

Clean Hydrogen Innovation Programme (CHIP) Contractors' Conditions

CHIP Phase II

1. DEFINITIONS AND INTERPRETATIONS.....	3
2. DURATION OF THE CONTRACT	5
3. ALTERATION OF REQUIREMENT	6
4. DUTY OF CARE.....	6
5. CONTRACTOR'S PERFORMANCE	6
6. REPORTS.....	7
7. INSPECTION.....	8
8. INVOICES AND PAYMENT.....	8
9. VALUE ADDED TAX.....	9
10. CORPORATE MATTERS AND ANTI-CORRUPTION.....	9
11. PUBLICITY AND PROTECTION OF INFORMATION	11
12. DISCRIMINATION.....	12
13. MERGER, TAKE-OVER OR CHANGE OF CONTROL.....	12
14. UNSATISFACTORY PERFORMANCE.....	12
15. TERMINATION OF THE CONTRACT	13
16. BREAK.....	13
17. CONSEQUENCES OF TERMINATION	13
18. ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS.....	14
19. INSURANCE.....	15
20. LOSS OR DAMAGE.....	16
21. RECOVERY OF SUMS DUE.....	17
22. DATA PROTECTION.....	17
23. INSOLVENCY OF THE CONTRACTOR.....	17
24. ROYALTIES AND LICENCE FEES.....	17
25. RETENTION OF DOCUMENTATION	18
26. SERVING OF NOTICES.....	18
27. GOVERNING LAW AND JURISDICTION	19
28. ARBITRATION	19
29. TRANSFER OF RESPONSIBILITY.....	19
30. CONTRACTOR'S OBLIGATIONS IN CONNECTION WITH TRANSFER REGULATIONS.....	20
31. ENVIRONMENTAL REQUIREMENTS.....	21
32. SEVERABILITY.....	21
33. WAIVER.....	21

34. RIGHTS OF THIRD PARTIES	21
35. SAFETY	21
36. CONFLICTS OF INTEREST	22
37. CAPITAL ITEMS	22
38. APPROVED MAXIMUM COST	22
39. OWNERSHIP OF INTELLECTUAL PROPERTY AND OTHER OUTCOMES	23
40. FORCE MAJEURE	25
41. REMEDIES	25
42. JOINT AND SEVERAL LIABILITY	26
43. ENTIRE AGREEMENT	26
44. COVID-19 EVENT	26

BACKGROUND TO THE CONTRACT

- I. CHIP convenes hydrogen industry players to assess the key innovations needed to increase the cost-competitiveness of clean hydrogen and undertake targeted research and development projects to stimulate the supply chain and accelerate deployment of clean hydrogen in the UK. Through this process, CHIP aims to drive down the end-to-end cost through collaborative innovation.

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In these Conditions, unless the context requires otherwise, the following words and phrases shall have the following meanings:

"Affiliate" means in relation to each CHIP Party, a legal entity or company which controls, is controlled by or is under common control with that CHIP Party. For purposes of this definition only, "control" and "controlled" shall mean (a) the ownership of more than fifty percent (50%) of voting securities or, (b) the ability to elect a majority of directors of, or (c) the exercise of management control over a legal entity, either through contract or otherwise;

"Approved Maximum Cost" means the Approved Maximum Cost set out in the Award Letter (as amended by the Carbon Trust from time to time);

"Award Date" means the date specified as such in the Award Letter;

"Award Letter" means the letter from the Carbon Trust to the Contractor confirming the award of the Contract to the Contractor;

"Business Day" has the meaning given to it in Condition 26.2(c);

"CHIP" means the Carbon Trust's Clean Hydrogen Innovation Programme;

"CHIP Agreement" means the agreement with an effective date of 14 February 2023 relating to CHIP, signed by the Carbon Trust and the following CHIP Parties: Levidian Nanosystems Limited, National Gas Transmission PLC, Scottish Power Energy Retail Limited, and SSE Thermal Energy Operations Limited, and any amendment thereof and/or any deed of adherence thereto;

"CHIP Parties" means: (i) the signatory parties to the CHIP Agreement (listed in Schedule 1), plus any future party who from time to time may join the CHIP Agreement or any successor agreement; and (ii) DESNZ, or some or all of the foregoing (each party being individually referred to as a **"CHIP Party"**);

"CHIP Parties' Information" means:

- i) non-trivial information concerning the business or affairs or any CHIP Party that is not in the public domain;
- ii) documented or otherwise registered intellectual property and technical data disclosed by any CHIP Party to the Contractor for the purposes of the Contract; and
- iii) documented or otherwise registered intellectual property and technical data created during or derived from the Work, whether by the Contractor, an CHIP Party, a sub-contractor or otherwise;
- iv) all information in whatever form, including data, documents, papers, drawings, diagrams, discs, tapes, prototypes, goods, processes, samples, specifications, formulae, technical, marketing, financial and other information (whether in physical or electronic form, oral or otherwise) including information relating to an CHIP Party's or its Affiliates' business, operations, activities, plans, clients, customers and suppliers which:
 - 1) is marked "Confidential";
 - 2) is accompanied by a transmittal identifying the information and its confidential

nature; or

- 3) if it is disclosed orally or visually, is identified and confirmed as confidential to the Contractor at the time of such disclosure;

"CHIP Parties' Property" means anything issued or otherwise provided in connection with the Contract by or on behalf of the CHIP Parties, or any of them;

"Conditions" means these Clean Hydrogen Innovation Programme (CHIP) Contractors' Conditions;

"Contract" means the Award Letter, these Conditions and the Final Scope of Work. In case of discrepancy between these Conditions and other documents forming part of the Contract, these Conditions shall prevail unless otherwise agreed in writing;

"Contract Manager" means any person appointed by the Carbon Trust from time to time and notified to the Contractor for the purpose of managing the Contract;

"Contract Price" means the price or prices payable to the Contractor by the Carbon Trust under the Contract for the full and proper performance by the Contractor of the Contract as determined under the provisions of the Contract;

"Contractor" means the person appointed by the Carbon Trust for the performance of the Work and Services (including any successors);

"Contractor's Employees" means any employee employed from time to time by the Contractor or by any sub-contractor involved in the provision of the Services;

"Contractor's Representative" means a competent person appointed by the Contractor to be its representative in relation to the performance of the Contract who will receive and act on any directions given by the Contract Manager;

"Data Protection Laws" means:

- i) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation) ("GDPR"), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;
- ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy;
- iii) all applicable law about the processing of personal data and privacy; and
- iv) the GDPR as it has effect in EU law;

"DESNZ" means the UK Department for Energy Security and Net Zero (which succeeded and assumed the energy policy responsibilities of the former UK Department for Business, Energy, and Industrial Strategy);

"Final Scope of Work" means the detailed programme of research to implement the Project, and as amended from time to time by decision of the CHIP Steering Committee, with its original version set out in [\[Schedule 2\]](#) to the Award Letter;

"Human Rights" means all internationally recognised human rights including those set out in the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) (collectively the International Bill of Human Rights), the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work, applicable standards of international humanitarian law, and the Voluntary Principles on Security and Human Rights;

"Key Personnel" means any person who, in the Carbon Trust's opinion, is fundamental to the performance of the Contract;

“month” means calendar month, unless otherwise defined;

“Normal Business Hours” has the meaning given to it in Condition 26.2(c);

“Programme” means any programme or timetable agreed by the parties to the Contract, as detailed in the Final Scope of Work, which regulates or specifies the period or periods for the performance of the Services or any part of them, together with any activities ancillary to the performance of the Services or the preparation and submission of reports;

“Project Deliverables” means the individual deliverables including, but not limited to, any reports, technical notes, documents, drawings, models, data, webinars to be produced by the Contractor under this Contract;

“Sanctions” means any laws or regulations adopted, maintained or enforced by the United Nations, European Union, the United Kingdom or the United States of America directed at prohibiting or restricting dealings with certain countries, territories, governments or specially designated persons or entities;

“Sanctions List” means any list of sanctioned individuals, entities, governments, countries or territories adopted, maintained or enforced under any Sanctions (including the United States List of Specifically Designated Nationals and Blocked Persons, the United States Entity List, the European Union financial sanctions list and any equivalent of the United Kingdom, and any list of parties designated for financial sanctions under United Nations Security Council Resolutions);

“Service(s)” or **“Work”** means in either case all work and services as further detailed in the Final Scope of Work (as amended from time to time in accordance with Condition 3) which the Contractor is required to carry out under the Contract, and the reference to “Services” shall include “Work” and vice versa; and

“Transfer Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time, and any equivalent applicable laws or regulations in other jurisdictions implementing or mirroring the Acquired Rights Directive (Directive 77/187/EC, as amended by Directive 2001/23/EC).

- 1.2 Any reference to a “person” shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, Government, Trust, Agency or any association or partnership (whether or not having a separate legal personality).
- 1.3 Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
- 1.4 The headings are inserted for convenience only and shall not affect the interpretation of the Contract.
- 1.5 Reference to any legislative requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them or replacement of them.
- 1.6 In these Conditions, any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. DURATION OF THE CONTRACT

- 2.1 Subject to the Carbon Trust's rights of termination under these Conditions, the Contract shall be in force from the Award Date and the Services shall be provided throughout the duration of the Contract in accordance with the dates and timetables specified in the Contract, or until the Services are completed in accordance with the Contract.

3. ALTERATION OF REQUIREMENT

3.1 The Carbon Trust reserves the right to alter the requirements of the Contract, as detailed in the Final Scope of Work, should this at any time become necessary in the interests of CHIP or where acting in accordance with the instructions of the CHIP Parties. In the event of any alteration of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between the Carbon Trust and the Contractor and recorded in writing.

4. DUTY OF CARE

4.1 The Contractor shall perform the Services to the reasonable satisfaction of the Carbon Trust and with the standard of skill, care and diligence which a competent and suitably qualified person performing the same Services could reasonably be expected to exercise.

4.2 The Contractor shall perform the Services in accordance with all relevant legislative and statutory requirements in force at the date at which the Services are performed.

4.3 The Contractor shall perform the Services in accordance with the Contract.

4.4 The Contractor acknowledges and agrees that the Contract has been awarded for the purposes of the CHIP Agreement and that all the CHIP Parties have an interest in its outcome.

5. CONTRACTOR'S PERFORMANCE

5.1 The Contractor shall properly manage and monitor performance of the Services and as soon as reasonably practical inform the Contract Manager if any aspect of the Contract is not being or is unable to be performed in accordance with its terms.

5.2 The Contractor shall provide all the necessary facilities, materials, equipment, and personnel of appropriate qualifications and experience to undertake the Services. The Contractor shall ensure that all personnel deployed on work relating to the Contract shall have appropriate qualifications and competence, shall be properly managed and supervised, and in these and any other respects be acceptable to the Carbon Trust. If the Carbon Trust gives the Contractor notice that in its reasonable opinion any person should be removed from involvement in the Services, the Contractor shall as soon as reasonably practical take appropriate steps to comply with such notice, and in any event such person shall be removed within fourteen (14) calendar days. The decision of the Carbon Trust regarding the Contractor's personnel shall be final and conclusive.

5.3 The Contractor shall:

- (a) give the Carbon Trust, if so requested, a copy of the curriculum vitae of every person who is or may be at any time employed on the Contract or engaged in the provision of the Services; and
- (b) when present at the facilities of any CHIP Party, comply (and ensure that its subcontractors, agents and employees comply) with any rules, regulations and any safety and security instructions from the relevant CHIP Party, including completion of any additional clearance procedures required by the relevant CHIP Party, and return of any facility passes as required.

5.4 The Contractor shall take all reasonable steps to avoid changes to any of the staff designated in the Contract as Key Personnel. The Contractor shall give at least one (1) month's notice to the

Contract Manager of any proposals to change Key Personnel and Condition 5.2 shall apply to the proposed replacement personnel.

- 5.5 The Contractor shall promptly notify the Carbon Trust, and keep the Carbon Trust informed of all other related business, negotiations, technology licensing, investment or trading activities with CHIP Parties in which the Contractor or any of its employees or agents are engaged. The foregoing requirement applies where any such activity may impact the performance of the Services or present a potential conflict (pursuant to Condition 36 (Conflicts of Interest)).
- 5.6 The Contractor shall exercise the standard of skill, care and diligence which a competent and suitably qualified person performing the same Services would exercise if dealing with third parties on behalf of the CHIP Parties in connection with the Contract and ensure that no significant commitments are entered into (unless expressly required under the Contract), without the Carbon Trust's prior written consent.
- 5.7 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Carbon Trust and the Contractor.
- 5.8 The Contractor acknowledges and confirms that various elements or work packages forming part of the Services may be subject to the Carbon Trust deciding (in certain circumstances, together with the other CHIP Parties), and the Contractor receiving confirmation from the Carbon Trust, that the Contractor is to perform such work package (such decision usually being described in the Final Scope of Work as a "go/no go" decision). Where a "go/no go" decision applies to the Services, the Contractor shall not commence any work package which is subject to such confirmation (or commence any work packages which are consequent upon, logically to be performed subsequent to or which are dependent on such work packages being commenced or completed) until the Contractor receives written confirmation from the Carbon Trust that the Carbon Trust requires such work package to be delivered.
- 5.9 In the event that the Carbon Trust does not give or decides not to give the confirmation referred to in Condition 5.8, the Contractor shall have no right to receive any payment, monies or compensation in respect thereof or in respect of the work packages which are subject to the requirement for such confirmation.

6. REPORTS

- 6.1 Without prejudice to the obligations relating to the submission of reports or other information as specified under the Contract, the Contractor shall provide such reports or other information regarding the performance of the Services at such time or times, and in such form as the Contract Manager may reasonably require from time to time.
- 6.2 Within five (5) working days following the end of each month following the Award Date, the Contractor shall provide to the Carbon Trust a report (i) with a breakdown of the total costs and expenses incurred by the Contractor in performing the Services in the previous month, (ii) informing about the completion status of the work packages delivered under the Contract, and (iii) the explanation of any variance to the agreed timings and budget. A template for the monthly reports will be provided by the Carbon Trust.

7. INSPECTION

7.1 During the course of the Contract the Carbon Trust shall have the right to inspect, audit or otherwise examine any of the Services being provided and all related records. The Carbon Trust shall likewise have reasonable opportunity to interview any person engaged in providing Services. The exercise of these rights may occur on any premises of or occupied by the Contractor or at those of any sub-contractor at a reasonable time. The Carbon Trust, through its Contract Manager, shall give reasonable notice to the Contractor of such visits or inspections. The Contractor shall provide free of charge all such facilities as the Carbon Trust may reasonably require for such inspection, audit, interview and examination. In this Condition, Services includes administrative records, planning documents or preliminary work for the Services in whatever form.

8. INVOICES AND PAYMENT

8.1 The Carbon Trust shall issue a purchase order(s) authorising the Contractor to undertake the relevant Services. Notwithstanding any other provision of the Contract, the Carbon Trust shall not be liable to pay the Contractor for any Services in connection with the Contract unless and until the Carbon Trust has issued the Contractor with a purchase order, and further the Carbon Trust shall not be liable to pay the Contractor any amount in excess of the amount stated in the purchase order.

8.2 The Contractor shall submit invoices in the form required by the Carbon Trust (including electronically if so requested by the Carbon Trust), and in any event within thirty (30) calendar days of the completion of the relevant Services. All invoices shall quote the Contract number, provide a description of the Services completed to date, provide an appropriate breakdown of the amount for payment and, where appropriate, the purchase order number. Invoices shall be addressed as the Carbon Trust may direct.

8.3 The Contractor shall submit with the invoice such records as the Carbon Trust may reasonably require to enable the Carbon Trust to verify that the Services referred to in that invoice have been properly performed.

8.4 The Contractor shall provide to the Carbon Trust the name and address of the bank, the account name and number, the bank sort code and any other details, in whatever format the Carbon Trust may require to execute payment transactions.

8.5 The Contractor shall be paid only in respect of the satisfactory performance of the Services in accordance with the Contract.

8.6 Except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the Services shall be inclusive of all costs of staff, facilities, equipment, materials and all other expenses whatsoever incurred by the Contractor in discharging its obligations under the Contract.

8.7 Payment to the Contractor shall be made within forty-five (45) Business Days of the Carbon Trust's receipt of a valid and undisputed invoice, provided that the Carbon Trust is satisfied, acting reasonably, that the Services for which the invoice relates have been performed fully in accordance with the Contract.

9. VALUE ADDED TAX

- 9.1 Where applicable, the Contractor shall be paid the amount of any VAT chargeable in respect of the performance of the Services in accordance with the Contract and subject to the provision of valid VAT invoices.

10. CORPORATE MATTERS AND ANTI-CORRUPTION

- 10.1 The Contractor hereby warrants and represents to the Carbon Trust that on the Award Date:
- (a) it is a company duly incorporated or otherwise established in and validly existing under the laws of its country of incorporation or establishment;
 - (b) it has taken all necessary corporate or other action to authorise the execution, delivery and performance of the Contract;
 - (c) it has the full power and authority to enter into and perform its obligations under the Contract; and
 - (d) the Contract will, when executed, constitute lawful, valid and binding obligations upon it in accordance with its terms.
- 10.2 The Contractor hereby warrants and represents that it has and shall continue to comply with all applicable laws relating to combating bribery and corruption (including any regulations or guidance issued pursuant to such laws) and to implement and maintain appropriate measures to ensure that its officers, directors, employees, agents, representatives and subcontractors will not in connection with the Contract:
- (a) offer, promise, pay, give or authorise any financial or other advantage, or anything else of value, to any other person or organisation, with the intent to exert improper influence over the recipient, induce the recipient to violate his or her duties, secure an improper advantage, or improperly reward the recipient for past conduct;
 - (b) offer, promise, pay, give, authorise, request or receive an improper advantage, or accept an offer thereof, in connection with a position, office or assignment; or
 - (c) request, receive or accept, for the benefit or himself or anyone else, any financial or other advantage, or anything else of value, as an inducement or reward for violating a duty of loyalty to the Carbon Trust or the other CHIP Parties, or improperly performing a function that relates in any way to the Contract or to the Carbon Trust or the other CHIP Parties.
- 10.3 The Contractor undertakes that throughout the duration of the Contract it will (and shall procure that its contractors and subcontractors will) take effective measures to ensure that its performance of the Contract respects Human Rights consistent with the United Nations Guiding Principles on Business and Human Rights (2011).
- 10.4 The Contractor undertakes that throughout the duration of the Contract it will, and shall ensure that its contractors and subcontractors will, comply and take effective measures to comply with the rules of international law and national law, as relevant and applicable to the party, in relation to:
- (a) embargos, drugs and weapons trafficking, terrorism;
 - (b) trade, import and export licenses and customs;
 - (c) health and safety of staff and third parties;
 - (d) labour, immigration and prohibition of illegal work;
 - (e) environment protection;

- (f) financial criminal offences, in particular corruption, fraud, influence peddling (or equivalent offence as it can be provided by the national law applicable to the Contract), swindling, theft, misuse of corporate funds, counterfeiting, forgery and the use of forgeries, and similar or related offences;
 - (g) measures to combat money laundering;
 - (h) competition law;
 - (i) fundamental human rights and in particular the prohibition of (i) using child labour and any form of forced or compulsory labour and (ii) organising any form of discrimination within its company or towards the suppliers and sub-contractors;
 - (j) without prejudice to any other provision of the Contract, modern slavery (including the Modern Slavery Act 2015); and
 - (k) without prejudice to any other provision of the Contract, tax evasion (including the Criminal Finance Act 2017).
- 10.5 The Contractor shall upon reasonable request by the Carbon Trust give a written statement to the Carbon Trust confirming that the Contractor has complied with all requirements under Conditions 10.2 and 10.4.
- 10.6 The Contractor shall promptly report to the Carbon Trust any act or omission which may reasonably be seen as a breach of this Condition 10. In such instances, the Contractor shall give the Carbon Trust access to all documents which, in the Carbon Trust's reasonable opinion, may be relevant to determine whether such a breach has occurred. The Contractor shall also promptly report to the Carbon Trust any requests or solicitations for advantages or anything of value as mentioned in this Condition 10.
- 10.7 The Contractor represents and warrants that neither it, nor to its knowledge any of its owners, or subcontractors performing work under the Contract is:
- (a) in breach of Conditions 10.2, 10.3 or 10.4;
 - (b) listed on a Sanctions List, or owned (in whole or in part) or otherwise controlled, directly or indirectly, by any person or entity listed on a Sanctions List; or
 - (c) resident in or incorporated under the laws of any country or territory subject to Sanctions, and the Contractor undertakes to promptly notify the Carbon Trust in writing should it become aware of any changes in this respect.
- 10.8 Where the Contractor or an individual or entity owning 50% or more of the Contractor or that in any other way controls the Contractor (directly or indirectly), is or becomes listed on any Sanctions List this will constitute a material breach of the Contract and the Carbon Trust shall be entitled to terminate the Contract with immediate effect.
- 10.9 The Carbon Trust may terminate the Contract without notice if the Contractor commits or participates in any offence under any law, statute, or regulation relating to anti-bribery and anti-corruption in relation to this or any other contract between the Contractor and the Carbon Trust (and, if the Contractor does, the Carbon Trust shall be entitled to recover from the Contractor the amount of any loss arising or resulting from such termination and/or from the Contractor's commission of or participation in such offence and the amount of value or any such gift, consideration or commission).
- 10.10 The decision of the Carbon Trust in relation to this Condition shall be final and conclusive.

11. PUBLICITY AND PROTECTION OF INFORMATION

- 11.1 The Carbon Trust reserves, for the benefit of the other CHIP Parties, the exclusive right to disclose to the other CHIP Parties any information about or connected with the Contract (the "**Contract Information**").
- 11.2 The Contractor shall not disclose any Contract Information to any person unless it is strictly necessary for the performance of the Contract, and authorised in writing by the other party. Subject to Conditions 11.5 – 11.9, the Contractor may however disclose Contract Information to Contractor's Employees without being authorised in writing by the Carbon Trust. The Contractor shall also not grant any right to photograph or film in relation to or in connection with the Services, except with the prior written permission of the Carbon Trust, to whom any press or other enquiry or any such matter should be referred. The Contractor shall comply with any instructions from the Carbon Trust regarding changes to authorisations and other instructions regarding disclosure or non-disclosure.
- 11.3 The Contractor shall treat any CHIP Parties' Information as confidential information and shall not disclose it to any other person without the express written consent of the Carbon Trust or the individual CHIP Party concerned, as the case may be.
- 11.4 Conditions 11.2 and 11.3 do not apply in relation to information which: (a) is in or enters the public domain, unless the information concerned entered the public domain as the result of any act or default on the part of the Contractor or any person for whose relevant acts or omissions it is responsible; (b) can be proved to have been independently developed by the Contractor; or (c) can be proved to have come into the possession of the Contractor through disclosure by a third party that owes no obligations of confidentiality towards the relevant CHIP Party and who did not receive it directly or indirectly from any person who owes such obligations in respect of the information concerned. Nothing in Conditions 11.2 or 11.3 shall prevent any disclosure which is required under any applicable law, regulation or order of a competent court or regulatory authority in any relevant jurisdiction (but only to the extent and for the purpose that disclosure is so required).
- 11.5 Without limitation to Conditions 11.2 and 11.3, but subject to Condition 11.4, the Contractor shall ensure that all CHIP Parties' Information and Contract Information:-
- (a) is divulged only to the minimum number of persons required to give effect to the requirements of the Contract;
 - (b) is divulged only to the extent essential to each person's action in carrying out (or in connection with) the Contract and that such persons do not further divulge such information; and
 - (c) is properly safeguarded.
- 11.6 Subject to the retention of a copy for proper professional records, the Contractor shall, on written request from the Carbon Trust, deliver up to the CHIP Parties all CHIP Parties' Information, all Contract Information, and all documents containing any part of the Work carried out by the Contractor, including but not limited to, documents stored electronically.
- 11.7 The Contractor shall ensure that any contract with:
- (a) its employees; and
 - (b) any contractor which it engages in any way in connection with the Contract,

contains a condition requiring that person to keep all CHIP Parties' Information and all Contract Information confidential or contain confidentiality provisions no less protective of the Contract Information and/or CHIP Parties' Information than those within this Condition 11, and shall, if so requested by the Carbon Trust, draw their attention to the requirements of this Condition 11 and obtain from them and deliver to the Carbon Trust a written undertaking in the same terms as this Condition 11 made directly enforceable by the Carbon Trust and the other CHIP Parties.

- 11.8 The Contractor shall not, in connection with the Contract, communicate with representatives of the general or technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the Carbon Trust.
- 11.9 Except with the prior written consent of the Carbon Trust (which will seek the approval of the relevant CHIP Party or CHIP Parties as necessary), the Contractor shall not make use of the Contract Information or any CHIP Parties' Information otherwise than for the purpose of the Contract.

12. DISCRIMINATION

- 12.1 The Contractor shall not unlawfully discriminate in any form or manner, and shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all subcontractors employed in the execution of the Contract do not unlawfully discriminate. This Condition shall not in any way relieve the Contractor of its general obligations to comply with any legislative requirements as provided in Condition 4.2.

13. MERGER, TAKE-OVER OR CHANGE OF CONTROL

- 13.1 The Contractor shall, to the extent legally permitted, forthwith inform the Carbon Trust in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control (where "control" in this context means (a) the ownership of more than fifty percent (50%) of voting securities or, (b) the ability to elect a majority of directors of, or (c) the exercise of management control over a legal entity, either through contract or otherwise), change of name or status. The Contractor shall comply with any request by the Carbon Trust for information arising from this Condition.

14. UNSATISFACTORY PERFORMANCE

- 14.1 Where the Contractor has failed to perform the whole or any part of the Services, to the reasonable satisfaction of the Carbon Trust or with the standard of skill, care and diligence which a competent and suitably qualified person performing the same Services could reasonably be expected to exercise, or in accordance with the Contract (including the Final Scope of Work and Programme), the Carbon Trust shall give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.
- 14.2 Where the Contractor has been notified of a failure in accordance with Condition 14.1 the Carbon Trust may either (at the Carbon Trust's sole option):
- (a) request from the Contractor that, at its own expense and as specified by the Carbon Trust, it re-schedules and performs the Services to the Carbon Trust's satisfaction within such period as may be specified by the Carbon Trust in the notice (to be no less than fourteen (14) days), including where necessary, the correction or re-execution of any Services already carried out; or

- (b) if remedying the default is not possible or the Contractor fails to remedy the default within the above mentioned 14-day period, withhold or reduce payments to the Contractor, in such amount as corresponds to the proportion of the Services failing to comply with the requirements of the Contract.

15. TERMINATION OF THE CONTRACT

15.1 Without prejudice to any other power of termination, the Carbon Trust may terminate the Contract without notice, for any of the following reasons:

- (a) the breach by the Contractor of any of Conditions 10 (Corporate Matters and Anti-Corruption) and 11 (Publicity and Protection of Information) herein, or any other material breach of Contract;
- (b) the failure by the Contractor to comply with a notice given under Condition 14 (Unsatisfactory Performance);
- (c) the Contractor ceases or proposes to cease to carry on its business; or
- (d) there is a change of control of the type referred to in Condition 13 (Merger, Take-over or Change of Control), and the Carbon Trust has not agreed in advance in writing to the particular change of control, save that in this event the Carbon Trust shall give thirty (30) calendar days' notice in writing to the Contractor.

15.2 The Carbon Trust shall have the right to immediately suspend or terminate the Contract either in whole or in part without notice and without liability if the Carbon Trust considers that:

- (a) the Contractor has not provided the Project Deliverables forming part of the Services in accordance with the Contract, to the reasonable satisfaction of the Carbon Trust and in a timely manner; and/or
- (b) activities agreed with the Carbon Trust are not being completed to the timescales and/or quality standards set out in the Contract or otherwise agreed between the Contractor and the Carbon Trust; and/or
- (c) the Services are not likely to be completed within the Approved Maximum Cost.

16. BREAK

16.1 The Carbon Trust shall in addition to its powers under any other of these Conditions have the right to terminate the Contract at any time by giving to the Contractor thirty (30) calendar days' written notice. Upon the expiry of the notice the Contract shall be terminated without prejudice to the rights of the parties accrued to the date of termination.

16.2 Without prejudice to Condition 16.1, if the Contract is terminated by the Carbon Trust under Condition 16.1 the Contractor shall have the right to receive a pro rata payment of the instalment of the Contract Price next falling due for payment. Subject to Conditions 8.5 and 8.7, the pro rata payment shall be based on the proportion of the Work associated with the respective payment instalment that has been completed. The Contractor will supply evidence of this Work and how the proportion is calculated.

17. CONSEQUENCES OF TERMINATION

17.1 Where the Contract is terminated under Condition 15 (Termination of the Contract) or Condition 23 (Insolvency of the Contractor), the following provisions shall apply:

- (a) any sum due or accruing to the Contractor may be withheld or reduced by such amount as

- the Carbon Trust in either case considers reasonable and appropriate in the circumstances;
- (b) the Carbon Trust may make all arrangements which are in its reasonable view necessary to procure the orderly completion of the Services including the letting of another contract or contracts; and
 - (c) where the total costs reasonably and properly incurred by the Carbon Trust by reason of such arrangements exceed the amount that would have been payable to the Contractor for the completion of the Services, the excess shall be recoverable from the Contractor, and the Carbon Trust reserves the right without prejudice to any other of its rights to recover such excess by set-off against any amount withheld by the Carbon Trust under Condition 17.1 (a) or as otherwise provided for under Condition 21 (Recovery of Sums Due).
- 17.2 Where the Contract is terminated under Condition 15 (Termination of the Contract) (subject to the Contractor's right to remedy a default within the 14-day period in the case of Condition 15.1(b)) or Condition 16 (Break), the Carbon Trust may, during any notice period:
- (a) direct the Contractor, where the Services have not been commenced, to refrain from commencing such Services, or where the Services have been commenced, to cease work immediately; and/or
 - (b) direct the Contractor to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid at the agreed Contract Price or, where no agreement exists, a fair and reasonable price.
- 17.3 Upon termination of the Contract for any reason whatsoever:
- (a) subject to Condition 17.3(b) the relationship of the parties shall cease and any rights or licences granted by the CHIP Parties under or pursuant to the Contract shall cease to have effect save as (and to the extent) expressly provided for in this Condition 17.3;
 - (b) the provisions of Conditions 6 (Reports), 7 (Inspection), 11 (Publicity and Protection of Information), 20 (Loss or Damage), 21 (Recovery of Sums Due), 22 (Data Protection), 24 (Royalties and Licence Fees), 25 (Retention of Documentation), 26 (Serving of Notices), 27 (Governing Law and Jurisdiction), 28 (Arbitration), 29 (Transfer of Responsibility), 30 (Contractor's Obligations in Connection with Transfer Regulations), 34 (Rights of Third Parties), 39 (Ownership of Intellectual Property and Other Outcomes) and 41 (Remedies) and any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect; and
 - (c) the Contractor shall immediately deliver up to the relevant CHIP Parties (or, if the Carbon Trust so requests by notice in writing, destroy) all property of the CHIP Parties in the Contractor's possession at the date of termination, including all CHIP Parties' Property and all CHIP Parties' Information, together with all copies of such information and shall certify that it has done so, and shall make no further use of such information.
- 17.4 The termination of the Contract shall be without prejudice to the rights and remedies of any party, and the other CHIP Parties, which may have accrued up to the date of termination.
- 17.5 Subject to Condition 16.2, where the Contract terminates for any reason or expires then the CHIP Parties will not be liable to make any further payments to the Contractor.
- 18. ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS**
- 18.1 The Contractor shall not transfer, assign, charge, subcontract or otherwise dispose of the Contract or any part of it without the prior written consent of the Carbon Trust which shall not be unreasonably withheld.

- 18.2 The Contractor shall ensure that any sub-contractor complies with all relevant Contractor obligations under the Contract. Any sub-contract shall not relieve the Contractor of his obligations under the Contract. The Contractor must notify the Carbon Trust in writing of the scope and the counterparty of any sub-contract entered into within 7 calendar days of its coming into effect.
- 18.3 Where the Contractor enters into a contract with a supplier or sub-contractor for the purpose of performing the Contract or any part of it, it shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or sub-contractor within a specified period not exceeding thirty (30) calendar days from receipt of a valid invoice as defined by the Contract requirements.
- 18.4 The Contractor shall be wholly responsible for the actions, omissions or defaults of its employees, sub-contractors, consultants, agents and suppliers and their respective employees.
- 18.5 The Carbon Trust, or any chosen nominee acceptable to the Carbon Trust and the Contractor, may attend at any time, without prior notice, any part of any tender process in connection with the Services, or inspect any documents relating to the proposal exercise. The Contractor shall provide the Carbon Trust with a regular updated programme for all tenders underway.
- 18.6 The Contractor shall, if requested to do so by the Carbon Trust for the purposes of audit, provide the Carbon Trust with a copy of any sub-contract placed by the Contractor in connection with the Services.
- 18.7 Notwithstanding any other provision of the Contract, the Carbon Trust may at any time without consent assign, novate or otherwise transfer the benefit and burden of the Contract to any other person provided that in the reasonable view of the Carbon Trust such person is of sufficient standing to be able to discharge the Carbon Trust's liabilities under the Contract. In such circumstances the Contractor, promptly following the Carbon Trust's request, shall execute all such further deeds and documents as the Carbon Trust may require to give effect to such assignment, novation or transfer.

19. INSURANCE

- 19.1 The Contractor shall ensure that it and its sub-contractors, agents and suppliers each take out and maintain at their own expense a policy or policies of insurance with reputable insurers (such policies as a minimum to be consistent with Good Industry Practice) in respect of public liability, professional indemnity for the Services in an amount of not less than £5,000,000 for each and every claim and employer's liability insurance in an amount of not less than £2,000,000 for each and every claim together with such other insurances as are required by law to be maintained by the sub-contractor in relation to the provision of the Services.
- 19.2 The Contractor shall ensure that its sub-contractors, agents and suppliers each also take out and maintain at their own expense a policy or policies of insurance with reputable insurers consistent with at least the best industry practice of contractors (who use the standard of skill, care and diligence which a competent and suitably qualified person performing the same Services could reasonably be expected to exercise); such insurance shall be for an appropriate value of cover for any claim arising out of such sub-contractor's, agent's or supplier's services in relation to the provision of the Services, and in any event shall cover public liability, employers liability and

professional indemnity for the Services, together with such other insurances as are required by law to be maintained by the sub-contractor in relation to the provision of the Services.

- 19.3 The Contractor shall supply to the Carbon Trust promptly on request the certificates of the insurance policies it is obliged to maintain in accordance with this Condition 19 together with evidence that all premiums have been paid to date. The Contractor agrees not knowingly to do or omit to do anything which would entitle the insurers to wholly or partially avoid liability under any such policy.
- 19.4 If, for whatever reason, the Contractor fails to maintain the insurance described in this Condition or without the approval of the Carbon Trust obtains a different policy of insurance from that which it notified to the Carbon Trust at the time when it submitted its tender, the Carbon Trust may notify the Contractor of the Carbon Trust's requirement that the Contractor make alternative arrangements and if such insurance is not arranged by the Contractor within thirty (30) calendar days of receipt of the notice from the Carbon Trust, the Carbon Trust may make such alternative arrangements as are necessary to protect its interests and recover the cost from the Contractor.
- 19.5 The terms of any insurance or the amount of cover shall not relieve the Contractor or its sub-contractors or consultants of any liabilities under the Contract, their sub-contracts or their terms of commission.

20. LOSS OR DAMAGE

- 20.1 Subject to Condition 20.2, the Contractor shall indemnify the CHIP Parties and keep each of them fully indemnified against all existing pending or threatened civil, criminal, administrative, regulatory or judicial actions, suits, claims, notices, demands, investigations, proceedings, orders, costs, charges, damages, losses and expenses suffered or incurred by the CHIP Parties and for any liability to any third party including without limitation regulatory authorities in either case, due to, arising from or in connection with:

- (a) the negligent acts, omissions or defaults of the Contractor or the Contractor's employees, sub-contractors, consultants, agents and suppliers and any of their respective employees in performing the Services;
- (b) the breach of any provision of the Contract by the Contractor or the Contractor's employees, sub-contractors, consultants, agents and suppliers and all of their respective employees;
- (c) any defect in the workmanship, materials or design of any goods supplied in connection with the Services; and
- (d) any infringement or alleged infringement of any patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right for or relating to the Services (or any goods supplied in connection with the Services) unless such infringement has occurred directly as a result of any specification supplied by the CHIP Parties,

in each case save to the extent that the same is directly attributable to any negligent act of the CHIP Parties.

- 20.2 With the exception of any liability howsoever arising under or in connection with, or as a result of a breach of, Conditions 10 (Corporate Matters and Anti-Corruption), 11 (Publicity and Protection of Information), 20.1(d) (Loss or Damage), 22 (Data Protection), 24 (Royalties and Licence Fees), or 39 (Ownership of Intellectual Property and Other Outcomes) where such liability shall be unlimited, the Contractor's liability under or in connection with the Contract shall be limited to one million

pounds sterling (£1,000,000) and, subject to the maximum extent permitted by law, the Contractor shall not be liable to the CHIP Parties for any indirect, special, punitive, consequential, exemplary or incidental damages or losses.

- 20.3 Notwithstanding any other provision in the Contract, the Carbon Trust's liability under or in connection with the Contract shall be limited to the lesser of: (i) the Approved Maximum Cost; and (ii) one hundred thousand pounds sterling (£100,000), and the Carbon Trust shall not be liable to the Contractor for any indirect, special, punitive, consequential, exemplary or incidental damages or losses.

21. RECOVERY OF SUMS DUE

- 21.1 Whenever under the Contract any sums of money shall be recoverable from the Contractor by the CHIP Parties or payable by the Contractor to the CHIP Parties, the same may be deducted from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other contract with the CHIP Parties connected to the Final Scope of Work (and issued as part of CHIP).

22. DATA PROTECTION

- 22.1 Each Party shall, at all times, comply with the provisions of the Data Protection Laws.

23. INSOLVENCY OF THE CONTRACTOR

- 23.1 Without prejudice to any other rights of the Carbon Trust under the Contract, the Carbon Trust may immediately terminate the Contract without payment of compensation or other damages caused to the Contractor solely by such termination by giving notice in writing to the Contractor if the Contractor ceases trading or is unable to pay its debts as they fall due, or has any receiver or liquidator appointed over any of its business or assets, or passes a resolution for winding-up, or is the subject of any application, petition or order for administration, winding up, dissolution or bankruptcy, or enters into any composition or voluntary arrangement with its creditors, or is subject to any similar event of insolvency in any other jurisdiction, or if the Carbon Trust reasonably suspects that the Contractor is likely to be subject to any of the events described in this Condition. Such termination shall not prejudice or affect any right of action or remedy which shall have accrued before that date or shall accrue thereafter to the Carbon Trust.
- 23.2 The Contractor shall inform the Carbon Trust if the Contractor shall at any time cease trading or become unable to pay its debts as they fall due, or has any receiver or liquidator appointed over any of its business or assets, or passes a resolution for winding-up (other than for the purpose of reconstruction or amalgamation), or is the subject of any application, petition or order for administration, winding up (other than for the purposes of amalgamation or reconstruction), dissolution or bankruptcy or enters into any composition or voluntary arrangement with their creditors or is subject to any similar event of insolvency in any jurisdiction.

24. ROYALTIES AND LICENCE FEES

- 24.1 The Contractor shall ensure that all royalties, licence fees or similar expenses in respect of all intellectual property used in connection with the Contract or forming part of the Services (other than intellectual property provided by any of the CHIP Parties for the purpose of performing the

Services) have been paid and are included within the Contract Price. The Contractor shall indemnify the CHIP Parties from and against all claims and proceedings, which may be made or brought against the CHIP Parties (or any of them) and any damages, costs and expenses incurred by the CHIP Parties (or any of them) in respect of such supply or use of such intellectual property, except where an CHIP Party's use of such intellectual property is negligent or done so in bad faith, which includes using the intellectual property in a way which is materially different from its normal use, as is reasonable in the circumstances.

25. RETENTION OF DOCUMENTATION

25.1 The Contractor shall retain and produce when required (and explain as necessary) such accounts, documents (including working documents) and records as the Carbon Trust, or the Contract Manager, may request, in connection with the Contract, at any time during the Contract and for a period of two (2) years from the date of expiry or termination or such longer period as may be agreed between the Carbon Trust and the Contractor in writing at or before the commencement of the Contract; and afford such facilities as the Carbon Trust may reasonably require for representatives of the CHIP Parties to visit the Contractor's premises and examine the records under this Condition provided that the Carbon Trust gives at least fourteen (14) days' prior written notice to the Contractor.

26. SERVING OF NOTICES

26.1 Subject to Condition 26.3, any notice or other communication required to be given or served under or in connection with the Contract by the Carbon Trust or any other CHIP Party shall be in writing and shall be served by either:

- (a) delivery to the Contractor's Representative;
- (b) sending it by pre-paid first-class post to the Contractor's last known place of business or registered office, when it shall be deemed to be served five (5) Business Days after posting in the prescribed manner; or
- (c) delivered via email to [INSERT EMAIL ADDRESS 1 OF CONTRACTOR] and [INSERT EMAIL ADDRESS 2 OF CONTRACTOR] where it shall be deemed to have been received at the time of transmission, or, if this time falls outside of Normal Business Hours in the place of receipt, 9:00am on the next Business Day after transmission.

26.2 Subject to Condition 26.3, any notice or other communication required to be given or served under or in connection with the Contract by the Contractor shall be in writing and served by either:

- (a) hand delivery to the Carbon Trust at the following address: Head of Legal and Company Secretary, The Carbon Trust, Level 5, Arbor, 255 Blackfriars Road, London SE1 9AX, UK;
- (b) sending it by pre-paid first-class post to the Carbon Trust at the following address: Head of Legal and Company Secretary, The Carbon Trust, Level 5, Arbor, 255 Blackfriars Road, London SE1 9AX, UK where it shall be deemed to be served five (5) Business Days after posting in the prescribed manner; or
- (c) delivered via email to [INSERT EMAIL ADDRESS 1 OF CT] and [INSERT EMAIL ADDRESS 2 OF CT] with a copy to legal@carbontrust.com where the Contractor is serving any termination notice or dispute notice in respect of the Contract or similar, where it shall be deemed to have been received at the time of transmission, or, if this time falls outside of 9:00am to 5:30pm ("**Normal Business Hours**") in the place of receipt, 9:00am on the next

day other than a Saturday, Sunday or public holiday in England when banks in London are open for business (“**Business Day**”) after transmission.

- 26.3 Conditions 26.1 and 26.2 do not apply to the service of any proceedings or other documents in any legal action or any arbitration.

27. GOVERNING LAW AND JURISDICTION

- 27.1 The Contract shall be governed by and interpreted in accordance with English Law and subject to Conditions 28 (Arbitration) and 41 (Remedies) the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales.

28. ARBITRATION

- 28.1 In the event of any dispute arising out of or in connection with the Contract, the parties will in good faith refer that dispute to the decision of the Managing Director of the Contractor and the Chief Operating Officer of the Carbon Trust or other such persons of equivalent status as the parties may respectively have designated for the purpose by notice to the other). If any other CHIP Party wishes to raise issues arising out of or in connection with the Contract with the Contractor, it shall do likewise. (References to “**parties**” in Condition 28.2 shall be taken to include reference to any CHIP Party.)
- 28.2 If within sixty (60) calendar days after any referral has been made pursuant to Condition 28.1, or such further period as the parties shall agree in writing, the parties remain in disagreement, the dispute shall be referred to and finally resolved by arbitration under the Arbitration Rules of the London Court of International Arbitration in force at the date of the referral, which such rules are deemed to be incorporated by reference to this Condition.
- 28.3 Any arbitration commenced pursuant to Condition 28.2 shall be administered by the London Court of International Arbitration.
- 28.4 In any arbitration, the standard London Court of International Arbitration administrative procedures and schedule of costs shall apply.
- 28.5 In any arbitration the appointing authority shall be the London Court of International Arbitration.
- 28.6 The number of arbitrators in any arbitration shall be one.
- 28.7 The place of arbitration shall be London, England.
- 28.8 The language to be used in the mediation or in the arbitral proceedings shall be English.
- 28.9 Judgment upon the award rendered may be entered in any Court having jurisdiction, or application may be made to such a court for a judicial acceptance of the award and an order for enforcement (as the case may be).

29. TRANSFER OF RESPONSIBILITY

- 29.1 In the event that a different organisation is required to take over the Services from the Contractor at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer of the Services, under arrangements to be notified to him by the Carbon Trust.

- 29.2 The transfer or assignment shall be arranged between the Carbon Trust and the Contractor so as to reduce to a minimum any interruption in the Services.
- 29.3 The Contractor shall provide such information and assistance as is reasonably required by the Carbon Trust in order for it to comply with applicable procurement laws and regulations (if this is relevant) relating to the selection of a different organisation to take over the Services from the Contractor.
- 29.4 Without prejudice to the generality of Conditions 29.1 and 29.2 the Contractor shall procure if required by the Carbon Trust the assignment, novation or otherwise the transfer of contracts with sub-contractors entered into by the Contractor for the purpose of performing the Contract to the organisation taking over the Services at the expiry or termination of the Contract.
- 29.5 Where the Contractor enters into a sub-contract for the purpose of performing the Contract or any part of it he shall cause a term to be included in such sub-contract which provides for the assignment, novation or otherwise transfer of the sub-contract to the organisation taking over the Services at the expiry or termination of the Contract. A further term shall make provision for the sub-contractor to execute the necessary deeds and documents as the Contractor may reasonably require to give effect to such assignment, novation or transfer.

30. CONTRACTOR'S OBLIGATIONS IN CONNECTION WITH TRANSFER REGULATIONS

- 30.1 Where requested to do so (and in circumstances where the Transfer Regulations might apply) the Contractor shall provide such information (including any changes to and interpretations thereof) in connection with the Transfer Regulations, as the Carbon Trust may require, to the Carbon Trust and/or to any other person authorised by the Carbon Trust who is to be invited to submit a tender in relation to the provision of similar Services, within ten (10) calendar days of the request.
- 30.2 During the eight (8) month period preceding the expiry of the Contract or within any period of notice of termination or notice of break of the Contract, the Contractor shall not without the prior written agreement of the Carbon Trust, which shall not be unreasonably withheld or delayed:
- (a) materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of the Contract; or
 - (b) materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of the Contract.
- 30.3 The Contractor shall not knowingly do or omit to do anything that may adversely affect an orderly transfer of responsibility for provision of the Services.
- 30.4 For the avoidance of doubt, it is agreed that the Contractor shall assume full responsibility for any redundancy cost and related notice and any liabilities that might arise under the Transfer Regulations for all Contractor Employees upon termination of the Contract. The Contractor agrees to indemnify the Carbon Trust, and any incoming contractor fully and to hold them harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the application of the Transfer Regulations in respect of Contractor Employees.
- 30.5 The Contractor's obligations regarding provision of information under this Condition 30 shall be qualified to apply solely to the extent that the Transfer Regulations apply.

31. ENVIRONMENTAL REQUIREMENTS

31.1 The Contractor shall provide the Services in accordance with the Carbon Trust's environmental policy, which is to conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, Volatile Organic Compounds and other substances damaging to health and the environment.

32. SEVERABILITY

32.1 If any provision, or part of a provision, of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision, or such part thereof, shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision, or part, eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Carbon Trust and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

33. WAIVER

33.1 The failure of the Carbon Trust or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.

33.2 No waiver shall be effective unless it is communicated to either the Carbon Trust or the Contractor in writing.

33.3 A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

34. RIGHTS OF THIRD PARTIES

34.1 Every CHIP Party shall have the right be fully informed about the Contract and its performance, and shall have the right to have full view and access to all research activities forming part of the Services. All CHIP Parties shall equally enjoy the right to receive all reports, records and information arising from the Contract and to inspect the work, technology or equipment developed hereunder.

34.2 The CHIP Parties shall have the joint and several right to enforce any term of the Contract, including without limitation these Conditions. Rights given to the Carbon Trust hereunder shall be deemed to have been given also to every other CHIP Party, and the obligations expressed to be owed to the Carbon Trust under these Conditions shall be deemed to be owed also to every other CHIP Party.

34.3 Except as expressly provided herein, a person who is not a party to this Contract shall not have any rights to enforce any term of the Contract.

34.4 No amendment or variation of this Contract shall be made without the prior written consent of the Contractor and the Carbon Trust.

35. SAFETY

35.1 The Contractor shall be responsible for the observance by it, its employees and sub-contractors of all safety precautions necessary for the protection of it, its employees, sub-contractors and any other persons including all precautions required to be taken by or under any legislative and statutory

requirements in force at the date at which the Services are performed and any relevant codes of practice (including any rules relating to safety issued by the Carbon Trust from time to time). The Contractor shall where required co-operate fully with the Carbon Trust to ensure the proper discharge of these duties.

35.2 Without prejudice to the generality of the foregoing, the Contractor shall:

35.2.1 at the commencement of the Contract, confirm that appropriate health and safety systems are in place;

35.2.2 submit a health and safety summary during or on completion of the Contract, as reasonably directed by the Carbon Trust; and

35.2.3 confirm corrective action in the event of serious incident.

36. CONFLICTS OF INTEREST

36.1 It shall be the Contractor's responsibility to ensure that no conflict of interest arises in connection with the Services to be carried out under the Contract. Conflicts of interest may arise, by way of example (only), through any circumstances where the Contractor has a direct or indirect commercial competitive interest in anything within the same research area as the Services, but which falls outside of the scope of the Contract and which could affect the Contractor's impartial provision of the Services. The Contractor shall immediately consult the Carbon Trust if there is any uncertainty about whether any such conflict of interest may exist or arise. The fact that such conflict is disclosed and acknowledged shall not detract from the Contractor's obligation of impartiality, and breach of this Condition shall be deemed a material breach of the Contract and the Carbon Trust retains the right to immediately terminate the Contract in accordance with Condition 15.1(a).

37. CAPITAL ITEMS

37.1 Any capital item, being a tangible productive asset, acquired or fabricated, which will yield a continuous Service for one year or more, which is essential to the Services, which costs in excess of £1,000 and for which the Carbon Trust has specifically reimbursed the Contractor under the Contract, shall be the property of the Carbon Trust. The Carbon Trust shall have the right to require the Contractor to pass such capital items into the Carbon Trust's possession or to dispose of them. In the latter event the Contractor shall pass any monies realised by the disposal to the Carbon Trust.

38. APPROVED MAXIMUM COST

38.1 This is a capped time and material Contract. The Carbon Trust will not accept liability for any expenditure, costs, expenses or monies beyond the Approved Maximum Cost authorised by the Carbon Trust or any subsequent variation thereto. The Carbon Trust reserves the right to vary the Approved Maximum Cost by notice in writing to the Contractor. If at any time the Contractor considers that the Services cannot be completed without exceeding the Approved Maximum Cost, it shall immediately submit to the Carbon Trust a full written explanation of the reasons together with a detailed forecast of the excess. The Carbon Trust shall not accept any liability for any actual or forecast excess until a formal written amendment has been made to the Contract.

39. OWNERSHIP OF INTELLECTUAL PROPERTY AND OTHER OUTCOMES

39.1 DEFINITIONS

In this Condition:

“Background Knowledge and IPR” means intellectual property rights, methodologies, tools, technologies, knowledge, data and know how, owned, developed or acquired by the Contractor before the start date of the Services, or developed by the Contractor independently from the Services;

“Exploit” means make any commercial or industrial use or exploitation of (including outside the scope of the CHIP), and this includes permitting Affiliates to make any such use or exploitation. The terms **“Exploiting”** and **“Exploitation”** shall be construed accordingly; and

“Results” shall mean any document, item, material, software, methodologies, tools technologies, knowledge, data, know-how or other work created, developed or acquired for the purposes of the Services or in connection with the Services by the Contractor or by any third party engaged by the Contractor or working under the Contractor's direction or supervision. This shall include any invention, innovation and design.

39.2 OWNERSHIP OF THE RESULTS

- (a) The Results and all copyright, all future rights and all rights in the nature of copyright, unregistered design rights, registered design rights, patent rights, all copyright in the typographical arrangement and all design elements, all trademarks, domain names, database rights and confidential information, and any other intellectual property rights anywhere in the world (including any application therefor) resulting from the Services or in the Results shall vest in and be the absolute property of the Carbon Trust (or its nominee) and the Contractor assigns to the Carbon Trust (or its nominee) with full title guarantee all present and future rights as referred to above in this Condition 39.2(a) for the full period of such rights as referred to above and including any extensions, renewals the right to apply for registration therefor and the right to sue for past infringement and retain damages obtained as a result of such action. The Contractor agrees to execute such further documents and do such acts as may reasonably be necessary or desirable to give full effect to this Condition.
- (b) To the extent that any of the rights referred to in Condition 39.2(a) include any Background Knowledge and IPR of the Contractor, the Carbon Trust shall not acquire any right or interest in or to such Background Knowledge and IPR and the Contractor hereby grants the Carbon Trust a non-exclusive, non-transferable, irrevocable, worldwide, royalty free, perpetual licence (sub-licensable to the other CHIP Parties (with the right for each CHIP Party to sub-licence to its Affiliates and joint venture companies where permitted by the CHIP Agreement)) to use and copy such Background Knowledge and IPR solely for the purposes of all activities in connection with CHIP and for the purpose of Exploiting the Results.
- (c) To the extent that any Background Knowledge and IPR of the Contractor is required by the CHIP Parties to allow the CHIP Parties to carry out any CHIP project, the Contractor hereby grants a non-exclusive, royalty-free licence for access and use rights to such Background IPR and Knowledge to all CHIP Parties (with the right to sub-license to (i) other contractors that have been awarded a contract by the Carbon Trust to carry out work in relation to any other CHIP project, (ii) CHIP Parties' Affiliates, and (iii) others engaged in any applicable CHIP project) for the sole purpose of CHIP, but not (except as provided for under Condition 39.2(b) or as may subsequently be agreed with the Contractor) for commercial use or Exploitation or any other use whatsoever.
- (d) The Contractor has identified the Background Knowledge and IPR that it will provide under or in connection with the Services within the Statement of Work. At the point the relevant Services and/or the Results are delivered to the Carbon Trust, the Contractor will inform the Carbon Trust whether such work contains or uses or relies upon the Contractor's Background Knowledge and IPR and specifically identify and detail such Background

Knowledge and IPR. Where the Contractor does not indicate that any Work produced by the Contractor pursuant to the Contract (including the Results) contains or uses or relies upon the Contractor's Background Knowledge and IPR, the Contractor acknowledges and agrees that the Carbon Trust and the other CHIP Parties can presume that such Work does not contain, use or rely upon the Contractor's Background Knowledge and IPR.

39.3 USE OF OTHER COPYRIGHT MATERIAL

- (a) The Contractor shall be responsible for obtaining and providing written evidence to the Carbon Trust of any and all authorities from the copyright holder for any material to be included in the Results of the Contract for which the Contractor or the Carbon Trust are not the beneficial holders of the copyright.
- (b) The Contractor hereby warrants that it shall not misappropriate the intellectual property of any third party under or in connection with the Contract and that the Results do not violate any existing copyright or other third party right, and that to the best of the Contractor's knowledge all facts and statements in the Results are true. The Contractor hereby agrees to indemnify the Carbon Trust and the other CHIP Parties from any loss, injury or damage (including any legal costs, expenses, compensation claims or disbursements made by the Carbon Trust or the other CHIP Parties in respect of any claim) occasioned to the Carbon Trust or the other CHIP Parties in consequence of any breach of this warranty.

39.4 PATENTING OF RESULTS

- (a) The Contractor shall use reasonable endeavours to inform the Carbon Trust promptly of anything capable of being patented as a proprietary right which may arise in consequence of the Results.
- (b) The Contractor shall if required by the Carbon Trust, but at the Carbon Trust's expense, do all that is necessary to enable the Carbon Trust (or its nominee) to obtain such patents or other protection for its rights as it may require.

39.5 COPYRIGHT AND PUBLICATION

- (a) The Carbon Trust shall be the proprietor of the copyright in respect of the Contract and any data relating to this copyright.
- (b) The Carbon Trust reserves the right to determine together with the CHIP Parties whether the Results of the Services shall be published and, if so, on what conditions. In this Condition, 'publication' and cognate terms include any method, whether written, oral or visual, by which information relating to the Work or the Results is disclosed to persons other than the Contractor, its employees, and the Carbon Trust.
- (c) The Contractor or any of its sub-contractors shall not use any of the Work undertaken in connection with the Contract as a means of advertising or promoting the Contractor or sub-contractor.
- (d) The Contractor shall not publish any information related to the Work or the Results without the prior written agreement of the Carbon Trust.
- (e) The Contractor shall not, without the prior written agreement of the Carbon Trust, use or permit any other person to use the Work or the Results for any thesis or degree.
- (f) If information is to be published in writing, the Contractor shall submit a draft of the proposed publication to the Carbon Trust together with the name of the journal in which it is to appear, or details of the form in which it is to be published. The Carbon Trust may make its agreement to the publication conditional upon specified amendments to the draft being made.
- (g) Any publication shall contain an acknowledgement that (i) the Work was carried out under contract with the Carbon Trust and is published with the Carbon Trust's agreement, and (ii).

DESNZ has made available a matched contribution to the Clean Hydrogen Innovation Programme which includes this activity.

- (h) Any publication by the Contractor shall be at the Contractor's cost, including the cost of any copyright fees.
- (i) The Contractor shall within ten days of the date of any permitted publication supply the Carbon Trust free of charge with as many copies of any publication as the Carbon Trust may reasonably request.

39.6 LICENSING OF THE RESULTS

- (a) The Contractor shall be entitled to apply for a non-transferable, non-exclusive licence in respect of information owned or controlled by the Carbon Trust for purposes outside of the Contract. The Carbon Trust reserves the right to decide in its absolute discretion whether such an application shall be granted.
- (b) The Carbon Trust reserves the right to grant at any time to any third party a licence to use and exercise and to manufacture and sell articles embodying any of the Results.

39.7 FURTHER ASSURANCE

The Contractor shall execute such further documents and do all such acts as may be necessary or desirable to give full effect to this Condition 39.

40. FORCE MAJEURE

- 40.1 Neither party shall be liable for any delay in performing or for failure to perform its obligations hereunder if the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control, including any breach or non-performance of the Contract by the other party (hereinafter "event of force majeure"), provided the same arises without the fault or negligence of such party and provided that the affected party notifies the other immediately upon becoming aware of the event of force majeure. If an event of force majeure occurs, the date(s) (where applicable) for performance of the obligation affected shall be postponed for as long as is made necessary by the event of force majeure, provided that if any event of force majeure affecting the Contractor continues for a period of or exceeding sixty (60) calendar days, the Carbon Trust shall have the right to terminate the Contract forthwith by written notice to the Contractor. Each party shall use its reasonable endeavours to minimise the effects of any event of force majeure. For clarity, a Covid-19 Event shall not be considered an event of force majeure.

41. REMEDIES

- 41.1 Without prejudice to any other rights or remedies that the Carbon Trust may have, the Contractor acknowledges and agrees that damages would not be an adequate remedy for any breach of certain Conditions of the Contract by the Contractor. Accordingly, the Carbon Trust shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other similar remedies or other equitable relief for any threatened or actual breach of the terms of the Contract in accordance with Condition 27 (Governing Law and Jurisdiction) and/or in the jurisdiction in which the threatened or actual breach is occurring or may occur.

42. JOINT AND SEVERAL LIABILITY

- 42.1 Unless expressly provided otherwise in this Contract, in the event that the Contractor consists of more than one person, (each person a “**Co-obligor**”), the Co-obligors shall be jointly and severally liable for the Contractor’s obligations and liabilities arising under this Contract.

43. ENTIRE AGREEMENT

- 43.1 The Contract, plus any executed addendums incorporated herein or future supplemental agreement(s), constitutes the entire agreement between the parties with respect to its subject matter. All prior agreements, whether or not agreed or offered and all conditions and warranties whether express or implied statutory or otherwise and all representations, statements, negotiations, understandings and undertakings either written or oral are superseded hereby (other than fraudulent misrepresentation on which a party can be shown to have relied).

44. COVID-19 EVENT

- 44.1 For the purpose of this Condition, a “**Covid-19 Event**” means any circumstance arising, directly or indirectly, from the spread or threatened spread of the COVID-19 virus or the mitigation thereof, including, without limitation, (i) the advice, order or other decision or instruction of the World Health Organisation or any other (non-) governmental authority or any change in law, customs, licenses or consents in any jurisdiction, (ii) a decision or measure by the Contractor or Carbon Trust on the basis of its health and safety policies or duty of care towards its employees, (iii) a failure of a sub-contractor or supplier of the Contractor to deliver services or equipment in relation to this Contract, (iv) shortage of personnel on the Contractor’s, its sub-contractor’s or supplier’s vessels or sites, or (v) restrictions on trade or movement of goods, services or people.
- 44.2 If a party is prevented or delayed from commencing or performing any of its obligations under this Contract by a Covid-19 Event occurring at any time, then it shall notify the other party thereof and of the likely impact to those obligations, including the effect on the scope and timeline of delivery of the services.
- 44.3 Subject to each party using reasonable endeavours to continue compliance with its obligations under this Contract in so far as reasonably practicable, the time for performance by the respective party of those obligations, including all affected milestone dates, shall be extended by a period as mutually agreed on by the parties, acting reasonably, to reflect the delay caused by the Covid-19 Event.

SCHEDULE 1

CHIP AGREEMENT PARTIES (CHIP Phase II)

(The Carbon Trust's contact details are set out in Condition 26)

Levidian Nanosystems Limited	a company incorporated under the law of England under company number 8186993 and whose registered office is at Levidian Technology Centre, 17 Mercers Row, Cambridge, England, CB5 8HY
National Gas Transmission PLC	a company incorporated under the laws of England and Wales (company number 02006000) whose registered office is at: National Grid House Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA
Scottish Power Energy Retail Limited	a company registered in Scotland with company number SC190287 whose registered office is at 320 St Vincent Street, Glasgow G2 5AD
SSE Thermal Energy Operations Limited	a company incorporated under the law of England under company number 12697902 and whose registered office is at No. 1 Forbury Place, 43 Forbury Road, Reading, England, RG1 3JH