The Chancery Lane Project

Climate Contract Playbook

February 2020
First edition

[www.chancerylaneproject.org]

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Foreword

Climate change poses unprecedented challenges for human societies and natural ecosystems. It is a crisis which we and our ancestors have caused and for which we must take responsibility.

An overarching legal framework is already in place at international level. Nearly five years ago, the world's governments reached agreement in Paris to move the global economy to net zero emissions, and to take action to limit warming to well below 2°C – and ideally 1.5°C – in order to prevent the worst consequences of climate change. At domestic level in the United Kingdom we also have a strong legislative framework in the Climate Change Act 2008, now with a revised target enshrined in law to reach net zero emissions by 2050.

As a legal community, we have a responsibility to play our part in ensuring that the whole machinery of the law, public and private, is brought into line with the objective of a just transition to a climate-resilient and net zero emissions economy. Judges must play their part, but there are limits to the judicial toolbox at their disposal. The statutes and regulations with which judges have to work must be adapted to compel or encourage sustainability in every aspect of society.

The role for commercial lawyers to help tackle the climate crisis has been largely overlooked. Lawyers who draft the contracts that shape the economic relationships of our society must use these arrangements to enable rather than hinder the transition.

These two companion publications – the Climate Contract Playbook and the Green Paper of Model Laws – show that the mechanisms for these changes are within our reach. The Chancery Lane Project shows us what can be achieved when lawyers come together as a profession and use the power of pro bono work to focus on practical solutions to the climate crisis.

I strongly welcome this initiative by The Chancery Lane Project. I add my encouragement to lawyers and businesses to use these contractual clauses whenever practicable, and to help the Project to improve and extend this work.

Lord Robert Carnwath CVO

Justice of The Supreme Court


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Introduction

Our vision at The Chancery Lane Project is a world where every contract and law enable solutions to climate change.

A world in which legal frameworks enable and encourage businesses and communities to have a positive impact on the environment.

The legal profession is in a unique position to make a difference. Lawyers write the contracts and laws that influence the decisions made by individuals and businesses. That means the contracts we draft today and the laws we draft for tomorrow can lock us into dangerous climate change activity or help provide the solutions.

We aim to mobilise the legal profession to help bring about the transition to net zero and protect our economy and community from the unavoidable impacts of a changing climate. We recognise there are many other environmental and societal challenges. But we believe focusing our efforts is the best way to make a difference and that successfully tackling climate change will prevent further problems of inequality and access to justice.

We do not profess to have all the answers to the climate crisis, and we are not trying to own the solutions. From the very beginning, the Project has not been about individual lawyers or firms, but rather the collective effort of the entire legal profession to make a positive impact. Our voice is separate and independent from any one firm, chambers or professional membership. We are, with the best of intentions, using our legal skills to accelerate solutions to climate change in a politically and professionally neutral manner.

However, we believe the Project is aligned with and supports the achievement of the UN Sustainable Development Goals relating to climate action and the UK's emissions reduction target, enshrined in law, to reach net zero by 2050.

The laws and contracts we draft through this Project will not be enough on their own to address climate change. But we are unwilling to delay or defer the problems to others. This is the first edition of The Climate Contract Playbook, with clauses drafted during our first legal hackathon.

The model laws and precedent clauses in this Climate Contract Playbook have been drafted in good faith. They are not recommendations or advice but a menu of tools for lawyers and policymakers to consider when advising clients and creating new policy. They are intended to inspire not divide. The contracts are intended to bridge the gap whilst legislation catches up.

We are not a group of specialist environmental or climate change lawyers, but rather mainstream corporate, commercial and transactional lawyers. We are not climate scientists or experts in the economic, social or health impacts of climate change, but we endeavour to draft laws and contracts which draw on relevant scientific and expert evidence of these disciplines. We are trying to play our part and add to the global leadership being shown by businesses and professions around the world.

A spectrum of lawyers from specialisms and sectors across the profession have been involved in drafting these clauses. As such the model laws and clauses do not represent their views and as such cannot be attributed to any one firm, chambers, business or lawyer.

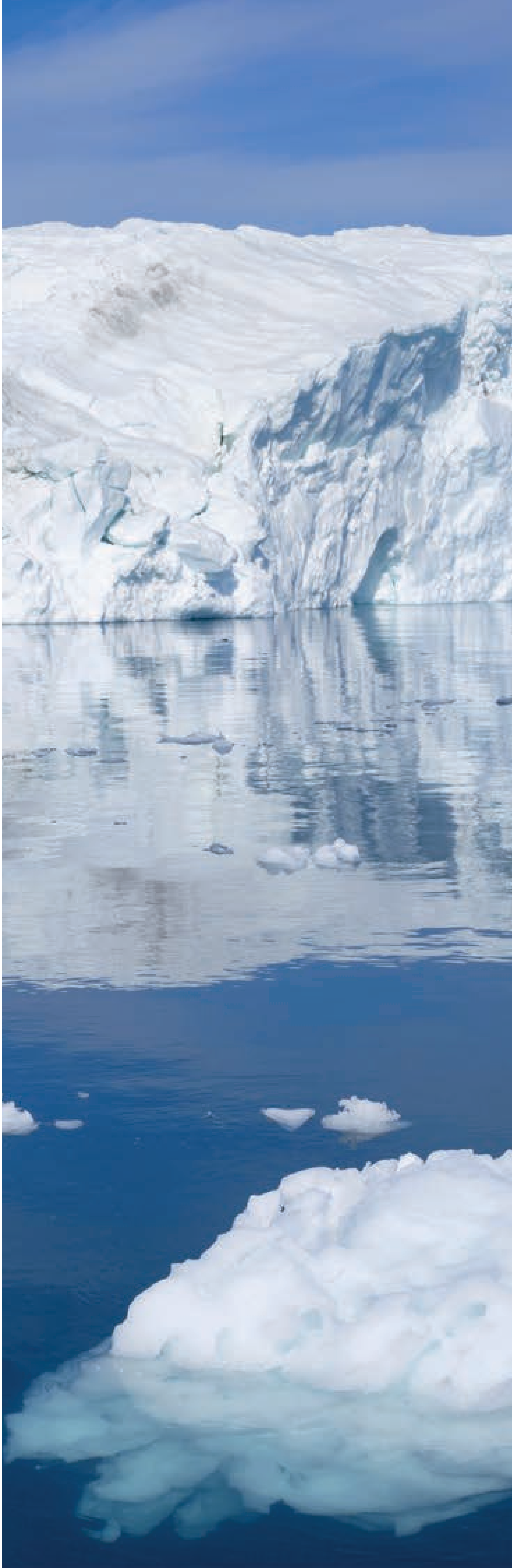
But these clauses and laws cannot just exist on the page. They must be taken up and used – negotiated, refined, applied to the unique circumstances of the client, project or jurisdiction, and agreed or passed. That is up to you. Each clause lists the key stakeholders who can bring the clause to life and into contracts to deliver real-world impact.

All the precedents and model laws are free to use. They are simply precedents and, as is standard practice, lawyers will need to use their professional judgement to decide how and when to deploy the clauses with their clients. They have each been given a child's name to ensure we are connected to the next generation for whom the changes we make are so important.

This is the start of our journey. It is now incumbent on all lawyers to amplify the impact of The Chancery Lane Project. We urge you to consider using these clauses where they meet the needs of the situation and the goals of your clients and communities. Please let us know how you use these clauses and how you adapt them to your particular circumstances. This is a work in progress and the clauses will be iterated with input from you – our community of experts.

The Chancery Lane Project will always remain positive, focused on climate solutions. We believe together we can overcome the immense challenges of climate change in the next 10 years. If you would like to join us, we encourage you to get in touch.

The year [11] Steering Group,
Chancery Lane Project



The Journey So Far

First and foremost, we would like to extend a big thank you to everyone who has facilitated, participated and invested their time and efforts into the Project so far. There are too many to thank individually. You know who you are. We are grateful for the generous support from the list of participating or contributing firms, chambers, businesses and universities included on page 64.

The Project was conceived during London Climate Action Week in July 2019 and held its first legal hackathon on 8 November 2019 at Thomson Reuters London office.

Our journey so far in numbers:

143
participants

63
different organisations

1200
pro bono hours

7
model laws

16
new precedents

7
months from idea to publication

The Power of the Pen

Why do precedents and clauses matter in the fight against climate change?

The UK recently enacted into law its 2050 net zero emissions target. However, the UK Government has only released very high-level detail as to how it will achieve this goal. It will, no doubt, require more detailed legislation that (quite rightly) will take time to consider, amend and enact. This is time we can ill afford: according to the Intergovernmental Panel on Climate Change (IPCC), the standard bearers for climate science, the 2020s are the most important decade of change. We must reduce emissions by 45% from 2010 levels by 2030 if we are to be on track to meet the Paris Agreement goal to limit global average warming to 1.5°C above pre-industrial temperatures.

Businesses wanting to take the lead can use contracts to bridge the gap in the transition to net zero until the necessary legislation is enacted. Once enacted, contracts will be required in almost every aspect of transitioning our economy towards net zero emissions. Further, contracts can help amplify positive environmental behaviour through the economy by passing on obligations to others.

In addition, contracts are not constrained by jurisdiction like most legislation. Therefore, the positive reach of a contract in a global economy is vast. Contracts with the governing law of England and Wales – the jurisdiction of the first edition of the Climate Contract Playbook – define the rights and obligations of contracting parties far beyond the bounds of the UK.

Lawyers advise across every sector of the economy, so their sphere of influence is significant. Clients trust lawyers to help them implement their net zero targets, to take up the opportunities of the net zero transition and protect them from climate change risk. As lawyers, we usually look to a recent precedent as the base for any new clause or agreement. By using these precedents, we hope that climate change solutions will find their way into the market and create a new emphasis on positive impact across the legal profession and the clients we advise.

Each of the precedents has a child's name chosen by the drafting team. This is to encourage long-term thinking and to focus on the next generation as they will be most affected by the serious consequences if we fail to effectively respond to the climate crisis.

There is a list of further problems and ideas set out in the Ideas Pipeline at page 62. We are only at the start of our journey and we will continue to work through these. We encourage you to pick these up and draft solutions. We also ask that you submit case studies describing how you have used the drafting and the impact this has made so that we can bring the drafting to life.

Using the Clauses and our Disclaimer

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

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

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

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

At present all the clauses are based on the laws of England and Wales. As the Project grows, we hope to convert these for use in other jurisdictions.

Glossary

We have identified that a glossary of uniform definitions would add significant value to the Project and will accelerate and harmonise future drafting activity.

This glossary will include definitions of key terms such as ‘net zero’. In this first edition of the Climate Contract Playbook, when we refer to net zero or the net zero transition in the introduction and cover notes, we mean the general term for moving an economy and its constituent businesses and communities to net zero emissions. It has been defined by reference to a specific entity and timeframe in some of the clauses, see, for example Net Zero Target.

This work stream will be undertaken in advance of the year [10] hackathon in November 2020.

[Frank's clause]

	The Origin Story
Child's name	Frank's clause
Full name	Green Investment Obligations
Theme	Mobilising Green Finance, Companies of the Future
Team	TMG
Issue	Climate Risk is Investment Risk[1]. Additionally, investors often want to understand and manage the climate impacts of their investments. Investors in private companies often hold significant influence and control over an investee company through the investment agreements, yet are not currently using this to mitigate climate risks or manage climate impacts of the companies and therefore their investments.
Solution	Amendments to standard non leveraged investment documents to focus the founders and investee company on climate change and environmental issues with their products, services, and operations.
Context	There is growing interest[2] in responsible investing from mainstream investors yet there is significant shortfall in funding and investment to meet the UN Sustainable Development Goals[3].
Impact	The clause will ensure environmental obligations are cascaded through the investment documentation so the investors can assess climate risks and demonstrate climate impact. In should also make the investee company more resilient to the Climate Change Risks articulated by the Bank of England.
Stakeholders	The key stakeholders that you think need to be engaged to deliver this Impact 1. British Venture Capital Association 2. Corporate financiers 3. Global Impact Investing Network 4. Precedent and know how providers 5. Professional support lawyers 6. Private practice firms
Application	The proposed amendments will mean that a company and founder will have various obligations in relation to climate risk and sustainability reporting. This puts environmental and climate change issues front and centre of the investment and the development of the investee company's business.
Notes for users	The investment could be contingent on adding in a purpose to the articles of association that are likely to be amended as part of the investment round. This could also be achieved through the option to obtain B Corporation certification. The company purposes can be re-prioritised and given different emphasis according to the investor requirements.

1 https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter
2 https://home.kpmg/xx/en/home/insights/2019/03/the-rise-of-responsible-investment-fs.html
3 https://www.undp.org/content/undp/en/home/blog/2017/7/13/What-kind-of-blender-do-we-need-to-finance-the-SDGs-.html

Additional Definitions

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

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

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

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

"Investor Consent" means the consent of 75% of the Investors.

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

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

Sustainable Promotion of the Company's Business

4.1 The Founders and the Company shall promote the best interests of the Company and ensure that its Business is conducted responsibly, sustainably, ethically and in accordance with all applicable laws and good business practice.

4.2 The Founders and the Company shall run and manage the business:

4.2.1 Primarily to advance the Social Purpose;

4.2.2 Secondly to achieve the Capital Purpose; and

4.2.3 Thirdly to achieve the Commercial Purpose.

4.3 The Founders and the Company undertake to procure, in so far as it is in their respective powers to do so, that the Company shall:

4.3.1 [publicly] set a Net Zero Target and within 6 months of Completion provide the Investors with a plan to deliver the Net Zero Target;

4.3.2 as soon as reasonably practical and no later than 12 months after Completion:

4.3.2.1 purchase electricity for its offices [and factory] on a green tariff that uses a 100% renewable energy;

4.3.2.2 use web hosts and cloud service providers which run their servers on 100% renewable energy or have a net zero target;

4.3.2.3 source all consumables used by the Company from sustainable and ethical sources;

4.3.2.4 create KPIs to measure the Company's impact of its operations and goods and services it provides;

4.3.2.5 [ensure the [casing/packaging] for the Company's products are sourced from as much recycled material as possible and are themselves designed to have the smallest environmental impact];

4.3.2.6 [For online businesses][provide the Company’s customers the option to offset the carbon footprint of delivering the Company’s products at the point of sale on the Company’s website];

4.3.2.7 establish a sustainability committee as a committee of the board chaired by a non-executive director with experience of improving sustainability and mitigating carbon footprint;

4.3.2.8 establish the company’s pension scheme with an ESG/green investment fund as the default;

4.3.2.9 become a certified B Corporation [achieving the Planet Mark];

4.3.2.10 set targets to support the achievement on one or more United Nations Sustainable Development Goals that are relevant to the Business;

4.3.3 report [annually] [quarterly] [monthly] to the Investors;

[Note: To select reporting aligned with needs and goals of Investors.]

4.3.3.1 the climate risks and opportunities to the Company and the Business in accordance with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD),

4.3.3.2 sustainability information in accordance with the standards set out by the Sustainability Accounting Standards Board (SASB); and

4.3.3.3 other environmental, social and governance factors that are requested by the Investors from time to time.

4.3.4 prepare and provide to Investors an annual sustainability report which, without limitation, demonstrates the activities undertaken by the Company in furtherance of this clause; and

4.3.5 once profitable, donate 1% of its net profits to environmental causes that are mitigating the impact of climate change.

Green Decisions Requiring the Consent of an Investor Majority

5.1 Each party shall use all the voting rights and powers of control deriving from their holding of Shares in order to procure that the Company shall not take any of the actions listed in this clause 5.2 without first obtaining the approval of an Investor Majority.

5.2 The actions requiring the approval of a Investor Majority are:

5.2.1 the amendment or revocation of the Net Zero Target; and

5.2.2 the entry into any contract or arrangement that conflicts with its Net Zero Target.

Founder Green Covenants

6.1 To assure the Investors that the Founders are aligned with the Investor's environmental aims and to enable the Investors to achieve the full benefit of the impact of their investment in the Company, each Founder hereby undertakes and covenants with the Investors and the Company that they shall not:

6.1.1 while they are a director or employee of, or a consultant to, the Company carry on or be directly concerned, engaged or interested in any trade or business that is:

6.1.1.1 not taking demonstratable steps to set and implement a net zero target equivalent to the Net Zero Target; or

6.1.1.2 operates in the following sectors [Insert sectors or industries that the Investor does not want the Founders to be involved in/ conflict with their ESG aims];

6.1.2 do or omit to do anything which could reasonably be expected to cause the Company to not achieve the Net Zero Target, whether pursuant to this contract or otherwise.

[Agatha's clause]

	The Origin Story
Child's name	Agatha's clause
Full name	Termination for Greener Supplier
Theme	Contracts for the Future
Team	Team 2 – Contracts for the Future
Issue	Parties being locked into supply contracts where the customer has identified that an alternative supplier offers more environmentally friendly goods or services
Solution	Include a standard clause to allow the customer to exit the agreement without incurring exit-related liability (such as cancellation fees) unless the existing supplier is able to at least match the green improvements represented by the alternative supplier's offer. See also Annie's Clause for a short form version.
Context	Many companies are locked into contracts without the unilateral ability to push the supplier to improve its green credentials or exit the agreement in favour of a greener supplier. In addition, companies that wish to reduce emissions in their supply chains, for example, where appropriate termination rights are available, may be prevented from doing so due to high switching costs (such as those relating to termination for convenience payouts or take-or-pay obligations). Therefore, the solution should not include any significant additional cost to the customer of going greener.
Impact	The clause should encourage existing suppliers to "up their climate change game". A contractual right to switch to a greener supplier if the existing supplier cannot match the alternative offer enables companies to green their supply chains, encourages green competition between existing and prospective suppliers, and provides a strong incentive for appointed suppliers to continuously improve their green performance.
Stakeholders	1. Inhouse legal counsel 2. Directors (Board level) 3. Shareholders (engagement) 4. Private practice firms 5. Industry bodies 6. Regulators (industry specific)
Application	The clause gives customers a right to switch supplier if the existing supplier is unable to match a 'greener' offer made by an alternative supplier. If this sort of clause can become the norm among customers, it will draw out greener suppliers that can do this and ensure that an assessment of green credentials is an important part of any procurement process.

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

Termination for Greener Supplier: Contractual Provisions

Insert into recitals:

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

Insert into preliminary obligations:

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

Insert into clause or definitions:

In this clause, "equivalent" or "equivalence" means:

a) If assessing the [goods OR services] of a Green Supplier, [goods OR services] that are [comparable OR identical or similar in all material respects] (including in terms of [scope,] complexity, specification, volume and quality [of performance], supporting technology, compliance with standards, and in terms of ancillary obligations such as delivery terms) to the [Goods OR Services] under this agreement.

b) If assessing the pricing of a Green Supplier, pricing for equivalent [goods OR services] that is [within the lower quartile OR less than or equal to the mean price over a previous 12-month period] of the pricing for [Goods OR Services] under this agreement.

Termination for Greener Supplier

1.1 Without affecting any other right or remedy available to it, the Customer may:

1.1.1 serve written notice (**“Notice of Greener Supplier”**) to the Supplier that the Customer has identified a third party supplier (the **“Greener Supplier”**) that is able to provide [goods / services] at least equivalent to the [Goods / Services], except that the Green Supplier’s equivalent [Goods / Services] achieve:

1.1.1.1 lower greenhouse gas emissions relating to the production or delivery of the goods and services, as measured in accordance with [the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard, Revised Edition 2015]; or

1.1.1.2 reduced environmental impact or increased sustainability outcomes, as measured in accordance with Appropriate standard for measuring environmental impacts or sustainability outcomes depending on the areas of concern to the business][, **or**; or];

1.1.1.3 [other],

in each case as compared to the Supplier’s Green Baseline.

1.1.2 The extent to which a Greener Supplier exceeds the Supplier’s Green Baseline (using the measures described in this clause) is the “Green Improvement”. The Notice of Greener Supplier must reasonably demonstrate that the Greener Supplier’s alternative [goods/services] are at least equivalent to those of the Supplier (including written confirmation by the Customer of overall price equivalence) and set out the Green Improvement.

1.1.3 The Supplier shall, within [30] days of the Notice of Greener Supplier notify the Customer whether it is able to achieve the Green Improvement [on terms no worse for the Customer than those set out in the Notice of Greener Supplier and] within [NUMBER] months of the Notice of Greener Supplier. If:-

1.1.3.1 Supplier is able to demonstrate to the Customer’s reasonable satisfaction that it is able to match the Green Improvement within that period, the parties shall use all reasonable endeavours acting in good faith to agree within a further 30 days the amended terms on which the [Goods/Services] shall be provided incorporating the Green Improvement. Once an amendment is agreed, the relevant specifications of the [Goods/Services] will be deemed to incorporate a requirement to comply with the Green Improvement (and the Green Baseline will be replaced by the Green Improvement from the date of that amendment); or

1.1.3.2 the Supplier;

1.1.3.2.1 does not respond to the Notice of Greener Supplier within the required period; or

1.1.3.2.2 is unable to demonstrate to the Customer's reasonable satisfaction that it is able to at least match the Green Improvement within the required period [on terms as good for the Customer as those set out in the Notice of Greener Supplier],

1.1.4 The Customer may terminate this agreement by giving the Supplier not less than [NUMBER] months' notice. Other than the agreed consideration for [Goods/Services] provided in accordance with the agreement before the date of termination, and despite any conflicting provisions in this agreement, no payments will become due to the Supplier as a result of termination under this clause.

[Annie's clause]

	The Origin Story
Child's name	Annie's clause
Full name	Green Termination Provision (short form)
Theme	Contracts of the Future
Team	TMG
Issue	Not being able to move to greener suppliers to achieve net zero or other sustainability targets because of the contractual consequences in doing so.
Solution	A clause that allows a right of termination for a customer so that they can pivot to a greener supplier to meet their sustainability, climate or other environmental objectives. See also Agatha's Clause.
Context	Many businesses sign long term supply or other business relationships in order to achieve certainty and value. However, once tied in it is often difficult to terminate without financial consequence. This becomes a problem if a business or organisation has stated a net zero target or declared a climate change emergency and the incumbent counterparty is either a high carbon user or not aligned with a customer's objectives. If a supplier is "greenwashing" and this becomes publicly acknowledged, then this will reflect on the customer and becomes a reputational issue as well.
Impact	The clause will allow a customer the ability to move suppliers in order to achieve its environmental aims. This should increase the likelihood of achieving net zero and other environmental targets that are set. It should also mean that the incumbent supplier will seek to ensure that it improves its carbon footprint and sustainability to ensure the contract is not terminated.
Stakeholders	The key stakeholders that you think need to be engaged to deliver this Impact 1. Procurement teams 2. Contract managers 3. In house lawyers 4. Sustainability managers 5. Precedent and know how providers 6. Professional support lawyers 7. Private practice firms
Application	The proposed amendments will mean that a contract can be terminated in a narrow set of environmental circumstances. The requirement of good faith and reasonableness may help to ensure that the clause is only used to meet climate goals and not for commercial convenience.
Notes for users	Can be added to the standard termination clause or standalone. This clause does not specifically deal with payments or other consequences that may apply on termination. Users of this clause will need to check the agreement carefully and ensure that the exercise of this clause does not trigger, for example, the payment of minimum purchases, cancellation fees or capital expenditure reimbursement. See [Agatha's clause] above for an example clause that does address this issue (the final sub-clause).

Green Termination

1.1 Without affecting any other right or remedy available to it, the Customer may terminate this agreement by giving [1 month OR [NUMBER] month's] written notice to the other party:

(a) if the Customer, [acting in good faith OR having made a reasonable comparison of the Supplier and other available suppliers], has decided to switch to an alternate supplier to achieve a reduction in the carbon footprint or emissions attributable to the Customer as a result of the Supplier's performance of the agreement, provided:

- the potential reduction is [supported by reasonable evidence and is] at least [PERCENTAGE]% less than the carbon footprint or emissions relating to this agreement at the time of the comparison [(with that calculation meeting the requirements of [INSERT CARBON MEASUREMENT METHODOLOGY USED BY THE CUSTOMER])]; [and]
- the proposed obligations of the alternate supplier are at least as onerous as those of the Supplier under this agreement; [and]
- [the proposed price of the alternate supplier is not significantly different to the price of the Supplier in aggregate over an equivalent period;]

(b) if the Supplier's environmental practices or negative environmental impacts may bring the Customer's reputation materially into disrepute as a result of conflicting with the Customer's published [net zero/carbon reduction] targets from time to time; or

(c) if the Supplier acts persistently and materially in such a manner as [to reasonably justify the opinion that its business operations or other conduct] is inconsistent with good environmental practice and policy [, as exemplified in [INSERT INDUSTRY ACCEPTED GUIDANCE OR STANDARD]]; or

(d) if the Supplier fails within [30] days to respond fully to a request for information made by the Customer to allow the Customer to assess the carbon footprint, emissions, environmental practices and policies of the Supplier that relate to activity under this agreement.

[Teddy's clause]

	The Origin Story
Child's name	Teddy's clause
Full name	Supplier Environmental Threshold Obligations
Theme	Contracts of the Future, Companies of the Future
Team	Team 2
Issue	Lack of legally enforceable environmental improvement standard in mainstream supply contracts, particularly in government procurement contracts.
Solution	Insert at purchase warranties for environmental performance and continuous improvement obligations. This will build in long term environmental improvements and transparency into supply agreements.
Context	Currently the carbon costs of producing goods or delivering services are not internalised to the contract and therefore there is no incentive to reduce carbon emissions. Government is unable to use its own procurement levers to decarbonise the economy.
Impact	Development of a wider market for new carbon reducing technologies, as well as accreditation/audit companies. Auditable transparency of an organisation's environmental impact, emissions and supply chain. Ultimately to filter down from Government, and to/through local authorities and the private sector contractual obligations to achieve the net zero target(s).
Stakeholders	1. Public sector procurers 2. Trade (standards) bodies 3. Contractors 4. Investors 5. Precedent and know how providers 6. Professional Support lawyers 7. Private practice firms
Application	From the recitals, to contract terms and conditions and remedies, supply contracts will become a vehicle for setting environmental performance and helping drive the transition to net zero emissions.
Notes for users	The incentives on a Supplier to comply with the requirements may be enhanced by varying clause 3 such that the Supplier must publicly disclose the emissions reductions and reports to an external public-interest third party such as CDP (formerly the Carbon Disclosure Project https://www.cdp.net/en). Users may also wish to use this clause in conjunction with green liquidated damages in [Jessica's Clause] as a remedy for non-compliance.

Recital

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

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

At Purchase Warranty

Add these definitions:

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

As a Condition of this Agreement the Supplier Warrants that

1.1 it has undertaken an assessment of the Carbon Footprint;

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

The Supplier Undertakes:-

2.1 to develop and implement a plan of continuous improvement with the objective of reducing the Carbon Footprint [throughout the [Contract Term]] [by [set reduction target] [per Contract Year]] [and shall provide a copy of that plan to the Purchaser on request]

2.2 to re-assess the Carbon Footprint every [one][three] [Contract Years];

2.3 to provide the Purchaser with a written confirmation of the results of each assessment within one month of the completion of each assessment under clause [2.2];

3. The Supplier shall at the Purchaser's request arrange for [the Carbon Trust] to undertake an independent assessment and verification of the Carbon Footprint and make a copy of the results of that assessment and verification available to the Purchaser as soon as reasonably practicable after receipt [(but no more than once in any period of [ ] Contract Years)].

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

[Jessica’s clause]

	The Origin Story
Child’s name	Jessica’s clause
Full name	Carbon contract clauses for environmental performance, and associated incentives and remedies
Theme	Contracts of the future
Team	Team 2
Issue	While the climate and environmental impact of goods or services is increasingly important to business customers (including to meet their own greenhouse gas (GHG) targets), this is not being captured in their supply agreements. If a breach of contract causes or contributes to the customer to miss its GHG targets, this has negative climate impacts and may be hard to quantify and evidence the loss caused to the injured party in missing in their GHG targets. So, in effect, there may be no remedy available to the customer. Additionally, most contractual remedies (other than those triggering termination and suspension rights) are pecuniary in nature - there is no standard practice of alternative remedies or consideration given to options which are not designed to improve the financial position of the injured party.
Solution	1. Include climate considerations in standard contract drafting. 2. Include climate metrics for performance in all contracts. 3. Provide a mechanism akin to liquidated damages for breaches with negative climate impacts, in the form of a mandatory donation to appropriate non-profit organisation. This provides an alternative to pure cash compensation.
Context	Currently the carbon costs of producing goods or delivering services are not usually specified in contracts and, therefore, there is no incentive to reduce carbon emissions.
Impact	Cascading environmental clauses which provide a remedy for breaches that impact a purchaser’s GHG targets and therefore that cause negative climate impacts should increase the speed of transition to net zero.
Stakeholders	1. Public sector procurers 2. Trade (standards) bodies 3. Contractors 4. Investors 5. Precedent and know how providers 6. Professional Support lawyers 7. Law firms
Application	The supplier warrants it will meet certain targets for the climate and environmental impacts of delivering the goods or services under the agreement. If breached, the supplier must pay a climate remediation fee to a selected environmental charity.

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

Recital

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

Climate and Ecological Impacts Under this Agreement

1.1 The parties acknowledge that the performance of this agreement will result in certain climate [and ecological] impacts, including the emission of greenhouse gases. For the purpose of this agreement, the parties agree that the quantity of greenhouse gas emissions related to this agreement will be quantified first in the Initial Emissions Report and then in subsequent Annual Emissions Reports.

1.2 Each party agrees to use all reasonable endeavours, and co-operate in good faith with the other party and its contractors, to minimise as far as reasonably practicable the quantity of greenhouse gas emissions related to this agreement as set in accordance with clause 2.1.

Climate Reporting and Warranties

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

2.1 The Supplier agrees to:

2.1.1 collect sufficient data, and analyse that data as required, to populate the Initial Emissions Report and the Annual Emissions Reports;

2.1.2 provide the Customer with the Initial Emissions Report within [twelve (12)] months after the start date of this agreement;

2.1.3 provide an Annual Emissions Report no later than forty (40) Business Days after the applicable Emissions Report Date; [and]

2.1.4 measure and calculate its Projected Total Emissions and Actual Total Emissions in accordance with the GHG Reporting Standard, and ensure that they are verified each year by an Independent Third Party before being provided to the Customer; [and]

2.1.5 [insert other climate performance metric as relevant to the performance of this Agreement].

2.2 The Supplier warrants and agrees that:

2.2.1 It will provide the reports required under clause 3.1 within the required period and as specified in clause 3.1.

2.2.2 The Initial Emissions Report and all Annual Emissions Reports provided to the Customer are in all material respects complete, accurate and not misleading.

2.2.3 The Actual Total Emissions during an Emissions Reporting Period will be less than the Actual Total Emissions of the previous Emissions Reporting Period.

2.2.4 It will not commit any Climate Breach during the term of the agreement.

Climate Remediation Fee

3.1 Without prejudice to any other claims, rights or remedies under this agreement, the parties agree that, in respect of any breach of the warranties set out in clause 3.2, damages payable by the Supplier to the Customer would not be an appropriate remedy in the wider context of damage to the climate, the environment and the Customer's reputation (all of which the Supplier accepts for the purpose of this agreement as being losses incurred by the Customer). Without prejudice to the Customer's right to damages, the Supplier agrees to pay the Climate Remediation Fee as set out in this clause 4.

3.2 The parties agree that any Climate Remediation Fee payable under this agreement to provide compensation for damage caused by the Supplier's Climate Breach or breach of clause 3.2 is reasonable and proportionate to the legitimate interests of the Customer in mitigating, setting off, counteracting, and repairing that damage (and preventing future damage), in part reflecting its public commitments to [reduce greenhouse gas emissions]. Each Party agrees that it has been properly advised regarding the negotiation of this agreement, and in particular regarding the inclusion of the Climate Remediation Fee as a remedy for Climate Breaches and breaches of clause 3.2.

3.3 If the Customer identifies or suspects a Climate Breach or breach of clause 3.2, the Customer may serve a Climate Remediation Notice on the Supplier at any time within twenty (20) Business Days of [the occurrence of such breach / becoming aware of such breach], whichever is later.

3.4 Upon receipt of a Climate Remediation Notice, the Supplier will promptly investigate the matter and in respect of any Climate Breach or breach of clause 3.2 pay the applicable Climate Remediation Fee to the Appointed Beneficiary within fifteen (15) Business Days of receipt of the notice.

Definitions

4.1 "**Actual Total Emissions**" means the Total Emissions that were actually emitted over the relevant Emissions Reporting Period, as verified by an Independent Third Party;

4.2 "**Annual Emissions Report**" means a written report setting out the Actual Total Emissions for the relevant Emissions Reporting Period, and the Projected Total Emissions for the next Emissions Reporting Period;

4.3 "**Appointed Beneficiary**" means the beneficiary of the Climate Remediation Fee, to be chosen from the Beneficiary List by the Customer and nominated in writing in the relevant Climate Remediation Notice;

4.4 "**Beneficiary List**" means the [ideal position – a list of reputable NGOs supporting environmental improvement UK and globally managed by reputable independent third party; in the absence of such a list, the parties may wish to choose a shortlist of their preferred charitable partners / NGO beneficiaries];

4.5 "**Business Day**" means any day other than a Saturday, Sunday or any other day which is a public holiday in England;

4.6 "**Climate Breach**" means any of the following events:

4.6.1 in an Annual Emissions Report, the Actual Total Emissions exceed the Projected Total Emissions by more than [Total Emissions per calendar year / per month / per Unit / per Emissions Reporting Period] or [X%][Xt/CO2e]];

4.6.2 [the Supplier fails properly to measure its Total Emissions [in the relevant Emissions Reporting Period]];

4.6.3 [the Supplier's fails to have its Total Emissions [in respect of the relevant Emissions Reporting Period] verified by an Independent Third Party;]

4.6.4 [where the Supplier has agreed to achieve certification under [insert relevant sustainability / climate / carbon industry standard] by a particular date, the Supplier fails to achieve that certification by that date and afterwards maintain that certification during the term of the agreement; or]

4.6.5 [insert failure to achieve other specified climate performance metric];

4.7 "**Climate Remediation Fee**" means:

4.7.1 [an amount equal to [£X] for each [percentage point / Xt/CO2e] that the Actual Total Emissions stated in a given Annual Emissions Report exceed the Projected Total Emissions set out in the previous Annual Emissions Report (or the Initial Emissions Report, in the case of the first Annual Emissions Report); and]

4.7.2 in respect of any Climate Breach or breach of any of the warranties set out in clause 3.2, but not covered by another element of the Climate Remediation Fee, [£[X]] [and an additional sum of £[x] for each [day] that the breach continues [up to a maximum of £[x]];

4.8 “**Climate Remediation Notice**” means a written notice by the Customer containing details of any identified or suspected Climate Breach(es) and nominating an Appointed Beneficiary;

4.9 “**Emissions Reporting Period**” means, firstly, a period of twelve months commencing on the start date of this agreement and ending on the first anniversary of that date, and then consecutive 12 month periods ending on the day before the next anniversary of that date;

4.10 “**Emissions Report Date**” means, in relation to an Emissions Reporting Period, the first day of the next Emissions Reporting Period;

4.11 “**GHG Reporting Standard**” means [the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard, Revised Edition 2015];[4]

4.12 “**Initial Emissions Report**” means a report setting out the Projected Total Emissions for the first Emissions Reporting Period;

4.13 “**Independent Third Party**” means an impartial organisation not affiliated with either party providing climate impact assessment and emissions reporting services, of a standard at least equal to the Carbon Disclosure Project or the Carbon Trust;

4.14 “**Projected Total Emissions**” means an estimate of Total Emissions for the Emissions Reporting Period commencing on the relevant Emissions Report Date, calculated in accordance with the GHG Reporting Standard;

4.15 “**Scope 1 Emissions**” means the direct greenhouse gas emissions emitted from sources directly owned or controlled by the Supplier;

4.16 “**Scope 2 Emissions**” means the indirect greenhouse gas emissions associated with the generation of electricity purchased by the Supplier;

4.17 “**Scope 3 Emissions**” means all indirect greenhouse gas emissions emitted from sources which are not directly owned or controlled by the Supplier, excluding Scope 2 Emissions, which occur both upstream and downstream in the Supplier’s supply or value chain related to the [Product/Services];

4.18 “**Total Emissions**” means the sum of the Supplier’s Scope 1 Emissions, Scope 2 Emissions, and Scope 3 Emissions, in each case arising out of the performance of its obligations under this agreement, in a given Emissions Reporting Period;

4.19 **“Unit**” means [the item(s) to be supplied under the provisions of this Agreement];

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

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

[Owen's clause]

	The Origin Story
Child's name	Owen's clause
Full name	Net Zero Target Supply Chain Cascade Clauses
Theme	Companies of the Future and Encouraging Green Living
Team	TMG
Issue	Many businesses and organisations have publicly committed to a net zero target across their value chain. Their supply chains and business partners contribute to their emissions and thus whether they achieve their net zero target.
Solution	Clauses that "back to back" or align a business's net zero target with its supply chain and business partners, thus enabling the business to achieve its target or take control to achieve it.
Context	Many businesses and organisations are publicly announcing targets to be net zero by a particular date, not just in their own operations, but including emissions upstream in their supply chains and downstream in their distribution networks. Some such as Unilever have gone further and declared they will become 'carbon positive' by 2030[6]. The UK government has a target to be net zero by 2050. UK businesses and organisations may be required by law to be net zero in order to achieve this target, or it may simply become economically unfeasible for emissions intensive companies to operate within this framework. In order to achieve a net zero target, a business or organisation will need to work with its suppliers and partners. As such it is necessary to pass on obligations through contracts to ensure targets are met.
Impact	The clause will ensure that business and organisations have the greatest chance of achieving their net zero targets. Cascading net zero obligations through a value chain should accelerate the rate of change in the economy and mean that net zero targets become common place.
Stakeholders	The key stakeholders that you think need to be engaged to deliver this Impact 1. Suppliers and business partners 2. Procurement teams 3. Sustainability managers 4. Precedent and know how providers 5. Professional support lawyers 6. Private practice firms

5 https://www.edie.net/news/6/Beyond-Paris--500-companies-target-net-zero-by-2030/
6 https://www.unilever.com/sustainable-living/reducing-environmental-impact/greenhouse-gases/global-climate-action/

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

Additional Definitions

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

"**Contract Target**" the proportion of the Customer's [Net Zero/Gross Zero] Target which will be achieved under this Contract.

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

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

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

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

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

Clauses

Supplier Net Zero Obligations

8.1 The Supplier acknowledges and understands the Customer's Net Zero Target. Accordingly, the Supplier shall:

a) set its own [Net Zero/Gross Zero] target (the "Supplier NZ Target") with a target achievement date the same as or earlier than the Net Zero Target Date (the "**Supplier NZ Date**");

b) agree the Contract Target with the Customer;

c) achieve the Contract Target;

d) ensure that this clause 8 will be copied into any and all of its supply chain contracts that relate to its obligations under this agreement;

e) introduce emission reduction technologies, processes and policies as well as offsetting and, where technologically and commercially feasible, carbon removal initiatives, to achieve the Supplier NZ Date;

f) undertake and keep up to date full and complete records of Carbon Reporting activity and data and provide the same to the Customer each year and more frequently as the Customer may reasonably request;

g) attend, on reasonable notice, meetings with the Customer's Sustainability Manager or other nominated representative to present the Supplier's plan to achieve, and current progress towards, the Supplier NZ Date;

h) not do or omit to do anything which could reasonably be expected to cause the Customer to miss its Net Zero Target Date, whether pursuant to this contract or otherwise.

8.2 If:

a) the Supplier fails to comply with any of the obligations in clause 8.1; or

b) the Customer, having reviewed the Carbon Reporting and discussed with the Supplier its progress to achieve the Supplier NZ Date, determines (acting reasonably) that the Supplier is making insufficient progress towards achieving the Supplier NZ Date; or

c) the Supplier fails to achieve the Supplier NZ Target by the Supplier NZ Date, the Customer may, without affecting any other right or remedy available to it:

d) terminate this agreement by giving one month's written notice to the Supplier;

e) require the Supplier to plant a number of Native Trees in the UK sufficient to compensate for the Customer's shortfall in progress towards the Supplier NZ Date attributable to the [production of the Goods/ delivery of the Services]; and/or

f) recover from the Supplier any costs reasonably incurred by the Customer in achieving the Contract Target to the extent by which that Contract Target is missed by the Supplier by:

i. obtaining carbon credits to offset the Supplier's net Greenhouse Gas emissions footprint [attributable to the [production of the Goods/ delivery of the Services]]; or

ii. planting, or arranging for the planting of, Native Trees to offset the Supplier's net Greenhouse Gas emissions footprint attributable to the [production of the Goods/ delivery of the Services].

8.3 [The Supplier shall, at its own cost, submit a report to the Customer within 20 Business Days of each anniversary of the date of the agreement identifying the emergence of new and evolving relevant technologies and processes which could accelerate the achievement of the Supplier NZ Date. Such report shall provide sufficient detail to enable the Customer to evaluate properly the benefits of the new technology or process.]

8.4 The Supplier warrants to Customer that:

g) it has sufficient resources, infrastructure and materials to achieve the Contract Target by the date of the expiry of the contract;

h) none of the [Goods/Services] supplied under this agreement will be of lower quality as a result of working towards the Contract Target;

i) it will not offer preferential terms to those other customers who do not require a Contract Target or similar obligations in their contracts.

[Zoë and Bea's clause]

	The Origin Story
Child's name	Zoë and Bea's clause
Full name	Green Supplier Agreement Terms
Theme	Encouraging Greener Living
Team	Table 2
Issue	Some supply agreements can lock a business or organisation into 'brown contracts' and don't encourage sharing of climate-related information and accountability for emissions reductions across value chains.
Solution	A green procurement checklist and clause to make a standard supplier agreement focus on emissions across a value chain.
Context	Many companies such as Microsoft are pledging to be Carbon Negative by 2030[8]. In order to achieve this, they will have to work across their value and supply chains to align them with this target.
Impact	The clause should encourage existing suppliers to "up their climate change game" and thus accelerate a greater number of businesses in their transition to net zero.
Stakeholders	1. Inhouse legal counsel 2. Directors (Board level) 3. Shareholders (engagement) 4. Law firms 5. Industry bodies 6. Regulators (industry specific)
Application	Further definitions could be inserted if the relevant business is using Science Based Targets to measure its emission reductions.
Notes for users	This envisages use in a customer generated supplier terms using a green procurement process.

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

Draft Clauses for Green Supplier Agreement

Additional Definitions

"**Supplier**" [Insert Supplier's Name]

"**Principal**" [Insert Principal's Name]

"**Supplied Products**" [Insert description of products]

"**GHG Emissions**" means emissions of the greenhouse gases listed at Annex A of the 1998 Kyoto Protocol to The United Nations Framework Convention on Climate Change, as may be amended from time to time including: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF_6), each expressed as a total in units of carbon dioxide equivalent (CO_2e)

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

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

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

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

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

Greenhouse Gas and Carbon Emissions

Measure, Manage, and Report GHG Emissions

1.1. The Supplier shall measure, manage and report its GHG Emissions in accordance with the provisions of this clause.

1.2. The Supplier shall formally adopt the Carbon Footprint Standards and appoint an employee with primary responsibility to the Supplier's board of directors for delivering compliance with such Carbon Footprint Standards and the requirements of this clause.

1.3. At all times during the term of this Agreement the Supplier shall measure and manage its GHG Emissions in accordance with the Carbon Footprint Standards.

1.4. Within 3 months after each anniversary of the date of this Agreement, the Supplier shall submit a GHG Report to the Principal, detailing as a minimum the matters listed at clause 3.

Emission Reduction Targets

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

Contents of GHG Report

3.1. The GHG Report shall, as a minimum, report and, where appropriate, explain:

3.1.1. What industry best practices on managing and reducing GHG Emissions have been applied by the Supplier in the previous contract year, and how these have been applied;

3.1.2. the Supplier's measured [Scope 1, Scope 2 and Scope 3 emissions;]

3.1.3. the measured Product Carbon Footprint;

3.1.4. the measured Supply Chain Carbon Footprint;

3.1.5. the reduction in GHG Emissions achieved measured against the [Scope 1, Scope 2 and Scope 3 emissions] stated in the preceding reports and in accordance with clause 2.1;

3.1.6. *[insert additional requirements]*.

Verification

4.1. The Supplier shall cooperate and collaborate with the Principal on its GHG Emissions, the preparation of each GHG Report and other obligations under this clause [●].

4.2. Should the Principal at any time reasonably require it, the Supplier shall appoint an external auditor or verification authority [(such as the Carbon Trust)] to certify its GHG Report.

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

Green Procurement Checklist

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

a) The Supplier will measure all carbon emissions associated with its delivery of [goods/services] under this agreement [in accordance with an internationally recognised standard] approved by the principal.

b) The Supplier will reduce its emissions by [10]% per year.

c) *[Bare minimum % reduction plus graded bonus commensurate to percentage reduction. Termination tied to failure to meet bare minimum reduction]*

d) *[Best practice related to implementation]*

e) [Reporting: timing, best practice reference standards, any other ESG reports]

f) [Audit: allocate responsibility and costs or tie audit to dispute over achievement of goals]

g) *[Cooperate and collaborate: standard provisions]*

[Philippe's clause]

	The Origin Story
Child's name	Philippe's clause
Full name	Contractor's environmental obligations (in public tender invitations)
Theme	Merging Public and Moral Duties
Team	Team 4
Issue	People who are not working may have time to use to protect the environment and engage with their local communities.
Solution	Incentivising people who are not working to undertake volunteer work to improve the environment and mitigate climate change impacts. Incentivising companies responding to public tender invitations to provide volunteer opportunities to improve the environment and mitigate climate change impacts.
Context	Retirees, prisoners, stay-at-home parents, students do not form part of the workforce and may therefore feel excluded from society. It may help these individuals to have a sense of purpose and not to feel lonely if they can work on projects that improve the environment and mitigate climate change impacts. Companies working for a public body should contribute to the local community's work to improve the environment and mitigate climate change impacts.
Impact	The clauses will create relationships between people at a local level. They will also create opportunities to diversify people's skills and create a bridge between social classes. They will create a cheaper workforce for governments and companies to tackle climate change. Being involved in these projects will foster a sense of purpose and belonging. These clauses will ensure companies are committed and promote circular economy.
Stakeholders	1. Public bodies 2. Public tender contractors 3. Retirees 4. Job hunters 5. Students 6. Stay-at-home parents 7. Former prisoners
Application	The clauses will mean that companies willing to contract with public bodies will have to offer volunteer opportunities on environmental projects to people who are unemployed. Public bodies will prioritise companies complying with these obligations.

Notes for users	A public body is a body, organisation or agency that is financed by a form of government, acts independently of it and has the responsibility to report key data, evidence, facts, statistics, to the government and is accountable for their role, responsibility and objectives. Conditions relating to the performance of a contract must be linked to the subject-matter of the contract. Most public authorities in the UK have declared a climate change emergency[9] and are working towards a net zero position. Therefore, whilst not certain we would envisage that the required link could be made. However, if this point was challenged by a bidder it may be deemed to place a blanket requirement upon a contractor to offer volunteer placements because the clause is very broad brush and open ended. In practice bidders may not object to this obligation and may simply take a view of it as part of the overall package to be delivered if they wish to secure the contract. However, if they do query the basis for imposing this requirement, the authority would be required to justify it.

Invitation to Tender Letter

Contractor's Obligations

1.1 The Contractor undertakes to implement a scheme under which it shall ensure that the following volunteers

a) retirees

b) job hunters

c) students

d) stay-at-home parents

e) former prisoners,

are involved in environmental work directly linked to the subject matter of the contract [for two months per year] (period will be determined by length of contract).

1.2 The Contractor shall utilise a number of volunteers equivalent to at least [10]% of the number of its employees which are assigned to this contract (minimum one volunteer).

1.3 The Contractor shall cover the expenses incurred by the volunteers to undertake the work.

1.4 The Contractor shall be responsible for advertising these volunteering opportunities.

Additional Definitions

"**Environmental work** " means work that will improve the local or national environment or ecology including but not limited to, tree planting projects, clearing and rewilding derelict land, habitat creation, or projects to install energy efficiency measures.

9 https://www.climateemergency.uk/blog/list-of-councils/

[Eric's clause]

	The Origin Story
Child's name	Eric's clause
Full name	Employer-employee environmental obligations
Theme	Merging Public and Moral Duties
Team	Team 4
Issue	People do not have enough time to engage with their local communities in the fight against climate change.
Solution	Incentivising people to fight against climate change through employment clauses.
Context	People want to make a difference but do not have the time nor the professional opportunity to fight against climate change. They need to find a sense of purpose.
Impact	The clauses will create relationships between people at a local level. They will also create opportunities to diversify people's skills and create a bridge between social classes. They will create a cheaper workforce for governments and companies to tackle climate change. Individuals involved in these projects will have a sense of purpose and belonging. These clauses will ensure companies are committed and promote circular economy.
Stakeholders	1. Employers 2. Employees 3. Environmental organisations
Application	**1. Senior employees:** If an employment agreement is terminated by either party and the employee is placed on garden leave for the whole or part of the remainder of their agreement they may undertake volunteering activities at an environmental organisation during any period of garden leave. **1. Employees on sabbaticals:** If an employee goes on sabbatical they can choose to go on a paid sabbatical for volunteering activities at an environmental organisation during that period.
Notes for users	Environmental organisations may be a charity, a trust, a non-governmental organisation or a government organisation. Environmental organisations can be global, national, regional or local. The employer may retain a duty of care to the employee during any period of garden leave or sabbatical leave at an environmental organisation, particularly where the employee is volunteering as part of an employer-supported scheme. This and vicarious liability would need to be managed by the employer. The employer may want to have a volunteer policy which provides a framework for its volunteer programme and sets out the expected conduct of employees who volunteer under the programme.

Senior Employment Contract

Interpretation

The definitions and rules of interpretation in this clause apply in this agreement.

Appointment: your employment by us on the terms of [this agreement OR the employment contract between you and us dated [DATE]].

Garden Leave: any period during which we have exercised our rights under clause [2]

Garden Leave

2.1 Following service of notice to terminate the Appointment by either party, or if you purport to terminate the Appointment in breach of contract, we may by written notice place you on Garden Leave for the whole or part of the remainder of the Appointment. [Any period of Garden Leave shall not normally exceed [PERIOD].] With our prior approval, you may undertake volunteering activities at an environmental organisation during any period of Garden Leave.

Sabbatical Leave Policy

Climate Sabbaticals

3.1 Sabbaticals are generally unpaid, with the exception of sabbaticals during which employees undertake volunteering activities to a pre-approved environmental organisation (climate sabbaticals). Climate sabbaticals may last for up to one month and will be paid at the reduced rate of [50% of annual salary], subject to the usual deductions for tax and national insurance.

[Arlo's clause]

	The Origin Story
Child's name	Arlo's clause
Full name	Draft Paris-compliant objects clause for use in company's articles of association
Theme	Companies of the future
Team	Companies of the Future
Issue	The historic legal requirement for companies to constitutionally state their objects, and to abide by that statement, was removed by the Companies Act 2006 (CA 2006). It was regarded as redundant in the light of previous legal changes to place a company's capacity beyond challenge as ultra vires. There is a concern that companies' activities have negative climate impacts and are not consistent with the goals of the Paris Agreement.
Solution	While it is no longer possible to insert an objects clause into a company's memorandum of association, it is possible to do so in its articles. This could appear as an option in a firm's precedents or on an open source basis. The default position is that a company's objects are unrestricted unless its articles specify otherwise (section 31(1), CA 2006). This draft objects or general-purpose clause is appropriate for inclusion in an SPV (or any) company's articles of association in order to concentrate its stakeholders' (including directors') minds on the importance of making sure that the company's activities proceed in an environmentally-appropriate and Paris-compliant manner.
Context	Legal services providers, including law firms and company formation agents, are a prime source of documentation and advice when adopting or amending a company's constitution.
Impact	The principal upside of this approach from the point of view of addressing climate risks and impacts is that: • It alerts clients potentially from the very beginning of the enterprise to the need to prioritise addressing climate risks to and impacts of the enterprise. • If an objects clause is inserted in the articles, it incentivises directors to act – they risk personal liability if they fail to act in accordance with their company's constitution (*section 171, CA 2006*). Thus, a newly-framed objects clause giving appropriate weight to the environmental challenges that face us could have an extraordinary impact.
Stakeholders	1. Private practice firms 2. Precedent and know how providers 3. Professional support lawyers 4. Company formation agents 5. Investor/shareholder bodies 6. Professional associations of General Counsels

Application	There appear to be two main options when drafting: • Include the obligation (or aspiration) to meet a certain environmental standard or specified climate change goals when meeting its other objectives. • Include that obligation and specify what its relation is to the company's existing objectives and stakeholders – primary, equal, subsidiary. Depending on this choice, one of the company's principal raisons d'être could be expressed as operating in an environmentally-conscious and indeed Paris-compliant way. The principal upside is that the directors are incentivised to act, thus it can change behaviour. Among the downsides: • The consequences of non-compliance could be significant for directors – and a deterrent to their joining or staying in post? • Objects clauses could be overridden by shareholders, though one might stipulate that the articles could in this respect only be changed by e.g. 90% approval, or this provision of the articles could be entrenched (section 22, CA 2006). • Shareholders of a solvent company could also authorise and ratify breach of directors' duty and release directors from liability.
Notes for users	Users may wish to consider reading: • George Goyder, 'The Just Enterprise' (1987) • Big Innovation Centre, 'The Purposeful Company' (2017) Where the objects of a company have been specified in its articles, it may be necessary to set out the powers which the company may exercise in their pursuit.] A related approach may be to limit the powers of the company (and therefore the directors) in pursuing its main goal for example by express reference to engaging in, or not engaging in, specified behaviours. These could be generic, tailored to the company's circumstances or both.] Climate or environmental standards referred to could be the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard, Revised Edition 2015, the Principles on Climate Obligations for Enterprises, the OECD Guidelines for Multinational Enterprises or the UN Global Compact.

Example I:

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

Example II:

Directors' General Authority:

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

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

(a) benefits wider society and the environment in a manner commensurate with the size of the company and the nature of its operations; and

(b) reduces harms the company creates or costs it imposes on wider society or the environment, with the goal of eliminating any such harms and costs.

[Dottie's clause]

	The Origin Story
Child's name	Dottie's clause
Full name	Extended warranties and undertakings in respect of environmental position and climate change risk in underwriting and sponsor agreements
Theme	Companies of the future
Team	Anonymous
Issue	Warranties and undertakings in underwriting and sponsor agreements are not required to go into significant and granular detail as regards an applicant/ issuer's environmental position and climate change risk, in particular so as to require: • full disclosure of the company's position/performance/record; and • disclosure on a continuing basis thereafter as to how any identified deficiencies are being/to be addressed with a view to continuous improvement and achievement by reference to Specified Metrics. It is necessary to increase transparency in this area and create at least the prospect of real accountability for non-compliance (or material non-compliance). The above may require prescribed contents requirements in relevant public documents to effectively be mandated by investor/shareholder bodies, or in default, mandated by regulators.
Solution	Proposed extension of director (and possibly major shareholder) warranties and issuer/director undertakings in underwriting, sponsor and similar agreements in respect of environmental position and climate change risk. Underwriting and sponsor agreements etc to require/impose: • full and specific disclosure of the applicant/company's position and performance by reference to Specified Metrics; and • disclosure thereafter on a continuing basis as to how any deficiencies that have been identified are being/to be addressed, with a view to continuous improvement by reference to Specified Metrics.
Context	It is standard practice for sponsors and nominated advisers to require the directors of an applicant for listing (and possibly also its major shareholders) to enter into an underwriting, sponsor or similar agreement, including warranties and undertakings as regards a range of accounting, trading and other operational matters. In the event of non-compliance, the institution can take enforcement action, effectively on behalf of the market. If warranties are breached for example, warrantors risk potentially very material liability (though subject to caps on liability). Another approach would be to for banks to require companies to make full climate change disclosure in the listing particulars, prospectus or other documentation, and require the company/directors to warrant their veracity.

Impact	The increased risk of liability will: • Force directors and others to assign greater priority to climate risk-related disclosure, performance and continuous improvement. • Increase knowledge of company's (and group's) operations and associated risks including climate change risks. • Increase engagement and understanding at board and senior management levels. • Mean that this becomes, and stays, a prominent item on board meeting agendas. • Minimise the chance that directors, when challenged, can successfully assert that they were unaware. Over time standards will be raised, even for companies not seeking a listing.
Stakeholders	1. Financial Conduct Authority 2. London Stock Exchange 3. Investor/shareholder bodies 4. Sponsors and nominated advisers 5. Law firms 6. Environmental/climate change experts
Application	The proposed amendments will result in improved transparency and greater prospects of accountability, resulting in improved performance against specified climate risk metrics.
Notes for users	The Specified Metrics could be linked to an established framework – e.g. Task Force on Climate-related Disclosures (TFCD) – but also be capable of alignment to individual company's/group's particular position, activities and known issues. Consider independent review, such as audit by third party. Science based[10] or net zero targets may also be useful. One standard that could be also be used for this, potentially in addition to the TFCD, is ISO 14001:2015, which has been updated to reflect the increased importance for organisations of: • Environmental management systems (EMS) in business strategy, boardroom decisions and communications. • Sustainable resource use and climate change mitigation. • Lifecycle thinking for products to maximise supply chain efficiency. For undertakings to improve performance in clause 1(d), consider using the detailed provisions in Jessica's clause – Contract clauses for carbon performance.

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

a) The Company's [historic/current] environmental [position/performance/record] meets the Specified Metrics;

b) The company and [each of the subsidiaries] have at all times operated in compliance with all Environmental Laws in force from time to time and there are no facts or circumstances that may lead to any breach of or liability under any Environmental Laws or liability in respect of Environmental Matters;

10 https://sciencebasedtargets.org/

c) There have been no claims, investigations, prosecutions or other proceedings against or threatened against the company [or any of the subsidiaries] or any of their respective directors, officers or employees in respect of any breach or alleged breach of any Environmental Laws, and there are no facts or circumstances that may lead to any such claims, investigations, prosecutions or other proceedings;

d) At no time has the company [or any of the subsidiaries] received any notice, communication or information alleging any liability in relation to any Environmental Matters or that any works are required;

e) The Company has implemented in full the recommendations of the Task Force on Climate-related Finance Disclosures in relation to the governance, strategy, risk management and disclosure of climate risks and opportunities;

f) The Company has carried out an assessment of its Carbon Footprint in accordance with international carbon reporting practice, being the accepted practice from time to time in relation to reporting for the purposes of the protocols to the United Nations Framework Convention on Climate Change and such assessment is accurate in all material respects;

g) [**INSERT** any bespoke warranties as to company's historic/current environmental position/performance/record]; and

h) [**INSERT** any bespoke undertakings to address/monitor environmental/climate change risk relevant to the business on a continuing basis thereafter, including rectifying/ameliorating any identified problems or deficiencies].

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

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

Environmental Matters means all matters relating to:

a) pollution or contamination of the environment;

b) the presence, disposal, release, spillage, deposit, escape, discharge, leak, migration or emission of hazardous substances or waste;

c) the creation or existence of any noise, vibration, odour, radiation, common law or statutory nuisance or other adverse impact on the environment; or

d) the condition, protection, maintenance, remediation, reinstatement, restoration or replacement of the environment or any part of it.

Specified Metrics means [**insert**].

[Chloe’s clause]

	The Origin Story
Child’s name	Chloe’s clause
Full name	Environmental Business Charter
Theme	Encouraging Greener Living
Team	Anonymous
Issue	Climate change is a complex and abstract issue, which makes it difficult to raise environmental concerns in the context of corporate law and their clients. The aim of the charter is to provide firms and individuals with the language and a starting point to raise and promote environmental best practice within the industry.
Solution	The Environmental Business Charter – a “soft touch” introduction to the way environmental concerns can be integrated into the City environment (similar to the highly successful Mindful Business Charter[11]).
Context	Many law firms are signed up to the Legal Sustainability Alliance[12] etc. but it can be difficult to put this into practice with clients, for example raising whether a flight to a meeting is necessary. The aim of this is to provide a tool to open these conversations with clients.
Impact	The Charter will allow environmental issues and language to become mainstream in the City.
Stakeholders	1. Law firms 2. Their clients
Application	The Charter will be developed between firms and clients to develop a set of best practice rules whereby deviations from best practice should be justified to encourage environmental thinking to be at the forefront of best business practice.
Notes for users	

11 https://mindfulbusinesscharter.com/.
12 https://legalsustainabilityalliance.com/.

Environmental Business Charter

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

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

Organisation Undertakings

Publish GHG emissions

Limits on use of offsetting to achieve targets

Transparency and consistency on green ratings and credentials

Conscious Travel

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

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

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

Challenge the business norm of travelling without thought.

Technology

Invest and encourage virtual meetings.

Long term decision making

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

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

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

Employee incentives

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

Offer the ability to take advantage of company offsets.

Offer climate sabbaticals[13].

Client/Customer Divestment

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

13 See Eric's clause.

[Darcy's Board Minutes]

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

14 https://ccli.ouce.ox.ac.uk/wp-content/uploads/2019/10/CCLI-Directors%E2%80%99-Liability-and-Climate-Risk-Comparative-Paper-October-2019-vFINAL.pdf.

Stakeholders	Companies can choose to incorporate this drafting into their board minutes at their discretion, however the following stakeholders could be consulted for example to encourage their members to incorporate environmental considerations into their governance processes, update precedents etc. 1. Department for Business, Energy and Industrial Strategy (BEIS) 2. Confederation of British Industry 3. Institute of Directors 4. Federation of Small Businesses 5. Precedent and know how Providers 6. Professional Support Lawyers 7. Private Practice Firms 8. Investor/shareholder bodies and GC groups
Application	This drafting can easily be incorporated into existing board minutes precedents.
Notes for users	Wording will of course need to be bespoke for the company using it, however the drafting is intended to encourage boards to specifically confirm that they have properly considered their environmental objectives and/or the environmental risks associated with their decisions. Boards should keep detailed notes of the matters discussed for accountability and audit purposes.

Example Clause

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

a) the matters referred to in section 172 of the Companies Act 2006;

b) [the environmental and social impact policies and objectives of the Company (as stated in its accounts for the year ended [●]/sustainability report dated [●]);

c) the Company's [net zero carbon emissions] OR [carbon emissions reduction] target (as stated in its strategic plan for the period [●]);

d) the carbon footprint of, and the climate change risks (including, physical, liability and transition risks) associated with, the transactions under contemplation at the meeting);

e) alternatives with a lower carbon footprint and giving rise to less climate change risk;

f) measures for reducing the Company's carbon footprint and reducing, mitigating and/or avoiding the climate change risks,

It was resolved that [insert resolutions].

[Hanley's clause]

	The Origin Story
Child's name	Hanley's clause
Full name	Climate change clauses for Heads of Terms
Theme	Contracts of the Future and Companies of the Future
Team	TMG
Issue	Heads of Terms for a commercial transaction or deal drive many of the workflows and set the tone and spirit of a negotiation. Precedent heads of terms do not include a section on climate change or the transition to net zero.
Solution	Incorporate a dedicated section into heads of terms precedents so that climate change issues become a key consideration for any deal team. This will be particularly relevant where one or both of the parties has a publicly stated net zero target.
Context	Heads of terms are commonly used in commercial transactions[15]. They allow parties to focus on key issues to ensure time is used efficiently and to set the tone, scope and timetable of the transaction. It is rare to see sustainability or climate change issues represented on heads of terms. As such they are often overlooked or are only picked up by environmental lawyers as part of a wider legal due diligence review. Climate change risks are now a board issue[16] and as such should be given equal prominence in transactions.
Impact	The clauses will ensure climate change is considered from the earliest part of a transaction and that carbon saving opportunities will become part of the due diligence exercise alongside the normal legal, financial, commercial and technical due diligence. It will also allow boards to demonstrate how climate change was considered as part of a transaction and thus potentially help mitigate future liability risk.
Stakeholders	1. Corporate finance houses 2. Banks 3. Precedent and know how providers 4. Professional support lawyers 5. Law firms and legal businesses
Application	The clauses will mean that a deal team will have to undertake specific due diligence relating to climate change issues and make known their position on these issues to the counterparty. This makes the evaluation and allo-cation of climate change risk a key part of any transaction.

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

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

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

Key Climate Change Considerations

1.1 The Deal will be structured so as not to increase, or amplify the impact of, climate change or the carbon emissions of the parties.

1.2 [The Deal will provide opportunities to reduce carbon emissions and the respective party's impact on climate change and the Parties agree to work together to identify carbon saving opportunities as part of the negotiations.]

1.3 The respective directors of the parties will consider the financial risks relating to climate change as part of the Deal due diligence in accordance with the [recommendations of the Task Force on Climate-related Financial Disclosures[17] / Bank of England's climate risk taxonomy and climate stress tests[18]] including the:

a) physical risks;

b) transition risks; and

c) litigation risks.

1.4 [If having considered the risks summarised in paragraph 1.3 the parties conclude that there are significant climate risks present in the Deal they will, as a Condition Precedent or Condition Subsequent, agree a plan to mitigate the risks identified.]

17 https://www.fsb-tcfd.org/.
18 https://www.bankofengland.co.uk/climate-change.

[Marni's clause]

	The Origin Story
Child's name	Marni's clause
Full name	Report on Title – Climate Change Clauses
Theme	Encouraging Green Living
Team	TMG
Issue	Standard Reports on Title for the acquisition of property in the UK do not include statements relating to the future risks of climate change that may affect the property. Given the wide acceptance of climate change science and the articulation of climate change risks by the Bank of England and others, this is something buyers should be aware of prior to purchase.
Solution	In the absence of climate change risk searches being available, standard climate change statements should be added to a report on title to make buyers aware of the future risks that may affect the property.
Context	The built environment contributes around 40% of the UK's total carbon footprint.[19] The Bank of England has observed that more building is being undertaken in high risk areas[20]. There are existing laws to make it illegal to lease commercial property that has an Energy Performance Certificate rating that is either F or G. If the UK is to hit its net zero target then it is logical that in the future it may become illegal to rent properties that are not net zero. There are already tools available to search for land projected to be below annual flood level in 2050[21].The average term of a UK mortgage is 25 years Reports on title are used in the acquisition of all UK property from commercial to residential and freehold to leasehold.
Impact	The clauses will ensure climate change risks are brought into mainstream transactional awareness. The identification of risks will also mean there has to be a new focus on solutions such as how the property could be made more resilient to the effects of climate change. This should result in investment in buildings to make them more energy efficient.

19 https://www.ukgbc.org/climate-change/
20 https://www.bankofengland.co.uk/knowledgebank/climate-change-what-are-the-risks-to-financial-stability
21 https://sealevel.climatecentral.org/maps/

Stakeholders	The key stakeholders that you think need to be engaged to deliver this Impact 1. Council for mortgage lenders 2. RIBA and RICS 3. Precedent and know how providers 4. Professional support lawyers 5. Private practice firms
Application	The proposed amendments will mean that climate change issues are a standalone section of the report, bringing the risks to the fore and prompting clients to consider obtaining professional advice on how the building will be resilient to the effects of climate change.
Notes for users	The statements are designed to be used for leasehold and freehold transactions for both commercial and residential buildings. If leasehold acquisition, then we expect the drafter will suggest that resilience questions are directed to the landlord.

Additional provisions to add to a report on title:

Interpretation

1.1 The following terms are used in this report:

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

Scope of the Review and Limitation of Liability

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

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

Climate Change Risks

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

4.1 Physical Risks

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

4.2 Transition Risks

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

4.3 Future Liability Risk

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

[Mary's clause]

	The Origin Story
Child's name	Mary's clause
Full name	JCT Energy Efficiency and Environmental Obligations
Theme	Accelerating Green Technology and Encouraging Green Living
Team	TMGGP
Issue	The standard JCT suite of contracts do not include environmental standards. Further they do not provide a remedy for the employer if energy efficiency targets are missed.
Solution	Amendments to the JCT standard Design and Build documents to make energy efficiency part of Practical Completion.
Context	The built environment contributes around 40% of the UK's total carbon footprint[22] The more energy efficient the buildings the more carbon that is saved and the more future proof the investment. The JCT suite of contracts are used in a large proportion of the building industry. Amendments to the JCT contracts are common and normal practice for employers.
Impact	The clause will ensure new and refurbished buildings hit desired energy efficiency requirements. A more energy efficient building should have a lower carbon footprint and be a more resilient long-term asset for the developer or funder. It should also be more valuable.[23]
Stakeholders	The key stakeholders that you think need to be engaged to deliver this Impact 1. The Joint Contracts Tribunal 2. RIBA and RICS 3. Developers 4. Contractors 5. Precedent and know how providers 6. Professional support lawyers 7. Private practice firms
Application	The proposed amendments will mean that a contractor will not be able to achieve Practical Completion without hitting the energy efficiency obligations. This puts energy efficiency front and centre. If the required standards are not achieved, then the contractor would have to retrofit the building until they are satisfied as there are no liquidated damages in lieu. Lenders are providing products which provide access to discounted rates for energy efficient property projects . Therefore, these Lenders and their covenants should be aligned with this clause. The drafting team are aware of a similar clause being used on funded projects[24] where energy efficiency is a core requirement of the employer.

22 https://www.ukgbc.org/climate-change/
23 https://www.rics.org/globalassets/rics-website/media/knowledge/research/insights/energy-efficiency-and-residential-values.pdf
24 https://www.lloydsbank.com/business/commercial-banking/clean-growth-financing-initiative.asp

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

JCT Contract Particulars: Incorporation into this Agreement

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

Definitions

1.2 Add these definitions:

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

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

Compliance with Environmental Requirements

2.1 Add a new sub-clause:

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

2.1.1 comply with the Modern Slavery Act 2015 and the Anti-Slavery Policy;

2.1.2 comply with the Anti-Bribery Policy; and

2.1.3 at all times in carrying out its obligations under this agreement, the Contractor shall seek to [promote] the Environmental Requirements.“

[Note: Alternatively, the Environmental Requirement could be included in the Standards/Compliance with Law’ obligations.]

2.2 Add a new sub-clause:

"Without derogating from any other provision in this Contract, the Contractor warrants to the Employer that it shall use the Standard of Care when:

2.2.1 designing the CDP Works;

2.2.2 selecting goods, materials, plant and equipment for incorporation in the CDP Works; and

2.2.3 complying with the obligation in clause 2.1.3 in respect of the Environmental Requirements."

EPC Obligation

3.1 Add new clause:

"For the purpose of assessing whether practical completion of the Section or the Works has been achieved, the [Employer/Employer's Agent/Architect/Contract Administrator] shall not issue any certificate to that effect until such time as the EPC Obligation for such Section or the Works as the case may be has been met or alternatively specific agreement has been reached between the Employer and the Contractor for the urgent achievement of the EPC Obligation during the course of the Rectification Period (which may include the Employer requiring the Contractor to undertake remedial works (such remedial works to include, but not limited to, retrofitting as necessary) to achieve the EPC Obligation or (if not possible) improve the energy performance of the Works, provided that the total aggregate costs (excluding VAT) of such remedial works (which shall be borne by the Contractor) do not exceed [10]% of the Contract Sum."

3.2 Add to the end of clauses 2.32 and 2.36, before the full stop:

", provided that the [Employer/Employer's Agent/Architect/Contract Administrator] shall not be required to issue any Certificate of Making Good earlier than the expiry of the Rectification Period and/or prior to the EPC Obligation for such Section or the Works as the case may be having been met."

3.3 Add a new clause after clause 2.36:

"Snagging list and defects, shrinkages or other faults remaining at practical completion Clauses 2.35 and 2.36 shall apply, all other things being equal, to:

3.3.1 any items identified on any snagging list issued by the Architect/Contract Administrator at or around practical completion or attached to a Practical Completion Certificate or Section Completion Certificate;

3.3.2 any defects, shrinkages or other faults in the Works at practical completion; and

3.3.3 any incomplete work, forming part of the Works, remaining at practical completion including but not limited to any work required for the purpose of achieving the EPC Obligation."

Annex A Environmental Requirements

Objectives:

- To use sustainable materials and avoid the use of environmentally harmful materials;
- To re-use and recycle materials on site;
- To employ a site waste management plan which includes zero-to-landfill and a process to minimise waste as far as possible;
- To adopt environmentally friendly working methods, including minimising energy use through plant and site services;
- To protect and enhance existing ecological features on site;
- To minimise air (dust and fumes) and noise pollution;
- To minimise water use and guard against water pollution;
- To utilise local suppliers; and
- To promote green travel to and from the site.

[Ideas Pipeline - Clauses or Contracts to be Drafted]

The following are ideas for clauses and contracts that The Chancery Lane Project will consider and where appropriate draft. If you would like to get involved in drafting these or have any other ideas for contractual clauses to help fight climate change please email contact@chancerylaneproject.org

Ideas:

1	Draft a syndicated Power Purchase Agreement that allows SME's to enter into a cor-porate PPA to buy energy from a new solar park or wind farm.
2	Draft rewilding remedies in contracts so that tree planting and other capacity building activity is prioritised over financial liquidated damages.
3	Draft a third party rights clause that doesn't exclude the planet/environment.
4	Tree planting as a Liquidated Damages remedy.
5	Draft warranties and provisions relating to alignment of suppliers to UN SDGs.
6	Create a green. Sustainability Service Level Agreement for all suppliers.
7	Create green covenants for new build flats - green leases but for residential units.
8	Draft provisions for a land promotion agreement that require the planning sought to build a community, capacity and use renewable energy rather than focus on minimising s106, open space etc.
9	Green/Low Carbon behaviour covenants in sponsorship agreements in the same way as anti-doping etc to protect the sponsor from climate litigation risk and brand association.
10	Draft net zero questions as part of standard ITT questionnaire for the public sector.
11	Update all government model contracts to include green warranties, net zero obligations etc .
12	Draft a carbon price fluctuation clause - similar to a currency conversion price mechanism.
13	A standard clause that deals with forecasts for the carbon footprint of goods or services.
14	A qualification to NDAs to allow disclosure where there has been significant environmental damage that it is in the public interest to be aware of.

15	Create low carbon distribution undertakings in a distribution agreement - i.e. use low carbon distribution methods, minimising packaging etc.
16	A green contract review and approval policy for use by an organisation. The policy would set out which contracts are subject to sustainability manager review, the scope of the review and the process of obtaining sustainability approval. This could be part of the legal sign off procedure giving in house legal the influence over the transition to net zero.
17	Draft a carbon performance guarantee.
18	Climate change 4 degree world trigger renegotiation clause.
19	Liquidated damages clause based on the prevailing price for carbon - based on European Emission Allowances.
20	Draft a Climate change risk section for a Certificate of Title.
21	Draft a Climate Change section for a standard due diligence questionnaire.
22	Draft a Green Benchmarking clause for outsourcing contracts.
23	Green benchmarking in outsourcing contracts with remedies requiring carbon improvements of rewilding remedies.
24	Draft a clause for an agency agreement that prevents the agent from promoting environmentally damaging or heavy carbon products.
25	Amendments to the Loan Market Association precedent documents to include green covenants.
26	Amendments to the British Venture Capital Association model documents to include green covenants.

Contributing, Participating or Supporting Firms and Organisations

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- 10 King's Bench Walk
- Acuity Law
- Akin Gump Strauss Hauer & Feld
- Airbnb (in house legal)
- Allen & Overy
- Anthony Collins
- Achill Management
- Ashfords
- Ashurst
- Bates Wells
- Bevan Brittan
- Bloomberg (In house legal)
- Bryan Cave Leighton Paisner
- The Bar Council
- Capital One (Europe) (in house legal)
- Charles Russell Speechlys
- Citi Group (In house legal)
- ClientEarth
- Clifford Chance
- Clyde & Co
- Commonwealth Climate and Law Initiative
- Cornerstone Chambers
- Davies and Partners
- Debevoise & Plimpton
- Doughty Street Chambers
- Eversheds Sutherland
- Foot Anstey
- Forsters
- Global Witness (in house legal)
- Goldman Sachs (in house legal)
- Herbert Smith Freehills
- Grantham Research Institute on Climate Change and the Environment at the LSE
- Low Carbon (in house legal)
- The Law Society
- Reed Smith
- Trowers & Hamlins
- Hogan Lovells
- International Airlines Group (in house legal)
- Kirkland & Ellis International
- Legal Sustainability Alliance
- Lewis Silkin
- Loan Markets Association (in house legal)
- Longmores Solicitors
- Lux Nova Partners
- Macfarlanes
- McDermott Will & Emery UK
- Michelmores
- MinterEllison
- Mishcon de Reya
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- Oxygen House Group (in house legal)
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- UK In House Pro Bono Group
- University of Exeter Law School
- University of Glasgow School of Law
- University of Oxford Faculty of Law
- Wiggin

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It is not a condition of use but it will help us measure and amplify our impact.

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