

Carbon Trust Contractors' Conditions

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BACKGROUND TO THE CONTRACT

- I. To address the uncertainty in relation to the cost and risk associated with novel technology associated with the integration of offshore wind, and to cultivate developer interest and create a more robust evidence base for the future prospects for integration technologies, the Carbon Trust wishes to establish the Integrator which will aim to inform both government and developers of the technology risk and cost projections for offshore wind integration (the "**Project**").
- II. It is anticipated that the Project will be co-funded by industry partners, mainly offshore wind developers ("**Participants**"). The Carbon Trust seeks procure the Services (as defined) from the Contractor, and the Contractor agrees to provide such Services, in accordance with these Conditions of Contract.
- III. The Carbon Trust will assume full ownership of all Intellectual Property Rights arising from the Contract and the Participants will be granted access to all new innovative solutions that may arise under the Contract.

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In these Conditions, unless the context requires otherwise, the following words and phrases shall have the following meanings:
 - (a) "**Approved Maximum Cost**" means the Approved Maximum Cost set out in the Contract (as amended by the Carbon Trust from time to time);
 - (b) "**Award Date**" means the date specified in the Award Letter;
 - (c) "**Award Letter**" means the letter from the Carbon Trust to the Contractor confirming the award of the Contract to the Contractor;
 - (d) "**Conditions**" means these Contractors' Conditions;
 - (e) "**Contract**" means the Award Letter, these Conditions and the 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;
 - (f) "**Contract Manager**" means the primary person appointed by the Carbon Trust to manage the Contract on behalf of the Carbon Trust and Participants;
 - (g) "**Contract Price**" means the price 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;
 - (h) "**Contractor**" means the person appointed by the Carbon Trust for the performance of the Work and Services (including any successors);
 - (i) "**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;
 - (j) "**Contractor's Representative**" means a competent person appointed by the Contractor to be his representative in relation to the performance of the Contract who will receive and act on any directions given by the Contract Manager;
 - (k) "**Key Personnel**" means any person who, in the Carbon Trust's opinion, is fundamental to the performance of the Contract;
 - (l) "**month**" means calendar month, unless otherwise defined;
 - (m) "**Participants**" means any company or organisation, other than the Carbon Trust and Contractor who has provided funding for the Project;

- (n) **"Programme"** means any programme or timetable agreed by the parties to the Contract, as detailed in the 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;
- (o) **"Project"** has the meaning given to it in recital I;
- (p) **"Relevant Audit Act"** means the Public Finance and Accountability (Scotland) Act 2000;
- (q) **"Relevant Auditor"** means the Auditor General for Scotland;
- (r) **"Scope of Work"** means the document titled "Integrator_P2_PowerToX_SoW-[Contractor]_vX(f)_202X.XX.XX" dated XX Month 202X included in the invitation to tender and referred to in the Award Letter; and
- (s) **"Service(s)"** or **"Work"** means in either case all work and services falling under particular work packages as further detailed in the 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.

- 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.

2. DURATION OF THE CONTRACT

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 Programme, or until the Services are completed to the satisfaction of the Carbon Trust.

3. ALTERATION OF REQUIREMENT

The Carbon Trust reserves the right to alter the requirements of the Contract, as detailed in the Scope of Work, should this at any time become necessary. 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 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.

5. CONTRACTOR'S PERFORMANCE

- 5.1 The Contractor shall properly manage and monitor performance of the Services and immediately inform the Contract Manager if any aspect of the Contract is not being or is unable to be performed.
- 5.2 The Contractor shall provide all the necessary facilities, materials and any other equipment, and personnel of appropriate qualifications and experience to undertake the Services. All personnel deployed on work relating to the Contract shall have appropriate qualifications and competence, 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 immediately take appropriate steps to comply with such notice, and in any event such person shall be removed within 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;
 - (b) when present at Carbon Trust facilities comply (and ensure that its subcontractors, agents and employees comply) with any rules, regulations and any safety and security instructions from the Carbon Trust, including completion of any additional clearance procedures required by the Carbon Trust, 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 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 exercise the standard of skill, care and diligence which a competent and suitably qualified person performing the same Services would exercise when dealing with third 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.
- 5.6 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.
- 5.7 The Contractor acknowledges and confirms that various elements or work packages ("**work packages**") forming part of the Services are subject to the Carbon Trust deciding, 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 Scope of Work as a "go/no go" decision). 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 packages to be delivered.
- 5.8 In the event that the Carbon Trust does not give or decides not to give the confirmation referred to in clause 5.7, 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

Without prejudice to the submission of reports as specified under the Contract, the Contractor shall render any additional reports or information regarding the performance of the Services at such time or times, and in such form as the Contract

Manager may reasonably require.

7. INSPECTION

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 this Contract, the Carbon Trust shall not be liable to pay the Contractor for any Services in connection with this Contract unless and until it 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 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 his 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 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 his obligations under the Contract.
- 8.7 Payment to the Contractor shall be made within 30 calendar days of the receipt of a valid invoice, provided that the Carbon Trust is satisfied that the Services for which the invoice relates have been performed fully in accordance with the Contract.

9. VALUE ADDED TAX

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. BRIBERY ACT

- 10.1 The Company may terminate this Contract without notice if the Contractor commits or participates in any offence under the Bribery Act 2010 in relation to this or any other contract between the Contractor and the Company (and, if the Contractor does, the

Company 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).

10.2 The decision of the Company in relation to this Condition shall be final and conclusive.

11. OFFICIAL SECRETS ACTS

[Not Used]

12. PUBLICITY, AND PROTECTION OF INFORMATION

12.1 The Carbon Trust reserves the exclusive right to disclose to the Participants any information about or connected with the Contract (the "**Contract Information**").

12.2 Subject to Conditions 12.1 and 41.4, neither the Contractor nor the Carbon Trust shall 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. 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.

12.3 The Contractor shall treat any information received under the Contract as confidential information and shall not disclose it to any other person without the express written consent of the Carbon Trust.

12.4 Conditions 12.2 and 12.3 do not apply in relation to information (a) which is in or enters the public domain otherwise than by a breach of an obligation of confidentiality under the Contract or (b) which is or becomes known from other sources without breach of any restriction on disclosure. Nothing in Conditions 12.2 or 12.3 shall prevent any disclosure which is required by law.

12.5 Without limitation to Conditions 12.2 and 12.3, but subject to Condition 12.4, the Contractor shall ensure that Contract Information:-

- (a) is divulged only to the minimum number of persons;
- (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.

12.6 Subject to the retention of a copy for proper professional records, the Contractor shall, on written request from the Carbon Trust, deliver up 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.

12.7 The Contractor shall ensure that any contract with:-

- (a) any employee of his, and
 - (b) any contractor of his engaged in any way in connection with the Contract,
- contains a condition requiring that person to keep all Contract Information confidential, and shall, if so requested by the Carbon Trust, draw their attention to the requirements of this Condition 12 and obtain from them and deliver to the Carbon Trust a written undertaking in the same terms as this Condition 12 made directly enforceable by the Carbon Trust.

- 12.8 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.
- 12.9 Except with the consent in writing of the Carbon Trust the Contractor shall not make use of the Contract Information otherwise than for the purpose of the Contract.

13. DISCRIMINATION

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010, and shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract do not unlawfully discriminate. This Condition shall not in any way relieve the Contractor of his general obligations to comply with any legislative requirements as provided in Condition 4.2.

14. MERGER, TAKE-OVER OR CHANGE OF CONTROL

The Contractor shall 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, change of name or status. Where the Contractor is a company as defined in the Companies Act 2006, "control" shall have the meaning given to it in section 416 of the Income and Corporation Taxes Act 1988. The Contractor shall comply with any request by the Carbon Trust for information arising from this Condition.

15. UNSATISFACTORY PERFORMANCE

- 15.1 Where the Contractor has failed to perform the whole or any part of the Services, 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 Scope of Work and Programme), the Carbon Trust shall give the Contractor notice specifying the way in which his performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.
- 15.2 Where the Contractor has been notified of a failure in accordance with Condition 15.1 the Carbon Trust may either (at the Carbon Trust's option):
- (a) request from the Contractor that, at his own expense and as specified by the Carbon Trust, he 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 seven days), including where necessary, the correction or re-execution of any Services already carried out; or
 - (b) withhold or reduce payments to the Contractor, in such amount as corresponds to the proportion of the Services failing to meet the agreed requirements.

16. TERMINATION OF THE CONTRACT

- 16.1 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 (Bribery Act) and 12 (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 15 (Unsatisfactory Performance);
 - (c) the Contractor ceases or proposes to cease to carry on his business;

- (d) there is a change of control of the type referred to in Condition 14 (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 30 calendar days' notice in writing to the Contractor.

16.2 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 deliverables forming part of the Services in accordance with this 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 this 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.

17. BREAK

17.1 The Carbon Trust shall in addition to its powers under any other of these Conditions have power to terminate the Contract at any time by giving to the Contractor thirty 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.

17.2 Without prejudice to Condition 17.1, if the Contract is terminated by the Carbon Trust under Clause 17.1 the Contractor shall have the right to receive a pro rata payment of the instalment of the Contract Price next falling due for payment.

18. CONSEQUENCES OF TERMINATION

18.1 Where the Contract is terminated under Condition 16 (Termination of the Contract), 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 view necessary to procure the orderly completion of the Services including the letting of another contract or contracts;
- (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 rights to recover such excess by set-off against any amount withheld by the Carbon Trust under Condition 18.1 (a) or as otherwise provided for under Condition 22 (Recovery of Sums Due).

18.2 Where the Contract is terminated under Condition 16 (Termination of the Contract) or Condition 17 (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;
- (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.

- 18.3 Upon termination of the Contract for any reason whatsoever:
- (a) subject to Condition 18.3(b) the relationship of the parties shall cease and any rights or licences granted under or pursuant to the Contract shall cease to have effect save as (and to the extent) expressly provided for in this Condition 18.3;
 - (b) the provisions of Conditions 21 (Loss or Damage), 22 (Recovery of Sums Due), 23 (Data Protection), 25 (Royalties and Licence Fees), 26 (Retention of Documentation), 27 (Serving of Notices), 28 (Governing Law and Jurisdiction), 29 (Arbitration), 30 (Transfer of Responsibility), 31 (Contractor's Obligations in Connection with TUPE), 35 (Rights of Third Parties), 37 (National Audit Office Access), 41 (Intellectual Property Ownership) and 43 (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;
 - (c) the Contractor shall immediately deliver up (or, if the Carbon Trust so requests by notice in writing, destroy) all property of the Carbon Trust in the Contractor's possession at the date of termination, including all Contract 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.
- 18.4 The termination of the Contract shall be without prejudice to the rights and remedies of any party which may have accrued up to the date of termination.
- 18.5 Without prejudice to Conditions 17.2, where the Contract terminates for any reason or expires then the Carbon Trust will not be liable to make any further payments to the Contractor.

19. ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS

- 19.1 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.
- 19.2 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.
- 19.3 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, he 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 30 calendar days from receipt of a valid invoice as defined by the Contract requirements.
- 19.4 The Contractor shall be wholly responsible for the actions, omissions or defaults of its employees, sub-contractors, consultants, its agents and suppliers and their respective employees.
- 19.5 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.
- 19.6 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.
- 19.7 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.

20. INSURANCE

- 20.1 The Contractor shall without prejudice to its obligations to indemnify the Carbon Trust under these Conditions take out and maintain at its 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(s) shall be for the value(s) requested by the Carbon Trust or (if no such request is made) an appropriate value of cover for any claim arising out of the Contractor's provision of the Services, to the Carbon Trust's satisfaction, 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 Contractor in relation to the provision of the Services.
- 20.2 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, and furthermore, such insurance shall offer no less coverage than the Contractor's own insurance coverage.
- 20.3 The Contractor shall supply to the Carbon Trust promptly on request the details of the insurance policies it is obliged to maintain in accordance with this Condition 20 including copy policies, sums insured, levels of excess and the conditions and warranties of each of the policies 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.
- 20.4 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 he notified to the Carbon Trust at the time when he submitted his 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 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.
- 20.5 The terms of any insurance or the amount of cover shall not relieve the Contractor or his sub-contractors or consultants of any liabilities under the Contract, their sub-contracts or their terms of commission.

21. LOSS OR DAMAGE

- 21.1 Subject to Condition 21.2, the Contractor shall indemnify the Carbon Trust and keep it 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 Carbon Trust 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 Carbon Trust,

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

- 21.2 With the exception of any liability arising under a breach of Conditions 12, 21.1(d), 25, or 41, the Contractor's liability under or in connection with the Contract shall be limited to £2,000,000 (two million pounds) and, subject to the maximum extent permitted by law, the Contractor shall not be liable to the Carbon Trust or any other party for any indirect, special, punitive, consequential, exemplary or incidental damages or losses.

22. RECOVERY OF SUMS DUE

Whenever under the Contract any sums of money shall be recoverable from the Contractor by the Carbon Trust or payable by the Contractor to the Carbon Trust, 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 Carbon Trust.

23. DATA PROTECTION

- 23.1 Subject to Condition 21.2, the Contractor shall indemnify the Carbon Trust against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Carbon Trust by any person in respect of loss, damage or distress caused to that person by the disclosure, loss or destruction by the Contractor, the Contractor's servants or agents of any personal data or sensitive personal data.
- 23.2 In this Condition "personal data" and "sensitive personal data" have the same meaning as in sections 1 and 2 of the Data Protection Act 1998.

24. INSOLVENCY OF THE CONTRACTOR

- 24.1 Without prejudice to any other rights of the Carbon Trust under this 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.

- 24.2 The Contractor shall inform the Carbon Trust if the Contractor shall at any time cease trading or become unable to pay his 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.

25. ROYALTIES AND LICENCE FEES

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 have been paid and are included within the Contract Price. The Contractor shall indemnify the Carbon Trust from and against all claims and proceedings, which may be made or brought against the Carbon Trust and any damages, costs and expenses incurred by the Carbon Trust in respect of such supply or use of such intellectual property.

26. RETENTION OF DOCUMENTATION

The Contractor shall retain, produce when required (and explain as necessary) such accounts, documents (including working documents) and records as the Carbon Trust may request, in connection with the Contract, at any time during the Contract and for a period of 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 to visit the Contractor's premises and examine the records under this Condition.

27. SERVING OF NOTICES

- 27.1 Any notice required to be given or served under the Contract by the Carbon Trust shall be in writing and shall be served by either:-
- (a) delivery to the Contractor's Representative, or
 - (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 two working days after posting in the prescribed manner.
- 27.2 Any notice which is served by the Contractor under the Contract 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, 4th Floor, Dorset House, 27-45 Stamford Street, London SE1 9NT, or
 - (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, 4th Floor, Dorset House, 27-45 Stamford Street, London SE1 9NT where it shall be deemed to be served two working days after posting in the prescribed manner.

28. GOVERNING LAW AND JURISDICTION

The Contract shall be governed by and interpreted in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales.

29. ARBITRATION

- 29.1 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 Executive 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).
- 29.2 If within 60 calendar days after any referral has been made pursuant to Condition 29.1, 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.
- 29.3 Any arbitration commenced pursuant to Condition 29.2 shall be administered by the London Court of International Arbitration.
- 29.4 In any arbitration, the standard London Court of International Arbitration administrative procedures and schedule of costs shall apply.
- 29.5 In any arbitration the appointing authority shall be the London Court of International Arbitration.
- 29.6 The number of arbitrators in any arbitration shall be one.
- 29.7 The place of arbitration shall be London, England.
- 29.8 The language to be used in the mediation or in the arbitral proceedings shall be English.
- 29.9 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).

30. TRANSFER OF RESPONSIBILITY

- 30.1 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 cooperate in the transfer, under arrangements to be notified to him by the Carbon Trust.
- 30.2 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.
- 30.3 The Contractor shall provide such information and assistance as is reasonably required by the Carbon Trust in order for it to comply with EU procurement regulations relating to the selection of a different organisation to take over the Services from the Contractor.
- 30.4 Without prejudice to the generality of Conditions 30.1 and 30.2 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.
- 30.5 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.

31. CONTRACTOR'S OBLIGATIONS IN CONNECTION WITH TUPE

- 31.1 Where requested to do so the Contractor shall provide such information (including any changes to and interpretations thereof) in connection with The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), 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 10 calendar days of the request.
- 31.2 During the eight 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.
- 31.3 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.
- 31.4 For the avoidance of doubt, it is agreed that the Contractor shall assume full responsibility for any redundancy cost and related notice and TUPE liabilities 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 TUPE regulations in respect of Contractor Employees.
- 31.5 The Contractor's obligations regarding provision of information under this Condition 31 shall be qualified to apply solely to the extent that TUPE applies.

32. ENVIRONMENTAL REQUIREMENTS

- 32.1 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.
- 32.2 So far as reasonably practicable, all written work, including reports, in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post-consumer waste and used on both sides where appropriate.

33. SEVERABILITY

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.

34. WAIVER

- 34.1 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.
- 34.2 No waiver shall be effective unless it is communicated to either the Carbon Trust or the Contractor in writing.
- 34.3 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.

35. RIGHTS OF THIRD PARTIES

- 35.1 Every Participant 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 Participants shall equally enjoy the right to receive all reports, records and information arising from the Contract. Except for the foregoing rights, no person other than a party to this Contract, and their respective successors and permitted assigns, shall have any rights to enforce any term of this agreement.
- 35.3 Except as expressly provided herein, a person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

36. SAFETY

- 36.1 The Contractor shall be responsible for the observance by himself, his employees and sub-contractors of all safety precautions necessary for the protection of himself, his 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). He shall where required co-operate fully with the Carbon Trust to ensure the proper discharge of these duties.
- 36.2 Without prejudice to the generality of the foregoing, the Contractor shall:
 - 36.2.1 at the commencement of the Contract, confirm that appropriate health and safety systems are in place;
 - 36.2.2 submit a health and safety summary during or on completion of the Contract, as reasonably directed by the Carbon Trust; and
 - 36.2.3 confirm corrective action in the event of serious incident.

37. NATIONAL AUDIT OFFICE ACCESS

For the purpose of

- (a) the examination and certification of the Carbon Trust's accounts, or
- (b) any examination pursuant to the Relevant Audit Act of the economy, efficiency and effectiveness, with which the Authorities have used their resources,

the Relevant Auditor may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 or any re-enactment thereof in relation to the Contractor is not a function exercisable under the Contract.

38. CONFLICTS OF INTEREST

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 Work or Services, but which falls outside of the scope of this 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 16.1(a).

39. CAPITAL ITEMS

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.

40. APPROVED MAXIMUM COST

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, he 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.

41. INTELLECTUAL PROPERTY OWNERSHIP

DEFINITION

In this Condition:

"Results" shall mean any document, item, material or other work produced 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;

"Affiliates" in relation to any party shall mean any company which is for the time being a holding company of that party or a subsidiary of that party or any such holding company, where subsidiary company and holding company have the meanings given in section 1159 of the Companies Act 2006;

"Tools" consist of any and all methods of analysis, know-how, tools, frameworks, and models used or developed by the Contractor in connection with the Services.

41.1. OWNERSHIP AND USE OF THE RESULTS

- (a) Subject to any prior rights of the Contractor, and to the rights of third parties or of the Carbon Trust arising otherwise than under the Contract, all copyright, all future rights and all rights in the nature of copyright, unregistered design rights, registered design rights, patent rights including 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 41.1 (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) Subject to Condition 41.4, all Participants shall be entitled to full access to the Results, and the Carbon Trust shall share all Results with the Participants on a non-exclusive, royalty-free, perpetual basis.
- (c) To the extent that the rights referred to in Condition 41.1(a) include any Tools belonging to the Contractor, the Carbon Trust shall not acquire any right or interest in or to the same and the Contractor hereby grants the Carbon Trust a non-exclusive, non-transferable, sub-licensable to the Participants and their Affiliates, worldwide, royalty free, perpetual licence to use and copy the Tools solely for the purposes of exploiting the Results as part of the rights referred to in Condition 41.1(a).
- (c) Subject to Condition 41.1(c), the Carbon Trust shall be entitled to use the Results or any part of the Results for any purpose whatsoever in connection with the Contract, or otherwise, without limitation or licence and the Contractor waives all moral rights relating to the Results.

41.2 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 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 from any loss, injury or damage (including any legal costs, expenses, compensation claims or disbursements made by the Carbon Trust in respect of any claim) occasioned to the Carbon Trust in consequence of any breach of this warranty.

41.3 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.

41.4 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 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, his 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 this 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 the Work was carried out under contract with the Carbon Trust and is published with the Carbon Trust's agreement.
- (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.

41.5 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.

41.6 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 41.

42. FORCE MAJEURE

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 this 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 60 (sixty) calendar days, the Carbon Trust shall have the right to terminate this Agreement forthwith by

written notice to the Contractor. Each party shall use its reasonable endeavours to minimise the effects of any event of force majeure.

43. REMEDIES

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 this 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 equitable relief for any threatened or actual breach of the terms of this Contract.

44. JOINT AND SEVERAL LIABILITY

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.

45. ENTIRE AGREEMENT

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).