

Climate Contract Playbook

Edition 2

July 2020





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Introduction

The second edition of the Climate Contract Playbook has been written during a time of extraordinary difficulty.

2020 has, understandably, not been the year of clarity and action on climate change that we all hoped would flow from the (now postponed) COP26 in Glasgow. The global economy, including the business of law, has experienced a shock like no other and it will take time to recover.

But the UK's loss of amenity and economic prosperity is irrelevant compared with the hundreds of thousands who have lost their lives to Covid-19, or the mental and physical efforts expended by medical teams and key workers excelling in adversity around the world.

It is in their memory and from their selfless acts that we felt inspired to double our efforts and continue the Project's momentum during the lockdown. None of us wish that Covid-19 had happened in our time, but we are unable to change that. However, we can decide what to do with that time.

The easy option would have been for us to pause, particularly after the significant uptake and impact of the first editions. Instead, we have chosen to focus on the future and accelerate climate solutions by extending the collaboration with even more drafting partners and publishing this second edition just four months after the first and eight months ahead of schedule. Alongside this edition, we are publishing a new glossary of definitions which will speed up drafting of climate solutions.

Despite being forced apart, we recreated the creative and collaborative discussions that proved so successful at the hackathon last year. Technology was important, clearly, but even more was the spirit and enthusiasm of everyone taking part in trying circumstances. Many lawyers continued to volunteer on the Project after being furloughed, offering their expertise and energy without agenda. We thank you all.

We do not intend to rehearse the reasons why the legal profession is in a unique position to make a difference on climate change. But our vision remains clear: a world where every contract and law enable solutions to climate change. Covid-19 is a tragedy and will be remembered for decades to come. But, like all tragedies, we can learn from it and grow stronger.

First, we have learned that where necessary to protect life and mitigate disaster, we can change laws quickly. We have seen changes to competition, insolvency, property, and other laws during the current crisis. Many comparable ideas to avert climate change disaster are contained in the pipeline of ideas in the Green Papers of Model Laws.

Second, the global economy has been decimated by the lockdown. The business of law is no different and the worldwide interdependencies have never been so pronounced. We will rebuild our economies so they are strong once again and, in doing so, we can take the opportunity to reframe and rewire the contracts that form their foundations to accelerate the transition to Net Zero. We can lock in the recent improvements on carbon footprints, air quality and biodiversity whilst helping businesses and communities' transition to Net Zero in a rapid and orderly fashion.

Finally, we have seen on a macro and micro scale that collaboration in a politically and professionally neutral way is key to solving the pressing global issues of the day. The creation of new ventilators, disease-tracing apps or cross sector supply chain co-operation are live and recent examples.

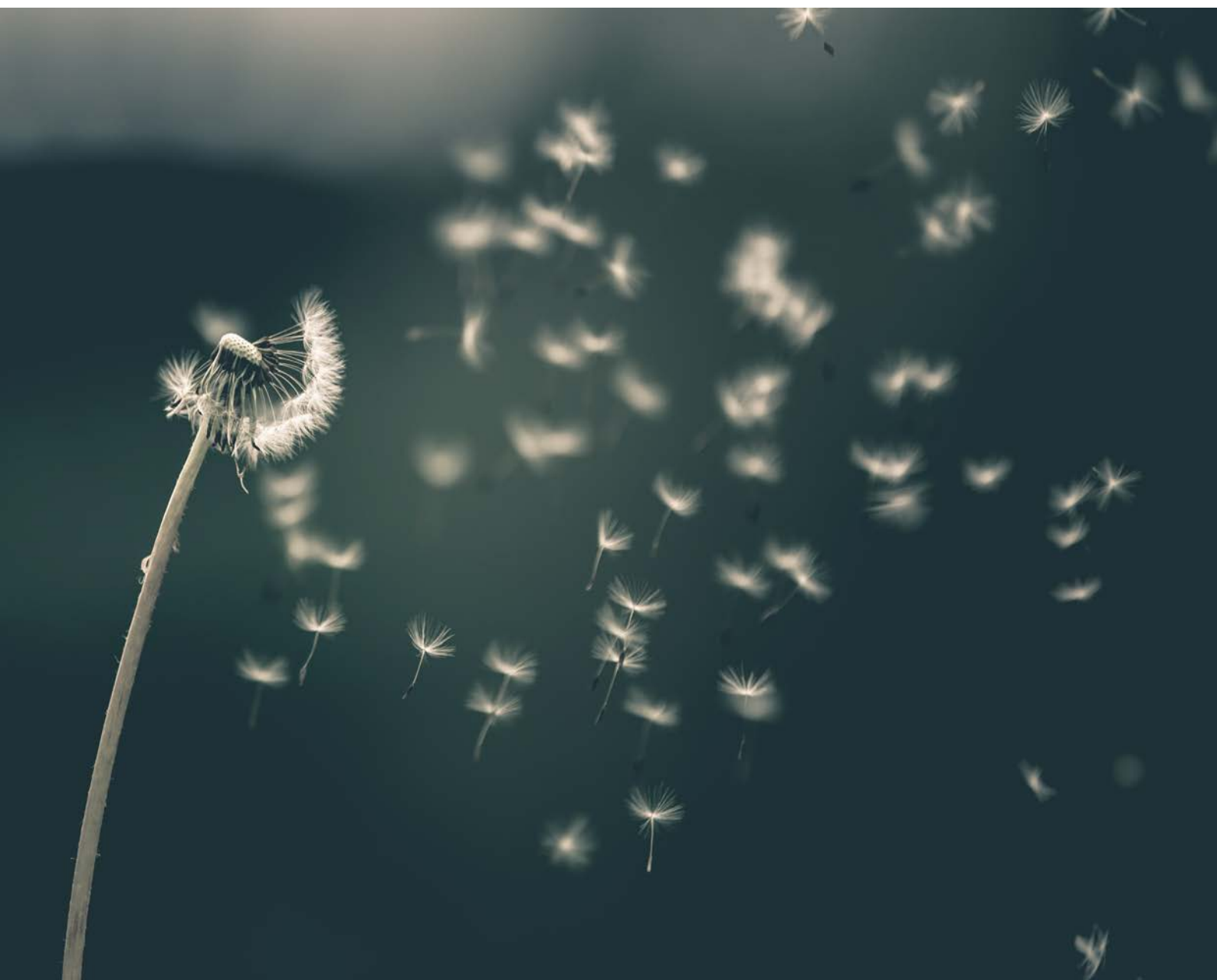
We are focused on learning from this crisis and using that knowledge to forge ahead with optimism. Whatever happens, we will continue as a profession to further our vision of a world where every contract and law enable solutions to climate change.

This second edition is published without a foreword or fanfare but with respect for those who have gone above and beyond in 2020.

Our journey continues in anticipation that if you change the precedent, you will change the world.

Thank you

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



The Journey Updated

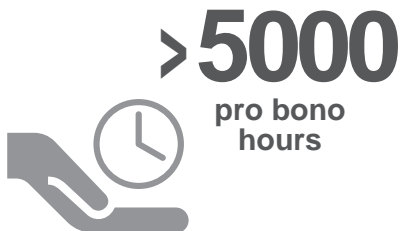
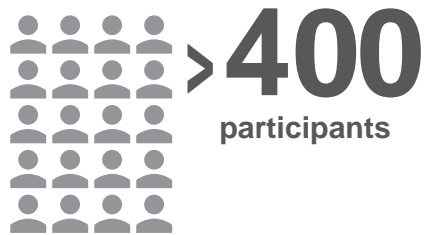
Since being published the first editions have been downloaded over 12,000 times, which is both staggering and humbling. But it is the amplification of impact from their publication that is our focus.

Thank you to all those firms and individual lawyers who have helped champion and amplify the impact of the drafting. The use of the clauses by lawyers in their practices, with their clients and colleagues, is key to accelerating the transition to Net Zero.

We said when we published the first edition that this is the start of our impact journey and we encourage everyone to redouble their efforts.

There is much left to do but if we work together in an aligned way, we can achieve anything.

Our journey so far in numbers:



Our Impact Theory

Our vision at The Chancery Lane Project is a world where every contract and law enable solutions to climate change. We do not profess to have all the solutions, but we believe that:

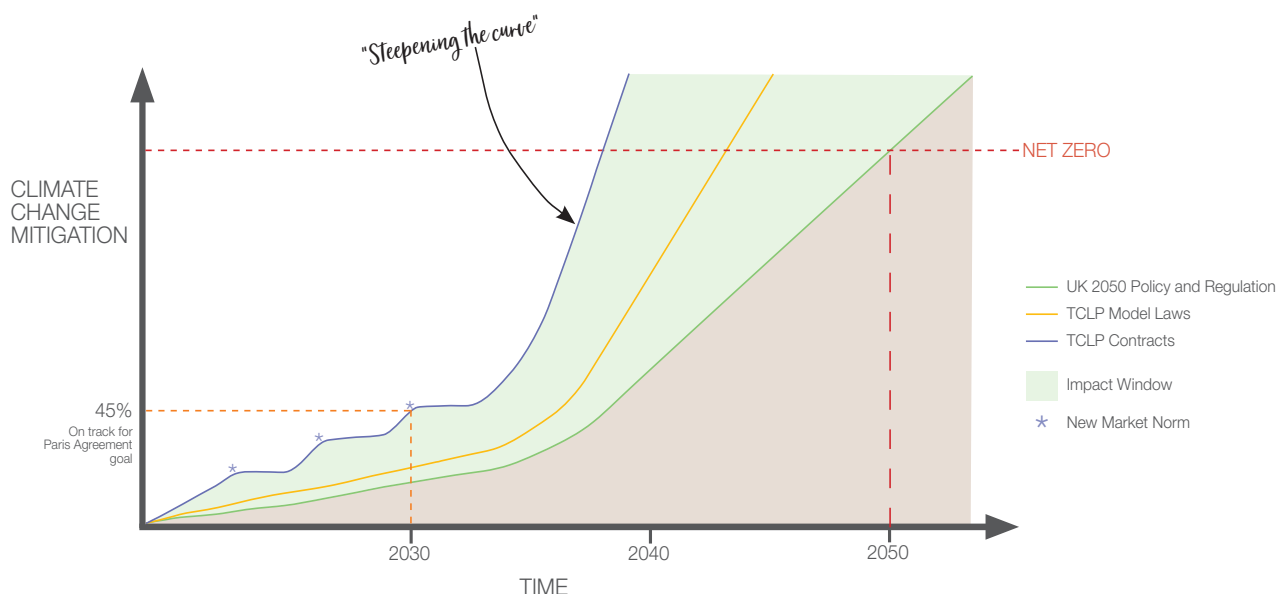
- 1) the legal profession is in a unique position to mitigate climate change;
- 2) new contracts and model laws increase the velocity and reach of our impact;
- 3) amending contractual precedents creates new market norms; and
- 4) new market norms reduce barriers to policy changes and allow the legislature to be more ambitious with climate laws and regulations.

We explained in the first editions of the Playbook and Green Papers of Model Laws how lawyers influence and shape transactions across every sector of our economy and that the power of the pen can be a catalyst for practical climate solutions.

Accelerating Change

The challenge is enormous: every country in the world must rewire its economy to reduce greenhouse gas emissions to Net Zero as quickly as possible. We should be encouraged that the UK has set its target of Net Zero by 2050 into law. But time is short, and as the Government has released only high-level detail as to how it will reach its target, there will, inevitably, be a delay before we see change. We can use contracts and model laws to reduce the lag and accelerate to Net Zero.

Impact Velocity Graph



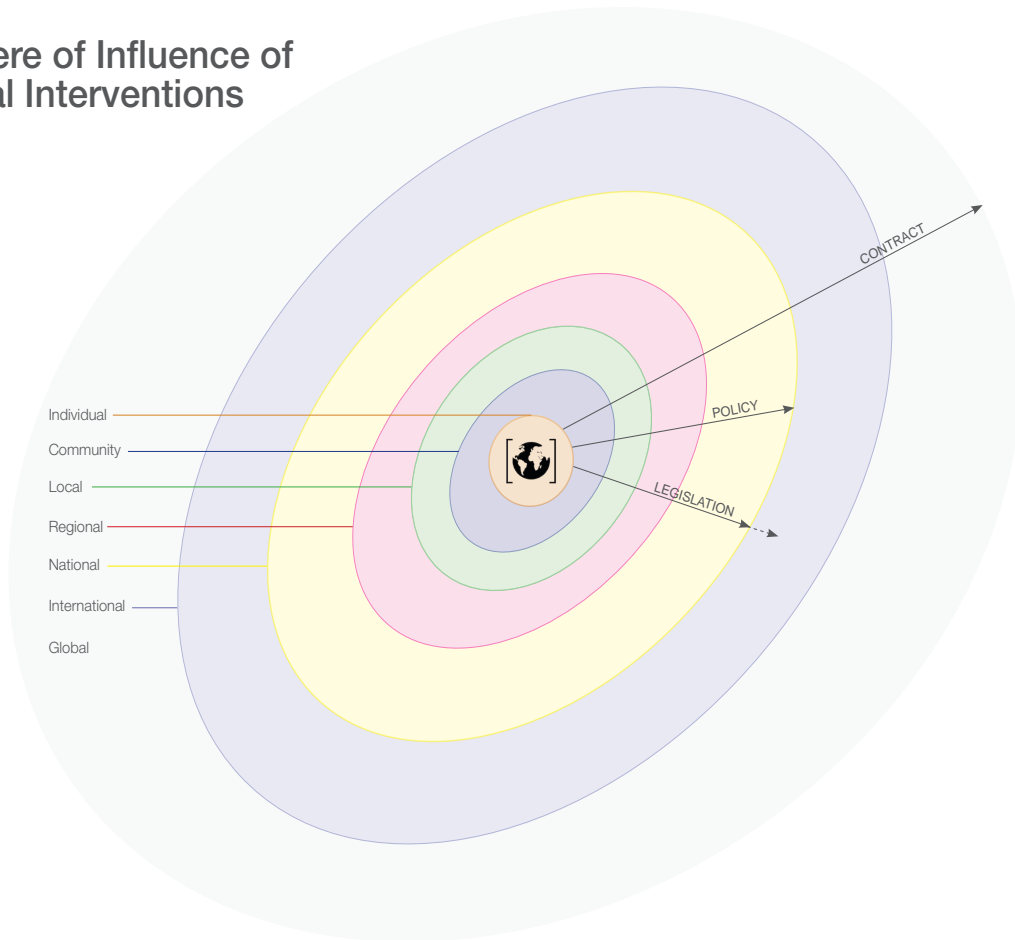
Our model laws and contracts will be crucial in minimising the lag. Model laws will, set the level of ambition and give the government ideas and guidance by adding some ink to their net zero plans to get them enacted faster.

And while those model laws are being considered and enacted, our new contract clauses can be implemented between businesses immediately. Creating positive outcomes from day one.

Moreover, as contracts reach across borders, linking multinational supply chains, their sphere of influence and our impact will expand.

We call the effect of contracts on climate change our Contract Impact Window. It is for that reason we will focus on contractual drafting and our output will be at least double that of our model laws. In doing so, we hope to ‘steepen the curve’ of impact and bring forward the date by which the Net Zero target is achieved.

Sphere of Influence of Legal Interventions



Contracts can be used to mirror future legislation before it hits the statute book. A carbon price, for example, is likely to form part of the UK’s Net Zero policy. But the same ends can be achieved using economic incentives or disincentives in contracts. For example, we see it with certain green loan banking covenants where lower coupons are paid if certain environmental targets are hit.

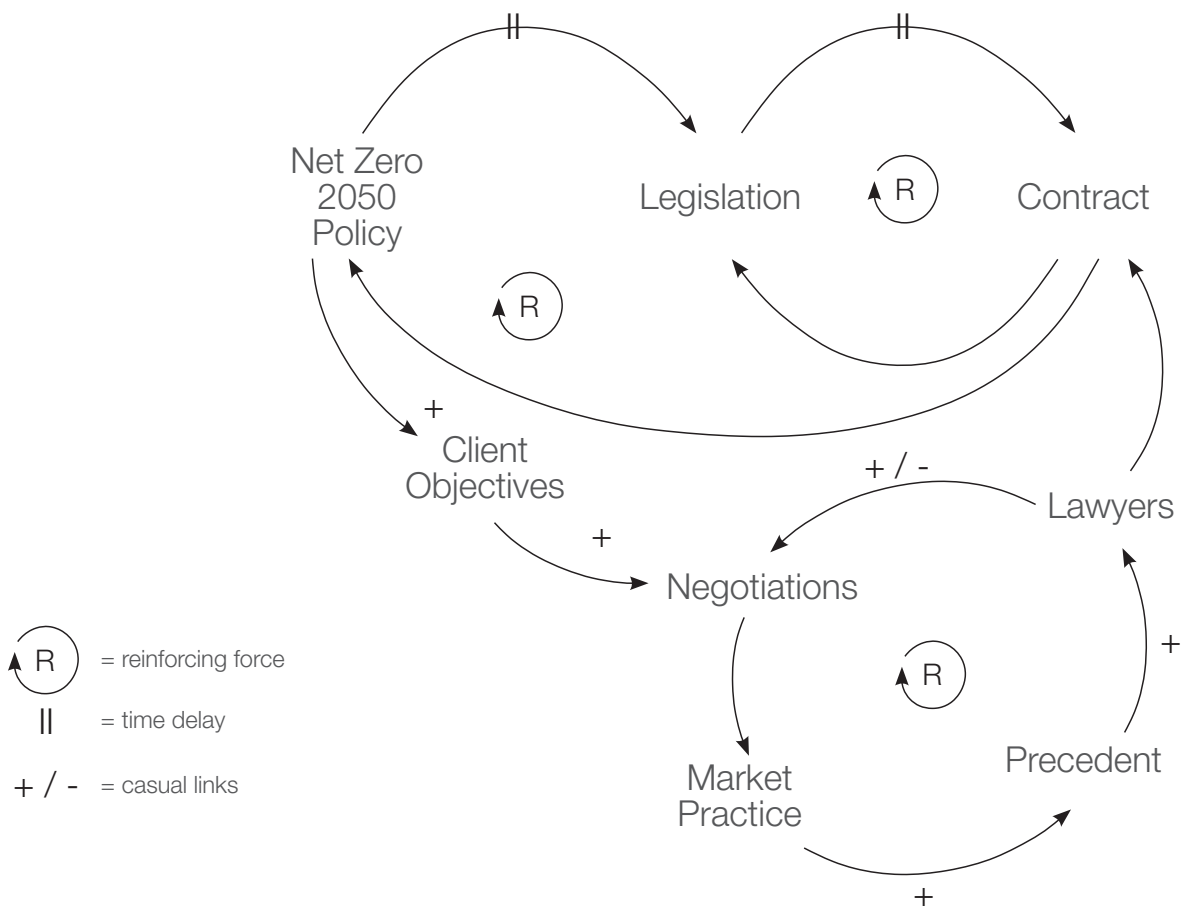
Creating new market norms

Customary contractual positions and norms build up over time and influence drafting, negotiations, and client expectations. Norms are useful: they accelerate delivery and ensure knowledge gained from previous transactions is not lost. And we can use them to guide behaviour.

In law, our norms are guided by precedents, and if a precedent includes ‘climate-positive’ drafting, even if it is optional, it is much more likely to be discussed with clients, form part of the negotiations and ultimately form part of a commercial relationship. If both sides of a transaction see a precedent with similar drafting, they will see this is as normal and over time the accepted way of doing business. This drafting locks in impact by creating a new starting point for negotiations and expanding the impact of a contractual relationship. If you change the precedent, you will change the world.

Finally, we believe that by creating new contractual market norms we will create positive feedback loops into the legislative system, which will allow governments to meet Net Zero targets sooner.

Contract Systems Diagram



Market practice can have a positive influence on precedents, which in turn influence the contracts that govern our economy. If those contracts reflect a new market practice, new legislation will not create a negative feedback loop on that market practice – rather it can consolidate it and expand from it.

This reinforcing effect potentially allows law makers to be more ambitious and allow change to happen quicker because the baseline from which they are starting has already shifted towards the achievement of the policy. In turn this allows the policy to be more ambitious in scope and timing. In effect, the market has pivoted towards the policy goal ahead of the legislation to enact it, which makes it easier for the government to bring in that legislation.

A theory without realisation of impact is mute. Therefore, we will seek a research partner to put our hypothesis to the test and will publish an annual impact report to show progress towards our vision.

Using the Clauses and our 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.



Changes since the 1st Edition

There have been no changes to the clauses published in the 1st edition. We encourage feedback to improve them and will update drafting in subsequent versions.

The format of the Origin Stories has changed slightly. We have removed the ‘Teams’ section to reflect dispersed collaboration, our professional neutrality and to focus on the collaborative effort of the profession rather than individual teams. We have also added in the practice areas that we think are relevant to the clauses.

Glossary

In the first edition, we identified that a glossary of uniform definitions for drafting climate solutions would add significant value to the Project and would accelerate and harmonise future drafting activity.

The first of those definitions have been collaboratively created online and have been published in parallel to this edition. We encourage these definitions to be adopted, refined and implemented.



[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)¹. 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 year². 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.

¹ <https://www.gov.uk/government/publications/non-disclosure-agreements/non-disclosure-agreements>

² <https://www.quora.com/How-many-NDAs-does-a-company-sign-each-year>

Stakeholders	<p>The key stakeholders that you think need to be engaged to deliver this Impact</p> <ol style="list-style-type: none"> 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	<p>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.</p>
Notes for users	<p>NDA's 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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>The drafting assumes Confidential Information is defined in the precedent.</p>

[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 inseting 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.



[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 ³ . 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	<p>Establish a concept of 'Climate Risk Sharing' in supply contracts.</p> <p>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.</p> <p>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.</p>
Context	<p>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.</p> <p>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 behaviour⁴.</p> <p>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.</p> <p>Therefore, balancing risk between client and contractual counterparty is going to be an ongoing imperative, which contracts of the future should provide for.</p>
Impact	<p>The proposed clauses will ensure that the parties take a fair share of risk. This should:</p> <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.

³ <https://www.ft.com/content/92518d19-ce35-4af3-90f4-64cb00f8e2f5>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/883737/ Covid-19_and_Responsible_Contractual_Behaviour_web_final_7_May_.pdf

Stakeholders	<p>The key stakeholders that need to be engaged to deliver this Impact are:</p> <ol style="list-style-type: none"> 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	<p>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.</p>
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.



[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 ⁵ .
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	<p>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 business⁶. It has been consistently shown that large companies that prioritise ESG issues outperform those that don't⁷, 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.</p> <p>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.</p>
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	<ul style="list-style-type: none"> - Angel investors and VC seed and pre-seed funds - BVCA - Private practice firms - Impact investing groups - Early stage companies
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.

⁵ <https://hbr.org/2019/05/the-investor-revolution>

⁶ <https://www.cnbc.com/2019/12/14/your-complete-guide-to-socially-responsible-investing.html>

⁷ <https://hbr.org/2019/05/the-investor-revolution>

<p>Notes for users</p>	<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>
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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 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" ⁸ 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	<p>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.</p> <p>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"⁹.</p>
Impact	<p>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).</p> <p>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 chip 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.</p>

⁸ <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>

⁹ <https://ccli.ouce.ox.ac.uk/wp-content/uploads/2019/10/CCLI-Directors%E2%80%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)¹⁰. 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)¹¹.</p>

¹⁰ <https://static1.squarespace.com/static/5d2f4d738d48be0001dee7c4/t/5e5587696eb9ca67a2b1040d/1582663542063/TCLP+-+Climate+Contract+Playbook+-+1st+Edition.pdf>

¹¹ <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 ¹² 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.	[•]

¹² <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 ¹³ .	[●]
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 ¹⁴ .	[●]
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?	[●]

¹³ 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)

¹⁴ For example, Agatha's and Annie's Clauses in the First Edition of the Climate Contract Playbook (February 2020)

¹⁵ 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 ¹⁵ .	[●]
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.	[●]



[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 ¹⁶ . 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	Directors and senior managers of investee companies Private equity funds and other financial sponsors British Venture Capital Association Law firms 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.

¹⁶ <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.</p> <p>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]¹⁷.

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.

¹⁷ 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.

[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 ¹⁸ 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 incentives Net Zero performance by lowering the conversion discount.
Context	The UK government has set a target to be net zero by 2050 ¹⁹ . Investors, particular 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 ²⁰ and alignment of climate change and Net Zero to investment helps meets 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.

¹⁸ <https://www.gov.uk/guidance/future-fund>

¹⁹ <http://www.legislation.gov.uk/ukpga/2008/27/part/1/crossheading/the-target-for-2050>

²⁰ <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.



[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 Goals²¹.</p> <p>The UK will need to mobilise large volumes of capital investment in clean energy and sustainable infrastructure to meet our Net Zero obligations²².</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

²¹ <https://www.undp.org/content/undp/en/home/blog/2017/7/13/What-kind-of-blender-do-we-need-to-finance-the-SDGs-.html>

²² <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/617/61704.htm>

<p>Application</p>	<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>
<p>Notes for users</p>	<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;

Notes for users
continued

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.

Possible Future Developments

Further iterations of the Green Loan “Starter Pack” could include:

- 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.

The drafting can be also tailored by the parties specifically to address specific net zero ambitions.

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].]

PRINCIPLE 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.]



[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 ²³ . All employees in an organisation will need to play their part to achieve a target ²⁴ . Despite widespread acceptance that organisations should improve environmental performance, "progress remains slow" ²⁵ . 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 values²⁶.</p>

²³ <https://www.ft.com/content/2c212fa8-8d17-11e9-a1c1-51bf8f989972>

²⁴ <https://www.cbi.org.uk/media/3716/cbi-low-carbon-2020s-report-4-november-2019.pdf>

²⁵ <https://www.bps.org.uk/sites/bps.org.uk/files/Member%20Networks/DOP%20Going%20Green%20The%20Psychology%20of%20Sustainability%20in%20the%20Workplace.pdf>

²⁶ <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 Law²⁷.</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 committee²⁸.</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>

²⁷ <https://uk.practicallaw.thomsonreuters.com/8-386-8683?view=hidealldraftingnotes>

²⁸ <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 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:
- (a) breaches of our policies, including our Dress Code, Expenses Policy [INSERT OTHER GREEN EMPLOYMENT HANDBOOK CLAUSES];
 - (b) failure to comply with any legal or professional obligation or regulatory requirements (including environmental law);
 - (c) acting in a manner which we consider has a detrimental impact on our ability to achieve of our Net Zero Target;
 - (d) 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);
 - (e) acting in a manner which we consider is likely to damage or has damaged our reputation as an environmentally conscious business; or
 - (f) 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 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

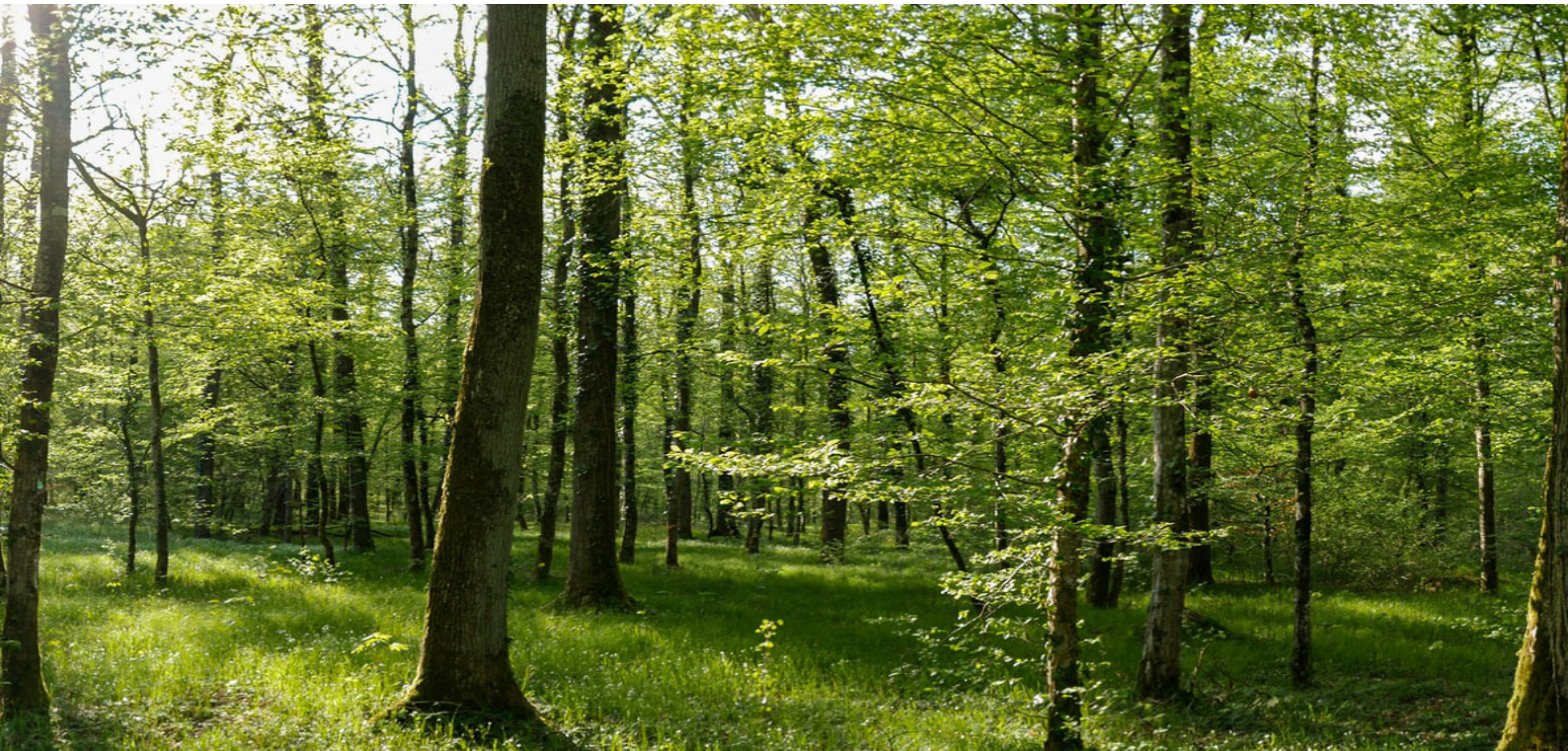
- 13.1 Whistleblowing is the disclosure of information which relates to suspected wrongdoing or dangers at work. This may include:
- (a) failure to comply with any legal or professional obligation or regulatory requirements (including environmental law);
 - (b) conduct which detrimentally impacts our 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.

[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	<p>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.</p> <p>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.</p>
Context	<p>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.</p> <p>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.</p>



Impact	<p>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.</p>
Stakeholders	<p>The key stakeholders that you think need to be engaged to deliver this Impact:</p> <ol style="list-style-type: none">1. Procurement teams2. Contract managers3. Sustainability managers4. Precedent and know how providers5. Professional support lawyers6. Private practice firms7. Construction firms and contractors
Application	<p>The clause is intended for inclusion in construction contracts.</p> <p>This clause compliments Mary's clause from the 1st Edition of the Playbook.</p>
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>



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]];
 - (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.

[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	<p>Establish a concept of 'Zero Carbon by design'.</p> <p>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.</p> <p>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.</p>
Context	<p>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.</p> <p>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.</p> <p>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.</p>
Impact	<p>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:</p> <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. <p>Further, planning should be easier to achieve in and around cities or local government areas that have declared climate change emergencies²⁹.</p> <p>Arguably the development will be a nicer place to live and ultimately command a comparable land price as the house sales should be stronger³⁰.</p>

²⁹ <https://www.climateemergency.uk/blog/list-of-councils/>; <https://netzeroexeter.co.uk/wp-content/uploads/2020/02/ECF-Net-Zero-Exeter-Blueprint.pdf>

³⁰ <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 these 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]

[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	<p>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. Owner's may replace LED bulbs with normal bulbs.</p> <p>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 measures³¹. 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.</p> <p>Some mortgage providers are starting to offer mortgage incentives to homeowners who buy greener homes³². Similarly, some developments are leading the way and successfully using these kinds of environmental obligations in the market³³.</p>
Impact	<p>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.</p> <p>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.</p> <p>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.</p>

³¹ <https://www.carbontrust.com/> <https://www.betterbuildingspartnership.co.uk/>

³² <https://www.businessgreen.com/news/4016056/saffron-building-society-debuts-green-mortgage-offer>

³³ <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 Todyn'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:- <ul style="list-style-type: none"> (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.

[Torin's clause]

	The Origin Story
Child's name	Torin'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	<p>According to Generation Rent³⁴, 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 type³⁵.</p> <p>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 market³⁶.</p> <p>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 it³⁷. 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 rent³⁸.</p>
Impact	<p>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.</p> <p>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)³⁹ – rather than having to wait until the property is unoccupied to undertake such works at a time when they are not receiving rent.</p>

³⁴ https://www.generationrent.org/about_renting

³⁵ <https://www.gov.uk/tenancy-agreements-a-guide-for-landlords/tenancy-types>

³⁶ <https://www.moneysupermarket.com/gas-and-electricity/green-energy-tariffs/>

³⁷ <https://energysavingtrust.org.uk/home-energy-efficiency/financial-support>

³⁸ <https://energysavingtrust.org.uk/blog/think-energy-efficiency-when-renting-home>

³⁹ <https://energysavingtrust.org.uk/scotland/businesses-organisations/landlords>

Stakeholders	<p>The following key stakeholders should be engaged to deliver the potential impacts identified above:</p> <ol style="list-style-type: none"> 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	<p>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.</p> <p>The clauses are reliant on the landlord not artificially inflating the rent to offer a discount.</p>
Notes for users	<p>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.</p>

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 tariff[, install a smart meter and smart heating controls to monitor their energy use⁴⁰] 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 time⁴¹;
 - (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 heads⁴²].
- 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.

⁴⁰ If not already installed by the Landlord.

⁴¹ Assumes all light bulbs in the Property are already LEDs.

⁴² 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 damaged 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.

Contributing, Participating or Supporting Firms and Organisations

Whilst the views and drafting of the Project are not attributable to our participants, contributors and supporters, our Project would not have been possible without their support and networks. It goes without saying that we thank all of them who are supporting, participating or in some way contributing to the Project.

These include:

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- 39 Essex Chambers
- Acuity Law
- Addleshaw Goddard
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- Airbnb (in house legal)
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- Anthony Collins
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- Herbert Smith Freehills
- Hansel Henson
- Hogan Lovells
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- Landlord Law Services
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- Tullow Oil Plc (in house legal)
- UK In House Pro Bono Group
- University of Exeter Law School
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Annex

Edition 1 Clauses

[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 ¹ . 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 ² in responsible investing from mainstream investors yet there is significant shortfall in funding and investment to meet the UN Sustainable Development Goals ³ .
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	<p>The key stakeholders that you think need to be engaged to deliver this Impact</p> <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	<p>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.</p> <p>The company purposes can be re-prioritised and given different emphasis according to the investor requirements.</p>

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

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

3 <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.



[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	<p>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.</p>
Impact	<p>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.</p>
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	<p>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.</p>

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 <ol 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.

<p>Notes for users</p>	<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];⁴
- 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.]

⁴ 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	<p>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. Some such as Unilever have gone further and declared they will become 'carbon positive' by 2030⁵. 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.</p> <p>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.</p>
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	<p>The key stakeholders that you think need to be engaged to deliver this Impact</p> <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

⁵ <https://www.edie.net/news/6/Beyond-Paris--500-companies-target-net-zero-by-2030/>

⁶ <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 ⁸ . 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.

⁸ <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]*



[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	<p>Retirees, prisoners, stay-at-home parents, students do not form part of the workforce and may therefore feel excluded from society.</p> <p>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.</p>
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/>

[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	<ol style="list-style-type: none"> 1. Employers 2. Employees 3. Environmental organisations
Application	<ol 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. 1. 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]

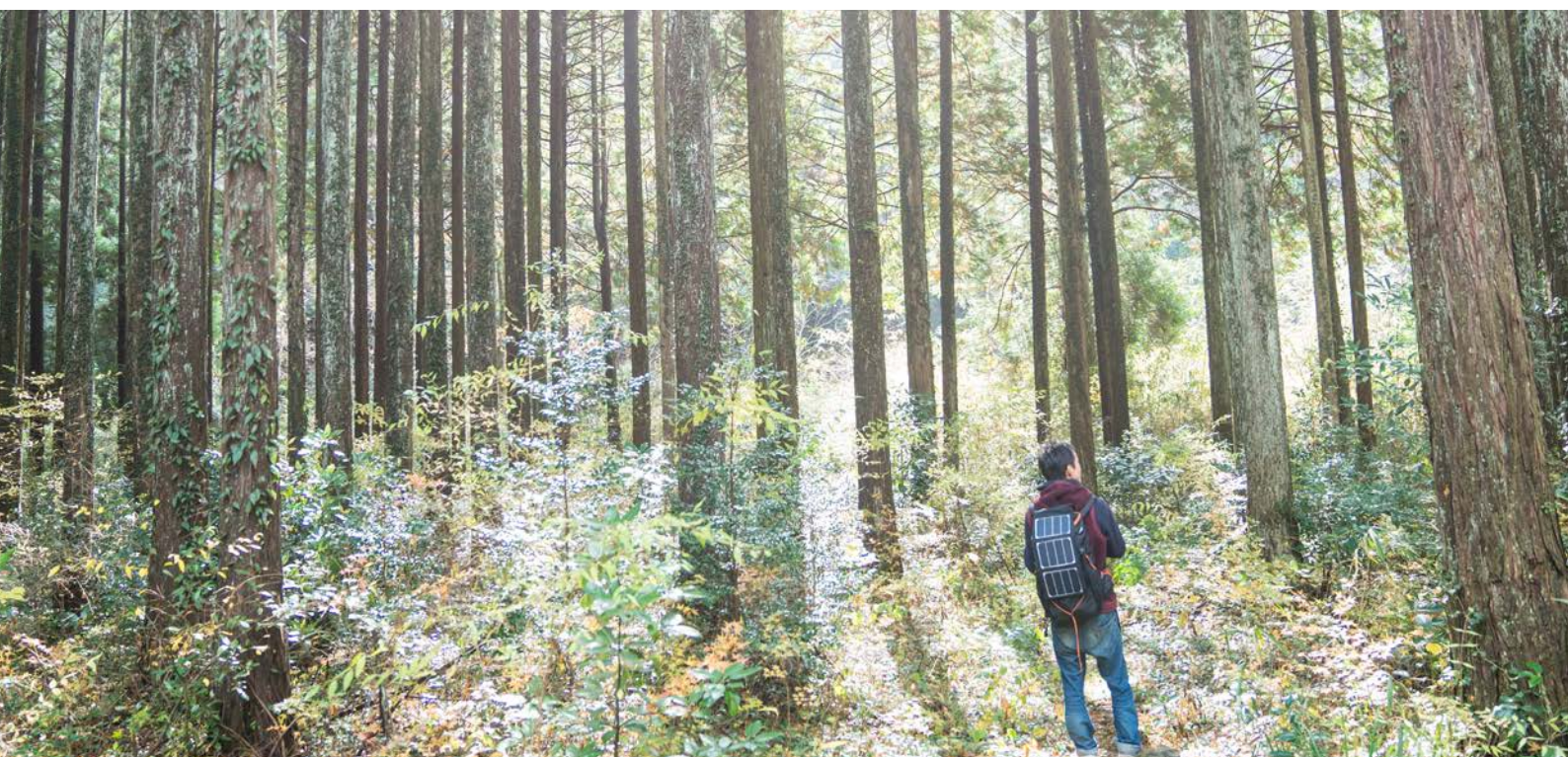
Garden Leave

- 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.



[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

<p>Application</p>	<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 <i>raison d'être</i> 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.
<p>Notes for users</p>	<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.

[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/impose:</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"> 1. Financial Conduct Authority 2. London Stock Exchange 3. Investor/shareholder bodies 4. Sponsors and nominated advisers 5. Law firms 6. 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 (TCFD) – 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 based¹⁰ 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 TCFD, 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;

- 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].

[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 ¹¹).
Context	Many law firms are signed up to the Legal Sustainability Alliance ¹² 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.
Notes for users	

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

12 <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 sabbaticals¹³.

Client/Customer Divestment

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

[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, 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).

Stakeholders	<p>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.</p> <ol style="list-style-type: none"> 1. Department for Business, Energy and Industrial Strategy (BEIS) 2. Confederation of British Industry 3. Institute of Directors 4. Federation of Small Businesses 5. Precedent and know how Providers 6. Professional Support Lawyers 7. Private Practice Firms 8. Investor/shareholder bodies and GC groups
Application	This drafting can easily be incorporated into existing board minutes precedents.
Notes for users	<p>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.</p>

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].

[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	<p>Heads of terms are commonly used in commercial transactions¹⁵. 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.</p> <p>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.</p> <p>Climate change risks are now a board issue¹⁶ and as such should be given equal prominence in transactions.</p>
Impact	<p>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.</p> <p>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.</p>
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.

¹⁵ [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>

¹⁶ <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 Disclosures¹⁷ / Bank of England's climate risk taxonomy and climate stress tests¹⁸] 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.]

¹⁷ <https://www.fsb-tcfd.org/>.

¹⁸ <https://www.bankofengland.co.uk/climate-change>.

[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	<p>The built environment contributes around 40% of the UK's total carbon footprint.¹⁹ The Bank of England has observed that more building is being undertaken in high risk areas²⁰.</p> <p>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.</p> <p>There are already tools available to search for land projected to be below annual flood level in 2050²¹. The average term of a UK mortgage is 25 years</p> <p>Reports on title are used in the acquisition of all UK property from commercial to residential and freehold to leasehold.</p>
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.

¹⁹ <https://www.ukgbc.org/climate-change/>

²⁰ <https://www.bankofengland.co.uk/knowledgebank/climate-change-what-are-the-risks-to-financial-stability>

²¹ <https://sealevel.climatecentral.org/maps/>

Stakeholders	<p>The key stakeholders that you think need to be engaged to deliver this Impact</p> <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	<p>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.</p>
Notes for users	<p>The statements are designed to be used for leasehold and freehold transactions for both commercial and residential buildings.</p> <p>If leasehold acquisition, then we expect the drafter will suggest that resilience questions are directed to the landlord.</p>

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.



[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	<p>The built environment contributes around 40% of the UK's total carbon footprint²². The more energy efficient the buildings the more carbon that is saved and the more future proof the investment.</p> <p>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.</p>
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. ²³
Stakeholders	<p>The key stakeholders that you think need to be engaged to deliver this Impact</p> <ol style="list-style-type: none"> 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	<p>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.</p> <p>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.</p> <p>The drafting team are aware of a similar clause being used on funded projects²⁴ where energy efficiency is a core requirement of the employer.</p>

²² <https://www.ukgbc.org/climate-change/>

²³ <https://www.rics.org/globalassets/rics-website/media/knowledge/research/insights/energy-efficiency-and-residential-values.pdf>

²⁴ <https://www.loydsbank.com/business/commercial-banking/clean-growth-financing-initiative.asp>

<p>Notes for users</p>	<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.





