



**ASSESSOR APPOINTMENT AGREEMENT**

entered into between

**CARBON PROTOCOL OF SOUTH AFRICA (ASSOCIATION INCORPORATED UNDER SECTION 21)**

Company Registration Number: 2009/007141/08

Registered Address: Ground Floor, Liesbeek House, River Lane, Mowbray, Cape Town 7700, South Africa

and

[.....]

Company Registration Number:

Identity Number of person authorised to sign:

(the "ASSESSOR")

1. **INTERPRETATION AND PRELIMINARY**

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears –

1.1. words importing –

1.1.1. any one gender include the other two genders;

1.1.2. the singular include the plural and vice versa; and

1.1.3. natural persons include created entities (corporate or unincorporate) and the state and vice versa;

1.2. the following terms shall have the meanings assigned to them hereunder, and cognate expressions shall have corresponding meanings, namely –

1.1.1. “ASSESSOR” means an individual or company whose core business deals with carbon management and is registered with the Carbon Protocol of South Africa for the purpose of conducting carbon footprints in terms of the Agreement, and with its main place of business being at [.....];

1.1.2. “Carbon Protocol” means Carbon Protocol of South Africa (Association incorporated under Section 21), a public benefit company registered and incorporated in terms of the Company laws of South Africa with its registered address at Ground Floor, Liesbeeck House, River Lane, River Park Mowbray, 7700, Cape Town;

1.1.3. “Carbon Standard” means the concept and methodology developed by FTFA to promote carbon neutrality by balancing a measured amount of carbon released with an equivalent amount sequestered or offset through, inter alia the planting of trees, the intellectual property in respect of which has been transferred to Carbon Protocol;

- 1.1.4. "Carbon Protocol Carbon Neutral Logo" means the logo reproduced in Annexure C and which may be used by the Client upon having been assessed and verified by the ASSESSOR in accordance with this Agreement as carbon neutral; and upon payment of a fee for a period of 12 months only; .
- 1.1.5. "Client" means the entity assessed by the ASSESSOR in terms of this Agreement;
- 1.1.6. "Effective Date" means the date of signature of this declaration.
- 1.1.7. "Emissions Table" means the graphs listing the stipulated amounts of discharges which an ASSESSOR is allowed to emit and is contained on the Website.
- 1.1.8. "FTFA" means Food and Trees for Africa, (Registration number: 1991/001061/08), a non-governmental non-profit organisation and company duly incorporated in terms of section 21 of the Companies Act, 61 of 1973, with its main place of business at 2nd Floor, FHS House, 15 Girton Road, Parktown, Johannesburg;
- 1.1.9. "Intellectual Property" means the Carbon Standard and any copyright and neighbouring rights, technical or commercial information, including, without limitation, computer software, documentation, drawings , designs, improvements, inventions, patents, developments, additions and know-how and the rights attached thereto, trade marks, industrial designs and models, crops and animals, whether such material is capable of such registration.
- 1.1.10. "Logo Fee" means R1000 (One thousand rand)(inclusive of VAT), as adjusted from time to time in the sole discretion of Carbon Protocol;
- 1.1.11. "Personnel" means employees, servants, agents, officers, office bearers, sub-contractors and consultants of the Provider;
- 1.1.12. "Services" means the services to be provided by the ASSESSOR to Carbon Protocol as fully described in Annexure

A and/or any schedules and/or attachments thereto, as these may be added to, cancelled or amended from time to time in terms of this Agreement;

- 1.1.13. "Service Fees" means the service fees payable to the ASSESSOR as consideration for the provision of the Services, as more fully set out in;Annexure B.
- 1.1.14. "VAT" means value-added tax in terms of the Value Added Tax Act, 1991;
- 1.1.15. "Website" means the official homepage and related links of the Carbon Protocol of South Africa website, namely [www.carbonprotocol.org](http://www.carbonprotocol.org)
- 1.2. any reference in this agreement to "Date of Signature Hereof" shall be read as meaning a reference to the date of the last signature of this Agreement;
- 1.3. any reference to an enactment is to that enactment as at the Date of Signature Hereof and as amended or re-enacted from time to time;
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.5. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7. expressions defined in this agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 1.8. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the

relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this clause 1;

- 1.9. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.10. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply; and
- 1.11. any reference in this Agreement to a party shall, if such party is liquidated or sequestrated, be applicable also to and binding upon that party's liquidator or trustee, as the case may be.

## 2. **RECORDAL**

It is recorded that:

- 2.1. Carbon Protocol is a public benefit company which provides services to organs of state and companies embarking on a low carbon strategy. To this end, Carbon Protocol seeks to facilitate:
  - 2.1.1. awareness for and education on climate change;
  - 2.1.2. the measurement of carbon emissions in accordance with international standards;
  - 2.1.3. a consistent framework for carbon disclosure;
  - 2.1.4. carbon emissions reduction guidelines;
  - 2.1.5. the offsetting of carbon emissions through recommending a portfolio of verified offsets from credible emission reduction projects.
- 2.2. Carbon Protocol has appointed the ASSESSOR to measure the Client's carbon emissions in accordance with accepted international standards being the GHG Protocol, ISO 14064 and PAS2050. ASSESSORS must also use the South African specific Emissions Table

and any other guidelines provided by Carbon Protocol to the ASSESSOR from time to time. Without derogating from the generality of the aforesaid, Carbon Protocol engage the services of the ASSESSOR to perform the Services set out in Annexure A, and the ASSESSOR is willing to perform such Services.

2.3. The Parties hereby record the terms and conditions on which the ASSESSOR shall provide the Services to Carbon Protocol.

### 3. **DURATION**

This Agreement shall, irrespective of the Date of Signature Hereof, commence on the Effective Date and shall continue for an indefinite period thereafter, unless terminated by either Party in accordance with the provisions thereof.

### 4. **NATURE OF THE RELATIONSHIP**

4.1. The ASSESSOR shall at all times remain an independent contractor in relation to Carbon Protocol, and shall be and be deemed to be the sole employer of any Personnel from time to time appointed by it for the purposes of carrying out the ASSESSOR's obligations in terms of this Agreement. For the avoidance of doubt, it is recorded that nothing contained herein shall create or constitute a relationship of employer and employee or any partnership, either between Carbon Protocol and the ASSESSOR and/or Carbon Protocol and the Personnel.

4.2. Nothing in this Agreement shall be construed in any way as an undertaking of exclusivity on the part of the ASSESSOR, and provided that same does not interfere with the performance of the Services under this Agreement, the ASSESSOR shall be entitled to perform the same and/or similar services for third parties.

4.3. Renewal of the ASSESSOR's status as an ASSESSOR will be considered yearly on the anniversary of this Agreement, subject to clause 3.

4.4. There will be a once-off charge of R1000 to become an ASSESSOR.

### 5. **THE ASSESSOR'S OBLIGATIONS**

5.1. The ASSESSOR acknowledges that Carbon Protocol is the proprietor of the Carbon Standard and that the quality and standard of the Services to be provided in terms of this Agreement is essential Carbon

Protocol's reputation within the market as well as to its relationship with its broad customer base. The ASSESSOR further acknowledges that the stringent terms and conditions of this Agreement are necessary, fair and reasonable under the circumstances.

5.2. In accordance with the provisions of clause 5.1, the ASSESSOR undertakes:

5.2.1. to provide the Services with the due skill, care and diligence expected by the market to which they are delivered to, maintaining the highest professional standard and quality at all times;

5.2.2. to provide the Services with promptness and within the deadlines and/or delivery time frames agreed upon from time to time by the Parties;

5.2.3. to ensure that the Services meet the requirements set out in this clause 5.2 and/or any specifications agreed upon by the Parties in writing from time to time, as envisaged in clause 5.3;

5.2.4. to provide the Services in compliance with all applicable laws, enactments, orders, regulations, and other similar instruments (including, but not limited to, all applicable health and safety legislation);

5.2.5. to ensure that the Services are complete, accurate, correct, current, timely, error free and reliable;

5.2.6. to correct any errors, inaccuracies or omissions as soon as reasonably practical to the extent that same are within the ASSESSOR's reasonable control and ability to do so;

5.2.7. not to do anything or take any action that is likely to prejudice or adversely affect or reflect on the name, goodwill, business reputation and/or business interests of Carbon Protocol;

5.2.8. to maintain such facilities, Personnel and resources as are necessary to adequately provide the Services as envisaged in this Agreement;

- 5.2.9. to use Personnel with suitable training, education, experience and skills and clearance to perform the Services;
  - 5.2.10. to ensure that its Personnel is professional and will deliver the Services in accordance with the required standard and quality set out in this Agreement;
  - 5.2.11. to ensure that its Personnel is always available to perform the Services and to attend on any queries Carbon Protocol might have pertaining to the Services;
  - 5.2.12. to advise Carbon Protocol immediately about any complaints that come to the attention of the ASSESSOR and/or its Personnel regarding the Services;
  - 5.2.13. to ensure that its Personnel adhere to the standards of security and confidentiality as set out in this Agreement or as determined by Carbon Protocol from time to time;
  - 5.2.14. to ensure that its Personnel will not, for the term of this Agreement, engage in any business or undertaking in competition with Carbon Protocol; and
  - 5.2.15. to allow the Carbon Protocol to develop a registry of all companies which use the Carbon Protocol Carbon Neutral Logo, including baseline and reduction information.
- 5.3. For the avoidance of doubt and without limiting the provisions of clauses 5.1 and 5.2 above, the Parties record and agree that:
- 5.3.1. the format and the timeframes for the delivery of the Services will vary from project to project;
  - 5.3.2. the format, the timeframes and project specific deliverables will be agreed upon in writing by the Parties and Carbon Protocol; and
  - 5.3.3. the ASSESSOR will be expected to apply the format and to meet the delivery timeframes as agreed upon by the Parties.
- 5.4. The ASSESSOR undertakes not to:

- 5.4.1. do anything or take any action that is likely to prejudice or adversely affect or reflect on the name, goodwill, business reputation and/or business interests of Carbon Protocol;
- 5.4.2. engage in any business or undertaking in competition with Carbon Protocol;
- 5.4.3. make any promises, representations, warranties or guarantees in respect of the Services or regarding Carbon Protocol or its affiliates, except as are consistent with Carbon Protocol's instructions;
- 5.4.4. incur any liability on behalf of, or in any way pledge or purport to pledge the credit of Carbon Protocol, except as are consistent with Carbon Protocol's instructions; and
- 5.4.5. represent itself or allow any of its Personnel to represent themselves as being employees of Carbon Protocol.

## **6. SERVICE FEES AND PAYMENT TERMS**

- 6.1. The ASSESSOR shall charge each Client the Logo Fee, by means of an invoice reflecting the banking details of Carbon Protocol, for the use of the Carbon Protocol Carbon Neutral Logo. Upon receipt of payment, the Client may use the Carbon Protocol Carbon Neutral Logo for a period of the succeeding 12 months only, the use of which shall be annually renewable upon
  - 6.1.1. having been further assessed as carbon neutral in terms of this Agreement by the ASSESSOR; and
  - 6.1.2. payment of the Logo Fee per annum so used.
- 6.2. The Parties agree that nothing in this Agreement will be construed as giving rise to a claim by the ASSESSOR against Carbon Protocol for remuneration for the work performed herein.

## **7. QUALITY CONTROL**

- 7.1. After the completion of any Carbon Assessment Report by the ASSESSOR the ASSESSOR shall send a copy of such report to the Carbon Protocol within 7 days of its completion. The Carbon Protocol will keep this report on file and will on a random basis assess the quality of the work being done by the ASSESSOR. If such quality is

found not to be in accordance with the international standards as set out in this agreement the Carbon Protocol reserves the right to terminate this agreement with immediate effect and to hold the ASSESSOR liable.

## 8. GENERAL WARRANTIES AND INDEMNITIES

- 8.1. Except as expressly set forth in this Agreement, the Parties do not make any representations or warranties to each other, express or implied, and the Parties confirm that they do not rely on any pre-contractual representations or warranties, express or implied, not recorded in this Agreement.
- 8.2. The ASSESSOR warrants that as at the Effective Date and for the duration of this Agreement, the Services shall be rendered in accordance with the applicable laws, regulations and/or legislation.
- 8.3. The ASSESSOR warrants to:
  - 8.3.1. use its best efforts not to insert, or let its Personnel and/or any third parties insert into any of Carbon Protocol's software, hardware, systems, technical infrastructure, network infrastructure or equipment, any code, deficiencies and/or malicious or destructive element that would have the effect of disabling, damaging interfering with, delaying or interception any data or information on such software, hardware, systems, technical infrastructure or equipment or otherwise shutting down all or any portion of such software, hardware, systems, technical infrastructure, network infrastructure or equipment;
  - 8.3.2. perform its obligations in terms of this Agreement in a manner that does not infringe or constitute an infringement or misappropriation of any patent, copyright, trademark, trade secret or other proprietary or Intellectual Property Rights of Carbon Protocol or any third party; and
  - 8.3.3. not permit, allow or cause any encumbrance to be created or arise over any of the assets of Carbon Protocol, its suppliers and/or its customers, which are in its possession, including any device and/or equipment or anything else

supplied by Carbon Protocol to the ASSESSOR for the purposes of rendering the Services.

- 8.4. The ASSESSOR hereby unconditionally and irrevocably indemnifies Carbon Protocol and agrees to hold Carbon Protocol harmless from and against any costs, losses, harm, liabilities, expenses, damages, fines or injury (including without limitation direct, indirect, incidental, special, punitive or consequential loss, loss of profit, loss of anticipated savings, loss of goodwill or legal fees on an attorney and own client scale), directly and/or indirectly suffered or incurred by Carbon Protocol or for any such claims instituted against Carbon Protocol by a third party, arising out of or relating to a breach of the aforementioned warranties supplied in this clause 8.
- 8.5. The Parties agree that the provisions of this clause 8 shall remain in full force and effect during operation of this Agreement as well as indefinitely thereafter, notwithstanding termination of this Agreement for whatsoever reason.

## 9. **NON-SOLICITATION OF EMPLOYEES**

- 9.1. Each Party agrees, undertakes and warrants in favour of the other that neither it nor any company, close corporation, firm, undertaking or concern in or by which it is directly or indirectly interested will, whilst this Agreement is in force and within 1 (one) year following its termination for whatsoever reason, and whether for reward or not, and whether alone or jointly with anyone else, or as representative or agent of anyone else, recruit, solicit or induce, or attempt to recruit, solicit or induce any employees, consultants, independent contractors of the other Party to terminate, alter or modify their employment, agreement or any other similar relationship with the other Party.
- 9.2. Notwithstanding the provisions of clause 9.1, Carbon Protocol specifically warrants in favour of the ASSESSOR that it shall not, whilst this Agreement is in force and within 1 (one) year following its termination for whatsoever reason:
- 9.2.1. encourage, entice, incite, persuade or induce any member of the Personnel who is engaged or participates in the provision of the Services, to terminate his employment by the ASSESSOR; or

9.2.2. furnish any information or advice to any member of the Personnel to whom clause 9.2.1 applies, or to any prospective employer of such employee, or use any other means which are directly or indirectly designed, or in the ordinary course of events calculated, to result in any such member of the Personnel terminating his employment with the ASSESSOR and/or becoming employed by, or directly or indirectly in any way interested in, or associated with, any other company, close corporation, firm, undertaking or concern; or

9.2.3. furnish any information or advice (whether oral or written) to any third parties that any member of the Personnel intends to, or will (whether as proprietor, partner, director, shareholder, member, employee, consultant, contractor, financier, agent, representative or otherwise), directly or indirectly, be interested or engaged in or concerned with or employed by any company, close corporation, firm, undertaking or concern carried on, which renders similar services to the Services rendered by the ASSESSOR to M-Net, or in the course of which similar services are rendered,

or attempt to do so.

9.3. Notwithstanding the provisions of this clause 9, should a party be found to have solicited the other Party's employees in any manner contemplated herein, then that Party shall be liable to pay to the other Party an amount equal to 30% (thirty percent) of the salary payable by that Party to the relevant employee.

## 10. **INTELLECTUAL PROPERTY RIGHTS**

10.1. It is recorded and agreed that Carbon Protocol is the proprietor of the Carbon Standard and all updates which may be made pursuant to this Agreement. Accordingly, the ASSESSOR shall have not rights in and to the Carbon Standard and all updates which may be made pursuant to this Agreement save for the rights expressly granted to the ASSESSOR in terms of this Agreement.

10.2. The ASSESSOR shall not be entitled to make any additions, alterations or adaptations to the Carbon Standard, and/or updates or any part

thereof for any purpose whatsoever, without the written permission of Carbon Protocol.

- 10.3. No provision of this Agreement may be interpreted as a transfer of Intellectual Property rights to the ASSESSOR.
- 10.4. For the avoidance of doubt, insofar as any copyright in and to the items developed by the ASSESSOR during the course of this Agreement may vest, or be capable of vesting, in the ASSESSOR, the ASSESSOR shall be deemed to have ceded and assigned all its rights, title and interest to such items to Carbon Protocol.
- 10.5. The Parties agree that the provisions of this clause 10 shall remain in full force and effect during the operation of this Agreement as well as indefinitely thereafter notwithstanding termination of this Agreement for any reason whatsoever.

## 11. **CONFIDENTIALITY**

- 11.1. The Parties hereby acknowledge that during the course of their relationship with each other confidential and/or proprietary information relating to each Party's business practices, personnel, business processes, systems, customers, customer information and any other information of a confidential nature which is not generally available to a competitor or which would be understood, exercising reasonable business judgment, to be confidential (the "Confidential Information"), may be disclosed to the other. Such Confidential Information shall be used only for the purposes of fulfilling the obligations under this Agreement and shall not be disclosed, either directly or indirectly, to any third party in any manner whatsoever. In order to protect such Confidential Information, the Parties will obtain similar confidentiality undertakings from any employee, consultant, sub-contractor or other third party to whom any Confidential Information is disclosed.
- 11.2. Each Party undertakes in favour of the other that neither it, its employees, nor any company, close corporation, firm, undertaking or concern in or by which it is directly or indirectly interested shall, whether directly or indirectly, and whether verbally or in writing, disclose the:

- 11.2.1. costs of its resources utilised to fulfil its obligations under this Agreement;
  - 11.2.2. remuneration of the Personnel; and/or
  - 11.2.3. costs related to the provision of the Services, whether relating to that Party's independent contractors and/or suppliers.
- 11.3. Subject to the provisions of 11.4, the receiving Party (the "Receiving Party") of Confidential Information irrevocably and unconditionally indemnifies a divulging Party (the "Divulging Party") against any loss, harm, damage costs, fines, expenses, including legal costs or injury which the Divulging Party may suffer as a result of the unauthorized disclosure by the Receiving Party (or its representative or affiliate) of Confidential Information.
- 11.4. The undertakings set out in this clause 11 shall not apply to information which can be shown to (and otherwise than as a result of a breach or default of the Receiving Party or of a representative or affiliate of the Receiving Party):
- 11.4.1. be part of the public domain;
  - 11.4.2. have been lawfully in the possession of the Receiving Party or its affiliates prior to its disclosure and is not subject to an existing agreement between the Parties or any of its affiliates;
  - 11.4.3. be acquired by a Party or its affiliates independently from a third party who lawfully acquired such information without restriction and who had not previously obtained the Confidential Information directly or indirectly under a confidentiality obligation from the Divulging Party or its affiliates;
  - 11.4.4. have been acquired or developed by a Party or its affiliates independently of the other Party and in circumstances which do not amount to a breach of the provisions of this Agreement; and/or
  - 11.4.5. have been disclosed or released by the Receiving Party to satisfy an order of a court of competent jurisdiction or to

otherwise comply with the provisions of any law or regulation in force at the time or the requirements of any recognised stock exchange; provided that, in these circumstances, the Receiving Party shall use its reasonable endeavours to protect the confidentiality of such information to the widest extent lawfully possible in the circumstances by only divulging that portion of the Confidential Information which it is legally required to so divulge, and by advising the Divulging Party of such beforehand to enable the Divulging Party to take whatever steps it deems necessary to protect its interests in this regard (including to seek an appropriate protective order or exemption), and the Receiving Party shall co-operate with the Divulging Party if the Divulging Party elects to contest any such disclosure.

11.5. The Parties agree that all of the foregoing undertakings shall remain in full force and effect during operation of this Agreement as well as indefinitely thereafter, notwithstanding termination of this Agreement for whatsoever reason.

## 12. **BREACH, EARLY TERMINATION AND EFFECTS OF TERMINATION**

12.1. Either Party may, without prejudice to any of its other rights which it may have in law, terminate this Agreement at any time on written notice to the other Party if such Party has committed a breach of any of its obligations under this Agreement and the other Party shall have failed to remedy such breach within 7 (seven) days of receiving written notice requiring it to do so.

12.2. Either Party shall be entitled to terminate this Agreement on written notice if the other Party ceases doing business as a going concern, is provisionally or finally sequestrated or liquidated or placed under provisional or final judicial management, commits an act which, if it were a natural person, would have constituted an act of insolvency other than in respect of a bona fide re-organisation or reconstruction, or compounds or enters into arrangements for the benefit of its creditors or takes or suffers any similar action in consequence of debt.

12.3. Without prejudice to any other remedies that Carbon Protocol may have against the ASSESSOR, Carbon Protocol shall, notwithstanding any provision to the contrary herein contained, have the right at any

time to terminate this Agreement forthwith in any of the following events, by notice in writing to the ASSESSOR:

- 12.3.1. if the ASSESSOR does not achieve the standard of performance and the format and the timeframes required in respect of the Services as envisaged in clauses 5.2 and 5.3 above. In this regard, non-achievement of performance is specifically detailed as not meeting the required standard of performance on more than 3 (three) incidents per week over a consecutive 2 (two) week period;
  - 12.3.2. if, from any cause whatsoever, the ASSESSOR is unable to perform its duties hereunder for a consecutive period of 7 (seven) Business Days; and
  - 12.3.3. if, other than as provided for in this Agreement, the ASSESSOR purports to assign the obligation or benefits, or cede the rights of it has in terms of this Agreement without the prior written consent of Carbon Protocol.
- 12.4. In the event of termination of the Agreement for whatever reason, the ASSESSOR shall forthwith:
- 12.4.1. advise Carbon Protocol of any uncompleted Services;
  - 12.4.2. return all devices and/or equipment, which relates to such uncompleted Services to Carbon Protocol, except if expressly otherwise agreed;
  - 12.4.3. return to Carbon Protocol all assets of Carbon Protocol (or for which Carbon Protocol is responsible for) of whatever nature, including software packages, manuals, forms, documents, Confidential Information provided to it by Carbon Protocol in its possession or in the possession of its Personnel;
  - 12.4.4. delete any Carbon Protocol related electronic or soft copy information or forms or documentation from all its hard drives and servers, and confirm in writing the compliance with the provisions of this clause; and
  - 12.4.5. subject to the provisions of clause 10, cease to use or display any of Carbon Protocol's Intellectual Property, trade marks,

designs, logos or any brands or anything of a similar nature, it was authorized to use or display in terms of this Agreement.

### 13. **LIMITATION OF LIABILITY**

- 13.1. Except as expressly set forth in this Agreement, the Parties do not make any representations or warranties and the Parties confirm that they do not rely on any pre-contractual or express or implied representations or warranties not recorded in this Agreement.
- 13.2. Neither Party shall be liable to the other under any circumstances, except if expressly set forth in this Agreement which shall include any indemnities supplied or in the event of gross negligence or wilful misconduct by such Party for any costs, losses, harm, liabilities, expenses, damages, fines or injury, including without limitation direct, indirect, incidental, special, punitive or consequential loss, loss of profit loss of anticipated savings, loss of goodwill, loss of revenue, loss of customers or clients caused or arising in any manner whatsoever.

### 14. **FORCE MAJEURE**

- 14.1. Neither Party will be liable to the other for any default or delay in the performance of its obligations under this Agreement if and to the extent that such default or delay is caused by an act of God, war or civil disturbance, court order, or any other circumstance beyond its reasonable control, including failure and fluctuations in electrical power or communications, (to the extent that such failures and fluctuations are beyond its reasonable control) (the "Force Majeure"); provided however, that neither Party shall be entitled to the benefits of this clause 14 unless such Party (the "Affected Party") is without fault in causing such default or delay, and such default or delay could not have been prevented by the Affected Party through the use of alternative sources, work-around plans or other reasonable means.
- 14.2. Following any circumstance of Force Majeure, the Affected Party shall notify the other Party as soon as possible and shall be excused from further performance or observance of its obligation(s) so affected for so long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay; and co-operate with the other Party in implementing such contingency measures as that other Party may reasonably require.

14.3. Neither Party may recover from the other Party any expense related to any circumstance of Force Majeure or the recommencement of its performance following such circumstance of Force Majeure.

15. **DISPUTE RESOLUTION**

15.1. Should any dispute, disagreement or claim arise between the Parties (hereinafter referred to as "the dispute") concerning this Agreement or the interpretation of this Agreement or its termination, the Parties shall attempt to resolve the dispute by negotiation.

15.2. Any dispute between the Parties shall be resolved at the lowest organisational level possible. In such event, and as and when the dispute arises, one Party may invite the other in writing to meet within 5 (five) Business Days from date of the written invitation and to attempt to resolve the dispute.

15.3. Should the procedure in clause 15.2 fail and the dispute remain unresolved for more than 15 (fifteen) Business Days of the date of either Party's written invitation to meet in terms of clause 15.2, then in such event the matter shall be referred to each Party's respective chief executives or their representatives and a meeting shall take place between such persons with a view to resolving same. Such meeting must take place within 5 (five) Business Days after the expiry of the aforementioned 15 (fifteen) day period.

15.4. Should the procedure as described in clause 15.3 fail to resolve the dispute within 10 (ten) business days, either Party may submit the dispute to the Arbitration Foundation of South Africa ("AFSA").

15.5. The arbitration shall be conducted in accordance with applicable rules of the Arbitration Foundation of Southern African or any body or institution succeeding the Arbitration Foundation having similar status.

15.6. The arbitration shall be administered by the Arbitration Foundation of southern Africa. The cost of arbitration, including the fees and expenses of the arbitration or arbitrators, shall be shared equally by the Parties unless the award otherwise provides.

15.7. The Parties shall agree to an arbitrator. Should the Parties be unable to reach Agreement in this regard, either Party may request the Arbitrator to be appointed by the Executive Director of AFSA.

- 15.8. The arbitration award shall be final and binding upon the Parties, in the absence of manifest error, and may include such order as to costs as the arbitrator deems fit. The arbitrator shall include reasons for such decision in writing.
- 15.9. The arbitration shall take place at either Johannesburg or another venue agreed upon by the Parties.
- 15.10. The arbitrator(s) shall determine the matters in dispute in accordance with the laws of the RSA.
- 15.11. The Parties agree that the arbitration shall proceed ex-parte in the event that a Party, after being duly notified, refuses to participate in the arbitration. The Parties also agree that the arbitrator shall be empowered to make a default award against the Party refusing to participate in the arbitration.
- 15.12. For the purposes of having any award made by the arbitrator/s being made an order of court, each of the Parties hereby submits itself to the jurisdiction of the Court, as contemplated in clause 17.
- 15.13. The performance of this Agreement by the Parties shall continue during the arbitration proceedings save where a Party has elected to cancel the Agreement in terms of hereof.
- 15.14. Nothing contained in this clause 15 will preclude either Party from applying for and obtaining intermediate relief on an urgent or other basis from a court with competent jurisdiction.
- 15.15. The Parties record and agree that the provisions of this clause 15 shall remain in full force and effect during operation of this Agreement as well as indefinitely thereafter, notwithstanding termination of this Agreement for whatsoever reason.

## 16. **DOMICILIA AND NOTICES**

- 16.1. The Parties choose their respective physical addresses in clause 1 as its domicilium citandi et executandi in respect of the service of any court process and chooses its physical address, postal address, fax number and/or e-mail address stipulated in clause 1 (if supplied) for all other purposes under this Agreement whether in respect of the receipt of notices, including notices relating to breach or termination, documents or any other communication of whatever nature.

- 16.2. Any notice or any other communication required or permitted to be given in terms of this Agreement by one Party to another Party (the "Addressee") shall only be valid and effective if given in writing to the Addressee at its chosen address referred to in clause 16.1 (whichever one is applicable) and addressed to:
- 16.2.1. The General Manager of Carbon Protocol should Carbon Protocol be the Addressee; or
  - 16.2.2. The General Manager of the ASSESSOR should the ASSESSOR be the Addressee.
- 16.3. Any notice or communication contemplated in clause 16.2 shall:
- 16.3.1. if delivered by hand be deemed to have been duly received by the Addressee on the date of delivery;
  - 16.3.2. if posted by prepaid registered post be deemed to have been received by the Addressee on the 10th (tenth) Business Day following the date of such posting;
  - 16.3.3. if transmitted by fax be deemed to have been received by the Addressee on the first Business Day following the day of successful transmission of the fax;
  - 16.3.4. if transmitted by e-mail be deemed to have been received by the Addressee only once the Addressee has acknowledged receipt thereof in writing, provided that it shall not be permissible to give any notice relating to a breach, cancellation or termination by e-mail.
- 16.4. Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by a Party at its chosen address set out above shall be an adequate written notice of communication to such Party.
- 16.5. Either Party may by notice to the other change the physical address chosen as its domicilium citandi et executandi to another physical address in the RSA or change its postal, telefax or e-mail address, provided the change shall only become effective on the 7th (seventh) day after receipt of such notice by the other Party.

## 17. **APPLICABLE LAW AND JURISDICTION**

- 17.1. This Agreement shall be governed by and interpreted according to the laws of the RSA.
- 17.2. Subject to the provisions of clause 15, the Parties submit to the non-exclusive jurisdiction of the High Court of South Africa, Witwatersrand Local Division, in respect of any action or proceeding arising from this Agreement.
- 17.3. The Parties record and agree that Johannesburg shall be deemed to be the place where the Parties have concluded this Agreement.

## 18. **GENERAL**

- 18.1. This Agreement shall constitute the full contractual relationship between the Parties in regard to the subject matter hereof, but without prejudice to rights which may have already accrued to either Party before the Date of Signature Hereof.
- 18.2. No Party shall be bound by any express or implied term, representation, warranty, promise of the like not recorded herein.
- 18.3. No addition to, variation of this Agreement shall be of any force or effect unless in writing and assigned by both Parties.
- 18.4. No extension of time or indulgence which either Party (the "grantor") may grant to the other (the "grantee") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.
- 18.5. Any provision of this Agreement which contemplates performance or observance subsequent to termination or expiration of this Agreement shall remain in full force and effect after expiration or termination of this Agreement and shall bind the Parties and their successors and assigns.
- 18.6. The relationship of the Parties is that of independent contractors fully responsible for its own acts or defaults, including those of its employees and agents. Nothing in this Agreement shall be construed as creating a joint venture or a partnership between the Parties or deemed to place the Parties in any other relationship. Neither Party nor their employees or agents shall at any time act or attempt to act on behalf of the other Party to bind the other Party in any manner

whatsoever to any obligation or bind the credit of the other Party. No Party nor their employees or agents shall engage in any acts which may lead any person to believe that it is the other Party or an employee, agent, or representative of the other Party.

18.7. The ASSESSOR shall not be entitled to assign its rights or obligations under this Agreement without the prior written consent of Carbon Protocol, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Carbon Protocol may, on written notice, assign its rights and obligations under this Agreement to any of its affiliated, being a holding company or a subsidiary of Carbon Protocol or subsidiary of a holding company of Carbon Protocol or any other company which directly or indirectly is controlled by or controls Carbon Protocol.

18.8. The Parties warrant that:

18.8.1. each is validly incorporated in terms of applicable laws of the RSA;

18.8.2. each possesses full power and authority to enter into this Agreement;

18.8.3. this Agreement shall be binding upon them in accordance with its terms; and

18.8.4. the entering into of this Agreement does not breach the rights of any third parties.

**CARBON PROTOCOL**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**ASSESSOR**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Annexure A - Service

Carbon Footprints – in accordance with the Green House Gas Protocol and ISO 14046

Life Cycle Assessments – in accordance with PAS 2050

## Annexure B – Service Fees

This refers to those fees charged by the Assessor for services rendered to the customer.

Annexure C - Carbon Protocol Carbon Neutral Logo



BOARD MEMBERS: Ms J Park • Mr K James • Mr G Perrott  
MEMBERS: Mr MB Peacock-Edward (Financial Director) • Mrs S Roopa  
• Ms RA Chapman • Ms R Stein • Mr R Christie • Mr O Shachar • Mr P Johnston