



Climate Contract Playbook

Edition 3

September 2020



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Introduction

Despite the continued uncertainty and restrictions imposed as a result of the COVID-19 pandemic, we are delighted to publish this, the 3rd Edition of the Climate Contract Playbook.

For ‘we’, read every lawyer and other participant who gave minutes, hours, days, weeks or months of time and energy to collaborate, coordinate and innovate, expertly and relentlessly. ‘We’ are not an organisation, but a collaboration. ‘We’ are the sum of our participants.

Embracing the shift to remote working, TCLP has created new ways of online collaboration, with our legal hackathons taking place completely virtually and building a Slack community to convene the legal profession and innovate on a daily basis. This pivot online has not just allowed our work to continue but also to accelerate, publishing the 3rd Edition only 6 months after the first.

Since publication of the 1st Edition in February, there has been a surge of interest in our work. Our clauses are being incorporated into law firm precedents and commercial agreements across the world. We also have plans to translate the drafting to meet the conventions and legal requirements of other jurisdictions.

However, the clock is ticking. Whilst we remain optimistic of making a difference, we must keep up the momentum and increase our impact. We are asking all lawyers to amplify our work and heed the International Bar Association’s call for lawyers to integrate climate considerations in their day-to-day legal practice.

Climate change no longer lives in an ‘environmental box’ but is becoming a central element of commercial decision making. This will become even more pronounced as the global corporate community sign up to the UNFCCC Race to Zero and build COP26 into their 2021 strategic plans. This is clearly an opportunity for impact and one we will work together to seize.

As described in our Year [11] Impact Report¹, we made great progress towards our shared goals of bringing together the legal profession to co-create and publish precedent clauses and model laws. This work continues with drafting for further publications already underway.

However, we need your help to disseminate, promote and use the clauses to amplify their impact. The work we create must take on a life outside the pages of our publications, evolving and growing with each use, to achieve our shared goals in a way that is aligned to clients, climate and the business of law. In doing so we create new market norms. We cannot do this without you. Please get in touch with us and share your ideas and actions to ‘change the precedent, change the world’.

The rest of 2020 is just as exciting as we look towards our annual ‘Big Hack’ taking place across multiple jurisdictions during November.

Thank you

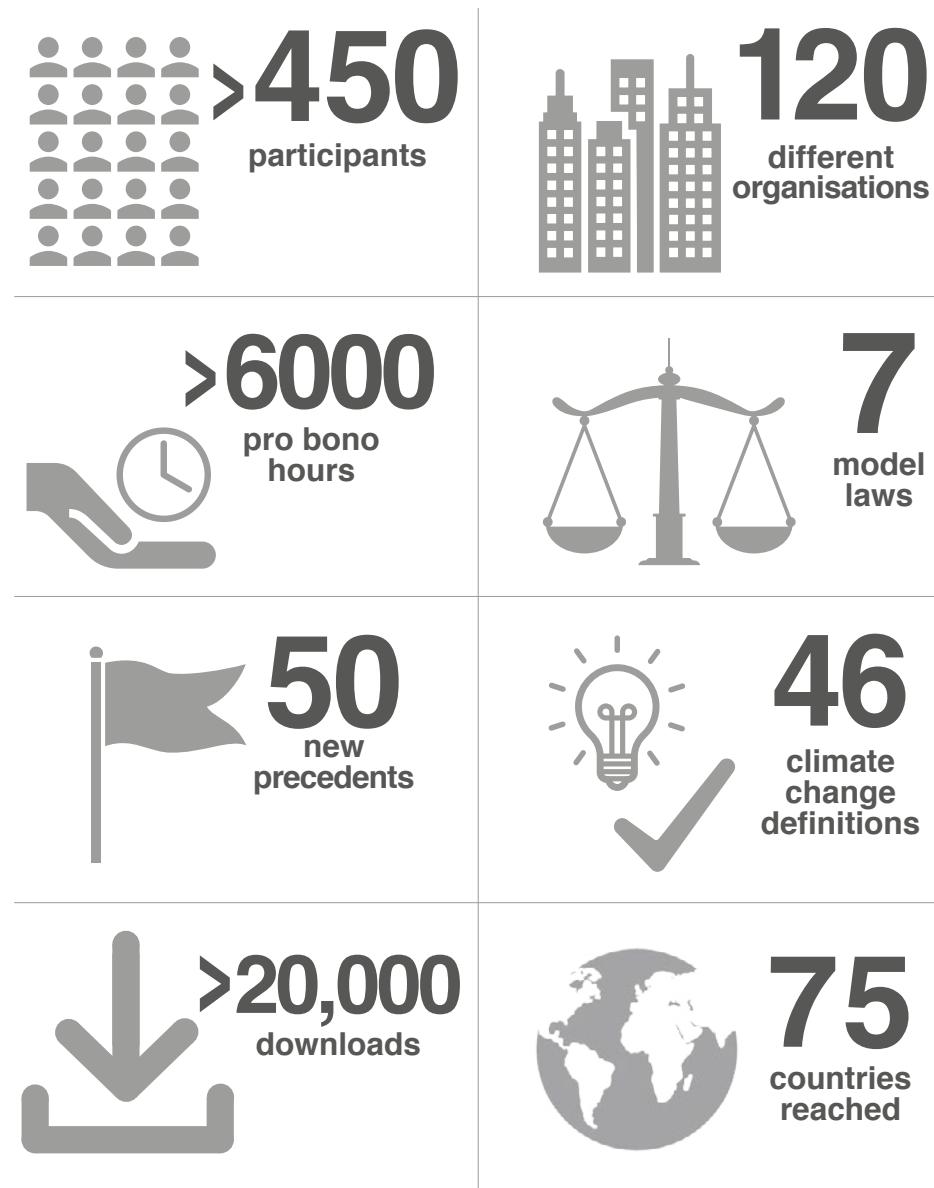
The year [10] Steering Group, The Chancery Lane Project

¹ <https://chancerylaneproject.org/s/TCLP-Year-11-Impact-Report-July-2020.pdf>



The Journey Updated

Our journey so far in numbers:



Changes since Edition 2

This edition of the Playbook is re-ordered to group clauses from all editions by subject matter to help users find clauses relevant to their practice area or sector more easily.

There have been no substantive changes to the clauses published in the first two editions. We encourage feedback to improve them and will update drafting in subsequent versions.

Glossary

Our glossary of uniform definitions for drafting climate solutions has been updated with refined and additional content. This has been published as a second edition alongside this playbook. The glossary continues to add significant value to the Project by helping participants accelerate and harmonise their drafting activity.

Legal Philanthropy

Introducing: “Legal Philanthropy” – Beyond Pro Bono and Responsible Business?

The Chancery Lane Project is unique in many ways: positive, solution focused and collaborative. Not to mention the genesis of a new legal doctrine of commercial contracts driving global environmental outcomes.

But this uniqueness makes it difficult to describe the Project and what the participants generously contribute. Our problem is that we struggle to do justice to their efforts.

The Project has always been termed ‘Pro Bono’ and certainly the drafting has all been undertaken for free. But there is no legal advice or representation being provided and the beneficiary is the world rather than an identifiable client. As such the Project does not sit within the normal definitions of ‘Pro Bono’. The Project transcends ‘Pro Bono’.

Perhaps ‘Knowledge Philanthropy’ is a better term? This relatively new concept describes a person who shares their knowledge for the benefit of humanity . Certainly, our lawyers use their expert knowledge and skills to co-create legal solutions for the benefit of the world, but we are not sharing that knowledge per se and the Project is not a knowledge manager. The solutions we publish cannot be used in isolation. They still require the expertise, judgement, and negotiation skill of the legal community to deploy the solutions and create real world impact. Only a fraction of the knowledge developed during our legal hackathons and drafting process is put out into the world, for free, as model clauses and laws and their origin stories – the rest is retained by the contributors.

Alternatively, the Project could simply be part of a participating firm’s ‘Responsible Business’ or ‘Corporate Social Responsibility’. Certainly, the elements of these concepts that relate to benefiting society and environment as a whole strike a chord, particularly when the business of law supports the project so generously. But the project also goes beyond a single business acting responsibly and we would not achieve our aims or create real world impact if only one firm were to participate. We are, as a profession, addressing a systemic issue in a way that is aligned to our businesses and clients.

In truth the Project is probably a mixture of all these concepts. Lawyers engage because we can use our transactional legal skills and experience to help address one of the urgent and important issues of the day – the climate crisis – in a way that is aligned to our businesses, benefiting the communities we live and work in. We are happy to provide this for free because Pro Bono is part of the DNA of the legal profession and part of being a responsible legal business. We have coined this blend of concepts ‘Legal Philanthropy’.

“Legal Philanthropy” describes a lawyer who uses their skills, without charge, to help solve systemic issues for the benefit of society and the environment’

Thank you to all the Legal Philanthropists involved in the Project.

Disclaimer

The clauses in this Climate Contract Playbook have been prepared in good faith on a pro bono basis and are free to download and use. The clauses have been drafted and edited by a variety of lawyers and, as such, the approaches to drafting may not conform to any particular drafting norms. We acknowledge this as a consequence of the collaborative drafting process.

This Climate Contract Playbook and the clauses in it are provided on an ‘as is’ basis and without any representation or warranty as to accuracy or that the clauses will achieve the relevant climate goal or any other welcome.

This Climate Contract Playbook does not comprise, constitute or provide personal, specific or individual recommendations or advice of any kind, and does not contain legal or financial advice. The clauses are precedents for legal professionals to use, amend and negotiate using their professional skill and judgement and at their own risk.

While care has been taken in the drafting of these clauses, neither The Chancery Lane Project nor any of its contributors owe a duty of care to any party in relation to the preparation of the Climate Change Playbook and do not accept any liability for any errors or omissions, nor for any loss incurred by any person relying on or using this Climate Contract Playbook or any other person. Users should use their own professional judgement in the application of these clauses to any particular circumstance or jurisdiction or seek independent legal advice.

At present, all the clauses are based on the laws of England and Wales. We encourage the conversion of these precedent clauses for use in other jurisdictions.



Precedent Clauses

[Hanley's clause]

The Origin Story	
Child's name	Hanley's clause
Full name	Climate change clauses for Heads of Terms
Practice Area / Sector	Universal
Issue	Heads of Terms for a commercial transaction or deal drive many of the workflows and set the tone and spirit of a negotiation. Precedent heads of terms do not include a section on climate change or the transition to net zero.
Solution	Incorporate a dedicated section into heads of terms precedents so that climate change issues become a key consideration for any deal team. This will be particularly relevant where one or both of the parties has a publicly stated net zero target.
Context	Heads of terms are commonly used in commercial transactions ² . They allow parties to focus on key issues to ensure time is used efficiently and to set the tone, scope and timetable of the transaction. It is rare to see sustainability or climate change issues represented on heads of terms. As such they are often overlooked or are only picked up by environmental lawyers as part of a wider legal due diligence review. Climate change risks are now a board issue ³ and as such should be given equal prominence in transactions.
Impact	The clauses will ensure climate change is considered from the earliest part of a transaction and that carbon saving opportunities will become part of the due diligence exercise alongside the normal legal, financial, commercial and technical due diligence. It will also allow boards to demonstrate how climate change was considered as part of a transaction and thus potentially help mitigate future liability risk.
Stakeholders	<ol style="list-style-type: none"> 1. Corporate finance houses 2. Banks 3. Precedent and know how providers 4. Professional support lawyers 5. Law firms and legal businesses
Application	The clauses will mean that a deal team will have to undertake specific due diligence relating to climate change issues and make known their position on these issues to the counterparty. This makes the evaluation and allocation of climate change risk a key part of any transaction.

² [https://uk.practicallaw.thomsonreuters.com/0-107-6683?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/0-107-6683?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1) , <https://uk.practicallaw.thomsonreuters.com/w-014-4519?view=hidealldraftingnotes>

³ <https://www.nortonrosefulbright.com/en/knowledge/publications/c528fde6/the-time-is-now---climate-risk-a-mandatory-issue-for-all-boards>

<p>Notes for users</p>	<p>A user could specify that specific climate change or sustainability due diligence could be undertaken by one of the parties, or that they will ask a third party to undertake a joint carbon audit as a result of the deal.</p> <p>A simple clause to add to heads of terms of a commercial or corporate deal as an aide memoire to the boards to be considering climate change issues as part of any transaction.</p> <p>A user that has already committed to emissions reductions (including the emissions from its supply chain and commercial partners) may impose the expectation of climate action from a new commercial partner by summarising its requirements in the heads of terms / MoU. This will save time as unwilling new partners will quickly be exposed when face-to-face discussions commence.</p> <p>It assumes 'Deal' (or equivalent 'Transaction' or 'Project') is defined elsewhere.</p>
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Key Climate Change Considerations

- 1.1 The Deal will be structured so as not to increase, or amplify the impact of, climate change or the carbon emissions of the parties.
- 1.2 [The Deal will provide opportunities to reduce carbon emissions and the respective party's impact on climate change and the Parties agree to work together to identify carbon saving opportunities as part of the negotiations.]
- 1.3 The respective directors of the parties will consider the financial risks relating to climate change as part of the Deal due diligence in accordance with the [recommendations of the Task Force on Climate-related Financial Disclosures⁴ / Bank of England's climate risk taxonomy and climate stress tests⁵] including the:
 - a) physical risks;
 - b) transition risks; and
 - c) litigation risks.
- 1.4 [If having considered the risks summarised in paragraph 1.3 the parties conclude that there are significant climate risks present in the Deal they will, as a Condition Precedent or Condition Subsequent, agree a plan to mitigate the risks identified.]

⁴ <https://www.fsb-tcfd.org/>.

⁵ <https://www.bankofengland.co.uk/climate-change>.

[Kaia's clause]

The Origin Story	
Child's name	Kaia's clause
Full name	Climate Purposed NDA Terms (Confidentiality Agreement)
Practice Area / Sector	Universal
Issue	Climate change issues and alignment of commercial objectives with Net Zero policies are rarely discussed at the outset of a new commercial relationship and identified at that early stage as a key focus for the parties. As a result, are often relegated to secondary issues or brought up towards the end of a negotiation – if at all.
Solution	Additional provisions for standard mutual non-disclosure/confidentiality agreement (NDA) to ensure climate change and environmental issues are discussed at the outset of a new commercial relationship.
Context	<p>Hanley's clause from the 1st edition of the Climate Contract Playbook showed how heads of terms can be used to give prominence to climate change issues. The theory being that the earlier climate issues are raised in the documentation the more likely that they will be a key consideration in the transaction or deal.</p> <p>This drafting solution expands on that logic: the earliest document that parties often sign is an (NDA)⁶. NDAs help build trust and encourage a more open conversation. At this stage, discussions tend to be fluid and exploratory in nature and the parties will not only be assessing the immediate commercial opportunity but also whether the parties' values are aligned.</p> <p>It is common for a business to sign hundreds if not thousands of NDAs each year⁷. Therefore, this provides a unique opportunity to raise climate issues in numerous and varied scenarios across all sectors of the economy.</p> <p>Most precedent and template NDAs focus on the commercial purpose only. Discussions relating to climate change or the transition to net zero are rarely stated objectives.</p> <p>This drafting will be particularly relevant where one or both of the parties has a publicly stated net zero target. It sets the tone of every commercial conversation and in that way aims to create a pervasive net zero culture.</p>
Impact	<p>The clauses will ensure climate change is considered from the earliest part of a commercial relationship. In effect, it will help to make climate change a mainstream topic within commercial teams.</p> <p>The clauses will also:</p> <ul style="list-style-type: none"> • Set the tone for future documentation should the parties progress to a more formal relationship. • Allow boards to demonstrate how climate change was considered as part of every commercial relationship and thus demonstrate its commitment to a Net Zero business strategy, Corporate Social Responsibility (CSR), and Environmental, Social and Governance (ESG) factors, whilst also potentially mitigating the risk of future liability relating to climate change.

⁶ <https://www.gov.uk/government/publications/non-disclosure-agreements/non-disclosure-agreements>

⁷ <https://www.quora.com/How-many-NDAs-does-a-company-sign-each-year>

Stakeholders	The key stakeholders that you think need to be engaged to deliver this Impact 1. In house counsel 2. Commercial and partnerships teams within businesses 3. Precedent and know how providers 4. Contract automation platforms 5. Professional support lawyers 6. Private practice firms
Application	The proposed additions will mean that the parties will have to consider climate change in the wider commercial conversations. This puts environmental and climate change issues front and centre of every business discussion.
Notes for users	NDAs are often used by commercial teams with only minimal lawyer intervention and are often using automated contract systems. Aligning the precedent/template with the business' Net Zero and ESG commitments will be key. If a party is not prepared to include a specific obligation in the NDA then the inclusion of the additional recital will at least signpost the issue to the parties. A party that has already committed to emissions reductions may impose the expectation of climate action from a new commercial partner by summarising its requirements in the NDA. This will save time as unwilling new partners will quickly be exposed when face-to-face discussions commence. The drafting assumes a mutual NDA based on a general commercial relationship and would need to be amended for cross border or specific sectors such as Real Estate transactions. The drafting assumes Confidential Information is defined in the precedent.

[Insert the additional recital]

BACKGROUND

- (A) The parties have agreed to consider the Climate Change Purpose as part of the discussions relating to the Commercial Purpose.

[Insert additional definitions (or add to existing definitions clause)]

1.1 Definitions:

Climate Change Adaption Measures means the measures taken or that could be taken by the Parties and their supply chains to achieve the Commercial Purpose whilst avoiding or minimising the actual or anticipated effects of climate change.

Climate Change Mitigation Measures means the measures taken or that could be taken by each of the Parties and their supply chains to reduce their respective Greenhouse Gas emissions and to meet their Net Zero targets.

Climate Change Purpose: means the consideration of Climate Change Adaptation Measures and Climate Change Mitigation Measures as part of every potential commercial relationship.

Commercial Purpose: [Insert Purpose of the NDA ie Discussions about X, consideration of Y, provision of Z]

ESG: Environmental, Social and Governance factors and standards forming a [published] policy or objective of a party.

Greenhouse Gas means gases that contribute to or accelerate the greenhouse effect by absorbing infrared radiation, including but not limited to: carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, hydrofluorocarbons, perfluorocarbons and chlorofluorocarbons.

Net Zero means that the balance between Greenhouse Gas emissions from all operations and Greenhouse Gas removals, including those accounted for by credits from either insetting or offsetting projects, is zero.

[Insert new Clause (or add to or adapt existing purpose clause)]

2. The Purposes

- 2.1 The parties shall, as part of their discussions and negotiations concerning the Commercial Purpose, discuss and consider how the Climate Change Purpose can be achieved as part of any future commercial relationship arising from those discussions and negotiations.
- 2.2 When considering the Climate Change Purpose under clause 2.1 the parties shall disclose and consider:
 - (a) their respective Net Zero targets; and
 - (b) their relevant ESG characteristics and commitments.
- 2.3 Any information disclosed by one party to the other in connection with the Climate Change Purpose shall be treated as the disclosing party's Confidential Information (and therefore subject to the applicable use and disclosure restrictions in this agreement), save that such information may be used by the recipient (but not disclosed to any third party) to make progress against its Net Zero target or ESG goals.



[Agatha's clause]

The Origin Story	
Child's name	Agatha's clause
Full name	Termination for Greener Supplier
Practice Area / Sector	Commercial
Issue	Parties being locked into supply contracts where the customer has identified that an alternative supplier offers more environmentally friendly goods or services
Solution	<p>Include a standard clause to allow the customer to exit the agreement without incurring exit-related liability (such as cancellation fees) unless the existing supplier is able to at least match the green improvements represented by the alternative supplier's offer.</p> <p>See also Annie's Clause for a short form version.</p>
Context	Many companies are locked into contracts without the unilateral ability to push the supplier to improve its green credentials or exit the agreement in favour of a greener supplier. In addition, companies that wish to reduce emissions in their supply chains, for example, where appropriate termination rights are available, may be prevented from doing so due to high switching costs (such as those relating to termination for convenience payouts or take-or-pay obligations). Therefore, the solution should not include any significant additional cost to the customer of going greener.
Impact	The clause should encourage existing suppliers to "up their climate change game". A contractual right to switch to a greener supplier if the existing supplier cannot match the alternative offer enables companies to green their supply chains, encourages green competition between existing and prospective suppliers, and provides a strong incentive for appointed suppliers to continuously improve their green performance.
Stakeholders	<ol style="list-style-type: none"> 1. Inhouse legal counsel 2. Directors (Board level) 3. Shareholders (engagement) 4. Private practice firms 5. Industry bodies 6. Regulators (industry specific)
Application	The clause gives customers a right to switch supplier if the existing supplier is unable to match a 'greener' offer made by an alternative supplier. If this sort of clause can become the norm among customers, it will draw out greener suppliers that can do this and ensure that an assessment of green credentials is an important part of any procurement process.

Notes for users	<p>To reassure the supplier that the right will not be abused, the parties can set limits on the number of times the customer can use this clause according to the circumstances of the contract (e.g. once per term, or only once every 12 months etc.).</p> <p>This drafting is deliberately designed to be relatively fair and provide a commercially acceptable arrangement for both parties. However, the customer may find that it triggers some further discussions with the supplier about how this clause will work in practice.</p>
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Termination for Greener Supplier: Contractual Provisions

Insert into recitals:

The parties acknowledge their common intention in the fulfilment of their obligations under this agreement to minimise their impact on climate change.

Insert into preliminary obligations:

The parties agree that the information provided by the Supplier before the start date of the agreement concerning measures of the impact on climate change by the Supplier and the products and services will form the baseline environmental credentials of the Supplier for the purpose of this agreement (“**Green Baseline**”). The Green Baseline may be amended by written agreement or otherwise in accordance with this agreement. The Supplier will provide at the Customer’s request reasonable evidence of its compliance with the Green Baseline.

Insert into clause or definitions:

In this clause, “equivalent” or “equivalence” means:

- a) If assessing the [goods OR services] of a Green Supplier, [goods OR services] that are [comparable OR identical or similar in all material respects] (including in terms of [scope,] complexity, specification, volume and quality [of performance], supporting technology, compliance with standards, and in terms of ancillary obligations such as delivery terms) to the [Goods OR Services] under this agreement.
- b) If assessing the pricing of a Green Supplier, pricing for equivalent [goods OR services] that is [within the lower quartile OR less than or equal to the mean price over a previous 12-month period] of the pricing for [Goods OR Services] under this agreement.

Termination for Greener Supplier

- 1.1 Without affecting any other right or remedy available to it, the Customer may:
- 1.1.1 serve written notice (“**Notice of Greener Supplier**”) to the Supplier that the Customer has identified a third party supplier (the “**Greener Supplier**”) that is able to provide [goods / services] at least equivalent to the [Goods / Services], except that the Green Supplier’s equivalent [Goods / Services] achieve:
 - 1.1.1.1 lower greenhouse gas emissions relating to the production or delivery of the goods and services, as measured in accordance with [the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard, Revised Edition 2015]; or
 - 1.1.1.2 reduced environmental impact or increased sustainability outcomes, as measured in accordance with Appropriate standard for measuring environmental impacts or sustainability outcomes depending on the areas of concern to the business][, **or**; or];
 - 1.1.1.3 [other],
 in each case as compared to the Supplier’s Green Baseline.
 - 1.1.2 The extent to which a Greener Supplier exceeds the Supplier’s Green Baseline (using the measures described in this clause) is the “Green Improvement”. The Notice of Greener Supplier must reasonably demonstrate that the Greener Supplier’s alternative [goods/services] are at least equivalent to those of the Supplier (including written confirmation by the Customer of overall price equivalence) and set out the Green Improvement.
 - 1.1.3 The Supplier shall, within [30] days of the Notice of Greener Supplier notify the Customer whether it is able to achieve the Green Improvement [on terms no worse for the Customer than those set out in the Notice of Greener Supplier and] within [NUMBER] months of the Notice of Greener Supplier. If:
 - 1.1.3.1 Supplier is able to demonstrate to the Customer’s reasonable satisfaction that it is able to match the Green Improvement within that period, the parties shall use all reasonable endeavours acting in good faith to agree within a further 30 days the amended terms on which the [Goods/Services] shall be provided incorporating the Green Improvement. Once an amendment is agreed, the relevant specifications of the [Goods/Services] will be deemed to incorporate a requirement to comply with the Green Improvement (and the Green Baseline will be replaced by the Green Improvement from the date of that amendment); or
 - 1.1.3.2 the Supplier;
 - 1.1.3.2.1 does not respond to the Notice of Greener Supplier within the required period; or
 - 1.1.3.2.2 is unable to demonstrate to the Customer’s reasonable satisfaction that it is able to at least match the Green Improvement within the required period [on terms as good for the Customer as those set out in the Notice of Greener Supplier],
 - 1.1.4 The Customer may terminate this agreement by giving the Supplier not less than [NUMBER] months’ notice. Other than the agreed consideration for [Goods/Services] provided in accordance with the agreement before the date of termination, and despite any conflicting provisions in this agreement, no payments will become due to the Supplier as a result of termination under this clause.

[Annie's clause]

	The Origin Story
Child's name	Annie's clause
Full name	Green Termination Provision (short form)
Practice Area / Sector	Commercial
Issue	Not being able to move to greener suppliers to achieve net zero or other sustainability targets because of the contractual consequences in doing so.
Solution	A clause that allows a right of termination for a customer so that they can pivot to a greener supplier to meet their sustainability, climate or other environmental objectives. See also Agatha's Clause.
Context	Many businesses sign long term supply or other business relationships in order to achieve certainty and value. However, once tied in it is often difficult to terminate without financial consequence. This becomes a problem if a business or organisation has stated a net zero target or declared a climate change emergency and the incumbent counterparty is either a high carbon user or not aligned with a customer's objectives. If a supplier is "greenwashing" and this becomes publicly acknowledged, then this will reflect on the customer and becomes a reputational issue as well.
Impact	The clause will allow a customer the ability to move suppliers in order to achieve its environmental aims. This should increase the likelihood of achieving net zero and other environmental targets that are set. It should also mean that the incumbent supplier will seek to ensure that it improves its carbon footprint and sustainability to ensure the contract is not terminated.
Stakeholders	The key stakeholders that you think need to be engaged to deliver this Impact <ul style="list-style-type: none"> 1. Procurement teams 2. Contract managers 3. In house lawyers 4. Sustainability managers 5. Precedent and know how providers 6. Professional support lawyers 7. Private practice firms
Application	The proposed amendments will mean that a contract can be terminated in a narrow set of environmental circumstances. The requirement of good faith and reasonableness may help to ensure that the clause is only used to meet climate goals and not for commercial convenience.
Notes for users	Can be added to the standard termination clause or standalone. This clause does not specifically deal with payments or other consequences that may apply on termination. Users of this clause will need to check the agreement carefully and ensure that the exercise of this clause does not trigger, for example, the payment of minimum purchases, cancellation fees or capital expenditure reimbursement. See [Agatha's clause] above for an example clause that does address this issue (the final sub-clause).

Green Termination

- 1.1 Without affecting any other right or remedy available to it, the Customer may terminate this agreement by giving [1 month OR [NUMBER] month's] written notice to the other party:
- (a) if the Customer, [acting in good faith OR having made a reasonable comparison of the Supplier and other available suppliers], has decided to switch to an alternate supplier to achieve a reduction in the carbon footprint or emissions attributable to the Customer as a result of the Supplier's performance of the agreement, provided:
 - the potential reduction is [supported by reasonable evidence and is] at least [PERCENTAGE]% less than the carbon footprint or emissions relating to this agreement at the time of the comparison [(with that calculation meeting the requirements of [INSERT CARBON MEASUREMENT METHODOLOGY USED BY THE CUSTOMER])]; [and]
 - the proposed obligations of the alternate supplier are at least as onerous as those of the Supplier under this agreement; [and]
 - [the proposed price of the alternate supplier is not significantly different to the price of the Supplier in aggregate over an equivalent period;]
 - (b) if the Supplier's environmental practices or negative environmental impacts may bring the Customer's reputation materially into disrepute as a result of conflicting with the Customer's published [net zero/carbon reduction] targets from time to time; or
 - (c) if the Supplier acts persistently and materially in such a manner as [to reasonably justify the opinion that its business operations or other conduct] is inconsistent with good environmental practice and policy [, as exemplified in [INSERT INDUSTRY ACCEPTED GUIDANCE OR STANDARD]]; or
 - (d) if the Supplier fails within [30] days to respond fully to a request for information made by the Customer to allow the Customer to assess the carbon footprint, emissions, environmental practices and policies of the Supplier that relate to activity under this agreement.

[Teddy's clause]

The Origin Story	
Child's name	Teddy's clause
Full name	Supplier Environmental Threshold Obligations
Practice Area / Sector	Commercial
Issue	Lack of legally enforceable environmental improvement standard in mainstream supply contracts, particularly in government procurement contracts.
Solution	Insert at purchase warranties for environmental performance and continuous improvement obligations. This will build in long term environmental improvements and transparency into supply agreements.
Context	Currently the carbon costs of producing goods or delivering services are not internalised to the contract and therefore there is no incentive to reduce carbon emissions. Government is unable to use its own procurement levers to decarbonise the economy.
Impact	Development of a wider market for new carbon reducing technologies, as well as accreditation/audit companies. Auditable transparency of an organisation's environmental impact, emissions and supply chain. Ultimately to filter down from Government, and to/through local authorities and the private sector contractual obligations to achieve the net zero target(s).
Stakeholders	<ol style="list-style-type: none"> 1. Public sector procurers 2. Trade (standards) bodies 3. Contractors 4. Investors 5. Precedent and know how providers 6. Professional Support lawyers 7. Private practice firms
Application	From the recitals, to contract terms and conditions and remedies, supply contracts will become a vehicle for setting environmental performance and helping drive the transition to net zero emissions.
Notes for users	<p>The incentives on a Supplier to comply with the requirements may be enhanced by varying clause 3 such that the Supplier must publicly disclose the emissions reductions and reports to an external public-interest third party such as CDP (formerly the Carbon Disclosure Project https://www.cdp.net/en).</p> <p>Users may also wish to use this clause in conjunction with green liquidated damages in [Jessica's Clause] as a remedy for non-compliance.</p>

Recital

The parties acknowledge that the UK Government has committed to bring all greenhouse gas emissions to net zero by 2050 pursuant to the Climate Change Act 2008 (2050 Amendment) Order 2019.

The parties have undertaken assessments of their respective carbon emissions and [the supplier][the parties] have undertaken an assessment of the carbon footprint of [the product/service] to be supplied pursuant to this contract.

At Purchase Warranty

Add these definitions:

“Carbon Footprint”: the amount of [carbon dioxide equivalent emissions] that will be released into the atmosphere as a result of the [manufacture/supply/use] of [the Product/Service/Business Operation/Project] [determined in accordance with international carbon reporting practice, being the accepted practice from time to time in relation to reporting for the purposes of the protocols to the United Nations Framework Convention on Climate Change].

As a Condition of this Agreement the Supplier Warrants that

- 1.1 it has undertaken an assessment of the Carbon Footprint;
- 1.2 [so far as it is aware,] the Carbon Footprint projected to be incurred as set out in [the Schedule] is true and accurate as at the date of this Agreement.

The Supplier Undertakes:-

- 2.1 to develop and implement a plan of continuous improvement with the objective of reducing the Carbon Footprint [throughout the [Contract Term]] [by [set reduction target] [per Contract Year]] [and shall provide a copy of that plan to the Purchaser on request]
- 2.2 to re-assess the Carbon Footprint every [one][three] [Contract Years];
- 2.3 to provide the Purchaser with a written confirmation of the results of each assessment within one month of the completion of each assessment under clause [2.2];
3. The Supplier shall at the Purchaser’s request arrange for [the Carbon Trust] to undertake an independent assessment and verification of the Carbon Footprint and make a copy of the results of that assessment and verification available to the Purchaser as soon as reasonably practicable after receipt [(but no more than once in any period of [] Contract Years)].

[Note on Remedies – consider mechanism akin to liquidated damages in Jessica’s Clause]

[Jessica's clause]

The Origin Story	
Child's name	Jessica's clause
Full name	Carbon contract clauses for environmental performance, and associated incentives and remedies
Practice Area / Sector	Commercial
Issue	<p>While the climate and environmental impact of goods or services is increasingly important to business customers (including to meet their own greenhouse gas (GHG) targets), this is not being captured in their supply agreements. If a breach of contract causes or contributes to the customer to miss its GHG targets, this has negative climate impacts and may be hard to quantify and evidence the loss caused to the injured party in missing in their GHG targets. So, in effect, there may be no remedy available to the customer.</p> <p>Additionally, most contractual remedies (other than those triggering termination and suspension rights) are pecuniary in nature - there is no standard practice of alternative remedies or consideration given to options which are not designed to improve the financial position of the injured party.</p>
Solution	<ol style="list-style-type: none"> 1. Include climate considerations in standard contract drafting. 2. Include climate metrics for performance in all contracts. 3. Provide a mechanism akin to liquidated damages for breaches with negative climate impacts, in the form of a mandatory donation to appropriate non-profit organisation. This provides an alternative to pure cash compensation.
Context	Currently the carbon costs of producing goods or delivering services are not usually specified in contracts and, therefore, there is no incentive to reduce carbon emissions.
Impact	Cascading environmental clauses which provide a remedy for breaches that impact a purchaser's GHG targets and therefore that cause negative climate impacts should increase the speed of transition to net zero.
Stakeholders	<ol style="list-style-type: none"> 1. Public sector procurers 2. Trade (standards) bodies 3. Contractors 4. Investors 5. Precedent and know how providers 6. Professional Support lawyers 7. Law firms
Application	The supplier warrants it will meet certain targets for the climate and environmental impacts of delivering the goods or services under the agreement. If breached, the supplier must pay a climate remediation fee to a selected environmental charity.

Notes for users	<p>Users to consider the legitimate interest of the supplier to ensure the Climate Remediation Fee is not unenforceable as a penalty.</p> <p>This is envisaged to be used by a larger corporate purchaser. Users may wish to use a bid document clause format to address the issue of incentivising higher estimates, e.g. 'Climate Part 36 offer' 'Green Part 36 Offer'.</p> <p>Users may wish to instead use softer incentives such as rights of first refusal. An example would be a 'climate option', where the Purchaser has option to pay Supplier to enact carbon reducing changes in systems, at cost of Supplier, or at a discount. The Purchaser is then able to lower its own emissions profile and Purchaser incentivised not to deviate from climate behaviour standards; if it does then it can still reduce its carbon footprint with what amounts to financial assistance from the Purchaser. The climate warranties may be used in M&A transaction documents.</p>
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Recital

[Note: Agreement to contain recital below in addition to the other recitals relevant to the agreement.]
The parties acknowledge that performance of this agreement by the parties is expected to have climate and ecological impacts as detailed in this agreement.

Climate and Ecological Impacts Under this Agreement

- 1.1 The parties acknowledge that the performance of this agreement will result in certain climate [and ecological] impacts, including the emission of greenhouse gases. For the purpose of this agreement, the parties agree that the quantity of greenhouse gas emissions related to this agreement will be quantified first in the Initial Emissions Report and then in subsequent Annual Emissions Reports.
- 1.2 Each party agrees to use all reasonable endeavours, and co-operate in good faith with the other party and its contractors, to minimise as far as reasonably practicable the quantity of greenhouse gas emissions related to this agreement as set in accordance with clause 2.1.

Climate Reporting and Warranties

[Note: The parties should agree a mechanism for measuring their climate and environmental impacts under this agreement. The warranties below should be adjusted accordingly. These could also be used as warranties in M&A transaction documents.]

- 2.1 The Supplier agrees to:
 - 2.1.1 collect sufficient data, and analyse that data as required, to populate the Initial Emissions Report and the Annual Emissions Reports;
 - 2.1.2 provide the Customer with the Initial Emissions Report within [twelve (12)] months after the start date of this agreement;
 - 2.1.3 provide an Annual Emissions Report no later than forty (40) Business Days after the applicable Emissions Report Date; [and]

- 2.1.4 measure and calculate its Projected Total Emissions and Actual Total Emissions in accordance with the GHG Reporting Standard, and ensure that they are verified each year by an Independent Third Party before being provided to the Customer; [and]
 - 2.1.5 [insert other climate performance metric as relevant to the performance of this Agreement].
- 2.2 The Supplier warrants and agrees that:
- 2.2.1 It will provide the reports required under clause 3.1 within the required period and as specified in clause 3.1.
 - 2.2.2 The Initial Emissions Report and all Annual Emissions Reports provided to the Customer are in all material respects complete, accurate and not misleading.
 - 2.2.3 The Actual Total Emissions during an Emissions Reporting Period will be less than the Actual Total Emissions of the previous Emissions Reporting Period.
 - 2.2.4 It will not commit any Climate Breach during the term of the agreement.

Climate Remediation Fee

- 3.1 Without prejudice to any other claims, rights or remedies under this agreement, the parties agree that, in respect of any breach of the warranties set out in clause 3.2, damages payable by the Supplier to the Customer would not be an appropriate remedy in the wider context of damage to the climate, the environment and the Customer's reputation (all of which the Supplier accepts for the purpose of this agreement as being losses incurred by the Customer). Without prejudice to the Customer's right to damages, the Supplier agrees to pay the Climate Remediation Fee as set out in this clause 4.
- 3.2 The parties agree that any Climate Remediation Fee payable under this agreement to provide compensation for damage caused by the Supplier's Climate Breach or breach of clause 3.2 is reasonable and proportionate to the legitimate interests of the Customer in mitigating, setting off, counteracting, and repairing that damage (and preventing future damage), in part reflecting its public commitments to [reduce greenhouse gas emissions]. Each Party agrees that it has been properly advised regarding the negotiation of this agreement, and in particular regarding the inclusion of the Climate Remediation Fee as a remedy for Climate Breaches and breaches of clause 3.2.
- 3.3 If the Customer identifies or suspects a Climate Breach or breach of clause 3.2, the Customer may serve a Climate Remediation Notice on the Supplier at any time within twenty (20) Business Days of [the occurrence of such breach / becoming aware of such breach], whichever is later.
- 3.4 Upon receipt of a Climate Remediation Notice, the Supplier will promptly investigate the matter and in respect of any Climate Breach or breach of clause 3.2 pay the applicable Climate Remediation Fee to the Appointed Beneficiary within fifteen (15) Business Days of receipt of the notice.

Definitions

- 4.1 **“Actual Total Emissions”** means the Total Emissions that were actually emitted over the relevant Emissions Reporting Period, as verified by an Independent Third Party;
- 4.2 **“Annual Emissions Report”** means a written report setting out the Actual Total Emissions for the relevant Emissions Reporting Period, and the Projected Total Emissions for the next Emissions Reporting Period;
- 4.3 **“Appointed Beneficiary”** means the beneficiary of the Climate Remediation Fee, to be chosen from the Beneficiary List by the Customer and nominated in writing in the relevant Climate Remediation Notice;
- 4.4 **“Beneficiary List”** means the [ideal position – a list of reputable NGOs supporting environmental improvement UK and globally managed by reputable independent third party; in the absence of such a list, the parties may wish to choose a shortlist of their preferred charitable partners / NGO beneficiaries];
- 4.5 **“Business Day”** means any day other than a Saturday, Sunday or any other day which is a public holiday in England;
- 4.6 **“Climate Breach”** means any of the following events:
 - 4.6.1 in an Annual Emissions Report, the Actual Total Emissions exceed the Projected Total Emissions by more than [Total Emissions per calendar year / per month / per Unit / per Emissions Reporting Period] or [X%][Xt/CO2e]];
 - 4.6.2 [the Supplier fails properly to measure its Total Emissions [in the relevant Emissions Reporting Period]];
 - 4.6.3 [the Supplier’s fails to have its Total Emissions [in respect of the relevant Emissions Reporting Period] verified by an Independent Third Party,];
 - 4.6.4 [where the Supplier has agreed to achieve certification under [insert relevant sustainability / climate / carbon industry standard] by a particular date, the Supplier fails to achieve that certification by that date and afterwards maintain that certification during the term of the agreement; or]
 - 4.6.5 [insert failure to achieve other specified climate performance metric];
- 4.7 **“Climate Remediation Fee”** means:
 - 4.7.1 [an amount equal to £X] for each [percentage point / Xt/CO2e] that the Actual Total Emissions stated in a given Annual Emissions Report exceed the Projected Total Emissions set out in the previous Annual Emissions Report (or the Initial Emissions Report, in the case of the first Annual Emissions Report); and]
 - 4.7.2 in respect of any Climate Breach or breach of any of the warranties set out in clause 3.2, but not covered by another element of the Climate Remediation Fee, £[X] [and an additional sum of £[x] for each [day] that the breach continues [up to a maximum of £[x]]];

- 4.8 **“Climate Remediation Notice”** means a written notice by the Customer containing details of any identified or suspected Climate Breach(es) and nominating an Appointed Beneficiary;
- 4.9 **“Emissions Reporting Period”** means, firstly, a period of twelve months commencing on the start date of this agreement and ending on the first anniversary of that date, and then consecutive 12 month periods ending on the day before the next anniversary of that date;
- 4.10 **“Emissions Report Date”** means, in relation to an Emissions Reporting Period, the first day of the next Emissions Reporting Period;
- 4.11 **“GHG Reporting Standard”** means [the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard, Revised Edition 2015];⁸
- 4.12 **“Initial Emissions Report”** means a report setting out the Projected Total Emissions for the first Emissions Reporting Period;
- 4.13 **“Independent Third Party”** means an impartial organisation not affiliated with either party providing climate impact assessment and emissions reporting services, of a standard at least equal to the Carbon Disclosure Project or the Carbon Trust;
- 4.14 **“Projected Total Emissions”** means an estimate of Total Emissions for the Emissions Reporting Period commencing on the relevant Emissions Report Date, calculated in accordance with the GHG Reporting Standard;
- 4.15 **“Scope 1 Emissions”** means the direct greenhouse gas emissions emitted from sources directly owned or controlled by the Supplier;
- 4.16 **“Scope 2 Emissions”** means the indirect greenhouse gas emissions associated with the generation of electricity purchased by the Supplier;
- 4.17 **“Scope 3 Emissions”** means all indirect greenhouse gas emissions emitted from sources which are not directly owned or controlled by the Supplier, excluding Scope 2 Emissions, which occur both upstream and downstream in the Supplier’s supply or value chain related to the [Product/Services];
- 4.18 **“Total Emissions”** means the sum of the Supplier’s Scope 1 Emissions, Scope 2 Emissions, and Scope 3 Emissions, in each case arising out of the performance of its obligations under this agreement, in a given Emissions Reporting Period;
- 4.19 **“Unit”** means [the item(s) to be supplied under the provisions of this Agreement];

[Note: Issues to consider in selecting the Appointed Beneficiary from the Beneficiary List may include proximity to the environmental harm caused under the performance of this Agreement and other issues relevant to achieving direct remediation of the relevant harm.]

⁸ Please consider using one of the GHG Protocol reporting standards as appropriate to the organization / activity under the Agreement. More information on these is available from: <https://ghgprotocol.org/standards>

[Owen's clause]

The Origin Story	
Child's name	Owen's clause
Full name	Net Zero Target Supply Chain Cascade Clauses
Practice Area / Sector	Commercial
Issue	Many businesses and organisations have publicly committed to a net zero target across their value chain. Their supply chains and business partners contribute to their emissions and thus whether they achieve their net zero target.
Solution	Clauses that “back to back” or align a business’s net zero target with its supply chain and business partners, thus enabling the business to achieve its target or take control to achieve it.
Context	Many businesses and organisations are publicly announcing targets to be net zero by a particular date, not just in their own operations, but including emissions upstream in their supply chains and downstream in their distribution networks ⁹ . Some such as Unilever have gone further and declared they will become ‘carbon positive’ by 2030 ¹⁰ . The UK government has a target to be net zero by 2050. UK businesses and organisations may be required by law to be net zero in order to achieve this target, or it may simply become economically unfeasible for emissions intensive companies to operate within this framework. In order to achieve a net zero target, a business or organisation will need to work with its suppliers and partners. As such it is necessary to pass on obligations through contracts to ensure targets are met.
Impact	The clause will ensure that business and organisations have the greatest chance of achieving their net zero targets. Cascading net zero obligations through a value chain should accelerate the rate of change in the economy and mean that net zero targets become common place.
Stakeholders	The key stakeholders that you think need to be engaged to deliver this Impact <ol style="list-style-type: none"> 1. Suppliers and business partners 2. Procurement teams 3. Sustainability managers 4. Precedent and know how providers 5. Professional support lawyers 6. Private practice firms

⁹ [https://www.edie.net/news/6/Beyond-Paris-500-companies-target-netzero-by-2030/](https://www.edie.net/news/6/Beyond-Paris-500-companies-target-net-zero-by-2030/)

¹⁰ <https://www.unilever.com/sustainable-living/reducing-environmental-impact/greenhouse-gases/global-climate-action/>

Application	<p>The clauses require the supplier to set a net zero target that aligns with the customer's. This puts energy efficiency and the net zero transition front and centre in the commercial relationship. If the obligations are not achieved, then the customer can terminate or offset the carbon emissions of the supplier, at the supplier's expense. This allows the customer to be in control of achieving their publicly stated net zero target.</p> <p>If used it would be useful to have corresponding messaging in any procurement policies for the relevant businesses or organisation.</p>
Notes for users	<p>Depending on the customer's target, Gross Zero or Net Zero can be deleted as appropriate.</p> <p>This clause includes obligations where customers wish to back-to-back net zero targets in their suppliers' own value chains. This may be too onerous for some suppliers, who may be only willing to commit to a net zero target within their company's or group's operations.</p> <p>The clauses do not deal with a change in a Net Zero Target Date. It is possible that businesses setting 2050 targets today will bring these forward to align with more ambitious Paris Agreement goal to keep global average temperature rise to 1.5°C above pre-industrial temperatures.</p> <p>These clauses are drafted to be customer-friendly and short form for use in Standard Supply Terms and Conditions. The precedent could easily be adapted for joint ventures, outsourcing and other commercial contracts.</p> <p>It may be a good idea to set milestone dates for carbon reduction as net zero dates will maybe 10 plus years away and a customer may want to see improvements earlier and on a regular basis e.g. every 2 years.</p> <p>The Supplier may wish to have a clause requiring the Customer to share information with them on how they are planning to meet their NZ Target Date so that the Supplier understands their role and proportion in that.</p> <p>Users should ensure that this clause is embedded or dovetails with any remedial process and/or persistent breach clauses in the contract.</p>

Additional Definitions

“Carbon Reporting” reporting of an organisation’s greenhouse gas emissions and extraction to a standard not less than that required by the UK government’s Streamlined Energy and Carbon Reporting (SECR).

“Contract Target” the proportion of the Customer’s [Net Zero/Gross Zero] Target which will be achieved under this Contract.

“Greenhouse Gas” gases that contribute to or accelerate the greenhouse effect by absorbing infrared radiation, including but not limited to: carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, hydrofluorocarbons, perfluorocarbons and chlorofluorocarbons.

“Gross Zero Target” an absolute reduction in Greenhouse Gas emissions from all operations [including value and supply chains] to zero by a specified date and for each subsequent year thereafter.

“Net Zero Target” a net reduction of Greenhouse Gas emissions from all operations [including value and supply chains] to zero by a specified date so there is a balance between sources and sinks of Greenhouse Gases in a calendar year and for each subsequent year thereafter.

“[Net Zero/Gross Zero] Target Date” the first year by which the Customer aims to achieve the Net Zero Target, being 1 January [2050]. *[Note: Define as per customer specific target for example if using a Gross Zero Target or other Science-Based Target]*

“Native Trees” those species of trees that are native to the United Kingdom since the last ice age and listed as such on the Forestry Commission Website.

Clauses

Supplier Net Zero Obligations

- 8.1 The Supplier acknowledges and understands the Customer's Net Zero Target. Accordingly, the Supplier shall:
- a) set its own [Net Zero/Gross Zero] target (the "Supplier NZ Target") with a target achievement date the same as or earlier than the Net Zero Target Date (the "Supplier NZ Date");
 - b) agree the Contract Target with the Customer;
 - c) achieve the Contract Target;
 - d) ensure that this clause 8 will be copied into any and all of its supply chain contracts that relate to its obligations under this agreement;
 - e) introduce emission reduction technologies, processes and policies as well as offsetting and, where technologically and commercially feasible, carbon removal initiatives, to achieve the Supplier NZ Date;
 - f) undertake and keep up to date full and complete records of Carbon Reporting activity and data and provide the same to the Customer each year and more frequently as the Customer may reasonably request;
 - g) attend, on reasonable notice, meetings with the Customer's Sustainability Manager or other nominated representative to present the Supplier's plan to achieve, and current progress towards, the Supplier NZ Date;
 - h) not do or omit to do anything which could reasonably be expected to cause the Customer to miss its Net Zero Target Date, whether pursuant to this contract or otherwise.
- 8.2 If:
- a) the Supplier fails to comply with any of the obligations in clause 8.1; or
 - b) the Customer, having reviewed the Carbon Reporting and discussed with the Supplier its progress to achieve the Supplier NZ Date, determines (acting reasonably) that the Supplier is making insufficient progress towards achieving the Supplier NZ Date; or
 - c) the Supplier fails to achieve the Supplier NZ Target by the Supplier NZ Date, the Customer may, without affecting any other right or remedy available to it:
 - d) terminate this agreement by giving one month's written notice to the Supplier;
 - e) require the Supplier to plant a number of Native Trees in the UK sufficient to compensate for the Customer's shortfall in progress towards the Supplier NZ Date attributable to the [production of the Goods/ delivery of the Services]; and/or

- f) recover from the Supplier any costs reasonably incurred by the Customer in achieving the Contract Target to the extent by which that Contract Target is missed by the Supplier by:
 - i. obtaining carbon credits to offset the Supplier's net Greenhouse Gas emissions footprint [attributable to the [production of the Goods/ delivery of the Services]]; or
 - ii. planting, or arranging for the planting of, Native Trees to offset the Supplier's net Greenhouse Gas emissions footprint attributable to the [production of the Goods/ delivery of the Services].
- 8.3 [The Supplier shall, at its own cost, submit a report to the Customer within 20 Business Days of each anniversary of the date of the agreement identifying the emergence of new and evolving relevant technologies and processes which could accelerate the achievement of the Supplier NZ Date. Such report shall provide sufficient detail to enable the Customer to evaluate properly the benefits of the new technology or process.]
- 8.4 The Supplier warrants to Customer that:
 - g) it has sufficient resources, infrastructure and materials to achieve the Contract Target by the date of the expiry of the contract;
 - h) none of the [Goods/Services] supplied under this agreement will be of lower quality as a result of working towards the Contract Target;
 - i) it will not offer preferential terms to those other customers who do not require a Contract Target or similar obligations in their contracts.

[Zoë and Bea's clause]

The Origin Story	
Child's name	Zoë and Bea's clause
Full name	Green Supplier Agreement Terms
Practice Area / Sector	Commercial
Issue	Some supply agreements can lock a business or organisation into ‘brown contracts’ and don’t encourage sharing of climate-related information and accountability for emissions reductions across value chains.
Solution	A green procurement checklist and clause to make a standard supplier agreement focus on emissions across a value chain.
Context	Many companies such as Microsoft are pledging to be Carbon Negative by 2030 ¹¹ . In order to achieve this, they will have to work across their value and supply chains to align them with this target.
Impact	The clause should encourage existing suppliers to “up their climate change game” and thus accelerate a greater number of businesses in their transition to net zero.
Stakeholders	<ol style="list-style-type: none"> 1. Inhouse legal counsel 2. Directors (Board level) 3. Shareholders (engagement) 4. Law firms 5. Industry bodies 6. Regulators (industry specific)
Application	Further definitions could be inserted if the relevant business is using Science Based Targets to measure its emission reductions.
Notes for users	This envisages use in a customer generated supplier terms using a green procurement process.

¹¹ <https://blogs.microsoft.com/blog/2020/01/16/microsoft-will-be-carbon-negative-by-2030/>

Draft Clauses for Green Supplier Agreement

Additional Definitions

“Supplier” [Insert Supplier’s Name]

“Principal” [Insert Principal’s Name]

“Supplied Products” [Insert description of products]

“GHG Emissions” means emissions of the greenhouse gases listed at Annex A of the 1998 Kyoto Protocol to The United Nations Framework Convention on Climate Change, as may be amended from time to time including: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆), each expressed as a total in units of carbon dioxide equivalent (CO₂e)

“GHG Report” means a report prepared by the Supplier in accordance with the requirements set out in Clause

“Organisational Carbon Footprint” means total annual worldwide GHG Emissions from all the activities across the organisation, including energy used in buildings, industrial processes and company vehicles and including [Scope 1 and Scope 2] [Scope 1, Scope 2, and Scope 3] [DELETE AS APPROPRIATE] activities

“Product Carbon Footprint” means total GHG Emissions over the whole life of the Supplied Products, from the extraction of raw materials and manufacturing through to its use and final re-use, recycling or disposal, including [Scope 1 and Scope 2] [Scope 1, Scope 2, and Scope 3] [DELETE AS APPROPRIATE] activities, as described in the Greenhouse Gas Protocol.

“Supply Chain Carbon Footprint” means total annual GHG Emissions associated with the raw materials and services purchased by the Supplier in order to deliver the Supplied Products

“Carbon Footprint Standards” means, for Organisational Carbon Footprints and Supply Chain Carbon Footprints the *GHG Protocol Corporate Accounting and Reporting Standard, [or ISO 14064?]*, and for Product Carbon Footprints the *GHG Protocol Product Life Cycle Accounting and Reporting Standard, or [ISO 14064]*

Greenhouse Gas and Carbon Emissions

Measure, Manage, and Report GHG Emissions

- 1.1. The Supplier shall measure, manage and report its GHG Emissions in accordance with the provisions of this clause.
- 1.2. The Supplier shall formally adopt the Carbon Footprint Standards and appoint an employee with primary responsibility to the Supplier's board of directors for delivering compliance with such Carbon Footprint Standards and the requirements of this clause.
- 1.3. At all times during the term of this Agreement the Supplier shall measure and manage its GHG Emissions in accordance with the Carbon Footprint Standards.
- 1.4. Within 3 months after each anniversary of the date of this Agreement, the Supplier shall submit a GHG Report to the Principal, detailing as a minimum the matters listed at clause 3.

Emission Reduction Targets

- 2.1. Commencing from the first anniversary of the date of this Agreement, the Supplier shall reduce its GHG Emissions by no less than the percentages shown at Annex 1 to this Agreement in each period to which a GHG Report relates.

Contents of GHG Report

- 3.1. The GHG Report shall, as a minimum, report and, where appropriate, explain:
 - 3.1.1. What industry best practices on managing and reducing GHG Emissions have been applied by the Supplier in the previous contract year, and how these have been applied;
 - 3.1.2. the Supplier's measured [Scope 1, Scope 2 and Scope 3 emissions;]
 - 3.1.3. the measured Product Carbon Footprint;
 - 3.1.4. the measured Supply Chain Carbon Footprint;
 - 3.1.5. the reduction in GHG Emissions achieved measured against the [Scope 1, Scope 2 and Scope 3 emissions] stated in the preceding reports and in accordance with clause 2.1;
 - 3.1.6. *[insert additional requirements].*

Verification

- 4.1. The Supplier shall cooperate and collaborate with the Principal on its GHG Emissions, the preparation of each GHG Report and other obligations under this clause [•].
- 4.2. Should the Principal at any time reasonably require it, the Supplier shall appoint an external auditor or verification authority [(such as the Carbon Trust)] to certify its GHG Report.

- 4.3. The Supplier shall meet all costs associated with external auditing and verification of the GHG Reports that is required in accordance with this agreement.

Green Procurement Checklist

[Note: The following checklist contains heads of terms / bullet points for headline clauses to include in contracts mandating measurement of emissions, reductions, reporting.]

- a) The Supplier will measure all carbon emissions associated with its delivery of [goods/services] under this agreement [in accordance with an internationally recognised standard] approved by the principal.
- b) The Supplier will reduce its emissions by [10]% per year.
- c) *[Bare minimum % reduction plus graded bonus commensurate to percentage reduction. Termination tied to failure to meet bare minimum reduction]*
- d) *[Best practice related to implementation]*
- e) *[Reporting: timing, best practice reference standards, any other ESG reports]*
- f) *[Audit: allocate responsibility and costs or tie audit to dispute over achievement of goals]*
- g) *[Cooperate and collaborate: standard provisions]*

[Iris' clause]

The Origin Story	
Child's name	Iris' clause
Full name	Climate Contract Risk Sharing (ex Force Majeure)
Practice Area / Sector	Commercial, Public Procurement
Issue	Contracting parties will not want to take the risk of known and foreseeable events such as global pandemics and climate change. Such events and related consequences will be difficult (perhaps impossible) and expensive to insure against ¹² . The COVID-19 global pandemic has shown that relying on current contractual risk allocation can lead to adverse environmental consequences and add to uncertainty.
Solution	Establish a concept of 'Climate Risk Sharing' in supply contracts. Use amendments and additions to standard force majeure agreements to ensure contracting parties work together to balance financial risks and avoid unintended adverse environmental and social issues. In effect this creates an orderly transition to a new normal for contractual risk assessment based on balancing financial obligations and the environmental and social impact.
Context	The COVID-19 global pandemic has shown many commercial lawyers and their clients that relying on Force Majeure clauses to avoid obligations and preserve cash flows is not certain and leads to unintended consequences such as planes flying without passengers or the dumping of stock following contract cancellations. These outcomes were clearly not envisaged. This, combined with the inability to invoke normal contractual remedies, has led to greater uncertainty on cash flows. In turn, this has led the UK government to publish guidance on responsible contractual behaviour ¹³ . Lawyers will, quite rightly, seek to protect against these risks in the future and will likely seek to carve out pandemic and climate change impacts from any prescribed list of force majeure events, as terror attacks have been excluded previously. Therefore, balancing risk between client and contractual counterparty is going to be an ongoing imperative, which contracts of the future should provide for.
Impact	The proposed clauses will ensure that the parties take a fair share of risk. This should: <ul style="list-style-type: none"> • make the supply chain more resilient as it enables both parties to stay in business and pay staff if impacted • make transactions work in the new context • give certainty to what would happen if climate change impacts affect a counterparty • ensure that if parties are affected by force majeure events, they work together to minimise the impact on the climate and the environment.

¹² <https://www.ft.com/content/92518d19-ce35-4af3-90f4-64cb00f8e2f5>

¹³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/883737/_Covid-19_and_Responsive_Contractual_Behaviour_web_final_7_May_.pdf

Stakeholders	The key stakeholders that need to be engaged to deliver this Impact are: 1. Procurement and buying professionals and their trade bodies 2. In house legal teams 3. Precedent and know how providers 4. Private practice firms and their professional support lawyers
Application	This clause has been drafted for a supply contract. However, the principles of “Climate Risk Sharing” can be applied to a variety of contractual agreements. The definitions of Adverse Climate Outcomes and Adverse Social Outcome should be tailored to fit the potential adverse outcomes of non-performance of the contract in question.
Notes for users	<p>The wording of the definition of Force Majeure is flexible. Parties may use their preferred wording, so long as the carve out below for Pandemic and Climate Change Event is added.</p> <p>There are many forms of Liquidity Ratio and the financial teams of a client will need to input into this drafting. The idea is to bring a climate lens to the drafting and to think about what happens if there are climate events that have the same outcome as a Pandemic.</p>

Additional Definitions

Adverse Climate Outcome (ACO): where non-performance of an affected obligation, or the enforcement of this clause [FORCE MAJEURE] in relation to that non-performance, directly leads to:

- a) reduced air quality;
- b) an increase in Greenhouse Gas Emissions;
- c) dumping of stock that was created using natural capital;
- d) wasted Embedded Carbon; or
- e) [INSERT OTHER ADVERSE EFFECTS].

Adverse Social Outcome (ASO): where non-performance of an affected obligation, or the enforcement of this clause [FORCE MAJEURE] in relation to that non-performance, directly leads to:

- a) the insolvency of a party;
- b) redundancies over and above [x];
- c) an increase in poverty, deprivation or hunger; or
- d) [INSERT OTHER ADVERSE EFFECTS].

Climate Change Event: an event, series of events or circumstance arising from the physical impacts of climate change that is either Pan-terra or Epi-terra in scope and prevents a party from performing its obligations under this agreement [including an obligation to pay money], and includes but is not limited to:

- a) unavailability of water, clean air or other natural capital required by a party to manufacture or supply the [Products/Services];
- b) damage to a party's premises, including flooding due to sea level rise or an increased intensity of rain and storms;
- c) disruption of logistics and transport systems relied on for the supply and distribution of key inputs or outputs;
- d) unsafe working conditions due to heat stress, extreme weather or increased disease;
- e) damage or disruption to food supply chains, housing or transport affecting the availability of food, shelter or transport for workers;
- f) unavailability of insurance;
- g) unavailability of workers for other reasons caused by the event; and
- h) [INSERT OTHER ADVERSE EVENTS]

Current Liabilities: a party's financial obligations falling due for payment during the Period of Disruption.

Embedded Carbon: the Greenhouse Gas Emissions emitted during the lifecycle production, delivery and disposal of the [Products/Services].

Force Majeure: any circumstance not within a party's reasonable control including, without limitation:

- a) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - b) nuclear, chemical or biological contamination or sonic boom;
 - c) collapse of buildings, fire, explosion or accident;
 - d) any labour or trade dispute, strikes, industrial action or lockouts; or
 - e) interruption or failure of utility service,
- but excluding a Pandemic or Climate Change Event.

Greenhouse Gas Emissions: gases that contribute to or accelerate the greenhouse effect by absorbing infrared radiation, including but not limited to: carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, hydrofluorocarbons, perfluorocarbons and chlorofluorocarbons.

Disruption Liquidity Ratio: a liquidity ratio measuring a party's ability to maintain its operations (where possible) and pay its staff for the Period of Disruption, calculated as Operating Cash Flow divided by Current Liabilities.

Operating Cash Flow: the net amount of cash or cash-equivalents being transferred into and out of a party's business during the Period of Disruption.

Pandemic: an incidence of an infectious disease that spreads through multiple countries and is declared a ‘pandemic’ by the World Health Organisation.

Period of Disruption: the period during which one or both parties is prevented from performing obligations under the agreement due to a Climate Change Event or Pandemic.

Epi-terra: a Climate Change Impact that affects a large number of people within a community, population, or region.

Pan-terra: a Climate Change Impact that affects multiple countries or continents.

Climate Risk Sharing

1. Climate Risk Co-operation

- 1.1 The parties agree and acknowledge that this Agreement is of significant commercial value to each of the parties and that neither party should bear the entire risk of a Climate Change Event or Pandemic occurring.
- 1.2 If a party is prevented from performing its obligations under this Agreement due to a Climate Change Event or Pandemic, the party shall as soon as reasonably practicable after the start of the Period of Disruption [or earlier date], notify the other party and provide a reasonably detailed summary of:
 - (a) Its understanding of the existence, location and nature of the Climate Change Event or Pandemic; and
 - (b) how the Climate Change Event or Pandemic has prevented and will continue to prevent it from performing its obligations under the agreement.
- 1.3 If a party gives notice under clause 1.2, the parties will work together, in good faith, [using reasonable efforts] to [promptly]:
 - (a) prevent the occurrence, or minimise the impacts, of any related ACO or ASO;
 - (b) ensure that each party’s Disruption Liquidity Ratio is maintained in accordance with clause 2;
 - (c) mitigate wasted Embedded Carbon in accordance with clause 3; and
 - (d) mitigate the effects of the Climate Change Event or Pandemic on performance of this Agreement and reduce the Period of Disruption, in each case to the extent it is safe to do so and will not cause an ACO or ASO.

2. Maintaining Climate Liquidity Ratios to avoid ASO

- 2.1 During the Period of Disruption, the parties will prepare weekly Disruption Liquidity Ratios [on an open book basis OR supported by reports of independent accountants] (in the format set out in this Agreement or otherwise agreed by the parties in writing) and share these with the other party. [no later than the last business day of the applicable week.]
- 2.2 If a party’s Disruption Liquidity Ratio is less than [X], the parties’ Finance Directors shall discuss in good faith an amendment to the payment terms under this agreement by a reasonable additional period (up to a maximum of [NUMBER] days) to assist each party to maintain an Operating Cash Flow sufficient to meet its Current Liabilities and therefore avoid any ASO that could be caused by cash flow problems.

- 2.3 If a party does not provide its Disruption Liquidity Ratio in accordance with clause 2.1, that party is deemed to have a Disruption Liquidity Ratio above the figure stated in clause 2.2.

3. Carbon mitigation to avoid ACO

- 3.1 In the event of a Climate Change Event or Pandemic, the parties acknowledge that the Embedded Carbon in the [Products/Services] might be wasted where the [Products/Services] are manufactured but not delivered, or delivered but not used.
- 3.2 To avoid an ACO from wasted Embedded Carbon resulting from a Climate Change Event or Pandemic, either party may by written notice to the other party request that it:
- (a) stops providing the affected [Products/Services] during the Period of Disruption without terminating this agreement;
 - (b) offers to sell the affected [Products/Services] to other customers and provide a corresponding payment discount to the notifying party; or
 - (c) reuse, resell or recycle the [Products or their constituent parts OR the input materials allocated to the Services] and provide a corresponding payment discount to the notifying party; or
 - (d) donate the [Products or their constituent parts OR the input materials allocated to the Services] to an agreed community project, social enterprise or other charitable cause.
- 3.3 If a party receives a notice under clause 3.2, it will consider the request in that notice within [NUMBER] days and shall only reject the request to the extent that:
- (a) it will have a materially disproportionate effect on that party compared to comparable businesses in its sector; or
 - (b) other steps can be taken to avoid the ACO from wasted Embedded Carbon.

[Alex's clause] NEW

	The Origin Story
Child's name	Alex's clause
Full name	Circular Economy product design obligation
Practice Area / Sector	Commercial, Intellectual property
Issue	<p>Many products, across a variety of industries, cannot be reused or recycled at their end of life. This may be because they have been manufactured using materials that cannot be recycled or they contain components which can be reused or recycled, but which cannot be easily extracted from the product. It could also be because designers do not know enough about circular materials and designs. Also, it is often expensive and difficult to refurbish or repair products.</p> <p>Different countries may have different recycling capabilities and requirements, which will make it problematic when common goods are placed on the market in different countries.</p> <p>The lack of refurbishment, repair, reuse and recycling of products results in excessive consumption of virgin raw materials, which increases the Carbon Footprint of the product as well as creating a waste issue.</p>
Solution	<p>Include a clause in the agreement with the designer/manufacturer (the Supplier) which embeds 'Repair, Reuse and Recycling' concepts for the benefit of the client, the end consumer and environment.</p>
Context	<p>The Environmental Audit Committee's investigation into the UK's fashion sector in 2018 was told that the UK sends 300,000 tonnes of clothes to landfill every year, which is worth £140 million¹⁴.</p> <p>The UN has reported that material footprint per capita has increased: in 1990 some 8.1 tons of natural resources were used to satisfy a person's need, while in 2015, almost 12 tons of resources were extracted per person¹⁵.</p> <p>Many products are also made of plastics, which release micro plastics into the water bodies when washed. This pollutes the water bodies and endangers aquatic life.</p> <p>In March 2020, as part of its Green Deal, the European Commission published a new Circular Economy Action Plan (CEAP)¹⁶. The CEAP sets out the Commission's planned initiatives for a product policy framework to make sustainable products, services and business models the norm, and to transform patterns of consumption so that no waste is produced. It includes an extension to the Ecodesign for Energy-Related Products Directive 2009 (2009/125/EC) to encourage a wide range of reusable, durable and repairable products.</p>

¹⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/1952/1952.pdf>

¹⁵ <https://sustainabledevelopment.un.org/sdg12>

¹⁶ https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf

Impact	<p>This clause will encourage suppliers to use recyclable/reusable materials in products, and to consider the entire lifecycle of the product (including end of life) from the design stage. This will ultimately help to reduce the amount of waste going to landfill, and reduce the reliance on natural resources thereby reducing the Carbon Footprint of the products.</p> <p>One of the UN's Sustainable Development Goals is that of 'responsible consumption and production'. A clause obliging suppliers to consider circular design will help to meet this goal. This clause will also bridge the gap between the aspirations for a circular economy and legislative initiatives by the EU and national governments being introduced.</p>
Stakeholders	<ol style="list-style-type: none"> 1. Large consumables companies 2. Product designers 3. Procurement teams 4. Industry bodies 5. In-house lawyers 6. IP lawyers (design right specialists)
Application	<p>This clause is intended to be used in procurement/supply agreements.</p> <p>Where the manufacturer and designer are different entities, encourage the two to work together to achieve the above.</p>
Notes for users	<p>Companies should also regularly communicate and collaborate with their Suppliers to ensure that the obligations are met, including requiring regular audits and reports from the Suppliers, and that design and procurement teams discuss and monitor the circular design requirements.</p> <p>There needs to be a clear definition of 'reusable' and whether this means that an item can be reused once or multiple times.</p> <p>The clause should be amended depending on the product being manufactured.</p> <p>In addition, companies should also request that the Supplier incorporate the European Commission's EU GPP criteria and Ellen MacArthur Foundation/IDEO Circular Design Guide.</p> <p>Drafters could decide to link the bonus payable to the Manufacturer under clause 3.6 to the GHG reductions made as a result of adopting the Circular Manufacturing Requirements.</p>

Additional Recitals

- (A) The Parties hereby acknowledge that the primary consideration for the design and manufacture of the Product is to ensure, as far as possible, that the Product can be reused, repaired and/or recycled at the end of its life.
- a) the insolvency of a party;

Additional Definitions

Carbon Dioxide Equivalent (CO₂e or CO₂eq) means the standard metric measure used by in industry to compare the emissions from various Greenhouse Gases (GHGs) on the basis of their global warming potential over a specified timescale in order to express a Carbon Footprint that consists of different GHGs as a single number;

Carbon Footprint means the amount in tonnes of Carbon Dioxide Equivalent of Greenhouse Gas Emissions that will be released into the atmosphere as a result of the [manufacture/supply/use] of the Product;

Circular Design Requirements means the requirements at clause 1.2;

Circular Manufacturing Requirements means the requirements at clause 2.3;

Climate Professional means an appropriately qualified [environmental, sustainability consultant/net zero consultant] who has the fundamental skills and experience to diligently, competently and professionally prepare the Carbon Footprint report as required by clause 2.3.4;

Design IP means the Product, the Final Design, any previous drafts or versions of the Final Design and any other documents, materials or information created by the Manufacturer in connection with its obligations under clause 1;

End of Life Product means a Product which is irreparably faulty and can no longer be used by the end customer, and/or has performed its intended purpose and/or is no longer desired by the end customer;

Final Design means the final design of the Product, as determined by clause 1.4;

Greenhouse Gases (GHGs) means gases that contribute to or accelerate the greenhouse effect by absorbing infrared radiation, including but not limited to: carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, hydrofluorocarbons, perfluorocarbons and chlorofluorocarbons;

Manufacturer is [X], being the person who designs and manufactures the Product in accordance with the Final Design for the Client;

Product means the [insert description of product]; and

Specification means the description and proposed use of the Product, including the intended customer base of the Product and any specific requirements of the Product, as outlined in Schedule [X].

1 Design obligations

- 1.1 The Manufacturer will prepare a design of the Product to deliver the Specification for the Client by [insert timings]. In creating the design for the Product, the Manufacturer shall use all reasonable endeavours to satisfy the Circular Design Requirements.
- 1.2 The Circular Design Requirements are:
 - 1.2.1 the Manufacturer shall minimise the volume of [natural and limited] resources that will be needed to manufacture the Product;
 - 1.2.2 the Manufacturer shall maximise the volume of materials derived from recycled sources used to manufacture the Product;
 - 1.2.3 the Product is not coated with, does not contain or is not otherwise treated with chemicals or treatments which prevent the Product from being recycled when it becomes an End of Life Product;
 - 1.2.4 the Product shall not contain any micro-plastics (or plastics which are capable of degrading to form microplastics), glitter, [insert other harmful/

- banned materials], and/or any other harmful materials made known to the Manufacturer by the Client and specified in Schedule [X];
- 1.2.5 the Manufacturer must affix any branding of the Client onto the Product in such manner that the Client's branding can be easily removed, so that the Product can be repaired, refurbished, reused or recycled;
 - 1.2.6 the Product shall contain a minimum [insert number]% constituent components and constituent parts that can be easily, and at economically viable cost, disassembled, removed, refurbished, replaced and/or repaired; and
 - 1.2.7 the Manufacturer shall document any know how and learnings which it creates during the design process of the Product, and the rights in such documents, know how and learnings shall be owned by the Client pursuant to clause 1.5.
- 1.3 To the extent that the Manufacturer determines that it cannot fulfil the Circular Design Requirements because either the Circular Design Requirements jeopardise the Specification or the Specification prevents the Circular Design Requirements from being fulfilled, the Manufacturer shall promptly make this known to the Client and identify which particular Circular Design Requirements are an issue. The Client shall then decide whether to:
- 1.3.1 proceed with the Specification, acknowledging that those identified Circular Design Requirements will not be fulfilled; or
 - 1.3.2 amend the Specification, and request that the Designer attempts again to fulfil all of the Circular Design Requirements against the amended specification.

This process shall be repeated until the Final Design is achieved in accordance with clause 1.4.

- 1.4 The Final Design of the Product shall be that design which either:
 - 1.4.1 satisfies the Circular Design Requirements and the Specification; or
 - 1.4.2 does not satisfy all of the Circular Design Requirements but which the Client has approved pursuant to clause 1.3.1 and satisfies the Specification.
- 1.5 All rights anywhere in the world (including all intellectual property rights, copyright, design rights and know-how rights) in the Design IP shall immediately vest in the Client and the Manufacturer shall promptly provide to the Client all copies in its possession of the Design IP. To the extent that such rights in the Design IP do not vest in the Client, the Manufacturer hereby assigns such rights to the Client with full title guarantee.
- 1.6 The Manufacturer shall, and shall use all reasonable endeavours to, procure that any third party shall promptly execute and deliver such documents and perform such acts as may be required to assist the Client in registering any Design IP.

2 Manufacturing obligations

- 2.1 The Client hereby grants to the Manufacturer a non-exclusive, royalty free, non-transferable, non-assignable [worldwide] licence to the use the intellectual property rights in the Final Design to perform its obligations under this clause 2.
- 2.2 The Manufacturer shall manufacture the Product in accordance with the Final Design. In manufacturing the Product, the Manufacturer shall satisfy the Circular Manufacturing Requirements.
- 2.3 The Circular Manufacturing Requirements are:
 - 2.3.1 the Manufacturer keeps accurate records of the origin and volume of raw materials which it uses, and will make these records available to the Client on request;

- 2.3.2 the Manufacturer can accurately demonstrate and trace the origin and journey of the raw materials which it uses to manufacture the Product through the supply chain of such raw materials, and will provide this demonstration to the Client on request;
 - 2.3.3 the Manufacturer shall take steps to minimise the volume of [natural and limited] resources which it requires to manufacture the Product and the volume of GHGs emitted during its manufacture of the Product;
 - 2.3.4 the Manufacturer shall provide the Client with a report prepared by a Climate Professional to [internationally recognised standards to measure, manage and demonstrate carbon credentials/the GHG Protocol Product Life Cycle/the BSI PAS 2050:2011] detailing the Carbon Footprint of the Product and confirming the impact that adherence to these Circular Manufacturing Requirements have made on the Carbon Footprint of the Product;
 - 2.3.5 the Manufacturer shall take steps to maximise the volume of materials derived from recycled sources which it requires to manufacture the Product;
 - 2.3.6 the Manufacturer shall take steps to minimise the loss through disposal or destruction of raw materials during the manufacturing of the Product;
 - 2.3.7 only after taking the steps required by clause 2.3.5 above, the Manufacturer shall take steps to first recycle or reuse any waste materials created from the manufacturing of the Product and, only having done so, proceed with any other form of disposal;
 - 2.3.8 the Client has the right to inspect the Manufacturer's premises and records to ensure that the Manufacturer is complying with the Circular Manufacturing Requirements and to verify the amount of any bonus payable to the Manufacturer pursuant to clause 2.6;
 - 2.3.9 the Manufacturer shall issue a declaration to the Client confirming that the Circular Manufacturing Requirements have been fulfilled for the Product; and
 - 2.3.10 the Manufacturer shall document, and explain to the Client, any know how and learnings which it creates during the manufacturing of the Product, and the rights in such documents, know how and learnings shall be owned by the Client.
- 2.4 Breach by the Manufacturer of clause 2.3 shall be a material breach of this Agreement and permit the Client to terminate the Agreement in accordance with clause [X]. This is without prejudice to any other termination rights of the Client under this Agreement.
- 2.5 Following the sale of the Product by the Client to its customers, the Manufacturer shall provide the following after sales assistance to the end customers of the Product for [insert term]. The Manufacturer shall: [Drafting note: the costs of the schemes and any fee payable to the Manufacturer for providing them will need to be dealt with in the Agreement]
- 2.5.1 operate a 'take back and treatment' scheme, whereby it will ensure that end customers can easily return to it End of Life Products. As part of the 'take back and treatment' scheme, the Manufacturer shall receive the End of Life Products, remove (insofar as is possible) those constituent components and constituent parts from the End of Life Products that can be reused or recycled and reuse or recycle the removed components and parts accordingly; [and/or]
 - 2.5.2 operate a repair scheme, whereby it uses all reasonable endeavours to repair any faulty Product (or component or part thereof) prior to the Product

becoming an End of Life Product. Where the Manufacturer reasonably considers that a faulty Product (or component or part thereof) is irreparable, it will replace the faulty Product (or component or part thereof).

- 2.6 The Client will pay to the Manufacturer a bonus equal to the following amounts for the volume of [materials derived from recycled sources which the Manufacturer uses to manufacture the Product/the GHG reductions made as a result of adopting the Circular Manufacturing Requirements]:

- 2.6.1 [X] tonnes to [X] tonnes, £[X];
- 2.6.2 [X] tonnes to [X] tonnes, £[X]; and
- 2.6.3 more than [X] tonnes, £[X].

[Zain's clause] *NEW*

The Origin Story	
Child's name	Zain's clause
Full name	Carbon Footprint Reduction - Mutual Notification Right (Carbon Footprint Reduction Notice)
Practice Area / Sector	Commercial, Public Procurement
Issue	Supply chains often hold the key to emissions savings ¹⁷ . However, contractual obligations may turn out to have a more significant climate impact than originally envisaged at the time of contracting. Unless there is a change management provision, contracts do not give sufficient flexibility to parties to adjust their obligations to become 'lower carbon' or require their counterparty to do the same.
Solution	A standard clause containing mutual obligations to allow each/all parties to an agreement to either: <ul style="list-style-type: none"> • perform their own obligations in a way that reduces their carbon footprint; and/or • require other parties to perform their respective obligations in this way.
Context	Many significant Outsourcing, Construction and IT contracts have detailed change management provisions that would allow a party (often the customer) to request a change to obligations. However, none are focused on carbon reduction and are often not mutual. The parties to an agreement should be familiar with the issues in their sector that could increase their carbon footprint be that business travel emissions, direct v indirect flights, importing produce, delivery miles, food wastage, packaging, catering, single use items etc. These will differ depending on what is being supplied or procured but the clause can be used on a wide range of commercial relationships that don't traditionally have change management and carbon targets imbedded: <ul style="list-style-type: none"> • Professional Retainers • Consultancy Contracts • Catering Contracts • Many other general commercial contracts
Impact	Contracting parties can control the outcome of their Scope 1-3 emissions. Since all parties are entitled to alter either their own performance or that of their counterparties to save carbon, the opportunities are considerable.
Stakeholders	All types of contracting parties (public and private entities, individuals, law firms, professional firms).

¹⁷ <https://www.cdp.net/en/articles/media/supply-chains-hold-the-key-to-one-gigaton-of-emissions-savings-finds-new-report>

Application	<p>This clause gives either party the right to request contract alterations to reduce the carbon footprint associated with the performance of the contract. This includes both changes to the notifying party's actions and the notified party's actions.</p> <p>The provisions are generally applicable and can be used in many types of agreements but will be particularly relevant in supply chains. Because it is a mutual right, it may be easier to include in agreements.</p>
Notes for users	<p>The parties to an agreement should be familiar with the issues in their sector that could increase their carbon footprint. They should consider carving out or clarifying potentially contentious issues (see clause 7.4).</p> <p>Parties may have other reasons for invoking the clause (for example, cost savings). Nevertheless, if the requested change does not harm the notified party and also has a material positive impact on the environment, then the burden shifts to the notified party to demonstrate why the notifying party should not be able to impose the change requested in the carbon reduction notice. If the notified party does not have reasonable grounds to reject the request, the contract change would take effect and the change would be enforceable.</p> <p>Drafting will need to be added in the event of a disagreement. For example, where the notified party believes it will incur additional costs owing to the change. The clause may impose an obligation to consider the amendment in good faith but if an agreement is not reached, the contract would continue in force. The parties will need to consider whether termination is the correct solution or whether to include third party adjudication or some other remedy such as carbon offsetting.</p>

Additional Definitions

Carbon Dioxide Equivalent (CO₂e or CO₂eq) means the standard metric measure used by the UN's Intergovernmental Panel on Climate Change (IPCC) to compare the emissions from various GHGs on the basis of their global warming potential over a specified timescale in order to express a Carbon Footprint that consists of different GHGs as a single number.

Carbon Footprint means the amount in tonnes of Carbon Dioxide Equivalent of Greenhouse Gas Emissions that is released into the atmosphere as a result of the [manufacture/supply/use] of [the Product/Service/Business Operation/Project] determined in accordance with international carbon reporting practice, being the accepted practice from time to time in relation to reporting for the purposes of the protocols to the United Nations Framework Convention on Climate Change (UNFCCC).

Greenhouse Gases (GHG or GHGs) means the natural and anthropogenic gases which trap thermal radiation in the earth's atmosphere and as specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) or otherwise specified by the UNFCCC, and which currently include: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).

Greenhouse Gas Emissions (GHG Emissions) means emissions of Greenhouse Gases over a specified area and period of time, each expressed as a total in units of carbon dioxide equivalent (CO₂e) [and calculated in accordance with the GHG Protocol Corporate Accounting and Reporting Standard or such other equivalent and generally recognised greenhouse gas emissions calculation methodology].

Additional Clauses

7. CARBON FOOTPRINT REDUCTION – MUTUAL NOTIFICATION RIGHTS

- 7.1. The parties agree to, wherever [practicable]/[possible], perform their obligations under this agreement in a way that [minimizes the Carbon Footprint associated with the activities under this agreement].
- 7.2. Each party (the Notifying Party) may serve written notice (the Carbon Footprint Notice) to the other party (the Notified Party), requesting or proposing a modification [in the form prescribed in Annex [A]] in the performance of the obligations of the Notifying Party and/or the Notified Party in order to reduce the Carbon Footprint resulting from this agreement [and outlining a way to implement the proposal]. The requested modification:
 - (i) must be capable of being implemented within [60] days following agreement between the parties;
 - (ii) must not result in an increase in an overall liability or cost to either party or a reduction in the quality of goods or services delivered to either party by the other as contemplated by this agreement; and
 - (iii) must not cause a reduction in compensation due to either party under the agreement.
- 7.3. Within [♦] days of receipt of the Carbon Footprint Notice, the Notified Party must provide the Notifying Party with a written response either: (i) accepting the request in the Carbon Footprint Notice [and outlining a way to implement it] within [60] days; [(ii) requesting further information] or (iii) rejecting the request in the Carbon Footprint Notice and explaining, reasonably and in good faith, (a) why the request would have a [material] negative impact on the Notified Party in terms of cost, quality, legal risk, or other relevant factors, or (b) why the request would not have a material impact on reducing the Carbon Footprint resulting from this agreement.
- 7.4. [Subject matter-specific sustainable standards, modifications, and carve-outs, in addition to generic modifications contemplated in 7.1-7.3 above]
- 7.5. [If the Notified Party rejects the Carbon Footprint Notice without an explanation as specified in clause 7.3 (iii), the parties agree to discuss in good faith the proposed modification within [15] days of the Carbon Footprint Notice being rejected. If the parties do not agree a reasonable modification or where the Notifying Party considers the rejection of the proposed agreement is not made in good faith or if the Notified Party fails to provide the Notifying Party with a written response to the Carbon Footprint Notice within [♦] days in accordance with clause 7.3, the Notifying Party may terminate this agreement for breach in accordance with the procedures set out in clause [♦] (Term and Termination).]
- 7.6. If the Notified Party rejects the request in the Carbon Footprint Notice in accordance with clause 7.3(iii) but the Notifying Party does not agree that the request would have a material negative impact on the Notified Party then [need to cross-refer to dispute resolution procedure].

[Alice's clause] NEW

The Origin Story	
Child's name	Alice's clause
Full name	Reduction of CO2 from Single Use Plastic
Practice Area / Sector	Commercial, Public Procurement
Issue	<p>The plastic pollution crisis is not only a threat to our environment but also a significant and growing threat to the climate. Greenhouse Gas Emissions from the plastic lifecycle threaten the ability to meet global climate targets.</p> <p>Carbon is produced at each stage of the plastic lifecycle: to produce oil; to convert it into resins; and at the waste management stage when plastic is burnt, buried or recycled. It is estimated that the carbon footprint is over 5 tonnes of CO2 per tonne of plastic (roughly twice as much as oil).</p>
Solution	<p>Introduce service level agreements or similar obligations into the contracts of facilities management providers (FM providers) (particularly those providing in-house catering services – this could be in offices, schools, hospitals and prisons) to reduce the volume of single use plastics (SUP) used in their operations over the term of the relevant agreement. Payment deductions (or service credits) could be made for failing to meet predetermined targets.</p>
Context	<ol style="list-style-type: none"> 1. Plastics make up two thirds of demand for oil in the petrochemical sector and account for all of the growth in demand for oil¹⁸. 2. The plastic sector alone will use up 19% of the entire global carbon budget if it continues to grow under business as usual¹⁹. 3. The Packaging Waste Directive 1994 (94/62/EC) sets out the EU's rules on managing packaging and packaging waste and contains measures (including deposit-return schemes, targets, economic incentives and minimum percentages of recycling) to prevent the production of packaging waste and promote the reuse, recycling and other forms of recovering of packaging waste. <ol style="list-style-type: none"> 1. In the UK, The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020 will ban many popular SUP products when introduced but it is not yet in force owing to the COVID-19 pandemic²⁰. 2. Given the scale of plastics' contribution to global GHG emissions, commercial facilities providers and other suppliers should reduce their reliance on plastics and start using other products with a lower carbon footprint ahead of any legislative prohibitions coming into force. It is difficult to see how the growth of the plastics industry can be reconciled with achieving national or corporate Net Zero Targets²¹.

18 & 21 https://www.pewtrusts.org/-/media/assets/2020/07/breakingtheplasticwave_report.pdf

19 https://www.pewtrusts.org/-/media/assets/2020/07/breakingtheplasticwave_report.pdf

20 <https://www.legislation.gov.uk/ukdsi/2020/9780111193631>

	<p>3. Annex 1 (Environmental requirements) of The Government Legal Department's Model Services Agreement Combined Schedules includes a table of SUPs that are Prohibited Items in Catering, Facilities and Office Supplies²².</p> <p>4. Public opinion is generally supportive of banning SUPs. Businesses across the UK are responding by joining Wrap's UK Plastics Pact - a collaborative initiative that creates a circular economy for plastics²³.</p> <p>This clause gives businesses wishing to reduce their reliance on SUPs a tool to require their suppliers to use less SUPs in the provision of facilities services and thus lower the scope of the carbon emissions at the same time.</p>
Impact	<p>1. Service providers will be financially incentivised to reduce the use of SUP.</p> <p>2. Reducing demand for SUP will reduce the corresponding CO2 emissions created during their manufacture (although it is acknowledged that this will be qualified by paper or other alternatives used).</p> <p>3. If this became a standard requirement for public sector contracts this would create a new market norm.</p>
Stakeholders	<p>1. Central Government procurement.</p> <p>2. Crown Commercial Services.</p> <p>3. Local Government procurement teams.</p> <p>4. FM Service Providers.</p> <p>5. Private sector procurement teams including in law firms.</p>
Application	<p>Whilst the specific example of SUP has been used in the precedent clauses, the solution and concept can be applied to all manner of CO2 emitting products. For example, a target ratio for the number of EVs to Diesel vehicles used in delivering services to or for a customer.</p>
Notes for users	<p>The definition of Plastic below refers to the REACH Regulation 2006²⁴ and is taken from the draft Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020²⁵. Users should check the final version of these regulations to ensure that the definition remains consistent.</p> <p>The definition of Single Use Plastic is more detailed than that of the draft Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020 ('made wholly or partly from plastic and that is not designed or intended to be reused').</p> <p>Clauses 1.5 and 1.6 provide for deductions to be made where the Service Provider fails to meet the SUPs reduction targets. Although a service credits mechanism would be more normal in outsourcing situations (and could be considered as an alternative by drafters) a deduction is suggested as more appropriate for a failure to meet SUPs reduction targets as the failure is seen as fundamental to climate-conscious buyers.</p> <p>Future drafting could include a performance bonus rather than a deduction to positively incentivise performance.</p> <p>Volume may not be the correct metric to measure and will need to be considered in detail when drafting. For example, there could be numerous items such as straws which are difficult to recycle but would not contribute much to a volume or weight measurement.</p>

²² <https://www.gov.uk/government/publications/model-services-contract>

²³ <https://www.wrap.org.uk/content/the-uk-plastics-pact>

²⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1907-20140410>

²⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841896/straws-stirrers-cotton-buds-regulations-191021.pdf

Additional Definitions

Annual Service Payment means the sum in pounds sterling calculated in accordance with [♦].

Business Days means a day other than a Saturday, Sunday or public holiday [in the UK].

Commencement Date means [♦].

Commencement Volume has the meaning given to it in clause 1.2.

Employer means [♦].

First Measurement Period means the period of [three (3)/six (6)/twelve (12)] consecutive months commencing on [the Commencement Date/[♦]].

Maximum At Risk Amount means [♦]% of the Service Payment paid in that Measurement Period.

Measurement Period means each period of [three (3)/six (6)/twelve (12)] consecutive months following the expiry of the First Measurement Period.

Plastic means a material consisting of a polymer within the meaning of Article 3(5) of Regulation (EC) No 1907/2006, to which additives or other substances may have been added, and which can function as a main structural component of final products, with the exception of natural polymers that have not been chemically modified.

Reduction Target has the meaning given to it in clause 1.4.

Service Payment Deduction means a deduction from a Service Payment.

Service Provider means [♦].

Service Failure means any breach by the Service Provider of its obligations to provide the Services in accordance with this Agreement and in particular in accordance with the Service Level Specifications.

Service Payment means the sum in pounds sterling payable by the Employer to the Service Provider for the provision of the Services in accordance with this Agreement.

Services means [♦].

Single Use Plastics means a product that is made wholly or partly from Plastic and that is not conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations by being returned to the producer for refill or reused for the same purpose for which it was conceived.

Supplies means [♦].

Clauses

1. Reduction of Single Use Plastics

- 1.1 Over the course of the First Measurement Period, the Parties shall assess and identify the volume by weight [and/or other measurements] of Single Use Plastics in the provision of the Services [and/or Supplies] during the First Measurement Period.
- 1.2 The Parties shall (acting reasonably) agree in writing the volume by weight [and/or other measurements] of Single Use Plastics used in the First Measurement Period and this volume shall be the Commencement Volume.
- 1.3 The Service Provider shall provide the Employer with a [monthly/quarterly/annual] service report within [five (5) days] [of the end of each Measurement Period] indicating the then current volumes by weight [and/or other measurement] of Single Use Plastic used in the Services.

1.4 The Service Provider shall reduce the volume of Single Use Plastics used:

- (i) in the Services in each Measurement Period by [♦]% of the [Commencement Volume/previous Measurement Period's volume]; and
- (ii) in relation to the [number of meals/amount of food] provided under the Services (expressed as [[kilogrammes/tonnes/other measurement] of Single Use Plastics per [100 meals]] or [[kilogrammes/tonnes] of Single Use Plastics per [kilogrammes/tonnes/other measurement] of food] so that reductions are shown to relate to measures taken by the Service Provider rather than any reduction in the [amount of food/number of meals] provided under the Services) (together the Reduction Target).

1.5 If the Service Provider fails to reduce the volume of Single Use Plastics over the Measurement period by the Reduction Target then:

- (a) this shall be deemed a Service Failure; and
- (b) a Service Payment Deduction shall be made by the Employer.

1.6 The percentage amount of the Service Payment Deduction made by the Employer pursuant to clause 1.5 shall be calculated as follows (all calculations shall be made for a Measurement Period):

$$\text{Service Payment Deduction} = (\text{Maximum At Risk Amount} * 0.1) * \text{Multiplier}$$

where:

the Maximum At Risk Amount is as defined at 1.7 below, and

the Multiplier shall be determined by reference to the table below, depending on the difference between the volume reduction achieved and the Reduction Target:

Band	The difference between volume reduction achieved and Reduction Target	Multiplier
A	Less than or equal to [0.2]%	1
B	Less than or equal to [0.4]% but more than [0.2]%	2
C	Less than or equal to [0.6]% but more than [0.4]%	4
D	Less than or equal to [0.8]% but more than [0.6]%	8
E	More than [0.8]%	10

1.7 The Maximum At Risk Amount shall be the maximum aggregate Service Payment Deduction in respect of a failure to meet the Reduction Target in the Measurement Period.

1.8 At the date that is [six (6) calendar months] after the Commencement Date (the First Review) (and [annually] thereafter) the Service Provider shall arrange a service review meeting (the Service Review Meeting). The Service Provider and the Employer shall in each Service Review Meeting review:

- (a) the Reduction Target; and
- (b) the additional costs incurred by the Service Provider in achieving or exceeding the Reduction Target,

and make adjustments to the Reduction Target and / or the Service Payments made under this Agreement as appropriate.

[Austen's clause] NEW

	The Origin Story
Child's name	Austen's clause
Full name	Sustainability Clauses in Supply Chain Contracts
Practice Area / Sector	Commercial, Public Procurement
Issue	<p>Climate change is a global issue. While some countries are prepared to commit to measures that mitigate climate change (e.g. carbon emissions reductions), other countries are less willing or able to do so. This is at odds with the operation of international supply chains and multinational corporate carbon reduction targets.</p> <p>'Supply chain emissions are on average 5.5 times as high as a corporation's direct emissions'²⁶</p>
Solution	<p>Using supply chain contracts to extend positive climate change measures adopted in one country to contracting parties in other countries that may have less of a legislative focus on climate and environmental matters.</p>
Context	<p>Contractual provisions have always been used to drive outcomes, deliverables and influence ethical supply chain behaviour. The Bribery Act is a recent example. Implementing carbon and other sustainability requirements is no different.</p> <p>The need for private entities to comply with industrial or corporate codes of conduct on reporting, monitoring, and auditing schemes improves climate change mitigation efforts at all levels of the supply chain. It is often information that ESG investors and shareholders are seeking.</p> <p>Suppliers that do not comply with these provisions may run the risk of losing a valuable source of business due to non-compliance with the environmental requirements in the contract.</p> <p>These contractual provisions are often accompanied by different monitoring and enforcing mechanisms ranging from softer requirements to tough contractual sanctions.</p>
Impact	<p>Adopting a bottom-up approach by way of supply chain requirements addresses the imbalance in regulatory activity between regions.</p> <p>If adopted within certain sectors the scale of carbon saving through a supply chain can be significant. For example, it has been reported that if 125 multinationals increased the renewable electricity used by their supply chains by 20%, over one billion metric tons of emissions would be saved²⁷.</p>

26 & 27 <https://www.cdp.net/en/articles/media/supply-chains-hold-the-key-to-one-gigaton-of-emissions-savings-finds-new-report>

Stakeholders	<ol style="list-style-type: none"> 1. Contracting parties (in-house counsel, directors) 2. Legal advisors 3. Risk managers 4. Procurement and Sustainability Teams
Application	<p>These clauses would be particularly relevant for multinational companies contracting with suppliers in jurisdictions with fewer environmental laws. Some suppliers may have limited access to the resources required to address climate change (for example, renewable energy or alternative technologies) and additional financial resources and technical assistance may be required to help such suppliers change behaviour or to measure their GHG emissions and carbon footprint.</p> <p>For instance, a supplier may have imposed on it (i) requirements for CO2 monitoring, (ii) a requirement to implement a policy to address climate change, or (iii) targets to cut emissions and to report on its progress.</p>
Notes for users	<p>It is intentional that the obligations imposed on the Parties under both clauses are mutual rather than unilateral. This is based on research studies which observed that parties are less likely to incorporate a SCC if it imposes unilateral obligations²⁸. Additionally, it helps to ensure that the clauses are suitable for use not only in circumstances where the ‘customer is calling the shots’ (as may often be the case), but also in other scenarios, where the bargaining power between parties may be more equal, or other considerations are at play.</p> <p>This clause differs from TCLP’s other SCCs (i.e. Agatha’s, Annie’s, Teddy’s, Jessica’s, Owen’s, Iris’ and Zoë and Bea’s clauses) as it provides mutual sustainability obligations for a Buyer and its Supplier.</p> <p>Clause 2.3 and 2.4 provide the non-breaching Party with the right to suspend and then terminate the Agreement where a material breach occurs. If drafters think that termination is too draconian, they can delete these provisions.</p>

Definitions

Corrective Action Plan means a corrective or mitigation plan agreed between the Parties, including a cost breakdown, allocation of responsibilities, and an implementation schedule, which, once initiated, will enable the Supplier to correct and remediate the damage and adverse effects resulting from any failure to comply with the Environmental Action Plan, the Sustainability Policy, the Environmental Standards and Guidelines, or the Environmental Legislation, or to correct or mitigate the adverse effects of any Serious Environmental Incident.

²⁸ Page 52 of Sustainability Clauses in Contracts: the Key to Corporate Responsibility: 2018 Study of CSR Contractual Practices Among Buyers and Suppliers by EcoVadis and Affectio Mutandi. <https://resources.ecovadis.com/news-press/landmark-study-on-sustainability-clauses-in-commercial-contracts-released> ; <https://ecovadis.com/library/sustainability-clauses-in-commercial-contracts-the-key-to-corporate-responsibility/>

Environmental Action Plan means the plan prepared by the Parties and appended to this Agreement, which shall indicate the necessary actions, including the allocation of responsibilities and implementation schedule, for the purposes of ensuring that the design, construction, installation, operation, maintenance, and/or decommission (as appropriate) of the Parties' [and their subcontractors'] Facilities, Plants, and Equipment shall meet, within the timescales set out therein, and maintain substantial compliance with, the Environmental Standards and Guidelines, the Environmental Legislation and the Sustainability Policy.

Environmental Damage Report means a written report describing (a) the relevant Party's non-compliance with the Environmental Action Plan, Environmental Legislation, Environmental Standards and Guidelines, and/or the Sustainability Policy, and/or (b) any Serious Environmental Incident. The report shall include a reasonable description of the event, detailing its extent, magnitude, and impact (or, where such impact is unknown, the potential impact).

Environmental Issues means issues related to: (a) emissions, spills, or discharges to the air, water, ground, or subsoil; (b) management of waste and Hazardous Substances; (c) other activities or circumstances that produce Greenhouse Gases; (d) preservation or management of habitats and ecosystems, as well as the protection of living organisms present therein; and (e) any other issue that may have a significant or substantial effect on the environment, biodiversity, animal habitats, or climate change in general.

Environmental Legislation means all statutes, laws, regulations, decrees, resolutions, codes, orders, plans, and judicial or administrative decisions or interpretations issued at the international, national, state, municipal, or sector level that govern or make reference to Environmental Issues that are applicable within any jurisdiction where the Parties carry out their operations, whether or not compliance is mandatory.

Environmental Licences means all licenses, approvals, and permits necessary for each Party's business and operations including, but not limited to, those issued by any governmental, local or planning authority where required by any Environmental Legislation.

Environmental Monitoring Report means the true, accurate and complete report prepared by an appropriately qualified environmental, sustainability consultant appointed by each Party [after consultation with the other Party] on the relevant Party's compliance with the Environmental Action Plan, the Environmental Legislation, the Environmental Standards and Guidelines, and the Sustainability Policy, confirming compliance therewith or detailing the non-compliance thereof, together with the remedial action taken to ensure compliance with the Environmental Action Plan, the Environmental Legislation, the Environmental Standards and Guidelines, and the Sustainability Policy.

Environmental Representations means the representations set out in Clause 1.

Environmental Standards and Guidelines means such guidelines and performance standards that contain best environmental practices to be implemented by the Parties in the design, construction, installation, operation, maintenance, and/or decommission (as appropriate) of all their Facilities, Plants, and Equipment, as referred to in the Sustainability Policy, and other guiding regulations and documents listed in the Environmental Action Plan.

Facilities, Plants and Equipment means the respective facilities, plants and equipment used by the Parties [and their subcontractors] for the purpose of carrying out their obligations under this Agreement.

Fiscal Year means a one-year period from [1 April] and ending [31 March] for the purposes of tax and accounting.

Greenhouse Gases (GHGs) means the natural and anthropogenic gases which trap thermal radiation in the earth's atmosphere and as specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) or otherwise specified by the UNFCCC, and which currently include: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).

Greenhouse Gas Emissions (GHG Emissions) means emissions of Greenhouse Gases over a specified area and period of time, each expressed as a total in units of carbon dioxide equivalent (CO₂e) [and calculated in accordance with the GHG Protocol Corporate Accounting and Reporting Standard or such other equivalent and generally recognised greenhouse gas emission calculation methodology].

Hazardous Substances means any material, substance or organism which, alone or in combination with others, is capable of causing harm to the natural and man-made environment including all or any of the following media: air (including air within buildings and other natural or man-made structures above or below the ground), water, land, and any ecological systems and living organisms (including man) supported by those media.

Net Zero Target means the net reduction of Greenhouse Gas Emissions from all operations to zero by [specified date] so there is a balance between the emissions by sources and removals by sinks of Greenhouse Gases. A Net Zero Target is met when residual emissions are fully offset by Greenhouse Gas removals.

Serious Environmental Incident means a material event of emission, spillage or discharge of Hazardous Substances; explosions, fire; environmental claims, complaints, or lawsuits (including pre-action correspondence) that are not frivolous or vexatious, and which the relevant Party, acting reasonably, believes to have a reasonable prospect of success; and / or complaints from or investigations by authorities responsible for the enforcement of Environmental Legislation.

Sustainability Policy means the Customer's Sustainability Policy attached at Schedule [X], as amended from time to time and in accordance with Clause 3.

1. Environmental Representations.

- 1.1 The Parties acknowledge their common intention in the fulfilment of their obligations under this Agreement to minimise their negative impact on climate change and biodiversity, and to reduce their Greenhouse Gas Emissions [to help [country] achieve its GHG reduction targets/ Net Zero Target].
- 1.2 The Parties state that they [and their subcontractors] are in substantial compliance with the Environmental Legislation, the Sustainability Policy and the applicable Environmental Standards and Guidelines, with the exception of any action specifically noted in the Environmental Action Plan as still pending with respect to achieving substantial compliance. Each Party further represents and warrants that [at the date of this agreement] in the last 6 years, it has not been fined or convicted of any offence involving the environment; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with damage to the environment.

- 1.3 Each Party represents and warrants that the Environmental Representations are true as at the date of this Agreement, and on the date of the delivery of the Environmental Monitoring Report.

2. Environmental Covenants.

- 2.1. Each Party shall comply[, and shall require their subcontractors to comply,] with the following obligations set forth below:

- 2.1.1. Each Party shall conduct its business with due diligence, in an efficient and environmentally responsible manner, adhering fully to the Environmental Action Plan, the Environmental Legislation, the Environmental Standards and Guidelines, and the Sustainability Policy and ensuring that all its operations are carried out in accordance therewith.
- 2.1.2. Each Party shall, within 45 days from the close of each Fiscal Year, provide the other Party with an Environmental Monitoring Report.
- 2.1.3. Each Party shall maintain in force all Environmental Licences, and shall comply with and observe all conditions and restrictions contained in or imposed by any such Environmental Licenses.
- 2.1.4. Each Party shall use best endeavours to ensure that its Facilities, Plants, and Equipment are designed, built, operated and/or maintained in accordance with the requirements set forth in the Environmental Action Plan, the Environmental Legislation, the Environmental Standards and Guidelines, and the Sustainability Policy.
- 2.1.5. Each Party shall, at the request of the other Party, allow the other Party or the person it designates to visit and inspect its Facilities, Plants and Equipment.
- 2.1.6. Each Party shall, at the request of the other Party (acting reasonably and made not more than once a year), provide the other Party with information about its activities and its compliance with the requirements pertaining to the Environmental Issues, its compliance (or non-compliance) with the Environmental Licences and the implementation of the Environmental Action Plan. The other Party shall have no right to confidential information, any information that attaches privilege of any kind, commercially sensitive information, and any information that is not directly relevant to the Party's compliance with its obligations under Clauses 1 and 2.

- 2.2 In the event that a Party [or a third party competent authority responsible for enforcing Environmental Legislation] detects any non-compliance with the Environmental Action Plan, the Environmental Legislation, the Environmental Standards and Guidelines, and/or the Sustainability Policy, and/or any Serious Environmental Incident, that Party shall:

- 2.2.1. subject to Clause 2.2.2, notify the other Party within [five (5) Business Days] from the date of discovery of such non-compliance, or within [forty-eight (48) hours] in the event of a Serious Environmental Incident, providing a reasonably detailed written description of such non-compliance or Serious Environmental Incident, including, but not limited to, an account of the expected environmental damage resulting therefrom;
- 2.2.2. have the option to remedy any non-compliance that does not amount to a Serious Environmental Incident within five (5) Business Days from the date the non-compliance was detected, if that Party reasonably believes it is possible to do so. That Party shall then have a further five (5) Business Days before it is required to notify the other Party of non-compliance in accordance with Clause 2.2.1;

- 2.2.3 engage, at its own expense, the services of an appropriately qualified environmental, sustainability consultant or other qualified professional satisfactory to the other Party (acting reasonably), to investigate the non-compliance or Serious Environmental Incident and prepare an Environmental Damage Report and a draft Corrective Action Plan for agreement between the Parties;
 - 2.2.4 agree within [fifteen (15) Business Days] the Corrective Action Plan with the other Party; and
 - 2.2.5 diligently take, at its own expense, all the reasonable steps necessary to implement the pertinent Corrective Action Plan in a form and substance satisfactory to the other Party.
- 2.3 In the event that a Party commits a material breach of Clause 2.1 and/or fails to take any and/or all the steps necessary to implement the Corrective Action Plan referred to at Clause 2.2.4, the other Party may suspend this Agreement until the breach is remedied or for a specified period but in any event for no more than [...] days, by giving written notice to the Party in breach.
- 2.4 The Customer or Supplier may terminate the agreement with immediate effect by giving written notice to the other Party who commits a material breach of this Clause 2 and fails to comply with the recommendations and measures specified in the Corrective Action Plan or required under Clause 2.3. The Customer or Supplier may also claim damages for any additional costs that it incurs as a result of the breach. The Party in breach of this Clause 2 also hereby indemnifies the other Party for any loss resulting from such breach, including without limitation any reasonably incurred public relations costs or legal fees.

3. Amendments to the Sustainability Policy

- 3.1 The Parties agree to engage in discussions regarding proposed amendments to the Sustainability Policy within a reasonable timeframe but no later than 30 days when notice is provided by one Party to the other. The Parties agree to amend the Sustainability Policy accordingly where the Supplier's own policies and practices exceed those set out in the Sustainability Policy.

[Maria's scorecard] NEW

The Origin Story	
Child's name	Maria's scorecard
Full name	Supply chain emissions scorecard
Practice Area / Sector	Commercial, Corporate, Investment, Public Procurement
Issue	<p>90% of companies' impacts on the environment come from supply-chains²⁹; and typically the carbon emissions from a company's supply chain are between 65% and 95% of the total emissions triggered by whatever it is a company does³⁰.</p> <p>Fewer than 20 percent of supply-chain managers say they have visibility into sustainability practices in the supply-chain (Scope 3 GHG emissions, as defined below)³¹.</p> <p>Executives tend to focus on plans for the next business cycle; long-term sustainability is often overlooked due to understandable pressure to focus on short-term profits³².</p>
Solution	<p>A pro forma scorecard to be incorporated into commercial agreements as a schedule. This could be implemented within both public and private sector deal-making.</p> <p>This would allow supply-chain sustainability to be viewed through the lens of risk to business continuity and the case for a longer-term approach would be easier to make.</p>
Context	<p>There are three scopes by which a company's GHG emission can be catalogued. Scope 1 is direct emissions from owned or controlled sources; Scope 2 is emissions from purchased energy; and Scope 3 is any remaining GHG emissions not covered by Scopes 1 or 2 in the value chain both upstream and downstream of a product's lifecycle.</p> <p>While acknowledging reducing GHG emissions under Scopes 1 and 2 are vital to a company's sustainability profile (the scorecard assists the contracting party in disclosing these), Scope 3 are particular important for meaningful reduction of GHG emissions across many sectors³³.</p> <p>Approximately 40% of global GHG emissions fall under the remit of Scope 3 as they are purchased and sold products and services. However, Scope 3 is often neglected by companies aiming to tackle climate change for a variety of reasons but principally because it is hardest to measure.</p> <p>Scope 3 emissions are particularly significant (on average) in a wide array of industries including automotive, logistics, and consumer packaged goods.</p>

²⁹ <https://youmatter.world/en/sustainability-supply-chain-27935/>

³⁰ https://perspectives.eiu.com/sites/default/files/lamasoft_report_-_report_digital_2_2_0.pdf

³¹ [Blume Global](#)

³² https://www.huffpost.com/entry/what-is-the-purpose-of-bu_b_7100126; <https://www.ellenmacarthurfoundation.org/assets/downloads/publications/Ellen-MacArthur-Foundation-Towards-the-Circular-Economy-vol.1.pdf>

³³ <https://www.cdp.net/en/articles/media/supply-chains-hold-the-key-to-one-gigaton-of-emissions-savings-finds-new-report>

Impact	<p>What gets measured gets managed. The scorecard can help reduce GHG emissions as companies realise the numerous benefits to investing in renewable technologies and energy sources, developing economies of scale and building strong relationships with clients and suppliers alike.</p> <p>The parties may agree to provide the information in the scorecard to other stakeholders, such as end-use customers and ESG investors who are increasingly factoring GHG emissions into their decision making.</p>
Stakeholders	<ol style="list-style-type: none"> 1. Funders (lenders and investors); 2. Procurement Specialists (in the public and private sector); 3. Supply-chain managers; 4. Environmental officers/compliance officer; 5. CSR leads; 6. CEOs/board members; 7. Environmental specialists (best practice, success stories to be shared); and 8. Sector regulators.
Application	<p>Companies may use the scorecard to impose sustainability requirements expected of the company with whom they are contracting - incentivising compliance with internationally accredited metrics such as Science Based Targets³⁴. For example, a revolving credit facility could have pricing mechanisms linked to sustainability performance against an earlier baseline.</p> <p>By including it in commercial negotiations, the scorecard positions sustainability performance as a collaborative effort between the parties, while increasing the transparency of action taken by companies through a robust reporting framework. The scorecard will give the contracting parties a chance to precisely quantify where they are meeting sustainability requirements, where they are falling short, and steps being taken to improve their performance.</p> <p>The metrics and audit standards measured by this scorecard may change by company, sector, industry and geographical location and so the scorecard needs to be easily modifiable, without affecting its intended overall accessibility. The scorecard should be easily readable and adaptable and is not intended to be an onerous drafting burden.</p>
Notes for users	<p>The operative clause triggering the obligation to complete the scorecard will depend on the agreement – various sample wording is provided below. It could be tied to existing reporting or information provision mechanisms in the agreement.</p> <p>EU Public procurement specialists will note an overlap between the information provided/asked for in this scorecard and the selection questionnaire. Caution needs to be taken to ensure that this information is not asked for or scored at the selection stage in the procurement process unless it is a lawful part of the selection criteria.</p>

³⁴ <https://sciencebasedtargets.org/>

CLAUSE (Company specific – indicative drafting)

“The pricing mechanisms referred to in clauses [] will take effect on the [Effective Date], being the date by which the [main party] receives the Scorecard described in Schedule []”

“The provisions of the [GHG Emissions Agreement] referred to in clause [] will take effect on the [Effective Date], being the date by which the [main party] receives the Scorecard duly completed by the [other party] in accordance with Schedule []”

“Supplier must [within [14] days of entry into this agreement/annually/on written request of the Customer] provide the Customer with a completed Scorecard set out in Schedule [].”

SCHEDULE [] [EMISSIONS SCORECARD]

Target:

Absolute emissions contraction

- Base year
- Target year
- Base year emissions, disaggregated by scope

i.e. reduce annual CO2e emissions to x% by 20xx from 20xx levels

Scope 1, 2 and 3 Emissions means the three classifications of emissions in the GHG Protocol³⁵.

- **Scope 1 Emissions** means all direct emissions from the activities of Company or under its control, including on site fuel combustion and emissions from chemical production in owned or controlled process equipment, refrigerant losses and company vehicles.
- **Scope 2 Emissions** means all indirect emissions from electricity purchased and used by the Company where the emissions occur at sources owned or controlled by another company.
- **Scope 3 Emissions** means all indirect emissions, other than Scope 2 Emissions, that are a consequence of the activities of the Company, but occur from sources not owned or controlled by the Company, including business travel, procurement, waste and water.

Background Information	
Company Name:	Date:
Number of Employees:	
Contact Name:	Title:
Contact Email:	Contact Phone:
Environmental Policy and Targets	
Do you have a sustainability/environmental/climate policy statement? Yes <input type="checkbox"/> No <input type="checkbox"/>	
<i>If yes, please provide link or attach document:</i>	
Do you publish a Corporate Social Responsibility (CSR)/Sustainability report? Yes <input type="checkbox"/> No <input type="checkbox"/>	
<i>If yes, please provide link or attach document:</i>	

³⁵ <https://ghgprotocol.org/>

Do you monitor and track energy consumption at your facility(ies)? Yes <input type="checkbox"/> No <input type="checkbox"/>			
<i>If yes, please describe:</i>			
Do you have goals or targets to reduce greenhouse gas emissions and/or energy use? Yes <input type="checkbox"/> No <input type="checkbox"/>			
<i>If yes, what is/are the target(s):</i>			
Have you received additional requests from stakeholders to disclose environmental information?			
Yes <input type="checkbox"/> No <input type="checkbox"/>			
<i>If yes, describe the types of information requested and specify the type of stakeholder that has requested the information:</i>			
Do you report greenhouse gas emissions and/or energy use either publicly or to another customer?			
Yes <input type="checkbox"/> No <input type="checkbox"/>			
<i>If yes, describe where:</i>			
Greenhouse Gas Emissions			
Do you calculate your Scope 1 and 2 greenhouse gas emissions? Yes <input type="checkbox"/> No <input type="checkbox"/>			
<i>If yes, what is the most recent year that data is available?</i>			
<i>If yes, please provide:</i>	Total Scope 1 Emissions: [] Metric Tons CO ₂ e		
	Total Location-Based Scope 2 Emissions: Metric Tons CO ₂ e		
	Total Market-Based Scope 2 Emissions: Metric Tons CO ₂ e		
Please provide a description of your major Scope 1 and Scope 2 emissions sources: [you can use the source (Conversion Factors) below to measure Scopes 1 and 2 emissions.]			
Do you seek third party verification/assurance of your Scope 1 and 2 emissions? Yes <input type="checkbox"/> No <input type="checkbox"/>			
<i>If yes, please attach your most recent verification statement.</i>			
Do you calculate your Scope 3 greenhouse gas emissions? Yes <input type="checkbox"/> No <input type="checkbox"/>			
<i>If yes, what is the most recent year that data is available?</i>			
For each Scope 3 category, state if it is relevant to your business and provide emissions, if available.			
Scope 3 Category	Relevant?	Quantified Sources	Emissions
<i>Purchased good and services</i>	(Y/N)		[] Metric Tons CO ₂ e
<i>Capital goods</i>			
<i>Fuel-and-energy-related activities</i>			
<i>Upstream transportation and distribution</i>			
<i>Waste generated in operations</i>			
<i>Business travel:</i>			
<i>Employee commuting</i>			
<i>Upstream leased assets</i>			

<i>Investments</i>			
<i>Downstream transportation and distribution</i>			
<i>Processing of sold products</i>			
<i>Use of sold products</i>			
<i>End of life treatment of sold products</i>			
<i>Downstream leased assets</i>			
<i>Franchises</i>			
<p>Do you seek third party verification/assurance of your Scope 3 emissions? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p><i>If yes, please attach your most recent verification statement.</i></p>			
Energy and Greenhouse Gas Emissions Reduction			
<p>Are you able to compare the greenhouse gas emissions reported above with emissions in a previous year? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p><i>If yes, please describe if Scope 1, 2, and 3 emissions have increased or decreased compared to prior years:</i></p>			
<p>Do you have a program and/or procedures to reduce energy use and greenhouse gas emissions?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p><i>If yes, please describe:</i></p>			
<p>Do you produce or purchase renewable energy? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p><i>If yes, please describe:</i></p>			
<p>Do you have strategies to reduce Scope 3 greenhouse gas emissions? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p><i>If yes, please describe:</i></p>			
<p>Do you engage with your suppliers around environmental issues and performance? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p><i>If yes, please describe:</i></p>			
<p>Do you collect environmental data from your suppliers? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p><i>If yes, please describe the type(s) of data collected and how it is used internally:</i></p>			



[Arlo's clause]

The Origin Story	
Child's name	Arlo's clause
Full name	Draft Paris-compliant objects clause for use in company's articles of association
Practice Area / Sector	Corporate
Issue	The historic legal requirement for companies to constitutionally state their objects, and to abide by that statement, was removed by the Companies Act 2006 (CA 2006). It was regarded as redundant in the light of previous legal changes to place a company's capacity beyond challenge as ultra vires. There is a concern that companies' activities have negative climate impacts and are not consistent with the goals of the Paris Agreement.
Solution	<p>While it is no longer possible to insert an objects clause into a company's memorandum of association, it is possible to do so in its articles. This could appear as an option in a firm's precedents or on an open source basis. The default position is that a company's objects are unrestricted unless its articles specify otherwise (section 31(1), CA 2006).</p> <p>This draft objects or general-purpose clause is appropriate for inclusion in an SPV (or any) company's articles of association in order to concentrate its stakeholders' (including directors') minds on the importance of making sure that the company's activities proceed in an environmentally-appropriate and Paris-compliant manner.</p>
Context	Legal services providers, including law firms and company formation agents, are a prime source of documentation and advice when adopting or amending a company's constitution.
Impact	<p>The principal upside of this approach from the point of view of addressing climate risks and impacts is that:</p> <ul style="list-style-type: none"> • It alerts clients potentially from the very beginning of the enterprise to the need to prioritise addressing climate risks to and impacts of the enterprise. • If an objects clause is inserted in the articles, it incentivises directors to act – they risk personal liability if they fail to act in accordance with their company's constitution (<i>section 171, CA 2006</i>). <p>Thus, a newly-framed objects clause giving appropriate weight to the environmental challenges that face us could have an extraordinary impact.</p>
Stakeholders	<ol style="list-style-type: none"> 1. Private practice firms 2. Precedent and know how providers 3. Professional support lawyers 4. Company formation agents 5. Investor/shareholder bodies 6. Professional associations of General Counsels

Application	<p>There appear to be two main options when drafting:</p> <ul style="list-style-type: none"> Include the obligation (or aspiration) to meet a certain environmental standard or specified climate change goals when meeting its other objectives. Include that obligation and specify what its relation is to the company's existing objectives and stakeholders – primary, equal, subsidiary. <p>Depending on this choice, one of the company's principal raisons d'être could be expressed as operating in an environmentally-conscious and indeed Paris-compliant way.</p> <p>The principal upside is that the directors are incentivised to act, thus it can change behaviour. Among the downsides:</p> <ul style="list-style-type: none"> The consequences of non-compliance could be significant for directors – and a deterrent to their joining or staying in post? Objects clauses could be overridden by shareholders, though one might stipulate that the articles could in this respect only be changed by e.g. 90% approval, or this provision of the articles could be entrenched (section 22, CA 2006). Shareholders of a solvent company could also authorise and ratify breach of directors' duty and release directors from liability.
Notes for users	<p>Users may wish to consider reading:</p> <ul style="list-style-type: none"> George Goyder, 'The Just Enterprise' (1987) Big Innovation Centre, 'The Purposeful Company' (2017) <p>Where the objects of a company have been specified in its articles, it may be necessary to set out the powers which the company may exercise in their pursuit.]</p> <p>A related approach may be to limit the powers of the company (and therefore the directors) in pursuing its main goal for example by express reference to engaging in, or not engaging in, specified behaviours. These could be generic, tailored to the company's circumstances or both.]</p> <p>Climate or environmental standards referred to could be the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard, Revised Edition 2015, the Principles on Climate Obligations for Enterprises, the OECD Guidelines for Multinational Enterprises or the UN Global Compact.</p>

Example I:

The objects of the Company are to [INSERT AS APPROPRIATE*] and, through its business and operations, to adopt OR engage with [INSERT PREFERRED CLIMATE OR ENVIRONMENTAL STANDARDS/GOALS]

Example II:

Directors' General Authority:

1.1 Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

1.1.2 The directors shall manage the company's business in a manner that:

- (a) benefits wider society and the environment in a manner commensurate with the size of the company and the nature of its operations; and
- (b) reduces harms the company creates or costs it imposes on wider society or the environment, with the goal of eliminating any such harms and costs.

[Chloe's clause]

	The Origin Story
Child's name	Chloe's clause
Full name	Environmental Business Charter
Practice Area / Sector	Commercial
Issue	Climate change is a complex and abstract issue, which makes it difficult to raise environmental concerns in the context of corporate law and their clients. The aim of the charter is to provide firms and individuals with the language and a starting point to raise and promote environmental best practice within the industry.
Solution	The Environmental Business Charter – a “soft touch” introduction to the way environmental concerns can be integrated into the City environment (similar to the highly successful Mindful Business Charter ³⁶).
Context	Many law firms are signed up to the Legal Sustainability Alliance ³⁷ etc. but it can be difficult to put this into practice with clients, for example raising whether a flight to a meeting is necessary. The aim of this is to provide a tool to open these conversations with clients.
Impact	The Charter will allow environmental issues and language to become mainstream in the City.
Stakeholders	<ol style="list-style-type: none"> 1. Law firms 2. Their clients
Application	The Charter will be developed between firms and clients to develop a set of best practice rules whereby deviations from best practice should be justified to encourage environmental thinking to be at the forefront of best business practice.

³⁶ <https://mindfulbusinesscharter.com/>.

³⁷ <https://legalsustainabilityalliance.com/>.

Environmental Business Charter

The intention of the Environmental Business Charter is to incorporate environmental awareness and best practice in the legal community. We recognise that the City and legal community can use their combined influence to support the decarbonisation of the economy. In this way, the Charter is practical and commercial. It recognises the power of the legal and financial community to start positively shaping the future. It believes that together, by placing environmental issues at the forefront of business, the City can guarantee its ongoing success and influence.

The Charter is to encourage discussion and reflection on how we as individuals and businesses can achieve change.

Organisation Undertakings

Publish GHG emissions

Limits on use of offsetting to achieve targets

Transparency and consistency on green ratings and credentials

Conscious Travel

While the importance of building relationships through face to face meetings is recognised, the cost of business travel and flights should be weighed against this.

A business case justification should be made for practices that are not in keeping with the organisation's environmental charter.

Challenge whether the use of technology can achieve an equivalent result.

Challenge the business norm of travelling without thought.

Technology

Invest and encourage virtual meetings.

Long term decision making

Commit to considering environmental best practice in all transactions including the sharing with other firms and companies of a 'toolkit' of terms and clauses to promote the environment.

Identify commercial risks and opportunities raised by decarbonisation and failure to decarbonise.

Encourage the use of 'green' language as commercial language.

Employee incentives

Flexibility with leave and working out of the office to accommodate and encourage train travel.

Offer the ability to take advantage of company offsets.

Offer climate sabbaticals³⁷.

Client/Customer Divestment

Consider whether the organisation's Client/Customer base is in alignment with their environmental targets and policy.

³⁷ See Eric's clause.

[Darcy's Board Minutes]

The Origin Story	
Child's name	Darcy's board minutes
Full name	Board Minutes incorporating consideration of climate change factors
Practice Area / Sector	Corporate
Issue	Section 172 of the Companies Act 2006 (section 172) requires directors “ <i>to promote the success of the company for the benefit of its members as a whole</i> ”. There are many consequences of this ‘shareholders first’ approach, an example of which is a tendency to focus on short-term financial performance rather than tackling what are often considered to be ‘tomorrow’s issues’ such as the impact of climate change. By doing so, directors may be breaching their fiduciary duties.
Solution	Whilst reform of the concept of shareholder primacy within corporate governance is desirable, introducing specific drafting into board minutes to encourage directors to consider environmental and social impact objectives, their net zero targets and/or carbon footprint and climate change risks as a routine part of their decision-making is one way of trying to bring the climate emergency to the fore within the boardroom and ensure that their strategies to address climate risk are not forgotten.
Context	The current requirements of section 172 are centred on ensuring boards of directors make decisions which are in the best interests of their shareholders. Whilst section 172 sets out a list of matters to which the board should have due regard – including “ <i>the impact of the company’s operations on the community and the environment</i> ” – these are secondary to financial performance. However, per the Commonwealth Climate and Law Initiative ³⁸ , directors “ <i>may breach their fiduciary duties...where they consciously disregard, or wilfully ignore, material financial risks associated with climate change and their potential impact on corporate risk management and strategy</i> ”.
Impact	Including this drafting in board minutes as standard will help to ensure that boards do not forget the importance of making decisions mindful of environmental objectives, impacts and risks. Presently, the environmental consequences may – in the majority of businesses – not be properly considered, however increasingly these consequences will have a tangible impact on financial performance and future strategy (i.e. the company’s success).

³⁸ <https://ccli.ouce.ox.ac.uk/wp-content/uploads/2019/10/CCLI-Directors%20Liability-and-Climate-Risk-Comparative-Paper-October-2019-vFINAL.pdf>.

Stakeholders	Companies can choose to incorporate this drafting into their board minutes at their discretion, however the following stakeholders could be consulted for example to encourage their members to incorporate environmental considerations into their governance processes, update precedents etc.
Application	This drafting can easily be incorporated into existing board minutes precedents.
Notes for users	Wording will of course need to be bespoke for the company using it, however the drafting is intended to encourage boards to specifically confirm that they have properly considered their environmental objectives and/or the environmental risks associated with their decisions. Boards should keep detailed notes of the matters discussed for accountability and audit purposes.

Example Clause

After due and careful consideration of the above matters and each of the documents produced to the meeting, including consideration of:

- a) the matters referred to in section 172 of the Companies Act 2006;
- b) [the environmental and social impact policies and objectives of the Company (as stated in its accounts for the year ended [●]/sustainability report dated [●]);
- c) the Company's [net zero carbon emissions] OR [carbon emissions reduction] target (as stated in its strategic plan for the period [●]);
- d) the carbon footprint of, and the climate change risks (including, physical, liability and transition risks) associated with, the transactions under contemplation at the meeting);
- e) alternatives with a lower carbon footprint and giving rise to less climate change risk;
- f) measures for reducing the Company's carbon footprint and reducing, mitigating and/or avoiding the climate change risks,

It was resolved that [insert resolutions].



[Frank's clause]

	The Origin Story
Child's name	Frank's clause
Full name	Green Investment Obligations
Practice Area / Sector	Corporate, Venture Capital, Private Equity
Issue	Climate Risk is Investment Risk ³⁹ . Additionally, investors often want to understand and manage the climate impacts of their investments. Investors in private companies often hold significant influence and control over an investee company through the investment agreements, yet are not currently using this to mitigate climate risks or manage climate impacts of the companies and therefore their investments.
Solution	Amendments to standard non leveraged investment documents to focus the founders and investee company on climate change and environmental issues with their products, services, and operations.
Context	There is growing interest ⁴⁰ in responsible investing from mainstream investors yet there is significant shortfall in funding and investment to meet the UN Sustainable Development Goals ⁴¹ .
Impact	The clause will ensure environmental obligations are cascaded through the investment documentation so the investors can assess climate risks and demonstrate climate impact. It should also make the investee company more resilient to the Climate Change Risks articulated by the Bank of England.
Stakeholders	The key stakeholders that you think need to be engaged to deliver this Impact <ol style="list-style-type: none"> 1. British Venture Capital Association 2. Corporate financiers 3. Global Impact Investing Network 4. Precedent and know how providers 5. Professional support lawyers 6. Private practice firms
Application	The proposed amendments will mean that a company and founder will have various obligations in relation to climate risk and sustainability reporting. This puts environmental and climate change issues front and centre of the investment and the development of the investee company's business.
Notes for users	The investment could be contingent on adding in a purpose to the articles of association that are likely to be amended as part of the investment round. This could also be achieved through the option to obtain B Corporation certification. The company purposes can be re-prioritised and given different emphasis according to the investor requirements.

³⁹ <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>

⁴⁰ <https://home.kpmg/xx/en/home/insights/2019/03/the-rise-of-responsible-investment-fs.html>

⁴¹ <https://www.undp.org/content/undp/en/home/blog/2017/7/13/what-kind-of-blender-do-we-need-to-finance-the-SDGs-.html>

Additional Definitions

“Capital Purpose” means to preserve the value of the Investors capital invested in the Company;

“Commercial Purpose” means to make the company profitable so as to provide a return to shareholders whilst having regard to the Social Purpose and Capital Purpose;

“Company” means [Insert name of Company that is being invested in]

“Founders” means the founders and senior Founders of the Company listed in schedule [INSERT]

“Investor Consent” means the consent of 75% of the Investors.

“Net Zero Target” means a reduction of greenhouse gas emissions from all operations [including value and supply chains] to net zero by [INSERT DATE] so there is a balance between sources and sinks of greenhouse gases in a calendar year and for each subsequent year thereafter.

“Social Purpose” means [Insert relevant purpose for investee company which is likely to be linked to a UN Sustainable Development Goal]

Sustainable Promotion of the Company’s Business

- 4.1 The Founders and the Company shall promote the best interests of the Company and ensure that its Business is conducted responsibly, sustainably, ethically and in accordance with all applicable laws and good business practice.
- 4.2 The Founders and the Company shall run and manage the business:
 - 4.2.1 Primarily to advance the Social Purpose;
 - 4.2.2 Secondly to achieve the Capital Purpose; and
 - 4.2.3 Thirdly to achieve the Commercial Purpose.
- 4.3 The Founders and the Company undertake to procure, in so far as it is in their respective powers to do so, that the Company shall:
 - 4.3.1 [publicly] set a Net Zero Target and within 6 months of Completion provide the Investors with a plan to deliver the Net Zero Target;
 - 4.3.2 as soon as reasonably practical and no later than 12 months after Completion:
 - 4.3.2.1 purchase electricity for its offices [and factory] on a green tariff that uses a 100% renewable energy;
 - 4.3.2.2 use web hosts and cloud service providers which run their servers on 100% renewable energy or have a net zero target;
 - 4.3.2.3 source all consumables used by the Company from sustainable and ethical sources;
 - 4.3.2.4 create KPIs to measure the Company’s impact of its operations and goods and services it provides;
 - 4.3.2.5 [ensure the [casing/packaging] for the Company’s products are sourced from as much recycled material as possible and are themselves designed to have the smallest environmental impact];
 - 4.3.2.6 [For online businesses][provide the Company’s customers the option to offset the carbon footprint of delivering the Company’s products at the point of sale on the Company’s website];
 - 4.3.2.7 establish a sustainability committee as a committee of the board chaired by a non-executive director with experience of improving sustainability and mitigating carbon footprint;

- 4.3.2.8 establish the company's pension scheme with an ESG/green investment fund as the default;
 - 4.3.2.9 become a certified B Corporation [achieving the Planet Mark];
 - 4.3.2.10 set targets to support the achievement on one or more United Nations Sustainable Development Goals that are relevant to the Business;
 - 4.3.3 report [annually] [quarterly] [monthly] to the Investors;
- [Note: To select reporting aligned with needs and goals of Investors.]
- 4.3.3.1 the climate risks and opportunities to the Company and the Business in accordance with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD),
 - 4.3.3.2 sustainability information in accordance with the standards set out by the Sustainability Accounting Standards Board (SASB); and
 - 4.3.3.3 other environmental, social and governance factors that are requested by the Investors from time to time.
- 4.3.4 prepare and provide to Investors an annual sustainability report which, without limitation, demonstrates the activities undertaken by the Company in furtherance of this clause; and
 - 4.3.5 once profitable, donate 1% of its net profits to environmental causes that are mitigating the impact of climate change.

Green Decisions Requiring the Consent of an Investor Majority

- 5.1 Each party shall use all the voting rights and powers of control deriving from their holding of Shares in order to procure that the Company shall not take any of the actions listed in this clause 5.2 without first obtaining the approval of an Investor Majority.
- 5.2 The actions requiring the approval of a Investor Majority are:
 - 5.2.1 the amendment or revocation of the Net Zero Target; and
 - 5.2.2 the entry into any contract or arrangement that conflicts with its Net Zero Target.

Founder Green Covenants

- 6.1 To assure the Investors that the Founders are aligned with the Investor's environmental aims and to enable the Investors to achieve the full benefit of the impact of their investment in the Company, each Founder hereby undertakes and covenants with the Investors and the Company that they shall not:
 - 6.1.1 while they are a director or employee of, or a consultant to, the Company carry on or be directly concerned, engaged or interested in any trade or business that is:
 - 6.1.1.1 not taking demonstratable steps to set and implement a net zero target equivalent to the Net Zero Target; or
 - 6.1.1.2 operates in the following sectors [Insert sectors or industries that the Investor does not want the Founders to be involved in/ conflict with their ESG aims];
 - 6.1.2 do or omit to do anything which could reasonably be expected to cause the Company to not achieve the Net Zero Target, whether pursuant to this contract or otherwise.

[Bella's clause]

The Origin Story	
Child's name	Bella's clause
Full name	Management equity ratchet terms
Practica Area / Sector	Private Equity, Finance, Corporate
Issue	Financial sponsors hold significant influence and control over their investee companies. However, the day-to-day decisions made by management teams can be equally important in driving growth in value. Consequently, management teams are typically incentivised to achieve the business' growth objectives using incentive schemes (often in the form of bonus arrangements or share-based schemes). The value of such schemes is typically dependent on financial performance, growth in value and/or the returns achieved by the sponsor but not on the contribution made by the business in the fight against climate change.
Solution	Provide a template clause for inclusion in investment documents to financially incentivise management teams to meet targets which are linked to climate change and environmental issues. The clause would be designed as an "equity ratchet" which could be overlaid on a share-based incentive scheme so as to increase the percentage of the equity share capital of the investee company held by management at exit if the business has achieved appropriate climate change related targets during the life of the investment. However, it is hoped that it would be relatively straightforward to adapt the clause for use alongside other types of incentive scheme (such as exit bonus arrangements) if desired.
Context	The UK government has set a target to be net zero by 2050 ⁴² . Governmental planning and intervention policies may be required to meet this, but many UK businesses are already announcing their own targets to help meet this goal. There is also a broader societal interest in climate change, and growing interest in responsible investments that comply with environmental and ethical standards. Investors should be encouraged to incentivise management teams to set their own targets in advance of legislative pressure to do so.
Impact	This clause will put climate change and environmental objectives on the same platform as other business drivers.
Stakeholders	<ol style="list-style-type: none"> 1. Directors and senior managers of investee companies 2. Private equity funds and other financial sponsors 3. British Venture Capital Association 4. Law firms 5. Industry bodies
Application	The proposed clause should encourage management teams to take a more active interest in ensuring that their businesses meet climate change related targets.

⁴² <http://www.legislation.gov.uk/ukpga/2008/27/part/1/crossheading/the-target-for-2050>

<p>Notes for users</p>	<p>The targets can be linked to established frameworks, e.g. ISO 14001:2015, and/or amended to align with the nature of a particular business or investor requirements.</p> <p>Consider using with Frank's clause in relation to a company's positive obligations and reporting requirements for investors, which can be amended to apply to management teams in investment documents.</p> <p>This ratchet is drafted on the following basis:</p> <p>There are two classes of Equity Shares – the investor[s] holds A Ordinary Shares and managers hold B Ordinary Shares.</p> <p>It is assumed that the investor would need to receive a minimum financial target amount before the ratchet is triggered. The parameters of the financial target have not been defined but, since it is envisaged that the primary purpose of the ratchet would be to incentivise achievement of the environmental target(s) (rather than financial overperformance) it is assumed that the financial target would be calibrated so that it only prevents the ratchet from being triggered in circumstances where the investment has materially underperformed from an investor return perspective.</p> <p>Examples of environmental targets which a business might wish to adopt have been included but these will need to be tailored to the specific case.</p> <p>If the ratchet is not triggered (because either the financial or the environmental targets are not met) on or before the occurrence of a "conversion event" (being a listing, sale or winding-up of the company), any equity proceeds on that conversion event will be allocated as between the two share classes in a specified default ratio – 75:25 is used here for illustrative purposes.</p> <p>The ratchet is drafted as a "top slice" ratchet. In other words, if the ratchet is triggered, proceeds from the relevant conversion event will be allocated as between the two share classes: (i) until such time as the financial target has been met, in the default ratio; and (ii) thereafter, in a new ratio which enhances the managers' return – 65:35 is used here for illustrative purposes. Alternatively, the ratchet could be structured as a "ground up" or "cliff" ratchet such that all proceeds are allocated in the enhanced ratio provided all relevant targets are met (taking into account the operation of the ratchet itself).</p> <p>Non-cash consideration is not taken into account in the operation of the ratchet. The enhanced ratchet ratio is achieved by converting a portion of the investor's A Ordinary Shares into valueless deferred shares.</p> <p>Tax specialists should review the drafting of any ratchet based on this template before it is incorporated into a company's articles.</p>
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1. CONVERSION RIGHTS

1.1 In this Article [●] (Conversion Rights), save where the context requires otherwise, the following expressions shall have the following meanings:

A Shareholder Proceeds means the sum comprising such proportion of the Capitalisation Value to which the A Shareholder[s] [is][are] entitled, calculated in accordance with Article [●].2.

B Shareholder Proceeds means the sum comprising such proportion of the Capitalisation Value to which the B Shareholders are entitled, calculated in accordance with Article [●].2.

B Shareholders means, for the purposes of this Article [●] only, the holders of B Ordinary Shares immediately prior to the conversions effected by this Article [●].

Capitalisation Value means:

- (a) in the event of a Listing, the aggregate value of all the shares (expressed in pounds sterling to the nearest three decimal places) for which a Listing is obtained (being, in the case of an offer for sale, the underwritten price (or if applicable the minimum tender price), or, in the case of a placing, the placing price) (but excluding any new shares issued as part of the arrangements relating to the Listing (other than any new shares to be paid up by way of capitalisation of reserves)) [net of the aggregate costs of the Listing attributable to the shareholders (save to the extent that any such cost has been borne by any member of the Group and has been taken into account in the Listing price per share)];
- (b) in the event of a Sale, the aggregate consideration payable in respect of such Sale to the holders of the Equity Shares [(net of the aggregate costs of the Sale attributable to the shareholders)]; and
- (c) in the event of a Winding-Up, the amount to be distributed in the Winding-Up to the holders of the Equity Shares [(net of the aggregate costs of Winding-Up attributable to the Shareholders)].

Carbon Footprint Standards means international recognised standards to measure, manage and demonstrate carbon credentials covering organisations (WRI Greenhouse Gas Reporting, BEIS Voluntary Reporting Guidelines, GHG Protocol Corporate Accounting and Reporting Standard), projects, product and services (PAS 2050:2011, ISO 14001, GHG Protocol Product Life Cycle Accounting and Reporting Standard) and events (PAS2060/ISO 20121).

Conversion Date means the date on which, conditionally upon the occurrence of the relevant Conversion Event, A Ordinary Shares are converted into Deferred Shares pursuant to this Article [●].

Conversion Event means any one of the following events:

- (a) the obtaining of a Listing;
- (a) the entering into of an unconditional agreement for a Sale, or where an agreement for a Sale is conditional in any respect, that agreement becoming unconditional in all respects; or
- (b) a Winding-Up.

Environmental Targets means:

- (a) the Group achieving the Net Zero Target;
- (b) the Group achieving one of the Carbon Footprint Standards;
- (c) the establishment by the Group of a sustainability committee as a committee of the Board chaired by a non-executive director with experience of improving sustainability and mitigating carbon footprint;
- (d) the purchase by the Group of electricity for its offices [and factory] on a green tariff that uses 100% renewable energy; [and]
- (e) the use by the Group of web hosts and cloud service providers which run their servers on 100% renewable energy or have their own Net Zero Target[; and][.]
- (f) [others as applicable to the business].

Equity Shares means the A Ordinary Shares and the B Ordinary Shares.

Listing means the admission of the whole of any class of the issued share capital of the Company (or any new holding company) to any [Recognised Stock Exchange]⁴³.

Net Zero Target means that the balance between greenhouse gas emissions from all operations and greenhouse gas removals, accounted for by credits from either insetting or offsetting projects, is zero.

Ratchet Trigger means the satisfaction (or waiver by the Investor[s] in accordance with Article [●].11) of each of the Environmental Targets on or before the occurrence of the relevant Conversion Event.

Sale means [the transfer of more than [50]% in number of the Equity Shares to a buyer].

Target Amount means the amount which would be required to be received by the Investor[s] in order to provide the Investor[s] with [financial target].

Winding-Up means a liquidation of the Company.

1.2 The purpose of this Article [●] is to adjust the share capital of the Company so that the A Shareholder Proceeds and the B Shareholder Proceeds shall be the proportions of the Capitalisation Value calculated in accordance with this Article [●].2:

- 1.2.1** firstly, the Capitalisation Value shall be split between the A Shareholder Proceeds and B Shareholder Proceeds in the ratio of [75:25] until the Target Amount shall have been received by the Investor[s]; and
- 1.2.2** secondly, provided a Ratchet Trigger has occurred, the balance (if any) of the Capitalisation Value (after deducting the amount allocated under Article [●].2.1) shall be split between the A Shareholder Proceeds and the B Shareholder Proceeds in the ratio [65:35].

1.3 On the Conversion Date, conditionally upon the occurrence of the relevant Conversion Event, such number of A Ordinary Shares shall automatically be converted into Deferred Shares such that:

- 1.3.1** the A Shareholder[s] shall [between them] receive the A Shareholder Proceeds;
- 1.3.2** the B Shareholders shall between them receive the B Shareholder Proceeds; and
- 1.3.3** the price per Equity Share on the relevant Conversion Event shall be identical for the A Shareholder[s] and the B Shareholders.

1.4 The Board shall determine, and notify the Investor[s] and B Shareholders of, the estimated Conversion Date (the “**Estimated Conversion Date**”) and, no later than [20] Business Days prior to such Estimated Conversion Date, shall procure that the calculations provided for in Articles [●].2 and [●].3 are carried out by reference to the Estimated Conversion Date. The Board shall notify the Investor[s] and B Shareholders in writing of the results of such calculations as soon as reasonably practicable after they become available.

⁴³ Definition not supplied.

- 1.5 Following receipt of such notice, the Investor[s] and the B Shareholders shall endeavour to agree the value of the A Shareholder Proceeds, the B Shareholder Proceeds and the number of A Ordinary Shares to be converted into Deferred Shares.
- 1.6 If the Investor[s] and the B Shareholders have failed to reach unanimous agreement pursuant to Article [●].5 by the date which is 10 Business Days prior to the Estimated Conversion Date, the matter shall be referred to [dispute resolution mechanism to be included].
- 1.7 If, after the number of A Ordinary Shares to be converted into Deferred Shares has been agreed or determined but before any Conversion Date, there shall be:
 - 1.7.1 any change in the Capitalisation Value; or
 - 1.7.2 any delay in the occurrence of the Conversion Date such that it is expected to occur in the month following the month in which the Estimated Conversion Date falls, the procedures set out in Articles [●].4 to [●].6 shall be repeated (as often as required) and the calculations recomputed accordingly.
- 1.8 On the Conversion Date, conditionally upon the occurrence of the relevant Conversion Event, such number of A Ordinary Shares as shall, subject to Article [●].7, have been agreed or determined as being subject to conversion shall automatically be converted into Deferred Shares.
- 1.9 Any conversion of shares pursuant to this Article [●] shall be made on the following terms:
 - 1.9.1 the conversion shall take effect immediately on a Conversion Date at no cost to the holders of the shares to be converted, and such shares shall be apportioned rateably (or as near thereto as may be practicable to avoid the apportionment of a fraction of a share) among the holders of shares of that class;
 - 1.9.2 the holders of the relevant shares to be converted shall each deliver their old share certificates to the Company for cancellation (or an indemnity in lieu thereof); and
 - 1.9.3 the Company shall issue share certificates to the persons entitled to shares resulting from the conversion.
- 1.10 Following any conversion of shares pursuant to this Article [●], the Company shall procure that all necessary steps are taken to ensure that such conversion is documented accurately and all filings and any other relevant formalities are complied with.
- 1.11 The Investor[s] shall be entitled in [its/their] sole discretion at any time on or before the occurrence of a Conversion Event to waive any of the Environmental Targets by written notice to the Company.

[Lauren's clause]

The Origin Story	
Child's name	Lauren's clause
Full name	Green Shareholders' Agreement (Early Stage)
Practice Area / Sector	Corporate
Issue	Many companies and shareholders prioritise fast growth and maximum financial returns above all other considerations. This creates business strategies that ignore the consumption of Natural Capital and their impact on Climate Change. There is evidence that these companies also do not perform as well as those that have ESG matters as a core strategy ⁴⁴ .
Solution	Amendments to a standard early stage shareholders' agreement which (a) gives rights to investors in holding the company to account on climate change and sustainability issues; and (b) aligns all parties' interests in the company achieving net zero by placing obligations on all shareholders.
Context	We seem to be coming out of a period where purely fast growth and fast capital returns were prioritised above everything else. Investors and companies are starting to take a more "holistic" approach to early stage investing and the management of business ⁴⁵ . It has been consistently shown that large companies that prioritise ESG issues outperform those that don't ⁴⁶ , and so this should be a consideration for all companies from the earliest possible opportunity and what better way than to enshrine this culture in the core corporate documents that drive shareholder behaviour and value. Sustainable investing is a growth market, and this solution extends that concept further in that by investing such a company the investor is also held to account in helping the company achieve its climate goals.
Impact	Aligning shareholder rights and future value to environmental outcomes, would see companies and directors placing climate goals at the forefront of company strategy, but it would also encourage investors to (whether individuals or institutions) to monitor and incentivise achievement of climate goals as they are directly linked to the value of the shares.
Stakeholders	<ol style="list-style-type: none"> 1. Angel investors and VC seed and pre-seed funds 2. BVCA 3. Private practice firms 4. Impact investing groups 5. Early stage companies

⁴⁴ <https://hbr.org/2019/05/the-investor-revolution>

⁴⁵ <https://www.cnbc.com/2019/12/14/your-complete-guide-to-socially-responsible-investing.html>

⁴⁶ <https://hbr.org/2019/05/the-investor-revolution>

Application	Various clauses to (a) place obligations and restrictions on the company and the management to ensure the company is run in the “greenest” possible manner and (b) place obligations upon the investors to engage in climate change mitigation or relinquish benefits from the investment.
Notes for users	<p>This clause should be read and used in conjunction with Frank's clause in the 1st Edition of the Contract Playbook. Frank's clause is made for an Investment Agreement and is therefore drafted with the investors holding the company and the founders to account. Lauren's Clause is drafted for a shareholders' agreement – so is more balanced and has reciprocal obligations on all shareholders. This shareholders' agreement is aimed to be slightly broader in scope.</p> <p>Any clauses that place obligations upon investors will likely be firmly resisted by investor solicitors initially but where there is high competition for an investment and companies are oversubscribed for their rounds, it should be insisted upon by company solicitors, albeit perhaps in amended form to something more commercially reasonable for the investor and company in question.</p> <p>The clauses can be used in the context of a founders only shareholders agreement or where there are external investors from the outset.</p> <p>The drafting envisages standard definitions throughout other than the additional definitions.</p> <p>In relation to the Sustainability Management Standards, the ISO has a whole section of their website devoted to SDG compliance, and therefore if the company has the budget, it should work with the ISO in devising a bespoke set of standards for its specific Sustainability Goals. An alternative (free) tool is the B Lab's SDG Action Tracker.</p> <p>The obligations on the Company to reach Carbon Neutral status can be replaced by the specific actions for achieving Net Zero in Frank's clause, if investors wish to be more prescriptive.</p> <p>Qualifying “drag” provisions may be important for impact investors who do not wish to sell to a “non-green” buyer.</p>

Additional Recital

- (A) The Shareholders wish to align the operation and management of the Company with various Climate Change and Sustainability Goals.

Additional Definitions

“Capital Purpose” means to preserve the value of the Shareholders’ capital as invested in the Company;

“Carbon Footprint” means the amount of carbon dioxide equivalent units that will be released into the atmosphere as a result of the Business operations as determined in accordance with the GHG Protocol;

“Carbon Neutral” means the reduction and maintenance of the Company’s Carbon Footprint to net zero;

“Carbon Neutral Date” means the date set by the Board for the Company to achieve Carbon Neutral status which date should not be more than 24 months from the date of the meeting convened under clause 10.1;

“Carbon Offsetting” means the purchase of a quantity of carbon credits from a project that has been verified by a Carbon Offset Provider or by United Nations Framework Convention on Climate Change clean development mechanism project;

“Carbon Offset Provider” means the following organisations [INSERT];

“GHG Protocol” means the current GHG Protocol Corporate Accounting and Reporting Standard;

“Material Climate Breach” means a breach of any terms of this Agreement which is material with regard to all relevant circumstances, including, without limitation:

- (a) increasing the Company’s Carbon Footprint;
- (b) missing the Carbon Neutral Date; or
- (c) taking any action that is contrary to the achievement of the Sustainability Goals.

“Sustainability Alignment” means the operation of the Business in a manner which (i) supports the achievement of the goals of the Paris Agreement, as set out in Articles 2.1 and 4.1 of the United Nations Framework Convention on Climate Change Paris Agreement and/or (ii) supports the achievement one or more of the United Nations Sustainable Development Goals as set out in the 2030 Agenda for Sustainable Development;

“Sustainability Goals” means the Company’s goals and objectives for achieving and maintaining Sustainability Alignment as set by the Board from time to time in accordance with clause [X];

Additional Clauses

2. SHARE OPTION SCHEME

- 2.1 The Founders undertake to include terms in the Share Option Scheme (which shall include the relevant share award agreement for the purpose of this clause 6.3) that make the vesting of Shares under the Share Option Scheme conditional upon the Company having achieved its Sustainability Goals on or before the agreed vesting date.

3. DIVIDEND POLICY

3.1 Where a Shareholder has failed to comply with the obligations under clause 11.6 it shall not be permitted to receive any portion of the dividend distributed under clause 7.1 and the amount of the dividend shall be reduced proportionate to such Shareholder's pro-rata allocation of the dividend (a "Portion"). Such Portion of the dividend will be retained by the Company and will be distributed to the defaulting Shareholder in accordance with clause 7.1 subject to the relevant Shareholder's achieving compliance with clause 11.6.

4. BUSINESS OF THE COMPANY

4.1 The Shareholders will each act in good faith to promote the best interests of the Company and ensure that the Business is conducted and developed in accordance with good business practice and any business plan for the Company that is adopted from time to time in furtherance of (in equal emphasis): (i) the Capital Purpose; and (ii) the Sustainability Goals.

5. COMPANY SUSTAINABILITY GOALS

5.1 Within 30 Business Days from the date of execution of this Agreement the Board shall meet and resolve to: (i) adopt the Company's Sustainability Goals; (ii) adopt a framework sustainability management standard by reference to [INSERT SPECIFIC STANDARD] (the "Sustainability Management Standards") and (iii) designate a member of the Board to be the Company's Chief Sustainability Officer ("CSO"). As soon as reasonably possible following the date of such meeting the Board shall provide a copy of meeting minutes to the Shareholders detailing the adopted Sustainability Goals along with a copy of the Company's Sustainability Management Standards.

5.2 Independent of each formal Board meeting convened in accordance with clause #[], the impact of the Company's Sustainability Goals shall be reviewed and evaluated by the Board on a quarterly basis (a "Sustainability Review Meeting"), which evaluation shall include the Board considering, without limitation:

- (a) the Company's progress in achieving its current Sustainability Goals;
- (b) whether any modifications should be made to the current Sustainability Goals;
- (c) whether any modifications should be made to the Sustainability Management Standards;
- (d) the effect of the current Sustainability Goals of the Company's Capital Purpose; and
- (e) any additional Sustainability Goals.

5.3 The Board shall provide copies of the meeting minutes from all Sustainability Review Meetings to Shareholders within 14 Business Days of the meeting date and any material changes to the Sustainability Goals shall be proposed to the Shareholders with such minutes in accordance with clause 5.1.

5.4 The Board shall provide any further information reasonably requested by Shareholders in respect of the Sustainability Goals, provided that such request is made by a Shareholder within 30 Business Days of receipt of the minutes provided under clause 5.3.

6. CARBON FOOTPRINT MANAGEMENT

- 6.1 Independent of the Board's obligation to ensure that the Business is conducted and developed in furtherance of its Sustainability Goals, the Board shall procure that the Business of the Company be conducted in a manner which is Carbon Neutral.
- 6.2 At the meeting to be convened under clause 5.1, the Board shall determine the Company's plan to achieve and maintain its Carbon Neutral status, [which should be determined by reference to ISO14001/the GHG Protocol], and should include, without limitation, a proposed Carbon Neutral Date (the "**Carbon Neutral Plan**"). The Board shall include details of the Carbon Neutral Plan with the Sustainability Management Standards to be provided under clause 5.1.
- 6.3 At each Sustainability Review Meeting the Board shall review and evaluate the Company's Carbon Neutral status and Carbon Neutral Plan and minutes of such meetings shall be provided to all Shareholders which shall include, without limitation, a measurement of the Company's Carbon Footprint at the date of such meeting.
- 6.4 The Board shall provide any further information reasonably requested by Shareholder in respect of the Company's Carbon Neutral Plan and Carbon Footprint, including but not limited to any information recommended to be disclosed by a Company under the GHG Protocol, provided that such request is made by a Shareholder within 30 Business Days of receipt of the minutes provided under clause 6.3.
- 6.5 At the end of the Company's financial year the Board shall provide the Shareholders with details of the Company's total Carbon Footprint for the year which information must also be included in the Directors' Report for that financial year.
- 6.6 During the continuance of this Agreement, the Company and each of the Shareholders agrees to undertake annual Carbon Offsetting at the following levels:
- (a) any Shareholder that is a body corporate [partnership or other undertaking] shall purchase carbon credits from a Carbon Offset Provider to offset not less than [500] metric tonnes of carbon dioxide equivalent units in each of the Company's financial years;
 - (b) any Shareholder that is an individual shall purchase carbon credits from a Carbon Offset Provider to offset not less than [50] metric tonnes of carbon dioxide equivalent units in each of the Company's financial years; and
 - (c) the Company shall purchase carbon credits from a Carbon Offset Provider to offset its total annual Carbon Footprint as determined in accordance with clause 11.5.

[ALTERNATIVE TO CLAUSE 6.6 – "During the continuance of this Agreement, the Company and each of the Shareholders agrees to undertake annual Carbon Offsetting at the following levels:

- In each the Company's financial years, each Shareholder shall purchase carbon credits from a Carbon Offset Provider to offset an amount of carbon dioxide equivalent units equal to a Shareholder's share of the total annual Carbon Footprint in the preceding year as determined in accordance with clause 6.5, where such Shareholder's share is determined by reference to a Shareholder's percentage holding of Shares in the Company; and
- the Company shall purchase carbon credits from a Carbon Offset Provider to offset its total annual Carbon Footprint as determined in accordance with clause 6.5.]

- 6.7 Evidence of each Shareholder's compliance with clause 6.6 should be provided to the CSO by each Shareholder as soon as reasonably possible following the completion each Company financial year but in any event by no later than one month after the end of such financial year. If applicable, evidence of the Company's compliance with clause 6.6 shall be provided with the minutes of the Board's first Sustainability Review Meeting in each financial year.
- 6.8 Without affecting any other right available to the Company under this Agreement, where a Shareholder fails to submit evidence of compliance with clause 6.6 by the date due and remains in default after having been given 14 Business Days' notice to comply, the Shareholder shall be considered to be in Material Breach of this Agreement and the provisions of clause 11 shall apply.
- 6.9 Notwithstanding clause 6.5, the obligations under clause 6.6 shall cease to apply in any financial year where the Company achieves Carbon Neutral status for the preceding financial year. In this event, each Shareholders shall be obliged to undertake Carbon Offsetting in the financial year but the quantum of carbon credits to be purchased by a Shareholder shall be at its own discretion. Each shareholder shall provide evidence of its Carbon Offsetting its CSO for the financial year and the Board shall be permitted to share such information will all Shareholders.

7. FURTHER ISSUE OF SHARES – PRE-EMPTION

- 7.1 Notwithstanding the foregoing, clause 12.1 shall not apply to benefit any Shareholder who has failed to comply with clause 6.6 and the Company may disregard any such Shareholder's Shares when computing the offer to be made under clause 12.[#].

8. TRANSFER OF SHARES – PERMITTED TRANSFERS

- 8.1 Notwithstanding the foregoing, clause 12.1 shall not apply to benefit any Shareholder that has failed to comply with clause 6.6 and the provisions of clause 13 shall apply to any purported transfer by such a Shareholder.

9. TRANSFER OF SHARES – PRE-EMPTION

- 9.1 Notwithstanding the foregoing, any Shareholder that has failed to comply with clause 6.6 shall not be considered an Eligible Shareholder for the purpose of clause [#] and the Board shall be under no obligation to offer any Sale Shares to such a Shareholder.

10. TRANSFER OF SHARES – VALUATION

- 10.1 “**Fair Value**” shall, in any case, be the price of the relevant Shares determined in writing by the Independent Accountant on the following bases and assumptions:
 - (a) [Insert normal valuation provisions [; and]
 - (b) Reflect a discount proportionate to the Company’s [consumption of Natural Capital in the previous 12 months][or time left to the Carbon Neutral Date] [Other alignment to sustainability goals that have not been achieved].

11. COMPULSORY TRANSFERS – MATERIAL CLIMATE BREACH

- 11.1 In the event that a Shareholder is (in the opinion of the Board, acting reasonably) in Material Climate Breach of any of the provisions of this Agreement (a “**Defaulting Shareholder**”), the Board may, in its absolute discretion, serve a notice on that Shareholder notifying him that he has been deemed, with immediate effect, to have served a Transfer Notice in respect of his or her Shares (together with any Shares held by Permitted Transferees of the Defaulting Shareholder), and the provisions of Clause 9 shall apply to any such transfer, save as provided by this Clause 11. In such event, the Shareholder (together with his or her Permitted Transferees) shall be treated as a Bad Leaver, in accordance with Clause [#], for the purposes of the valuation and transfer of his or her Shares[, provided that the Sale Price shall be at a 50% discount to Fair Value of the relevant Shares.

12. DRAG ALONG

- 12.1 Notwithstanding any other provision of this clause [], a Shareholder may refuse to be dragged or otherwise sell or transfer any or all their Shares to the Drag Purchaser if acting reasonably and in Good Faith she believes that the Drag Purchaser, its group or affiliates are operating in a way that can reasonably be considered a Material Climate Breach or otherwise contrary to the Sustainability Goals.

13. RESTRICTIONS

- 13.1 In addition to the restrictions set out in Clause [#] Shareholder undertakes to the other and separately to the Company that they will not at any time, without the prior consent of the Board, carry on or be employed, engaged, or interested in any business which has not publicly set a target of achieving Carbon Neutral status or is not otherwise operating with or towards Sustainability Alignment.

14. NOTICES

- (a) use recycled paper and non-solvent based ink when printing a notice;
- (b) if the notice is being delivered by hand, use a courier service which operates zero or ultra-low emission vehicles only; and
- (c) allow notices to be given electronically.

SCHEDULE 1

MATTERS REQUIRING SHAREHOLDER CONSENT

Company Operations

1. Enter into any contract, transaction or arrangement in relation to the Company that it is likely to impede the achievement of the Sustainability Goals, the Sustainability Management Plan or Carbon Neutral Plan.
2. Make any material change to the Sustainability Goals.
3. Make any change to the target Carbon Neutral Date.

[Lola & Harry's clause]

	The Origin Story
Child's names	Lola & Harry's Questionnaire
Full name	Climate Change Due Diligence Questionnaire
Practice Area / Sector	Corporate
Issue	Traditional due diligence questionnaires tend to focus on compliance with environmental laws and regulations and the associated consequences of a breach. Indeed, Buyers may not ask any questions regarding these matters of target companies, relying instead on more generic ‘compliance with laws’ type questions. This approach is not prudent in a world where “climate change has become a defining factor in companies’ long-term prospects” ⁴⁷ and can affect value across mainstream investment horizons.
Solution	Issue a due diligence questionnaire which asks the target company to provide information regarding a wide range of climate change-related issues going far beyond the standard compliance-focused questions.
Context	The risks of ignoring the potential impacts of climate change on a target company are obvious. Without doing so, the buyer may not fully understand or even have considered whether its investment or reputation could be jeopardised by climate change risks or how geared up the target company is to make the net-zero transition. As a result, it may be buying a business which is not viable or sustainable in the medium to long-term, however impressive its recent financial performance may be and regardless of its strategic importance. The buyer’s board will need to ensure that any acquisition aligns with their corporate strategy, which may include environmental, social and corporate governance targets against which they will be held to account. Further, directors could be in breach of their fiduciary duties should they “consciously disregard, or wilfully ignore, material financial risks associated with climate change and their potential impact on corporate risk management and strategy” ⁴⁸ .
Impact	Having this questionnaire available gives the opportunity for buyers to appraise how the target company currently approaches climate change matters (if it does at all). If the target company has not previously considered how climate change might have a future impact upon it, at least a buyer who asks these types of questions will be aware of that and can act accordingly. At one extreme, the buyer may pull out if the risks are too great or it might appropriate to seek a price cap or contractual indemnities; at the other, the buyer may wish to proceed anyway due to other commercial factors but will have properly evaluated the target company’s approach to climate change-related issues and be aware of the work that is required to be undertaken post-acquisition to align the target company with the wider group’s environmental strategy or manage climate change risks that are identified through the due diligence process.

⁴⁷ <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>

⁴⁸ <https://ccli.ouce.ox.ac.uk/wp-content/uploads/2019/10/CCLI-Directors%20%99-Liability-and-Climate-Risk-Comparative-Paper-October-2019>

Impact continued	<p>It is often said that “people buy people”, so management’s response to being issued with an extensive questionnaire regarding climate change could indicate how they will fit into the buyer’s culture post-acquisition. If they are dismissive of the request or do not have any awareness of climate change issues, perhaps they will not be a good fit either at a strategic or personal level. If they admit that they have not previously done enough to address climate change risks, their honesty and apparent willingness to change may encourage a buyer to give them the opportunity to develop the business in this regard.</p> <p>The questionnaire may also help the buyer understand if the target company has been ‘greenwashing’, which might present a reputational issue in the future.</p>
Stakeholders	<p>Buyers can choose to issue this questionnaire, whether in whole or in part, at their discretion. Practitioners should seek to understand buyers’ climate change strategy as part of their wider business relationship with their clients, and this should inform the advice they give about the types of questions they should be asking target companies as part of the due diligence process.</p> <p>The following stakeholders could be consulted for example to encourage their members to consider climate change factors when seeking to conduct corporate transactions (whether as buyers or sellers, investors or investees):</p> <ol style="list-style-type: none"> 1. Department for Business, Energy and Industrial Strategy (BEIS) 2. Confederation of British Industry 3. Federation of Small Businesses 4. British Private Equity & Venture Capital Association 5. Corporate financiers 6. Global Impact Investing Network 7. Precedent and know how providers 8. Professional support lawyers 9. Private practice firms 10. Company directors and in-house lawyers
Application	<p>Whilst this questionnaire has been drafted to be issued as a stand-alone information request, it could also be incorporated into other due diligence questionnaires (for example, Section 16 of PLC’s Legal due diligence information request: long form: share purchases (Environment)).</p> <p>Depending on the context of the acquisition, it may be appropriate to ask a limited amount of initial questions and go into more detail in additional information requests.</p> <p>Answers to this questionnaire should inform the type of warranties and indemnities that the buyer may wish to seek from the target company and/or investment requirements it may wish to impose in its investment agreement. Example green investment obligations are contained in Frank’s Clause in the First Edition of the Climate Contract Playbook (February 2020)⁴⁹. A number of the questions also link to other clauses from the Playbook (see footnotes 6-8 (inclusive)).</p>
Notes for users	<p>This questionnaire has been drafted to be issued for use in a corporate transaction where the buyer is acquiring the entire issued share capital of a single company. However, it can easily be adapted for other corporate transactions (for example, a share acquisition of a group of companies, an angel or private equity investment or an asset purchase of a going concern business) and can be used on corporate transactions in any jurisdiction.</p> <p>Questions 3-9 (inclusive) are sourced from or inspired by Principles for Responsible Investment: A guide on climate change for private equity investors (31 May 2016)⁵⁰.</p>

⁴⁹ <https://static1.squarespace.com/static/5d2f4d738d48be0001dee7c4/t/5e5587696eb9ca67a2b1040d/1582663542063/TCLP+-+Climate+Contract+Playbook+-+1st+Edition.pdf>

⁵⁰ <https://www.unpri.org/private-equity/a-guide-on-climate-change-for-private-equity-investors/122.article>

Climate Change Due Diligence Questionnaire

Introduction

We are making this information request as part of our due diligence review in connection with the proposed purchase by [company] or a special purpose acquisition company (“Buyer”) of the entire issued share capital of [target] (“Company”) from [shareholders] (“Sellers”, each being a “Seller”) agreed to be purchased under the heads of terms dated [date] (“Transaction”).

[Insert paragraph. re. strategic importance of climate change issues to the Buyer (for example by reference to its corporate strategy)]. Accordingly, the Buyer is making this information request to understand how the Company approaches climate change-related issues. Please note the Response Guidelines below and provide your answers in the spirit of openness and transparency – the Buyer does not expect the Company to be ‘perfect’ and would prefer you to be honest if particular areas have not been addressed to date.

Response Guidelines

[Standard Response Guidelines to be inserted by Buyer’s legal advisers]

This is an initial request for information and we may ask for further information in due course.

Responses to this information request are not disclosures for the purposes of any warranties in the legal documents relating to the Transaction.

Questionnaire

Please provide the information and copy documents requested below.

Question Number	Question	Response
1.	Details of how climate change issues are considered in the Company’s corporate strategy/business plan, including examples of where it has mapped against UN SDG 13 (Climate Action). Has the Company set a Net Zero Target, a Science Based Target ⁵¹ or a Carbon Budget? Does the company assess and disclose climate risks and opportunities with regard to the recommendations of the Task Force on Climate-related Financial Disclosure (TCFD)	[•]
2.	Copy of the Company’s sustainability policy and details of any key performance indicators it has set to measure its success against this policy.	[•]
3.	Copy of the Company’s climate change risk register. If not maintained, details of any known or reasonably foreseeable climate change risks to its business or possible legal, financial and commercial impacts of climate change on its business (for example, the impact of extreme weather on its supply chain, the potential for increased operating costs due to climate change, the potential for decreased revenues due to policy, regulatory, technological developments or stakeholder preferences in the economic transition to net zero, or climate-related liability risks). Details of any adaptation or resilience measures to mitigate against physical climate risks.	[•]

⁵¹ <https://sciencebasedtargets.org>

4.	Details of any evaluation the Company has undertaken on the potential impact of rising climate change-related costs on its business. Could increases in costs materially affect the profitability of its business and, if so, what mitigation efforts have been considered?	[•]
5.	Details of any current or proposed climate change laws and regulations that might impact upon the Company's business.	[•]
6.	Details of any scenario analysis or stress-testing of the Company's strategy and business model against plausible climate futures, including rapid or disruptive transition scenarios to a 'well-below' 2° or 1.5°C and warming scenarios above 4°C. Details of any other climate change-related current awareness/horizon activities undertaken by the Company.	[•]
7.	Which functions within the Company's business are responsible for climate change measurement, management and reporting? Please provide details of their roles and examples of recent measurements undertaken or reports submitted to the board.	[•]
8.	Does the Company have a board member or executive committee who is primarily accountable for climate risk measurement, management and reporting or a non-executive director with experience of improving sustainability and mitigating carbon footprint who advises it on these issues? If so, please provide details of their role and examples of recent board discussions that have been led by this board member/NED regarding climate change matters and their impact on the Company's business.	[•]
9.	(In so far as you are aware of them) Details of any actions that the Company's competitors are taking to mitigate or assess the risks and opportunities to their business arising from climate change, and the climate change impacts of the company. How do the Company's actions compare with the actions of its peers?	[•]
10.	Do you foresee any opportunities for the Company's business which will arise from the Net Zero transition? If so, please provide details.	[•]
11.	Details of how the Company integrates climate change factors into decision-making?	[•]
12.	Details of any board decisions taken where climate change factors were: (a) given a higher weighting than other commercial factor; or (b) disregarded in favour of other commercial factors.	[•]

13.	Details of any climate change-related due diligence the Company conducts when procuring goods or services.	[•]
14.	Details of any environmental obligations the Company includes in its contracts for the supply of goods or services ⁵² .	[•]
15.	Details of any [material] contracts which the Company considers to be ‘brown’ (i.e. they are not environmentally friendly or a more sustainable option was rejected due to other factors, such as economic factors) and any rights of termination or renegotiation for this reason ⁵³ .	[•]
16.	If the Company’s business involves the production and supply of goods, what, if any, steps have been taken to minimise environmental impacts of the company, for example, to use recycled goods/packaging where possible, to use environmentally friendly production methods, to offset carbon footprints, etc.	[•]
17.	If the Company’s business is operated online, are customers provided with the option to offset the carbon footprint of delivering the Company’s goods or services at the point of sale?	[•]
18.	Details of any activities the Company undertakes to offset its business’ carbon emissions.	[•]
19.	Details of any renewable energy technologies employed by the Company.	[•]
20.	Does the Company purchase utilities on renewable energy tariffs and/or use web hosts and cloud service providers which run their servers on renewable energy?	[•]
21.	Are any of the Company’s facilities certified to meet the requirements of an accredited green building programme?	[•]
22.	Copies of the EPC certificates for the Company’s facilities.	[•]
23.	Details of any data the Company collects about the environmental impact of its business. Does the Company have an environmental management system (EMS) covering waste generation, energy usage, water usage and carbon emissions?	[•]
24.	If the Company collects environmental data or maintains an EMS, have these led to environmental improvements or energy savings at the Company’s facilities? If so, by how much?	[•]
25.	Details of the steps the Company takes to recycle its waste.	[•]
26.	Does the Company send any of its waste to landfill?	[•]

⁵² For example, Teddy’s, Jessica’s, Owen’s and Zoë and Bea’s Clauses in the First Edition of the Climate Contract Playbook (February 2020)

⁵³ For example, Agatha’s and Annie’s Clauses in the First Edition of the Climate Contract Playbook (February 2020)

⁵⁴ For example, Eric’s and Chloe’s Clause in the First Edition of the Climate Contract Playbook (February 2020)

27.	Details of any single-use plastic products that the Company purchases or consumes on a regular basis.	[•]
28.	Details of any investments made by the Company in ethical funds.	[•]
29.	Is the Company's pension scheme invested in ethical funds by default?	[•]
30.	Details of any information provided or training given to the Company's employees regarding climate change-related issues in so far as they affect its business.	[•]
31.	Details of any other engagement activities the Company undertakes to educate its employees about climate change-related issues generally or consult with them about changes that could be made to business activities or practices which would have a positive environmental impact.	[•]
32.	Details of any 'green' employment benefits, terms or initiatives offered to the Company's employees and their level of take-up ⁵⁴ .	[•]
33.	Does the Company have any policies in place to reduce the environmental footprint caused by travel/commuting?	[•]
34.	Does the Company donate to environmental causes that are seeking to mitigate the impact of climate change?	[•]
35.	Is the Company aware of any business activities, practices or outcomes that have produced a substantial negative environmental impact? If so, please provide details.	[•]

[Nozomi's clause]

The Origin Story	
Child's name	Nozomi's clause
Full name	Net Zero Convertible Loan Note
Practica Area / Sector	Private Equity, Venture Capital, Finance, Corporate
Issue	Private and Public ⁵⁵ bridging finance and investment often doesn't explicitly align with UK government's Net Zero Policy target. Therefore, finance is mobilised to achieve business growth and economic activity without reference to long term policy and mitigation of climate change.
Solution	Make the qualifying criteria for receiving finance conditional on setting a Net Zero target aligned with UK Net Zero Policy and reflecting those obligation in a convertible loan note instrument that incentivises Net Zero performance by lowering the conversion discount.
Context	The UK government has set a target to be net zero by 2050 ⁵⁶ . Investors, particularly those co-investing with public funds, should be encouraged to incentivise management teams to set their own net zero targets in advance of legislation being enacted. ESG is becoming of increasing importance to the investment sector ⁵⁷ and alignment of climate change and Net Zero to investment helps meet some of these requirements.
Impact	This clause will cascade government policy into finance agreements and incentivise management teams and founders to put climate change and environmental objectives on the same platform as other business drivers. It will mobilise "green finance" and will allow investment managers to demonstrate how they are cascading ESG strategies into deal paperwork.
Stakeholders	<ol style="list-style-type: none"> 1. HM Treasury 2. British Business Bank and other managers of public investment 3. Directors and senior managers of investee companies 4. Investment managers 5. Private equity funds and other financial sponsors 6. British Venture Capital Association 7. Law firms 8. Industry bodies
Application	The proposed clause should be used in a standard unsecured convertible loan note that is in advance or a bridge to an equity investment round.

55 <https://www.gov.uk/guidance/future-fund>

56 <http://www.legislation.gov.uk/ukpga/2008/27/part/1/crossheading/the-target-for-2050>

57 <https://hbr.org/2019/05/the-investor-revolution>

<p>Notes for users</p>	<p>Specific tax advice should be taken on linking the loan note coupon or the conversion discount rate to business performance as this could result in the interest on the notes ceasing to be interest deductible. Depending on the context this may or may not be an issue as convertible loan notes are often used in early stage loss making businesses.</p> <p>The targets can be linked to established frameworks, e.g. ISO 14001:2015, and/or amended to align with the nature of a particular business or investor requirements.</p> <p>Consider requiring the provisions of Frank's clause to be cascaded into the shareholder/investment agreement at conversion of the loan notes.</p> <p>The principles of the Climate Coupon and conditionality linked to Net Zero should be included in any Heads of Terms preceding the loan note instrument.</p> <p>The loan instrument can be subject to the setting of a Net Zero target or if time does not allow a covenant can be given.</p> <p>The Net Zero Target Date is aligned with UK government policy of 2050 but if possible, should be brought forward to 2030 to align with IPCC timelines and advances in our understanding of the climate science and carbon budgets.</p> <p>The drafting assumes Notes, Noteholders, Shares, Relevant Fund Raising etc will be defined as normal.</p> <p>The discounts applied can be varied to suit the noteholder and risk profile but for illustration in this example the money is 50% 'cheaper' if Net Zero Targets are hit.</p> <p>The Noteholders shares could convert into a preferential or senior share class if Net Zero Targets have not been met and ordinary shares if the Net Zero Targets have been achieved.</p>
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Additional Definitions

Climate Coupon Discount Rate: means a rate of [6] per cent simple interest per annum

Climate Conversion Discount: shall mean a price per Share being [10] per cent lower than that offered to investors on a Relevant Fund Raising.

Default Conversion Discount shall mean a price per Share being [20] per cent lower than that offered to investors on a Relevant Fund Raising.

Default Interest Rate shall mean [12] per cent per annum, compounding monthly.

Environmental Targets means:

- (a) the Company achieving the Net Zero Target;
- (b) the establishment by the Company of a sustainability committee as a committee of the Board chaired by a non-executive director with experience of improving sustainability and mitigating carbon footprint;
- (c) the purchase by the Company of electricity for its offices [and factory] on a green tariff that uses 100% renewable energy; [and]
- (d) [others as applicable to the business].

Net Zero Professional: an independent environmental or net zero consultant that specialises in the creation of Net Zero targets.

Net Zero Target means that the balance between greenhouse gas emissions from all operations and greenhouse gas removals, accounted for by credits from either insetting or offsetting projects, is zero.

Net Zero Target Date: means the date by which the Net Zero Target will be met, such date to be no later than [2050]

Additional Clauses

2. CONDITIONS

- 2.1** The Notes shall be subject to the passing of all directors' and shareholders' resolutions of the Company to set and publicly announce a Net Zero Target Date.

3. UNDERTAKINGS

- 3.1** The Company undertakes to:

- 3.1.1** [publicly] set a Net Zero Target Date within 1 month of the date of this instrument;
- 3.1.2** provide the Noteholders with a plan to deliver the Environmental Targets within 6 months of the date of this instrument; and
- 3.1.3** inform the Noteholders as soon as reasonably practicable following achievement of the Net Zero Target and provide a written report from a Climate Professional confirming the same.

4. INTEREST

- 4.1** Until the Notes are repaid by the Company or converted into Shares, interest shall accrue on any outstanding Notes (so far as not converted) at the following rates:

- 4.1.1** Default Interest Rate until the Net Zero Target is achieved; and
- 4.1.2** Climate Coupon Discount Rate after the Net Zero Target is achieved and such achievement has been confirmed in a written report from a Net Zero Professional.

5. EVENTS RESULTING IN IMMEDIATE REDEMPTION

- 5.1** The Notes then in issue shall be immediately redeemed at the principal amount, together with interest on the Notes outstanding at the Default Interest Rate, if:

- 5.1.1** the Company does not set a Net Zero Target Date in accordance with the undertaking set out in clause []; or
- 5.1.2** the Company does or omit to do anything which could reasonably be expected to cause the Company to not achieve the Net Zero Target.

6. CONVERSION

- 6.1** All outstanding Notes shall automatically convert into fully paid Shares on occurrence of a Relevant Event with the following discounts:

- 6.1.1** Default Conversion Discount if the Net Zero Target has not been achieved; and
- 6.1.2** Climate Conversion Discount if the Net Zero Target has been achieved and such achievement has been confirmed in a written report from a Net Zero Professional.

[Zack's clause] NEW

The Origin Story	
Child's name	Zack's clause
Full name	SPA/Investment Agreement Disclosure of Climate Change Plans
Practice Area / Sector	Corporate
Issue	The commercial imperative for an investment or corporate deal often overrides climate considerations. As such there is a perceived lack of engagement of directors and managers in businesses to implement and work towards a net zero emissions economy.
Solution	By including pro-active disclosure requirements in M&A or investment transactions, it brings climate targets and aims to the forefront of both the minds of management of the target and the buyer/investors.
Context	In current transactions and in the context of granting warranties, it is usual for a seller or management of a company to 'confirm' that the company adheres to environmental and social regulations which apply to the relevant company, but there is no obligation on them to disclose/explain their plan for reaching a net zero emissions in their business (or what steps they have taken to date). The UK has enshrined into law a 2050 net zero target, meaning that businesses that operate the UK will need to transition to net zero to continue to survive and thrive in the UK economy. Other jurisdictions have net zero targets in law or policy, as governments take steps to implement the net zero goal in the Paris Agreement.
Impact	By including forced climate disclosure warranties in a share purchase agreement or investment agreement, a buyer or investor can assess the climate risks of the target. If the target discloses that it has not engaged in any actions to reduce its emissions/ does not have a net zero emissions plan in its business, then this could potentially negatively impact on price (resulting in management of the target taking a more proactive approach to climate matters).
Stakeholders	<ol style="list-style-type: none"> 1. Directors/Shareholders 2. Professional Support Lawyers 3. Precedent and Know-How Providers 4. Private Practice Firms 5. Corporate Financiers
Application	These disclosure clauses can be used alongside the Harry & Lola's DDQ.

Notes for users	There is reference in clause 2 to 'climate change risks' to the business, but no guidance as to what might constitute such risks. This may be fine to leave broad for the party relying on disclosures, but the disclosing party would likely want much more specificity and may wish to reference the climate change risks referred to in the recommendations of the Task Force on Climate-related Financial Disclosures, or any guidance from corporate or securities regulators in the jurisdiction.
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Additional Definitions

Carbon Budget means [x] the aggregate of [value] tonnes of Carbon Dioxide Equivalent of Greenhouse Gas emissions permitted within the period of [YEAR to YEAR].

Carbon Dioxide Equivalent (CO2e or CO2eq) means the standard metric measure used by the UN's Intergovernmental Panel on Climate Change (IPCC) to compare the emissions from various Greenhouse Gases (GHGs) on the basis of their global warming potential over a specified timescale in order to express a Carbon Footprint that consists of different GHGs as a single number.

Carbon Footprint means the amount in tonnes of Carbon Dioxide Equivalent of Greenhouse Gas emissions that will be released into the atmosphere as a result of the [manufacture/supply/use] of [the Product/Service] determined in accordance with international carbon reporting practice, being the accepted practice from time to time in relation to reporting for the purposes of the protocols to the United Nations Framework Convention on Climate Change.

Disclosure Letter means the disclosure letter in the agreed form having the same date as this Agreement from the [Sellers] addressed to the [Buyer].

Disclosure Documents means the Disclosure Letter and the USB memory stick containing the documents included in the electronic data room maintained by the [Sellers], an index of which is attached at Schedule [1] of the Disclosure Letter.

Greenhouse Gases (GHGs) means the natural and anthropogenic gases which trap thermal radiation in the earth's atmosphere and as specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) [or otherwise specified by the UNFCCC at the date of this agreement]. [These GHGs are currently: carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF6), and nitrogen trifluoride (NF3)].

Material Climate Contracts means any contract, agreement, arrangement or similar between the Company and a third party that:

- a) contributes to more than [5]% of the Company's [Scope 2 [or] Scope 3] emissions;
- b) a failure to perform by either party or a material breach by the counterparty could result in a material risk that the Company will not meet an interim target it has set as part of its Net Zero Target and/or exceed its Carbon Budget; or
- c) is identified as an onerous contract or otherwise relates to a material risk on the climate change risk register referred to in clause 2.

Net Zero Target means a net reduction of Greenhouse Gas emissions from all operations [including value and supply chains] to zero by a specified date so there is a balance between sources and sinks of Greenhouse Gases in a calendar year and for each subsequent year thereafter.

Clauses

1. Details of:
 - 1.1. how climate change issues are considered in the Company's corporate strategy and Business Plan (including examples of where the Company has mapped against the United Nations Sustainable Development Goal 13 (Climate Action));
 - 1.2. the Company's Net Zero Target (if any);
 - 1.3. the Company's Carbon Budget (if any); and
 - 1.4. if and how the Company assesses and discloses climate risks and opportunities with regard to the recommendations of the Task Force on Climate-related Financial Disclosure,
- are set out in the Disclosure Letter.
2. The Company has and maintains a climate change risk register (detailing (i) any known or reasonably foreseeable climate change risks to its business (including upstream in its supply chain and downstream in its value chain), (ii) possible legal, financial and commercial impacts of climate change on its business, and (iii) any mitigation measures of such impact which the Company could reasonably adopt) and is included in the Disclosure Bundle.
3. The Company has a board member or an executive committee who/which is primarily accountable for measurement, management and reporting on climate risks, and the Company's Net Zero Target and Carbon Budget (if any), and details of the board member or executive committee are Disclosed.
4. Details of how the Board integrates climate change factors into decision-making are set out in the Disclosure Letter.
5. Copies of all Material Climate Contracts are included in the Disclosure Bundle and identified as such.
6. [Where the Company conducts its business online, the Company offers customers, at the point of sale, the option to offset the Carbon Footprint.] OR [Details of opportunities offered by the Company to its customers to offset the Carbon Footprint are set out in the Disclosure Letter.]
7. Details of the steps the Company takes to reduce, recycle and reuse its waste (including plastic waste) are set out in the Disclosure Letter.
8. Details of engagement activities which the Company undertakes to educate and consult with its employees regarding climate change issues within the business of the Company are set out in the Disclosure Letter.

[Sienna's clause] *NEW*

The Origin Story	
Child's name	Sienna's clause
Full name	Green Acquisition Obligations
Practice Area / Sector	Corporate
Issue	Purchasers of 'green' companies may have no direct incentive to maintain the company's green credentials or behaviours post-acquisition, despite the seller's vision for that company.
Solution	A clause to be inserted into a Share Purchase Agreement (or Asset Purchase Agreement) requiring the purchaser to maintain/improve the target company's green credentials post acquisition, linked to payment from escrow if successful.
Context	<p>Sellers that have invested heavily (financially, reputationally or otherwise) to create a green company will want the company to continue to trade as a green company (and improve how it trades as a green company) post-acquisition. Regardless of the assurances given by a purchaser on acquisition, sellers will have limited control over this post-acquisition.</p> <p>The clause can be linked to the payment mechanics under the Share Purchase Agreement (or Asset Purchase Agreement), specifically payments from escrow. For example, the purchaser pays 110% of the purchase price and if in a year/X years later, the company is still meeting/has improved on its green credentials then the seller pays back 10% (indexed) of the purchase price to the purchaser i.e. if the purchaser upgrades a fleet of vehicles from diesel to hybrid/EV in year 1, this could unlock the extra 10% payment from escrow.</p>
Impact	The clause will encourage and financially incentivise the purchaser to invest in the sustainability of the target company post-acquisition. It ensures that the seller's vision for the company operating with due regard to the climate emergency is continued to be realised for a period of time post-acquisition.
Stakeholders	<ol style="list-style-type: none"> 1. Shareholders 2. Investors 3. Sustainability managers 4. Service providers and contractors 5. Precedent and know how providers 6. Professional support lawyers 7. In-house legal counsel 8. Private practice firms
Application	Share or asset purchase agreements.

<p>Notes for users</p>	<p>This entire clause should be subject to separate tax review following insertion into an SPA.</p> <p>The definition of 'Climate Targets' is to be negotiated and agreed between the parties as part of the Head of Terms process. These will be based on the unique circumstances of the Company, including the Seller's goals that they would like to incentivise and the Purchaser's capabilities and strategy for the Company.</p> <p>If any payment is made in accordance with clause 1.4, it is likely that the Escrow Account Manager will need to be informed.</p> <p>The drafting assumes other terms will be defined in the wider agreement such as 'Purchase Price.'</p>
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Additional Definitions

Buyer means [x]

Carbon Footprint Standards means internationally recognised standards to measure, manage and demonstrate carbon credentials covering:

- a) organisations (including but not limited to the BEIS Voluntary Reporting Guidelines and the GHG Protocol Corporate Accounting and Reporting Standard);
- b) (projects, product and services (including but not limited to PAS 2050:2011, ISO 14001 and the GHG Protocol Product Life Cycle Accounting and Reporting Standard); and
- c) events (including but not limited to PAS2060/ISO 20121).

Company means [x].

Climate Credentials means the following aspects of the Company:

- a) the existing carbon footprint of the Company, including particular projects, products or services, measured in accordance with a Carbon Footprint Standard;
- b) the sustainability committee of the Board chaired by a non-executive director with experience of improving sustainability and mitigating carbon footprint; and
- c) the purchase by the Company of electricity for its office [and factory] on a green tariff that uses 100% renewable energy [; and] [.]

Climate Report means a report provided by a licensed professional to be agreed by the Seller and commissioned by the Buyer [3] months prior to the Repayable Consideration Condition Date to determine whether the Buyer has satisfied the Repayable Consideration Conditions.

Climate Targets means:

- a) the Company [has demonstrated credible progress towards] achieving the Net Zero Target;

- b) the Company achieving pre-agreed reductions on its Carbon Footprint measured in accordance with one of Carbon Footprint Standards;
- c) [the establishment by the Company of a sustainability committee as a committee of the Board chaired by a non-executive director with experience of improving sustainability and mitigating carbon footprint;] [If not already a Climate Credential]
- d) [the purchase by the Company of electricity for its office [and factory] on a green tariff that uses 100% renewable energy;] [If not already a Climate Credential]
- e) [the use by the Group of web hosts and cloud service providers which run their servers on 100% renewable energy or have their own Net Zero Target;
- f) [the replacement of the Company's fleet of vehicles with electric vehicle equivalents or implementation other electrification projects];
- g) [the Company reviewing and updating supplier terms of engagement to procure goods and services from companies that have Net Zero Targets or other relevant climate targets] [the Company sourcing all consumables used by the Company from sustainable and ethical sources];
- h) [the Company implementing zero waste and circular economy practices and principles in existing operations and design of new products and services] [; and] [.]

Determination Date has the meaning given in paragraph 1.2 .

Escrow Account means [x].

Escrow Account Manager means [x].

Greenhouse Gases (GHGs) means the natural and anthropogenic gases which trap thermal radiation in the earth's atmosphere and as specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change ("UNFCCC") or otherwise specified by the UNFCCC, and which currently include: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).

Greenhouse Gas Emissions means the emission of Greenhouse Gases over a specified area and period of time [as calculated in accordance with the GHG Protocol Corporate Accounting and Reporting Standard, or such other equivalent and generally recognised greenhouse gas emission calculation methodology].

Net Zero Target means that the balance between greenhouse gas emissions from all operations and greenhouse gas removals, accounted for by credits from either insetting or offsetting projects, is zero.

Repayable Consideration means [x%] of [purchase price].

Repayable Consideration Conditions has the meaning given in paragraph 1.1.

Repayable Consideration Condition Date means [x] or such later date as may be agreed between the Seller and the Buyer.

Seller means [x].

Clauses

- 1.1 Payment of the Repayable Consideration by the Seller from the Escrow Account via a notification to the Escrow Account Manager is conditional on the following conditions (the **Repayable Consideration Conditions**) being satisfied (as determined by the Seller in its sole discretion in the absence of manifest error) or waived by the Seller on the Repayable Consideration Condition Date:
 - (a) that, for the period commencing on the date of this Agreement and ending on the Repayable Consideration Condition Date, the Company has maintained its Climate Credentials (as evidenced by the Climate Report); and
 - (b) that, for the period commencing on the date of this Agreement and ending on the Repayable Consideration Condition Date, the Company has made reasonable efforts to achieve the Climate Targets (as evidenced by the Climate Report).
- 1.2 Within [x] days of the Repayable Consideration Condition Date, the Seller shall notify the Buyer that:
 - (c) the Repayable Consideration Conditions have been satisfied or waived; or
 - (d) the Repayable Consideration Conditions have not been satisfied or waived, providing written evidence of its calculations and outlining its reasons as to why the Repayable Consideration Conditions have not been satisfied,

such date of notification being the **Determination Date**.

- 1.3 In the event the Seller fails to notify the Buyer by the Determination Date pursuant to paragraph 1.2 above the Seller shall be deemed to have notified the Buyer that the Repayable Consideration Conditions have been waived.
- 1.4 If the Repayable Consideration Conditions are satisfied or waived by the Seller pursuant to paragraphs 1.2 and 1.3 above, then the Seller shall pay to the Buyer the Repayable Consideration from the Escrow Account on the Repayable Consideration Payment Date within [10 Business Days] of the Determination Date.



[Callum & Theo's clause] *NEW*

The Origin Story	
Child's name	Callum & Theo's clause
Full name	Climate Standard Transaction Terms
Practice Area / Sector	Project Finance, Infrastructure, Corporate, International Development
Issue	Impact investors have financial leverage to accelerate climate solutions and encourage the building of climate-resilient infrastructure when financing private sector infrastructure in countries in Africa and Asia. Yet it is not clear where they can have the best effect and what the key climate issues are that they should be seeking to change through their transaction documents (taking into account geographical investment mandate and potential market constraints).
Solution	<p>Developing model climate terms and conditions (using TCLP's work to date as a starting point) that an impact investor financing private sector infrastructure in countries in Africa and Asia can incorporate into its standard documents.</p> <p>Model clauses that seek to support positive climate behaviour in the countries in which such investors operate that can be adopted as a market standard and which will change behaviour of markets, investors, clients and help ensure that impact investments are as aligned with the Paris Agreement as possible.</p>
Context	<p>The solution leverages the impact investment mandate (with development finance institutions, international finance institutions and the private sector) to incorporate climate terms into model contracts used for project finance, other infrastructure investments (e.g. investments in financial intermediaries) and other investments in general.</p> <p>It seeks to develop model clauses and climate sections for documents used at each stage of the life cycle of an infrastructure investment to deliver maximum climate impact but which are practical and realistic - e.g. due diligence, term sheet, loan/guarantee and other transaction documents.</p> <p>The model clauses: incorporate the climate positive behaviour expected of clients and their contractors (e.g. engineering, procurement and construction contractors); commit clients to supply data to be able to measure the climate impact of an investment; require projects to be designed in such a way that they are in line with climate change approaches, government climate change strategies and plans of the country(ies) where projects are located, helping achieve Nationally Determined Contributions; set out the remedies and sanctions appropriate for a breach of such clauses; and promote consideration of the resources required to implement, monitor and ensure compliance with climate obligations.</p>
Impact	These model clauses will provide support for the countries in which investments are made to transition to climate resilient and low carbon infrastructure in line with Paris Agreement commitments and help the country of investment achieve its Nationally Determined Contributions.

Stakeholders	<ol style="list-style-type: none"> 1. Development Finance Institutions 2. International Finance Institutions 3. Social Impact Investors 4. Other project financiers 5. Law Firms (in multiple jurisdictions) 6. LMA 7. Technical advisors 8. Infrastructure developers and other potential clients 9. Government
Application	<p>These are boilerplate climate clauses applicable to all transaction documents (whether for project or financial intermediary) but will need to be adapted for the relevant circumstances.</p> <p>There are clearly complicated geopolitical and local issues to consider alongside this clause which are outside of the scope of the drafting and will have to be considered as part of the specific deal or project.</p>
Notes for users	<p>Drafting will need to be adapted depending on project location and jurisdiction.</p> <p>These climate standard terms consolidate, adapt and supplement elements of (i) Lauren's clause; (ii) Bella's clause; and (iii) Harrison's clause. Relevant clauses from the Playbook can be added as appropriate for each transaction.</p> <p>Users can consider whether these can be pushed down to client's contractors and sub-contractors. There will be questions on the practical reality of this for the project team to consider.</p> <p>The practicality and funding of carbon measurement and reporting will need to be decided early on. This may need to be aligned to existing ESG reporting so as to avoid duplication. However, the Climate Standard Terms have been drafted as separate and distinct from other ESG clauses, including compliance with environmental law. This is to highlight that climate change is not just a matter of compliance (or breach) of environmental law, but requires separate consideration. Reps and warranties regarding environmental law are captured under ESG terms.</p> <p>The clauses are currently drafted on the basis that the carbon footprint of a financial intermediary includes the carbon footprint of any investments that the financial intermediary makes using impact investor's funding. These could be separated as required.</p>

Additional Recital

(A) The [Parties] wish to align the [operation and management of the Company] with Sustainability Goals.

Additional Definitions

Business Purpose means the [insert summary of activities of the Company].

Carbon Dioxide Equivalent (CO₂e or CO₂eq) means the standard metric measure used by the United Nation (UN)'s Intergovernmental Panel on Climate Change (IPCC) to compare the emissions from Greenhouse Gases on the basis of their global warming potential over a specified timescale in order to express a Carbon Footprint that consists of different Greenhouse Gases as a single number.

Carbon Footprint means the amount in tonnes of carbon dioxide and Carbon Dioxide Equivalent of GHG Emissions that will be released into the atmosphere as a result of [the Project] [any Eligible Transaction funded by the Company using monies provided by the [Shareholder] [Lender] [Guarantor]] determined in accordance with the [Shareholder] [Lender] [Guarantor]'s carbon footprint methodology and carbon footprint tool.

[**Carbon Footprint Standard** means an internationally recognised standard for quantifying, monitoring, reporting and validating or verifying of GHG Emissions.]

Carbon Neutral means that every tonne of Greenhouse Gases emitted or caused to be emitted in relation [to the Project] [any Eligible Transaction funded by the Company using monies provided by the [Shareholder] [Lender] [Guarantor]] has been replaced by an equivalent amount of Greenhouse Gases removed in the same period by Carbon Offsetting.

Carbon Neutral Date means the date set by the Board for [the Company] [any Eligible Transaction funded by the Company using monies provided by the [Shareholder] [Lender] [Guarantor] to achieve Carbon Neutral status, which date should not be more than 24 months from the date of [INSERT].

Carbon Neutral Plan means the [Company]'s plan to achieve and maintain Carbon Neutral status, [which should be determined by reference to the GHG Protocol], by the Carbon Neutral Date.

Carbon Offsetting means the purchase of a quantity of carbon credits equal to the amount of the Company's GHG Emissions from a Carbon Offset Provider.

Climate Standard Terms means clauses [●] to [●].

Climate Change Standard means the climate change standard of the [Shareholder] [Lender] [Guarantor] as attached at Schedule [●].

Carbon Offset Provider means the following organisations [INSERT].

Climate Monitoring Report means a report on:

- a) the Company's compliance with the Sustainability Management Standard, the [Shareholder(s)] [Lender(s)] [Guarantor(s)] Climate Change Standard or, as the case may be, identifying any non-compliance or failure and the actions being taken to remedy such non-compliance or failure;
- b) achievement of the Sustainability Goals; and
- c) the Project Climate Information,

substantially in a form agreed between the Company and the [Shareholder] [Lender] [Guarantor], as such form may be amended or supplemented from time to time with the consent of the [Shareholder] [Lender] [Guarantor].

Eligible Transaction means a transaction that:

- a) is permitted under the [Company] [Shareholder] [Lender] [Guarantor]'s Investment Policy; [and]
- b) [is a Paris Aligned Investment][.][; and]
- c) is permitted under the Climate Change Standard.

GHG Protocol means the current GHG Protocol Corporate Accounting and Reporting Standard produced by the World Resources Institute and the World Business Council for Sustainable Development, amongst others.

Greenhouse Gases (GHG or GHGs) means the natural and anthropogenic gases which trap thermal radiation in the earth's atmosphere and as specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (**UNFCCC**) or otherwise specified by the UNFCCC, and which currently include: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).

GHG Emissions means emissions of Greenhouse Gases over a specified area and period of time, each expressed as a total in units of carbon dioxide equivalent (CO₂e) [and calculated in accordance with the GHG Protocol Corporate Accounting and Reporting Standard or such other equivalent and generally recognised greenhouse gas emission calculation methodology]

Material Climate Breach means a breach of [clause [insert clause numbers] of this Agreement][a Climate Standard Term] which is material with regard to all relevant circumstances, including, without limitation:

- a) using monies provided by the [Shareholder] [Lender] [Guarantor] for any transaction other than an Eligible Transaction;
- b) increasing the Company's Carbon Footprint;
- c) missing the Carbon Neutral Date;
- d) taking any action that is contrary to the achievement of the Sustainability Goals.

Nationally Determined Contribution (NDC(s)) means the stated successive intended goals of a country to reduce its national emissions and adapt to the impacts of climate change as required under Article 4, paragraph 2 of the Paris Agreement.

Paris Agreement means the climate change agreement among countries to reduce Greenhouse Gas Emissions to (i) limit the global average temperature increase to well below 2°C (3.6°F) above pre-industrial levels by the year 2100; (ii) pursue efforts to limit the global average temperature rise to 1.5°C (2.7°F) above pre-industrial levels; and (iii) reach net zero emissions in the second half of this century, agreed during the 21st Conference of the parties to the UNFCCC in Paris in 2015.

Paris Aligned Investment means an investment that is (i) aligned with the mitigation goals set out in articles 2.1 and 4.1 the Paris Agreement to limit the global average temperature increase and reach net zero emissions, and (ii) does not undermine the implementation of NDCs of signatories to the Paris Agreement.

[**Project** means [insert summary info about project to be financed.]

Project Climate Information means (i) the Carbon Footprint of [the Company] [and] [the Carbon Footprint of any Eligible Transaction funded by the Company using funding [provided] [borrowed by it] [guaranteed] under this [Agreement] [Facility] [Deed]; and (ii) the Total GHG Emissions.

Scope 1 GHG Emissions means all direct GHG Emissions [within the physical boundary of the Project] [of any Eligible Transaction funded by the Company using monies provided by the [Shareholder] [Lender] [Guarantor]], including emissions produced by the combustion of fossil fuels, by industrial processes, from company vehicles and by fugitive emissions, such as refrigerants or methane leakage [other Project specific examples to be added].

Scope 2 GHG Emissions means indirect GHG Emissions from electricity purchased [by the Company for the Project] [by third parties in relation to any Eligible Transaction supported by the Company using monies provided by the [Shareholder] [Lender] [Guarantor]].

Scope 3 GHG Emissions means all indirect GHG Emissions emitted from sources which are not directly owned or controlled by the Company, excluding Scope 2 GHG Emissions, which occur both upstream and downstream in the Company's supply or value chain in relation to [the Project] [any Eligible Transaction funded by the Company using monies provided by the [Shareholder] [Lender] [Guarantor]].

Total GHG Emissions means the sum of the Scope 1 GHG Emissions, the Scope 2 GHG Emissions and Scope 3 GHG Emissions.

Sustainability Alignment means the operation of the Company in a manner which (i) supports the achievement of the goals of the Paris Agreement, as set out in Articles 2.1 and 4.1 of the Paris Agreement, (ii) supports the achievement one or more of the United Nations Sustainable Development Goals as set out in the 2030 Agenda for Sustainable Development and (iii) supports [insert name of country]'s achievement of its Nationally Determined Contribution.

Sustainability Goals means the Company's goals and objectives for achieving and maintaining Sustainability Alignment as set by the Board from time to time in accordance with clause [4.1], which shall include:

- a) [developing a Carbon Neutral Plan;]
- b) [the Company achieving pre-agreed reductions on its Carbon Footprint measured in accordance with one of the Carbon Footprint Standards;]
- c) [the Company moving to a renewable energy provider when such source of energy is available;]
- d) [undertaking projects to electrify operations, including, where possible, transport and logistics;]
- e) [adopting a travel and expense reimbursement policy that puts climate change and sustainability at the forefront and has been approved by the CSO (as defined in clause [2.1]);]

- f) [the purchase by the Company of electricity for its offices [and factory] on a green tariff that uses 100% renewable energy;]
- g) [the use by the Company of web hosts and cloud service providers which run their servers on 100% renewable energy or have their own Carbon Neutral target date;]
- h) [reviewing and updating supplier terms of engagement to procure goods and services from companies that have Net Zero Targets or other relevant climate targets] [sourcing all consumables used by the Company from sustainable and ethical sources;]
- i) [implementing zero waste and circular economy practices and principles in existing operations and design of new products and services;]
- j) [creating KPIs to measure the Company's impact of its operations [; and] [.]
- k) [others as applicable].

Additional Clauses

1. BUSINESS OF THE COMPANY

- 1.1 The parties will each act in good faith to promote the best interests of the Company and ensure that its business is conducted and developed in accordance with good business practice and any business plan for the Company that is adopted from time to time in furtherance of (in equal emphasis): (i) the Business Purpose; and (ii) the Sustainability Goals.

2. COMPANY SUSTAINABILITY GOALS

- 2.1 Within [30] Business Days from the date of execution of this Agreement the Board shall meet and resolve to:
 - (i) adopt the Company's Sustainability Goals;
 - (ii) adopt a framework sustainability management standard by reference to [INSERT SPECIFIC STANDARD] (the **Sustainability Management Standard**); and
 - (iii) appoint a member of the Board to be the Company's Chief Sustainability Officer (**CSO**).

Within [14] Business Days following the date of such meeting the Board shall provide a copy of meeting minutes to the [Shareholder] [Lender] [Guarantor] detailing the adopted Sustainability Goals along with a copy of the Company's Sustainability Management Standard.

- 2.2 The impact of the Company's Sustainability Goals shall be reviewed and evaluated by the Board on a quarterly basis (a **Sustainability Review Meeting**), and such evaluation shall include the following:

- a) the Company's progress in achieving its current Sustainability Goals;

- b) whether any modifications should be made to the current Sustainability Goals;
 - c) whether any modifications should be made to the Sustainability Management Standards;
 - d) the effect of the current Sustainability Goals on the Company's Business Purpose;
 - e) a measurement of the Company's Carbon Footprint as at the date of each meeting; and
 - f) any additional Sustainability Goals.
- 2.3 The Board shall provide copies of the meeting minutes from all Sustainability Review Meetings and the measurement of the Company's Carbon Footprint as at the date of each meeting to the [Shareholder] [Lender] [Guarantor] within [14] Business Days of the meeting date and any material changes to the Sustainability Goals shall be proposed to the [Shareholder] [Lender] [Guarantor] with such minutes in accordance with clause [2.1].
- 2.4 The Board shall provide any further information reasonably requested by the [Shareholder] [Lender] [Guarantor] in respect of the Sustainability Goals, including but not limited to any information recommended to be disclosed by a company under the GHG Protocol, provided that such request is made by the [Shareholder] [Lender] [Guarantor] within 30 Business Days of receipt of the minutes provided under clause [2.3].
- 2.5 At the end of each Financial Year the Board shall provide the [Shareholder] [Lender] [Guarantor] with details of the Company's total Carbon Footprint for the Financial Year, which information must also be included in the Directors' Report for each Financial Year.
- 2.6 The Company shall purchase carbon credits from a Carbon Offset Provider to offset its total annual Carbon Footprint within [30] days of the end of each Financial Year.
- 2.7 Evidence of the Company's compliance with clause [2.6] shall be provided to the [Shareholder] [Lender] [Guarantor] with the minutes of the Board's first Sustainability Review Meeting in each Financial Year.
- 2.8 [The Company shall ensure that any investment or equivalent activity that it makes using [funding] provided by the [Shareholder] [Lender] [Guarantor] is on equivalent terms to these Climate Standard Terms.]

3. PURPOSE/USE OF FUNDS/USE OF GUARANTEE

- 3.1 The [Borrower] [Company] shall apply all amounts [provided] [borrowed by it] [guaranteed] under this [Agreement] [Facility] [Deed] exclusively to Eligible Transactions.

4. RESTRICTIONS

- 4.1 In addition to the restrictions set out in clause [#] the [Shareholder] [Lender] [Guarantor] undertake[s] [to the other] [and separately to the Company] that they will not at any time, without the prior consent of the [Shareholder] [Lender] [Guarantor], carry on or be employed, engaged, or interested in any business which has not publicly set a Carbon Neutral Target Date or has not set its own sustainability goals or equivalent.]

5. CONDITIONS PRECEDENT FOR FIRST DISBURSEMENT

- 5.1 The Company shall have adopted a Sustainability Standard and Sustainability Goals satisfactory to the [Shareholder] [Lender] [Guarantor].
- 5.2 The Company shall have appointed a member of the Board to be the CSO.
- 5.3 [Insert any climate risk mitigation measures required and not addressed during DD phase e.g. climate risk insurance]

6. CONDITIONS PRECEDENT FOR SUBSEQUENT DRAWDOWNS AND REPEATING REPRESENTATIONS

- 6.1 The Company continues to have in place a Sustainability Standard and Sustainability Goals satisfactory to the [Shareholder] [Lender] [Guarantor].
- 6.2 The Company continues to have a CSO.
- 6.3 No Material Climate Breach has occurred in the twelve months preceding the date of [this Agreement].
- 6.4 The Company shall comply with the Climate Change Standard set out in Schedule [●] as amended from time to time; and shall implement such policies, procedures and systems as may be required to monitor compliance with the Climate Change Standard and to prevent liability under any Applicable Law.
- 6.5 The Company is in compliance with its climate reporting obligations under clause [2] and clause [8].
- 6.6 [Any Others]

7. INSPECTIONS

- 7.1 The Company shall, if deemed necessary by the [Shareholder] [Lender] [Guarantor] (acting reasonably), permit representatives of the [Shareholder] [Lender] [Guarantor], their accountants and their other advisors free access to all premises, persons, documents and other information at all reasonable times and on reasonable notice to carry out climate monitoring visits/audits and/or investigations into any failure or potential failure by the Company to comply with the Sustainability Management Standard, the Sustainability Goals or the Climate Change Standard at the Company's cost, unless such visits or investigations do not reveal any material non-compliance by the Company.
- 7.2 The Company shall cooperate in good faith with the representatives of [Shareholder] [Lender] [Guarantor], its accountants and its other advisors to assist any such representatives in preparing reports for the [Shareholder] [Lender] [Guarantor] on [climate matters] in connection with the Project; and shall implement the recommendations of such representatives in order to address any non-compliance with [climate matters] by the Company.

8. REPORTING

- 8.1 [The Company commits to supporting the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD) and to include climate related disclosures in its financial reporting from [insert date]].
- 8.2 The Company will include an assessment of climate risk (including physical risks associated with a changing climate and transition risks associated with the change to a net zero emissions economy, for example as a result of amendments to NDCs) in (i) the Climate Monitoring Report and (ii) its business continuity plan, including an assessment of resilience and whether the Company and its activities are “climate proof”. A copy of the Company’s Business Continuity Plan will be updated and provided to the [Shareholder] [Lender] [Guarantor] within [30] days of the end of each Financial Year.
- 8.3 The Company shall, as soon as it is available, but in any event no later than [90] days after the end of each [quarter for Construction Period]/ [financial year for Operating Period], deliver to the [Shareholder] [Lender] [Guarantor] the Climate Monitoring Report.

9. ONGOING COVENANTS

- 9.1 The Company shall:
 - a) continue to have adopted a Sustainability Standard and Sustainability Goals satisfactory to the [Shareholder] [Lender] [Guarantor];
 - b) have a CSO;
 - c) [have in place [insurance for its material climate risks (where insurable) at a level acceptable to the [Shareholder] [Lender] [Guarantor] and shall have provided a copy of the certificate of insurance to the [Shareholder] [Lender] [Guarantor] within [30] days of [insert event]];]
 - d) comply with the Climate Change Standard set out in Schedule [●] as amended from time to time; and shall implement such policies, procedures and systems as may be required to monitor compliance with the Climate Change Standard and to prevent liability under any Applicable Law.
 - e) be in compliance with its climate reporting obligations under clause [2] and clause [8].

10. BREACH

Option 1:

Breach of the Climate Standard Terms is an Event of Default. The remedy periods for breach of the Climate Standard Terms will be the same as for breach of other material terms and conditions of the Transaction Documents.

Option 2:

If the [Shareholder] [Lender] [Guarantor] considers that a Material Climate Breach has (or may have) occurred, the [Shareholder] [Lender] [Guarantor] shall inform the Company and shall have the right to investigate the breach (or possible breach) using its own staff or such third parties as it may consider necessary. Within [30] days of the [Shareholder] [Lender] [Guarantor] informing the Company that it considers that a Material Climate Breach has (or may have) occurred, the [Shareholder] [Lender] [Guarantor] and the Company shall meet to discuss possible remedies for the Material Climate Breach. If the investigation by the [Shareholder] [Lender] [Guarantor] finds that there has been a Material Climate Breach, the costs of such investigation will be borne by the Company.

11. NOTICES

- a) use recycled paper and non-solvent based ink when printing a notice;
- b) if the notice is being delivered by hand, use a courier service which operates zero or ultra-low emission vehicles only; and
- c) allow notices to be given electronically.

SCHEDULE 1

MATTERS REQUIRING [SHAREHOLDER(S)] [LENDER(S)] [GUARANTOR(S)] [PARTIES] CONSENT

Company Operations

1. Enter into any contract, transaction or arrangement in relation to the Company and the Project that it is likely to impede the achievement of the Sustainability Goals, the Sustainability Management Plan [and the Carbon Neutral Plan].
2. Make any material change to the Sustainability Goals.
3. Make any change to the Carbon Neutral Date.

ADDITIONAL CLIMATE CLAUSES FOR SHAREHOLDERS AGREEMENT

Additional Clauses

1. [SHARE OPTION SCHEME]

- 1.1 The Founders undertake to include terms in the Share Option Scheme that make the vesting of Shares under the Share Option Scheme conditional upon the Company having achieved its Sustainability Goals on or before the agreed vesting date.]

2. [COMPULSORY TRANSFERS – MATERIAL CLIMATE BREACH]

- 2.1 In the event that the Company or a Shareholder is (in the opinion of the Board or the other Shareholders [as applicable, acting reasonably]) in Material Climate Breach (a Defaulting Shareholder), the Board may, in its absolute discretion, serve a notice on that Shareholder notifying him that he has been deemed, with immediate effect, to have served a Transfer Notice in respect of their Shares (together with any Shares held by Permitted Transferees of the Defaulting Shareholder), and the provisions of clause [8] shall apply to any such transfer, save as provided by this clause 10. In such event, the Shareholder (together with his or her Permitted Transferees) shall be treated as a Bad Leaver, in accordance with clause [#], for the purposes of the valuation and transfer of his or her Shares[, provided that the Sale Price shall be at a 50% discount to Fair Value of the relevant Shares].

3. [DRAG ALONG]

- 3.1 A Shareholder may refuse to be dragged or otherwise sell or transfer any or all their Shares to a Drag Purchaser if acting reasonably and in good faith they believe that the Drag Purchaser, its group or affiliates are operating in a way that can reasonably be considered a Material Climate Breach or otherwise contrary to the Sustainability Goals.]



[Harrison's clause]

	The Origin Story
Child's name	Harrison's clause
Full name	Green Loan "Starter Pack"
Practice Area / Sector	Finance
Issue	<p>There is significant shortfall in funding to meet the UN Sustainable Development Goals⁵⁸.</p> <p>The UK will need to mobilise large volumes of capital investment in clean energy and sustainable infrastructure to meet our Net Zero obligations⁵⁹.</p> <p>There is a general absence of publicly available template wording available for use in green loans. More green loans need to be issued to mobilise green finance.</p>
Solution	A form of commonly used and widely accepted green loan clauses that are aligned to the Green Loan Principles by reference to Loan Market Association (LMA) style drafting.
Context	<p>Green loan frameworks (such as the Green Loan Principles) (as defined below) exist that provide high-level principles that support the development and integrity of green loan products.</p> <p>Currently, sophisticated financial institutions that are capable of designing tailored documentation aligned to green loan frameworks are most familiar with such green loan documentation. However, this has created a demand gap in which borrowers that are unfamiliar with green finance or green loans may generally fall into.</p>
Impact	<p>The availability of a standardised set of green loan terms by reference to the existing Green Loan Principles should make green loan products accessible to a broader sweep of borrowers and increase demand from borrower-side finance requests, thus mobilising more green finance to fight climate change.</p> <p>Borrowers and their counsel will benefit from market standard drafting establishing how the Green Loan Principles can be applied to market standard loan facilities from both a commercial and a legal perspective.</p> <p>In addition, lenders and their counsel will benefit from a clear framework for monitoring the adherence of borrowers to the "green" purposes of the proceeds of the loan thus avoiding the potential for green washing.</p>
Stakeholders	<p>The key stakeholders that the Green Loan "Starter Pack" is aimed at are:</p> <ol style="list-style-type: none"> 1. Borrowers (particularly borrowers with limited experience of "green" products or green finance) 2. Precedent and Know-How providers 3. Private practice firms 4. Professional support lawyers 5. Lenders

⁵⁸ <https://www.undp.org/content/undp/en/home/blog/2017/7/13/What-kind-of-blender-do-we-need-to-finance-the-SDGs-.html>

⁵⁹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/617/61704.htm>

Application	<p>The proposed template wording can form part of standardised green loan documentation to be disseminated widely by Know-How providers. It can function as a base for commercial and legal negotiations between lenders, borrowers and their respective legal advisors but the relevant clauses should be further tailored to the needs of each commercial situation.</p>
Notes for users	<p>Interpretation:</p> <p>Listed principles one to four below are in accordance with the Green Loan Principles.</p> <p>Section references are in accordance with an LMA style credit agreement (for ease of reference we have looked to the definitions and numbering under the LMA form of Senior Multi-Currency Term and Revolving Facilities Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine) dated 20 March 2020) (the LMA Form). Other terms used but not defined herein are as defined in the LMA Form.</p> <p>It is not intended for this Green Loan “Starter Pack” to be sector or transaction specific and accordingly the following language should be tailored to account for any industry or transaction specific market standard inclusions or requirements. Any section references and terms taken from the LMA Form and used herein should be replaced throughout, as may be applicable.</p> <p>Drafting Notes:</p> <p>As noted above, this Green Loan “Starter Pack” is intended to provide a framework for negotiation and, in particular, provide guidance for borrowers who are unfamiliar with green loan documentation but the underlying proposed clauses should be amended to reflect the commercial realities of each transaction. For the purposes of this Green Loan “Starter Pack” we have contemplated a term loan facility that will only have one utilisation. In the case of a facility that contemplates multiple utilisations, the proposed drafting should be tailored accordingly.</p> <p>The drafting allows “light green” or “hard green” options for defaults and events of default.</p> <p>In particular, we would also like to highlight that it is a matter for the relevant parties to determine the following:</p> <ol style="list-style-type: none"> 1. Repeating Representations (Clause 25.34 and 25.35) and the ability to modify the Green Loan Framework: The extent to which the “green” and “environmental” representations are repeated throughout the life of the loan. The contractual consequences in terms of a default, an event of default, an acceleration or a declassification for any breach, or misrepresentation, of such clauses will be an important topic of discussion between the parties. The parties should also be encouraged to discuss the ability to undertake complementary “green” projects in the same structure and any representation which repeats should not serve to restrict that business development goal provided that is commercially agreed. Similarly, the ability to amend the Green Loan Framework (as defined below) (whether with all lender or majority lender consent) to react to regulatory evolution in this area should be considered and discussed at an early stage;

<p>Notes for users continued</p>	<ol style="list-style-type: none"> 2. Environmental Representations (Clause 25.35): If there is commercial appetite for the outlined general environmental representations to be incorporated and whether any breach of these should trigger a default, an event of default, an acceleration or a declassification. These have been included so that this Green Loan "Starter Pack" can provide as much insight as possible into the area of "green" and "sustainable" finance for borrowers. Please note that such environmental representations do not illustrate a settled market position and should be negotiated on a case-by-case basis accordingly; 3. Certification (Clause 26.8) and Second Party Opinion: What will qualify the borrower's "green" use of proceeds and the Eligible Green Project as suitable for a sector-specific Certification (as defined below) (as distinct from any statements that the underlying loan complies with the core components of the Green Loan Principles) by an accredited certification provider. Similarly, what will meet the requirements of procuring a Second Party Opinion (as defined below) from an external reviewer in relation to the borrower's alignment with core tenants of the Green Loan Principles will vary. Further, we note that the requirements of the delivery of a Certification and a Second Party Opinion are not yet settled market positions and note that these requirements will require further expenses for the borrower. For purposes of this Green Loan "Starter Pack" we have assumed that obtaining a Certification and Second Party Opinion will be possible (both by reference to the Green Loan Framework and practically in order to satisfy the relevant condition precedent to utilisation) and commercially desirable for both the borrower and the credit providers; and 4. Declassification and Events of Default (Clause 29.22 to Clause 29.25): What will constitute a "green" breach and whether such breach will trigger a default, event of default, acceleration or merely a declassification of the loan as a "green loan." For purposes of this Green Loan "Starter Pack" we have included, in brackets, provisions relating to declassifications and events of default to encourage the parties to discuss these topics early in any process as it is important that these provisions are tailored and negotiated on a case-by-case basis. It should be emphasized that the consequences of a breach of Clause 3.1, relating to the "green" use of proceeds, will be a key commercial point for the lenders as this is a material determining factor in a green loan and without adequate protections the possibility of "green washing" will be prevalent. Conversely, parties should be alive to the argument that a declassification event, as a result of a technical breach of the Green Loan Framework, should not serve to end an otherwise commercially viable project and accordingly other remedies, short of a declared default, may be appropriate.
	<p>Possible Future Developments</p> <p>Further iterations of the Green Loan "Starter Pack" could include:</p> <ul style="list-style-type: none"> • changes of pricing mechanics (e.g. margin increases) for the occurrence of defaults or events of default; • carbon offsetting or sequestration remedies or "cures"; and/or • a pre-populated list of alternatives for Schedule A to inspire the parties to think creatively in relation to the types of assets that capital can be allocated to and the methods of sustainably developing such assets. <p>The drafting can be also tailored by the parties specifically to address specific net zero ambitions.</p>

Definitions:

Certification has the meaning set out in Clause 26.8.

Deposit Account means an account held by the Borrower and designated as such in accordance with Clause 28.34.

Eligible Green Project means:

- (a) debt or other financing arrangements provided by the Group to finance, refinance or invest projects or to maintain or purchase physical assets;
- (b) related and supported expenditures for projects or physical assets;
- (c) physical assets or projects owned by the Borrower including but not limited to the following: equipment, machinery, infrastructure and/or buildings in construction redevelopment, upgrades, expansion and similar asset value creation or enhancement activity; and
- (d) existing and operational equipment, machinery, infrastructure, buildings or land, in each case, to the extent such projects comply with the Eligibility Criteria.

Eligibility Criteria means the Borrower's established process of project evaluation and selection eligibility criteria for as stated in the Green Loan Framework in adherence to the Green Loan Principles.

Environmental Claim means any notice, claim, proceeding or investigation in connection with any Environmental Law and/or Environmental Permit by any person or entity.

Environmental Laws means all applicable environmental laws and regulations in the jurisdiction(s) in which the Borrower operates and conducts business, which relate to the protection and/or violation of environmental issues.

Environmental Permits means any applicable permit, licence, certification and/or other authorisation that is required under any Environmental Laws to carry out the Group's operations and business.

External Reviewer means [external reviewer] or any other consultant and/or institution with recognized expertise in environmental sustainability or other aspects of the administration of a green loan appointed as such by the Borrower with the prior written consent of the Agent (acting on the instructions of all the Lenders).

Green Facility means the term loan facility made available under this Agreement as described in Clause 2.1 (The Facilities) for purposes of financing an Eligible Green Project adhering to the Green Loan Principles and has not been declassified as such by the Lenders pursuant to Clause 29.23 (Declassification Events).

Green Loan means a loan that is made or to be made under the Green Facility or the principal amount outstanding for the time being of that loan.

Green Loan Framework means the green framework prepared by the Parent and agreed by the Agent (acting on the instructions of the Lenders) describing the Eligible Green Project by reference to the Green Loan Principles, in substantially the form of Schedule A (Green Loan Framework). For the avoidance of doubt, the Green Loan Framework does not constitute a Finance Document.

Green Loan Principles means the high-level framework of market standards and guidelines, published by the Loan Market Association together with the Asia Pacific Loan Market Association (APLMA) and the Loan Syndications and Trading Association (LSTA) (and with the support of International Capital Market Association), providing a consistent methodology for use across the green loan market. The Green Loan Principles are available at: https://www.lma.eu.com/application/files/9115/4452/5458/741_LM_Green_Loan_Principles_Booklet_V8.pdf

Green Project Costs means all fees, costs and expenses, stamp, registration and other Taxes incurred by the Borrower or any other member of the Group in connection with the Eligible Green Project.

Second Party Opinion means the opinion issued by the External Reviewer or such other party that is acceptable to the Arrangers and Borrower, addressed to the Arrangers and the Agent, in form and substance satisfactory to the Agent (acting on the instructions of all of the Lenders), confirming the conformity of the Green Loan Framework to the Green Loan Principles.

PRINCIPLE ONE: USE OF PROCEEDS

1.1 Typical Clause to Review: Purpose (Clause 3 of the LMA Form)

3. Purpose

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Green Facility towards:

- (a) The financing of the Eligible Green Project in accordance with the Green Loan Framework; and
- (b) payment of the Green Project Costs (other than periodic fees) [as described in the Funds Flow Statement].

PRINCIPLE TWO: PROJECT EVALUATION AND SELECTION

1.2 Typical Clauses to Review: Conditions to Utilisation (Clause 4 of the LMA Form), Part IB of Schedule 2 (Conditions Precedent) of the LMA Form and/or Conditions Subsequent (Clause 28.41 of the LMA Form)

3. Finance Documents

- (a) The Green Loan Framework executed by the Parent and any other member of the Group party thereto.

7. Other Documents and Evidence

- (b) A certificate of the Parent (signed by a director) detailing the estimated Green Project Costs and certifying that the Green Project Costs have been applied or will[, simultaneously with the first utilisation under this Agreement] be applied for the same purposes as the proceeds of the Green Facility.
- (c) A copy of the Borrower's and/or the Group's environmental sustainability strategy materials (to the extent not already included in the Green Loan Framework).
- (d) [A Second Party Opinion].
- (e) [The Certification].

PRINCIPLE THREE: MANAGEMENT OF PROCEEDS

1.3 Typical Clause to Review: Representations (Clause 25 of the LMA Form)

25.34 Green Loan Representations

- (a) The Green Loan Framework shall set out:
 - (i) the environmental sustainability objectives of the Borrower in respect of the Eligible Green Project;
 - (ii) the process by which the Borrower determines how the Eligible Green Project aligns with the Eligibility Criteria; and
 - (iii) any related eligibility criteria, including, if applicable, exclusion criteria, or any other process applied to identify and manage potentially material environmental risks associated with the Eligible Green Project.
- (b) Save as disclosed in writing to the Agent and the Arranger prior to the date of this Agreement the factual information provided by the Borrower as set out in the Green Loan Framework is true and accurate in all material respects as at the date it was provided or (as the case may be) as at the date the information is expressed to be given.
- (c) The Eligible Green Project conforms to the Eligibility Criteria and Green Loan Framework.
- (d) The Borrower has an established process to identify and manage potentially material environmental risks associated with the Eligible Green Project.

25.35 Environmental Representations

- (e) It has not been convicted for material violations of any Environmental Law.
- (f) No material Environmental Claim has been commenced or threatened against it.
- (g) All information provided by it for the purposes of environmental due diligence by the Lenders is true and accurate in all material respects as at the date such information was provided and is not misleading in any material respect.

1.4 Typical Clause to Review: General Undertakings (Clause 28 of the LMA Form)

28.42 Green Loan Undertakings

- (a) The Borrower shall comply with the provisions of the Green Loan Framework in all material respects.
- (b) The Borrower shall not amend or agree to amend the Green Loan Framework in a way which is materially adverse to the Lenders.
- (c) The Borrower shall ensure that the proceeds of the Green Facility are credited to a Deposit Account and notified to the Agent and withdrawals from such account are notified to the Agent in accordance with the provisions of Clause 26 (Information Undertakings) by the Borrower.
- (d) The Borrower shall maintain policies and procedures to enable it to track the allocation of funds towards the Eligible Green Project and to monitor and evaluate the Eligible Green Project on an on-going basis, in accordance with the Green Loan Framework.

1.5 Typical Clause to Review: Group Bank Accounts (Clause 28.34 of the LMA Form)

28.34 Group Bank Accounts

- (a) The Borrower shall ensure that [by no later than the Closing Date] [within [number of] days of the Closing Date] a deposit account shall be opened and maintained in the name of the Borrower and shall be designated as a Deposit Account.
- (b) The Borrower will allocate the proceeds of the Green Facility to the Deposit Account for application in accordance with the Green Loan Framework.
- (c) Proceeds of the Green Facility not required to be immediately applied in accordance with the Green Loan Framework shall not be invested in any greenhouse gas intensive, highly polluting or non-green energy intensive projects. The unallocated proceeds may:
 - (i) be invested in or refinanced by any [other green financing instruments][green bonds] issued in accordance with [third party green standards]; or
 - (ii) be invested in money market instruments with a credit rating of [applicable rating], until such time as they are applied to the Eligible Green Project in accordance with the Green Loan Framework.

1.6 Typical Clause to Review: Events of Default (Clause 29 of the LMA Form)

29.22 Green Loan Audits

- (a) If the Borrower fails to comply with any of the provisions referred to in:
 - (i) Clause 3.1 (Purpose);
 - (ii) Clause 25.34 (Green Loan Representations);
 - (iii) Clause 26.8 (Green Loan Reporting);
 - (iv) Clause 28.34 (Group Bank Accounts); or
 - (v) Clause 28.42 (Green Loan Undertakings),
 the Agent (acting on the instructions of the Lenders) may carry out any third party verifications or audits, at the cost of the Borrower, that it considers reasonably necessary to confirm compliance by the Borrower with its obligations under this Agreement.
- (b) The terms of reference of any audit pursuant to this Clause 29.22 shall be subject to the prior approval of the Agent (acting on the instructions of the Lenders).
- (c) The findings of any audit carried out pursuant to this Clause 29.22 shall, in the absence of manifest error, be conclusive and binding on all Parties.

29.23 Declassification Events

If:

- (d) any representation, warranty or statement made or given or deemed to be made or given by the Borrower relating to a Green Loan is or provides to have been incorrect or misleading in any material respect when made or deemed to be made;
- (e) the Borrower fails to comply with any of the provisions referred to in:
 - (i) Clause 3.1 (Purpose);
 - (ii) Clause 25.34 (Green Loan Representations);
 - (iii) Clause 26.8 (Green Loan Reporting);
 - (iv) Clause 28.34 (Group Bank Accounts);
 - (v) Clause 28.42 (Green Loan Undertakings); or

- (vi) Clause 29.22 (Green Loan Audits),

and if such failure to comply is capable of remedy but not remedied by the Borrower within [number of] Business Days (or such longer period as the Agent may agree in writing) of the earlier of (i) the Agent giving written notice of the failure to comply to the Borrower and (ii) the Borrower becoming aware of the failure to comply; or

- (f) the Certification of the Eligible Green Project is revoked or not renewed by the External Reviewer,

each outstanding Green Loan shall be declassified as such by the Arrangers.

29.24 Consequences of Declassification

From the date on which any Loan is declassified as a Green Loan in accordance with Clause 29.23 (Declassification Events), the Borrower shall, as soon as reasonably practicable and in any event within [number of] days of notice from the Agent (acting on the instructions of the Lenders):

- (g) cease representing in all internal and external communications, marketing or publications that each outstanding Loan is a Green Loan; and
- (h) ensure that all material, publications and information it publishes relating each outstanding Loan no longer refers to it as a Green Loan.

[For the avoidance of doubt, any breach of this Clause 29.24 in relation to such Green Loan shall [not] constitute an Event of Default.]

29.25 [[No] Event of Default

The Parties hereby acknowledge and agree that:

- (i) a breach or non-compliance with:
 - (i) Clause 3.1 (Purpose);
 - (ii) Clause 25.34 (Green Loan Representations);
 - (iii) Clause 26.8 (Green Loan Reporting);
 - (iv) Clause 28.34 (Group Bank Accounts);
 - (v) Clause 28.42 (Green Loan Undertakings);
 - (vi) Clause 29.22 (Green Loan Audits); or
- (j) a Declassification Event,

[does not][will] constitute a Default or Event of Default, [and the Borrower shall not bear any liability to the Finance Parties as a result of the occurrence of any of the foregoing].]

PRINICIPLE FOUR: REPORTING

1.7 Typical Clause to Review: Information Undertakings (Clause 26 of the LMA Form)

26.7 Information: Miscellaneous

- (e) The Borrower shall supply to the Agent promptly, upon becoming aware of them, details in writing of:
 - (i) any non-compliance with Clause 28.42 (Green Loan Undertakings);
 - (ii) any Environmental Claim against it which is current, pending or threatened; and
 - (iii) any fact or circumstance which may result in any Environmental Claim being commenced or threatened against it.

26.8 Green Loan Reporting

- (a) [The Borrower shall promptly, upon receiving the same, deliver to the Agent a copy of the certificate issued by [accredited sector specific external certification provider] (certified true by a director of the Borrower) certifying that the Eligible Green Project has been given a rating of at least [applicable rating] by [accredited sector specific external certification provider] (the Certification).]
- (b) The Borrower shall from time to time at its own cost and expense supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests) any such relevant information which in the opinion of the Borrower relates to:
 - (i) a material change to the Eligible Green Project financed with the Green Loan;
 - (ii) the Green Loan Framework; and/or
 - (iii) [any status of the issuance of the Certification for the Eligible Green Project,]

which, in each case, would reasonably be expected to result in a Declassification Event or the declassification of the Green Loan in accordance with the provisions of Clause 29.23 (Declassification Events).

26.9 Management Presentations

The directors of the Borrower shall hold [amount of] [physical meeting(s)][conference calls] with the Lenders per calendar year at such times and locations as (a) notified in writing to the Lenders and (b) accepted by the Lenders (acting reasonably) to discuss the contents of the information provided pursuant to Clause 26.8 (Green Loan Reporting).

Schedule A

This Green Loan Framework sets out how the Borrower will utilise the Green Loan in the amount of [amount] provided by the Lenders under a facility agreement dated [date].

The Green Loan raised in accordance with this Green Loan Framework is in alignment with the Eligibility Criteria.

1. Use of Proceeds

[Description of use of proceeds to be included]

2. Project Selection and Evaluation

[Description of Eligible Green Project selection and evaluation to be included]

3. Management of Proceeds

[Description of the management of the proceeds of the Green Facility to be included]

4. Reporting

[Description of the reporting of the Green Loan to be included]

The Borrower will notify the Arrangers within [number of] Business Days of being aware of any non-compliance of this Green Loan Framework. [The Parties acknowledge and agree that, solely as a result of failure to perform or comply with this Green Loan Framework, no Default or Event of Default will occur.]

[Casper's clause] *NEW*

The Origin Story	
Child's name	Casper's clause
Full name	Sustainability-Linked Loans
Practice Area / Sector	Finance, financial services & capital markets
Issue	To support the UK's target for net zero emissions by 2050 and the environmental, social and governance ("ESG") goals of business, sustainability-linked principles ("SLPs") will need to be incorporated into lending products as a whole, not just purely into green projects. At present, there are no model clauses to incorporate SLPs into traditional finance documentation, standard terms and conditions and finance products.
Solution	Drafting model clauses, as a set of optional riders divided into product categories and ESG goals, to incorporate SLPs into traditional financing documents, standard T&Cs and finance products. These can be stored centrally by industry bodies (e.g. the LMA/ICMA) and developed periodically along with changing ESG policies.
Context	Part of the UK's Green Finance Strategy is to transform financial services, 'moving beyond just funding green projects to ensuring climate and environmental factors are fully integrated into mainstream financial decision making across all sectors and asset classes.' ⁶⁰ The LMA produced its guidance on SLPs in May 2020 ⁶¹ and ICMA produced its guidance on SLPs in June 2020 ⁶² . The EU have also recently agreed a common language to identify what economic activities can be considered environmentally sustainable (the EU Taxonomy) ⁶³ . There is increasing demand for this type of financing in the market with circa. \$67.2 billion of loans with pricing linked to ESG targets issued in Europe, the Middle East and Africa in 2H 2019 and the increase of ESG-linked bonds rising circa. \$10 billion per annum globally since 2017 ⁶⁴ .
Impact	The drafting will mobilise more climate finance. The availability of industry approved terms allowing for finance linked to sustainable goals will make it easier for lenders to focus their lending practices to achieve ESG goals. This will encourage businesses and borrowers across the economy as a whole to transform their business into a more sustainable structure. For example, traditional development loans to be linked to environmental targets such as use of materials and other targets focusing on how buildings can be built in an environmentally friendly way.

⁶⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/820284/190716_BEIS_Green_Finance_Strategy_Accessible_Final.pdf

⁶¹ https://www.lma.eu.com/application/files/5115/8866/8901/Sustainability_Linked_Loan_Principles_V032.pdf

⁶² <https://www.icmagroup.org/assets/documents/Regulatory/Green-Bonds/June-2020/Sustainability-Linked-Bond-PrinciplesJune-2020-100620.pdf>

⁶³ https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/eu-taxonomy-sustainable-activities_en

⁶⁴ <https://www.bloomberg.com/news/articles/2019-10-16/esg-debt-a-user-s-guide-to-ever-growing-menu-of-bonds-and-loans>

Stakeholders	<ol style="list-style-type: none"> 1. Lenders and intermediaries across the economy (including clearing banks, investment fund managers, specialist financers and so on) to incorporate SLPs into the decision making and mechanics of how they lend to their customers. 2. Industry bodies such as the LMA to assist in the production, approval and incorporation of model clauses into industry standard/approved documentation. 3. Corporates and borrowing institutions across the economy including businesses (including SMEs and large corporations) and public/publicly backed institutions to agree to incorporate SLPs into their borrowing behaviours, business models and institutional policies. 4. Lawyers and law firms to encourage use of precedent clauses into the drafting of finance documents and an environmentally friendly procedures for documenting the loan (for example, less paper used during a transaction). 5. Government agencies and the Bank of England to support lenders with the backing of sustainability linked loans.
Application	<p>These draft clauses are for use in any facility agreement, particularly based on a standard LMA Facility Agreement, which will include a sustainability linked loan.</p> <p>They are designed to incorporate the Sustainability Linked Principles produced by the LMA⁶⁵ in May 2020 and provide model drafting for one or more sustainability linked facilities.</p> <p>Ideas for further development:</p> <ul style="list-style-type: none"> • Development of Information Undertakings and Events of Default related to sustainability linked facilities. • Development of calculations of Margin or other performance related metrics based on sustainability linked targets to incentivise borrowers. • Development of Conditions Precedent and Sustainability Compliance Certificates to include industry standard/recognised documentation or information (for example, ESG4 ratings). • Development of Sustainability Performance Targets with suggested ESG targets for typical corporates.
Notes for users	<p>Other teams have produced template clauses for use in green loans. When using Casper's clause, it would be beneficial to consider other relevant clauses including Nozomi's clause and Harrison's clause, as well as those in the market.</p> <p>When using Casper's clause, it is envisaged that users will incorporate into the SLP principles relevant common language and other market/regulatory concepts/principles such as the EU taxonomy to create harmony within the market.</p> <p>The drafting below contains some specific reporting requirements. The parties may wish to provide for the Obligors to provide general ESG information prior to entry into the agreement and/or annually. If so, the parties could agree to the form of questionnaire and set out in the appendix linked to an annual reporting obligation or condition precedent.</p> <p>The example targets provided are indicative only. These can be amended, replaced or supplemented as appropriate to meet a variety of lender portfolio or borrower specific objectives. They must be clearly measurable and capable of verification by the Sustainability Experts without excessive time and costs being incurred, and must include timelines, e.g. reduce X to level A by date M, and to level B by date N.</p>

⁶⁵ https://www.lma.eu.com/application/files/5115/8866/8901/Sustainability_Linked_Loan_Principles_V032.pdf

Table of contents for Casper's clause

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Definitions:

Achieved SPT means a Sustainability Performance Target in respect of which the Group is categorised as being in current compliance with by the Sustainability Coordinator in the most recent Sustainability Performance Evaluation.

Business Site means [x].

Sustainability Performance Evaluation means a Sustainability Performance Evaluation provided by the Sustainability Coordinator pursuant to Clause 1.4(a) (Sustainability Performance Evaluations).

Margin means

- (a) [x] per cent. per annum; or
- (b) in relation to a Sustainability Linked Facility, as may be amended from time to time following a Sustainability Performance Evaluation by way of a Sustainability Linked Margin Decrease or a Sustainability Linked Margin Increase.

Sustainability Compliance Certificate means a certificate substantially in the form set out in Schedule [x] (Schedule 3 - Form of Sustainability Compliance Certificate).

Sustainability Coordinator [or Sustainability Structuring Agent] means [x].

Sustainability Expert means an auditor, environmental consultant, independent ratings agency or industry professional qualified in relation to one or more Sustainability Performance Targets, in each case as agreed between the Sustainability Coordinator, Sustainability Linked Borrowers and Majority Lenders from time to time (or in the absence of such agreement, as selected by the Sustainability Coordinator).

Sustainability Linked Borrower means each Borrower under a Sustainability Linked Facility.

Sustainability Linked Facility means each Facility designated as a sustainability linked facility made available under this Agreement as described in Clause [1.1] (Sustainability Linked Facilities).

Sustainability Linked Margin Decrease means a decrease in the Margin to [x] per cent. per annum.

Sustainability Linked Margin Increase means an increase in the Margin to [x] per cent. per annum.

Sustainability Objectives means the sustainability objectives as detailed in the Sustainability Strategy.

Sustainability Performance Evaluation means an evaluation provided by the Sustainability Coordinator substantially in the form set out in Schedule [x] (Schedule 4 - Form of Sustainability Performance Evaluation).

Sustainability Performance Target or SPT means the key performance indicators set out in Schedule [x] (Schedule 2 - Sustainability Performance Targets).

Sustainability Performance Test Date means [31 March, 30 June, 30 September and 31 December] in each calendar year.

Sustainability Strategy means a report provided by each Sustainability Linked Borrower detailing:

- (a) its Sustainability Objectives;
- (b) a business plan detailing how it will achieve its Sustainability Objectives and comply with the Sustainability Performance Targets for the duration of each Sustainability Linked Facility; and
- (c) the fees, costs and expenses, stamp, registration and other Taxes incurred or to be incurred by it or any other member of the Group in connection with achieving the Sustainability Performance Targets.

1. Sustainability Linked Facilities

1.1 [Facility/Tranche] [x] and [Facility/Tranche] [x] are each designated as a Sustainability Linked Facility.

1.2 Sustainability Performance Targets

Each Sustainability Linked Borrower undertakes to use its [best/all reasonable] endeavours to achieve its Sustainability Performance Targets.

1.3 Sustainability Performance Evaluations

- (a) Within [15] Business Days of receipt of a Sustainability Compliance Certificate pursuant to Clause 3.1(a) (Sustainability Compliance Certificate), the Sustainability Coordinator shall provide the Sustainability Linked Borrower with a Sustainability Performance Evaluation detailing, based on the Sustainability Compliance Certificate provided to it and any further discussions it has had with Sustainability Experts in accordance with Clause 4.1(d), the amount of SPTs which shall be designated as Achieved SPTs for the purposes of calculating a Sustainability Linked Margin Decrease or Sustainability Linked Margin Increase pursuant to Clause 1.3(b) below.
- (b) Each Sustainability Performance Evaluation shall determine whether a Sustainability Linked Margin Decrease or a Sustainability Linked Margin Increase shall apply during the period from the date of its delivery to the Sustainability Linked Borrower until the delivery of the next Sustainability Performance Evaluation to the Sustainability Linked Borrower, using the following calculations:
 - (i) If the number of Achieved SPTs is over [75%] of the total number of Sustainability Performance Targets as at the most recent Sustainability Performance Test Date then the Sustainability Linked Margin Decrease shall apply; or

- (ii) If the number of Achieved SPTs is under [50%] of the total number of Sustainability Performance Targets as at the most recent Sustainability Performance Test Date then the Sustainability Linked Margin Increase shall apply.

2. Representations

- 2.1 [Insert sustainability linked reps and warranties – for example, correct form of reporting on SPTs etc.]

3. Information Undertakings

3.1 Sustainability Compliance Certificate

- (a) Within 30 days of each Sustainability Performance Test Date, each Sustainability Linked Borrower shall supply the Sustainability Coordinator with a Sustainability Compliance Certificate setting out (in form and substance satisfactory to the Sustainability Coordinator, acting reasonably) computations and information in compliance with this Clause 3.1.
- (b) Each Sustainability Compliance Certificate shall:
 - (i) report on achievement of each Sustainability Performance Target as at the relevant Sustainability Performance Test Date, including identification of those it considers to be Achieved SPTs;
 - (ii) include any relevant report, certification, rating or any other information as contemplated by any Sustainability Performance Target;
 - (iii) detail any assumptions used by the Sustainability Linked Borrower in its preparation and include reasonable supportive evidence as to compliance with each Sustainability Performance Target, which has been independently verified by a Sustainability Expert (the costs of which shall be paid by the Sustainability Linked Borrower); and
 - (iv) be signed by two directors of the Sustainability Linked Borrower.
- (c) Each Sustainability Compliance Certificate provided to the Sustainability Coordinator pursuant to this Clause 3 [(including any documentation produced in the verification of the relevant Sustainability Compliance Certificate pursuant to clause 3.1(b)(iv) above)] shall be made available for public access on its website by the Sustainability Linked Borrower [within [3] months of delivery to the Sustainability Coordinator][, and additionally shall be referenced in its annual [sustainability] report].
- (d) [If requested to do so by the Majority Lenders, the Sustainability Coordinator shall discuss the Sustainability Compliance Certificate or any aspect of it with the relevant Sustainability Expert[s] and report on those discussions to the Lenders. The Sustainability Linked Borrower shall pay the reasonable costs and expenses of the Sustainability Coordinator and the Sustainability Experts so incurred.]

3.2 Sustainability Strategy

Each Obligor shall:

- (e) at all times and in all material respects procure that the Group's business is carried out in accordance with the Sustainability Strategy; and

- (f) not, without the prior written consent of the Sustainability Coordinator (acting in accordance with the instructions of the Majority Lenders), amend or vary the Sustainability Strategy.

3.3 [Energy Performance Certificate of each [Business Site]]

[Each Obligor shall, within [15] Business Days of a request by the Sustainability Coordinator, supply or shall procure to supply to the Sustainability Coordinator of a copy of the current energy performance certificate(s) in respect of each Business Site or evidence that an energy performance certificate is not required under any applicable law or regulation.]

3.4 Environmental, social and corporate governance

- (g) Together with delivery of each Sustainability Compliance Certificate the Company shall notify the Sustainability Coordinator (in reasonable detail) of any incident relating to environmental, social and corporate governance of the Group that has occurred that is in any material respect a breach or non-compliance with its Sustainability Objectives [or any ESG report delivered to the Sustainability Coordinator].
- (h) Upon delivery of each set of its Annual Financial Statements each Obligor shall deliver to the Agent information as may be reasonably requested by the Sustainability Coordinator (acting on the instructions of the Majority Lender) regarding the environmental, social and corporate governance of the Group which is not already contained in such Annual Financial Statements.

4. Events of Default

- 4.1 [A Sustainability Linked Borrower has Achieved SPTs which are less than [25%] of the total number of Sustainability Performance Targets as at any Sustainability Performance Test Date, as indicated by a Sustainability Performance Evaluation.]
- 4.2 A Sustainability Linked Borrower fails to provide a Sustainability Compliance Certificate pursuant to Clause 4.1(a) for a Sustainability Performance Evaluation.

5. Conditions Subsequent

- 5.1 [Publication of each Sustainability Strategy and the Sustainability Performance Targets within [x] Business Days of the date of this Agreement on the relevant Sustainability Linked Borrower's website.]

Schedule 1 – Conditions Precedent

1. Sustainability linked documentation
 - (a) The Sustainability Strategy initialled by the Sustainability Linked Borrower and the Sustainability Coordinator.
 - (b) A certificate of the Sustainability Linked Borrower (signed by a director) confirming the Sustainability Linked Borrower will undertake its business activities and apply proceeds of the Sustainability Linked Facilities in accordance with the Sustainability Strategy.
 - (c) A report by the relevant Sustainability Experts addressed to the Lenders confirming that the Sustainability Strategy is appropriate, uses suitable and reasonable methodologies and that its application can reasonably be expected to enable the Sustainability Linked Borrower to achieve its Sustainability Performance Targets
 - (d) [Insert specific SPTs CPs/Industry standard reports/ratings related to SPTs etc.]

Schedule 2 - Sustainability Performance Targets

SPT	Category	SPT Targets
SPT1	Energy efficiency	<ul style="list-style-type: none"> [Improvements in the energy efficiency rating of buildings and/or machinery owned or leased by the borrower.] [e.g. before end of March 2021]
SPT2	Greenhouse gas emissions	<ul style="list-style-type: none"> [Reductions in greenhouse gas emissions in relation to products manufactured or sold by the borrower or to the production or manufacturing cycle.]
SPT3	Renewable energy	<ul style="list-style-type: none"> [Increases in the amount of renewable energy generated or used by the borrower.]
SPT4	Water consumption	<ul style="list-style-type: none"> [Water savings made by the borrower.]
SPT5	Affordable housing	<ul style="list-style-type: none"> [Increases in the number of affordable housing units developed by the borrower.]
SPT6	Sustainable sourcing	<ul style="list-style-type: none"> [Increases in the use of verified sustainable raw materials/supplies.]
SPT7	Circular economy	<ul style="list-style-type: none"> [Increases in recycling rates or use of recycled raw materials/supplies.]
SPT8	Sustainable farming and food	<ul style="list-style-type: none"> [Improvements in sourcing/producing sustainable products and/or quality products (using appropriate labels or certifications).]
SPT9	Biodiversity	<ul style="list-style-type: none"> [Improvements in conservation and protection of biodiversity.]
SPT10	Global ESG assessment	<ul style="list-style-type: none"> [Improvements in the borrower's ESG rating and/or achievement of a recognised ESG certification.]
SPT11	Employee Training Programme	<ul style="list-style-type: none"> [Training staff on sustainability/climate issues and how to improve on the borrower's footprint]
SPT12	[x]	<ul style="list-style-type: none"> [x]
SPT13	[x]	<ul style="list-style-type: none"> [x]

Schedule 3 - Form of Sustainability Compliance Certificate

To: [x] as Sustainability Coordinator

From: [Sustainability Linked Borrower]

Dated:

Dear Sir or Madam,

**[Sustainability Linked Borrower] – Facility Agreement
dated [x] (the “Agreement”)**

1. We refer to the Agreement. This is a Sustainability Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Sustainability Compliance Certificate unless given a different meaning in this Sustainability Compliance Certificate.
2. Sustainability Linked Borrower’s report on its Sustainability Performance Targets as at most recent Sustainability Performance Testing Date

SPT	SPT Category	Developments during period since the immediately preceding Sustainability Performance Testing Date	Self-evaluation of Sustainability Linked Borrower
SPT1	Energy efficiency	[x]	[Achieved SPT] [Unachieved SPT]
SPT2	Greenhouse gas	[x]	[Achieved SPT] [Unachieved SPT]
SPT3	emissions	[x]	[Achieved SPT] [Unachieved SPT]
SPT4	Renewable energy	[x]	[Achieved SPT] [Unachieved SPT]
SPT5	Water consumption	[x]	[Achieved SPT] [Unachieved SPT]
SPT6	Affordable housing	[x]	[Achieved SPT] [Unachieved SPT]
SPT7	Sustainable sourcing	[x]	[Achieved SPT] [Unachieved SPT]
SPT8	Circular economy	[x]	[Achieved SPT] [Unachieved SPT]
SPT9	Sustainable farming and food	[x]	[Achieved SPT] [Unachieved SPT]
SPT10	Biodiversity Global ESG assessment	[x]	[Achieved SPT] [Unachieved SPT]

Signed:
	Director	Director
	of	of
	<i>[Sustainability Linked Borrower]</i>	<i>[Sustainability Linked Borrower]</i>

[Insert applicable certification language]⁶⁶

[include Sustainability Expert's verification reporting]

.....
for and on behalf of

[name of Sustainability Expert of the Sustainability Linked Borrower]

⁶⁶ To be agreed with the Sustainability Linked Borrower, Sustainability Expert and the Lenders prior to signing the Agreement

Schedule 4 - Form of Sustainability Performance Evaluation

To: [x] as Sustainability Linked Borrower

From: [x] as Sustainability Coordinator

Dated:

Dear Sir or Madam,

[Sustainability Linked Borrower] – Facility Agreement

dated [x] (the “Agreement”)

1. We refer to the Agreement. This is a Sustainability Performance Evaluation. Terms defined in the Agreement have the same meaning when used in this Sustainability Performance Evaluation unless given a different meaning in this Sustainability Performance Evaluation.

2. We have evaluated your Sustainability Compliance Certificate dated [Date]. [It is our assessment is that [SPT][, SPT][and SPT] are Achieved SPTs.] [It is our assessment that no SPTs are Achieved SPTs/]

3. [Sustainability Linked Borrower] has achieved [x]% of its Sustainability Performance Targets.

4. As [Sustainability Linked Borrower] has achieved [[75%] or more][[50%] or less][between [50%] and [75%]] of its Sustainability Performance Targets, [Sustainability Linked Borrower] [will have a Sustainability Linked Margin [Increase][Decrease]][no Sustainability Linked Margin Increase or Sustainability Linked Margin Decreased] shall be applied.

5. Margin from the date of this certificate until delivery of the next succeeding certificate (“Temporary Margin Interest Period”) shall be [x] per cent. per annum.

Signed:
	Authorised Signatory
	of
	<i>[Sustainability Coordinator]</i>



[Dottie's clause]

	The Origin Story
Child's name	Dottie's clause
Full name	Extended warranties and undertakings in respect of environmental position and climate change risk in underwriting and sponsor agreements
Practice Area / Sector	Corporate, Finance, Capital Markets
Issue	<p>Warranties and undertakings in underwriting and sponsor agreements are not required to go into significant and granular detail as regards an applicant/issuer's environmental position and climate change risk, in particular so as to require:</p> <ul style="list-style-type: none"> • full disclosure of the company's position/performance/record; and • disclosure on a continuing basis thereafter as to how any identified deficiencies are being/to be addressed with a view to continuous improvement and achievement by reference to Specified Metrics. <p>It is necessary to increase transparency in this area and create at least the prospect of real accountability for non-compliance (or material non-compliance).</p> <p>The above may require prescribed contents requirements in relevant public documents to effectively be mandated by investor/shareholder bodies, or in default, mandated by regulators.</p>
Solution	<p>Proposed extension of director (and possibly major shareholder) warranties and issuer/director undertakings in underwriting, sponsor and similar agreements in respect of environmental position and climate change risk.</p> <p>Underwriting and sponsor agreements etc to require/pose:</p> <ul style="list-style-type: none"> • full and specific disclosure of the applicant/company's position and performance by reference to Specified Metrics; and • disclosure thereafter on a continuing basis as to how any deficiencies that have been identified are being/to be addressed, with a view to continuous improvement by reference to Specified Metrics.
Context	<p>It is standard practice for sponsors and nominated advisers to require the directors of an applicant for listing (and possibly also its major shareholders) to enter into an underwriting, sponsor or similar agreement, including warranties and undertakings as regards a range of accounting, trading and other operational matters.</p> <p>In the event of non-compliance, the institution can take enforcement action, effectively on behalf of the market. If warranties are breached for example, warrantors risk potentially very material liability (though subject to caps on liability). Another approach would be to for banks to require companies to make full climate change disclosure in the listing particulars, prospectus or other documentation, and require the company/directors to warrant their veracity.</p>

Impact	<p>The increased risk of liability will:</p> <ul style="list-style-type: none"> Force directors and others to assign greater priority to climate risk-related disclosure, performance and continuous improvement. Increase knowledge of company's (and group's) operations and associated risks including climate change risks. Increase engagement and understanding at board and senior management levels. Mean that this becomes, and stays, a prominent item on board meeting agendas. Minimise the chance that directors, when challenged, can successfully assert that they were unaware. <p>Over time standards will be raised, even for companies not seeking a listing.</p>
Stakeholders	<ol style="list-style-type: none"> Financial Conduct Authority London Stock Exchange Investor/shareholder bodies Sponsors and nominated advisers Law firms Environmental/climate change experts
Application	<p>The proposed amendments will result in improved transparency and greater prospects of accountability, resulting in improved performance against specified climate risk metrics.</p>
Notes for users	<p>The Specified Metrics could be linked to an established framework – e.g. Task Force on Climate-related Disclosures (TFCD) – but also be capable of alignment to individual company's/group's particular position, activities and known issues. Consider independent review, such as audit by third party. Science based⁶⁷ or net zero targets may also be useful.</p> <p>One standard that could be also be used for this, potentially in addition to the TFCD, is ISO 14001:2015, which has been updated to reflect the increased importance for organisations of:</p> <ul style="list-style-type: none"> Environmental management systems (EMS) in business strategy, boardroom decisions and communications. Sustainable resource use and climate change mitigation. Lifecycle thinking for products to maximise supply chain efficiency. <p>For undertakings to improve performance in clause 1(d), consider using the detailed provisions in Jessica's clause – Contract clauses for carbon performance.</p>

[Note: The following warranties may be added to the warranties schedule in the Placing Agreement.]

- a) The Company's [historic/current] environmental [position/performance/record] meets the Specified Metrics;
- b) The company and [each of the subsidiaries] have at all times operated in compliance with all Environmental Laws in force from time to time and there are no facts or circumstances that may lead to any breach of or liability under any Environmental Laws or liability in respect of Environmental Matters;

⁶⁷ <https://sciencebasedtargets.org/>

- c) There have been no claims, investigations, prosecutions or other proceedings against or threatened against the company [or any of the subsidiaries] or any of their respective directors, officers or employees in respect of any breach or alleged breach of any Environmental Laws, and there are no facts or circumstances that may lead to any such claims, investigations, prosecutions or other proceedings;
- d) At no time has the company [or any of the subsidiaries] received any notice, communication or information alleging any liability in relation to any Environmental Matters or that any works are required;
- e) The Company has implemented in full the recommendations of the Task Force on Climate-related Finance Disclosures in relation to the governance, strategy, risk management and disclosure of climate risks and opportunities;
- f) The Company has carried out an assessment of its Carbon Footprint in accordance with international carbon reporting practice, being the accepted practice from time to time in relation to reporting for the purposes of the protocols to the United Nations Framework Convention on Climate Change and such assessment is accurate in all material respects;
- g) [INSERT any bespoke warranties as to company's historic/current environmental position/performance/record]; and
- h) [INSERT any bespoke undertakings to address/monitor environmental/climate change risk relevant to the business on a continuing basis thereafter, including rectifying/ameliorating any identified problems or deficiencies].

"Carbon Footprint": the amount of carbon dioxide equivalent emissions that will be released into the atmosphere as a result of the activities of the Company in the year ending [date].

"Environmental Laws" means all applicable laws, statutes, regulations, subordinate legislation, bye-laws, common law and other national, international, federal, European Union, state and local laws, judgments, decisions and injunctions of any court or tribunal, and [legally binding] codes of practice and guidance notes to the extent that they relate to or apply to the environment, energy efficiency or climate change.

Environmental Matters means all matters relating to:

- a) pollution or contamination of the environment;
- b) the presence, disposal, release, spillage, deposit, escape, discharge, leak, migration or emission of hazardous substances or waste;
- c) the creation or existence of any noise, vibration, odour, radiation, common law or statutory nuisance or other adverse impact on the environment; or
- d) the condition, protection, maintenance, remediation, reinstatement, restoration or replacement of the environment or any part of it.

Specified Metrics means [insert].

[Gordons clause] NEW

The Origin Story	
Child's name	Gordon's clause
Full name	Capital Markets ESG Due Diligence Questionnaire
Practice Area / Sector	Capital Markets, Finance
Issue	<p>There is a significant shortfall in Climate Finance required to limit the world to a 1.5-degree scenario⁶⁸.</p> <p>Capital Markets are important to bridging that gap. However, climate change considerations are often not raised until the late stages of a transaction when the deal is already being marketed.</p>
Solution	<p>Issue a capital markets focused due diligence questionnaire (DDQ) at the early transaction stage which requires the company to provide information regarding its impact on and considerations of climate change issues for the present and for the future.</p>
Context	<p>Increasing demand for transparency and investor scrutiny in capital markets highlights the importance of thorough due diligence from a legal, risk and reputational perspective. There is however no single source of guidance or regulatory benchmark when it comes to climate change due diligence and companies, underwriters or lenders and law firms may have their own internal ESG processes leading to differing information requests, inconsistent disclosure and confusion.</p> <p>As the effort to harmonise decision useful ESG disclosures continues, regulators in the United Kingdom and the European Union have suggested additional disclosures and benchmarks to promote sustainable economic activity. The recent consultation paper published by the UK's Financial Conduct Authority (FCA) proposes that U.K. companies make climate change disclosures consistent with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) on a comply or explain basis. The European Commission's Technical Expert Group on Sustainable Finance has published its final Taxonomy report for screening environmentally sustainable activities.</p> <p>There is no one size fits all and convergence is therefore best achieved through a more consultative due diligence process at the outset of the transaction.</p> <p>Policymakers have also indicated that ESG considerations will continue to become increasingly important in regulatory analysis and policy making⁶⁹. ESG considerations may have a growing impact on value creation. Integrating ESG factors during the due diligence phase raises awareness of potential risks and opportunities that can affect investment performance.</p>

⁶⁸ <https://www.climatepolicyinitiative.org/publication/global-landscape-of-climate-finance-2019/>

⁶⁹ https://insight.factset.com/esg-regulation-where-to-start; https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1571 ; https://boardagenda.com/2020/02/13/uk-government-set-to-implement-mandatory-tcfด-reporting/ ; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/820284/190716_BEIS_Green_Finance_Strategy_Accessible_Final.pdf

Impact	<p>Helping raise climate change risks and issues during the initial screening assists in the following ways:</p> <ul style="list-style-type: none"> • buy-side investors, financial sponsors and underwriters are able to identify climate-related risks (including reputational risks) or legal liability that they may determine to be unacceptable, thus diverting funds to more impactful deals; • ESG screening during the diligence phase ensures that ESG investment metrics and targets are aligned with internal and broader sustainable development standards; • the output from the DDQ will aid consistent and fulsome disclosure of climate change on the Company and its sector; and • uncover material issues that need to be monitored throughout the lifetime of an investment.
Stakeholders	<ol style="list-style-type: none"> 1. Borrowers and issuer (particularly borrowers and issuers with limited experience of 'green' products or green finance) 2. Underwriters, Buy-side Investors and Financial Sponsors 3. UNEP Finance Initiative and UN Global Compact 4. Investors 5. Policymakers 6. Precedent and Know-How Providers 7. Private Practice Firms 8. Professional Support Lawyers 9. Lenders
Application	<p>This Capital Markets DDQ seeks to act as a starting point for such dialogue by providing a framework list of questions that market participants can address at the due diligence stage of the capital markets transaction. The DDQ has been developed to assist financial institutions to understand and evaluate a company's approach to integrating material environmental factors into their business practices, and to understand where responsibility for doing so lies within its wider business structure. Additionally, the DDQ is aimed at encouraging consistency with existing guidance on sustainable development and climate goals.</p> <p>The due diligence questionnaire integrates existing guidance helping market participants better understand the potential sustainability impact and align with some of the broader UN sustainable development goals.</p> <p>This DDQ is intended to provide a suggested framework for market participants' climate change due diligence with respect to both equity and debt capital markets transactions. From this baseline, investors, lenders, underwriters and companies are encouraged to tailor a list of questions to suit their broader objectives and their strategy, size, experience and resources. It is not meant to be comprehensive, nor to cover all ESG considerations and is intended to complement, rather than replace, existing due diligence processes. The aim is that uptake of this DDQ will help to streamline industry practices and encourage early discussion of ESG issues by investors, lenders, underwriters and companies.</p>
Notes for users	<p>ESG factors and practices will vary depending on the company's sector, business practices, geographical location, output and other factors, and that parties will require some level of flexibility in following or applying these or any other such considerations. Parties should carefully consider which of the items below are relevant for each company, industry and transaction as some of the questions may not be appropriate in the circumstances. We note that the DDQ may include certain questions that already form part of questionnaires prepared by underwriters, lenders, investors and other participants for use in existing due diligence processes.</p> <p>Please see Lola & Harry's Questionnaire [Climate Change Due Diligence Questionnaire] for a comprehensive list of more general corporate and M&A transaction climate change due diligence questions.</p>

Introduction

We are making this information request as part of our due diligence review in connection with the proposed [insert details of capital markets transaction] (“**Transaction**”).

With respect to the below questions, unless otherwise specified, please comment only on any material changes that have occurred or come to your attention during the period from [last transaction/relevant time period] to the present date (the “**Applicable Period**”).

The references to the “Company” mean each of [insert details of entities of the borrower/guarantor group] together with their subsidiaries (collectively, the “**Company**”).

Additional Definitions

Net Zero Target means a net reduction of Greenhouse Gas Emissions from all operations [including value and supply chains] to zero by a specified date so there is a balance between sources and sinks of Greenhouse Gases in a calendar year and for each subsequent year thereafter.

Science-Based Targets means a [organisation/corporate] target to reduce Greenhouse Gas Emissions that is in line with what the latest climate science says is necessary to meet the goals of the Paris Agreement, that is to limit global warming to below 2 degrees Celsius and above-pre-industrial levels, and pursue efforts to limit global warming to 1.5 degrees Celsius.

Carbon Budget means the aggregate of [value] tonnes of Carbon Dioxide Equivalent of Greenhouse Gas emissions permitted within a defined period.

Greenhouse Gases (“GHGs”) means the natural and anthropogenic gases which trap thermal radiation in the earth’s atmosphere and as specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) or otherwise specified by the UNFCCC, and which currently include: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).

Greenhouse Gas Emissions (“GHG Emissions”) means emissions of Greenhouse Gases over a specified area and period of time, each expressed as a total in units of carbon dioxide equivalent (CO₂e) [and calculated in accordance with the GHG Protocol Corporate Accounting and Reporting Standard or such other equivalent and generally recognised greenhouse gas emission calculation methodology]

Carbon Reporting means reporting of Greenhouse Gas Emissions in rounded tonnes of carbon dioxide or Carbon Dioxide Equivalent (CO₂(e)) to the [COMPETENT AUTHORITY] on an annual basis in accordance with the requirements of Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of Greenhouse Gas Emissions pursuant to Directive 2003/EC of the European Parliament and of the Council, including verification of reports in accordance with Regulation (EU) No 600/2012 of 21 June 2012 on the verification of Greenhouse Gas Emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council.

Environmental

#	Question
1	<p>Sustainability Overview</p> <p>What does the Company regard as the most important sustainability issues that its business faces? Does the Company have an environmental or sustainability policy which sets out commitments and targets to improve the Company's sustainability standards, including its environmental footprint, examples of where the Company has mapped its impact against the UN Sustainability Development Goals and/or where the Company has applied any other external sustainability standards. If yes, please provide the relevant details, including a copy of such environmental or sustainability policy.</p>
2	<p>Climate Change/Energy Efficiency</p> <p>Has the Company set a Net Zero Target, a Science-Based Target or a Carbon Budget? Does the Company assess, monitor and report its carbon and/or other Greenhouse Gas emissions through Carbon Reporting or otherwise, including benchmarking versus peers and/or industry standards? If yes, please provide the results of the Company's [latest/last [number of]] analyses.</p> <p>Does the Company assess and disclose climate risks and opportunities with regard to the recommendations of the Task Force on Climate-related Financial Disclosure (TCFD)? If so, please provide copies of any internal or external TCFD reports.</p> <p>Alternatively, has the Company performed another form of environmental or climate change risk and opportunity assessment? If yes, please provide details of the assessment. If not, please provide details of: (i) any known or reasonably foreseeable climate change risks; (ii) any potential impact of extreme climate events (such as floods or drought); and (iii) any current or proposed climate change laws and regulations that might impact upon the Company's business, in each case in relation to the Company's operations, business and supply chain. Please also provide details of any adaptation or resilience measures adopted (or proposed to be adopted) by the Company to mitigate risks of physical climate changes.</p> <p>Has the Company undertaken any audits of energy efficiency and/or energy reduction opportunities? Is the Company obligated to undertake energy audits (for example, under the EU Energy Efficiency Directive or similar)? If so, please provide examples of: (i) any energy efficiency audits; and (ii) any energy efficiency improvement programs/initiatives the Company implemented recently.</p>
3	<p>Raw Materials ⁷⁰</p> <p>What are the Company's primary energy, water and other raw materials sources? Has the Company experienced, or does the Company anticipate experiencing, any issues associated with sourcing these materials? In particular, does the Company maintain records of water use and use of other primary raw materials in the production process? What measures are in place to ensure sustainable water and raw materials use in the production process?</p>
4	Emissions through Carbon Reporting or otherwise, including benchmarking versus peers and/or industry standards? If yes, please provide the results of the Company's [latest/last [number of]] analyses.
5	<p>Biodiversity ⁷¹</p> <p>Please disclose any risks concerning biodiversity, ecosystem services and land use. Are there any operational dependencies and potential impacts? If so, are they appropriately mitigated, associated potential risks are effectively managed, and potential opportunities for biodiversity enhancement identified?</p>

⁷⁰ Access to raw materials covers issues that are broader than just climate change. However, access to raw materials (in particular, water), may be impacted by the effects of climate change. As such, you may want to consider inclusion of this question depending on the nature of the Company's activities.

⁷¹ Biodiversity issues cover a broader range of issues than just climate change. However, degradation of biodiversity contributes towards climate change and makes it harder to meet targets concerning increases in global temperatures. As such, you may want to consider inclusion of this question depending on the nature of the Company's activities.

Social

#	Question
6	Please outline any community relations projects, education and/or social awareness relating to the Company's services/products including examples of where it has mapped against [UN SDG 8 (Decent Work and Economic Growth)/insert relevant social UN SDG].
7	Do you have formal procurement and supply chain ethical standards in place, including making sure that modern slavery does not occur in your supply chains? If so, please discuss and/provide further details.
8	Please provide copies of the Company's formal health and safety, anti-discrimination, diversity (including gender), data privacy, human rights and safeguarding policies in place. How often are the policies reviewed?
9	Describe any actual or suspected breaches of the policies listed in 8. that the Company has experienced, including the nature of the breach, types of data compromised (in relation to the data privacy policy), any actual or threatened regulatory investigations, reporting obligations, remediation and effect on the Company and its customers. Describe the Company's view of how the measures it takes to guard against and respond to breaches of such policies compare to industry standards and legal requirements.
10	Please provide confirmation that the Company adheres to [local minimum wage standards in all the jurisdictions it has employees] [the applicable requirements in respect of wages, working hours, gender equality, labour contracts and occupational health and safety issues, set out in the International Labour Organisation of the United Nations].
11	Is there a formal procedure for employees' general questions/views/concerns/grievances? If so, please provide details. If not, how are such matters addressed by the Company?
12	Please discuss any class-action lawsuits (employee related) and material social related legal, regulatory complaints, claims or enforcement actions over the Applicable Period, associated with employees, suppliers, local communities, regulators or any other key stakeholders?

Governance

#	Question
13	Does the Company have a specific ESG budget and ESG training programs? Is there an evaluation system or oversight mechanism (KPIs) of ESG concerns mapped against [the UN Sustainable Development Goals [and/or such other applicable assessment standard/metric]]?

14	Does the Company convene a shareholders' meeting at least annually? Do the shareholders vote on the board of directors' composition and compensation? What is the term of each board member? Do any of the directors' terms of employment include 'golden parachute' provisions? If so, please provide details.
15	Please provide details on the composition of the board of directors: including the total number, number of independent members, number of women and number of minorities. Are anti-discrimination and diversity considered in determining the composition of the Company's board?
16	How are ESG-related matters or monitoring and reporting issues brought to the board's attention? Is there any specific board member (or committee) that is specifically tasked with ESG-related matters? If so, what is their qualification?
17	Please provide details of the Company's audit committee (the " Audit Committee ") including composition and policies.
18	Who is the firm's auditor? How long has the current audit partner been involved with this engagement? Within the Applicable Period has the Company had a material dispute over accounting practices with its auditor, including any compliance or other issues at the Company or any of its consolidated subsidiaries? If yes, what actions were taken and how have these issues been resolved?
19	Please discuss any material litigation or legal proceedings (actual or threatened) brought by any minority shareholder of the Company during the Applicable Period. What safeguards are in place to ensure that minority shareholder rights (with respect to access to information and voting rights) are fair and transparent?
20	Please discuss any material corporate governance and/or ethical related regulatory or employee claims, breaches, investigations, enforcement, litigation action (pending or threatened) relating to issues such as anti-bribery, fraud, corruption, unfair labour practices, human rights abuses, and other malpractices.
21	Does the Company have a whistle-blower policy? Please provide details, including any complaint procedures, remediation processes, protections against retaliation and ensuring anonymity.



[Connor's clause] NEW

The Origin Story	
Child's name	Connor's clause
Full name	Exclusions from insurance coverage for climate harms
Practice Area / Sector	Insurance
Issue	<p>Insurance is a tool used by businesses to manage risk. Climate Risk is one such risk⁷².</p> <p>However, insuring Climate Risk could have an unintended consequence of encouraging reliance on insurance rather than an impetus to address the issues.</p>
Solution	An explicit exclusion from cover for climate liability, costs and losses occasioned because of GHG emissions and where the Insured has failed to meet GHG emissions targets.
Context	<p>Climate cases are being brought in jurisdictions around the world for the alleged causation of, or contribution to, climate change by sectors with high Greenhouse Gas (GHG) emissions, particularly the Carbon Majors^{73 74}. As climate obligations increase and GHG emissions reductions targets are enshrined in law, it is possible that cases will be brought in the future on the basis of a corporate's Scope 1, Scope 2 or Scope 3 emissions or failure to keep within the targets set under the Paris Agreement and the 'ratchet mechanism'.</p> <p>Climate cases have been brought against governments and oil majors⁷⁵. However, climate change litigation may expand as it progresses to other sectors and as emissions targets increase and are strengthened. By insurers and reinsurers explicitly leaving the costs of liability for emissions with insureds, a risk signal is sent to corporations and industries that they need tackle their GHG emission as the resulting climate obligations rest with them (and not with the insurance market unless specifically provided for).</p>
Impact	<p>With a clear exclusion for any climate liability and liability for GHG emissions, policyholders will understand that they are to be solely responsible for the costs and expenses of their GHG emissions and their failure to meet emissions targets. This will incentivise them to actively manage climate issues and limit their operational impact.</p> <p>By explicitly excluding cover for such claims insurers and reinsurers will ensure that the risk of liability for such claims remains with the entities that are responsible for the emissions, and encourages more climate-conscious behaviour on the part of those insureds and industries.</p>

⁷² See https://www.allianz.com/content/dam/onemarketing/azcom/Allianz_com/migration/media/economic_research/publications/working_papers/en/ClimateRisk.pdf

⁷³ See <https://b8f65cb373b1b7b15feb-c70d8ead6ced550b4d987d7c03fcdd1d.ssl.cf3.rackcdn.com/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf?1499691240>

⁷⁴ See Practical Law: Climate change litigation note

⁷⁵ See <https://www.financial-dictionary.info/terms/big-oil-super-majors/>

Stakeholders	1. Insurers and insureds across multiple sectors and industries.
Application	All insurance contracts.
Notes for users	<p>Clearly, such a clause would be a strategic policy decision for an insurer in the same way that some banks, as a policy, want their whole lending portfolios to be Pairs aligned⁷⁶.</p> <p>Insurers may decide to allow cover for certain high GHG emitting activities where the cedant commits to meeting or working towards specific targets for reducing GHG emissions.</p> <p>This clause has been drafted widely, in order to encompass any type of insurance policy and to demonstrate the principle being considered. Further specific and detailed drafting would be required for any specific policy of insurance.</p> <p>Drafters should consider if the definition of Climate Change should be limited to effects caused by human activity. Policyholders will want to amend the definition in this way and Insurers will prefer the wider definition.</p> <p>Drafters should consider if the definition of GHG Emissions should be limited to only Scope 1 (direct emissions e.g. from fuel consumption) and 2 Emissions (indirect emissions from electricity purchased and used by the Insured) rather than Scope 3 Emissions (all indirect emissions other than Scope 2 Emissions) (see the definition in the TCLP Glossary). Insureds will want this as it narrows the exclusion.</p>

Additional Definitions

Greenhouse Gas (GHG or GHGs) means the natural and anthropogenic gases which trap thermal radiation in the earth's atmosphere and as specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) or otherwise specified by the UNFCCC and which currently include carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).

Greenhouse Gas Emissions (GHG Emissions) means emissions of Greenhouse Gases over a specified area and period of time, each expressed as a total in units of carbon dioxide equivalent (CO₂e) [and calculated in accordance with the GHG Protocol Corporate Accounting and Reporting Standard or such other equivalent and generally recognised Greenhouse Gas emission calculation methodology].

Claim means written demands, civil or criminal proceedings, extradition proceedings, regulatory or administrative proceedings against the Policyholder for actual or alleged, negligence, misstatements, default, breach of duty or breach of trust.

⁷⁶ <https://home.barclays/society/our-position-on-climate-change/>

Climate Change means a change in the state of the climate that can be identified and that persists for [an extended period of time/decades] and where the change is caused directly or indirectly by (i) human activity that alters the composition of the global atmosphere or (ii) natural processes, including volcanic eruptions and changes of solar cycles.

Additional Clause

This Policy does not cover liability in respect of any actual or potential effects of Climate Change, including liability in respect of an actual or alleged failure by the Insured to reduce or limit GHG Emissions in line with emissions-reductions targets.

This Policy does not cover any Claims [defence costs or any other costs, fees or expenses] of any kind whatsoever directly or indirectly relating to, arising out of or in consequence of:

- (1) GHG Emissions by the Insured or for which the Insured is responsible.
- (2) Any actual or alleged failure to reduce or limit GHG in line with emissions-reductions targets.

[Archie's clause] *NEW*

The Origin Story	
Child's name	Archie's clause
Full name	Premium adjustment for D&O Climate-related financial disclosures
Practice Area / Sector	Insurance, Corporate
Issue	<p>Often, companies' activities contribute to climate change. Many businesses do not understand the climate risks their activities pose, or the climate impacts they cause. There is a corresponding lack of adequate information for insurers to price climate-related risks. This is exacerbated by the lack of a common language to define and quantify risks. Inconsistencies in disclosure practices add to the problem.</p> <p>Ultimately, this all leads to an increased risk of further climate impacts but also of litigation against companies and their directors for failing to take adequate steps to mitigate climate risk.</p> <p>Pressure on directors and companies has increased over the last few years, not least through the emergence of shareholder pressure groups and climate litigation.</p>
Solution	<p>Incentivise companies to mitigate climate risk through a reduction in insurance premium for Policyholders who meet agreed disclosure standards.</p> <p>To avail themselves of the adjustment, the baseline standard Policyholders must meet requires disclosure of their climate-related financial risks in line with the TCFD global recommendations and in the four areas of governance, strategy, risk management, and metrics and targets.</p>
Context	<p>D&O liability insurance offers cover for claims brought for alleged wrongful acts by Directors and Officers of the Policyholder. Insertion of Archie's clause into D&O liability insurance will mean the clause is widely usable for all businesses, indirectly affecting change across business sectors and projects.</p>
Impact	<p>Archie's clause encourages Policyholders to achieve a baseline reporting standard. Policyholders will be financially incentivised to take action and improve internal reporting structure and reporting standards. This will lead to a change in the Policyholder's behaviour, including by bringing climate risk analysis and considerations into the C-suite and another rung of pressure will be added to directors and officers of companies to mitigate climate-risks.</p> <p>The benefit to the Policyholder will be adequate disclosure of climate-related financial risks reducing director liability risk against claims and increasing transparency of climate risks within the Policyholder's business/business operations.</p> <p>The benefit to the Insurer includes a corresponding reduction in claims. Receipt of fuller information on a Policyholder's climate-related risks will allow the Insurer to adequately price climate risks.</p> <p>Creating a resilient legal framework works to protect our climate. The existence of a homogeneous legal and risk framework will allow Policyholders to not only assess their climate risks but also to take active steps to responsibly mitigate them.</p>

Stakeholders	<ol style="list-style-type: none"> 1. Policyholders across multiple sectors and industries 2. Directors and Officers 3. Shareholders 4. Underwriters 5. Insurance brokers 6. Risk managers 7. Legal and compliance advisers 8. Financial regulatory authorities 9. Pressure groups 10. Litigation funders
Application	<p>Holding Policyholders to this standard will link directors' duties and corresponding litigation risks for: failure to disclose financial risk; failure to mitigate greenhouse gases; failure to adapt investment strategies; and failure to comply with climate regulations.</p> <p>There is scope for the clause to be tailored (by including industry-specific standards, particularly on metrics and targets) to the individual Policyholder's specific business/climate-related risks affecting that business.</p> <p>The onus is on the Policyholder to claim the premium adjustment through supplying evidence of compliance with the standards. There is no need for the Insurer to undertake an onerous qualitative assessment or appraisal of the Policyholder's actions, which may require industry or project specific knowledge.</p>
Notes for users	<p>We have sought to make Archie's clause as simple and sellable as possible, to effect change on big D&O accounts, and increase the likelihood of Insurers and Insureds adopting the clause. Whilst Archie's clause has been worded for a D&O policy, there would be scope for future development and application to other types of policy.</p> <p>Similarly, the clause can be amended to suit the needs of the Policyholder, for example, with cover on a specific project.</p> <p>The clause allows for decision-making between the Insurer and Policyholder regarding:</p> <ul style="list-style-type: none"> • the level of premium return; • how compliance will be judged (i.e. the documents to be furnished on the Insurer at the time of claiming the adjustment); and • whether any further standards should be included. <p>The wording was drafted to be suitable for the global market. Insurers/Policyholders may wish to amend wording to accord with Lloyd's Market Association standard wording for premium adjustment, where applicable.</p>

Definitions

Annual Accounts means the annual accounts prepared from the Policyholder's financial records at the end of its financial year.

Claim means written demands, civil or criminal proceedings, extradition proceedings, regulatory or administrative proceedings against the Policyholder for actual or alleged wrongful acts [, including negligence, misstatements, default, breach of duty or breach of trust].

Climate Change Mitigation means human intervention or efforts to reduce the sources or enhance the sinks of Greenhouse Gas Emissions.

Declaration means the document at Appendix 1.

Directors and Officers means a natural person holding past, present, or future management or supervisory position or equivalent position under the laws of any jurisdiction, including any member of the supervisory board or management board of the company.

Greenhouse Gas (“GHG” or “GHGs”) means the natural and anthropogenic gases which trap thermal radiation in the earth’s atmosphere and as specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) or otherwise specified by the UNFCCC and which currently include to: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).

Greenhouse Gas Emissions (“GHG Emissions”) means emissions of Greenhouse Gases over a specified area and period of time, each expressed as a total in units of carbon dioxide equivalent (CO₂e) [and calculated in accordance with the GHG Protocol Corporate Accounting and Reporting Standard or such other equivalent and generally recognised greenhouse gas emission calculation methodology].

Insurer means [specify insurer].

Policy Period means the period specified in item [...] of the Schedule of the policy.

Policyholder means the entity specified in item [...] of the Schedule of the policy.

TCFD Recommendations means the recommendations by the Task Force on Climate-related Financial Disclosures to assess, collate and disclose the [material] financial impacts of climate-related risks and opportunities for an organisation, including those related to the global transition to a lower-carbon economy.

Additional Clauses

- 1.1 The Insurer and the Policyholder acknowledge that accurate, climate-related financial disclosures in the Policyholder’s Annual Accounts benefit the Policyholder by ensuring greater transparency of its climate-related risks, as well as any Climate Change Mitigation steps, reducing the risk of a Claim being brought against the Policyholder and/or its Directors and Officers.
- 1.2 [To incentivise the Policyholder to make climate-related financial disclosures in its Annual Accounts,] the Policyholder may avail itself of a pro-rata return of premium of [10%], provided that during the relevant Policy Period:
 - a. the Policyholder has publicly reported and accurately disclosed to the Insurer all climate-related risks and opportunities relevant to its business in the areas of:
 - (i) governance;
 - (ii) strategy;
 - (iii) risk management; and
 - (iv) metrics and targets,
 in line with the TCFD Recommendations, and/or in line with the environmental standards agreed between the Policyholder and Insurer (the “Disclosures”); and
 - b. the Policyholder has declared to the Insurer that it, and/or its Directors and Officers, have not been involved in any Claim in respect of any breach or alleged breach relating to the Disclosures and have no actual knowledge of any facts or circumstances that may lead to any such Claim.

- 1.3 The Policyholder shall provide to the Insurer no later than six months after the expiry of the Policy Period:
- its audited Annual Accounts which show compliance with the Disclosures;
 - the Declaration made by the Policyholder evidencing compliance with the Disclosures and the absence of a Claim (in the form set out at Appendix 1); and
 - any other documentation as agreed between the Policyholder and Insurer.

Appendix 1

Declaration of the Policyholder regarding Scope of Disclosure for the purposes of premium adjustment. The Policyholder confirms that the Annual Accounts for this policy year evidence the following agreed targets have been met:

Governance

- Board oversight of climate-related risks and opportunities.
- Management involvement in assessing and managing climate-related risks and opportunities.

Strategy

- Identification of climate-related risks and opportunities for the Policyholder over the short, medium, and long term.
- Disclosure of the impacts of climate-related risks and opportunities on the Policyholder's businesses, strategy, and financial planning.
- Disclosure of the resilience of the Policyholder's business strategy taking into consideration different climate-related scenarios, including a transition to a lower-carbon economy consistent with a 2°C or lower scenario and where relevant, scenarios consistent with increased physical climate-related risks.

Risk Management

- Processes for identifying and assessing climate-related risks have been implemented.
- Processes for managing climate-related risks have been implemented.
- Processes for identifying, assessing, and managing climate-related risks are integrated into the Policyholder's overall risk management.

Metrics and Targets

- Disclosure of the metrics used by the Policyholder to assess climate-related risks and opportunities in line with its strategy and risk management process.
- Disclosure of greenhouse gas (GHG) emissions for which the Policyholder is responsible, and the related risks.
- By signing this document, the Policyholder confirms that it, and/or its Directors and Officers have not been involved in any Claim in respect of any breach or alleged breach relating to the Disclosures and have no actual knowledge of any facts or circumstances that may lead to any such Claim.

I declare the truthfulness of the above.

Signed
Name
Position

Date



[Rory's clause]

The Origin Story	
Child's name	Rory's clause
Full name	Net Zero Land Promotion Agreement
Practice Area / Sector	Real Estate, Planning, Construction
Issue	Landowners often hold significant influence and control over future development through land promotion documentation. The drafting of commercial objectives is often singular, focusing on maximising returns, and silent on climate change and environmental issues. This creates an imbalance that landowners may not be aware of and can lead to the development of estates and homes that are inconsistent with net zero strategies and policy. Landowners have often been custodians of the land and wish to see it sympathetically and conscientiously developed.
Solution	Establish a concept of 'Zero Carbon by design'. Use amendments to standard land promotion agreements and precedents to balance climate change and environmental issues against maximising financial returns for the landowner and promoter. In effect, this creates a carbon price and accounting through a "market value" based on a different economic model, balancing financial returns and environmental impact.
Context	Development starts with the ownership of land. However, landowners often don't have the knowledge or resources to promote and sell their land for development and will contract with third party promoters/developers to do this for them. A land promotion agreement is a contract between the landowner and a promoter or developer who agrees to apply for planning permission on the landowner's property and, once planning permission has been obtained, the promoter/developer markets the land for sale. As the development cannot take place without the land, net zero development is within the landowner's control. However, precedents and drafting may not trigger this realisation as they often focus on maximising returns and minimising Open Space (such as woodland), and Infrastructure (such as cycleways, footpaths, and landscaping). As such, new precedents and drafting are required to provide the options to assist landowners in creating net zero developments of the future.
Impact	The proposed clauses will ensure environmental and net zero considerations are cascaded to developers. In effect a commercial relationship is established to take account of natural capital consumed during construction and operation of the future development to be built on the land. This should: <ul style="list-style-type: none"> • Reduce energy consumption • Make the transition to renewables • Make occupation and living more affordable • Improve air quality and wider sustainability • Build communities for the future rather than estates of homes. Further, planning should be easier to achieve in and around cities or local government areas that have declared climate change emergencies ⁷⁷ . Arguably the development will be a nicer place to live and ultimately command a comparable land price as the house sales should be stronger ⁷⁸ .

⁷⁷ <https://www.climateemergency.uk/blog/list-of-councils/>; <https://netzeroexeter.co.uk/wp-content/uploads/2020/02/ECF-Net-Zero-Exeter-Blueprint.pdf>

⁷⁸ <https://www.rics.org/globalassets/rics-website/media/knowledge/research/insights/energy-efficiency-and-residential-values.pdf>

Stakeholders	<p>The key stakeholders that you think need to be engaged to deliver this Impact:</p> <ol style="list-style-type: none"> 1. Royal Institute of Chartered Surveyors 2. Land agents 3. Land Promoters & Developers Federation 4. Local planning policy decision makers 5. Precedent and know how providers 6. Private practice firms and their professional support lawyers
Application	<p>The proposed amendments will mean that a landowner and their promoter/developer will have to discuss net zero and environmental implications of a development. This puts environmental and climate change issues front and centre of the negotiation and future land use.</p> <p>A Zero Carbon by Design approach is consistent with UK policy and targets on Net Zero and therefore less likely to be challenged by environmental groups.</p>
Notes for users	<p>The drafting is deliberately “Dark Green” in nature and acknowledged as not representing the market norm today. It is likely that parts of the drafting will be more acceptable than others and as usual is for the individual lawyer and their client to consider what is appropriate in any particular case.</p> <p>The promoter’s fee has a bonus mechanism whereby the promoter gets paid more if they hit the financial and net zero obligations. This creates incentives but also acknowledges the challenges.</p> <p>The community and net zero aspects can be re-prioritised and given different emphasis according to the landowner’s and site requirements.</p> <p>The Net Zero Overage clause operates to use economic levers to prevent erosion of the net zero obligations by a subsequent owner of the land. As usual tax advice should be taken on the creation and entry into an overage.</p> <p>Capitalised Terms not defined are assumed to be defined in a wider land promotion precedent for example “Determining Authority”, “Affordable Homes” etc. It is acknowledged that the drafting requires refinement and could be difficult to interpret without the rest of the agreement.</p> <p>The restriction wording would need to be reviewed to ensure it meets the Land Registry Practice Guide 19.</p> <p>The drafting favours the landowner and assumes they will want to retain complete control of the environmental outcomes for the site. A promoter is likely to want to be more specific about what is and is not acceptable to the owner.</p> <p>The Net Zero Overage is deliberately aggressive to discourage erosion of the original Net Zero Objectives.</p>

Additional recitals:

- (B) The Owner wishes any future development of the Property to create a sustainable, resilient and net zero community.
- (C) The parties wish to adopt a ‘Zero Carbon by Design’ approach to the promotion, development and construction on the Property.
- (D) The parties aim the Development to be consistent with all applicable policy and targets for Net Zero.

Additional Definitions

Air Quality Index: the Daily Air Quality Index numbered 1-10 as published by DEFRA or replacement index issued by the UK government to measure air quality and pollution.

Allotment Land: land designated in the Development for use as an allotment garden and to be made available to individuals within the community

Architectural Diversity: a range of architectural designs and styles for housing and commercial buildings that provides different designs and a fair range of Affordable Housing options.

BAU Development: a development that does not [comply with UK net zero policy] [achieve EPC A standard for at least 95% of the properties] [or similar benchmark].

Biodiversity Objectives: to develop a plan for the Development that will maintain, monitor and [improve][ensure no net loss of] the genetic, species and ecological diversity on the Property in accordance with [the Natural Capital Impact Group Biodiversity Impact Metric] [the Defra Biodiversity metric] [or a similar biodiversity framework].

Carbon Capture: the mechanical or natural removal of carbon dioxide from the atmosphere

Carbon Insetting: a carbon reduction project, verified by a carbon offset standard, which occurs on the Property.

Carbon Offsetting: the purchase of a quantity of carbon credits from a project that has been verified in accordance with [insert name of voluntary standard] or from a United Nations Framework Convention on Climate Change clean development mechanism in order to compensate for the emissions made by the Development.

Climate Positive Planning Permission: a Planning Permission and Planning Agreement (if any) free from any Owner’s Unacceptable Condition (unless any Owner’s Unacceptable Condition is waived by the Owner in accordance with this agreement).

Climate Professional: an environmental or net zero consultant that specialises in the creation, implementation and measurement of net zero targets that may from time to time be appointed in accordance with this Agreement in connection with the Development.

Community Land: that part or parts of the Property designated as being for the benefit of the community, and to be held in community ownership, following the completion of the Development including:

- a) Allotment Land;
- b) Conservation Land;
- c) Community Energy Land; and
- d) Open Spaces.

Community Energy Land; land designated in the Development for the creation of renewable energy as part of a Community Energy Programme;

Community Energy Programme; the production and sale of electricity generated from the Community Energy Land whether direct to the Residents or otherwise via a community energy company.

Community Objectives: all of the following:

- a) become a Plastic Free Community from the start of the Development;
- b) encourage healthy living;
- c) encourage use of Co-Working Space at the Development;
- d) designate of areas of land for use as Community Land;
- e) create structures and governance for the co-ownership and stewardship of Community Land;
- f) modelled to achieve an Air Quality Index score of 3 or below at all times;
- g) maximise Architectural Diversity.

Conservation Covenant a covenant to do or not do something on the land for a conservation purpose.

Conservation Land: land designated in the Development to be returned to its natural state in order to achieve the Biodiversity Objectives.

Co Working Space; a shared office space for independent workers.

Development: the buildings and wider development to be created on or at the Property pursuant to the Satisfactory Planning Permission.

District Heating Scheme; a new or existing system for the distribution of heat and hot water to buildings on the Development.

Embodied Carbon; the Greenhouse Gases that are emitted through the production and delivery of building materials for and used in the Development.

EV; a vehicle that uses one or more electric motors for propulsion and obtains all its power an electric battery.

EV Parking Spaces; spaces specifically designated for charging EVs through charge points or directly from the grid.

EV Substation Capacity; a substation with sufficient capacity to be able support the requirements of the EV Parking Spaces.

Greenhouse Gases; specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC).

Green Transport Objectives; all of the following

- a) to include car sharing facilities and spaces at the Development;
- b) to minimise Private Car Ownership with a target of no more than [1] per 100 inhabitants in the Development;
- c) to maximise EV Parking Spaces and minimise non-EV car parking spaces on the Development;
- d) to maximise Pedestrian Zones;
- e) to maximise cycle storage facilities;
- f) to maximise cycle ways and footpaths;
- g) to maximise the use of public transport for commuting by the residents of the Development; and
- h) to use advanced data analytics to predict transport requirements creating new public transport hubs as required.

Hydrocarbons: principally oil, gas and coal or other fuel source derived from an organic compound made up of hydrogen and carbon.

Natural Capital: the natural assets in and around the Property including the geology, soil, air, water and all living things that the residents and community use, which make their lives possible.

NGO: a non-governmental organisation that is established to protect, wildlife, the environment or biodiversity and that has rights to object to the Development.

Net Zero: the sum of Greenhouse Gas emissions from all operations on the Property and Greenhouse Gas removals, accounted for by credits from Carbon Insetting or Carbon Offsetting projects, is zero.

Net Zero Adjusted Land Price: [NUMBER]% of the Minimum Land Price or Market Value whichever is higher.

Net Zero Bonus: an additional [NUMBER]% of the Net Sale Receipts (exclusive of VAT) payable for achievement of all the Net Zero Objectives.

Net Zero Objectives: all of the following

- a) maximise the proportion of Zero Carbon Housing;
- b) use construction materials with the lowest Embodied Carbon reasonably available;
- c) maximise self-generation of renewable energy on the Development;
- d) minimise the use of heating and hot water technologies that use Hydrocarbon fuels or produce Greenhouse Gases;
- e) establish a Community Energy Programme to supply renewable energy to the Development;

- f) maximise Carbon Capture at the Development;
- g) use Carbon Offsetting for the Development as a last resort;
- h) minimise the use of energy by the Development using ‘smart grid’, demand side energy management and other technologies;
- i) prioritise the use of electricity from renewable energy sources over all other types of fuel on the Development;
- j) maximise the EV Substation Capacity; and
- k) connect into existing District Heating Schemes where possible.

Net Zero Overage: the overage provisions set out in Schedule 1

Objectives: the Net Zero Objectives, the Green Transport Objectives, the Community Objectives and the Planning Objectives.

Open Space:

- a) public open space, public recreational social or communal use amenity land, landscaped areas, play areas, school sports grounds, playing fields; and
- b) parkland and woodland (including (but not limited to) any areas of land required for tree belts, structural landscaping buffer zones and noise bunds).

Owner’s Unacceptable Climate Condition: a Condition which in the Owner’s reasonable opinion:

- a) will or is likely to increase the Greenhouse Gas emissions during occupation of the Development;
- b) will or is likely to reduce the UK’s transition to Net Zero;
- c) will or is likely to cause irreversible damage to the environment; or
- d) is otherwise inconsistent with the Net Zero Objectives.

Pedestrian Zone: areas of the Development reserved for pedestrian [and cyclist] only use and where motor vehicles are prohibited.

Planning Objectives: all of the following:

- a) obtaining a Climate Positive Planning Permission; and
- b) maximising so far as reasonably practicable the area within the Property which has the benefit of a Climate Positive Planning Permission.

Planning Permission: detailed planning permission for the Development granted by the Determining Authority.

Plastic Free Community; has the meaning given to it by the charity Surfers Against Sewage as at the date of this agreement.

Private Car Ownership; a car, van or other vehicle owned or operated for private use.

Promoter's Costs: [INSERT ALL THE MARKET STANDARD COSTS from a traditional land promotion agreement and add] including the fees of the Climate Professionals.

UK's Net Zero Target: the UK Government's target under Section 1 of the Climate Change Act 2008, which as at the date of this agreement is 2050.

Zero Carbon Housing: [has the same meaning as Level 6 of the Code for Sustainable Homes. [or any successor or equivalent standard].

Additional Clauses

14. Development Objectives and Priorities

- 14.1 The Promoter shall use all reasonable endeavours to achieve all of the Objectives.
- 14.2 The Promoter shall prioritise the Objectives in the following order:
 - (a) First, the Net Zero Objectives;
 - (b) Second, the Green Transport Objectives; and
 - (c) Third, the Community Objectives.

15. Not to promote BAU Developments

During the Promotion Period, the Promoter shall not promote through the planning process or be connected or associated in any way with a BAU Development.

16. Green Planning Strategy

- 16.1 In preparing and implementing the Planning Strategy, the Master Plan and the Disposal Strategy, the Promoter shall:
 - (a) have regard to:
 - (i) the Objectives;
 - (ii) the priorities set out in clause 1.2;
 - (iii) the Embodied Carbon that will be used to build the Development;
 - (iv) the use of Natural Capital during the occupation of the Development in the future;
 - (v) the UK's Net Zero Target; and
 - (vi) any policies or strategies that have been created in response to a declaration of a 'climate change emergency' by the local council covering the Development or the Determining Authority.
 - (b) In collaboration with the Climate Professionals, create a Net Zero model to measure the Greenhouse Gas emissions from the Development and demonstrate how these are reduced to Net Zero.

17. NGO Interests

17.1 The Promoter shall engage with all relevant NGOs to encourage direct feedback from them to the extent reasonably required to achieve the Objectives or facilitate the Development, in order to reduce the number of objections at planning.

18. Net Zero Price Adjustment

- 18.1 If after [NUMBER] months of promotion the Promoter is unable to find a buyer and the reason has been notified and evidenced as the Net Zero Objectives being too onerous, the Owner will, acting in good faith, consider offers to buy the Development Land at the Net Zero Adjusted Land Price. [DN the drafting tries to set a higher disposal threshold to enable the higher price to be used to offset the environmental losses from not hitting the Net Zero Objectives]
- 18.2 On sale of the Development Land at the Net Zero Adjusted Land Price the parties agree that the cash difference between the Net Zero Adjusted Land Price and the Minimum Land Price and Market Value (the “Carbon Premium”) shall be used for any of the following purposes:
- (a) to progress Carbon Insetting or Carbon Offsetting relating to the Development;
 - (b) to promote Carbon Capture in the UK by using the Carbon Premium to plant trees or preserve peat bogs; and/or
 - (c) to any similar or analogous activity that would offset or balance the resulting Development’s carbon footprint.

19. Net Zero Bonus

- 19.1 The Owner shall pay the Promoter the Net Zero Bonus immediately following completion of each Sale that meets the Net Zero Objectives in full.

20. Net Zero Overage

- 20.1 To ensure that the Objectives are met and delivered, the Owner shall ensure the Satisfactory Planning Permission is not amended by subsequent owners or developers in a way that would erode the Net Zero Objectives.
- 20.2 The Owner and the Promoter agree that they will not accept a financial offer for the Development Land if such offer excludes the Net Zero Overage.
- 20.3 The Owner shall not exchange contracts in relation to any Sale without incorporating the Net Zero Overage either as covenant in the Transfer or as a separate overage deed.

21. Transfer

The transfer of the Development Land to a Buyer shall include:

- (a) a positive covenant to pay the Net Zero Overage [DN: assumes deed of covenant wording included elsewhere]; and
- (b) a Conservation Covenant over the Conservation Land in favour of [NGO or Community Company].

22. Rights of third parties

Save for relevant NGOs and the potential beneficiaries of the Conservation Covenants a person who is not a party to this agreement will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement

Schedule 1 - Net Zero Overage

[Include ‘typical’ overage provisions and drafting.]

Add theses additional definitions

1.1 Definitions:

New Owner: the new owner of the Development Land or any part of it from time to time.

Original Landowner: [Insert name of landowner from the promotion agreement]

Original Value: the consideration paid for the Development Land by the New Owner with the benefit of the Climate Positive Planning Permission.

NZ Overage Payment: an amount equivalent to [NUMBER %] of the Original Value.

New Planning Permission: an outline or detailed planning permission for the whole or part of the Development Land submitted by the New Owner, or on its behalf, which varies or replaces the Climate Positive Planning Permission such that the Development would:

- (a) not meet the Net Zero Objectives; or
- (b) have a higher carbon footprint than the development that would have been progressed as part of the Climate Positive Planning Permission.

Trigger Date: the date of submission to the Determining Authority of the New Planning Permission by the New Owner or its agent, developer, promoter or contractor. [DN deliberately brought forward to submission to discourage the action in the first place]

2. Net Zero Overage Payment

- 2.1 On each occasion that a Trigger Date occurs a NZ Overage Payment shall immediately become due by the New Owner to the Original Landowner.
- 2.2 The New Owner covenants with the Original Landowner that it shall pay each NZ Overage Payment due under paragraph 2.1 to the Transferor within 10 working days of the Trigger Date.

3. Disposals and restriction

- 3.1 The New Owner covenants with the Original Landowner not to make any Disposal of the Development Land without the transferee executing a Deed of Covenant.
- 3.2 The New Owner shall procure that the following restriction is registered on the title to the Development Land:
“No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, is to be registered without a written consent signed by the [Original Landowner]” [DN See notes for Users regarding Land Registry Guide 19]

[Evelyn & Ezra's clause] NEW

	The Origin Story
Child's name	Evelyn & Ezra's clause
Full name	Securing Net Zero in planning development projects
Practice Area / Sector	Planning, Real Estate, Construction, Energy
Issue	Currently, there is a wide disparity throughout England in aspirations of local planning authorities to achieve net zero. This is reflected in the range of planning policies in place and typical planning conditions and planning obligations being used. A coordinated and consistent approach will be required to achieve the government's target of Net Zero by 2050 ⁷⁹ .
Solution	Provide drafting solutions, suggestions, case studies and other resources to help local planning authorities gain confidence in requiring carbon neutral development as standard in their areas through policy, planning conditions and planning obligations. These suggestions are suitable for adoption through a range of different planning documents, including local planning authority policies, planning permissions, section 106 agreements and unilateral undertakings.
Context	<p>RIBA have developed strategies to enable architects to meet Net Zero⁸⁰ but these strategies are still dependent on an aligned planning system.</p> <p>The planning system can play an instrumental role in guiding any development to be carbon neutral through the whole of its life.</p> <p>Including planning conditions and planning obligations in legal documents are two ways in which local planning authorities (and other planning decision makers) can secure carbon neutral development in their area.</p> <p>Any planning decision is the outcome of balancing many factors. Decisions are to be made in accordance with the local plan unless material considerations indicate otherwise⁸¹.</p> <p>Accordingly, the need for climate neutral development can be introduced through the local plan or, may be a material consideration to be taken into account for any project development.</p> <p>Climate change material considerations may include:</p> <ul style="list-style-type: none"> • the Secretary of State's duty in the Climate Change Act 2008 [s1(1)]; • the Paris Agreement; • the National Planning Policy Framework (NPPF) [February 2019 revision]; and/or • the National Design Guide. <p>Local planning authorities can put together supplementary planning documents (SPD) which can include material considerations.</p> <p>Decision makers can use planning conditions and/or planning obligations to secure planning objectives such as carbon neutral development.</p>

⁷⁹ https://www.theccc.org.uk/wp-content/uploads/2020/06/Reducing-UK-emissions-Progress-Report-to-Parliament-Committee-on-Cli..._002-1.pdf
pages 100, 123, 191-192

⁸⁰ RIBA has developed the 2030 Climate Challenge to help architects meet net zero (or better) whole life carbon for new and retrofitted buildings by 2030.

⁸¹ Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004.

Context continued	<p>Planning obligations should not be used unless the issues cannot be addressed through a planning condition. Planning conditions (implemented through planning permission) should be kept to a minimum and only imposed if: necessary; relevant to planning and to the development permitted; enforceable; precise and reasonable in all other respects⁸². Planning obligations (secured by way of a section 106 agreement or unilateral undertaking) can only be a reason for granting planning permission if it is necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development⁸³.</p> <p>The planning system sits alongside the building regulation regime. Part L of the Building Regulations, which deals with energy efficiency of buildings, may be a useful reference point.</p> <p>Government proposals to “radically reform”⁸⁴ the planning system may render the agreements referenced here (e.g. section 106 agreements) inapplicable in future. However, the drafting is intended to form a basis for securing developer contributions and may be adapted to future agreements.</p>
Impact	A mechanism to encourage and assist with nationwide carbon neutral planning developments.
Stakeholders	<ol style="list-style-type: none"> 1. Government (in particular the Secretary of State for Housing, Communities and Local Government) 2. Local Planning Authorities 3. Town and Country Planning Association 4. Investors 5. Developers 6. Commercial landlords 7. Landowners
Application	<p>The suggestions below can be applied nationwide.</p> <p>Methods of assessing a development’s carbon neutral status are still being developed and this should be monitored.</p>
Notes for users	<p>The suggested drafting in items 2, 3 and 6 below are suitable for incorporation into planning permissions (planning conditions) or section 106 agreements and unilateral undertakings (planning obligations).</p> <p>Drafters need to ensure that the requirements of the Sustainability Plan do not conflict with the submitted planning application (including the drawings). For example, if the Sustainability Plan requires a developer to use on-site renewable energy but the application on which the planning permission is to be granted does not include renewables, it will be difficult for a developer to depart from the approved drawings. However, this is an issue as the sustainability of developments are then limited by the original lack of ambition.</p> <p>In drafting solution 3: adapt the definition of Net Zero Objectives to suit the development. Consider including obligations to help ensure implementation of the Net Zero Objectives Plan. E.g. refine the concept of the Plan so that some objectives are implemented prior to commencement, completion, occupation or any other phase of the development.</p>

Mechanisms, suggested drafting solutions and resources

1. Planning policy examples
2. Planning obligation to secure a sustainability plan

⁸² NPPF, paras 54 & 55.

⁸³ Regulation 122(2) Community Infrastructure Levy Regulations 2010.

⁸⁴ August 2020, ‘Planning For the Future’ White Paper, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907647/MHCLG-Planning-Consultation.pdf

3. Planning condition or obligation to secure net zero development (adapted from [Rory's clause] of this Playbook.)
 4. Whole lifecycle carbon assessments
 5. 'Be Seen' energy monitoring
 6. Carbon offset funds and planning obligations securing carbon offset contributions
-

1. Planning policy examples

Draft London Plan (draft (Intend to Publish) version Dec 2019) contains policy SI 2 Minimising greenhouse gas emissions (p414), which states major developments should be net zero-carbon in operation, follow the energy hierarchy (be lean, be clean, be green, be seen), include a detailed energy strategy, reduce beyond building regulations and if zero carbon cannot be met on site, provide offsite mitigation or a cash in lieu contribution. Requirement for certain development proposals to provide a whole life-cycle carbon emissions assessment (see point 4 below).

2. Planning obligation to secure a sustainability plan

Additional Definitions

Sustainability Plan means a plan to be agreed in writing with the Local Planning Authority which sets objectives to ensure the Development is constructed and maintained for the lifetime of the Development in a way that is sustainable (in accordance with paragraph 8 of the National Planning Policy Framework (as amended from time to time)) and where appropriate shall impose obligations on the Developer including (but not limited to) the following:

- a) a recommendation for the Developer and any future landlords of the Development to use the most detailed version of the sustainable obligations set out in Schedule 6 of the Model Commercial Lease⁸⁵;
- b) an obligation to monitor the usage of electric car charging points in any public/common parking areas and to submit an annual report to the Local Planning Authority on the usage of the electric car charging points. Where the usage of the electric car charging points exceeds X hours per month, an obligation to provide additional electric car charging points to meet demand;
- c) an obligation where possible to use renewable energy through on-site energy sources (such as solar or wind) or where it is not possible to use on-site renewable energy sources, an obligation to source renewable energy from energy suppliers;
- d) an annual requirement to publish in the public domain 5-10 initiatives which are being promoted at the Property that support sustainable development (in accordance with paragraph 8 of the National Planning Policy Framework).
- e) an obligation to provide a sustainability information pack to occupiers on first occupation which shall include (but is not limited to) the following items:
 - (i) information on waste recycling schemes at the Development and the Greenhouse Gas emissions that can be avoided by recycling;
 - (ii) information on the environmental benefits of using of energy-saving light bulbs/ LEDs;
 - (iii) [information on the environmental and financial benefits of using smart meters and how to obtain one;]⁸⁶

⁸⁵ See <https://modelcommerciallease.co.uk/leases/mcl-office-01/>.

⁸⁶ Delete if the development already includes smart meters.

- (iv) information on the environmental and financial benefits of reducing water usage and how to do so;
 - (v) information on the environmental benefits of using online shopping services and how to do so;
 - (vi) information on using public transport and the local services available; and
 - (vii) information on the benefits of using electric and/or hybrid cars.
- f) an obligation to promote the use of [x]% of public open space provided at the Development as an allotment for use by occupiers of the Development;
- g) a requirement to submit an annual (or biennial) report to the Local Planning Authority setting out whether the objectives in the sustainability plan have been achieved and to agree revised/updated objectives with the authority for the following year (or two years).

Sustainability Plan Coordinator(s) means a person or persons appointed by the Developer and approved in writing by the Local Planning Authority to be responsible for the co-ordination and ongoing management of the Sustainability Plan.

Sustainability Plan Monitoring Fee means £[X] payable to the Local Planning Authority towards the Local Planning Authority's costs incurred in monitoring compliance with the Sustainability Plan.

Clause xx: Planning Obligation

The Owner agrees:

- 1) Prior to Commencement of the Development, to agree the Sustainability Plan with the Local Planning Authority and appoint a nominated Sustainability Plan Coordinator(s) and notify the details of the Sustainability Plan Coordinator(s) to the Local Planning Authority.
- 2) To comply with the terms of the Sustainability Plan throughout the lifetime of the Development PROVIDED THAT any failure on the part of the Developer to comply with this provision which is due to acts, events or other circumstances beyond the reasonable control of the Developer shall not constitute a breach of this Agreement.
- 3) Not to allow Occupation of the 1st Dwelling on the Land until the Sustainability Plan Monitoring Fee has been paid to the Local Planning Authority.
- 4) Developers shall review the Sustainability Plan in accordance with the provisions of and timescales set out in the Sustainability Plan and to submit the results of such review(s) to the Local Planning Authority.
- 5) Following discussions with the Local Planning Authority, Developer shall have regard to any reasonable recommendations made by the Local Planning Authority in relation to each review and incorporate, where reasonable, such recommendations.

3. Planning obligation to secure net zero development (adapting Rory's clause and related definitions)

Definitions

Carbon Capture means the [technology for and] process of capturing, transporting and storing waste carbon dioxide.

Carbon offsetting means the purchase of a quantity of carbon credits equal to the amount of Residual Emissions from a project that has been verified in accordance with [insert name of voluntary standard] or from a United Nations Framework Convention on Climate Change (UNFCCC) clean development mechanism (CDM) [or [successor/equivalent] UNFCCC mechanism] project.

District Heating Scheme means a new or existing system for the distribution of heat and hot water to buildings on the Development.

Embodied Carbon means the Greenhouse Gases that are emitted through the production and delivery of building materials for and used in the Development.

EV means a vehicle that uses one or more electric motors for propulsion and obtains all its power from an electric battery.

EV Parking Spaces means spaces specifically designated for charging EVs through charge points or directly from the grid.

EV Substation Capacity means a substation with sufficient capacity to be able support the requirements of the EV Parking Spaces.

Greenhouse Gas (GHG) means gases that contribute to or accelerate the greenhouse effect by absorbing infrared radiation, including but not limited to: carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, hydrofluorocarbons, perfluorocarbons and chlorofluorocarbons.

Hydrocarbons means principally oil, gas and coal or other fuel source derived from an organic compound made up of hydrogen and carbon.

Net Zero Objectives means obligations to:

- a) maximise the proportion of Zero Carbon Housing on the Development;
- b) use building materials with the lowest Embodied Carbon reasonably available;
- c) maximise self-generation of renewable energy on the Development;
- d) minimise the use of heating and hot water technologies that use Hydrocarbon fuels or produce Greenhouse Gases;
- e) establish a Community Energy Programme to supply renewable energy to the Development;
- f) maximise Carbon Capture at the Development;
- g) use Carbon Offsetting for the Development as a last resort;
- h) minimise the use of energy by the Development using ‘smart grid’, demand side energy management and other technologies;
- i) prioritise the use of electricity from renewable energy sources over all other types of fuel on the Development;
- j) maximise the EV Substation Capacity; and
- k) connect into existing District Heating Schemes where possible.

Residual emissions means the [Greenhouse Gas] emissions that are emitted after all reasonable efforts have been made by the Developer to reduce the GHG emissions associated with the Development.

Zero Carbon Housing means dwellings that are designed to [maximum energy efficiency standards/ Passive House standards/BREEAM rating outstanding] and to be heated and powered only through [on-site/off-site] renewable technologies and where their construction has resulted in net zero carbon emissions including through efficient methods of construction, the use of materials with low Embodied Carbon and the use of Carbon Offsetting for [unavoidable/residual] emissions.

Obligations

The Developer agrees:

- 1.1 Prior to commencement, to submit to the Local Planning Authority a plan to achieve all of the Net Zero Objectives (Net Zero Objectives Plan).
- 1.2 Not to Commence Development before the Local Planning Authority has approved the Net Zero Objectives Plan.
- 1.3 To comply with the Net Zero Objectives Plan subject to any amendments agreed in writing between the Local Planning Authority and the Developer.

4. Whole Life-Cycle Carbon assessments

‘Whole Life-Cycle Carbon (WLC) emissions are the carbon emissions resulting from the materials, construction and the use of a building over its entire life, including its demolition and disposal. A WLC assessment provides a true picture of a building’s carbon impact on the environment.’⁸⁷

5. ‘Be seen’ monitoring

Monitoring of a development’s energy use during the first years of its life. This is to help understand (and reduce) the gap between a development’s theoretical energy use and its actual operational energy use.⁸⁸

6. Carbon offset funds and planning obligations securing carbon offset contributions

For guidance on how to set up a carbon offset fund and how the funds may be spent, see: Carbon Offset Funds, Greater London Authority guidance for London’s Local Planning Authorities on establishing carbon offset funds, Mayor of London, October 2018, available at 28.07.2020 at <https://www.london.gov.uk/what-we-do/planning/planning-applications-and-decisions/pre-planning-application-meeting-service>.

Definitions

Carbon Offset Contribution means the sum to be calculated in accordance with the Carbon Offset Contribution Formula as taken from the Local Planning Authority’s [insert Supplementary Planning Document reference] towards the provision of carbon offsetting projects within the Local Planning Authority’s administrative area.

[Example] **Carbon Offset Contribution Formula** means the following formula:

(a) x (b) x (c)

where:

(a) = carbon gap (residual tonnes of carbon)

(b) = price of carbon (£)

(c) = 30 years

⁸⁷ See 1) para. 9.2.11 of the Draft London Plan (draft (Intend to Publish) version Dec 2019 (p418): https://www.london.gov.uk/sites/default/files/intend_to_publish_-_tracked.pdf) and 2) London’s Pre-consultation draft of Whole Life Cycle Carbon Assessments guidance: <https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/planning-guidance/whole-life-cycle-carbon-assessments-guidance-pre-consultation-draft>

⁸⁸ See 1) Policy SI2 of the Draft London Plan (draft (Intend to Publish) version Dec 2019 (p414) available at 28.07.2020 https://www.london.gov.uk/sites/default/files/intend_to_publish_-_tracked.pdf) and 2) London’s Pre-consultation draft of ‘Be seen’ energy monitoring guidance at 28.07.2020 <https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/planning-guidance/be-seen-energy-monitoring-guidance-pre-consultation-draft>



[Marni's clause]

	The Origin Story
Child's name	Marni's clause
Full name	Report on Title – Climate Change Clauses
Practice Area / Sector	Real Estate, Commercial Property
Issue	Standard Reports on Title for the acquisition of property in the UK do not include statements relating to the future risks of climate change that may affect the property. Given the wide acceptance of climate change science and the articulation of climate change risks by the Bank of England and others, this is something buyers should be aware of prior to purchase.
Solution	In the absence of climate change risk searches being available, standard climate change statements should be added to a report on title to make buyers aware of the future risks that may affect the property.
Context	The built environment contributes around 40% of the UK's total carbon footprint. ⁸⁹ The Bank of England has observed that more building is being undertaken in high risk areas ⁹⁰ . There are existing laws to make it illegal to lease commercial property that has an Energy Performance Certificate rating that is either F or G. If the UK is to hit its net zero target then it is logical that in the future it may become illegal to rent properties that are not net zero. There are already tools available to search for land projected to be below annual flood level in 2050 ⁹¹ . The average term of a UK mortgage is 25 years Reports on title are used in the acquisition of all UK property from commercial to residential and freehold to leasehold.
Impact	The clauses will ensure climate change risks are brought into mainstream transactional awareness. The identification of risks will also mean there has to be a new focus on solutions such as how the property could be made more resilient to the effects of climate change. This should result in investment in buildings to make them more energy efficient.
Stakeholders	The key stakeholders that you think need to be engaged to deliver this Impact <ol style="list-style-type: none"> 1. Council for mortgage lenders 2. RIBA and RICS 3. Precedent and know how providers 4. Professional support lawyers 5. Private practice firms
Application	The proposed amendments will mean that climate change issues are a standalone section of the report, bringing the risks to the fore and prompting clients to consider obtaining professional advice on how the building will be resilient to the effects of climate change.

⁸⁹ <https://www.ukgbc.org/climate-change/>

⁹⁰ <https://www.bankofengland.co.uk/knowledgebank/climate-change-what-are-the-risks-to-financial-stability>

⁹¹ <https://sealevel.climatecentral.org/maps/>

Notes for users	The statements are designed to be used for leasehold and freehold transactions for both commercial and residential buildings. If leasehold acquisition, then we expect the drafter will suggest that resilience questions are directed to the landlord.
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Additional provisions to add to a report on title:

Interpretation

- 1.1 The following terms are used in this report:

Climate Change: the long-term and material changes in global or regional weather patterns including, temperature, humidity, precipitation, or wind.

Scope of the Review and Limitation of Liability

- 3.1 [No searches are available to clarify the risks to the Property from Climate Change and] we have not sought advice from Climate Change scientists or consultants specialising in climate risk analysis. We have generally summarised the general risks to the Property from Climate Change based on the Bank of England risk analysis but have not taken any steps to verify these risks and express no opinion on the likelihood of their occurrence.

[Note: Property searches are likely to become increasingly available for climate risks to properties, at differing levels of granularity.]

Climate Change Risks

The Property could be subject to the following risks in the future as a result of the impacts of Climate Change and the transition to a net zero emissions economy. These risks could affect the future value as well as the ability to obtain future borrowing against the property and policies of insurance.

4.1 Physical Risks

According to the Bank of England, Climate Change “means we may face more frequent or severe weather events like flooding, droughts and storms” and gradual onset changes. As such you should consider whether such events could interrupt your intended use of the Property. For example, it may be more likely that the risks identified in your Flood Risk Report will occur as a result of Climate Change. You may also like to discuss with your surveyor how the Property could be made more resilient to the effects of Climate Change.

4.2 Transition Risks

The UK government policy has set a target to achieve net zero emissions by 2050. The Property has an Energy Performance Certificate Rating of []. It may be that as a result of policy changes required to achieve net zero you will be required by law to invest in improving the energy efficiency of the Property such as using additional insulation, installing solar panels etc.

4.3 Future Liability Risk

If you are buying the Property as an investor or business you should report the potential Physical and Transitional Risks to your investors, shareholders or funders so that you have adequately disclosed the Climate Change related financial risks to them.

[Emma's clause]

The Origin Story	
Child's name	Emma's clause
Full name	Green Residential Lease Clauses
Practice Area / Sector	Real Estate
Issue	New build flats may be built in a sustainable way using sustainable materials (e.g. with BREEAM rating excellent, Passivhaus or Energy Performance Certificate (EPC) A rating). However, the way they are operated (i.e. used) by purchasers/ tenants can erode the design intent and carbon savings made during the construction process.
Solution	Covenants in the leasehold agreement or lease to require the flat purchaser/ tenant to operate the flat to its maximum energy efficiency and abide by rules concerning waste recycling/ composting/ maintenance of green roofs and spaces.
Context	Property developers have long recognised that even green developments can be run sub-optimally from an environmental perspective. For example, renewables may be installed but then not used. Buildings management systems may not be commissioned or may be operated incorrectly, meaning energy efficient equipment is not used to the maximum efficiency. Owners may replace LED bulbs with normal bulbs. The difficulty is educating and incentivising purchasers and tenants to use the building in the way that the designers intended. Most improvements in building management that have occurred in the last twenty years have resulted from education and collaborative measures ⁹² . To date, buyers and sellers and landlords and tenants, may have not been aware of the potential, or have not been encouraged to include, wording in leasehold agreements to impose obligations on buyers and tenants to use the building in an environmentally conscious way. Some mortgage providers are starting to offer mortgage incentives to homeowners who buy greener homes ⁹³ . Similarly, some developments are leading the way and successfully using these kinds of environmental obligations in the market ⁹⁴ .
Impact	Homes in the UK are responsible for about 27% of the UK's total CO2 emissions. Even with ever improving building design and construction, the energy consumption of new homes has not fallen dramatically. This is due partly to increasing consumption (people own more electrical goods even though all products have become more energy efficient). How owners and occupiers use flats (and other buildings) can have a dramatic effect on their energy consumption. Currently, there are education and incentive programmes, run by government agencies (for example, see The Energy Saving Trust) to encourage more climate conscious behaviour and use of buildings but there is nothing to require this in a residential setting. Adding covenants (and other terms) to leasehold agreements and leases requiring leaseholders and tenants to use their flats in a more environmentally conscious way (or even to meet targets to reduce their energy consumption) will focus people's minds and reinforce the educational approach taken by government policy to date. The covenants will make flat owners and tenants aware of what is required to use a building efficiently and make such behaviour mainstream.

⁹² <https://www.carbontrust.com/> <https://www.betterbuildingspartnership.co.uk/>

⁹³ <https://www.businessgreen.com/news/4016056/saffron-building-society-debuts-green-mortgage-offer>

⁹⁴ <https://www.stmargaretsresidences.co.uk/>

Stakeholders	<p>The key stakeholders that you think need to be engaged to deliver this Impact</p> <ol style="list-style-type: none"> 1. Royal Institute of Chartered Surveyors (RICS) 2. The Better Buildings Partnership (BBP) 3. The Council for Mortgage Lenders 4. Construction finance professionals 5. Real estate lawyers. 6. Private practice firms 7. Developers (and their in-house teams). 8. Estate agents 9. Banks and building societies providing mortgages. 10. British Property Federation (BPF) 11. The Law Commission.
Application	<p>The drafting is for apartments in a block with common internal and external areas run by a management company that owns the freehold reversion.</p>
Notes for users	<p>This drafting is based upon the Better Building's Partnership (BBP) Green Lease Toolkit. BBP's Model form green lease clauses are aimed at commercial rather than residential leases and are also of a "light green" variety. These clauses are of a "darker green" variety and aim to challenge existing legal drafting for new build flats.</p> <p>The drafting assumes that the developer and landlord wish to collect environmental data ("Data") to create an analytical feedback loop to show how the building is performing against design. This will then help demonstrate the impact and provide design insight for future developments.</p> <p>The drafting includes a series of tenant covenants and regulations which ensure the energy efficiency of the buildings is not fundamentally altered and that the tenants focus on low energy occupation. Additional wording could be added to:</p> <ul style="list-style-type: none"> • Reflect the provision of renewable power by generation units on the estate. • Reflect the provision of electric vehicle charging points if there is a car park attached to the development. • Reflect the provision of cycle racks if there is a car park attached to the development. • Require tenants to recycle waste generated at the premises or to use the recycling facilities provided by the Landlord. <p>The drafting assumes that the buildings have been built to a high EPC standard and this is the benchmark used to prevent erosion of energy efficiency. The drafting assumes normal definitions of Premises, Landlord, Tenant, Manco. Other Lessees etc.</p> <p>The drafting assumes a metered and centralised heating system in this case ground source heat pumps in a small district system. Hence the reference to Heat Supplies, Heat Infrastructure, heat interface unit etc.</p> <p>The drafting assumes a cure process for breach of environmental covenants that is sufficiently robust but without resulting in forfeiture.</p>

Additional Clauses

Rights excepted and reserved

[The right to receive and use Data in relation to the Environmental Performance of the Building in accordance with the provisions of Schedule [X].]

Tenant's covenants

The Tenant covenants with the Landlord and the Manco and the Other Lessees as follows:

- 1.1 The Landlord and/or the Manco reserve the right to collect Data (as defined in Schedule []) to monitor the consumption of [energy and/or Heat Supplies] to the Premises and to use such Data in accordance with the provisions of Schedule [] and, where in the reasonable opinion of the Landlord and/or the Manco the consumption of [energy and/or Heat Supplies] at the Premises is excessive (by way of comparison with Other Lessees or otherwise) then the Tenant shall pay to the Landlord on demand such reasonable and proper charges in respect of the excessive [energy and/or Heat Supplies] to the Premises as the Landlord and/or the Manco shall deem reasonable in the circumstances (which said charges may be demanded with Service Charge demands by the Landlord for administrative purposes).

2. Repair

- 2.1 To keep the Premises in good and substantial repair and condition and when necessary to replace and renew any landlord's fixtures and fittings with new ones of equivalent quality and value and with equivalent [or better] sustainability and environmental performance credentials to the reasonable satisfaction of the Landlord
- 2.2 Where the Tenant is required to replace or renew any relevant Landlord's fixtures or fittings or other appliances at the Premises then it shall do so (where applicable) with A+++ rating models and/or LED light bulbs [or other designation].

3. Decoration Maintenance and Cleaning

- 3.1 To carry out all works of repair, decoration and maintenance and other treatment of the Premises in a proper and workmanlike manner in accordance with good practice current at the time and using good quality sustainable, environmentally friendly and sufficient materials.

4. Alterations

- 4.1 The Tenant shall not carry out any alterations to the Premises which may adversely affect the Environmental Performance (as defined in Schedule []) of the Premises of the Building or the EPC rating of the Premises (without the prior written consent of the Landlord or Manco).

Regulations

The Tenant covenants with the Landlord and the Manco and the Other Lessees as follows:

- 1 To ensure that the electricity consumed at the Premises is purchased on a 100% renewable energy tariff.
- 2 To minimise the use of energy [and/ or heat supplies] at the Premises to help meet the Greenhouse Gas emissions targets set by the Landlord and the Manco in respect of the [the Estate/ the Building].
- 3 Not to park or accommodate any vehicle on any parking space or any other part of the Estate that runs on diesel fuel.
- 4 Not to store or use any patio heater or any other exterior high energy heating facility on any external patio terrace or other external areas forming part of the Premises.

- 5 To comply with all requirements and recommendations from time to time of the Manco in relation to the energy efficient use of the Premises and apparatus within it.
- 6 Not to sub-let or rent the Premises other than on an assured shorthold tenancy basis that obligates the sub-tenant to occupy the Premises in accordance with the Environmental Performance and energy efficiency requirements of this lease [See Toryn's clause for AST wording].
- 7 Not to carry out any works to the Premises which could affect the heat insulation or the rate of transfer of heat through the Premises structure, windows and doors ("U Value").
- 8 Not to damage or tamper with or make any alterations or additions to the heat interface unit or Heat Infrastructure within the Premises or any other meter installed in the Premises and to pay to the Landlord or Manco on demand the reasonable cost of repairing or reinstating or replacing any such heat interface unit, Heat Infrastructure or meter so damaged or tampered with or altered.
- 9 At all times to observe and perform all such variations or modifications of the foregoing regulations and all such further or other regulations as the Landlord or Manco may from time to time in its reasonable discretion think fit to make (and notify to the Tenant) for the energy efficient use of the Building and the Estate and the comfort, safety and convenience of the tenants and occupiers.

Schedule [] - Environmental performance provisions

Definitions

In this Schedule 10 the following definitions shall apply:

'Data'	means data all and any data held in respect of the Environmental Performance of the Premises, the Building and/or the Estate (as the context requires);
'Environmental Performance'	means all or any of the following in relation to the Premises, the Building and/or the Estate:- (a) energy consumption; (b) water consumption and discharge; (c) waste generation and management; (d) generation and/or emission of Greenhouse Gases; and/or (e) other adverse environmental impacts.
Greenhouse Gas	means gases that contribute to or accelerate the greenhouse effect by absorbing infrared radiation and that as specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) or otherwise specified by the UNFCCC at the date of this Lease.

1 Co-Operation Obligations

The Landlord and Manco may:

- 1.1 take such reasonable steps as are required to promote and improve the Environmental Performance of the Premises, Building and the Estate; and
- 1.2 Identify and pursue appropriate strategies for improvement of the Environmental Performance of the Premises, Building and the Estate.

2 Environmental Management Plan

- 1.3 The Landlord and/or Manco may (or procure via its managing agent) put in place an appropriate environmental management plan ('EMP') for the Building and the Estate.
- 1.4 The Tenant agrees that the Landlord and/or Manco may use the Data for the purposes of creating an EMP and ensuring that the Building and Estate is run in a sustainable way that improves Environmental Performance.
- 1.5 The Tenant shall comply with any Estate Regulations relating to the Environmental Performance of the Premises, the Building and/or the Estate.

3 Data Sharing and Metering

- 1.6 The Landlord and the Manco may collect Data and share this with any other third party that the Landlord and/or Manco considers needs to receive the Data.
- 1.7 The Landlord and the Manco may disclose the Data collected pursuant to this Schedule [] to third parties in order to promote the sustainability credentials of the Building and/or the Estate and to encourage and promote sustainability to third parties with the housebuilding and construction sector provided that sensitive personal data shall not be disclosed.
- 1.8 The Landlord and/or Manco shall only use the Data for the purposes of procuring promoting or encouraging Environmental Performance.
- 1.9 The Landlord shall ensure that similar restrictions on the publication and use of the Data are placed on its managing agent.
- 1.10 The Landlord and Manco shall have the right (at the Landlord's cost) to install inspect maintain and receive Data from meters relating to energy supplies and Heat Supplies used in the Premises. The Tenant shall give the Landlord the necessary access in order to allow for such metering to be inspected and maintained (the Landlord or Manco complying with any entry requirements).

4 Tenant's General Obligation on Energy Efficiency and Information

- 1.11 The Tenant shall:
 - 4.1.1 not do or omit to do anything which adversely affects; and
 - 4.1.2 provide to the Landlord and/or Manco (and all persons authorised by the Landlord and/or Manco) all information, assistance, access to the Property and other facilities reasonably requested by the Landlord or Manco (or such person), and co-operate with the Landlord in relation to any initiatives, in connection with the Environmental Performance or sustainability characteristics of the Building or the Estate (including the Energy Performance Certificate and related recommendations report).
- 1.12 The Tenant shall use all reasonable endeavours to minimise energy consumption and waste and to recycle waste generated at the Property.

5 Costs

The reasonable and proper costs incurred by the Landlord and/or the Manco of implementing and operating the provisions of this Schedule [] may be included within the Service Charge.

[Toryn's clause]

The Origin Story	
Child's name	Toryn's clause
Full name	Green Assured Shorthold Tenancy (AST) clauses
Practice Area / Sector	Real Estate
Issue	Tenants are not incentivised to occupy their rental property in a sustainable way and landlords have no ability to install renewable energy solutions whilst the property is occupied by virtue of the protections afforded to tenants under ASTs.
Solution	Include the Green AST clauses in all ASTs to give tenants a modest rental rebate (to be determined by each landlord) for buying renewable energy, recycling and reducing household and water waste and give landlords the ability to invest in renewable energy installations (and take advantage of tariffs or financial support, if available) whilst their rental properties are occupied.
Context	According to Generation Rent ⁹⁵ , 13 million people in the UK rent from a private landlord, equivalent to 20% of the UK's population. In London, that figure is 29%. The most common form of tenancy is an AST. Most new tenancies are automatically this type ⁹⁶ . Around 2/3rds of UK households are on standard variable rate energy tariffs, however fixed rate green energy tariffs are generally cheaper and there are several green energy tariffs – offered by suppliers such as Good Energy and Bulb - on the market ⁹⁷ . Energy bills are a concern for many people. Research by the Energy Saving Trust regularly highlights that large numbers of UK residents are worried about their energy costs and would like to do something about it ⁹⁸ . However, potential tenants do not always apply the same level of scrutiny to their potential home as buyers and high energy bills in private rental properties, which are more likely than any other tenure to be old and inefficient, could place an unwelcome burden on top of the cost of the rent ⁹⁹ .
Impact	By utilising the Green AST clauses, private landlords can incentivise their tenants to live more sustainably by offering them the "Green Rent Rebate". The "Green Rent Rebate" encourages tenants to choose a renewable energy tariff at the start of the tenancy and maintain it for their period of occupation. Further, by including the ability to re-enter their properties to investigate, and if possible, undertake the installation of renewable energy solutions, in their AST, private landlords have the option to invest in their properties – for the benefit of themselves (in terms of the properties long-term value, making the property more attractive to tenants, lowering turnover and reducing potential problems such as damp) and their tenant (who will have the opportunity to live in a more energy efficient home which is cheaper to run, thus reducing the risk of fuel poverty) ¹⁰⁰ – rather than having to wait until the property is unoccupied to undertake such works at a time when they are not receiving rent.

⁹⁵ https://www.generationrent.org/about_renting

⁹⁶ <https://www.gov.uk/tenancy-agreements-a-guide-for-landlords/tenancy-types>

⁹⁷ <https://www.moneysupermarket.com/gas-and-electricity/green-energy-tariffs/>

⁹⁸ <https://energysavingtrust.org.uk/home-energy-efficiency/financial-support>

⁹⁹ <https://energysavingtrust.org.uk/blog/think-energy-efficiency-when-renting-home>

¹⁰⁰ <https://energysavingtrust.org.uk/scotland/businesses-organisations/landlords>

Stakeholders	The following key stakeholders should be engaged to deliver the potential impacts identified above: 1. Ministry of Housing, Communities and Local Government; 2. Landlords associations such as the National Landlords Association, the Residential Landlords Association and the British Landlords Association; 3. Property lettings or managing agents; and 4. Housing associations and charities.
Application	The Green AST clauses can easily be incorporated into a standard form AST. Practitioners should engage with landlord clients to encourage them to consider the benefits of adopting the clauses. The clauses are reliant on the landlord not artificially inflating the rent to offer a discount.
Notes for users	Green Occupation Undertakings should be amended as applicable for each tenancy and do not represent an exhaustive list of potential undertakings that landlords could require in return for the Green Rent Rebate.

Additional Clauses:

23. Rent

- 23.1 Subject to clause 1.2, the Tenant shall pay rent at an initial rate of £[AMOUNT] per calendar month (**Rent**) in advance on or before the [DAY] day in each calendar month (**Rent Payment Date**) to the Landlord.
- 23.2 The Landlord hereby agrees to reduce the Rent by £[AMOUNT] per calendar month (**Green Rent Rebate**) in reliance on the following Tenant undertakings (**Green Occupation Undertakings**):
- (a) to purchase electricity and, if available, gas from a renewable/green tariff¹⁰¹, install a smart meter and smart heating controls to monitor their energy use¹⁰¹ and minimise energy use as far as possible (for example by turning appliances off standby mode);
 - (b) to replace existing LED light bulbs with new LED light bulbs as required from time to time¹⁰²;
 - (c) to recycle as much as possible and otherwise minimise household waste as far as possible;
 - (d) to minimise water use as far as possible [for example by installing water efficient shower heads]¹⁰³.
- 23.3 The Landlord reserves the right to require the Tenant to provide reasonable evidence (for example, copies of recent utility bills) to demonstrate its compliance with the Green Occupation Undertakings.
- 23.4 If, in the Landlord's reasonable opinion, it does not believe that the Tenant has been complying with the letter and/or spirit of the Green Occupation Undertakings, the Landlord may withdraw the Green Rent Rebate at its discretion. In this event, the Rent shall return to the amount stated in clause 1.1 with effect from the next Rent Payment Date.

¹⁰¹ If not already installed by the Landlord.

¹⁰² Assumes all light bulbs in the Property are already LEDs.

¹⁰³ If not already installed by the Landlord.

24. Landlord's right to enter the Property

- 24.1 Subject to clause 2.2, the Landlord reserves the right for the Landlord, or any person acting on behalf of the Landlord, to enter the Property on giving reasonable prior notice to the Tenant to investigate the possibility of installing renewable energy or energy efficiency solutions (for example installing a more efficient boiler, loft insulation, solar panels on the Property's roof, a home battery or an electric vehicle charging point) and, if deemed suitable, undertake any such installations.
- 24.2 The Landlord, or any person acting on behalf of the Landlord, shall take reasonable steps to ensure that the Tenant's right to quiet enjoyment of the Property is not unduly interrupted by, and make good any damage caused by, the investigations or the undertaking of the installations referred to in clause 2.1.
- 24.3 Subject to the Landlord's compliance with clauses 2.1 and 2.2, the Tenant shall use its reasonable endeavours to co-operate with the Landlord to assist it with the investigations or the undertaking of the installations referred to in clause 2.1.

[Rosie's clause] NEW

	The Origin Story
Child's name	Rosie's clause
Full name	Alteration/improvement provisions within leases to improve climate/ environmental impact of buildings and better use of shared space
Practice Area / Sector	Real Estate
Issue	<p>In commercial leases, tenants usually need their landlord's consent for alterations or improvements to the property or the common parts - even if the aim of the alteration/improvement is to achieve a more positive environmental impact.</p> <p>Sometimes landlords will give consent, but on terms which do not encourage tenants to improve the climate or other environmental impact of the property and this can be a barrier to the transition to net zero.</p>
Solution	<p>Including wording in leases to require landlords to act reasonably when tenants propose (i) alterations to their premises (and associated change of use) or (ii) improvements to common areas, which (in all cases) have a positive climate or environmental impact.</p> <p>This will encourage a shift towards a more collaborative landlord/tenant relationship and reduce the climate or other environmental impact of buildings and shared areas in a move towards Net Zero.</p>
Context	<p>In 2013, the Better Buildings Partnership (BBP)¹⁰³ launched their 'Green Lease Toolkit', which included some proposed drafting expanding a tenant's ability to carry out alterations which improve environmental performance. The proposed clause was limited to non-structural alterations and, in the seven years since its launch, take up of this clause (or something similar) has been limited.</p> <p>The UK Government's 'Clean Growth Strategy' has led to some improvement in energy efficiency in commercial buildings (with minimum requirements for such buildings to be able to be let)¹⁰⁴. However, the lease itself needs to promote proactive environmental improvements to address the impact of commercial buildings on climate change and the environment.</p> <p>The 'Climate Change Commitment' (signed in 2019 by 23 leading commercial landlords covering over £300bn of assets under management, responsible for over 1.2 million tonnes of carbon emissions per annum) focused on the target for buildings to be net zero carbon by 2050¹⁰⁵. To help achieve this, building owners will need to allow (and encourage) occupiers to make changes to the buildings which will have a positive impact on their environmental performance.</p>

¹⁰³ See <https://www.betterbuildingspartnership.co.uk/>.

¹⁰⁴ See the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (SI 2015/962) (MEES Regulations).

¹⁰⁵ See <https://www.cgi.co.uk/news/better-buildings-partnership-outlines-climate-commitment/>..

Impact	<p>This clause will:</p> <ul style="list-style-type: none"> • help tenants to carry out environmental improvements knowing that landlords need to act reasonably in allowing these; • lead to better and more efficient use of land and buildings (e.g. empty roof space being used for renewables or as green space; shared areas being used for recycling etc.); • lead to a more collaborative landlord/tenant relationship and improve the environmental performance of both parties as well as the environmental impact of buildings and shared areas.
Stakeholders	<ol style="list-style-type: none"> 1. Law Firms 2. The Law Society 3. Insurers 4. Council of Mortgage Lenders 5. Legal Know How Providers 6. Property Standardisation Group (Scotland) 7. British Property Federation (BPF) 8. Royal Institute of Chartered Surveyors (RICS) 9. The BBP 10. RIBA
Application	<p>This wording is intended to be used as riders by a tenant and as suggested amendments to a lease.</p>
Notes for users	<p>Defined terms such as Premises, Estate, Building or End Date can be tailored to the draft lease being used. The definition of Environmental Performance follows the definition in the Model Commercial Lease¹⁰⁶.</p> <p>Drafters should consider the potential impact of this wording on user provisions.</p> <p>Examples of where this clause could apply:</p> <ul style="list-style-type: none"> • the tenants in a city centre office building getting permission from their landlord to use the roof space as a herb garden and for bee hives; and/or • using common areas for the installation of bike racks (encouraging people to cycle to work and use cars less). <p>On internal leases of part of multi-let buildings, tenants are more likely to want to influence the Landlord's service charge practices and any works to the building to achieve environmental objectives. With that in mind, tenants could also consider including a clause enabling their environmental recommendations relating to services etc. to be made to the management company/landlord by way of a tenant representative/consultative body that would give non-binding recommendations on behalf of itself and potentially other tenants at the building.</p>

¹⁰⁶ See <https://modelcommerciallease.co.uk/>.

Environmental Improvements means alterations made by the Tenant which improve the Environmental Performance of the Premises, the Estate or the Building;

Environmental Performance means all or any of the following:

- (a) the consumption of energy and associated generation of greenhouse gas emissions;
- (a) the consumption of water;
- (b) waste generation and management; and
- (c) any other environmental impact arising from the use or operation of the Premises, the Estate or the Building;

For Tenant's alterations covenant

The Tenant may, with the Landlord's consent, which is not to be unreasonably withheld or delayed, carry out [structural and] non-structural works to the Premises [or to unbuilt parts of the Estate] which [the Tenant can demonstrate by the provision of an [energy efficiency report/ecology report/other report]] will improve the Environmental Performance of the Premises, Building or Estate. The Landlord can refuse consent to any proposed works which in the Landlord's reasonable opinion would have a detrimental impact on the investment value of the Landlord's reversionary interest in the Premises, Building or Estate.

For Tenant's Yielding Up covenant

By the End Date the Tenant must have removed....

save that the Tenant shall not be required to remove any Environmental Improvements [unless the Landlord has given it at least [X] months' notice that it is requiring the Tenant to remove all or part of any Environmental Improvements on the basis that those works remaining after the End Date would have a detrimental impact on the investment value of the Landlord's reversionary interest in the Premises, Building or Estate].



[Mary's clause]

The Origin Story	
Child's name	Mary's clause
Full name	JCT Energy Efficiency and Environmental Obligations
Practice Area / Sector	Construction
Issue	The standard JCT suite of contracts do not include environmental standards. Further they do not provide a remedy for the employer if energy efficiency targets are missed.
Solution	Amendments to the JCT standard Design and Build documents to make energy efficiency part of Practical Completion.
Context	The built environment contributes around 40% of the UK's total carbon footprint ¹⁰⁷ The more energy efficient the buildings the more carbon that is saved and the more future proof the investment. The JCT suite of contracts are used in a large proportion of the building industry. Amendments to the JCT contracts are common and normal practice for employers.
Impact	The clause will ensure new and refurbished buildings hit desired energy efficiency requirements. A more energy efficient building should have a lower carbon footprint and be a more resilient long-term asset for the developer or funder. It should also be more valuable. ¹⁰⁸
Stakeholders	The key stakeholders that you think need to be engaged to deliver this Impact 1. The Joint Contracts Tribunal 2. RIBA and RICS 3. Developers 4. Contractors 5. Precedent and know how providers 6. Professional support lawyers 7. Private practice firms
Application	The proposed amendments will mean that a contractor will not be able to achieve Practical Completion without hitting the energy efficiency obligations. This puts energy efficiency front and centre. If the required standards are not achieved, then the contractor would have to retrofit the building until they are satisfied as there are no liquidated damages in lieu. Lenders are providing products which provide access to discounted rates for energy efficient property projects . Therefore, these Lenders and their covenants should be aligned with this clause. The drafting team are aware of a similar clause being used on funded projects ¹⁰⁹ where energy efficiency is a core requirement of the employer.

¹⁰⁷ <https://www.ukgbc.org/climate-change/>

¹⁰⁸ <https://www.rics.org/globalassets/rics-website/media/knowledge/research/insights/energy-efficiency-and-residential-values.pdf>

¹⁰⁹ <https://www.lloydsbank.com/business/commercial-banking/clean-growth-financing-initiative.asp>

Notes for users	<p>This clause can only be used for Design and Build Contracts.</p> <p>EPC is not a perfect benchmarking tool but is a standard uniformly applied in the UK.</p> <p>The clause assumes the employer is happy with some uncertainty and has taken a commercial view as to the remedies available.</p> <p>The remedy is likely to include additional solar panels, further insulation, etc and does not envisage the contractor knocking down and rebuilding the property.</p> <p>“Standard of Care” and other defined terms are not provided, only those relating to energy efficiency.</p>
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JCT Contract Particulars: Incorporation into this Agreement

- 1.1 The Parties have completed the JCT Contract Particulars in the JCT Design and Build Contract, 2016 edition attached at Annex A. The JCT Contract Particulars shall take effect in this agreement, as completed by the Parties, subject to these amendments.

Definitions

- 1.2 Add these definitions:

“Environmental Requirements”: (a) the protection of the environment (including the prevention of atmospheric and other pollution and the protection of wildlife and wildlife habitats); (b) sustainable construction and development; and (c) energy efficiency, in particular by using all reasonable endeavours to fulfil the environmental and sustainability objectives listed in Annex [A].”

“EPC Obligation”: the specific obligation imposed in the Employer’s Requirements requiring the Contractor to achieve an EPC “A” rating in respect of [certain parts of] the Works [as identified therein].”

Compliance with Environmental Requirements

- 2.1 Add a new sub-clause:

“In performing his obligations under this Contract, the Contractor shall and shall ensure that each of its sub-contractors shall:

- 2.1.1 comply with the Modern Slavery Act 2015 and the Anti-Slavery Policy;
- 2.1.2 comply with the Anti-Bribery Policy; and
- 2.1.3 at all times in carrying out its obligations under this agreement, the Contractor shall seek to [promote] the Environmental Requirements.“

[Note: Alternatively, the Environmental Requirement could be included in the Standards/Compliance with Law’ obligations.]

- 2.2 Add a new sub-clause:

“Without derogating from any other provision in this Contract, the Contractor warrants to the Employer that it shall use the Standard of Care when:

- 2.2.1 designing the CDP Works;
- 2.2.2 selecting goods, materials, plant and equipment for incorporation in the CDP Works; and
- 2.2.3 complying with the obligation in clause 2.1.3 in respect of the Environmental Requirements.”

EPC Obligation

3.1 Add new clause:

“For the purpose of assessing whether practical completion of the Section or the Works has been achieved, the [Employer/Employer’s Agent/Architect/Contract Administrator] shall not issue any certificate to that effect until such time as the EPC Obligation for such Section or the Works as the case may be has been met or alternatively specific agreement has been reached between the Employer and the Contractor for the urgent achievement of the EPC Obligation during the course of the Rectification Period (which may include the Employer requiring the Contractor to undertake remedial works (such remedial works to include, but not limited to, retrofitting as necessary) to achieve the EPC Obligation or (if not possible) improve the energy performance of the Works, provided that the total aggregate costs (excluding VAT) of such remedial works (which shall be borne by the Contractor) do not exceed [10]% of the Contract Sum.”

3.2 Add to the end of clauses 2.32 and 2.36, before the full stop:

“, provided that the [Employer/Employer’s Agent/Architect/Contract Administrator] shall not be required to issue any Certificate of Making Good earlier than the expiry of the Rectification Period and/or prior to the EPC Obligation for such Section or the Works as the case may be having been met.”

3.3 Add a new clause after clause 2.36:

**“Snagging list and defects, shrinkages or other faults remaining at practical completion
Clauses 2.35 and 2.36 shall apply, all other things being equal, to:**

- 3.3.1 any items identified on any snagging list issued by the Architect/Contract Administrator at or around practical completion or attached to a Practical Completion Certificate or Section Completion Certificate;
- 3.3.2 any defects, shrinkages or other faults in the Works at practical completion; and
- 3.3.3 any incomplete work, forming part of the Works, remaining at practical completion including but not limited to any work required for the purpose of achieving the EPC Obligation.”

Annex A Environmental Requirements

Objectives:

- To use sustainable materials and avoid the use of environmentally harmful materials;
- To re-use and recycle materials on site;
- To employ a site waste management plan which includes zero-to-landfill and a process to minimise waste as far as possible;
- To adopt environmentally friendly working methods, including minimising energy use through plant and site services;
- To protect and enhance existing ecological features on site;
- To minimise air (dust and fumes) and noise pollution;
- To minimise water use and guard against water pollution;
- To utilise local suppliers; and
- To promote green travel to and from the site.

[Luna's clause]

The Origin Story	
Child's name	Luna's clause
Full name	Green Project Modifications
Practice Area / Sector	Construction
Issue	Greener construction solutions exist, yet building contractors are not incentivised to provide greener solutions to project design or construction processes once a project has commenced. Contractors are however, typically incentivised to provide solutions which present value for money to the Employer in the short term (i.e. innovations in the construction process which reduce the Contract Sum).
Solution	A clause that incentivises building contractors to propose 'Green Modifications' to the project works, which will benefit the Employer, the overall Project and the environment into the future. These clauses seeks to tie the incentives of providing a greener solution to long term reduced energy costs of the completed project and to green financing.
Context	Construction contracts typically include the ability for the Contractor to propose a Modification to the contracted works, where that modification results in a cost saving or other improvement. Construction contracts do not typically allow or incentivise Contractors to provide a more sustainable construction solution (i.e. using recycled materials, more energy efficient completed projects, less waste), as the reduction of costs of construction is paramount and the long term savings and impact on the environment is not a consideration for the construction contract.
Impact	The proposed clause will allow a contractor to propose a green variation to the project works, thus reducing the impact on climate change and the environment in the long term. Employers will benefit from reduced long term energy consumption/emissions/financing costs, as may be applicable.
Stakeholders	The key stakeholders that you think need to be engaged to deliver this Impact: 1. Procurement teams 2. Contract managers 3. Sustainability managers 4. Precedent and know how providers 5. Professional support lawyers 6. Private practice firms 7. Construction firms and contractors
Application	The clause is intended for inclusion in construction contracts. This clause compliments Mary's clause from the 1st Edition of the Playbook.

Notes for users	<p>The clause focusses on the thing being built, rather than the way it is built. That is the clause does not focus on the internal discretionary decisions the Contractor might make (which do not alter the finished product) or decisions as to methodology.</p> <p>The drafting assumes a definition of Green Loan representing third party construction finance that carries a discounted coupon in return for hitting various environmental targets.</p> <p>The drafting envisages cross referencing and interfacing with dispute resolution and contract variation mechanisms.</p>
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Additional Definitions

Green Modification means a change to the requirements of the deed or the Works which:

- (a) increases the resilience of the completed Project to the impacts of climate change (including gradual onset and extreme weather events);
- (b) improves the energy efficiency of the completed Project from the existing obligations in the deed (including through a design change or change to construction materials);
- (c) increases protection of the natural environment by:
 - (i) increasing protection of, or enhancing, existing ecological features on the site;
 - (ii) increasing protection of wildlife and wildlife habitats on or impacted by the site or the Project;
- (d) increases the utilisation of local suppliers;
- (e) increases green travel to and from the site;
- (f) otherwise assists the Employer in meeting the Green Objectives.

Green Objectives means the following shared objectives:

- (a) to carry out the Project responsibly, sustainably, ethically and in accordance with all applicable laws and good business practice;
- (b) in relation to the construction phase and the undertaking of the construction activities:
 - (i) maximising:
 - (A) the use of sustainable materials;
 - (B) the use of materials which result in lower emissions of greenhouse gasses throughout the supply chain; and
 - (C) the protection of the natural environment;
 - (ii) minimising:
 - (A) emissions of greenhouse gases;
 - (B) the use of environmentally harmful materials;
 - (C) the use of water;
 - (D) the generation of waste; and
 - (E) the generation, emission or transmission of pollution (without diminishing any obligation to avoid pollution in particular circumstances);
- (c) in relation to the Employer's circumstances:
 - (i) maximising the prospect of achieving the Employer's Net Zero Target;
 - (ii) ensuring, insofar as is relevant to the matters the subject of this definition, that the terms of [the Employer's sustainability linked loan/terms of the Green Loan] are complied with and satisfied;

- (iii) [the achievement of or improvement to the achievement of sustainability performance targets of the Employer's sustainability linked loan];
 - (iv) [the improvement of the Project's performance under the terms of the [Employer's Green Loan]]; and
 - (v) [the prevention of a default under the terms of the Employer's Green Loan]; or
- (d) in relation to the occupation, operation and utilisation of the Project during its operating life:
- (i) minimising greenhouse gas emissions;
 - (ii) maximising energy efficiency; and
 - (iii) maximising resilience to the impacts of climate change in a concentration pathway RCP8.5 future or other runaway climate change scenario.

1. Contractor's Green Obligations

The Contractor must, to the extent that is reasonably practicable in the circumstances, undertake its obligations under the deed in a manner which maximises the prospect of achieving the Green Objectives.

2. Green Modification

2.1 Green Modification request by Contractor

The Contractor may propose a Green Modification to the Works by giving a written notice to the Employer and Superintendent, setting out:

- (a) the proposed Green Modification;
- (b) the reason for the proposed Green Modification, including how the Green Modification will assist in delivering to the Green Objectives;
- (c) the time within, and the manner in which, the Contractor proposes to implement the proposed Green Modification;
- (d) the effect the proposed Green Modification will have on the construction program (including any extension of time required to the Date for Practical Completion);
- (e) any Approvals required to implement the proposed Green Modification, and the effect of the proposed Green Modification on any existing Approvals;
- (f) the effects the proposed Green Modification will have on the Contractor's ability to satisfy its obligations under the deed (including any warranties given by the Contractor under the deed and in respect of work health and safety on the site);
- (g) the cost impacts to the Employer arising from the Green Modification, including but not limited to:
 - (i) cost savings or increases to the Contract Sum;
 - (ii) costs savings to the ongoing operations and maintenance of the completed Project (including reduced energy costs arising from the Green Modification);
 - (iii) reduced [costs of greenhouse gas emissions obligations/carbon price etc];
 - (iv) reduced financing costs of the Project; and
- (h) any other relevant information reasonably required by the Employer to assess the proposed Green Modification,
- (i) (**Green Modification Notice**).

2.2 Employer's Green Modification response

Within [20] business days of receipt of a Green Modification Notice, the Employer must issue a notice to the Contractor which:

- (a) approves the proposed Green Modification (either in whole or part), in which case clause [2.3] will apply to those approved parts;
- (b) subject to clause [2.4(a)], rejects the proposed Green Modification (either in whole or part), acting reasonably and setting out reasons, in which case clause [2.4(b)] will apply to those rejected parts; or
- (c) requests further information from the Contractor to enable the Employer to properly assess the Proposed Green Modification on any part of the Green Modification which has not been approved or rejected, in which case clause [3.5] will apply.

2.3 Approved Green Modification

If the Employer has approved the proposed Green Modification pursuant to clause [2.2(a)]:

- (a) the Superintendent must within [10] business days of the approval, issue a notice to the Contractor which sets out:
 - (i) where the Green Modification results in an increase to the Contractor's design or construction costs, the revised Contract Sum valued as a variation in accordance with clause [#] (but not exceeding the amount nominated pursuant to clause [2.1(g)(i)]); and
 - (ii) any extension of time required to the Date for Practical Completion (but not exceeding the duration of the extension of time nominated pursuant to clause [2.1(d)]); and
- (b) the Contractor may proceed with implementing the approved Green Modification.

2.4 Rejected Green Modification

- (a) The Employer must not reject a Green Modification (in whole or part) under clause [2.3(b)], where the Project is not meeting the Green Objectives and the Green Modification will assist in meeting those objectives; and
 - (i) the delay to the completion of the Project arising from the proposed Green Modification would be not be material having regard to the Project's overall objectives; or
 - (ii) the cost of the implementing the Green Modification is [not significantly detrimental to the financial viability of the Project]. **[Drafting note: consider amending the standard for what is unreasonable. For example, perhaps a % threshold increase to project costs.]**
- (b) If the Employer rejects a proposed Green Modification (in part or whole) under clause 2.2(b) the Contractor may:
 - (i) amend the Green Modification Notice to address the Employer's reasons for the rejection, and re-submit the modified Green Modification Notice pursuant to clause [2.2], in which case the process for approving or rejecting the Green Modification Notice in clauses [2.2] to [2.4] will reapply; or
 - (ii) issue a notice of dispute in accordance with clause [#].

[Estelle's clause]

The Origin Story	
Child's name	Estelle's clause
Full name	Green Design and Construction standards
Practice Area / Sector	Construction
Issue	<p>The typical standard for the performance of works and services, commonly found in construction contracts, does not require the Contractor or Service Provider to take into account climate risks or other sustainability objectives to achieve net zero targets.</p> <p>As such, new development projects may be built or designed in a manner that:</p> <ul style="list-style-type: none"> • releases avoidable greenhouse gas emissions into the atmosphere throughout construction, which exacerbates the impact of climate risks (generally) within the wider community; and • exposes the Employer (and subsequent owners) to the impacts of climate change, that may emerge in the future and which could compromise the physical integrity of the development.
Solution	<p>Revising the standard of care to require Contractors and Service Providers to:</p> <ul style="list-style-type: none"> • adhere to “Best Industry Practice” throughout the performance of their obligations and delivery of the Project, in order to mitigate against climate risk being generally exacerbated in the region; and • ensure that Project meets the “Green Objectives” upon completion and into the future, so that the Project is capable of withstanding climate risks which may arise and impact the Project.
Context	<p>It is understood that physical assets, such as buildings and infrastructure services, will be vulnerable to damage, disruption or destruction by extreme precipitation, flooding, fires, and other hazards as a result of climate change.</p> <p>It is within the interests of all stakeholders within the construction industry to ensure that this standard of care is adopted and implemented within the lifecycle of a development.</p>
Impact	<p>Projects will be:</p> <ul style="list-style-type: none"> • designed and constructed in a manner that does not exacerbate climate risks generally throughout the term of the contract (which could ultimately compromise developments in the future); and • delivered to withstand climate risks which may emerge in the future.
Stakeholders	<ol style="list-style-type: none"> 1. Landlords, Developers and subsequent land owners 2. Procurement teams (including Government infrastructure) 3. Contract managers 4. Sustainability managers 5. Precedent and know how providers 6. Professional support lawyers 7. Private practice firms 8. Construction companies and contractors 9. Service Providers, such as architects and design teams

Application	<p>The proposed amendments will:</p> <ul style="list-style-type: none"> • ensure the Contractor or Service Provider is kept accountable to implement the Best Industry Practice throughout construction, and implements practices towards achieving the Green Objectives upon completion; • allow a Developer to terminate the contract if standard of care is not met. <p>The requirement of good faith and reasonableness ensure that the clause is only used to meet climate goals and not for commercial convenience.</p>
Notes for users	<p>In addition to the standalone clause below, user to consider whether breach of these obligations should give rise to a termination right or right to issue a default notice.</p> <p>Defined terms used in the below clause but not defined in the playbook should be adapted from terminology found in the construction contract.</p> <p>RCP means a Representative Concentration Pathway (RCP) - a greenhouse gas concentration (not emissions) trajectory set out in the reports of the IPCC.</p> <p>Clause 2 could be alternatively placed in the Project Control Group clause of the Contract (if applicable).</p> <p>Please also refer to Luna's and Mary's clauses.</p>

Add new Definitions

Best Industry Practice means design, supply, construction, installation, commissioning and repair practices which are carried out:

- (a) with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional carrying out design, supply, construction, installation, commissioning and repair work similar to the delivery activities;
- (b) with adequate levels of resources, including personnel, materials and supplies; and
- (c) in a manner which maximises the prospects of achieving the Green Objectives.

Green Objectives means the following shared objectives:

- (d) to carry out the Project responsibly, sustainably, ethically and in accordance with all applicable laws and good business practice;
- (e) in relation to the construction phase and the undertaking of the construction activities:
 - (i) maximising:
 - (A) the use of sustainable materials;
 - (B) the use of materials which result in lower emissions of greenhouse gasses throughout the supply chain;
 - (C) the protection of the natural environment;
 - (ii) minimising:
 - (A) emissions of greenhouse gases;
 - (B) the use of environmentally harmful materials;
 - (C) the use of water;
 - (D) the generation of waste;
 - (E) the generation, emission or transmission of pollution (without diminishing any obligation to avoid pollution in particular circumstances);
- (f) in relation to the Employer's circumstances:
 - (i) maximising the prospect of achieving the Employer's Net Zero Target;
 - (ii) ensuring, insofar as is relevant to the matters the subject of this definition, that the terms of [the Employer's sustainability linked loan/terms of the Green Loan] are complied with and satisfied;

- (iii) [the achievement of or improvement to the achievement of sustainability performance targets of the Employer's sustainability linked loan];
 - (iv) [the improvement of the Project's performance under the terms of the [Employer's Green Loan]]; or
 - (v) [the prevention of a default under the terms of the Employer's Green Loan]; or
- (g) in relation to the occupation, operation and utilisation of the Project during its operating life:
- (i) minimising greenhouse gas emissions;
 - (ii) maximising energy efficiency;
 - (iii) maximising resilience to the impacts of climate change in a concentration pathway RCP8.5 future or other runaway climate change scenario.

Operative terms

1. Contractor's Obligations

- 1.1 The [Contractor/Service Provider] must carry out all of its obligations under the Contract in accordance with:
- (a) the Project Documents;
 - (b) all applicable laws and standards; and
 - (c) Best Industry Practice.
- 1.2 The [Contractor/Service Provider] warrants that, subject to using Best Industry Practice, the Project will be fit for purpose and achieve Green Objectives on Practical Completion and during its [operating life]. **[Drafting note: consider whether the Contractor/Service Provider should be liable for the asset achieving the Green Objectives into the future, as this is potentially a very onerous obligation on current drafting.]**

2. Reporting obligations

- 2.1 The [Contractor/Service Provider] must provide to the Employer a report on the last day of each [quarter] that describes conduct or actions taken to satisfy the Green Objectives (**Green Report**).
- 2.2 The Employer must notify the [Contractor/Service Provider] within [10 Business Days] of receiving the Green Report if the Employer:
- (a) accepts the Green Report; or
 - (b) considers that the [Contractor/Service Provider's] is not meeting the Green Objectives, setting out reasons.
- 2.3 If the Employer issues a notice under clause 2.2(b), the [Contractor/Service Provider] must promptly comply with the requirements set out in that notice, and within [10 Business Days] notify the Developer of the changes which have been implemented. **[Drafting note: It may be more feasible to require the Contractor/Service Provider in this situation to prepare a rectification plan, detailing how it plans to correct any failure to achieve the Green Objectives as set out in the Employer's notice. The termination right in cl 2.4 would then arise if the Contractor/Service Provider either (a) doesn't actually submit a rectification plan, or (b) fails to diligently pursue and/or adhere to the plan.]**
- 2.4 If the [Contractor/Service Provider] does not comply with clause 2.3, this will be deemed a [substantial breach of the Contract] and the default clause [X] will apply.

[Edgar's clause] NEW

	The Origin Story
Child's name	Edgar's clause
Full name	Climate Resilient landscape design contracts
Practice Area / Sector	Construction, Real Estate Development
Issue	Land around new building projects is often either left underdeveloped or landscaped using either hard landscaping (concrete etc.) or non-native species (for ease of maintenance). This creates unnecessary embedded carbon and development less resilient to climate change.
Solution	Insert a clause into landscape architect appointments and/or building contracts requiring the appointee to utilise the available open space in an environmentally efficient manner. Where applicable, include pain/gain mechanism to allow for future savings (i.e. through reduced water costs via effective grey water management) during the building's lifetime to be split between parties.
Context	Biodiversity is inextricably linked to climate change. Biodiversity provides ecosystem services including carbon sequestration ¹¹⁰ . Urbanisation, habitat loss, species decline and pollution are some of the key issues facing the UK along with rising temperatures and increasing CO2 levels ¹¹¹ . In urban or industrialised areas, efficient utilisation of green space is one of the most important tools for improving sustainable development ¹¹² .
Impact	Landscaping these spaces with natural and biodiverse flora provides an opportunity to improve the built environment both from a financial and ecological perspective, particularly in dense urban areas, yet it is not occurring at scale or speed required. Widespread adoption of this clause would: <ol style="list-style-type: none"> 1. Increase overall habitat diversity in urban and industrialised areas; 2. Aid reduction in CO2 emissions through effective planting, particularly of trees¹¹³; 3. Support better building sustainability through use of water management/ energy efficiency support; 4. Provide more outside space for the public and other stakeholders.

¹¹⁰ <https://blogs.ei.columbia.edu/2018/01/15/biodiversity-climate-change/>.

¹¹¹ See for example Hayhow et al, The State of Nature 2019, The State of Nature Partnership <https://nbn.org.uk/wp-content/uploads/2019/09/State-of-Nature-2019-UK-full-report.pdf> 25 June 2020

¹¹² See for example Karade, R.M., Kuchi, V.S and Salma, Z 2017. The Role of Green Space for Sustainable Landscape Development in Urban Areas, Int, Arch. App. Sci. Technol.; Vol 8 (2). https://www.researchgate.net/publication/321307661_The_Role_of_Green_Space_for_Sustainable_Landscape_Development_in_Urban_Areas 25 June 2020

¹¹³ Crowther, T.W., et al 2015 Mapping tree density at a global scale Nature 525, 210-215

Stakeholders	<ol style="list-style-type: none"> 1. Developers 2. Landscape architects 3. Landscape Institute 4. Contractors 5. Commercial landlords 6. Tenants 7. Local authorities – particularly in relation to zoning/ planning 8. Wildlife and environmental groups 9. Urban beekeepers and other interested community groups.
Application	<p>This clause is intended to be used in landscape architect appointments and/or building contracts.</p> <p>To be fully effective this should be developed in line with the development of laws/planning regulations around habitat ‘zoning’ to encourage habitat continuity and species corridors across the landscape.</p>
Notes for users	<p>It is acknowledged that the clause will need to be updated as and when the Environment Bill is passed. This clause is designed to be adopted in advance and independent of those provisions.</p> <p>This clause would be subject to compliance with any relevant conditions/obligations on the planning permission or section 106 agreement. There will usually be a landscaping scheme approved under a planning condition which will need to be complied with.</p> <p>Key issues to consider would be:</p> <ul style="list-style-type: none"> • site preparation – retaining as much of the native planting/topsoil as possible during the preparation phase; • water course management – disruptions to natural flow of water across a site can have long term effects both downstream and onsite (i.e. increasing flooding risk); • sustainable building – prevention of pollutants either damaging remaining habitats or landscaping; • minimising hard standing to allow for water percolation and soak across a site; • planting – should as far as possible utilise native species to provide suitable habitats and should be complementary to nearby sites to allow for species movement; and • planting should also be used to assist in building energy usage/air quality and dealing with run-off – for large sites a pain/gain mechanism may be suitable. <p>Services and Employer's Requirements should also have standardised clauses that can be inserted to cover site specific requirements.</p> <p>The Drafting assumes definitions from the wider contract are used and would have to be cross referenced.</p> <p>Clause 1.2 assumes a corresponding clause would be inserted in all consultant appointments and the building contract as required.</p>

Additional Definitions

Biodiversity Gain means the measurable gain in the biodiversity value between pre-development and post-development that is attributable to the development, being the total of:

- (a) the post-development biodiversity value of the onsite habitat;
- (b) the biodiversity value, in relation to the development, of any registered offsite biodiversity gain allocated to the development, and
- (c) the biodiversity value of any biodiversity credits purchased for the development.

Development means [define development projects].

Hard Landscaping means the built components of a landscape such as paving, decking, paths and walls and does not include vegetation or water zones.

Landscaped Area means the area[s] bounded in [red] shown on drawing reference [x] at appendix [x].

Native Flora means those species of flora that have arrived and inhabited the United Kingdom naturally, without deliberate assistance from humans, since the last ice age and includes Native Trees.

Native Trees means those species of trees that are native to the United Kingdom since the last ice age and listed as such on the Forestry Commission Website.

Professionals means all consultants, [the Contractor and other persons appointed or to be appointed by the Developer, in addition to the Consultant,] that provide professional services in relation to the Development (whether such Professionals are novated to the Contractor or otherwise).

Additional Clauses

1 Design

1.1 The Consultant shall ensure that in the design of the Landscaped Area:

- (a) [a minimum of [x]% of the Landscaped Area shall consist of Native Flora [typical of [x] habitat]];
- (b) [only Native Trees are specified for use];
- (c) [a maximum of [x]% of the Landscaped Area consists of Hard Landscaping];
- (d) [habitats for [x] species are [maintained][enhanced] as set out in the [x] [Ecology Report dated t]]; and
- (e) [insert any additional planning conditions or site specific landscaping conditions relating to environmental management].

1.2 The Consultant shall collaborate with the other Professionals to ensure that the Development achieves a Biodiversity Gain of [10]% which will be maintained for at least [30] years after the Development is completed.

[Tristan's clause] NEW

	The Origin Story
Child's name	Tristan's clause
Full name	Construction Materials: Procurement
Practice Area / Sector	Construction, Industrials, Materials, Public Procurement, Real Estate
Issue	<p>By some estimates the construction industry accounts for 50% of climate change. Developers and contractors will often procure materials that are the most cost-effective rather than those that are beneficial to the environment or have longevity for the development. This is often a symptom of commercial pressure and margins being squeezed but can have a detrimental impact on climate change ¹¹⁴.</p>
Solution	<p>The introduction of a formal 'Carbon Budget' alongside the traditional Financial Budget for construction projects to incentivise industry participants to reduce GHG Emissions across the project lifecycle through the selection of more sustainable materials and construction processes.</p>
Context	<p>Some studies suggest that the construction industry is responsible for up to:</p> <ul style="list-style-type: none"> a. 50% of emissions causing human-induced climate change; b. 40% of energy usage globally; and c. 50% of landfill waste¹¹⁵. <p>The cement industry alone is responsible for 5-8% of the worldwide emissions of CO₂¹¹⁶.</p> <p>The transportation of materials for construction around the world can often be done with little consideration of the environmental impact of the same with sea freight being very common and environmentally damaging.</p> <p>The construction industry uses standard form contracts (JCT, NEC, FIDIC, Australian standards etc.). It is common for these contracts to be amended by a schedule of amendments and there are commonly accepted 'market standards' for how these are amended. Clauses can be inserted into these schedules of amendments to compel parties to resource materials sustainably. The most recent update of JCT was 2016 and a new one is due around 2021. Consideration could also be given to incentivise Developers to source sustainable materials which may require statutory legal change.</p>
Impact	<p>The encouragement of sustainable sourcing and procurement of materials would significantly contribute to reducing the impact of the construction industry on the environment. A key driver of bringing about this change is shifting attitudes in the construction industry to ensure that this becomes the market standard.</p> <p>The impact would be amplified if this could be incorporated within the industry standard form contracts.</p>

¹¹⁴ <https://constructionclimatechallenge.com/2019/05/22/3-ways-the-construction-industry-can-help-the-environment/>.

¹¹⁵ <https://constructionclimatechallenge.com/2019/05/22/3-ways-the-construction-industry-can-help-the-environment/>

¹¹⁶ <https://reader.chathamhouse.org/making-concrete-change-innovation-low-carbon-cement-and-concrete#>

Stakeholders	<ol style="list-style-type: none"> 1. Developers 2. Financiers 3. JCT, FIDIC, NEC 4. Private Practice Firms 5. RIBA 6. Legal Know How Providers
Application	For use in construction projects.
Notes for users	<p>The ‘best endeavours’ obligation in clause 2.1A3.3 would need to be considered in detail by public sector employers as it will need to align with procurement rules. Not exceeding the Carbon Budget is the ultimate goal, so strength and the clause can be amended to achieve this.</p> <p>It is acknowledged that Clause 2.1A4. would be subject to the case law on penalties and liquidated damages. Some other ways of dealing with this could be:</p> <ul style="list-style-type: none"> • Instead of damages, have an incentive pot that is payable to the Contractor if they reach the Carbon Budget. The pot available could become proportionately larger the further below the Carbon Budget they manage to go to incentivise even better performance than the target. • Use the retention mechanism in a contract to cover the risk of the Contractor not achieving the Carbon Budget. Instead of the standard 3% retention to cover unfinished or defective work, increase the retention amount with a specific proportion held against achievement of the Carbon Budget. If at practical completion the works have gone over the Carbon Budget, the Employer could require the Contractor to spend the defects rectification period demonstrating how they have either offset that excess through carbon offsets or demonstrate how they have done so by reducing the carbon impact of another of their projects. If they still fail to do so after the defects rectification period, then the percentage of the Contract Sum retained can be held by the Employer to be used itself to ensure carbon offsetting. Further, the Employer could ask bidders at tender stage to competitively say what percentage of the Contract Sum they are willing to be retained for this purpose – so that the bidder offering the higher percentage that they put at risk is awarded more points at tender evaluation than the others. This would demonstrate bidders’ commitment and also ensure the Employer’s retained amount is the highest that the market will allow. • If the contract is a term contract, rather than a project contract, the contract could impose quarterly Carbon Budgets (as opposed to a single ‘global’ budget) and measure achievement through a key performance indicator. Achievement against good performance could lead to an incentive payment. However, continually exceeding the Carbon Budget could be linked to a termination right, enabling the Employer to get out of the contract so as to find a contractor that can deliver instead.

Additional Definitions

Carbon Budget means the aggregate of [value] tonnes of Carbon Dioxide Equivalent of Greenhouse Gas emissions permitted for the construction of the Works as set out in Appendix [x].

Carbon Offsetting means the purchase of a quantity of carbon credits equal to the amount of the Residual Emissions from the Works that has been verified in accordance with [insert name of voluntary standard].

Carbon Dioxide Equivalent (CO₂e or CO₂eq) means a unit of measurement that is used to standardise the climate effects of various Greenhouse Gases.

Greenhouse Gases (“GHG” or “GHGs”) means the natural and anthropogenic gases which trap thermal radiation in the earth’s atmosphere and as specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) or otherwise specified by the UNFCCC, and which currently include: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).

Greenhouse Gas Emissions (“GHG Emissions”) means emissions of Greenhouse Gases over a specified area and period of time, each expressed as a total in units of carbon dioxide equivalent (CO₂e) [and calculated in accordance with the GHG Protocol Corporate Accounting and Reporting Standard or such other equivalent and generally recognised greenhouse gas emission calculation methodology].

Prohibited Materials means any material, substance, product, process, technique or combination of the same which, by its nature or application:

- .1 contravenes any British Standard or EU equivalent;
- .2 contravenes the recommendations of the British Council for Offices’ publication Good Practice in the Selection of Construction Materials (2011) (as may be amended or updated from time to time);
- .3 would unnecessarily increase the total GHG Emissions of the Works because their embodied GHG Emissions cannot be reduced by Carbon Offsetting; or there is an alternative material or good which meets the standards of the Contract with fewer embodied GHG Emissions; or
- .4 is generally considered to be deleterious or harmful to the environment within the building design professions¹¹⁷.

Residual Emissions means the Greenhouse Gas Emissions that are emitted after all reasonable efforts have been made to reduce emissions.

Additional Clauses for use with JCT Design & Build Contract 2016

OPTION 1

Climate Impact of Materials

- 2.1A.1 The Contractor shall provide to the Employer as soon as possible, but in any event within ten (10) days of such a request being made, all information that the Employer reasonably

¹¹⁷ Drafting note: While this definition is not used in this clause, the term it is used in the JCT D&B Contract and should be amended accordingly so other contractual provisions support this clause.

requests regarding the climate impacts, including the total embodied GHG Emissions, of the supply and use of materials and goods which are selected or used in carrying out the Works.

- 2.1A.2 The Contractor confirms that the total embodied GHG Emissions in the materials and goods used to construct the Works and GHG Emissions emitted in the construction of the Works shall not exceed the Carbon Budget.
- 2.1A.3 In selecting materials and goods for use in the Works, the Contractor shall:
 - .1 prior to the commencement of the Works, provide a list of the intended manufacturers and suppliers to the Employer's Agent along with the climate impacts of the transportation of the same to the Site as against the Carbon Budget;
 - .2 liaise with the Employer's Agent with regards to the list of intended manufacturers and suppliers and shall have due regard to the representations of the Employer's Agent with regards to the same;
 - .3 [use best endeavours to ensure that the materials and goods are sourced from manufacturers and suppliers located as close to the Site as reasonably practicable;]
 - .4 update the Employer's Agent, on a monthly basis, with the actual climate impacts of the transportation of the materials and goods to the Site to date by reference to the levels set out in the list and the projected impact of the same for the remainder of the Works assessed against the Carbon Budget.
- 2.1A.4 If the Carbon Budget of the Works (excluding Changes issued in accordance with clause 3.9.1) is exceeded due to a breach by the Contractor of its obligations under this clause 2.1A, then liquidated damages at the rate of £[] per tonne of Carbon Dioxide Equivalent of Greenhouse Gas over and above the Carbon Budget, shall be due and payable from the Contractor to the Employer. To avoid doubt, liquidated damages payable under this clause 2.1A.4 represent the reasonable commercial concerns of the Employer and its costs of [offsetting the excess GHG Emissions/remedying an equivalent breach of the development funding agreement].

OPTION 2

- 2.1A.1 The Contractor is required to carry out the Works so that the Carbon Budget is not exceeded.
- 2.1A.2 The Contractor is required to provide monthly management information on its ongoing compliance with clause 2.1A.1 to enable the Employer to assess the progress of the Works towards meeting the Carbon Budget and provide input to the Contractor on further progress;
- 2.1A.3 If the Carbon Budget of the Works (excluding Changes issued in accordance with clause 3.9.1) is exceeded due to a breach by the Contractor of its obligations under this clause 2.1A, then liquidated damages at the rate of £[] per tonne of Carbon Dioxide Equivalent of Greenhouse Gas over and above the Carbon Budget, shall be due and payable from the Contractor to the Employer. To avoid doubt, liquidated damages payable under this clause 2.1A.3 represent the reasonable commercial concerns of the Employer and its costs of [offsetting the excess GHG Emissions/remedying an equivalent breach of the development funding agreement].

[Francis' clause] NEW

	The Origin Story
Child's name	Francis' clause
Full name	Climate Aligned Construction Waste Management
Practice Area / Sector	Construction
Issue	<p>Landfill waste from construction continues to be an ever-present issue in the UK, and throughout the world¹¹⁸.</p> <p>Aside from the visual amenity impact as well as the availability of suitable sites, landfill generates methane (a Greenhouse Gas (GHG) with a global warming potential 28 times that of carbon dioxide¹¹⁹) and cause pollutants, toxins, and leachates which make their way into waterways.</p>
Solution	<p>Imposing contractual obligations in respect of the usage of materials and waste management to ensure consequential GHGs are minimised.</p> <p>Requirements to carry out early assessment of materials usage to understand exactly what materials are required and how much of each such that materials are not wasted unnecessarily.</p> <p>Obligations to prepare a Site Waste Management Plan (SWMP) on all projects, regardless of size or complexity.</p> <p>KPIs in respect of recycling, reusing, and disposing of waste materials.</p>
Context	<p>The construction industry is the UK's largest user of natural resources (approximately 400 million tonnes of materials used each year) and produces huge amounts of waste (approximately 100 million tonnes of waste produced each year – 1/3rd of the UK's annual waste). Of the 100 million tonnes of waste produced by the UK construction industry every year, 25 million tonnes is disposed of in landfills¹²⁰.</p> <p>Despite the strain the disposal of construction materials creates on the environment, the Site Waste Management Plans Regulations 2008 (SI 2008/314) were rescinded by the UK government from 1 December 2013 so that there is no legal obligation to produce a SWMP and no requirement on construction firms outside of the planning or waste permitting processes to consider the environmental impact of waste or to optimize the use of materials, including recycling.</p>

¹¹⁸ <https://www.constructiondive.com/news/report-global-construction-waste-will-almost-double-by-2025/518874/>

¹¹⁹ See https://ghgprotocol.org/sites/default/files/ghgp/Global-Warming-Potential-Values%20%28Feb%202016%202016%29_1.pdf

¹²⁰ <http://www.wrap.org.uk/sites/files/wrap/Reducing%20your%20construction%20waste%20-%20a%20pocket%20guide%20for%20SME%20contractors.pdf>

Impact	Make contractors/subcontractors accountable for managing materials and waste to reduce landfill waste and the associated GHG emissions and reduce pollution to waterways caused by landfill waste.
Stakeholders	<ol style="list-style-type: none"> 1. Developers/employers 2. Construction firms, contractors, subcontractors 3. Investors and funders 4. Procurement teams 5. Contract managers 6. Sustainability managers 7. Precedent and know how providers 8. Professional support lawyers 9. Private practice firms 10. Service providers, such as engineers and designers
Application	Traditional and Design and Build Construction Contracts.
Notes for users	<p>Examples for drafting in respect of Site Waste Management Plans can be found in the Site Waste Management Plans Regulations 2008 (UK).</p> <p>The management of waste and construction materials ought to be an ongoing process i.e. not just considered at the beginning of the design phase or at practical completion. See also Mary's clause [Build Contract Energy Efficiency Clauses] and Estelle's clause [Net Zero Construction Standards]</p> <p>Such obligations should be applicable where the design/construction is changed during the life of the build. See Luna's clause [Green Construction Modifications].</p> <p>The drafting assumes that Law and Statutory Requirements are suitably defined in the wider construction contract.</p>

Additional Definitions

Diverted Waste means all Waste Materials that are recycled, reused, salvaged, composted or otherwise diverted from landfills or incineration.

Site Waste Management Plan means the site waste management plan in the form set out at [Schedule/ Appendix/Annex [x]] (approved by the Employer acting reasonably and without delay).

Waste Materials means spoil, waste, rubbish, debris, materials or goods or surplus materials generated by or used in undertaking the Works which are not incorporated into the Works at practical completion.

Additional Clauses

SITE WASTE MANAGEMENT

- 1.1. The Contractor shall ensure materials are managed efficiently and Waste Materials (which cannot be converted to Diverted Waste) are disposed of in accordance with [the Law/ Statutory Requirements].
- 1.2. The Contractor shall use best endeavours to minimise any Waste Materials and to turn Waste Materials into Diverted Waste where possible.
- 1.3. The Contractor shall where possible propose amendments to the Works which, if instructed as a Change, may result in a reduction of Waste Materials in carrying out the Works or the Completed Works.
- 1.4. The Contractor shall undertake the Works in accordance with the Site Waste Management Plan.
- 1.5. The Contractor shall ensure that the Site Waste Management Plan is kept up to date throughout the Project and where a Change is instructed the Contractor shall, after consultation with the Employer's Agent, update the Site Waste Management Plan where necessary and provide it to the Employer for approval.
- 1.6. The Contractor shall ensure that original waste transfer notes are retained and delivered to the Employer on a monthly basis and so that they can be included in the Health and Safety File.
- 1.7. The Contractor shall provide to the Employer all information that the Employer reasonably requests regarding the environmental disposal of Waste Materials.

[SCHEDULE/APPENDIX/ANNEX[x]]

[Download [Precedent Project Waste Management Plan](#)¹²¹ from Gov.uk website]

¹²¹ As at publishing the 2015 template (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/696180/Project-Waste-Management-Plan-Template.docx) is listed on the government website (<https://www.gov.uk/government/publications/national-waste-programme-project-waste-management-plan-pwmp-template>) as withdrawn. Users should check for an updated version.



[Eric's clause]

	The Origin Story
Child's name	Eric's clause
Full name	Employer-employee environmental obligations
Practice Area / Sector	Employment
Issue	People do not have enough time to engage with their local communities in the fight against climate change.
Solution	Incentivising people to fight against climate change through employment clauses.
Context	People want to make a difference but do not have the time nor the professional opportunity to fight against climate change. They need to find a sense of purpose.
Impact	The clauses will create relationships between people at a local level. They will also create opportunities to diversify people's skills and create a bridge between social classes. They will create a cheaper workforce for governments and companies to tackle climate change. Individuals involved in these projects will have a sense of purpose and belonging. These clauses will ensure companies are committed and promote circular economy.
Stakeholders	<ul style="list-style-type: none"> 1. Employers 2. Employees 3. Environmental organisations
Application	<ul style="list-style-type: none"> 1. Senior employees: If an employment agreement is terminated by either party and the employee is placed on garden leave for the whole or part of the remainder of their agreement they may undertake volunteering activities at an environmental organisation during any period of garden leave. 2. Employees on sabbaticals: If an employee goes on sabbatical they can choose to go on a paid sabbatical for volunteering activities at an environmental organisation during that period.
Notes for users	<p>Environmental organisations may be a charity, a trust, a non-governmental organisation or a government organisation. Environmental organisations can be global, national, regional or local.</p> <p>The employer may retain a duty of care to the employee during any period of garden leave or sabbatical leave at an environmental organisation, particularly where the employee is volunteering as part of an employer-supported scheme. This and vicarious liability would need to be managed by the employer.</p> <p>The employer may want to have a volunteer policy which provides a framework for its volunteer programme and sets out the expected conduct of employees who volunteer under the programme.</p>

Senior Employment Contract

Interpretation

The definitions and rules of interpretation in this clause apply in this agreement.

Appointment: your employment by us on the terms of [this agreement OR the employment contract between you and us dated [DATE]].

Garden Leave: any period during which we have exercised our rights under clause [2]

Garden Leave

- 2.1 Following service of notice to terminate the Appointment by either party, or if you purport to terminate the Appointment in breach of contract, we may by written notice place you on Garden Leave for the whole or part of the remainder of the Appointment. [Any period of Garden Leave shall not normally exceed [PERIOD].] With our prior approval, you may undertake volunteering activities at an environmental organisation during any period of Garden Leave.

Sabbatical Leave Policy

Climate Sabbaticals

- 3.1 Sabbaticals are generally unpaid, with the exception of sabbaticals during which employees undertake volunteering activities to a pre-approved environmental organisation (climate sabbaticals). Climate sabbaticals may last for up to one month and will be paid at the reduced rate of [50% of annual salary], subject to the usual deductions for tax and national insurance.

[Elliot's clause]

The Origin Story	
Child's name	Elliot's clause
Full name	Net Zero Culture Employment Handbook clauses
Practice Area / Sector	Employment
Issue	Achievement of a company's Net Zero target will be challenging ¹²² . All employees in an organisation will need to play their part to achieve a target ¹²³ . Despite widespread acceptance that organisations should improve environmental performance, "progress remains slow" ¹²⁴ . As such the creation of a Net Zero or sustainability culture will need to be embedded and pervade every aspect of employment and business life.
Solution	Incorporate new Net Zero and sustainability clauses into employment handbooks so that these issues become a key part of, and permeate, all levels of the employment relationship and encourage the development of a "green" ethos and a Net Zero Culture within the company.
Context	<p>Although, policies and employee handbooks do not make a culture they are often a key part of an induction process and therefore set a tone.</p> <p>These handbooks traditionally outline a company's operating procedures and define the day-to-day working relationship between the employer and employee. Their main function is to establish important policies, rules and standards that are expected in the workplace and afford protection to both the employer and employee. They predominantly focus on performance management, employee accountability and employee rights (such as parental leave). They are rarely used to enshrine a company's sustainability ethos and objectives by including environmental and sustainability provisions (whether on their own or as part of other company policies).</p> <p>Although employment handbooks are not required by law, most companies have some form of handbook.</p> <p>It is uncommon to see sustainability or climate change issues represented within the handbook. Consequently, such issues are often only addressed lightly in relation to a firm's corporate social responsibility approach and are not truly embedded within a company's day to day operations. By contrast, employees (in particular, millennials) increasingly want to work for employers who align with their personal values¹²⁵.</p>

¹²² <https://www.ft.com/content/2c212fa8-8d17-11e9-a1c1-51bf8f989972>

¹²³ <https://www.cbi.org.uk/media/3716/cbi-low-carbon-2020s-report-4-november-2019.pdf>

¹²⁴ <https://www.bps.org.uk/sites/bps.org.uk/files/Member%20Networks/DOP%20Going%20Green%20The%20Psychology%20of%20Sustainability%20in%20the%20Workplace.pdf>

¹²⁵ <https://www.forbes.com/sites/forbesagencycouncil/2019/06/10/five-rules-of-millennial-recruitment-and-retention/#708b97297192>

Impact	<p>The proposed clauses will ensure environmental, sustainability and net zero initiatives are interwoven into employment policies. Active collaboration between the board and HR teams is necessary to effectively implement such clauses into the employment handbook. Consequently, the importance of these provisions will be cascaded to employees.</p> <p>This should:</p> <ul style="list-style-type: none"> • Increase awareness and opportunities for carbon and cost saving; • Incentivise employees to opt for and advocate “greener choices” helping the transition to Net Zero; • Reverse/erase high energy consuming habits; and • Reduce the carbon footprint of the company.
Stakeholders	<p>The following key stakeholders should be engaged to deliver the potential impacts identified above:</p> <ol style="list-style-type: none"> 1. Law firms (including Environmental Committees and active participation from internal business and marketing teams); 2. Chartered Institute of Personnel and Development; 3. Guild of Human Resource Professionals; 4. Unions 5. Employees; 6. Shareholders; 7. Non-Executive Boards; and 8. Non-Executive Directors.
Application	<p>The Green Employment Handbook clauses should be modified and adapted by each company to create a handbook which aligns with their strategic plan and net zero or environmental targets.</p> <p>The drafting provided clauses for sections of a handbook. They are not full policies. The structure follows the standard employment handbook published by Practical Law¹²⁶.</p>
Notes for users	<p>The Green Employment Handbook clauses are an illustrative and non-exhaustive list. There will be many other opportunities to align formal policy with Net Zero and other environmental ambitions. For example a company could have a pensions policy that says that ESG fund will be default fund for its workplace pension if no other selection is made by an employee.</p> <p>Companies are encouraged to incorporate them as applicable within their existing handbook but also consider whether their spirit and intention could be adapted for the business in question and/or reflected in other policies or clauses which do not currently form part of the Green Employment Handbook clauses.</p> <p>The Green Employment Handbook clauses introduces the concept of ‘Sustainability Team’ but some organisations may already have a joint environmental committee¹²⁷.</p> <p>The drafting assumes a list of suppliers has been researched and created to reflect the Net Zero targets of the organisation. For example confirming all suppliers operate using 100% renewable energy.</p>

¹²⁶ <https://uk.practicallaw.thomsonreuters.com/8-386-8683?view=hidealldraftingnotes>

¹²⁷ <https://www.tuc.org.uk/sites/default/files/extras/gogreenatwork.pdf>

Additional Clauses

4. General: alignment with Net Zero Target

- 4.1 [INSERT GENERAL DETAILS ABOUT THE EMPLOYER AND ITS BUSINESS.]
- 4.2 Our aim is to [INSERT KEY CORPORATE OBJECTIVES] whilst achieving our Net Zero Target. Our Net Zero Target is to reduce our greenhouse gas emissions to Net Zero (or net negative) [INSERT COMPANY's DEFINITION OF NET ZERO] on or before our Net Zero Target Date.
- 4.3 Achieving our Net Zero Target requires each of us accepting a personal responsibility to consider their own carbon footprint identify and create opportunities to make carbon and other environmental improvements and savings. Environmental sustainability is an important part of our business culture and DNA. Everyone has a part to play.
- 4.4 You will be given a sustainability induction as part of our process for new joiners. This will explain our approach and your role. We aim to build a diverse, inclusive and open environment that empowers employees to speak up, ask questions and make sustainable choices, every single day.
- 4.5 You can also reach out to the Sustainability Team at any time to discuss how you can contribute towards achieving our Net Zero Target or let us know if you have any ideas for new initiatives or to improve existing ones. No idea is bad or too small and your conversations will be kept confidential where required.

5. Commuting Policy: sustainable commuting

- 5.1 Reducing business travel wherever possible is an important part of our plan to achieve our Net Zero Target. We recognise that emissions from commuting to and from our offices could also be reduced.
- 5.2 We encourage you to consider both the cost and the carbon footprint of your journey to work and your chosen method of transport and offer the following incentives to help you make a sustainable commuting choice:
 - (a) Any employees who walk, run or cycle to their primary office can apply to the Sustainability Team for a monthly green travel allowance (which may, for example, be utilised to pay for trainers or bike repairs and maintenance). The amount of the allowance that you will be eligible for will be determined by the Sustainability Team at their discretion. The maximum amount of the allowance is be capped at £[AMOUNT] per month;
 - (b) Any employees using public transport or a park and ride scheme to commute to their primary office can apply to the Sustainability Team for a monthly contribution towards their commuting costs. The amount of contribution that you will be eligible for will be determined by the Sustainability Team based on distance of your commute. The maximum amount of the contribution will be [PERCENTAGE]% of your commuting costs and is capped at £[AMOUNT] per month; and
 - (c) [OTHERS].
- 5.3 To discourage those employees living within a [NUMBER] mile radius of their primary office from travelling to work by car (excluding electric cars), we may impose a parking charge of

£[AMOUNT] per day. The proceeds of the parking charge will be donated to our charity of the year [provided to our Sustainability Team's budget].

- 5.4 [To play our part in improving air quality in the communities we live and work you will not be permitted to park a Diesel car in any of our car parks.]

6. Dress Code Policy: sustainable clothing allowance and uniform care

- 6.1 It is important that your clothing and appearance promote a positive and professional image. This contributes to our reputation and the development of our business.
- 6.2 As part of this, we encourage everyone to consider the environmental footprint of the clothes they wear to work and discourage the wearing of low cost “Fast Fashion” items; inexpensive, low quality clothing produced rapidly by mass-market retailers.
- 6.3 In support of this, we offer each employee a clothing allowance [at the start of your employment OR annually] up to the value of £[AMOUNT]. This can be used to purchase sustainable clothing for work (for example, garments made from organic or recycled materials and/or sourced from Net Zero suppliers).
- 6.4 Please contact the Sustainability Team to claim your clothing allowance. Purchases can be made from our approved suppliers only. You will be expected to provide copies of your receipts and will be reimbursed in the next payroll run following your purchase.
- 6.5 Our uniforms are [made from organic OR recycled materials OR sourced from Net Zero suppliers]. This is more expensive for us and we therefore ask you to bear this in mind when using and cleaning your uniform. You are expected to follow any washing or other care recommendations that we may issue from time to time.

7. Disciplinary Policy: environmental misconduct

- 7.1 The following are examples of matters that will normally be regarded as misconduct and will be dealt with under our Disciplinary Policy:
- breaches of our policies, including our Dress Code, Expenses Policy [INSERT OTHER GREEN EMPLOYMENT HANDBOOK CLAUSES];
 - failure to comply with any legal or professional obligation or regulatory requirements (including environmental law);
 - acting in a manner which we consider has a detrimental impact on our ability to achieve of our Net Zero Target;
 - acting in a manner which we consider to be damaging to the climate or the environment during time and activities that are not part of your ordinary, reasonable working life (for example, being caught littering would constitute misconduct, however driving a petrol or diesel car – whilst not encouraged if more sustainable options are viable – would not);
 - acting in a manner which we consider is likely to damage or has damaged our reputation as an environmentally conscious business; or
 - the deliberate concealment of any of the above matters.

This list is intended as a guide and is not exhaustive.

8. Expenses Policy: sustainable business travel, overnight accommodation and client entertainment

- 8.1 Reducing business travel wherever possible is an important part of our plan to achieve our Net Zero Target. The world today is the most connected it has ever been and the coronavirus pandemic has demonstrated that it is possible to achieve our financial targets without the need for face-to-face meetings. Whilst we understand that it can be important to meet clients in person to build rapport, especially at the outset of a business relationship, we encourage you consider whether you can meet your clients – new or existing – ‘virtually’ as default.
- 8.2 Where is it necessary to travel for business purposes, you must consider both the cost and the carbon footprint of your journey and chosen method of transport (which may not be the easiest or most convenient form of travel available). For example, we do not expect you to take a taxi when there is public transport available [Consider COVID related policies], unless it is cost effective due to a significant saving of journey time or the number of staff travelling together. When a taxi is the only viable option, electric or hybrid providers should be chosen over petrol and diesel vehicles where possible.
- 8.3 We will reimburse the reasonable cost of necessary business travel provided you have obtained approval of your journey, its cost and method from the Sustainability Team in advance. This will require you providing a justification for the business travel which is acceptable to the Sustainability Team.
- 8.4 The Sustainability Team may refuse to approve your journey at its discretion or may impose conditions such as requiring you to travel by an alternative means (for example by train rather than domestic flight).
- 8.5 If it is not possible to obtain advance approval from the Sustainability Team, for example in the case of an urgent meeting convened on short notice, you will subsequently be required to provide a justification for the business travel which is acceptable to the Sustainability Team and show that it was undertaken at a reasonable cost and method in order to claim back your expenses.
- 8.6 If your journey requires an overnight stay, we will reimburse your reasonable out-of-pocket expenses for overnight stays provided you have chosen an accommodation provider approved by the Sustainability Team.
- 8.7 As part of a business journey, you may entertain actual or prospective clients only where your proposal and an appropriate budget has been agreed in advance with your line manager. Wherever possible, you should opt to entertain at restaurants and bars which have been approved by the Sustainability Team (for example, those who use organic or local suppliers). Our employees are expected to choose vegetarian or vegan options from menus and you will not be able to claim for your own meal should you wish to eat a meat dish.
- 8.8 Every business journey you undertake will be recorded on our internal system. Your annual performance review may include consideration of the journeys that were undertaken during the previous year to ensure you are not unnecessarily travelling for business purposes and otherwise following the letter and spirit of our business travel policy.

9. Flexible Working Policy: homeworking to support achievement of Net Zero Target

- 9.1 We are committed to providing equality of opportunity in employment and to developing working practices and policies that support work-life balance. Our Flexible Working Policy gives you an opportunity to formally request a change to your working pattern.
- 9.2 Line managers are encouraged to facilitate requests unless they cannot be accommodated for business or operational reasons. Advice will be sought from the Sustainability Team in each instance to ensure the environmental benefits of each flexible working are given due consideration and an appropriate weighting.
- 9.3 In particular, we recognise that flexible working offers an opportunity for our business to reduce our carbon footprint which will contribute to the achievement of our Net Zero Target. Accordingly, we support homeworking in appropriate circumstances either occasionally (to respond to specific circumstances or to complete particular tasks) and in some cases on a regular (full or part-time) basis.
- 9.4 Homeworking can be authorised by your line manager (having sought advice from the Sustainability Team) where, in their opinion:
 - (a) you have work that can be undertaken at home;
 - (b) working at home is cost-effective and any increase in work that may be passed to your colleagues as a result is kept to a minimum; and
 - (c) working from home (either occasionally or regularly, as applicable) will significantly reduce your carbon emissions and/or have another positive environmental impact.
- 9.5 If you wish to apply to work from home, you will need to be able to show that you can:
 - (a) work independently, motivate yourself and use your own initiative;
 - (b) manage your workload effectively and complete work to set deadlines;
 - (c) identify and resolve any new pressures created by working at home;

- (d) adapt to new working practices including maintaining contact with your line manager and colleagues at work; and
- (e) significantly reduce your carbon emissions and/or have another positive environmental impact.

9.6 When working at home, you are responsible for operating your virtual office in a sustainable manner (for example, buying 100% renewable energy and avoiding single use office supplies).

10. Holiday Policy: additional holiday to encourage sustainable travel

- 10.1 To allow you to make a more sustainable choice when considering how to utilise your holiday entitlement:
- (a) you may claim one additional days holiday (to be bolted on to the start or end of your trip) where you decide to travel to a foreign holiday destination for a holiday of more than 5 working days duration without flying to that destination (for example, by choosing to travel by car, rail or ferry); and
 - (b) you may claim two additional days holiday (to be bolted on to the start or end of your trip) where you decide to travel to a domestic holiday destination for a holiday of more than 5 working days duration without flying to that destination (for example, by choosing to travel by rail or ferry).

10.2 Claims for additional holiday must be approved by the Sustainability Team at least one month in advance of your holiday and you can only claim for additional holiday once in each holiday year.

11. Procurement Policy: elimination of single use plastics

- 11.1 Plastic waste is one of the greatest environmental challenges facing the world today. In response to this, we expect you to seek to eliminate the use of single use plastics in our working environment and supply chain. Single use plastics are disposable plastics, which are used only once before they are thrown away or recycled.
- 11.2 This policy seeks to identify areas where single-use plastics are prevalent and where more sustainable replacements can be chosen. Monitoring usage of single use plastics will help us to implement a measurable reduction plan.
- 11.3 Together, we make a commitment to:
- (a) work with each other ensure that the use of single use plastics is eliminated from our working environment;
 - (b) work with our partners to ensure that single use plastics are not used at any events that we hold or have a role in organising;
 - (c) work with each other, our partners and the local business community to develop innovative projects to eliminate the use of single use plastics across the local business community; and
 - (d) share best practice and information about our single use plastic elimination initiatives with each other, our partners and the local business community.

11.4 Where the use of plastics is unavoidable, we will encourage the use of recycled plastics, where practicable and wish to support manufacturers that make products from locally sourced waste plastics.

12. Training Policy: environmental and sustainability training programmes

12.1 We are committed to developing the skills of our employees and recognise that training can benefit us, our staff and the environment. Staff will receive training appropriate to their role, subject to need, operational and budgetary considerations.

12.2 Training needs will be identified through regular performance reviews. You will be given appropriate access to training to enable you to progress within our business.

12.3 We encourage employees to enrol onto our internal environmental and sustainability training programmes. These may cover, without limitation, education regarding sustainable eating habits, promotion of the protection and enhancement of biodiversity and ecosystems, the importance of achieving a zero-carbon working environment and other topical sustainability issues.

12.4 You may also seek approval from the Sustainability Team to enrol onto external environmental and sustainability training programmes where you have a justifiable business need for additional knowledge. Please discuss any ideas you may have with the Sustainability Team.

12.5 External environmental and sustainability training programmes do not need to lead to a formal qualification. The only limitation is that their purpose must be to enable you to improve the environmental performance of our business and/or better contribute towards the achievement of our Net Zero Target.

13. Whistleblowing Policy: environmental whistleblowing

13.1 Whistleblowing is the disclosure of information which relates to suspected wrongdoing or dangers at work. This may include:

- (a) failure to comply with any legal or professional obligation or regulatory requirements (including environmental law);
- (b) conduct which detrimentally impacts our on our ability to achieve of our Net Zero Target;
- (c) conduct which causes damage to the climate or the environment (which is not part of ordinary, reasonable working life);
- (d) conduct likely to damage our reputation as an environmentally conscious business; or
- (e) the deliberate concealment of any of the above matters.



[Sava's clause] NEW

The Origin Story	
Child's name	Sava's clause
Full name	Sustainable Connectivity in Rail Franchise Agreements
Practice Area / Sector	Public Procurement, Commercial
Issue	Obligations on train operating companies (TOCs) to provide ancillary transport do not normally require the use of low emission vehicles or sustainable alternatives. This is at odds with Net Zero strategies.
Solution	<p>Create requirements within existing franchise agreements for TOCs to use a certain percentage of low emissions vehicles, defined by reference to standardised language.</p> <p>Incentivise TOCs to think of long-term solutions, beyond their own franchise, by recognising and crediting investment towards low emission road transport or more sustainable working practices (including the possibility of demand driven services, ride-sharing solutions or micro-transit).</p>
Context	<p>In 2018, HM Government published its Road to Zero strategy which sets how it will support the transition to zero emission road transport. This strategy is heavily dependent on the replacement of fossil-fuel vehicles by low and zero emission electric vehicles (EVs) with the HM Government now planning to end the sale of fossil-fuel vehicles by 2035.</p> <p>Use of EVs, ride-sharing and micro transit is essential if we are to stem reliance on fossil fuels before 2035. The Government can impact the procurement of sustainable transport services in a number of ways, including through the system of rail franchising.</p> <p>Obligations on train operating companies (TOCs) to provide ancillary transport (e.g. connecting rail services to local areas, other transport hubs, or road replacement services) are significant and long term (e.g. 10 years) investments in transport services, yet:</p> <ul style="list-style-type: none"> • if there are any requirements relating to the type of transport/vehicles provided, the clauses will not provide for low emission vehicles or do not clearly define what constitutes a 'low emission vehicle'; • no standard terminology is used to describe different types of vehicle or where a vehicle is on the 'low emission vehicles' scale is; and • there are no benchmarking provisions or requirements ensuring that ancillary transport services are sustainable.

Impact	<ol style="list-style-type: none"> 1. The clause will ensure that franchise operators must invest in sustainable ancillary transport that connects passengers with rail services. Ensuring the lowest carbon method of transport is adopted. 2. The provision will also ensure ancillary transport services continue to be evaluated in terms of suitability and sustainability.
Stakeholders	<ol style="list-style-type: none"> 1. Government (DfT) 2. Rail franchise operators (Train Operating Companies) 3. Law firms
Application	<p>Rail franchise operators are obliged to provide a sustainability plan as part of the bid process. This provision should be included in the sustainability plan and follow through into the franchise agreement.</p>
Notes for users	<p>The suggested drafting is split into two sections.</p> <p>Section 1 provides drafting which could be inserted within the ‘Committed Obligations’ schedule of a franchise agreement, having formed part of the successful bidder’s submission at the procurement stage. The Department for Transport will need to require bidders to include the green initiatives in the bid for the new franchise.</p> <p>The timelines and targets will need to be tailored to the bid’s nuances.</p> <p>Section 2 provides drafting to amend Schedule 14.7 (Incentivising Long-Term Investment). Whilst this would not place explicit obligations on the current franchisee, it does provide the ability for the incumbent franchisee to submit proposals to the Secretary of State in relation to the use of clean vehicles which, if accepted by the Secretary of State, could form an amendment to the relevant franchise agreement as of the date at which the new franchise begins. Any associated capital expenditure would then be recoverable by the incumbent franchisee at the end of the relevant franchise (although the target of this expenditure would also pass to the next franchisee).</p> <p>The drafting demonstrates the principle of incorporating EV usage within TOC contracts but it is acknowledged that further drafting is required for specific implementation and target setting. Further that remedies for failure to achieve clean vehicle targets would be required.</p>

Additional Definition:

“clean vehicles” has the meaning given to such term within Directive 2009/33/EC, as amended by EU Directive 2019/1161

Existing Definitions from existing franchise agreement:

Committed Obligations or COs means any of the Franchisee’s obligations listed in Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations) or any other obligation of the Franchisee expressed as a Committed Obligation under the Franchise Agreement;

Franchise means the rights tendered by the Secretary of State in the Invitation to Tender to operate railway passenger services over the Routes prescribed in paragraph 6.1 of Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development);

Franchise Period means the period commencing on the Start Date and ending on the Expiry Date or Schedule 10 (Remedies, Events of Default or Termination Events);

Start Date means the time and date stated in the Certificate of Commencement as being the time at and date on which the Franchisee is to commence operating the Franchise Services, which shall be the later of:

- a) []; or
- b) []; or
- c) [].

Train Fleet means:

- a) the rolling stock vehicles described in or required by Schedule 1.6 (The Rolling Stock);
- b) any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 3 of Schedule 1.6 (The Rolling Stock).

Additional Conditions:

Section 1 – Committed Obligation

1. Committed Obligation – Reducing the Environmental Impact:

All vehicles

[XX] The Franchisee shall ensure that, in line with the timeline set out in column 1 of the table below, that it shall meet or exceed the targets set out in column 2 of the table below in respect of the percentage of clean vehicles used by it, excluding Train Fleet and replacement bus services, in fulfilling its obligations under the Franchise Agreement.

Months from Start Date	Target percentage (%) of clean vehicles
[12] months	[25]%
[24] months	[50]%
[36] months	[75]%
[48] months	[100]%

Buses

[XX] The Franchisee shall, in the event buses are used as part of the rail replacement provision:

- (a) ensure that appropriate interchange and waiting facilities are provided; and
- (b) ensure that where it procures any buses, or services to provide buses, the Franchisee meets or exceeds the minimum procurement targets set out for clean vehicles under EU Directive 2019/1161 as if it applied to the Franchisee.

Section 2 – Incentivising Long-Term Change

[XX]. In this context, investment or change for the purposes of transition to zero emission road transport may be considered to encompass:

- a) capital investments undertaken solely by the Franchisee;
- b) capital investments undertaken by the Franchisee in association with others;
- c) total or partial substitution of certain train services by bus services where an enhanced service level could be provided for reduced cost or where the provision of bus services improves the overall capacity of the network or delivers other benefits;
- d) changes in working practices of the Franchisee's employees;
- e) changes in the contracted roles and responsibilities between the Franchisee and its major suppliers;
- f) operational changes; and
- g) any proposals for the partial or total replacement of any vehicles used by the Franchise, excluding Train Fleet, with clean vehicles, as well as the installation of any associated and/or required infrastructure, including but not limited to electric vehicle charging points.



[Emilia's Protocols] *NEW*

The Origin Story	
Child's name	Emilia's Protocols
Full name	Green litigation and arbitration protocols
Practice Area / Sector	Arbitration & Dispute Resolution, Commercial, International Development
Issue	The processes and paperwork for courts/tribunals to conduct disputes is carbon intensive and environmentally unfriendly.
Solution	Two similar protocols (litigation and arbitration) with modules which parties can opt into at the start of a dispute to make it lower carbon and greener.
Context	<p>Disputes often involve a lot of environmentally unfriendly practices. Numerous copies of paper bundles, travel to hearings etc.</p> <p>Disputes are not normally aligned with corporate objectives on environment or climate, yet they are part of business life.</p> <p>Companies are becoming increasingly aware of this issue and are looking to see what law firms are doing when considering who to have on their panel and these companies also need to show what they are doing to offset their own impact.</p>
Impact	<p>Adherence to all or some of the protocol(s) would reduce paper consumption and other environmentally-unfriendly practices</p> <p>Raising the protocol at the start of a dispute helps focus parties' minds on environmentally friendly practices</p>
Stakeholders	<ol style="list-style-type: none"> 1. Practitioners – disputes as well as those in more niche practices such as construction, financial litigation etc. to ensure that the protocols reflect the different types of disputes 2. In-house counsel 3. Arbitration tribunals and institutions

Application	<p>This Protocol is voluntary and parties should indicate at an early stage whether they intend to seek to adhere to it or specific modules within it.</p> <p>A tribunal may also indicate to the parties that it expects the protocol to be adhered to as much as possible by the parties, with the parties' agreement to be recorded in a procedural order, terms of reference or terms of appointment, as appropriate.</p> <p>Parties should consider re-visiting their commitment to the modules on a regular basis, including in relation to specific stages of the dispute.</p> <p>As the protocol becomes established some of the drafting could be condensed into principles to avoid repetition. However, the detail and breaking down into the component stages provides the granularity for awareness and impact.</p> <p>See also Toby and Mia's clauses. Toby's and Mia's clauses focus on a subset of topics addressed in Emilia's protocols.</p>
Notes for users	<p>The below guiding principles should be considered by litigation and arbitration practitioners wherever possible ahead of a dispute and during the course of proceedings.</p> <ol style="list-style-type: none"> 1. Generally to conduct the proceedings in the most environmentally conscious manner available. 2. To reduce the use of paper-based documentation and correspondence where efficient electronic versions offer a viable alternative. 3. To reduce travel and conduct meetings and hearings remotely, where practicable. 4. To request that all third parties engaged during the course of the proceedings be mindful of these guiding principles and the protocols to which the parties have subscribed. 5. To recycle all materials used where possible. 6. The protocol has been drafted to be broad so that it applies to a range of dispute types. Further it is designed not to be too prescriptive so that parties can implement in a way that suits them and the needs of the dispute best. <p>There are offset options for parties not able to adhere to the protocol(s) but who still want to do something positive.</p>

Green Arbitration Protocol

Module 1 Written Correspondence

Written Correspondence Between the Parties and To and From the Tribunal

1. Parties agree to correspond by way of electronic communication only, and not to print copies of electronic communications unnecessarily. Parties, the Tribunal, the relevant arbitral institution and the Tribunal Secretary should seek to correspond by way of electronic communication only, and not print copies of electronic communications unnecessarily.
2. Parties agree not to request hard copy documents from each other unnecessarily.
3. The relevant participants should share or agree on the following:
 - a. the relevant email addresses for all email communications to be sent to if not using a shared platform for all communications;

- b. the maximum size of file accepted (e.g.15MB);
 - c. the platform agreed by the parties for the sharing of larger documents, if documents exceed maximum size;
 - d. requirement that any document served by email must be in searchable pdf format, where possible;
 - e. whether any specific security should be applied to documents, for example, through the use of passwords;
 - f. any required labelling convention of documents; and
 - g. confirmation that any correspondence sent by way of email is deemed received unless proven to the contrary.
4. Any written correspondence which cannot be delivered electronically will be printed double-sided and will be delivered in as environmentally-friendly a manner as is reasonable.

Written Correspondence with Third Parties

- 5. The parties agree, as far as is reasonably possible, to seek to correspond by way of electronic communication only with any third parties.
- 6. Where it is not possible to correspond by way of electronic communication with a third party, the parties agree to print all correspondence double-sided.

Written Correspondence Within Legal Teams

- 7. Legal teams should seek to correspond internally by way of electronic communication only and should not print copies of electronic communications unnecessarily.
- 8. Any written correspondence which cannot be delivered electronically will be printed double-sided and will be delivered in as environmentally-friendly a manner as is reasonable.

Module 2 Bundles

Internal preparation & analysis bundles

- 1. Parties are to avoid printing documents where possible.
- 2. When compiling document bundles for internal preparation and analysis purposes, the parties are to use electronic bundles where possible.
- 3. Where hard copies are required or unavoidable, parties are to seek to print double sided and consider whether it is practicable to print in A5 format. If these bundles need updating, parties will amend existing bundles instead of recreating them.
- 4. Where possible, parties shall use recycled paper.

Hearing bundles

- 5. Parties are to use best endeavours to produce electronic bundles.
- 6. Parties will propose to the Tribunal, when negotiating an initial Procedural Order and/or the Terms of Reference or the Terms of Appointment, that:
 - (a) electronic copies be used for interim and/or final hearings; and/or
 - (b) hard copy bundles not be sent over long international distances by courier if this can be avoided.

7. Hard copy printing generally should be kept to a minimum.
8. Parties will seek to use soft copy hearing bundles for interim or procedural hearings, where practicable.
9. Where hard copies are unavoidable, parties are to seek to print double sided and consider whether it is practicable to print in A5 format.
10. Once no longer needed, hard copy bundles are to be recycled in a secure and confidential manner.
11. Where it is necessary to deliver hard copy bundles, where possible and as agreed by the parties, these should be sent by non-motorised transport (e.g. cycle courier) or sent in electronic format to a local print agency who can deliver to the intended recipient.

Module 3 Written Pleadings

Written Pleadings

1. Parties will file their respective written pleadings by way of electronic communication or through the use of an agreed and secure platform only, with the size of the electronic file to be minimised insofar as is possible.
2. Parties will not usually print written pleadings, but where it is necessary to do so, agree to print only a minimal number (including, where feasible, relevant excerpts only) and, where doing so, to print double-sided and consider whether it is practicable to print in A5 format.

Fact Exhibits & Legal Authorities Accompanying the Written Pleadings

3. Parties will submit their fact exhibits and legal authorities by way of electronic communication or through the use of an agreed and secure platform only.
4. Parties will not usually print fact exhibits and legal authorities, but where it is necessary to do so, undertake to print only a minimal number (including, where feasible, relevant excerpts only) and, where doing so, to print double-sided and consider whether it is practicable to print in A5 format.
5. Parties will cooperate to ensure that each exhibit has a unique identifier that is used for all subsequent references to that document and without a further copy of the exhibit being attached.

Module 4 Expert Reports and Factual Witness Statements

Preparation of documents for witnesses and experts

1. Documents should be provided to witnesses and experts in electronic form only, if possible.
2. Where documents are provided in an electronic bundle, they should be made available in a format which can be electronically highlighted and annotated.

Meetings with witnesses and experts

3. Parties agree to consider conducting witness proofing remotely, where it is not possible to meet in person in an environmentally conscious manner.
4. Meetings with experts, and between experts, should be held remotely where practicable. Where not practicable, meetings should be arranged in an environmentally conscious manner.

- 5 Expert joint meetings should be held remotely, where it is not possible to meet in person in an environmentally conscious manner.
- 6 Parties agree to provide an easily accessible electronic bundle of documents for any experts or witnesses. Where the bundle for a particular meeting is made available in a single document, the party preparing the bundle should endeavour to bookmark/tab the bundle to allow the user to navigate it easily and minimise the temptation to print documents.

Travel and accommodation

- 7 In exceptional cases where travelling is necessary, parties should endeavour to travel in as environmentally-friendly a manner as possible (for example, using hybrid or electric vehicles where possible) and use their best endeavours to offset any carbon emissions associated with air travel.
- 8 Where experts or witnesses do travel to meet with solicitors or counsel (or vice versa) the parties should endeavour to obtain accommodation near their meeting place to eliminate the need to travel by motorised transport.

Module 5 Document Production & Disclosure

Document Production and Disclosure

- 1 Parties agree that documents should be produced and disclosed electronically as far as possible.
- 2 Parties agree that electronic copies shall be provided in the form which allows the party receiving the documents the same ability to access, search, review and display the documents (including metadata) as the party providing them.
- 3 As regards hard copy documents, parties agree that these should be scanned and where possible, made word searchable, in order to facilitate production in electronic form.

Reviewing Document Production and Disclosure

- 4 Parties agree to consider as far as possible ways to access data sources remotely rather than travelling and/or sending these to legal teams for review, including:
 - a. Data to be sent via file sharing sites; and/or
 - b. Remote, rather than localised, connections to servers.

Module 6 Hearings

Procedural & Evidentiary Hearings

1. The parties agree to consider whether the dispute can be resolved on a documents only basis, and without the need for a hearing.
2. The parties agree to the default position that hearings not requiring witness or expert evidence should be conducted using videoconferencing technology, telephone communication or other form of communications technology unless this is inappropriate in the circumstances of the case.
3. Parties will also consider the feasibility of this default position in hearings where witness or expert evidence is required.

Location of Hearings

4. Parties agree,
5. where appropriate, to hold procedural hearings and hearings of one day or less by video-conference.
6. Parties agree, where appropriate, to hold a hybrid hearing whereby legal counsel for the parties and the Tribunal (including the Tribunal Secretary, where appropriate) are all in the same physical location and where some or all experts and witnesses are permitted to provide oral testimony by way of video-conference.

Hearing Bundles

7. Parties agree, where reasonable, to use electronic hearing bundles only. Where possible, the bundles should be prepared in a format which can be electronically highlighted and annotated.
8. Parties agree, where reasonable, to provide electronic copies of opening and closing oral presentations only.
9. Parties agree to dispose of hard copies of any hearing bundle (including bundles for witnesses and/or experts) after the hearing in an environmentally-friendly, confidential and secure manner.

Travel to Hearings

10. Parties will minimise unnecessary travel both within their own team and within their counsel team and, where it is necessary to travel, to do so using the minimum number of trips.
11. Parties and counsel will travel to hearings in as environmentally-friendly a manner as possible (for example, using hybrid or electric cars where possible).
12. Parties will use their best endeavours to offset any carbon emissions associated with air travel to and from the hearing.

Module 7 Settlement

1. Parties agree that settlement discussions are to be had by way of video or conference call, where possible.
2. Parties agree that, where possible, the signing of the settlement agreement and consequent award shall be done in counterparts to avoid travelling to meet in person, in particular where such travel would require international travel.
3. Parties agree to consider, where possible, as part of the settlement, how they can take steps to offset the climate impact of the dispute.
4. Parties agree to consider, where possible, charitable initiatives, as part of the settlement, in relation to the subject matter of the dispute or as part of any payment under the settlement.

Module 8 End of Dispute

1. Parties agree to assess at the end of the dispute whether any hard copy documents need to be retained to avoid the need to reprint in the future.
2. Parties agree to consider at the end of the dispute, how they can take steps to offset the climate impact of the dispute.

Green Litigation Protocol

Module 1 Written Correspondence

Written Correspondence Between the Parties

1. Parties agree to correspond by way of electronic communication only, and not to print copies of electronic communications unnecessarily.
2. Parties agree not to request hard copy documents from each other unnecessarily.
3. At the start of the dispute, the parties should share or agree on the following:
 - a. the relevant email addresses for all email communications to be sent to if not using a shared platform for all communications;
 - b. the maximum size of file accepted (e.g.15MB);
 - c. the platform agreed by the parties for the sharing of larger documents, if documents exceed maximum size;
 - d. requirement that any document served by email must be in searchable pdf format where possible;
 - e. whether any specific security should be applied to documents, for example, through use of passwords; and
 - f. any required labelling convention of documents.

Written Correspondence with Third Parties

4. The parties agree, as far as is reasonably possible, to seek to correspond by way of electronic communication only with any third parties.
5. Where it is not possible to correspond by way of electronic communication with a third party, the parties agree to use best endeavours to print all correspondence double-sided.

Written Correspondence Within Legal Teams

6. Legal teams seek to correspond internally by way of electronic communication only and should not print copies of electronic communications unnecessarily.
7. Where it is not possible to correspond by way of electronic communication, the parties agree to use best endeavours to print all correspondence double-sided.

Module 2 Bundles

Internal preparation & analysis bundles

1. Parties are to avoid printing documents where possible.
2. When compiling document bundles for internal preparation and analysis purposes, the parties are to use electronic bundles where possible.
3. Where hard copies are required or unavoidable, parties should print double sided and consider whether it is practicable to print in A5 format. If these bundles need updating, parties will amend existing bundles instead of recreating them.

4. Where possible, parties shall use recycled paper for internal bundles.

Hearing bundles

5. Parties will use soft copy hearing bundles for interim or procedural hearings, where practicable, and limit the number of hard copies to that required by a relevant court or tribunal order, procedural rule, practice direction or court guide.
6. Where hard copies are required or are unavoidable, parties should print in accordance with a relevant court or tribunal order, procedural rule, practice direction or court guide, where practicable printing double sided and/or in A5 format.
7. Once no longer needed, hard copy bundles should be recycled in a secure and confidential manner.
8. Where delivery of hard copy bundles is required or is unavoidable, where possible and as agreed by the parties, these should be sent by non-motorised transport (e.g. cycle courier) or sent in electronic format to a local print agency who can deliver to the intended recipient.

Module 3 Witness Statements & Expert Reports

Preparation of documents for witnesses and experts

- 1 Parties agree that documents should be provided to witnesses and experts in electronic form only if possible.
- 2 Where documents are provided in an electronic bundle, they should, where possible, be made available in a format which can be electronically highlighted and annotated.

Meetings with witnesses and experts

- 3 Parties agree to consider conducting witness proofing remotely, where it is not possible to meet in person, in an environmentally conscious manner.
- 4 Meetings with experts, and between experts, should be held remotely where practicable. Where not practicable, meetings should be arranged in an environmentally conscious manner.
- 5 Expert joint meetings should be held remotely, where it is not possible to meet in person, in an environmentally conscious manner.
- 6 Parties agree to provide an easily accessible electronic bundle of documents for any experts or witnesses. Where the bundle for a particular meeting is made available in a single document, the party preparing the bundle should endeavour to bookmark/tab the bundle to allow the user to navigate it easily and minimise the temptation to print documents.

Travel and accommodation

- 7 In exceptional cases where travelling is necessary, parties will endeavour to travel in as environmentally-friendly a manner as possible (for example, using hybrid or electric vehicles where possible) and use their best endeavours to offset any carbon emissions associated with air travel.

- 8 Where experts or witnesses do travel to meet with legal representatives (or vice versa) the parties will endeavour to obtain accommodation near their meeting place to eliminate the need to travel by motorised transport.

Module 4 Document Production

Document Production and Disclosure

- 1 Parties agree that documents should be produced and disclosed/provided electronically as far as possible, unless a relevant court or tribunal order, procedural rule, practice direction or court guide requires hard copy documents to be disclosed.
- 2 Parties agree that, as far as possible, electronic copies shall be provided in the form which allows the party receiving the documents the same ability to access, search, review and display the documents (including metadata) as the party providing them.
- 3 As regards hard copy documents, parties agree that they should be scanned and, where possible, made word searchable, in order to facilitate production in electronic form.

Reviewing Document Production and Disclosure

- 4 Parties agree to consider as far as possible ways to access data sources remotely rather than travelling and/or sending these to legal teams for review, including:
 - a. data to be sent via file-sharing sites; and/or
 - b. remote, rather than localised, connections to servers.

Module 5 Hearings

Location of Hearings

1. Parties agree, where appropriate, to seek permission for procedural hearings and hearings of one day or less to be held by video-conference.
2. Parties agree, where appropriate, to seek permission for hearings to be held on a hybrid basis whereby the legal teams for the parties attend Court but some or all experts and witnesses are permitted to provide oral testimony by way of video-conference.
3. Parties agree to the default position that hearings not requiring witness or expert evidence should be conducted using videoconferencing technology, telephone communication or other form of communication technology unless this is inappropriate in the circumstances of the case.

Hearing Bundles

4. Parties agree, where permitted by a relevant court or tribunal order, procedural rule or practice direction, to use electronic hearing bundles only. Where possible, the bundles should be prepared in a format which can be electronically highlighted and annotated.
5. Parties agree, where permitted by a relevant court or tribunal order, procedural rule or practice direction, to provide electronic copies of opening and closing submissions only.

6. The Parties agree to dispose of hard copies of any hearing bundles (including bundles for witnesses and experts) in an environmentally friendly, confidential and secure manner.

Travel to Hearings

7. Parties will minimise unnecessary travel both within their own team and within their counsel team and, where it is necessary to travel, to do so using the minimum number of trips.
8. Parties and counsel will travel to hearings in as environmentally-friendly a manner as possible (for example, using electric or hybrid vehicles where possible).
9. Parties will use their reasonable endeavours to offset any carbon emissions associated with air travel to and from the hearing.

Module 6 Mediation/Settlement

1. Parties agree that settlement discussions are to be had by way of video or conference call, where possible.
2. Parties agree that, where possible, the signing of the settlement agreement shall be in counterparts to avoid travelling to meet in person, in particular where such travel would require international travel.
3. Parties agree to consider, where possible and as part of the settlement, how they can take steps to offset the climate impact of the dispute.
4. Parties agree to consider, where possible, charitable initiatives, as part of the settlement in relation to the subject matter of the litigation or as part of any payment under the settlement.

Module 7 End of the Dispute

1. Parties agree to assess at the end of the dispute whether any hard copy documents might need to be retained to avoid the need to print them again in the future.
2. Parties agree, as far as possible, to dispose of all confidential documents related to the matter which are no longer needed in an environmentally friendly and secure manner.
3. Parties agree to consider at the end of the dispute how they can take steps to offset the climate impact of the dispute.

[Mia's clause] NEW

The Origin Story	
Child's name	Mia's clause
Full name	Low Carbon arbitration hearings clause
Practice Area / Sector	Arbitration & Dispute Resolution
Issue	<p>Parties in arbitration proceedings tend to create an excessive amount of paper both in preparation of their case and when attending hearings. Bundles of documents containing submissions and evidence can count in thousands of sheets of paper.</p> <p>Parties' air travel to attend hearings generates unnecessary carbon footprint.</p>
Solution	<p>Encouraging parties to use a choice of virtual hearings clause along with their choice of law and jurisdiction clauses in contracts and arbitration agreements. All documents in arbitration would be in electronic form whilst all hearings would be conducted remotely. Alternatively, the parties could opt for hybrid virtual and in-person hearings.</p>
Context	<p>Traditional arbitration proceedings tend to consume substantial amounts of paper – for example a recent survey of US law firms found that each attorney generates up to 100,000 sheets a year¹²⁸. There were 6288 international arbitrations in 2018¹²⁹.</p> <p>Unless recycled, paper requires trees, this creates a considerable environmental impact, which could be avoided. '100,000 sheets of paper from new sources requires over 8 trees and almost 2,000kWh of energy'¹³⁰. Trees are carbon sinks and are important to removing CO2 from the atmosphere.</p> <p>Moreover, parties in international arbitration tend to have sizeable teams of lawyers, experts, witnesses and other professionals whose air travel to attend hearings would add up to considerable carbon emissions.</p> <p>Proceedings may be effectively conducted via virtual hearings and using digital documents as recently evidenced by lockdowns across the world caused by Covid-19. In fact, the use of digital documents as opposed to paper offers numerous advantages such as quick navigation using search tools and bespoke mark-up of documents, whilst reduced travel to attend hearings would save considerable time for parties and their teams to focus on other matters.</p>

¹²⁸ https://www.abajournal.com/news/article/one_paper_pushing_lawyer_tons_of_greenhouse_gases/

¹²⁹ <https://globalarbitrationnews.com/international-arbitration-statistics-2018-another-busy-year-for-arbital-institutions/>

¹³⁰ <https://www.goodenergy.co.uk/good-stats-on-carbon-saving/>

Impact	<p>The impact is clear if 8 trees and 2000kwh are saved by each attorney on each arbitration then there is clear Carbon Saving from the paper alone. Albeit many firms will already use 100% recycled paper in their operations.</p> <p>The virtual hearings clause would codify parties' commitment to greener proceedings. It would not only reduce the environmental impact of disputes by decreasing carbon costs associated with air travel and paper consumption, but also boost efficiency of dispute resolution through use of technology and digital documents. It should also be noted that virtual hearings would save costs for the parties involved as there would be no travel to venues where hearings are taking place (which may be considerable for international arbitrations) and fewer or no paper bundles to produce.</p>
Stakeholders	<ol style="list-style-type: none"> 1. Parties in dispute 2. Arbitrators 3. Staff at arbitration institutions 4. Lawyers 5. Trainees and paralegals 6. Witnesses 7. Experts 8. (and most importantly) Trees
Application	<p>When drafting the arbitration agreement, drafters should consider all potentially applicable mandatory laws, and consider if any change to this clause language is necessary or desirable.</p>
Notes for users	<p>It goes without saying that a user of the drafting would need to consider any procedural requirements or limitations on virtual hearings and use of digital documents within the jurisdiction or under the laws applicable to the contract or arbitration agreement before adding the virtual hearings clause.</p>

Option 1 (basic clause):

1. The parties agree that any arbitration commenced pursuant to clause [x] of this Agreement, shall be conducted having regard to the Campaign for Greener Arbitrations' Green Pledge¹³¹ with a view to reducing the environmental impact of disputes.
2. At the outset of any arbitration, each party shall submit to the tribunal its plan for minimising the carbon footprint of the arbitration, including but not limited to its plan for engaging consultants, suppliers and service providers who commit to minimising their carbon footprint.

¹³¹ <https://www.greenerarbitrations.com/news/the-green-pledge-no-talk-more-action>

3. The parties shall discuss their plans, agree on how best to manage the carbon footprint of the arbitration and agree review dates for their plans.
4. Each party must disclose their total emissions for air travel conducted by all attorneys, paralegals, staff, in-house counsel, clients, experts, witnesses, consultants, suppliers and service providers, for the purpose of preparing for and/or attending any hearing, using an online calculator agreed between the parties.
5. All documents and communications exchanged or submitted in any arbitration shall be in electronic form.
6. All hearings shall be conducted remotely.
7. The tribunal may deviate from paragraphs 4, 5 or 6 above, on its own initiative or on application of a party, on a showing of good cause, and may condition the grant of such application on the payment of reasonable costs [incurred by the non-applying party as a result of the deviation, for example, reasonable costs related to the production (printing, copying, bundling, compiling) and mailing of any hard-copy documents¹³²]. [The tribunal, in its discretion, may permit hybrid virtual and in-person hearings as it deems appropriate.¹³³]
8. [Under paragraph 7 above, the tribunal may also condition such application on the payment of a carbon offset fee to a programme selected by the arbitral institution under whose auspices the arbitration is conducted, or as agreed by the parties.¹³⁴]

¹³² Drafting note: optional addition 1 of references to reasonable costs

¹³³ Drafting note: optional addition 2 of hybrid virtual and in-person hearings

¹³⁴ Drafting note: optional addition of carbon offset fee

[Toby's clause] NEW

The Origin Story	
Child's name	Toby's clause
Full name	Avoidance of excessive paperwork in Dispute Resolution – including both litigation and arbitration.
Practice Area / Sector	Dispute Resolution
Issue	Litigation and arbitration create considerable and unnecessary amounts of physical paperwork and printing. Paper is energy intensive and has a significant carbon and water footprint.
Solution	<p>A contractual obligation between the parties stating that, in the event of a dispute, parties agree to litigate/arbitrate in a 'green' manner. This would include using an electronic bundle rather than hard copy documents, and agreement on waste disposal of the bundle should a hard copy be required.</p> <p>Use of a paper bundle could be conditioned on a tree planting obligation to offset the paper usage and emissions produced.</p>
Context	<p>Commercial contracts often contain a disputes clause that states the preferred method of dispute resolution in the event that a dispute arises in relation to that contract.</p> <p>The production of paper accounts for the destruction of approximately 4.1 million hectares of trees per year¹³⁵. The paper industry uses over 40% of all industrial wood traded globally, with factors such as irresponsible tree harvesting increasing the size of the carbon footprint attributed to this industry¹³⁶.</p> <ol style="list-style-type: none"> Within litigation and arbitration, large volumes of paper bundles are created. Multiple copies are often needed, with a notable amount of paper being wasted. This is despite many documents starting out as electronic files, particularly in IT disputes or those involving drawings/plans. With Covid-19, we have seen the Courts move to electronic hearings and electronic bundles. It has demonstrated the possibility to resolve a dispute remotely and without hard copy documentation/evidence.

¹³⁵ <https://paperontherocks.com/2018/11/28/environmental-impact-of-deforestation-paper-production/>

¹³⁶ <https://www.worldwildlife.org/industries/pulp-and-paper>

Impact	<p>Reduced paper use and the corresponding saving of energy, Co2 and water.</p> <p>Reduced need for paper will assist with avoiding deforestation/felling of trees and increased preservation of natural habitats, water savings and reduced carbon footprint for the construction project.</p> <p>Where it is essential to use hard copy bundles, further energy savings can be made by using recycled paper¹³⁷.</p> <p>It would make parties more aware of environmental obligations/factors from outset of a contractual relationship.</p> <p>The use of electronic bundles could be reported in a firm's sustainability report as an amount of emissions, water, ink, paper and energy saved.</p>
Stakeholders	<ol style="list-style-type: none"> 1. Commercial companies considering disputes clauses at outset of contract 2. Trade bodies 3. Courts 4. International arbitration bodies (ICC, LCIA, PCA, SCC etc.) 5. E-court providers 6. In house lawyers 7. Law firms 8. Knowledge lawyers
Application	<p>Any commercial agreement with a dispute resolution clause.</p>
Notes for users	<p>Success of the clause might be limited by the willingness of a court to adopt such measures, but could be used in mediation or arbitration agreed between the parties.</p> <p>Law firms could set targets to ensure that [x]% of their disputes are conducted with only electronic documentation.</p> <p>See also PD 51O The Electronic Working Pilot Scheme in relation to e-working and court practice and procedure¹³⁸.</p> <p>There is the possibility to expand this approach further to include any legal procedure or in any transaction – following the move to use e-signing at a completion meeting. E-signing is now the norm in commercial transactions following Covid-19.</p> <p>Clause 1.4 could be expanded to clarify that the offsetting obligation applies to business travel.</p> <p>See also Emilia and Mia's clauses for alternative approaches.</p>

BACKGROUND

- (A) The parties have agreed to consider Climate Change Mitigation [or link to Emilia's protocols] as part of their discussions in the event of a dispute arising from this agreement.

¹³⁷ <https://recycled-papers.co.uk/green-matters/why-use-recycled-papers/saving-wood#:~:text=Saving%20wood.-Using%20wood%20to&text=Each%20time%20paper%20is%20recycled,paper%20breaking%20down%20in%20landfill.>

¹³⁸ <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51o-the-electronic-working-pilot-scheme>

DEFINITIONS

Climate Change Mitigation means human intervention or efforts to reduce the sources or enhance the sinks of Greenhouse Gas emissions.

Electronic Bundles means a bundle of documents for use by the parties and court or tribunal as required in electronic format, with efforts made as far as possible to strive for legibility and a user-friendly format through the use of sequential pagination and bookmarks appropriate for each document.

Greenhouse Gases (GHGs) means the natural and anthropogenic gases which trap thermal radiation in the earth's atmosphere and as specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) [or otherwise specified by the UNFCCC at the date of this agreement].

Native Trees means those species of trees which, since the last ice age, have grown in the geographic area now called the [United Kingdom] and which are listed as native on the [Forestry Commission Website].

DISPUTE MANAGEMENT

- 1.1. In the event of any dispute arising in relation to this contract:
 - a. all notices and communications between the parties will be sent by electronic means; and
 - b. Electronic Bundles will be used to prepare for, and during, meetings or hearings.
- 1.2. The obligation at Clause 1.1 is subject to any party's obligation to the contrary found in any relevant court or tribunal order, procedural rule, practice direction or court guide
- 1.3. Where a paper bundle is used at any stage in a dispute, the parties must:
 - a. use recycled paper, non-solvent-based printer ink and cardboard (non-plastic) tabs, dividers and folders; and
 - b. subject to any legal obligations to retain copies, dispose of the bundle through secure recycling.
- 1.4. Each party will, within [one month] of resolution of any dispute or a relevant stage of a dispute, contribute towards Climate Change Mitigation by purchasing carbon offsets or planting Native Trees to offset their Greenhouse Gas emissions arising from the procedure to resolve the dispute, including those of lawyers, advisers and other third party consultants.



[Philippe's clause]

The Origin Story	
Child's name	Philippe's clause
Full name	Contractor's environmental obligations (in public tender invitations)
Practice Area / Sector	Commercial, Public Sector Procurement
Issue	People who are not working may have time to use to protect the environment and engage with their local communities.
Solution	Incentivising people who are not working to undertake volunteer work to improve the environment and mitigate climate change impacts. Incentivising companies responding to public tender invitations to provide volunteer opportunities to improve the environment and mitigate climate change impacts.
Context	Retirees, prisoners, stay-at-home parents, students do not form part of the workforce and may therefore feel excluded from society. It may help these individuals to have a sense of purpose and not to feel lonely if they can work on projects that improve the environment and mitigate climate change impacts. Companies working for a public body should contribute to the local community's work to improve the environment and mitigate climate change impacts.
Impact	The clauses will create relationships between people at a local level. They will also create opportunities to diversify people's skills and create a bridge between social classes. They will create a cheaper workforce for governments and companies to tackle climate change. Being involved in these projects will foster a sense of purpose and belonging. These clauses will ensure companies are committed and promote circular economy.
Stakeholders	<ol style="list-style-type: none"> 1. Public bodies 2. Public tender contractors 3. Retirees 4. Job hunters 5. Students 6. Stay-at-home parents 7. Former prisoners
Application	The clauses will mean that companies willing to contract with public bodies will have to offer volunteer opportunities on environmental projects to people who are unemployed. Public bodies will prioritise companies complying with these obligations.

<p>Notes for users</p>	<p>A public body is a body, organisation or agency that is financed by a form of government, acts independently of it and has the responsibility to report key data, evidence, facts, statistics, to the government and is accountable for their role, responsibility and objectives.</p> <p>Conditions relating to the performance of a contract must be linked to the subject matter of the contract. Most public authorities in the UK have declared a climate change emergency⁹ and are working towards a net zero position. Therefore, whilst not certain we would envisage that the required link could be made.</p> <p>However, if this point was challenged by a bidder it may be deemed to place a blanket requirement upon a contractor to offer volunteer placements because the clause is very broad brush and open ended.</p> <p>In practice bidders may not object to this obligation and may simply take a view of it as part of the overall package to be delivered if they wish to secure the contract. However, if they do query the basis for imposing this requirement, the authority would be required to justify it.</p>
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Invitation to Tender Letter

Contractor's Obligations

- 1.1 The Contractor undertakes to implement a scheme under which it shall ensure that the following volunteers
 - a) retirees
 - b) job hunters
 - c) students
 - d) stay-at-home parents
 - e) former prisoners,
 are involved in environmental work directly linked to the subject matter of the contract [for two months per year] (period will be determined by length of contract).
- 1.2 The Contractor shall utilise a number of volunteers equivalent to at least [10]% of the number of its employees which are assigned to this contract (minimum one volunteer).
- 1.3 The Contractor shall cover the expenses incurred by the volunteers to undertake the work.
- 1.4 The Contractor shall be responsible for advertising these volunteering opportunities.

Additional Definitions

“Environmental work” means work that will improve the local or national environment or ecology including but not limited to, tree planting projects, clearing and rewilding derelict land, habitat creation, or projects to install energy efficiency measures.

⁹<https://www.climateemergency.uk/blog/list-of-councils/>



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