

CO2 SENSE YORKSHIRE BUSINESS SUPPORT AGREEMENT FOR PART ERDF-FUNDED PROJECTS

Client Contact Details	
Name	CO2Sense Ltd
Address	Third Floor, Victoria House, 2 Victoria Place, Leeds, West Yorkshire, LS11 5AE

Contractor Contact Details	
Name	
Address	

Contract Details			
Contract Number		Contract Date	
Project Name		Project Manager	
		Sector (if appropriate)	

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
PARTICULARS.....	4
RECITALS:.....	6
1. DEFINITIONS AND INTERPRETATION.....	6
2. CONTRACTOR'S WARRANTIES AND REPRESENTATIONS.....	10
3. DURATION.....	11
4. DELIVERY OF THE PROJECT.....	11
5. PROCUREMENT.....	13
6. PAYMENT OF INVESTMENT.....	13
7. FUNDING SOURCES.....	16
8. PROJECT MANAGEMENT.....	16
9. ASSIGNMENT AND SUB-CONTRACTING.....	16
10. PROJECT RECORDS AND REPORTING.....	17
11. COMPLIANCE WITH LEGISLATION.....	19
12. CAPITAL ASSETS.....	20
13. INTELLECTUAL PROPERTY.....	20
14. GENERAL INDEMNITY AND INSURANCE.....	21
15. RECOVERY OF INVESTMENT.....	22
16. TERMINATION.....	23
17. PUBLICITY REQUIREMENTS.....	24
18. TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION.....	25
19. SEVERABILITY.....	25
20. AMENDMENTS.....	25
21. EXCESS PROFITS AND DEVELOPMENTS.....	25
22. WAIVER.....	26
23. NOTICES.....	26

24.	REPUTATION OF CO2 SENSE YORKSHIRE	26
25.	NON SOLICITATION AND CONFLICT OF INTEREST.....	27
26.	NO PARTNERSHIP OR AGENCY	27
27.	GOVERNING LAW AND JURISDICTION.....	27
28.	ENTIRE AGREEMENT	27
29.	INTEREST ON LATE PAYMENTS.....	27
30.	VAT.....	27
31.	FREEDOM OF INFORMATION ACT 2000	28
32.	THIRD PARTY RIGHTS	28
33.	EUROPEAN COMMUNITY STATE AID RULES	29
	SCHEDULE 1 PROJECT OPERATIONAL PLAN.....	31
	SCHEDULE 2 FUNDING PROFILE	35
	SCHEDULE 3 PROFILE OF PLANNED MONTHLY FINANCIAL CLAIMS TO BE MADE AGAINST THE AGREEMENT.....	37
	SCHEDULE 4 PUBLICITY REQUIREMENTS.....	38
	SCHEDULE 5 EUROPEAN PROCUREMENT GUIDANCE	43

PARTICULARS

Terms

1. DATE

: DEFINITIONS
INSERT DATE

2. CO2 SENSE YORKSHIRE :

CO2 Sense Yorkshire is the trading name of CO2 Sense Ltd, a company registered in England with Company No. 5383346, whose registered office is at: Victoria House, 2 Victoria Place, Leeds, LS11 5AE)

3. CONTRACTOR

: INSERT COMPANY NAME
(a company registered in England with Company No. 06679382 whose registered office is at
INSERT ADDRESS

4. CONDITIONS PRECEDENT

: (a) CO2 Sense Yorkshire being satisfied that the Contractor has sufficient funding (whether from its own resources or otherwise) to carry out and complete the Project in accordance with this Agreement;

(b) CO2 Sense Yorkshire shall have received such evidence as may be necessary to establish that the representations and warranties by the Contractor in this Agreement are true and accurate in all respects and are not misleading; and

5. CONDITIONS PRECEDENT END DATE

: 31st March 2012

6. CONTRACTOR'S BANK ACCOUNT

: Account Name: []
Account No. [] with [] Bank Plc of []
Sort Code []

7. CONTRACTOR'S MANAGER

: insert name and company any replacement from time to time agreed in writing by CO2 Sense Yorkshire in accordance with Clause 8

8. EFFECTIVE DATE

: INSERT DATE

9. INSTALMENT PERIOD

: the period of one month from the Effective Date and each subsequent

4

period of one month until Jan 2010

10. MAXIMUM AMOUNT : The maximum amount available to be claimed by the Contractor under this Agreement being (subject to Clause 6.5 5 and any other provisions of this Agreement) *[insert the amount in words] [same in figures]* including non-recoverable VAT which is allocated between the following Financial Years as follows:-

Financial Year	Allocation
[2009-2010]	£[]
[2010-2011]	£[]
[2011-2012]	£[]

11. TERM : The period from the Effective Date until 31st March 2012 or until termination in accordance with this Agreement (whichever is earlier)

12. PROJECT NAME : **INSERT NAME**

13. PROJECT REFERENCE NUMBER : N/A

14. QUALIFYING EXPENDITURE : Those items of expenditure (being part of the Project Expenditure) identified in the table in Schedule 2 as being funded by CO2 Sense Yorkshire but excluding all other Project Expenditure

15. CO2 SENSE YORKSHIRE'S REPRESENTATIVE : **INSERT NAME** of CO2 Sense Yorkshire or such other person or persons from time to time appointed in replacement by CO2 Sense Yorkshire and notified in writing to the Contractor.

16. CO2 SENSE YORKSHIRE INTERVENTION RATE : Means the total amount paid by CO2 Sense Yorkshire, expressed as a percentage of the total costs of the Project.

THIS AGREEMENT is made on the date set out in paragraph 1 of the Particulars

BETWEEN:

- (1) **CO2 Sense Yorkshire** (as described in the Particulars); and
- (2) **THE CONTRACTOR** (as described in the Particulars)

RECITALS:

- (A) CO2 Sense Yorkshire has agreed to provide the Investment for the Project subject to and on the basis of the terms and conditions set out below.

[OR]

The Conditions Precedent referred to in paragraph 4 of the Particulars have not been fulfilled as at the date of this Agreement and the provisions of clause 6.1 shall apply.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings and the definitions set out on the Particulars pages at the front of this Agreement are incorporated into this Agreement:

"Approved Claim Form" means the standard claim form which the Contractor must submit to claim instalments of the Investment such document to be in the form from time to time specified by CO2 Sense Yorkshire;

"Base Interest Rate" means the base rate of Barclays Bank Plc (or the base rate of such other bank as CO2 Sense Yorkshire may from time to time stipulate) or if such base rate shall not be readily available at any time or times such other rate as CO2 Sense Yorkshire shall determine;

"Beneficiary Data" means information about an individual person or business directly benefiting from the Project i.e. the person or business who is or will be the ultimate recipient of a benefit;

"Business Support Scheme" is the name given to the package of projects that CO2 Sense Yorkshire has assembled for purposes of applying for Objective 2 European Funding. If this Project includes targets for spend or output achievement in Objective 2 areas, it sits within the Business Support Scheme;

"Capital Asset" means any item of equipment or other moveable asset which in accordance with the accounting practice of the Contractor is recorded as a capital item and is shown in their own asset register and is purchased wholly or partly out of funds provided under this Agreement;

"Cluster Development Scheme" is the name given to the package of projects that Yorkshire Forward has assembled for purposes of applying for Objective 1 European Funding. If this Project includes targets for spend or output achievement in Objective 1 areas, it sits within the Cluster Development Scheme;

"Consents" means any approval, consent, exemption, licence, permission or registration by or from any governmental or other authority or any other person or authority in relation to the Project or any part of it or otherwise required to enable the same to be lawfully carried out and maintained;

"Control" means the ability to direct the affairs of the Contractor whether by virtue of ownership of shares, control of the board of directors, contract or otherwise;

"Developments" means all materials and information coming into existence during the Term relating to the Project including learning and training material, Intellectual Property, website design, source codes and software whether wholly or partly funded by CO2 Sense Yorkshire;

"Diversity" means, in the context of this contract, the promotion of a culture that values what people's individual differences can bring to an undertaking in the pursuit of a just and fair society within the framework of the Regional Economic Strategy;

"Environmental Information Regulations" means the Environmental Information Regulations 2004;

"Events of Default" means any of the events or circumstances described in clause 16.2;

"EU" means European Union;

"Financial Year" means CO2 Sense Yorkshire's financial year that runs from 1 April to 31 March;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued pursuant to or in relation to such legislation;

"Investment" means the amount to be provided by CO2 Sense Yorkshire as reimbursement of actual Qualifying Expenditure paid and incurred by the Contractor in relation to the Project up to the Maximum Amount and subject to the terms of this Agreement;

"Her Majesty's Government" means the duly elected Government for the time being during the reign of Her Majesty (and her successors) and/or any department, committee, office, agency, servant or officer of such Government;

"ICT" means information and communications technology;

"Information" has the meaning given under section 84 of the FOIA and shall include all environmental information within the meaning given to it in the Environmental Information Regulations;

"Intellectual Property" means any or all of the following: patents, trademarks, service marks, drawings, designs, registered designs, utility models, design right, copyright (including copyright in computer software), database rights, inventions, trade secrets and other confidential information, technical information, know-how, business or trade names, rights to prevent passing off, and all other intellectual property rights and rights of a similar⁷ or corresponding nature in any part of the

world, whether registered or not or capable of registration or not and including all applications and the right to apply for any of the foregoing rights;

"Outputs" means the Outputs listed in paragraph 13 of Schedule 1;

"Particulars" means the Particulars pages at the front of this Agreement;

"Project" means the activities and/or services to be performed and outputs to be achieved by the Contractor as described in Schedule 1;

"Project Expenditure" means the expenditure paid and incurred by the Contractor in relation to the Project;

"Project Intellectual Property" means all Intellectual Property arising from or which comes into existence as a result of carrying out the Project;

"Project Operational Plan" means the plan contained in Schedule 1;

"Public Sector Bodies" means all bodies, whether public, private, or mixed, in respect to the tasks they undertake that are paid by public funds including (without limitation) any government department or authority, any non departmental government body and any local and public authority;

"Quarter Day" means 30 June, 30 September, 31 December and 31 March in each Financial Year;

"CO2 Sense Yorkshire" / "CO2 Sense Yorkshire" is the Yorkshire and Humber Sustainable Futures Company Limited;

"CO2 Sense Yorkshire Logo" means the 'CO2 Sense Yorkshire' logo as specified in Schedule 4;

"Regional Brand Logo" means the 'Yorkshire Alive with Opportunity!' logo as specified in Schedule 4;

"Regional Economic Strategy" means the Regional Economic Strategy for Yorkshire and Humberside approved by Her Majesty's Government in January 2003 and as may from time to time be varied and/or replaced by Yorkshire Forward;

"Requests for Information" shall have the meaning set out in FOIA and shall in addition include all requests for environmental information made in accordance with the Environmental Information Regulations and/or pursuant to any other statutory requirements;

"Sustainable Development" means social progress that recognises the needs of everyone, effective protection of the environment, prudent use of natural resources and economic development that is inclusive, efficient and stable;

"Statement of Investment Expenditure" means a full summary of income and expenditure incurred by the Contractor within the terms and conditions of this Agreement given by CO2 Sense Yorkshire in the preceding Financial Year;

"Trade Marks" means any logos, marks, names (including trade names) and trade mark registrations and applications for registration made, owned or used by

Yorkshire Forward including without limitation the Regional Brand Logo and the Yorkshire Forward Logo;

"VAT" means value added tax payable by virtue of the Value Added Tax Act 1994 and any similar tax from time to time in addition to it, replacing it or performing a similar fiscal function;

"Working Day" means a day on which clearing banks in the City of London are (or would be but for a strike, lock-out or other stoppage affecting a particular bank or banks generally) open during banking hours and **"Working Days"** shall be construed accordingly;

"Yorkshire Forward Logo" means the 'Yorkshire Forward' logo as specified in Schedule 4;

- 1.2 References to Clauses, sub-clauses and Schedules are to clauses, sub-clauses and schedules in this Agreement unless otherwise stated.
- 1.3 Headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.4 In this Agreement references to the masculine include the feminine and the neuter, and the singular shall include the plural, and vice versa as the context admits or requires.
- 1.5 In this Agreement references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.6 Where there are two or more persons included in the expression "the Contractor" the obligations and warranties expressed to be entered into or given by the Contractor shall be deemed to be entered into or given by such persons jointly or severally.
- 1.7 Wherever in this Agreement there is a right of inspection for CO₂ Sense Yorkshire in relation to the Project including (without limitation) a right to review, inspect and copy any documentation and right of entry on to any premises to review the Project or to inspect any documentation such rights shall extend to any agents, employees or licensees nominated from time to time by CO₂ Sense Yorkshire.
- 1.8 All the schedules shall be part of this Agreement and all the obligations of the parties contained therein are legal and binding obligations in this Agreement.

2. CONTRACTOR'S WARRANTIES AND REPRESENTATIONS

The Contractor represents and warrants to CO2 Sense Yorkshire that:

- 2.1 the Contractor is validly existing and that the execution on behalf of the Contractor of this Agreement has been validly authorised and the obligations expressed as being assumed by the Contractor under this Agreement constitute valid legal and binding obligations of the Contractor enforceable against the Contractor in accordance with their terms;
- 2.2 neither the execution of this Agreement by the Contractor nor the performance or observation of any of its obligations under it will:
 - 2.2.1 conflict with or result in any breach of any law or enactment or any deed, agreement or other instrument, obligation or duty to which the Contractor is bound; or
 - 2.2.2 cause any limitation on any of the powers whatsoever of the Contractor or on the right or ability of the directors of the Contractor to exercise such powers, to be exceeded;
- 2.3 the Contractor is not in default under any law or enactment or under any deed agreement or other instrument or obligation by which it is bound so as to affect adversely its ability to perform its obligations under this Agreement;
- 2.4 all Consents required in connection with the execution, delivery, issue, validity or enforceability of this Agreement have been obtained and have not been withdrawn;
- 2.5 no litigation or administrative or arbitration proceeding before any court, tribunal, Government authority or arbitrator is presently taking place, pending or (to the knowledge, information and belief of the Contractor) threatened against, or against any of the assets of the Contractor which might have a material adverse effect on its business, assets, condition or operations or might affect adversely its ability to perform its obligations under this Agreement;
- 2.6 all information, documents and accounts of the Contractor submitted to CO2 Sense Yorkshire for its appraisal of the Project for the purposes of this Agreement are true and accurate and no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets, operations or prospects of the Contractor since such information was provided;
- 2.7 the Contractor has disclosed to CO2 Sense Yorkshire all information which would or might reasonably be thought to influence CO2 Sense Yorkshire in awarding the Investment to the Contractor or the amount thereof;
- 2.8 no person having any charge or other form of security over the assets of the Contractor has enforced or given notice of its intention to enforce such security;
- 2.9 the Contractor is not aware, after due enquiry, of anything which materially threatens the delivery and completion of the Project in accordance with this Agreement;

- 2.10 no Event of Default has occurred and is continuing; and
- 2.11 the representations in clauses 2.1 – 2.10 above will be deemed to be repeated by the Contractor when each claim for an instalment of Investment is submitted pursuant to clause 6 as if made with reference to the facts and circumstances existing at such date

and the Contractor acknowledges that CO2 Sense Yorkshire has relied on and will rely on this information in agreeing to pay the Investment.

3. DURATION

This Agreement shall commence on the Effective Date and (subject to clauses 6.1(c), 15, 16 and any of the other provisions of this Agreement) shall continue for the duration of the Term.

4. DELIVERY OF THE PROJECT

4.1 The Contractor agrees with CO2 Sense Yorkshire that:-

- (a) It shall commence the Project by the Effective Date;
- (b) It shall diligently carry out and complete the Project promptly and efficiently in accordance with all the Consents and shall achieve all the aims and objectives of the Project Operational Plan as set out in Schedule 1; and
- (c) It shall deliver all the Outputs by the relevant dates as set out in paragraph 13 of Schedule 1.

4.2 The Contractor shall:

- (a) Permit CO2 Sense Yorkshire at all reasonable times and upon such notice as is reasonable in all circumstances to inspect the Project and progress made;
- (b) Attend regular review meetings with CO2 Sense Yorkshire to discuss progress. Such meetings may be required by CO2 Sense Yorkshire on a monthly basis but in any event will be no less than quarterly in each Financial Year;
- (c) Cooperate fully and provide all information and assistance as required by CO2 Sense Yorkshire for the purpose of review and evaluation of the Project, the Investment and this Agreement, such reviews to be at CO2 Sense Yorkshire's discretion and may take place at any time and at reasonable notice to the Contractor.

4.3 The Contractor shall ensure that the Project promotes Diversity and demonstrates a commitment to equal opportunities. In order to capture the positive approach you are taking towards equality of opportunity within your organisation you should complete and return the Equalities and Diversity in your organisation form supplied by CO2 Sense Yorkshire prior to the date of this Agreement. Such report to be in a format from time to time prescribed by CO2 Sense Yorkshire and containing such information as may be reasonably required by CO2 Sense Yorkshire.

- 4.4 The Contractor shall ensure that the planning and operation of the Project reflect the principles of Sustainable Development to ensure sustainability within the region.
- 4.5 The Contractor shall promptly notify CO2 Sense Yorkshire in writing as soon as it becomes aware that it does not intend to claim the Maximum Amount of the Investment available for the Project.
- 4.6 If delivering business support services under this agreement, the Contractor shall operate within the Better Deal for Business framework, which has been supplied by CO2 Sense Yorkshire to the Contractor prior to the date of this agreement.
- 4.7 If delivering business support services under this Agreement the Contractor shall be fully compliant with the "Customer First" quality standard details of which have been supplied by CO2 Sense Yorkshire to the Contractor prior to the date of this Agreement. If not already fully compliant, the Contractor shall have made a formal commitment to meeting the "Customer First" quality standard and shall achieve full compliance within 12 months of the date of this Agreement.
- 4.8 CO2 Sense Yorkshire are committed to creating sustainable communities that are safer, greener, cleaner and more prosperous. Where applicable the Contractor shall ensure that the planning and operation of the Project reflect the concept of crime prevention through environmental design to prevent crime and disorder in the region.
- 4.9 The Contractor shall abide by all United Kingdom and EU State Aid laws that are applicable. Where the Contractor is a public authority, it should satisfy itself whether State Aid laws apply to the Project in consultation with the Department of Trade and Industry. Recipients of illegal State Aid will risk being held responsible for meeting the cost of any penalty applied in the event that the Project is found to have infringed the State Aid laws and also risk actions for damages from third parties. The Contractor agrees to provide any information necessary to allow CO2 Sense Yorkshire to complete any returns required under the State Aid laws.
- 4.10 The Contractor shall ensure that implementation of the Euro shall not prejudice execution of the Project, such that the Contractor will:
- (a) comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on conversion and rounding set out in the EU Regulation number 1103/97;
 - (b) be capable of utilising all symbols and codes adopted by the EU Commission in relation to the Euro; and
 - (c) act in accordance with the CO2 Sense Yorkshire's requirements for reporting both in Sterling and in the Euro.
- 4.11 If delivering Information Communications Technology projects the Contractor shall ensure that the component elements including, but without limitation, software, hardware, user interfaces, peripherals and documentation shall prior to the commencement of any transitional period prior to the implementation of the Euro by the United Kingdom government:
- (a) comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on

conversion and rounding set out in the EC Regulation number 1103/97;

- (b) incorporate in all relevant hardware and user interfaces, all symbols and codes adopted by the EU Commission in relation to the Euro as well as all symbols and codes normally included in systems developed for use in the UK; and
- (c) where applicable will perform all relevant functions set out in the Schedule 1 both for Sterling and for the Euro.

5. PROCUREMENT

- 5.1 All procurement of works, equipment, goods and services shall be based on value for money and in accordance with all relevant law including EU Procurement Directives if applicable.
- 5.2 For all purchases the Contractor shall comply with the requirements of this clause 5 unless it has the prior written consent of CO2 Sense Yorkshire.
- 5.3 All purchases by the Contractor with a contract value of over £15,000 shall be subject to competitive tendering in accordance with UK and EU public sector procurement rules including, where appropriate, through the Official Journal of the EU. At least three (and wherever feasible a minimum of five) written tenders should be obtained. In determining how this requirement should be met, the Contractor must take account of public sector accountability and probity, and shall document the decision making process. See Schedule 5 for EU procurement guidance.
- 5.4 The Contractor will not split purchases to fall below the thresholds set out in this clause 5 nor extend existing contracts so that the total value of the contract for its duration exceeds these thresholds.
- 5.5 For all purchases the Contractor shall select a supplier from the potential suppliers on the basis of:
 - (a) overall value for money;
 - (b) suitable skills and experience
 - (c) its equal opportunities obligations set out at clause 11; and

in making the selection of the supplier use a fair and documented decision making process and take account of public sector accountability and probity.

- 5.6 CO2 Sense Yorkshire reserves the right after reasonable notice to the Contractor to vary from time to time the requirements relating to procurement processes in line with CO2 Sense Yorkshire's own procurement guidelines and procedures.

6. PAYMENT OF INVESTMENT

- 6.1 Unless paragraph (E) of the recitals to this Agreement shall contain a declaration by the parties that all the Conditions Precedent have been fulfilled as at the date of this Agreement:-
 - (a) CO2 Sense Yorkshire shall not be obliged to pay any part of the Investment to the Contractor unless it is₁₃satisfied (acting reasonably) that the

Conditions Precedent specified have been met.

- (b) CO2 Sense Yorkshire may in its absolute discretion and on such terms as it may specify agree to pay part of the Investment to the Contractor before some or all of the Conditions Precedent have been met but if CO2 Sense Yorkshire does so this will not prejudice its right to refuse to pay any further funding until the Conditions Precedent are met.
- (c) If any of the Conditions Precedent have not been fully complied with by the Conditions Precedent End Date or such later date as CO2 Sense Yorkshire may in its absolute discretion agree (whether or not the previous date fixed hereunder is past) CO2 Sense Yorkshire may by notice in writing to the Contractor determine this Agreement and all sums paid under this Agreement shall forthwith be repaid to CO2 Sense Yorkshire together with interest thereon at the Base Interest Rate from the date of demand until the date of repayment.

6.2 Subject to the provisions of this Agreement CO2 Sense Yorkshire shall make payments of the Investment into the Contractor's Bank Account specified in the Particulars (not exceeding in total the Maximum Amount) in instalments as follows:-

- (a) Each instalment will be paid within Thirty Working Days of receipt by CO2 Sense Yorkshire of a valid claim for an instalment of the Investment submitted in accordance with this clause;
- (b) Payments of instalments of the Investment shall (subject to the limits contained in this clause 6) be made by reference to the amount of Qualifying Expenditure to which the relevant claim relates;

PROVIDED THAT the total amount of all payments made by CO2 Sense Yorkshire under this Agreement shall not in any event exceed the Maximum Amount.

6.3 Unless CO2 Sense Yorkshire otherwise agree CO2 Sense Yorkshire shall not be liable to provide (or as the case may be continue to provide) the Investment (or any instalment thereof):-

- (a) Unless a claim by the Contractor for an instalment of the Investment shall:-
 - (i) be submitted in the form of the Approved Claim Form and certify that the amount claimed is in accordance with this Agreement and that the claim does not include any Project Expenditure being claimed from any other person or from CO2 Sense Yorkshire within the terms of any other arrangement with CO2 Sense Yorkshire;
 - (ii) relate to Qualifying Expenditure in relation to which the Contractor has not submitted any other claim to CO2 Sense Yorkshire;
 - (iii) be submitted to CO2 Sense Yorkshire's Representative within 7 days of the end of the Instalment Period in respect of which the Qualifying Expenditure was paid;
 - (iv) include (to the reasonable satisfaction of CO2 Sense Yorkshire) evidence that the Qualifying Expenditure to which the claim relates

has been incurred and that payment has been made by the Contractor;

- (b) If expenditure is incurred before or after the term date;
 - (c) If an Event of Default has occurred and is continuing;
 - (d) If the representations and warranties made in clause 2 do not remain true and correct in all material respects;
- 6.4 If CO2 Sense Yorkshire shall reasonably determine that any expenditure instalment of the Investment paid is not Qualifying Expenditure or if at any time CO2 Sense Yorkshire has paid more than it is liable to pay under any provision of this Agreement the Contractor shall forthwith on demand in writing pay to CO2 Sense Yorkshire the amount stipulated by CO2 Sense Yorkshire as being overpaid.
- 6.5 CO2 Sense Yorkshire reserves the right to vary the Maximum Amount if the Contractor receives any public sector financial assistance for the Project (other than that specified in Schedule 2) or the acceptance of an offer thereof.
- 6.6 The Contractor acknowledges that:-
- (a) The Qualifying Expenditure allocated to a particular activity heading in Schedule 2 is available for that activity heading only;
 - (b) The Investment allocated to a particular Financial Year by paragraph 10 of the Particulars is available for that Financial Year only; and
 - (c) The allocation of items of Qualifying Expenditure in the summary set out in Schedule 2 against which the payment of the Investment shall be made shall not be altered without the prior written consent of CO2 Sense Yorkshire.
- 6.7 The Contractor has submitted to CO2 Sense Yorkshire in Schedule 3 a profile of planned monthly financial claims it intends to submit for each instalment period. The Contractor shall submit to CO2 Sense Yorkshire with each claim a revised claim profile where this differs from the initial forecast set out in Schedule 3. For the avoidance of doubt CO2 Sense Yorkshire shall not be obliged to accept or approve any revised claim profile nor does any acceptance or approval of any revised claim profile amend or vary any of the other provisions in this clause 6.
- 6.8 The Contractor acknowledges that the summary of payments set out in Schedule 2 includes the amount (if any) set aside for administration of the Project. Unless expressly identified in the table in Schedule 2 as being funded by CO2 Sense Yorkshire it is agreed that no administration costs, management fees, project management fees or costs or overheads of the Contractor shall constitute Qualifying Expenditure for the purpose of payment of any part of the Investment.
- 6.9 For the avoidance of doubt the Contractor shall not claim or use any part of the Investment in respect of the following:-
- (a) Any activity other than the Project;
 - (b) To support or assist activities which are political or of an exclusive religious

nature or which may bring CO2 Sense Yorkshire into disrepute;

- (c) For work services or activities for which a person has a statutory duty to provide (except with the prior written consent of CO2 Sense Yorkshire);
- (d) Any amounts payable as a result of the default of the Contractor;
- (e) Any loss or damage resulting from an insured risk;
- (f) Any additional costs incurred due to increasing expenses of the Project;
- (g) Redundancy costs of staff; or
- (h) Any Project Expenditure other than Qualifying Expenditure.

7. FUNDING SOURCES

- 7.1 The Contractor warrants to CO2 Sense Yorkshire that the funding sources for the Project as set out in Schedule 2 are true and correct in all material respects.
- 7.2 The Contractor shall notify CO2 Sense Yorkshire's Representative in writing of the amounts of any other funding (additional to those described in Schedule 2) including any other public sector funding (if any) and/or guarantees secured or offered for the Project as soon as it is approved.
- 7.3 The Contractor shall not use the Project as a source of match funding to obtain EU investments or monies without the prior written consent of CO2 Sense Yorkshire.

8. PROJECT MANAGEMENT

- 8.1 The Contractor shall manage the Project in accordance with the terms of this Agreement and shall nominate the Contractor's Manager to manage the Project who is suitably qualified and experienced. The Contractor's Manager shall be CO2 Sense Yorkshire's main contact point for the Project. The Contractor shall be responsible to CO2 Sense Yorkshire for ensuring that the Contractor's Manager delivers the Project and provides all monitoring information required by CO2 Sense Yorkshire.
- 8.2 The Contractor shall notify CO2 Sense Yorkshire in writing of any changes to the Contractor's Manager.
- 8.3 The Contractor shall immediately notify CO2 Sense Yorkshire in writing of any circumstances that may result in a possible breach of any of the terms of this Agreement including, without limitation, any concerns relating to the financial stability of the Contractor, the management of the Project and probity issues.
- 8.4 The Contractor shall promptly comply with all reasonable requests or directions of CO2 Sense Yorkshire's Representative in respect of the Project.

9. ASSIGNMENT AND SUB-CONTRACTING

- 9.1 The Contractor's rights to the Investment pursuant to this Agreement are exclusive to the Contractor and are not assignable or transferable.
- 9.2 The Contractor shall not sub-contract any of its obligations under this Agreement

without the prior written consent of CO2 Sense Yorkshire and such consent (if given) may be made subject to any conditions which CO2 Sense Yorkshire considers necessary and CO2 Sense Yorkshire may withdraw its consent to any sub-contractor where it has reasonable grounds to no longer approve of the sub-contractor or the sub-contracting arrangement and such grounds will be notified in writing to the Contractor.

9.3 Where CO2 Sense Yorkshire has on or prior to the date of this Agreement given its consent to the Contractor using any sub-contractor for any works the details of such sub-contractor and the extent of their involvement will be set out in paragraph 9 of Schedule 1 of this Agreement but CO2 Sense Yorkshire may withdraw its consent to any such sub-contractor at any time where it has reasonable grounds to no longer approve of the sub-contractor or the sub-contracting arrangement.

9.4 Any use by the Contractor of any sub-contractor approved by CO2 Sense Yorkshire shall not absolve or release the Contractor from its liabilities and obligations under this Agreement to comply with all the obligations contained herein.

10. PROJECT RECORDS AND REPORTING

10.1 Project Records

The Contractor shall:-

- (a) Keep a full, proper and auditable record of the progress of the Project and the Project Expenditure which shall be available at any time during the Term for inspection by CO2 Sense Yorkshire;
- (b) Keep full and accurate records of all Outputs, outcomes and other results achieved from the Project.
- (c) Collect and report on the Beneficiary Data as described in Schedule 1. The reports shall be included in the progress reports referred to in clause 10.2 below or in such other format and at such other time as shall be required by CO2 Sense Yorkshire. The Contractor must ensure that all Beneficiary Data is auditable (i.e. that they are able to trace the beneficiary outputs back to the source data).

10.2 Reporting

The Contractor shall:-

- (a) Use the Approved Claim Form provided by CO2 Sense Yorkshire for claiming instalments of the Investment under clause 6 which shall contain a monthly progress report which is completed by the Contractor describing the progress achieved on the Project. Such report to be in a format from time to time prescribed by CO2 Sense Yorkshire and containing such information as may be reasonably required by CO2 Sense Yorkshire.
- (b) Provide a more detailed written project report to CO2 Sense Yorkshire not less than once in every quarter during each Financial Year during the Term detailing progress on the Project by the dates specified in paragraph 10 of Schedule 1. Each such report shall be in a format from time to time

prescribed by CO2 Sense Yorkshire but shall include:

- (i) Progress against the Project Operational Plan set out in Schedule 1;
 - (ii) Confirmation of the Project Expenditure and Qualifying Expenditure which has previously been incurred and which is likely to be incurred during the forthcoming Financial Year;
 - (iii) Confirmation of the Outputs actually achieved during the previous quarter and confirmation of the cumulative Outputs achieved since the Date of this Agreement;
 - (iv) An estimate of the Outputs which are likely to be achieved in the following Financial Year;
 - (v) The Contractor's estimate of any shortfall or expected shortfall in the delivery of any Outputs and the Contractor's proposal to rectify the position;
 - (vi) The Contractor's estimate of any shortfall or expected shortfall in the Project Expenditure and/or Qualifying Expenditure and/or any cost overruns or expected cost overruns in the Project; and the Contractor's proposal to rectify the position;
 - (vii) Such environmental and sustainability monitoring information which CO2 Sense Yorkshire shall require in relation to the Project; and
 - (viii) The Beneficiary Data collected which is referred to in clause 10.1(c).
- (c) The Contractor will be aware that this contract facilitates delivery of ERDF funded activity. Therefore all reporting and monitoring requirements are as per all projects funded through the relevant Objective 1 or 2 Programme. Further guidance on this can be found in Yorkshire Forward's ERDF Contractor Handbook.

For the purposes of this contract, the definitions of SMEs for EU reporting purposes are;

- (i) there must be fewer than 250 employees;
- (ii) the annual turnover must not exceed 50million Euros or the balance sheet must not total more than 43million Euros;
- (iii) not more than 25% of the capital or voting rights is owned by an enterprise that is not itself an SME or a University or non-profit research centre.

In addition, the SME must have a productive capability and provide a non-local service.

Ineligible SME activity constitutes those that provide:

- (iv) local services such as 18 hairdressers,

restaurants, window cleaners etc;

- (v) social welfare facilities such as hospitals, nursing homes, doctors, education establishments.

10.3 Financial Records

- (a) The Contractor shall retain documentary evidence of:-
 - (i) All capital and revenue purchases to support the amounts claimed from CO2 Sense Yorkshire. This shall include an invoice register of suppliers' and sub-contractors' invoices and all other documents relating to the purchase of all capital and revenue items funded by CO2 Sense Yorkshire.
 - (ii) Output generation to support the project progress reports, including those reports submitted on the Approved Claim Form for claiming instalments of Investment. CO2 Sense Yorkshire reserves the right to access and use any such output information held on databases, spreadsheets etc. by the Contractor for its own purposes.
- (b) The Contractor shall maintain full and accurate accounts for the Project. At the end of each Financial Year a 'Statement of Investment Expenditure' must be completed. This Statement has to be certified by the Chief Finance Officer for the Contractor. The Statement should also be certified by the Contractor's external auditor in accordance with the Audit Certification Instruction CI A1. The audited final accounts, certificate and auditor's report must reach CO2 Sense Yorkshire as soon as possible, and at the latest by the end of September of each year of funding. The first year's accounts can be for a maximum of 15 months. If the audited Statement of Investment Expenditure has not been received by the end of September date, the Investment may be suspended until receipt of the form. Such accounts shall be retained for at least 6 years after the end of the Financial Year in which the last payment is made under this Agreement. Different sources and amounts of funding shall be identified and input and output VAT shall be included as separate items in such accounts.
- (c) The Contractor shall allow access to its business premises on 2 days notice during 9.00 a.m. – 5.00 p.m. to CO2 Sense Yorkshire and Yorkshire Forward's internal auditors or its other duly authorised staff or agents, Government Office, European Commission or the National Audit Office to inspect such documents as CO2 Sense Yorkshire considers necessary in connection with this Agreement. CO2 Sense Yorkshire shall be entitled to interview employees of the Contractor in order to obtain oral and/or written explanations of documents and the Contractor shall provide access to the relevant employees at such times as may be reasonably required to enable CO2 Sense Yorkshire to do so. CO2 Sense Yorkshire reserves the right to have such staff or agents carry out examinations into the probity, economy, efficiency and effectiveness with which the Contractor has used CO2 Sense Yorkshire's resources in the performance of this Agreement.

11. COMPLIANCE WITH LEGISLATION

In carrying out this Agreement the Contractor and sub-contractors shall comply in all respects with all relevant legislation, and in particular;

- 11.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Amendment Act 2000, the Sex Discrimination Act 1975, the Human Rights Act 2000, the Disability Discrimination Act 1975 or relating to discrimination in employment on the grounds of age, sexual orientation or religious beliefs.
- 11.2 Evidence should be shown of a policy covering equal opportunities so that there is no unfair discrimination on any unjustifiable grounds whatsoever both within the Project plans and within the roll out of the Project. Evidence should also be shown of the implementation of this policy. Unless there is justifiable exception, the Project shall comply with all regulations that pertain to the equal opportunities agenda.
- 11.3 The Contractor shall comply fully with the Data Protection Act 1998 and any subsequent amendments. Personal data arising as a result of the Project shall not be processed and/or transmitted to a third party without the written permission of CO₂ Sense Yorkshire.
- 11.4 The Contractor shall comply with all relevant requirements contained in or having effect under the legislation relating to health, safety and welfare at work.
- 11.5 The Contractor will inform CO₂ Sense Yorkshire of any environmental incident or infringement during the project lifetime at the earliest opportunity and will take all reasonable steps to minimise (and if required, remedy) the adverse environmental impacts of such an occurrence.

12. CAPITAL ASSETS

- 12.1 During its useful life, no Capital Asset should be sold, charged or otherwise disposed of by the Contractor without prior written consent of CO₂ Sense Yorkshire. At CO₂ Sense Yorkshire's sole option such consent may be made conditional upon the refund to CO₂ Sense Yorkshire of the whole or (as the case may be) proportionate part of the proceeds of sale of the asset less any necessary sale expenses.
- 12.2 All Capital Assets must be kept insured against loss or damage for their full replacement value, and with a reputable insurer. The Contractor shall, upon CO₂ Sense Yorkshire's request, provide a copy of such insurance policy, together with the receipt for the payment of the last premium paid in respect of the policy. For the avoidance of doubt, in the event of any loss of, or damage to any Capital Asset, CO₂ Sense Yorkshire will not be obliged to pay for its replacement or repair.
- 12.3 The Contractor should keep a register of all Capital Assets and their location, which should be accessible at all times. Where the Investment is used for the purchase of furniture and ICT equipment all items must be included on the asset register if their individual value is more than £1,000.

13. INTELLECTUAL PROPERTY

- 13.1 All Project Intellectual Property shall be proprietary to and owned by the Contractor immediately on its coming into existence and to the extent that it sub-contracts performance of the Project, the Contractor shall ensure that any Project Intellectual

Property emanating from the work of its sub-contractor shall be assigned to it absolutely.

- 13.2 The Contractor hereby investments to CO2 Sense Yorkshire an irrevocable, world-wide, royalty-free transferable non-exclusive right and licence (with freedom to sublicense) of the Project Intellectual Property and to use and exploit all the Project Intellectual Property;
- 13.3 Notwithstanding termination of this Agreement for any reason whatsoever the Contractor shall at its expense do and execute, and shall procure that its employees and any sub-contractor engaged in the performance of the Project do and execute any further thing or document as may be required by CO2 Sense Yorkshire to give effect this clause.
- 13.4 The Contractor warrants:
- (a) that the Project Intellectual Property will not infringe the rights of any third party and no third party has threatened or so far as it is aware is currently threatening proceedings in respect of such infringement; and
 - (b) that it is able to conduct the Project without breaching any obligations it may owe to any third party now or, as far as it is at present aware, in the future and hereby undertakes to carry out the Project without breaching any such obligations and further undertakes not to assume any obligations to any third party which would be inconsistent with such undertaking. Without limitation, it warrants that it shall acquire all rights in any Project Intellectual Property obtained or developed by any third party in the course of or in connection with the Project or shall be duly allowed to licence the same as contemplated under this Agreement.
- 13.5 The Contractor shall indemnify and hold CO2 Sense Yorkshire harmless (and keep indemnified and hold harmless notwithstanding termination of this Agreement) against any and all loss or damage (including without limitation any economic loss or other loss of profits, business or goodwill or any consequential loss) suffered by CO2 Sense Yorkshire as a result of the Contractor's breach of any or all the warranties in Clause 13.

14. GENERAL INDEMNITY AND INSURANCE

- 14.1 The Contractor shall indemnify CO2 Sense Yorkshire in full from and against:-
- (a) all costs, claims, damages, liabilities, expenses and proceedings arising from or in connection with any breach or non performance of the terms of this Agreement or otherwise arising through the act or default of the Contractor; and
 - (b) without prejudice to the generality of the foregoing, all costs, claims, damages, liabilities, expenses and proceedings arising under statute or at common law in respect of any personal injury to or death of any person whomsoever or loss or damage to property whether belonging to CO2 Sense Yorkshire or otherwise arising out of or in the course of or caused by the performance of the Project.

- 14.2 The Contractor shall ensure that it has and maintains at all times:-
- (a) adequate insurance cover with a insurer of good repute to cover all claims and liabilities under this Agreement or any other claims or demands which may be brought or made by it by any person suffering any injury, damage or loss in connection with the Project; and
 - (b) employer's liability insurance cover with a reputable insurer for a sum of not less than £5,000,000.
- 14.3 The Contractor shall:-
- (a) upon request by CO2 Sense Yorkshire at any time produce to CO2 Sense Yorkshire a copy or copies of the policies of insurance referred to in this clause together with the receipt for or evidence of the payment of the last premium in respect of each such policy or other documentary evidence to the satisfaction of CO2 Sense Yorkshire that the policy or policies are properly maintained; and
 - (b) comply with all legislation including (without limitation) the Employer's Liability (Compulsory Insurance) Regulations 1998 with regard to the disclosure and/or display of the insurance policies.

15. RECOVERY OF INVESTMENT

- 15.1 CO2 Sense Yorkshire may reduce suspend or withhold the Investment or require all or part of the Investment to be repaid (or require Capital Assets to be transferred where the purchase was wholly funded by CO2 Sense Yorkshire) if:
- (a) it judges the performance of the Project to be unsatisfactory;
 - (b) the Contractor fails to comply with any term or condition of this Agreement in any material respect;
 - (c) the Investment is terminated in accordance with clause 16 (Termination);
 - (d) there is a substantial change to the Project which CO2 Sense Yorkshire has not approved;
 - (e) any attempt is made to transfer or assign any rights interests or obligations created under this Agreement without the prior written consent of CO2 Sense Yorkshire;
 - (f) any information provided in the application for funding or in a claim for payment or in subsequent or supporting correspondence is found to be incorrect or incomplete to an extent which CO2 Sense Yorkshire considers to be material;
 - (g) a charge is taken on a Capital Asset without the prior consent of CO2 Sense Yorkshire;
 - (h) there is an unauthorised attempt to dispose of a Capital Asset;
 - (i) there is a failure to keep and maintain the records required by CO2 Sense

Yorkshire;

- (j) there is a failure by the Contractor to provide reports on time as required by this Agreement;
- (k) the Investment has not been used for the purpose for which it was given;
- (l) there is financial irregularity within the Contractor which is not rectified within the timescale specified by CO2 Sense Yorkshire;
- (m) there has been an overpayment of Investment;
- (n) there is a change in the Contractor's activities which are inconsistent with the Outputs;
- (o) CO2 Sense Yorkshire has to repay funding from which the Investment was allocated;
- (p) CO2 Sense Yorkshire is required to do so as a result of a decision by the EU or as a result of any obligation arising under EU Law.
- (q) CO2 Sense Yorkshire believes that all necessary approvals to lawfully deliver the Project have not been obtained or all relevant legislation has not been complied with;
- (r) CO2 Sense Yorkshire has consented to a change in the Project which in its opinion reduces the amount of Investment needed; and
- (s) any other circumstances or events that in the reasonable opinion of CO2 Sense Yorkshire are likely to adversely affect the Contractor's ability to deliver the Project in accordance with the terms of this Agreement or result in a risk that the Project as approved will not be completed.

15.2 The provisions of clause 15.1 are without prejudice to CO2 Sense Yorkshire's rights in clause 16.

15.3 The Contractor agrees that on receipt of notice requiring repayment of all or any part of the Investment that it will make such repayment within 20 Working Days of receipt of such notice.

16. TERMINATION

16.1 Without prejudice to any other rights to which it may be entitled, either party may give notice in writing to the other terminating this Agreement with immediate effect if the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified of the breach.

16.2 CO2 Sense Yorkshire may give notice in writing to the Contractor terminating this Agreement with immediate effect if:

- (a) an order is made or a resolution is passed for the winding up of the Contractor or a provisional liquidator is appointed or if an order is made for the appointment of an administrator to manage the affairs,

business and property of the Contractor or if a receiver is appointed of any of the Contractor's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding up order or if the Contractor makes or proposes any composition or voluntary arrangement with its creditors or if the Contractor takes or suffers any similar or analogous action in consequence of debt or in any jurisdiction other than England;

- (b) there is a change of Control of the Contractor;
- (c) the Contractor purports to assign its rights or obligations under this Agreement;
- (d) CO2 Sense Yorkshire invokes the provisions described in clause 15;
- (e) the Contractor fails to achieve the Outputs set out in Schedule 1;
- (f) the Contractor ceases to carry on business;
- (g) the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct of the Contractor;
- (h) the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of its business;
- (i) the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/its obligations relating to the payment of Social Security contributions;
- (j) the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/its obligations relating to payment of taxes; or
- (k) the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by CO2 Sense Yorkshire in or pursuant to this Agreement.

16.3 Termination of this Agreement however caused shall be without prejudice to any rights or liabilities accrued at the date of termination, but for the avoidance of doubt CO2 Sense Yorkshire shall not be obliged to make any further payments to the Contractor after such termination.

16.4 Nothing in this clause 16 shall affect the coming into, or continuance in force of any provision of this Agreement that is expressly or by implication intended to come into force or continue in force upon termination of this Agreement.

17. PUBLICITY REQUIREMENTS

17.1 The Contractor shall comply with all the obligations and requirements set out in Schedule 4.

18. TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION

- 18.1 If upon or at any time within 6 months after the expiry or sooner determination of this Agreement CO2 Sense Yorkshire shall notify the Contractor that any nominee of CO2 Sense Yorkshire or any other person will be undertaking work which is a continuation of the Project or similar in nature to the Project then the Contractor shall, at no additional cost to CO2 Sense Yorkshire, promptly provide such information and assistance and comply with such timetable as CO2 Sense Yorkshire may reasonably require. CO2 Sense Yorkshire shall be entitled to require the provision of such information and assistance both prior to and for a reasonable period after, the expiry or other determination of this Agreement.
- 18.2 Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor that relate to this Agreement, the Project and its results including the documents and data, if any, referred to in the Schedules.

19. SEVERABILITY

If any part of this Agreement becomes invalid, illegal or unenforceable the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible validly gives effect to their intentions as expressed in this Agreement. Failure to agree on such a provision within six months of commencement of those negotiations shall result in automatic termination of this Agreement. The obligations of the parties under any invalid, illegal or unenforceable provision of this Agreement shall be suspended during such a negotiation.

20. AMENDMENTS

Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it. The Contractor shall comply with any formal procedures for amending or varying contracts that CO2 Sense Yorkshire may have in place from time to time.

21. EXCESS PROFITS AND DEVELOPMENTS

- 21.1 The Contractor shall immediately disclose to CO2 Sense Yorkshire and in such detail as CO2 Sense Yorkshire may reasonably require all Developments that it may create or put into use during the Term and the requirements of clauses 21.1 to 21.5 inclusive shall apply to all Developments, unless otherwise agreed in writing by CO2 Sense Yorkshire.
- 21.2 Developments shall remain the exclusive property of the Contractor but CO2 Sense Yorkshire shall have a non-exclusive perpetual irrevocable world-wide royalty-free licence to use and exploit all Developments with the right to investment sub-licences.
- 21.3 Developments arising from work carried out jointly with CO2 Sense Yorkshire shall belong to the parties equally (unless they otherwise agree) and each party shall be free to exploit jointly owned Developments including the right to investment sub-licences provided that prior to investment or any sub-licence the other party shall be notified of the proposed investment and shall notify the proposed licensee of the other party's

interest in the rights to be licensed.

- 21.4 The Contractor shall pay to CO2 Sense Yorkshire a share of any capital or income receipts received by the Contractor from the Project or arising out of the Developments at any time during the Term such share to be determined by CO2 Sense Yorkshire and which may be the whole of the receipts up to the amount of the Investment unless CO2 Sense Yorkshire is satisfied that any such receipts are to be used by the Contractor solely for the benefit of the Project.
- 21.5 The Contractor shall immediately notify CO2 Sense Yorkshire of any capital and/or income receipts (including rental income) received at any time during the Term.
- 21.6 Pending an assessment of the amount to be so paid under clause 21.5 the Contractor shall create a separate account for the full value of such capital and/or income receipts and shall hold the same on trust for CO2 Sense Yorkshire.

22. WAIVER

No delay or omission by either party in exercising any right, power, privilege or remedy under this shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not bar the exercise or enforcement of it at any time or times thereafter.

23. NOTICES

- 23.1 Any notice or communication required or given by either party to the other party in connection with this Agreement shall be in writing and delivered by hand or by first class or registered post to the relevant address or addresses prescribed in this Clause 23 of the party to whom the notice is to be given (or such other address as the recipient may have notified to the sending party in writing) and any notice so sent shall be deemed, if delivered by hand, to have been served at the time of delivery and if posted by first class or registered post to have been served on the second business day following the date of posting.
- 23.2 All notices or communications to CO2 Sense Yorkshire shall (unless CO2 Sense Yorkshire shall give notice to the Contractor otherwise) be delivered to CO2 Sense Yorkshire at the address stated in paragraph 16 of the Particulars and marked for the attention of CO2 Sense Yorkshire's Representative (with a copy delivered at the same time to CO2 Sense Yorkshire Green Sand Foundry, 99 Water Lane, Holbeck, Leeds LS11 5QN marked for the attention of the Programme Director).
- 23.3 All notices or communications to the Contractor shall (unless the Contractor shall give notice to CO2 Sense Yorkshire otherwise) be delivered to the Contractor at the address stated in paragraph 3 of the Particulars and marked for the attention of the Contractor's Manager.

24. REPUTATION OF CO2 SENSE YORKSHIRE

- 24.1 The Contractor shall not, and shall use its best endeavours to procure that its employees, agents and/or sub-contractors shall not, knowingly do or omit to do, anything in relation to this Agreement or in the course of their other activities, that may bring the standing of CO2 Sense Yorkshire into disrepute or attract adverse

publicity for CO2 Sense Yorkshire.

- 24.2 The Contractor shall at all times perform the Project with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, probity, courtesy, consideration and hygiene.

25. NON SOLICITATION AND CONFLICT OF INTEREST

- 25.1 The Contractor undertakes and agrees that during the Term of the Agreement and for a period of six months thereafter, it shall not directly or indirectly entice away or attempt to entice away any employee of CO2 Sense Yorkshire. Further, during the Term of the Agreement, the Contractor shall not employ any person who during a period of 12 months beforehand had been an employee of CO2 Sense Yorkshire without obtaining the prior written consent of CO2 Sense Yorkshire.

- 25.2 The Contractor should not solicit knowledge or services from any CO2 Sense Yorkshire employee in any way directly or indirectly for favour that may compromise the relationship of the Contractor and that of CO2 Sense Yorkshire or any of its employees that may present a conflict of interest.

26. NO PARTNERSHIP OR AGENCY

This Agreement does not create a relationship of partnership or agency between the parties and the Contractor must not represent itself to others as an agent of CO2 Sense Yorkshire.

27. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English courts.

28. ENTIRE AGREEMENT

This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it.

29. INTEREST ON LATE PAYMENTS

If the Contractor fails to pay to CO2 Sense Yorkshire any sums due under this Agreement within 10 Working Days of demand interest shall accrue at the Base Interest Rate on the amount due to be paid from the due date until payment is made.

30. VAT

The Investment does not represent consideration for a taxable supply to the Contractor and is therefore not subject to VAT. In the event that HM Customs and Excise rule that VAT is payable, then the amount of the Investment shall be deemed to be inclusive of VAT. The Contractor acknowledges that CO2 Sense Yorkshire shall not be obliged to make any further payment in addition to the Investment in respect of any VAT which may be payable on Investment funded activities.

31. FREEDOM OF INFORMATION ACT 2000

31.1 Nothing in this Agreement shall prevent CO2 Sense Yorkshire from disclosing any Information whether relating to the Project or this Agreement or otherwise which CO2 Sense Yorkshire in its absolute discretion considers it is required to disclose in order to comply with FOIA and/or the Environment Information Regulations and any other statutory requirements whether or not existing at the date of this Agreement and CO2 Sense Yorkshire reserves the right to make such disclosure without reference to the Contractor.

31.2 If CO2 Sense Yorkshire shall at any time notify the Contractor that it has received a Request for Information in respect of which CO2 Sense Yorkshire requires the Contractor's assistance then:-

- (a) the Contractor shall at its own cost provide and procure that its sub-contractors provide all necessary assistance required by CO2 Sense Yorkshire in order to allow CO2 Sense Yorkshire to comply with the Request for Information within the period or periods when it is obliged to respond to the Request for Information;
- (b) without limitation to the foregoing the Contractor shall at its own cost within 5 Working Days of request supply and procure that its sub-contractors supply to CO2 Sense Yorkshire such Information and documents requested by CO2 Sense Yorkshire in such form as reasonably prescribed by CO2 Sense Yorkshire; and
- (c) the Contractor shall ensure that all Information produced in the course of the Project in relation to the Project and/or this Agreement is retained for disclosure and shall permit CO2 Sense Yorkshire to inspect such records as required from time to time.

31.3 In the event that the Contractor shall at any time receive any Request for Information relating to the Project, this Agreement or any activities or business of CO2 Sense Yorkshire then:-

- (a) the Contractor shall supply the Request for Information to CO2 Sense Yorkshire within 2 Working Days of receipt;
- (b) CO2 Sense Yorkshire shall be responsible for determining in its absolute discretion as to whether such Information is obliged to be disclosed; and
- (c) the Contractor shall not respond to the Request for Information or disclose any such Information without the prior written consent of CO2 Sense Yorkshire (such consent not to be unreasonably withheld).

32. THIRD PARTY RIGHTS

Save as expressly provided in this Agreement, no term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party (being any person other than the parties and their permitted successors and assignees).

33. EUROPEAN COMMUNITY STATE AID RULES

- 33.1 The European Commission has considerable powers to monitor, control and restrict the forms and levels of aid given by all Member States to their industries. The principles underlying State Aid are set out in Article 88(3) of the EEC Treaty. Detailed guidance on State Aid rules can be found in “European Community State Aids: Guidance for all Departments and Agencies” published by DTI in March 1999 and the various frameworks and guidelines issued by the Commission on the application of the rules. All State Aid (other than those covered by *de minimis* provisions – see below) must be notified to and approved by the Commission in advance of implementation, otherwise it is illegal.
- 33.2 Applicants are required to abide by any EC State Aid limits that are applicable. Where the applicant is a public authority, it should satisfy itself whether state aid rules apply to the project in consultation if necessary with the Department of Trade and Industry and should inform the Department immediately it has decided it does not need to notify the project to the Commission. In all other cases, no investment will be paid in respect of the project until the Department has been informed of the Commission’s approval of the project under the notification of the state aids procedure pursuant to Article 88(3) of the EC Treaty, or the Department has formed the view that such notification is not required. Recipients of illegal aid will risk being held responsible for meeting the cost of any penalty applied by the EC in the event the project is found to have infringed the State Aid rules, and also risk actions for damages from third parties. If you are in any doubt contact the Government Office.

The CO2 Sense Yorkshire (CO2 Sense Yorkshire) programme sits under the RDA notified Block Exemption Schemes:

SME Consultancy Scheme for Yorkshire and Humber 2009-2013 (Commission General Block Exemption Provisional Reference Number 2084)

Training Aid to support Yorkshire and Humber, North West of England and North East of England Enterprises (Commission General Block Exemption Provisional Reference Number 2030)

As such the contractor does not have to separately notify the DTI or the EC of any support which is provided in line with this Block Exemption.

Notification

- 33.3 Where a project will use public expenditure (including structural funds) either directly or indirectly to provide subsidised benefits to the private sector, eg investments to firms for investment, R&D, training and a reduced cost business consultancy, the assistance provided to the project will normally need to conform to EC State Aids rules and be formally approved by the EC.

De minimis

- 33.4 There is a threshold below which aid need not be notified. This *de minimis* threshold applies if the project will not allow any private sector organisation to receive more than 200,000 Euros of state aid over any three year period taking account of all State Aid that such organisations may receive from any source.
- 33.5 The following sectors are ineligible for support: agriculture, fisheries, transport,



Project Part-Financed
by the European Union
European Regional
Development Fund

shipbuilding, coal, steel and aid for export.

33.6 Projects that include an element of aid to businesses and are proposing to operate a de minimis scheme must be mindful of the need to:

- (a) **obtain confirmation of a company's receipt of state aid in the last three years; and**
- (b) **provide company's participating in the project with a record of the cash value of any assistance provided.**

**SCHEDULE 1
SCHEDULE 1
Project Operational Plan**

[Please see the Guidance Notes Annex 2 for what should be included under each heading.]

- 1. Background and Baseline Position**
- 2. Scope**
- 3. Assumptions**
- 4. Aims**
- 5. Objectives**
- 6. Deliverables, Activities, Resources and Milestones**
- 7. Management Structure**
- 8. Quality Plan**
- 9. Sub-Contracting**
- 10. Progress Reporting**

The Contractor shall produce progress reports for CO₂ Sense Yorkshire in accordance with Clause 10.2(b) & (c) on the following dates:

[insert dates]

At the end of each calendar European cross cutting theme outputs must be reported to CO₂ Sense Yorkshire.

[insert relevant cross cutting themes]

- 11. Risk Management Plan**
- 12. Evaluation**

Programme evaluation will be undertaken through monthly updates to [] from CO₂ Sense Yorkshire.

Outputs from projects will be recorded on a quarterly basis via project update forms used by all CO₂ Sense Yorkshire – Project managers and any contactors.

[insert contractors name] must provide project updates on a quarterly basis until March 2012.

13. Outputs

The following table will be used to monitor progress with funding claims. *[Detail all outcomes, outputs and results to be achieved by the project and enter all ERDF outputs and results, profiled over time.]*

Indicate what outputs the project will achieve – all projects do not necessarily create all outputs. These outputs will become part of any future investment contract.	Year 1 2010/11	Year 2 2011/12	Year 3 2012/2013	Year 4 2012/2013	Year 5 2013 / 2014	Outputs should be entered year-by-year, they are added together in right-hand columns to give totals	
						Year 1 - 3	All Years
Project Budgets (non-CO2 Sense Yorkshire) (identify source and item)							
Total match funding							
CO2 Sense Yorkshire investment (itemise)							
Total CO2 Sense Yorkshire investment							
Total Project Spend							
Jobs Created / Safeguard							
New Businesses Created / Attracted							
Businesses Supported							
Business Cost Savings (£)							
Increased Business Sales (£)							
*Increased GVA (£)							
Skills Gained							
Increased Materials Avoided, Reused, Recycled etc (tonnes)							
Total							
Energy Savings (kilowatt hours)							
Total							
Water Saving (m³)							

Total							
Reduced Transport (tonnes/km)							
Total							
*Reduced Material GHG Emissions (tonnes)							
*Reduced Energy GHG Emissions (tonnes)							
*Reduced Water GHG Emissions (tonnes)							
*Reduced Transport GHG Emissions (tonnes)							
*Total Reduced GHG Emissions (tonnes)							

14. Beneficiary Data

As part of the outputs monitoring for all Yorkshire Forward Single Programme funded projects information on Beneficiary Data is required as follows:

Business Related: Business Creation, Business Support.

Individual Related: Skills, Job Creation, and Employment Support.

The term Beneficiary Data relates to an individual person or business directly benefiting from the project activity of CO2 Sense Yorkshire i.e. the person who is or will be the ultimate recipient of a benefit.

The Beneficiary Data will be used to allow CO2 Sense Yorkshire to analyse its interventions and monitor outputs. It is necessary to collect Beneficiary Data information at an individual output level for the following reasons:

- (a) for audit purposes each output should be traceable back to the individual output level. The recording of unique identifiers in the form of name, postcode and VAT registration numbers also alleviates any problems of double counting outputs;
- (b) the collection of the data is also necessary for the purpose of identifying and keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and will be carried out with appropriate safeguards for the rights and freedoms of data subjects;
- (c) the reporting to government, where outputs must be capable of disaggregation on a rural/urban basis and by disadvantaged areas;
- (d) The Beneficiary Data will provide management information that will be used by CO2 Sense Yorkshire to monitor progress of individual projects and its interventions. Any reporting based on the collected Beneficiary Data will be aggregated to Ward level to make sure no individuals are identifiable.

The Contractor shall:

- (a) provide the Beneficiary Data detailed in the Beneficiary Proforma and Summary Spreadsheet Guidance Note supplied by CO2 Sense Yorkshire with this Agreement or in such other format and at such other time as shall be required by CO2 Sense Yorkshire. The Beneficiary Proforma is available for business based or individual based outputs and the relevant form should be completed for each output created. The Beneficiary Data Summary Spreadsheet will record this data in a format that can be interfaced with CO2 Sense Yorkshire's Beneficiary Database. It is essential that the data is recorded in the format as specified in the guidance note;
- (b) collect the Beneficiary Data for each Output continuously during the project lifetime;
- (c) ensure that all Outputs are traceable back to the individual for audit purposes. It is acknowledged that this information could only be gained from self-assessment by the beneficiary and the individual whose details are to be recorded must be informed of the collection and processing of the data. To allow each individual's details to be recorded and processed, individuals must opt into the use of their details;
- (d) retain the original completed proforma as an auditable record of opt in to the use of details, if the individual does not opt in to the use of their personal details the name and postcode must still be supplied. Beneficiaries can choose not to answer some of the questions in the sample forms. These essentially relate to information that the beneficiaries may find personal or sensitive and may not want to give. If this is the case the relevant section on the form and the Summary Spreadsheet should be left blank.

- (e) input the completed proforma details into CO2 Sense Yorkshire's Beneficiary Data Summary Spreadsheet , the layout and the fields mirror those in the proforma. This should be e-mailed to the CO2 Sense Yorkshire Project Development Manager when the outputs are claimed.
- (f) include the Beneficiary Data information in the progress reports referred to in paragraph 10 above;
- (g) adhere to the Data Protection Act 1998 and any subsequent amendments in terms of the processing and storage of the personal details of beneficiaries;
- (h) each Beneficiary's details recorded should be indicated with the relevant project number and output created;

15. Equalities and Diversity Impact Assessment Action Plan (*Delete if not applicable*)

**SCHEDULE 2 FUNDING PROFILE
TOTAL PROJECT EXPENDITURE AND FUNDING SOURCES**

Investment, consisting of both Single Pot and ERDF, will be paid to the Contractor, in line with the CO2 Sense Yorkshire Intervention Rate, as shown in the Table below.

Cashflow	2009/2010				2010/2011				2011/2012			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
1) Expenditure (£000s)												
1a) Revenue Costs (£000s)												
Category 1												
Category 2												
Category 3												
Revenue Costs SUBTOTAL												
1b) Capital Costs (£000s)			10									
Capital costs - SUBTOTAL												
TOTAL COSTS (revenue+capital)			10									
2) Income by Funding Source												
Project Sponsor's Own Funds												
CO2 Sense Yorkshire												
Private Sector												
Income from project activities												
Other (please specify) ¹												
Total (Gross) Income												
CO2 Sense Yorkshire Intervention Rate %age												

¹Replace the 'other partner' boxes with the name of relevant partners and complete the financial detail accordingly. Please extend the table if necessary.

SCHEDULE 3

Profile of Planned Monthly Financial Claims To Be Made Against The Agreement

FINANCIAL YEAR	£ CAPITAL	£ REVENUE	£ TOTAL
2008/09			
July			
August			
September			
October			
November			
December			
January			
February			
March			
TOTAL (including non-recoverable VAT)			
2009/10			
April			
May			
June			
July			
August			
September			
October			
November			
December	£10,000		£10,000
January			
February			
March			
TOTAL (including non-recoverable VAT)			
2010/11			
April			
May			
June			
July			
August			
September			
October			
November			
December			
January			
February			
March			
TOTAL (including non-recoverable VAT)			

TOTAL FORECAST ALL YEARS £ [*insert total which is maximum CO2 Sense Yorkshire investment*]

SCHEDULE 4

Publicity Requirements

A Guide for Contractors delivering CO2 Sense Yorkshire funded Activities

CO2 Sense Yorkshire is wholly owned by Yorkshire Forward and therefore any CO2 Sense Yorkshire funded activities are also Yorkshire Forward funded Activities.

Your responsibility

As a recipient of funds from CO2 Sense Yorkshire, and therefore Yorkshire Forward, you are contractually required to adhere to the requirements as stated in this guide. Any breach of these guidelines may result in you having to pay back some of the funding.

The CO2 Sense Yorkshire logo should be used on all material which supports CO2 Sense Yorkshire funded projects. The guidelines to using the CO2 Sense Yorkshire logo are explained in 'CO2 Sense Yorkshire Logo Requirements' and will have been supplied prior to the date of this agreement by CO2 Sense Yorkshire to the contractor.

The Yorkshire Forward logo should also be used on all material which supports CO2 Sense Yorkshire funded projects. This is the primary visual representation of Yorkshire Forward and it is vital that it is used and applied consistently and correctly in all applications. It is also important that Yorkshire Forward's involvement and support for your project is recognised through correct and prominent use of the mark and its prefixes.

Where the Yorkshire Forward logo appears on a third party project or initiative it must always be prefixed with the descriptor: **'Supported by'** to clarify Yorkshire Forward's role. **It is not acceptable to use alternative descriptors.**

Master artwork, which includes this descriptor, which should always be used, is contained on the CD which has prior to the date of this Agreement been delivered by CO2 Sense Yorkshire to the Contractor, the receipt of which the Contractor acknowledges.

In addition, the Regional Brand 'Yorkshire Alive with Opportunity!' should be used on all material which supports Yorkshire Forward funded projects. The guidelines are explained on the CD which has prior to the date of this Agreement been supplied by CO2 Sense Yorkshire to the Contractor. The CD also explains how the Yorkshire Forward logo and the Regional Brand should be positioned and prioritised when they appear together.

Examples of how to apply logos and descriptor are also shown on the CD and in 'CO2 Sense Yorkshire Logo Requirements' which has prior to the date of this Agreement been supplied by CO2 Sense Yorkshire to the Contractor.

Yorkshire Forward Recognition: Press, PR, Events

CO2 Sense Yorkshire and Yorkshire Forward require full recognition for their involvement in a project or initiative, whether this recognition appears in a press release, or as branding at an event.

Press and PR

All press releases related to projects funded or partly funded by Yorkshire Forward must be approved by Yorkshire Forward's press office. They must include:

- a paragraph describing CO2 Sense Yorkshire and Yorkshire Forward's involvement
- and a quote from a CO2 Sense Yorkshire spokes person and a Yorkshire Forward spokes person.

CO2 Sense Yorkshire must also be informed of any press briefings or interviews scheduled to promote projects. Press releases, which contain quotes by CO2 Sense Yorkshire and Yorkshire Forward, must be signed off by CO2 Sense Yorkshire and a Yorkshire Forward Press Officer respectively, prior to release.

Please contact the CO2 Sense Yorkshire Administration Co-ordinator on 0113 237 8419 to obtain approval.

Marketing and PR Portfolio

You will be expected to provide CO2 Sense Yorkshire with copies of all marketing and PR materials which are produced as part of the project. This will then be passed on to Yorkshire Forward's Communications Team. This information should also be made available during monitoring and evaluation exercises. Incorrect use of CO2 Sense Yorkshire and Yorkshire Forward's branding or the Yorkshire Alive With Opportunity branding, may result in your material being withdrawn and/or reprinted at your cost.

Please contact the CO2 Sense Yorkshire Administration Co-ordinator on 0113 237 8419.

Events

Where an event is being organised that CO2 Sense Yorkshire has funded, or part funded, it is your responsibility to ensure that:

- the CO2 Sense Yorkshire Administration Co-ordinator is notified in advance,
- the CO2 Sense Yorkshire, Yorkshire Forward and Yorkshire Alive With Opportunity logo must appear on pre-event promotional material, on the day materials, and event holding slides,
- a relevant CO2 Sense Yorkshire spokesperson and Yorkshire Forward spokesperson must be invited to speak,
- if there is not a CO2 Sense Yorkshire or Yorkshire Forward speaker present, then verbal acknowledgement of CO2 Sense Yorkshire and the Agency's support must be clearly referenced at the event,

Please contact the CO2 Sense Yorkshire Administration on 0113 237 8419.

Internet sites

Where CO2 Sense Yorkshire funded projects have specific websites or web content on existing websites they should carry the CO2 Sense Yorkshire and Yorkshire Forward logos or descriptor on the home page and a link to the CO2 Sense Yorkshire and Yorkshire Forward websites.

Logo application example

The CO2 Sense Yorkshire and Yorkshire Forward logos should be applied in a position that ensures it is immediately visible on a 15 inch monitor, set at a resolution of 800 x 600 pixels. Web pages should use web enabled versions of the CO2 Sense Yorkshire, Yorkshire Forward and Yorkshire Alive With Opportunity logos.

These should include links to the CO2 Sense Yorkshire and Yorkshire Forward websites. It is important for websites to observe minimum size

A full guide describing how Yorkshire Forward should be recognised for all projects and activities it funds or sponsors is included on the CD which has prior to the date of this Agreement been supplied by CO2 Sense Yorkshire to the Contractor. This includes Yorkshire Forward and Yorkshire Alive With Opportunity logos and gives guidance to Contractors delivering these projects. The guidelines provide a broad outline of Yorkshire Forward's requirements with specific examples of how these should be implemented.

The full details of how to apply the CO2 Sense Yorkshire Logo are available from the CO2 Sense Yorkshire Administration Co-ordinator on 0113 237 8419.

EU Publicity Requirements

The Contractor shall acknowledge the receipt of the Investment by also incorporating the European Union logo into the design of any printed or presentation material associated with the project.

This is a brief summary of the main points. Full details are contained in the Commission Regulation 1159/2000 with which you must comply.

Billboards

1. Billboards must be erected on the sites of infrastructure projects with a cost exceeding 3 million euros and 500,000 euros for operations part-financed by Financial Instruments for Fisheries Guidance (FIFG). Billboards must be of a size appropriate to the scale of the operation.
2. The billboard must include a space reserved for the European Union's (EU) contribution. This section must:

- a) take up at least 25% of the total area of the billboard;
- b) bear the standard Community emblem - twelve five-pointed gold stars in a circle on a blue background - and the following text, to be presented as below:



**Project Part-Financed
by the European Union**

**European Regional
Development Fund**

- c) the lettering used to indicate the EU's financial contribution must be at least the same size as the lettering used to indicate national participation, although the typeface may be different.
 - d) the Fund concerned may be mentioned (e.g. European Regional Development Fund (ERDF)).
3. Billboards must not be removed until at least 6 months after completion of the work.

Commemorative plaques

4. A permanent commemorative plaque shall replace the billboard, where the infrastructure project is accessible to the general public (e.g. congress centres, airports, stations, etc.). Such plaques must include the Community emblem, mention the EU's contribution and may mention the Fund concerned, (e.g. ERDF). In the case of physical investments in commercial business premises, commemorative plaques shall be installed for a period of a year.

Other points

5. If a billboard is erected, a commemorative plaque placed, a poster displayed, or any other type of publicity is used for the project, the Community's contribution must also be noted. This requirement applies even if the costs of the project do not exceed the amounts mentioned in paragraph 1.

6. Forms issued concerning the announcement of, application for and investment of assistance to final beneficiaries shall indicate the part financing by the Community and the European Regional Development Fund. The notification of aid sent to beneficiaries shall mention the amount or percentage of the assistance financed by the ERDF. If national or regional emblems are included, a European emblem of the same size must also be included.

**SCHEDULE 5
European Procurement Guidance**

1. The European Community rules on Procurement apply to contracts that are financed or part financed by Structural Funds investment. Within the coverage of the Directives set out below, contracts above certain limits are required to be advertised in the Official Journal (OJ) of the European Communities. Bids for contracts must be assessed on an objective basis and contract awards should be published in the OJ. Investment will be reclaimed if it is found subsequently that the procurement rules have not been observed.
2. Organisations that are not financed or supervised by public sector bodies and commercial organisations in the private sector may not be covered by the procurement rules but are nonetheless expected to use fair and open practices including competitive tendering when letting contracts for which they intend to claim Structural Funds investment.
3. If your organisation is not covered by the procurement directives we expect the following procurement procedures (or equivalent) to be adopted according to the estimated value (inc. VAT) of the contract at pre-tender stage. Your decision must demonstrate best value and you must keep records which support your decision. We also expect that public sector bodies awarding contracts below the thresholds to demonstrate best value for instance by following these procedures.

Estimated Value	Tender Action Required
Below £250	No quote required
£250 up to £500	Single oral quote
£501 up to £2,500	Minimum of three oral quotes
£2,501 up to £15,000	Minimum of three written quotes, based on a clear written specification of requirement
£15,001 up to £50,000	Normally minimum of 3 formal competitive tenders invited.
£50,001 and over	Normally 4 to 6 formal competitive tenders invited.

4. Private sector organisations letting any works contracts covering civil engineering, hospitals, sports facilities, recreation and leisure facilities in excess of 5,000,000 euros for which 51% or more of the costs are funded by a public body must meet the EC procurement rules.
5. The Procurement rules are complex and the following list provides a very brief description. The following description is not intended to provide guidance on how the Directives should or should not be applied. If there is any doubt about the application of the Procurement rules you should seek legal advice. In general, where doubt remains (after consultation with lawyers or other experts) about the application of the Procurement rules, it may be better to err on the side of caution and apply the

procurement process. Note that Directives are implemented in the UK by Statutory Instruments (SIs). Applicants should examine the appropriate SI to ensure they comply with the requirements. The thresholds were revised on 1 January 2004; and these may be subject to annual review (applicants can check details of latest EC procurement thresholds on the Office of Government and Commerce Website: www.ogc.gov.uk). The Directives are:

The Public Works Directive

- **Directive 93/37/EEC** amended by **Directive 97/52/EC**, implemented in the UK by Statutory Instrument (SI) 1991/2680. The organisations covered are Government Departments, local authorities and a wide range of public bodies not of an industrial or commercial nature. Included are organisations established for the specific purpose of meeting needs in the general interest that are financed for the most part by other bodies, subject to management supervision by them or having an administrative, managerial or supervisory body more than half of whose members are appointed by them. The rules apply to contracts for building or civil engineering works, the award of works concession contracts and works contracts funded by the above organisations. Works concessions contracts are those where the contractor has the right to exploit the works (e.g. to levy road tolls), although they may be paid as well.

Government Procurement Agreement sector contracts

- For Government Procurement Agreement (GPA) sectors, (ie water, electricity, urban transport, ports and airports), the threshold is 5m Standard Drawing Rights SDR, (which equates to 5,358,153 euros).
- The threshold for non GPA sector contracts is 5M euros. This refers specifically to gas and heat, extraction of oil and gas, extraction of solid fuels, transport by railway but excluding urban railways and telecommunications sectors.

Subsidised Works Contracts

- If the organisation awarding the contract contributes more than half the contract value, where the total contract value exceeds 5,000,000 euros for any works contract covering, in general, civil engineering (roads bridges, railways, tunnels etc), hospitals, sports facilities, recreation and leisure facilities, school and university building or buildings for administrative purposes, then the contribution must be conditional on the subsidised body complying with the rules as if it were a Contracting Authority.

The Public Supplies Directive

- **Directive 77/62/EEC** (amended by **Directive 93/36 EC and 97/52/EC**, implemented in the UK by SI 91/2679. This covers the purchase or hire of goods by the same organisations covered by the Public Works Directive.
- The thresholds are 600,000 euros for the telecommunications sector, 400,000 euros for non GPA sectors and for GPA sector contracts 400,000 SDR,(which equates to 428,653 euros).

The Public Services Directive

- **Directive 92/50**, (as amended by **Directive 97/52/EC**, implemented in the UK by SI 1993/3228. Based on the Works Directive, but allows greater freedom to use the negotiated procedure with a prior call for competition. Includes rules on design contests and quality assurance. Does not apply to public service concession contracts.
- The thresholds are 600,000 euros for the telecommunications sector, 400,000 euros for non GPA sectors. The thresholds for GPA sector contracts are either 400,000 euros or 400,000 SDR, depending on the nature of the service contracts.

The Utilities Directive

- **Directive 93/38/EEC** (replaced **90/531/EEC** and includes services) on procurement procedures of entities operating in the water, energy, transport and telecommunications sectors as last amended by **Directive 98/4/EC**, implemented in the UK by SI 1996/2911.
- This Directive shall apply to contracting entities:
 - (a) which are public authorities or public undertakings and which pursue one of the activities referred to in Articles 3 to 6¹;
 - (b) which, when they are not public authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 3 to 6, or any combination thereof and operate on the basis of special or exclusive rights investmented by a competent authority of a Member State.
- A contract, which is intended to cover several activities, and which cannot be split up shall be subject to the rules applicable to the activity for which it is principally intended.
- This directive shall apply to contracts where their estimated value, net of VAT, is equal to or greater than:
 - (a) 428,653 euros in the case of supply and service contracts
 - (i) 400,000 euros for oil, gas, coal and railway sectors
 - (ii) 600,000 euros for telecoms sectors
 - (b) 5,358,153 euros in the case of works contracts
 - (i) 5,000,000 euros for oil, gas, coal, railway and telecoms sector.

Supply, Works and Service Contracts

- Supply, works and service contracts mean contracts for pecuniary interest concluded in writing between one of the contracting authorities or entities referred to in Article 2 (2)², and one or more suppliers, contractors or service providers, having as their object:
 - (a) in the case of supply contracts, the purchase, lease, rental or hire-purchase of products, with or without the option to buy;
 - (b) in the case of works contracts, which have as their object either the execution, or both the execution and design of building and civil engineering activities (referred to in Annex XI³). In addition, these contracts may cover the execution of these activities, by whatever means, as required by the contracting authority;
 - (c) in the case of service contracts, contracts concerning services are mentioned in Annex XVI⁴

Compliance and Remedies Directives

There is also a **Compliance Directive (89/665)** for the general public sector and a **Remedies Directive (92/13)** for the utilities. These deal with remedial action for breaches of the rules. They are implemented in the UK via the main SIs.

¹ Directive 93/38/EEC as amended; Scope: Definition of the activities and entities covered; Section 2; Activities referred to; p60-62

² Directive 93/38/EEC as amended; Definition of the activities and entities covered; Article 2 Contracting entities; p59

³ Directive 93/38/EEC as amended; Statistical obligations, implementing powers and final provisions; list of activities as set out in Article 1 (b), point B; p131

⁴ Directive 93/38/EEC as amended; Statistical obligations, implementing powers and final provisions; services within the meaning of Article 30 & 31; p150

AS WITNESS the hands of the duly authorised representatives of the parties hereto the day and year first above written.

SIGNED BY

Duly authorised for and on behalf of:
CO2 Sense Yorkshire

DATE:

Name:

Position:

Address: CO2 Sense Yorkshire
Victoria House
2 Victoria Place
Leeds
LS11 AE

SIGNED BY

Duly authorised for and on behalf of:
[name of contractor]

DATE:

Name:

Position:

Address:

For publicity and communications purposes, your contact details will be published in printed and electronic formats and will be included on CO2 Sense Yorkshire web site. Please confirm this is acceptable by ticking this box.