

# Carbon Farming Example Contract Clauses

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| Carbon Farming Project Development AgreementThere are two primary types of agreements entered into with the owner or perpetual lessee of land (**Landholder**) for sequestration projects: one where a carbon project developer is the project proponent of the project, commonly referred to as a ‘Project Development Agreement’; the second where the Landholder is the project proponent, commonly referred to as a ‘Services Agreement’.A ‘**Carbon Farming Project Development Agreement**’ is the appropriate form of agreement if the Landholder on which the carbon farming project is to be undertaken would like another entity (**Project Developer**) to: be primarily responsible for the development, implementation and management of the project; and be the project proponent of the project.As the Project Developer will be the project proponent of the project the Landholder will need to grant the Project Developer ‘legal right’, being, the right to undertake the project activities on the project land; and the right to be issued all ACCUs generated by the project. The Landholder will typically receive a share of the ACCUs generated by the project (or a share of the proceeds from the sale of the ACCUs generated by the project) in consideration for granting the Project Developer ‘legal right’. The Project Developer *may* require the Landholder to transfer the ‘carbon rights’ in the project land to them. Whilst the CFI Act does not require a project proponent to hold the carbon rights in the project land in order to be project proponent, holding the carbon rights in the project land provides greater security to the Project Developer should the project land be sold by the Landholder without the incoming Landholder entering into an agreement with the Project Developer. It is recommended that a Project Development Agreement include as a schedule to the agreement a ‘Project Management Plan’ which is prepared having regard to the requirements of the CFI Legislation and the methodology determination which applies to the Project. The Project Management Plan should clearly set out: the matters and activities that the Project Developer agrees to be responsible for with respect to the development, implementation and management of the project (for example: registering the project, undertaking any agreed project activities, monitoring the abatement, engaging auditors, submitting offset reports and applying for certificates of entitlement etc.); the matters and activities that the Landholder agrees to be responsible for with respect to the development, implementation and management of the project (for example: maintaining fences, maintaining fire breaks etc.); and the actions that the Landholder cannot undertake on the project land (for example: restrictions on grazing, restrictions on clearing vegetation etc.). This document, which was procured by the Carbon Market Institute and prepared by Norton Rose Fulbright Australia, provides example clauses for a generic Carbon Farming Project Development Agreement. Example clauses for a Carbon Project Services Agreement are provided at [Insert cross-reference]. The aim of the clauses is to provide a balanced approach in terms of the allocation of risk between the parties, however further consideration may be needed as to whether the clauses are appropriate given the proposed commercial relationship between the parties.Some of the example contract clauses may not be appropriate for use for carbon sequestration projects to be undertaken on land where native title has been extinguished i.e. the example contract clauses may not be appropriate if the project land is, or may be, subject to a native title determination under the *Native Title Act 1993 (Cth)*. It is CMI’s intention to support, in partnership with relevant Indigenous Australian carbon and land organisations, the development of a second set of example contract clauses for projects to be undertaken on land that is, or may be, subject to a native title determination. Refer to paragraph 1.4 of the CMI Carbon Farming Contracts Guidance Note for further detail. It is noted that this document does not address the co-benefits that may be generated by carbon projects. This topic may be addressed in further versions of these Contract Clauses. |

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| **Example Contract Clauses** | **Guidance**  |
| Recitals The Project Developer carries on the business of developing, implementing and managing carbon farming projects registered as Eligible Offsets Projects under the CFI Act. The Landholder is the holder of an estate or interest in the Project Land. The Project Developer wishes to undertake an Eligible Offsets Project on the Project Land. This Agreement sets out the terms and conditions upon which the Landholder grants the Project Developer the right to undertake the Project on the Project Land. | This clause summarises the parties intentions and provides context to the Agreement. It may be used by a court to aid contractual interpretation in the event there is a dispute between the parties in relation to terms of the Agreement.  |
| Key DefinitionsIn this Agreement, unless the contrary intention appears: **Agreement** means this document, including any schedule or annexure to it. **ANREU** means the Australian National Registry of Emissions Units.**Applicable Laws** means all applicable legislation, rules, policies, codes and methodology and all legally binding interpretations, judgements, injunctions and orders of any authority, court or tribunal applicable to the Project under this Agreement. **Australian Carbon Credit Unit (ACCU)** has the meaning given to that term in the CFI Act.**Australian Consumer Laws** means all applicable laws, legislation, codes of practice, interpretative guidelines and guidance material relating to the protection of consumers.**Biosecurity Risk** means anything that could increase the impacts of pests, diseases, weeds or contaminants on the Land.**Carbon Abatement Purchasing Process** has the meaning given to that term in the CFI Act.**Carbon Maintenance Obligation** has the meaning given to that term in the CFI Act.**Carbon Rights** means the right to commercially benefit from the carbon sequestered by vegetation or soil on the Project Land and includes rights conferred by applicable state or territory legislation, including rights commonly known as ‘carbon sequestration rights’ in Victoria, New South Wales and Tasmania, ‘carbon rights’ in South Australia and Western Australia and ‘carbon abatement interests’ in Queensland. **CFI Act** means the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth), as amended from time to time.**CFI Legislation** means the CFI Act or any similar or successor scheme legislation, and any regulation, rule, guideline, or methodology determination made pursuant to them.**Change of Law** means the introduction of or material change in any law, regulation, binding rules, policy, codes or requirement of an authority, including a change to the CFI Legislation or the Methodology, (or a change in the interpretation of these by a Court), which directly affects the matters the subject of this Agreement.**Code of Conduct** means the *Australian Carbon Industry Code of Conduct*, currently administered by the Carbon Market Institute, as amended from time to time.**Commencement Date** is, unless otherwise specified, the date the last party to this Agreement executes this Agreement.**Confidential Information** has the meaning given to that term in clause 17.1.**Crediting Period** has the meaning given to that term in the CFI Act.**Disturbance** means an event, or conduct engaged in by a party, which may have the effect of causing a release of carbon dioxide back into the atmosphere which had otherwise been sequestered as a result of the Project. **Eligible Interest** has the meaning given to that term in the CFI Act.**Eligible Interest Holder** means a person or entity with an Eligible Interest in the Project Land.**Eligible Offsets Project** has the meaning given to that term in the CFI Act.**Expiry Date** means [inset date].[***Drafting note:*** *regard should be had to the Permanence Period of the project when determining the expiry date for the Agreement as the Agreement will need to be in force until the Project Developer has no exposure under the CFI Legislation as Project Proponent of the Project.]***Fit and Proper Person** means a person who passes the fit and proper person test set out in the CFI Act.**Force Majeure Event** means any of the following events: fire, storm, frost, wind, flood, heatwave, drought or any other adverse weather or climatic condition or natural disaster;act of God;biosecurity or pest incursion, disease, epidemic, national emergency, war, terrorism, riot, insurrection, vandalism or sabotage;strike, lockout, ban, limitation of work or other industrial disturbance; orlaw, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application;which:is unforeseen by the Affected Party;is beyond the control of the Affected Party; andoccurs without the fault or negligence of the Affected Party.**Insolvency Event** means the occurrence of any one or more of the following events in relation to any party (**Defaulting Party**):where the Defaulting Party is a body corporate:the Defaulting Party becomes an externally-administered body corporate under the *Corporations Act 2001*;steps are taken by any person towards making the Defaulting Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);a controller (as defined in section 9 of the Corporations Act 2001) is appointed of any of the property of the Defaulting Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days);the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*; ora resolution is passed for the reduction of capital of the Defaulting Party or notice of intention to propose such a resolution is given, without the prior written consent of the other party;where the Defaulting Party is a natural person:the Defaulting Party authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;a person holding a security interest in assets of the Defaulting Party enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; orthe Defaulting Party commits an act of bankruptcy. **Intellectual Property Rights** means:all industrial and intellectual property rights throughout the world and includes rights in respect of copyright, patents, trade marks, designs, trade secrets, know-how and confidential information; andany application or right to apply for registration of any of the rights referred to in paragraph (a).**Land** means [insert title details for land].**Landholder Activities** means those matters and activities specified in the Project Management Plan as being the responsibility of the Landholder to perform and/or undertake. **Landholder IP** means:all Intellectual Property Rights owned by the Landholder as at the Commencement Date;all Intellectual Property Rights created or developed by the Landholder in the performance of its obligations under this Agreement; andall improvements, derivative works or modifications of any Intellectual Property Rights referred to in paragraph (a) or (b), irrespective of which party created or developed them.**Landholder’s Share** has the meaning given to that term in clause 6.1. **Methodology** means [insert relevant methodology determination].**OHS Laws** means all laws, legislation, codes of practice, interpretative guidelines and guidance material relating to health and safety in workplaces (including any Laws made to enact harmonised work health and safety) applicable to the jurisdiction within which the Project is being undertaken.**Permanence Period** has the meaning given to that term in the CFI Act.**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth). **Proceeds** means the proceeds from the sale of all Project ACCUs.**Project** means the project intended to be registered as an Eligible Offsets Project and undertaken on the Project Land in accordance with the Methodology.**Project ACCUs** means all ACCUs issued in respect of the Project.**Project Developer Activities** means those matters and activities specified in the Project Management Plan as being the responsibility of the Project Developer to perform and/or undertake.**Project Developer IP** means:all Intellectual Property Rights owned by the Project Developer as at the Commencement Date;all Intellectual Property Rights created or developed by the Project Developer in the performance of its obligations under this Agreement; andall improvements, derivative works or modifications of any Intellectual Property Rights referred to in paragraph (a) or (b), irrespective of which party created or developed them.**Project Land** means that part of the Land on which the Project is to be undertaken being the area labelled “Project Land” on the map contained in Annexure # to this Agreement. **Project Proponent** has the meaning given to that term in the CFI Act. **Project Management Plan** means the document contained in Annexure #.[***Drafting Note:*** *A Project Management Plan should be prepared and included as a Schedule* *to the Agreement*. *It should specify the activities that the Project Developer is responsible for undertaking with respect to the Project (defined as the Project Developer Activities) and what activities the Landholder is responsible for undertaking (defined the Landholder Activities). It should also detail what activities the Landholder cannot undertake on the Project Land (defined as Restricted Activities).*]**Regulator** means the authority appointed by the Commonwealth to administer the CFI Act, being the Clean Energy Regulator and includes any successor body.**Relinquishment Notice**means a notice issued under the CFI Act by the Regulator requiring a number of ACCUs to be relinquished to the Regulator.**Restricted Activities** means thoseactivities specified in the Project Management Plan as not permitted on the Project Land.**Reversal** in relation to the Project, means the release of carbon dioxide back into the atmosphere which had otherwise been sequestered as a result of the Project, however such a reversal is caused.**Sequestered Carbon Insurance** means insurance which covers losses associated with a Reversal as the result of a natural disaster.**Term** has the meaning given to that term in clause 3.1.**Threshold Price** means$# per Project ACCU. | This clause defines key terms used in the Agreement. Where a capitalised term is used in the Agreement it has the meaning specified in this clause. It is noted that the definition of a Force Majeure Event is broader than the definition of ‘natural disturbance’ set out in section 5 of the CFI Act which is limited to flood, bushfire, drought, pest attack and diseaseIt is noted that the Project Land may be an area which is equal to or smaller than the total area of land included on the title details for the land. The Threshold Price is the negotiated minimum price per ACCU under which the Project Developer will not sell any ACCUs without the written consent of the Landholder (see clause 6.5 below). |
| TermThis Agreement commences on the Commencement Date and, unless terminated earlier in accordance with this Agreement, continues until the Expiry Date (**Term**).  | This clause defines the term of the Agreement (that is, how long the agreement is in place for and binding on the parties). The Agreement will end on the Expiry Date which is a defined term.It is recommended that the Expiry Date should not be a date which would fall before the end of the Permanence Period of the project as the Project Developer will continue to have obligations under the CFI Legislation for the duration of the Permanence Period. Alternatively, if the parties wish to have a shorter Term (than the Permanence Period) apply to the Agreement consider adding a clause in the Agreement which allows for the Landholder to assume the role of Project Proponent at the termination of the Agreement. |
| Legal RightThe Landholder grants the Project Developer: the right to carry out the Project, and the activities comprising the Project, on the Project Land; and subject to clause 6,the exclusive right to be issued all ACCUs generated as result of the carrying out of the Project and the activities comprising the Project. The Landholder consents to the Project Land being, or being part of, an Eligible Offsets Project, and will provide any document reasonably required by Project Developer (other than this Agreement) evidencing such consent. | In order to be registered as Project Proponent of the Project the CFI Act requires that the Project Developer must be responsible for carrying out the Project and have the legal right to carry out the Project. The Regulator will recognise the Project Developer as having the legal right to carry out the Project if they have been granted: the right to carry out the project activities on the land; andthe exclusive right to be issued all ACCUs that may be generated as a result of the Project. This clause confers on the Project Developer the legal rights it requires in order to act as Project Proponent of the Project.It should be noted that other consents or approvals may also be needed by the Project Proponent to lawfully undertake the Project. |
| [Optional]Transfer of Carbon RightsThe Landholder grants the Project Developer all Carbon Rights in the Project Land from the Commencement Date to the Expiry Date.The Landholder agrees to do all things and sign all documents which may be required by the Project Developer to procure the registration of the Carbon Rights on the certificate of title of the Project Land in favour of the Project Developer.On termination of this Agreement (for whatever reason except material breach by the Landholder) all Carbon Rights vested with the Project Developer pursuant to this Agreement shall revert to the Landholder and the Project Developer agrees to do all things and sign all documents which may be required by Landholder to give effect to this clause.For the avoidance of doubt, if this Agreement is terminated as a result of a material breach by the Landholder all Carbon Rights vested with the Project Developer remain vested with the Project Developer until the Expiry Date.  | This clause firstly provides that the Landholder grants the Project Developer all Carbon Rights in the Project Land and must do all things to implement the transfer.Carbon rights vary from state to state but are, in essence, the legal right to commercially benefit from the carbon sequestered in trees, vegetation and soil on the land. Carbon rights are typically held by the Landholder but may be transferred to a third party which is what this clause is doing. A carbon right constitutes an interest in land. Depending upon the relevant state/territory legislation, it may be possible for the Project Developer to register its interest in the Project Land on the certificate of title for the Land. The Project Developer’s right (to commercially benefit from the carbon sequestered in trees, vegetation and soil on the land) will be enforceable against any subsequent owners of the Project Land. This clause provides that the carbon rights will revert back to the Landholder on termination of the Agreement and the Project Developer must do all things to implement the transfer. If the Agreement is terminated as a result of a material breach by the Landholder the Project Developer will continue to hold the carbon rights until the Expiry Date. It is not common practice to register the carbon right on the land, as often the Landholder will not agree to this. However, given that it would ordinarily be best practice in terms of mitigating risks to the Project Developer to register the carbon right, this clause has been provided for optional use should both parties agree to its inclusion.  |
| Landholder Remuneration[***Drafting Note****: Remuneration Option 1. If this option is used the Project Developer may need to hold an Australian Financial Services licence as ACCUs are a ‘financial product’ under the Corporations Act 2001 and the Australian Securities and Investments Commission Act 2001.*]In consideration for granting the Project Developer the right to undertake the Project on the Project Land and be issued all Project ACCUs, the Landholder is entitled to #% of the Proceeds. The Project Developer agrees that it will account to the Landholder for the Landholder’s share of the Proceeds within 15 Business Days of receipt in clear funds of the last of the Proceeds of any one sale, disposal or dealing of the Project ACCUs.The Landholder shall be entitled to charge interest on any monies not paid by the due date at the rate of [# per cent] per annum from the due date until the date of actual receipt.Subject to clause 6.5, the Project Developer will negotiate and contract the sale of the Project ACCUs in such quantities, at such time and at such prices as the Project Developer determines. The Project Developer must not sell any Project ACCUs for any less than the Threshold Price without the written consent of the Landholder.[***Drafting Note****: Remuneration Option 2.*]In consideration for granting the Project Developer the right to undertake the Project on the Project Land and be issued all Project ACCUs, the Landholder is entitled to receive # % of the Project ACCUs (**Landholder’s Share**) from the Project Developer.Within 15 Business Days of issuance to the Landholder of any Project ACCUs, the Project Developer will transfer the Landholder’s Share of the Project ACCUs to the Landholder’s nominated ANREU account.  | This clause will reflect the negotiated commercial arrangement between the parties in terms of the consideration the Landholder is entitled to receive in return for granting the Project Developer the rights conferred by clause 4. **Option 1** Under option 1 the Landholder is entitled to a percentage of the proceeds that the Project Developer receives from the sale of all ACCUs generated by the Project. The Landholder has no control of when the Project Developer sells the project ACCUs, the price the Project Developer sells the ACCUs for, or the quantity of ACCUs sold at any one point. However, the Project Developer cannot sell the ACCUs for less than the Threshold Price without the Landholder’s consent. The Threshold Price will be agreed between the parties and specified in the defined terms. If the Landholder is not happy with the Project Developer having such a broad discretion regarding the timing around the sale of the ACCUs it may wish to negotiate alternative terms. **Option 2** Under option 2 the Landholder is entitled to receive a percentage of the ACCUs generated by the Project and issued to the Project Developer. The Landholder will need to hold an ANREU account so the ACCUs can be transferred to them. If the Landholder does not wish to open an ANREU account or be responsible for selling their own ACCUs, the Landholder may prefer remuneration option 1.  |
| Project Developer Obligations Without limiting any other provision of this Agreement, the Project Developer must: maintain its status as a Fit and Proper Person; subject to clause 7.2, meet all of its obligations as Project Proponent of the Project under the CFI Legislation and Methodology; undertake the Project Developer Activities in accordance with the Project Management Plan;hold and maintain all necessary consents and approvals required in order to perform its obligations under this Agreement; and use its best endeavours to observe and fulfil the requirements of the Code of Conduct when dealing with the Landholder and meeting its obligations under this Agreement.The Parties agree that the Project Developer is not required to satisfy any obligation it has as Project Proponent of the Project under the CFI Legislation and Methodology which is specified as being the responsibility of the Landholder under the Project Management Plan.  | This clause addresses the key obligations of the Project Developer. As the Landholder’s remuneration is tied to the performance of the Project these obligations ensure that the Project Developer won’t compromise the performance of the Project. The first obligation on the Project Developer is to maintain its status as a Fit and Proper Person within the meaning of the CFI Act. This is an important obligation as the Project Developer cannot act as Project Proponent of the Project unless they are a Fit and Proper Person. The second obligation on the Project Developer is to comply with its obligations as Project Proponent of the Project under the CFI Legislation and Methodology. This would include matters such as submitting offsets reports, arranging audits for the Project, keeping Project records etc. If an obligation which would otherwise rest with the Project Proponent of the Project pursuant to the CFI Legislation and Methodology is specified as being the responsibility of the Landholder under the Project Management Plan, the Project Developer is not require to meet this obligation under the Agreement. The third obligation on the Project Developer is to undertake the Project Developer Activities in accordance with the Project Management Plan. Project Developer Activities means those matters and activities specified in the Project Management Plan as being the responsibility of the Project Developer to perform and/or undertake. The Project Management Plan will be contained in a schedule to the Agreement and will have been prepared having regard to the requirements of the CFI Legislation and the Methodology. There is likely to be some cross over between the activities the Project Developer is specified as being responsible for under the Project Management Plan and the Project Developer’s general obligations under the CFI Legislation and Methodology as Project Proponent of the Project. The final obligation on the Project Developer is to use its best endeavours to observe and fulfil the requirements of the Code of Conduct when dealing with the Landholder and meeting its obligations under this Agreement. The Code of Conduct aims to define best practice for carbon project developers and, among other things, sets out rules and standards with respect to communication with, and the provision of advice to, Landholders. Breach of these obligations may result in the Landholder having the right to terminate the Agreement. Clause 24.3 addresses the termination rights of the Parties. |
| Landholder Obligations Without limiting any other provision of this Agreement, the Landholder must: undertake the Landholder Activities in accordance with the Project Management Plan; and not undertake, and use reasonable endeavours to ensure no third party undertakes, any Restricted Activities on the Project Land.  | This clause addresses the key obligations of the Landholder. The first obligation on the Landholder is to undertake the Landholder Activities in accordance with the Project Management Plan. Landholder Activities means those matters and activities specified in the Project Management Plan as being the responsibility of the Landholder to perform and/or undertake. As noted above, the Project Management Plan will be contained in a schedule to the Agreement and will have been prepared having regard to the requirements of the CFI Legislation and the Methodology. Typically, the matters and activities that the Landholder will be responsible for will have to do with the *physical* (rather than administrative) development, implementation and management of the Project (for example undertaking planting, maintaining fences, maintaining fire breaks) although the activities may also be administrative (such as recording keeping). The second obligation on the Landholder is not to undertake, and use reasonable endeavours to ensure no third party undertakes, any Restricted Activities on the Project Land. The Project Management Plan will specify certain activities that are not to be undertaken on the Project Land (i.e. the ‘Restricted Activities’). The list of Restricted Activities will be prepared having regard to the Methodology but may include such things as restrictions on grazing, restrictions on clearing vegetation etc. The purpose of this clause is to ensure that the performance of the Project isn’t compromised by the actions of the Landholder or a third party. Breach of these obligations may result in the Project Developer having the right to terminate the Agreement. Clause 24.3 addresses the termination rights of the Parties.It is important for a Project Developer, when contracting with a Landholder, to ensure that the Landholder has an accurate understanding of the obligations they will be under if they enter into the Project Development Agreement. This could be done by way of providing the Landholder with a plain English guide or fact sheet that addresses the Landholder’s obligations under the Project Management Plan and, where appropriate, the Project Development Agreement. |
| Mutual Obligations Without limiting any other provision of this Agreement, each party must: not do anything which would lead to the Project being revoked as an Eligible Offsets Project, unless mutually agreed between the parties in writing;not do anything which would lead to a Disturbance, Reversal or a Relinquishment Notice being issued by the Regulator;not do anything that would reduce the amount of ACCUs the Project was capable of generating; promptly share and disclose information with the other party which it considers to be of relevance to the performance of Project (for example changes in the climatic conditions of the Project Land or government policy which may impact on the amount of ACCUs that will be generated by the Project); and promptly provide any information, and deliver any documents that are reasonably required by the other party in order to allow them to fulfil their obligations under this Agreement (including, but not limited to, the sharing of any correspondence from the Regulator). | This clause sets out the mutual obligations of the parties i.e. the obligations that apply to both parties. Subclauses 9.1(1) to (3) are aimed at ensuring both parties do not compromise the performance of the Project whilst clause 9.1(4) seeks to ensure the parties are sharing information which may be of relevance to the performance of Project. Subclause 9.1(5) requires the parties to provide information and documents reasonably required by the other party in order for them to fulfil their obligations under the Agreement. As noted above, it is particularly important that the Landholder share information with the Project Developer which the Project Developer requires in order for them to meet their obligations as Project Proponent of the Project (such as preparation of offsets reports).  |
| Assignment and Sub-contracting A party may not assign its rights or sub-contract any of its obligations under this Agreement without the other party’s written consent. For the avoidance of doubt, a party’s liability for the performance of its obligations under this Agreement is unaffected by its engagement of sub-contractors. | This clause restricts the parties from assigning their rights and benefits under the Agreement to another party (without the consent of the other party). It also restrict the parties from engaging a sub-contractor to undertake any of their obligations under the Agreement (without the consent of the other party). The primary purpose of this clause is to ensure that the parties have control and visibility over the persons/entities that will be exercising rights under the Agreement or performing obligations. An alternative option would be to allow sub-contracting to take place, as of right, but restrict assignment without consent.  |
| Access to Project LandSubject to the Project Developer complying with clauses 11.2 and 11.3, the Landholder grants to the Project Developer (including its employees, contractors and agents), for the Term of this Agreement, a non-exclusive licence to access the Project Land (including passing over the Land) for the purpose of undertaking the Project.The Project Developer agrees to:take all reasonable care when accessing the Project Land (including, but not limited to taking reasonable measures to ensure that when accessing the Project Land it does not create or contribute to a Biosecurity Risk);comply with the reasonable directions of the Landholder when accessing the Project Land, including without limitation directions relating to interactions with any other third parties present on the Project Land such as utilities or agricultural contractors; andrepair, or if repair is not feasible, financially compensate, the Landholder for any damage or harm to crops, stock, roads, trails, fences or gates on the Land, caused by the Project Developer or its employees, contractors or agents.The Project Developer must give the Landholder reasonable written notice (being at least 72 hours) of its intention to access the Project Land. | This clause grants the Project Developer the right to access the Project Land for the purpose of undertaking the Project. The Project Developer is also permitted to pass over the Land for the purpose of accessing the Project Land (this may be necessary if the Project Land comprises only part of the Landholder’s Land). The Project Developer requires the right to access the Project Land so the Project Developer can meets its obligations under the Agreement and as Project Proponent of the Project. The Project Developer must give 72 hours written notice to the Landholder before accessing the Project Land. If notice is not provided the Project Developer has no right to access the Project Land. The Project Developer is also required to take reasonable care and comply with the reasonable directions of the Landholder when accessing the Project Land. If the Project Developer (or its employees, contractors or agents) does any damage or harm to crops, stock, roads, trails, fences or gates on the Land they are required to repair the damage and if repair is not feasible, financially compensate, the Landholder.  |
| Eligible Interest Holder Consent The Parties must cooperate to: undertake all reasonable steps to ensure that all Eligible Interest Holders are identified; andobtain the necessary consents required from Eligible Interest Holders under the CFI Legislation. Nothing in this Agreement shall be construed as requiring one or both Parties to agree to pay any monies, or otherwise remunerate in any manner, an Eligible Interest Holder in order to secure its consent. | **Note:**   **This contract clause should only be used for carbon sequestration projects to be undertaken on land where native title has been extinguished. It is not appropriate for use if the project land is, or may be, subject to a native title determination under the *Native Title Act 1993* (Cth). Refer to the Guidance Note for more information.**This clause addresses the extent to which the parties are required to cooperate to ensure the necessary consents required from Eligible Interest Holders under the CFI Legislation are obtained. Eligible Interest Holders are, in essence, a person who holds some form of legal interest in the Project Land (for example, a bank who holds a mortgage over the Project Land). The CFI Legislation requires all Eligible Interest Holders to consent to an Eligible Offsets Project being undertaken on land in which they hold an Eligible Interest. The Project can be registered (conditionally) prior to the consent of Eligible Interest Holders being obtained. Whilst an Eligible Interest Holder may agree to provide their consent in consideration for some form of remuneration, clause 12.3 makes it clear that neither party is required under the Agreement to pay any monies, or otherwise remunerate in any manner, an Eligible Interest Holder in order to secure its consent. An alternative option to this clause is to impose the requirement to obtain Eligible Interest Holder consent on only one of the parties, with the other party being required to provide reasonable assistance to secure the consent.Clause 24.1 provides for the automatic termination of the Agreement in the event that the consent of Eligible Interest Holders cannot be obtained prior to the end of the Project’s first reporting period.  |
| Reversal and RelinquishmentThe Parties acknowledge that they understand the consequences that may arise under the CFI Legislation in the event of a Reversal, which may include:issuance of a Relinquishment Notice; and the declaration of a Carbon Maintenance Obligation over the Land or Project Land. The Landholder agrees to use reasonable endeavours to: prevent the occurrence of a Disturbance or a Reversal; andminimise the adverse impacts on the Project in the event that such a Disturbance or Reversal occurs. The Landholder must immediately upon becoming aware of an actual or threatened Disturbance or Reversal notify the Project Developer and provide the Project Developer with sufficient details to enable the Project Developer to notify the Regulator.The notification by the Landholder under clause 13.3 must detail whether the actual or threatened Disturbance or Reversal occurred as a result of conduct by the Landholder or a third party.Subject to clause 13.6, the Project Developer is responsible for complying with a Relinquishment Notice issued in respect of the Project. Without limiting any remedy that may available to the Project Developer for breach of contract, if the Reversal occurs as a result of the act or omission of the Landholder, the Landholder must reimburse the Project Developer the reasonable costs associated with Project Developer complying with the requirements of:Clause 13.2(2);and the Relinquishment Notice. | This clause sets out the parties respective obligations in relation to a Disturbance or Reversal.Disturbance is defined as an event, or conduct engaged in by a party, which may have the effect of causing a release of carbon dioxide back into the atmosphere which had otherwise been sequestered as a result of the Project. Reversal is defined as the release of carbon dioxide back into the atmosphere which had otherwise been sequestered as a result of the Project, however such a reversal is caused.Clause 13.2 requires the Landholder to use reasonable endeavours to prevent the occurrence of a Disturbance or a Reversal and minimise the adverse impacts on the Project in the event that such a Disturbance or Reversal occurs. These obligations rest with the Landholder as they are the party with day to day access to the Project Land and in the best position to monitor and act on any threat to the vegetation or soil in which the carbon is stored. ‘Reasonable endeavours’ can be broadly characterised as the actions a person acting reasonably would take having regard to the circumstances.Clause 13.5 provides that the Project Developer is responsible for complying with a Relinquishment Notice issued in respect of the Project. A Relinquishment Notice is a notice requiring the Project Proponent of a Project to relinquish (i.e. give back) a specified number of ACCUs to account for a Reversal. A Relinquishment Notice will only be issued by the Regulator if the Reversal is a ‘Significant Reversal’ within the meaning of the CFI Legislation. A Relinquishment Notice won’t be issued by the Regulator if the Significant Reversal was caused by a natural disturbance (defined under the CFI Act as flood, bushfire, drought, pest attack and disease), or the actions of a third party (where those actions were not within the reasonable control of the Project Proponent) provided the Project Proponent took reasonable steps to mitigate the reversal.If the Project Proponent fails to comply with a Relinquishment Notice, the Regulator is able to declare a Carbon Maintenance Obligation over the land on which the project is being undertaken. It is important to note that a Carbon Maintenance Obligation can require the owner or occupier of the land (as opposed to the Project Proponent) to ensure that the amount of carbon sequestered in the vegetation or soil on the land is not further reduced. To date, there have been no Carbon Maintenance Obligations declared over land so it is difficult to provide further guidance as to how they will operate.Clause 13.5 has been drafted to align with the CFI Legislation as under the CFI Legislation the requirement to comply with a Relinquishment Notice rests with the Project Proponent of a Project. Nevertheless, if the Reversal was the result of the of the act or omission of the Landholder, clause 13.6 requires the Landholder to reimburse the Project Developer the reasonable costs associated with Project Developer complying with the requirements of the Relinquishment Notice. |
| Compliance with Applicable LawsThe Parties mutually agree that each will observe and fulfil the requirements of all Applicable Laws (including, but not limited to, Australian Consumer Laws, OHS Laws and the CFI Legislation) when meeting their respective obligations under this Agreement, and comply with any notices issued under such laws. | This clause is a general requirement on both parties to comply with all Applicable Laws when meeting their respective obligations under this Agreement. Applicable Laws is defined broadly and means ‘all applicable legislation, rules, policies, codes and methodology and all legally binding interpretations, judgements, injunctions and orders of any authority, court or tribunal applicable to the Project under this Agreement.’As note above in relation to clause 8, the Project Developer may consider providing the Landholder with plain English guidance addressing the Landholder’s obligations under this clause to ensure that the Landholder has an accurate understanding of their obligations if they enter into the Project Development Agreement. |
| Project Costs Subject to clauses 15.2 and 15.3 and unless expressly provided otherwise in this Agreement, all costs and expenses under this Agreement are to be borne by the party who is otherwise liable to pay the cost or expense. The Project Developer is liable for all costs and expenses incurred in undertaking and/or providing the Project Developer Activities as specified in the Project Management Plan. The Landholder is liable for all costs and expenses incurred in undertaking and/or providing the Landholder Activities as specified in the Project Management Plan. | This clause addresses which parties are responsible for costs associated with the Project. The starting position is that if a party incurs a cost or expense under the Agreement it is liable to pay the cost or expense. This clause is subject to clauses 15.2 and 15.3 which provide that the parties are liable for all costs and expenses incurred in undertaking and/or providing those activities which are specified in the Project Management Plan as being their responsibility. For example:if the Project Management Plan specifies that the Landholder is responsible for undertaking planting activities, the Landholder will be responsible for the costs and expenses associated with undertaking the planting; and if the Project Management Plan specifies that the Project Developer is responsible for arranging and submitting audits for the Project, the costs and expenses associated with the engagement of the auditor are to be borne by the Project Developer. It is recommended that the Landholder give consideration to the financial impacts of the Project on its landholdings before entering into a Carbon Farming Project Development Agreement. In this context, it is noted that the costs of undertaking the Project may extend beyond the crediting period, depending upon the length of the permanence period. For example if a Permanence Period of 100 years is chosen, this would extend beyond the standard 25 year Crediting Period for carbon sequestration projects. |
| Dealing with the Project LandThe Landholder must not sell, transfer or dispose (**Dealing**) of the Project Land to a third party without the consent of the Project Developer. The Project Developer must not withhold its consent under clause 16.1 if the third party (who is to acquire an interest in the Project Land) has entered into a deed of novation with the Landholder and the Project Developer agreeing to assume the rights and obligations of the Landholder under this Agreement (**Deed of Novation**). The Landholder must use reasonable endeavours to secure the Deed of Novation prior to the Dealing of the Project Land being completed.In the event that the Deed of Novation cannot be secured prior to the Dealing (or any extended time agreed between the parties), this Agreement will terminate. | This clause prevents the Landholder transferring ownership of the Project Land to a third party without the consent of the Project Developer unless the condition contained in clause 16.2 is satisfied. This clause is important as it protects the interests of the Project Developer who would otherwise not have a legally enforceable agreement with the new owner of the Project Land if the land was transferred without a Deed of Novation being entered into.An alternative option if the Landholder does not wish to agree to the restriction in clause 16.1 could include the ability to terminate the Agreement. The parties would need to determine whether any termination payment should be incorporated in this instance.If the Agreement terminates because the Landholder is unable to secure a Deed of Novation, the parties would need to determine whether any compensation is payable by the Landholder to the Project Developer. As this is a commercial matter, drafting has not been proposed.An alternative way for the Project Developer to obtain projection in the event that the Project Land is sold (or otherwise dealt with, would be to register the Project Developer’s interest on the land. This could be done via registration of the carbon right. Alternatively, the Project Developer could register a caveat in relation to its interest in the land.  |
| ConfidentialitySubject to clauses 18.1(3) and 18.2(3), each party must treat as confidential information all information provided by the other party under this Agreement, that is:Personal Information;marked as confidential or proprietary;agreed between the Parties to be confidential or proprietary; or evident on its face as being confidential or proprietary (**Confidential Information**).Each party must take all reasonable precautions to maintain confidentiality of the other party’s Confidential Information and protect it from unauthorised access, use and disclosure. Each party must not use the other party’s Confidential Information for any purpose other than for exercising rights and satisfying obligations in connection with this Agreement.Each party must not disclose the other party’s Confidential Information to any person except:if required for the purpose of satisfying obligations under the CFI Legislation or in connection with this Agreement;as required by law;to its affiliates, employees, contractors and professional advisors for the purpose of obtaining advice in connection with this Agreement or the Project;with the other party’s prior written consent; orif it is in the public domain without a breach of this Agreement by the first party.Following termination of this Agreement, the Landholder may use and disclose the Project Developer’s Confidential Information if it is reasonably necessary for the Landholder to do so for the purpose of undertaking the Project and satisfying its obligations under the CFI Legislation. | This clause addresses the parties’ mutual obligations in relation to maintaining the confidentiality of the other party’s Confidential Information. Clause 17.4 sets out the various situations in which it is permissible for a party to disclose the other party’s Confidential Information. Importantly, it is permissible for a party to disclose the other party’s Confidential Information if it is required for the purpose of it satisfying its obligations under the CFI Act or in connection with this Agreement. For example, if the Landholder provided certain personal information to the Project Developer which they required in order to register the Project as an Eligible Offsets Project, the exemption contained in clause 17.417.4(1) allows the Project Developer to disclose this information for the purpose of registering the Project as an Eligible Offsets Project (assuming that Project registration was the responsibility of the Project Developer under the Agreement). The definition of Confidential Information has been drafted narrowly so as not to not overly restrict the Parties in their ability to publicly share information regarding the Project. This has been done to facilitate improved transparency around ACCU Scheme projects having regard to the recommendations of the 2022 Independent Review of Australian Carbon Credit Units.The obligations of the parties under this clause survive termination of the Agreement, meaning the parties are required to maintain the confidentiality of the other party’s Confidential Information even after the Agreement comes to an end. Importantly, the Landholder can use and disclose the Project Developer’s Confidential Information if it is reasonably necessary for the Landholder to do so for the purpose of undertaking the Project and satisfying its obligations under the CFI Legislation. This is to cover situations where the Landholder is continuing with the Project despite the termination of the Project Development Agreement. |
| Intellectual Property and Data Project Developer IP and DataThe Parties agree that, the Project Developer will own: all of the Project Developer IP; and all data created or developed by the Project Developer in the performance of its obligations under this Agreement (**Project Developer Data**).The Landholder hereby assigns to the Project Developer all right, title and interest in any Project Developer IP and Project Developer Data to the extent that the Landholder has any such right, title and interest. The Project Developer will share the Project Developer Data with the Landholder on request. Unless otherwise agreed in writing between the Parties, Project Developer Data is not to be treated as Confidential Information and may be disclosed by the Landholder. Project Developer IP to be treated as Confidential Information and is subject to clause 17. Landholder IP and Data The Parties agree that, the Landholder will own:all of the Landholder IP; and all data created or developed by the Landholder in the performance of its obligations under this Agreement (**Landholder Data**).The Project Developer hereby assigns to the Landholder all right, title and interest in any Landholder IP and Landholder Data to the extent that the Project Developer has any such right, title and interest. The Landholder will share the Landholder Data with the Project Developer on request. Unless otherwise agreed in writing between the Parties, Landholder Data is not to be treated as Confidential Information and may be disclosed by the Project Developer. The Landholder IP is to be treated as Confidential Information and is subject to clause 17. | This clause addresses who owns the intellectual property (**IP**) (and data) created or developed by the parties in the performance of their obligations under the Agreement. In short, each party owns the IP and data that was created or developed by them in the performance of their obligations under the Agreement. A party will also continue to own any IP they owned at the commencement of the Agreement (and any improvements, derivative works or modifications to that IP). To facilitate improved transparency around ACCU Scheme projects, the Parties must share with each other data that was created or developed by them in the performance of their obligations under the Agreement and that data is not to be taken to be Confidential Information unless agreed between the Parties i.e. the Parties’ respective data can be disclosed by the other party to any third party and for any purpose unless the Parties agree otherwise in writing. Where a Landholder is a First Nations person or entity, it would be appropriate to amend clause 18 or include further provisions to ensure that the Landholder’s Indigenous Cultural and Intellectual Property (**ICIP**) rights are protected and all ICIP remains in the control and ownership of the Landholder and is not otherwise used without the Landholder’s free, prior and informed consent. ICIP has a broad meaning and generally refers to all aspects of cultural practices, traditional knowledge, resources and knowledge systems developed by First Nations people as part of their identity. |
| Insurance**Landholder Insurance**The Landholder must effect or cause to be effected and maintained appropriate insurances on or before the Commencement Date and for the Term. **Project Developer Insurance**Subject to clause 19.1(1)(2), the Project Developer must effect or cause to be effected and maintained appropriate insurances (including but not limited to Sequestered Carbon Insurance) on or before the registration of the Project as an Eligible Offsets Project and for the Term.The Project Developer is not required to effect and maintain Sequestered Carbon Insurance if it is: not available to the Project Developer; or commercially unreasonable having regard to the expected profitability of the Project and the costs associated with effecting and maintaining Sequestered Carbon Insurance.The Project Developer must advise the Landholder if it is not able to effect and maintain Sequestered Carbon Insurance.**General**Where applicable, each party must ensure that the interest of the other party is noted on the policy, or dealt with in such other manner as may be equivalent to noting.Each party will share certificates of currency of the insurances required to be maintained by it under this Agreement on request of the other party. | This clause provides that each party is required to be maintain appropriate insurances. The insurance policies it is appropriate for a party to maintain will be dependent on the activities that the party will be responsible for under the Project Management Plan. This clause may be amended by the parties to list the specific insurance policies required to be held by a party having regard to the party’s obligations under the Project Management Plan (e.g public liability, workers compensation). This would provide greater certainty to the parties. Clause 19.2(1) requires the Project Developer to maintain Sequestered Carbon Insurance. Sequestered Carbon Insurance means insurance which covers losses associated with a Reversal as the result of a natural disaster. As Sequestered Carbon Insurance is not commonly available and may not be affordable having regard to the expected profitability of the Project, clause 19.2(2) excuses the Project Developer from holding Sequestered Carbon Insurance if it is not available or not commercial.  |
| Mutual Warranties and RepresentationsIn addition to and despite all other warranties, express or implied, in this Agreement, each party represents and warrants to the other that:it has the right, power and authority, and has taken all action necessary and has obtained all authorisations required or desirable, to enter into and perform its obligations under this Agreement;the entry into force and performance of this Agreement will not cause it to be in breach of any law or regulation, its constitutional documents or, to the extent it could reasonably be expected to have a material adverse effect on the performance of its obligations under the agreement, any obligations to a third party; it is not presently suffering or is aware of circumstances that may soon cause it to suffer an Insolvency Event; all information supplied to the other in the performance of this Agreement is accurate and complete; and it has no actual knowledge of any fact or circumstances which would prevent or limit the use of the Project Land for the purposes of the Project as anticipated under this Agreement. | This clause contains the parties’ cross-representations and warranties. Cross-representation and warranties are statements each party makes which the other party can rely on as fact. If the statement is untrue the other party may bring a claim for breach of contract or potentially rescind the Agreement. The Project Developer and Landholder will need to make their own enquires and undertake their own due diligence to ensure that they can make the representations and warranties contained in this clause.  |
| Project Developer Warranties and RepresentationsIn addition to and despite all other warranties, express or implied, in this Agreement, the Project Developer represents and warrants that its employees, contractors and sub-contractors have the necessary skills and expertise to undertake and/or provide the Project Developer Activities as specified in the Project Management Plan. The Project Developer makes no warranty, representation or guarantee in relation to, among other things, the following:successful registration of the Project as an Eligible Offsets Project;the amount of ACCUs that may be generated by the Project; orthe Landholder’s financial or commercial gains or losses that may result from the Project. | The first part of this clause contains the Project Developer’s representation and warranty that it (and its contractors and sub-contractors) have the necessary skills and expertise to undertake and/or provide the Project Developer Activities. As noted above, if this is found to be untrue the Landholder may be entitled to bring a claim for breach of contract or potentially rescind the Agreement. The second part of this clause lists out the matters that the Project Developer makes **no** representation, warranty or guarantee in relation to i.e. the Landholder will not be entitled to bring a claim for breach of contract (or rescind the Agreement) on the basis that the Project Developer led it to believe that: 1. the Project would be capable of successful registration as an Eligible Offsets Project;
2. the Project would generate a certain amount of ACCUs; or
3. the Landholder would make certain commercial gains as a result of the Project.

The Landholder will need to be comfortable with the practical and commercial feasibility of the Project on the basis of its own enquiries and due diligence, including with regard to potential sequestration rates from the Project and the impact of the Project on the Landholder’s long term use of its land.If the Landholder is relying entirely on information or advice provided by the Project Developer in relation to its decision to allow the Project to be developed on its Land and any financial return it may obtain from doing so, then the Landholder may require clause 21.2 (or parts) to be deleted.ACCUs are designated as “financial products” under the *Corporations Act.* If the Project Developer provides financial product advice to the Landholder, the Project Developer may need to hold an Australian Financial Services Licence. Further professional advice should be sought on this aspect.  |
| Force MajeureIf a party (**Affected Party**):is prevented from or delayed in performing an obligation (other than to pay money) by a Force Majeure Event; as soon as possible after the Force Majeure Event occurs, notifies the other party of full particulars of:the Force Majeure Event;the effect of the Force Majeure Event on performance of the Affected Party’s obligations;the anticipated period of delay; andthe action (if any) the Affected Party intends to take to mitigate or remove the effect and delay; andpromptly and diligently acts to mitigate or remove the Force Majeure Event and its effect;then the obligation is suspended during, but for no longer than, the period the Force Majeure Event continues and such further period as is reasonable in the circumstances. If the Affected Party is prevented from or delayed in performing the obligation by the Force Majeure Event for at least # Business Days, any party may by notice to the other party terminate this Agreement.  | This clause specifies the consequences of a force majeure event and the obligations on the affected party. A force majeure event is generally defined as an event that is beyond the control of one party which effects the ability of that party to perform its obligations under the Agreement. In this Agreement ‘Force Majeure Event’ is given the following specific and narrower meaning: ***Force Majeure Event*** *means any of the following events:* *fire, storm, frost, wind, flood, heatwave, drought or any other adverse weather or climatic condition or natural disaster;**act of God;**biosecurity or pest incursion, disease, epidemic, national emergency, war, terrorism, riot, insurrection, vandalism or sabotage;**strike, lockout, ban, limitation of work or other industrial disturbance; or**law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application;**which:**is unforeseen by the Affected Party;**is beyond the control of the Affected Party; and**occurs without the fault or negligence of the Affected Party.*Clause 22.1 provides that a Party which is prevented from or delayed in performing an obligation under the Agreement by a Force Majeure Event will not be in breach of the Agreement **provided** it satisfies the preconditions contained in subclauses 22.1(2) and (3).  |
| Dispute ResolutionIf a dispute arises in connection with this Agreement (**Dispute**) a party to this Agreement must not commence any court proceedings unless the Parties have complied with clauses 23.2 and 23.3 except where a Party seeks urgent interlocutory relief or such other provisional judicial relief as it considers necessary to avoid irreparable damage. A party to this Agreement claiming that a Dispute has arisen must give written notice (**Dispute Notice**) to the other party or parties of the Agreement specifying the nature of the Dispute. Within 10 Business days of receipt of the Dispute Notice (or such further period as agreed in writing by them) the Parties must agree as to; the dispute resolution mechanism (e.g. expert determination, mediation, arbitration etc.) and procedures to be adopted;the timetable for all steps in those procedures; and the selection and compensation of the independent person required for such mechanism. If the Parties fail to reach agreement under clause 23.3 within the stipulated or agreed timeframe, the Dispute must be submitted to mediation in accordance with clauses 23.5 and 23.6.The mediation must be administered by the Australian Disputes Centre (**ADC**) in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC. The Parties must pay the mediator’s remuneration in equal shares. Each party must pay its own costs of the mediation. | This clause specifies how disputes between the parties are to be resolved. The aim of this clause is for the parties to avoid (if possible) legal proceedings. Under the clause a party is prevented from commencing court proceedings in relation to a dispute until the process specified in clauses 23.2 and 23.3 have been followed. Under the clause the parties are given the opportunity to agree on the dispute resolution mechanism and process. If the parties are unable to reach agreement (on the dispute resolution mechanism and process) within the time frame specified in clause 23.3 the dispute must be referred to mediation.Mediation is a process whereby a neutral third party (mediator) assists the parties to attempt to resolve their dispute by agreement. A resolution cannot be forced on to the parties, it has to be agreed to by both parties. If the parties don’t agree a solution to the dispute (through mediation) it will remain unresolved and the parties can commence court proceedings in relation to the dispute. |
| Termination Automatic termination In the event that: the Parties are unable to secure registration of the Project as an Eligible Offsets Project within # months of the Commencement Date; orany Eligible Interest Holder does not provide consent prior to the end of the Project’s first reporting period, this Agreement is automatically terminated. Termination by agreementThe Parties may terminate this Agreement by mutual agreement.Termination for breachWithout prejudice to any other right, action or remedy, if a party (the first party) materially breaches this Agreement and the breach, being reasonably capable of being remedied by the first party, is not remedied within 15 Business Days of the other party’s notifying the first party in writing about the breach (or such other period as may be agreed between the Parties, both acting reasonably), then the other party may terminate this Agreement with immediate effect by giving the first party notice in writing.Termination for (other) causeIf a party suffers an Insolvency Event then the other party may terminate this Agreement with immediate effect by giving the first party notice in writing.  Change of lawIf there is a Change of Law that would make it unlawful, impossible or futile for a party to exercise a material right or perform a material obligation under this Agreement, then the Parties agree to vary this Agreement, only to the extent necessary or appropriate, so that the Parties can comply with the Change of Law and give effect to the objectives and terms of this Agreement.If it is not possible to vary this Agreement to achieve the outcome set out in clause 24.5, then either party may terminate this Agreement with immediate effect by giving the other party notice in writing. | This clause sets out the circumstances which:will result in the automatic termination of the Agreement (i.e. the parties do not exercise a right to terminate the Agreement - it is simply automatically terminated by virtue of the circumstance occurring); orgives a party a right to terminate the Agreement. On termination of the Agreement, the parties are no longer bound by the terms of the Agreement. However, there are some clauses which will “survive” termination, meaning the parties are still required to adhere to them following termination of the Agreement (see guidance box below). This clause specifies two circumstances which will result in the automatic termination of the Agreement (failure to secure registration of the Project as an Eligible Offsets Project or obtain Eligible Interest Holder consent within specified timeframes). As the Agreement is wholly premised on the implementation and running of the Project under the CFI Legislation, if this cannot be achieved it would be impossible or futile for the parties to exercise their rights or perform their obligations under the Agreement and as such, the Agreement should be terminated.There are three circumstances which give a party a right to terminate the Agreement. These are set out in clauses 24.3, 24.4 and 24.5. In relation to clause 24.3, it is important to note that a breach of material obligation of the Agreement does not give rise to a right to terminate the Agreement. The breaching party must first be given the opportunity to remedy the breach (if the breach is capable of being remedied). In relation to clause 24.4, the parties should give consideration to the definition of Insolvency Event as it has been given a broad meaning. The parties should ensure that they are comfortable with the definition of Insolvency Event having regard to their business operations and solvency. Where the agreement is terminated prior to the conclusion of the Project, the Project Developer will no longer hold the ‘legal right’ to undertake the Project. Should the Landholder wish for the Project to continue they would need to take on the role of Project Proponent or contract with another Carbon Project Developer. The revocation of the Project prior to the conclusion of the Project’s Permanence Period may result in a requirement for the Project Developer to relinquish a specified number of ACCUs (which could form the basis for a damages claim if the Agreement was terminated on the breach of the Landholder).  |
| Effect of Termination On termination of this Agreement (for whatever reason) or expiry of the Term each party:subject to clause 25.2,is released from its obligation to further perform the Agreement; andretains the rights it had against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.Despite any other provision of this Agreement no termination of this Agreement affects the obligations of the Parties under this clause and clauses 0, 17, 18, 23 and 25. These clauses survive termination and remain in force and effect in accordance with their respective terms. | As noted above, on termination of an Agreement the parties are no longer bound by the terms of the Agreement. This clause, however sets out certain exceptions to this general rule and provides that: termination of the Agreement does not extinguish a party’s rights against the other party in respect of any past breach; andcertain clauses (being, the Transfer of Carbon Rights, Confidentiality, Intellectual Property and Data, Dispute Resolution and Effect of Termination clauses) continue to bind the parties following termination.  |
| Other clauses for consideration GSTIndemnities Limitation of Liability |  |
| Boilerplate clausesNoticesLegal Relationship Entire Understanding ContinuationVariationSeveranceGoverning LawJurisdictionElectronic Execution and Counterparts |  |