

ICE FUTURES EUROPE
AUCTION TERMS FOR CARBON CREDITS
(Version 1)

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INTRODUCTION

These Auction Terms are contractually binding on all Auction Participants and govern the qualification for, participation in, and execution of Auctions of Carbon Credits.

The "**Auctioneer**" is **ICE Futures Europe**, an unlimited company incorporated under the laws of England and Wales, with registered office at Milton Gate, 60 Chiswell Street, London, EC1Y 4SA and company no. 01528617, who will conduct and administer Auctions.

Each Auction Participant is required to execute an Auction Participation Agreement to these Auction Terms as a precondition of participating in an Auction of Carbon Credits, in the form set out in Annex 1. To the extent that any such Auction Participation Agreement is not executed or evidenced or suffers from any defect in due execution, due authorisation or is unenforceable for any other reason, it is intended that each Person that participates in an Auction nonetheless be bound contractually pursuant to these Auction Terms through acceptance by conduct, which may be evidenced by disclosure by the Auctioneer to the Person of these Auction Terms and the Person's participation or continued participation in any Auction. No failure of documentary execution of any document in the form of Annex 1 or any similar document is intended to preclude such acceptance by conduct.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For purposes of these Auction Terms:

"**Aggregate Demand**" means the sum of all Bid Quantities specified in all valid Bids accepted by the Auctioneer in an Auction.

"**Applicable Laws**" means any applicable national, federal, supranational, state, regional, provincial, local or other statute, law, enactment, by-law, decree, resolution, ordinance, regulation, rule, code, guidance, order, direction, notification, published practice or concession, regulatory requirement, judgment or decision of a Governmental Authority and any memorandum of understanding (or equivalent) between the Auctioneer and one or more Governmental Authorities or between Governmental Authorities and, for the avoidance of doubt, includes the Financial Services and Markets Act 2000, the Financial Conduct Authority's Handbook of rules and guidance, and any rules, regulations, guidance and approach document of any other Regulatory Authority.

"**Applicant**" means a Person wishing to participate in Auctions as either a Seller or a Bidder.

"**Application Documents**" means the documents described in Section 2.2 and such other documents that may be specified by the Auctioneer from time to time.

"**Auction**" means an auction conducted in accordance with these Auction Terms.

"**Auction Date**" is the date on which an Auction is held, as stated in each Product Specification, and as may be notified by the Auctioneer on the Website.

"**Auction Participant**" means an Applicant that has been approved by the Auctioneer to participate in one or more Auctions, including after having met the Participation Criteria set forth in Section 2 and having executed an Auction Participation Agreement or otherwise having become bound by these Auction Terms.

"**Auction Participation Agreement**" means a document in the form set out in Annex 1 pursuant to which an Auction Participant agrees to become bound contractually by these Auction Terms.

"**Auction Price**" means the price as specified in Section 5.20 which a Bidder pays to the Seller for allocated Carbon Credits.

"**Auction Reserve Price**" means the minimum price below which the Seller will not sell any Carbon Credits to Bidders, as specified in the Product Specifications.

"**Auction Terms**" means these auction terms and, in respect of any particular Auction Participant, the Auction Participation Agreement and including, in relation to any particular Auction, the Product Specifications.

"**Bid**" means the submission by a Bidder of demand for a stated Bid Quantity of Carbon Credits at the Bid Price stated in the Bid.

"**Bid Price**" means the price per lot stated by a Bidder in a Bid.

"**Bid Quantity**" means the quantity specified by a Bidder in a Bid, expressed in the number of lots as a whole non-zero number.

"Bidder" means an Auction Participant that submits one or more Bids in an Auction.

"Bidder Criteria" has the meaning given in Section 3.3.

"Business Day" means a day, other than Saturday or Sunday, which is not a public holiday in England.

"Carbon Credit" means a transferrable or assignable interest (whether being in property, equity, contract or otherwise) in an instrument, certificate, permit, asset, security, right, contract or allowance that represents a Greenhouse Gas Reduction of one metric tonne of carbon dioxide (CO₂) or an equivalent amount of other Greenhouse Gases and, in relation to each Auction, which is specified in the Product Specifications in relation to that Auction.

"Data Protection Laws" means all local, state, national and/or foreign laws, treaties, and/or regulations which are applicable to the Processing of Personal Data by an Applicant, Auction Participant or the Auctioneer, including without limitation the laws and regulations of the European Union, the European Economic Area ("**EEA**") and their member states, such as Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 ("**GDPR**") and the e-Privacy Directive 2002/58/EC together with its national implementations; the laws of Switzerland, such as the Federal Act on Data Protection ("**FADP**") of 19 June 1992 as updated by the revised version of the FADP as updated from time to time; and the laws of the United Kingdom, such as the GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and the Data Protection Act 2018, in each case as they may be updated, amended, or replaced from time to time.

"Dispute" means any dispute, difference, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise).

"Force Majeure" means any occurrence outside the control of the Auctioneer or Auction Participant, including in relation to a Registry or Standard or their administrator, which prevents, hinders or delays the performance in whole or in part of any of its obligations under these Auction Terms or an ICE Carbon Credit Agreement (excluding an obligation to make a payment), and, where an obligation has not yet fallen due, such an occurrence which would prevent, hinder or delay performance in whole or in part of any of its obligations were the occurrence or effects of the occurrence to continue until the date of performance of the relevant obligation, including, but not limited to, fire, flood, storm, earthquake, explosion, war, hostilities, accidents howsoever caused, strike, labour dispute, lockout, work to rule or other industrial dispute, lack of energy supply, disruption or blackout of gas or electricity transmission systems, criminal action, terrorist action, civil unrest, embargoes, acts of God, epidemic or pandemic, acts of a public enemy, unavailability or impairment of computer or data processing facilities, the actions or omissions of third Persons and illegality.

"Governmental Authority" means any supranational, state, regional, provincial, local or other government, government department, ministry, governmental or administrative authority, regulator, agency, commission, secretary of state, minister, court, tribunal, judicial body or arbitral body or any other Person exercising judicial, executive, interpretative, enforcement, regulatory, investigative, fiscal, taxing or legislative powers or authority anywhere in the world with competent jurisdiction, including any entity that is named in the definition of the term "Regulatory Authority".

"Greenhouse Gas" means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and emit radiation at specific wavelengths within the spectrum of thermal infrared radiation emitted by the Earth's surface, the atmosphere itself, and by clouds, including but not limited to: carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), ozone

(O₃), sulphur hexafluoride (SF₆), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), other substances, including halocarbons and other chlorine and bromine-containing substances, dealt with under the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer or other gases designated by a Standard.

"Greenhouse Gas Reduction" means the (i) direct reduction or mitigation of emissions of Greenhouse Gases from an emission source; (ii) removal and sequestration of Greenhouse Gases; or (iii) indirect reduction or avoidance of emissions of Greenhouse Gases.

"ICE Carbon Credit Agreement" means a contract for the immediate sale and purchase of a Carbon Credit to be delivered through a Registry at the Auction Price, between a Seller and a Winning Bidder, arising pursuant to an Auction, and on the terms set forth in Annex 2.

"ICE Data Services and Software Services Agreement" means the agreement for the provision of front-end interface to the Auction platform through which Bidders can input Bids, or its successor, that is entered into with ICE Data, LP, or its affiliates or its assignees or transferees from time to time.

"ICE Futures Europe Rules" means the rules of ICE Futures Europe acting in its capacity as a recognised investment exchange and has the same meaning as that given to the term "Regulations" in the regulations of ICE Futures Europe.

"Insolvency" means, in relation to any Person: a bankruptcy or winding-up petition being presented; a bankruptcy order being made; a suspension of payments or moratorium being granted; a voluntary arrangement being approved; an Insolvency Practitioner being appointed or petition or order being made for such an appointment; a composition or scheme of arrangement being approved by a court or other Governmental Authority; an assignment, compromise or composition being made or approved for the benefit of any creditors or significant creditor; an order being made or resolution being passed for winding up; dissolution; the striking off of that Person's name from a register of companies or other corporate bodies; a distress or execution process being levied or enforced or served upon or against property of that Person; a Governmental Authority making an order, instrument or other measure pursuant to which any of that Person's securities, property, rights or liabilities are transferred; a trust deed granted by it becoming a protected trust deed (where the terms 'trust deed' and 'protected trust deed' are construed in accordance with section 73(1) of the Bankruptcy (Scotland) Act 1985); or any event analogous to any of the foregoing in any jurisdiction (always excluding any frivolous or vexatious petition or solvent reorganisation, change of control or merger notified to the Auctioneer).

"Insolvency Practitioner" means a receiver, judicial manager, administrator, temporary administrator, bank administrator, manager, administrative receiver, liquidator, conservator, examiner, trustee in bankruptcy, relevant office-holder (under the Companies Act 1989) or any other Person appointed or with powers in relation to an Insolvency in any jurisdiction.

"Maximum Supply" means the maximum amount of Carbon Credits offered for sale in an Auction by the Seller, as set out in the Product Specifications.

"Participation Criteria" means satisfaction of the criteria under Section 2.1, provision of the Application Documents, and the meeting of any further qualifications or limitations on the categories or types of Auction Participants which may, or may not, participate in a particular Auction, as specified in these Auction Terms and the Product Specifications.

"**Person**" means any individual, partnership, firm, body corporate, association, trust, unincorporated organisation or other entity.

"**Personal Data**" means any information that relates to an identified or identifiable natural person or that otherwise meets the definition of 'personal data' or 'personal information' or any similar term in applicable Data Protection Laws and which is provided by or for an Applicant or Auction Participant in connection with Auctions or collected and Processed by or for the Auctioneer in connection with Auctions.

"**Process/Processing**" means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

"**Product Specifications**" means the particular contractual and economic terms applicable to a particular Auction of Carbon Credits and which form part of these Auction Terms, as notified by the Auctioneer in advance of that Auction, in the format determined by the Auctioneer from time to time.

"**Purchase Order**" means an order submitted by the Auctioneer to the Seller and Winning Bidder following the conclusion of an Auction, in relation to the ICE Carbon Credit Agreement(s) arising thereunder, substantially in the form set out in Annex 4.

"**Registry**" means an electronic database allowing for the holding, transfer or retirement of a Carbon Credit, and, in relation to each Auction, the registry that is specified in the Product Specifications in relation to that Auction.

"**Registry Account**" means one or more accounts or sub-accounts at the Registry which would be capable of being used for the delivery of Carbon Credits.

"**Registry Rules**" means the rules, procedures, terms of business, terms and conditions, membership agreements, participation agreements, decisions or guidelines of a Registry and, in relation to each Auction, the rules of the Registry that is identified in the Product Specifications for that Auction.

"**Regulatory Authority**" means any Governmental Authority which exercises a regulatory or supervisory function under the laws of any jurisdiction in relation to financial services, the financial markets, recognised bodies, including, without limitation, the Financial Conduct Authority, the Prudential Regulation Authority and HM Treasury.

"**Sanction**" means any Applicable Law executing foreign policy, security, sanction, trade embargo, boycott, export control, foreign trade control, non-proliferation or anti-terrorism objectives or similar restrictions on any business with a particular jurisdiction, certain types of business or activity or specified Persons that is imposed, administered or enforced from time to time by: (i) the European Union; (ii) HM Treasury or the United Kingdom; (iii) OFAC or the United States of America and/or its President; (iv) the United Nations Security Council; or (v) any of their successors.

"**Sell Order**" means the instructions given by the Seller to the Auctioneer to make available through the Auction the specified Carbon Credits, in the form set out in Annex 3.

"**Seller**" means an Auction Participant that offers Carbon Credits for sale in an Auction and, in relation to each Auction, means the seller specified in the Product Specifications in relation to that Auction.

"**Standard**" means in respect of a Carbon Credit, a program or standard administered by a mandatory or voluntary domestic or international Greenhouse Gas program, certification, scheme or protocol and, in relation to each Auction, the standard specified in the Product Specifications in relation to that Auction.

"**Standard Rules**" means the rules, procedures, terms of business, terms and conditions, membership agreements, participation agreements, decisions or guidelines of a Standard and, in relation to each Auction, the rules of the Standard that is identified in the Product Specifications for that Auction.

"**User Privacy Notice**" means the Member/User Privacy Notice that is available at [https://www.ice.com/publicdocs/ICE Member and User Privacy Notice.pdf](https://www.ice.com/publicdocs/ICE_Member_and_User_Privacy_Notice.pdf), as updated from time to time on the Website.

"**Vintage**" means the calendar year in which the Greenhouse Gas Reduction giving rise to a Carbon Credit has occurred.

"**Website**" shall mean www.theice.com.

"**Winning Bidder**" means a Bidder which has been notified by the Auctioneer of its becoming party to ICE Carbon Credit Agreement pursuant to an Auction.

1.2 Interpretation

- (a) References to "**Article**", "**Section**", and "**Annex**" refer to the corresponding article, section, subsection or annex of these Auction Terms unless otherwise specified.
- (b) The headings in these Auction Terms are provided for convenience only and shall not affect in any way the meaning or interpretation of these Auction Terms.
- (c) The words "**include**" or "**including**" are to be construed without limitation to the generality of the foregoing.
- (d) All references to timings or times of day are to London (UK) times, unless indicated otherwise.
- (e) All references to "**tax**" shall include, without limitation, any tax, levy, impost, social security contributions, duty, or other charge or withholding of a similar nature (including any penalty or interest payable in connection with such tax or with any failure to pay or any delay in paying the same). All references to "value added tax" shall include any sales, use or goods and sales tax and any other tax of a similar nature.
- (f) Any reference to a statute, statutory provision or rule shall include any notice, order, guidance, example, regulation or subordinate legislation made from time to time under that statute, statutory provision or rule which is in force from time to time. Any reference to a statute or statutory provision shall include such statute or provision as from time to time amended, modified, re-enacted or consolidated from time to time and (so far as liability thereunder may exist or can arise) shall include also any past statute or statutory provision (as from time to time modified, re-enacted or consolidated) which was applicable at the time of any relevant action or omission.
- (g) References to any rules, terms or agreement are references to such rules, terms or agreement as amended or restated from time to time, provided that such amendments or restatements are made in accordance with these Auction Terms.

- (h) The Interpretation Act 1978 shall apply to these Auction Terms in the same way as it applies to an enactment.
- (i) Unless the context requires otherwise, the singular shall include the plural and vice versa.
- (j) The ICE Futures Europe Rules do not apply to Auctions. No Auction Participant will be treated as a member of the exchange operated by ICE Futures Europe by virtue of their status as an Auction Participant. Further, no Auction Participant will be added to the "Auction Participant List" maintained by ICE Futures Europe acting in its capacity as a recognised auction platform by virtue of their status as an Auction Participant.
- (k) No member of the exchange operated by ICE Futures Europe acting in its capacity as a recognised investment exchange shall have access to the Auctions or treated as an Auction Participant unless specifically permissioned as such by ICE Futures Europe in its capacity as Auctioneer, in accordance with these Auction Terms.

2. **APPLICATION PROCESS FOR PARTICIPATION IN AUCTIONS OF CARBON CREDITS**

2.1 **Participation requirements**

- (a) In order to be considered as eligible for participation in an Auction, an Applicant must be able to satisfy the Auctioneer that:
 - (i) it has paid the Auctioneer's (non-refundable) application fee (if applicable);
 - (ii) it has provided the Auctioneer with the Application Documents and any additional documentation requested by the Auctioneer to demonstrate that the Applicant, meets, or continues to meet, the Participation Criteria;
 - (iii) it and its beneficial owners are each fit and proper for the Applicant to be an Auction Participant;
 - (iv) the Applicant has sufficient financial, compliance and managerial capacity, business integrity, reputation and competence as the Auctioneer, in its discretion, considers necessary or appropriate;
 - (v) it maintains adequate financial resources;
 - (vi) it has in place all necessary regulatory authorisations, licences, permissions and approvals in its country of origin, the UK and any other jurisdiction in which it conducts business;
 - (vii) it possesses the experience, knowledge and expertise to make its own investment decisions in relation to Carbon Credits and properly assess the risks that it incurs;
 - (viii) it is not subject to an Insolvency;
 - (ix) it is not prevented from entering into the Auction Participation Agreement, any ICE Carbon Credit Agreement or the ICE Data Services and Software Services Agreement or participating in an Auction as a result of any Sanctions;
 - (x) in addition to Section 2.1(a)(ix):

- (A) it is not, nor to its knowledge does it have, any directors, officers, employees, agents or Representatives; or
- (B) to its knowledge have any affiliates which are, or whose directors, officers, employees or agents are,
the target of any Sanction;
- (xi) it has adequate systems, controls and arrangements which enable it to ensure that:
 - (A) it can comply with these Auction Terms and, in particular, the conduct requirements under Section 6;
 - (B) its internal affairs are organised and controlled in a responsible and effective manner with adequate risk management systems;
 - (C) all Persons that are involved in the conduct of business in relation to Auctions are fit and proper, suitable, adequately trained and properly supervised; and
 - (D) it can enter into an ICE Carbon Credit Agreement and settle delivery of Carbon Credits subject to an ICE Carbon Credit Agreement on time;
- (xii) it is incorporated and registered in, and will access Auctions only from, such jurisdictions as are approved by the Auctioneer for such purposes, and the Applicant will comply with any restrictions or requirements imposed by the Auctioneer in relation to such jurisdiction; and
- (xiii) it shall observe and comply with Data Protection Laws.
- (b) Sections 2.1(a)(ix) and 2.1(a)(x) shall not apply to the extent that:
 - (i) the Person is subject to an exemption or exception established in the Applicable Laws establishing the Sanction or any regulations thereunder or subject to an applicable licence granted by all relevant Governmental Authorities under that Applicable Law; or
 - (ii) any obligation or undertaking contemplated would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts.
- (c) The Auctioneer may at its discretion attach further objective conditions to any application to become an Auction Participant prior to such status being granted. The Auctioneer may grant approval to an Applicant conditional upon satisfying certain requirements, provided that the Applicant has expressed its intention to meet such requirements and provided evidence of its ability to do so.

2.2 Application Documents

- (a) The Applicant shall provide the Auctioneer with information or documentation evidencing compliance (or lack thereof) with the participation requirements under Section 2.1. Such documentation and information includes:
- (i) a completed Auction Participant application form in the format specified by the Auctioneer;
 - (ii) an executed Auction Participation Agreement;
 - (iii) where the Applicant shall sell Carbon Credits, an executed Sell Order;
 - (iv) an extract of the Applicant's companies registry or chamber of commerce entry (*e.g.*, United Kingdom: Companies House; the Netherlands: Kamer van Koophandel; or Germany: Handelskammer);
 - (v) the Applicant's articles of association, memorandum of association, partnership agreement or similar constitutive and governance documents;
 - (vi) a list of the beneficial owners of the Applicant whose shareholding is of 25% or more of the Applicant's total issued share capital (or such lower percentage as is specified by the Auctioneer);
 - (vii) if the Applicant is a consolidated subsidiary and it or its parent company is not publicly listed, a list of the beneficial owners whose shareholding is of 25% or more of the Applicant's ultimate parent company;
 - (viii) a valid and executed ICE Data Services and Software Services Agreement;
 - (ix) proof of it holding an account at such Registry for Carbon Credits which would be capable of being used for delivery of Carbon Credits pursuant to an ICE Carbon Credit Agreement (provided that the Auctioneer may waive this requirement in certain instances, for example where a Bidder warrants that it will solely accept delivery of Carbon Credits under an ICE Carbon Credit Agreement by way of retirement);
 - (x) details of a Person, satisfactory to the Auctioneer, who:
 - (A) is a director, general partner, trustee or officer of the Applicant (or Person occupying a similar status or performing similar functions);
 - (B) is responsible for the Carbon Credit activities of the Applicant; and
 - (C) is authorised to act on behalf of the Applicant in all transactions with or involving Carbon Credits and any ICE Carbon Credit Agreement; and
 - (D) has all authorisations, registrations, licences, permissions, non-objections, consent or approvals required under Applicable Law in any jurisdiction in order to act as a representative for the Applicant's business in connection with these Auction Terms;
 - (xi) such documents and/or other information as are necessary to evidence that the Applicant's signatories and the Persons identified in Section 2.2(a)(x) are duly

authorised to sign and enter into the Auction Participation Agreement and ICE Data Services and Software Services Agreement and become bound by these Auction Terms and any ICE Carbon Credit Agreement, such as by way of a power of attorney or board resolution; and

- (xii) if it is not incorporated in England and Wales, documentation evidencing that it has appointed an agent for the service of process in the form set out in Annex 5.
- (b) By submitting the Application Documents to the Auctioneer, the Applicant requests to be admitted as an Auction Participant and to be bound by these Auction Terms, as amended from time to time.
- (c) The Applicant or Auction Participant shall promptly furnish to the Auctioneer any additional information which the Auctioneer may reasonably request in relation to the Application Documents or Participation Criteria.
- (d) Where the Auctioneer already holds any documents or evidence similar to the Application Documents or demonstrating satisfaction of any of the Participation Criteria as a result of any other relationship between the Auctioneer and the Applicant, the Auctioneer shall be entitled to waive any of the requirements of this Section 2.
- (e) Each Applicant represents and warrants for the benefit of the Auctioneer that:
 - (i) neither its execution of the Auction Participation Agreement nor its performance under these Auction Terms by or on behalf of that Applicant or the Auctioneer will breach or conflict with any provision of the memorandum of incorporation, articles of association, by-laws, partnership agreement, limited liability company agreement or any other organisational document of the Applicant, or with any agreement or Applicable Law which is binding upon or affects the Applicant;
 - (ii) it and its signatories each have full power and all necessary authority to execute the Auction Participation Agreement and perform any act that may be required pursuant to the Auction Participation Agreement, these Auction Terms and any ICE Carbon Credit Agreement;
 - (iii) the Applicant is duly organised and validly existing under Applicable Laws of the jurisdiction of its incorporation and is in good standing under such Applicable Laws;
 - (iv) the Applicant is of sufficient financial standing to meet its obligations under the Auction Terms and any ICE Carbon Credit Agreement to which it becomes party; and
 - (v) after having had the opportunity to ask questions and receive answers from the Auctioneer regarding these Auction Terms and the operation of Auctions, it has received all the information it considers necessary and appropriate for deciding whether to become an Auction Participant and has consulted its own independent advisers, or otherwise satisfied itself concerning, without limitation, the tax, legal and other considerations relevant to becoming an Auction Participant.

2.3 **Qualification and confirmation**

- (a) Following a request to be admitted as an Auction Participant, the Auctioneer may, in its absolute discretion:
 - (i) admit an Applicant as an Auction Participant;
 - (ii) request revised and/or additional documents, and, upon review of such documents, decide whether to admit or refuse the application of an Applicant; or
 - (iii) refuse to admit an Applicant as an Auction Participant.
- (b) The Auctioneer shall notify the Applicant in writing of an acceptance of its application made in accordance with Section 2.3(a)(i) or a refusal made in accordance with Section 2.3(a)(iii). No Person may submit a Bid in an Auction or act as a Seller under an Auction, unless it has received a notice of admission under this Section 2.3 from the Auctioneer.
- (c) The Auctioneer shall provide the individual referred to in Section 2.2(a)(x) with access for participation in Auctions on behalf of the Auction Participant.

2.4 **Suspension, withdrawal or revocation of Auction Participant status**

- (a) A Person may terminate its status as an Auction Participant by giving notice of the same in writing to the Auctioneer not less than 20 Business Days prior to that notice taking effect.
- (b) A Person may terminate its status as an Auction Participant upon the Insolvency of the Auctioneer by giving notice of the same in writing to the Auctioneer.
- (c) The Auctioneer shall be entitled to suspend or terminate a Person's status as an Auction Participant, upon written notice to that Person:
 - (i) if that Person has committed or is likely to have committed a breach of any provision of these Auction Terms or any Applicable Law in connection with an Auction;
 - (ii) if the Auctioneer considers that the Person has ceased or is likely to cease to meet the Participation Criteria;
 - (iii) without cause, with 20 Business Days' prior written notice;
 - (iv) if the Auctioneer considers that termination or expulsion is necessary to protect the interests of the Auctioneer or other Auction Participants, to ensure an orderly Auction or ensure the Auctioneer's compliance with any Applicable Law;
 - (v) in the event of a Force Majeure affecting the Auction Participant; or
 - (vi) in the exercise of any other right conferred on the Auctioneer by these Auction Terms.

- (d) Termination or suspension of status as an Auction Participant does not affect:
 - (i) any submitted Bids, unless a Bid is withdrawn, modified or rejected in accordance with Section 5; or
 - (ii) rights or obligations under any existing ICE Carbon Credit Agreement.
- (e) Once a Person is suspended as an Auction Participant, that Person may no longer participate in Auctions unless and until the suspension is lifted by the Auctioneer.
- (f) Once a Person ceases to be an Auction Participant, that Person may no longer participate in Auctions unless and until it successfully re-applies for status as an Auction Participant.

3. **PRODUCT SPECIFICATIONS**

- 3.1 The Carbon Credits made available in each Auction, and which will be transferred under the resultant ICE Carbon Credit Agreement, will be as described in the Product Specifications for that Auction.
- 3.2 The Product Specifications may include amendments or additions to any provision of these Auction Terms or may disapply any provision of these Auction Terms, and may cover one Auction of one lot, one Auction of multiple lots, multiple Auctions or series of Auctions on the same or different dates.
- 3.3 The Auctioneer may (at the request of the Seller or otherwise at its discretion) include additional, objective criteria for Bidders in the Product Specifications (the "**Bidder Criteria**"). As a result of the Bidder Criteria, certain Auction Participants may be excluded from participating in any particular Auction. Auction Participants acknowledge and agree that they may be excluded from bidding in any Auction on the basis of Bidder Criteria.
- 3.4 In the event of any conflict between the Product Specifications and these Auction Terms in respect of any particular Auction, the Product Specifications shall prevail, but only with respect to that inconsistency.

4. **AUCTION REPRESENTATIONS**

- 4.1 All Auctions shall be conducted on the basis that neither the Auctioneer nor any of its affiliates, nor any other intermediary becomes party to any resulting ICE Carbon Credit Agreement. As a result, all ICE Carbon Credit Agreements resulting from an Auction will be entered into directly between Sellers and Winning Bidders on a non-cleared, bilateral settlement basis. All Auction Participants shall be deemed to acknowledge, agree and accept that:
 - (a) the Auctioneer is the platform through which Carbon Credits can be auctioned and bought;
 - (b) notwithstanding Section 4.1(a), neither the Auctioneer, nor any member of its group, will intermediate:
 - (i) the delivery of Carbon Credits between the Seller and a Winning Bidder; or
 - (ii) payment of the Auction Price between a Winning Bidder and the Seller;

- (c) delivery of Carbon Credits will be made, as applicable, from and to accounts of the Seller and Winning Bidder, respectively, at the relevant Registry specified in the Product Specifications, or by retirement at the Winning Bidder's instructions, in accordance with the Purchase Order and the Registry Rules and Standard Rules;
 - (d) neither the Auctioneer, nor any of its affiliates, shall provide clearing, exchange, settlement, risk management, default management or margin-related services in relation to the Auctions; and
 - (e) each Winning Bidder and Seller shall bear counterparty risk to one another in respect of any rights or obligations under an ICE Carbon Credit Agreement.
- 4.2 Each Auction Participant shall be deemed to acknowledge, warrant, represent and agree in relation to each Auction (and shall repeat such acknowledgement, warranty, representation and agreement each time that it submits a Sell Order or Bid or becomes party to an ICE Carbon Credit Agreement) that:
- (a) Carbon Credits are originally documented or created by Sellers or other third parties unaffiliated with the Auctioneer, and not by the Auctioneer itself nor any member of its group nor on the Auctioneer's behalf;
 - (b) it has a sufficient understanding of these Auction Terms, Carbon Credits and the ICE Carbon Credit Agreement and any rights or obligations thereunder to understand these Auction Terms and to appreciate the risks and implications of participating in an Auction and purchasing Carbon Credits;
 - (c) it understands that the Auctioneer is not party to any ICE Carbon Credit Agreement and does not guarantee the performance of any ICE Carbon Credit Agreement by any Seller or Bidder;
 - (d) it is the Auction Participant's responsibility to obtain its own access to and operate its account at the relevant Registry or use such other means as are necessary to allow the Seller to retire the Carbon Credit or, to the extent that the Bidder intends to accept delivery by way of transfer, transfer the Carbon Credit to the Bidder;
 - (e) it understands that there is no warranty as to the characterisation of Carbon Credits, whether as property, contract, a negotiable instrument, a financial instrument, securities or otherwise under Applicable Laws in any jurisdiction and that, consequently, it has taken its own advice as to the value or otherwise of Carbon Credits and its own regulatory position and does not rely upon the regulation of Carbon Credits or of the Auctioneer;
 - (f) its bidding in Auctions, entry into of any ICE Carbon Credit Agreement and purchase, receipt and holding of Carbon Credits complies with Applicable Laws;
 - (g) it understands that a Carbon Credit does not necessarily grant any right relating to the underlying project to which it is associated;
 - (h) the description of the underlying project related to a Carbon Credit, and any other statement made in relation to the project, including about its nature and condition, may not be relied upon as a statement of fact made by the Auctioneer;
 - (i) the Auctioneer does not carry out any in-depth environmental, technical or legal analysis of any project nor does the Auctioneer warrant the accuracy or completeness of any information provided;

- (j) it is responsible for making its own determination as to whether to proceed with making a Bid on any Auction;
- (k) it understands that the Carbon Credits may not be used as a compliance unit in the United Kingdom emissions trading scheme, the European Union emissions trading scheme, the Switzerland emissions trading scheme, the Californian cap-and-trade program, or similar mandatory emissions schemes; and
- (l) it understands and accepts the limitation of liability set out in Section 7; and
- (m) the Auctioneer does not have any obligation to procure delivery of a Carbon Credit to the Winning Bidder in the event that the Seller, through actions, omissions, performance or non-performance, fails to create any Carbon Credit, or transfer or procure the transfer of any Carbon Credit to the Bidder or the Seller is subject to an Insolvency, merged or otherwise ceases to exist; and
- (n) the Auctioneer does not have any obligation to procure the payment of any amounts to the Seller in the event that the Winning Bidder, through actions, omissions, performance or non-performance, fails to instruct payment, or transfer or procure the transfer of any moneys to the Seller or the Winning Bidder is subject to an Insolvency, merged or otherwise ceases to exist.

5. AUCTION PROCESS

- 5.1 All Auctions shall be conducted in accordance with these Auction Terms.
- 5.2 The Auctioneer may carry out Auctions from time to time on days where it is open for business for purposes of administering Auctions, pursuant to Sell Orders submitted to the Auctioneer by the Seller.
- 5.3 In order to participate in an Auction, a Person must:
 - (a) have been admitted as an Auction Participant and notified as such, in accordance with Section 2.3(b), at least 7 Business Days prior to the Auction Date;
 - (b) notify the Auctioneer that it may participate in that Auction, at least 3 Business Days prior to the Auction Date; and
 - (c) subject to Section 5.4, at least 3 Business Days prior to the Auction Date, provide the Auctioneer with the information and documentation required to complete a Purchase Order were it to become a Winning Bidder, including:
 - (i) electing whether it will take delivery of all of the allocated Carbon Credits by way of either retirement or transfer;
 - (ii) where it will take delivery by way of transfer, the Registry Account name and number that will be used to accept delivery;
 - (iii) where it will take delivery by way of retirement, any language that the Bidder would request the Registry to record as part of that process, in accordance with the Registry Rules and Standard Rules.
- 5.4 The Auctioneer will, in advance of each Auction, share with the Auction Participant the information and elections that it has received from that Auction Participant in respect of previous equivalent Auctions pursuant to Section 5.3(c). Following receipt of this

information, the Auction Participant shall at least 1 Business Day prior to the Auction Date:

- (a) communicate any modifications to the information and elections recorded; and
- (b) confirm to the Auctioneer that the information, as amended in accordance with Section 5.4(a) as necessary, remains applicable to the current Auction and any Purchase Order in relation to that Auction.

In the absence of any confirmation or clear alternative instructions from an Auction Participant, the previously submitted information and elections will apply

- 5.5 Auction Participants are not under any obligation to submit Bids. The Auctioneer is not obliged to solicit Bids from any Auction Participants.
- 5.6 Auction Participants shall be treated equally as regards the provision of information by the Auctioneer.
- 5.7 For the purposes of each Auction, the Seller shall be the Person specified in the Product Specifications as offering Carbon Credits for sale in that Auction.
- 5.8 The relevant Product Specifications for each Auction shall be derived from a Sell Order and may include, but not be limited, to the following information:
 - (a) the Maximum Supply;
 - (b) the Vintage (if applicable);
 - (c) the date on which the Auction is proposed to be conducted;
 - (d) the time at which the Auction is proposed to start and end;
 - (e) the Auction Reserve Price (if any, modifying or adding to that arising under Section 5.15);
 - (f) the minimum price fluctuations permitted;
 - (g) the maximum allowed number of Bids for each round;
 - (h) the minimum and maximum allowed Bid Quantity for each Bid;
 - (i) whether payment from the Winning Bidder for the Carbon Credits will occur prior to or after delivery of the Carbon Credits by the Seller; and
 - (j) the method for determining the Auction Price.
- 5.9 Each Auction Participant can submit up to the maximum allowed number of Bids in an Auction. Each Bid shall include a Bid Quantity, a non-negative whole number representing the number of lots the Bidder wishes to buy and a Bid Price, as may be further detailed in the Product Specification.
- 5.10 The time at which any Bid is received shall be the time that the Auctioneer records the bid as being received. A Bid which is not received and recorded by the Auctioneer in its systems on time in the manner specified in these Auction Terms and Product Specifications shall not be considered, even if it was sent by the Bidder before the end of the Auction.

- 5.11 No Auction Participant may make a referential Bid or make a Bid that is subject to conditions.
- 5.12 Prior to the end of an Auction, a Bidder may modify or withdraw a Bid, including by resubmitting its entire Bid. In the event a Bid is resubmitted with any changes, the Auctioneer shall disregard any previous Bid submitted by such Bidder, and any such previous Bid shall be null and void.
- 5.13 Bids (or changes to Bids) received before the time at which an Auction starts or after an Auction ends, and Bids (or changes to Bids) may be cancelled by the Auctioneer, at its sole discretion. Bids that do not meet the conditions of Sections 5.9 or 5.11 or any other part of these Auction Terms or the Product Specifications are not valid and shall be treated as void by the Auctioneer and thereby rejected. A Bid may be rejected and will be treated as void if, at the time of its submission or the proposed entry into of the ICE Carbon Credit Agreement, the Auction Participant did not meet any of the Participation Criteria or the Person submitting the Bid had not been admitted as an Auction Participant or had had its status as Auction Participant suspended or terminated by the Auctioneer.
- 5.14 It is an Auction Participant's sole responsibility to ensure that it timely submits a valid Bid. The Auction Participant shall ensure that all equipment used by it in connection with the Auction operates properly.
- 5.15 If no Bids exceed the Auction Reserve Price (if any), then there shall be no Winning Bidder for that Auction. If no Auction Reserve Price is set in the Product Specifications, the reserve price shall be zero. A Bid Price may not be a negative price (*i.e.*, where it reflects a hypothetical payment to the Bidder for accepting the Carbon Credit); any Bid Price below zero shall result in the Bid being null and void.
- 5.16 Subject to Sections 5.17 and 5.18, each valid Bid that is received and logged by the Auctioneer shall be a firm and irrevocable commitment to buy the stated Bid Quantity of Carbon Credits at the stated Bid Price under an ICE Carbon Credit Agreement.
- 5.17 If the Auctioneer is satisfied, upon the request of a Bidder, that a genuine mistake has been made in the submission of a Bid, the Auctioneer may, at its own discretion, invalidate a Bid.
- 5.18 Upon invalidation of a Bid pursuant to Section 5.17, the Bid shall be deemed not to have been submitted for the purposes of these Auction Terms, and the Auction Participant shall be treated as if it had not made such Bid.
- 5.19 At the end of the Auction, a Winning Bidder will enter into an ICE Carbon Credit Agreement with the Seller as follows:
- (a) allocated Carbon Credits will be limited by the Maximum Supply;
 - (b) Carbon Credits will be allocated to some or all valid Bids which are at or exceed the Auction Reserve Price, in order of the value of the Bid Price of the Bids from highest to lowest, whereby a Bid with a higher Bid Price will be allocated first and with priority over a Bid with a lower Bid Price, taking into account the applicable Auction Reserve Price;
 - (c) if Bids have an equal Bid Price, the time stamp of the Bids will determine the allocation of Carbon Credits on a first-committed-first-served basis;

- (d) if a Bid is changed, the time stamp of the changed Bid will be used rather than the time stamp of the original unamended Bid for purposes of Section 5.19(c); and
 - (e) a Bidder whose Bid is accepted will be a Winning Bidder for purposes of that Auction, upon communication of the same and the Auction Price to the Bidder by the Auctioneer.
- 5.20 The method for determining the Auction Price for allocated Carbon Credits shall be set forth in the relevant Product Specifications. The Product Specifications may cross-refer to one of the following methods, which have the meanings set forth below (unless modified further by the Product Specifications):
- (a) a "Single Auction Price" means that the Bid Price is fixed for all Bidders and all resulting ICE Carbon Credit Agreements awarded in the Auction, as being the Bid Price of the lowest valid and accepted Bid at which an allocation would be made to a Bidder under Section 5.19; all Winning Bidders will be treated as if their Bid were submitted at that same Bid Price; or
 - (b) a "Pay-as-Bid Price" means that the actual Bid Price of each accepted Bid is used for the related ICE Carbon Credit Agreement entered into by the Winning Bidder in question, with ICE Carbon Credit Agreements resulting from the Auction; therefore each Winning Bidder may have a different price depending upon the Bid Price of each accepted Bid.
- 5.21 Following an Auction and immediately upon the Auctioneer notifying an Auction Participant that it is a Winning Bidder under Section 5.19(e), and without the need for any further step, a contract in the form of the ICE Carbon Credit Agreement shall arise between that Winning Bidder and the Seller. No contract of sale, ICE Carbon Credit Agreement or guarantee arises between the Auctioneer and a Seller or Bidder.
- 5.22 At the end of an Auction, the Auctioneer will:
- (a) inform the Winning Bidders and the Seller of the ICE Carbon Credit Agreement arising; and
 - (b) provide a Purchase Order to the Seller and the Winning Bidder setting out details of the allocated Carbon Credits.
- 5.23 If the Seller or Winning Bidder have any objections to the accuracy of the Purchase Order, they shall notify the Auctioneer as soon as possible. The Auctioneer may, in its absolute discretion, re-issue the Purchase Order to the Seller and the Winning Bidder.
- 5.24 Absent any objections to the Purchase Order (or a Purchase Order re-issued in accordance with Section 5.23) within 1 Business Day of receipt, the Seller and Winning Bidder shall be deemed to accept the Purchase Order.
- 5.25 The Auctioneer may postpone the time at which an Auction starts or ends by giving notice of such postponement to all Auction Participants. Any reference to the Auction start or end time as so postponed shall be construed as that postponed time, regardless of what was stated on the Website or Product Specifications.
- 5.26 To the fullest extent lawfully permissible, the Auctioneer may cancel, adjourn or terminate an Auction at any time, and may withdraw all or any portion of the Carbon Credits from any Auction lot prior to the close of the Auction.

- 5.27 The Auctioneer shall promptly inform Auction Participants of any cancellation, adjournment or termination of an Auction. No Auction Participant shall have any claim for damage or losses or any right for performance of an Auction in the event of postponement, cancellation, adjournment or termination.
- 5.28 If permissible under Applicable Laws, the User Privacy Notice and if available and required, the Auctioneer will disclose to a Seller such information which is required under the ICE Carbon Credit Agreement, relating to a specific Auction. Each Auction Participant acknowledges and agrees that the Auctioneer may make such disclosures and otherwise handle its Personal Data in accordance with the User Privacy Notice, with references in the User Privacy Notice to "Member" being read as a reference to "Auction Participant", *mutatis mutandis*.
- 5.29 Auction Participants shall be liable to pay such fees and charges as are levied by the Auctioneer in accordance with published rates from time to time.
- 5.30 Interest shall be charged at a compounded rate to the Auction Participant on any unpaid but due amount from the date on which the amount becomes due and payable until the date of payment at 1% above the rate per annum which is the cost (without proof or evidence of any actual cost) to the Auctioneer if it were to fund or itself funded the relevant amount, compounded daily.

6. CONDUCT TERMS

- (a) Each Auction Participant shall at all times observe high standards of integrity and fair dealing and high standards of market conduct and act with due skill, care and diligence when participating in an Auction.
- (b) In connection with these Auction Terms, an Auction Participant shall:
- (i) observe, comply with and be bound by the Auction Participation Agreement and these Auction Terms;
 - (ii) comply with all Applicable Laws, including Data Protection Laws and concerning money laundering and Sanctions, and must not cause or facilitate any breach of the same by the Auctioneer;
 - (iii) observe high standards of conduct in relation to each Auction, behave in a fair and orderly manner in an Auction;
 - (iv) act in good faith in its dealings with the Auctioneer;
 - (v) continually satisfy the Participation Criteria;
 - (vi) establish proper systems and controls in relation to its participation in an Auction, with due observation of the interest of all other Auction Participants;
 - (vii) be subject to and bound by all of the provisions and requirements of these Auction Terms in relation to payments, title, rights, obligations, liabilities, property (whether tangible or intangible) including any transfers, assignments and dispositions required thereunder;
 - (viii) observe, comply with and be bound by any ICE Carbon Credit Agreement to which it becomes a party by virtue of being the Winning Bidder or Seller and

which arise pursuant to these Auction Terms from time to time and to all rights, obligations and liabilities pursuant to such ICE Carbon Credit Agreement;

- (ix) be subject to any requirement imposed as a result of a request, decision, determination, direction, sanction, requirement, award or discretion that the Auctioneer is entitled to make, exercise or impose pursuant to these Auction Terms;
- (x) submit to the jurisdiction and be bound by any decision, determination, direction, sanction, requirement or award of any arbitral tribunal, court or other body appointed or formed pursuant to these Auction Terms or that has jurisdiction over any matter in accordance with these Auction Terms.
- (xi) be responsible for the performance of all of its obligations under these Auction Terms, the Auction Participation Agreement, the ICE Data Services and Software Services Agreement and any ICE Carbon Credit Agreement;
- (xii) keep (and represent that it has kept) all information received from the Auctioneer in connection with any Auction (including username(s) and password(s) issued by the Auctioneer and all information obtained on the password-protected section of the Auctioneer's website or other systems) confidential on the terms set forth in these Auction Terms;
- (xiii) perform all its obligations, and all enquiries or requests from the Auctioneer, in a complete and timely manner;
- (xiv) refrain from entering into (and represents that it has not entered into) any agreement or arrangement of any kind with any other Auction Participants (other than affiliates) concerning any Auction or participation in any Auction;
- (xv) act for the purposes of these Auction Terms, and be liable to the Auctioneer, as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (xvi) comply with the requirements of any applicable Registry Rules or Standard Rules, including by making any payments due to such Registry or Standard;
- (xvii) notify the Auctioneer immediately if the Auction Participant fails to comply, or may fail to comply, in respect of any obligations or deadlines under these Auction Terms;
- (xviii) be responsible for all actions and omissions of individuals acting or purporting to act on its behalf in relation to any Auction or any related obligations, including the Auction Participant's signatories and the Persons identified in Section 2.2(a)(x);
- (xix) be deemed to represent and warrant that it is in full compliance with the Participation Criteria and that its Application Documents remain current and up to date (or have been updated through provision of new documentation to the Auctioneer) each time it submits a Bid in an Auction or enters into an ICE Carbon Credit Agreement; and
- (xx) furnish to the Auctioneer any additional information which the Auctioneer may reasonably request.

- (c) In connection with these Auction Terms, the Auction Participation Agreement, any ICE Carbon Credit Agreement, or its business and activities as an Auction Participant, an Auction Participant shall not:
- (i) provide any information to the Auctioneer (including information for the purpose of obtaining or reinstating status as an Auction Participant) which is false, misleading or inaccurate in any material respect;
 - (ii) breach any Applicable Law relating to its status and performance as an Auction Participant;
 - (iii) commit any act of fraud;
 - (iv) knowingly disseminate false, misleading or inaccurate reports concerning any Auction, Carbon Credits or market information or conditions that affect or tend to affect prices of Carbon Credits;
 - (v) make or report a false or fictitious transaction in relation to an Auction;
 - (vi) knowingly, fraudulently, recklessly or negligently furnish any false, inaccurate or misleading information to the Auctioneer;
 - (vii) place a Bid either intending to default in performance of the same or having no reasonable grounds for believing that it would be able to avoid such default (provided that it shall not be sufficient to have intended to comply with any contractual or other provision governing the consequences of default);
 - (viii) use or reveal any information confidential to the Auctioneer or a Seller when under a legal or contractual obligation to the Auctioneer or any Applicable Law not to do so;
 - (ix) use any information technology or any online services provided to it or made available to it pursuant to these Auction Terms other than for the purposes of conducting its business and activities as an Auction Participant in accordance with these Auction Terms;
 - (x) engage in any other event or practice which has developed or is developing in an Auction and is reasonably considered by the Auctioneer to be capable of impairing the orderly conduct of business of the Auctioneer;
 - (xi) represent or hold out to any Person that status as an Auction Participant brings with it any stamp of approval, special status, hallmark, regulatory supervision or approval or confers any rights or protections to any other Person in relation to the Auctioneer's business, policies, financial standing or otherwise;
 - (xii) participate in, facilitate, procure, counsel, incite, encourage, aid or abet any conduct by a third party which would be a violation or attempted violation of these Auction Terms, regardless of whether that third party is subject to these Auction Terms;

- (xiii) take any action or make any omission or knowingly or recklessly permit the use of its services, facilities or status as Auction Participant by any Person in a manner which in the reasonable opinion of the Auctioneer is liable to:
 - (A) bring the Auctioneer, Seller or any other Auction Participant into disrepute;
 - (B) impair the dignity or degrade the good name of the Auctioneer;
 - (C) create or maintain or exacerbate actual or attempted breaches, infringements, manipulations or violations of these Auction Terms or market practice; or
 - (D) otherwise be substantially detrimental to the interests or welfare of the Auctioneer;
 - (xiv) conduct its affairs so as to give the Registry or Standard, or their administrator, cause to refuse, reject or cancel (whether in whole or in part) any transfer of Carbon Credits or to suspend or restrict the Auction Participant's ability to receive any Carbon Credits;
 - (xv) fail to comply with such conditions and requirements as are necessary to effect transfers or Carbon Credits in accordance with these Auction Terms and any Registry Rules and Standard Rules;
 - (xvi) breach or fail to perform or pay under an ICE Carbon Credit Agreement entered into pursuant to an Auction;
 - (xvii) fail to make payment of any amounts due and payable pursuant to and in accordance with these Auction Terms;
 - (xviii) engage in any behaviour (including, without limitation, the submission of Bids in any particular manner or the disclosure of any information or making of any representation) which is likely to result in an unfair, manipulated or improper Auction; or
 - (xix) fail to perform any other obligation imposed on an Auction Participant under these Auction Terms.
- (d) Each Auction Participant shall notify the Auctioneer in writing without delay providing full particulars known to it, and prior to participation in any Auction:
- (i) of anything relating to the Auction Participant of which the Auctioneer would reasonably expect notice (including of any breach of the Participation Criteria or the Auction Participant Agreement, the Auction Participant no longer meeting the Participation Criteria, or any matter, circumstance, change or occurrence which would cause an Application Document or statement previously furnished for the purposes of becoming an Auction Participant to be inaccurate, incomplete or superseded); or
 - (ii) of any breach by it (or any non-frivolous or non-vexatious investigation or allegation of a breach by it) of any Applicable Law relating to its status and performance as an Auction Participant or of these Auction Terms, including full particulars of the breach.

7. LIABILITY AND INDEMNIFICATION

7.1 Liability

- (a) Neither the Auctioneer nor any of its representatives, its affiliates or its affiliates' representatives shall be liable to any Auction Participant in respect of any loss, liability, damage, injury, cost or expense incurred or suffered by such Auction Participant, whether in contract, tort or restitution, as a fiduciary or under any other cause of action, arising out of or in connection with any of the following:
- (i) any suspension, restriction or termination of an Auction or the services of the Auctioneer for any period of time;
 - (ii) any failure or malfunction of or inability to use any systems, communication lines or facilities or technology supplied, operated or used (directly or indirectly) by the Auctioneer;
 - (iii) any exercise (or failure to exercise) by the Auctioneer of any discretion or right conferred upon it pursuant to these Auction Terms, including in relation to the termination of a Person's status as an Auction Participant;
 - (iv) any indirect or consequential loss, liability, damage, injury, cost or expense, any loss of profit (whether direct or indirect) or any loss of bargain;
 - (v) rejection of any application to become an Auction Participant;
 - (vi) any action taken by the Auctioneer pursuant to these Auction Terms, on the basis that these Auction Terms are to any extent invalid or that a determination or request made by the Auctioneer or any agreement made by the Auctioneer, is incompatible with these Auction Terms;
 - (vii) any implied representations or warranties, whether in relation to the Auctioneer's systems or otherwise, including any representations or warranties of good title, merchantability or fitness for purpose or for a particular use;
 - (viii) any statement, representation, assurance or warranty of the Auctioneer, whether orally or in writing other than as expressly set out in these Auction Terms;
 - (ix) claims in respect of title and authenticity, property status or good and valid ownership of any Carbon Credits sold under these Auction Terms;
 - (x) any losses arising as a result of a Carbon Credit sold under these Auction Terms not having any redeemable value or utility or a Carbon Credit being impaired;
 - (xi) any impairment in the validity, enforceability, marketability or commercial value of any Carbon Credit sold under these Auction Terms, whether by virtue of any Applicable Laws, any verification system, the action or inaction of any Governmental Authority, verifying body or other organisation or body, or otherwise;
 - (xii) any losses incurred as a result of the receipt, acceptance or existence of fraudulent, forged, improperly executed, false, incorrect, unenforceable, negligently prepared or invalid Carbon Credit sold under these Auction Terms or any document relating to a Carbon Credit;

- (xiii) claims in respect of the project or area to which a Carbon Credit may relate, including whether a Carbon Credit represents a project which has resulted in any reduction or removal of Greenhouse Gases or other objective;
- (xiv) any losses arising from or relating to any event or condition occurring or existing whether past, present or future, at any property, location or other area (including, without limitation, any land, environmental, biological, natural or man-made structures above or below ground, air within or outside any natural or man-made structure, surface or ground water, waterway, marine waters, and soil and sub-soil strata) to which a Carbon Credit may relate, including, without limitation, any hazardous material contamination, deforestation, fire, carbon-releasing event, or other event or condition;
- (xv) any losses arising from any act or omission of any Person providing verification in respect of a Carbon Credit under any program or certification standard;
- (xvi) claims in respect of nationalisation, expropriation, or other governmental actions or regulation of any Carbon Credit under these Auction Terms, or of the environment, exchange or currency controls or restrictions on the transfer of property or the execution of transactions for Carbon Credits sold under these Auction Terms;
- (xvii) claims in respect of any losses incurred as a result of any Carbon Credits sold under these Auction Terms or document relating to a Carbon Credit not being freely transferable or deliverable without encumbrance;
- (xviii) any reputational loss or other loss associated with holding a Carbon Credit sold under these Auction Terms;
- (xix) claims in respect of the retirement process or any event or circumstances affecting a Carbon Credit arising before or after the transfer of a Carbon Credit;
- (xx) claims in relation to a Registry or Standard, the accuracy of that Registry or Standard, the purported transfer of Carbon Credits through the Registry, any losses arising on the Insolvency of a Registry or Standard, a breach of Applicable Law by a Registry or Standard, or otherwise in respect of the performance, non-performance or operation of the Registry or Standard;
- (xxi) an entry on a Registry not actually referring to an existing or valid Carbon Credit;
- (xxii) the performance or non-performance by a Registry or Standard, including any issues arising with regards to legal title to, and physical delivery of, a Carbon Credit sold under these Auction Terms;
- (xxiii) any losses arising from or relating to the failure of any record in an account with a Registry to constitute a Carbon Credit;
- (xxiv) claims in respect of any Person's breaches or failure to comply with the applicable Registry Rules or Standard Rules;
- (xxv) without prejudice to the position that Carbon Credits should be regarded as a property right, for any losses resulting from Carbon Credits sold under these

Auction Terms constituting or being found to constitute a mere contractual or other right;

- (xxvi) any losses resulting from a breach of Data Protection Laws; and
 - (xxvii) any action, suit or proceeding brought against the Auctioneer over one year after the time that a cause of action, suit or proceeding has accrued or commenced.
- (b) If the Auctioneer is found to be liable to an Auction Participant for any reason, the liability of the Auctioneer in connection with any Auction shall not exceed the fees paid by the Auction Participant to the Auctioneer in relation to the Auction(s) which gave rise to the liability.
- (c) Each Auction Participant acknowledges that the Auctioneer will not review nor be responsible for reviewing any provision of that Auction Participant's memorandum of incorporation, articles of association, by-laws, partnership agreement, limited liability company agreement or any other organisational document, any agreement to which the Auction Participant is party or any Applicable Law which is binding upon or affects the Auction Participant with a view to determining the authority of the Auction Participant to enter into any ICE Carbon Credit Agreement, the Auction Participation Agreement or to comply with these Auction Terms; and that, as a result, the Auctioneer relies upon the assumed authority of the signatories of the Applicant or Auction Participant.
- (d) Each Auction Participant agrees and acknowledges for the benefit of the Auctioneer that:
- (i) the Auctioneer shall not be liable for any contents, including any inaccuracy, of a Purchase Order to the extent that neither party to whom the Purchase Order relates objects to it in accordance with Section 5.23; and
 - (ii) in relation to any Dispute, the liability of the Auctioneer to that Auction Participant shall be limited to these Auction Terms and the Auction Participation Agreement, and the Auctioneer shall have no tortious liability or tortious duty of care to an Auction Participant;
 - (iii) in no event shall that Auction Participant attempt to interfere with the ability of the Auctioneer to exercise its rights under these Auction Terms, the Auction Participation Agreement or Applicable Law; and
 - (iv) it is not entitled to, and will not, petition a court or take any action or commence any proceedings against the Auctioneer, directly or indirectly and will if any such action is taken fully indemnify the Auctioneer against any costs, losses or other consequences of that Auction Participant taking any such action.
- (e) None of Sections 7.1(a) to 7.1(d), nor any other provision of these Auction Terms, shall exclude or restrict the liability of the Auctioneer or any other Person for:
- (i) fraud, bad faith, gross negligence or wilful misconduct;
 - (ii) personal injury or death resulting from negligence, recklessness, or an intentional act or omission; or

- (iii) any liability which in accordance with Applicable Laws cannot be excluded, to the extent such liability cannot lawfully be excluded.
- (f) The Auctioneer shall have no liability or obligation to an Auction Participant in respect of any ICE Carbon Credit Agreement and the Auctioneer shall have no duty of care or liability to that Auction Participant, in any case whether in tort, contract, equity, restitution, in respect of the ICE Carbon Credit Agreement;
- (g) Any possible action, suit or proceeding against the Auctioneer must be notified to the Auctioneer as soon as reasonably practicable, including all relevant details then known and supporting documentation.
- (h) Save for any liability which it cannot exclude pursuant to Applicable Laws in accordance with Section 7.1(e), the Auctioneer shall not be liable pursuant to these Auction Terms to an Applicant or any other Person who is not an Auction Participant.

7.2 **Connectivity and technical issues**

- (a) The Auctioneer does not make any representations or warranties on the quality or continuous availability of an Auction or the reception or saving of Bids in case of technical or other problems beyond their reasonable control.
- (b) Each Auction Participant confirms, represents and warrants that it understands that the platform on which the Auction will be conducted is provided by the Auctioneer on an "as is" basis at the Auction Participant's sole risk.
- (c) The Auctioneer does not make any warranty on and shall not have any liability for:
 - (i) the accuracy, adequacy, timeliness, completeness, reliability, performance or continued availability of the platform on which the Auction will be conducted; or
 - (ii) delays, omissions or interruptions therein.
- (d) The Auctioneer shall not be responsible to an Auction Participant for errors or failures to submit or execute a Bid, including, without limitation, errors or failures caused by:
 - (i) any loss of connection of the Auctioneer or Auction Participant to the Auction;
 - (ii) a breakdown or problems with the Auctioneer's software; or
 - (iii) a breakdown or problems with any internet connection, computer, mobile device or system.
- (e) The Auctioneer disclaims liability to any Auction Participant for its failure, or the Auctioneer's failure, to access an Auction or to accept, submit or execute a Bid or for errors or omissions in connection with this activity or these Auction Terms.

7.3 **Indemnification**

Each Auction Participant shall indemnify and hold harmless the Auctioneer against any and all losses, liabilities, damages, injuries, costs, claims, shortfalls and expenses (excluding any consequential losses, liabilities, damages, injuries, costs, claims, shortfalls or expenses)

incurred or suffered by the Auctioneer or any of its directors, officers or employees arising out of or in connection with any of the following:

- (a) a breach (or an allegation made by the Auctioneer or any Governmental Authority of a breach) by such Auction Participant of any of its obligations under these Auction Terms or an ICE Carbon Credit Agreement;
- (b) such Auction Participant's conduct, excluding conduct which the Auction Participant is obliged to perform and has performed in accordance with these Auction Terms;
- (c) any claim made or alleged against the Auctioneer by, or any liability of the Auctioneer to, a Seller which is a counterparty of such Auction Participant; or
- (d) a breach (or an allegation made by the Auctioneer or any Governmental Authority of a breach) by the Auction Participant of any Applicable Law,

provided that an Auction Participant shall not indemnify or hold harmless the Auctioneer or any of its directors, officers or employees to the extent that any such loss, liability, damage, injury, cost or expense arises out of or in connection with:

- (i) a breach by the Auctioneer of any of its obligations under these Auction Terms;
- (ii) fraud, bad faith, gross negligence or wilful misconduct by the Auctioneer or any of its directors, officers or employees; or
- (iii) personal injury or death resulting from negligence, recklessness or an intentional act or omission of the Auctioneer or any of its directors, officers or employees.

7.4 **Tax**

- (a) All amounts which are payable in connection with these Auction Terms, the Auction Participation Agreement or the ICE Data Services and Software Services Agreement shall be made without withholding or deduction for or on account of tax, save only as may be required by Applicable Law. To the extent that such a deduction or withholding is so required to be made from any amount which is so payable to or for the account or benefit of the Auctioneer, ICE Data, LP or any affiliate, the relevant Auction Participant shall pay such additional amounts as may be necessary to ensure that the net amount received and retained by or for the account or benefit of the Auctioneer, ICE Data, LP or any affiliate after such deduction or withholding shall equal the amount which would have been so received and retained had no deduction or withholding been so required.
- (b) All amounts which are payable in connection with these Auction Terms, the Auction Participation Agreement or the ICE Data Services and Software Services Agreement and which (in whole or in part) constitute the consideration for value added tax purposes for any supply of goods or services shall be deemed to be exclusive of any value added tax which is chargeable on that supply. If value added tax is chargeable on any supply made in connection with these Auction Terms, the Auction Participation Agreement or the ICE Data Services and Software Services Agreement for which the Auctioneer, ICE Data, LP or any affiliate (the "supplier") is liable to account, the relevant Auction Participant shall pay to the supplier, in addition to and (where relevant) at the same time as paying any other consideration for such supply, a sum equal to the amount of such value added tax, together with any related interest or penalties.

- (c) Where an Auction Participant is required in connection with these Auction Terms, the Auction Participation Agreement or the ICE Data Services and Software Services Agreement to reimburse or indemnify the Auctioneer, ICE Data, LP or any affiliate in respect of any cost or expense, such reimbursement or indemnity shall be for the full amount of such cost or expense, including the part thereof that represents value added tax, save to the extent that the Auctioneer determines in its absolute discretion that it, ICE Data, LP or an affiliate is entitled to credit or repayment in respect of such value added tax from the relevant tax authority.

7.5 Exclusions

- (a) The provisions of this Section 7 shall apply:
 - (i) without prejudice to the liability of any other Person subject to these Auction Terms for the same conduct;
 - (ii) in the case of inconsistency with any other provision of these Auction Terms, in priority to that other provision; and
 - (iii) whether or not the Auction Participant's representative(s) can be conclusively identified (provided that it is established that the relevant conduct was in fact carried out by the Auction Participant's representative, albeit an unidentified representative).

8. AUCTIONEER DUTIES AND REGULATORY STATUS OF AUCTIONEER AND AUCTIONS

8.1 Auctioneer duties

- (a) All Auction Participants are hereby on notice that the Auctioneer is not member of any professional or other association, society, institution or organisation of auctioneers or agents and is not therefore bound by the terms, rules or practices of any such association, society, institution or organisation. Any standard terms, rules, customs, good practice guidelines or guidance or other industry practices relating to auctions or agency sales are hereby disappplied and disclaimed. All and any rights of the Auction Participant which may arise as a result of a liability of an auctioneer or agent pursuant to common law or statutory duties applicable to auctioneers or selling agents are hereby expressly waived by each Auction Participant, to the fullest extent permitted by all Applicable Laws. The implied term of care and skill under section 13 of the Supply of Goods and Services Act 1982 is hereby expressly excluded in respect of the conduct of any Auction by the Auctioneer. The Auctioneer expressly disclaims any duty of care or skill in respect of the conduct of any Auction by the Auctioneer arising other than expressly pursuant to these Auction Terms. The Auctioneer will not provide and has not provided any valuation services in connection with any Carbon Credit nor Auction.
- (b) In respect of any Auction, each Auction Participant:
 - (i) agrees and acknowledges that copies of the Auctions (Bidding Agreements) Acts 1927 and 1969 have been made available to it online at www.legislation.gov.uk for the duration of the Auction and that it has received any other notices required to be provided to it under all Applicable Laws;
 - (ii) agrees and acknowledges that it has received sufficient information concerning the identity of the persons conducting the Auction; and

- (iii) waives any right to make any claim that it has not received any information or documentation of a nature referred to in this Section 8.1(b) and agrees in favour of the Auctioneer not to make any statement to the contrary to any third party.
- (c) All obligations of the Auctioneer under these Auction Terms are solely to Auction Participants. In particular, the Auctioneer shall have no liability or obligation to customers or clients of an Auction Participant in respect of these Auction Terms, the Auction Participation Agreement or any ICE Carbon Credit Agreement or otherwise nor shall the Auctioneer have any duty of care or liability to such customers or clients, in any case whether in tort, contract, equity, restitution, in respect of any contract, pursuant to the Auction Terms or the Auction Participation Agreement, pursuant to an ICE Carbon Credit Agreement, or otherwise, save for any liability which by Applicable Law may not be excluded.

8.2 **Regulatory status of Auctioneer and Auctions**

- (a) Each Auction Participant confirms, represents and warrants that it understands that Auctions carried on by the Auctioneer in accordance with these Auction Terms will not be carried on by the Auctioneer in its capacity as a recognised investment exchange, recognised auction platform, regulated market, authorised person or benchmark administrator.
- (b) Each Auction Participant confirms, represents and warrants that it understands that Auctions will not constitute or result in any "market contract" (within the meaning of section 155 of the Companies Act 1989) as a result of the Auctions not taking place on the recognised investment exchange or regulated market of the Auctioneer.
- (c) Each Auction Participant confirms, represents and warrants that it understands that it shall not benefit from certain protections or regulations that would otherwise have been available and/or applied under Applicable Law had the Auctioneer been acting in such capacity or if the Auctions otherwise involved a regulated service.
- (d) The protections and regulations referred to in Section 8.2(c) which are not applicable to Auctions nor protect Auction Participants include, but are not limited to:
 - (i) all requirements on and protections arising under the Financial Services and Markets Act 2000, the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001, the Recognised Auction Platforms Regulations 2011, the Companies Act 1989, Regulation (EU) No 600/2014 as it forms part of UK law by virtue of the European Union (Withdrawal) Act 2018 and Directive 2014/65/EU as it forms part of UK law by virtue of the European Union (Withdrawal) Act 2018, including:
 - (A) the obligation of a body to have adequate, effective and appropriate systems and controls, including procedures and arrangements;
 - (B) the obligation of a body to have transparent, fair and non-discriminatory fee structures in relation to auctions, orders and executing transactions;
 - (C) the obligation of a body to ensure business is conducted in an orderly manner and so as to afford proper protections to investors, including the obligation of a body to ensure that access to its facilities is subject to criteria designed to protect the orderly functioning of the market or

- platform and for appropriate measures to be adopted to reduce the extent to which the facility can be used for a purpose connected with market abuse or financial crime;
- (D) the obligation on a body to have appropriate arrangements for relevant information to be made available to persons engaged in dealing in investments on the exchange or participants in auctions conducted by the platform;
 - (E) the obligation on a body to have satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions effected or executed on the body's systems or exchange;
 - (F) the obligation on a body to have appropriate arrangements to identify and manage conflicts between it, its owners and operators and the interests of the persons who make use of its facilities or the interests of any market operated by it;
 - (G) the obligations on a body to have appropriate procedures for making rules, keeping its rules under review and for amending them;
 - (H) the obligation on a body to make transparent and non-discriminatory rules, based on objective criteria, governing access to, or membership of, its facilities
 - (I) the obligation on a body to apply position management controls and to make position reports;
 - (J) the obligation on a body with regards to the investigation and resolution of complaints;
 - (K) the obligation on a body to have default rules which enable action to be taken in respect of unsettled "market contracts" (within the meaning of section 155 of the Companies Act 1989); and
 - (L) the availability of remedies upon the default of another Auction Participant, such as a default fund, default management, porting, leapfrog payments or margin segregation
- (ii) the jurisdiction of and access to the United Kingdom's Financial Ombudsman Service, which means that Auction Participants will not have access to a statutorily appointed independent person to resolve disputes in relation to these Auction Terms;
 - (iii) the United Kingdom's Financial Services Compensation Scheme (FSCS), which means Persons participating in Auctions will not have their investment or money protected by this statutory scheme; and
 - (iv) the protections that are typically offered by firms authorised or supervised by the Financial Conduct Authority and Prudential Regulation Authority where that firm is providing a regulated service.
- (e) For the purposes of the Financial Conduct Authority Handbook and the Financial Services and Markets Act 2000, no Auction Participant or any other Person will be

treated as a "client" of the Auctioneer as a result of these Auction Terms or the Auction Participation Agreement.

8.3 Release of data

- (a) Following the Auction, the Auctioneer may release the following data to the public either immediately or such later time as it chooses:
 - (i) the Aggregate Demand;
 - (ii) the total amount of Carbon Credits allocated;
 - (iii) the number of Winning Bidders;
 - (iv) the minimum and maximum Bid Price; and
 - (v) the Auction Price.
- (b) The Auctioneer and any of its affiliates shall be entitled to charge a fee to third parties wishing to receive such data or any other data relating to an Auction either generally or earlier to the public release of such data, provided that the Bids of particular Bidders are anonymised.

8.4 Intellectual property in data

- (a) As between the Auctioneer and the Auction Participants, the Auctioneer will own all intellectual property in data created in each Auction, including the data identified in Section 8.3(a).
- (b) At the request of the Auctioneer, each Auction Participant shall promptly do all things necessary to perfect, confirm, and (where applicable) register the Auctioneer's ownership of the intellectual property described in Section 8.4(a).

9. MISCELLANEOUS

9.1 Amendment of these Auction Terms

- (a) The Auctioneer may at any time amend these Auction Terms by giving notice to the Auction Participants and Applicants that have submitted the Application Documents and are awaiting a determination of their application from the Auctioneer. Except where Section 9.1(b) applies, the Auctioneer will provide at least 10 Business Days' notice of any such amendment.
- (b) Notwithstanding Section 9.1(a), the Auctioneer may if it reasonably believes that immediate or urgent amendment is necessary to improve or facilitate the Auction or comply with Applicable Laws, amend these Auction Terms upon immediate or shorter notice than that specified in Section 9.1(a).
- (c) An Auction Participant shall be deemed to consent by conduct to any amendment of these Auction Terms if it participates in an Auction following the receipt of any notice given under Sections 9.1(a) or 9.1(b).

9.2 Force Majeure

- (a) Neither the Auctioneer nor an Auction Participant shall be liable for any failure, hindrance or delay in performance in whole or in part of its obligations under these

Auction Terms if and to the extent that such failure, hindrance or delay arises as a result of a Force Majeure.

- (b) An Auction Participant shall immediately notify the Auctioneer if it is subject to a Force Majeure.
- (c) An Auctioneer shall notify Auction Participants if it is subject to a Force Majeure. Upon becoming subject to a Force Majeure, the Auctioneer may amend these Auction Terms in accordance with Section 9.1(b).
- (d) An Auction Participant affected by a Force Majeure shall use all reasonable endeavours to mitigate the effects of the same upon its ability to perform its obligations to the Auctioneer, and to bring the Force Majeure event to an end, and if the Auctioneer is affected by a Force Majeure, it shall use all reasonable endeavours to mitigate the effects of the same upon its ability to perform such obligations to Auction Participants.

9.3 Confidentiality

- (a) The Auctioneer may keep records in an electronic or durable medium of all data or information available to it under, or in relation to, these Auction Terms or the Auction Participation Agreement, its operations or otherwise concerning Applicants, Auction Participants, Carbon Credits, any ICE Carbon Credit Agreement, deliveries and settlement, including information provided by a Person to the Auctioneer at the Auctioneer's request, or pursuant to these Auction Terms or Applicable Laws.
- (b) All information received or held by the Auctioneer pursuant to Section 9.3(a) shall be held in confidence by the Auctioneer and shall not be made known to any other Person, subject to Section 9.3(c).
- (c) The Auctioneer may make the following disclosures of confidential information:
 - (i) to a regulatory or supervisory authority, competent authority or Governmental Authority or the public where a request is formally made to the Auctioneer by or on behalf of the same, as required pursuant to Applicable Laws or where disclosure is necessary for the making of a complaint or report under Applicable Laws for an offence alleged or suspected to have been committed under Applicable Laws;
 - (ii) pursuant to an order of a competent court or other Governmental Authority or otherwise to such other Persons, at such times and in such manner as may be required by Applicable Law;
 - (iii) pursuant to any Applicable Law, including any order of a competent court or other Governmental Authority or otherwise to such other Persons, at such times and in such manner as may be required by Applicable Law;
 - (iv) to any Person in the business of providing data processing or similar services for the purposes of performing computations or analysis, or of preparing reports or records of the Auctioneer;
 - (v) to any member of the Auctioneer's affiliates and any of their auditors, advisers or lawyers including (without limitation) for audit, compliance, market surveillance, disciplinary or dispute purposes;

- (vi) to any Person who has provided or is considering entering into a loan, insurance policy, guarantee or other financial arrangement with the Auctioneer or any of its affiliates, provided that information identifying Bids, the names of Applicants or Auction Participant's or an Auction Participant's accounts will not be so disclosed;
- (vii) to any Person if the information comes into the public domain, other than as a result of a breach of these Auction Terms by the Auctioneer or its representatives;
- (viii) to a Seller or Bidder for the purposes of facilitating an Auction or the entering into, or operation of, an ICE Carbon Credit Agreement;
- (ix) with the specific written consent of an Applicant, Auction Participant or Persons to whom the confidential information relates; or
- (x) otherwise pursuant to any obligation on the Auctioneer or pursuant to the exercise of any right, either existent or which may arise in the future under these Auction Terms or an ICE Carbon Credit Agreement.

9.4 Assignment and Transfer

- (a) No Auction Participant shall at any time be entitled to assign any of its rights, transfer by novation any of its rights and obligations or create any interest whatsoever in any of its rights or obligations under these Auction Terms to a third party (or purport to do so) unless the Auctioneer provides its prior written consent.
- (b) The Auctioneer shall be entitled to assign, allocate or transfer any of its rights, liabilities or obligations resulting from these Auction Terms and the Auctions to a third party, upon giving notice of the same to each Auction Participant.
- (c) Any purported transfer of any rights, liabilities or obligations under these Auction Terms other than in accordance with this Section 9.4 shall be null and void.

9.5 Language

All communications in relation to these Auction Terms, including in respect of any Auction, shall be in the English language only.

9.6 Regulatory reporting

It is the responsibility of an Auction Participant to make any transaction or other reports or notifications, as necessary, to any Regulatory Authority or Governmental Authority (including, without limitation, any transaction reports) that it is required to make pursuant to Applicable Laws.

9.7 Submission of documents to Auctioneer

The Application Documents, any changes and amendments thereto, any additional documents requested by the Auctioneer or any other documents that shall be submitted to the Auctioneer under these Auction Terms shall be sent to the Auctioneer at the following address, unless specified otherwise by the Auctioneer in writing or on its Website:

ICE Futures Europe
60 Chiswell St

London
EC1Y 4SA
Attn: ICE Futures Europe Membership Team
Email: ICEEuropeMembership@TheIce.com

9.8 No partnerships or joint ventures

Nothing in these Auction Terms is intended to, or shall be deemed to, establish any partnership or joint venture between the Auctioneer and any Applicants, Auction Participants or Sellers. Nothing in these Auction Terms is intended to, or shall be deemed to, constitute any party to these Auction Terms as the trustee, beneficiary, agent or principal of the other party, nor authorise any party to these Auction Terms to make or enter into any commitments for or on behalf of any other party.

9.9 Contracts (Rights of Third Parties) Act 1999

These Auction Terms shall create a series of bilateral contracts between the Auctioneer and each Auction Participant. No Person other than the Auctioneer and an Auction Participant shall have any right pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of these Auction Terms. No Auction Participant shall have any right to enforce any provision of these Auction Terms against another Auction Participant. Nothing in this Section 9.9 shall effect the coming into force or rights of the parties under an ICE Carbon Credit Agreement.

9.10 Waivers

Any waiver of any right or consent under these Auctions Terms is only effective if it is in writing and signed by the waiving or consenting party, and applies only in the circumstances for which it is given and shall not prevent the party who is giving it from subsequently relying on the relevant provision. No delay or failure to exercise any right under these Auctions Terms shall operate as a waiver. No single or partial exercise of any right under this Agreement shall prevent any further exercise of the same or any other right under this Agreement.

9.11 Entire Agreement

- (a) These Auction Terms, together with the Auction Participation Agreement, ICE Data Services and Software Services Agreement, User Privacy Notice and any applicable Product Specification or Sell Order, constitutes the entire agreement and understanding of the Auctioneer and an Auction Participant with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.
- (b) The Auction Participant warrants to the Auctioneer that, in executing the Auction Participation Agreement and becoming bound by these Auction Terms, it does not rely on any statement, representation, assurance or warranty of the Auctioneer or any other Person other than as expressly set out in these Auction Terms. The Auction Participant agrees and undertakes to the Auctioneer that its only rights and remedies available arising out of or in connection with these Auction Terms or their subject matters shall be solely for breach of contract, in accordance with the provisions of these Auction Terms.
- (c) Nothing in this Section 9.11 shall effect the coming into force or rights of the parties under an ICE Carbon Credit Agreement.

9.12 Severability

If any provision of these Auction Terms (or part of any provision) is found by any court or other Governmental Authority to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of these Auction Terms, and the validity and enforceability of the other provisions of these Auction Terms shall not be affected.

10. GOVERNING LAW AND DISPUTE RESOLUTION

10.1 Governing law

These Auction Terms and any non-contractual obligations arising out of or in connection with it, will be governed by and construed in accordance with the laws of England and Wales.

10.2 Disputes

- (a) Any Dispute between the parties arising out of, in relation to, or in connection with these Auction Terms, including any dispute as to the existence, construction, validity, interpretation, enforceability, termination or breach of these Auction Terms, shall be referred to and finally settled by arbitration under the Arbitration Rules of the London Court of International Arbitration ("LCIA"), which LCIA Rules are deemed to be incorporated herein. In the event of a conflict between any provision of the LCIA Rules and this Section 10.2, this Section 10.2 shall prevail.
- (b) The seat of arbitration will be London, England and the language of the arbitration proceedings shall be English.
- (c) The tribunal will comprise three arbitrators appointed by the LCIA Court. The LCIA Court shall nominate one of the arbitrators to act as the chairman of the tribunal. The members of the tribunal will be persons considered by the LCIA Court in its discretion to have experience with respect to the subject matter of the Dispute. Tribunal members shall not be current or former employees or directors of any person that is a party to the arbitration, current or former employees of the Auctioneer or any person or persons with a material interest or conflict of interest in the outcome of the Dispute.
- (d) The parties agree that any other Auction Participant may be joined as an additional party to an arbitration under this Section 10.2 and that arbitrations under this Section 10.2 may be consolidated into a single arbitration with other arbitrations involving any other Auction Participant. In case of such joinder, the tribunal shall make a single, final award determining all Disputes between the relevant parties in those proceedings. The parties shall each be deemed irrevocably to have waived any right to challenge any award or order of the tribunal by reason of the fact that it arises from a joined or consolidated arbitration.
- (e) The commencement of any arbitral proceedings shall be without prejudice to and shall not limit in any way the right of the Auctioneer to instigate any rights under the Auction Terms.
- (f) The award of the tribunal will be final and binding on the parties from the day it is made. Judgment upon the award may be entered or the award enforced through any other procedure in any court of competent jurisdiction. The parties shall each execute any such award and, to the extent permitted by law, irrevocably shall be deemed to have waived the making of any appeal or other means of recourse that might be open to them.

10.3 **Enforcement of Auction Terms**

The Auctioneer is under no obligation to enforce these Auction Terms against an Auction Participant or Applicant at the request of another Auction Participant or Applicant.

ANNEX 1

AUCTION PARTICIPATION AGREEMENT

**AUCTION PARTICIPATION AGREEMENT OF THE CARBON CREDIT AUCTION
TERMS ENTERED WITH ICE FUTURES EUROPE**

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This Auction Participation Agreement (the "Agreement") is made on _____,

BETWEEN:

- (1) ICE Futures Europe, an unlimited company incorporated under the laws of England and Wales, with registered office at Milton Gate, 60 Chiswell Street, London, EC1Y 4SA and company no. 01528617, who will conduct and administer Auctions (the "**Auctioneer**"); and
- (2) [●], incorporated under the laws of [●] with registered number [●], with its registered office at [●] ("**Applicant**"),

each being a "Party" to this Agreement.

WHEREAS:

- A. The Auctioneer carries on the business of an auctioneer in relation to Carbon Credits in accordance with its Auction Terms and including, in relation to any particular Auction, the Product Specifications applicable to that Auction.
- B. Pursuant to the Auction Terms, the Auctioneer may conduct one or more Auctions.
- E. The Applicant wishes to participate in one or more Auctions as an Auction Participant.
- F. The Applicant has agreed to become party to any ICE Carbon Credit Agreement that arises pursuant to an Auction as a result of being the Seller or Winning Bidder in relation to that Auction.
- G. This Agreement is a contract between the Auctioneer and the Applicant, supplementing the Auction Terms.

NOW IT IS AGREED AS FOLLOWS:

1. **INTERPRETATION**

- 1.1 The following words in this Agreement shall have the following meanings:

- (a) **"Auction Terms"** means the auction terms published by the Auctioneer, as amended from time to time; and
 - (b) all other capitalised terms used but not defined herein shall have the meaning given to them in the Auction Terms.
- 1.2 All references in this Agreement to the Auction Terms, the ICE Carbon Credit Agreement, the User Privacy Notice, the ICE Data Services and Software Services Agreement or any other agreement, include the same as amended, modified, restated or supplemented from time to time by the Auctioneer, pursuant to the terms of such documents.
- 1.3 A reference to a Clause, unless the context otherwise requires and except as expressly provided, is a reference to a clause of this Agreement.
- 1.4 The headings in this Agreement are provided for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
- 1.5 The words "include" or "including" are to be construed without limitation to the generality of the foregoing.
- 1.6 Any reference to a statute, statutory provision or rule shall include any notice, order, guidance, example, regulation or subordinate legislation made from time to time under that statute, statutory provision or rule which is in force from time to time. Any reference to a statute or statutory provision shall include such statute or provision as from time to time amended, modified, re-enacted or consolidated from time to time and (so far as liability thereunder may exist or can arise) shall include also any past statute or statutory provision (as from time to time modified, re-enacted or consolidated) which was applicable at the time of any relevant action or omission.

2. **AUCTION PARTICIPATION AND AGREEMENT TO AUCTION TERMS**

- 2.1 The Applicant has taken knowledge of the Auction Terms and undertakes, covenants to, and agrees with the Auctioneer to:
- (a) observe, comply with and be bound by this Agreement;
 - (b) observe, comply with and be bound by the Auction Terms (as amended in accordance with the Auction Terms from time to time) as an Auction Participant as if the Auction Terms were set out herein;
 - (c) observe and comply with Data Protection Laws;
 - (d) be subject to and bound by all of the provisions and requirements of the Auction Terms in relation to payments, title, rights, obligations, liabilities, property (whether tangible or intangible) including any transfers, assignments and dispositions required thereunder;
 - (e) be subject to and bound by all representations, warranties, agreements and acknowledgements that arise pursuant to the Auction Terms from time to time;
 - (f) observe, comply with and be bound by any ICE Carbon Credit Agreement to which it becomes a party and which arise pursuant to the Auction Terms from time to time and to all rights, obligations and liabilities pursuant to such ICE Carbon Credit Agreement;

- (g) be subject to any requirement imposed as a result of a request, decision, determination, direction, sanction, requirement, award or discretion that the Auctioneer is entitled to make, exercise or impose pursuant to the Auction Terms;
- (h) be responsible for the actions and omissions of its representatives as set out in the Auction Terms;
- (i) submit to the jurisdiction and be bound by any decision, determination, direction, sanction, requirement or award of any arbitral tribunal, court or other body appointed or formed pursuant to the Auction Terms or that has jurisdiction over any matter in accordance with the Auction Terms.
- (j) keep username(s), password(s) and any other access credentials issued by the Auctioneer confidential;
- (k) keep (and represent that it has kept) all information received from the Auctioneer in connection with any Auction (including all information obtained on the password-protected section of the Auctioneer's website or other systems) confidential on the terms set forth in the Auction Terms; and
- (l) act for the purposes of this Agreement, and be liable to the Auctioneer, as principal (and not as agent or in any other capacity, fiduciary or otherwise).

2.2 The Applicant represents and warrants that:

- (a) it meets the Participation Criteria, or will meet the Participation Criteria prior to participation in any Auction;
- (b) neither the execution of this Agreement nor performance under the Auction Terms by or on behalf of the Applicant or the Auctioneer will breach or conflict with any provision of the memorandum of incorporation, articles of association, by-laws, partnership agreement, limited liability company agreement or any other organisational document of the Applicant, or with any agreement or Applicable Law which is binding upon or affects the Applicant;
- (c) it is incorporated and registered in, and will access Auctions only from, jurisdictions in which it is permissible for it to enter into this Agreement or an ICE Carbon Credit Agreement and to participate in Auctions;
- (d) the Applicant and its signatories each have full power and all necessary authority to execute this Agreement and perform any act that may be required pursuant to this Agreement, the Auction Terms and any ICE Carbon Credit Agreement;
- (e) the Applicant is duly organised and validly existing under Applicable Laws of the jurisdiction of its incorporation and is in good standing under such Applicable Laws; and
- (f) it possesses the experience, knowledge and expertise to make its own investment decisions in relation to Carbon Credits and properly assess the risks that it incurs;
- (g) after having had the opportunity to ask questions and receive answers from the Auctioneer regarding the Auction Terms and the operation of Auctions, it has received all the information it considers necessary and appropriate for deciding whether to become an Auction Participant and has consulted its own independent advisers, or

otherwise satisfied itself concerning, without limitation, the tax, legal and other considerations relevant to becoming an Auction Participant.

3. NOTICES

3.1 The Auctioneer shall make future notifications to the Applicant regarding any Auction or matters under the Auction Terms solely to the following contact person:

Contact person:

Title:

Contact address:

Contact tel.:

Email address:

3.2 The Applicant confirms that each of the individuals named hereunder have the power to sign all statements and make all declarations required for qualification as a participant in an Auction.

1. Name: _____
Title: _____
Signature: _____
Date: _____

[If applicable:]

2. Name: _____
Title: _____
Signature: _____
Date: _____

4. TERMINATION

This Agreement shall automatically terminate upon the Applicant ceasing to be an Auction Participant, including on any date on which the Applicant's status as an Auction Participant is terminated pursuant to the Auction Terms, with effect from the date of such termination.

5. MISCELLANEOUS

5.1 No Person other than the Auctioneer and an Applicant shall have any right pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement. No Applicant shall have any right to enforce any provision of this Agreement against another applicant or Auction Participant. Nothing in this Clause 5.1 shall effect the coming into force or rights of the parties under an ICE Carbon Credit Agreement.

5.2 This Agreement and any non-contractual obligations arising out of or in connection with it, will be governed by and construed in accordance with the laws of England and Wales.

- 5.3 Any Dispute between the parties arising out of, in relation to, or in connection with this Agreement, including any dispute as to the existence, construction, validity, interpretation, enforceability, termination or breach of this Agreement, shall be settled in accordance with the dispute resolution provisions under Section 10.2 of the Auction Terms (as amended from time to time), as if that Section was incorporated into this Agreement, *mutatis mutandis*.
- 5.4 Any waiver of any right or consent under this Agreement is only effective if it is in writing and signed by the waiving or consenting party, and applies only in the circumstances for which it is given and shall not prevent the party who is giving it from subsequently relying on the relevant provision. No delay or failure to exercise any right under this Agreement shall operate as a waiver. No single or partial exercise of any right under this Agreement shall prevent any further exercise of the same or any other right under this Agreement.
- 5.5 If any provision of this Agreement (or part of any provision) is found by any court or other Governmental Authority to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 5.6 No Applicant shall at any time be entitled to assign any of its rights, transfer by novation any of its rights and obligations or create any interest whatsoever in any of its rights or obligations under this Agreement to a third party (or purport to do so) unless the Auctioneer provides its prior written consent.
- 5.7 The Auctioneer shall be entitled to assign, allocate or transfer any of its rights, liabilities or obligations resulting from this Agreement to a third party, upon giving notice of the same to each Applicant.
- 5.8 Any purported transfer of any rights, liabilities or obligations under this Agreement other than in accordance with Clauses 5.6 or 5.7 shall be null and void.
- 5.9 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Auctioneer and any Applicants. Nothing in this Agreement Terms is intended to, or shall be deemed to, constitute any party to this Agreement as the trustee, beneficiary, agent or principal of the other party, nor authorise any party to this Agreement to make or enter into any commitments for or on behalf of any other party.
- 5.10 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of the counterparts together shall constitute the same document.

Agreed by:

Signature:

Applicant Name: _____

By: _____

Title: _____

Date: _____

ANNEX 2

ICE CARBON CREDIT AGREEMENT

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1. DEFINITIONS AND INTERPRETATION

1.1 This document sets out the terms of the agreement arising between a Seller and Winning Bidder pursuant to an Auction under the Auction Terms.

1.2 These terms may be modified pursuant to the relevant Product Specifications.

1.3 As a result of an Auction, each Winning Bidder and the Seller have agreed to become bound by the terms of this ICE Carbon Credit Agreement, which arises pursuant to the Auction Terms and the associated Product Specifications.

1.4 It is intended that a Winning Bidder and a Seller become contractually bound to one another on the terms and conditions of this ICE Carbon Credit Agreement through acceptance by conduct as a result of their participation in Auctions. Offer and acceptance shall be deemed to have become complete as a result of the Auctioneer notifying the Winning Bidder and Seller of the ICE Carbon Credit Agreement(s) between the Parties (including details of the Auction Price and number of Contracted Carbon Credits), following the completion of the relevant Auction.

1.5 It is not intended nor necessary that there be any documentary execution of this ICE Carbon Credit Agreement in order for:

- (a) an ICE Carbon Credit Agreement to arise or become valid; or
- (b) the obligations of the Parties under this ICE Carbon Credit Agreement to arise or fall due.

1.6 This ICE Carbon Credit Agreement is published by the Auctioneer as an Annex to the Auction Terms but does not form part of the Auction Terms. This ICE Carbon Credit Agreement governs, instead, the relationship only between the Winning Bidder and the Seller.

1.7 The following interpretive provisions apply to this ICE Carbon Credit Agreement:

- (a) References to a "**Section**" refer to the corresponding section or subsection of this ICE Carbon Credit Agreement unless otherwise specified.

- (b) The headings in this ICE Carbon Credit Agreement are provided for convenience only and shall not affect in any way the meaning or interpretation of this ICE Carbon Credit Agreement.
 - (c) The words "**include**" or "**including**" are to be construed without limitation to the generality of the foregoing.
 - (d) All references to "**tax**" shall include, without limitation, any tax, levy, impost, social security contributions, duty, or other charge or withholding of a similar nature (including any penalty or interest payable in connection with such tax or with any failure to pay or any delay in paying the same). All references to "value added tax" shall include any sales, use or goods and sales tax and any other tax of a similar nature.
 - (e) Any reference to a statute, statutory provision or rule shall include any notice, order, guidance, example, regulation or subordinate legislation made from time to time under that statute, statutory provision or rule which is in force from time to time. Any reference to a statute or statutory provision shall include such statute or provision as from time to time amended, modified, re-enacted or consolidated from time to time and (so far as liability thereunder may exist or can arise) shall include also any past statute or statutory provision (as from time to time modified, re-enacted or consolidated) which was applicable at the time of any relevant action or omission.
 - (f) References to any rules, terms or agreement are references to such rules, terms or agreement as amended or restated from time to time.
 - (g) Unless the context requires otherwise, the singular shall include the plural and vice versa.
- 1.8 Terms defined or given a particular construction or interpretation in the Auction Terms have the same meaning in this ICE Carbon Credit Agreement unless a contrary indication appears.
- 1.9 In addition, the following definitions apply to this ICE Carbon Credit Agreement:

"**Affiliate**" means in relation to any Person, another Person that Controls, is Controlled by, or is under common Control with, such Person where "**Control**" of a Person by another means that the other (whether alone or acting in concert with others, whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that Person or of any other Person which controls that Person or otherwise controls or has the power to control the affairs and policies of that Person or of any other Person which controls that Person. "**Controlled**" and "**Controlling**" shall be construed accordingly.

"**Contracted Carbon Credit**" means Carbon Credits that are the subject of the relevant Auction and Purchase Order, whose Delivery is required pursuant to this ICE Carbon Credit Agreement.

"**Delivery**" means either Transferring or Retiring the Contracted Carbon Credits, in accordance with the Purchase Order. "**Delivered**" and "**Deliver**" shall be construed accordingly.

"**Delivery Date**" means the date specified for Delivery under a Purchase Order, being the date falling two (2) Payment Days after the date on which the Purchase Order (or a re-issued and rectified Purchase Order) was served on the Seller by the Auctioneer or, if that date is not a Delivery Day, the next following Delivery Day.

"**Delivery Day**" means a day where the Registry identified in the Product Specification for the purposes of Delivery is open for business.

"**Dispute**" means any dispute, difference, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise).

"**Encumbrance**" means:

- (a) any claim, charge, mortgage, security, lien, equity, beneficial interest, power of sale, option or other right to purchase, usufruct, hypothecation, retention of title, right of pre-emption or other third party right or security interest of any kind or an agreement to create any of the foregoing; and
- (b) any other restriction of any kind under any regulatory or voluntary regime or Applicable Law that applies to the Seller and may affect the ability of the Winning Bidder to receive, hold or use a Carbon Credit or any right in any Carbon Credit purchased under the ICE Carbon Credit Agreement,

and "**Encumber**" shall be construed accordingly.

"**EFFR**" means the U.S. Dollar effective federal funds rate administered by the Federal Reserve Bank of New York (or any successor administrator).

"**Party**" or "**Parties**" means each party to this ICE Carbon Credit Agreement.

"**Payment Date**" means, in accordance with the Product Specifications and the Purchase Order, either:

- (c) the Payment Day falling one (1) Payment Day prior to the Delivery Date; or
- (d) the Payment Day falling five (5) Payment Days after the day on which Delivery is completed.

"**Payment Day**" means a day on which commercial banks are open for general business (including settling payments and dealings in foreign exchange and foreign currency deposits) in New York or, if the payment obligation is not denominated in United States Dollar, the principal financial centre of the currency of the payment obligation that is payable.

"**Purchase Price**" has the meaning given in Section 2.6(a).

"**Representatives**" means, in relation to a Party, its Affiliates, members, partners, managers, directors, officers, employees, agents and representatives, including without limitation attorneys, accountants, consultants and financial advisors.

"**Retire**" means the permanent removal of the Contracted Carbon Credits from circulation in the relevant Registry in accordance with the applicable Registry Rules and Standard Rules. "**Retirement**" shall be construed accordingly.

"**Transfer**" means delivering the Contracted Carbon Credits from the Seller's Registry Account to the Winning Bidder's Registry Account in accordance with the applicable Registry Rules and Standard Rules.

"**Winning Bidder's Registry Account**" means the Registry Account designated under the Purchase Order to receive the Contracted Carbon Credits to be Transferred under this ICE Carbon Credit Agreement.

2. PURCHASE AND SALE OF CONTRACTED CARBON CREDITS

2.1 Formation of ICE Carbon Credit Agreement

- (a) On the day of the Auction and immediately upon the Auctioneer notifying the Auction Participant that it is the Winning Bidder, and without the need for any further step, a contract in the form of this ICE Carbon Credit Agreement shall arise between that Winning Bidder and the Seller, pursuant to the Auction Terms.
- (b) The Parties acknowledge that the Auctioneer shall notify the Seller that the ICE Carbon Credit Agreement has arisen with the Winning Bidder, pursuant to the Auction Terms.

2.2 Purchase Order

- (a) In accordance with the Auction Terms:
 - (i) following the conclusion of the Auction the Auctioneer will provide a Purchase Order to the Seller and the Winning Bidder setting out details of the Contracted Carbon Credits; and
 - (ii) the Parties may notify the Auctioneer if they consider that a Purchase Order is incorrect but this shall not affect the validity of the Purchase Order unless and until the Auctioneer, in its absolute discretion, re-issues the Purchase Order to the Seller and the Winning Bidder.

2.3 Delivery

- (a) On the Delivery Date, and subject to the conditions of this ICE Carbon Credit Agreement, the Purchase Order and the Auction Terms:
 - (i) the Seller shall Deliver the Contracted Carbon Credits to the Winning Bidder by providing an instruction to the Registry (in such format as may be required by the Registry Rules) directing the Registry to either Transfer or Retire the Contracted Carbon Credits; and
 - (ii) the Winning Bidder shall accept Delivery of the Contracted Carbon Credits from or by the Seller.
- (b) Delivery of Contracted Carbon Credits shall be free and clear of any Encumbrances and together with all rights now and hereafter attaching to the Contracted Carbon Credits.

2.4 Delivery by way of Transfer

- (a) Where Delivery takes place by way of Transfer:
 - (i) the Seller shall take all necessary steps to Deliver (or procure the Delivery of) the Contracted Carbon Credits to the Winning Bidder's Registry Account on the Delivery Date;
 - (ii) the Winning Bidder shall take all necessary steps to enable Delivery of the Contracted Carbon Credits into the Winning Bidder's Registry Account on the Delivery Date;
 - (iii) upon the Contracted Carbon Credits being credited to the Winning Bidder's Registry Account:

- (A) legal title to the Contracted Carbon Credits will pass to the Winning Bidder;
 - (B) all beneficial interests in the Contracted Carbon Credits will pass to the Winning Bidder once the Purchase Price has been paid and received by the Seller, without prejudice to any change in beneficial interests having arisen earlier; and
- (iv) Delivery will be considered to be completed when the Registry has taken the necessary steps to credit the Contracted Carbon Credits to the Winning Bidder's Registry Account in accordance with the Registry Rules and Standard Rules.

2.5 Delivery by way of Retirement

- (a) Where Delivery takes place by way of Retirement:
- (i) the Seller shall Retire the Contracted Carbon Credits on behalf of the Winning Bidder, or procure such Retirement, on the Delivery Date;
 - (ii) the Seller shall carry out the Retirement in accordance with the Registry Rules and Standard Rules including, where necessary, instructing the Register and by transferring the Contracted Carbon Credits to the retirement account of the Registry on the Delivery Date;
 - (iii) the Seller shall, where applicable, in relation to that Retirement request the Register to record the wording specified in the Purchase Order, using whichever format or wording that is required under the Registry Rules; and
 - (iv) the Seller shall confirm, or procure the Registry to confirm, in writing to the Winning Bidder, as soon as possible after the Retirement, that the Contracted Carbon Credits have been Retired in accordance with the Purchase Order and the Registry Rules and Standard Rules.

2.6 Payment of Purchase Price

- (a) The purchase price for the Contracted Carbon Credits shall be an amount equal to the Auction Price multiplied by the number of lots allocated to the Winning Bidder pursuant to the Auction (the "**Purchase Price**").
- (b) The Purchase Price shall be paid by the Winning Bidder to the Seller by wire transfer or electronic bank transfer of immediately available U.S. Dollars. Payment of the Purchase Price shall be deemed satisfied under this ICE Carbon Credit Agreement only once cleared funds are received by the Seller in the account specified in the Purchase Order.
- (c) If the Winning Bidder is overdue with any payment due under Sections 2.6, 2.7 or 2.8, then without prejudice to the Seller's other rights or remedies, the Winning Bidder shall be liable to pay interest on the overdue amount at a compounded rate equal to the EFRR from (and including) the Payment Date to (but excluding) the actual date of payment.

2.7 Payment of Purchase Price prior to Delivery

- (a) This Section 2.7 applies if the Purchase Order specifies that the Payment Date shall be prior to the Delivery Date.

- (b) On or before the Payment Date, the Winning Bidder shall pay to the Seller the Purchase Price in cleared funds at the account specified in the Purchase Order.
- (c) If the Winning Bidder does not pay the Purchase Price by the Payment Date, the Delivery Date will be postponed to the Business Day falling two (2) Business Days after the day on which payment is in fact made in cleared funds, or, if that date is not a Delivery Day, the next following Delivery Day. References to "Delivery Date" in this ICE Carbon Credit Agreement shall be interpreted accordingly.
- (d) Without prejudice to any other rights or remedies under this ICE Carbon Credit Agreement, if the Winning Bidder fails to pay the Purchase Price within seven (7) Payment Days of the Payment Date, the Seller may terminate this ICE Carbon Credit Agreement in writing and issue a written demand that the Winning Bidder pay:
 - (A) the positive difference, if any, between (x) the Purchase Price minus (y) the price that the Seller would receive in an arm's length transaction to sell an equal quantity of Carbon Credits, as determined reasonably and in good faith, of an equivalent quality and type, to the Contracted Carbon Credits; plus
 - (B) interest at a compounded rate equal to the EFFR for the period from (and including) the Payment Date to (but excluding) the date on which the Seller receives cleared funds in satisfaction of the amount due under this Section 2.7(d), calculated on the Purchase Price; plus
 - (C) the amount of the Seller's reasonable costs and expenses incurred in respect of the Winning Bidder's failure to pay the Purchase Price.
- (e) Where Section 2.7(d) applies, the Winning Bidder shall pay to the Seller the payment due within three (3) Payment Days following receipt of such demand from the Seller.

2.8 **Payment of Purchase Price after Delivery**

- (a) This Section 2.8 applies if the Purchase Order specifies that the Payment Date shall be after the Delivery Date.
- (b) If the Contracted Carbon Credits are Delivered on the Delivery Date in accordance with Section 2.3, then on or before the Payment Date, the Winning Bidder shall pay to the Seller the Purchase Price in cleared funds at the account specified in the Purchase Order.
- (c) If the Seller does not Deliver the Contracted Carbon Credits by the Delivery Date:
 - (i) Section 2.9 shall apply as regards the Delivery;
 - (ii) as regards payment, the Payment Date will be postponed to the Payment Day falling five (5) Payment Days after the day on which Delivery is in fact completed, provided that, in the case of a Delivery of some but not all of the Contracted Carbon Credits, the Purchase Price multiplied by the proportion of the Contracted Carbon Credits that are not Delivered will be payable on the postponed Payment Date (and the original Payment Date shall apply to the Purchase Price multiplied by the proportion of timely delivered Contracted Carbon Credits); and

- (iii) references to "Payment Date" in relation to that outstanding Purchase Price in this ICE Carbon Credit Agreement shall be interpreted in accordance with Section 2.8(c)(ii).

2.9 Failure to Deliver or accept Delivery of Carbon Credits

- (a) If, for any reason, (x) the Seller fails to make, or (y) the Winning Bidder fails to accept, a Delivery of Contracted Carbon Credits, then:
 - (i) this Section 2.9 will apply; and
 - (ii) the Party failing to make or accept a Delivery will be deemed the "**Defaulting Party**", and the other Party will be deemed the "**Affected Party**".
- (b) Where this Section applies the Affected Party may, within 3 Business Days of the Delivery Date, by notice to the Defaulting Party, require the Defaulting Party to remedy such failure (a "**Remedy Notice**"), except to the extent that:
 - (i) this failure was caused by the Affected Party's non-performance under this ICE Carbon Credit Agreement; or
 - (ii) the Defaulting Party was relieved from complying pursuant to a Force Majeure in accordance with Section 5.3.
- (c) If the failure referred to in Section 2.9(a) is not remedied by the Defaulting Party within one (1) Delivery Day after receipt of a Remedy Notice, the Affected Party may issue a written demand that the Defaulting Party:
 - (i) make or accept Delivery (as applicable) on a different date, such date being within seven (7) Business Days of the original Delivery Date or, if there is no Delivery Day within that period, the next following Delivery Day; or
 - (ii) pay to the Affected Party an amount calculated in accordance with Section 2.9(e).
- (d) If the failure referred to in Section 2.9(a) is remedied by the Defaulting Party within one (1) Delivery Day after receipt of a Remedy Notice or the Defaulting Party makes or accepts delivery in accordance with Section 2.9(c)(i), then the Defaulting Party shall pay to the Affected Party interest on an amount equal to the Purchase Price multiplied by the proportion of Contracted Carbon Credits not Delivered or accepted for Delivery for the period from (and including) the Delivery Date to (but excluding) the actual date of Delivery or acceptance of Delivery (as applicable), at a compounded rate equal to the EFR.
- (e) Where the Affected Party issues a written demand for payment in accordance with Section 2.9(c)(ii), or if the Defaulting Party fails to accept or make a Delivery on the revised date in accordance with Section 2.9(c)(i), the Affected Party may terminate this ICE Carbon Credit Agreement in writing (without prejudice to any other rights of the Parties under this Section 2.9) and the Defaulting Party shall pay the Affected Party:
 - (i) if the Affected Party is the Winning Bidder and the following calculation results in a positive amount:
 - (A) the positive difference, if any, between (x) the price the Affected Party would pay in an arm's length transaction to buy, on the date of the

written demand, an equal quantity of Carbon Credits, as determined reasonably and in good faith, of an equivalent quality and type, to the Contracted Carbon Credits not Delivered, minus (y) the Purchase Price multiplied by the proportion of Contracted Carbon Credits not Delivered; plus

- (B) interest for the period from (and including) the Delivery Date to (but excluding) the date on which the Affected Party receives cleared funds in satisfaction of the amount due under this Section 2.9(e), calculated on an amount equal to the Purchase Price multiplied by the proportion of Contracted Carbon Credits not Delivered, at a compounded rate equal to the EFFR; plus
 - (C) the amount of the Affected Party's reasonable costs and expenses incurred in respect of the Defaulting Party's failure to Deliver; plus
 - (D) if the Winning Bidder has paid the Purchase Price in accordance with Section 2.7, the Purchase Price multiplied by the proportion of Contracted Carbon Credits not Delivered; or
- (ii) if the Affected Party is the Seller and the following calculation results in a positive amount:
- (A) the positive difference, if any, between (x) the Purchase Price multiplied by the proportion of Contracted Carbon Credits not accepted for Delivery minus (y) the price that the Affected Party would receive in an arm's length transaction to sell an equal quantity of Carbon Credits, as determined reasonably and in good faith, of an equivalent quality and type, to the Contracted Carbon Credits not accepted for Delivery; plus
 - (B) interest for the period from (and including) the Delivery Date to (but excluding) the date on which the Affected Party receives cleared funds in satisfaction of the amount due under this Section 2.9(e), calculated on an amount equal to the Purchase Price multiplied by the proportion of Contracted Carbon Credits not accepted for Delivery, at a compounded rate equal to the EFFR; plus
 - (C) the amount of the Affected Party's reasonable costs and expenses incurred in respect of the Defaulting Party's failure to accept Delivery; less
 - (D) if the Winning Bidder has paid the Purchase Price in accordance with Section 2.7, the Purchase Price multiplied by the proportion of Contracted Carbon Credits not accepted for Delivery.
- (f) Where Section 2.9(e) applies, the Defaulting Party shall pay to the Affected Party the payment due within three (3) Payment Days:
- (i) of the failure to make Delivery on the revised Delivery date in accordance with Section 2.9(c)(i); or
 - (ii) following receipt of such demand from the Affected Party in accordance with Section 2.9(c)(ii).

- (g) Notwithstanding the introductory language to 2.9(e)(ii), if:
 - (i) the calculation in 2.9(e)(ii) results in a negative number;
 - (ii) the Winning Bidder is the Defaulting Party;
 - (iii) the Winning Bidder has paid the Purchase Price in accordance with Section 2.7; and
 - (iv) Delivery has not occurred within 7 Business Days of the Delivery Date or, if there is no Delivery Day within that period, the next following Delivery Day,Sections 2.9(h) and 2.9(i) shall apply.
- (h) No later than 14 Delivery Days after the Delivery Date, the Winning Bidder may issue a written demand for the positive difference between the Purchase Price multiplied by the proportion of Contracted Carbon Credits not accepted for Delivery, less the amounts specified in Sections 2.9(e)(ii)(A), 2.9(e)(ii)(B), and 2.9(e)(ii)(C). Following receipt of a demand, the Seller shall pay such amount within three (3) Payment Days.
- (i) Upon the Winning Bidder's receipt of the payment specified under Section 2.9(h), the Seller's obligation to Deliver the Contracted Carbon Credits not Delivered to the Winning Bidder by the Delivery Date shall be fully discharged.

2.10 Charges and Tax

- (a) The Purchase Price shall be exclusive of any charges payable by either the Winning Bidder, the Seller or the Auctioneer to any third party in respect of maintaining an account at the Registry or effecting a Delivery on the Registry.
- (b) The Purchase Price shall be exclusive of any value added tax or any other transfer, registration, documentation or similar tax or duty that may be or become payable in respect of the sale or transfer of (or the agreement to sell or transfer) Carbon Credits, and the Winning Bidder shall, other than where such taxes or duties have been paid by the Winning Bidder, in addition to the Purchase Price pay an amount equal to any such taxes or duties such that they are borne by the Winning Bidder. If value added tax is chargeable on the Purchase Price, the Seller shall provide a valid value added tax invoice to the Winning Bidder in respect of the supply.
- (c) The payment of the Purchase Price and any other payment arising under this ICE Carbon Credit Agreement shall be made without deduction or withholding for or on account of tax, save only as may be required by Applicable Law. To the extent that such a deduction or withholding is required by Applicable Law, the payer shall pay such additional amounts as may be necessary to ensure that the net amount received by the recipient (after such deduction or withholding) shall equal the amount which would have been received had no deduction or withholding been so required.

3. NATURE OF THE SALES

3.1 Absolute Transfer or Retirement

- (a) It is the express intent of the Parties that the Delivery of the Contracted Carbon Credits from the Seller to the Winning Bidder under this ICE Carbon Credit Agreement be, and be treated for all purposes (other than accounting purposes and subject to the tax

characterisation of the Winning Bidder) as, a sale of assets by the Seller of such Contracted Carbon Credits to the Winning Bidder.

- (b) Where Delivery is made by Transfer, the Winning Bidder is the legal, equitable and beneficial owner of the Contracted Carbon Credits upon the Transfer of the Contracted Carbon Credits as described in Section 2.4, with full rights to transfer, alienate and pledge the same (subject to no Encumbrances), and Seller shall use commercially reasonable efforts to cooperate with the Winning Bidder by executing documents or agreements to properly reflect the Winning Bidder's rights in the Contracted Carbon Credits intended to be conveyed by this ICE Carbon Credit Agreement.
- (c) Where Delivery is made by Retirement, to the extent possible under the relevant Standard Rules, the Registry Rules and Applicable Law, all legal, equitable and beneficial title in the Retired Contracted Carbon Credits shall be extinguished, no further transfer of that Contracted Carbon Credits may be made and that Contracted Carbon Credits shall become non-transferable. This Section 3.1(c) is not intended to restrict any record keeping obligations of the Parties and the Registry as regards the Retirement.

3.2 Prohibition on Assignment

- (a) No Party shall be entitled to assign, allocate or transfer, or create any Encumbrance whatsoever in relation to, any of its rights, liabilities or obligations under this ICE Carbon Credit Agreement except with the prior written consent of the other Party and the Auctioneer.
- (b) Any purported transfer of any rights, liabilities or obligations by the Parties under this ICE Carbon Credit Agreement other than:
 - (i) as a result of the purchase and sale referred to in Section 2;
 - (ii) in accordance with Section 3.2(a); or
 - (iii) any equitable interest granted in favour of the Winning Bidder's customer, where the purchase by the Winning Bidder under this ICE Carbon Credit Agreement was made pursuant to an equivalent order by that customer,

shall be null and void.

- (c) Subject to Section 3.2(d) and without prejudice to Section 3.2(b)(iii), no provision of this ICE Carbon Credit Agreement is to be construed as creating any rights enforceable by a third party pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, and all third party rights implied by law are, to the extent permissible by law, excluded from the ICE Carbon Credit Agreement.
- (d) Sections 3.2(a), 4.3, 5.6 and 5.15 shall be construed as creating rights that may be enforced by the Auctioneer.

4. REPRESENTATIONS AND WARRANTIES

4.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Party, such representations and warranties to be repeated on the date of entry of the ICE Carbon Credit Agreement and the Delivery Date, that:

- (a) it is duly organised and validly exists under the laws of its governing jurisdiction and is in good standing under such laws and is qualified to conduct its business in that jurisdiction;
- (b) it is in full compliance with the Auction Terms;
- (c) it has, and each authorised signatory acting on its behalf has, the full power and necessary authority to enter into the ICE Carbon Credit Agreement and to perform its obligations under it; and it has taken all necessary actions to authorise the entry into and the observance and performance of its obligations under the ICE Carbon Credit Agreement including the making of all representations and filings with the Registry;
- (d) the entry into and observance and performance of its obligations under the ICE Carbon Credit Agreement do not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing and organisational documents or any contract to which it is a party or by which any of its assets are bound or affected, or any Applicable Laws which is binding upon or affects it;
- (e) it has in full force and effect all governmental and other licences, authorisations, permits, consents, contracts and other approvals (if any) that are required to enable it to fulfil any of its obligations under the ICE Carbon Credit Agreement;
- (f) the ICE Carbon Credit Agreement constitutes a legal, valid and binding obligation on it enforceable in accordance with its terms, except as may be limited by Insolvency or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability (whether enforcement is sought in equity or at law);
- (g) it is not relying upon any representations of the other Party other than those expressly set out in this ICE Carbon Credit Agreement, the Auction Terms and the Product Specifications and it has entered into the ICE Carbon Credit Agreement after a full opportunity to review its terms and conditions;
- (h) it is capable of assessing, and understands and accepts, the merits, terms, conditions and risks of the ICE Carbon Credit Agreement, and it is also capable of assuming, and assumes the risks of the ICE Carbon Credit Agreement;
- (i) it possesses the experience, knowledge and expertise to make its own investment decisions in relation to the Contracted Carbon Credits and properly assess the risks that it incurs;
- (j) the other Party is not acting as a fiduciary or an advisor for it, nor has the other Party given to it any advice, representation, assurance or guarantee as to the expected performance, benefit or result of the ICE Carbon Credit Agreement (other than as expressly set out in the ICE Carbon Credit Agreement);
- (k) it has made its own independent decisions to enter the ICE Carbon Credit Agreement and as to whether the entry into of the ICE Carbon Credit Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary;
- (l) it conducts its business so as not to give the Standard or Registry, or their administrators, cause to refuse, reject or cancel the Delivery (whether in whole or in part);

- (m) the Seller, and the Winning Bidder unless it has elected for Delivery by way of Retirement, has a Registry Account in accordance with the Registry Rules and Standard Rules in its own name and so long as Delivery has not been effected it will keep its Registry Account operational;
- (n) it will act for the purposes of this ICE Carbon Credit Agreement, and be liable to the other Party, as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (o) it has at all times fully complied with the Auction Terms, the Registry Rules and Standard Rules to the extent necessary to permit the Delivery contemplated by the ICE Carbon Credit Agreement; and
- (p) the Delivery timetable in relation to the Contracted Carbon Credits is that of an unregulated spot or forward transaction and that it is not the Parties intention to enter into a derivative, future or option for purposes of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or Directive 2014/65/EU; and
- (q) there is no Dispute pending or, to the knowledge of such Party, threatened against, relating to or that might have a material adverse effect on such Party or the legality, validity or enforceability against it of the ICE Carbon Credit Agreement or such Party's ability to perform its obligations under the ICE Carbon Credit Agreement.

4.2 **Seller Representations and Warranties**

The Seller represents and warrants to the Winning Bidder upon Delivery of Contracted Carbon Credits, that with respect to the Contracted Carbon Credits Delivered:

- (a) the Contracted Carbon Credits have been issued in respect of eligible and certified projects in accordance with the Registry Rules and Standard Rules and are of the quality specified under the relevant Product Specifications;
- (b) the Contracted Carbon Credits are additional to and not created pursuant to any requirement or obligation under any Applicable Law;
- (c) it has the right to Deliver full legal, beneficial and equitable title to the Contracted Carbon Credits, free of any interests or Encumbrances and fully transferable without claims by third parties and has not sold, transferred, assigned, licensed, disposed of, granted or otherwise created any interest or Encumbrance in the Contracted Carbon Credits other than as contemplated in this ICE Carbon Credit Agreement, and will not do so except in accordance with the ICE Carbon Credit Agreement;
- (d) the Contracted Carbon Credits are not and will not be subject to any pre-emptive rights or rights of first refusal that have not been properly waived or complied with;
- (e) the Contracted Carbon Credits have not already been cancelled for use or retired and are eligible for Delivery;
- (f) it has all requisite rights to enter into the ICE Carbon Credit Agreement with the Winning Bidder and to sell the Contracted Carbon Credits to the Winning Bidder.

4.3 **Representations in relation to the Auctioneer**

Each Party agrees and acknowledges that the Auctioneer is not Party to this ICE Carbon Credit Agreement and shall have no responsibility, duty of care or liability in any case whether in tort,

equity, contract, restitution, or otherwise towards any contracting Party under this ICE Carbon Credit Agreement. Each Party further agrees to all the limitations and exclusions of liability of the Auctioneer under the Auction Terms, which shall apply equally to this ICE Carbon Credit Agreement.

4.4 **General**

- (a) Each Party hereby expressly disclaims any other representations or warranties, whether written or oral, and whether express or implied including without limitation, any representation or warranty with respect to conformity to models or samples, merchantability, or fitness for any particular purpose.
- (b) The Seller further expressly disclaims any representation or warranty regarding the ability and fitness of the Contracted Carbon Credits to meet the obligations of, or to hold any commercial value in, any environmental market trading system or Greenhouse Gas emission reduction trading system, whether mandatory or voluntary, and whether or not currently effective, operational, or contemplated.

5. **MISCELLANEOUS**

5.1 **Costs and Expenses**

- (a) With respect to the ICE Carbon Credit Agreement and Contracted Carbon Credit, unless otherwise prescribed by the Registry Rules or Standard Rules:
 - (i) the Seller shall be responsible for the payment of any fees, charges, levies, taxes and other costs and expenses relating to the ICE Carbon Credit Agreement and Contracted Carbon Credit prior to Delivery being completed; and
 - (ii) the Winning Bidder shall be responsible for the payment of any fees, charges, levies, taxes and other costs and expenses relating to the ICE Carbon Credit Agreement and Contracted Carbon Credit arising after Delivery is completed.
- (b) Each Party will bear its own costs and expenses, including legal costs, in connection with the preparation, negotiation, and performance of the ICE Carbon Credit Agreement.
- (c) If a Party incurs any amount which is the responsibility of the other Party in accordance with Section 5.1(a), the first Party shall promptly reimburse the other Party.

5.2 **Limitation of Liability**

- (a) Subject to Section 5.2(c) and Section 3.2(d), all obligations of a Party under this ICE Carbon Credit Agreement are solely to the other Party. In particular, the Parties shall have no liability, duty of care or obligation, in any case whether in tort, contract, equity or restitution, to customers or clients of the other Party in respect of this ICE Carbon Credit Agreement.
- (b) Subject to Section 5.2(c), neither Party shall be liable to the other Party under or in connection with the ICE Carbon Credit Agreement for any loss of income, loss of profits or loss of contracts or any indirect, special or consequential loss or damage of any kind, in each case however arising and whether caused by tort (including negligence), breach of contract or otherwise.

- (c) Nothing in this Section or elsewhere in the ICE Carbon Credit Agreement shall limit or exclude any liability for fraud, death or personal injury or for any other liability which by Applicable Law cannot be excluded.

5.3 Force Majeure

- (a) Neither Party shall be liable for any failure, hindrance or delay in performance in whole or in part of its obligations under this ICE Carbon Credit Agreement if and to the extent that such failure, hindrance or delay arises as a result of a Force Majeure.
- (b) An affected Party shall immediately notify the other Party if it is subject to a Force Majeure.
- (c) An affected Party shall use all reasonable endeavours to mitigate the effects of the same upon its ability to perform its obligations under this ICE Carbon Credit Agreement, and to bring the Force Majeure event to an end.

5.4 Governing Law

This ICE Carbon Credit Agreement and any non-contractual obligations arising out of or in connection with it, will be governed by and construed in accordance with the laws of England and Wales.

5.5 Disputes

- (a) Any Dispute between the Parties arising out of, in relation to, or in connection with this ICE Carbon Credit Agreement, including any dispute as to the existence, construction, validity, interpretation, enforceability, termination or breach of this ICE Carbon Credit Agreement, shall be referred to and finally settled by arbitration under the Arbitration Rules of the London Court of International Arbitration ("**LCIA**"), which LCIA Rules are deemed to be incorporated herein. In the event of a conflict between any provision of the LCIA Rules and this Section 5.5, this Section 5.5 shall prevail.
- (b) The seat of arbitration will be London, England and the language of the arbitration proceedings shall be English.
- (c) No arbitral proceedings may be instigated where arbitral proceedings could have been instigated in the first instance under the procedures set out in the Auction Terms (with arbitration under the Auction Terms taking priority at all times).
- (d) The tribunal will comprise three arbitrators appointed by the LCIA Court. The LCIA Court shall nominate one of the arbitrators to act as the chairman of the tribunal. The members of the tribunal will be persons considered by the LCIA Court in its discretion to have experience with respect to the subject matter of the Dispute. Tribunal members shall not be current or former employees or directors of any person that is a party to the arbitration, current or former employees of the Auctioneer or any person or persons with a material interest or conflict of interest in the outcome of the Dispute.
- (e) The parties agree that any other Auction Participant may be joined as an additional party to an arbitration under this Section 5.5 and that arbitrations under this Section 5.5 may be consolidated into a single arbitration with other arbitrations involving any other Auction Participant. In case of such joinder, the tribunal shall make a single, final award determining all Disputes between the relevant parties in those proceedings. The Parties shall each be deemed irrevocably to have waived any right to challenge any award or

order of the tribunal by reason of the fact that it arises from a joined or consolidated arbitration.

- (f) The commencement of any arbitral proceedings shall be without prejudice to and shall not limit in any way the right of the Auctioneer to instigate any rights under the Auction Terms.
- (g) The award of the tribunal will be final and binding on the Parties from the day it is made. Judgment upon the award may be entered or the award enforced through any other procedure in any court of competent jurisdiction. The Parties shall each execute any such award and, to the extent permitted by law, irrevocably shall be deemed to have waived the making of any appeal or other means of recourse that might be open to them.

5.6 **Amendments**

- (a) The Winning Bidder and Seller agree that the Auctioneer may amend, modify, restate or supplement this ICE Carbon Credit Agreement from time to time.
- (b) Any amendment, modification, restatement or supplement made by the Auctioneer in accordance with Section 5.6(a) shall specify whether it applies only in respect of prospective ICE Carbon Credit Agreements or also applies to any existing ICE Carbon Credit Agreements.
- (c) Where any amendment, modification, restatement or supplement made by the Auctioneer applies to any existing ICE Carbon Credit Agreements, the Auctioneer must give at least at least 10 Business Days' notice of any such amendment to the Parties, except where the Auctioneer reasonably believes that a shorter notice period, or immediate amendment, is necessary to improve or facilitate Auctions or Deliveries or comply with Applicable Laws. At the request of the Auctioneer, the Winning Bidder and Seller shall enter into a written confirmation of the terms of any such amendment, modification, supplement or restatement.
- (d) This ICE Carbon Credit Agreement may be amended by an agreement in writing signed by both the Winning Bidder and Seller, provided that any amendment which conflicts with the Auction Terms or results in any change to the unregulated status, transferability or Delivery Date of Contracted Carbon Credits or any change to the rights and obligations of the Auctioneer shall not be permitted without the prior written consent of the Auctioneer.

5.7 **Remedies Cumulative**

The enumeration herein of specific remedies shall not be exclusive of any other remedies available to the Parties.

5.8 **Entire Agreement**

- (a) This ICE Carbon Credit Agreement, together with the Product Specification (for the relevant Auction under which the ICE Carbon Credit Agreement arose), the Purchase Order and, to the extent applicable, the Auction Terms, constitute the entire agreement and understanding of the Parties with respect to the subject matter of the ICE Carbon Credit Agreement and supersede and extinguish any representations previously given or made with respect to its subject matter.

- (b) The Parties acknowledge that, in entering into this ICE Carbon Credit Agreement, they do not rely on any statement, representation, assurance of warranty of the Auctioneer or any other party other than as expressly set out in this ICE Carbon Credit Agreement or the Auction Terms or the Product Specifications.
- (c) The Parties agree that their only rights and remedies available arising out of or in connection with the ICE Carbon Credit Agreement or its subject matter shall be solely for breach of contract, in accordance with this ICE Carbon Credit Agreement.

5.9 **Severance**

If any provision of this ICE Carbon Credit Agreement (or part of any provision) is found by any Court or other Governmental Authority to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this ICE Carbon Credit Agreement, and the validity and enforceability of the other provisions of that ICE Carbon Credit Agreement shall not be affected.

5.10 **Waiver**

- (a) Any waiver of any right or consent under this ICE Carbon Credit Agreement is only effective if it is in writing and signed by the waiving or consenting Party, and applies only in the circumstances for which it is given and shall not prevent the Party who is giving it from subsequently relying on the relevant provision.
- (b) No delay or failure to exercise any right under this ICE Carbon Credit Agreement shall operate as a waiver.
- (c) No single or partial exercise of any right under this ICE Carbon Credit Agreement shall prevent any further exercise of the same or any other right under the ICE Carbon Credit Agreement.

5.11 **No partnerships or joint ventures**

Nothing in this ICE Carbon Credit Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties. Nothing in this ICE Carbon Credit Agreement is intended to, or shall be deemed to, constitute any Party the trustee, beneficiary, agent or principal of the other Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

5.12 **Notices**

- (a) Except as otherwise provided in this ICE Carbon Credit Agreement, whenever it is provided in the ICE Carbon Credit Agreement that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any Party by another Party, or whenever any Party desires to give or serve upon the other Party any communication with respect to the ICE Carbon Credit Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be deemed to have been validly served, given or delivered if delivered to the last relevant address or e-mail address communicated by the other Party:
 - (i) upon the earlier of actual receipt and three (3) Payment Days after posting by registered or certified mail, return receipt requested, with proper postage prepaid;

- (ii) if sent by e-mail, on the day of notice receipt, if received before 10.00 am (in the place of business of the Register that shall be used for Delivery) on a Payment Day, or otherwise on the first Payment Day after receipt;
 - (iii) one (1) Payment Day after deposit with a reputable overnight courier with all charges prepaid; or
 - (iv) when delivered, if hand-delivered by messenger.
- (b) The giving of any notice required under this Section may be waived in writing by the Party entitled to receive such notice.

5.13 Use of Parties' Names

- (a) Each Party covenants (on their own behalf and on behalf of each of their Affiliates and subcontractors):
- (i) not to use any trademark, trade name, or service mark owned or controlled by the other Party, (x) in any name or business unit, or (y) without the prior written consent of the other Party (which may include pre-approval of one or more standard statements and a photograph for use in such materials), in any advertising materials or brochures or any sales pitch, business proposal, statement of qualifications, or the like except to the extent that such use is a quote from a public press release issued by the other Party; and
 - (ii) to make no representation, whether directly or indirectly, to any other Person that the other Party is in any way related to, in partnership with, or an affiliate of, the Party making the representation.

5.14 Language of communications

All communications between the Winning Bidder and Seller in relation to the ICE Carbon Credit Agreement shall be in English, unless otherwise agreed between the Parties.

5.15 Confidentiality

- (a) In connection with this ICE Carbon Credit Agreement, each Party shall not:
- (i) use or reveal any information confidential to the other Party;
 - (ii) reveal any information that is to be kept confidential under the Auction Terms, without the prior written consent of the Auctioneer.
- (b) Each Party receiving confidential information from the other Party in connection with an ICE Carbon Credit Agreement agrees that:
- (i) except as required by Applicable Laws, it will keep this confidential information confidential and will not permit any of its Representatives to, without in each case the prior written consent of the other Party, disclose the confidential information in any manner whatsoever, in whole or in part; *provided*, that such consent shall not be required if such confidential information has already been disclosed to the public;
 - (ii) all such confidential information will not be used by that Party or its Representatives directly or indirectly for any purpose other than consummating

the transaction contemplated by this ICE Carbon Credit Agreement and enforcing its rights and fulfilling its obligations hereunder and agrees to transmit the confidential information only to those Representatives who need to know the confidential information for such purposes; and

- (iii) it shall be responsible for any breach of the provisions of this Section by any of its Representatives, and will indemnify and hold harmless the other Party for any losses, damages, charges, fees or expenses, including reasonable attorney's fees arising out of or resulting from such breach.
- (c) Each Party shall be bound by the obligations set forth in this Section regarding confidentiality for a period of three (3) years from the date of the ICE Carbon Credit Agreement.

5.16 Anti-Bribery and Corruption

Each Party agrees and undertakes to the other that in connection with this ICE Carbon Credit Agreement they shall each respectively comply with all Applicable Laws of the United States of America, the United Kingdom, the European Union and any other relevant countries' Applicable Laws relating to anti-bribery, anti-corruption and anti-money laundering.

5.17 Sanctions

- (a) Subject to Section 5.17(b), each Party agrees and undertakes to the other that in connection with this ICE Carbon Credit Agreement, they shall each respectively comply in all material respects with Sanctions.
- (b) Section 5.17(a) shall not apply to a Party if, and to the extent, that it is or would:
 - (i) be unenforceable or illegal as a result of any applicable anti-boycott or blocking law, regulation or statute that is in force from time to time in the European Union (and/or any of its member states) or the United Kingdom, including Council Regulation (EC) No 2271/96, Council Regulation (EC) No 2271/96 as it forms part of domestic law in the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 and as amended by the Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020, or any similar blocking or anti-boycott law of any jurisdiction; or
 - (ii) prevent or prohibit a Party from engaging in business, transactions, activities or other conduct pursuant to a general or specific licence or authorisation from OFAC, HM Treasury, the European Union, or any European Union Member State, or any other registration, authorisation, permit, licence exemption, or licence from any other applicable Governmental Authority.

5.18 Further assurance

The Parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given under this ICE Carbon Credit Agreement.

ANNEX 3

SELL ORDER

The Seller hereby irrevocably and unconditionally instructs the Auctioneer to carry out an Auction in accordance with the Auction Terms and the following instructions:

Date of Sell Order	
Seller	
Auction date(s)	
Project name	
Project type	
Standard	
Registry	
Vintage	
Bidder Criteria (if any)	
Maximum Supply	
Auction Reserve Price (if any)	
Amendments to Auction Terms (if any)	
Amendments to ICE Carbon Credit Agreement (if any)	
Contract size	
Quotation	
Minimum price fluctuation	
Minimum Quantity per Bid	
Maximum number of Bids	
Payment by Winning Bidder to occur prior or after delivery	
Methodology for determining Auction Price	
Seller's Registry account	
Seller's payment account	

Capitalised terms in this Sell Order have the meaning assigned to them in the Auction Terms or the ICE Carbon Credit Agreement (as applicable).

The Auctioneer retains absolute discretion as to whether it will arrange an Auction in accordance with this Sell Order.

In the event of any inconsistency between this Sell Order and the resultant Product Specifications, the Product Specifications in relation to that Auction shall prevail.

Signature of Seller:

Name:

Title:

Date:

The undersigned is a duly authorised representative of the Seller and agrees on behalf of the Seller that the Auctioneer shall undertake an Auction pursuant to this Sell Order.

ANNEX 4

FORM OF PURCHASE ORDER

Pursuant to the Auction Terms and the ICE Carbon Credit Agreement, [●] (the "**Winning Bidder**") and [●] (the "**Seller**") agree to this order (the "**Purchase Order**") in relation to the Contracted Carbon Credits.

1. TRANSACTION TERMS

As specified in the table below, the Seller will Deliver the Contracted Carbon Credits and the Winning Bidder will make the following payments of the Purchase Price.

Trade ID	Project Name and Project Type	Standard	Vintage	Quantity	Price	Currency	Value	Payment Date	Delivery Date
[●]	[●]	[●]	[●]	[Number of Contracted Carbon Credits]	[Auction Price]	[●]	[●]	[●]	[●]

2. METHOD OF DELIVERY

Seller shall Retire Contracted Carbon Credits on behalf of the Winning Bidder

Retirement Language: *[Retired on behalf of Winning Bidder]* / [●]

Seller shall Transfer Contracted Carbon Credits to Winning Bidder's Registry Account

Account details in relation to a Transfer:

Winning Bidder's Account Name: [●]

Winning Bidder's Account Number: [●]

3. PAYMENT TERMS

Winning Bidder shall pay the Purchase Price to the following account:

[●]

Capitalised terms in this Purchase Order have the meaning assigned to them in the Auction Terms or the ICE Carbon Credit Agreement (as applicable).

ANNEX 5

FORM OF SERVICE OF PROCESS AGENT APPOINTMENT AGREEMENT

This service of process agent appointment agreement ("**Process Agent Agreement**") is made on [*Date*]

by (the "**Applicant**):

of:

and:

(the "**Process Agent**")

of:

This Process Agent Agreement relates to (i) the Auction Terms For Carbon Credits with ICE Futures Europe as the "**Auctioneer**" (as amended from time to time, the "**Auction Terms**"); (ii) the Auction Participation Agreement executed by the Applicant; and (iii) any ICE Carbon Credit Agreement that arises under the Auction Terms.

With reference to Section 2.2(a)(xii) of the Auction Terms, the Applicant hereby appoints the Process Agent as its agent to accept for and on its behalf service of any process issued by the courts of England and Wales in connection with any arbitration commenced under Section 10.2 of the Auction Terms or commenced under Section 5.5 of the ICE Carbon Credit Agreement.

The Process Agent will accept such process at its address stated above and will notify the Applicant and the Auctioneer promptly if its address for service of process changes.

The Process Agent will forward any document received for and on behalf of the Applicant within 7 days to the Applicant by courier, or fax or email to the address, fax number or email address specified above or to such other address, fax number or email address as the Applicant notifies in writing from time to time.

This Process Agent Agreement will continue until either party gives seven days' written notice of termination to the other. This Process Agent Agreement shall be governed and construed in accordance with English law. The Process Agent and the Applicant agree that a copy of this Process Agent Agreement may be provided to the Auctioneer. This Process Agent Agreement may be executed in any number of counterparts and all those counterparts taken together shall be deemed to constitute one and the same document.

Each party represents and warrants that:

- i. neither the execution nor performance of this Process Agent Agreement by or on behalf of the party will breach or conflict with any provision of the memorandum of incorporation, articles of association, by-laws, partnership agreement, limited liability company agreement or any other organisational document of the party, or with any agreement or applicable law which is binding upon or affects the party;
- ii. the party and signatories to this Process Agent Agreement each have full power and all necessary authority to execute this Process Agent Agreement and perform any act that may be required pursuant to this Process Agent Agreement; and
- iii. the party is duly organised and validly existing under applicable laws of the jurisdiction of its incorporation and is in good standing under such applicable laws.

Authorised Signatory

Authorised Signatory

Applicant

Process Agent