
VERSION 2.0 April 2014

**Bi-Lateral Off-take Contract
for ECO Points
on
The ECO Brokerage Auction Platform**

This instrument is intended to be used only in conjunction with the Terms and Conditions and Bid Confirm Letters for the Auction Platform, as described herein.

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WHEREAS:

- (A) The Seller is in the business of delivering projects involving low energy/carbon measures to generate points for use in the Energy Company Obligation statutory scheme contained in the Electricity and Gas (Energy Companies Obligation) Order 2012, where certain energy suppliers will be obligated to deliver energy efficient measures and home heating to domestic households, and pursuant to this Agreement the Buyer intends to purchase such points in order to meet its obligations as an energy supplier.
- (B) The Buyer and Seller acknowledge that this Agreement is being used in conjunction with the Auction Platform, and that it is made effective pursuant to the Bid Confirm Letter, as described herein.
- (C) Pursuant to the Terms and Conditions, the Bid Confirm Letter brings into force this Agreement and dictates the identities of the Buyer and Seller, and the commercial terms to be incorporated into this Agreement.

As evidenced by the execution of the Bid Confirm Letter, the Buyer and Seller hereby agree to be bound by the following terms:

1 DEFINITIONS AND INTERPRETATION

Capitalised terms used in this Agreement shall have the meanings set out in Schedule 1 and words shall be interpreted in accordance with the provisions of Schedule 1, paragraph 1.2.

2 CONTRACT QUANTITY

- 2.1 The Seller agrees to sell and the Buyer agrees to buy a volume of ECO Points that is an amount no less than ninety-five per cent (95%) and no more than one hundred and five per cent (105%) of the Bid Contract Quantity (the "**Contract Quantity**"). For the avoidance of doubt, the variation in the Contract Quantity volume as permitted in this Clause shall reflect the actual variation in the volume of ECO Points generated by the Measures resulting from the ordinary course of the Seller's business operations and may not be varied for the purpose of price optimisation by the Seller.
- 2.2 The Seller shall not agree to, and shall not sell, transfer or otherwise Encumber or dispose of any of the Contract Quantity to or in favour of any third party.
- 2.3 In the event that the Seller provides Replacement ECO Points pursuant to this Agreement, such ECO Points shall be treated as part of the Contract Quantity mutatis

mutandis throughout this Agreement and shall be a fulfillment of the Delivery obligations hereunder.

3 PRE-DELIVERY TECHNICAL MONITORING

3.1 The Parties agree that where the Relevant Authority requires Technical Monitoring to be performed for any of the Measures prior to installation or Delivery of any portion of the Contract Quantity, the Seller shall on behalf of the Buyer contract to have performed the required Technical Monitoring in compliance with the Applicable Rules and as required from time to time by the Relevant Authority. Without limiting the foregoing, where Technical Monitoring is required under this Clause 3, the Seller shall:

- (a) as soon as possible Notify the Buyer that Technical Monitoring is applicable to a Measure being Delivered under this Agreement, and ensure that the Buyer is put in direct contact with the third-party service provider performing the Technical Monitoring;
- (b) ensure that under its contract with any third-party service provider all final reports shall be provided to the Buyer directly and not disclosed to the Seller, and the Seller shall keep the third-party service provider informed of the identity and contact details of the Buyer;
- (c) ensure that the third-party service provider performing the Technical Monitoring has no conflict of interest with the outcome of its work and that the work is performed at arms-length under RPO standards;
- (d) where the Seller is provided with information from the third-party service provider, it shall as soon as reasonably practicable provide all such information to the Buyer;
- (e) ensure that there are no restrictions that limit the Buyer's ability to directly contact the third-party service provider performing the Technical Monitoring or any related sub-contractors directly, or to obtain any information related thereto where it is required in order to use the Contract Quantity for the Intended Purpose;
- (f) ensure that the volume of samples taken for the Technical Monitoring reflects the requirements of the Relevant Authority and that the third-party service provider without any input and independently from the Seller, chooses the sample measures used to perform the Technical Monitoring. For the avoidance of doubt, the Seller shall in no event choose the samples used for Technical

Monitoring nor shall it be involved in this aspect of any Technical Monitoring for a Measure.

- 3.2 The Seller shall keep itself informed of any and all standards and requirements related to Technical Monitoring, including but not limited to the timing for when and the standards by which the Technical Monitoring has to be performed.
- 3.3 Notwithstanding anything contained in this Agreement to the contrary, any and all costs associated with or arising out of Technical Monitoring performed by the Seller under this Clause 3 shall be the sole responsibility of and shall be borne by the Seller and may not be charged against the Buyer by the Seller in an invoice.
- 3.4 Once the Buyer has obtained the reports from the third-party service provider and submitted them as required by the Relevant Authority, it shall provide a copy to the Seller.
- 3.5 Complying with this Clause 3 shall not create an agency relationship between Buyer and Seller, and the Seller shall not hold itself out to any third-party service provider that it is the agent of the Buyer or imply that it has the power to act on its behalf.
- 3.6 Failure by the Seller to perform the Technical Monitoring pursuant to this Clause 3 shall be a breach of a material obligation. The Seller shall not have any obligation to perform Technical Monitoring that is required to occur after the Delivery of any portion of the Contract Quantity.

4 COMPLETION OF MEASURE AND DELIVERY

- 4.1 The Seller shall Notify the Buyer no later than fifteen (15) Calendar Days following the Completion of a Measure, and such Notice shall include any and all information in the notification template required by the Relevant Authority from time to time, which may also include supporting documentation or explanations of the information in a notification template as specifically required by the Relevant Authority in order to Accept a Measure under the Applicable Rules (the “**Completion Notice**”). Additionally, where a Completion Notice is intended to Deliver the remaining or full portion of the outstanding Contract Quantity, the Seller shall communicate this to the Buyer in the Completion Notice. The Parties acknowledge that the Relevant Authority requirements in relation to reporting the Measures may change from time to time both in form and substance. The Parties agree to use reasonable endeavours to work together to provide the Relevant Authority with the required information and documentation to the extent such information is available, which shall not prejudice any other express obligations or rights under this Agreement.

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- 4.2 From time to time prior to receipt of the final Completion Notice, the Buyer may Notify the Seller in writing to request a best estimate of the quantity to be Delivered as the Contract Quantity on the Delivery Date, and the Seller shall provide, to the extent that it is commercially reasonable to do so, a non-binding estimated volume of Contract Quantity for the Buyer no later than five (5) Business Days from receipt of the Notice. Where the Seller finds that it is not commercially reasonable to provide a best estimate it shall Notify Seller of this in the time provided and shall give the reasons for not being able to provide a best estimate. The forgoing notwithstanding, the Seller shall not be obligated to provide more than two best estimates on Contract Quantity to the Buyer under this Clause 4.2.
- 4.3 The Contract Quantity may be Delivered incrementally in a series of Completion Notices or in one Completion Notice during the Delivery Period pursuant to Clause 4.1. For the avoidance of doubt, this shall not prejudice the obligation on the Seller to ensure that the Contract Quantity is Delivered to the Buyer on or before the Delivery Date. In the event that the Seller commits any one of the following it shall be a delivery failure ("**Delivery Failure**"):
- (a) at the expiry of the Delivery Period, failure to Deliver the Contract Quantity, which shall include for the avoidance of doubt failure to provide the information required by the Buyer under Clause 4.1; or
 - (b) providing within the Delivery Period a Completion Notice that includes any Measures that have been completed for more than fifteen (15) Calendar Days, and failing to replace them with Measures that were completed fifteen (15) or less Calendar Days prior to the Completion Notice (as provided under Clause 4.4 below); or
 - (c) failure to provide the final Completion Notice by the Delivery Date.
- 4.4 In the event of a Delivery Failure, the Buyer shall Notify the Seller and it shall have five (5) Calendar Days to correct the Delivery Failure, where it is possible to correct the Delivery Failure within those five (5) Calendar Days. Where a Delivery Failure is capable of cure by the Seller and it fails to do so during the time provided under this Clause 4.4 or where the Delivery Failure is not capable of being cured, it shall be a breach of a material obligation of this Agreement (as it relates to the applicable Contract Quantity). The Buyer shall use reasonable efforts to communicate with the Relevant Authority as required to extend a deadline for notifying a Measure where this is permitted by the Relevant Authority and where the Seller is in the process of performing a cure to a Delivery Failure under this Clause 4.4, which may include taking all the steps in making the required applications for an extension.

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- 4.5 Once a Completion Notice has been provided, the Buyer shall comply with the reporting and verification requirements for the Measure(s) as dictated by the Relevant Authority as soon as reasonably practicable and in any event within the period provided by the Relevant Authority in accordance with the Applicable Rules. If the Buyer, acting in a commercially reasonable manner, believes that there is an issue with the information in any Completion Notice through which it is reporting a Measure to the Relevant Authority, then the Buyer shall Notify the Seller of the issue. Notwithstanding the obligation in this Clause 4.5, where the Buyer acting in a commercially reasonable manner believes that the Seller has failed to correct the information and due to this (in its reasonable judgement) it is likely that the Measure(s) will be rejected when submitted to the Relevant Authority, then it shall not be obligated to report the Measure(s) in question to the Relevant Authority. For the avoidance of doubt, this shall not prejudice any rights of the Buyer under this Agreement nor shall it relieve the Seller of any of its duties or obligations hereunder.
- 4.6 After notification of a Measure to the Relevant Authority by the Buyer using a Completion Notice, where the Relevant Authority issues a notice to the Buyer requesting additional information or clarifications during the process of making a decision on Acceptance of any Measure, the Buyer shall provide all such requests and communications to the Seller. The Seller shall provide as soon as is reasonably practicable, but no later than the time provided by the Relevant Authority all such reasonable cooperation, assistance and information that is required to respond to the Relevant Authority. Provided however, the Seller shall not be required to resend information in the form and containing the substance required by the Relevant Authority that is has already supplied to the Buyer. Where the Buyer fails to clearly communicate the requirements of the Relevant Authority to the Seller, and a Measure Failure or Reporting Failure results then it shall not be a default on the part of the Seller and in relation to the Contract Quantity in question all obligations on the Buyer shall apply as if the Measure was accepted. If however, the Seller fails to provide the further information as required under this Clause 4, then this shall be a Delivery Failure.
- 4.7 Upon the Acceptance of the Measure(s) contained in a Completion Notice by the Relevant Authority, the Buyer shall notify the Seller as soon as reasonably practicable, such notification may be made by forwarding or sending correspondence via email to the Seller.

5 PRICE AND PAYMENT

- 5.1 The Buyer shall pay to the Seller an amount equal to the Unit Price multiplied by the portion of the Contract Quantity that is Delivered under a Completion Notice issued pursuant to Clause 4. Such payment shall be due no later than thirty (30) Calendar

Days after receipt by the Buyer from the Seller of an Invoice in the form set out at Schedule 2 (*Form of Invoice*) for the amount that is the Unit Price multiplied by the portion of the Contract Quantity that is Delivered. All payments due under this Agreement shall be paid only in the Currency.

- 5.2 The forgoing notwithstanding if an Invoice does not contain the correct amount for payment because it is an amount that is more than or less than the Unit Price multiplied by the portion of the Contract Quantity that is being Delivered under the applicable Completion Notice (the “Disputed Amount”) then the Buyer shall Notify the Seller. For the avoidance of doubt, the Buyer shall be obligated to pay only the amount due pursuant to Clause 5.1. If the corporate accounting procedures of the Buyer do not permit the Buyer to make a payment withholding the Disputed Amount without a corrected invoice then the Buyer shall Notify the Seller and the Seller shall provide a new Invoice correcting the Disputed Amount within three (3) Calendar Days of the Buyer's Notice. The amount owed by the Buyer must be paid within thirty (30) Calendar Days of receipt of the correct Invoice.
- 5.3 In the event that the Buyer fails to pay any amounts when due under this Clause 5, the Seller shall Notify the Buyer and the Buyer shall have five (5) Calendar Days to cure the payment failure. Failure by the Buyer to make the payments due in full beyond the cure period in this Clause 5.3 shall be a breach of a material obligation under this Agreement.

6 FAILURE TO MEET INTENDED PURPOSE AND RIGHT TO CURE

- 6.1 If due to a failure on the part of the Seller to comply with the requirements to provide information and/or documentation to the Buyer pursuant to Clause 4 and as a result of this the Relevant Authority refuses to Accept any Measure in a Completion Notice reported by the Buyer, or communicates a rejection of a Measure (a “**Reporting Failure**”), then the Buyer shall as soon as reasonably practicable Notify the Seller of the Reporting Failure.
- 6.2 For the avoidance of doubt, where the Buyer fails to comply with the reporting requirements applicable to having a Measure Accepted by the Relevant Authority, which shall include responding to any further inquiries or minded to letters from the Relevant Authority, the Seller shall have no further obligations relating to that portion of the Contract Quantity to which the failure on the part of the Buyer relates, and the Buyer shall be and/or remain liable for any amounts due and owing for the remaining portion of the Contract Quantity pursuant to this Agreement as if the applicable Measures have been Delivered.

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- 6.3 Where the Buyer reports a Measure pursuant to the Applicable Rules but the Relevant Authority refuses to Accept a Measure on the grounds that the Measure fails to meet the requirements of the Applicable Rules for the Intended Purpose (a **“Measure Failure”**), then the Buyer shall Notify the Seller. The Seller shall have until the later of the Delivery Date or the expiry of the Cure Period commencing on the date it receives Notice to perform any or a combination of the following options to cure the Measure Failure: i) pay the Buyer's Replacement Costs; and/or ii) Deliver Replacement ECO Points to the Buyer that can be used in place of the Measures by the Buyer for the Intended Purpose (the **“Cure Options”**).
- 6.4 In the event that a Measure is Revoked within the Audit Period, then the Buyer shall Notify the Seller of the Revocation as soon as reasonably practicable. The Seller shall have the Cure Period commencing on the date it receives the Notice to perform either or a combination of the Cure Options as required to meet its obligations to deliver the Contract Quantity.
- 6.5 If the Seller requires more time than the Cure Period to perform any or all of its Cure Options it is permitted to perform, then it shall Notify the Buyer as soon as reasonably practicable on becoming aware of the same, such Notice to specify the additional period of time that the Seller (acting reasonably) requires (the **“Notice of Cure Period Extension”**). The Buyer shall (acting reasonably and in good faith) Notify the Seller as soon as reasonably practicable stating whether it agrees to the Seller's request to extend the Cure Period. Where the Buyer agrees to the Notice of Cure Period Extension, then such Notice of Cure Period Extension will be deemed part of this Agreement and the Cure Period shall be deemed to be extended in accordance with the same. For the avoidance of doubt, in the event that the Buyer refuses the extension of a Cure Period, the original Cure Period shall remain in effect.
- 6.6 Where there is a Reporting Failure, Measure Failure, or Revocation pursuant to this Clause 6, which could be cured by the Seller and the Seller has failed to do so in the time required (if any), then, it shall have failed to Deliver the ECO Points applicable to the Reporting Failure, Measure Failure or Revocation.
- 6.7 Notwithstanding anything contained herein to the contrary at any point after 31 December 2014 where there is: i) a Cure Period in effect and no cure has been provided or ii) a Measure Failure or Revocation has occurred, then the Buyer may dictate in its sole discretion and Notify the Seller whether it requires the Cure Option of Buyer's Replacement Costs or Replacement ECO Points.

7 MEASURE CONSTRUCTION, OPERATION AND MANAGEMENT

7.1 The Seller shall, and/or shall procure that each and any Sub-Contractor shall, in respect of the Measures:

- (a) obtain any and all Required Authorisations;
- (b) construct and install the Measures and carry out all related work as the case may be in accordance with the Applicable Rules, in each case acting as an RPO and in accordance with this Agreement;
- (c) where applicable construct, implement, and maintain, all machinery, equipment and other property required for the construction, implementation, operation, and maintenance of the Measures in each case acting as an RPO;
- (d) inform the Buyer of any material issues in relation to the Measures including in relation to generation of the Contract Quantity, material issues that may adversely affect the reputation of a buyer in the opinion of the Seller, or issues with non-compliance of a Measure, the Seller or its Sub Contractor with the Applicable Rules, as soon as reasonably practicable after becoming aware of them, in each case acting as an RPO;
- (e) use reasonable efforts to avoid and/or mitigate activity that would cause the Measures to be viewed negatively by the public acting as an RPO;
- (f) as soon as reasonably practicable after the date of this Agreement, obtain and maintain adequate insurance in respect of the Measures to the extent required acting as an RPO, and upon written request provide proof of such insurance to the Buyer;
- (g) maintain the financial stability required to install the Measures for the Intended Purpose acting as an RPO;
- (h) to the extent to which it is required to do so in order to Deliver the Contract Quantity for the Intended Purpose, hold a valid accreditation as specified by the Relevant Authority;
- (i) ensure that all of its contracts with third parties allow for the access by the Buyer or Buyer's nominated third parties to the Measures as required under this Agreement.

7.2 For the avoidance of doubt, the Seller may contract out to Sub-Contractors the work required to Complete the Measures as required for the Intended Purpose provided that the Seller retains all responsibilities and liabilities under this Agreement.

8 SELLER'S RECORD KEEPING AND MONITORING REQUIREMENTS

8.1 The Seller shall and/or shall procure that each and any Sub-Contractor shall:

- (a) when Notified by the Buyer, respond to an inquiry relating to the Technical Monitoring or audit requirements set out in the Applicable Rules by the Relevant Authority in order to have the Measures Accepted or to avoid Revocation of the validity of the Measures, and shall make the required response by the earlier of: i) eight (8) Calendar Days from when it is Notified of the request by Buyer, or ii) two (2) Calendar Days prior to the end of the response period given by the Relevant Authority;
- (b) install, operate, and maintain data measurement and collection systems, and employ and train staff necessary for gathering all such data, and observe, implement and meet all other requirements as may be required by the Relevant Authority for the Intended Purpose;
- (c) allow the Buyer to perform any Technical Monitoring or an audit of the Measures after Delivery of the Contract Quantity as required by the Relevant Authority from time to time.
- (d) retain records of any and all data and documentation that could be required by the Relevant Authority relating to the Measures and the Contract Quantity for no less than six (6) years following the date of the Completion Notice, which shall include, but not be limited to, all information reported to the Buyer upon the Completion of the Measure;
- (e) keep itself informed of any changes to the Applicable Rules or requirements of the Relevant Authority in relation to monitoring or auditing of Measures for the Intended Purpose; and
- (f) dedicate appropriate personnel to ensuring that its obligations under this Clause 8 are met.

A failure to comply with this Clause 8 shall be a breach of a material obligation of this Agreement to the extent that it causes the Buyer to fail to comply with the Applicable Rules or causes the Relevant Authority to refuse to Accept or to Revoke the Contract Quantity or any part thereof.

9 COSTS

- 9.1 The Seller shall be responsible for any costs incurred in respect of the Delivery of the Contract Quantity or the performance of any of the Cure Options as required under this Agreement.
- 9.2 The Buyer shall be responsible for any costs incurred in respect of having the Measures Accepted by the Relevant Authority, including the development of the required documentation, authorisations, and any other costs incurred in responding to the requirements of the Relevant Authority. Provided, however, where the Seller is required by the Applicable Rules to perform or fulfil any requirements for the purposes of having a Measure Accepted by the Relevant Authority (including the provision of missing information pursuant to Clause 4.6), then such costs shall be for the Seller's account and the Seller shall have no recourse to the Buyer in respect of the same.
- 9.3 For the avoidance of doubt, any obligation to pay any costs or fees associated with or arising from the participation in the Auction Platform shall remain with the Party that incurred the costs.

10 COMMUNICATIONS, MATERIALS AND ACCESS TO THE MEASURE

- 10.1 The Seller shall, upon the Buyer's reasonable prior Notice:
- (a) allow reasonable access to the Measures by the Buyer and the nominated third parties of the Buyer, for the purposes of inspecting the Measures (which shall include an audit) to the extent that it can reasonably do so under its third party contracts;
 - (b) make reasonably available to the Buyer or any nominated third parties of the Buyer, key personnel involved in the construction, implementation, operation, maintenance and management or in any other way involved in the Measures as required by the Relevant Authority; and
 - (c) provide any information outside the scope of the information at 8.1(a) requested by the Buyer which it holds in its possession without implying any duty to incur costs, to respond to the Relevant Authority, within the earlier of: (i) two (2) Calendar Days prior to the end of the response period set by the Relevant Authority, or (ii) twenty (20) Calendar Days from the Notice. If the information is not to be produced, the Seller shall provide the Buyer with a written explanation of the reason within the same period.

11 REPRESENTATIONS AND WARRANTIES

11.1 Each Party represents and warrants to the other Party that at the date of execution of this Agreement and on the date on which it issues or receives (as applicable) a Completion Notice:

- (a) it is duly organised and validly existing under the Laws of the jurisdiction of its organisation or incorporation, and, if relevant under those Laws, is in good standing;
- (b) it has the power:
 - (i) to execute this Agreement and any other documentation relating to or required to be entered into pursuant to this Agreement to which it is a party;
 - (ii) to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver; and
 - (iii) to perform its obligations under this Agreement;
- (c) its obligations under this Agreement constitute legal, valid and binding obligations, enforceable in accordance with its terms subject to applicable rules and equitable principles of general application;
- (d) the execution, delivery and performance of this Agreement do not violate any Laws, its constitution, charter or articles of association or similar, or any material order applicable to it or conflict with or result in any breach under any other contract with the other Party or any third party;
- (e) no Event of Default, or event that with Notice or lapse of time or both would constitute an Event of Default, has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under the Agreement;
- (f) no litigation or other proceeding at Law or in equity or before any court or other body is pending or, so far as it is aware, threatened against it that would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under this Agreement, or that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement;

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- (g) it has entered into this Agreement after a full opportunity to review its terms, it has a full understanding of the Bid Confirm Letter, as well as the current Terms and Conditions, and is capable of assuming any risks arising therefrom;
 - (h) the other Party is not acting as a fiduciary or an advisor for it and has not given it any advice, representation, assurance or guarantee as to the expected performance, benefit or result of this Agreement;
 - (i) it has not relied upon any warranties, representations and covenants (actual, constructive or imputed) in entering into this Agreement other than the representations and warranties specifically set out in this Agreement;
 - (j) all applicable information (excluding audited financial statements and any other financial statements) that is furnished in writing by or on behalf of it to the other Party and is identified as being subject to or connected to this Agreement is, as of the date it is furnished to the other Party, true, accurate and complete in every material respect; and
 - (k) it is entering into this Agreement as a principal and not as agent on behalf of a third party.

11.2 Without prejudice to Clause 11.1 above the Seller further represents and warrants to the Buyer that on the date it issues the Completion Notice pursuant to Clause 4:

- (a) all Required Authorisations necessary for the Seller to perform its obligations under this Agreement and the construction, implementation, operation and maintenance of the Measure have been obtained from all relevant third parties and are in full force and effect; and
- (b) the Buyer receives good and full title to the Contract Quantity free of any Encumbrance.

12 LIMITATION OF LIABILITIES

12.1 This Agreement sets out the full extent of the Parties' obligations and liabilities as between each other arising out of or in connection with this Agreement, and there are no conditions, warranties, representations or terms, express or implied, that are binding on the Parties except as specifically stated in this Agreement. Any condition, warranty, representation or other term, which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is hereby expressly excluded to the fullest extent permitted by law, with the exception of the Terms and Conditions.

12.2 Without prejudice to the right of a Party to receive Liquidated Damages in accordance with this Agreement or a Party's right to an indemnity under Clause 13, neither Party shall be liable under or in connection with this Agreement for:

- (a) any Loss arising as a loss of profits or loss of contracts;
- (b) any indirect or consequential Loss or damage of any kind;
- (c) any Loss that has already been recovered by the Party making the relevant claim, or for the avoidance of doubt any amount in Liquidated Damages that has already been paid by a Party as required under this Agreement; or
- (d) Loss or liability (including fines or penalties) arising from the other Party's obligations to comply with the Order or any other applicable rules or provisions related thereto.

12.3 Nothing in this Agreement shall exclude or in any way limit either Party's liability for breach of Clause 16.7 (Bribery), fraud, death or personal injury caused by either Party's negligence, for any damage caused intentionally by either Party or for any damages caused by the fraud or wilful breach of either Party. Additionally, nothing in this Agreement shall be deemed to limit a Party's rights to temporary or preliminary relief from a court of competent jurisdiction.

12.4 A Party must take reasonable steps to mitigate any Loss arising out of or relating to this Agreement which may be the subject of a claim by it under this Agreement.

13 INDEMNITY

13.1 In addition to any other remedy available to the Buyer, the Seller indemnifies the Buyer, the Buyer's Affiliates and all employees, subcontractors of the Buyer and of each in full and on demand against all claims, demands, actions, proceedings, Losses, costs and expenses (including legal and other professional adviser's fees) whether direct or indirect arising from:

- (a) any breach whatsoever of any of the Seller's warranties in this Agreement;
- (b) any breach by the Seller of the Terms and Conditions to the extent such breach is material to this Agreement;
- (c) any breach of Clauses 16.5 (Confidentiality), 16.7 (Bribery) or 16.8 (Data Protection);

(d) a claim by a third party that is the direct result of a breach by the Seller of its obligation to perform the installation of any of the Measures and to conduct itself as a RPO under Clause 7.1(c); and

(e) any breach by Seller of its obligations under Clause 3,

provided that the Seller shall not be liable under this indemnity to the extent that any such claim or breach was caused by any act or omission of the Buyer, the Buyer's Affiliates and employees, or subcontractors of the Buyer.

13.2 In addition to any other remedy available to the Seller, the Buyer indemnifies the Seller, the Seller's Affiliates and all employees, subcontractors of the Seller and of each Affiliate in full and on demand against all claims, demands, actions, proceedings, losses, costs and expenses (including legal and other professional adviser's fees) whether direct or indirect arising from:

(a) any breach whatsoever of any of the Buyer's warranties in this Agreement;

(b) any breach by the Buyer of the Terms and Conditions to the extent such breach is material to this Agreement;

(c) any breach of Clauses 16.5 (Confidentiality), 16.7 (Bribery) or 16.8 (Data Protection), and

(d) any Loss or liability arising from a third party claim that resulted from the Buyer or its third party accessing a Measure pursuant to Clause 10.1(a);

provided that the Buyer shall not be liable under this indemnity to the extent that any such claim or breach was caused by any act or omission of the Seller, the Seller's Affiliates and all employees, or subcontractors of the Seller.

13.3 Each Party undertakes, if a claim, demand or action is made or threatened by a third party that may give rise to a claim for indemnity under this Clause 13 to:

(a) notify the indemnifying Party of such a claim, demand or action in writing within five (5) Calendar Days of it first being made or threatened or if not reasonably practicable to do so then as soon as reasonably practicable thereafter;

(b) give the indemnifying Party promptly all reasonable co-operation, assistance and information which may be relevant to the claim, demand or action; and

(c) not admit, defend, compromise, negotiate or settle the claim or action without the consent of the indemnifying Party (such consent not to be unreasonably withheld) in writing.

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- 13.4 The indemnities in this Clause 13 shall not apply to any Loss that is:
- (a) already recovered in accordance with the procedures established in this Agreement; or
 - (b) arises as a result of fraud committed by the Party claiming an indemnity.
- 13.5 Notwithstanding anything contained herein to the contrary each Party's total liability to the other Party for its indemnity provided under this Clause 13, except for any breach of Clauses 16.5 (Confidentiality), 16.7 (Bribery) or 16.8 (Data Protection), shall be limited to an amount equal to two times the value of this Agreement as taken from the terms of the Bid Confirm Letter.
- 13.6 The Parties acknowledge that each of the sub-clauses in this Clause 13 is severable and that each of those sub-clauses shall be construed as separate limitations.

14 EVENTS OF DEFAULT

- 14.1 The occurrence of any of the following events in respect of a Party shall constitute an Event of Default:
- (a) any failure to pay as required under this Agreement that is not remedied within the time period applicable to that payment;
 - (b) unless specified elsewhere in this Agreement, the Party fails to perform a material obligation under this Agreement which on the part of the Seller shall include a failure to Deliver the Contract Quantity as required under this Agreement beyond any applicable cure period;
 - (c) Bankruptcy Proceedings are commenced against the Party and are not resolved in accordance with the provisions of that definition; or
 - (d) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, or reorganisation, reincorporation or reconstitution into or as another Entity with the result that the surviving or transferee Entity fails to assume all of its obligations under this Agreement at that time.
- 14.2 In addition to 14.1, the occurrence of any of the following events shall constitute an Event of Default in respect of the Seller:
- (a) any act or omission that causes or allows the creation of an Encumbrance over the Contract Quantity; or

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- (b) any assignment or transfer or sale of any portion of the Contract Quantity to any third party.

15 TERM, EARLY TERMINATION, AND RECOURSE

- 15.1 This Agreement shall become effective upon the date as stated in the Bid Confirm Letter by the Parties pursuant to the Terms and Conditions, and shall continue in force until the later of the following: i) expiration of the Audit Period, or ii) the expiration of any applicable cure periods or Cure Periods that fall beyond the Audit Period unless it is terminated early pursuant to this Agreement (the “**Term**”).
- 15.2 The occurrence of an Illegality with respect to this Agreement where the Parties are unable to agree the required amendments to this Agreement pursuant to the process and timeframe specified in Clause 16.4(d) (Illegality) shall constitute a “**No-Fault Termination Event**”. For the purposes of this No-Fault Termination Event, the Party whose obligations are affected by such Illegality will be the Affected Party.
- 15.3 Upon the occurrence of a No-Fault Termination Event, the Party that is not the Affected Party or either Party (if there is more than one Affected Party) shall be entitled to terminate this Agreement with immediate effect by providing Notice in writing to the Affected Party specifying the applicable No-Fault Termination Event. Each Party shall bear its own costs in connection with such termination and the obligations of both Parties under this Agreement shall cease, except for any obligations and liabilities accruing prior to the date of such termination. For the avoidance of doubt, neither Party will be liable for Liquidated Damages where a No-Fault Termination Event occurs.
- 15.4 Where an Event of Default has occurred and remains uncured after the expiration of any applicable cure period (which shall include the expiration any Cure Period and any extensions as permitted under this Agreement), the Non-Defaulting Party shall be entitled to terminate this Agreement with Notice to the Defaulting Party (“**Early Termination**”), which shall be effective twenty (20) Calendar Days from receipt of such Notice.
- 15.5 Seller’s Liquidated Damages shall be owed to the Seller by the Buyer for the following Events of Default only: i) failure to pay any amounts due and payable under Clause 5, ii), commencement of Bankruptcy Proceedings against the Buyer that are not resolved within the time provided for in the definition of Bankruptcy Proceedings, and ii) breach of the assignment restrictions under Clause 16.6.
- 15.6 Buyer’s Liquidated Damages shall be owed to the Buyer by the Seller for the following Events of Default only: i) Delivery Failure, ii) Reporting Failure, iii) Measure Failure, iv) Revocation, v) Bankruptcy Proceedings against the Seller that are not resolved within

the time provided for in the definition of Bankruptcy Proceedings, and vi) a breach of the assignment restrictions under Clause 16.6.

- 15.7 In an Event of Default where Liquidated Damages are owed under this Clause 15, the Non-Defaulting Party shall acting reasonably and in good faith calculate the applicable Liquidated Damages (if any) and Notify the amount of such Liquidated Damages to the Defaulting Party, which shall include an explanation of the calculation of such Liquidated Damages. If the Liquidated Damages are a positive number, the Defaulting Party shall pay such Liquidated Damages as are not in dispute to the Non-Defaulting Party within ten (10) Calendar Days from receipt of the Notice of Liquidated Damages to the account of the Non-Defaulting Party as specified in writing by that Party. A Party is not required to enter into replacement transactions in order to determine the Liquidated Damages.
- 15.8 The Parties acknowledge that the amount of liquidated damages set out in this Agreement represents a genuine pre-estimate of the loss that such Non-Defaulting Party anticipates it would incur as a result of the applicable breach.
- 15.9 In the event that the Parties have entered into other agreements on the Auction Platform with each other, and : i) a final and binding order for damages has been made by a court or adjudicating body as it relates to liquidated damages, or ii) a Party has agreed in writing to pay any damages, and that Party has failed to pay the damages when due and payable under either i) or ii), then the non-defaulting Party shall have a right to suspend its obligations under this Agreement until such time as the due and payable damages as referenced above in this Clause 15.9 are paid in full.
- 15.10 Notwithstanding anything contained herein to the contrary, the following shall survive termination of this Agreement: Clause 8.1(d) (Seller's Record Keeping and Monitoring Requirements), Clause 10 (Communications Materials and Access to the Measure), 11 (Representation and Warranties), Clause 12 (Limitation of Liabilities), Clause 13 (Indemnity), Clause 14 (Events of Default), Clause 15 (Term, Termination and Recourse), Clause 16 (General) and Schedule 1 (Definitions).

16 GENERAL

16.1 Governing Law and Dispute Resolution

- (a) This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed and construed according to the laws of England and Wales.

16.2 Disputes

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- (a) Subject to either Party's right to adjudicate at any time, the Parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation and/or, if the parties agree, mediation.
 - (b) Notwithstanding any other provision of this Agreement either party may refer a dispute arising under this Agreement to adjudication at any time in accordance with the Technology and Construction Solicitors Association Adjudication Rules which are deemed to be incorporated into this Agreement.

16.3 Taxes

- (a) All amounts referred to in this Agreement are exclusive of any applicable VAT chargeable on the supply or supplies for which such amounts form the whole or part of the consideration for VAT purposes. The VAT treatment of any delivery or payment shall be determined pursuant to the VAT law of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place. If VAT is properly chargeable on any such supply or supplies, the Buyer shall pay to the Seller an amount equal to the VAT, if any, chargeable in the Seller's jurisdiction provided that:
 - (i) such amount shall only be required to be paid once the Seller provides the Buyer with a valid VAT invoice in relation to that amount; and
 - (ii) the Buyer shall be under no obligation to make any payment to the Seller in respect of VAT that the Buyer must self-assess under the reverse charge rule or any similar system in the Buyer's jurisdiction.

Each Party shall to the extent permitted by Law provide the other with any additional valid VAT invoices as required for the purposes of this Agreement and, to the extent required by Law, shall correctly account for any VAT properly due in its jurisdiction.

- (b) Subject to each Party's obligations relating to VAT, each Party shall cause all royalties, Taxes, duties, and other sums (including any stamp duty, other documentary taxes, climate change levy or other environmental tax or levy) legally payable by that Party arising in connection with this Agreement to be paid. In the event that the Seller is required by law to pay any tax that is properly for the account of the Buyer, the Buyer shall promptly indemnify or reimburse the Seller in respect of such tax. In the event that the Buyer is required by law to pay any tax that is properly for the account of the Seller, the Buyer may deduct the amount of any such tax from the sums due to the Seller

under this Agreement and the Seller shall promptly indemnify or reimburse the Buyer in respect of any such tax not so deducted.

- (c) Both Parties shall use all reasonable efforts to administer this Agreement and to implement its provisions in accordance with the intent to minimise, where reasonable and possible, the accrual of tax payment obligations.

16.4 Illegality

- (a) If an Illegality occurs with respect to this Agreement, then, at the written request of either Party, the Parties shall, in good faith, seek to agree the amendments (if any) to this Agreement necessary or appropriate to take account of those changes.
- (b) Any new costs, expenses or risks that arise owing to such Illegality and not of a type provided for in this Agreement are not intended to be allocated from one Party to the other by virtue of this Clause 16.4.
- (c) The obligations of both Parties with respect to the obligations affected by the Illegality shall be suspended until such time as the Agreement has been amended pursuant to Clause (a).
- (d) In the event that the Parties are unable to agree the necessary amendments to this Agreement within ninety (90) Calendar Days from the date of the receipt of the written request pursuant to Clause 16.4(a) by the relevant Party, the rights provided for in Clause 15.7 shall apply.

16.5 Confidentiality

- (a) Each Party undertakes, for itself and on behalf of its Affiliates, not to use or to disclose any Confidential Information, except as specifically authorised under this Agreement.
- (b) During the period of this Agreement and afterwards, a Party will take all steps necessary to preserve the secrecy of the other Party's Confidential Information and shall not disclose it to any third party (except to the extent necessary in respect of the Measure). The Seller shall ensure that its officers or employees to whom details of the Buyer's Confidential Information are disclosed are made aware of the confidentiality of the same.
- (c) Any other Confidential Information disclosed by one Party to the other pursuant to this Agreement shall be treated by the recipient in confidence and shall not

be used or disclosed to any third party by the recipient without the prior written consent of the disclosing Party.

- (d) This Clause 16.5 does not apply to disclosure of Confidential Information:
- (i) with the prior written consent of the other Party;
 - (ii) to the extent required by any Law, or a competent court or other competent authority;
 - (iii) to the professional advisers, directors, agents or consultants of each Party, provided that each Party ensures that the matters disclosed are kept confidential;
 - (iv) to the Relevant Authority, the Platform Provider, or any required regulatory bodies in the Party's jurisdiction; which includes for the avoidance of doubt the disclosure of information requested from the Parties by the Relevant Authorities or the Platform Provider as required to administer or improve the administration of the Auction Platform;
 - (v) in respect of information which is lawfully in the public domain other than information that is or later becomes available to the public through the fault of the recipient or any breach of this Agreement or any other agreement between the Parties;
 - (vi) to the extent required in respect of an obligation specified in this Agreement; or
 - (vii) by the Buyer to any third party who is a purchaser or a potential purchaser of the Contract Quantity generated by the Measure and that are the subject of this Agreement.

16.6 Transfer and Assignment

- (a) Notwithstanding Clause 7.2 and subject to Clause (b) below neither the Seller nor the Buyer shall transfer or assign, sub-licence or sub-contract its rights under this Agreement including in pursuance of a reorganisation, consolidation, merger or reconstruction, in whole or in part without the prior written consent by the other Party.
- (b) The Buyer shall be entitled to sell or transfer to any third party that is an ECO obligated party under the Applicable Rules any and all ECO Points purchased pursuant to this Agreement.

16.7 Bribery

- (a) Each Party shall at all times comply with all applicable Laws, regulations and sanctions relating to anti-bribery including but not limited to the Bribery Act 2010.
- (b) Each Party shall not engage in any activity, practice or conduct which would constitute an offence either by it or the other Party under the Bribery Act.
- (c) Each Party shall implement and enforce written policies and procedures constituting adequate procedures under the Bribery Act in order to prevent commission by the Party, the Party's employees and the Party's third party agents, contractors and associated persons, of any offence under the Bribery Act.
- (d) Each Party shall produce to the other Party copies of such written policies and procedures within seven (7) Calendar Days at any time upon request by the other Party.
- (e) Each Party shall ensure that any third party agent, contractor or associated person of the Party who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on such person terms equivalent to those imposed on the Party in this Clause 16.7. Each Party shall be responsible for the observance and performance by such persons of the terms of that written contract.
- (f) Each Party shall report to the other Party any request or demand for any undue financial or other advantage of any kind received by the Party in connection with the performance of this Agreement.

16.8 Data Protection

- (a) To the extent the Seller Processes any Personal Data in conjunction with this Agreement the Buyer acknowledges that it is the Data Controller of the Personal Data, and that the Seller is acting on the Buyer's behalf as a Data Processor of the Personal Data.
- (b) To the extent the Buyer Processes Personal Data in conjunction with this Agreement the Seller acknowledges that it is the Data Controller of the Personal Data, and that the Buyer is acting on the Seller's behalf as a Data Processor of the Personal Data.

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- (c) Each party warrants and represents to the other that in performing its obligations under this agreement it will comply with all relevant requirements of any applicable Data Protection Legislation, including compliance with the following:
- (i) the requirements relating to the notification and consents by data controllers under the DPA;
 - (ii) the data protection principles set out in Schedule 1 of the DPA; and
 - (iii) requests from data subjects for access to data held by it.

16.9 Other

- (a) This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same Agreement.
- (b) If any inconsistency between or among different language versions of the counterparts exists, the English language version shall prevail.
- (c) Each Party shall promptly do or cause to be done and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the other Party) required by any Law or reasonably requested by the other Party to give effect to this Agreement.
- (d) Except as otherwise provided in this Agreement, each Party shall pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Agreement.
- (e) Any amendment to this Agreement shall come into force only when agreed and executed by both Parties in writing.
- (f) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Agreement by either Party shall not in any way preclude, or operate as a waiver by such Party of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Agreement. Any waiver or consent given by a Party under this Agreement shall only be effective and binding on that Party if it is given or confirmed in writing by that Party. No waiver of a breach of any term of this Agreement shall operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

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- (g) This Agreement supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement and contains the whole agreement between the Parties relating to the subject matter of this Agreement at the date of its execution to the exclusion of any terms implied by law which may be excluded by contract. Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it. So far as permitted by law and except in the case of fraud, each Party agrees and acknowledges that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be for breach of the terms of this Agreement, to the exclusion of all other rights and remedies (including those in tort or arising under statute). In this sub-Clause "this Agreement" includes all documents entered into pursuant to this Agreement.
- (h) Subject to an event of Illegality provided for in Clause 16.4, if any provision or part of a provision of this Agreement is found by a court, arbitrator or other authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision is to be deemed deleted from this Agreement and the remaining provisions to continue in full force and effect. If any such invalidity substantially affects or alters the commercial basis of this Agreement, the Parties shall negotiate in good faith to amend and modify the provisions and terms of this Agreement as may be necessary or desirable in the circumstances to achieve, as closely as possible, the same economic or commercial effect as the original provisions and terms of this Agreement.
- (i) Any consent referred to in, or required under, this Agreement from either Party may not be unreasonably withheld, unless this Agreement expressly provides for that consent to be given in that Party's absolute discretion.
- (j) Subject to the rights that may accrue to any successor or permitted assignees of the Parties, no provision of the Agreement is to be construed as creating any rights enforceable by a third party, and all third party rights implied by law are, to the extent permissible by law, excluded from this Agreement.
- (k) All notices shall be in writing, in English, delivered by express courier service, fax, email or hand to the contacts as provided in the Bid Confirm Letter ("**Notice**").

Any Notice or communication given under this Agreement must be signed by the Party making the communication or (on its behalf) by the solicitor for, or by

any attorney, director, secretary, or authorised agent of, that Party, and shall be deemed to be received by the recipient:

- (i) (in the case of express courier service) on the second (2nd) Calendar Day after the date of posting to an address within the posting country, and on the fourth (4th) Calendar Day after the date of posting to an address outside the posting country;
- (ii) (in the case of fax) at the local time (in the place of receipt of that fax) as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Banking Day, or is after 5.00 pm on a Banking Day, when that communication shall be deemed to be received at 9.00 am on the next Banking Day;
- (iii) (in the case of email) upon actual receipt of an email in readable form addressed to the relevant email address provided for notices in accordance with this Agreement; and
- (iv) (in the case of delivery by hand) on delivery at the address of the addressee as provided in the Bid Confirm Letter unless that delivery is made on a non-Banking Day, or after 5.00 pm on a Banking Day, in which case such communication shall be deemed to be received at 9.00 am on the next Banking Day.

A party may change its address for Notice at any time by Notice to the other party pursuant to this Clause (k).

- (l) Time shall be of the essence of this Agreement, both as regards times, dates and periods specified in the Agreement, and more specifically without limiting the foregoing, the obligations of Seller in relation to Reporting Failure, Measure Failure, Delivery pursuant to the Bid Confirm Letter, and to cure a Revocation.

Schedule 1

Definitions

1 DEFINITIONS

- 1.1 Unless otherwise specified in this Agreement capitalised terms used in this Agreement shall have the meanings set out below.

"Acceptance" means an event whereby the Relevant Authority issues a communication to the Buyer that a Measure is accepted under the Applicable Rules for use by the Buyer for the Intended Purpose. **"Accept"** and **"Accepted"** shall each have a corresponding meaning as applicable.

"Administrative Costs" means an amount equal to Six Hundred and Six Pounds (£606.00), which shall be owed at each Event of Default where Buyer's Liquidated Damages are owed under the Agreement, such amount represents the reasonable assessment of actual monetary loss of the Buyer as reflected in the time required to repurchase lots on the Auction Platform, and is calculated at rate that is twenty pounds and twenty pence (£20.20) for each hour, multiplied by seven point five (7.5) for the number of hours in a working day, with an estimate of four (4) working days as a reasonable time to replace credits applicable to the Event of Default in question. **"Affected Party"** means the Party that is affected by the relevant event specified and identified in Clause 15 (*Termination*).

"Affiliate" means, in relation to any Party, any other Entity that directly or indirectly, through one or more intermediaries controls or is controlled by or is under common control with the Party. The terms "controls", "controlled by" and "under common control with" mean the possession, directly or indirectly through one or more intermediaries, of more than fifty per cent (50%) of the outstanding voting stock of, or the power to direct or cause the direction of the management policies of, any Entity, whether through ownership of stock, as a general partner or trustee, by contract or otherwise.

"Agreement" means this Agreement and includes all of its recitals and schedules and annexures, as well as the Bid Confirm Letter between the Buyer and Seller, which shall be incorporated by reference.

"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 Scheme, the Auction Platform, the Measures and/or the Intended Purpose of the Measures, each as amended from time to time.

"Auction Platform" means the platform for the sale of ECO Points as established by the Order and Applicable Rules.

"Audit Period" means the period from the date of this Agreement until 31 December 2016.

"Banking Day" means any day (other than a Saturday or Sunday) on which commercial banks are open for general business in the jurisdiction(s) of both the Buyer and the Seller.

"Bankruptcy Proceedings" means, in respect of a Party, where that Party:

(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 creditor's rights, or a petition is presented for its bankruptcy, administration, 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 administration, bankruptcy, winding-up or liquidation or ii) is not withdrawn, dismissed, discharged, stayed or restrained in each case within three (3) months of the institution or presentation of that proceeding or petition;

(e) becomes notour bankrupt, enters into any individual voluntary arrangement or (being a company) enters into or has a resolution passed for its winding up administration or liquidation whether compulsory or voluntary (save for the purpose of amalgamation or reconstruction of a solvent company) or has a receiver appointed of its undertaking or enters into arrangement or composition for the benefit of its creditors or proposing to enter into or suffers any diligence to be done or execution to be levied on its goods;

(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;

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- (g) any petition is presented or proposal made in connection with negotiations with creditors or any meeting is convened with a view to a composition, assignment or arrangement with any creditors of a Party;
 - (h) a meeting of a Party is convened for the purpose of considering any resolution for (or to petition for) its winding-up or its administration or any such resolution is passed;
 - (i) any person presents a petition for the winding-up or for the administration of a Party;
 - (j) any order for the winding-up or administration of a Party is made;
 - (k) any other formal legal step (including petition, proposal or convening a meeting) is taken with a view to the administration, liquidation, winding-up or dissolution of the Borrowers or any other insolvency proceedings involving any Party;
 - (l) any notice of intention to appoint an administrator is given in respect of a Party;
 - (m) 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;
 - (n) 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 (n) (inclusive); or
 - (o) 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.

Provided however, the forgoing shall not be a commencement of Bankruptcy Proceedings for the purpose of this Agreement if it is withdrawn dismissed discharged, stayed or restrained within ten (10) Calendar Days of the applicable event.

"Bid Confirm Letter" means the letter sent by the Platform Provider to the winning bidder (Buyer) and the Seller, which is duly signed pursuant to the Terms and Conditions, and which shall be incorporated herein by reference and is an integral part of this Agreement; where there is a conflict between any term in this Agreement and the Bid Confirm Letter, the terms of the Bid Confirm Letter shall prevail.

"Bid Contract Quantity" means the amount stated in the Bid Confirm Letter. .

"Bribery Act" means the Bribery Act 2010.

"Buyer" means the party named as Buyer in the Bid Confirm Letter.

"Buyer's Liquidated Damages" means an amount equal to the sum of:

- (a) the positive difference, if any, between: i) the price which the Buyer, acting in a commercially reasonable manner, does or would pay as determined by the Platform Provider pursuant to the Terms and Conditions, for a quantity of Comparable ECO Points equal to the Default Quantity, and ii) the Unit Price multiplied by the Default Quantity; plus
- (b) if applicable, the Unit Price paid by the Buyer multiplied by the ECO Points applicable to the Measures included in an Event of Default; plus
- (c) the Administration Costs; plus
- (d) any such reasonable costs incurred and expenses which the Buyer incurs as a result of the termination (where applicable) of this Agreement, including brokerage fees, commissions and legal fees.

"Buyer's Replacement Costs" means an amount equal to the sum of:

- (a) the positive difference, if any, between: i) the price the Buyer would have paid as determined by the Platform Provider pursuant to the Terms and Conditions using the date that the Seller receives the Notification of a Reporting Failure, a Measure Failure or a Revocation from the Buyer pursuant to Clause 6 for a quantity of Comparable ECO Points equal to the Shortfall Quantity, and ii) the Unit Price multiplied by the Shortfall Quantity; plus
- (b) if applicable, the Unit Price paid by the Buyer, multiplied by the Shortfall Quantity.

"Calendar Day" means any day of the week save that if any period of Calendar Days under this Agreement should end on a day which is not a Banking Day then that period will be deemed to continue until the next Banking Day.

"Comparable ECO Points" means ECO Points that can be used for the Intended Purpose.

"Completion" shall be the day on which a Measure is fully completed by the Seller to a standard by which a RPO would determine to be required to meet the Intended Purpose, in accordance with the Applicable Rules and **"Complete"** shall have a corresponding meaning as applicable.

"Completion Notice" has the meaning given to it in Clause 4.1.

"Confidential Information" means the existence and substance of all information or data provided to either Party by or on behalf of the other party or by a third party with the authority of that other party in connection with this Agreement, in any form or medium (whether communicated in writing, orally, electronically or by any other means), whether before or after the effective date of the Bid Confirm Letter, including without limitation proposals, results, investigations, research, surveys, operations, processes, reports, statistics, know-how, trade secrets, software intellectual property rights, and the existence and terms of this Agreement and any documents referred to in this Agreement, and the commercial and financial arrangements evidenced by this Agreement.

"Contract Quantity" has the meaning provided to it in Clause 2;

"Cure Options" has the meaning given to it in Clause 6.6 and for the avoidance of doubt shall only be applicable to a Reporting Failure, Measure Failure, and/or Revocation pursuant to Clause 6.

"Cure Period" shall be a period of ninety (90) Calendar Days, and for the avoidance of doubt shall only be applicable to a Reporting Failure, Measure Failure, and/or Revocation pursuant to Clause 6.

"Currency" means the currency as specified in the Bid Confirm Letter.

"Data" has the meaning given to it in the DPA.

"Data Controller" has the meanings given to it in the DPA.

"Data Processor" has the meaning given to it in the DPA.

"DPA" means the Data Protection Act 1998 of the United Kingdom as amended from time to time.

"Data Protection Legislation" means any applicable data protection and privacy legislation in force anywhere in the world, including, the DPA and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (and in each case as amended, extended or re-enacted from time to time and including any subordinate provision made under that legislation).

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

"Default Rate" means the rate that is the greater of: (i) six per cent (6%); and (ii) the rate offered to leading banks in the London interbank market at or about 11.00 am on

the date that the Event of Default occurs of a sterling advance for a one (1) month period, plus two per cent (2%).

"Defaulting Party" means the Party in respect of which an Event of Default has occurred.

"Default Quantity" means the difference (if any) between: i) the Maximum Contract Quantity, and ii) the number of ECO Points Delivered to the Buyer.

"Delivery" means the communication of the completion of a Measure by the Seller to the Buyer using a Completion Notice, as more specifically described in Clause 4.1 of this Agreement. **"Deliver"** and **"Delivered"** shall each have a corresponding meaning and as applicable.

"Delivery Date" means the last date by which the all of the Contract Quantity has to be Delivered pursuant to the Bid Confirm Letter.

"Delivery Failure" shall have the meaning in Clause 4.4.

"Delivery Period" means the period in which the Seller shall Deliver the Contract Quantity to the Buyer, which shall be a period from the commencement of the Term to the Delivery Date.

"DPA" means the Data Protection Act 1998 as amended, extended or re-enacted from time to time and including any subordinate provision made under that act and any guidance issued under the act.

"ECO Obligated Company" means an Energy Supply Company, which is defined and under the Scheme.

"ECO Point" means the unit for an environmental impact offset as defined by the Relevant Authority, and as specifically referenced in the Bid Confirm Letter.

"Early Termination" shall have the meaning in Clause 15.2.

"Encumbrance" means any claim, mortgage, charge, pledge, lien, encumbrance, assignment, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any Entity by way of security for the payment of a debt or any other monetary obligation and restriction of any kind under any regulatory or voluntary regime that may affect the ability of the Buyer to use the ECO Points for the Intended Purpose, with exception to the restrictions as dictated by the Platform Provider in the Terms & Conditions and **"Encumber"** shall be interpreted accordingly.

"Entity" means an individual, government or state or division of it, government or state agency, corporation, partnership or such other entity as the context may require, and includes, to the extent that the context permits, its executors, administrators, successors and permitted assigns, including any Entity taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee.

"Event of Default" means each of the events specified in Clause 14 (*Events of Default*) as being an Event of Default.

"Illegality" means the adoption of, or any change in, any Law or any other applicable law after the date of this Agreement, or the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, as a result of which it becomes unlawful (other than as a result of a breach by the Party of this Agreement) for such Party to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of this Agreement or to comply with any other material provision of this Agreement.

"Intended Purpose" means the purpose for which the Buyer intends to use the Contract Quantity to satisfy its obligations under the Order, which is described as a Lot Type in the Bid Confirm Letter.

"Invoice" means the invoice in the form set out in Schedule 2 (*Form of Invoice*).

"Law" means any international and/or federal, state, national, regional, local and domestic laws, common laws and custom, administrative laws, regulations, rules, planning policy statement, orders, interpretations, permits, standards, judgments, decrees, injunctions, writs and orders of a tribunal or regulatory body that apply to this Agreement, and/or to the relevant Party, and/or to the Measures as the context requires.

"Liquidated Damages" means Buyer's Liquidated Damages (where the Seller is the Defaulting Party) or Seller's Liquidated Damages (where the Buyer is the Defaulting Party).

"Loss" means all costs, losses, expenses, payments damages, liabilities, interest, and the amounts by which rights or entitlements to amounts have been reduced.

"Maximum Contract Quantity" means ninety-five per cent (95%) of the Bid Contract Quantity.

"Measures" means projects which are undertaken by the Seller to achieve the generation of ECO Points which are to be Delivered under this Agreement as the

Contract Quantity to be used for the Intended Purpose, and which are of the type specified in the Bid Confirm Letter. **"Measure"** means an individual measure forming part of the Measures.

"Measure Failure" shall have the meaning in Clause 6.3.

"No-Fault Termination Event" shall have the meaning in 15.2.

"Non-Defaulting Party" means the Party that is not the Defaulting Party.

"Notice" shall have the meaning in Clause 16.9(k). **"Notify"** and **"Notified"** shall each have a corresponding meaning accordingly.

"Notice of Cure Period Extension" shall have the meaning in Clause 6.5.

"Ofgem" means the Office of the Gas and Electricity Markets as established by 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 Companies Obligation) Order 2012 and any amendment, variation or consolidation from time to time. **"Party"** means each of the Buyer and the Seller and **"Parties"** means the Buyer and the Seller.

"Personal Data" shall have the meaning given to it in the DPA.

"Platform Provider" means the body appointed by DECC from time to time to administer the Auction Platform.

"Process" shall have the meanings given to it in the DPA and **"Processing"** and **"Processes"** shall each have a corresponding meaning accordingly.

"Relevant Authority" means any governing body of the United Kingdom (or where applicable the European Union), including but not limited to Ofgem, DECC, an 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 an applicable Relevant Authority.

"Replacement ECO Points" means ECO Points generated by the same types of measures which are or would be available on the Auction Platform in respect of the same type of measure as the Measures in the Bid Confirm Letter, which may be used by the Buyer for the Intended Purpose during the Audit Period.

"Reporting Failure" shall have the meaning in Clause 6.1.

"Required Authorisations" means all governmental and other licences, authorisations, permits, consents, contracts and other approvals under Law, the Applicable Rules and as required by the Relevant Authority.

"Revocation" means an event whereby the Relevant Authority after having accepted (either passively or explicitly) a Measure for use by the Buyer for the Intended Purpose, finds that the Measure shall in fact not be valid for use by the Buyer for the Intended Purpose and **"Revoked"** shall have a corresponding meaning accordingly.

"RPO" or **"Reasonable and Prudent Operator"** means a person acting in good faith and performing its contractual obligations exercising a degree of skill, diligence and prudence that would reasonably and ordinarily be expected from a skilled and experienced operator complying with the Applicable Rules, engaged in the same type of undertaking, under the same or similar circumstances and conditions, and any reference to the standards of an RPO shall be construed accordingly.

"Scheme" means the statutory scheme contained in the Order.

"Seller" means the party named as Seller in the Bid Confirm Letter.

"Seller's Bank Account" means the bank account of the Seller in a commercial bank as named in the Bid Confirm Letter, the identity of which has been agreed between the Parties.

"Seller's Liquidated Damages" means an amount equal to the sum of:

- (a) the Unit Price multiplied by the portion of the Contract Quantity that: i) were Delivered by the Seller to the Buyer, and ii) that the Buyer failed to make the required payment for when owed under this Agreement beyond any cure period provided; plus
- (b) interest at the Default Rate for the period starting from (and including) the Event of Default up to (but excluding) the date the payment is made on the amount calculated pursuant to paragraph (a) above; plus
- (c) such reasonable costs and expenses which the Seller incurs as a result of the termination of this Agreement, including brokerage fees, commissions and legal fees.

"Shortfall Quantity" shall be the quantity of ECO Points equal to the portion of the Contract Quantity that is not acceptable for the Intended Purpose as a result of a Reporting Failure, Revocation, or a Measure Failure.

"Sub-Contractor" means any third party appointed, contracted or otherwise involved in the construction, operation, maintenance or management of the Measures, excluding the Seller and the Buyer.

"Taxes" means all value added taxes, national, state, regional, provincial, local, foreign and other net income, gross income, gross receipts, sales, use, transfer, franchise, profits, license, lease, service, service use withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall, profits, fuel, gas import, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever imposed by any governmental Entity, whether in effect at the time of this Agreement or thereafter imposed, together with any interest and any penalties, additions to tax or additional amounts with respect thereto.

"Technical Monitoring" means any monitoring of a Measure that is required from time to time by the Relevant Authority, which must be performed pursuant to the Applicable Rules in order to use the Contract Quantity for the Intended Purpose.

"Term" shall have the meaning in Clause 15.1.

"Terms and Conditions" means the Terms and Conditions produced by the Platform Provider which were signed and agreed to by the Buyer and Seller, and which shall be incorporated and shall govern this Agreement where referenced; provided however, where there is a conflict between this Agreement and the Terms and Conditions, this Agreement will prevail.

"Unit Price" means the price to be paid per ECO Point pursuant to the Bid Confirm Letter.

"VAT" means value added tax.

1.2 Unless otherwise specified in this Agreement or where the context otherwise requires, words shall be interpreted in accordance with the provisions of this paragraph 1.2:

- (a) headings are for convenience only, do not form part of the operative provisions of this Agreement and are not to be taken into consideration in its interpretation;
- (b) a reference to any Entity (including a Party) includes a reference to that Entity's successors and permitted assigns, including any Entity taking by way of novation;
- (c) a reference to any law is a reference to that law as may be varied, novated, ratified or replaced from time to time;

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- (d) a reference to any law includes all protocols, rules, modalities, guidelines, procedures, ordinances, by-laws, regulations and statutory instruments (however described) issued under it;
 - (e) the singular includes the plural and vice versa, and a reference to one gender includes a reference to all genders, to the extent the context permits or requires;
 - (f) references to Parties, Clauses and Schedules are references to Parties, Clauses and Schedules to or of this Agreement, unless otherwise indicated;
 - (g) the Schedules are an integral part of this Agreement;
 - (h) where a word or phrase is defined in this Agreement, any other grammatical form or conjugation of such word or phrase shall have the corresponding meaning;
 - (i) the terms of this Agreement shall be interpreted in a manner that is consistent with the Terms and Conditions;
 - (j) all monetary amounts shall be calculated and shall be payable in the Currency;
 - (k) a reference to a law, statute, statutory provision or subordinate legislation shall include any amendment, modification, extension, variation, replacement, substitution or consolidation of the same from time to time during the term of the Agreement; and
 - (l) words shall not be given a restrictive interpretation by reason of their being proceeded or followed by words indicating a particular class of acts, matters or things.

Schedule 2
Form of Invoice

The Invoice provided to the Buyer pursuant to this Agreement shall be in the format and shall incorporate the information as set out below.

- 1 The Invoice shall:
 - 1.1 be on the Seller's headed paper and sent either in paper or electronic form. If the latter it must be in pdf format (not Word, which can be altered);
 - 1.2 be addressed to the Buyer as indicated on the Bid Confirm Letter;
 - 1.3 be marked for the attention of the person noted in the Bid Confirm Letter;
 - 1.4 state the Seller's full name;
 - 1.5 state the Seller's Invoice number;
 - 1.6 state the date the Invoice is generated;
 - 1.7 state the service the Invoice is for and amount in the Currency;
 - 1.8 state the Seller's Account details and any other bank information required when making payment; and
 - 1.9 state the name and telephone number of the Seller's contact person.
- 2 This form of Invoice may be amended from time to time by Notice from the Buyer to the Seller. Such amendments shall be effective from the next invoice.