***This template should be used as a starting point and modified based on the specific circumstances of your deal as well as the needs of your organization. We’ve included annotations for your convenience that can be used for reference. This template does not, and is not intended to, provide legal advice. Please talk with a lawyer licensed to practice in your jurisdiction before using or relying on this template.***

**CARBON REMOVAL OFFTAKE AGREEMENT
BETWEEN
[CARBON SUPPLIER] AND [BUYER]**

THIS CARBON REMOVAL OFFTAKE AGREEMENT (the “Agreement”) is made as of [Date] (the “Effective Date”) between [Carbon Supplier] (“Carbon Supplier”)[[1]](#footnote-0) and [Buyer] (“Buyer”). Carbon Supplier and Buyer may be referred to herein collectively as the “Parties,” or individually as a “Party.”

WHEREAS, the removal and storage of greenhouse gasses, including carbon dioxide (“CO2”), from the atmosphere has been recognized as a critical component of mitigating global warming;

WHEREAS, scalable and permanent carbon removal and storage technologies and projects (“CRU Projects”) can benefit from multi-year offtake agreements;

WHEREAS, Carbon Supplier has proposed to Buyer the operation of a project intended to remove greenhouse gasses from the atmosphere, as further described in Exhibit B (*Project Description*) (the “Project”);

WHEREAS, Carbon Supplier wishes to sell CRUs representing Environmental Attributes associated with removal and storage of greenhouse gasses, expressed in metric tons of CO2e, generated by the Project, and Buyer wishes to purchase CRUs generated by the Project from Carbon Supplier, in accordance with the terms of this Agreement; and

WHEREAS, the Parties desire to enter into this Agreement in order to set forth their respective rights and obligations with respect to the transactions contemplated hereby.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions and Interpretation**
	1. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings assigned to them in Exhibit A (*Definitions*).
	2. Interpretation. When a reference is made in this Agreement to an Article, Section or Exhibit, such reference shall be to an Article or Section of, or an Exhibit to, this Agreement, unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The words “hereof,” “hereto,” “herein,” “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “or” is not exclusive. The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.” Words in this Agreement describing the singular number shall be deemed to include the plural and vice versa. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein shall mean such agreement, instrument or statute as from time to time amended, modified or supplemented, unless otherwise specifically indicated. References to a Person are also to its permitted successors and assigns. References to “days” are to calendar days unless otherwise indicated; provided, that any action otherwise required to be taken on a day that is not a Business Day shall instead be taken on the next Business Day. Unless otherwise specifically indicated, all references to “dollars” and “$” are to U.S. dollars.
2. **Term, Conditions Precedent[, Commercial Operation][[2]](#footnote-1) and Delivery**
	1. Term. This Agreement is effective as of the Effective Date and shall continue in effect until the date that the CRUs for the final Contract Year identified in Exhibit D (*Quantity and Price by Year*) have been Delivered to Buyer (the “Term”), unless earlier terminated pursuant to the terms hereof. The Term may be extended or renewed if both Parties agree in writing at least thirty (30) days in advance of the expiration of the then current Term to a specified time period for such extension or renewal. For clarity, unless otherwise agreed by the Parties, an extension or renewal of the Term shall not affect the volume of CRUs required to be Delivered or purchased under this Agreement pursuant to the applicable provisions hereof, including this Article 2.
	2. Delivery.
		1. Delivery Obligation. From and after the [date that Commercial Operation has occurred pursuant to Section 2.6 (*Commercial Operation Date*)]**[[3]](#footnote-2)**, during each Contract Year of the Term, Carbon Supplier shall have an obligation to Deliver to Buyer the number of CRUs stated for such Contract Year in Exhibit D (*Quantity and Price by Year*) under the heading “Contract Quantity (CRUs)” (the “Contract Quantity”), or such lower or higher amount as may apply pursuant to Section 2.3 (*Delivery Volumes*) or Section 5.2 (*Excess CRU ROFO*), on one or more Delivery Dates.
		2. Delivery Certification; Transfer of Title. On or prior to each Delivery Date and with respect to the CRUs Delivered on such Delivery Date, Carbon Supplier shall provide to Buyer an executed certificate in the form of Exhibit E (*CRU Certification*) (a “CRU Certification”). Upon Delivery, all right, title, and interest in and to the CRUs will fully vest in Buyer (or, at Buyer’s option, its designee). The transfer of title to CRUs pursuant to this Agreement includes the exclusive right to verify, certify, use, transfer, sell, or resell to third parties, and otherwise take advantage of the rights, claims, value, and ownership of, such CRUs, in each case, in Buyer’s sole discretion. Buyer may, on its behalf or on behalf of a designee, elect to have such CRUs retired. Upon Buyer’s written request, Carbon Supplier shall retire CRUs on behalf of Buyer (or its designee) and in such Person’s name. Carbon Supplier agrees not to sell or transfer to any Person except Buyer any right or title to or interest in any of the CRUs obligated to be Delivered by Carbon Supplier to Buyer under this Agreement.
	3. Delivery Volumes. The Parties acknowledge that the Project may generate a number of CRUs in a given Contract Year that is greater than or less than the Annual CRU Target for such Contract Year. If, in connection with any such delivery volume change, the Parties agree to update Exhibit D (*Quantity and Price by Year*) in accordance with this Agreement, Exhibit D (*Quantity and Price by Year*) may be deemed replaced by such updated Exhibit D if Buyer consents to such replacement. Buyer’s “Proportionate Share” in a given Contract Year is equal to (i) the Contract Quantity for such Contract Year divided by (ii) the Annual CRU Target for such Contract Year as set forth on Exhibit D.
		1. Delivery Surplus. In the event the Project generates a number of CRUs in a given Contract Year that is greater than the Annual CRU Target for such Contract Year whether due to expansions or modifications of the Project or any other reason (“Excess CRUs”), Buyer shall have the right, but not the obligation, to purchase its Proportionate Share of such Excess CRUs as set forth in Section 5.2. For the avoidance of doubt, Buyer shall have no obligation to acquire CRUs in excess of the annual or aggregate Contract Quantities set forth on Exhibit D (*Quantity and Price by Year*) for a given Contract Year or over the Term, respectively.
		2. Delivery Shortfall. In the event the Project generates a number of CRUs in a given Contract Year that is less than the Annual CRU Target for such Contract Year (a “Delivery Shortfall”), Carbon Supplier shall deliver to Buyer its Proportionate Share of the CRUs produced in such Contract Year. For each Contract Year in which there is a Delivery Shortfall, Carbon Supplier shall provide a written explanation of such shortfall to Buyer Representative and, if requested by Buyer Representative, shall use reasonable efforts to remedy such shortfall (including, where feasible, by proposing revised Contract Quantities in subsequent Contract Years such that Buyer receives its Total Contract Quantity over the Term), subject to Buyer’s written approval in its sole discretion. In the event the Project generates a number of CRUs that results in a Minimum Quantity Deficit, Buyer may exercise its rights in accordance with Section 8.2. For the avoidance of doubt, Buyer shall have no obligation to purchase any CRUs after the expiration or termination of this Agreement in accordance with its terms, whether or not the Project generates sufficient CRUs to satisfy the Total Contract Quantity or Minimum Quantity.
	4. Conditions Precedent to Commencement Date. Carbon Supplier shall use best efforts to satisfy the conditions precedent to the Commencement Date set forth below (the “Conditions Precedent”) on or before [Date] (the “Target Commencement Date”). The Conditions Precedent are as follows:
		1. Protocol. Carbon Supplier shall have provided to Buyer a protocol describing the metrics and methods of quantification and verification and other information applicable to the generation of CRUs under this Agreement (the “Protocol”). The Protocol shall: (i) provide an overview of the system-level boundaries for what emissions are included (and excluded) in the CRU calculation; (ii) provide for quantitative estimation, measurement, monitoring and verification of the CRUs generated by the Project; (iii) describe the sources, methods and instruments used to establish that such CRUs meet the requirements for a CRU under this Agreement using the highest verification standards that are feasible for the Project to achieve and publicly available at the time such Protocol is adopted; (iv) ensure that the CRUs do not result from, or cause, “double counting” of CRUs or other Environmental Attributes; (v) describe any uncertainties associated with net carbon removal and storage, estimate those uncertainties according to best practices, and adjust estimates of net removal and storage of the Project and the number of CRUs expected to be generated accordingly; (vi) if appropriate, include a storage monitoring plan and plan for addressing reversals; (vii) establish the procedures by which Carbon Supplier will mitigate or control any and all health and ecosystem safety risks associated with the Project; (viii) require that the Project complies with applicable Laws; (ix) incorporate the requirements of any applicable CRU Issuer; and (x) contain such other information as Buyer’s Representative may reasonably request. Carbon Supplier shall have (A) attached a preliminary form of the protocol to this agreement as of the Effective Date and (B) proposed, no later than sixty (60) days prior to the Target Commencement Date, a final form of Protocol as approved in writing by Buyer’s Representative. The final, agreed Protocol shall be delivered to Buyer and Exhibit F (*Protocol*) shall be deemed replaced by such Protocol.
		2. CRU Issuer. The Project and CRUs to be generated from the Project shall have been approved by the applicable CRU issuer as eligible for registration on a public registry from a CRU issuer that (i) engages a third party verifier having relevant experience, capabilities, certifications and capacity to provide the services contemplated to be provided by such verifier under this Agreement, including any such services or functions required by the CRU Issuer to assess compliance with the Protocol, as applicable (a “Verifier”) and (ii) has been approved in writing by Buyer’s Representative (the “CRU Issuer”).
		3. Engagement of Independent Expert. Carbon Supplier shall have entered into an agreement with an Independent Expert in a form reasonably acceptable to Buyer’s Representative.
		4. Project Documents. Carbon Supplier shall have provided to Buyer [and, with respect to clause (iv) only, [relevant local regulators],][[4]](#footnote-3) the following documents, each in a form reasonably acceptable to Buyer’s Representative:

(i) A document that includes a detailed description of the planning of the Project and how it meets the requirements of the Protocol and any applicable CRU Issuer (the “Project Design Document”), together with written confirmation from the Verifier that the Verifier has approved such Project Design Document;

(ii) A community benefits plan that includes (A) a detailed description of initiatives for community and labor engagement and environmental justice on an ongoing basis with relevant stakeholders, (B) a workforce development program, and (C) a diversity, equity, and inclusion (DE&I) policy and summary of plans to foster a welcoming and inclusive work environment for underrepresented groups (the “Community Benefits Plan”). The Community Benefits Plan shall be in the form outlined in Exhibit C (*Community Benefits Plan*);

(iii) A document that sets forth the number of CRUs expected to be generated by the Project for each Contract Year during the Term (each, an “Annual CRU Target” and the sum of the Annual CRU Targets for all such Contract Years, the “Aggregate CRU Target”), together with written confirmation from the Independent Expert that the Annual CRU Targets are accurate and technically feasible [; and]

(iv) [An ecosystem safety plan that includes (i) standard operating procedures for safe handling and spill prevention for feedstock, by-product, and waste materials; (ii) hazard analysis and relevant disaster management plans; (iii) decommissioning plan; (iv) potential ecosystem impacts list and thresholds for action; and (v) ongoing risk monitoring plan (the “Ecosystem Safety Plan”), to be deemed attached as Exhibit P (*Ecosystem Safety Plan*) when delivered to Buyer and accepted by Buyer’s Representative].[[5]](#footnote-4)

* + 1. Compliance with Agreement. As of the Commencement Date, the representations and warranties of Carbon Supplier set forth herein shall be true and accurate in all material respects, and Carbon Supplier shall have complied in all material respects with all covenants and agreements of Carbon Supplier set forth herein.
		2. Officer’s Certificate. Carbon Supplier shall have delivered to Buyer a certificate in the form attached hereto as Exhibit J (*Form of Commencement Date Certification*) signed by an authorized officer of Carbon Supplier certifying that all Conditions Precedent have been satisfied or waived and proposing a Commencement Date (the “Commencement Date Certification”).
		3. [Achievement of Milestones. Carbon Supplier shall have completed each of the planning and development milestones related to the Project by the dates specified below:

(i) [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.] ]**[[6]](#footnote-5)**

* + 1. [Affiliate Projects.

(i) On [the Effective Date], [TopCo] shall have executed and provided to Buyer the agreement set forth in Exhibit [\_] (*Form of New Project ROFO Agreement*), that provides a right of first offer to Buyer for the purchase of CRUs or other Environmental Attributes that are offered for sale by [TopCo] or any of its Affiliates during the Term of this Agreement (the “New Project ROFO Agreement”). Such execution by [TopCo] of the New Project ROFO Agreement shall satisfy the Condition Precedent set forth in this Section 2.4(h). The New Project ROFO Agreement, when executed by [TopCo] and Buyer, shall supersede the obligations of [TopCo] under Article 5 (*Right of First Offer*) of this Agreement (but not its successors or assigns who may become the Carbon Supplier under this Agreement pursuant to Section 7.11 (*Transfer, Sale, and/or Assignment*)), unless [TopCo] and Buyer agree otherwise. Upon execution of the New Project ROFO Agreement by Buyer, the executed New Project ROFO Agreement provided by [TopCo] shall be binding on [TopCo] and Buyer. [[7]](#footnote-6)

(ii) On the Effective Date, [TopCo] shall have executed and provided to Buyer the agreement set forth in Exhibit N (*Form of Guaranty*) in favor of Buyer. Such execution by [TopCo] of such guaranty agreement shall satisfy the Condition Precedent set forth in this Section 2.4(h)(ii).][[8]](#footnote-7)

* 1. Commencement Date Matters. Carbon Supplier acknowledges and agrees that the satisfaction (or, in the sole discretion of Buyer, waiver, in whole or in part) of the Conditions Precedent set forth above will partially depend upon the findings and certifications of the Independent Expert or the CRU Issuer and the approvals of Buyer or Buyer’s Representative. Within thirty (30) days following the date of receipt of the Commencement Date Certification, Buyer may (x) object in writing to Carbon Supplier’s notice of the Commencement Date as set forth in the Commencement Date Certification, stating with specificity what Conditions Precedent Buyer reasonably believes have not been met, or (y) request additional information. If Buyer so notifies Carbon Supplier, Carbon Supplier shall promptly address the concerns stated in Buyer’s notice and provide any such requested information. The Commencement Date shall occur on the date that the Parties mutually agree in writing that all of the Conditions Precedent have been satisfied (or, in the sole discretion of Buyer, waived, in whole or in part).
	2. [Commercial Operation Date. Carbon Supplier shall use best efforts to achieve Commercial Operation of the Project on or before [ ] (the “Target COD”). Carbon Supplier shall deliver to Buyer a certificate in the form attached hereto as Exhibit K (*Form of COD Certification*) (the “COD Certification”) signed by an authorized officer of Carbon Supplier certifying that Commercial Operation has occurred as of a specified date (such date, the “COD”) and that the Project is capable of reliably producing the Annual CRU Targets, including, with respect to the first Contract Year specified in Exhibit D (*Quantity and Price by Year*), the Contract Quantity for such Contract Year. Within thirty (30) days following the date of receipt of the COD Certification, Buyer may (x) object in writing to Carbon Supplier’s notice of the COD as set forth in the COD Certification, stating with specificity why Buyer reasonably believes the COD has not occurred, or (y) request additional information. If Buyer so notifies Carbon Supplier, Carbon Supplier shall promptly address the concerns stated in Buyer’s notice and provide any such requested information. To the extent the Parties do not agree, Carbon Supplier may engage the Independent Expert to conclusively determine whether and when Commercial Operation has occurred.]**[[9]](#footnote-8)**
	3. Physical Settlement; Forward Contract. Each Party intends that (a) this Agreement and each transaction hereunder meets the criteria for the exclusion from the definition of “swap” set forth in 7 U.S.C. §1(a)(47)(B)(ii) and (b) the transactions contemplated under this Agreement be physically settled. Each Party further intends that (i) this Agreement and all transactions hereunder constitute a single integrated “forward contract” under the U.S. Bankruptcy Code, 11 U.S.C. §101(25); (ii) this Agreement constitutes a “master netting agreement” within the meaning of the U.S. Bankruptcy Code; and (iii) the remedies identified in this Agreement are “contractual rights” as provided for in 11 U.S.C. §556.
1. **Price and Payment**
	1. Buyer Payment Obligations.
		1. CRU Payment Obligations. From and after the [COD]**[[10]](#footnote-9)**, Buyer shall pay to Carbon Supplier a sum for each Contract Year equal to (x) the quantity of CRUs Delivered to Buyer under this Agreement multiplied by (y) the applicable CRU Price for such Contract Year (the “Contract Price”). Carbon Supplier shall invoice Buyer no later than thirty (30) days after each Delivery Date for the Contract Value due to Carbon Supplier for the CRUs Delivered to Buyer on such Delivery Date.
		2. Verification and Registry Payment Obligations. From and after the [COD]**[[11]](#footnote-10)** and for so long as Carbon Supplier is Delivering CRUs to Buyer in accordance with this Agreement, Buyer shall be responsible for Carbon Supplier’s reasonably documented and actually incurred costs of [(i) verification (which may include a physical audit) of the Project, including any such costs associated with social and environmental protocols, and (ii) reporting data in connection with the Project and coordinating review of such data by the CRU Issuer][[12]](#footnote-11) (the “Verification and Registry Costs”), not to exceed the amounts set forth on Exhibit D under the heading “Maximum Buyer Verification and Registry Cost ($ / Year)” for the applicable Contract Year (each, a “Maximum Verification and Registry Cost”). For the avoidance of doubt, any Verification and Registry Costs paid by Buyer, whether directly to the CRU Issuer or as reimbursement to Carbon Supplier, shall count towards the Maximum Verification and Registry Cost for the applicable year. For clarity, subject to the last sentence of this Section 3.1(b), the Verification and Registry Costs shall be payable by Buyer regardless of the number of CRUs so Delivered. Notwithstanding the foregoing, to the extent any Verification and Registry Costs were incurred as a result of inaccurate, incomplete or misleading information provided by Carbon Supplier, Buyer shall not be required to reimburse Carbon Supplier for such costs (and, to the extent such costs were incurred by Buyer directly, Buyer shall be entitled to offset against payments due to be paid by Buyer to Carbon Supplier hereunder (including any reimbursement of other Verification and Registry Costs) any Verification and Registry Costs to the extent arising from the submission of such inaccurate, incomplete or misleading information by Carbon Supplier).
		3. Manner of Payment. Buyer shall pay each invoice in accordance with the payment terms (including timing, currency and methods of payment) provided in the Payment Provisions. At least thirty (30) days prior to the first Delivery under this Agreement, (i) each Party shall provide the other Party with banking details, the name of the account holder to which such payments are to be made, and the name of a contact person responsible for receiving such payments and (ii) Buyer shall notify Carbon Supplier whether Buyer will pay any Verification and Registry Costs to the CRU Issuer directly or to Carbon Supplier as reimbursement for such costs. If Buyer chooses to reimburse Carbon Supplier for any Verification and Registry Costs, Carbon Supplier shall invoice Buyer for such costs actually incurred during the applicable Contract Year, together with reasonable supporting documentation, and Buyer shall reimburse Carbon Supplier for such costs, in accordance with the payment procedures and terms set forth in this Section 3.1(c). Either Party may change the payment instructions by written notice to the other Party at least thirty (30) days in advance of the effective date of such change.
	2. Price Adjustments. If[, during any Contract Year after the Effective Date and until the Financial Closing,]**[[13]](#footnote-12)** Carbon Supplier sells or agrees to sell CRUs to any other Person at a price per metric ton of CO2e that is less than the applicable CRU Price for such Contract Year, (a) Carbon Supplier shall provide prompt written notice thereof to Buyer and (b) the CRU Price payable by Buyer for CRUs Delivered (or yet to be Delivered) under this Agreement for each such Contract Year shall automatically be updated to reflect such lower price for the applicable Contract Year. For clarity, this Section 3.2 (*Price Adjustments*) (i) shall not apply to Contract Years not covered by the agreement with such other Person and (ii) shall not be triggered if the agreement with such other Person has a materially higher volume commitment than this Agreement [or is entered into after the Financing Closing]**[[14]](#footnote-13)**.
	3. Taxes and Fees. Carbon Supplier shall pay or cause to be paid all taxes and fees, including any sales, use or value added taxes, imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the CRUs Delivered to Buyer under this Agreement, to the extent arising prior to or imposed upon the Delivery of CRUs to Buyer. Buyer shall pay to Carbon Supplier any such Governmental Charges that Carbon Supplier has a legal obligation to collect from Buyer provided that such amounts are identified in the invoices rendered to Buyer hereunder for CRUs Delivered in accordance with the payment procedures and deadlines set forth in Section 3.1 (*Buyer Payment Obligations*). Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the CRUs Delivered to Buyer under this Agreement, to the extent arising following the Delivery of the CRUs to Buyer. In the event Carbon Supplier is required by Law to remit or pay Governmental Charges that are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Carbon Supplier for such Governmental Charges. In the event Buyer is required by Law to remit or pay Governmental Charges which are Carbon Supplier’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Carbon Supplier under this Agreement. Nothing shall obligate a Party to pay or be liable for any Governmental Charges for which it is exempt under Law. Buyer may provide Carbon Supplier an exemption certificate or equivalent information acceptable to the relevant taxing authority, in which case, Carbon Supplier will not charge or collect the Governmental Charges covered by such certificate. Carbon Supplier will provide Buyer with any forms, documents, or certifications as may be reasonably required by Buyer to satisfy any information reporting or withholding tax obligations of Buyer with respect to any payments under this Agreement.
2. **Representatives and Independent Expert**
	1. [Representatives. Carbon Supplier and Buyer will each appoint a representative (“Representative”) to coordinate implementation of this Agreement and communication between the Parties. The initial Representative of each of Carbon Supplier and Buyer is named in Section 10.2 (*Notices*). Each Party may rely upon the representations, statements and other communications, subject to this Agreement, of the other Party’s Representative as the statements of such Party. Each Party may change any identified Representative of such Party at any time by providing written notice to the other Party. Each Party is responsible for the actions or omissions of its Representatives in implementing this Agreement.][[15]](#footnote-14)
	2. Independent Expert. Carbon Supplier shall appoint, and Buyer’s Representative shall approve in writing, a third party expert, expected to be [an engineer]**[[16]](#footnote-15)**, having relevant experience, capabilities, certifications and capacity to provide the services contemplated to be provided by such [engineer]**[[17]](#footnote-16)** under this Agreement (the “Independent Expert”). Notwithstanding any such prior approval, if Buyer’s Representative reasonably determines that the then-current Independent Expert is not performing its obligations under this Agreement in a satisfactory manner, Buyer’s Representative may terminate the appointment of such Independent Expert and replace such Independent Expert with a new firm that is mutually acceptable to the Parties. In the event the parties cannot agree on a replacement Independent Expert, a replacement Independent Expert will be determined in accordance with the dispute resolution procedure in Section 10.4 (*Dispute Resolution*). All costs, fees and expenses of the Independent Expert shall be borne and paid directly by Carbon Supplier. To the extent any such costs, fees and expenses are incurred by Buyer directly, Buyer shall be entitled to offset against payments due to be paid by Buyer to Carbon Supplier hereunder, or to reimbursement of such costs, fees and expenses from Carbon Supplier within thirty (30) days after such costs, fees or expenses are incurred. For the avoidance of doubt, in order to qualify as an Independent Expert hereunder, such Independent Expert must be completely independent from, and not have any separate commercial relationship with or be an Affiliate of, Carbon Supplier or any of its Affiliates and otherwise be reasonably acceptable to Buyer’s Representative.
3. **Right of First Offer**
	1. New Project ROFO.
		1. Right of First Offer. Carbon Supplier, on behalf of itself and its Affiliates, hereby grants to Buyer a right of first offer (the “New Project ROFO”) as further described in this Section 5.1, for the purchase of up to Buyer’s ROFO Share of the CRUs or other Environmental Attributes similar to CRUs that are expected to be generated from new carbon removal projects not included in Exhibit B (*Project Description*) (as modified pursuant to Section 7.1 (*Project Development and Operation; Modifications*)) (each a “New Project”) that are owned or developed by Carbon Supplier or any of its Affiliates (“New Project CRUs”), at a price at which Carbon Supplier or such Affiliate proposes to sell such New Project CRUs (the “New Project CRU Price”), prior to Carbon Supplier or such Affiliate offering or selling such New Project CRUs to any other Person during the Term of this Agreement and during the Restricted Period. For the avoidance of doubt, the New Project ROFO does not apply to CRUs that have been contractually committed to third parties in definitive agreements executed prior to the Effective Date and that have been disclosed to Buyer’s Representative. With respect to New Project CRUs, Buyer’s “ROFO Share” is equal to [\_\_\_\_\_\_\_\_\_\_ (\_\_%)][[18]](#footnote-17) multiplied by (A) the Total Contract Quantity divided by (B) the Aggregate CRU Target.
		2. Exercise of Rights.

(i) Notice. Carbon Supplier or its applicable Affiliate shall provide written notice to Buyer of any New Project reasonably promptly after Carbon Supplier or such Affiliate determines that New Project CRUs will be offered for sale from such New Project. Such written notice shall be provided to Buyer in the form attached hereto as Exhibit G (*Form of ROFO Notice*) (the “ROFO Notice”), and shall describe the New Project CRUs, including the source, number and quality of such New Project CRUs, the time periods during which such New Project CRUs are expected to be available and the New Project CRU Price. Carbon Supplier shall propose a form of agreement for the purchase and sale of such New Project CRUs on the terms of the transaction set forth in the ROFO Notice and otherwise on commercially reasonable terms and conditions typical for an offtake agreement for CRUs or Environmental Attributes similar to CRUs, as applicable (the “Proposed Project Agreement”).

(ii) Response. If Buyer desires to purchase some or all of Buyer’s ROFO Share of the New Project CRUs, Buyer shall provide written notice to Carbon Supplier or its applicable Affiliate in the form set forth in Exhibit H (*Form of ROFO Acceptance Notice*) (the “ROFO Acceptance Notice”), together with a signed Proposed Project Agreement or a revised version of such Proposed Project Agreement, within ninety (90) days after the date of receipt of the ROFO Notice (the “New Project ROFO Deadline”). If Buyer submits a revised version of the Proposed Project Agreement to Carbon Supplier or its applicable Affiliate as set forth in this Section 5.1(b), Carbon Supplier or such Affiliate shall negotiate in good faith exclusively with Buyer for a period of no less than ninety (90) days (subject to extension by either Party for an additional ninety (90) days if negotiations are ongoing at the end of the initial ninety (90) day period) after the New Project ROFO Deadline to finalize the Proposed Project Agreement in a form mutually acceptable to the Parties (a “New Project Agreement”). Each Party shall respond promptly to proposed revisions to the Proposed Project Agreement provided by the other Party.

(iii) Acceptance or Rejection. If Buyer does not submit a ROFO Acceptance Notice for New Project CRUs by the New Project ROFO Deadline (or notifies Carbon Supplier or its applicable Affiliate in writing prior to such deadline that it does not intend to exercise its ROFO with respect to such notice) or the Parties fail to reach agreement on a New Project Agreement within the time periods established pursuant to this Section 5.1(b), no further action is required by either Party with respect to the New Project CRUs set forth in the ROFO Notice; provided that neither Carbon Supplier nor any of its Affiliates may sell the New Project CRUs at a price lower than the New CRU Price stated in the ROFO Notice or otherwise on more favorable terms, taken as a whole, compared to those offered to Buyer unless Carbon Supplier or such Affiliate shall have first issued an additional ROFO Notice to Buyer offering to sell such New Project CRUs at such proposed price or terms in accordance with this Section 5.1.

* 1. Excess CRU ROFO.
		1. Right of First Offer. Carbon Supplier, on behalf of itself and its Affiliates, hereby grants to Buyer a right of first offer (the “Excess CRU ROFO”, together with the New Project ROFO, the “ROFO”) as further described in this Section 5.2, for the purchase of up to Buyer’s ROFO Share of Excess CRUs (together with the New Project CRUs, “New CRUs”), at a price equal to [the lower of (i)] the CRU Price for the applicable Contract Year [and (ii) the price proposed to be offered to any third party buyer with respect to such Excess CRUs][[19]](#footnote-18) (the “Excess CRU Price”, together with the New Project CRU Price, each a “New CRU Price”), prior to Carbon Supplier or such Affiliate offering or selling such Excess CRUs to any other Person during the Term and during the Restricted Period. For the avoidance of doubt, the Excess CRU ROFO does not apply to CRUs that have been contractually committed to third parties in definitive agreements executed prior to the Effective Date and that have been disclosed to Buyer’s Representative. With respect to Excess CRUs, Buyer’s “ROFO Share” is equal to Buyer’s Proportionate Share.
		2. Exercise of Rights.

(i) Notice. Carbon Supplier or its applicable Affiliate shall provide written notice to Buyer of any Excess CRUs reasonably promptly after Carbon Supplier or such Affiliate determines that Excess CRUs will be available to sell. Such written notice shall be in the form of a ROFO Notice and shall describe the Excess CRUs, including the source, number and quality of such Excess CRUs, the time periods during which such Excess CRUs are expected to be available and the Excess CRU Price. The purchase of any Excess CRUs shall be made pursuant to this Agreement (as opposed to a New Project Agreement).

(ii) Response. If Buyer desires to purchase some or all of Buyer’s ROFO Share of the Excess CRUs, Buyer shall deliver to Carbon Supplier or its applicable Affiliate a ROFO Acceptance Notice within sixty (60) days after the date of receipt of the ROFO Notice (the “Excess CRU ROFO Deadline”).

(iii) Acceptance or Rejection. If Buyer submits a ROFO Acceptance Notice for Excess CRUs by the Excess CRU ROFO Deadline, then unless the Parties agree otherwise, Exhibit D (*Quantity and Price by Year*) shall be replaced as set forth in Section 2.3 (*Delivery Volumes*). If Buyer does not submit a ROFO Acceptance Notice for Excess CRUs by the Excess CRU ROFO Deadline (or notifies Carbon Supplier or its applicable Affiliate in writing prior to such deadline that it does not intend to exercise its ROFO with respect to such notice), no further action is required by either Party with respect to the Excess CRUs set forth in the ROFO Notice; provided that neither Carbon Supplier nor any of its Affiliates may sell the Excess CRUs at a price lower than the Excess CRU Price stated in the ROFO Notice or otherwise on more favorable terms, taken as a whole, compared to those offered to Buyer unless Carbon Supplier or such Affiliate shall have first issued an additional ROFO Notice to Buyer offering to sell such Excess CRUs at such proposed price or terms in accordance with this Section 5.2.

* 1. Survival of ROFO Obligation; Application in Context of Assignment or Change of Control. [Carbon Supplier][TopCo][[20]](#footnote-19) acknowledges and agrees that in the event of an assignment of this Agreement and a transfer of all of the Project’s assets to an Affiliate of [Carbon Supplier] in accordance with Section 7.11 (*Transfer, Sale, and/or Assignment*), each of [Carbon Supplier][TopCo, Carbon Supplier,] and its Affiliates (including the applicable assignee) shall continue to be bound by the New Project ROFO set forth in Section 5.1. In addition, in the event that this Agreement is assigned by operation of law in connection with a transfer of the Project to a third party pursuant to a Change of Control of Carbon Supplier that is otherwise permitted by and complies with the terms of this Agreement, including Section 7.11 and Section 7.12 (*Change of Control*), the acquiring or surviving entity in such Change of Control shall continue to be bound by the Excess CRU ROFO set forth in Section 5.2 (but not, for clarity, as to any other projects or operations of the applicable third party).
1. **Representations and Warranties**
	1. By Both Parties. Buyer and Carbon Supplier each represent and warrant to the other Party that as of the Effective Date:
		1. Such Party is duly organized, validly existing, and duly qualified to conduct business in each jurisdiction where required; the execution, delivery and performance of this Agreement are within its power, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Law;
		2. There is no action, claim, proceeding, order, writ, injunction, judgment or investigation outstanding or pending, or to the knowledge of such Party, threatened against or relating to such Party or the Project that would have a material adverse effect on this Agreement or the transactions contemplated hereby or such Party’s ability to perform its obligations under this Agreement;
		3. Such Party is an “eligible commercial entity” and an “eligible contract participant” as defined in Sections 1a(17) and (18) of the Commodity Exchange Act, as amended (7 U.S.C. §1a), and such Party is a “forward contract merchant” within the meaning of the U.S. Bankruptcy Code, 11 U.S.C. §101(26); and
		4. This Agreement is the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors’ rights generally and subject to general equitable principles.
	2. By Carbon Supplier. Carbon Supplier represents and warrants to Buyer that as of the Effective Date, the Commencement Date, [the COD,]**[[21]](#footnote-20)** any date on which Carbon Supplier Delivers CRUs to Buyer, and any date on which Carbon Supplier sends an invoice to Buyer:
		1. Carbon Supplier has good and marketable title to the Project and its assets free and clear of any liens or encumbrances not disclosed in writing to Buyer; Carbon Supplier has not infringed on any intellectual property rights of any other Person in connection with the Project; none of Carbon Supplier, its Affiliates or the Project is the subject of any pending or threatened action, suit or proceeding not disclosed in writing to Buyer prior to the Effective Date;

;

* + 1. Carbon Supplier (i) is in compliance in all material respects with all Laws applicable to the Project and this Agreement, including all environmental Laws, if applicable, and (ii) has obtained and is in compliance in all material respects with the terms and conditions of all Governmental Approvals required for the present stage of development of the Project, including permits for operation, if applicable;
		2. All information provided to Buyer and Buyer’s Representative by Carbon Supplier in connection with the Project or this Agreement is true, complete, and correct in all material respects and does not omit to state a material fact necessary in order to make such information not misleading;
		3. Each CRU Delivered by Carbon Supplier to Buyer under this Agreement is valid, accurately represents the identity, volume, and CO2e of greenhouse gasses removed by the Project, and complies in all material respects with the terms of this Agreement, including the requirements of the Protocol and any applicable CRU Issuer;
		4. Upon Delivery by Carbon Supplier of CRUs to Buyer hereunder, Carbon Supplier will have transferred to Buyer all right, title, and interest in and to such CRUs, free and clear of any liens or encumbrances;
		5. Carbon Supplier has not sold, transferred, or agreed to sell or transfer any CRUs, and none of Carbon Supplier or any of its suppliers or other partners has claimed or has any right to claim benefits represented by the CRUs, to be Delivered to Buyer under this Agreement to any other Person (excluding any such liens, collateral assignments or pledges permitted by this Agreement that, in each case, are released prior to or concurrently with such Delivery);
		6. All insurance policies required to have been obtained by Carbon Supplier under this Agreement have been so obtained and are in full force and effect;
		7. None of Carbon Supplier, its Affiliates, or any of its or their respective directors, officers, or employees or, to the knowledge of Carbon Supplier, its or their suppliers, partners, representatives or agents, is a government-sanctioned person or the subject or target of any government sanctions, has its assets located in a government-sanctioned country or derives revenues, directly or indirectly, from transactions with or investments in government-sanctioned persons or government-sanctioned countries, is under administrative, civil or criminal investigation for an alleged violation of, or has received notice from or made a voluntary disclosure to any governmental entity regarding a possible violation of, anti-corruption Laws, anti-money laundering Laws or sanctions by a governmental authority;
		8. Carbon Supplier has implemented and maintains in effect policies and procedures designed to ensure compliance by it and its Affiliates, and its and their directors, officers, employees, suppliers, partners, representatives or agents, with all anti-money laundering Laws, anti-corruption Laws and applicable sanctions, and Carbon Supplier is in compliance with all such Laws and policies and procedures; and
		9. Except as disclosed in writing to Buyer, neither Carbon Supplier nor any of its Affiliates has sold or agreed to sell CRUs to any other Person pursuant to a definitive offtake agreement entered into within the past twelve (12) months at a price per metric ton of CO2e for a given Contract Year that is less than the CRU Price for the applicable Contract Year covered by this Agreement.
1. **Covenants**
	1. Project Development and Operation; Modifications. Unless otherwise required by applicable Law, Carbon Supplier shall operate the Project in a manner that conforms in all material respects with the Project description in Exhibit B (*Project Description*) (as such Exhibit may be updated or modified from time to time with the written consent of Buyer) and shall not make any material modifications to the Project if, after giving effect to such modifications, the Project would cease to satisfy the terms of this Agreement, including the requirements set forth on Exhibit B (*Project Description*), or the Protocol. If the Project description is updated or modified and approved as set forth in this Section 7.1, then Exhibit B shall be deemed replaced by such updated or modified Exhibit B (*Project Description*) if Buyer consents to such replacement.
	2. [Third-Party Sales. Carbon Supplier shall not sell or agree to sell CRUs expected to be generated by the Project to any third party if such sale or agreement (i) would result in the aggregate commitments for the Project to exceed the Annual CRU Target for a given Contract Year (unless Carbon Supplier has notified Buyer of an increased Annual CRU Target and offered to Buyer its Proportionate Share of such increase pursuant to and in accordance with Article 5 (*Right of First Offer*)) or (ii) would otherwise constitute a breach of the terms of this Agreement, including Section 2.3 (*Delivery Volumes*) and Article 5.]**[[22]](#footnote-21)**
	3. Compliance with Protocol Requirements; Protocol Changes.
		1. Carbon Supplier shall comply with the terms and conditions of the Protocol in all material respects. If there is a change to the CRU Issuer or either Party or Buyer’s Representative determines that it is reasonably necessary or advisable to modify the Protocol or Project Design Document for any other reason, such Party or Buyer’s Representative, as applicable, shall notify such other parties of the proposed modifications or improvements to the Protocol or Project Design Document (a “Protocol Change Request”).
		2. Promptly following the delivery of a Protocol Change Request, Carbon Supplier, Buyer’s Representative, and the CRU Issuer shall confer on whether any modifications to the Protocol or Project Design Document are reasonably necessary or advisable, including in order to ensure that the Protocol and Project Design Document result in accurate verification and quantification of the CRUs and related Environmental Attributes consistent with current scientific consensus and best market practices. If the Protocol Change Request was delivered due to a change to the CRU Issuer, the CRU Issuer recommends, and Buyer’s Representative approves, changes to the Protocol, or the Parties otherwise mutually agree on changes to the Protocol, then (a) Carbon Supplier shall use best efforts to implement such changes within thirty (30) days and (b) the applicable Exhibits to this Agreement shall be updated to reflect such changes and Buyer’s Representative shall notify Buyer of such update. Any changes to the Protocol will not apply to any CRUs Delivered to Buyer or any Project activities to generate CRUs already completed or submitted for Delivery review by Verifier prior to the date on which the Protocol has been so amended. For the avoidance of doubt, Carbon Supplier shall bear all costs and expenses incurred in connection with complying with the Protocol and implementing any changes to the Protocol in accordance with this Section 7.3.
	4. Compliance with CRU Issuer Requirements; CRU Issuer Changes.

(a) Carbon Supplier shall comply with the terms and conditions of any applicable CRU Issuer in all material respects.

(b) If Carbon Supplier or Buyer’s Representative determines that it is reasonably necessary or advisable to change the CRU Issuer at any time during the Term, the Parties shall cooperate in good faith to mutually agree on and effect such change. Any changes to the CRU Issuer will not apply to any CRUs Delivered to Buyer prior to the date on which the CRU Issuer has been so updated.

* 1. Compliance with Law. Carbon Supplier shall (a) comply, and shall cause the Project to comply, with all applicable Laws, (b) obtain, maintain and comply with all Governmental Approvals applicable to the Project and (c) provide to Governmental Authorities or any applicable third party any financial security required in connection with the Project.
	2. Compliance with Payment Requirements. Carbon Supplier shall comply with Buyer’s Payment Provisions.
	3. Insurance. From and after the Commencement Date and through the Term, Carbon Supplier shall obtain, hold and maintain insurance policies that satisfy the requirements set forth on Exhibit M (*Insurance Requirements*), except that (a) Carbon Supplier shall not be required to obtain such insurance to the extent it is not available on commercially reasonable terms, and (b) such insurance need not be maintained for the entire Term if a shorter period is specified in such Exhibit. Carbon Supplier shall provide prompt written notice to Buyer of any policy renewal, termination, cancellation or other material change to any required insurance coverage.
	4. Books and Records; Access. Carbon Supplier shall maintain books and records reasonably sufficient to document compliance by Carbon Supplier with its obligations under this Agreement and applicable Laws and Governmental Approvals. Upon reasonable advance notice, Carbon Supplier shall provide to Buyer and its representatives such access to the Project and to Carbon Supplier’s books and records, properties, contracts, commitments and personnel as Buyer or such representatives may reasonably request. Without limiting the foregoing, Carbon Supplier acknowledges and agrees that Buyer and its Representative may utilize the Independent Expert, the CRU Issuer or other advisors for the purposes of evaluating Carbon Supplier’s performance under this Agreement and the information provided by Carbon Supplier hereunder, including the certifications, reports and other deliverables described herein, and agrees to extend such reasonable access to such experts and advisors. All access pursuant to this Section 7.8 shall be conducted in such a manner as not to interfere unreasonably with the normal operations of Carbon Supplier and shall be subject to Section 9.1 (*Confidentiality*).
	5. Project Status Report; Other Documents.
		1. From and after the Effective Date, Carbon Supplier shall, at the end of each quarter, provide a quarterly progress report to Buyer in a form reasonably acceptable to Buyer’s Representative (the “Project Status Report”). The Project Status Report shall include the following: (i) an overview of the progress of the Project, including the status and anticipated timing of development, construction, testing and operation of the Project, [and any milestones listed in [Section 2.4(g)]][[23]](#footnote-22); (ii) information regarding any material Governmental Approvals obtained or required for the development, construction, testing and operation of the Project; (iii) an evaluation of Carbon Supplier’s and the Project’s compliance with applicable Laws, Governmental Approvals and this Agreement; (iv) the status of any bond, insurance or other financial security required to be provided to Governmental Authorities or third parties with respect to the Project; (v) estimated month-by-month delivery schedule including anticipated Delivery Dates and corresponding amounts of CRUs to be Delivered on such dates for the next twelve (12) months; and (vi) any other information that is material to the Project or generation of CRUs or that Buyer’s Representative otherwise reasonably requests.
		2. During the Term, upon Buyer’s written request and subject to Section 9.1 (*Confidentiality*), Carbon Supplier shall, at no cost or expense to Buyer, provide Buyer with copies of (a) all Project-related documents that have been prepared or verified by the CRU Issuer, Verifier, or Independent Expert, (b) any research findings or publications that are issued or produced in connection with the Project, and (c) to the extent reasonably required, other information related to the development, construction and operation of the Project, including financial models, Project schedules and material agreements with third parties.
		3. Carbon Supplier shall not be required to provide to Buyer any information under this Section 7.9 the disclosure of which would breach a contract with a third party, provided that the nature of such information is disclosed to Buyer and the basis for the claim of confidentiality is substantiated by Carbon Supplier, and Carbon Supplier uses commercially reasonable efforts to obtain consent from the third party for disclosure of such information to Buyer. From and after the Effective Date, prior to agreeing to non-disclosure obligations to third parties of the type of information to be provided by Carbon Supplier to Buyer under this Section 7.9 or otherwise, Carbon Supplier shall use commercially reasonable efforts to include Buyer as a permitted recipient of such information.
	6. Publicity.
		1. Except for disclosures permitted or approved in accordance with this Section 7.10 (*Publicity*) and without limiting Article 9 (*Confidentiality*), neither Party shall disclose to any other Person the relationship between the Parties or the terms of this Agreement without the prior written consent of the other Party. For clarity, this Section 7.10 applies to all public disclosures, including packaging, promotional materials, advertisements and communications to third parties.
		2. Either Party may, without consent from the other Party, disclose such information (i) to current or prospective lenders to or investors in such Party, and (ii) to other Persons with a need for such information for purposes of measurement, verification or reporting pursuant to the Protocol or any applicable CRU Issuer; provided that all such receiving parties agree (or are required by professional obligation) to maintain the confidentiality of such information in a manner materially consistent with the requirements of Section 9.1 (*Confidentiality*).
		3. Buyer may, without consent from Carbon Supplier, (i) disclose the information set forth in Exhibit L (*Permitted Disclosures*) and (ii) disclose such other information that Buyer may reasonably require to disclose in order to substantiate claims Buyer may make regarding its carbon emissions removals or reductions.
		4. For any disclosure by a Party requiring the prior written consent of the other Party pursuant to this Section 7.10, such Party shall share with the other Party a draft of any such proposed disclosure(s) referencing the Project, this Agreement or the transactions contemplated hereby no less than ten (10) days prior to publication for review, comment and approval by the other Party. Any such approval (i) may be withheld or given in a Party’s sole discretion, (ii) may be revoked at any time with respect to future disclosures and (iii) may be provided for particular text or content, which text or content may be used for multiple disclosures with prior written notice, as the case may be. Each Party agrees to review any request for approval under this Section 7.10 within ten (10) days after receipt.
		5. Carbon Supplier hereby grants Buyer a worldwide, royalty-free, non-exclusive, non-transferable, non-sublicensable, limited license to use and display Carbon Supplier’s trademarks, service marks, logos, trade names, copyrighted content, graphic files, and images in connection with the public disclosures made in accordance with this Section 7.10.
		6. Carbon Supplier may not use or display Buyer’s trademarks, service marks, logos, trade names, copyrighted content, graphic files, and images (the “Buyer Marks”) without Buyer’s prior written consent. If Buyer approves Carbon Supplier’s use of the Buyer Marks, Carbon Supplier agrees to comply with Buyer’s brand usage guidelines as may be amended from time to time.
	7. Transfer, Sale, and/or Assignment.
		1. Carbon Supplier shall not transfer, sell, or assign any assets of or interests in the Project, including any interest in real property on which the Project is located or any contracts or other attributes of the Project, whether by operation of law or otherwise, to any Person without providing at least thirty (30) days’ prior written notice to Buyer, except for Permitted Assignments (as defined below). In the event Carbon Supplier provides notice of any such transfer, sale, or assignment that is not a Permitted Assignment, Buyer may terminate the Agreement without penalty.
		2. Carbon Supplier may (i) assign this Agreement and transfer all (but not less than all) of the assets of the Project to an Affiliate of Carbon Supplier, so long as such Affiliate assumes the obligations of Carbon Supplier under this Agreement and [Carbon Supplier][TopCo][[24]](#footnote-23) guarantees the obligations of such Affiliate in accordance with the form attached hereto as Exhibit N (*Form of Guaranty*), (ii) assign this Agreement by operation of law in connection with the transfer of the Project to a third party pursuant to a Change of Control of Carbon Supplier that is otherwise permitted by and complies with the terms of this Agreement, including Section 5.3 (*Survival of ROFO Obligation; Application in Context of Assignment or Change of Control*) and Section 7.12 (*Change of Control*), so long as such third party assumes in writing the obligations of Carbon Supplier under this Agreement, and (iii) collaterally assign this Agreement and the Project for purposes of direct or indirect financing of the development, construction, operation or maintenance of the Project or any refinancing thereof (each, a “Permitted Assignment”).
		3. In connection with any financing of the Project described in Section 7.11(b), upon request by Carbon Supplier, Buyer agrees to cooperate with Carbon Supplier and its financing parties, except to the extent that such cooperation would materially and adversely affect Buyer or its interests in this Agreement; provided that Buyer shall not be required to furnish a legal opinion or execute any documents in connection with such financing, except for a consent to a collateral assignment substantially in the form attached hereto as Exhibit O (*Form of Consent to Collateral Assignment*). Carbon Supplier shall be responsible for any costs and expenses incurred by Buyer in connection with such financing cooperation. For the avoidance of doubt, this Section 7.11 shall not restrict (i) sales of CRUs or equity interests in Carbon Supplier that otherwise comply with this Agreement, or (ii) any lawful foreclosure by a secured creditor pursuant to a collateral assignment that complies with this Section 7.11.
	8. Change of Control. Carbon Supplier shall provide Buyer with at least thirty (30) days’ prior written notice of any proposed Change of Control, whether to a Restricted Person or otherwise. In the event Carbon Supplier provides notice of a potential Change of Control with a Restricted Person in breach of this Section 7.12 and the Buyer does not agree to such Change of Control, Buyer may terminate the Agreement without penalty. For the avoidance of doubt, this Section 7.12 shall not apply to a collateral assignment of this Agreement or the Project, or any lawful foreclosure by a secured creditor pursuant to any such collateral assignment, in each case that complies with Section 7.11 (*Transfer, Sale, and/or Assignment*).
	9. Exclusive Rights. Carbon Supplier understands and agrees that the CRUs are the exclusive representations of the Environmental Attributes associated with the reduction, removal or storage of greenhouse gasses, expressed in metric tons of CO2e, associated with the Project, and that Carbon Supplier shall not sell or attempt to sell any CRU or related Environmental Attribute in any manner that would result in double counting of the CRUs or other Environmental Attributes associated with removal or storage of greenhouse gasses, expressed in metric tons of CO2e, attributable to the Project. [For the avoidance of doubt, (a) soil carbon and soil organic carbon are Environmental Attributes, and (b) soil health attributes generated by the Project (e.g. pH adjustment, trace mineral application, and similar attributes) are not Environmental Attributes subject to the restrictions of this Section 7.13.]**[[25]](#footnote-24)**
	10. Independent Parties. Nothing in this Agreement shall be construed to create an employer-employee, partnership, agency, joint venture, joint employer, or franchise relationship among or between any of the Parties or the Representatives, and each of the Parties shall, and shall cause their Representatives and Affiliates and its and their respective officers, directors, employees, representatives and agents to, refrain from making any representation or statement that could be construed as such.
	11. Further Assurances; Cooperation. Subject to the terms and conditions of this Agreement, Carbon Supplier shall use reasonable efforts to execute and deliver any further documentation and do all things reasonably necessary to fulfill Carbon Supplier’s obligations under, and otherwise carry out, the provisions of this Agreement. Without limiting the foregoing, Carbon Supplier shall take all commercially reasonable actions, and execute and deliver all documents, reasonably required by any Tracking System or CRU Issuer, or otherwise requested by Buyer, to effectuate the transfer of title and the Delivery of the CRUs to Buyer and to enable Buyer to comply with the requirements of any applicable CRU Issuer, Tracking System or other regulatory or administrative obligations with respect to the CRUs.
	12. [Transfer of Mitigation Outcomes. The CRUs under this Agreement are intended for use by Buyer for voluntary purposes. Buyer agrees not to use or report the CRUs acquired from the Carbon Supplier under this Agreement in a way that results in any signatory to the Paris Agreement or any other nation or other intergovernmental organization (e.g. CORSIA), excluding the country of origin of Carbon Supplier, to report or otherwise claim the right to such CRUs or the underlying removal for purposes of its Nationally Determined Contributions (as defined in the Paris Agreement) or comparable national or international climate targets, (the “Restricted Sovereign Use”).

It is the Parties’ common expectation, and the Parties agree to promote and support, that the CRU Issuer will include a mechanism that ensures that no double-counting of CRUs or the underlying physical removals as between nations can occur.

If either Party becomes aware of any claim, event, or development that purports to challenge or threaten the validity of the Restricted Sovereign Use, such Party will provide prompt notice of such claim, event or development to the other Party. In the event of any non-compliance with the Restricted Sovereign Use, the Parties will use all commercially reasonable efforts to cure any such non-compliance.][[26]](#footnote-25)

* 1. [Ecosystem Safety Monitoring. Carbon Supplier shall (a) monitor breaches of ongoing safety protocols on at least a biannual basis, (b) track its performance against the Ecosystem Safety Plan and Community Benefits Plan, and (c) within sixty (60) days of the end of each calendar year, deliver to Buyer’s Representative an annual report summarizing the results of such monitoring and tracking, including a plan to mitigate any identified risks (an “Ecosystem Impact Data Report”); provided that, if requested by Buyer’s Representative in its commercially reasonable discretion, Carbon Supplier shall engage an Ecosystem Safety Reviewer to perform the foregoing services for one calendar year.]
1. **Default, Termination and Remedies; Indemnity**
	1. Default. Each of the following events shall constitute an “Event of Default” under this Agreement:
		1. Buyer’s failure to make any required payment (not subject to good faith dispute) when due under this Agreement, if such failure is not remedied within thirty (30) days after written notice thereof from Carbon Supplier (a “Payment Failure”);
		2. Carbon Supplier’s failure to achieve [(i)] the Commencement Date by the Target Commencement Date (or any extension of such date that may be proposed by Carbon Supplier and approved by Buyer in its sole discretion, it being understood that a one-time extension of six (6) months or less that is proposed by Carbon Supplier and accompanied by a written explanation of the reason for the delay shall automatically be deemed approved) (a “Commencement Date Failure”)[ or (ii) the COD by the Target COD (or any extension of such date that may be proposed by Carbon Supplier and approved by Buyer in its sole discretion, it being understood that a one-time extension of six (6) months or less that is proposed by Carbon Supplier and accompanied by a written explanation of the reason for the delay shall automatically be deemed approved) (a “COD Failure”)]**[[27]](#footnote-26)**;
		3. Carbon Supplier’s failure to Deliver to Buyer at least the Minimum Quantity of CRUs (a “Minimum Quantity Deficit”);
		4. Carbon Supplier’s material breach of any provision of this Agreement (other than a Commencement Date Failure[, COD Failure,]**[[28]](#footnote-27)** or Minimum Quantity Deficit) (including, for the avoidance of doubt, a material breach of its obligation to operate the Project in accordance with the Protocol and to comply with applicable Laws and Governmental Approvals) (a “Carbon Supplier Breach”), which breach (if curable) is not cured within thirty (30) days after written notice thereof from Buyer;[[29]](#footnote-28)
		5. Buyer’s material breach of any provision of this Agreement (other than a Payment Failure) (a “Buyer Breach”), which breach (if curable) is not cured within thirty (30) days after written notice thereof from Carbon Supplier;
		6. [Buyer’s failure to comply with the Restricted Sovereign Use (an “RSU Breach”), if such RSU Breach is not cured within one hundred eighty (180) days from Carbon Supplier notifying Buyer in writing of such breach;][[30]](#footnote-29) or
		7. Carbon Supplier becoming the subject of a federal or state law receivership, foreclosure, dissolution or bankruptcy proceeding, making a general assignment of its assets for the benefit of credits or having an administrator, conservator or similar official appointed with respect to it or a material portion of its assets (an “Insolvency Event”).
	2. Termination. This Agreement may be terminated prior to the end of the Term, whether before or after the Commencement Date as follows:

(a) by mutual written consent of the Parties;

(b) by Carbon Supplier, upon written notice to Buyer, if an Event of Default involving a Payment Failure or[,] Buyer Breach[, or RSU Breach][[31]](#footnote-30) has occurred;

(c) by Buyer, upon written notice to Carbon Supplier, if an Event of Default involving a Commencement Date Failure, [a COD Failure,]**[[32]](#footnote-31)** a Minimum Quantity Deficit, a Carbon Supplier Breach or an Insolvency Event has occurred; and

(d) by Buyer, upon written notice to Carbon Supplier, [(i)] if a Change of Control to a Restricted Person has occurred (whether or not such Change of Control also constitutes a Carbon Supplier Breach for failure to obtain the prior written consent of Buyer pursuant to Section 7.12 (*Change of Control*)) [or (ii) if a Change of Control (whether or not to a Restricted Person) has occurred and Buyer reasonably believes that it will suffer material reputation damage, or that the remaining CRUs will not be Delivered, as a result of such Change of Control]**[[33]](#footnote-32)**.

* 1. Remedies. Without limiting a Party’s termination rights under Section 8.2, Buyer shall have the following remedies with respect to the following Events of Default, in addition to any other remedies that may be available at law or in equity:
		1. With respect to a Carbon Supplier Breach of Section 2.3 (*Delivery Volumes*), in the event that Carbon Supplier has sold or delivered CRUs to any other Person in violation of this Agreement, Carbon Supplier shall (i) offer replacement CRUs or other Environmental Attributes to Buyer that are acceptable to Buyer in its sole discretion or (ii) if such replacement CRUs are not available or are not acceptable to Buyer in its sole discretion, pay to Buyer the value received from the sale of such CRUs to such other Person.
		2. With respect to a Carbon Supplier Breach of Section 3.2 (*Price Adjustments*), Carbon Supplier shall reimburse Buyer for the difference between the price paid by Buyer and the lower price per CRU paid by the applicable third party for the applicable Contract Years.
		3. With respect to a Carbon Supplier Breach of Article 5 (*Right of First Offer*) , Carbon Supplier shall (i) offer replacement CRUs or other Environmental Attributes to Buyer that are acceptable to Buyer in its sole discretion or (ii) if such replacement CRUs are not available or are not acceptable to Buyer in its sole discretion, pay to Buyer the value received from the sale of any New Project CRUs or Excess CRUs not offered to Buyer as required by Article 5 (*Right of First Offer*).
		4. With respect to a Carbon Supplier Breach of Section 6.2(d) or Section 6.2(e), Carbon Supplier shall (i) offer replacement CRUs or other Environmental Attributes to Buyer that are acceptable to Buyer in its sole discretion or (ii) if such replacement CRUs are not available or are not acceptable to Buyer in its sole discretion, reimburse Buyer for the Contract Price paid in respect of any CRUs Delivered to Buyer that are not valid, fail to accurately represent the identity, volume and CO2e of greenhouse gasses removed by the Project, fail to comply in all material respects with the terms of this Agreement, including the requirements of the Protocol and any applicable CRU Issuer, are subject to third party claims, or otherwise do not convey to Buyer all right, title, and interest in and to such CRUs, free and clear of any liens or encumbrances. For the avoidance of doubt, the remedies in this Section 8.3(d) apply to a failure by Carbon Supplier to comply with the terms of this Agreement, including the requirements of the Protocol, which failure results in or contributes to the release of previously removed and stored CO2 back into the atmosphere.
	2. Certain Carbon Supplier Obligations After Termination. If (i) this Agreement is terminated by Buyer pursuant to Section 8.1 (*Default*) as a result of a Minimum Quantity Deficit, a Commencement Date Failure[, a COD Failure,]**[[34]](#footnote-33)** or a Carbon Supplier Breach of Section 2.3 (*Delivery Volumes*), and (ii) during the eighteen (18) month period following such termination (the “Restricted Period”), Carbon Supplier proposes to sell CRUs or Environmental Attributes generated by the Project to a third party, Carbon Supplier shall first offer to sell to Buyer at least its Proportionate Share of the CRUs available for sale (up to the aggregate Contract Quantity of CRUs or Environmental Attributes not Delivered to Buyer prior to such termination) at the lower of (x) the CRU Price under this Agreement and (y) the CRU price proposed to be offered to such third party, with the CRU delivery and payment schedule to be mutually agreed upon by Buyer and Carbon Supplier.
	3. Indemnification. Notwithstanding the limitations on liability in Section 8.6, Carbon Supplier shall indemnify each of Buyer, its Affiliates, and its and their respective officers, directors, employees, contractors, representatives and agents (the “Buyer Indemnified Parties”), against and hold the Buyer Indemnified Parties harmless from any and all claims, losses, liabilities, obligations, damages, fines, judgments, settlements, fees, penalties, costs, interest and expenses (including reasonable attorneys’ and consultants’ fees and expenses) suffered or incurred by such Buyer Indemnified Parties to the extent resulting from or arising out of (i) a third party claim that relates to or is based on the ownership, financing or operation of the Project or any breach of this Agreement by Carbon Supplier, (ii) the negligence or willful misconduct of Carbon Supplier or any Affiliate of Carbon Supplier, or (iii) environmental impacts, personal injury or property damage related to the Project.
	4. Limitations on Liability. EXCEPT FOR EQUITABLE REMEDIES PROVIDED IN SECTION 8.7 OR AS OTHERWISE EXPRESSLY PROVIDED HEREIN (INCLUDING PURSUANT TO SECTIONS 8.3, 8.4 AND 8.5), IN NO EVENT WILL (A) ANY PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING LOSS OF BUSINESS PROFITS) ARISING FROM OR RELATED TO THIS AGREEMENT, (B) CARBON SUPPLIER’S LIABILITY TO BUYER FOR BREACH OF THIS AGREEMENT EXCEED (I) PRIOR TO THE [COD]**[[35]](#footnote-34)**, [\_]% OF THE TOTAL CONTRACT VALUE SET FORTH IN EXHIBIT D AND (II) FROM AND AFTER THE [COD][[36]](#footnote-35), THE TOTAL CONTRACT VALUE SET FORTH IN EXHIBIT D, OR (C) BUYER’S LIABILITY TO CARBON SUPPLIER FOR BREACH OF THIS AGREEMENT EXCEED (X) IN THE CASE OF A PAYMENT FAILURE, THE AMOUNT OF ANY SUCH REQUIRED PAYMENT NOT YET MADE AND NOT SUBJECT TO GOOD FAITH DISPUTE OR (Y) IN THE CASE OF ANY OTHER BUYER BREACH (I) PRIOR TO THE [COD]**[[37]](#footnote-36)**, [$100,000] AND (II) FROM AND AFTER THE [COD][[38]](#footnote-37), THE PORTION OF THE TOTAL CONTRACT VALUE THAT HAS NOT BEEN PAID TO CARBON SUPPLIER AS OF THE DATE OF SUCH BREACH FOR THE REMAINDER OF THE TERM. THE LIMITATIONS ON LIABILITY IN THIS SECTION 8.6 SHALL NOT APPLY (I) TO CLAIMS FOR BREACH OF CARBON SUPPLIER’S COVENANTS, (II) TO CARBON SUPPLIER’S INDEMNIFICATION OBLIGATIONS HEREUNDER OR (III) IN THE CASE OF A PARTY’S GROSS NEGLIGENCE, WILFUL MISCONDUCT OR FRAUD.
	5. Equitable Remedies. The Parties agree that monetary damages may be an inadequate remedy for the breach of any of the covenants or agreements (in each case, other than payment obligations) contained in this Agreement. Accordingly, each Party shall be entitled to equitable and injunctive relief with respect to any such breach, including specific performance of such covenants or agreements, without the requirement to post a bond or other security. The rights set forth in this Section 8.7 shall be in addition to any other rights the non-breaching Party may have at law or in equity.
1. **Confidentiality**
	1. Confidentiality.
		1. “Confidential Information” means (i) any information, data, reports, analyses, compilations, studies, interpretations, forecasts, records and other materials, whether oral, written or in any other form, concerning Carbon Supplier, Buyer, or any of their Affiliates or Representatives, that one Party or its Representatives (the “Disclosing Party”) provides to the other Party or its Representatives (the “Receiving Party”) in connection with this Agreement and (ii) the terms of this Agreement and any discussions or negotiations between the Parties and their representatives with respect to this Agreement. Notwithstanding the foregoing, “Confidential Information” does not include information that: (A) is already known to the Receiving Party prior to disclosure by the Disclosing Party; (B) is or becomes known to the Receiving Party on a non-confidential basis from a source that, to the Receiving Party’s knowledge, is not prohibited from disclosing such information to the Receiving Party by a contractual, legal or fiduciary obligation owed to the Disclosing Party; or (C) is independently developed by the Receiving Party without reference to or reliance upon the Disclosing Party’s Confidential Information. The Receiving Party will hold in strict confidence all Confidential Information of the Disclosing Party and will not disclose any Confidential Information of the Disclosing Person to any Person other than (x) the Receiving Party’s employees, officers, directors, contractors, advisors, representatives or agents, in each case who have a need to know such information to exercise the Receiving Party’s rights or perform its obligations under this Agreement and who are subject to confidentiality obligations at least as restrictive as those contained in this Section 9.1, or (y) with the Disclosing Party’s prior written consent. In the event the Receiving Party is required to disclose any Confidential Information of the Disclosing Party by applicable Law, the Receiving Party shall provide prompt written notice thereof to the Disclosing Party (to the extent legally permitted) so that the Disclosing Party may seek a protective order or other appropriate remedy. In the event that the Disclosing Party is unable to obtain a protective order or other such remedy, the Receiving Party shall furnish only that portion of the Confidential Information of the Disclosing Party that, in the opinion of its counsel, is legally required to be disclosed, and shall exercise commercially reasonable efforts to obtain reliable assurance that confidential treatment shall be accorded such Confidential Information.
		2. Notwithstanding anything herein to the contrary, information regarding the requirements of and Carbon Supplier’s performance under any Protocol or CRU Issuer shall not be considered Confidential Information hereunder.
		3. A Receiving Party may use and disclose Confidential Information where required to do so in litigation, administrative, regulatory or other legal proceedings or otherwise by applicable Laws, but only after, to the extent permitted by applicable Laws, notice to the providing Party and affording the providing Party an opportunity to seek a protective order or other relief to prevent or limit disclosure of the Confidential Information. In such event, the Receiving Party shall reasonably cooperate, at the providing Party’s sole expense, in connection with the providing Party’s efforts to obtain such protective order or other relief. Further, each Party shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation or administrative or regulatory proceeding or in any other instance where disclosure is required by applicable Laws, and shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise.
2. **Miscellaneous**
	1. Survival. The following provisions shall survive the expiration or earlier termination of this Agreement: Article 3 (*Price and Payment*), Article 6 (*Representations and Warranties*), Section 7.2 (*Compliance with Protocol Requirements; Protocol Changes*), Section 7.3 (*Compliance with CRU Issuer Requirements; CRU Issuer Changes*), Section 7.10 (*Publicity*), Article 8 (*Default, Termination and Remedies; Indemnity*), Article 9 (*Confidentiality*) (for a period of five (5) years following such expiration or termination) and Article 10 (*Miscellaneous*). For clarity, such expiration or termination shall not relieve a Party from obligations arising prior to the effective date of such expiration or termination, including, in the case of Buyer, the obligation to pay the Contract Price for validly Delivered CRUs for which payment remains outstanding (but not for any other CRUs).
	2. Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be deemed given if (i) delivered in person or by electronic mail (which is confirmed) or sent by overnight courier (providing proof of delivery) to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice) and (ii) in the case of notices given by Carbon Supplier, also posted in any online data room hosted by or on behalf of Buyer or its Representative that Carbon Supplier has been invited to use:

If to Buyer:

To: [Buyer]
[Name, contact information]
Initial Representative for purposes of Section 4.1 of this Agreement: [\_\_\_\_\_\_\_\_\_\_\_\_]

With a copy to: [Carbon Supplier counsel]
[Name, contact information]

If to Carbon Supplier:

To: [Carbon Supplier]
[Name, contact information]
Initial Representative for purposes of Section 4.1 of this Agreement: [\_\_\_\_\_\_\_\_\_\_\_\_]

With a copy to: [Carbon Supplier counsel]
[Name, contact information]

* 1. Governing Law and Venue. This Agreement shall be interpreted, construed and governed by the Laws ofthe State of New York and shall be enforced in courts located in New York, New York.
	2. Dispute Resolution. In the event of any dispute, claim or controversy arising out of or relating to this Agreement, the Representatives will meet to resolve such dispute, claim or controversy within seven (7) days after the written request of any Representative. The Parties and their respective Representatives will cooperate in good faith to resolve such dispute, claim or controversy. If any such dispute, claim or controversy cannot be resolved within thirty (30) days after the initial meeting of the Representatives, either Party may refer such dispute, claim or controversy to arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation or validity thereof, shall be finally determined by arbitration in New York, New York before three arbitrator(s). The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules, except that in the case of a Carbon Supplier not located in or organized under the laws applicable in North America, the applicable rules shall be the JAMS International Arbitration Rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This Section 10.4 shall not preclude a Party from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.
	3. Assignment. Neither Party shall assign, transfer, license or sublicense its rights under this Agreement (or any right granted herein) without the prior written consent of the other Party, except that (a)  Buyer, upon written notice to Carbon Supplier, may assign this Agreement to (i) any Affiliate of Buyer or (ii) any other Person that (x) has a Moody’s rating of Baa3 or higher or S&P rating of BBB- or higher or (y) otherwise satisfies creditworthiness standards reasonably acceptable to Carbon Supplier, and in each case that assumes in writing the obligations of Buyer under this Agreement, and (b) Carbon Supplier, upon written notice to Buyer, may assign this Agreement solely to the extent permitted by and in accordance with Section 7.11 (*Transfer, Sale, and/or Assignment*) or Section 7.12 (*Change of Control*), as applicable.
	4. Entire Agreement; Severability. This Agreement sets forth the entire understanding of the Parties, and supersedes any and all prior and contemporaneous agreements and understandings, relating to the subject matter hereof. Upon a determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable Law to the end that the transactions contemplated hereby are fulfilled to the extent possible.
	5. Amendments, Waivers, and Consents. [Any amendment or waiver of this Agreement must be in writing and signed by Carbon Supplier and Buyer. Any consent or approval given by Buyer or Buyer’s Representative under this Agreement must be in writing, which may be via email if delivered in accordance with Section 10.2 (*Notices*).][[39]](#footnote-38) The waiver or failure of either Party to exercise any right provided for herein will not be deemed a waiver of any further right hereunder. Except as expressly set forth herein, the rights and remedies of the Parties set forth in this Agreement are in addition to any rights or remedies the Parties may otherwise have at law or in equity.
	6. Counterparts. This Agreement may be executed in two or more counterparts (which may be delivered electronically), each of which shall be deemed an original and all of which together shall constitute one and the same agreement.
	7. Force Majeure. Except as expressly provided herein, neither Party shall be considered in default under this Agreement for any delay or failure to perform any of its obligations under this Agreement, to the extent that such delay or failure results from an event of Force Majeure. A Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party: (a) provides prompt written notice (within ten (10) days) of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement; (b) exercises all reasonable efforts to continue to perform its obligations under this Agreement and mitigate or limit any damages to the other Party; (c) expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than necessary; and (d) provides prompt written notice (within ten (10) days) to the other Party of the cessation of the event or condition giving rise to its excuse from performance. In connection with any failure by Carbon Supplier to perform obligations hereunder for a period of one hundred eighty (180) days after the date notice of a Force Majeure event is given (or required to have been given), Buyer shall have a right to terminate this Agreement any time upon written notice to Carbon Supplier and without any further obligation to Carbon Supplier.
	8. Costs and Expenses. Except as otherwise explicitly provided in this Agreement, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such fees and expenses.
	9. Project Site Visits. During the Term, Buyer may request reasonable, periodic site visits upon advance notice to Carbon Supplier. Carbon Supplier shall accommodate any and all reasonable requests of Buyer with respect to such visits; provided that Buyer shall comply with all Carbon Supplier health and safety policies and procedures and instructions while present at the Project site and shall conduct itself in a manner that will not unreasonably interfere with or disrupt the operation of the Project or other activities of Carbon Supplier and its subcontractors.

[*Signature page follows*]

**IN WITNESS WHEREOF,** the undersigned have caused this Agreement to be executed as of the Effective Date.

| **[Carbon Supplier]** | **[Buyer]** |
| --- | --- |
| Signed: | Signed: |
| By:  | By:  |
| Name:  | Name:  |
| Title:  | Title:  |
| Date:  | Date:  |

[Acknowledged and agreed solely with respect to Article 5 hereof:][[40]](#footnote-39)

| **[TopCo]** |
| --- |
| Signed: |
| By:  |
| Name:  |
| Title:  |
| Date:  |

**Exhibit A**

**Definitions**

“**Affiliate**” means, with respect to any Person, another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such first Person, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise.

“**Aggregate CRU Target**” has the meaning set forth in Section 2.4(d)(iii).

“**Agreement**” means this Carbon Removal Offtake Agreement, as amended or supplemented from time to time in accordance with its terms.

“**Annual CRU Target**” has the meaning set forth in Section 2.4(d)(iii).

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Law to close.

“**Buyer**” has the meaning set forth in the first paragraph of this Agreement.

“**Buyer Breach**” has the meaning set forth in Section 8.1(e).

“**Buyer Indemnified Parties**” has the meaning set forth in Section 8.5.

“**Buyer Marks**” has the meaning set forth in Section 7.10(f).

“**Carbon Supplier**” has the meaning set forth in the first paragraph of this Agreement.

“**Carbon Supplier Breach**” has the meaning set forth in Section 8.1(d).

“**Change of Control**” means, with respect to Carbon Supplier, (a) the sale, lease, transfer, exclusive license or other disposition, in a transaction or a series of transactions, of all or substantially all of the assets of Carbon Supplier to any other Person or group of Persons, or (b) the consummation of a transaction or a series of related transactions, the result of which is that any Person or group of Persons becomes the direct or indirect owner of fifty percent (50%) or more of the equity interests of Carbon Supplier, measured by voting power, or gains the ability to exercise operational or management control of Carbon Supplier (and which Person or group of Persons did not hold such voting power or exercise such control immediately prior to such transactions).

“**CO2**” has the meaning set forth in the recitals to this Agreement.

“**CO2e**” means the CO2 equivalent impact of a greenhouse gas.

[“**COD**” has the meaning set forth in Section 2.6.

“**COD Certification**” has the meaning set forth in Section 2.6.

“**COD Failure**” has the meaning set forth in Section 8.1(b).]**[[41]](#footnote-40)**

“**Commencement Date**” means the date on which the Conditions Precedent have been satisfied (or, in the sole discretion of Buyer, waived, in whole or in part) in accordance with Section 2.4 and Section 2.5.

“**Commencement Date Certification**” has the meaning set forth in Section 2.4(f).

“**Commencement Date Failure**” has the meaning set forth in Section 8.1(b).

[“**Commercial Operation**” means the state of the Project that corresponds to the completion of construction and the beginning of the operation of the Project, such that Carbon Supplier is demonstrably able to produce and Deliver CRUs generated by the Project to Buyer pursuant to the terms of this Agreement.]**[[42]](#footnote-41)**

“**Community Benefits Plan**” has the meaning set forth in Section 2.4(d)(ii).

“**Conditions Precedent**” has the meaning set forth in Section 2.4.

“**Confidential Information**”has the meaning set forth in Section 9.1(a).

“**Contract Price**” has the meaning set forth in Section 3.1.

“**Contract Quantity**” has the meaning set forth in Section 2.2(a).

“**Contract Value**” means an amount equal to the Contract Price multiplied by the portion of the Contract Quantity Delivered to Buyer.

“**Contract Year**” means a calendar year or portion thereof in which CRUs are to be Delivered to Buyer hereunder, including any partial calendar year from the [COD]**[[43]](#footnote-42)** to December 31 of the calendar year in which the [COD]**[[44]](#footnote-43)** occurs, and any partial calendar year occurring from and after January 1 of the year in which the Term expires or this Agreement is earlier terminated in accordance with its terms.

“**CRU**”means a unit representing the net capture, fixation, mineralization, removal and storage of one (1) metric ton of CO2e of greenhouse gasses from the atmosphere, all of which must be (a) Permanent, (b) verified and documented pursuant to a protocol, and (c) verified and registered by any applicable project registry.

“**CRU Certification**” has the meaning set forth in Section 2.2(b).

“**CRU Issuer**” has the meaning set forth in Section 2.4(b).

“**CRU Price**” means the amount expressed in dollars per CRU set forth in Exhibit D (*Quantity and Price by Year*) under the heading “CRU Price ($ / CRU)”.

“**CRU Projects**” has the meaning set forth in the recitals to this Agreement.

“**Deliver**” or “**Delivered**” or “**Delivery**” means the transfer of CRUs from Carbon Supplier to Buyer in accordance with this Agreement (or retirement of such CRUs at Buyer’s direction as contemplated under Section 2.2(b))), together with recognition by any applicable Tracking System that such transfer or retirement has been completed.

“**Delivery Date**” means any day that Carbon Supplier makes a Delivery to Buyer during the period from January 1 through and including December 1 of any Contract Year; provided that Carbon Supplier shall not make more than one Delivery in any calendar month.

“**Delivery Shortfall**” has the meaning set forth in Section 2.3(b) of this Agreement.

“**Disclosing Party**” has the meaning set forth in Section 9.1(a).

[“**Ecosystem Impact Data Report**” has the meaning set forth in Section 7.17 of this Agreement.

“**Ecosystem Safety Plan**” has the meaning set forth in Section 2.4(d)(iv) of this Agreement.

“**Ecosystem Safety Reviewer**” means a third party review body acceptable to Buyer’s Representative having the relevant experience, capabilities, certifications, and capacity to provide the ecosystem safety monitoring services set out in Section 7.17.][[45]](#footnote-44)

“**Effective Date**” has the meaning set forth in the first paragraph of this Agreement.

**“Environmental Attribute**” means the environmental and other attributes as may exist from time to time, including (i) any and all credits, benefits, emissions reductions, offsets, removals, storage, and allowances, howsoever entitled, attributable to the Project, and its removal and storage of emissions of CO2 and other greenhouse gasses that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the earth’s climate by trapping heat in the atmosphere, and (ii) any reductions, credits, benefits, allowances, transferred mitigation outcomes or corresponding adjustments resulting from or related to the Project and its implementation pursuant to the laws, rules and standards of the United Nations Framework Convention on Climate Change, including the Paris Agreement and Article 6.2 and 6.4 rulebooks. Environmental Attributes include all CRUs and any and all aspects of a CRU but do not include tax credits or rebates available under applicable Law in the United States or attributes of the Project, the Project site or its operation that constitute a potential source of liability or any adverse wildlife or environmental impacts.

“**Event of Default**” has the meaning set forth in Section 8.1.

“**Excess CRU Price**” has the meaning set forth in Section 5.2(a).

“**Excess CRU ROFO**” has the meaning set forth in Section 5.2(a).

“**Excess CRU ROFO Deadline**” has the meaning set forth in Section 5.2(b)(ii).

“**Excess CRUs**” has the meaning set forth in Section 2.3(a).

[“**Financial Closing**” means the execution and effectiveness of one or more definitive agreements that provide the debt and/or equity financing necessary to construct and complete the entire Project.]**[[46]](#footnote-45)**

“**Force Majeure**” meansan event or circumstance that materially adversely affects the ability of a Party to perform its obligations under this Agreement, which event or circumstance (a) was not reasonably anticipated or foreseeable, (b) is not attributable to fault or negligence on the part of that Party, (c) is caused by factors beyond that Party’s reasonable control, and (d) for which, despite the exercise of due diligence and all commercially reasonable precautions and measures to prevent, avoid, mitigate or overcome such event or circumstance, the affected Party has been unable to prevent, avoid, mitigate or overcome such event or circumstance. Force Majeure does not include (i) changing economic, market or industry conditions, (ii) the failure to enter into or perform commercial agreements with third parties (including the failure to obtain financing) or (iii) the failure to obtain Governmental Approvals. Force Majeure shall include, to the extent that such event or condition also satisfies clauses (a) through (d) above, action of a Governmental Authority (including a change in applicable Law but excluding a failure to obtain any Governmental Approval required for the Project) that prevents or prohibits Carbon Supplier from operating the Project, selling or producing CRUs or otherwise performing its obligations hereunder.

“**Governmental Approvals**” means any permits, consistency determinations, certifications, licenses, approvals, consents, registrations, privileges, franchises, memberships, certificates, entitlements, grants, leases and other authorizations issued by Governmental Authorities.

“**Governmental Authority**” means any international, federal, regional, state, provincial, local, municipal, governmental, administrative, judicial, or government-owned body, commission, authority, tribunal, court, agency or entity making decisions with the force of Law.

***“*Governmental Charges**” has the meaning set forth in Section 3.3.

“**Independent Expert**” has the meaning set forth in Section 4.2.

“**Insolvency Event**” has the meaning set forth in [Section 8.1(g)].

“**Law**” means all legally binding statutes, laws, ordinances, rules, regulations, orders, judgments, decrees, injunctions and writs of any Governmental Authority that apply to the Project, CRUs or any one or both of the Parties, or the terms hereof, including common law principles. For the avoidance of doubt, Laws includes the Foreign Corrupt Practices Act of 1977, as amended, along with any similar or analogous law.

“**Maximum Verification and Registry Cost**” has the meaning set forth in Section 3.1(b).

“**Minimum Quantity**” means a number of CRUs equal to [[\_\_\_\_\_ percent (\_\_%)] of the Total Contract Quantity, achieved in one or more Contract Years within the first [two (2)] calendar years of the Term][(a) [\_\_\_\_\_], with respect to [the first Contract Year], (b) [\_\_\_\_\_], with respect to [the second Contract Year], and (c) [\_\_\_\_\_], with respect to [the third Contract Year]][[47]](#footnote-46).

“**Minimum Quantity Deficit**” has the meaning set forth in Section 8.1(c).

“**New CRUs**” has the meaning set forth in Section 5.2(a).

“**New CRU Price**” has the meaning set forth in Section 5.2(a).

“**New Project**”has the meaning set forth in Section 5.1(a).

“**New Project Agreement**” has the meaning set forth in Section 5.1(b)(ii).

“**New Project CRU Price**”has the meaning set forth in Section 5.1(a).

“**New Project CRUs**”has the meaning set forth in Section 5.1(a).

“**New Project ROFO**”has the meaning set forth in Section 5.1(a).

[“**New Project ROFO Agreement**” has the meaning set forth in Section 2.4(h).][[48]](#footnote-47)

“**New Project ROFO Deadline**” has the meaning set forth in Section 5.1(b)(ii).

“**Paris Agreement**” means the international treaty on climate change adopted at the United Nations Framework Convention on Climate Change in 2015 and entered into in 2016.

“**Party**” and “**Parties**” have the meaning set forth in the recitals to this Agreement.

“**Payment Failure**” has the meaning set forth in Section 8.1(a).

“**Payment Provisions**” means Buyer’s payment requirements set forth in Exhibit I (*Payment Provisions*).

“**Permanent**” means removal from the atmosphere and storage for at least 1,000 years.

“**Permitted Assignment**” has the meaning set forth in Section 7.11(b).

“**Person**” means any natural person or any entity or organization legally recognized as a separate entity, such as a limited liability company, partnership, corporation or non-profit organization.

“**Project**” has the meaning set forth in the recitals to this Agreement.

“**Project Design Document**” has the meaning set forth in Section 2.4(d)(i).

“**Project Status Report**” has the meaning set forth in Section 7.9(a).

“**Proportionate Share**” has the meaning set forth in Section 2.3.

“**Proposed Project Agreement**” has the meaning set forth in Section 5.1(b).

“**Protocol**” has the meaning set forth in Section 2.4(a).

“**Protocol Change Request**” has the meaning set forth in Section 7.3(a).

“**Receiving Party**” has the meaning set forth in Section 9.1(a).

“**Representative**” has the meaning set forth in Section 4.1.

“**Restricted Period**” has the meaning set forth in Section 8.4.

“**Restricted Person**” means a Person that does not have, or has not retained a Person with, reasonable experience in the operation and maintenance of relevant facilities or is (a) a competitor of Buyer, (b) engaged as its primary business in oil and gas exploration, production, transportation, storage, refining, marketing or investing, (c) on (or affiliated with any Person on) the Office of Foreign Assets Control Sanctions List, or (d) held liable (or for which its senior executives are held liable) criminally or for fraud under any applicable Law.

[“**Restricted Sovereign Use**” has the meaning set forth in Section 7.16 of this Agreement.]​​[[49]](#footnote-48)

“**ROFO Acceptance Notice**” has the meaning set forth in Section 5.1(b)(ii).

“**ROFO Notice**” has the meaning set forth in Section 5.1(b).

“**ROFO Share**”has the meaning set forth in Section 5.1(a) or Section 5.2(a), as appropriate.

[“**RSU Breach**”has the meaning set forth in Section 8.1(f).][[50]](#footnote-49)

[“**Target COD**” has the meaning set forth in Section 2.6.]**[[51]](#footnote-50)**

“**Target Commencement Date**” has the meaning set forth in Section 2.4.

“**Term**” has the meaning set forth in Section 2.1.

“**Total Contract Quantity**” means the sum of the Contract Quantities for each Contract Year of the Term, as set forth in Exhibit D (*Quantity and Price by Year*).

“**Tracking System**” means the tracking system used by the CRU Issuer, if any.

“**Verification and Registry Costs**” has the meaning set forth in Section 3.1(b).

“**Verifier**” has the meaning set forth in Section 2.4(b).

**Exhibit B**

**Project Description**

[*To be provided by Carbon Supplier*]

**Exhibit C**

**Template for Community Benefits Plan**

This template is intended to provide helpful information to assist applicants in developing a community benefits plan for carbon dioxide removal offtake agreements. **The plan should be no more than 5 pages long.**

The rationale for developing a community benefits plan (CBP) for each relevant deployment site is threefold: 1) normative: engaging communities and designing projects that maximize societal benefits is the right thing to do; 2) instrumental: a failure to appropriately engage communities and design responsible projects can result in backlash and delayed/terminated efforts; and 3) substantive: communities often have insights into the kinds of research questions that are relevant that can escape the narrow view of experts, so early engagement can improve project design and outcomes.[[52]](#footnote-51)

Our expectation is not that a CBP is complete at commencement of the contract, but that a) meaningful progress has been made already, and the applicant has demonstrated both a commitment to delivering benefits to communities and a commitment to be responsive to community input; and b) the applicant has a plan to finalize a robust CBP as a deliverable for each relevant deployment site *ideally* before deployment.

Our template is very aligned with the [US Department of Energy’s requirements for CBPs](https://www.energy.gov/oced/articles/community-benefits-plan-guidance), as we expect these to be table stakes for the CDR industry. This means focusing on four pillars: 1) community and labor engagement; 2) workforce development; 3) diversity, equity, access, and inclusion (DEIA); and 4) environmental justice.

There is no universal formula for developing good CBPs that would apply to all CDR projects, but this template is meant to ensure that applicants are addressing relevant issues and have established effective processes.

1. **Community and labor engagement plan**: This section should describe plans (not ad hoc efforts) to engage with stakeholders and/or groups in the communities most impacted by the deployment of your approach. This could include host communities, labor unions representing workers, trades needed for construction and operations, community-based organizations, local residents and businesses, local governments, etc. There is no “right” way to develop an engagement plan, but some ideas include: identify impacted stakeholders; identify goals for engagement; choose methods for engagement and prepare a timeline; identify who is responsible for overseeing engagement (e.g., which staff person, organization, etc.).

Please make sure that your plan describes:

* + 1. How stakeholders will be identified
		2. What methods will be used to engage stakeholders
		3. Plans to communicate / give access on project impacts to interested parties
		4. What methods will be used to incorporate community feedback and improve engagement
		5. Any timelines for negotiating workforce and/or community agreements
	1. Background: A brief description of previous efforts to engage communities, labor, and other stakeholder groups with a focus on those most impacted by the project.
	2. Community assessment: A brief summary of the relevant current and historical social, cultural, economic, labor, and environmental landscape of the project.
	3. Initial stakeholder analysis: A brief summary of specific stakeholder groups relevant to the project.
	4. Engagement methods and timelines: Describe the methods and timelines for engaging with stakeholders that fit with the proposed project. This could be one chart, but should include milestones (e.g., “by month 3, host a listening session with at least 10 community-based groups).
	5. Two-way engagement statement: Make clear that there are areas where engagement can impact project decisions or characteristics (e.g., “we will use input from listening session 1 to inform the location of proposed deployment A”).
	6. Workforce and community agreements: Describe any plans to negotiate workforce and community agreements. If there are opportunities for co-ownership or community stake, include that here.
1. **Workforce development plan:** This section should describe plans for quality job creation, inclusive recruitment and hiring, workplace safety, and investment in worker training.
	1. Background: Describe previous efforts to provide good pay and benefits to workers, support the rights of workers to have a free and fair chance to join a union, etc.
	2. Job quantity: Please describe the number and type of jobs you anticipate will be created by this proposed offtake.
	3. Quality jobs: Describe plans to attract, train, and retain a skilled and diverse workforce.
	4. Workforce development: Describe plans to invest in workforce education, training, etc. This requires understanding local labor force and project needs.
	5. Worker rights: Describe steps to support the rights of workers, including to join a union, ensure project success, and address health and safety. Include discussion of any project labor agreements or community workforce agreements.
	6. Timeline and milestones: Describe methods and timelines for ensuring workforce development.
2. **Diversity, equity, inclusion plan**: Describe plans to foster a welcoming and inclusive environment and support participation from groups underrepresented in relevant fields.
	1. Background: Describe efforts relevant to DEIA, including efforts related to suppliers, partners, etc.
	2. Strategies, milestones, timeline: Describe targeted outcomes and implementation strategies.
3. **Environmental justice plan:** Describe any plans to address energy and environmental justice. Environmental justice addresses how benefits and harms are distributed among groups (distributive justice) and whether there is meaningful involvement in decision-making (procedural justice). For definitions of disadvantaged communities, particularly in the US, see the White House Council on Environmental Quality’s Climate and Economic Justice Screening Tool. This section can draw heavily on the information/characterization in the earlier sections.
	1. Assessment: Describe all relevant impacted communities associated with the project, including which–if any–are disadvantaged. Characterize existing burdens faced (e.g., use the EPA’s EJSCREEN tool, or state-level screening tools; engage with communities to understand existing burdens). Assess benefits and where they flow (e.g., decreased environmental exposure; increased access to capital; increased jobs/job training; etc.) Assess negative impacts (ecological, aesthetic, cultural, economic, etc.). Be sure to assess how negative impacts interact with existing cumulative burdens.
	2. Implementation strategy: Develop a strategy that includes steps to implement energy and environmental justice efforts, advance positive outcomes, and minimize harms. This should include milestones and timelines.

**Exhibit D**

**Quantity and Price by Year**

|  | **Contract Year** | **Total** |
| --- | --- | --- |
|  | **[1]** | **[2]** | **[3]** | **[4]** |  |
| **Annual CRU Target** |  |  |  |  | *[Aggregate CRU Target]* |
| **Buyer Contract Quantity (CRUs)** |  |  |  |  | [*Total Contract Quantity*] |
| **CRU Price ($ / CRU)** |  |  |  |  | N/A |
| **Verification and Registry Price ($ / CRU)** |  |  |  |  | N/A |
| **Buyer Contract Value ($ / Year)** |  |  |  |  | [*Total Contract Value*] |
| **Maximum Buyer Verification and Registry Cost ($ / Year)** |  |  |  |  | [*Aggregate Maximum Buyer Verification and Registry Costs*] |
| **Buyer ROFO Share (Excess CRUs) / Proportionate Share** |  |  |  |  | N/A |
| **Buyer ROFO Share (New Project CRUs)** |  |  |  |  | N/A |

Minimum Quantity: [ ][[53]](#footnote-52)

**Exhibit E**

**CRU Certification**

I, the undersigned, in my capacity as [ \_\_\_\_\_\_] of Carbon Supplier, do hereby certify pursuant to the Carbon Removal Offtake Agreement (the “Agreement”), dated [ \_\_\_\_\_\_], between [Carbon Supplier] (“Carbon Supplier”) and [Buyer] (“Buyer”) that the Project generated [ \_\_\_\_\_\_] CRUs representing the removal of [ \_\_\_\_\_\_] metric tons of CO2e from the period commencing on [ \_\_\_\_\_\_] and ending on [ \_\_\_\_\_\_], and confirm pursuant to the Agreement that all right, title, and interest in and to such CRUs are hereby transferred to Buyer. All capitalized terms used and not defined herein shall have the meanings set forth in the Agreement. I further certify with respect to the Project and CRUs that:

* Each of the representations and warranties in the Agreement remain true and correct, and Carbon Supplier is not in default of any of its obligations under the Agreement;
* The CRUs transferred under this Certificate have been registered on the approved CRU Issuer;
* If the CRUs transferred under this Certificate have been assigned CRU numbers or other unique identifiers, the CRUs transferred hereunder are identified as follows:

[ \_\_\_\_\_\_];

* All CRUs transferred under this Certificate were generated pursuant to and in accordance with the Protocol, which Protocol complies with the requirements of Sections 2.4(a) and 7.3 of the Agreement and uses the highest feasible standards for verification approaches that are available, as evidenced by the certification from the CRU Issuer attached as Annex I hereto;
* No CRUs transferred under this Certificate have been transferred, transmitted, conveyed, promised, or otherwise used by Carbon Supplier or any other Person for any purpose, including with respect to any claims relating to carbon removal and storage;
* As of the time of transfer of each CRU to Buyer, Carbon Supplier had full ownership of each CRU and no other Person has a claim, right, or lien affecting the CRUs transferred under this Certificate;
* All CRUs transferred under this Certificate are free and clear of any liens, and following such transfer, Buyer shall have all right, title, and interest in and to such CRUs;
* All CRUs transferred under this Certificate conform to the requirements established pursuant to a third-party lifecycle analysis confirming that the carbon removal and storage represented by such CRUs resulted in a net-negative carbon footprint;
* No CRUs transferred under this Certificate result from, or cause, “double counting” of Environmental Attributes, and each CRU accurately represents the net carbon removal and storage associated with the Project;
* Verification of the CRUs was performed by the CRU Issuer in accordance with the agreement between Carbon Supplier and the CRU Issuer; and
* The measurement, monitoring, and verification providing evidence of the completion of carbon removal and storage represented by the CRUs were conducted in accordance with the Protocol and the terms of the Agreement, and the net amounts of such removal and storage and other results are attached.

[Carbon Supplier]

By:
Name:
Title:

**Annex I**

[CRU Issuer Certification]

**Exhibit F**

**Protocol**

[*Preliminary protocol to be attached at signing*.]

**Exhibit G**

**Form of ROFO Notice**

Re: ROFO Notice

To Whom It May Concern:

Reference is made to the Carbon Removal Offtake Agreement (the “Agreement”), dated as of [ \_\_\_\_\_\_], between [Carbon Supplier] (“Carbon Supplier”) and [Buyer] (“Buyer”). Capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the Agreement.

Pursuant to [Section 5.1(b)][Section 5.2(b)]of the Agreement, Carbon Supplier provides this ROFO Notice to notify Buyer of its intent to offer for sale up to [ \_\_\_\_\_\_] [New Project CRUs from a New Project][Excess CRUs] for the periods commencing on [ \_\_\_\_\_\_] and ending on [ \_\_\_\_\_\_] at a price of [$ \_\_\_\_\_\_] per CRU.[[54]](#footnote-53) [*Placeholder for description of New Project and New Project CRUs or Excess CRUs, as applicable*]. [A form of Proposed Project Agreement is enclosed.][[55]](#footnote-54)

Buyer may elect to purchase up to its ROFO Share of [New Project CRUs][Excess CRUs], equal to [ \_\_\_\_\_\_], by providing to Carbon Supplier a ROFO Acceptance Notice in accordance with the terms of the Agreement.

The terms and provisions of this ROFO Notice shall be interpreted in accordance with the Laws of the State of New York, without regard to conflict or choice of law provisions thereof.

This ROFO Notice and the information set forth herein shall constitute Confidential Information pursuant to Section 9.1 of the Agreement.

Sincerely,

[Carbon Supplier]

By:
Name:
Title:

**Exhibit H**

**Form of ROFO Acceptance Notice**

Re: ROFO Acceptance Notice

To Whom It May Concern:

Reference is made to the Carbon Removal Offtake Agreement (the “Agreement”), dated as of [ \_\_\_\_\_\_], between [Carbon Supplier] (“Carbon Supplier”) and [Buyer] (“Buyer”). Capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the Agreement.

Pursuant to Section [5.1(b)][5.2(b)] of the Agreement, Buyer hereby acknowledges receipt of Carbon Supplier’s ROFO Notice dated [ \_\_\_\_\_\_], and elects to exercise its right to purchase [ \_\_\_\_\_\_] [New Project CRUs][Excess CRUs] (which may be all or a portion of Buyer’s ROFO Share of such CRUs) offered in the ROFO Notice at the New CRU Price of $[ \_\_\_\_\_\_] for each such CRU, for a total payment of $[ \_\_\_\_\_\_] [pursuant to a New Project Agreement to be executed by the Parties][[56]](#footnote-55). [A revised version of the Proposed Project Agreement is enclosed.][[57]](#footnote-56)

The terms and provisions of this ROFO Acceptance Notice shall be interpreted in accordance with the Laws of the State of New York, without regard to conflict or choice of law provisions thereof.

This ROFO Acceptance Notice and the information set forth herein shall constitute Confidential Information pursuant to Section 9.1 of the Agreement.

Sincerely,

[BUYER]

By:
Name:
Title:

**Exhibit I**

**Payment Provisions**

**Exhibit J**

**Form of Commencement Date Certification**

This certificate is being furnished pursuant to Section 2.4(f) of the Carbon Removal Offtake Agreement (the “Agreement”), dated as of [ \_\_\_\_\_\_], between [Carbon Supplier] (“Carbon Supplier”) and [Buyer] (“Buyer”). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

The undersigned, [ \_\_\_\_\_\_], does hereby certify, solely in [his/her] capacity as an officer of Carbon Supplier and not personally, that [s]he is the duly elected [ \_\_\_\_\_\_] of Carbon Supplier, and that, as such, [s]he is duly authorized to deliver this certificate on behalf of Carbon Supplier in accordance with Section 2.4(f) of the Agreement.

1. All Conditions Precedent have been satisfied or waived, subject to the approval or consent of Buyer or Buyer’s Representative where required.

2. As of the Commencement Date, the representations and warranties of Carbon Supplier set forth herein shall be true and accurate in all material respects, and Carbon Supplier shall have complied in all material respects with all covenants and agreements of Carbon Supplier set forth herein.

3. Exhibit A hereto includes evidence of the satisfaction or waiver or each Condition Precedent.

4. The Commencement Date shall be [ \_\_\_\_\_\_].

[Carbon Supplier]

By:
Name:
Title:

Exhibit A to Commencement Date Certification

**Exhibit K**

**[Form of COD Certification**

This certificate is being furnished pursuant to Section 2.6 of the Carbon Removal Offtake Agreement (the “Agreement”), dated as of [ \_\_\_\_\_\_], between [Carbon Supplier] (“Carbon Supplier”) and [Buyer] (“Buyer”). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

The undersigned, [ \_\_\_\_\_\_], does hereby certify, solely in [his/her] capacity as an officer of Carbon Supplier and not personally, that [s]he is the duly elected [ \_\_\_\_\_\_] of Carbon Supplier, and that, as such, [s]he is duly authorized to deliver this certificate on behalf of Carbon Supplier in accordance with Section 2.6 of the Agreement.

1. Commercial Operation has occurred as of, and the COD shall be, [ \_\_\_\_\_\_].

2. The Project is capable of reliably producing the Annual CRU Targets as of the COD, including, with respect to the first Contract Year specified in Exhibit D (*Quantity and Price by Year*) and Contract Quantity for such Contract Year.

[Carbon Supplier]

By:
Name:
Title: ]**[[58]](#footnote-57)**

**Exhibit L**

**Permitted Disclosures**

Buyer may publicly disclose the following information:

* Identity of Carbon Supplier and a description of its business and carbon removal technology, including the location(s) of facility(ies) and relevant community or other benefits, such as employment data
* Information regarding aggregate purchase commitment for each contract year and over the term
* [Information regarding CRUs, including contracted tonnes, delivered tonnes, pricing and Verification and Registry Costs, durability of storage plans and third-party validation or verifications, for each contract year and over the term][[59]](#footnote-58)
* Timeline for CRU delivery
* Protocol and registry information
* Updated timelines, changes to projected deliveries or failures to deliver tons and reversals of deliveries
* Information required to be disclosed by applicable Law, including AB 1279 and AB 1305

**Exhibit M**

**Insurance Requirements**

[Buyer to provide][[60]](#footnote-59)

**Exhibit N**

**Form of Guaranty**

This Guaranty, dated and effective as of [\_\_\_\_\_\_] (the “Guaranty”), is made by [Carbon Supplier], a [\_\_\_\_\_\_] (“Guarantor”), for the benefit of [Buyer], a [\_\_\_\_\_\_] (“Buyer”).

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement (as defined below).

**Recitals**

WHEREAS, Carbon Supplier and Buyer have entered into a Carbon Removal Offtake Agreement dated as of [\_\_\_] (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Agreement”) to support the development and operation of a project intended to remove greenhouse gasses from the atmosphere, which may consist of the construction and operation of a facility upon a specific site, or may include a series of actions or deliverables, all as more specifically described on Exhibit B (*Project Description*) to the Agreement (the “Project”);

WHEREAS, Carbon Supplier is a [direct subsidiary][Affiliate] of Guarantor and Guarantor will benefit from the transactions contemplated by the Project; and

WHEREAS, the Agreement requires the Guarantor to guarantee the obligations of Carbon Supplier under the Agreement under circumstances specified in the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

**1) Covenants, Representations and Warranties**. The Guarantor represents, warrants and covenants to the Buyer as follows:

a) the execution, delivery and performance by it of this Guaranty does not and will not contravene or conflict with any law, order, rule, regulation, writ, injunction or decree now in effect of any government, governmental instrumentality or court or tribunal having jurisdiction over it, or any contractual restriction binding on or affecting it;

b) the execution, delivery and performance by it of this Guaranty does not and will not conflict with or result in a breach of the terms or provisions of any indenture, agreement or instrument to which it is a party, or by which it is bound, or to which it is subject, or constitute a default thereunder;

c) with the assistance of counsel of its choice, it has read and reviewed this Guaranty, the Agreement and such other documents as it and its counsel deemed necessary or desirable to read in connection with entering into this Guaranty;

d) it is a corporation, validly formed and existing and in good standing under the laws of the jurisdiction of its formation and all other jurisdictions where its failure to be so qualified would have a material adverse effect on its financial condition or results of operations, and, in all cases, it has the full power and authority to enter into and perform its obligations under this Guaranty; and

e) it has duly authorized, executed and delivered this Guaranty, and this Guaranty is fully enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws affecting creditors’ rights and remedies generally and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether a proceeding is sought in equity or at law).

**2) Guaranty**. From and after the date hereof, the Guarantor shall absolutely and unconditionally guarantee any and all of Carbon Supplier’s obligations under the Agreement, including without limitation, (a) the obligation to operate the Project and deliver CRUs (as defined in the Agreement), (b) indemnify the Buyer pursuant to Section 8.5 of the Agreement, and (c) the due payment, performance and fulfillment of any and all of Carbon Supplier’s covenants and obligations under the Agreement (collectively the “Guaranteed Obligations”).

**3) Attorneys’ Fees and Expenses**. The Guarantor shall reimburse the Buyer for all reasonable attorneys’ fees and expenses which the Buyer pays or incurs in connection with enforcing this Guaranty, including, without limitation, all costs, attorneys’ fees and expenses incurred by the Buyer in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceedings in which the Guarantor is the debtor and which adversely affect the exercise by Buyer of its rights and remedies hereunder. Notwithstanding the foregoing, for purposes of this Guaranty, the term “reasonable attorneys’ fees” shall mean reasonable attorneys’, paralegals’ and other similar legal fees actually incurred by the Buyer in enforcing this Guaranty, at such professionals’ standard hourly rates, without regard to any statutory or common law presumption of such term.

**4) Direct and Primary Obligations**. The Guarantor agrees that, if the Carbon Supplier’s obligations guaranteed by this Guaranty are not fully and timely paid or performed according to the tenor thereof, whether by acceleration or otherwise, Guarantor may pay all amounts due or perform all obligations hereby guaranteed in a like manner as if the obligations constituted the direct and primary obligations of the Guarantor. Any right of the Guarantor to subrogation as a result of any payment or performance hereunder or any other payment made or performance by the Guarantor on account of the amounts or obligations due hereunder shall be subordinated to the rights of the Buyer under this Guaranty. In the event that Guarantor pays, performs or fulfills any obligation hereunder (a “Guarantor Performance”), and then Carbon Supplier subsequently pays, performs or fulfills the same obligation, then Buyer shall reimburse Guarantor such amounts as needed so as to restore Guarantor to the Guarantor’s position immediately prior to such Guarantor Performance.

**5) Continuing and Irrevocable Obligations**. This Guaranty and the obligations of the Guarantor hereunder shall be continuing, unconditional and irrevocable until all obligations guaranteed hereunder have been satisfied in full. Notwithstanding the foregoing or anything else set forth herein, and in addition thereto, if at any time all or any part of any payment received by the Buyer from the Guarantor under or with respect to this Guaranty is or must be rescinded or returned for any reason whatsoever (including, but not limited to, determination that said payment was a voidable preference or fraudulent transfer under insolvency, bankruptcy or reorganization laws), then Guarantor’s obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous receipt of payment by the Buyer, and Guarantor’s obligations hereunder shall continue to be effective or be reinstated as to such payment, all as though such previous payment to the Buyer had never been made. The provisions of the foregoing sentence shall survive termination of this Guaranty and shall remain a valid and binding obligation of the Guarantor until satisfied. For the avoidance of doubt, in the event that any payment, or any part thereof, is avoided, rescinded or otherwise restored or returned as described in the preceding sentences, the amount so rescinded, restored or returned shall not be counted for purposes of limiting the Guarantor’s liability hereunder to the limitations on liability set forth in Section 8.6 of the Agreement.

**6) Waiver and Estoppel**. The Guarantor hereby grants to the Buyer, in its absolute discretion and without notice to the Guarantor, the power and authority to deal in any lawful manner with the obligations guaranteed hereby. Without limiting the generality of the foregoing, the Guarantor knowingly waives and agrees that it will be estopped from asserting any argument to the contrary as follows: (a) any and all notice of acceptance of this Guaranty or of the creation, renewal or accrual of any of the obligations or liabilities hereunder indemnified against, either now or in the future; (b) protest, presentment, demand for payment, notice of default or nonpayment, notice of protest or default; (c) any and all notices or formalities to which it may otherwise be entitled, including, without limitation, notice of the granting of any indulgences or extensions of time of payment of any of the liabilities and obligations hereunder and hereby indemnified against; (d) any promptness in making any claim or demand hereunder; (e) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons; (f) any defense based upon an election of remedies which destroys or otherwise impairs any or all of the subrogation rights of the Buyer or the right of the Buyer to proceed against any other person for reimbursement, or both; (g) any duty or obligation of the Buyer to perfect, protect, retain or enforce any security for the payment of amounts payable by the Guarantor hereunder or to proceed against any one or more persons as a condition to proceeding against the Guarantor; and (h) to the extent it may be waived, any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Guaranty. No delay or failure on the part of the Buyer in the exercise of any right or remedy against any other party against whom the Buyer may have any rights shall operate as a waiver of any agreement or obligation contained herein, and no single or partial exercise by the Buyer of any rights or remedies hereunder shall preclude other or further exercise thereof or other exercise of any other right or remedy. No provision of this Guaranty or right of the Buyer hereunder can be waived, nor can Guarantor be released from its obligations hereunder prior to the expiration of this Guaranty in accordance with its terms, except by a writing duly executed by the Buyer. This Guaranty may not be modified, amended, revised, revoked, terminated prior to the expiration of this Guaranty in accordance with its terms, changed or varied in any way whatsoever, except by the express terms of a writing duly executed by Guarantor and the Buyer.

**7) Notices**. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing, shall be sent by certified mail, postage prepaid, return receipt requested, or by overnight courier, or by hand delivery, and shall be effective as of the date on which it is received or would have been received but for the refusal of the addressee to accept delivery, and shall be addressed as follows:

To Buyer:

To Guarantor:

With a copy to:

[Carbon Supplier]

By giving to the other party hereto at least fifteen (15) business days’ written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

**8) Governing Law and Venue**. This Guaranty shall be interpreted, construed and governed by the Laws of the State of New York and shall be enforced in courts located in New York, New York.

**9) [Dispute Resolution**.  In the event of any dispute, claim or controversy arising out of or relating to this Guaranty, Guarantor and the Representatives will meet to resolve such dispute, claim or controversy within seven (7) days after the written request of any Representative. Guarantor, the Parties and their respective Representatives will cooperate in good faith to resolve such dispute, claim or controversy. If any such dispute, claim or controversy cannot be resolved within thirty (30) days after the initial meeting of the Representatives, Guarantor or either Party may refer such dispute, claim or controversy to arbitration. Any dispute, claim or controversy arising out of or relating to this Guaranty, or the breach, termination, enforcement, interpretation or validity thereof, shall be finally determined by arbitration in New York, New York before three arbitrator(s). The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules, except that in the case of a Guarantor or Carbon Supplier not located in or organized under the laws applicable in North America, the applicable rules shall be the JAMS International Arbitration Rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This Section 9 shall not preclude Guarantor or a Party from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.][[61]](#footnote-60)

**10) Entire Agreement**. Except as provided in any other written agreement now or at any time hereafter in force executed by the Guarantor and accepted and acknowledged by the Buyer, this Guaranty shall constitute the entire agreement of the Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon the Guarantor unless expressed herein.

**11) Duration**. The Guarantor hereby agrees that this Guaranty shall remain in full force and effect at all times hereinafter until the Guaranteed Obligations and the obligations hereunder are paid and/or performed in full subject to the limitations and expiration periods set forth herein, notwithstanding any action or undertakings by or against the Buyer and the Guarantor in any proceeding in the United States Bankruptcy Court, including, without limitation, any proceeding relating to valuation of collateral, election or imposition of secured or unsecured claim status upon claims by the Buyer pursuant to any Chapter of the Bankruptcy Code or the Rules of Bankruptcy Procedure, as same may be applicable from time to time.

**12) Miscellaneous**.

a) Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

b) When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. The word “person,” as used herein, shall include any individual, company, firm, association, limited liability company, corporation, trust or other legal entity of any kind whatsoever.

c) All headings in this Guaranty are for convenience of reference only and are not intended to qualify the meaning of any provision of this Guaranty.

d) The obligations of the Guarantor contained herein are undertaken solely and exclusively for the benefit of the Buyer and their permitted successors and assigns, and no other person or entities shall have any standing to enforce such obligations or be deemed to be beneficiaries of such obligations.

e) This Guaranty may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed to be an original, and all of which, when taken together, shall be one and the same instrument, with the same effect as if all parties hereto had signed the same signature page. Any signature page of this Guaranty may be detached from any counterpart of this Guaranty without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Guaranty identical in form hereto but having attached to it one or more additional signature pages.

*Remainder of page intentionally blank; Signature pages follow*

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date first above written.

**[GUARANTOR]**

By:

Name:

Date:

[Acknowledged and agreed:

**[BUYER]**

By:

Name:

Date: ]

**Exhibit O**

**Form of Consent to Collateral Assignment**

This CONSENT TO COLLATERAL ASSIGNMENT (this “Consent Agreement”) is entered into as of [\_\_\_\_\_\_\_\_] among [Supplier], (the “Carbon Supplier”), [Buyer] (the “Buyer”) and [\_\_\_\_\_\_\_\_], as Collateral Agent (together with its successors, designees and assigns in such capacity, the “Collateral Agent”). Capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the Assigned Agreement (as defined below).

W I T N E S S E T H

WHEREAS, the Buyer and Carbon Supplier entered into that certain Carbon Removal Offtake Agreement between Carbon Supplier and Buyer, dated as of [\_\_\_\_\_\_\_\_] (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”); and

WHEREAS, in connection with the financing for the Project, the Carbon Supplier and the Collateral Agent entered into a security agreement (as amended, amended and restated, replaced, supplemented or otherwise modified from time to time, the “Security Agreement”) pursuant to which Carbon Supplier has collaterally assigned all of its right, title, and interest in, to and under the Assigned Agreement to the Collateral Agent on behalf of certain secured creditors represented thereby, including noteholders, lenders, issuers of letters of credit, agents, interest rate hedge counterparties and/or other secured creditors providing credit to or for the benefit of the Carbon Supplier pursuant to certain contracts and agreements (such contracts and agreements, collectively, the “Secured Obligation Documents” and such creditors, collectively, the “Secured Parties”)

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Acknowledgement. The Buyer acknowledges the collateral assignment to the Collateral Agent for the benefit of the Secured Parties of all right, title, and interest of the Carbon Supplier in, to and under the Assigned Agreement and acknowledges the right of the Collateral Agent, on behalf of the Secured Parties, to exercise the rights and remedies herein as secured creditors with respect to the Assigned Agreement. Until such time as the Buyer receives an Exercise of Remedies Notice, such Buyer shall continue to deal directly with the Carbon Supplier with respect to the Assigned Agreement. For purposes of this Section 1 of this Consent Agreement, “Exercise of Remedies Notice” means a notice provided by the Collateral Agent to the Buyer pursuant to Section 10 of this Consent Agreement reflecting the Collateral Agent’s intent to exercise certain rights and remedies herein and shall include reasonable detail of the rights and remedies Collateral Agent intends to exercise.
2. Assumption by the Collateral Agent or Designee.
3. Buyer agrees that, if Collateral Agent, on behalf of the Secured Parties, has elected to exercise rights and remedies to proceed against the Assigned Agreement pursuant to the Secured Obligation Documents and this Consent Agreement, and has provided Buyer with an Exercise of Remedies Notice in accordance with Section 1 of this Consent Agreement, then, if and only if Buyer has not terminated the Assigned Agreement pursuant to the terms thereof and of this Consent Agreement, then:
	* 1. the Collateral Agent, including any purchaser in a foreclosure sale, may be substituted for Carbon Supplier under the Assigned Agreement, if and only if, the Collateral Agent, or the purchaser in a foreclosure sale, (x) are themselves a Subsequent Seller or (y) engage a Subsequent Seller pursuant to a reasonably acceptable operating agreement to perform Carbon Supplier’s obligations under the Assigned Agreement; and
		2. then the Assigned Agreement may be assigned by the Collateral Agent to a Subsequent Seller.

For purposes of this Section 2(a) of this Consent Agreement, “Subsequent Seller” means (i) an entity that (a) has, or has retained a person or entity with at least five (5) years’ experience in the operation and maintenance of carbon capture facilities comparable to those contemplated in the Assigned Agreement; and (b) has agreed in writing to be bound by the Assigned Agreement and to assume all of Carbon Supplier’s obligations under the Assigned Agreement or (ii) an entity which is reasonably acceptable to each of Buyer and the Collateral Agent (each acting reasonably).

1. If the interest of the Carbon Supplier in the Assigned Agreement is sold or transferred to and assumed by a Subsequent Seller as provided in Section 2(a), then Buyer shall recognize such Subsequent Seller as its counterparty under the Assigned Agreement and, subject to all rights and remedies of Buyer under the Assigned Agreement, continue to perform its obligations under the Assigned Agreement in favor of such Subsequent Seller. Any Subsequent Seller that succeeds to the interests and obligations of Carbon Supplier must comply with the Assigned Agreement.
2. Collateral Agent is not obligated to become a Subsequent Seller unless and until it has agreed with Buyer to do so and Collateral Agent shall have no liability in respect of the Assigned Agreement unless and until it becomes a Subsequent Seller and the liability in respect of any and all obligations of Collateral Agent under the Assigned Agreement shall be limited to the Assigned Agreement and this Consent. In no event shall Collateral Agent or any officer, director, employee, or shareholder of Collateral Agent have any personal liability for the Carbon Supplier’s obligations under the Assigned Agreement except as separately assumed in writing.
3. Notwithstanding any transfer, assignment, or assumption of the Assigned Agreement in accordance with this Section 2, the Carbon Supplier shall not be released or discharged from and shall remain liable for any and all of its obligations to the Buyer arising or accruing under the Assigned Agreement prior to such transfer, assignment, or assumption.
4. In connection with the foregoing, the Buyer shall be entitled to assume that any exercise of rights by the Collateral Agent is in accordance with the Secured Obligation Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.
5. Change of Control. Buyer hereby acknowledges both (i) the pledge of the Assigned Agreement to Collateral Agent as part of the transactions contemplated by the Secured Obligation Documents, and (ii) the transfer of such Assigned Agreement, in connection with such an exercise of Collateral Agent’s remedies under the Security Agreement in accordance with Section 2 of this Consent Agreement, to a Subsequent Seller, provided that Collateral Agent provides written notice to Buyer in advance of any such transfer.
6. Replacement Agreement. If the Assigned Agreement is rejected or otherwise terminated in connection with any bankruptcy, insolvency, reorganization or similar proceedings in respect of the Carbon Supplier, Buyer will, at the option of Collateral Agent exercised within thirty (30) calendar days after such rejection or termination enter into a new agreement (the “Replacement Agreement”) with Collateral Agent (or its designee or assignee) (a) having identical terms as the Assigned Agreement (subject to any conforming changes (none of which may include limitation of Buyer’s remedies) necessitated by the substitution of the seller entity; provided that the following conditions shall apply: (i) the seller under the new agreement must be a Subsequent Seller; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the Assigned Agreement and (iii) Collateral Agent (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Carbon Supplier under the Assigned Agreement (other than the bankruptcy of Carbon Supplier).
7. Cure Rights.
8. Buyer agrees that it shall not, without Collateral Agent’s prior written consent, mutually agree with Carbon Supplier to a voluntary termination of the Assigned Agreement; provided that notwithstanding the foregoing, Buyer may terminate the Assigned Agreement without Collateral Agent’s consent due to an uncured event of default under the Assigned Agreement after the expiration of Collateral Agent’s rights to cure under this Section 5.
9. If Carbon Supplier defaults in the performance of any of its obligations under the Assigned Agreement, Collateral Agent may cure such default by the deadline provided therefor in the Assigned Agreement. Buyer will not terminate the Assigned Agreement before providing notice to Collateral Agent and giving Collateral Agent the opportunity to cure such default as follows: (i) with respect to any failure to make a payment when due, within thirty (30) days after the end of the specified cure period, if any, set forth in the Assigned Agreement and (ii) with respect to any other defaults, within the greater of (x) ninety (90) days or (y) thirty (30) days after the end of the specified cure period, if any, set forth in the Assigned Agreement; provided, however, that such cure period in clause (ii) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days if Collateral Agent has commenced and is diligently pursuing appropriate action to cure such non-monetary default. If, in connection with such default, Collateral Agent forecloses on its security interests in the Assigned Agreement and Collateral Agent needs to gain possession of the Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed one hundred eighty (180) days, to permit Collateral Agent to do so.
10. Bankruptcy Stays; Etc. If the Collateral Agent or its nominee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Carbon Supplier from continuing the Assigned Agreement in place of the Carbon Supplier or from otherwise exercising any of its rights or remedies hereunder or under the Security Agreement in respect of the Assigned Agreement, then the times specified herein for the exercise by the Collateral Agent of any right or benefit granted to it hereunder (including without limitation the time period for the exercise of any cure rights granted in Section 5) shall be extended for the period of such prohibition; provided*,* that the Collateral Agent or its nominee is diligently pursuing such rights or remedies (to the extent permitted) in such bankruptcy or insolvency proceeding or otherwise and the Collateral Agent has notified the parties to this Consent Agreement thereof and that such extension shall, together with the extensions outlined in Section 5 of this Consent Agreement, not extend more than 180 days.
11. Representations and Warranties.
	1. The Buyer, as to itself only, hereby makes the following representations and warranties as of the date hereof:
		1. [*Insert name of counterparty*] is a [*form of entity*] validly existing and in good standing under the laws of the [*jurisdiction of formation*]. [*Insert name of counterparty*] has the [corporate]/[limited liability company]/[partnership] power to carry on its business as currently being conducted and as proposed to be conducted by it. The Buyer has the [corporate]/[limited liability company]/[partnership] power and authority to execute and deliver this Consent Agreement and the Assigned Agreement and to perform its obligations thereunder.
		2. This Consent Agreementand the Assigned Agreement to which such Buyer is a party has been duly authorized, executed and delivered by such Buyer, is in full force and effect and is a legal, valid and binding obligation of such Buyer enforceable against such Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, debt adjustment, moratorium or other similar laws affecting creditors’ rights generally and the application of general principles of equity or law (regardless of whether such enforceability is considered in a proceeding at law or in equity) and does not require any further consent or approval of any other person which have not been obtained.
		3. There are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement to which such Buyer is a party, either oral or written[, other than [*insert, if any*]]. A true and correct copy of the Assigned Agreement, together with all Amendments, is attached hereto as Appendix A.
		4. The execution and delivery of this Consent Agreement and the Assigned Agreement by such Buyer did not, and the fulfillment and compliance with the respective provisions hereof and thereof by such Buyer do not and will not, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien, security interest, charge, or encumbrance upon any of the properties or assets of the Buyer pursuant to the provisions of, or result in any violation of, (x) the articles or by-laws of such Buyer, or (y) any applicable law, statute, rule or regulation, or any agreement, instrument, order, judgment or decree, to which such Buyer is subject.
		5. There are no proceedings pending or, to such Buyer’s knowledge, threatened against or affecting such Buyer in any court or by or before any governmental authority, arbitration board or tribunal that would reasonably be expected to have a material adverse effect upon Buyer’s ability to perform its obligations under this Consent Agreement and the Assigned Agreement.
	2. The Carbon Supplier, as to itself only, hereby makes the following representations and warranties as of the date hereof:
		1. The Carbon Supplier gives notice to the Buyer that the Carbon Supplier has created or will pursuant to the Security Agreement create security interests in favor of the Collateral Agent over all of the Carbon Supplier’s present and future right, title, benefit, and interest in the Assigned Agreement, and Buyer acknowledges that it has received this notice.
		2. (x) Carbon Supplier is not in default of any of its obligations under the Assigned Agreement and (y) [subject to Carbon Supplier’s obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation date,] no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Carbon Supplier to terminate or suspend its obligations under the Assigned Agreement.
		3. Carbon Supplier has not delivered notice of any assignment relative to the right, title, and interest of the Carbon Supplier in, to and under its Assigned Agreement other than the collateral assignment referred to in Section 1.
		4. Carbon Supplier is not in default of any of its obligations under the Assigned Agreement, to the best of the actual knowledge of Carbon Supplier, Buyer is not in default of any of its obligations under the Assigned Agreement.
12. Termination of the Assigned Agreement. Buyer agrees that it shall not, without Collateral Agent’s prior written consent, mutually agree with Carbon Supplier to a voluntary termination of the Assigned Agreement pursuant to Section 8.2(a) of the Assigned Agreement; provided that notwithstanding the foregoing, Buyer may terminate the Assigned Agreement without Collateral Agent consent due to an uncured Event of Default under the Assigned Agreement after the expiration of Collateral Agent’s rights to cure under Section 5 hereof, subject to an extension, if applicable, pursuant to Section 6 hereof**.**
13. Notices. Notice to any party hereto shall be in writing to the addresses set forth below or such other addresses provided by notice in accordance herewith. Notices shall be deemed to be delivered (a) if personally delivered, on the date of such personal delivery, (b) if sent by reputable overnight delivery service, on the date of physical delivery confirmed by such reputable express delivery service or (c) if sent by electronic mail, on the date the intending recipient of an electronic mail confirms receipt.

If to the Buyer:

[*Legal name of Buyer*]

[*Address line 1*]

[*Address line 2*]

[*City, State, Zip/Postal*]

Attention: [\_\_\_\_\_\_\_\_]

Phone: [\_\_\_\_\_\_\_\_]

Email: [\_\_\_\_\_\_\_\_]

and with a copy (which shall not constitute notice) to:

[\_\_\_\_\_\_\_\_]

If to the Carbon Supplier:

[*Legal name of Company*]

[*Address line 1*]

[*Address line 2*]

[*City, State, Zip/Postal*]

Attention: [\_\_\_\_\_\_\_\_]

Phone: [\_\_\_\_\_\_\_\_]

Email: [\_\_\_\_\_\_\_\_]

If to the Collateral Agent:

[*Legal name of Collateral Agent*]

[*Address line 1*]

[*Address line 2*]

[*City, State, Zip/Postal*]

Attention: [\_\_\_\_\_\_\_\_]

Phone: [\_\_\_\_\_\_\_\_]

Email: [\_\_\_\_\_\_\_\_]

1. Amendment, Waiver. Neither this Consent Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Buyer, the Carbon Supplier and the Collateral Agent.
2. Binding Effect; Assignment. This Consent Agreement shall be binding upon and shall inure to the benefit of the Buyer, the Carbon Supplier and the Collateral Agent and their respective permitted successors, transferees and assigns.
3. Counterparts. This Consent Agreement may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart to this Consent Agreement by facsimile or an electronic transmission of a PDF copy thereof shall be as effective as delivery of a manually signed original.
4. Governing Law. THIS CONSENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW RULES THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).
5. Consent to Jurisdiction and Venue. The Buyer, Carbon Supplier and Collateral Agent hereby submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York State court sitting in New York City for the purposes of all legal proceedings arising out of or relating to this Consent Agreement or the transactions contemplated hereby. The Buyer, Carbon Supplier and Collateral Agent hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. To the extent permitted by applicable law, the Buyer, Carbon Supplier and Collateral Agent irrevocably agrees to the service of process of any of the aforementioned courts in any suit, action or proceeding by the mailing of copies thereof by certified mail, postage prepaid, return receipt requested, to the Buyer, Carbon Supplier or Collateral Agent, as applicable, at its address referenced in Section 10, such service to be effective upon the date indicated on the postal receipt returned from such Buyer, Carbon Supplier or Collateral Agent, as applicable.
6. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.
7. Payments. Buyer agrees to make all payments required to be made by it under the Assigned Agreement directly to the account described immediately below or to such other account as Collateral Agent may from time to time specify in writing to Buyer. Any payment made by Buyer to Collateral Agent shall discharge any obligation of Buyer to Carbon Seller, and Buyer agrees not to accept any changes to these payment instructions from Carbon Seller; provided, however, that this instruction does not constitute direct notification of Buyer as an account debtor within the meaning of Section 9406 of the Uniform Commercial Code. Buyer may reasonably and in good faith rely on the apparent authority of Collateral Agent or any person representing himself or herself as the authorized representative of Collateral Agent. In the event of a conflict or inconsistency between the terms of this Section and the payment terms of the Assigned Agreement, the terms of this Section shall prevail.

ACCOUNT: [\_\_\_\_\_\_\_\_\_\_\_]

1. Termination. This Consent Agreement and the rights of the Secured Parties hereunder shall automatically and without further action of the parties terminate upon (a) the satisfaction in full of Carbon Supplier’s obligations under the Security Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Security Agreement) and (b) upon Collateral Agent’s consummation of all of its remedies available under this Consent. As a courtesy, Collateral Agent will notify Buyer in writing promptly upon the occurrence of the conditions described in either of the foregoing clauses (a) and (b).
2. Severability. If any provision of this Consent Agreement or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.
3. Third Party Rights. Nothing in this Consent Agreement, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer, Carbon Supplier and Collateral Agent, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent Agreement and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer, Carbon Supplier and Collateral Agent.

*[SIGNATURE PAGES FOLLOW]*

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent Agreement as of the date first written above.

[\_\_\_\_\_\_\_\_]

as Buyer

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Name:
 Title:

[\_\_\_\_\_\_\_\_]

as Carbon Supplier

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Name:
 Title:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

as Collateral Agent

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Name:
 Title:

Appendix A

Assigned Agreement and Amendments

*Attached*

**[Exhibit P**

**Ecosystem Safety Plan**

The Ecosystem Safety Plan should include the following:

1. Standard operating procedures for safe handling and spill prevention for feedstock, by-product, and waste materials;
2. Hazard analysis and relevant disaster management plans;
3. Decommissioning plan;
4. Potential ecosystem impacts list and thresholds for action; and
5. Ongoing risk monitoring plan.][[62]](#footnote-61)

**[Exhibit Q**

**Form of New Project ROFO Agreement**[[63]](#footnote-62)

This New Project ROFO Agreement (this “Agreement”) is entered into by [TopCo], a [\_\_\_\_\_] organized under the laws of [\_\_\_\_\_] (hereinafter “[TopCo]”) and [Buyer], a [\_\_\_\_\_] organized under the laws of [\_\_\_\_\_] (hereinafter “Buyer”), in connection with that certain Carbon Removal Offtake Agreement (the “Offtake Agreement”), dated as of [\_\_\_\_\_\_\_\_\_], between [Carbon Supplier], [a wholly owned subsidiary of TopCo], and Buyer. All capitalized terms used and not defined herein shall have the meanings assigned to them in the Offtake Agreement. [TopCo] and Buyer may be referred to herein collectively as the “Parties,” or individually as a “Party.”

1. Effect on Offtake Agreement. This Agreement shall not amend the Offtake Agreement. The Offtake Agreement shall remain in full force and effect, without modification, notwithstanding the entry into this Agreement by [TopCo] and Buyer[, except that for so long as [TopCo] is the Carbon Supplier under the Offtake Agreement, this Agreement shall supersede the provisions of Section 5.2 of the Offtake Agreement][[64]](#footnote-63).
2. New Projects.
	1. Right of First Offer. [TopCo], on behalf of itself and its Affiliates, hereby grants to Buyer a right of first offer (the “New Project ROFO”) as further described in this Section 2, for the purchase of up to Buyer’s ROFO Share of the CRUs or other Environmental Attributes similar to CRUs that are expected to be generated from new carbon removal projects not included in Exhibit B (*Project Description*) to the Offtake Agreement (each a “New Project”) that are owned or developed by [TopCo] or any of its Affiliates (“New Project CRUs”), at a price at which [TopCo] or such Affiliate proposes to sell such New Project CRUs (the “New Project CRU Price”), prior to [TopCo] or such Affiliate offering or selling such New Project CRUs to any other Person during the Term of the Offtake Agreement and during the Restricted Period. For the avoidance of doubt, the New Project ROFO does not apply to CRUs that have been contractually committed to third parties in definitive agreements executed prior to the Effective Date and that have been disclosed to Buyer’s Representative. With respect to New Project CRUs, Buyer’s “ROFO Share” is equal to [\_\_\_\_\_\_\_\_\_\_ (\_\_%)] multiplied by (A) the Total Contract Quantity divided by (B) the Aggregate CRU Target.
	2. Exercise of Rights.
		1. Notice. [TopCo] or its applicable Affiliate shall provide written notice to Buyer of any New Project reasonably promptly after [TopCo] or such Affiliate determines that New Project CRUs will be offered for sale from such New Project. Such written notice shall be provided to Buyer in the form attached hereto as Exhibit G (*Form of ROFO Notice*) to the Offtake Agreement (the “ROFO Notice”), and shall describe the New Project CRUs, including the source, number and quality of such New Project CRUs, the time periods during which such New Project CRUs are expected to be available and the New Project CRU Price. [TopCo] shall propose a form of agreement for the purchase and sale of such New Project CRUs on the terms of the transaction set forth in the ROFO Notice and otherwise on commercially reasonable terms and conditions typical for an offtake agreement for CRUs or Environmental Attributes similar to CRUs, as applicable (the “Proposed Project Agreement”).
		2. Response. If Buyer desires to purchase some or all of Buyer’s ROFO Share of the New Project CRUs, Buyer shall provide written notice to [TopCo] or its applicable Affiliate in the form set forth in Exhibit H (*Form of ROFO Acceptance Notice*) to the Offtake Agreement (the “ROFO Acceptance Notice”), together with a signed Proposed Project Agreement or a revised version of such Proposed Project Agreement, within ninety (90) days after the date of receipt of the ROFO Notice (the “New Project ROFO Deadline”). If Buyer submits a revised version of the Proposed Project Agreement to [TopCo] or its applicable Affiliate as set forth in this Section 2(b), [TopCo] or such Affiliate shall negotiate in good faith exclusively with Buyer for a period of no less than ninety (90) days (subject to extension by either Party for an additional ninety (90) days if negotiations are ongoing at the end of the initial ninety (90) day period) after the New Project ROFO Deadline to finalize the Proposed Project Agreement in a form mutually acceptable to the Parties (a “New Project Agreement”). Each Party shall respond promptly to proposed revisions to the Proposed Project Agreement provided by the other Party.
		3. Acceptance or Rejection. If Buyer does not submit a ROFO Acceptance Notice for New Project CRUs by the New Project ROFO Deadline (or notifies [TopCo] or its applicable Affiliate in writing prior to such deadline that it does not intend to exercise its ROFO with respect to such notice) or the Parties fail to reach agreement on a New Project Agreement within the time periods established pursuant to Section 2(b), no further action is required by either Party with respect to the New Project CRUs set forth in the ROFO Notice; provided that neither [TopCo] nor any of its Affiliates may sell the New Project CRUs at a price lower than the New CRU Price stated in the ROFO Notice or otherwise on more favorable terms, taken as a whole, compared to those offered to Buyer unless [TopCo] or such Affiliate shall have first issued an additional ROFO Notice to Buyer offering to sell such New Project CRUs at such proposed price or terms in accordance with this Section 2.
		4. Survival of ROFO Obligation; Application in Context of Assignment or Change of Control. [TopCo] acknowledges and agrees that in the event of an assignment of the Offtake Agreement and a transfer of all of the Project’s assets to an Affiliate of [Carbon Supplier][TopCo] in accordance with Section 7.11(a) of the Offtake Agreement, [TopCo] and its Affiliates (including the applicable assignee) shall continue to be bound by the New Project ROFO set forth herein. In addition, in the event that this Agreement is assigned by operation of law in connection with a transfer of the Project to a third party pursuant to a Change of Control of Carbon Supplier that is otherwise permitted by and complies with the terms of this Agreement and the Offtake Agreement, including Section 7.11 and Section 7.12 of the Offtake Agreement, the acquiring or surviving entity in such Change of Control shall continue to be bound by the Excess CRU ROFO set forth in Section 5.2 of the Offtake Agreement (but not, for clarity, as to any other projects or operations of the applicable third party).
3. Remedies. As Buyer’s sole and exclusive remedy and [TopCo]’s sole and entire obligation for a breach by [TopCo] of the requirements of this Agreement with respect to Buyer, [TopCo] shall (i) offer replacement CRUs or other Environmental Attributes to Buyer that are acceptable to Buyer in its sole discretion or (ii) if such replacement CRUs are not available or are not acceptable to Buyer in its sole discretion, pay to Buyer the value received from the sale of any New Project CRUs not offered to Buyer as required by Section 2 above.
4. Miscellaneous. The provisions of Article 10 of the Offtake Agreement shall apply, *mutatis mutandis*, to the interpretation of this Agreement, except that, for purposes of this Agreement, Section 10.5 of the Offtake Agreement shall be revised as follows:

“Assignment. No Party to this Agreement shall assign, transfer, license or sublicense its rights under this Agreement (or any right granted herein) without the prior written consent of the other Party.”

**(Signature Pages Follow)**

**[TOP-LEVEL ENTITY]**

**By:**

**Name:**

**Title:**

**Date:**

 **[**BUYER**]**

**By:**

**Name:**

**Title:**

**Date:**

1. Carbon Supplier to be top-level entity. [↑](#footnote-ref-0)
2. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-1)
3. Consider if replacing with "Commencement Date" is appropriate for the Project. [↑](#footnote-ref-2)
4. Consider including if adding clause (iv) below. [↑](#footnote-ref-3)
5. Consider including if appropriate for the project. [↑](#footnote-ref-4)
6. Consider if including milestones is appropriate for the Project and, if so, the appropriate timing for status updates. [↑](#footnote-ref-5)
7. Include if Carbon Supplier is not the top-level entity as of the Effective Date or will be assigning the agreement to a subsidiary shortly after the Effective Date. [↑](#footnote-ref-6)
8. Include if Carbon Supplier is not the top-level entity as of the Effective Date. [↑](#footnote-ref-7)
9. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-8)
10. Consider if replacing with "Commencement Date" is appropriate for the Project. [↑](#footnote-ref-9)
11. Consider if replacing with "Commencement Date" is appropriate for the Project. [↑](#footnote-ref-10)
12. To be updated for different pathways as needed. [↑](#footnote-ref-11)
13. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-12)
14. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-13)
15. Consider removing provision if neither party selects a representative to serve on their behalf, and check all related references to “Representative” to be replaced with “Buyer” or another applicable party. [↑](#footnote-ref-14)
16. Consider if replacing with “a statistician” is appropriate for the Project. [↑](#footnote-ref-15)
17. Replace with “expert” if “statistician” is used above. [↑](#footnote-ref-16)
18. Appropriate percentage to be determined for each deal. [↑](#footnote-ref-17)
19. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-18)
20. Include top-level entity if not the Carbon Supplier in each case. [↑](#footnote-ref-19)
21. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-20)
22. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-21)
23. Include if any specific milestones are listed as a condition precedent in Section 2.3. [↑](#footnote-ref-22)
24. Name top-level entity. [↑](#footnote-ref-23)
25. Consider if including bracketed language is appropriate for the Project. [↑](#footnote-ref-24)
26. Include for any non-domestic Carbon Supplier. Alternatively, if a Carbon Supplier is offering a Corresponding Adjustment, 7.16 would need to state that instead. [↑](#footnote-ref-25)
27. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-26)
28. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-27)
29. Consider adding a separate default and related cure period for meeting any milestones (if added as a condition precedent under Section 2.4(g). [↑](#footnote-ref-28)
30. Include with Section 7.16 for any non-domestic Carbon Supplier. [↑](#footnote-ref-29)
31. Include with Section 7.16 for any non-domestic Carbon Supplier. [↑](#footnote-ref-30)
32. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-31)
33. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-32)
34. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-33)
35. Consider if “COMMENCEMENT DATE” is more appropriate for the Project. [↑](#footnote-ref-34)
36. Consider if “COMMENCEMENT DATE” is more appropriate for the Project. [↑](#footnote-ref-35)
37. Consider if “COMMENCEMENT DATE” is more appropriate for the Project. [↑](#footnote-ref-36)
38. Consider if “COMMENCEMENT DATE” is more appropriate for the Project. [↑](#footnote-ref-37)
39. Buyer to determine manner of amendments, waivers, consents, and approvals. [↑](#footnote-ref-38)
40. Include if Carbon Supplier is not the top-level entity. [↑](#footnote-ref-39)
41. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-40)
42. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-41)
43. Consider if “COMMENCEMENT DATE” is more appropriate for the Project. [↑](#footnote-ref-42)
44. Consider if “COMMENCEMENT DATE” is more appropriate for the Project. [↑](#footnote-ref-43)
45. Remove bracketed language if related condition precedent and covenant are not included. [↑](#footnote-ref-44)
46. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-45)
47. Minimum quantity formulation to be determined. [↑](#footnote-ref-46)
48. To be included if the Affiliate Projects condition precedent is included. [↑](#footnote-ref-47)
49. Include with Section 7.16 for any non-domestic Carbon Supplier. [↑](#footnote-ref-48)
50. Include with Section 7.16 for any non-domestic Carbon Supplier. [↑](#footnote-ref-49)
51. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-50)
52. Fiorino, Daniel J. "Citizen participation and environmental risk: A survey of institutional mechanisms." Science, Technology, & Human Values 15.2 (1990): 226-243. [↑](#footnote-ref-51)
53. [\_]% multiplied by the Total Contract Quantity. [↑](#footnote-ref-52)
54. Format of notice may include a table similar to Exhibit D. [↑](#footnote-ref-53)
55. Include if notice relates to New Project CRUs. [↑](#footnote-ref-54)
56. Include if notice relates to New Project CRUs. [↑](#footnote-ref-55)
57. Include if notice relates to New Project CRUs and Buyer has comments to the Proposed Project Agreement provided by Carbon Supplier. [↑](#footnote-ref-56)
58. Consider if removing bracketed language is appropriate for the Project. [↑](#footnote-ref-57)
59. Consider adapting based on Buyer’s needs and discussion with Carbon Supplier. [↑](#footnote-ref-58)
60. To be provided by Buyer, requirements may include evidence of commercial liability and property insurance. [↑](#footnote-ref-59)
61. Jurisdiction to be agreed among parties. [↑](#footnote-ref-60)
62. Remove bracketed language if related condition precedent and covenant are not included. [↑](#footnote-ref-61)
63. Include if Carbon Supplier is not the top-level entity as of the Effective Date or will be assigning the agreement to a subsidiary shortly after the Effective Date. [↑](#footnote-ref-62)
64. Include if TopCo’s ROFO will be limited while it is the Carbon Supplier under the agreement, and modify Section 2 accordingly. [↑](#footnote-ref-63)