

Terms and Conditions - Enhanced Capital Allowance Scheme

WHEREAS:

- The Department of Energy and Climate Change has policy responsibility for the ECA Scheme including responsibility for managing the Energy Technology List (“**ETL**”) and promoting the Enhanced Capital Allowance Scheme (“**ECA Scheme**”).
- Her Majesty’s Revenue & Customs has legislative responsibility for Enhanced Capital Allowances.
- Her Majesty’s Treasury has overall financial responsibility for the ECA Scheme.
- The final decision on composition of the ETL (and what Products are listed on it) is with Government.
- These Terms and Conditions are applicable to all Partners whose Product qualifies for the ECA Scheme and is included on the ETL. In addition, Partners must agree to these Terms and Conditions prior to the submission of ETL Product Applications or New Technology Proposals.
- The purpose of these Terms and Conditions is to set out how the ECA Scheme operates and detail what a Partner can do to have a Product(s) qualify for the ECA Scheme.

IT IS AGREED as follows:-

DEFINITIONS AND INTERPRETATION

- “Authorities”** means the Department of Energy and Climate Change, the Secretary of State for such Department, any other UK Government Department, the Welsh Government, Invest Northern Ireland and the Scottish Government and, in each case, such persons as are authorised to act on their behalf;
- “Company”** means the DECC ETL Managed Service Provider, currently the Carbon Trust and persons authorised to act on its behalf;
- “Contract”** means these Terms and Conditions;
- “DECC”** means the Department of Energy and Climate Change or the duties carried out by its ETL Managed Service Provider on its behalf;
- “Delivery Partner”** means persons and/or organisations authorised by the Carbon Trust to act on its behalf;
- “ECA Scheme”** means the scheme allowing enhanced first year capital

	allowances of 100% for assets which appear on the ETL pursuant to the Capital Allowances Act 2001 as amended by section 65 of and schedule 17 to the Finance Act 2001, and as may be amended from time to time;
"Enhanced Capital Allowance"	means an enhanced first year capital allowance pursuant to the ECA Scheme;
"ETCL"	means the Energy Technology Criteria List which is required pursuant to the ECA Scheme;
"ETL"	means the ETPL and the ETCL;
"ETL Licence Agreement"	means the agreement in the form prescribed by the Company from time to time governing use of the ETL Symbol along with the ETL Symbol Regulations filed with and approved by the UK Patent Office;
"ETL Product"	means a uniquely defined and identifiable item of equipment that meets the requirements of the ETCL and for which an ETL Product Application has been approved (whether or not the ETL Product is as yet on the ETPL);
"ETL Co-ordinator"	means such of the personnel who are responsible on a day to day basis for the provision of ETL Product administration;
"ETL Product Application" or "ETLPA"	means an application (in the prescribed form from time to time) submitted by a Partner in respect of one or more potential ETL Products or sets of potential ETL Products for inclusion on the ETPL in relation to the ECA Scheme (including an application submitted by way of an ETL Product Re-Application);
"ETL Product Re-Application"	means the process of submitting an ETLPA in cases where the ETL Product in question has been identified for removal from the ETL as a result of ETCL changes or pursuant to clauses 4 or 5;
"ETL Symbol"	means the certification trade mark available to be used by Partners in respect of ETL Products once they have signed an ETL Licence Agreement, and which may only be used in association with ETL Products listed on the ETPL;
"ECA Website"	means the Department of Energy and Climate Change website used for the purposes of the management and administration of the ECA Scheme;
"ETPL"	means the Energy Technology Product List which is required pursuant to the ECA Scheme;
"Market Performance"	means the actual data for sales, resulting CO2 emissions abatement, market share, uptake or any additional commercial information;
"New Technology Proposals"	means a proposal or application electronically submitted by a Partner via the ECA Website for a new Technology Category to be considered for the ETL;

"Partner"	means an organisation which makes an ETL Product, a potential ETL Product or a Product which it would like to add to the ETL;
"Product"	means any product, equipment or thing;
"Quality Assurance Test Plan"	means a testing document that presents how the Company will perform testing on a Product and analyse the results;
"Relevant Audit Act"	means in respect of England, the National Audit Act 1983, in respect of the Welsh Government, the Government of Wales Act 1998, in respect of Invest Northern Ireland, the Northern Ireland Act 1988 and Audit (Northern Ireland) Order 1987, and in respect of the Scottish Government, the Public Finance and Accountability (Scotland) Act 2000 and any amending or replacing legislation;
"Relevant Auditor"	means in respect of England, the Comptroller and Auditor General, in respect of the Welsh Government, the Auditor General for Wales, in respect of Invest Northern Ireland, the Comptroller and Auditor General for Northern Ireland and in respect of the Scottish Government, the Auditor General for Scotland;
"Technology"	means a grouping of similar Technology Categories;
"Technology Category"	means each of the categories of technologies listed on the ECA Website as amended from time to time;
"Test House"	means an organisation which provides testing services for ETL Products which is independent of any Partner whose product is being tested by the Test House for the purposes of determining whether it meets the requirements of the ETCL and which has no interest directly or indirectly in the Partner;
"Test Report"	means the test report or test results issued by a Test House regarding an ETL Product's performance;
"Unlisted Product"	means any ETL Product which is from an Unlisted Technology Category; and
"Unlisted Technology Category"	means a Technology Category which is not listed on the ETPL but is described on the ETCL.

1 THE ECA SCHEME AND ETL

- 1.1 The Partner, by making an ETL Product Application or New Technology Proposal or any other application in relation to the ECA Scheme or the ETL, accepts and agrees to this Contract and agrees to comply with its terms.
- 1.2 DECC is responsible for providing a managed ETL service. The final decision on the composition of the ETL is with DECC.
- 1.3 The Partner acknowledges that DECC may at its own discretion and without

notification appoint a Company to administer technical aspects of the ECA Scheme.

- 1.4 All ETL Product Applications, New Technology Proposals and any other applications by the Partner to have Products or technology considered by the Company for inclusion on the ETL must be made via the ECA Website (or where the Partner cannot do so, must be sent by email to the ETL Co-ordinator at the address set out in clause 2.2).
- 1.5 The Partner acknowledges that acceptance by the Government of Product on the ETL does not entitle the Partner to use the DECC name and/or logo or the Company name and/or logo or the ETL Symbol or any other branded materials relating to the ECA Scheme for the particular Product. In order to use the ETL Symbol, the Partner must have signed and be entitled to do so under an ETL Licence Agreement.
- 1.6 In the event that a Product is removed from the ETL the Partner shall not be entitled to claim that the Product qualifies for the ECA Scheme and shall be required to remove all references to ECA Scheme support from its documentation and publications.

2 ETL PRODUCT APPLICATIONS

- 2.1 The ETLPA shall contain details of individual potential ETL Products that the Partner wishes to register on the ETL.
- 2.2 To make an ETLPA, the Partner must register on the ECA Website and make an on-line ETLPA. The Partner must also provide supporting information detailing the potential ETL Products within its ETLPA. All supporting information which is not able to be sent on-line shall be sent to: -

ETL Co-ordinator
The Carbon Trust,
4th Floor,
Dorset House,
27-45 Stamford Street,
London, SE1 9NT
- 2.3 If an ETLPA commenced under clause 2.2 is not completed within 30 days, the application shall be deemed to be closed and to have been withdrawn by the Partner.
- 2.4 If the outcome of the Partner's ETLPA is positive, the Partner will be sent an email informing it that its company and Product details (and other relevant information) will be displayed on the ECA Website after the next monthly update of the ECA Website.
- 2.5 If the outcome of the Partner's ETLPA is negative, the Partner will be sent an email explaining that its company and Product details (and other relevant information) will not be displayed on the ECA Website (other than in respect of any other ETL Product which it has which remains on the ETL).
- 2.6 For the avoidance of doubt, a Partner that has a Product listed on the ETL will have its details listed on the public facing components of the ECA Website. If a Partner has no Products listed on the ETL it will not have its details listed on the public facing components of the ECA Website.

3 NEW TECHNOLOGY PROPOSALS

- 3.1 A Partner intending to submit a New Technology Proposal shall register on the ECA Website as a Partner (if they have not already done so).
- 3.2 In order to apply to have a new technology considered under the ECA Scheme, the Partner shall follow the guidance for submission of a New Technology Proposal and send the proposal to ECAQuestions@carbontrust.co.uk. The Partner shall also submit any additional information to support its application within 30 days of submitting the New Technology Proposal. All additional Information shall be sent to : -

ETL Co-ordinator
The Carbon Trust,
4th Floor,
Dorset House,
27-45 Stamford Street,
London, SE1 9NT

- 3.3 If the additional information is not received by the Company within 30 days of submission of the New Technology Proposal, the application shall be deemed to be closed and withdrawn by the Partner and the Partner shall not be entitled to make a further application for that technology for a period of 12 months commencing on the date of such deemed closure and withdrawal.
- 3.4 In addition to the information or documentation provided in accordance with clause 3.2, the Partner may be requested by the Company to submit other information or documentation in support of its New Technology Proposal. The Partner shall respond to any such request within 30 days of receipt.
- 3.5 The Partner represents and warrants that that all information contained in the New Technology Proposal and in any additional information or documents provided pursuant to clauses 3.2 and 3.4 are true, complete and accurate.
- 3.6 DECC and/or the Company reserve the right, at their absolute discretion, to reject any New Technology Proposal that it considers does not fall within the remit of the ECA Scheme.
- 3.7 Any decision made by DECC or the Company in relation to a New Technology Proposal is final and binding on the Partner and the Partner shall not be entitled to resubmit or make a further New Technology Proposal for the same technology for a period of twelve months after such rejection.

4 PRODUCT TESTING

- 4.1 The Company, on DECC's behalf, may carry out product testing, and/or conduct an audit programme covering ETL Products or Technologies included on the ETL. This may include an audit of manufacturing procedures relevant to the ETL Product(s) included on the ETPL and/or physical ETL Product.
- 4.2 Testing is based on the standard(s) presented or referenced in the relevant ETCL for the relevant ETL Product or Technology being tested.
- 4.3 In the case of Unlisted Products, the Company may carry out product testing and/or an audit of the Unlisted Products that the Partner has

self-assessed as meeting the requirements of the ETCL.

- 4.4 Product testing will be carried out by a third party Test House nominated by the Company and the Company shall pay the costs of the initial product testing, excluding any associated carriage or equipment costs.
- 4.5 In limited circumstances, and with the agreement of the Company, product testing may be undertaken at a Partner site and witness tested by a Company or Test House representative. For this to happen the relevant ETCL criteria must clearly state that witness testing is an acceptable testing mechanism. The Company shall not bear any testing costs.
- 4.6 On request from the Company, the Partner shall provide a sample of the ETL Product it has submitted for qualification under the ECA Scheme. Any such sample shall be made available to the Company within 30 days of the request being made, or on a date otherwise agreed by the Company.
- 4.7 The Partner shall confirm to the Company as soon as reasonably practicable after being requested to provide a sample of an ETL Product whether the ETL Product selected for testing is a stock item or built to order, and whether it can be made available within the timescales required by the Company. If the Partner is aware that it may have difficulty in providing, or it fails to provide, the sample of the ETL Product within 30 days of the date the sample is requested by the Company, the Partner shall immediately thereafter contact the Company who may agree a suitable alternative date or alternative steps to be taken by the Partner. All costs (including the cost of the equipment, delivery, storage and disposal costs) associated with providing the ETL Product sample to the Company shall be borne by the Partner.
- 4.8 Should the Partner fail or refuse to provide the ETL Product for testing, the Partner will be notified in writing that if the ETL Product is not received within 60 days of the period for provision of the sample set out in clause 4.6, the ETL Product shall automatically be deemed to have failed testing and will thereafter be removed from the ETL.
- 4.9 The Partner is responsible for arranging for delivery of the ETL Product to the independent Test House or for the testing of the ETL Product in the presence of a Company or Test House witness (if permissible for the Technology area) pursuant to clause 4.5. When it has been agreed that the testing can take place either in the Partner's own in-house test facility or at a third party laboratory customarily used by the Partner, the Partner is also responsible for ensuring that the testing is completed by the agreed date and also for all costs incurred during witness testing, except for the fees and expenses of the witness.
- 4.10 Where the ETL Product is to be tested by a Test House, the Partner will be invited (on reasonable notice) to send a technician to set up the ETL Product for testing or witness the installation of the ETL Product on the test equipment. Where attendance is not possible, the Partner shall ensure that any set up instructions are sent to the Test House in advance of the test and confirm to the Test House, before testing commences, that the Partner is satisfied with the way that the ETL Product has been set up for testing. Should the Partner not provide the necessary technical instructions or support for testing, or fail to confirm

that the Partner is satisfied with the way the ETL Product has been set up for testing, the Test House may request the Company's permission to still proceed with the testing. If the Company grants such permission and the ETL Product is tested, the Partner shall not have any right to dispute the setup for testing, the testing of the ETL Product or the results achieved.

- 4.11 In situations where an obvious fault is identified during the commissioning or carrying out of a test (e.g. visible damage or alarms triggered), the Partner will be offered the opportunity to substitute another sample of the same ETL Product for testing. Less obvious faults, such as inaccurate calibration that might not be identified during commissioning trials, will not qualify as permitting an ETL Product sample substitution opportunity and the ETL Product shall be deemed to have failed the test.
- 4.12 If it is evident that a fault has occurred part way through testing, the Test House shall report the type of fault to the ECA testing coordinator designated by the Company. The Company will then, in its absolute discretion, decide on the next steps to be taken. If the option of a re-test is offered to and accepted by the Partner, the Partner shall be liable in accordance with clause 5.2 for all costs relating to the further testing. If the Partner chooses not to pursue this option, the ETL Product shall be deemed to have failed testing and shall be removed from the ETPL.
- 4.13 The Test House will retain any ETL Products tested at its facilities until the testing process is complete and the test results have been verified and confirmed as acceptable by the Company.
- 4.14 The Company will inform the Partner of the results of the tests by letter or email. The communication will state whether the ETL Product has passed or failed to meet the threshold criteria for ECA Scheme eligibility and shall include a copy of the Test Report.
- 4.15 If the test result for an ETL Product is positive (i.e. the ETL Product met the requirements of the ETCL), no further action is taken. The Partner will be informed in writing of the positive outcome and supplied with a copy of the supporting test result.
- 4.16 If the test result for an ETL Product is negative, the Company will send the Partner a letter or email notifying it of the negative result and informing it that it has the opportunity to have one re-test, subject to the conditions set out in clause 5.
- 4.17 If an ETL Product fails testing and no re-test is requested by the Partner within 30 days of being informed, in accordance with clause 4.16, of the opportunity for a re-test, the Product shall be removed from the ETPL.
- 4.18 All similar derivatives of an ETL Product that has failed testing (for example a re-badged Product, a Product that is made to the same design (including where it is manufactured by more than one organisation) or is technically similar to the ETL Product which has failed testing) may, in the absolute discretion of the Company, be removed from the ETPL by the Company if it considers the test result to be applicable to such Products.
- 4.19 The Company's technical interpretation of test standards including test methodologies, testing tolerances, test result interpretations and all other

aspects of testing is final and binding upon the Partner.

- 4.20 Testing standards not referenced in the ETCL shall not be accepted as valid test standards or as proof of test results.
- 4.21 Other test approaches from other energy-saving or energy-efficiency schemes are not acceptable or applicable to the ECA Scheme unless named in the ETCL for the Technology being tested.
- 4.22 The Company and/or its Delivery Partners will provide communications promptly on all matters relating to testing.

5 PRODUCT TESTING AND RE-TESTING

- 5.1 The Company may permit one re-test for each ETL Product where the test result is negative (i.e. the Product has failed to meet ETCL criteria). However, limitations may exist on Product re-testing. These limitations will be set out in the relevant Quality Assurance Test Plan. Where no such limitation is presented in a Quality Assurance Test Plan, the Company may decide to only permit re-testing where a technically justified business case for retesting is presented to the Company. The Partner can nominate a different independent Test House to do the re-testing and, provided that such Test House is acceptable to the Company, it can be used for the re-testing. Otherwise a Company appointed Test House will be used. The same ETL Product as was subject to the original test is to be re-tested and the results will be analysed by the relevant technical expert. The re-testing will be completed within 90 days of the date of the Company's letter notifying the Partner of the initial test results.
- 5.2 Should the ETL Product fail the re-test, the cost of that re-test shall be borne by the Partner. If an ETL Product passes the re-test, the Company will reimburse the Partner for the re-testing costs (but not for the cost of the ETL Product or associated carriage or delivery costs).
- 5.3 If an ETL Product fails re-testing it will be removed from the ETPL. All similar derivatives of an ETL Product that has re-failed testing (for example a re-badged Product, a Product that is built to the same design (including where it is manufactured by more than one organisation) or a Product which is technically similar to the ETL Product which has failed re-testing) may be removed from the ETPL by the Company if, in its absolute discretion, it considers the test result to be applicable to such Products.
- 5.4 If an ETL Product passes the re-testing it shall be kept on the ETPL. All similar derivatives of a Product that has passed testing (for example a re-badged Product, a Product that is built to the same design (including where it is manufactured by more than one organisation) or a Product which is technically similar to the re-test Product) will remain on the ETPL if the Company considers the test result to be applicable to such Products.

6 OBLIGATION TO PROVIDE SALES DATA

- 6.1 On request from the Company, the Partner must make available all information it has to support market analysis research being undertaken by the Company. This includes actual financial and product volume sales information for current and previous years, sales forecast information and Market Performance data. This information may be requested in various formats to support the development or maintenance of a Technology Category summary case that is presented by the Company to Government from time to time.

- 6.2 The Company shall not pass on any data collected as a result of clause 6.1 to a third party without notification to the Partner.

7 MAINTAINING PRODUCT AND CONTACT DETAILS

- 7.1 The Partner and all employees registered with the ECA Scheme shall inform the Company within seven days of any change in ETL Product details and/or contact details. It is the responsibility of the Partner and its employees to maintain and update any details submitted to the Company and to ensure that these details are accurate. This includes, but is not limited to the full and correct postal address and all information relating to the ETL Product and/or personal details contained on the ECA Website.

8 OBLIGATION TO PROVIDE INFORMATION TO SUPPLIERS

- 8.1 The Partner listed on the ETL is obliged to provide reasonable and sufficient information to its purchasing customers of ETL Products such that such customers are able to claim and prove a claim for an Enhanced Capital Allowance.

9 CONFIDENTIALITY

- 9.1 The Partner acknowledges and agrees that the Company may disclose the information, data and documents provided to it by or on behalf of the Partner ("**information**") to the UK Government (or a UK Government Department) and/or to any person who may succeed the Company as manager and administrator of the ECA Scheme ("**successor**"), and that the Government (or UK Government Department) may, for the purposes of the ECA Scheme or the ETL disclose such information to other public authorities, the European Commission and/or any successor.
- 9.2 Save as provided herein, all information supplied by the Partner to the Company will be kept confidential and will only be provided to Company nominated third parties in order to carry out the technical analysis required in relation to a Product or to develop or maintain a Technology Category summary case that is presented to Government.
- 9.3 The restriction in clause 9.1 does not apply in relation to information (a) which is in or enters the public domain otherwise than by a breach of an obligation of confidentiality; (b) which is or becomes known from other sources without breach of any restriction on disclosure; or (c) which is required to be disclosed by law.

10 NATIONAL AUDIT OFFICE ACCESS

- 10.1 For the purpose of (a) the examination and certification of the Company's accounts, or (b) any examination pursuant to the Relevant Audit Act of the economy, efficiency and effectiveness with which the Authorities have used their resources, the Relevant Auditor may examine such documents as he/she may reasonably require which are owned, held or otherwise within the control of the Partner and may require the Partner to produce such oral or written explanations as he/she considers necessary. For the avoidance of doubt, it is hereby declared that the carrying out of an examination under Section 6(3) (d) of the National Audit Act 1983 or any re-enactment thereof in relation to the Partner is not a function exercisable under this Contract.

11 INTELLECTUAL PROPERTY

Definition

In this clause:-

"**Results**" shall mean any document, item, material or other work produced for the purposes of this Contract; and

"**Tools**" consist of any and all methods of analysis, know-how, tools, and frameworks and models used or developed by or on behalf of the Partner in connection with this Contract.

Ownership of the Results

- 11.1 Subject to any prior rights of the Partner, and to the rights of third parties or of the Company arising otherwise than under this Contract, all copyright, all future rights and all rights in the nature of copyright, unregistered design rights, registered design rights, patent rights including all copyright in the typographical arrangement and all design elements, all trademarks, domain names, database rights and confidential information and any other intellectual property rights anywhere in the world (including any application thereof) resulting from this Contract or in the Results, shall vest in and be the absolute property of the Company (or its nominee) and the Partner assigns to the Company (or its nominee) with full title guarantee all present and future rights as referred to above in this clause 11.1 for the full period of such rights as referred to above and including any extensions, renewals the right to apply for registration thereof and the right to sue for past infringement and retain damages obtained as a result of such action. The Partner agrees to execute such further documents and do such acts as may reasonably be necessary or desirable to give full effect to this clause.
- 11.2 To the extent that the rights referred to in clause 11.1 include any Tools belonging to the Partner, the Company shall not acquire any right or interest in or to the same and the Partner hereby grants the Company a non-exclusive, non-transferable, non-sub-licensable, worldwide, royalty free, perpetual licence to use and copy the Tools solely for its internal purposes and as part of the rights referred to in clause 11.1.
- 11.3 Subject to clause 11.2, the Company shall be entitled to use the Results or any part of the Results for any purpose whatsoever in connection with this Contract, or otherwise, without limitation or licence and the Partner waives all moral rights relating to the Results.

Use of copyright material

- 11.4 The Partner shall be responsible for obtaining and providing written evidence to the Company of any and all authorities from the copyright holder for any material to be included in the Results for which the Partner or the Company are not the beneficial holders of the copyright.
- 11.5 The Partner hereby warrants that the Results do not violate any existing copyright or other third party right, and that to the best of the Partner's knowledge all facts and statements in the Results are true. The Partner hereby agrees to indemnify the Company from all loss, injury and/or damage (including any legal costs, expenses, compensation claims or disbursements made by the Company in respect of any claim) occasioned to the Company in consequence of any breach of this warranty.

Copyright and publication

- 11.6 The Company shall be the proprietor of the copyright in respect of this Contract and documents and things resulting from this Contract and any data relating to this copyright.
- 11.7 The Company reserves the right to determine whether any Results shall be published and, if so, on what conditions. In this clause, 'publication' and cognate terms include any method, whether written, oral or visual, by which the documents and things referred to in clause 11.6 or information relating to the Results is disclosed to persons other than the Partner, its employees and the Company.
- 11.8 The Partner shall not publish any information in connection with this Contract or the Results without the prior written consent of the Company.

12 INDEMNITY

- 12.1 The Partner shall indemnify the Company and keep it fully indemnified against all existing pending or threatened civil, criminal, administrative, regulatory or judicial actions, suits, claims, notices, demands, investigations, proceedings, orders, costs, charges, damages, losses and expenses suffered or incurred by the Company and for any liability to any third party including without limitation regulatory authorities in either case, due to, arising from or in connection with:
- (a) the negligent acts, omissions or defaults of the Partner or the Partner's employees, sub-contractors, consultants, agents and suppliers and any of their respective employees in carrying out their obligations under this Contract;
 - (b) the breach of any provision of this Contract by the Partner or the Partner's employees, sub-contractors, consultants, agents and suppliers and all of their respective employees;
 - (c) any infringement or alleged infringement of any patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right for or relating to this Contract unless such infringement has occurred directly as a result of any specification supplied by the Company,

13 RIGHTS OF THIRD PARTIES

- 13.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.

14 AMENDMENTS

- 14.1 Amendments to this Contract may be necessary due to a legislative, policy, financial or other change relating to the promotion and/or administration of the ECA Scheme. Accordingly, this Contract may be amended from time to time by the Company, and the Partner hereby consents and agrees to such amendments. The Partner will be notified of any such amendments in writing and/or via the ECA Website.

15 RELATIONSHIP OF THE PARTIES

- 15.1 Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Company

and the Partner. The Partner shall ensure that no commitments relating to the subject matter of this Contract are entered into (unless expressly required under this Contract), without the Company's prior written consent.

16 SERVING OF NOTICES

16.1 Notices under this Contract shall be in writing and sent by hand, fax, email or post to the other party. If delivered by hand, notices shall be deemed to be received when delivered; if sent by post, notices shall be deemed to have been received 1 business day after sending if posted by first class mail, and 2 business days after posting if posted by second class mail; if sent by fax or email, notices shall be deemed to have been received on the same business day where the fax or email has been sent before 5pm and on the following business day where it is sent after 5 p.m. Notices shall be addressed to the Company Secretary or such other individual or addressee as is nominated from time to time by the Company. If sent by hand or by post, notices should be addressed to:

The Carbon Trust,
4th Floor,
Dorset House,
27-45 Stamford Street,
London, SE1 9NT

For the purposes of this Contract, "business day", means Monday to Friday, excluding bank or public holidays in England.

17 DISPUTE RESOLUTION

- 17.1 In the event of any dispute, disagreement or difference ("**dispute**") arising out of or in connection with this Contract or any ETL Licence Agreement, the Company and the Partner (the "**Dispute Parties**") shall in good faith refer that dispute to the decision of the Company's Head of Legal or Chief Executive and the person designated for this purpose by the Partner in the ETL Licence Agreement or, if no such person is designated, to the Partner's Chief Executive.
- 17.2 If the dispute is not resolved within 30 days after any referral pursuant to clause 17.1, the Dispute Parties shall, in good faith, seek to resolve that dispute through mediation under the auspices of the Centre for Dispute Resolution. The mediator and the procedure to be followed in the mediation shall be agreed between the Dispute Parties within 15 days of one party requesting mediation, failing which the mediator shall be the person appointed by the Centre for Dispute Resolution and the procedure shall be that established by him/her.
- 17.3 The costs and fees associated with the mediation shall be borne equally by the Dispute Parties.
- 17.4 In the event that the dispute has not been resolved to the satisfaction of both Dispute Parties within 60 days after the appointment of the mediator, or either Dispute Party fails or refuses to agree to mediation, the dispute may be referred to the courts and the Dispute Parties will be free to pursue their remedies without further reference to this clause.
- 17.5 Nothing in this clause 17 shall prevent the Company or Partner seeking a preliminary injunction or other judicial relief at any time if in its judgement such action is necessary to prevent irreparable damage.

17.6 If the Dispute Parties reach agreement as to resolution of the dispute through an alternative dispute resolution method, such agreement shall be recorded in writing and signed by the Dispute Parties whereupon it shall become binding on the Dispute Parties.

18 JURISDICTION

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

19 ENTIRE AGREEMENT

19.1 This Contract constitutes the entire agreement between the parties with respect to the subject matter contained herein. All prior agreements, whether or not agreed or offered and all conditions and warranties whether express or implied statutory or otherwise and all representations, statements, negotiations, understandings and undertakings either written or oral are superseded hereby (other than fraudulent misrepresentation on which a party can be shown to have relied).

Partner:

Position of authority:.....

Signed:.....

Print Name:.....

Date:.....

