Final Draft Template: 12 January 2021

 

**Application and Agreement for Climate Bonds Verifier Approval (version January 2021)**

A bond auditor seeking approval as a Climate Bonds Approved Verifier (**Approved Verifier**) is required to sign this Application and Agreement for Climate Bonds Verifier Approval (**Agreement**). To start the process of becoming an Approved Verifier with Climate Bonds Initiative (**CBI**), you need to complete this Agreement, sign it, and return it to CBI.

By executing this Agreement, Applicant applies to CBI for approval as an Approved Verifier (**Approval**) on the terms of this Agreement and in accordance with the Climate Bonds Standard & Certification Scheme (**Scheme**) in the form published on CBI’s website as of the date of this Agreement, together with any changes to the Scheme from time to time which have been accepted, or deemed to have been accepted, by Applicant, whether or not specifically notified to Applicant by CBI. Approved Verifiers may be engaged by Issuers in relation to bonds, loans and other debt instruments which can be certified under the Scheme (**Debt Instruments**).

**Agreement Details**

|  |  |
| --- | --- |
| **Date of Agreement** | {{ca\_application\_date}} |
| **Applicant** | {{ca\_legal\_name\_issuing\_entity}} |
| **Registered office address of Applicant** | {{ca\_address}} |
| **Applicant place of incorporation** | {{user\_location}} |
| **Applicant company number** | {{invoice\_registration\_number}} |
| **Agreed Language** | English |
| **Agreed Currency** | [USD / GBP] |
| **Governing Law** | The laws of England and Wales |
| **Dispute resolution** | Method of Dispute Resolution: Arbitration  Arbitral Body: London Court of International Arbitration (**LCIA**)/ International Chamber of Commerce (**ICC**)  Rules of Arbitration: Rules of Arbitration of the LCIA / Rules of Arbitration of the ICC  Arbitral Seat: London, England  Agreed Number of Arbitrators: Three  Agreed Arbitrator Appointment Process: Each of the parties shall appoint an arbitrator and then the party-appointed arbitrators shall jointly select a third person to chair the tribunal |
| **Notices** | **Applicant**  Address: ***{{ca\_address}}***  Email: ***{{ca\_email\_address}}***  Contact person: ***{{ca\_contact\_person}}***  **CBI**  Address: 40 Bermondsey Street, London, SE1 3UD, United Kingdom  Email: notices@climatebonds.net  Contact person: Head of Certification |

Capitalised terms used in this Agreement and not otherwise defined have the meaning given to them in the Agreement Details. Capitalised terms used in this Agreement and not defined in Agreement Details have the meaning given to them in the Standard (as defined in Section 4.1.1 below).

# Fees

* 1. Applicant is required to pay to CBI a one-time fee of GBP 2,500 within thirty (30) business days after the date of this Agreement, and an additional annual fee of GPB 2,500 (or such other amount as may be notified to Applicant by CBI with at least 30 days’ prior notice) (the **Annual Fee**) is payable by Applicant to CBI on each anniversary of the date of this Agreement. Such fee shall be payable without deduction or withholding of any kind and shall not be refundable for any reason.
  2. CBI reserves the right to review the Annual Fee referred to at paragraph 1.1 above on an annual basis and agrees to notify the Applicant in writing at least 60 business days before the date of each anniversary of this Agreement of any increase in the Annual Fee.
  3. All amounts expressed to be payable under this Agreement are exclusive of VAT. However, where VAT is chargeable on any such amounts it must be paid concurrently with the other amounts due.
  4. Applicant must make all payments to be made by it to CBI in the Agreed Currency without any set-off, withholding or deduction unless required by law. If any withholding or deduction is required by law to be made by Applicant, the amount of the payment due from Applicant shall be increased to an amount which (after making any withholding or deduction) leaves an amount equal to the payment which would have been due if no withholding or deduction had been required.

# Process for Approved Verifier

* 1. Upon CBI’s approval of Applicant’s request to be an Approved Verifier in respect of a particular geographic scope and technical scope, CBI shall issue a formal Letter of Approval and Certificate to Applicant (**Approval Letter**).
  2. Applicant will be listed as an Approved Verifier on the CBI website with their geographic scope, technical scope, and relevant contact details once an Approval Letter (as defined below) is provided and this Agreement has been executed.
  3. Applicant shall be and remain listed on the CBI website and remain an Approved Verifier in respect of the relevant geographic scope and technical scope subject to the terms of this Agreement and only during the term of this Agreement. In the event of non-payment of any fees due by Applicant under this Agreement or the non-performance of any other terms of this Agreement by Applicant, CBI reserves the right to remove Applicant from the list of Approved Verifiers until such non-payment or non-performance is remedied.

1. **Approval is at CBI’s Sole Discretion**
   1. The approval by CBI of Applicant as an Approved Verifier, and Applicant’s continued status as an Approved Verifier, is in the sole discretion of CBI.
   2. Applicant acknowledges and agrees that it may only hold itself out to be an Approved Verifier during the term of, and subject to the terms of, this Agreement and while its status as an Approved Verifier is active and has not been revoked by CBI.

# Rights and Responsibilities of Applicant

* 1. After receipt of an Approval Letter, Applicant may be engaged by Issuers to provide a report prior to issuance in compliance with the Scheme, and detailing, among other items:
     1. the eligibility and readiness of projects and assets being financed to meet the Climate Bonds Standard in the form published on CBI’s website from time to time (**Standard**) and any relevant Sector-Specific Criteria or other relevant sector eligibility criteria published on CBI’s website from time to time (**Sector Eligibility Criteria**); and
     2. the readiness of the Issuer’s internal processes to track and report on the use of proceeds in accordance with the Standard and any relevant sector Eligibility Criteria.
  2. After receipt of an Approval Letter, Applicant may be engaged by Issuers to provide a report after issuance detailing:
     1. the actual use of proceeds;
     2. the ongoing eligibility of the projects and assets being financed to meet the Standard and any relevant sector Eligibility Criteria;
     3. the use of funds not yet allocated; and
     4. the adequacy of, and output from, the Issuer’s internal processes to satisfy the Standard and any relevant sector Eligibility Criteria.
  3. Applicant shall use industry accepted standards (including ISAE 3000) for undertaking assurance work, including but not limited to the “Guidance for Verifiers” document published on CBI’s website from time to time or otherwise provided to Applicant. Applicant shall include an assurance statement in all reports prepared pursuant to Section 4.2 based on the assessment and assurance activities undertaken by Applicant during the verification process.
  4. Following entry into this Agreement, Applicant shall participate in an introductory training webinar provided by CBI, and, as a minimum, one further webinar on an annual basis during the term of this Agreement. Where further training sessions, workshops or events are offered by CBI, Applicant shall be required to attend these. Where CBI hosts roundtable events, in the event Applicant is unable to attend it must provide written notification to CBI.
  5. Applicant and its clients shall not use any CBI marks or symbols or other intellectual property in any misleading manner or in any manner not expressly approved in writing by CBI.
  6. Applicant shall procure and maintain an insurance policy satisfying the requirements of the Scheme.
  7. Applicant shall otherwise review, remain familiar with and comply with the entirety of the Scheme, including any updates to the Scheme, whether or not specifically provided by CBI to Applicant.
  8. Applicant agrees and acknowledges that, by being engaged by an Issuer in relation to the Certification, or proposed Certification, of Debt Instruments under the Scheme, it shall be deemed to have accepted all updates to the Scheme:
     1. notified by CBI to Applicant on or prior to such date; or
     2. published on CBI’s website as of the date of such engagement, whether or not specifically notified to Applicant by CBI, whether by automated system or otherwise.

# Requirements for Approval as Approved Verifier

* 1. Applicant hereby agrees to remain subject to assessment by CBI for the term of this Agreement. Such assessments shall include (but is not limited to) each of the following:
     1. Applicant’s level of competence and experience;
     2. Applicant’s participation in regular training sessions;
     3. Applicant’s adherence to the oversight regime detailed in Section 6 below;
     4. Applicant’s maintenance of appropriate professional indemnity and liability insurance to cover their verification activities under the Standard and any relevant sector Eligibility Criteria; and
     5. Applicant’s compliance with its obligations under this Agreement.
  2. CBI maintains the right to revoke or suspend Applicant’s Approval should CBI determine, in its sole discretion, that Applicant has failed to meet any of the standards assessed in Section 5.1 and to take any other steps it sees fit to protect its position, in accordance with the Scheme, the Standard or this Agreement.

# CBI Oversight Regime

* 1. Applicant hereby agrees to remain subject to ongoing oversight by CBI for the term of this Agreement. Such oversight shall include (but is not limited to) each of the following:
     1. review of all Verifier reports prepared by Applicant submitted to the Climate Bonds Standard Secretariat by or on behalf of Issuers;
     2. detailed monitoring of the first three (3) to five (5) engagements undertaken by the Approved Verifier in any given geographical scope and/or technical scope; including review of work plans, verification teams, risk assessments, draft reports and findings;
     3. interviews with Issuers on the performance of the Approved Verifier;
     4. spot checks on Approved Verifier working documents, evidence and assurance procedures;
     5. on-site appraisals to review performance of the Approved Verifier in the field; and
     6. annual review of Approved Verifier competence and performance, for consideration by the Climate Bonds Standard Board (the “**Board**”).

The receipt of verification by a CBI Approved Verifier does not guarantee that an issuer will receive Certification by CBI, unless all conditions set out in the relevant Certification Agreement for the Bonds have been satisfied.

# Liability and Indemnity

* 1. Applicant acknowledges that the Board operates legally as an advisory committee of the CBI board of directors and oversees the development of the Scheme. Neither the Board members nor any organisation, individual or other person forming part of, or representing, the Board members (together, "**CBSB**") accepts or owes any duty, liability or responsibility of any kind whatsoever to Applicant or to any other person or body whatsoever, whether with respect to the award or withdrawal of any Certification under the Scheme or otherwise. In particular, all advice or recommendations with respect to any Certification under the Scheme or otherwise that CBSB provides to the CBI board of directors is provided to it in an advisory capacity only and is not to be treated as provided or offered to any other person.
  2. To the extent permitted by law and subject to the limitations expressly provided for in this Section 7, Applicant agrees to indemnify, or otherwise to hold harmless, each of CBI, its board of directors and employees and CBSB (**Covered Persons**) from any damages, liabilities, judgments, costs, charges, expenses (including reasonable attorney’s fees) and claims arising or resulting from, or relating to, Applicant’s status as an Approved Verifier or otherwise in relation to anything done or failed to be done by or on behalf of Applicant in connection with this Agreement or its verification of any Debt Instruments (including but not limited to any direct, indirect, consequential, special, punitive or exemplary losses, loss of profit, loss of reputation and all interest, penalties and legal costs related thereto (calculated on a full indemnity basis)) (**Losses**).
     1. Applicant, however, will not be liable for any Loss to the extent that it is directly attributable to the fraud, gross negligence or wilful misconduct of any Covered Person.

# Confidentiality

* 1. For the purposes of this Agreement, **Confidential Information** means all information (regardless of its form) disclosed or otherwise made available by Applicant or its representatives to CBI or its representatives (before, on or after the date of this Agreement), for or in connection with this Agreement or the arrangements contemplated by it (and includes without limitation this Agreement and its contents), to the extent to which it:
     1. is marked or otherwise designated as being (a) proprietary or confidential to Applicant or (b) that CBI has been notified by the Applicant is confidential to a third party to whom Applicant owes an obligation of confidence;
     2. in the circumstances surrounding disclosure or because of the nature of the information, ought in the reasonable opinion of the deciding party to be treated as confidential;
     3. includes, or relates to the business, financial records, staff, technology, projects, investments, intellectual property rights, trade secrets, financial position, customers and suppliers of Applicant; or
     4. is derived or produced partly or wholly from such information, but excludes information which:
     5. is in or becomes part of the public domain otherwise than through a breach of this Agreement or a breach of an obligation of confidentiality owed to Applicant, one of Applicant’s representatives or a third party; or
     6. was already known to CBI at the time of disclosure by Applicant or any of its representatives (unless such knowledge arose from disclosure of information in breach of an obligation owed to or by a third party).
  2. CBI must keep the Confidential Information confidential and must not:
     1. use or reproduce any of Applicant’s Confidential Information otherwise than in performing or giving effect to this Agreement or issuing, suspending or withdrawing an Applicant’s Approval without the prior written consent of Applicant;
     2. use Applicant as a reference without the prior written consent of Applicant; or
     3. disclose any Confidential Information except:
        1. if required in connection with that Applicant’s Approval;
        2. if required in connection with legal proceedings relating to this Agreement;
        3. to officers, employees, legal and other advisers and auditors of CBI, provided the recipient agrees to act consistently with this Section 8;
        4. to any party to this Agreement or any affiliate of CBI, provided the recipient agrees to act consistently with this Section 8;
        5. as required by any law or stock exchange; or
        6. with the prior written consent of Applicant.
  3. Applicant shall also keep the confidential information of CBI confidential and shall be subject to the same restrictions set out in paragraph 8.2, except that the roles of CBI and the Applicant shall be reversed.
  4. On expiry or termination of this Agreement, CBI must promptly use reasonable efforts to return or destroy in a manner that is secure and reasonably satisfactory to Applicant any or all copies of Confidential Information, in which case any right of CBI to use, copy and disclose that Confidential Information ceases.

# Sanctions; Anti-Terrorism

* 1. To the knowledge of the Applicant, its affiliates and its officers as at the date of this Agreement:
     1. Applicant is not (i) subject to economic, trade or transactional sanctions imposed by any government or government agency to which Applicant is subject in any jurisdiction in which it carries on its business nor (ii) located in or carrying on business in a country subject to such sanctions;
     2. neither the Applicant nor or any of its directors or material wholly owned subsidiaries appears on any of the following EU or US lists of known or suspected terrorists, terrorist organisations or other prohibited persons maintained by any jurisdiction in which it carries on its business: (i) https://eur-lex.europa.eu/legal-content/en/TXT/HTML/?uri=CELEX:32019D1341&from=en; or (ii) https://www.state.gov/foreign-terrorist-organizations/ and
     3. Applicant is not controlled, directly or indirectly, by any entity subject to the sanctions referred to in Section 9.1.1 or appearing on the lists referred to in Section 9.1.2.
  2. During the term of this Agreement, Applicant will promptly notify CBI if it becomes aware of any of the circumstances in Section 9.1 changing.

# Compliance with Laws

* 1. Nothing in this Agreement prevents:
     1. CBI or Applicant from acting in accordance with applicable laws and regulations; or
     2. CBI acting in accordance with the Scheme, including the Standard or any sector Eligibility Criteria (whether in the form published on CBI’s website as at the date of this Agreement or at the relevant time).

# Entire Agreement

* 1. This Agreement constitutes the complete and entire agreement between the parties regarding its subject matter.

# Limits on CBI’s Liability

* 1. Neither CBI nor CBSB, their affiliates or third party providers or any of their officers, directors, employees or agents are liable to Applicant, Applicant’s affiliates or any person asserting claims on Applicant’s or the Applicant’s affiliates’ behalf, directly or indirectly, for any inaccuracies, errors, or omissions (in each case regardless of cause) actions, damages (consequential, special, indirect, incidental, punitive, compensatory, exemplary or otherwise and even if such party has been advised of the possibility of such damages and regardless of the theory of liability), claims, liabilities, costs, expenses, legal fees or losses (including without limitation lost income or lost profits and opportunity costs) in any way arising out of or relating to this Agreement or otherwise in relation to anything done or failed to be done by or on behalf of CBI and/or CBSB, their affiliates or third party providers in connection with this Agreement except to CBI may be liable to the extent such damages or other amounts are determined in good faith to have resulted from the fraud, gross negligence or wilful misconduct of CBI, its affiliates or third party providers or any of their officers, directors, employees or agents, or from CBI’s breach of this Agreement.
  2. In furtherance of (and not in limitation of) Section 12.1, neither CBI nor CBSB will be liable to Applicant, Applicant’s affiliates or any other person asserting claims on Applicant’s or the Applicant’s affiliates’ behalf in respect of any decisions alleged to be made or actions alleged to be taken by any person based on anything that may be perceived as advice or recommendations by CBI or any of its affiliates or its officers.
  3. However, if (regardless of Sections 12.1 and 12.2) CBI is held liable to Applicant, Applicant’s affiliates or any person asserting claims on Applicant’s behalf for monetary damages under this Agreement, then the most that CBI can be liable to pay is an aggregate amount of the fees paid to CBI by Applicant under this Agreement, except to the extent such limitation is unenforceable by law. This Section 12.3 applies regardless of the form of action, damage, claim, liability, costs, expense or loss, whether in contract, statute, tort (including without limitation negligence) or otherwise.
  4. Neither party waives any protections, privileges or defences it may have under law.

# Term and Termination

* 1. The initial term for this Agreement shall be [two (2)] years from the date hereof. This Agreement shall automatically renew at the end of each term for an additional one (1) year period, unless written notice of termination is provided by either party within sixty (60) days of the end of the current term.
  2. This Agreement will terminate on the date for termination nominated by either party by giving written notice to the other party (such date being no earlier than the date of the notice).
  3. CBI may terminate this Agreement at any time:
     1. if there is a breach of this Agreement by Applicant, and such breach is not cured within sixty (60) days;
     2. if Applicant becomes insolvent, there is a petition by or on behalf of Applicant seeking an order of relief under the bankruptcy laws of any applicable jurisdiction, or any assignment of Applicant’s assets for the benefit of creditors or any similar event occurs; or
     3. in accordance with Section 5.2.
  4. Section 7, Section 8, Section 12, Section 19 and Section 20 shall survive termination of this Agreement.

# Third Party Rights Not Created

* 1. Except for those third parties (including, without limitation, Covered Persons) referred to in Section 7 and/or Section 12, a person who is not a party to this Agreement (including without limitation any third party which receives a copy of a Certificate) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

# Assignment

* 1. Applicant shall not assign or otherwise deal with its rights under this Agreement. CBI may assign its rights under this Agreement to an affiliate upon giving notice to Applicant.

# Invalid Material

* 1. If any term of this Agreement is held to be invalid, void or unenforceable, then:
     1. the remainder of this Agreement is not affected, impaired or invalidated; and
     2. each remaining term is valid and enforceable to the fullest extent permitted by law.
  2. Notwithstanding anything to the contrary in this Agreement, CBI reserves the right not to provide Certification in respect of any Debt Instruments, whether or not they comply with the requirements of the Climate Bond Standard, if in CBI's sole discretion, activities that are carried on by the Applicant or its affiliates are such that Certification of such projects would (or could reasonably be expected to) expose CBI to reputational risk or harm.

# Changing This Agreement

* 1. Without limiting Section 4.7 or Section 4.8, the only way this Agreement may be changed is by an authorised representative of each party executing a document agreeing to the change.

# Counterparts

* 1. This Agreement may consist of a number of copies, each signed by one or more parties to the Agreement. If so, the signed copies are treated as making up the one document.

# Dispute Resolution And Governing Law

* 1. This Agreement shall be governed by, and construed in accordance with, the Governing Law.
  2. Any party claiming that a dispute has arisen must give written notice (**Dispute Notice**) to the other party setting out the nature of the dispute and all other information relevant to the dispute.
  3. Within 7 days of receipt of a Dispute Notice, the parties must escalate the dispute to the dispute resolution body appointed under the paragraph below. That body must then promptly meet and undertake discussions with a view to resolving the dispute as soon as practicable.
  4. Each party will appoint one authorised representative to form a liaison committee. Each party may replace some or all of its representatives by giving written notice to the other party. The initial representatives for each party are the contact persons set out in Section 20 (the **Liaison Committee**).
  5. The Liaison Committee will be responsible for:
     1. managing the relationship between Applicant and CBI; and
     2. resolving any day to day operational issues which arise during performance of the Agreement.
  6. The initial dispute resolution body for this Agreement is the Liaison Committee.
  7. If the Method of Dispute Resolution is Litigation, each party agrees to submit to the Jurisdiction of the Agreed Courts.
  8. If the Method of Dispute Resolution is Arbitration:
     1. all disputes, controversies or claims arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Rules of Arbitration;
     2. the seat of the arbitration shall be the Arbitral Seat and the language of the arbitration shall be the Agreed Language;
     3. (if English law is the Governing Law) Section 45 and Section 69 of the Arbitration Act 1996 shall not apply; and
  9. the arbitration shall be conducted by the Agreed Number of Arbitrators, each of which shall be appointed in accordance with the Agreed Arbitrator Appointment Process. Despite the existence of a dispute, each party must continue to perform its obligations under this Agreement unless those obligations are the subject of the dispute.

# Notices

* 1. All notices, consents and other communications in connection with this Agreement must be in the Agreed Language, in writing, signed by an authorised officer of the sender and must be:
     1. left at the address set out in the Agreement Details for the relevant party;
     2. sent by prepaid ordinary airmail post to the address set out in the Agreement Details for the relevant party; or
     3. sent by email to the address set out in the Agreement Details for the relevant party.
  2. However if the intended recipient has notified a changed address or email address, then communications must be addressed to that address or number.
  3. Communications must be marked for the attention of the contact person specified below for the relevant party, except that communications sent by email need only be marked for attention in this way but must still state the first and last name of the sender.
  4. Communications take effect from the time they are received or taken to be received under Section 20.5 (whichever happens first) unless a later time is specified.
  5. Communications are taken to be received:
     1. if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
     2. if sent by email:
        1. when the sender receives an automated message confirming delivery; or
        2. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever happens first.

# Representations by Applicant

* 1. Applicant hereby makes the following representations to and in favour of CBI, (i) as of the date hereof; (ii) on each anniversary of the date of this Agreement; and (iii) each time that the Applicant delivers any information or reporting under or in connection with this Agreement:
     1. Applicant is duly incorporated, organised, or formed (as applicable), validly existing and in good standing under the laws of the jurisdiction of its incorporation, organisation, or formation (as applicable) and has the power and authority to carry on its business as being conducted;
     2. Applicant has the requisite power and authority to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby, and all necessary actions by the applicable persons necessary for the due authorization, execution, delivery and performance of this Agreement have been duly taken;
     3. this Agreement constitutes the valid and binding obligations of Applicant, enforceable against Applicant in accordance with its terms; and
     4. the execution and delivery of this Agreement and the consummation of all transactions contemplated herein to be performed by Applicant does not and will not result in any material breach, violation of, or default under, any governing instrument of Applicant, any material agreements to which Applicant is a party or by which it is bound, or under any applicable law.

# Executed as an agreement

Executed for and behalf of **Climate Bonds Initiative** by:

………………………………………………………….

(Signature)

Name: Sean Kidney Title: CEO

Date:

Executed for and behalf of **Applicant** by:

………………………………………………………….

(Signature)

Name:

Title:

Date: