

NET ZERO TECHNOLOGY CENTRE LIMITED

PROJECT TERMS AND CONDITIONS





1 INTERPRETATION

1.1 In these Terms and Conditions, the following words and expressions shall have the following meanings unless the context otherwise requires:

“Agreement” means the agreement governing the Project, collectively being these Terms and Conditions and the corresponding Directed Project Agreement;

“Affiliate” means in relation to a Party any holding company or subsidiary of the Party or any subsidiary of any holding company of the Party, and **“holding company”** and **“subsidiary”** shall have the meanings set out in s.1159 of the Companies Act 2006 provided that a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Companies Act 2006, as a member of another company even if its shares in that other company are registered in the name of (i) another person (or its nominee) by way of security or in connection with the taking of security, or (ii) its nominee; and provided further that such person (or nominee) referred to in (i) or such nominee referred to in (ii) shall not be Affiliates by reason of holding shares in such capacity;

“Background IPR” means any Intellectual Property Rights owned by, licensed to, or otherwise in the possession of, a Party prior to the Effective Date or created otherwise than in the conduct of the Project and which the owning Party contributes or uses in the course of performing the Project;

“Change of Control” means a change in the Control of the Developer;

“Claims” means any claim, demand, cause of action (whether arising in contract, tort including without limitation in negligence or otherwise), judgment, remedies, debts, liens, loss, expense, proceeding, penalty, award of damages or liability (including without limitation reasonable legal fees, costs and expenses and sums paid by way of settlement or compromise);

“Close Out Report” means a report produced by the Developer (with assistance from the Participants, if required) in accordance with the template provided which may be updated by the NZTC from time to time;

“Completion” means the completion of the Project, which shall take place on signing of the Close Out Report by each member of the Project Steering Group;

“Confidential Information” in relation to a Party means information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to that Party, its Affiliates, its Co-Venturers, and its or their business, operations, customers, finances, transactions, methods or activities which: (i) a Party has marked as confidential or proprietary; or (ii) a Party, orally or in writing has advised the other Parties is of a confidential



nature; or (iii) due to its character or nature, a reasonable person in a like position and under like circumstances would treat as confidential;

“Control” means the acquisition of: (a) the voting rights attaching to 50% or more of the voting shares in the Developer or a Participant; or (b) the power to direct or cause the direction and management of the policies of the Developer or a Participant in accordance with the acquirer’s wishes, whether as a result of ownership of shares, assets, contracts, control of the board of directors, or any powers conferred by the constitutional documents;

“Corresponding Funding” shall have the meaning given to it in Clause 10.6;

“Co-Venturer” means in respect of a Participant or Developer, any entity, with whom such Participant or Developer (or any Affiliates of such Participant or Developer) is or may be from time to time a party to a joint operating agreement or unitisation agreement or similar agreement relating to the operations in respect of which the Participant or Developer (or any Affiliates of such Participant or Developer) is participating in the Project, and the successors and assigns of any such person or entity in respect of such interest;

“Data Protection Laws” means all applicable laws, statutes, bye-laws, regulations, orders or rules of court relating to the processing of personal data and/or privacy (including, but not limited to: (a) Regulation (EU) 2016/679 (the **“GDPR”**); (b) the Data Protection Act 2018; (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (d) any data protection and privacy laws enacted in replacement of (a), (b) or (c) and/or as a result of the GDPR ceasing to have direct effect in the UK (in each case as amended, updated or re-enacted from time to time), and all applicable guidance and codes of practice issued by the Information Commissioner and/or any other relevant regulatory body from time to time;

“Demand for Payment” means a demand for payment form completed by the Developer and submitted to the NZTC or the Participant (as the case may be);

“Developer” shall have the meaning given to it in the Directed Project Agreement;

“Directed Project Agreement” means the agreement signed by all Parties, which shall incorporate these Terms and Conditions and set out the terms specific to the Project;

“Effective Date” shall have the meaning given to it in the Directed Project Agreement;

“Exit” means a Party’s withdrawal from the Agreement (and the terms **“Exits”** and **“Exited”** shall be construed accordingly);

“Exiting Party” shall have the meaning given to it in Clause 10.4;

“Funding” means the financial funding (if any) provided by the NZTC and/or the Participants to the Developer in furtherance of the Project (following receipt of a Demand for Payment) as set out in the Directed Project Agreement;



“Force Majeure Event” shall have the meaning given to it in Clause 12.1;

“Grant” shall have the meaning given to it in the Directed Project Agreement;

“Intellectual Property Rights” means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“In-Kind Contribution” means the non-monetary contribution (including but not limited to management time, test data, access to and use of facilities and resources) supplied by a Participant and/or a Developer to the Project, and the value of such contribution is calculated by the NZTC in accordance with the NZTC’s rate card from time to time and set out in the Directed Project Agreement;

“Internal Use” means use in a Party’s and/or its Affiliates’ own operations but excluding making available for use by any other third party;

“Key Personnel” means the key members of staff engaged to undertake the Project as set out in the Directed Project Agreement.

“NZTC” shall have the meaning given to it in the Directed Project Agreement;

“Participants” shall have the meaning given to it in the Directed Project Agreement;

“Party” or **“Parties”** means NZTC, the Developer and a Participant;

“Project” shall have the meaning given to it in the Directed Project Agreement;

“Project Deliverables” means any deliverables of the Project as set out in the Directed Project Agreement;

“Project IPR” shall have the meaning given to it in Clause 8.1;

“Project Manager” means a project manager appointed by the NZTC to oversee delivery of the Project;

“Project Management Framework” means the NZTC framework for management of projects in place set out in Appendix 1 and as varied from time to time by written agreement among the Parties;



“Project Milestones” means any specific dates which are required to be met in relation to the Project Responsibilities and/or Project Deliverables as set out in the Directed Project Agreement;

“Project Responsibilities” means the responsibilities to be performed by the Parties in furtherance of the Project as set out in the Directed Project Agreement;

“Project Results” means all results, outcomes, conclusions, findings, recommendations, reports, documentation, information and data (whether in oral, written or electronic form) which are generated for the purposes of, as a result of, or in connection with the Project including all measurable job data recorded for logging facilities, operational procedures, photographic and video records and reports from personnel involved in or supervising Project activities, including the Key Personnel;

“Project Steering Group” means the committee established in accordance with Clause 6;

“Protected Data” shall have the meaning given to it in Clause 13.2;

“Publication Date” shall have the meaning given to it in Clause 5.3;

“Term” shall have the meaning given to that expression in Clause 10.1; and

“UK Subsidy Control Framework” means any legislation applicable in the United Kingdom on or after 1 January 2021 that regulates the granting by an organisation of any advantage which threatens to or actually distorts competition in the United Kingdom and/or any other country or countries.

- 1.2 Words denoting the singular number only shall include the plural and vice versa. Reference to a person includes individuals, firms and corporations.
- 1.3 Unless the context otherwise requires, reference to a Clause or Appendix is to a clause of, or appendix to, these Terms and Conditions.
- 1.4 The Appendices form part of these Terms and Conditions and shall have effect as if set out in full in the main body of these Terms and Condition.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended and/ or re-enacted from time to time.
- 1.6 Any words following the term “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.



1.7 In the event there is ambiguity or a conflict between the terms of the Directed Project Agreement and these Terms and Conditions, the terms of the Directed Project Agreement shall prevail.

2 **PROJECT**

2.1 Each Party shall:

2.1.1 carry out their respective Project Responsibilities under the direction of the Project Steering Group and in accordance with the Project Management Framework;

2.1.2 use reasonable endeavours to achieve the Project Milestones;

2.1.3 carry out their respective Project Responsibilities:

(a) with all due diligence, care and skill, in accordance with applicable laws and regulations (including the UK Subsidy Control Framework);

(b) in such manner as to ensure the health and safety of all Project personnel at all times and in accordance with the Health and Safety at Work etc. Act 1974, and associated regulations and the Environmental Protection Act 1990 and associated regulations;

2.1.4 supply to the other Parties information and assistance reasonably requested by it relating to the Project as is reasonably necessary to enable that other Party to perform its own Project Responsibilities in relation to the Project; and

2.1.5 in the case of the Developer, only engage Key Personnel to carry out the Project Responsibilities (except where the Project Steering Group consents to a variation of such Key Personnel or where work is delegated to subcontractors approved by the Project Steering Group).

2.2 Each Party shall undertake the Project and their Project Responsibilities at its own cost except insofar as provided for and set out in the Agreement or as otherwise agreed in writing between the Parties. No Party may incur costs which they expect to be reimbursed for unless agreed in advance by the Project Steering Group.

3 **FUNDING AND PAYMENT**

3.1 Each Party is responsible for the respective Funding as set out in the Directed Project Agreement and payment of any taxes due from it to HMRC including VAT. In respect of Funding provided by a Participant (if any), the Participant and Developer shall agree the terms and conditions relating to payment of such Funding, and such Funding shall be paid directly by the Participant to the Developer.



- 3.2 The NZTC shall be under no obligation to pay Demands for Payment it receives:
- 3.2.1 which have not been approved in advance by NZTC in writing;
 - 3.2.2 where the Developer has not complied with the reporting requirements set out in Appendix 1 (Project Management Framework);
 - 3.2.3 where the Developer has not complied with the requirements for any Demands for Payment as detailed in Appendix 2;
 - 3.2.4 which relate to payments (either staff costs or third party supplier costs) incurred six (6) months prior to the date that the Demand for Payment is received by NZTC;
 - 3.2.5 six (6) months post completion of the final Project Milestone (any Demands for Payment submitted after this time will not be eligible for payment);
 - 3.2.6 which are not properly due and payable under the terms of the Agreement; or
 - 3.2.7 that are raised invalidly.
- 3.3 The NZTC will not reimburse any costs committed or incurred prior to approval of the Project.
- 3.4 Demands for Payment received by the NZTC must include vouching as set out in Appendix 2, in particular:
- 3.4.1 with a clear and transparent link to the duly completed front sheet template of the Demand for Payment, as detailed out in Appendix 2;
 - 3.4.2 the Developer is required to attach timesheets and evidence of salary burden from its payroll system (e.g. a Demand for Payment shall be supported by a signed timesheet for 5 x days @ 8 hours per day together with a PAYE record confirming the cost rate);
 - 3.4.3 if the Developer is unable to provide timesheets from its payroll system, timesheets shall be delivered on a monthly basis in the format determined by the NZTC in its sole discretion; and
 - 3.4.4 the NZTC shall be under no obligation to release Funding in respect of time incurred until the relevant timesheets are approved by NZTC in writing.
- 3.5 The NZTC shall take into account the activities of each Party in calculating In-Kind Contributions. The NZTC shall determine in its sole discretion the value of a Party's In-Kind Contribution.



3.6 Funding from the NZTC must be used solely for the intended purpose as stated in the Demand for Payment (i.e. to pay the third party stated in the request for Funding). For the avoidance of doubt, no Funding from the NZTC shall be held by the Developer in its own account instead of settling any third-party debt that Funding from the NZTC was to be used for. Funding from the NZTC cannot be used for any other Developer requirements or business needs other than what is agreed under the Agreement. Failure to comply with such requirements shall be classed as a material breach and may result in the Agreement being terminated with no further Funding being provided and any Funding already paid out to be returned to the NZTC.

4 **SUBSIDY CONTROL**

4.1 The Parties acknowledge that the UK Competition and Markets Authority is empowered in certain circumstances to require the NZTC to supply it with any information it deems necessary to enable it to determine that the Funding complies with the UK Subsidy Control Framework and:

4.1.1 the NZTC reserves the right to provide the UK Competition and Markets Authority with information about the Grant and the contents of the Agreement; and

4.1.2 the Developer and the Participants shall, so far as lawfully obliged to, supply the NZTC with such information related to the Grant as may be required by the UK Competition and Markets Authority.

4.2 The NZTC may withhold payment of the Funding and/or reclaim the Funding to the extent that it has been paid out, with interest, either:

4.2.1 to the extent necessary to ensure that the Funding, taken together with any other assistance which has been or is likely to be received by the Developer (including In-Kind Contributions), has been given in compliance with the UK Subsidy Control Framework; or

4.2.2 if required to do so by the UK Competition and Markets Authority, the Scottish Government, the UK Government, a court or tribunal of competent jurisdiction or other competent authority.

4.3 Any amount paid out and reclaimed by the NZTC pursuant to Clause 4.2 shall be payable by the Developer within two (2) months of notification to the Developer of any non-compliance with the UK Subsidy Control Framework and/or a decision of the UK Competition and Markets Authority, Scottish Government, or UK Government.

5 **PUBLICITY, PUBLICATIONS AND ANNOUNCEMENTS**

5.1 The Developer and Participants acknowledge and agree that the NZTC is subject to stringent requirements under the UK Subsidy Control Framework. Subject to the terms of this Clause



5, the NZTC shall be entitled to disseminate the Project Results and publicise that it is collaborating with the Developer and the Participants.

- 5.2 The Parties to the Agreement shall work collaboratively to provide a Close Out Report to the NZTC within three (3) months of completion of the final Project Milestone. The Parties agree that completion of the Close Out Report is a fundamental condition of the Agreement and, notwithstanding any Demand for Payment, the NZTC shall be entitled to withhold ten percent (10%) of the Funding or ten thousand pounds (£10,000), whichever is the greater, until Completion.
- 5.3 All proposed publicity, publications, and announcements shall first be submitted in writing to the Project Steering Group for review not less than thirty (30) calendar days before the date of any publicity, publication or announcement, as the case may be, is scheduled to take place (the “**Publication Date**”).
- 5.4 A member of the Project Steering Group shall notify the Project Steering Group no later than fourteen (14) calendar days before the Publication Date if it requires the deletion or amendment of any reference to a Party’s Confidential Information or Intellectual Property Rights in any proposed publicity, publication or announcement.
- 5.5 If no notification is received by the Project Steering Group in accordance with Clause 5.4, the Project Steering Group shall be deemed to authorise the proposed publicity, publication or announcement.
- 5.6 Notwithstanding the foregoing, the NZTC shall always be entitled to publicise, publish, announce or disseminate the Close Out Report, and/or Project Results, and/or other information (including that it is collaborating with the Developer and the Participants) to the minimum extent necessary to ensure compliance with the UK Subsidy Control Framework, and Clause 5.3, Clause 5.4 and Clause 5.5 shall not apply to any publicity, publication or announcement made by the NZTC in accordance with this Clause 5.6, provided that such publication shall not contain Confidential Information.
- 5.7 The Developer shall provide to the NZTC (if applicable) suitable images, videos and any applicable visuals to assist the NZTC in promoting the Project. The Developer shall be responsible for ensuring that suitable images and visuals are provided to the NZTC at the relevant Project Milestones as requested by the Project Manager.

6 **PROJECT STEERING GROUP**

- 6.1 NZTC will exercise overall supervision of the Project in accordance with Appendix 1 (Project Management Framework), provided that any activities on, or within the five hundred (500) metre safety zone of, an offshore installation will be subject to the sole approval and control of the Participant (or its Co-Venturer) operating the installation.



- 6.2 The Project Steering Group will be established for the purpose of the Project for the Term with the NZTC exercising overall supervision and chairing of the Project Steering Group in accordance with the Project Management Framework.
- 6.3 Each Party shall be entitled to appoint one (1) member to the Project Steering Group. Each member of the Project Steering Group shall be given one (1) vote to cast in relation to decisions made at a Project Steering Group meeting. Any decision of the Project shall be made unanimously.
- 6.4 The representative for each member of the Project Steering Group shall be set out in the Directed Project Agreement.

7 **CONFIDENTIALITY**

7.1 Each Party (the “**Recipient**”) shall:

7.1.1 during the term of the Agreement and for a period of five (5) years thereafter keep secret and confidential all Confidential Information disclosed to it, including the level of Funding provided, In-Kind Contributions made or related financial information, by any other Party (the “**Disclosing Party**”) and shall not disclose or permit it to be made available to any person, firm or company (except to the Affiliates of the Recipient and its and their employees or sub-contractors (and in the case of a Participant, its Co-Venturers) who shall be obliged by the Recipient to treat the Confidential Information as confidential and in the same manner and to an equivalent extent as provided for herein with regard to confidentiality, disclosure and use) without the Disclosing Party’s prior written consent;

7.1.2 upon expiry of the Term, promptly following receipt of a written request from the Disclosing Party upon Exit from the Project, or on termination of the Agreement, either return all Confidential Information of the Disclosing Party and all copies of it to the Disclosing Party, or at the Disclosing Party’s request, confirm in writing to the Disclosing Party that all Confidential Information and all copies of it have been destroyed, save as required by law or save in the case of Confidential Information which has been automatically backed-up on the computer systems of the Recipient or its Affiliates (which may be retained for the period that backed-up computer records are normally archived).

7.2 Nothing in Clause 7.1 shall apply to any information or data which:

7.2.1 at the time of its disclosure is in, or subsequently comes into the public domain (other than due to a breach of the Agreement);

7.2.2 is disclosed by the Disclosing Party on a non-confidential basis;



- 7.2.3 was lawfully in the possession of the Recipient or any of its Affiliates or sub-contractors prior to the date of the disclosure;
- 7.2.4 is subsequently received by the Recipient or any of its Affiliates or sub-contractors from a third party without any obligation of confidentiality (and, for the avoidance of doubt, the Recipient shall not be required to enquire whether there is a duty of confidentiality); or
- 7.2.5 is required to be disclosed by the Recipient or any of its Affiliates or sub-contractors by applicable law or order of a court of competent jurisdiction or government department or agency (including the UK Competition and Markets Authority, Scottish Government, or UK Government) or by any recognised stock exchange.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Agreement does not transfer any interest in Intellectual Property Rights which are either existing at the time of entering the Agreement or subsequently developed independently of the Project, in each case which are made available for the purposes of the Project (“**Background IPR**”). All Intellectual Property Rights developed or created by a Party pursuant to the Project shall be owned by that Party (“**Project IPR**”).
- 8.2 Each Party grants to each of the other Parties and their Affiliates and Co-Venturers (in the case of the Participants) (together the “**Licensed Parties**”, each a “**Licensed Party**”) a non-exclusive, non-transferable, non-sub-licensable, royalty-free, worldwide licence during the Term to use its Project IPR, the Project Results and its Background IPR in performance of the Project and to the extent necessary for such other Parties to carry out their obligations in relation to the Project.
- 8.3 The Parties acknowledge and agree that the licence granted under Clause 8.2 shall:
 - 8.3.1 include a non-exclusive, non-transferable, non-sub-licensable, royalty-free, worldwide licence during the Term to use a Party’s logos and branding, provided that written consent is obtained prior to a Party using another Party’s logo and branding; and
 - 8.3.2 enable NZTC to publish and disseminate Project Results in accordance with Clause 5.6.
- 8.4 Upon expiry of the Term or termination of the Agreement, a Licensed Party, shall cease to use the Project IPR, Project Results and Background IPR and shall upon written request return any physical embodiment of the Project IPR, Project Results and Background IPR (including any copies) in its possession or control to the Party that owns the Project IPR, Project Results and Background IPR.
- 8.5 Each Party:



8.5.1 warrants and represents that it owns or has the right to use the Background IPR and that the use its Background IPR in connection with the Project shall not infringe the rights of any third party; and

8.5.2 shall promptly give written notice to each of the other Parties of any actual, threatened or suspected infringement of a Party's Intellectual Property Rights (including Project IPR) used in connection with a Project of which it becomes aware.

9 LIABILITIES AND INDEMNITIES

9.1 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:

9.1.1 death or personal injury caused by negligence;

9.1.2 fraud or fraudulent misrepresentation; and

9.1.3 any other liability which cannot be lawfully excluded.

9.2 The NZTC accepts no liability for any consequences, whether direct or indirect, that may arise from the Developer or Participants participation in the Project, the use of the Grant or from withdrawal of the Grant.

9.3 The Developer shall indemnify, hold harmless and defend the NZTC, its employees, agents, officers or sub-contractors with respect to all Claims arising from or incurred by reason of the actions and/or omissions of the Developer in relation to the Project, the non-fulfilment of obligations of the Developer under the Agreement or their obligations to third parties, irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of NZTC, its employees, agents, officers or sub-contractors.

9.4 Each Participant shall indemnify, hold harmless and defend the NZTC, its employees, agents, officers or sub-contractors with respect to all Claims arising from or incurred by reason of the actions and/or omissions of the Participant in relation to the Project, the non-fulfilment of obligations of the Participant under the Agreement or their obligations to third parties, irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of NZTC, its employees, agents, officers or sub-contractors.

9.5 The Parties shall effect and maintain, at all times during the Term and for a period of five (5) years thereafter insurance cover with a reputable insurance company sufficient to meet their liabilities under the Agreement or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with the Agreement.



10 TERM AND TERMINATION

10.1 The Agreement shall be effective on and from the Effective Date and shall expire on the date of Completion unless terminated earlier in accordance with this Clause 10 (“**Term**”).

10.2 The NZTC and the Participant reserve the right to Exit subject to providing thirty (30) days’ written notice in advance to the other Parties at any time.

10.3 If any Participant or Developer (the “**Defaulting Party**”):

10.3.1 is in material breach of the Agreement (including breach of any applicable law) which breach is irremediable or, if remediable, is not remedied by the Defaulting Party to the satisfaction of the NZTC within fourteen (14) days of being requested to do so by the NZTC in writing; or

10.3.2 ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, liquidator, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business (or is the subject of a filing with any court for the appointment of any such officer), makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction, and the event or action is not dismissed or discharged within fourteen (14) days;

the Defaulting Party shall be treated as having Exited and subject to the terms of this Clause 10, will no longer be a Party to the Agreement.

10.4 In the event the Developer or any Participant Exits pursuant to Clause 10.2 or Clause 10.3 (an “**Exiting Party**”), the remaining Parties shall as soon as reasonably practicable discuss in good faith whether:

10.4.1 the Agreement can continue without the Exiting Party;

10.4.2 a replacement for the Exiting Party is required and can be found within a reasonable period of time; or

10.4.3 to terminate the Agreement.

For the avoidance of doubt, if the NZTC Exits, the Agreement shall terminate.

10.5 If a Force Majeure Event continues for more than four (4) weeks, a Party not affected may terminate the Agreement by giving fourteen (14) day’s written notice to the other Parties.



10.6 Notwithstanding any other provisions of the Agreement, the NZTC's obligation to make payment of the Funding is subject to it having received the corresponding amount of funding from its funders (including the Scottish Government and UK Government as the providers of the Aberdeen City Region Deal) (the "**Corresponding Funding**"). If for any reason the NZTC does not receive the Corresponding Funding or anticipates, acting reasonably that it is not likely to receive the Corresponding Funding, it will notify the other Parties in writing as soon as reasonably practicable. If the NZTC does not receive the Corresponding Funding, the other Parties shall have the right to terminate or Exit the Agreement or at each Party's option, suspend performance of its obligations under the Agreement until such time as the Corresponding Funding is received.

11 **CONSEQUENCES OF TERMINATION**

11.1 The Developer agrees that if it is in breach of any of the terms of the Agreement then it may be required to repay all or part of the Funding (and any other de minimis) granted by the NZTC to the extent that it has been paid out, with interest as determined in accordance with Clause 4.2.

11.2 Termination, Exit by a Party or expiry shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, Exit or expiry, including:

11.2.1 the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination, Exit or expiry;

11.2.2 liability for the pro-rated payment of Funding payable, or In-Kind Contributions due, as at the date of termination, Exit or expiry of the Agreement, which includes payment of any committed costs or charges which are expressed as "committed" in the Directed Project Agreement, provided that the Party which has committed to those costs uses reasonable endeavours to reduce such costs or charges.

11.3 Upon termination, Exit or expiry of the Agreement any licences to use the Project IPR, Project Results and any Background IPR, granted to a Party under Clause 8 shall terminate unless agreed otherwise between the Parties.

11.4 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination, Exit or expiry of the Agreement shall remain in full force and effect.

12 **FORCE MAJEURE**

12.1 Subject to complying with Clause 12.2, no failure or omission by any Party (the "**Affected Party**") to carry out or observe any of the stipulations, conditions or obligations to be performed hereunder shall, (except for failure to pay) be deemed to be in breach of the



Agreement for so long as such failure or omission arises from any cause beyond the reasonable control of that Party (a “**Force Majeure Event**”).

12.2 The Affected Party shall:

12.2.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than five (5) days from its start, notify the other Parties of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

12.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

13 **DATA PROTECTION**

13.1 In the Agreement, ‘personal data’ shall have the meaning given to it in the Data Protection Laws unless otherwise stated.

13.2 Each Party must comply with all Data Protection Laws that apply to it in relation to any personal data processed in connection with the Agreement (“**Protected Data**”).

13.3 Each Party must ensure that it maintains appropriate technical and organisational measures (including appropriate policies communicated to employees, management and review of ongoing compliance and effective security measures):

13.3.1 to prevent any unauthorised or unlawful processing of the Protected Data; and

13.3.2 to guard against accidental loss or destruction of, or damage to, the Protected Data.

13.4 For the avoidance of doubt, any data provided by a Participant to the Developer in regard to the Project shall be provided directly to the Developer by the Participant and the Participant and the Developer shall agree between them such terms and conditions as are necessary for the Participant and Developer to ensure compliance with the Data Protection Laws (if any). The Developer then shall provide the NZTC with transmittal information to confirm the data transfer has occurred to allow accurate tracking of In-Kind Contribution by the NZTC.

14 **ANTI-BRIBERY**

14.1 Each Party shall uphold the highest standards of business ethics in the performance of its responsibilities under the Agreement.

14.2 The Parties shall:



- 14.2.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including to the Bribery Act 2010; and
 - 14.2.2 promptly report to the other Parties any request or demand for any undue financial or other advantage of any kind received by it (or its Affiliates or Co-Venturers) in connection with the performance or non-performance of the Agreement.
- 14.3 The Parties shall ensure that any person associated with it who is performing obligations in connection with the Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on it in this Clause 14 (“**Relevant Terms**”). The Parties shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the other Parties for any breach by such persons of any of the Relevant Terms.
- 14.4 Breach of this Clause 14 shall be deemed a material breach under Clause 10.3.

15 **MODERN SLAVERY**

- 15.1 In performing its obligations under the Agreement, each Party shall:
- 15.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;
 - 15.1.2 include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this Clause 15;
 - 15.1.3 notify the other Parties as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Agreement; and
 - 15.1.4 maintain a complete set of records to trace the supply chain of all goods and/or services provided by it in connection with the Agreement.
- 15.2 Each Party represents and warrants that they have not been convicted of any offence involving slavery and human trafficking; nor have they been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 15.3 Breach of this Clause 15 shall be deemed a material breach under Clause 10.3.

16 **RIGHTS OF AUDIT**

- 16.1 The Participants and the Developer acknowledge and accept that NZTC is subject to stringent funding requirements and must ensure compliance with the UK Subsidy Control Framework. As a result, the Participants and the Developer agree to give reasonable support and



assistance (but not to provide any funding or incur any cost) when requested by the NZTC to comply with the UK Subsidy Control Framework, other related funding requirements (including arrangements with Aberdeenshire Council), or any enquiry or investigation by the UK Competition and Markets Authority, the Scottish Government, or UK Government which the NZTC is obliged to comply with.

- 16.2 During the Term and for a period ending two (2) years thereafter, NZTC or its duly authorised representative shall have the right to audit at all reasonable times and, upon request, take copies of all of the Participants' or Developer's records, books, personnel records, accounts, correspondence, memoranda, receipts, vouchers and other papers of every kind relating to the Funding and any provision of the Agreement under which the Participants' or Developer have obligations the performance of which are capable of being verified by audit.
- 16.3 If the Participant or the Developer (as applicable) determines in its sole discretion that any documentation is confidential or proprietary including for commercial reasons, competition law or any other reason it will instruct its statutory auditors to confirm those details and facts that are reasonably required by the NZTC to the extent possible without such documentation being disclosed to the NZTC.
- 16.4 The Participants and the Developer shall cooperate fully with NZTC and/or its representatives in carrying out any audit required by the NZTC which shall include providing the NZTC with reasonable assistance in auditing expenditures by third parties.
- 16.5 The NZTC will carry out any audit in a manner which will keep to a reasonable minimum any inconvenience to the Participants or Developer (as applicable). Such audits will take place at the election of NZTC.
- 16.6 On an annual basis for a period of three (3) years from Completion, the Developer shall be required to report to NZTC (in a format to be approved by NZTC) on the overall performance and outcomes of the Developer gaining Funding from the NZTC.

17 **GENERAL**

- 17.1 These Terms and Conditions (together with the terms set out in the Directed Project Agreement) constitutes the entire agreement between the Parties and supersedes any previous agreement entered into by the Parties in connection with the Project, and may not be varied except in writing between the Parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 17.2 No failure or delay by any Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by any Party of any breach of the Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.



- 17.3 If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected.
- 17.4 The Developer or a Participant have no rights to assign the Agreement or any part thereof without having first obtained the prior written consent of the NZTC, such consent shall not be unreasonably withheld or delayed.
- 17.5 In the event that the Developer intends to undergo a Change of Control during the Project, the Developer (as the case may be) shall notify the NZTC prior to undergoing such Change of Control. If the NZTC acting reasonably and in good faith, considers that the Change of Control would have a material adverse effect on the NZTC's interest in the Project, the NZTC will have the immediate right to cease providing Funding to the Project and exit the Agreement on notice immediate effect. The Developer expressly acknowledges that the NZTC may require credit reference checks to determine whether to continue providing its Funding.
- 17.6 The Developer shall not subcontract any of its Project Responsibilities without first receiving the prior written consent of the Project Steering Group, not to be unreasonably withheld or delayed.
- 17.7 The Agreement shall be binding upon and enure for the benefit of the Parties, their successors and permitted assigns.
- 17.8 Nothing in the Agreement shall create or shall be construed as creating a partnership of any kind or an association or as imposing upon any Party any duty, obligations or liability of a partnership nature.
- 17.9 Subject to Clause 9, the Parties intend that no provision of the Agreement shall confer any benefit, nor be enforceable by any person who is not a Party by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**the Act**"). Notwithstanding Clause 9, this Agreement may be rescinded or varied by the Parties without the consent of any third party, even if, as a result, that third party's right to enforce a term of the Agreement will be varied or extinguished.
- 17.10 Any demand, notice or communication required or permitted to be given by a Party shall be in writing and may be given by delivering it by hand at, or by sending it by prepaid first class post to, the other Parties at their registered office or principal place of business (with a copy emailed to the recipient at the email address listed in the Directed Project Agreement) or such other address may at the relevant time have been notified pursuant to this Clause 17.10 to the Party giving the notice. Any such demand, notice or communication given as aforesaid shall be deemed to have been given or received at the time of delivery (if delivered by hand) and forty eight (48) hours after the end of day it was posted (excluding Saturdays, Sundays and public holidays) (if sent by pre-paid first class post).



17.11 The Agreement shall be governed by and construed in all respects in accordance with the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.



APPENDIX 1

Project Management Framework

This Project Management Framework covers all projects that are undertaken in partnership with the NZTC and provides an overview on what is expected of all Developers and Participants that are involved in the delivery of projects that are supported and funded by the NZTC.

Projects are expected to be managed directly by the developing organisation (the Developer) and will be required to demonstrate appropriate processes and systems to deliver the Project. This will include agreeing, with the appropriate NZTC project manager), the mechanisms and reporting requirements to ensure that the NZTC has an appropriate level of information and control to track progress of the Project. This will be determined on a project-by-project basis dependent on the level of involvement of the NZTC.

The Project will be implemented and managed via the Developer's processes and systems. The management of the Project should incorporate the requirements of the NZTC's business management system which is a systematic process covering three key phases: (i) initiation; (ii) execution; and (iii) final close-out. During each phase of the NZTC's business management system the Developer will be required to provide information that will allow the NZTC project manager) to track project progress and financial performance against agreed key performance indicators.

Business Management System:

Phase 1 - Initiation

The initiation phase of the Project will commence once the project funding agreement has been executed. The first activity for this stage is the "kick-off" meeting where the roles and responsibilities of each Party will be clearly defined, and the scope of the Project work committed to and documented.

Other tasks to be completed as part of the initiation stage include:

- creation of work breakdown structure/packages;
- execution of the management plan for the Project; and
- initiation of procurement policy and the issuing of purchase orders.

Phase 2 – Execution

This phase measures progression and performance of the Project, ensuring alignment with the management plan and agreed deliverables and Project Milestones.

The Developer is expected to provide, on a monthly basis, the following information as part of monitoring and reporting activities agreed in the management plan:



- status reporting: highlighting if the Project is on schedule, and specific task deliverables/Project Milestones are being met, together with expected remaining duration;
- cost reporting (including In-Kind Contributions): ensuring that the budget and resources are within the approved funding limits (i.e. monitoring forecasted Funding and In-Kind Contributions against actual amounts of Funding and In-Kind Contributions spent and received);
- value of work done to-date;
- variation and management of change: monitoring and reporting on changes within the Project including unforeseen hurdles and scope changes;
- risk register: updates to the risk register to close or outline new risks and their mitigation to Project process; and
- timesheets and invoices, including those of Participants, where required.

On a quarterly basis Developer will co-ordinate and provide a forecast update to the NZTC Project Manager, including a detailed 'cost to-date' and 'anticipated full project cost' lines together with a detailed cost breakdown by month. The forecast update shall be provided no later than the last week of each quarter. The Developer will be required to provide the necessary input in order to finalise the forecast update. The Developer and all Participants will be required to provide the necessary input in order to finalise the total In-Kind Contributions.

The NZTC will use this information to complete stage gate reviews and release Funding and before proceeding to the next stage gate.

Phase 3 - Close Out

On completion of the final Project Milestone and the delivery of the final status report, the NZTC shall provide a template close out report for the Developer to complete (with assistance from the Participants). The Close Out Report will capture information about the Project and will consist of two (2) parts: (i) information that will be released to the public; and (ii) a full report for the Party's Internal Use (or as otherwise set out in this Agreement).

The Developer will be responsible for co-ordinating with the Participant to complete the Close Out Report before returning the Close Out Report to the NZTC within three (3) months of issue.

Once returned, the Close Out Report will undergo an internal review by the solution centre, as well as NZTC finance and communications. The Close Out Report will then be issued to the Project Steering Group for final approval by all members.

Other tasks to be completed as part of the close out phase include:



- final Project budget review and close out of all remaining Project costs no more than three (3) months after completion of the final Project Milestone;
- Project close out meeting; and
- publication of Project Results in accordance with Clause 5.

If applicable, the Developer will be required to provide to NZTC a scrap certificate/relevant paperwork upon Project completion to confirm that any materials and equipment purchased exclusively for the Project have been disposed of and are not being used for any other purposes by the Developer as agreed between the NZTC and Developer. This should be provided as an appendix to the Close Out Report upon Completion. Failure to do so may result in the Funding from NZTC being recalled.

On completion of all the tasks set out in the phase 3 (Close Out) each member of the Project Steering Group shall sign the Close Out Report thereby confirming that the Project is complete.



APPENDIX 2

Demands for Payment

For the avoidance of doubt, the Developer confirms that any personnel costs funded by the NZTC are based upon the Developers fully burdened cost rate (i.e. reflect payroll burden only). The Developer will be required to evidence each individual cost rate from the Developer's PAYE records. The Developer is also required to provide PAYE evidence of the individuals cost rate at the point of three (3) months prior to Project approval by the NZTC. Failure to provide approved timesheets along with supporting PAYE documentations may result in Funding being withheld.

The Developer and the Participants confirm that the cost rates included within the funding proposal for the Project reflect their PAYE. The Developer is required to attach PAYE evidence of personnel costs to Demands for Payment (with timesheets). Failure to do so may result in payment being withheld until remedied to the NZTC's satisfaction.

Drawdown of Funding - requirements:

All Demands for Payment from the Developer are to be addressed to:

Net Zero Technology Centre Limited

20 Queens Road

Aberdeen

AB15 4ZT

Marked for the attention of Accounts Payable Department.

Demands for Payment can be submitted via PDF to accountspayable@netzerotc.com or via post, it is recommended where possible, to submit via the email address.

All Demands for Payment to be submitted (where the Developer does not have an existing Demand for Payment template available), on company letter headed paper and must quote the project reference number in the Directed Project Agreement. Failure to identify this reference number may result in delays to payment.

VAT is excluded from all Demands for Payment (unless otherwise agreed with the NZTC in advance, e.g. where a Developer is either partially exempt for VAT purposes or not registered for VAT – such costs would be agreed and included within the Demand for Payment template as a net cost to the Developer).

All Demands for Payment must quote the relevant sub-area (detailed breakdown area) of the NZTC budget to which the Funding payments relate. Additionally, all Demands for Payment should provide



a clear and transparent link between the front sheet of the Demand for Payment and vouching supplied, failure to do so may delay release of Funding.

General requirements for Demands for Payment:

- NZTC retains the right to reject any Demands for Payment relating to reclaims (including but not limited to staff costs or third party supplier costs) charged over six (6) months prior to the said Demand for Payment.
- Please submit all Demand for Payment with the front sheet displaying each budget category separately.
- Please submit a separate Demand for Payment to cover personnel charges separately from claims for third party costs.
- All Demands for Payment should provide a clear and transparent link between the front sheet of the Demand for Payment and vouching supplied, failure to do so may delay release of Funding.
- Demands for Payment must be submitted to NZTC, at a minimum, on a quarterly basis.

Categories of reclaims to be sent to Net Zero Technology Centre Limited are as follows (Developer Only):

1. Where NZTC is funding personnel costs (per the budget) – for staff labour:

- Vouching to support the charges will include the signed timesheets by the Developer with a clear breakdown and description of the tasks being performed as well as a summary of the timesheets, for the period, by individual.
- Charges to be reclaimed via a Demand for Payment monthly in arrears.
- Payslips are required as supporting evidence for every Demand for Payment submitted.
- Complete the summary template provided to show: (i) how the PAYE day rate has been derived against each individual staff member; (ii) summary of time against each individual staff member based on the timesheets provided; and (iii) a total value that matches the Demand for Payment.
- Payment terms are twenty-five (25) days following receipt of the relevant Demand for Payment by the NZTC.
- Additional notes on timesheets are included on the templates to be used and must be followed accordingly.



2. Where NZTC is funding personnel costs (per the budget) – staff expenses:

- Vouching to support the charges will include signed company expense claim form along with supporting documentation (receipts) to support all expense claims.
- Expenses should represent reasonable and relevant costs incurred in line with the approved Project work.
- Charges to be reclaimed via a Demand for Payment monthly in arrears.
- Payment terms are twenty five (25) days following receipt of the relevant Demands for Payment by the NZTC.
- Note individual expense claim forms will not require approval from the NZTC prior to submission of the Demand for Payment.

3. Where NZTC is funding other costs (per the budget) – third party charges:

- To be recharged to the NZTC upon receipt and verification of a Demand for Payment from the Developer.
- Vouching to support the charges will include all information supplied by the third-party vendor in regard to the third-party invoice along with completion of a summary table detailing all invoices. Where Failure to do so will result in payment being withheld.
- Complete the summary template provided to show: (i) a list of all third party charges being claimed, either in full or part, with information to explain any pro-rata charges or any charges in non-GBD currency claimed in the GBP equivalent; and (ii) the budget category for the third party charge.
- Payment terms are twenty-five (25) days following receipt of the relevant Demands for Payment by the NZTC.
- For the avoidance of doubt, the Developer shall settle the invoice with the third party vendor in line with the due date on the third party invoice. Failure to do so and retaining the Funding from NZTC will result in any and all future Funding due by NZTC being withheld and may be considered a material breach in accordance with Clause 10.3. Subsequently following payment of invoices to third party vendor, proof of payment / bank statement evidence to be provided to the NZTC no later than five (5) working days following payment. Proof of payment must be in the form of a bank statement and clearly marked which transactions relate to the Demand for payment to ensure a full and clear audit trail.
- Failure to provide such remittances within the agreed time frame will result in no further payments released by the NZTC until all remittances due have been submitted.



- For clarity, all third-party charges are to be recharged to the NZTC at cost, with no percentage mark-up applied.

NZTC Expense Requirements:

The Developer can claim reasonable travel and subsistence costs for those personnel identified within the personnel section of the NZTC Demand for Payment template. Costs must be necessary and incurred exclusively for the progression of the Project. Travel costs must be at economy travel only.

The Developer should provide sufficient justification, details and the purpose for the expenditure, including the number of staff involved.

Expenses should be included under the section entitled Materials / Supplies / Other Direct Costs within the Demand for Payment template.

Reasonable expenses should be with a cost-conscious mindset, where travel, subsistence and accommodation are minimised as far as possible.

For the avoidance of doubt, the NZTC shall not settle any travel over and above economy bookings nor any subsistence or accommodation that is not in keeping with this principle or the occasion.

Further the NZTC will only pay for any expenses incurred on travel to and from the NZTC for Project updates for the Developer's personnel travelling from outside Aberdeen City and shire. Travel costs should be at economy and be the most cost-effective solution for providing the project update.

The Developer's personnel claiming expenses as part of the Funding from NZTC must complete an expense claim form. The following guidance should be followed when completing the form:

- Expense claim forms must not be handwritten and must detail the purpose and description of the claim.
- Different types of expenses should be detailed on a line by line basis and cross referenced to the original receipts (e.g. hotels, taxis, etc).
- Provide vouching / receipts for all items included on the form – noting the NZTC shall not release any funding where the claim is on a per diem basis or billed based solely on the value estimated within the budget.
- No alcohol can be included on any expense claim.

NZTC will issue, to the Developer, a VAT invoice relating to the NZTC's project management services that are provided as part of the Funding from the NZTC. Project management services will be charged at 1% of the total amount of Funding from NZTC.



These services are taxable under VATA 1994, s.7A(2). The consideration for the project management services will be paid part in cash (the VAT element of the transaction) and part in kind (Developer's participation in the Project). The project management services are not seen or to be treated as a barter transaction.