

# **Department of Energy and Climate Change**

## **ECO Platform Provider Terms and Conditions**

Version 3.0 October 2015

## CONTENTS

<b>Clause</b>	<b>Heading</b>	<b>Page</b>
1	GLOSSARY OF DEFINED TERMS .....	1
2	AUCTION PLATFORM AND AUCTION WEBSITE .....	6
3	CONFIDENTIALITY .....	10
4	PLATFORM PROVIDER .....	11
5	LIMITATION OF LIABILITY .....	13
6	AUCTION PARTICIPANTS .....	14
7	BID CONFIRM LETTER .....	15
8	OFF-TAKE CONTRACT .....	15
9	AUCTION PROCESS.....	16
10	DISPUTE RESOLUTION .....	17
11	OTHER .....	17
12	ANTI-CORRUPTION AND BRIBERY .....	22

## 1 GLOSSARY OF DEFINED TERMS

**Applicable Rules** means the Order, any law and any guidance, order or rules in any form issued by DECC or the Relevant Authority, which are relevant to the ECO Scheme the Auction Platform or the Measures, each as amended from time to time.

**Auction** means a transaction for the sale and purchase of ECO Points taking place on the Auction Platform, as conducted by the Platform Provider, which is binding on the Buyer and Seller.

**Auction Failure** means where, in the opinion of the Platform Provider, an Auction cannot be properly conducted by reason of technical failures or any other reason.

**Auction Platform** means the ECO Auction platform on which the offer for sale and purchase of ECO Point Lots will take place.

**Auction Process** means the rules which govern the running of the Auction as set out on the Auction Website.

**Auction Website** means the website through which the Auctions are conducted, which is provided at <https://ukgps-sandbox.emptoris.com> or at such other address as may be stipulated from time to time by the Platform Provider or DECC.

**Auction Window** means the period during which bids for the purchase of ECO Point Lots may be submitted in accordance with the Auction Process.

**Auction Window Closure** means the end of the Auction Window.

**Band** means the standardized ECO Point Lot sizes as stipulated by DECC or the Platform Provider from time to time.

**Bid** means a bid submitted by a Bidder in respect of an Auction and **Bidding** shall be interpreted accordingly.

**Bid Confirm Letter** means the notification confirming a Winning Bid as sent by the Platform Provider according to these Terms and Conditions.

**Bidder** means an ECO Obligated Party that has completed the Registration in order to participate in the Auction Process to purchase a Submitted Lot.

**Business Day** means any day (other than a Saturday or Sunday) on which commercial banks are open for general business in London.

**Buyer** means a Bidder that submits a Winning Bid in an Auction.

**Cancel** means the irreversible removal of a Proposed Lot, Submitted Lot or Bid from an Auction by the Platform Provider.

**Change of Registration Information Form** means the form provided on the Auction Website that the Platform Provider requires Participants to use to inform it of any changes to the Participant's registration information.

**Change of Nominated Person Form** means the form provided on the Auction Website that the Platform Provider requires Participants to use to inform it of any changes to the Participant's Nominated Person.

**Confidential Information** means the existence and substance of all information or data provided to Participants by or on behalf of another Participant, a third party, the Platform Provider or DECC in connection with these Terms and Conditions, the Auction Platform or any Auction, in any form or medium (whether communicated in writing, orally, electronically or by any other means) including without limitation proposals, results, investigations, research, surveys, operations, processes, reports, statistics, know-how, trade secrets including selling and bidding strategies, software intellectual property rights, the existence and terms of any agreement for the sale and purchase of ECO Points pursuant to an Auction, details of any Submitted Lot, Proposed Lot or Bid and the commercial and financial arrangements entered into pursuant to any Auction.

**Contract Quantity** means the amount of ECO Points to be sold and purchased under an Off-take Contract which shall be specified in Bid Confirm Letter.

**DECC** means the Department of Energy and Climate Change as established by the government of the United Kingdom, or any successor entity in function.

**Delivery Date** means the date in the Bid Confirm Letter by which the full Contract Quantity shall be Delivered under an Off-take Contract.

**DPA** means the Data Protection Act 1998 and any amendment, variation or consolidation in force.

**ECO Affordable Warmth** means an ECO Point generated by Measures benefitting an affordable warmth group as described in the Order.

**ECO Carbon Saving Communities** means an ECO Point generated by Measures of the type described in the Applicable Rules.

**ECO Carbon Saving Communities (rural)** means an ECO Point generated by Measures of the type described in the Applicable Rules.

**ECO Carbon Saving Obligation** means an ECO Point generated by Measures which are carbon qualifying actions as described in the Order.

**ECO Governance** means the governance structures put in place from time to time by DECC to monitor and assess the ECO Brokerage and the process of reviewing and amending the ECO Brokerage.

**ECO Obligated Party** means an entity which is obligated under the ECO Scheme.

**ECO Point Lot** means a set of ECO Points in a Lot Type to be included in any one Auction as set forth by the Platform Provider pursuant to the Auction Process.

**ECO Points** means the unit contributing towards the scheme target as set by the Order.

**ECO Scheme** means the statutory scheme created by the Order.

**EIR** means the Environmental Information Regulations SI 2004 No. 3391 and any amendment, variation or consolidation in force.

**FOIA** means the Freedom of Information Act 2000 and any amendment, variation or consolidation in force.

**Framework Regulations** means The Green Deal (Framework) Regulations 2012 (S.I. 2012/1660) and any amendment, variation or consolidation in force.

**Green Deal Providers (GDPs)** means an entity registered in accordance with the ECO Scheme to deliver Measures for the generation of ECO Points.

**Intellectual Property Right** means patents, trademarks, service marks, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, trade or business names and other similar rights or obligations, whether registrable or not, in any country, including but not limited to, the United Kingdom.

**Lot Type** means the type of Measure specified by the Platform Provider pursuant to what DECC may stipulate, which is evidenced in a Bid Confirm Letter, which may include but shall not be limited to ECO Affordable Warmth, ECO Carbon Saving Communities, ECO Carbon Saving Communities (rural), or ECO Carbon Saving Obligation.

**Measure** means an activity to be undertaken by a Seller for the generation of ECO Points.

**Nominated Person** means one or more natural persons that have the capacity to legally bind a Participant to these Terms and Conditions and to the Off-take Contract as notified by the Participant to the Platform Provider and authorised in accordance with these Terms and Conditions.

**Off-take Contract** means the version of the Standard Bi-lateral Off-take Contract provided on the Auction Website as applicable to a specific transaction pursuant to a

Bid Confirm Letter with effect from the date of the Bid Confirm Letter, executed by the Buyer and Seller.

**Ofgem** means the Office of the Gas and Electricity Markets as established by the Gas and Electricity Markets administrator under the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998 and the Enterprise Act 2002, or any successor entity in function.

**Order** means the Electricity and Gas (Energy Company Obligation) Order 2014 (SI 2014/3219) and any amendment, variation or consolidation.

**Participants** means Sellers, Bidders and Buyers.

**Platform Provider** means the such body as may be appointed by DECC from time to time to manage the Auctions; the foregoing notwithstanding DECC reserves the right to step in and perform the activities required to operate the Auction Platform from time to time in its sole discretion, and shall have all rights and limitations of liabilities as contained in these Terms and Conditions without prejudice to any sovereign immunity it engages.

**Proposed Lot** means an ECO Point Lot proposed for sale by a Seller.

**Registration** means the process required by the Platform Provider in order to become a Participant in the Auction Platform.

**Relevant Requirements** has the meaning provided to it in Clause 12.1.

**Relevant Authority** means any governing body of the United Kingdom (or where applicable the European Union), including but not limited to Ofgem, DECC and any agency, authority, inspectorate, minister, ministry, official, public/statutory person of the government with the relevant jurisdiction over the applicable party, including a court with jurisdiction over the applicable party.

**Seller** means a party that has completed Registration and that intends to submit a Proposed Lot to the Platform Provider.

**Subcontract** has the meaning provided to it in Clause 12.4.

**Subcontractor** has the meaning provided to it in Clause 12.4.

**Submission of Lots Format** means the format in which Proposed Lots must be submitted as it may be amended from time to time in accordance with these Terms and Conditions.

**Submitted Lot** means a Proposed Lot which is accepted by the Platform Provider as complying with these Terms and Conditions and as eligible for sale on the Auction Platform.

**Terms and Conditions** means this document governing the obligations of the Participants, the role of the Platform Provider and establishing the terms of use for the Auction Platform.

**Website Terms** means the terms provided on the Auction Website governing use of the Auction Website in addition to the relevant terms in the Terms and Conditions.

**Winning Bid** means the highest bid at the Auction Window Closure as determined by the Platform Provider.

**Winning Bidder** means the Bidder which submitted the Winning Bid.

**Withdrawal Process** means the process by which a Participant withdraws from the Auction Platform, which shall be by contacting the Platform Provider to communicate in writing its intention to withdraw as a Participant.

## **2 AUCTION PLATFORM AND AUCTION WEBSITE**

### **2.1 Purpose**

The Auction Platform is a facility upon which ECO Point Lots shall be offered for sale and purchase in a double-blind Auction, where the identity of the Seller and Bidders is not disclosed prior to the Auction Window Closure.

These Terms and Conditions set out the role of the Platform Provider, the obligations of the Participants and the general governing rules of the Auction Platform.

By executing the ECO Brokerage Compliance Letter during Registration the Participants agree to comply with the requirements herein as a condition to participating in the Auction Platform.

### **2.2 Amendments**

The Platform Provider reserves the right in its sole and absolute discretion to amend these Terms and Conditions from time to time, pursuant to ECO Governance. The Platform Provider will notify the Nominated Person of each Participant when an amendment is made. The amendments will apply to the use of the Auction Website from the effective date stated in the notification or announcement which will not be less than fourteen (14) Business Days from the date of the notification or announcement. For the avoidance of doubt, the form of the Terms and Conditions in place shall continue to govern the Auctions taking place up to, but not including, the effective date stated in a notification or announcement. The Platform Provider shall keep a record of the amendments and superseded versions of the Terms and Conditions.

If a Participant is not willing to accept the Terms and Conditions as amended, it should discontinue use of the Auction Platform and notify the Platform Provider of this as soon as reasonably practicable using the Withdrawal Process. For the avoidance of doubt, if after an amendment to the Terms and Conditions is made a Participant continues to use the Auction Platform this use shall be deemed to constitute an agreement to be bound by the Terms and Conditions as amended.

### **2.3 Registration Information**

After Registration is completed, the Platform Provider may require a Participant to provide additional documentation or information upon written notice, which may include but shall not be limited to:

- (a) where applicable, proof of registration as a Green Deal Provider; or



- (b) proof that the Nominated Person has authority and authorisation to act on the Participant's behalf including authority to bind the Participant contractually to the sale or purchase of ECO Point Lots; or
- (c) proof of identity in respect of the Nominated Person or any information required for the purposes of complying with any laws, which may include a requirement to provide an acceptable form of official photographic identification.

A Participant shall provide all information or documentation requested as soon as reasonably practicable, but no later than ten (10) Business Days from the date of the written notice as provided by the Platform Provider.

As soon as reasonably practicable a Participant shall inform the Platform Provider of any changes to the information provided at Registration by submitting an online Change of Registration Information Form provided on the Auction Website.

If a Seller is required under the Applicable Rules to hold an authorisation as a Green Deal Provider, and such authorisation is lost or has been withdrawn under the Framework Regulations or otherwise, or if an intention notice in respect of a potential withdrawal of authorisation pursuant to Regulation 72 of the Framework Regulations has been provided to it, the Seller must notify the Platform Provider (as soon as reasonably practicable) and in any event within two (2) Business Days.

#### **2.4 Password and Security**

Participants must use reasonable endeavours to prevent fraud and to keep their passwords confidential, and must not disclose or share their passwords with third parties. If a Participant becomes aware or suspects that a third party has come to know its password, it should contact the Platform Provider immediately using the method provided on the Auction Website.

If the Platform Provider has reason to believe that there is likely to be, or there has been, a breach of security or misuse of the Auction Website, it may require a Participant to change its password upon notice to the Participant.

#### **2.5 Auction Website**

The Auction Website is provided for use subject to these Terms and Conditions. By using the Auction Website a Participant agrees to be bound by the Terms and Conditions as they relate to the Auction Website and any additional Website Terms which may be stated on the Auction Website from time to time, and at each use of the Auction Platform it confirms its agreement to be bound.

The Platform Provider does not guarantee that the Auction Website will be fault-free. If a Participant becomes aware of a fault with the Auction Website it should report it to the Platform Provider. The Platform Provider will attempt to correct the fault as soon as reasonably practicable, but in no case shall it have any liability for faults with the Auction Website.

From time to time, it may be the case that the Platform Provider needs to limit access to the Auction Website for repairs, maintenance or the introduction of new facilities or services. Where this occurs, the Platform Provider will attempt to restore the service as soon as reasonably practicable. The Platform Provider takes no responsibility for, and will not be liable for, any temporary unavailability of the Auction Website.

## **2.6 Use of the Auction Site**

A Participant may not use the Auction Website for any of the following purposes:

- (a) disseminating any unlawful, harassing, libellous, abusive, threatening, harmful, vulgar, obscene, or otherwise objectionable material or otherwise breaching any laws;
- (b) transmitting material that encourages conduct that constitutes a criminal offence, or otherwise breaches any applicable laws, regulations or codes of practice;
- (c) interfering with any other person's use or enjoyment of the Auction Website;
- (d) making, transmitting or storing electronic copies of materials protected by copyright without the permission of the owner; or
- (e) providing information that it knows to be false or misleading to the Platform Provider or other Participants.

A Participant agrees to reimburse, indemnify and hold harmless the Platform Provider and DECC from, against and in respect of any and all losses, liabilities, damages, costs, claims, deficiencies and all expenses (including reasonable professional fees and disbursements) that any Platform Provider or DECC, its agents or employees may suffer, sustain, incur or become subject to due to breach of this Clause 2.6.

The obligation to provide the above indemnity shall survive as an obligation on a Participant for a period of three (3) years following the discontinuation of use of the Auction Platform by a Participant.

## **2.7 Termination, Suspension and withdrawal of Use of Auction Platform**

Where a Participant commits a material breach of its obligations under these Terms and Conditions, the Platform Provider may issue a written warning to the Nominated Person.

The Platform Provider may suspend a Participant's use of the Auction Platform for a specified period or terminate a Participant's use indefinitely for a material breach of its obligations under these Terms and Conditions, upon written notice to the Nominated Person where:

- (a) a Participant has received two written warnings and commits a third material breach, or
- (b) the Platform Provider or DECC (in its sole discretion) considers that a breach by a Participant of its obligations under these Terms and Conditions is so serious that the Participant's use of the Auction Platform should be suspended or terminated at once.

The suspension or termination shall take effect one (1) Business Day after the day on which the written notice is sent to the Nominated Person. Depending on the nature of the breach, the Platform Provider may Cancel any Proposed Lot, Submitted Lot or Bid which was made prior to the effective date of the suspension or termination provided that (i) it notifies the Nominated Person in the written notice and (ii) provided that it may Cancel a Submitted Lot or Bid only before the Auction Window Closure and only if a cancellation does not disrupt or cause confusion in any Auction in progress. During a suspension period, or once a Participant's use has been terminated, a Participant may not participate in any further Auctions. On expiry of the suspension period, a Participant may resume participation in the Auctions.

A Participant may challenge any written warning, decision to suspend or terminate the Participant's use of the Auction Platform, or any specified period of suspension under the dispute resolution procedure at Clause 10. During any dispute resolution procedure, the Participant shall remain subject to the disputed written warning or the Participant's use shall remain suspended or terminated as the case may be.

Without prejudice to the terms of the relevant Off-take Contract, any suspension or termination in accordance with these Terms and Conditions shall not affect any agreement for the sale and purchase of ECO Points concluded on the Auction Platform, prior to the suspension or termination. A Participant may withdraw at any time by going through the Withdrawal Process. A withdrawal is effective from the Business Day after the Platform Provider notifies the Participant of receipt of the withdrawal notice.

Without prejudice to the terms of the relevant Off-take Contract, the withdrawal of a Participant in accordance with these Terms and Conditions shall not affect any

agreement for the sale and purchase of ECO Points in a Bid Confirm Letters and Off-take Contracts between a Buyer and Seller concluded on the Auction Platform prior to the withdrawal, and shall not have any impact on the Submitted Lot or Bid submitted on or prior to the effective date of the withdrawal.

## **2.8 Disclaimer for Content of Auction Website**

The Auction Website provides content from Participants and potentially other resources. While the Platform Provider works to ensure that material included on the Auction Website is correct, reputable and of high quality, it does not owe any duty to Participants, and makes no warranties or guarantees whatsoever, in relation to that content. If the Platform Provider becomes aware of any inaccuracies in the material on the Auction Website it will correct the inaccuracies as soon as reasonably practicable. If a Participant becomes aware of any inaccurate information on the website it shall inform the Platform Provider as soon as reasonably practicable.

## **2.9 Intellectual Property**

The content of the Auction Website is protected by copyright, trade mark, database right and other intellectual property rights. A Participant may retrieve and display the content of the Auction Website on a computer screen, store such content in electronic form on disk (but not any server or other storage device connected to a network) or print copies for use only in conjunction with the Auction Platform and any Off-take Contract. No party shall otherwise reproduce, modify, copy or distribute or use for commercial purposes any of the materials or content on the Auction Website without obtaining prior written permission from the Platform Provider.

Subject to any pre-existing rights of third parties, the Intellectual Property Rights (other than copyright) in all reports, documents and other materials which are generated or acquired by the Participants to participate in the Auctions shall belong to and be vested automatically in the Platform Provider and DECC.

DECC shall have the sole right to use any information (whether or not it is Confidential Information) collected pursuant to these Terms and Conditions, as well as all original documents in whatever form which contain that information, including any computer tape or disk, any voice recording and any special computer program written to give access to the information. Provided however, that it shall endeavour to use sensitive information in a manner that preserves confidentiality.

## **3 CONFIDENTIALITY**

The Confidential Information shall not be disclosed to any third party without the prior written consent of DECC. To the extent that it is necessary to disclose Confidential Information to staff, agents and sub-contractors, a Participant shall ensure that such

staff, agents and sub-contractors are subject to the same obligations as the Participant in respect of all Confidential Information.

The obligation in relation to Confidential Information excludes information which:

- (a) is or becomes public knowledge (otherwise than by breach of these Terms and Conditions or a breach of an obligation of confidentiality);
- (b) is in the possession of a Participant, without restriction as to its disclosure, before receiving it from the Platform Provider, DECC or any other department or office of Her Majesty's Government;
- (c) is required by law or regulation (including the disclosure obligations of any relevant stock exchange) to be disclosed;
- (d) was independently developed by a Participant without access to the Confidential Information; or
- (e) is required to be disclosed under an Off-take Contract between Buyers and Sellers.

The obligations contained in this Clause shall continue to apply for a period of five (5) years after a Participant has completed the Withdrawal Process from the Auction Platform.

No general or technical press, radio, television or other media shall be permitted with regard to any information related to Bids, Auctions or transactions arising therefrom and taking place on the Auction Platform, unless previously agreed in writing by DECC. Provided however, this restriction is not intended to limit the ability of Buyers and Sellers to agree to a separate agreement on a press release or other form of media communications as it related to the transaction under the Off-take Contract binding upon them.

Except with the prior consent in writing of DECC, Confidential Information shall not be used for any purposes other than the participation in the Auction Platform.

## **4 PLATFORM PROVIDER**

### **4.1 Role of the Platform Provider**

The Platform Provider will amongst other activities:

- (a) administer, manage and oversee Registration;
- (b) notify Participants of changes to the Terms and Conditions;
- (c) manage and oversee the operation of the Auction Platform;

- (d) enforce DECC's determinations regarding access to the Auctions;
- (e) have the power to:
  - (i) alter the Submission of Lots Format;
  - (ii) alter the Auction Process in accordance with the ECO Governance.;
  - (iii) alter the frequency of Auctions by up to a maximum of thirty (30) days in consultation with DECC; and
  - (iv) Administer a ratings system for Sellers based on criteria determined by DECC and at DECC's request;
- (f) determine when a Proposed Lot may be submitted or withdrawn in line with the Auction Process;
- (g) determine when a Bid has been submitted, modified or withdrawn in line with the Auction Process;
- (h) determine when a Proposed Lot, Submitted Lot or Bid should be Cancelled in line with the Auction Process;
- (i) determine the Winning Bid in line with the Auction Process;
- (j) publish the results of the Auction while keeping the identity of the winning parties anonymous
- (k) make available on the Auction Website its current contact information to enable the Participants to make enquiries or communicate with it; and
- (l) provide the data required under the Standard Off-take Contract to calculate damages following receipt of a written request from a Participant.
- (m) The Platform Provider will provide the Bid Confirm Letters, pursuant to Clause 7 below for each successful Auction completed on the Auction Platform.

The Platform Provider does not act as agent for Bidders, Sellers, or Buyers. Any statement or representation made on the Auction Platform in respect of an ECO Point Lot is made on the Sellers', Buyers' or Bidders' behalf and not on the Platform Provider's behalf. Furthermore, the Platform Provider shall not assess or evaluate the commercial aspects of any Proposal Lots, and cannot modify the terms of any Proposed Lot or Submitted Lot.

For the avoidance of doubt, an Off-take Contract connected to a Winning Bid is between the Buyer and the Seller only. The Platform Provider and DECC are not a party to any contract for sale in relation to the Auction Platform or liable thereunder.

## 5 LIMITATION OF LIABILITY

The Platform Provider, DECC, their officers, servants and agents do not owe, undertake or agree to any duty or responsibility to Participants in contract or tort or otherwise (whether direct, collateral, express, implied or otherwise).

The Platform Provider, DECC, their officers, servants and agents make no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability of any Measures and related ECO Points, the Auction Platform or the information, ECO Point Lots or Bids shown on the Auction Platform. Any reliance a Participant places on such information is strictly at its own risk.

The Platform Provider, DECC, their officers, servants and agents are not liable (whether in negligence or otherwise) for any error or false description or omission in any description of an ECO Point Lot, whether submitted on the Auction Platform or otherwise, whether given orally or in writing and whether given before or during the Auction.

The Platform Provider, DECC or their officers, servants and agents are not liable for any loss or damage suffered by the Participants including without limitation, loss of business, profits, revenue or income, data, or for loss of reputation, disruption to business or wasted time on the part of management or staff, or for indirect losses or consequential damages of any kind, irrespective in any case of the nature, volume or source of the loss or damage alleged to be suffered, and irrespective of whether the said loss or damage is caused by or claimed in respect of any negligence, other tort, breach of contract (if any) or statutory duty, restitutionary claim or otherwise in connection with the Auction Platform, any aspect of the Terms and Conditions or any agreement for the sale and purchase of ECO Points pursuant to an Auction or otherwise.

Without prejudice to the above, in any circumstances where DECC and/or the Platform Provider and/or their officers, servants and agents are held to be liable in relation to any ECO Point Lot or the conduct of any Auction in relation to any ECO Point Lot, the liability of DECC and/or the Platform Provider and/or their officers, servants and agents (combined, if both are held liable) will be limited to payment of a sum which will not exceed by way of maximum the amount of the purchase price of the relevant ECO Point Lot irrespective in any case of the nature, volume or source of any loss or damage alleged to be suffered or sum claimed as due, and irrespective of whether the liability arises from any negligence, other tort, breach of contract (if any) or statutory duty or otherwise.

Nothing in this Clause will be construed as excluding or restricting (whether directly or indirectly) the liability of DECC or the Platform Provider or their officers, servants and

agents or excluding or restricting any person's rights or remedies in respect of (i) fraud on the part of DECC or the Platform Provider or their officers, servants or agents, or (ii) death or personal injury caused by the negligence of DECC or the Platform Provider (or by the negligence of any person under the control of DECC or the Platform Provider or for whom DECC or the Platform Provider are legally responsible), or (iii) acts or omissions for which DECC or the Platform Provider are liable under the Occupiers Liability Act 1957, or (iv) any other liability to the extent the same may not be excluded or restricted as a matter of law.

## **6 AUCTION PARTICIPANTS**

### **6.1 Sellers agree to undertake:**

- (a) to abide by these Terms and Conditions;
- (b) not to enter into any agreements or arrangements with a Buyer that would directly or by implication vary the terms of an Off-take Contract;
- (c) to submit Proposed Lots in accordance with the Auction Process applicable to the Auction;
- (d) not to communicate with Buyers in an attempt to identify specific ECO Point Lots.

### **6.2 Bidders agree to undertake:**

- (a) to abide by these Terms and Conditions;
- (b) not to enter into any agreements or arrangements with a Seller that would directly or by implication vary the terms of an Off-take Contract;
- (c) to submit Bids in accordance with the Auction Process;
- (d) not to communicate with Sellers in an attempt to identify specific ECO Point Lots.

### **6.3 Reporting to the Platform Provider**

In respect of the sale and purchase of an ECO Points Lot concluded on the Auction Platform under the Off-take Contracts, the Buyer must report to the Platform Provider:

- (a) the delivery of the full Contract Quantity by the Seller. This notification shall be made within twenty (20) Business Days of the notification to Ofgem of the completion of all of the Measures forming the Contract Quantity; or



- (b) where the delivery of Contract Quantity by the Seller remains outstanding beyond the Delivery Date and after the expiration of any cure periods provided under the Off-take Contract.

The above reports shall be made in the standard format as found on the Auction Website, and shall include all information required in the form on the Auction Website.

## **7 BID CONFIRM LETTER**

Upon the conclusion of an Auction, the Platform Provider shall provide to the Nominated Person of the successful Bidder (now Buyer) and Seller an electronic form of the Bid Confirm Letter via email. Where the Buyer or Seller notices that the Bid Confirm Letter does not accurately or completely state the commercial terms of the agreement concluded on the Auction Platform pursuant to the Submitted Lot and Winning Bid, the Buyer or Seller shall notify the other Party and the Platform Provider as soon as reasonably practicable and the Buyer and Seller shall cooperate in good faith to correct the mistake.

The Buyer and Seller named in the Bid Confirm Letter shall date and sign a hard copy for the other party, and one for the Platform Provider. The Buyer and Seller shall send an electronic copy of the signed Bid Confirm Letter to the other party and to the Platform Provider within five (5) Business Days from receipt and an original signed version within six (6) Business Days from receipt.

Where a Buyer or Seller fails to provide an executed Bid Confirm Letter as required under these Terms and Conditions within five (5) Business Days from receipt, the other party may elect to treat the contract as terminated with notice to the Platform Provider and the non-complying counter-party.

## **8 OFF-TAKE CONTRACT**

In order to operate the Auction Platform in a uniform manner, the Participants are required to use the Off-take Contract and no other form of agreement to facilitate the purchase and sale of ECO Points on the Auction Platform.

The Off-take Contract shall be made available on the Auction Website. By signing the ECO Brokerage Compliance Letter as part of Registration, the Participants acknowledge that they have read and are familiar with the terms of the Off-take Contract. They also agree to be bound by the terms of the Off-take Contract upon completing a Winning Bid, which will be evidenced by their execution of the Bid Confirm Letter.

The Off-take Contract terms as contained in these Terms and Conditions may be amended by DECC pursuant to the ECO Governance. The Platform Provider will notify

Participants of any amendments to the Off-take Contract at least fourteen (14) Business Days prior to the first Auction to which the amended Off-take Contract will apply. Notification shall be provided to the Nominated Person of each Participant and may also be posted on the Auction Website.

As a material obligation hereunder, the Participants agree to familiarise themselves with the Off-take Contract as and when amended. Where a Participant is unclear as to any of the terms of the Off-take Contract it is urged to seek outside legal advice.

Amendments to the Off-take Contract may be sanctioned by DECC pursuant to the ECO Governance. The Platform Provider will notify Participants of any amendments to the Off-take Contract at least fourteen (14) Business Days prior to the first Auction to which the amended Off-take Contract will apply. Notification shall be provided to the Nominated Person of each Participant and may also be posted on the Auction Website.

The Off-take Contract may not be amended or altered in any way either directly or indirectly by Participants, except that this shall not affect the ability of the Participants to agree contractual arrangements for joint advertising or media relations. It may not be used by any party outside of the Auction Platform. If a Participant does not agree to be bound by the terms of the Off-take Contract (or any amendments made thereto by DECC), it should discontinue use of the Auction Platform.

## **9 AUCTION PROCESS**

The Platform Provider shall establish the Auction Process as required from time to time to implement the Auction Platform. The Auction Process shall be published on the Auction Website.

By participating in an Auction, the Participants agree to be bound by the requirements of the Auction Process in place at the time.

The Auction Process as published from time to time on the Auction Website shall be included by reference in these Terms and Conditions and governed hereby.

### **9.1 Binding Nature of Auction**

By participating in an Auction, a Seller is making a firm offer which is binding upon acceptance of the Submitted Lot, and a Bidder by making a Bid is making an irrevocable acceptance of the offer on which it is Bidding.

At the point of the Auction Window Closure, the Winning Bidder shall be the Buyer and a binding agreement is made between Buyer and Seller. Execution of the Bid Confirm Letter by the Buyer and Seller will be evidence of the Buyer's and Seller's entry into the Off-take Contract relating to the Submitted Lot.

With approval from DECC, the Platform Provider may change the Auction Process at any time. Where a change is made, the Platform Provider will notify the Participants at least fourteen (14) Business Days prior to the first Auction to which the amended Auction Process will apply. Notification may be provided by a notice on the Auction Website.

## **10 DISPUTE RESOLUTION**

Dispute Resolution will work in line with DECC's governance processes which may change from time to time. Where there is a conflict between the process outlined below and the governance process as determined by DECC, the governance process will take precedence.

Where a dispute arises between Participants in relation to an Auction on the Auction Platform, but excluding a dispute in relation to a binding sale and purchase which will be dealt with in accordance with the Off-take Contract, the Participants shall refer the matter to the Platform Provider who may in turn refer the matter to the Green Deal Oversight Body or DECC, as it deems appropriate.

Where a Participant disputes any action of the Platform Provider or a dispute arises between the Platform Provider and a Participant it shall be referred to DECC and DECC may take appropriate action itself or refer the dispute to the appropriate decision-making body within DECC. The decision made by DECC or the body within DECC will be binding.

## **11 OTHER**

### **11.1 Termination for Insolvency or Change of Control**

A Participant shall notify the Platform Provider within two (2) Business Days where Bankruptcy Proceedings are initiated against it. "Bankruptcy Proceedings" means, in respect of a Participant, where that Participant:

- (a) is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts generally as they fall due, fails generally to pay, or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement, composition or other arrangement with or for the benefit of its creditors;
- (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency

law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or petition (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (ii) is not withdrawn, dismissed, discharged, stayed or restrained in each case within fifteen (15) Business Days of the institution or presentation of that proceeding or petition;

- (e) has a resolution passed for its winding-up, administration or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and that secured party maintains possession, or that process is not withdrawn, dismissed, discharged, stayed or restrained, in each case within fifteen (15) calendar days of that event;
- (h) causes or is subject to any event with respect to it that, under applicable law, has an analogous effect to any of the events specified in paragraphs (a) to (g) (inclusive); or
- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this definition of Bankruptcy Proceedings.

On receipt of such a notice from a Participant, the Platform Provider may, in its absolute discretion, suspend or terminate the Participant's use of the Auction Platform with immediate effect. For the avoidance of doubt, the rights of DECC or the Platform Provider as it relates to the insolvency of a Participant shall in no way be an obligation on the Platform Provider or DECC to enforce the terms in this Clause 11.1.

## **11.2 Rights of Third Parties**

These Terms and Conditions do not either expressly or by implication, to the extent that they grant any rights, confer any benefit on any person who is not a party to these Terms and Conditions and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

### **11.3 Conflicts of Terms**

Where any obligations in the Terms and Conditions conflict with the Website Terms, these Terms and Conditions shall prevail. In the event that the terms of Bid Confirm Letter or a form of an Off-take Contract that is binding and in place between Buyers and Sellers conflict with these Terms and Conditions, then the Bid Confirm Letter and the applicable Off-take Contract shall prevail only to the extent that the conflict is applicable to transaction contemplated under the Bid Confirm Letter.

### **11.4 Data Protection**

In this Clause 11.4 references to "personal data", "data subjects" and "data processor" are to be interpreted as defined in the DPA.

The Participants acknowledge that personal data may be processed by the Platform Provider, DECC or the Participants in the operation of the Auction Platform.

The Participants and the Platform Provider shall comply with all relevant provisions of the DPA and do nothing which causes, or may cause, each other or DECC to be in breach of its obligations under the DPA. In particular, to the extent that the Participants or the Platform Provider acts as a data processor in respect of any personal data pursuant to these Terms and Conditions or the Auction Platform, the Participants and Platform Provider shall only process such personal data as is necessary.

A Participant warrants that it has appropriate technical and organisational measures in place to protect any personal data it is processing on the Platform Provider or DECC's behalf against any unauthorised or unlawful processing and against any accidental loss, destruction or damage and undertakes to maintain such measures. The Participant shall also take all reasonable steps to ensure the reliability of its staff having access to any such personal data.

Upon reasonable notice a Participant shall allow the Platform Provider access to any relevant premises owned or controlled by it to enable the Platform Provider to inspect its procedures described above and will upon the Platform Provider's request from time to time prepare a report for it on the technical and organisational measures it has in place to protect the personal data it is processing on the Platform Provider or DECC's behalf.

A Participant shall at its own cost, at the Platform Provider or DECC's request, assist the Platform Provider to comply with any requests for access to personal data and in particular shall respond to any such request promptly to enable the Platform Provider or DECC to comply with its obligations under the DPA. When requested by the Platform Provider or DECC the Participant shall at its own cost promptly provide the Platform Provider or DECC with any personal data relating to these Terms and Conditions and/or its use of the Auction Platform.

If the Participant fails to comply with requests of the Platform Provider or DECC in relation to data protection, or if the Platform Provider or DECC is otherwise concerned with the Participant's data processing measures or practices then the Platform Provider may, in its absolute discretion, suspend or revoke the Participant's Registration to the Auction Platform on providing fourteen (14) Business Days' notice, within which time the Participants may make representations.

A Participant shall indemnify the Platform Provider and DECC against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Platform Provider or DECC by any person in respect of the DPA or equivalent applicable legislation in any other country which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Participant or its sub-contractors and hold the Platform Provider or DECC harmless against all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in these Terms and Conditions which result in the Platform Provider or DECC being in breach of their obligations under the DPA or equivalent applicable legislation in any other country.

A Participant warrants that it has submitted, pursuant to Section 18(1) of the DPA, a notification to the Information Commissioner and shall keep that notification up to date.

A Participant shall not transfer any personal data outside the European Economic Area unless in accordance with the DPA.

Upon ceasing participation in the Auction Platform for whatever reason or by whatever means the Participant shall, unless notified otherwise by the Platform Provider or required by law, immediately cease any processing of the personal data on the Platform Provider or DECC's behalf and as requested by the Platform Provider or DECC destroy or provide the Platform Provider or DECC with a copy on suitable media.

A Participant shall promptly carry out any request from the Platform Provider or DECC requiring it to amend, transfer or delete the personal data or any part of the personal data.

Where a Participant is required to collect any personal data in relation to the Auction Platform, it shall ensure that it provides the data subjects from whom the personal data are collected with a data protection notice in accordance with the DPA.

The obligations in this Clause 11.4 shall survive and apply to a Participant for a period of five (5) years after it has withdrawn as a Participant on the Auction Platform.

## 11.5 Freedom of Information Act

A Participant acknowledges that the Platform Provider and DECC are subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Platform Provider and DECC, at the Participant's expense, to enable the Platform Provider and DECC to comply with any information disclosure requirements.

"Information" has the meaning ascribed to it in section 84 of the FOIA and "Request for Information" has the meaning ascribed to it in section 8 of the FOIA, or any apparent request for information under the FOIA or EIR.

A Participant shall (and shall procure that its sub-contractors shall):

- (a) Transfer any request for Information to the Platform Provider and DECC as soon as practicable after receipt and in any event within two (2) Business Days;
- (b) Provide the Platform Provider and/or DECC with a copy of all Information in its possession or power in the form that the Platform Provider and/or DECC requires within five (5) Business Days (or such other period as the Platform Provider and/or DECC may specify) of such a request by the Platform Provider and/or DECC; and
- (c) Provide all necessary assistance as reasonably requested by the Platform Provider and/or DECC to enable it/them to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

The Platform Provider and/or DECC shall be responsible for determining, at its/their absolute discretion, whether any Information:

- (d) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; or
- (e) is to be disclosed in response to a Request for Information.

In no event shall the Participant respond directly to a Request of Information unless expressly authorised to do so in writing by the Platform Provider or DECC.

The Participant acknowledges that the Platform Provider and/or DECC may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the FOIA (issued under section 45 of the FOIA in November 2004), be obliged under the FOIA or the EIR to disclose Information unless an exemption applies. The Platform Provider and/or DECC may at its/their discretion consult the Participant with regard to whether the FOIA applies to the Information and whether an exemption applies.

The Participant shall ensure that all Information produced in the course of its participation in the Auction Platform or relating to the Auction Platform is retained for disclosure for a period of at least six (6) years and shall permit the Platform Provider and DECC to inspect such records as requested from time to time.

The Participant acknowledges that any lists or schedules provided by it outlining information it deems confidential or commercially sensitive are of indicative value only and that the Platform Provider and/or DECC may nevertheless be obliged to disclose information which the Participant considers confidential in accordance with the FOIA, EIR or the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the FOIA.

## **12 ANTI-CORRUPTION AND BRIBERY**

12.1 The Participant shall and shall procure that persons associated with it or other persons who are performing in connection with these Terms and Conditions:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (the "**Relevant Requirements**"), including but not limited to the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) not do, or omit to do, any act that will cause or lead the another Participant, Platform Provider or DECC to be in breach of any of the Relevant Requirements.
- (d) promptly report to the Platform Provider any request or demand for any undue financial or other advantage of any kind received by the Participant in connection with its participation in the Auction Platform;
- (e) have and shall maintain in place throughout the period that it is Registered as Participant policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- (f) if requested, provide the Platform Provider with any reasonable assistance, at the Platform Provider's reasonable cost, to enable the Platform Provider to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements;



- (g) provide such supporting evidence of compliance as the Platform Provider may reasonably request.

12.2 The Participant shall indemnify the Platform Provider against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the as a result of any breach of this Clause 12 by the Participant or any breach of provisions equivalent to this Clause 12.

### **12.3 Additional audit and record keeping**

- (a) The Participant shall permit the Platform Provider and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this Clause 12 to access and take copies of the Participant's records and any other information held at the Participant's premises and to meet with the Participant's personnel to audit the Participant's compliance with its obligations under this Clause 12. Such audit rights shall continue for three (3) years after a Participant has withdrawn from the Auction Platform.
- (b) Audit access by any third party representative of the Platform Provider shall be subject to such representative agreeing confidentiality obligations equivalent to those in Clause 3 in respect of the information obtained, always provided that all information obtained may be disclosed to the Platform Provider.

12.4 The Participant warrants and represents that:

- (a) its responses to the Platform Provider's anti-bribery and anti-corruption during Registration are true and accurate;
- (b) neither the Participant nor any of its officers, employees or other persons associated with it:
  - (i) has been convicted of any offence involving bribery or corruption, or fraud;
  - (ii) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or
  - (iii) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts;

- (c) none of the officers or employees of the Participant or any person associated with it or any other person who is performing services or providing goods in connection with these Terms and Conditions or the Auction Platform is a foreign public official; and
- (d) no foreign public official owns a direct or indirect interest in the Participant or any person associated with it or any other person for whom the Participant is responsible under Clause 12.4(c) and no public official has any legal or beneficial interest in any payments made in connection with the Auction Platform, any Bid Confirm Letter or Off-take Contract.

The Participant shall promptly notify the Platform Provider if, at any time its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in Clause 12.4 at the relevant time.

Breach of this Clause 12 shall be a material breach of these Terms and Conditions.

The Platform Provider shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Relevant Requirements.

For the purpose of this Clause 12.4:

- (a) the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act, and section 8 of that Act respectively and, a person associated with the Participant includes but is not limited to any Subcontractor.
- (b) "**Subcontract**" means:
  - (i) any subcontract; and
  - (ii) any agreement or commitment to enter into a subcontract, relating to services to be supplied under in connection with a Measure, Off-take Contract or Bid Confirm Letter (in their entirety or any part of them), whether formal or informal and whether or not in writing,

and "**Subcontractor**" shall be construed accordingly.