

THE LAND RESTORATION FUND

Project Investment Agreement

Version 3, July 2021

[insert name of Seller]

and

Queensland Treasury Corporation for and
on behalf of the Land Restoration Fund Unit
Trust

Table of contents

1.	Definitions, interpretation, headings, schedules	1
2.	Term	12
3.	Conditions Precedent	12
4.	Payment for ACCUs with Co-Benefits	12
5.	Delivery Shortfall	13
6.	Co-Benefits	13
7.	Subcontracting	15
8.	Representations and warranties	16
9.	Undertakings	18
10.	Force Majeure	20
11.	Change in Law	21
12.	Events of Default	22
13.	Termination and survival of the Project	23
14.	Liability	25
15.	Intellectual Property and Knowledge Sharing	26
16.	Acknowledgement and publicity	27
17.	Confidentiality	28
18.	Costs and Taxes	29
19.	Dispute resolution	30
20.	Notices	32
21.	Rights of the State	32
22.	General provisions	33
Schedule 1		37
Commercial Terms		37
Schedule 2		40
Delivery Schedule		40
Schedule 3		41
Co-Benefit Activities Schedule		41
Schedule 4		43
Knowledge Sharing and IP Management Plan		43

Title **Project Investment Agreement: [insert project no. and name]**

Parties **[insert name of Seller]** (the Seller)

Queensland Treasury Corporation (ABN 15 736 217 171) for and on behalf of the **Land Restoration Fund Unit Trust** (the Purchaser)

Recitals

- A The State aims to expand carbon farming in Queensland by supporting land-sector projects that generate ACCUs and deliver Co-Benefits, funded by the Queensland Government's Land Restoration Fund.
- B The Seller is or intends to be the Project Proponent for the Project.
- C The Project is intended to generate ACCUs that the Seller will Deliver to the Purchaser.
- D The Project is also intended to deliver Co-Benefits that will be reported on by the Seller in each Annual Report.
- E In consideration for the Delivery of ACCUs with Co-Benefits, the Purchaser will pay to the Seller the Annual Payments, the On-Delivery Payments and if applicable, the Upfront Payment.
- F The Parties wish to enter into this Agreement in order to document the terms on which the Seller will sell and the Purchaser will purchase the ACCUs generated by the Project as well as the terms on which Co-Benefits will be delivered by the Seller.

1. Definitions, interpretation, headings, schedules

Definitions

- 1.1 Unless the context otherwise requires, capitalised terms will have the following meanings wherever used in this Agreement and its recitals:

Accounts means for a particular period:

- (a) a statement of financial performance and statement of cash flows for that period; and
- (b) a statement of financial performance as at the end of that period,

and all disclosures, reports, and notes required to be included or attached to or intended to be read with any of those financial statements and all directors' declarations about those financial statements.

ACCU means an Australian carbon credit unit issued by the Clean Energy Regulator in accordance with the Carbon Farming Legislation.

ACCU with Co-Benefits Price means the price per Project ACCU in Dollars identified at item 8 of Schedule 1 (*Commercial Terms*), payable by the Purchaser as set out in clause 4.

ACCU Volume means, for a Delivery Date, the number of Project ACCUs deliverable on that Delivery Date under the relevant Carbon Farming Legislation methodology (or methodologies, if applicable), as set out in the column (or columns) headed "ACCU Volume" in the Delivery Schedule, and as may be increased from time to time in accordance with the provisions of clause 5.2.

Address for Notices means, for a Party, the address and e-mail address for that Party identified at item 18 of Schedule 1 (*Commercial Terms*).

Affiliate means, for a Party, any other party that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the Party.

Agreement means this agreement.

Agreement Term has the meaning given to that term in clause 2.1.

Annual Payment means the amount in Dollars identified at item 11 of Schedule 1 (*Commercial Terms*), payable following the delivery of each Annual Report in accordance with clause 4.6.

Annual Report means, for a Delivery Period, a report prepared and delivered by the Seller to the Purchaser in accordance with the Applicable Standard and the provisions of clause 6.2 which, in form and substance satisfactory to the Purchaser and containing, at a minimum:

- (a) a detailed description of the progress made by the Seller towards achieving each Co-Benefit;
- (b) a detailed description of how each Co-Benefit Activity has been undertaken and performed by the Seller in its efforts to progress towards the achievement of each Co-Benefit;
- (c) a description of the environmental condition of the Project Land;
- (d) a statement of assurance that each Co-Benefit Activity has been undertaken in accordance with the Applicable Standard; and
- (e) if no progress or limited progress has been made by the Seller towards achieving a Co-Benefit, a detailed explanation of the reasons why no progress or such limited progress has been made,

in each case, during that Delivery Period.

Annual Report Due Date means each date in each year of the Effective Term that is the anniversary of the Effective Date.

ANREU Account means an account established in the Australian National Registry of Emissions Units for the purposes of receiving, holding, and transferring ACCUs.

Applicable Laws means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs, and orders of any governmental authority or arbitrator that apply to any one or more of the Parties or the terms of this Agreement, including the Carbon Farming Legislation.

Applicable Standard means the *Land Restoration Fund Co-benefits Standard for Land Restoration Fund projects* and/or any other standard as may be required or notified by the Purchaser to the Seller from time to time, including but not limited to the Accounting for Nature Standard and the Aboriginal Carbon Foundation's Core Benefit verification framework.

Approved Subcontractor has the meaning in clause 7.1.

Auditor-General means the person appointed as Auditor-General of Queensland.

Background IP means Intellectual Property Rights which are made available by a Party for the purpose of carrying out its obligations under this Agreement and that are:

- (a) in existence at the Execution Date; or
- (b) brought into existence after the Execution Date other than as a result of the performance of its obligations under this Agreement.

Books and Records means originals and copies of all registers or minute books, books, reports, correspondence, files, records, manuals accounts, documents, plans, letters and papers of every description and other material, whether coming into existence before, on or after the date of this Agreement, belonging or relating to or used by the Seller (or any of its Affiliates) in relation to the Project, including certificates of registration, minute books, statutory books and registers, books of account, Tax returns, title deeds and other documents of title, sustainability studies, preliminary environmental impact statements, environmental and other assessments, submissions, trading and financial records, and other material in the possession or under the control of the Seller (or any of its Affiliates), about or used in connection with the Project.

Business Day means a day when banks are open for business in Brisbane, Australia.

Carbon Farming Legislation means *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) and the *Australian National Registry of Emission Units Act 2011* (Cth), and their associated regulations and rules, as amended from time to time and may, if the Carbon Farming Legislation is repealed, include an Equivalent Emissions Trading Scheme.

CFL Change in Law Event has the meaning given to it in clause 11.1.

Change in Law means the introduction of or material change in any law, regulation, binding rules (including a change to or repeal of the Carbon Farming Legislation), policy or codes or requirement of a Government Agency (or a change in the interpretation of these by a Court).

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whatsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Clean Energy Regulator means the administrator of the ERF responsible for, among other things, the issuance of ACCUs under the Carbon Farming Legislation and includes any successor agency or entity that becomes responsible for the issuance of ACCUs (or any Equivalent Emissions Reductions Units) during the Agreement Term.

Co-Benefit means each environmental, socio-economic and/or First Nations benefit achieved from the Project in a manner that is consistent with the Applicable Standard, as more particularly identified in item 4 of Schedule 1 (*Commercial Terms*). Co-Benefits do not include any co-benefits from the Project not identified in Schedule 3 (*Co-Benefit Activities Schedule*).

Co-Benefit Activity means, for a Co-Benefit, each activity required to be undertaken and performed by the Seller in order to achieve such Co-Benefit in a manner that is consistent with the Applicable Standard and as more particularly identified in the column headed "Co-Benefit Activity" in the Co-Benefit Activities Schedule.

Co-Benefit Activities Schedule means the schedule of Co-Benefits and Co-Benefit Activities in Schedule 3 (*Co-Benefit Activities Schedule*).

Co-Benefit Unit means any tradable or non-tradable, tangible or intangible, mandatory or voluntary unit, certificate, permit or legal instrument (of any kind or nature whatsoever) that relates to any rights, entitlements or benefits (legal, equitable or otherwise) arising out of or in connection with any Co-Benefit or the undertaking and performance of any Co-Benefit Activity, that may from time to time be provided for or recognised by any Applicable Law.

Conditions Precedent means the conditions precedent set out at item 13 of Schedule 1 (*Commercial Terms*). For the avoidance of doubt, the Conditions Precedent do not include the Co-Benefit Condition Precedent.

Confidential Information means:

- (a) the content or effect of this Agreement or any other agreement entered into or report provided under or in connection with this Agreement;
- (b) the content of negotiations leading up to or relating to this Agreement; and
- (c) any information received or obtained by a Party (or its Representatives) regarding the other Party (or its Representatives).

Conflict of Interest means, for the Seller, the Seller having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with the Seller's ability to perform its obligations under this Agreement fairly, objectively, and independently.

Consent means any consent, authorisation, registration, filing, licence, permit, approval, agreement, authority or exemption from, by or with a competent authority, required for the Seller to manage the Project, carry out the registration of the transactions contemplated in this Agreement or comply with its obligations under this Agreement, in each case, in accordance with the Applicable Laws.

Consequential Loss means:

- (a) loss of use, production, generation, productivity, income, business, business opportunities or reputation; and
- (b) any loss, damage, cost or expense that:
 - (i) may not be considered to arise purely from the usual course of things from the breach of the relevant subject; or
 - (ii) is not reasonably contemplated by the parties at the date of this Agreement as a likely result of the breach of the relevant subject; or
 - (iii) any failure to realise anticipated savings, tax credits or subsidies.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Defaulting Party means the party in respect of which an Event of Default has occurred.

Delivery means, for a Project ACCU:

- (a) the sale, conveyance and transfer by the Seller to the Purchaser of the full legal and beneficial, good and marketable title to that Project ACCU; and
- (b) receipt of that Project ACCU into the Purchaser's ANREU Account,

in each case, in accordance with this Agreement.

Delivery Date means each date identified in the column headed "Delivery Date" in the Delivery Schedule.

Delivery Period means the period of time between two Delivery Dates except that the first Delivery Period means the period of time between the date of this Agreement and the first Delivery Date.

Delivery Schedule means the schedule of ACCU Volumes and Delivery Dates in Schedule 2 (*Delivery Schedule*).

Disclosing Party has the meaning given to it in clause 17.2.

Dispute means any dispute or disagreement between the parties arising under or in connection with this Agreement, including in relation to whether:

- (a) a party has complied with or is in breach of this Agreement;
- (b) a party is owed payments under this Agreement;
- (c) this Agreement has a particular meaning, interpretation or effect.

Effective Date means the date on which all Conditions Precedent have been satisfied or waived in accordance with the provisions of clause 3.

Effective Term has the meaning given in item 5 of Schedule 1 (*Commercial Terms*).

Eligible Offsets Project means a project that has been declared an eligible offsets project in accordance with the Carbon Farming Legislation.

Encumbrance means any mortgage, charge, pledge, lien, restriction, assignment, hypothecation, security interest, title retention or any other agreement or arrangement the effect of which is the creation of security, or any other interest, equity or other right of any person (including any right to acquire, option, right of first refusal or right of pre-emption), or any agreement or arrangement to create any of the same and Encumber will be construed accordingly.

End Date means the last day of the Effective Term.

Equivalent Emissions Reduction Unit means a carbon credit unit, certificate, permit or legal instrument (of any kind or nature whatsoever) issued in accordance with an Equivalent Emissions Trading Scheme.

Equivalent Emissions Trading Scheme means any framework or policy established, or law or regulation enacted or promulgated by the government of Australia for purposes principally related to the reduction of Greenhouse Gas emissions, which:

- (a) imposes a requirement to reduce, abate or mitigate greenhouse gas emissions or imposes a price on the emission of Greenhouse Gases; and/or
- (b) requires units to be held or surrendered corresponding to emissions of Greenhouse Gases (whether such units are to be surrendered by the Parties to this Agreement or by any other person); and/or
- (c) enables units to be created and allows for units to be surrendered that are corresponding to the sequestration or abatement of Greenhouse Gases; and
- (d) is not the Carbon Farming Legislation.

ERF means the Emissions Reductions Fund, being the Australian carbon offsets scheme given effect to through the Carbon Farming Legislation and associated guidelines.

Event of Default means each of the events referred to in clauses 12.1 and 12.2 and any other events or circumstances which the Purchaser is entitled to treat as such under any other provision of this Agreement.

Execution Date means the date on which the last Party executes this Agreement.

Expert Determination Notice has the meaning given to it in clause 19.6.

Final ACCU Volume means the ACCU Volume deliverable by the Seller to the Purchaser on the final Delivery Date, as may be increased as a result of any cumulative additions of Shortfall Volumes in accordance with the provisions of clause 5.3.

FM Affected Party means the Party affected by a Force Majeure Event.

Force Majeure Event means an event or circumstance beyond the control of a Party that could not, after using all reasonable efforts, be overcome and which (but for the provisions of clause 10) results in or causes the failure of that Party to perform its obligations under this Agreement, provided that:

- (a) such Party did not play a substantial role in bringing about the event or circumstance; and
- (b) a lack of funds will not constitute a Force Majeure Event.

Force Majeure Period has the meaning given to it in clause 10.2.

Government Agency means:

- (a) a government, whether foreign, federal, state, territorial or local or a department, office or minister of a government acting in that capacity (including, without limitation, the Queensland Police Service and Queensland Treasury Corporation); or
- (b) a commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal body, department, tribunal, entity or authority, whether statutory or not, and includes any self-regulatory organisation established under statute or any stock exchange; or
- (c) a body corporate, a trust or an unincorporated body established or constituted for a public purpose by the State, legislation, or an instrument made under that legislation (including a local authority); or
- (d) a body established by the State through the Governor or a Minister or by the Governor-General; or
- (e) an incorporated company over which the State exercises control and any other entity controlled or managed by the State or in which the State has an ownership interest, including Government Owned Corporations.

Government Owned Corporation has the meaning given to this term in the *Government Owned Corporations Act 1993* (Qld).

Greenhouse Gases means any of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, and any other substance recognised as a greenhouse gas under the Carbon Farming Legislation.

GST has the meaning given to it in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Amount means the amount calculated by multiplying the monetary consideration payable by the recipient (excluding the amount payable as GST) for the relevant taxable supply by the prevailing GST rate.

Independent Verifier means an auditor, assessor or a representative of a validation/verification body approved or accredited by the administrator of the Applicable Standard, as may be nominated by the Purchaser from time to time to audit, assess or verify an Annual Report.

Insolvency Event means, in respect of a Party, the happening of one or more of the following events:

- (a) except for the purpose of a solvent reconstruction or amalgamation which has the prior written consent of the other parties:
 - (i) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or

- (ii) a resolution that it be wound up is passed;
- (b) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
- (c) an administrator is appointed to it;
- (d) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or (in the case of the Purchaser) the Seller, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
- (e) a reorganisation, moratorium, agreement of company arrangement or other administration involving one or more of its creditors is proposed or effected;
- (f) it is unable to pay its debts as and when they fall due or it is presumed to be insolvent under any applicable law;
- (g) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
- (h) it stops or suspends or threatens to stop or suspend:
 - (i) the payment of all or a class of its debts; or
 - (ii) the conduct of all or a substantial part of its business; or
- (i) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (h) happens to it under the law of any jurisdiction.

Insurance means insurances with a reputable insurer in the manner and to the extent which is in accordance with prudent business practice having regard to the nature of the activities conducted in respect of the Project and including, without limitation the insurances described at item 21 of Schedule 1 (*Commercial Terms*).

Intellectual Property Rights means the rights to all intellectual property, whether created before or after the Execution Date, including but not limited to:

- (a) the design of the Project and modelling of the Project ACCUs and emissions reductions generated by the Project;
- (b) the design of each Co-Benefit and each Co-Benefit Activity achieved by the Project;
- (c) all maps, drawings, designs, algorithms, and mathematical models of the Seller;
- (d) all patents, trademarks, copyright, and registered designs of the Seller;
- (e) all rights of a similar nature to any of the rights in paragraphs (a), (b), (c) and (d) that may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered; and
- (f) all rights of a similar nature to any of the rights in paragraphs (a), (b), (c) and (d) with respect to the Logo of each Party.

Knowledge Sharing and IP Management Plan means the plan in the form of the template in Schedule 4 (*Knowledge Sharing and IP Management Plan*).

Knowledge Sharing Deliverables means each of the items identified in the Knowledge Sharing and IP Management Plan.

Knowledge Sharing Outcomes means the outcomes identified in the Knowledge Sharing and IP Management Plan.

Landholder means the registered proprietor of the Project Land.

Logo means:

- (a) in relation to the Seller, such logo of the Seller as may be provided by the Seller to the Purchaser from time to time for use by the Purchaser in accordance with the provisions of this Agreement; and
- (b) in relation to the State, the logo identified at item 20 of Schedule 1 (*Commercial Terms*) or such other logo as may be provided by the Purchaser or the State to the Seller from time to time for use by the Seller in accordance with the provisions of this Agreement.

Nominee has the meaning given to it in clause 13.6.

Non-Compliance Notice has the meaning given to it in clause 9.2.

Non-Defaulting Party means the party that is not the Defaulting Party.

Notice of Dispute has the meaning given to it in clause 19.3.

On-Delivery Payment means, for a Delivery Date, an amount in Dollars for each ACCU Delivered on that Delivery Date as set out in item 12 of Schedule 1 (*Commercial Terms*).

Parties means the parties to this Agreement.

Performance Review has the meaning given to it in clause 6.4.

Permitted Activities means all activities carried out by the Purchaser (and/or its Representative(s)) and/or the Independent Verifier associated with researching, monitoring, reviewing, auditing, assessing, surveying or studying potential or achieved Co-Benefits on the Project Land, including:

- (a) the manner of the Seller's undertaking and performance of the Co-Benefit Activities; and
- (b) as reported in each Annual Report delivered by the Seller to the Purchaser in accordance with the provisions of clause 6.2.

Project means the project described at item 1 of Schedule 1 (*Commercial Terms*) using the Carbon Farming Legislation methodology or methodologies described at item 2 of Schedule 1 (*Commercial Terms*).

Project ACCU means, for an ACCU Volume, each ACCU with Co-Benefits generated by the Project and comprising that ACCU Volume.

Project Event means any external promotional event conducted by the Seller relating to the Project.

Project Land means the land described at item 3 of Schedule 1 (*Commercial Terms*).

Project Material means any material including Intellectual Property Rights, created, written or otherwise brought into existence by or on behalf of the Seller in the course of carrying out its obligations under this Agreement, excluding the Annual Reports.

Project Proponent has the same meaning as in the Carbon Farming Legislation.

Purchaser's ANREU Account means the ANREU Account identified at item 17 of Schedule 1 (*Commercial Terms*) or such other ANREU Account as may be notified by the Purchaser to the Seller in writing from time to time (including another ANREU Account of the Purchaser or an ANREU Account of a third party).

Queensland Government Supplier Code of Conduct means, from time to time, the latest version of the Queensland Government Supplier Code of Conduct freely available on the Queensland Government website (www.qld.gov.au).

Queensland Indigenous Procurement Policy means, from time to time, the latest version of the Queensland Government Indigenous Procurement Policy freely available on the Queensland Government website (www.qld.gov.au).

Reassessment Date has the meaning give to it in cluse 6.5(b).

Representative means, for a Party, such Party's Affiliate, employee, agent, officer, director, auditor, adviser, debt financier (including members of a syndicate), partner, associate, consultant, joint venturer or sub-contractor.

Seller's ANREU Account means the ANREU Account identified at item 16 of Schedule 1 (*Commercial Terms*).

Seller's Cash Account means the bank account identified at item 15 of Schedule 1 (*Commercial Terms*).

Shortfall Default has the meaning given to it in clause 12.2(a).

Shortfall Event has the meaning given to it in clause 5.1.

Shortfall Volume means, for a Delivery Date, the ACCU Volume for that Delivery Date less the number of Project ACCUs actually delivered on that Delivery Date.

State means the State of Queensland.

State Covenants has the meaning given to it in clause 21.1.

State's Policies means:

- (a) the Queensland Government Supplier Code of Conduct;
- (b) the Queensland Indigenous Procurement Policy; and
- (c) any other policy and/or procedure implemented or adopted by the Purchaser as may be notified by the Purchaser to the Seller from time to time.

Sunset Date means the date identified at item 14 of Schedule 1 (*Commercial Terms*).

Supplier has the meaning given to it in clause 18.7.

Surviving Provisions means clauses 14, 15, 16, 17, 19, 20, and 21.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) imposed by a Government Agency.

Total Agreement Value has the meaning in item 6 of schedule 1 (*Commercial Terms*).

Transfer Notice has the meaning given to it in clause 13.6.

Trust means the Land Restoration Fund Unit Trust.

Trust Property means all the Trustee's rights, property and undertaking which are the subject of the Trust.

Trustee means Queensland Treasury Corporation, a corporation sole, established under the *Queensland Treasury Corporation Act 1988*.

Trustee Liability means any liability or obligation (of any kind including for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with this Agreement or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this Agreement or its performance.

Upfront Payment means the amount in Dollars identified at item 10 of Schedule 1 (*Commercial Terms*).

Upfront Payment Election means the Seller's and the Purchaser's option to elect to make the Upfront Payment Provisions effective by selecting "Applies" at item 9 of Schedule 1 (*Commercial Terms*).

Withheld Payment has the meaning given to it in clause 6.5(b).

Year means a period of 365 days.

\$ or Dollars means Australian Dollars.

Interpretation

1.2 In this Agreement (unless the contrary intention appears):

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Agreement;
- (b) anything after the words 'include' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (c) the singular includes the plural and the plural includes the singular;
- (d) words of any gender include all genders;
- (e) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (f) an expression importing a person includes any individual, firm, company, partnership, joint venture, consortium, trust, association, corporation, any Government Agency or other body corporate or entity (whether or not having separate legal personality);
- (g) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(g) implies that performance of part of an obligation constitutes performance of the obligation;
- (h) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Agreement;
- (i) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (j) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (k) a reference to a Party to a document includes that Party's successors and permitted assignees;
- (l) a reference to an agreement other than this Agreement includes any other agreement and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;

- (m) a reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits;
 - (n) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
 - (o) a reference to a document includes any agreement in writing, or any certificate, notice, agreement, instrument or other document of any kind;
 - (p) no provision of this Agreement will be construed adversely to a Party because that Party was responsible for the preparation of this Agreement or that provision;
 - (q) a reference to a body, other than a Party to this Agreement (including an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
 - (r) references to time are to Brisbane time;
 - (s) the terms controls, controlled by, and under common control with mean the possession, directly or indirectly through one or more intermediaries, of more than 50% of the outstanding voting stock, or the power to direct or cause the direction of the management policies of any Party, whether through ownership of stock, as a general partner or trustee, by contract or otherwise;
 - (t) where this Agreement confers any power or authority on a person that power or authority may be exercised by that person acting personally or through an agent or attorney; and
 - (u) an Event of Default is 'continuing' or 'subsisting' if it has not been remedied or waived.
- 1.3 The terms of this Agreement will be interpreted in a manner that is consistent with the Carbon Farming Legislation and all other Applicable Laws.
- 1.4 Unless a provision of this Agreement expressly indicates to the contrary then all reference to an ACCU, an ACCU Volume and a Project ACCU (and all related terms) in this Agreement must be interpreted as an ACCU, an ACCU Volume and a Project ACCU generated by, relating to or otherwise connected with the Project.

Schedules

- 1.5 The schedules to this Agreement are an integral part of this Agreement.

Headings

- 1.6 The headings of the articles, clauses, and schedules are inserted for convenience of reference only and do not affect the interpretation of this Agreement.

2. Term

- 2.1 This Agreement will come into effect on the Execution Date and will continue in effect until the End Date, unless terminated earlier in accordance with its terms or as otherwise agreed in writing by the Parties (**Agreement Term**).

3. Conditions Precedent

- 3.1 Clauses 4, 5, 6 and **Error! Reference source not found.** of this Agreement are subject to, conditional on, and do not take effect until all Conditions Precedent have been satisfied (or waived in accordance with clause 3.2) by the Seller in a manner that is satisfactory to the Purchaser.
- 3.2 The Conditions Precedent are for the benefit of the Purchaser and may only be waived by the Purchaser. If satisfaction of a Condition Precedent is waived on the condition that the Seller satisfy that Condition Precedent or any other requirement at or before a particular time, the Seller must comply with that condition and if the Seller fails to do so, such failure will be deemed to be an immediate Event of Default under this Agreement.
- 3.3 The Purchaser may immediately terminate this Agreement by notice in writing to the Seller if the Conditions Precedent are not satisfied (or waived in accordance with clause 3.2) by the Seller in a manner that is satisfactory to the Purchaser by the Sunset Date.

4. Payment for ACCUs with Co-Benefits

Agreement

- 4.1 Subject to the provisions of this Agreement and in consideration of the Purchaser paying the On-Delivery Payments, the Annual Payments and if applicable, the Upfront Payment to the Seller, the Seller agrees to sell Project ACCUs to the Purchaser and the Purchaser agrees to purchase Project ACCUs from the Seller.

Delivery of Project ACCUs

- 4.2 The Seller must, on each Delivery Date, Deliver to the Purchaser all Project ACCUs for an applicable ACCU Volume free and clear of all Encumbrances by transferring all such Project ACCUs from the Seller's ANREU Account to the Purchaser's ANREU Account.
- 4.3 The Parties agree to co-operate with each other in relation to Delivery of the Project ACCUs and to do all such things as may be necessary (including as may be required by the Clean Energy Regulator) in order to enable or facilitate the transfer of Project ACCUs from the Seller's ANREU Account to the Purchaser's ANREU Account on each Delivery Date.

On-Delivery Payment

- 4.4 The Purchaser must, within 20 Business Days of each Delivery of Project ACCUs for an applicable ACCU Volume into the Purchaser's ANREU Account, pay the On-Delivery Payment payable by the Purchaser to the Seller to the Seller's Cash Account.
- 4.5 The Purchaser must, promptly after paying the On-Delivery Payment in accordance with the provisions of clause 4.4 and following the Seller's request, provide the Seller with a copy of an electronic funds transfer notice from an authorised deposit taking institution in Australia that shows that the payment representing the On-Delivery Payment has been made to Seller's Cash Account.

Annual Payments

- 4.6 Subject to clauses 6.4 - 6.6, the Purchaser must, within 20 Business Days of receipt by it of each Annual Report delivered to it by the Seller in accordance with the provisions of clause 6.2, make the Annual Payment to the Seller's Cash Account.
- 4.7 The Purchaser must, promptly after paying each Annual Payment, provide the Seller with a copy of an electronic funds transfer notice from an authorised deposit taking institution in Australia that shows that the payment representing the Annual Payment has been made to the Seller's Cash Account.

Upfront Payment

- 4.8 If the Upfront Payment Election applies to this Agreement, the Purchaser must make the Upfront Payment to the Seller's Cash Account within 20 Business Days of the Effective Date.

5. Delivery Shortfall

- 5.1 Subject to the provisions of clause 12.2(a), if, on a Delivery Date, the Seller Delivers a number of Project ACCUs that is less than the ACCU Volume for that Delivery Date, then this will constitute a shortfall under this Agreement (**Shortfall Event**).
- 5.2 If a Shortfall Event has occurred then the ACCU Volume deliverable on the Delivery Date that is immediately subsequent to the Delivery Date with respect to which the Shortfall Event occurred will automatically be increased by the volume of Project ACCUs that is equal to the Shortfall Volume for that Shortfall Event and the Delivery Schedule will be deemed to be automatically (and without the need for any formal amendment) updated to reflect such increase.
- 5.3 Subject to the provisions of clause 12.2(a), the provisions of clause 5.2 will apply throughout the Effective Term on a cumulative basis such that the Final ACCU Volume will be increased by a number of Project ACCUs that is equal to the aggregate of all Shortfall Volumes up to the final Delivery Date.

6. Co-Benefits

Undertaking

- 6.1 The Seller must throughout the Effective Term undertake and perform each Co-Benefit Activity for each Co-Benefit in accordance with the Applicable Standard.

Annual Report

- 6.2 The Seller must, on each Annual Report Due Date (or such later date as may be agreed to by the Purchaser in writing), provide the Purchaser with a Annual Report for the Year ending on that Annual Report Due Date.
- 6.3 If the Seller is required to provide third party assurance for the Co-Benefits being claimed, the Annual Report must be accompanied by third party certification in accordance with the Applicable Standard.

Performance Review

- 6.4 On the fourth Annual Report Due Date and on each subsequent Annual Report Due Date, the Purchaser's obligation to make the Annual Payment in accordance with the provisions of clause 4.6 will be suspended until such time as the Purchaser has had an opportunity (acting reasonably) to review, assess and consider the Annual Report delivered by the Seller to the Purchaser on the applicable Annual Report Due Date for the purposes of determining the level of the Seller's performance of its undertaking in clause 6.1 between the Effective Date and that Annual Report Due Date (**Performance Review**).

- 6.5 If, following a Performance Review, the Purchaser determines, acting reasonably, that:
- (a) the level of the Seller's performance of its undertaking in clause 6.1 is satisfactory to the Purchaser then the suspension of the Purchaser's obligation to make the Annual Payment will be lifted and the Purchaser will be required to make the Annual Payment to the Seller in accordance with the provisions of clause 4.6 within 20 Business Days of such determination; or
 - (b) the level of the Seller's performance of its undertaking in clause 6.1 is not satisfactory to the Purchaser then the suspension of the Purchaser's obligation to make the Annual Payment will remain in place and the Purchaser may withhold the Annual Payment (in whole or in part and notwithstanding the occurrence or continuation of any Force Majeure Event (the **Withheld Payment**)) until the Annual Report Due Date that is immediately subsequent to the Annual Report Due Date for which such Performance Review was undertaken by the Purchaser (**Reassessment Date**).
- 6.6 If the Purchaser makes a determination in accordance with the provisions of clause 6.5(b) then, on the applicable Reassessment Date and following the Performance Review undertaken by the Purchaser for that Reassessment Date, the Purchaser may elect to make the Withheld Payment (in whole or in part) to the Seller in addition to the Annual Payment that may (subject to the provisions of clause 6.5) be due for payment by the Purchaser to the Seller for the Annual Report delivered to the Purchaser by the Seller on that Reassessment Date. For the avoidance of doubt, if the Purchaser elects not to make the Withheld Payment in accordance with the provisions of this clause 6.6, then the Purchaser's obligation to make that Withheld Payment in accordance with the provisions of clause 4.6 will no longer be suspended but will be deemed to have lapsed as of the date that the Purchaser elects not to make the Withheld Payment in accordance with the provisions of this clause 6.6.

Access to documents, persons and Project Land in relation to Permitted Activities

- 6.7 If requested by the Purchaser in writing (from time to time) the Seller must provide or make available to the Purchaser and/or the Independent Verifier (as applicable):
- (a) all documentation and evidence reasonably requested by the Purchaser and/or the Independent Verifier (as applicable); and
 - (b) access to all of the Seller's Representatives who have been involved in undertaking and performing each Co-Benefit Activity,
- in each case, to carry out the Permitted Activities; and
- (c) the Seller must provide (or, to the extent that the Seller does not own the Project Land, the Seller must procure that the Landholder provides) to the Purchaser (and/or its Representative(s)) and/or the Independent Verifier for the purpose of undertaking the Permitted Activities, non-exclusive access to the Project Land (and all other sites and locations where each Co-Benefit Activity has been undertaken and performed) and any other permissions reasonably necessary for the Purchaser (and/or its Representative(s)) and/or the Independent Verifier to carry out the Permitted Activities.
- 6.8 If the Purchaser wishes to exercise its rights under clause 6.7(c) then it must provide the Seller (or, to the extent that the Seller does not own the Project Land, the Landholder) with reasonable notice of the date, time, and duration of the proposed access to the Project Land.
- 6.9 The Purchaser's, its Representatives' and/or the Independent Verifier's access to the Project Land is at the Purchaser's own risk.

Negative covenant

- 6.10 The Seller must not sell, dispose of, Encumber, convey, transfer, assign, novate or otherwise deal with any Co-Benefit Unit, or any other rights, entitlements or benefits (legal, equitable or otherwise) arising out of or in connection with the Co-Benefits, or the undertaking and performance by the Seller of any Co-Benefit Activity, to any other person or party.

Exclusive right to Co-Benefit Units

- 6.11 The Seller confirms and acknowledges for the benefit of the Purchaser that to the extent that any Co-Benefit Units are capable of being created, generated or issued out of or in connection with the Co-Benefits or the undertaking and performance by the Seller of any Co-Benefit Activity, the Seller must:
- (a) at the Purchaser's cost, take all steps that are necessary to create, generate or be issued with such Co-Benefit Units; and
 - (b) transfer (by way of assignment, novation or otherwise), all of its legal and beneficial title (free and clear of all Encumbrances) to such Co-Benefit Units to the Purchaser.
- 6.12 For the avoidance of doubt, clauses 6.10 and 6.11 do not apply to any co-benefit unit derived from a co-benefit for the Project that is not a Co-Benefit under this Agreement, as described in Schedule 3.
-

7. Subcontracting

Engagement of subcontractors by the Seller

- 7.1 Subject to clause 7.5, the Seller may not delegate or subcontract the performance of any of its obligations under clauses 4 and 6 or the exercise of any of its rights under this Agreement to any third party unless the Purchaser gives written notice approving that third party (**Approved Subcontractor**), which notice may not be unreasonably withheld.
- 7.2 The Seller will notify the Purchaser as soon as reasonably practicable if it intends to propose a third party as an Approved Subcontractor under this Agreement and provide the Purchaser with the following information:
- (a) the identity and address of the proposed subcontractor;
 - (b) the responsibilities, obligations and rights under this Agreement are proposed to be delegated and/or subcontracted to the proposed subcontractor; and
 - (c) such other information as reasonably requested by the Purchaser in connection with the proposed delegation or subcontracting, including details of the experience and qualifications of the proposed subcontractor.
- 7.3 If directed by the Purchaser, the Seller must allow the Purchaser to review the terms of any agreement under which the Seller proposes to engage an Approved Subcontractor. If the Purchaser gives notice requesting to review such terms, the Seller must not engage the Approved Subcontractor unless the Purchaser gives notice that it approves the terms, such notice not to be unreasonably withheld by Purchaser.
- 7.4 The Seller acknowledges and agrees that if it engages a subcontractor it will be responsible for ensuring the suitability of any subcontractor appointed by it and that the work performed by the subcontractor meets the requirements of this Agreement.
- 7.5 Clause 7.1 does not apply to subcontracts of a minor nature, including but not limited to subcontracts defined as minor in a State policy.

Subcontracting by the Purchaser

- 7.6 The Purchaser may delegate or subcontract its responsibilities and obligations or the exercise of any of its rights under this Agreement to any person without the Seller's prior consent.

Continued liability

- 7.7 Delegating or subcontracting in the manner contemplated by clauses 7.1, 7.5 and 7.6 will not relieve a Party from any of its liabilities or obligations under this Agreement and such Party will remain liable to the other Party for:
- (a) the performance of its responsibilities and obligations under this Agreement irrespective of whether any such responsibilities and obligations have been delegated or subcontracted; and
 - (b) the acts, defaults, neglects and omissions of an Approved Subcontractor and its personnel and agents, as if they were the acts, defaults, neglects and omissions of the Party that has delegated or subcontracted in accordance with the provisions of clauses 7.1 and 7.6.
-

8. Representations and warranties

Purchaser representations and warranties to the Seller

- 8.1 The Purchaser represents and warrants to the Seller that each of the following statements is true and accurate as at the date of this Agreement:
- (a) it is duly organised and validly existing under the laws of its jurisdiction and is qualified to conduct its business in that jurisdiction;
 - (b) it has the power and authority to enter into and comply with its obligations under this Agreement;
 - (c) this Agreement constitutes its legal, valid, and binding obligations enforceable in accordance with its terms; and
 - (d) the execution, delivery, and performance of its obligations under this Agreement will not contravene any Applicable Law.

Seller representations and warranties to the Purchaser

- 8.2 Subject to the provisions of clauses 8.3 and 8.5, the Seller represents and warrants to the Purchaser that each of the following statements is true and accurate as at the date of this Agreement, on each Delivery Date and on each date on which the Purchaser pays an On-Delivery Payment in accordance with the provisions of clause 4.4:
- (a) it is duly organised and validly existing under the laws of its jurisdiction and is qualified to conduct its business in that jurisdiction;
 - (b) the execution, delivery, and performance of this Agreement are within its powers, have been duly authorised by all necessary action, and do not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents or any material contract to which it is a party or by which any of its assets are bound or affected, or any law, rule, regulation, order, statement of claim, judgment, decree or other legal or regulatory determination applicable to it;
 - (c) this Agreement constitutes its legal, valid, and binding obligations enforceable in accordance with its terms;

- (d) there is no Insolvency Event pending or being contemplated by it or threatened against it;
- (e) there are no claims, actions, proceedings or investigations pending or threatened against or relating to it before any competent authority that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) it is not subject to any outstanding judgment, rule, order, statement of claim, injunction or decree of competent authority that materially adversely affects its ability to perform its obligations under this Agreement;
- (g) this Agreement, the execution, and delivery of this Agreement and the fulfilment and compliance with the terms of this Agreement by it will not materially conflict with any of, or require the consent of any person under, any loan or security agreement, or other material agreement, to which it is a party;
- (h) the Project is an Eligible Offsets Project (and for the avoidance of doubt, no part of the Project Land which is also part of the project land under the Carbon Farming Legislation is used to meet an obligation under a Commonwealth, State or Territory law to offset or compensate for the adverse impact of an action on vegetation);
- (i) all Consents necessary for it to perform its obligations under this Agreement have been obtained and are in full force and effect and it is in compliance with all such Consents;
- (j) it has not received any notice of violation of any Consents relating to the Project;
- (k) it is not aware of any circumstances which have, or could be reasonably expected to, adversely affect:
 - (i) the ability of the Project to generate ACCUs;
 - (ii) its ability to develop and operate the Project; or
 - (iii) its ability to comply with its obligations under this Agreement;
- (l) it is not in breach of its obligations under any other agreement executed in respect of or in connection with the Project;
- (m) all information, data, and records provided by it to the Purchaser, and their nominees, or to any government, governmental body, regulator or competent authority, including the Clean Energy Regulator, is true and accurate in all material respects; and
- (n) each author or creator of Project Materials and Annual Reports has:
 - (i) unconditionally and irrevocably consented to all acts or omissions in relation to that author's or creator's moral rights in the Project Materials and Annual Reports which may or might otherwise constitute a breach or infringement of those moral rights;
 - (ii) unconditionally and irrevocably waived all moral rights in the Project Materials and Annual Reports; and
 - (iii) to the extent that the consent or waiver at (ii) above does not operate as an immediate consent in relation to or waiver of these rights, unconditionally and irrevocably agreed to provide a written consent and waiver at any time at the Purchaser's request, in accordance with (i) and (ii) above;
- (o) no Conflict of Interest has occurred or is subsisting;
- (p) it is the Project Proponent with respect to the Project; and

- (q) with respect to each Project ACCU deliverable by the Seller to the Purchaser on a Delivery Date, it has full legal and beneficial, good and marketable title that is free and clear of all Encumbrances to such Project ACCU immediately prior to delivery of such Project ACCU to the Purchaser on such Delivery Date.
- 8.3 The statement in clause 8.2(q) is repeated by the Seller on each Delivery Date and on each date on which the Seller actually delivers each Project ACCU to the Purchaser (if on a date other than a Delivery Date) and not at any other time.
- 8.4 The statements in clauses 8.2(h) and 8.2(p) are repeated by the Seller on each Delivery Date and on each date on which the Purchaser pays an On-Delivery Payment in accordance with the provisions of clause 4.4 and not at any other time.

Mutual representation and warranties of the Seller and the Purchaser

- 8.5 Each Party represents and warrants to the other that to the best of its knowledge and belief at the Execution Date, it owns its Background IP, or otherwise has the right to use and licence its Background IP in accordance with this Agreement.

9. Undertakings

General undertakings

- 9.1 The Seller must, throughout the Agreement Term:
 - (a) not sell, dispose of, Encumber, convey, transfer, assign, novate or otherwise deal with the Project ACCUs other than in accordance with this Agreement;
 - (b) maintain the Seller's ANREU Account in order to give effect to the transactions contemplated by this Agreement;
 - (c) not do anything or become involved in any situation which, in the reasonable opinion of the Purchaser, reflects unfavourably upon the Purchaser, the State (or any of its Affiliates) and/or the Project; and
 - (d) comply with:
 - (i) all Applicable Laws (including obtaining and maintaining all Consents);
 - (ii) standards of professional care and diligence of the industry to which the Seller belongs; and
 - (iii) the Purchaser's reasonable requests, directions and requirements in connection with the performance by the Seller of its obligations under this Agreement, in each case, to the Purchaser's satisfaction;
 - (e) develop and operate the Project in a manner that ensures that the Project is at all times capable of generating ACCUs and use best endeavours to maximise the generation of ACCUs by the Project; and
 - (f) not change the carbon estimation area for the Project without obtaining the Purchaser's prior written consent.

State's Policies

- 9.2 The Seller must, throughout the Agreement Term:

- (a) inform itself of and comply with (and procure that each of its Representatives informs itself of and complies with) the State's Policies;
- (b) use best endeavours to keep itself (and each of its Representatives) apprised of any updates or amendments to a State's Policy; and
- (c) notify the Purchaser in writing (**Non-Compliance Notice**) within 10 Business Days of becoming aware that:
 - (i) it is no longer compliant with or will be unable to continue to comply with a State's Policy; and
 - (ii) compliance by it with a State's Policy would have a materially adverse impact on the Seller or the performance by it of its obligations under this Agreement.

9.3 On receipt of a Non-Compliance Notice the Purchaser may, at its absolute discretion:

- (a) provide all necessary assistance to the Seller (and/or its Representatives) such that the Seller (and/or its Representatives) is able to resume or continue compliance with the State's Policies; or
- (b) terminate this Agreement by notice in writing to the Seller.

9.4 The Purchaser will use best endeavours to inform the Seller within a reasonable time period of becoming aware of any update or amendment to a State's Policy.

Information provision

9.5 The Seller must:

- (a) within 5 Business Days of the occurrence of a Shortfall Event, provide an explanation to the Purchaser explaining the reasons for the Shortfall Event and such explanation must be accompanied by evidence (in form and substance satisfactory to the Purchaser) supporting such explanation; and
- (b) throughout the Agreement Term, provide to the Purchaser immediately upon becoming aware of or receiving (whichever is the earliest):
 - (i) notice of any actual or potential breach by it or any of its Representatives of the Carbon Farming Legislation or any other Applicable Laws; and
 - (ii) the details of any claim, counterclaim, material litigation, arbitration or administrative proceedings which are current, pending or threatened in writing against it and which might, if adversely determined, materially affect its ability to comply with its obligations under this Agreement.

Books and records

9.6 The Seller will, throughout the Agreement Term, maintain adequate Books and Records with prudent business practice having regard to the nature of its business and assets and its obligations under this Agreement.

Rights of access to persons and materials

9.7 Without limiting the scope of clause 6.7, the Seller provides (and must procure that each of its Representatives provides), upon reasonable notice and during normal business hours, full and free access and reasonable assistance to the Purchaser (and its Representatives) to:

- (a) speak to the persons associated with the Project;

- (b) locate, examine, inspect, and copy any material (including any Books and Records) in the possession of the Seller (or any of its Representatives) which is relevant to this Agreement or necessary for the Purchaser to:
 - (i) comply with Applicable Laws (including Applicable Laws relating to Tax);
 - (ii) defend or deal with litigation upon reasonable request by the Purchaser (provided that this obligation does not require the Seller to provide access to information if it might result in a loss of any legal professional privilege); and
 - (iii) comply with its obligations under this Agreement; and
 - (c) locate and make copies of any of the Seller's Accounts, records, documents and other material that relate directly or indirectly to the receipt, expenditure, or payment of payments made to the Seller by the Purchaser.
- 9.8 The Purchaser's right of access under clause 9.7 may be exercised any number of times throughout the Agreement Term provided that it is exercised by the Purchaser for any reasonable purpose relating to this Agreement, including for financial or compliance audits, or reviews of the Seller's performance of its obligations of this Agreement.
- 9.9 The Purchaser will bear all costs incurred by the Seller as a result of the Seller's compliance with its obligations under clause 9.7.
- 9.10 When accessing premises and/or records in accordance with clause 9.7, the Purchaser will use its best endeavours to minimise interference to the Seller.

Insurance

- 9.11 The Seller will (or where applicable in respect of professional indemnity insurance, procure that its professional advisers) take out and maintain throughout the Agreement Term commercially reasonable Insurances in respect of the Project.

Arm's length dealings

- 9.12 Neither Party will transact with third parties in a manner which would reasonably be expected to materially adversely affect the ability of that Party to fulfil its obligations under this Agreement.
- 9.13 Any transaction by a Party with a third party in connection with the Project must be on arm's length terms for valuable commercial consideration in the ordinary course of that Party's business.

Conflict of Interest

- 9.14 If, during the Agreement Term, a Conflict of Interest arises, or appears likely to arise, the Seller must notify the Purchaser immediately and take such steps as are necessary to expeditiously resolve or otherwise deal with such Conflict of Interest, as may be required by the Purchaser to its satisfaction.
- 9.15 If a Conflict of Interest cannot be resolved or otherwise dealt with to the satisfaction of the Purchaser in accordance with the provisions of clause 9.14, the Purchaser may terminate this Agreement by notice in writing.

10. Force Majeure

- 10.1 Upon the occurrence of a Force Majeure Event, the FM Affected Party must notify the other Party in writing of the commencement of the Force Majeure Event, providing in reasonable detail, to the extent available to the FM Affected Party:

- (a) details of the event or circumstance causing the Force Majeure Event;
 - (b) the steps being taken by the FM Affected Party to remove or mitigate the effects of the Force Majeure Event; and
 - (c) a non-binding estimate of the extent and the expected duration of its inability to perform its obligations due to the Force Majeure Event.
- 10.2 The obligations of both Parties with respect to the obligations affected by the Force Majeure Event will be suspended for the period that the Force Majeure Event results in or causes the failure of the FM Affected Party to perform its obligations (**Force Majeure Period**). During the Force Majeure Period, the FM Affected Party must use all reasonable endeavours to overcome the Force Majeure Event. Upon the Force Majeure Event being overcome or it ceasing to subsist, both Parties will, as soon as reasonably practicable thereafter, resume their obligations under this Agreement (including, for the avoidance of doubt, any suspended obligations). Where the Force Majeure Event has prevented delivery of Project ACCUs occurring on any Delivery Date, the Parties will, acting in good faith, make reasonable endeavours to agree a revised Delivery Schedule with revised Delivery Dates and/or revised ACCU Volumes (as applicable) to take account of the delay occasioned by the Force Majeure Event within 20 Business Days of the Force Majeure Event being overcome or it ceasing to subsist.
- 10.3 Where a Force Majeure Period continues for a period of 365 days or the Parties are unable to agree a revised Delivery Schedule in accordance with the provisions of clause 10.2, either Party may, by written notice to the other Party, terminate this Agreement.

11. Change in Law

Change in Law - Carbon Farming Legislation

- 11.1 If, at any time during the Agreement Term, a Change in Law prevents, limits or restricts the Seller from:
- (a) being entitled to be issued with or Deliver any Project ACCUs; or
 - (b) otherwise comply with its obligations under this Agreement insofar as they relate to the generation, issuance, sale or Delivery of Project ACCUs,
- (each, a **CFL Change in Law Event**) then if there is an Equivalent Emissions Trading Scheme pursuant to which the Seller may create, register or deliver Equivalent Emissions Reduction Units with respect to the Project:
- (c) the Seller must (subject to the provisions of clause 18.4) deliver such Equivalent Emissions Reductions Units in place of ACCUs to the Purchaser and all other rights and obligations of the Parties under this Agreement will continue to be effective in all respects, in each case as though such Equivalent Emissions Reductions Units were ACCUs, under this Agreement;
 - (d) this Agreement will not be regarded as frustrated; and
 - (e) neither Party will have any right to terminate this Agreement.
- 11.2 If there is more than one type of Equivalent Emissions Reductions Unit capable of being created, registered and delivered by the Seller with respect to the Project, then the Equivalent Emissions Reductions Unit of the highest monetary value is required to be created, registered and delivered to the Purchaser in accordance with the provisions of clause 11.1(c).
- 11.3 Any direct costs and expenses incurred by the Seller (not including adviser's and consultant's fees) in connection with the creation, registration and delivery of an Equivalent Emissions Reductions Unit to the Purchaser must be reimbursed to it by the Purchaser, up to a maximum of a 20% difference from the

direct costs that would have been incurred had the Equivalent Emissions Reductions Unit been an ACCU Issued pursuant to the CFI Act.

11.4 If, following the occurrence of a CFL Change in Law Event, there is no Equivalent Emissions Reductions Unit capable of creation, registration and delivery:

- (a) the Seller must on each remaining Delivery Date, deliver audited reports verifying the number of ACCUs that would have been delivered on that Delivery Date but for the occurrence of the CFL Change in Law Event; and
- (b) the Parties must otherwise continue to comply with all other provisions of this Agreement (to the extent that it is practicable to do so),

provided always that to the extent it is necessary to do so (in the opinion of both Parties), the Parties must meet and negotiate in good faith any amendments that are required to be made to this Agreement in order to effect the provisions of this clause.

12. Events of Default

Events of Default with respect to any Party

12.1 The occurrence with respect to a Party of any of the following events in this clause 12.1 will be an Event of Default with respect to such Party:

- (a) **non-payment:** the Party fails to pay any amount when due under this Agreement and such failure is not remedied within 20 Business Days of the Non-Defaulting Party giving the Defaulting Party notice of that failure;
- (b) **other breach:** the Party fails to perform or comply with any of its obligations (other than any payment obligation) under this Agreement and, if capable of remedy, such failure is not remedied within 20 Business Days of the Non-Defaulting Party giving the Defaulting Party notice of that failure; and
- (c) **misrepresentation:** any representation or warranty made, or deemed to have been made or repeated by a Party to this Agreement proves to have been recklessly, wilfully or intentionally false or materially misleading at the time it was made, or was deemed to have been made or repeated and, where the circumstance causing that representation or warranty to be so false or materially misleading is capable of being remedied, it is not so remedied within 30 Business Days of the earlier of the Defaulting Party becoming aware of the default or notice from the Non-Defaulting Party to the Defaulting Party requiring the Defaulting Party to remedy the default.

Events of Default with respect to the Seller

12.2 The occurrence with respect to the Seller of any of the following events in this clause 12.2 will be an Event of Default:

- (a) **shortfall in Delivery of ACCUs:** the aggregate number of Project ACCUs Delivered on two consecutive Delivery Dates is less than 25% of the aggregate of the ACCU Volumes for those Delivery Dates (**Shortfall Default**) and, following notice by the Purchaser to the Seller, the Seller fails (within the time period specified in such notice) to Deliver such number of Project ACCUs to the Purchaser as is required to cure the Shortfall Default;
- (b) **Co-Benefit Activities:** the Purchaser determines after undertaking a Performance Review that the level of the Seller's performance of its undertaking in clause 6.1 is not satisfactory to the Purchaser and, following notice by the Purchaser to the Seller, the Seller fails (within the time

period specified in such notice) to begin undertaking and performing the Co-Benefit Activities to the Purchaser's satisfaction;

- (c) **fraud, negligence, wilful misconduct:** any fraud, negligence or wilful misconduct of the Seller in connection with or arising out of any act or omission of the Seller relating to any matter contemplated by this Agreement, immediately on the Seller providing the Purchaser with notice in writing with respect to any such fraud, negligence or wilful misconduct of the Seller; and
- (d) **insolvency:** the occurrence of an Insolvency Event with respect to the Seller.

- 12.3 Where the Seller is notified of and required by the Purchaser to remedy any event or circumstance set out in clauses 12.1 or 12.2 prior to the expiry of any grace period that is applicable to such event or circumstance (and the expiry of which would cause such event or circumstance to become an Event of Default), the Seller must keep the Purchaser informed at all times of the measures it is taking to remedy such event or circumstance within any such applicable grace period.
- 12.4 Upon the occurrence of an Event of Default in respect of a Defaulting Party or at any time thereafter while such Event of Default is subsisting, the Non-Defaulting Party may, in its sole and absolute discretion seek to resolve the matter as a dispute in accordance with the provisions of clause 19.

13. Termination and survival of the Project

Default termination

- 13.1 Upon the occurrence of an Event of Default in respect of a Defaulting Party or at any time thereafter while such Event of Default is subsisting, the Non-Defaulting Party may, in its sole and absolute discretion and by written notice to the Defaulting Party immediately terminate this Agreement.

Non-default termination

- 13.2 In addition to the right of termination set out in clause 13.1:
- (a) either Party may also terminate this Agreement:
 - (i) if a Force Majeure Period is continuing, in accordance with the provisions of clause 10.3; and
 - (ii) by notice to the other Party, requesting the agreement of that other Party to terminate this Agreement by acknowledging (by way of countersignature) such notice; and
 - (b) the Purchaser may also terminate this Agreement:
 - (i) if the Conditions Precedent are not satisfied, in accordance with the provisions of clause 3.3;
 - (ii) upon receipt of a Non-Compliance Notice, in accordance with the provisions of clause 9.3; and
 - (iii) if a Conflict of Interest cannot be managed to the satisfaction of the Purchaser, in accordance with the provisions of clause 9.

Consequences of termination

- 13.3 Upon termination of this Agreement, each Party's rights and obligations under this Agreement will be released and discharged in full, except for:
- (a) the Surviving Provisions; and

(b) any other rights and obligations accruing prior to the date of termination,

which, in each case, will survive any such termination.

13.4 For the avoidance of doubt, if upon the termination of this Agreement, any amount is owing by one Party to the other, such amount must be paid by that Party to the other on the date of termination in full and final satisfaction of all obligations owed by that Party to the other Party.

Set-off

13.5 On termination of this Agreement for any reason whatsoever, a Party may, without prejudice to any other right or remedy which may be available to it, whether under this Agreement or otherwise, set-off against any sums payable by that Party to the other Party under this Agreement, and/or deduct or withhold from payment of any such sums, any liability of the other Party, howsoever arising and whether such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination.

Transfer of the Project directed by Purchaser

13.6 If:

- (a) a right to terminate this Agreement in accordance with the provisions of clauses 13.1 or 13.2 becomes exercisable; and
- (b) the Parties agree that the Seller is unable, for any reason whatsoever, to carry on with the Project and to continue to comply with its obligations under this Agreement; and
- (c) the Purchaser wishes to facilitate the continuation of the Project and this Agreement for the remainder of its Term,

then, the Purchaser may (acting in its absolute discretion) provide the Seller with a notice (the **Transfer Notice**), requiring the Seller to transfer all of its rights and obligations under this Agreement, whether by way of assignment, novation or by any other means, to such nominee of the Purchaser (the **Nominee**) as must be identified by the Purchaser in the Transfer Notice.

13.7 Upon receipt of a Transfer Notice, the Seller must:

- (a) do all things that are necessary to transfer all of its rights and obligations under this Agreement, whether by way of assignment, novation or by any other means to the Nominee; and
- (b) do or procure any other relevant person to do all other things that may be reasonably necessary in order to effect the Seller's undertaking in clause 13.7(a), which may, for the avoidance of doubt, include the transfer of all of the Seller's legal and beneficial rights to the Project, the Project Land and the transfer of all its rights and obligations under any other agreement (whether by way of assignment, novation or any other means) that relates to the Project or the performance by the Seller of its obligations under this Agreement, to the Nominee,

in each case, at the full cost of the Purchaser.

13.8 For the avoidance of doubt, where a right to terminate this Agreement is exercisable by the Seller, the exercise of such right by the Seller is subject always to the Purchaser's right to provide the Seller with a Transfer Notice in accordance with the provisions of clause 13.6.

14. Liability

Limitation of liability

- 14.1 The Parties agree that, notwithstanding any other provision of this Agreement (but without prejudice to the Purchaser's obligation to pay any costs of the Seller which the Purchaser is expressed to be responsible for under the terms of this Agreement), the Purchaser will have no liability to the Seller or to any person for any direct or indirect losses, claims, damages, liabilities or expenses (including legal fees) in respect of the Project, including in relation to:
- (a) the development and operation of the Project, including in respect of any environmental liabilities associated with the Project; and
 - (b) any liability in relation to injury or death to persons or damage to real or personal property caused, directly or indirectly, by the actions, omissions or negligence of the Seller; and
 - (c) any failure by the Seller to comply with its obligations under this Agreement or any Applicable Law.

Consequential loss

- 14.2 Each Party agrees that it will not be liable to the other whether by way of indemnity or statute (to the extent that it is possible to limit such liability), in tort (for negligence or otherwise), or on any other basis in law or equity for any Consequential Loss arising under or in connection with this Agreement.

Exclusion to limitations

- 14.3 Nothing in clauses 14.1 or 14.2 will exclude or in any way limit a Party's liability for:
- (a) fraud;
 - (b) personal injury, including sickness, injury or death;
 - (c) loss of, or damage to, tangible property;
 - (d) any liability to the extent the same may not be excluded or limited as a matter of law; or
 - (e) Intellectual Property Rights infringement.

Limitation of Liability of Trustee

- 14.4 The Trustee's liability to any person in connection with this Agreement (or any transaction in connection with it) is limited to the extent to which the liability can be satisfied out of the Trust Property by the Trustee exercising its right of indemnity out of the Trust Property.
- 14.5 Clause 14.4 applies despite anything else in this Agreement but subject to clauses 14.6 and 14.7.

No proceedings

- 14.6 The Seller may not seek to recover any amounts owing to it under this Agreement by applying to have the Trustee wound up. However, the Seller may:
- (a) do anything necessary to enforce its rights in connection with the Trust Property; and
 - (b) take proceedings to obtain:
 - (i) an injunction or other order to restrain any breach of this Agreement by the Trustee; or

- (ii) declaratory relief or other similar judgment or order as to the obligations of the Trustee under this Agreement.

When the limitation does not apply

- 14.7 The limitation and restriction under clause 14.4 and clause 14.6 does not apply to a liability to the extent that it is not satisfied because there is a reduction in the extent of the Trustee's indemnification out of the Trust Property as a result of the Trustee's fraud.

Liability must be limited

- 14.8 The Trustee is not obliged to do or not do any thing in connection with this Agreement (including enter into any transaction or incur any liability) unless the Trustee's liability is limited in a manner which is consistent with this clauses 14.4 to 14.7.
- 14.9 This clause 14 will survive the termination (for any reason whatsoever) of this Agreement.

15. Intellectual Property and Knowledge Sharing

Intellectual Property

- 15.1 Nothing in this Agreement affects ownership of Background IP.
- 15.2 All rights in and title to the Project Material and the Annual Reports will vest in accordance with the Knowledge Sharing and IP Management Plan or, if not specified in the Knowledge Sharing and IP Management Plan, will vest in the Purchaser and the State.
- 15.3 For the purpose of giving effect to the Knowledge Sharing and IP Management Plan, the Seller grants to each of the Purchaser and the State a non-exclusive, worldwide, perpetual, irrevocable, royalty-free licence (including a right to sub-license) to use, communicate, reproduce, publish, adapt, and modify:
- (a) the Project Material;
 - (b) the Seller's Background IP insofar as it forms part of the Project Material; and
 - (c) the Annual Reports for the Purchaser's non-commercial purposes.
- 15.4 The Purchaser grants to the Seller for the purpose of giving effect to the Knowledge Sharing and IP Management Plan a non-exclusive, non-transferable, royalty-free licence to use the Purchaser's Background IP solely for the purposes of developing and operating the Project and exercising its rights in the Project Material (insofar as the Purchaser's Background IP forms part of the Project Material).
- 15.5 The Seller will do all things necessary (including, to the extent necessary or required, obtaining Consents) to ensure:
- (a) the vesting of the Project Material and Annual Reports in accordance with clause 15.2; and
 - (b) the licensing of the Project Material and Annual Reports in accordance with clause 15.3.

Knowledge Sharing

- 15.6 The Seller must:
- (a) in consultation with the Purchaser, implement and comply with the Knowledge Sharing and IP Management Plan;
 - (b) ensure the delivery of the Knowledge Sharing Deliverables; and
 - (c) as reasonably required by the Purchaser:

- (i) participate in relevant meetings, conferences, seminars, workshops, surveys and interviews relating to and in connection with the Knowledge Sharing Deliverables and the Knowledge Sharing Outcomes;
- (ii) deliver presentations relating to and in connection with the Knowledge Sharing Deliverables and the Knowledge Sharing Outcomes; and
- (iii) provide briefings to the Purchaser and, at the request of the Purchaser, to other relevant industry forums, on Project progress and achievement of the Knowledge Sharing Outcomes.

15.7 Clause 15.6 will survive the termination (for any reason whatsoever) of this Agreement.

16. Acknowledgement and publicity

Acknowledgement of support

16.1 The Seller must, in all marketing publications, promotional and advertising materials, public announcements, events and activities in relation to the Project, or in relation to any products, processes or inventions developed as a result of it, acknowledge the financial and other support from the State, in the manner specified at item 19 of Schedule 1 (*Commercial Terms*).

Publicity

16.2 The Purchaser reserves the right to publicise and report on the State's support of the Seller and/or the Project, and may do this by, amongst other means, including the Seller's name, the names of the Seller's Affiliates, the amount of the Total Agreement Value under this Agreement and the title and a brief description of the Project (including details of any Co-Benefits achieved and photographs of the Project and Project Land) in media releases, general announcements about the Project and its annual reports.

16.3 Prior to publicly reporting on or making a public announcement in connection with the Project, the Seller must coordinate the approval process with the Purchaser, except to the extent that the reporting or the announcement is:

- (a) required by Applicable Law or a relevant regulatory body; or
- (b) part of the implementation of a previously approved promotional opportunity.

16.4 If the Seller is required by Applicable Law or a regulatory body to make a public announcement in connection with the Project, this Agreement or any transaction contemplated by this Agreement, the Seller must, to the extent practicable, first consult with and take into account the reasonable requirements of the Purchaser with respect to such public announcement.

16.5 The Parties acknowledge and agree that clauses 16.2 to 16.4 (inclusive) are subject to and will not limit the operation of, clause 17.

Project Events

16.6 The Seller must not undertake, or participate in any way in, any Project Event, without the Purchaser's prior consent (not to be unreasonably withheld or delayed).

16.7 The Seller must:

- (a) notify the Purchaser of a proposed Project Event at least 10 Business Days before the proposed date for the Project Event and submit all details of the Project Event to the Purchaser in the format required by the Purchaser;

- (b) invite a Representative of the Purchaser or the State to the Project Event; and
- (c) if required by the Purchaser, provide a Representative of the Purchaser or the State an opportunity to speak at the Project Event.

16.8 The Seller must notify the Purchaser of any change to the details of a Project Event as soon as possible.

17. Confidentiality

Provisions to remain confidential

17.1 Subject to clause 17.2, each Party must not, and must procure that its Representatives must not, without the prior written consent of the other Party, disclose any Confidential Information and must keep the Confidential Information confidential and secure.

Permitted disclosures

- 17.2 Consent by one Party is not required for disclosure of Confidential Information by the other Party (the **Disclosing Party**):
- (a) to directors or employees of the Disclosing Party, as long as they in turn are required by the Disclosing Party to treat the Confidential Information as confidential in favour of the other Party on terms equally or more restrictive as those set out in this clause 17.2;
 - (b) to persons professionally engaged by the Disclosing Party, or to potential Nominees where the Purchaser has exercised its rights under clause 13.6, as long as such persons are:
 - (i) subject to statutory professional secrecy rules or similar legal concepts under Applicable Law; or
 - (ii) are required by the Disclosing Party to treat the Confidential Information as confidential in favour of the other Party on terms equally or more restrictive as those set out in this clause 17.2;
 - (c) to the Clean Energy Regulator for the purpose of the Project being declared an Eligible Offsets Project or the issuance of ACCUs by the Clean Energy Regulator in accordance with the Carbon Farming Legislation;
 - (d) to the extent legally required or authorised by any Government Agency having jurisdiction over the Disclosing Party;
 - (e) to any bank, other financial institution or rating agency to the extent required in relation to the financing of the Disclosing Party's business activities, as long as the bank or other financial institution or rating agency, as the case may be, is required by the Disclosing Party to treat the Confidential Information as confidential in favour of the other Party on terms equally or more restrictive as those set out in this clause 17.2 and then only subject to prior consultation with the other Party and subject to minimising the extent of Confidential Information to be disclosed so far as is reasonably practicable;
 - (f) to the extent required by any Applicable Laws, judicial process or the rules and regulations of any regulated market or recognized stock exchange, and then only subject to prior consultation with the other Party;
 - (g) to the extent that the Confidential Information is in or lawfully comes into the public domain other than by breach of this clause 17.2; or

- (h) where the Disclosing Party is a Government Agency and the Government Agency is disclosing such information:
 - (i) to the responsible State Ministers and/or their Government Agency personnel, officers and advisers;
 - (ii) to the Auditor-General for the purposes of satisfying any audit or disclosure requirements;
 - (iii) in the annual reports of the Government Agency;
 - (iv) in response to a request by the Parliament, Committee of the Parliament of the State or in response to a commission of enquiry; or
 - (v) where disclosure is required to be made in accordance with established governmental policies, procedures, or for public accountability purposes.

Breach of confidentiality

- 17.3 If a Party becomes aware of a suspected or actual breach of this clause 17, that Party will immediately notify the other Party and take all reasonable steps required to prevent or stop the suspected or actual breach.
- 17.4 The Parties acknowledge and accept that damages will be an inadequate remedy for a breach of this clause 17.

Agreed announcements

- 17.5 Subject to the provisions of clause 16, a Party must not make nor permit, solicit or assist any other person to make any announcement, communication or disclosure concerning any Confidential Information unless the other Party has provided its prior written consent to the announcement, including the form and content of such disclosure.

Survival of termination

- 17.6 Except as otherwise agreed between the Parties in writing, the confidentiality undertaking contained in this clause 17 will remain in force until the date falling 2 years from the termination or expiry of this Agreement.

18. Costs and Taxes

General costs

- 18.1 Each Party will be liable for its own costs and expenses in connection with the preparation, negotiation and execution of this Agreement.
- 18.2 For the avoidance of doubt and as otherwise expressed to the contrary in this Agreement, the Seller is responsible for the costs arising out of or in connection with its compliance with its obligations under the Agreement (including any fees related to the transfer of ACCUs to the Purchaser's ANREU Account imposed by the *Australian National Registry of Emission Units Act 2011* (Cth) or the Carbon Farming Legislation).

Costs of developing and operating the Project

- 18.3 For the avoidance of doubt, the Purchaser is not responsible for any costs of developing or operating the Project.

Taxes

- 18.4 Subject to the provisions of clauses 18.5 to 18.10 (inclusive), each Party is responsible for, and will pay all Taxes levied upon it in respect of the exercise by it of its rights, and the performance by it of its obligations, under this Agreement.

GST

- 18.5 Terms defined in the GST Act have the same meaning when used in clauses 18.5 to 18.10 (inclusive), or in the definition of "GST Amount", unless expressly stated otherwise.
- 18.6 Unless expressly stated otherwise, any sum payable or amount used in the calculation of a sum payable under this Agreement has been determined without regard to GST and must be increased on account of any GST payable in accordance with the provisions of clause 18.7.
- 18.7 If any GST is payable on any taxable supply made under this Agreement to the recipient by the supplier (**Supplier**), the recipient must pay the GST Amount to the Supplier on the earlier of:
- (a) the time of making payment of any monetary consideration on which the GST is calculated; and
 - (b) the issue of an invoice relating to the taxable supply.
- 18.8 The recipient must pay the GST Amount in the same manner as making payment of any monetary consideration on which the GST is calculated. The Supplier must provide as a precondition for payment by the recipient of the GST Amount, a tax invoice or a document that the Commissioner will treat as a tax invoice.
- 18.9 The amount recoverable on account of GST under these clauses 18.5 to 18.10 (inclusive) by the Supplier will include any fines, penalties, interest and other charges incurred as a consequence of late payment or other default by the recipient under this clause.
- 18.10 If either Party is required to pay, reimburse or indemnify the other for the whole or any part of any cost, expense, loss, liability or other amount that the other Party has incurred or will incur in connection with this Agreement, the amount must be reduced by the amount for which the other Party (or representative member if this is not the other Party) can claim an input tax credit, partial input tax credit, or other like offset.

19. Dispute resolution

Dispute resolution procedures to apply

- 19.1 If a Dispute arises under this Agreement, a Party will not commence any court proceedings unless it has complied with this clause 19, except to seek:
- (a) urgent interlocutory relief; or
 - (b) a remedy where a delay in commencing proceedings in court could prejudice that Party's entitlement to seek that remedy.

Negotiations

- 19.2 The Parties will attempt to resolve any Dispute which arises under this Agreement expeditiously by negotiation between representatives of the Parties who have authority to settle the Dispute.

Notice of Dispute

- 19.3 If any Dispute arises under this Agreement which cannot be resolved under clause 19.2, the Party raising the Dispute will:

- (a) as soon as practicable give notice of the Dispute to the other Party (**Notice of Dispute**); and
- (b) at the same time, or as soon as practicable thereafter, give to the other Party detailed particulars of the matters in issue in the Dispute (comprising a statement of relevant facts and issues, and the quantum and legal basis of any Claim).

Resolution by Authorised Representatives

- 19.4 If a Notice of Dispute is given under clause 19.3(a), each Party must within 5 Business Days of such Notice of Dispute, appoint a representative with authority to resolve the Dispute on behalf of that Party (**Authorised Representative**).
- 19.5 The Authorised Representative of each Party will convene a meeting of the parties within 10 Business Days after a Notice of Dispute has been given. At that meeting:
- (a) representatives of the parties concerned must confer in good faith to attempt to resolve the Dispute, putting to each other the issues in dispute and any points of difference;
 - (b) if the parties agree as to how the Dispute should be resolved, they will document that agreement; and
 - (c) if the parties cannot agree as to how the Dispute should be resolved, the Dispute will be referred to expert determination under clause 19.6.

Expert Determination

- 19.6 If the procedures in clauses 19.2 and 19.5 do not lead to resolution of any Dispute, then not earlier than 5 Business Days after the meeting in clause 19.5 either Party may give notice in writing to the other referring the Dispute to expert determination (**Expert Determination Notice**).
- 19.7 Notwithstanding the giving by either Party of an Expert Determination Notice, the parties must continue to take steps to attempt resolution of the Dispute without expert determination.
- 19.8 No later than 10 Business Days from the date on which the Expert Determination Notice is provided to a Party, the parties will organise for the Dispute (unless it has been otherwise settled) to be heard and determined by an independent expert agreed by the parties (or if no agreement can be reached, appointed by the President of the Australian Commercial Disputes Centre).
- 19.9 Any expert determination under clauses 19.6 to 19.10 (inclusive) must be conducted in accordance with, and the parties must comply with, The Institute of Arbitrators & Mediators Australia Expert Determination Rules (2010), except to the extent inconsistent with clauses 19.6 to 19.10 (inclusive).
- 19.10 It is intended that the decision of the independent expert will be final and binding if neither Party commences further proceedings in respect of the Dispute within 10 Business Days after the independent expert's decision is given to the parties.

Costs of Dispute Resolution

- 19.11 Each Party will bear its own costs in relation to any process under this clause 19 except that:
- (a) the Parties will share equally the costs of the independent expert; and
 - (b) the costs of and incidental to an expert determination (other than the costs of the independent expert) will follow the event, unless in the discretion of the independent expert it is fair and reasonable that some other allocation of costs be made, in which case the independent expert may determine the amount, by whom, in what proportion and in what manner those costs are to be paid.

20. Notices

20.1 Any notice to or by a Party to this Agreement:

- (a) must be in legible writing and in English addressed to the other Party's Address for Notices;
- (b) where the sender is a company, must be signed by an authorised officer or under the common seal of the sender;
- (c) is regarded as being given by the sender and received by the addressee:
 - (i) if by delivery in person, when delivered to the addressee;
 - (ii) if by post, 3 Business Days from and including the date of postage; or
 - (iii) if sent by email, at the time shown on the delivery receipt stating that the email was received by the recipient,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is regarded as received at 9.00 am on the following Business Day; and

- (d) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

20.2 In clause 20.1, a reference to an addressee includes a reference to an addressee's authorised officers, agents or employees or any person reasonably believed by the sender to be an authorised officer, agent or employee of the addressee.

20.3 Each Party may change its particulars for delivery of notices by written notice to the other Party.

21. Rights of the State

21.1 The Seller confirms, agrees and acknowledges for the benefit of each of the Purchaser and the State that:

- (a) notwithstanding the State not being a party to this Agreement, the State has the full and complete benefit of the promises, representations, warranties, and other obligations of the Seller under this Agreement (**State Covenants**) for the duration of the Agreement Term; and
- (b) entry by the Purchaser into this Agreement is adequate consideration for the provision of the State Covenants by the Seller in favour of the State in accordance clause 21.1(a).

21.2 Each Party confirms, agrees and acknowledges for the benefit of the State that:

- (a) the entry into this Agreement by the Purchaser constitutes (amongst other things) acceptance of the benefit of the State Covenants by the State; and
- (b) the State is able to enforce, in its own name, the State Covenants in accordance with section 55 of the *Property Law Act 1974* (Qld).

22. General provisions

No joint venture or partnership

- 22.1 Nothing in this Agreement constitutes or is to be construed as being a joint venture or partnership relationship between the Parties.
- 22.2 For the avoidance of doubt, the Purchaser must not acquire any equitable interest in the Project assets or the Project.

Assignments and Transfers

- 22.3 This Agreement will be binding upon and ensure to the benefit of each Party and its successors and permitted assigns and permitted transferees.
- 22.4 The Seller is not entitled to assign and/or transfer any or all of its right and/or obligations under this Agreement without the prior written consent of the Purchaser.
- 22.5 The Purchaser is entitled to assign and/or transfer any or all of its rights and/or obligations under this Agreement provided always that notifies the Seller in writing of its intention to do so.
- 22.6 If the Seller's involvement is required in order to facilitate an assignment and/or transfer contemplated by clause 22.5, the Seller will do such things and execute such documents as may be reasonably requested of it by the Purchaser to give effect to the assignment and/or transfer contemplated by clause 22.5, including entering into a novation with the Purchaser's transferee. Any reasonable out-of-pocket expenses (including, subject to fees arrangements previously approved by the Purchaser, reasonable legal fees) incurred by the Seller in connection with this clause 22.6 will be borne by the Purchaser or the Purchaser's transferee. The Seller will make such amendments to the insurances effected in respect of the Project so as to ensure continued compliance with the requirements of clause 9.11 with regard to the interests of the Purchaser's transferee and must provide to the Purchaser updated documentation evidencing such amendment at the time of such transfer.

Entire agreement

- 22.7 This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any agreement or representations previously given or made with respect to its subject matter other than those given or made in the Agreement, provided that nothing in this clause 22.7 limits or excludes any liability for fraud in relation to those representations.

Severability

- 22.8 If any provision or part of a provision of this Agreement is found by a court, arbitrator or other authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision is to be deemed deleted from this Agreement and the remaining provisions to continue in full force and effect. The Parties must in such event seek to agree upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void and unenforceable.

Governing law and Jurisdiction

- 22.9 This Agreement is governed by and is to be construed in accordance with the laws of Queensland.
- 22.10 Each Party irrevocably and unconditionally:
- (a) submits to the non-exclusive jurisdiction of the courts of Queensland; and
 - (b) waives, without limitation, any Claim or objection based on absence of jurisdiction or inconvenient forum.

Non-reliance

- 22.11 Notwithstanding any communication that a Party (and/or its Affiliates) may have had with the other Party, each Party represents to the other Party that:
- (a) it is entering into this Agreement as principal (and not as agent or in any other capacity);
 - (b) the other Party nor any of the other Party's Affiliates or agents are acting as a fiduciary for it;
 - (c) it is not relying upon any representations except those expressly set out in this Agreement;
 - (d) it has consulted with its own legal, regulatory, tax, business, investments, financial, and accounting advisers to the extent that it has deemed necessary, and it has made its own investments and trading decisions based upon its own judgment and upon any advice from such advisers as it has deemed necessary and not upon its any view expressed by the other Party or any of its Affiliates or agents; and
 - (e) it is entering into this Agreement with a full understanding of the terms, conditions, and risks thereof and it is capable of and willing to assume those risks.

Rights and remedies

- 22.12 The rights, powers, and remedies of each Party under this Agreement are cumulative and not exclusive of any rights, powers or remedies which may exist at law.
- 22.13 A Party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Agreement expressly states otherwise.
- 22.14 Rights given to the Parties under this Agreement and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.
- 22.15 If a Party does not exercise a right or remedy fully or at a given time, the Party may still exercise it later.
- 22.16 A Party is not liable for costs or loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this Agreement.
- 22.17 The rights and remedies provided in this Agreement are in addition to other rights and remedies given by law independently of this Agreement.

Further assurances

- 22.18 Each Party must, at its own expense, whenever reasonably requested by the other Party, promptly do or arrange for others to do, everything reasonably necessary or desirable to give full effect to this Agreement and the transactions contemplated by this Agreement.

Variation and waiver

- 22.19 A provision of this Agreement or a right created under it may not be waived or varied except in writing, signed by the Party or Parties to be bound.

Service of process

- 22.20 Each Party agrees that a document required to be served in proceedings about this Agreement may be served:
- (a) by being delivered to or left at its Address for Notices; or
 - (b) in any other way permitted by Applicable Law.

Counterparts

- 22.21 This Agreement may be executed in any number of counterparts and each such counterpart will constitute an original of this Agreement but all of which together constitute one and the same instrument. This Agreement will not be effective until each Party has executed at least one counterpart.

Electronic Execution

- 22.22 Each Party consents to each other Party executing this Agreement wholly or partly by electronic means and agrees to be bound by an electronic signature made on its behalf by its officer or duly authorised representative.

Amendments

- 22.23 The provisions of this Agreement may only be amended or modified in writing by the Parties.

Delivery by E-mail (PDF)

- 22.24 Delivery of an executed counterpart of this Agreement by email attachment (PDF) will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by email attachment (PDF) will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

Executed as an agreement

SELLER

Signed by

[insert Seller identity]

in accordance with section 127 of the
Corporations Act 2001 by a director and
secretary/director:

Signature of director/ sole director

Signature of director/secretary

Name of director (please print)

Name of director/secretary (please print)

Date

PURCHASER

Signed for and on behalf of

**Queensland Treasury Corporation
(ABN 15 736 217 171)**

as trustee of the **Land Restoration Unit
Trust**

Signature

Name and title/capacity of signatory (please
print)


Date

Schedule 1

Commercial Terms

1.	Project	<i>[insert project description]</i>
2.	Carbon Farming Legislation methodology/ies	<i>[insert name of applicable methodology or methodologies]</i>
3.	Project Land	<i>[insert description including land title details of where the Project will be located]</i>
4.	Co-Benefit and Assurance Types	<p>Environmental <i>[select one or more from the environmental co-benefit classes specified in the Applicable Standard: Soil Health; Great Barrier Reef; Wetlands; Coastal Ecosystems; Threatened Ecosystems; Threatened Wildlife (including plants); Native Vegetation]</i></p> <p>Socio-economic <i>[select one or more from the socio-economic co-benefit classes specified in the Applicable Standard: Employment and Skills; Community Socio-economic Resilience and Environmental Connection; Diversity and Human Rights]</i></p> <p>First Nations <i>[select one or more from the First Nations co-benefit classes specified in the Applicable Standard: First Nations benefits based on location; First Nations benefits based on participation]</i></p>
5.	Effective Term	The period of time from the Effective Date to the date that is <i>[insert effective term duration]</i> years from the Effective Date.
6.	Total Agreement Value	<i>[insert total of all payments]</i>
7.	Number of ACCUs to be Delivered	<i>[insert total number of ACCUs to be delivered over the Effective Term of the agreement]</i>
8.	ACCUs with Co-Benefits Price	<i>[insert Total Agreement Value ÷ total number of ACCUs to be Delivered]</i>
9.	Upfront Payment Election	<i>[Applies / Does not apply]</i>
10.	Upfront Payment	<i>[insert Upfront Payment amount if Upfront Payment Election applies]</i>
11.	Annual Payment (per year)	<p><i>\$(insert Annual Payment amount)</i></p> $\text{Annual Payment (per year)} = \frac{(\text{Total Agreement Value} - \text{Upfront Payment}) \times 40\%}{\text{Effective Term (years)}}$
12.	On-Delivery Payment per ACCU	<p><i>\$(insert On-Delivery Payment amount per ACCU)</i></p> $\text{On-delivery Payment per ACCU} = \frac{(\text{Total Agreement Value} - \text{Upfront Payment}) \times 60\%}{\text{Effective Term (years)}}$

		Number of ACCUs to be Delivered
13.	Conditions Precedent	<p>Conditions Precedent</p> <ul style="list-style-type: none"> • The Seller has provided to the Purchaser as validated Monitoring and Reporting Plan as per the <i>Land Restoration Fund Co-benefits Standard for Land Restoration Fund projects</i>; • the Knowledge Sharing and IP Management Plan is agreed by the Parties; • the Seller has provided a copy or copies of all subcontracts (howsoever described) already in place as between the Seller and a subcontractor that would be covered by clause 7.1; and • the Project is unconditionally registered under the Carbon Farming Legislation.
14.	Sunset Date	24 months from the Execution Date
15.	Seller's Cash Account	<i>[insert bank account details]</i>
16.	Seller's ANREU Account	<i>[insert ANREU Account details]</i>
17.	Purchaser's ANREU Account	As notified by the Purchaser to the Seller
18.	Address for Notices	<p>For the Purchaser:</p> <p>To: <i>Department of Environment and Science</i> Attention: <i>Director, Land Restoration Fund</i> Address: <i>Level 27, 400 George St Brisbane 4000</i> Email: <i>LRF.Contracts@des.qld.gov.au</i></p> <p>and, where the communication constitutes a formal notice under this Agreement, a copy to:</p> <p>To: <i>Queensland Treasury Corporation as trustee for the Land Restoration Fund</i> Attention: <i>LRF Team</i> Address: <i>Address: Level 31, 111 Eagle Street, Brisbane QLD 4000</i> GPO Box 1096, Brisbane QLD 4001 Email: <i>LandRestorationFund@qtc.com.au</i></p> <p>For the Seller:</p> <p>To: <i>[to be inserted]</i> Attention: <i>[to be inserted]</i> Address: <i>[to be inserted]</i> Email: <i>[to be inserted]</i></p>
19.	Acknowledgement of support	The Seller must acknowledge the support received from the State by including the following statement in any media or collateral activity associated with the Project:

		<p><i>"The [describe project] Project is a [insert number of years] year, \$[insert amount]million collaboration between the Queensland Government and [insert name of Seller and any other relevant parties]. The Project aims to [insert key message]."</i></p> <p>In addition to the foregoing, the State's Logo should be included where appropriate in such media or collateral activity.</p> <p>The Seller must also acknowledge the support received from the State by placing signage outside the site or facility where the Project is undertaken which includes the following statement:</p> <p><i>"supported by the Queensland Government [State's Logo]"</i>.</p>
20.	Logo	 <p>Queensland Government</p>
21.	Insurance	<ul style="list-style-type: none"> a) Public liability insurance for an insured amount of not less than \$10,000,000.00 per claim; b) Professional indemnity insurance for an insured amount of not less than \$1,000,000.00 per claim; and c) Worker's compensation insurance as required by Applicable Law.

Schedule 2

Delivery Schedule

Total ACCU Volume: *[insert total number of ACCUs to be Delivered under Agreement]*

Delivery Date	ACCU Volume <i>[Insert method]</i>	<i>[Optional]</i> ACCU Volume <i>[Insert second method]</i>
1 year after Effective Date	<i>[0]</i> ¹	
2 years after Effective Date	<i>[0]</i>	
3 years after Effective Date	<i>[0]</i>	
4 years after Effective Date	<i>[0]</i>	
5 years after Effective Date	<i>[0]</i>	
6 years after Effective Date	<i>[7,500]</i>	
7 years after Effective Date	<i>[6,500]</i>	
8 years after Effective Date	<i>[5,600]</i>	
9 years after Effective Date	<i>[6,300]</i>	
10 years after Effective Date	<i>[4,500]</i>	
11 years after Effective Date	<i>[5,400]</i>	
12 years after Effective Date	<i>[3,100]</i>	
13 years after Effective Date	<i>[2,340]</i>	
14 years after Effective Date	<i>[3,300]</i>	
15 years after Effective Date	<i>[2,900]</i>	

¹ For indicative purposes only.

Schedule 3

Co-Benefit Activities Schedule

NOTE: the Co-Benefits and Co-Benefit Activities set out below are examples only and are intended to illustrate to prospective Sellers the types of Co-Benefits and Co-Benefit Activities that should be included in the Seller's application along with the level of assurance that may be required for each type and class of Co-Benefit as described in the Applicable Standard. The Purchaser fully expects for Co-Benefits and Co-Benefit Activities to be Project specific.			
Date	Co-Benefit Activities	Co-Benefits	Evidence to support Annual Report
<i>Year/s after Effective Date</i>	<i>include key establishment, operational and verification activities and reporting schedules.</i>	<i>For on-ground activities, identify the co-benefit class/es that each activity aligns to</i>	<i>e.g. audit report, photographs, monitoring data, receipts of local expenditure, letters of support and participation reports.</i>
	Environmental		
		<i>[increased habitat and refuge values for fauna species protected under Queensland and Commonwealth conservation legislation]</i>	
		<i>[improved biodiversity and ecosystem connectivity]</i>	
		<i>[improved soil health and water retention through increased ground cover]</i>	
		<i>[reduced impacts of agriculture activities and adverse flow on effects]</i>	
		<i>[demonstration of project scale measurement and valuation of co-benefits - demonstrate how innovative approaches to financing through stacking and blending of different environmental units and co-benefits can leverage and facilitate further investments in ERF projects]</i>	
	Socio-Economic		
	<i>[demonstration of contribution to jobs / training]</i>	<i>[contribute to maintaining/ creating new jobs in area of relative socio-economic disadvantage]</i>	

		<i>[provide employment to a local worker undertaking a traineeship through the Skilling Queenslanders for Work program]</i>	
		<i>[co-fund a Cert 3 in Conservation and Land Management for two employees]</i>	
	First Nations		
	<i>[delivery or procurement by the Seller of a ground-truthing skills development program in the [describe area] to the [describe Indigenous Land Ranger group].]</i>	<i>[increasing Indigenous Land Ranger training and skills development capacity via delivery of training described in Co-Benefit Activities]</i>	

Schedule 4

Knowledge Sharing and IP Management Plan



LAND RESTORATION FUND

1. Knowledge Sharing and IP Management Plan

1.1 Background

Through the Land Restoration Fund program, the Department of Environment and Science (the **Department**) on behalf of the Purchaser wishes to promote the sharing of information and knowledge about carbon farming and associated environmental, social, cultural and economic markets amongst interested groups. The objective of this knowledge sharing is to accelerate the development and growth of Queensland's land-based carbon farming sector.

1.2 Knowledge Sharing Outcomes

The Seller will provide the Knowledge Sharing Deliverables in accordance with this Plan and such other inputs as are reasonably required by the Department for the purpose of achieving the following Knowledge Sharing Outcomes:

- demonstrating how carbon farming activities generating co-benefits can work;
- generating and collating data that measures and values co-benefits for communicating to markets and other land managers; and
- forming a basis to facilitate the first investments of the Land Restoration Fund.

1.3 Knowledge Sharing Deliverables

The Knowledge Sharing Deliverables are outlined below and delivery of those Knowledge Sharing Deliverables in accordance with this plan are a key component of the Seller's obligations under the Project Investment Agreement.

In accordance with clause 15 of the Project Investment Agreement the Intellectual Property Rights in the Knowledge Sharing Deliverables will vest in the party specified in the "Who owns it?" column below. If no party is specified in that column, the Knowledge Sharing Deliverable will be owned by Queensland Treasury Corporation for and on behalf of the Land Restoration Fund Unit Trust and the State.

Nothing in this Plan will limit the licence granted to the Purchaser and the State to use, communicate, reproduce, publish, adapt, and modify the Knowledge Sharing Deliverables listed in this Plan (noting that the licence to use Annual Reports is limited to use for non-commercial purposes).

What?	Why?	Frequency?	When?	Who is it for?	Who owns it?	How? (expected content and delivery)
<i>Knowledge Sharing Report</i>	<i>Provides an overview of the Project learnings from the preceding year, with a focus on how the Project has achieved or contributed to the Knowledge Sharing Outcomes, including lessons learnt.</i>	<i>Annually</i>	<i>With Annual Report</i>	<i>Public</i>	<i>The Purchaser</i>	<i>Discuss:</i> <ol style="list-style-type: none"> <i>1. What is working?</i> <i>2. What problems have been experienced?</i> <i>3. What would the Seller do differently?</i> <i>4. What has the Seller learnt?</i> <i>5. How could learnings be applied beyond the current Project?</i>
<i>Attendance and participation in Department webinars, presentations or workshops.</i>	<i>Share project information with other Department funded projects and key stakeholders.</i>	<i>As agreed</i>	<i>From Execution Date to 12 months following the End Date</i>	<i>Department and key external stakeholders.</i>	<i>The Purchaser</i>	<i>As required by format of event</i>

