



OCTOBER 2026

Protecting Community Rights and Interests in Carbon Projects

Guidance for NGOs supporting communities

 **RAINFOREST
FOUNDATION UK**



SDSG
SUSTAINABLE DEVELOPMENT
STRATEGIES GROUP

Contents

Acknowledgements	3
Introduction	4
The right to say “no”	4
A note on independent professional advice	5
Carbon project development agreement	6
Guidance for Carbon Project Development Agreements in Voluntary Carbon Markets	7
01 Conditions Precedent	8
02 Land and Tenure Rights	10
03 Project and Carbon Rights	12
04 Benefit Sharing	14
05 Project Description and Implementation	17
06 Term/Renewal	19
07 Relationship Between Parties	21
08 Mutual Covenants	22
09 Developer Obligations	24
10 Landholder Obligations	26
11 Warranties	28
12 Project Costs	30
13 Reversal & Cancellation	32
14 Monitoring, Reporting & Administration	35
15 Compliance with Laws & Approvals	37
16 Contract Documents and Resolving Ambiguities	40
17 Site Access, Land Use & Environmental Compliance	42
18 Transfers and Change in Control	45
19 Security for Performance	47
20 Default, Suspension & Termination	48
21 Post-Termination Obligations	50
22 Liabilities and Indemnities	51
23 Force Majeure	54
24 Dispute Resolution and Grievances	57
25 Intellectual Property Rights	59
26 Confidentiality	62

Acknowledgements

We would like to thank Vittoria Moretti, Kim Aumonier, Maud Lepaon, and Joe Eisen for overseeing, coordinating, and reviewing these guidelines. We are also grateful to Bennett Jarvis and Brendan Schwartz for their valuable contributions and insights.

Our thanks also go to Andrew Brown for the design of this publication, and to Pia Drzewinski for the French translation.

This publication was made possible through the generous pro bono support of lawyers from DLA Piper, whose guidance and commitment were invaluable throughout the process.

Finally, we extend our deepest gratitude to the frontline communities and civil society organisations working tirelessly to defend tropical forests and human rights across tropical forests. This guide builds upon years of collaboration to document the perspectives of Indigenous Peoples and other local communities in the Democratic Republic of Congo, and to develop awareness-raising, research, advocacy, and community outreach materials. Without these collective efforts and shared knowledge, the publication of these guidelines would not have been possible.

Introduction

This guide is designed for NGOs, grassroots and other solidarity organisations and legal experts supporting local communities, Indigenous Peoples, and other customary or community-based landholders in the Democratic Republic of Congo (DRC) who are approached by private developers seeking to undertake voluntary carbon market (VCM) projects on their land. These projects aim to generate carbon credits under international VCM standards (such as Verra's VCS or Gold Standard), with the intention of profiting from the sale of credits in voluntary carbon markets.¹

Important: This guidance applies to private-sector initiatives that produce credits under certified projects in voluntary markets. It is not designed for government-sponsored carbon projects.

This document provides practical contracting guidance to help Landholders:

- understand their rights and obligations;
- navigate negotiations with developers;
- secure fair, long-term agreements that reflect community interests and comply with international carbon market standards;
- ensure that agreements provide clear protections and remedies in the event of default, breach, or illegal activity by the Developer; and
- advocate for their interests if a Developer seeks to proceed without proper consent or agreement.

The right to say “no”

For the purposes of this guide, a “Landholder” includes any person, group, or entity with recognised, customary, or de facto rights, or a

legitimate claim to occupy, use, or manage any part of the Project area. This includes statutory titleholders, leaseholders, concession holders, communal tenure holders, or others with legally recognised interests, whether or not formally registered. The Landholder is the party with the authority to give or withhold consent to an agreement regarding land use for carbon projects. This authority may arise from recognised or de facto land ownership rights, or through the requirements of free, prior and informed consent (FPIC) and benefit-sharing requirements embedded in voluntary carbon market standards such as Verra's VCS and the Gold Standard. Under these standards, developers cannot proceed with a verified project without first obtaining FPIC from occupants or users of the land.

These requirements apply to all Local Communities and Indigenous Peoples including those with customary or traditional rights, not only formal titleholders. Even where a developer holds a concession, project certification should not occur unless FPIC and benefit-sharing requirements are met through agreements with the true Landholders. Because these obligations apply broadly, Landholders can withhold FPIC and insist that a project does not proceed unless it enters into a Carbon Project Development Agreement that preserves their rights and forms the basis for consent.

FPIC means that the community must be given full and honest information about the project, enough time to consider it, and the freedom to say “yes” or “no” without pressure. The community may decide that the project is not in its best interests, unfairly restricts its use of the forest or that it wants to pursue other development options, for example. **This means that landholders do not have to agree to anything. The community has the right to refuse to enter into any agreement with a developer.**

¹ A separate guide has been developed for landholders and communities with rights over land that a developer wants to use for a carbon project.

FPIC is not just about agreeing to a project at the start. It is an ongoing process throughout the life of the project. Communities should be kept informed and consulted at important stages of the project, especially if major changes are proposed. Communities should also have the right to suspend or end the project if the developer seriously breaks the agreement, and to renegotiate the agreement if they want changes to be made.

Community participation

When speaking with a carbon project developer, it is crucial that the entire community is able to engage in the process rather than just local chiefs and other elites. FPIC is structured around collective decision-making, ensuring the active participation of often marginalised groups such as women, youth and Indigenous Peoples. This is also critical to preventing intra-community exploitation and creating truly inclusive agreements. A list of people participating in each discussion with project developers should be recorded to ensure that any decisions reflect the will of the entire community.

A note on independent professional advice

Wherever possible, landholders should seek their own professional advice before entering into any agreement with a developer, particularly where significant rights over land and natural resources are at stake.²

Acknowledging that independent legal, financial, or technical advice may be difficult to access or afford in many cases, landholders might consider requesting that the developer provide funding for the landholder to obtain such advice for the community as a condition of the free, prior and informed consent process.

Other advice could be obtained from national and international NGOs working to support the rights of Indigenous Peoples and other local communities.

RFUK and SDSG recognise that the legal and regulatory framework governing community rights and natural resource management in the DRC continues to evolve. This publication will therefore be updated as relevant new legislation and regulations are adopted.

² These guidelines are a practical tool to support landholders to effectively engage with carbon project developers. They are not a substitute for independent legal, financial, or technical advice. For this reason, RFUK and SDSG make no representations, warranties, or guarantees of any kind in relation to this publication and accept no responsibility or liability for any loss or damage of any nature arising out of or in connection with this publication or its use.

Carbon project development agreement

To clearly define the roles, responsibilities, and limitations of each party under a Carbon Project Development Agreement, it is recommended to include a 'Project Management Plan' schedule which is prepared in accordance with the requirements of DRC legislation and the applicable carbon methodology, setting out at minimum:

- the matters and activities that the Developer agrees to be responsible for with respect to the development, implementation and management of the Project (e.g. registering the Project, undertaking agreed project activities, monitoring abatement, engaging auditors, submitting reports, obtaining and trading credits etc);
- the matters and activities that the Landholder will be responsible for; and
- restrictions on activities on the Project land once the Project commences, as agreed between the parties.

The aim of the guidance on each clause is to provide a balanced approach in terms of the allocation of risk between the parties. Not all clauses in this guide will be relevant or required for every Project. However, as a matter of best practice and to clearly define and protect Landholder rights, minimise ambiguity and reduce the risk of disputes, they have been included. Further consideration should always be given as to whether the clauses are appropriate given the proposed relationship between the Landholder and the Developer, as well as the specific requirements of DRC law and the selected carbon market's standards and requirements.

This document does not address the co-benefits that may be generated by carbon projects.



Photo: Franck Zongwe Lukama/Kilalopress

Guidance for Carbon Project Development Agreements in Voluntary Carbon Markets

01 Conditions Precedent

KEY CONSIDERATIONS

- 1.1 This clause identifies specific conditions that must be satisfied before the Agreement becomes legally binding or operational.
- 1.2 It ensures that key legal, regulatory, carbon standard (e.g. Verra, Gold Standard), and project-specific requirements are met before either party is obligated to perform under the Agreement.
- 1.3 It protects both parties from premature commitments in case the Project becomes unviable. It also helps manage risk by ensuring that the Agreement only proceeds once critical legal, technical, and community safeguards are in place.
- 1.4 The clause provides a mechanism for early-stage coordination and alignment of expectations between the parties.
- 1.5 The following conditions precedent are examples which might be considered as requirements to be satisfied prior to Project commencement and implementation:
 - (a) regulatory and legal approvals:
 - (i) approval from relevant authorities (e.g. the Ministry of Environment and Sustainable Development) for project registration;
 - (ii) confirmation from the Developer (or Landholder, where allocated responsibility) of obtaining all necessary approvals, consents, authorisations, or permits required to undertake the Project from government agencies, customary authorities, local councils, and any other competent authority or land commission;
 - (b) land and carbon rights confirmation:
 - (i) evidence of full compliance with a community land rights recognition process;
 - (ii) confirmation of rights to land access and carbon rights, including written assurance of there being no unresolved conflicts over land or carbon rights within the Project area;
 - (iii) stakeholders have reached agreement on relevant Project Management Plan/s to the Agreement to implement the Project;
 - (c) community engagement and safeguards:
 - (i) completion of consultation with Landholder and affected communities, documented satisfaction of the FPIC process with Landholder and all affected communities, plus confirmation of completion of public consultation period;
 - (ii) Landholder (and affected communities) agreement reached on the benefit-sharing arrangement, with confirmation that all interested/affected stakeholders have accessed the Agreement (and if possible, have signed a copy in their native language);
 - (d) Project documentation and technical readiness:
 - (i) the Developer has either registered the Project under the applicable standard, or has confirmed that it has submitted compliant project documentation to the applicable

carbon standard (e.g., Verra, Gold Standard) and such project documentation is publicly accessible for review;

- (ii) completion of all required due diligence, including land tenure verification and social/ community impact assessments; and
- (iii) completion of baseline carbon and environmental assessments in accordance with the applied methodology;

(e) financial readiness:

- (i) evidence of funding availability and sufficient financial guarantee to secure project implementation and commitment to the benefit-sharing arrangement.

1.6 Where multiple Landholders or customary groups are involved, the clause should specify how collective consent will be documented and verified.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

1.7 It may be appropriate to include a mechanism to defer obligations if satisfaction of conditions precedent is delayed due to factors outside the parties' control (e.g. government delays, community processes) but this should not permit deferral of obligations indefinitely.

1.8 The clause should specify:

- (a) a deadline by which the Agreement will or may be terminated, if the conditions are not satisfied or waived (or the date is not agreed to be extended);
- (b) whether conditions can be waived and by whom; and
- (c) whether failure to satisfy conditions results in automatic termination, or whether the termination requires notice.

1.9 Consider including a fallback mechanism (e.g. renegotiation or extension to expiry date) if conditions are not met but parties wish to continue discussions.

1.10 Use clear and specific language to define each condition precedent and its required evidence or documentation.

1.11 If the clause allows for waiver of conditions, ensure that any waiver by the Landholder must be in writing and signed by the Landholder, accompanied with confirmation and evidence of FPIC compliance.

1.12 Where community decision making is required to be involved in the satisfaction of conditions precedent, ensure that the process for satisfying the condition includes culturally appropriate engagement and documentation.

1.13 Consider including a mechanism for the parties to notify each other of progress, or if there are any obstacles, in satisfying the conditions precedent.

1.14 Ensure the clause aligns with other clauses regarding commencement, termination, renewal of term and Project implementation.

02 Land and Tenure Rights

KEY CONSIDERATIONS

- 2.1 The Agreement should specify the capacity in which the relevant land is owned and managed, whether by the State, under a concession by an individual, group or entity, or managed by community under customary rights or laws.
- 2.2 This clause should address the requirement for consideration to be given to all communities living in and around the Project area and whether the land is subject to customary or communal ownership claimed over any part of the land (including tenure which is not formalised or documented).
- 2.3 If the land is held under a forest conservation concession, complete details should be provided regarding the concession. If the land is not yet held under a concession and an application is still processing, consider whether it is appropriate for the Project to proceed at this point, and whether a conservation concession being granted should be a condition precedent to commencement of the Project.
- 2.4 If the Project commences while the land is still under application for a concession (i.e. if it is not a condition precedent), ensure the Developer provides complete information about the steps it has taken, and is taking to procure the concession. Ensure there is a right to terminate for the Landholder if the concession is not granted and the Project cannot go ahead.
- 2.5 Where land is held communally, the clause should specify:
 - (a) who has authority to grant rights on behalf of the community;
 - (b) how the community exercises its authority to grant those rights to carry out the Project and activities on the Landholder's land (e.g. through community/cultural decisions and resolutions);
 - (c) how FPIC standards have been met in procuring the land rights necessary to undertake the Project; and
 - (d) whether or not the Agreement binds successors or future representatives of the Landholder on the land.
- 2.6 The clause should address:
 - (a) whether the land rights are exclusive to the Developer (i.e. it can undertake activities at its discretion and to the exclusion of other persons on the land), or solely limited to the carbon project (and the clause should address what any interface or cooperation may look like);
 - (b) whether the Landholder and other affected communities retain rights to land use, particularly those which are relevant to their livelihood (though consideration will need to be given as to whether such land use interferes with the Project's intended activities/land use).

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 2.7 Where land uses and rights are to be restricted for the Landholder and any other affected communities, the nature and extent of such restrictions should be determined in consultation with, and with the agreement of, the Landholder and affected communities. In doing so, the Agreement should ensure:
- (a) consent to such restriction is obtained in compliance with FPIC standards by the Landholder and affected communities;
 - (b) mapping of community lands is undertaken in consultation with community and is verified to account for all affected communities (in accordance with FPIC standards) in order to avoid inadvertent displacement, exclusion or disputes later in time;
 - (c) training is provided by the Developer to the Landholder and affected communities on compliance with the restrictions to any land use; and
 - (d) such restriction does not lead to unavoidable physical or economic displacement or relocation without complying with FPIC standards, and without providing fair compensation.
- 2.8 By reference to a plan, consider documenting the location of affected communities (including Indigenous Peoples, local communities, customary rights holders), and areas outside the Project area that are predicted to be impacted by the Project. Clarify how the Project will (or will not) impact upon community land and how it will impact upon or restrict traditional land uses by affected communities.
- 2.9 Ensure the clause recognises the Landholder's rights under any community/customary tenure, stating that the Agreement acknowledges, and does not diminish or waive customary rights (except where absolutely necessary for the performance of the Agreement, and stating the extent to which it diminishes any tenure rights).
- 2.10 Include a warranty from the Developer that land rights were (and continue at all times to be) obtained in compliance with FPIC standards and require the Developer to document those standards and measures taken.
- 2.11 Link to a clause dealing with Compliance with Laws, ensuring compliance at all times with DRC Land Law, Forest Code, Ministerial Orders, and DRC FPIC Guidelines and Laws. A breach of Laws should amount to a material breach capable of the Landholder terminating the Agreement.
- 2.12 If the land rights to the Project area are extinguished for any reason (such as cancellation or withdrawal of a concession), the Landholder should have a right to terminate the Agreement.
- 2.13 Consider what options may be available for a grievance redress process for disputes related to land rights in the Project area for affected communities (particularly those coming forward after commencement of the Project and/or those who were not consulted prior to or at the commencement of the Project).
- 2.14 Consider whether activities should be able to commence or continue where there are unresolved conflicts over land rights.

03 Project and Carbon Rights

KEY CONSIDERATIONS

- 3.1 This clause governs the ownership of carbon rights and carbon credits generated from the Project and the potential transfer of rights. It clarifies who holds the commercial benefit from credits generated through the carbon sequestration or emissions reduction methodology and how those rights are protected, transferred, and potentially reverted.
- 3.2 The clause will often confirm either the Developer or the State as project proponent for the Project, and permit the Developer or State (as the case may be) to undertake the sale or disposal of carbon credits generated by the Project.
- 3.3 Local land law in DRC does not explicitly recognise carbon rights as a registrable interest by a party, meaning these rights are typically created contractually.
- 3.4 Carbon rights are often transferred from the State to the Developer through a separate/side carbon rights agreement (which may be part of, or separate to, a forest conservation concession agreement or similar). Such carbon rights agreement will ordinarily make provision for (among other things) revenue sharing, payment to affected communities, and taxes to be paid.
- 3.5 A clause might be included in the Agreement (consistent with any carbon rights agreement, if one exists) which clarifies:
 - (a) the scope of the carbon rights granted for the Project (e.g. Developer retains exclusive rights to benefit from carbon sequestration, sell and monetise carbon credits) and classification of the carbon rights under local laws (in accordance with any forest conservation concessions or similar arrangements);
 - (b) how carbon credits derived from the Project will be managed (ordinarily by the Developer as 'project proponent', which may also be dealt with in any carbon rights agreement with the State);
 - (c) the duration of the grant of the carbon rights, and conditions for reversion of carbon rights (a breach of any conditions resulting in reversion should give rise to a right to terminate for the Landholder); and
 - (d) how the carbon rights extinguish or revert upon termination of the Agreement.
- 3.6 The clause should clarify whether the rights granted are exclusive or limited in scope or duration. Consistent with the land use clause, it should address whether the Landholder retains any rights to conduct other activities on the land, and any conditions for doing so, with consideration of the impact of carbon rights on land use and development.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 3.7 Ensure the clause defines “carbon rights” in a way that is compatible with local laws.
- 3.8 Annex a copy of the carbon rights agreement negotiated between the Developer and the State. Check the Agreement does not contain conflicting obligations with that carbon rights agreement, and that any revenue stream/benefit-sharing requirements in the carbon rights agreement are accounted for and are proportional/consistent with the benefit-sharing arrangement in the Agreement.
- 3.9 Include a mechanism for reversion of carbon rights on termination, including timelines and obligations.
- 3.10 Consider whether existing customary land tenure or community ownership systems affect the ability for the Developer to obtain, enforce or transfer carbon rights. Where land is held communally or under customary systems, ensure community consent is obtained and documented.

04 Benefit Sharing

KEY CONSIDERATIONS

- 4.1 The benefit-sharing arrangement sets out how and when the Landholder (and where appropriate, other affected communities) will be paid, and under what conditions, including whether payment is made in cash or in some other form (e.g. share of carbon credits). It is common in this context for benefit-sharing arrangements to make specific provision for in-kind assistance such as construction of social infrastructure in communities.
- 4.2 The benefit-sharing arrangement is critical for Landholders to assess the viability and community benefit of participating in the Project. The Landholder will need to consider whether the financial compensation offered under the benefit-sharing arrangement is sufficient, especially where the parties to the benefit-sharing arrangement have agreed that displacement or relocation will occur, or activities undertaken by affected communities which generate their livelihood will be restricted by the Project.
- 4.3 A fair and equitable benefit-sharing arrangement should provide the Landholder with:
 - (a) a baseline compensation component, which provides financial support payable from the commencement of the Project term, intended to compensate the Landholder and recoup costs for any loss of access to land, restriction on land use, or disruption to livelihood activities resulting from the Project; and
 - (b) a participation component rewarding the Landholder for its contribution to the Project, such as a share in the benefits generated, (e.g. revenue from the sale of carbon credits) and/or in-kind benefits that go beyond the Project's basic operating requirements.
- 4.4 The sufficiency of the baseline compensation offered under the benefit-sharing arrangement should be assessed separately from the participation compensation. Baseline compensation should not be contingent on Project performance, credit issuance, or the successful sale of carbon credits. It should be structured as a fixed payment obligation that commences at (or before) the start of the Project term and continues at regular intervals throughout the term, reflecting the value and cost of the Landholder's contribution, including lost land uses and any restrictions imposed on land use or livelihood activities which are agreed between the parties. Delays in credit issuance or Project registration should not result in the Landholder bearing an uncompensated period of restricted land use.
- 4.5 The participation compensation may be structured by reference to the financial performance of the Project (for example, as a percentage of proceeds from the sale of carbon credits) and may therefore be variable or contingent. However, the existence of a participation mechanism should not be treated as a replacement for baseline compensation. The adequacy of each element should be assessed separately.
- 4.6 It is important to distinguish between genuine benefit sharing and project inputs. Infrastructure, roads, tools, seeds and similar items provided by the Developer as part of Project implementation should be viewed as operational inputs for the Project, not benefits shared with the Landholder. Genuine benefit sharing must reflect value transferred to the Landholder beyond what is necessary for Project implementation.

- 4.7 Some common financial remuneration structures include:
- (a) in-kind benefits and community development (infrastructure, jobs and training, tools, livelihood support, stipends);
 - (b) a fixed percentage of the proceeds from the sale of carbon credits;
 - (c) a fixed annual payment or milestone-based payment; and/or
 - (d) performance based payments.
- 4.8 The clause should specify:
- (a) the percentage share, or direct amount of proceeds allocated to the Landholder (and any other interested parties);
 - (b) whether payments are linked to project performance or issuance milestones;
 - (c) timing of payments (e.g. at certain intervals, or within a specified number of days after receipt of sale proceeds);
 - (d) whether the Landholder's share in the proceeds is fixed or subject to renegotiation, adjustment or escalation;
 - (e) how the Landholder will receive the payment or credits.
- 4.9 If the remuneration or benefits are calculated on net proceeds instead of gross proceeds, the benefit-sharing arrangement should be clear about what deductions are made before distribution of net proceeds (such as brokerage fees, operational costs, taxes and other costs).

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 4.10 The Landholder should not be presented with a benefit-sharing arrangement on a take-it-or-leave-it basis but should have a meaningful role in shaping its terms and the adequacy of the baseline and participation compensation. The participatory process and its outcomes should be documented, and the resulting arrangement should reflect the informed agreement of the Landholder as to what constitutes sufficient compensation for any loss or restriction imposed by the Project.
- 4.11 Where the Developer is granted exclusive use or access rights over the Project land, the benefit-sharing arrangement should address upfront the period between commencement of the Project term and delivery of Project outcomes (such as credit issuance and sale). The Landholder should not bear an uncompensated period of restricted land use. While this need not in every case require a formal security for performance arrangement (see Item 19), the issue is sufficiently common that it should be addressed proactively in the benefit-sharing arrangement.
- 4.12 The Developer should be required to provide the Landholder with reasonable timeline estimates for credit issuance and the commencement of benefit-sharing payments or delivery of in-kind benefits.

- 4.13 Include safeguards to ensure timely and transparent accounting and reporting of proceeds on sales. For example, require the Developer to prepare and share annual or quarterly reports detailing:
- (a) amount of carbon credit revenue received;
 - (b) calculation of benefit-sharing allocations;
 - (c) payments made to Landholders or affected communities (with dates and amounts); and
 - (d) non-cash benefits delivered (e.g. infrastructure, training).
- 4.14 The Landholder should scrutinise any proposed in-kind benefits to determine whether they are genuine community benefits or operational project inputs or project costs. While the precise boundary may be case-specific and informed by community preferences expressed through the FPIC process, the overarching principle remains that benefit-sharing must deliver genuine, additional value beyond what is necessary for the operational delivery of the Project.
- 4.15 Include a clause requiring maintenance of accessible records for Landholders and allowing third-party audits or affected communities to verify compliance with the benefit-sharing arrangement.
- 4.16 Require public disclosure of benefit-sharing outcomes in a culturally appropriate format (e.g., community notice boards, radio announcements).
- 4.17 Ensure the Landholder can access and retrieve payments made in the manner contemplated by the Agreement/Developer. If the Agreement provides for remuneration in the form of carbon credits, ensure the Landholder is capable of maintaining an account with the relevant registry and is able take ownership of those carbon credits.
- 4.18 If banking access is limited and depositing proceeds into a bank account on behalf of the Landholder is not practical, consider alternatives to ensure fair compensation such as mobile money platforms or prepaid cards.
- 4.19 Include provisions for charging interest, in case of payment defaults by the Developer.

05 Project Description and Implementation

KEY CONSIDERATIONS

- 5.1 This clause outlines the type, scope, classification (e.g. Verra VCS), project objectives, and key components involved in implementing the carbon project. The clause provides a shared understanding of what the Project entails, how it will be delivered, and what outcomes are expected.
- 5.2 The clause should describe the roles and responsibilities of each party in implementing the Project. This might include due diligence and investigations, physical activities on the land, administrative activities, implementation, and evaluation and monitoring activities.
- 5.3 It is strongly recommended that this clause refers to a detailed Project Management Plan schedule to the Agreement which sets out the activities in detail along with responsible parties, deliverables, timelines, milestones and performance indicators.
- 5.4 The clause should identify:
 - (a) the type of carbon project and the proposed methodology (e.g. reforestation, prevention or avoidance of planned/unplanned deforestation, afforestation);
 - (b) the Project area and boundaries (which may be identified by a map included as a schedule);
 - (c) Project design, scope of works, and a description of activities authorised (if a suitable project has not yet been identified, this may include activities to identify potential projects in the Project area);
 - (d) management plans to be developed to facilitate carrying out the Agreement;
 - (e) the duration of the Project and crediting period (consistent with the Term clause); and
 - (f) the implementation phases and activities (e.g. planning, physical activities such as planting, monitoring, evaluating, reporting).
- 5.5 Consider whether the Project includes co-benefits (e.g. biodiversity, water conservation, livelihood support) and whether these should be described in the clause, or in a separate clause or in a schedule to the Agreement.
- 5.6 Ensure that the Landholder/s have sufficient capacity and resources to implement and carry out their activities as this may significantly affect the feasibility of the Project and could lead to Landholder default under the Agreement.
- 5.7 The clause may be used by third parties (e.g. the Developer's lenders and advisers, auditors, regulators) to understand the scope and obligations of the Project.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 5.8 The clause should reference the applicable methodology under the specific carbon standard (e.g. VCS, Gold Standard) and may seek to set out fundamental compliance requirements.
- 5.9 The clause should clarify which activities are mandatory and which are subject to further agreement, funding availability, technical feasibility or third-party approvals.
- 5.10 The clause should clarify whether the Project description may evolve over time, subject to agreement, regulatory changes, or in pursuit of identified viable projects. If the Project includes experimental activities (e.g. to identify potential projects), these should be clearly identified and treated separately from core obligations.
- 5.11 Where:
 - (a) the Developer is responsible for implementation or core physical activities, clarify whether they will use subcontractors and how quality will be assured.
 - (b) the Landholder is responsible for implementation or core physical activities, consider whether it will be necessary for the Developer (or any third party) to provide training, technical support, or financial assistance.
- 5.12 Where land is held communally, the clause should reflect who is accountable for delivery and how responsibilities are distributed within the community. Where the Project spans multiple land parcels or communities, the clause should clarify how coordination will occur. If coordination is required, a coordination and interface schedule should be included with the Agreement.
- 5.13 Engage local stakeholders to validate the Project description and ensure it is transparent, realistic and reflects community expectations and priorities.
- 5.14 Use participatory methods (e.g. workshops) to co-develop the Project description with Landholders if the Project has not already been clearly identified and articulated.

06 Term/Renewal

KEY CONSIDERATIONS

- 6.1 This clause specifies the duration of the Agreement and the conditions under which it may be renewed, extended, or exited by terminating early. It is typically linked to defined terms such as commencing on the 'Commencement Date' and continuing until the 'Expiry Date'.
- 6.2 For carbon projects, the term should ordinarily align with the crediting period and consideration should also be given to permanence obligations, which may span beyond the crediting period (depending on the selected carbon market standard). Consider what impact this may have on the Landholder at the end of the crediting period, and what obligations it may be required to take over from the Developer.
- 6.3 The project crediting period is the time period for which greenhouse gas emission reductions or carbon removals generated by the Project are eligible for issue as credits under the carbon standard and selected methodology.
- 6.4 Permanence in carbon projects refers to the obligation to ensure that carbon removed from the atmosphere remains stored to prevent its re-release. This commitment protects the long-term integrity of carbon credits by establishing a permanence plan (or non-permanence risk plan) and a security buffer to address potential reversals caused by events like fires, pests, or land-use changes. If during the permanence period, the stored carbon is lost (e.g., due to fire, drought, or land-use change), the project proponent will likely be required to take actions to rectify the loss, such as replanting trees or purchasing and retiring carbon credits (or surrendering buffer credits) equivalent to the amount lost.
- 6.5 For Landholders, this clause provides an understanding of the long-term commitments and applicable renewal or exit mechanisms.
- 6.6 The clause should specify:
 - (a) Project Start/Commencement Date (e.g. date of execution or project registration);
 - (b) Sunset Date (deadline for satisfying conditions precedent, or else Agreement does not proceed);
 - (c) Duration (i.e. Term) of the Agreement (e.g. 30 years, aligned with crediting period);
 - (d) the Crediting Period (aligned with the relevant carbon standard);
 - (e) renewal options and process; and
 - (f) opt-out rights and notice periods.

- 6.7 In most cases, renewal will likely be linked to the carbon market standard crediting period renewal process which may be automatic, subject to the project proponent demonstrating the validity of the original baseline scenario (or updates to the baseline scenario to ensure it remains valid). Consider whether there should be additional contractual rights governing whether the Project can be renewed and on what terms between the Landholder and the Developer (which sit separate to the process under the carbon market standard), including for example:
- (a) review and renegotiation/amendment of the Agreement at fixed intervals (e.g. every 10 years); or
 - (b) conditions for renewal (e.g. compliance history for FPIC and contractual obligations, mutual agreement).
 - (c) termination, opt-out or transfer rights at specific intervals (e.g. every 5 or 10 years) with advance written notice (e.g. 9 to 12 months before opt-out date) if there are outstanding breaches that have not been remedied.
- 6.8 Renewal may be automatic or may require affirmative action. Conditions may be specified for a party to refuse renewal of the Term.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 6.9 The Term should align with the crediting period under the carbon standard (e.g. 20 or 100 years).
- 6.10 Specify whether renewal or termination triggers obligations such as transfer of carbon rights, final reporting, handover/transition of Project responsibilities, and decommissioning activities.
- 6.11 Consider making renewal subject to:
- (a) performance reviews or audits;
 - (b) demonstrated FPIC compliance, community consultation or re-consent; or
 - (c) documented up-to-date compliance with the selected carbon standard's requirements.
- 6.12 Where the Agreement is tied to a forest conservation concession, clarify whether the Agreement expires early if the concession is surrendered, forfeited, or expires.
- 6.13 Consider including a clause requiring parties to review the Agreement at fixed intervals (e.g. every 5 or 10 years) to assess remuneration adjustment/escalation, performance, compliance, and community impact.
- 6.14 Consider whether the Agreement is capable of being assigned or novated to successors (such as family members, or community entities) at any point during the Term, which may be necessary or inevitable for a project with a long duration.

07 Relationship Between Parties

KEY CONSIDERATIONS

- 7.1 This clause may be included to clarify the nature of the relationship between the parties and whether such party is at arm's length (i.e. no partnership) which is the usual course, or if it is one of partnership, agency, joint venture, or independent contracting.
- 7.2 The clause helps manage expectations and decision making, limit liability, and avoid unintended legal consequences for the Landholder which might arise from a mischaracterisation of the relationship (if not clearly stated).
- 7.3 The clause typically states that:
 - (a) the parties are independent and nothing in the Agreement creates a partnership, joint venture, or employment relationship; and
 - (b) neither party has authority to bind the other, without first obtaining express written consent.
- 7.4 This protects both parties from being held liable for the acts or omissions of the other and ensures that both parties make decisions independently and cannot be bound by each other's acts (without consent).
- 7.5 It also helps ensure that tax, employment, and regulatory obligations are correctly allocated (in most cases it would not be appropriate for the Landholder to be responsible for the Developer's obligations and liabilities). However, note that caution needs to be exercised where the Project intends to employ personnel from local communities, to make sure the relationship is documented consistently.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 7.6 Where land is held communally under a community/customary tenure, it might be appropriate to identify the representative body or individuals authorised to act on behalf of the Landholders. Consider whether community governance structures (e.g. elders, committees, cooperatives) should be formally recognised in the Agreement.
- 7.7 Avoid terms like "partner", "joint venture", "agent", or "contractor" unless those relationships are intended and there is a good reason for doing so.
- 7.8 Include a clause that the Developer is responsible for its own obligations and liabilities in respect of employees, taxes, and insurances (it is unlikely to be appropriate for the Landholder to assume this responsibility).

08 Mutual Covenants

KEY CONSIDERATIONS

- 8.1 This clause sets out the mutual obligations of both the Landholder and the Developer, which are designed to ensure that both parties cooperate to support the successful implementation and performance of the Project.
- 8.2 It also ensures that both parties share relevant information and documents necessary to meet their respective obligations under the Agreement and applicable carbon standard.
- 8.3 Covenants can vary widely depending on the circumstances, but some general themes emerge. For example, it is usually required that each party must:
- (a) avoid actions that may compromise the Project or its eligibility under the applicable carbon standard (including any disturbance or reversal);
 - (b) similarly, do all things reasonably necessary to maintain emissions reduction or carbon sequestration;
 - (c) keep the other party informed of relevant information that may affect Project performance or compliance;
 - (d) notify the other party of any events or circumstances that may impact their ability to meet obligations;
 - (e) comply in all respects with applicable Laws, requirements of government agencies, authorisations, approvals, consents and permits;
 - (f) provide documents and data reasonably required by the other party to fulfil their responsibilities under the Agreement; and
 - (g) perform its obligations in a timely manner as set out in the Agreement and in accordance with the Project Management Plan.
- 8.4 The clause may limit the standard required of any actions e.g. “reasonable endeavours”, “best endeavours” or it may be required to be warranted or guaranteed by the party providing the covenant.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 8.5 Encourage the use of plain-language summaries and checklists to support understanding of, and capability to comply with, mutual covenants which are often fundamental promises to the operation of the Agreement.
- 8.6 Where covenant obligations involve information sharing, ensure there are culturally appropriate mechanisms in place for information to be shared (especially in community contexts) and that Landholders are able to share information as required (i.e. they have access to requisite technology).
- 8.7 Understand that covenants may bind successors of the Landholder (provided the Agreement binds future successors/transferees of a party).
- 8.8 Consider whether mutual obligations should be reviewed periodically or updated based on project changes or methodology revisions. Check whether it is appropriate that the mutual obligations are general in nature (flexibility but less clarity) or whether they need to be more specific (clarity but less flexibility to changing circumstances over time).

09 Developer Obligations

KEY CONSIDERATIONS

- 9.1 This clause sets out the key obligations of the Developer in relation to the development, implementation, and ongoing management of the Project.
- 9.2 These obligations are essential to ensure the integrity and proper performance of the Project, especially where the Landholder's remuneration is tied to credit issuance or Project performance/success.
- 9.3 The clause helps ensure that the Developer maintains its qualifications, fulfils its technical and administrative responsibilities, engages with the Landholder in a fair and transparent manner, fulfils its obligations under the benefit-sharing arrangement, and avoids acts or omissions that will compromise the performance of the Project.
- 9.4 Continued and unremedied breaches of these obligations should entitle the Landholder to terminate the Agreement or seek remedies.
- 9.5 The nature of the Developer's obligations will depend on the Project, but some examples of key responsibilities and core obligations are provided below :
- (a) preparing and updating a Project Management Plan, sequestration/emissions reduction plans, feasibility studies, baseline scenario studies for measuring emissions reductions/removals for crediting, and undertaking activities allocated to the Developer under the Project Management Plan;
 - (b) undertaking technical and administrative activities required for project registration, monitoring, and credit issuance;
 - (c) managing and supervising audits, reporting, and verification processes throughout the Project lifecycle;
 - (d) ensuring compliance with the obligations required under the applicable carbon standard or methodology;
 - (e) managing performance and maintenance for the long term viability of the Project;
 - (f) fulfilling requirements of the benefit-sharing arrangement; and
 - (g) providing regular updates to the Landholder on project progress, credit issuance, sales, reports, audit outcomes and financial summaries.

9.6 The Developer should:

- (a) be a fit and proper person (i.e. the entity is suitable to participate in the carbon credit scheme), including having the necessary skills, capability and competency, good business practices, integrity and good character.
- (b) maintain any required qualifications, registrations, or accreditations under the applicable carbon standard;
- (c) have the technical, financial and operational capacity and required experience to implement the Project and maintain insurance and/or financial guarantees;
- (d) keep accurate records and ensure clear, accurate and timely communication with the Landholder and relevant authorities;
- (e) avoid conduct that may jeopardise the Project's credibility or credit issuance;
- (f) comply with applicable standards and laws, which should involve:
 - (i) complying with the rules of the relevant carbon standard (e.g. Verified Carbon Standard, Gold Standard);
 - (ii) complying with national and local laws, including concession requirements, environmental and land use regulations and FPIC requirements; and
 - (iii) obtaining and maintaining all necessary permits and approvals for the Project.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 9.7 Align this clause with provisions on ownership of project/carbon rights, monitoring reporting, default and termination.
- 9.8 Clarify how performance issues will be addressed if the Developer is not performing its obligations to a satisfactory standard, or whether the issue will be escalated to dispute. Consider implementing a set of minimum requirements or performance guarantees.
- 9.9 Consider requiring the following further obligations of the Developer:
 - (a) continuing engagement with and documentation of FPIC process with affected communities, especially where land is communally held or where customary rights are affected;
 - (b) implementation of a grievance mechanism or community liaison process; and
 - (c) commitment to ethical business practices, including anti-bribery and anti-corruption standards, and avoiding conflicts of interest.

10 Landholder Obligations

KEY CONSIDERATIONS

- 10.1 This clause sets out the key obligations of the Landholder in relation to the development, implementation, and ongoing management of the Project.
- 10.2 The Landholder may be required to undertake specific Landholder activities in accordance with the Project Management Plan. The Landholder may also be restricted from undertaking certain activities by the Project Management Plan (with the nature and extent of any such restrictions being determined in consultation with the Landholder).
- 10.3 The Landholder is also typically obliged not to interfere with Project activities, obstruct access to the Project area, or engage in unauthorised activities or use of Project land.
- 10.4 Landholder activities might (but will not always) include:
- (a) physical tasks such as planting, sowing, establishing, increasing or restoring vegetative cover, maintaining firebreaks, fencing, erosion control and so on which have the effect of converting logged forests to protected forests, or stopping or reducing deforestation on forest lands that are legally authorised and documented for conversion;
 - (b) administrative tasks such as record keeping, reporting, or attending training; and
 - (c) monitoring and maintenance of Project areas as specified in a Project Management Plan.
- 10.5 Activities that are often restricted in the Project area may include:
- (a) unauthorised clearing or harvesting of protected vegetation;
 - (b) grazing or burning;
 - (c) use of chemicals or machinery that may interfere with a carbon sequestration or emissions reduction process;
 - (d) any activity that otherwise conflicts with the carbon sequestration or emissions reduction methodology or Project objectives.
- 10.6 The Landholder may also be required to prevent affected communities and other third parties from undertaking restricted activities on the land, though the Landholder should not be liable for any third-party breaches beyond the Landholder's reasonable control.
- 10.7 The Landholder may retain rights to use the land for other purposes, provided these do not interfere with the Project (and it does not conflict with provisions elsewhere in the Agreement). Consider what Landholder obligations might be inconsistent with the Landholder or Affected Community habitation, livelihoods or community/cultural practices.

- 10.8 The Landholder may nevertheless be able to undertake activities restricted under the Agreement in limited circumstances:
- (a) in emergencies (e.g. fire control, pest management).
 - (b) where the Landholder has sought approval for activities.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 10.9 Consider including a plain-language guide or fact sheet summarising the Landholder's obligations. The Landholder should have a say in the Project Management Plan and fully understand its contents before signing the Agreement. The Landholder should also be able to access the Project Management Plan (translated if required) at any time. Use local language or visual aids where appropriate to explain obligations.
- 10.10 Ensure any Project Management Plan clearly identifies the Landholder's required activities and any restricted activities. The management plan should specify the scope, timing and standard required (e.g. reasonable efforts) of Landholder activities and any support or resources provided by the Developer. These activities should be signed off and agreed by the Landholder (having regard to FPIC requirements).
- 10.11 If a Project Management Plan changes significantly over time, it may be appropriate to update the Landholder's obligations under the Agreement. If the plan deviates significantly and introduces new or changing obligations, consider negotiating a right for the Landholder to review or object to changes.
- 10.12 Consider whether obligations should be reviewed periodically or updated based on Project performance or methodology changes.
- 10.13 Consider whether provisions should be included requiring the Developer to provide training, support, or capacity building to help the Landholder meet their obligations.
- 10.14 Where possible, negotiate a standard of 'reasonable endeavours' in relation to the Landholder's requirement to prevent third parties from undertaking restricted activities on land as it may not be possible for a Landholder to directly control the actions of third parties.

11 Warranties

KEY CONSIDERATIONS

- 11.1 A warranty is a statement of fact made by one party that the other party can rely on. If the statement turns out to be untrue, the other party may be entitled to sue for breach of contract or, in some cases, terminate the Agreement (for example if the party acknowledges it enters into the Agreement in reliance on that warranty).
- 11.2 Common warranties in this context include that both the Landholder and the Developer are entering the Agreement with valid legal authority to do so, that there is a right to conduct the Project on the land, and that the parties will share accurate information with each other.
- 11.3 Some other typical warranties that are not Project-specific include:
- (a) that the Developer and its personnel have the necessary skills, experience/expertise and capacity to deliver the Project; and
 - (b) that the parties will comply with applicable laws and standards.
- 11.4 Disclaimers may also be included. For example, the Developer may state that it does *not* warrant:
- (a) that the Project is guaranteed to be successfully registered or certified as an eligible sequestration or emissions reduction project;
 - (b) that a specific number of carbon credits will be generated; or
 - (c) that the Landholder will receive a particular financial return (subject to the terms of the benefit-sharing arrangement).
- 11.5 If the Landholder is relying solely or heavily on the Developer's advice or information in entering into the Agreement, the Landholder should negotiate to exclude commonplace '*no reliance/no representation as to accuracy of information*' disclaimers that the Developer may include in the Agreement (because the Landholder is relying on that information and its accuracy).
- 11.6 Be mindful that warranties may not always be effective if:
- (a) the other party already knew the statement was untrue;
 - (b) the breach did not cause any actual loss; or
 - (c) the warranty was qualified (e.g. reasonable/best endeavours or 'to the best of knowledge').
- 11.7 Some warranties may be expressly excluded, such as those guarantees on future outcomes (e.g. no guarantee as to project success, credit volumes, or market prices).

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 11.8 The Landholder may be requested to warrant that it has made its own enquiries about the feasibility and potential benefits of the Project. Consider whether this is practical in the circumstances where the Landholder is not a sophisticated commercial entity and will not necessarily have the capability of investigating and verifying information. In many cases the Landholder may be forced to rely on information provided by the Developer and in such cases a warranty that it has made its own enquiries may be unfair.
- 11.9 Landholders should:
- (a) understand the implications of any warranties they are asked to give (e.g. about land use, or compliance) and what this means for their ongoing use and management of the land; and
 - (b) confirm whether any limitations or assumptions apply to any representations or warranties provided by Developers.
- 11.10 Consider including remedies and enforcement mechanisms:
- (a) express right to claim loss or damages for breach of warranty;
 - (b) right to terminate the Agreement if a particular warranty turns out to be false;
 - (c) requirement to notify the other party if a warranty is breached/becomes untrue during the term of the Agreement; or
- 11.11 Ensure warranties are explained in plain language and are not confusingly drafted or misleading.
- 11.12 Review all warranties carefully to ensure they are accurate and can be supported by evidence or due diligence.

12 Project Costs

KEY CONSIDERATIONS

- 12.1 This clause allocates responsibility for costs and expenses incurred in the development, implementation, and ongoing management of the Project.
- 12.2 In some Carbon Project Development Agreements, the default position is that each party bears the costs of the activities they are responsible for under the Agreement and the Project Management Plan, but this is not suitable for all projects and will depend on the Project's activities.
- 12.3 For carbon projects affecting local communities and community owned land, it will often be appropriate for the Developer to bear most or all costs associated with the implementation, development and administration of the Project.
- 12.4 Project costs are an important consideration when assessing the long-term viability of participation in the Project. Costs may vary significantly depending on Project phase:
- (a) start-up costs (e.g. site preparation, training, initial implementation activities such as planting);
 - (b) operational costs (e.g. maintenance, transactions and reporting, monitoring); and
 - (c) post-crediting costs (e.g. permanence and decommissioning obligations, land restoration).
- 12.5 Consider how costs are affected by Project scale and duration:
- (a) larger or longer-term projects may benefit from economies of scale; and
 - (b) smaller projects may face proportionally higher per-unit costs.
- 12.6 The clause may also address:
- (a) inflation adjustments or cost escalation over time;
 - (b) contingency funds for unexpected costs (e.g. pest outbreaks, replanting);
 - (c) cost-sharing arrangements with third parties.
- 12.7 The clause should clarify whether any costs are capped, subject to approval, or reimbursable.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 12.8 Some maintenance obligations and costs may extend beyond the crediting period, especially where a long permanence period applies. Consider the long-term impact and whether the Landholder can feasibly continue to bear such costs over a long period of time.
- 12.9 Ensure the Project Management Plan clearly identifies which party is responsible for each activity and its associated costs. Where possible, expected costs should be listed or itemised in a transparent manner.

- 12.10 If the Landholder is expected to incur or pay costs on behalf of the Developer, or pay for certain costs managed or incurred by the Developer, consider requiring:
- (a) a right to audit or review project expenditure and cost reporting for matters that concern the Landholder; and/or
 - (b) regular cost reporting and budget updates, with a mechanism to challenge or renegotiate unreasonable spend.
- 12.11 Include provisions for renegotiation if costs become unreasonable or unforeseen.
- 12.12 If any costs are required to be paid by the Landholder, clarify the mechanism by which costs are payable, whether:
- (a) upfront, periodically (at specified intervals), or upon completion of certain milestones; and
 - (b) as a lump sum, or on a cost reimbursable basis.
- 12.13 Consider whether the Developer should provide financial support or cost-sharing arrangements for Project activities to be undertaken by the Landholder.
- 12.14 Ensure Landholders have access to financial literacy support and advisory services to understand cost implications.

13 Reversal & Cancellation

KEY CONSIDERATIONS

- 13.1 This clause sets out the parties' respective obligations in relation to:
- (a) a 'reversal risk', which is an event, action or conduct that carries a risk of releasing carbon sequestered or emissions reduced by the Project back into the atmosphere; and
 - (b) a reversal, which is an actual release of either carbon sequestered, or emissions reduced by the Project.
- 13.2 Reversals can result from intentional actions (e.g. logging) or unintentional actions (e.g. wildfires).
- 13.3 Obligations are typically included to ensure that both parties take reasonable steps to prevent, mitigate, and respond to events that could compromise the integrity of the Project's methodology and/or undermine the climate benefit of previously issued credits.
- 13.4 This clause will typically allocate responsibility for compliance with any regulatory or carbon standard obligation to undertake a compulsory surrender, replacement, cancellation or compensation for carbon credits lost through a reversal event. In some carbon standards (such as Verra's VCS), these credits are referred to as 'buffer credits', which are a pool of credits used to insure against unintentional reversals.
- 13.5 If the Landholder is the party with day-to-day access, control and supervision of the Project area, the Landholder might typically be responsible for:
- (a) using reasonable endeavours to prevent reversal risks by monitoring and reviewing threats (e.g. through fire management activities, grazing controls, vegetation protection);
 - (b) implementing specific preventative measures as outlined in the Project Management Plan;
 - (c) notifying the Developer immediately of any actual or threatened reversal risk or reversal event;
 - (d) cooperating with the Developer to mitigate the effects of any such event; and
 - (e) repairing or compensating for reversals caused by the Landholder's own actions or omissions.
- 13.6 The Developer as the project proponent will typically be responsible for:
- (a) complying with any regulatory or carbon standard requirement to cancel or replace carbon credits or buffer credits;
 - (b) managing the administrative and technical aspects of responding to a reversal event;
 - (c) notifying the Landholder of any compliance steps required; and
 - (d) maintaining insurance or buffer reserves to manage reversal risk.

- 13.7 If a reversal occurs due to the Landholder's breach or negligence, the Agreement may require that the Landholder is required to:
- (a) reimburse the Developer for the reasonable costs of compliance or cancellation; and
 - (b) indemnify the Developer for any losses incurred (though such indemnity should be resisted wherever possible, particularly where an obligation to reimburse is already an adequate remedy).
- 13.8 In some carbon standards (such as Verra or Gold Standard), the scheme's regulator may:
- (a) impose a requirement on the project proponent to report detected reversals;
 - (b) impose a mandatory cancellation requiring a surrender or replacement of carbon credits or buffer credits (or other remedial action) depending on the nature of the reversal event; and
 - (c) impose maintenance obligations on the project proponent or responsible party.
- 13.9 This clause may be limited by a standard of acts or omissions that are reasonable in the circumstances (e.g. 'reasonable endeavours'), recognising each party's role, capacity and control over actions which are within and outside of their control.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 13.10 Ensure that contractual obligations recognise and are consistent with the applicable carbon standard's buffer credit cancellation process. Specify the circumstances where carbon credits or buffer credits are required to be cancelled, surrendered, replaced or where other forms of remedial action are required.
- 13.11 Require prompt notification of a reversal risk, with a clear protocol containing timeframes depending on severity (e.g. 24 to 72 hour). Include emergency response protocols to rectify risks in the event of an emergency (which might be contemplated further in a schedule to the Agreement or the Project Management Plan).
- 13.12 Clarify who bears the cost, and in what circumstances, when responding to a reversal risk or reversal, including the cost of any credit cancellation, replacement or other remedial action.
- 13.13 Discuss with the Landholder practical examples of prohibited or high-risk activities which have the potential to interfere with emission reduction or carbon sequestration methods and carry a high risk of reversal (e.g. clearing vegetation, unmanaged grazing, burning). Consider how these activities intersect with the Landholder's livelihood, cultural rights and practices. Aim to find a balance that respects cultural values while supporting the integrity of the Project's carbon sequestration or emission reduction methods. Consider whether allowances may be made in the Project Management Plan for such activities in certain circumstances.

- 13.14 The clause should specify which party is liable to compensate for reversals which are outside a party's control caused by:
- (a) certain force majeure events such as natural disasters (e.g. fire, flood, drought); or
 - (b) actions or interference by unrelated third parties.
- 13.15 Consider including a process for joint investigation and documentation of the cause and extent of the reversal risk or reversal to ensure the Landholder is not unfairly blamed or penalised.
- 13.16 The Landholder should not be able to be penalised or held liable for a reversal outside of its control, especially where the reversal is caused by the Developer and the Landholder did not cause or contribute to the reversal.
- 13.17 Consider whether the Landholder should be granted a right to terminate if a reversal (not caused or contributed to by the Landholder) significantly affects the viability of the Project and cannot be remedied within a reasonable timeframe.
- 13.18 Ensure the clause aligns with the Project Management Plan, and provisions on environment, site use, insurance, liability and indemnities (if appropriate) and the default and termination provisions.

14 Monitoring, Reporting & Administration

KEY CONSIDERATIONS

- 14.1 This clause sets out the obligations of parties in relation to the ongoing monitoring, reporting, and administration of the Project. The clause's complexity will vary depending on the complexity of the Project activities, applicable laws and the regulations imposed by the applicable carbon standard, funding requirements for the Developer, community reporting requirements, and so on.
- 14.2 It ensures that the Project is monitored in accordance with the Project design and sequestration/emissions reduction methodology, and so that it complies with the transaction and reporting requirements set out in the applicable carbon standard.
- 14.3 Clear reporting and administration requirements promotes transparency between the Developer and the Landholder, which is important where equitable benefit-sharing is often a concern. Regular, accessible reporting helps the Landholder understand the Project's progress, financial flows, and benefit-sharing outcomes, reducing the risk of disputes, misunderstandings or inequitable outcomes for the Landholder.
- 14.4 In most cases the Developer is typically responsible for ongoing reporting and administration associated with managing carbon credits (e.g. project registration, monitoring emissions reduction or sequestration, engaging auditors and third party verifiers, submitting reports and financial information, applying for and transacting credits). Consider whether it is appropriate or not for the Landholder to be responsible for monitoring the Project area (e.g. monitor reversal risks and take remedial action such as maintaining fences, firebreaks, controlling grazing).
- 14.5 The clause may include:
 - (a) reporting obligations (e.g. frequency, format, content);
 - (b) record-keeping requirements (e.g. records retained for up to 7 years);
 - (c) audit and verification procedures; and
 - (d) notification obligations for events affecting Project performance (e.g. reversal risk or reversal, event of force majeure, non-compliance).
- 14.6 The Developer may seek to retain discretion over how monitoring is conducted, provided it complies with the applicable methodology and regulatory requirements.
- 14.7 The Landholder's obligations should be reasonable and proportionate to their role and capacity. Caution should be exercised that any reporting and administration requirements imposed on the Landholder are reasonable and capable of being complied with.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 14.8 Consider what reports or information the Landholder may need in relation to the Project, for legitimate financial or benefit-sharing purposes (e.g. to understand the ongoing benefits or financial viability of the Project if applicable).
- 14.9 For reports to be provided to the Landholder, specify:
 - (a) frequency (e.g. monthly, quarterly, annually);
 - (b) content and format (maps, photos, narrative summaries); and
 - (c) location where reports are stored or accessed (which should be in a format reasonably accessible for the Landholder).
- 14.10 Include obligations for the Developer to:
 - (a) maintain accurate records for a specified period (e.g. 7 years but consider what information may need to be stored for longer periods given the Project's lifespan); and
 - (b) make records available for audit or verification upon reasonable request.
- 14.11 Tailor the monitoring obligations in the Project Management Plan to ensure they are consistent and compatible with seasonal cycles, cultural practices, and community land use.
- 14.12 Require prompt notification and reporting on events that may affect Project performance or compliance.
- 14.13 Consider whether the Developer needs to provide training or support to the Landholder to assist it to fulfil its monitoring and reporting obligations.
- 14.14 Specify who bears the cost of day-to-day reporting and audit costs.

15 Compliance with Laws & Approvals

KEY CONSIDERATIONS

- 15.1 This clause imposes a general obligation on both parties to comply with all applicable Laws (as that term is defined) when performing their obligations under the Agreement.
- 15.2 It ensures the Project is implemented in accordance with legal, regulatory, and policy frameworks, including carbon credit scheme standards and methodologies, local laws, ministerial orders and land use regulations (along with any updates or interpretations to those laws, rules and frameworks from time to time).
- 15.3 It also sets out how the Agreement may be amended or varied when changes in Laws affect the Project, so that the Project avoids regulatory breaches, penalties, or land/Project revocation.
- 15.4 'Laws' is typically defined broadly to include, for example:
 - (a) legislation, regulations, rules, policies and codes and other requirements of government agencies; and
 - (b) legally binding interpretations, judgments, injunctions, and orders of any authority, government, court, or tribunal.
- 15.5 Laws can relate to (among other things) environmental protection, land use, cultural heritage and occupational health and safety.
- 15.6 In some jurisdictions it may be appropriate for the definition of Laws to make allowance for community laws, cultural systems and cultural heritage rights. Consider whether the clause can appropriately respond to changes in those kinds of laws (where applicable).
- 15.7 Typically, each party must:
 - (a) ensure its actions under the Agreement comply with all Laws;
 - (b) obtain and maintain all necessary approvals, permits, and consents to comply with Laws;
 - (c) cooperate with regulators and government agencies as required;
 - (d) monitor changes in law that may affect project delivery or compliance; and
 - (e) notify the other party of any changes in law or compliance issues that may affect the Project.
- 15.8 This clause will typically include a mechanism allowing the parties to vary the Agreement in the event of a change in Laws (**Change in Law**), usually by written consent, to the extent necessary or appropriate so that the parties can continue to comply with their obligations under the Agreement having regard to the Change in Law.

- 15.9 Such Change in Law clause will typically permit a variation to the terms of the Agreement when:
- (a) a new law or regulation is introduced;
 - (b) an existing law is amended or repealed; or
 - (c) a government agency issues a new interpretation or policy (including on an existing law or regulation),
- and that Change in Law:
- (d) makes the Project illegal or unfeasible;
 - (e) imposes unreasonable costs or obligations; or
 - (f) removes key benefits, rights or obligations under the Agreement or makes them difficult or impossible to perform.
- 15.10 The clause should specify:
- (a) what types of changes in Law trigger a variation to the Agreement (i.e. whether the Change in Law 'qualifies' or not for a variation to the Agreement)
 - (b) the preconditions for a variation to apply (e.g. it must comply with the items described in subparagraphs (d) to (f) above)
 - (c) how the parties will negotiate and agree on amendments to the Agreement if such a variation is required.
- 15.11 The clause should state whether changes in Law excuse performance. It is normally the case that changes in Law do not inherently excuse performance if:
- (a) the change does not materially affect the ability of a party to perform its obligations (or in some cases, the change does not materially affect the cost of performing obligations); and
 - (b) the change was foreseeable (for example if a party was aware of the Change in law at the date of signing the Agreement),
- and if performance is not excused, parties must continue to perform their obligations and comply with the new Law (unless the terms of the Agreement specify otherwise).
- 15.12 Changes in Law should not typically trigger an automatic or 'deemed' variation to the Agreement. Variations to the Agreement for changes in Law will typically only be valid if clearly documented in writing and agreed upon and signed by both parties.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 15.13 Clarify which party is responsible for securing and maintaining specific approvals (e.g. conservation concessions, consents, environmental permits). It is customary to set important approvals as conditions precedent for commencement of the Project (or certain phases of the Project).
- 15.14 Define 'Laws' clearly and comprehensively to avoid confusion, and what constitutes a 'Change in Law' and when variations to the Agreement are permitted for a Change in Law. Ensure compatibility with local legal systems and community laws and cultural systems.
- 15.15 Include obligations for each party to notify the other of a Change in Law, and a clear process for proposing, negotiating, and documenting variations to the Agreement for a Change in Law, setting out:
- (a) who can initiate a variation request when there is a Change in Law;
 - (b) when a variation claim (and associated claim for costs) resulting from a Change in Law must be made; and
 - (c) timeframes to assess and provide a response approving or rejecting the claim.
- 15.16 Set a reference date, such that only unforeseen Changes in Law after contract signing allow for variation (as the Developer should be expected to be apprised of relevant Laws before entering into the Carbon Project Development Agreement). Exclude changes reasonably anticipated by the Developer at signing.
- 15.17 Consider including indemnity or remediation provisions, and exclusions from the Developer's limitation of liability, for a breach of Laws.
- 15.18 Request that the Developer offers clear guidance or summaries of relevant legal obligations under applicable Laws to assist the Landholder in achieving compliance, particularly when the obligations are complex or technical.
- 15.19 Consider including a termination right if a Change in Law makes the Project unviable or imposes unreasonable burdens.
- 15.20 If the Landholder's obligations to comply with Laws are complex, consider requiring the Developer to assist and support the Landholder in performing those obligations.

16 Contract Documents and Resolving Ambiguities

KEY CONSIDERATIONS

- 16.1 This clause governs how the various documents forming part of the Agreement are interpreted and applied. It establishes the order of precedence between documents, sets rules for resolving ambiguities or inconsistencies between different documents forming part of the Agreement (and between documents which do not form part of the Agreement), and clarifies the parties' ability to rely on representations and warranties both in the Agreement and not contained in the Agreement.
- 16.2 The purpose of this provision is to avoid conflicting provisions or misunderstandings and prevent parties from relying on informal or superseded communications, documents not included with the Agreement or provided to a party, and out of date documents.
- 16.3 The Agreement may be combined with multiple other documents (not just the main terms of the Agreement), including for example:
 - (a) schedules to the Agreement (e.g. Project Management Plan, Project area maps, reports);
 - (b) Project designs and specifications; and
 - (c) external standards or methodologies under the relevant carbon standard.
- 16.4 The clause should specify the order of precedence for how those documents are to be interpreted in the event of any ambiguity, typically in a numbered/ranked list format.
- 16.5 Preference in the order of precedence should be given to documents that have been properly developed and negotiated to accurately reflect the Landholder's rights and obligations. It is usually customary to have the main Agreement prevail as the highest-ranking document because it has been fully negotiated.
- 16.6 The clause may also confirm that:
 - (a) the Agreement constitutes the entire agreement between the parties;
 - (b) no party has relied on representations or warranties not expressly set out in the Agreement (however note comments above at Item 11 – Warranties regarding the suitability of such warranties); and
 - (c) any prior communications (oral or written) are superseded by the terms of the Agreement and the Agreement's documents.
- 16.7 Some documents (e.g. regulatory guidelines or carbon methodologies) may be incorporated by reference, even if not physically or digitally included in the final copy of the Agreement bundle. Such documents can still form part of the Agreement's documents even if only included by reference. Where this is the case, it is essential to ensure such documents have been read and understood and copies have been made before agreeing to incorporate them by reference.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 16.8 Ensure there is a clear list of all documents that form part of the Agreement and define their hierarchy.
- 16.9 Avoid documents that preference the Developer being ranked unnecessarily high in the order of precedence, especially where they have not been negotiated or agreed on, or if they contain requirements which conflict with the Agreement.
- 16.10 Documents may not be appropriate to include as Agreement documents if they are reference material only and are not strictly binding or relevant (e.g. a cost estimate which is to be revised at a later time).
- 16.11 Be mindful of version control with updated versions of documents. Specifically reference dates and versions of documents (especially project design documents) to avoid conflicting and outdated requirements. Clarify whether the Agreement automatically adopts updated versions or requires formal amendment.
- 16.12 Do not include as contract documents any early/draft versions of documents that are deliverables to be developed under the Agreement, because:
 - (a) deliverables are the products or services which are output by/result from the Agreement, not documents that govern the requirements of the Agreement and relationship between the parties; and
 - (b) deliverables may evolve during the Project's lifecycle, and including a deliverable in the Agreement documents creates a circular conflict between the original version (as a document governing the requirements of the Agreement) and an updated version (which may have evolved away from those original requirements).
- 16.13 Avoid permitting documents to be included by reference only, unless the Landholder is provided a copy of such documents and has fully read and understood their contents.
- 16.14 Include a mechanism for resolving ambiguities if it cannot be resolved by applying the clause (e.g. good faith negotiation, reference to project intent). If there is a conflict or ambiguity between documents that rank the same in the order of precedence, it is customary for the conflict to be resolved by applying the "higher standard" or "higher requirement" imposed between the conflicting documents (and the Agreement terms should note this).
- 16.15 Confirm that the Agreement constitutes the entire agreement and supersedes prior negotiations. Clearly state whether or not the Landholder is entering into the Agreement in reliance on any representations or information provided by the Developer, especially where those representations are not expressly set out in the Agreement.

17 Site Access, Land Use & Environmental Compliance

KEY CONSIDERATIONS

- 17.1 This clause governs the parties' access to the Project area and the land generally (whether under conservation concession or owned by the Landholder under a customary/community system) and outlines the environmental obligations of both parties.
- 17.2 It ensures the Developer can carry out its responsibilities under the Agreement and as project proponent, while protecting and respecting the Landholder's property, land use, and environmental interests.
- 17.3 It also provides mechanisms for accountability and remediation in case of damage or contamination.
- 17.4 Under this clause, the Developer might be granted the right to:
- (a) access the Project area to design, implement, monitor, and report on the Project;
 - (b) pass over other parts of the Landholder's property as is reasonably necessary to reach the Project area and use existing roads, tracks, and utilities (e.g. water, electricity) on the land where appropriate, provided this does not unreasonably interfere with the Landholder's use (and due compensation is provided where reasonable);
 - (c) install, operate, and maintain equipment or infrastructure necessary for the Project, such as monitoring stations, signage, or temporary structures;
 - (d) carry out environmental, cultural heritage, or other relevant surveys and assessments on the Project area and adjoining areas as required for the Project's implementation or compliance obligations;
 - (e) bring subcontractors, consultants, or other specified persons (e.g. auditors, regulators) onto the land, subject to conditions;
 - (f) undertake remediation, restoration, or rehabilitation works as required under the Agreement or the Project Management Plan;
 - (g) in some cases, store materials, tools or equipment on the land and conversely to remove waste, debris or materials generated as part of the Project; and
 - (h) enter the Project area without prior notice in the event of emergency (such as to prevent or mitigate environmental harm or address urgent safety concerns).

- 17.5 These rights should be balanced by appropriate obligations to minimise disruption, comply with Landholder directions, and ensure environmental and cultural protection. For example, the Developer might be required to:
- (a) give written notice (e.g. no less than 24 hours) or provide a schedule when accessing the Project area, or provide prompt notification in the event of an emergency;
 - (b) take reasonable care when accessing the Project area;
 - (c) comply with the Landholder's reasonable directions;
 - (d) repair or financially compensate for any damage to crops, roads, trails, fences, or gates (other than by activities expressly contemplated in the Agreement or the Project Management Plan, such as clearing);
 - (e) avoid interference with ongoing Landholder operations, culturally sensitive areas or community activities (restricting access to such areas where appropriate); and
 - (f) maintain records of visits and activities undertaken.
- 17.6 Specific environmental obligations may include:
- (a) compliance with all applicable environmental Laws;
 - (b) implementing environmental management protocols into the Project Management Plan dealing with:
 - (i) avoiding pollution or contamination (including air, noise, vibrations, dust, water, soil, waste, chemical);
 - (ii) avoiding harm to biodiversity and cultural heritage; and
 - (iii) land access restrictions and specific requirements (e.g. biosecurity washdown procedures);
 - (c) monitoring and reporting on environmental performance;
 - (d) ensuring the Landholder is not exposed to liability for environmental breaches or breaches of any Law caused by the Developer.
- 17.7 Access rights should be limited to specific areas or purposes required for the Project (as outlined in any map schedule or the Project Management Plan) and should not extend to unrelated activities or access to the whole of the Landholder's land unless it is required for the Project.
- 17.8 Emergency access may be permitted for the Developer without notice, subject to emergency protocols.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 17.9 Define the scope of access rights and where appropriate, make provision for notice periods, permitted activities, and access routes. Consider including or expanding on these requirements in the Project Management Plan. Require that the Developer prepare the environmental management plan which (if applicable) should be prepared in consultation with affected communities.
- 17.10 Ensure access rights and permitted activities on the land are compatible with local land use practices, cultural sensitivities, and biodiversity protections. Exclude culturally sensitive areas or require consultation with affected communities before accessing certain areas.
- 17.11 Ensure there are obligations in place requiring the Developer to avoid or minimise impact on culturally significant sites, native vegetation and biodiversity.
- 17.12 Where appropriate, address how project activities on the land will coexist with existing and ongoing Landholder use (grazing, farming, cultural activities).
- 17.13 Include obligations for the Developer to minimise disturbance (e.g. noise, vibration and dust) and comply with reasonable Landholder requests or instructions in respect of disturbances.
- 17.14 Require the Developer to ensure that any third parties engaged by the Developer are held to the same site access terms and obligations as the Developer.
- 17.15 Include an indemnity and remediation requirement for environmental damage or breach caused by the Developer, including for any contamination or pollution.
- 17.16 Provide a right to suspend the Project or restrict access if the Developer is in breach of site access or land use obligations, or in the event of an emergency.
- 17.17 Specify how access is facilitated in the event of an emergency (e.g. types of emergencies, and whether notice requirement waived in such cases).
- 17.18 Require the Developer to keep records of site visits, activities undertaken, and any incidents or environmental observations. Include obligations to report environmental breaches or damage promptly to the Landholder and relevant authorities.

18 Transfers and Change in Control

KEY CONSIDERATIONS

- 18.1 This clause restricts the parties from transferring their rights or obligations under the Agreement to another party without consent. It ensures that both parties retain control and visibility over who is exercising rights or performing obligations under the Agreement.
- 18.2 Transfer provisions typically cover:
- (a) assignment of rights and benefits;
 - (b) novation of obligations, rights and benefits;
 - (c) changes in control of a party (e.g. sale of shares, change of trustee); and/or
 - (d) subcontracting of services or responsibilities.
- 18.3 The Agreement might:
- (a) require notification and consent to be provided for an assignment, novation or change in control;
 - (b) allow subcontracting with notice or subject to subcontracting approval conditions; and
 - (c) include exceptions where transfers are deemed to be approved, without the need for consent, for internal restructures or transfers to related entities (provided continuity is maintained).
- 18.4 The incoming party (e.g. assignee) may be required to enter into a deed of assignment or novation to ensure enforceability and continuity under the Agreement and to regulate prior conduct and obligations of the outgoing party.
- 18.5 Approval to subcontract is customarily conditional upon:
- (a) subcontractors being competent, skilled and reputable;
 - (b) subcontractors also complying with the obligations of the Agreement (and subcontracts containing any provisions necessary to ensure the subcontractor will comply with the Agreement);
 - (c) the Developer being liable for subcontractor's performance and acts or omissions.
- 18.6 Any agreement to transfer, may impose conditions on the approval of such transfer (e.g. no outstanding breaches of the Agreement, satisfaction as to financial capacity or technical competence of the transferee, and so on).

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 18.7 Avoid allowing the Developer to transfer its rights and obligations under the Agreement unless consent is first obtained from the Landholder. This is important to ensure:
- (a) the Landholder is allowed to vet any new party to ensure they meet the standards required by the Agreement and will not introduce operational, financial or reputational risks or exploitation;

- (b) the incoming transferee is aligned with the Landholder's land uses and will not unreasonably interfere with existing or future activities or jeopardise the integrity of the Project;
 - (c) the Landholder avoids being exposed to financial risks or failure to implement the benefit-sharing arrangement if the transferee is not adequately resourced, technically competent, or reliable;
 - (d) the working relationship and communication channels established with the original Developer are preserved, which may have been a key contributing factor to the establishment of the Project and the obtaining of FPIC.
- 18.8 Consider whether it is necessary to have separate sections dealing with what constitutes:
- (a) assignment;
 - (b) novation;
 - (c) subcontracting; and
 - (d) change in control,
- and document how each process should be treated.
- 18.9 Consider treating unauthorised transfers or changes in control as a material breach/event of default, giving the Landholder the right to terminate.
- 18.10 Caution needs to be exercised in consenting to a transfer so that it does not inadvertently affect the legal right to carry out the Project (whether under the Agreement itself or for example under any approvals, permits, concessions and so on).
- 18.11 In the event of a transfer by the Developer, ensure the incoming transferee is bound by the same obligations as the outgoing Developer. This can be implemented by a deed of novation or assignment (as the case may be) to formalise the transfer. Such deed of novation or assignment should require the Developer to remain liable for its acts, omissions and obligations up until the novation has become effective.
- 18.12 The Landholder should not give consent to a transfer until it has had an opportunity to receive guidance or advice on the appropriateness of such novation or assignment.
- 18.13 Include a process for seeking and granting consent to a transfer, including timeframes and conditions.
- 18.14 If permitting the Developer to subcontract, ensure that the Developer remains liable for the actions of any subcontractors.
- 18.15 Consider whether Landholder transfers to closely related/associated parties should be permitted as of right, for example to family members, related community entities, or successors. Ensure transfer provisions are adapted to reflect customary and community systems, family arrangements or community succession.
- 18.16 Require clear notice requirements and timeframes for proposed transfers.

19 Security for Performance

KEY CONSIDERATIONS

- 19.1 This clause addresses whether a party is required to provide some kind of financial security to guarantee performance under the Agreement.
- 19.2 Where a Landholder has granted exclusive rights or access to land but the Project outcomes or milestones (e.g. credit issuance or revenue generation) may not be delivered for a significant period of time, the Landholder risks being deprived of land use and left to cover its costs without receiving any corresponding benefit. As such, it is important to consider having some kind of mechanism for upfront or baseline compensation as a form of security to offset against this loss.
- 19.3 The most practical form of security for Landholders is often built into the benefit-sharing arrangement itself (e.g. requiring advance payments, signing bonuses, or payments tied to early milestones rather than waiting for credit issuance).
- 19.4 Having some form of security in favour of the Landholder will also:
- (a) incentivise the Developer to properly perform its key obligations under the Agreement, including registration, reporting, and implementation of the benefit-sharing arrangement, particularly where there is a risk of unviability, early termination, or abandonment of the Project; and
 - (b) protect the Landholder against the risk of Developer insolvency, including scenarios where the Landholder may be left with an incomplete Project, residual decommissioning obligations, and limited or no recourse against the Developer.
- 19.5 It is not commonplace or recommended for Landholders to provide security to Developers in carbon projects in this context, and such regimes should be avoided/resisted (especially if legal and financial advice has not first been obtained). Some reasons Developers may seek to obtain security from Landholders may include:
- (a) there is a material risk of Landholder breach that could trigger reversion, cancellation of carbon credits or financial penalties; or
 - (b) the Agreement includes significant indemnity or compensation obligations,
- however in almost all circumstances there are more appropriate ways to mitigate these risks that do not involve financial burden on the Landholder.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 19.6 Where the Developer is a subsidiary or project vehicle, consider whether a guarantee from a more substantial parent entity is appropriate and enforceable.
- 19.7 Seek legal and financial advice before agreeing to provide any form of security. In most cases, it will not be appropriate for the Landholder to provide any security for performance.
- 19.8 If a formal security regime is included (i.e. outside of the benefit-sharing arrangement), clearly state under what conditions the security may be enforced, including what the processes and timeframes are before having recourse.
- 19.9 Avoid overly complex or burdensome security arrangements, especially where Landholders are not commercial entities and may have difficulty enforcing or having recourse to the security.

20 Default, Suspension & Termination

KEY CONSIDERATIONS

- 20.1 This clause outlines the circumstances under which the Agreement may be suspended or terminated, either automatically or by one party due to a material breach, insolvency, or other specified events.
- 20.2 It provides a mechanism for ending the Agreement and the Project where a party materially breaches its obligations. It may also provide a mechanism for termination where the Project becomes unviable.
- 20.3 On termination, the parties are generally released from further obligations under the Agreement. However, certain clauses are usually expressly stated to 'survive termination', meaning they continue to bind the parties after the termination of the Agreement (common examples include Confidentiality, Intellectual Property, Dispute Resolution, Termination clauses).
- 20.4 The Agreement may allow for temporary suspension of obligations in certain circumstances (e.g. force majeure, regulatory delays, environmental or safety risk), with a view to resuming performance of those obligations once the issue is resolved. Suspension will typically excuse obligations under the Agreement but ordinarily does not excuse payment obligations on amounts already owing.
- 20.5 Termination is usually specified to occur:
- (a) by notice, if a party commits an event of default and fails to remedy it within a specified period (i.e. the 'cure period');
 - (b) automatically, if:
 - (i) a serious breach occurs;
 - (ii) conditions precedent/key Project milestones (e.g. registration) are not met within agreed timeframes;
 - (iii) the Developer loses the right to carry out the Project; or
 - (iv) the Developer becomes insolvent, or other financial default events occur that make Project continuation impractical.
- 20.6 Generally, the party in default is allowed an opportunity to correct the breach before termination rights are exercised, unless the breach cannot be remedied.

- 20.7 However, some examples of serious breaches that may lead to immediate termination rights under the Agreement include:
- (a) where a party becomes insolvent or is declared bankrupt;
 - (b) the Developer abandons the Project or ceases operations;
 - (c) if the Developer loses the legal right to carry out the Project (for example, the necessary concession, approvals, or registrations are revoked);
 - (d) serious unethical behaviour, such as fraud, wilful misconduct, criminal activity or deliberate wrongdoing;
 - (e) a party discloses confidential information in a manner that cannot be remedied;
 - (f) a party's actions result in a breach of laws or regulations that jeopardise the Project.
- 20.8 In some cases, the Agreements may permit 'termination for convenience' rights which allow one party to end the Agreement unilaterally and without cause. However, this right should generally be avoided where possible because it introduces uncertainty and risk of leaving the Landholder exposed after investing resources, time, or money into the Project, with little or no recourse to recover losses or costs.
- 20.9 Some termination rights may be subject to regulatory approval or notification requirement, particularly under certain carbon standards, or if there is a project financing arrangement in place with a project financier such that the Landholder is required to give the financier an opportunity to first rectify the default.
- 20.10 Termination may trigger obligations for the Developer to relinquish carbon credits or pay compensation, especially if the termination results in a reversal of emission reductions or carbon sequestration.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 20.11 Define what constitutes a 'serious breach' which gives rise to an immediate right to terminate, and ensure it appropriately reflects Project-specific issues. The definition of 'insolvency' should also be clearly stated.
- 20.12 Add a reasonable time period to remedy events of default (which are not a serious breach). Define breach notice procedures and required response timeframes.
- 20.13 Ensure Landholders understand the consequences of termination, including the potential loss of Project benefits, and any decommissioning obligations that may be required.
- 20.14 Ensure that certain clauses (e.g. indemnities, confidentiality, dispute resolution, carbon rights) survive termination so that the Landholder can continue to enforce its rights and protect itself even if the Agreement is terminated early.
- 20.15 Termination should not extinguish the Landholder's rights or claims in respect of any past breach by the Developer, or payment of outstanding amounts.
- 20.16 Ensure Landholders understand how to challenge termination or seek remedies through the dispute resolution process under the Agreement.

21 Post-Termination Obligations

KEY CONSIDERATIONS

- 21.1 This clause details the obligations that survive termination of the Agreement. While termination generally releases the parties from further obligations under the Agreement, this clause sets out exceptions to that rule, ensuring that certain responsibilities and rights continue beyond the Agreement's expiry.
- 21.2 Post-termination obligations may include:
- (a) ongoing protection of confidential information and ongoing rights to use intellectual property and data;
 - (b) continuing indemnities for breaches occurring before termination;
 - (c) final reporting and audits, handover and transition activities, return of Project materials;
 - (d) final payment obligations to ensure all payments are made under the benefit-sharing arrangement;
 - (e) dispute resolution procedures for unresolved or continuing issues existing before the date of termination.
- 21.3 These obligations may be time-bound (e.g. 12 – 24 months) or indefinite (except to the extent where duration is limited by local laws), depending on the nature of the obligation and the risk involved.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 21.4 Not all obligations should survive termination. The Agreement should clearly identify:
- (a) which clauses continue to apply;
 - (b) the duration of their survival; and
 - (c) any conditions or limitations on their enforcement.
- 21.5 Include provisions for handover of project materials, final reporting, and cooperation with audits.
- 21.6 Specify how IP and data must be handled (e.g. returned, destroyed, or retained under licence).
- 21.7 Ensure Landholders understand their continuing obligations and rights, especially where land use restrictions, decommissioning obligations or regulatory compliance obligations remain in place.

22 Liabilities and Indemnities

KEY CONSIDERATIONS

- 22.1 This clause (sometimes split into separate clauses for 'liability' and 'indemnities' respectively) sets out how responsibility for loss, damage, or harm is allocated between the parties, and how one party may be required to compensate the other for such losses.
- 22.2 It often includes caps on the total liability payable from one party to the other under the Agreement and may include exclusions or 'carve outs' to such cap on liability in certain circumstances (where liability will remain uncapped).
- 22.3 An indemnity creates a direct obligation for one party to compensate the other for specified losses, without no requirement to prove breach of contract. The scope of recoverable losses under an indemnity can vary depending on how the clause is drafted. For example, it may include consequential losses, legal costs, or other expenses incurred.
- 22.4 Indemnities are often drafted to "survive" termination of the Agreement, meaning they continue to apply even after the Agreement ends. They may be tied to a specific time period or linked to particular obligations.
- 22.5 Because indemnities can impose significant financial risk, they are generally reserved for high-risk matters such as environmental harm or safety breaches where the potential for extensive loss or damage (including consequential loss) is high.
- 22.6 It is often not appropriate to include an indemnity where parties have adequate rights to enforce under the Agreement in the event of a breach (but may be appropriate for example if those rights are difficult to, or unlikely to be able to, be enforced).
- 22.7 Types of indemnities that may be found in a Carbon Project Development Agreement include:
 - (a) intellectual property infringement or breach of confidentiality;
 - (b) environmental harm, pollution or contamination;
 - (c) breaches of health and safety;
 - (d) damage to property (other than Project activities authorised by the Agreement) or injury to or death of persons;
 - (e) regulatory breaches (e.g. breach of concession, or breach of carbon standard obligations).
- 22.8 Given the significance of indemnities, Developers are unlikely to offer indemnities in favour of Landholders by default. Whether an indemnity should be negotiated in favour of the Landholder should be informed by consideration of what breaches are most likely to occur, and the likelihood and scale of losses or damages that could arise for the Landholder.

- 22.9 If a Landholder is subjected to an indemnity in favour of the Developer (which should be avoided), it should be qualified to:
- (a) limit indemnities to acts and things within the Landholder's control;
 - (b) exclude unreasonable liability under the indemnity (e.g. for Developer negligence, breaches of contract, wilful default); and
 - (c) attempt to seek reciprocal/mutual indemnities from the Developer.
- 22.10 It is advisable to negotiate a limitation on the Landholder's total liability to the Developer. The Developer may equally seek to negotiate a cap on its own liability.
- 22.11 The limitation of liability (i.e. the cap on the amount payable by one party) will usually not apply in respect of any carve-outs which are specified in the Agreement. Some examples of common carve-outs which are often excluded from the cap on liability include:
- (a) a party's liability for its indemnity obligations elsewhere under the Agreement;
 - (b) fraud, wilful misconduct or illegal acts;
 - (c) where a party was negligent or failed to mitigate loss; and
 - (d) fines payable for a breach of a law.
- 22.12 Many contracts include mutual exclusions for 'consequential loss', stating that neither party is liable for consequential loss, which includes (among other things):
- (a) loss of business or production;
 - (b) loss of anticipated revenue or profit;
 - (c) damage to reputation;
 - (d) loss of use; and
 - (e) damage to goodwill or reputation.
- 22.13 Some contracts often go even further, including a carve-outs to the consequential loss exclusion described above. This means that parties can be liable for consequential loss for certain breaches (often intellectual property, confidential information, environment, safety breaches).
- 22.14 Indemnities may be limited by:
- (a) caps on total liability (e.g. a fixed monetary amount);
 - (b) exclusions for consequential or speculative losses; and/or
 - (c) proportional liability (e.g. reduced where the other party contributed to the loss).

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 22.15 Consider whether subjecting Landholder(s) to indemnities of any kind is appropriate as the Landholder(s) may not have access to insurance and/or the capability to satisfy an indemnity.
- 22.16 Clearly define the scope of indemnities and liabilities, including:
- (a) what types of loss are covered;
 - (b) who is responsible for what risks; and
 - (c) whether liability is capped or excluded in respect of certain losses.
- 22.17 Include a direct right for the Landholder to recover all forms of losses under indemnity, including all costs incurred (including costs of professional advisers, if possible).
- 22.18 Include limitations on proportional liability that:
- (a) limit the Landholder's liability to their share of fault, rather than allowing the Landholder to also be liable for faults of any other party;
 - (b) prevent the Developer from benefitting or recovering for losses caused by their own negligence or misconduct; and
 - (c) reflect shared responsibility where both parties contribute to a loss.

23 Force Majeure

KEY CONSIDERATIONS

- 23.1 This clause defines what happens when a party is no longer able to meet its obligations due to the occurrence/existence of an extraordinary event outside its control. It protects parties from being penalised for non-performance while obligations are impossible to perform in extraordinary circumstances.
- 23.2 In Carbon Project Development Agreements, force majeure clauses are important because natural disasters, political unrest, or regulatory changes bring a significant risk of disruption to Project activities, especially in remote or climate-sensitive areas.
- 23.3 However, not all events should be properly categorised as force majeure. For carbon project methods such as prevention of unauthorised logging, where unauthorised logging does occur in the Project area in contravention of the Project methodology (and which might have the effect of reversal or cancellation) this may be seen as a reversal or a failure of the Project to meet the criteria, rather than an intervening extraordinary event (such as a flood event). In each case, it will depend on the application of the definition of Force Majeure Event.
- 23.4 A Force Majeure Event is typically defined as an event that:
- (a) is unforeseen by the affected party;
 - (b) is beyond the control of the affected party; and
 - (c) occurs without the fault or negligence of the affected party,
- which may be for example, any of the following:
- (d) natural disasters such as bush/wildfire, flood, drought, storm, frost, heatwave, earthquake, cyclones, landslides (sometimes defined as 'Acts of God');
 - (e) biosecurity threats such as pest incursion, disease, epidemic, pandemic;
 - (f) political or social unrest such as war and invasion, terrorism, sabotage, riot, rebellion, embargo, trade or custom restriction, revolution, insurrection or military or usurped power or martial law; and
 - (g) industrial actions such as strike, lockout, work bans.
- 23.5 Note that certain risks may be containable or avoidable with proper due diligence and exercising good practice, such as wildfires using vegetation clearing and firebreaks, and in such cases it may not be appropriate to excuse such an event as force majeure.
- 23.6 The clause will typically specify:
- (a) what obligations (whether some or all) are suspended during force majeure;
 - (b) how long the suspension of the affected obligations lasts;
 - (c) what notice must be given by the affected party to the other party; and
 - (d) whether the Agreement can be terminated if the force majeure event continues over an extended period of time.

- 23.7 The clause usually does not excuse performance if:
- (a) the event was foreseeable or preventable;
 - (b) the party contributed to the event through negligence; and
 - (c) the event does not materially affect the party's ability to perform.
- 23.8 Some agreements may allow termination if the Force Majeure Event continues beyond a specified period (customarily 6 or 12 months).

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 23.9 Clearly define what constitutes a Force Majeure Event, using examples relevant to the region and Project type/methodology. It may be prudent to distinguish between reversal events and Force Majeure Events, as not all reversal events will be Force Majeure Events (however note that it is possible for some events to satisfy both).
- 23.10 Consider whether the clause reflects customary understandings of responsibility and land use practices, and what might be considered a fair excuse for non-performance in view of traditional/ community expectations.
- 23.11 Consider whether the clause reflects local risks. Specific examples might include:
- (a) heavy rain causing flooding (or erosion), or dry seasons or droughts affecting reforestation;
 - (b) wildfires or other damage resulting from unmanaged/unauthorised land clearing (not caused by the Landholder);
 - (c) armed conflict, militia activity, civil unrest, government-imposed restrictions, protest or transport blockades affecting operations or land use/access;
 - (d) technology/communications blackouts; and
 - (e) pandemic or disease outbreak.
- 23.12 Include obligations on the affected party to:
- (a) provide prompt written notice of the Force Majeure Event to the other party;
 - (b) take reasonable steps to minimise disruption and mitigate the impact;
 - (c) resume performance of obligations as early as possible.

- 23.13 Consider including a termination right if the event continues for an extended period and makes the Project unviable, having regard to the reversal/buffer pool system set for the Project when registering it with the relevant carbon standard (i.e. where a certain percentage of carbon credits are set aside by projects to cover potential reversals, such as natural disasters or human activities that release carbon back into the atmosphere).
- 23.14 Consider including remedies for the affected party, and reasonable protections/enforcement mechanisms for the non-affected party:
- (a) suspension of obligations without financial penalty during the Force Majeure Event;
 - (b) no liability for breach of the Agreement due to force majeure, provided conditions are met and parties are exercising good practice;
 - (c) requirement to document and evidence the Force Majeure Event and its impact;
 - (d) dispute resolution process if parties disagree on whether an event qualifies as a Force Majeure Event.

24 Dispute Resolution and Grievances

KEY CONSIDERATIONS

- 24.1 This clause sets out the process for resolving disagreements between the parties without immediately resorting to formal dispute resolution. It aims to promote cooperation and preserve relationships while reducing costs incurred by formal dispute resolution (until absolutely necessary).
- 24.2 In Carbon Project Development Agreements, disputes might arise for example over land use or exclusion, Project performance, payments under the benefit-sharing arrangement, breaches of laws, or compliance with many other rights and obligations under the Agreement.
- 24.3 A clear dispute resolution process helps ensure that issues are quickly resolved in an accessible and cost effective format, with the objective of continuing the Project. It is not always in the best interest of the parties for the Project to come to an end simply due to the existence of a dispute.
- 24.4 The clause typically requires parties to follow the agreed dispute resolution steps before resorting to any form of litigation or formal dispute resolution.
- 24.5 The steps in the dispute resolution process often include:
- (a) Notice of dispute: One party formally notifies the other of the issue with full particulars of the issues.
 - (b) Negotiation: Parties meet to try to resolve the dispute.
 - (c) Mediation (optional): A neutral third party helps the parties negotiate appropriate compromises and reach a voluntary agreement.
 - (d) Expert determination (optional): A technical expert makes a binding decision on specific issues (which may be preferred where the dispute relates to a highly technical issue, which is appropriate for an independent expert to decide rather than an arbitrator or judge).
 - (e) Arbitration or litigation: If earlier steps fail, the dispute may proceed to formal resolution.
- 24.6 In the local community context, there may need to be customary dispute resolution mechanisms suitable for the Landholder, for example:
- (a) involvement of elders or community leaders;
 - (b) use of local community mediation practices; and
 - (c) respect for cultural protocols and decision-making processes.
- 24.7 A party should be able to bypass the dispute resolution process only in limited circumstances, such as:
- (a) seeking urgent court orders (e.g. to prevent harm or preserve rights);
 - (b) where the other party refuses to engage in the process; and
 - (c) where the agreed dispute resolution process has been exhausted without resolution.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 24.8 Ensure the clause clearly outlines each step in the dispute resolution process, including timeframes and responsibilities.
- 24.9 Ideally, the parties should have an opportunity to negotiate and agree in advance on the dispute resolution mechanism. However, it may also be possible to include a clause that allows parties to agree on appropriate dispute resolution methods once a dispute has arisen (with a default mechanism if no agreement is reached).
- 24.10 Consider whether the process is accessible to all parties. The following requirements should be included:
- (a) use of plain language;
 - (b) translation into local languages;
 - (c) opportunity to obtain support from legal or community advisers;
 - (d) reasonable timeframes to facilitate (including sufficient time to arrange for independent legal advice and support).
- 24.11 When selecting the appropriate jurisdiction for resolving disputes, consider the practicality of the jurisdiction and the likely enforceability of any resolution to the dispute:
- (a) Does the Developer have a presence locally, or only internationally? Is the country where the Developer is located traditionally hostile or difficult to enforce in? Judgments or awards may be difficult to enforce across borders without a reciprocal enforcement treaty.
 - (b) Is the selected jurisdiction independent, impartial, politically stable and free from corruption?
 - (c) Does the selected legal system have experience with alternative dispute resolution processes like mediation?
 - (d) Does the jurisdiction have experience with environmental or land-based disputes or over customary law? Is there a track record of that jurisdiction upholding or enforcing indigenous or customary rights (if relevant)?
 - (e) Is the jurisdiction accessible (geographically and financially) to the Landholder, having regard to support/representation, travel, and language?
- 24.12 If jurisdictional/practicality of enforcement issues are significant, consider what other rights may be negotiated in favour of the Landholder, such as a right to terminate the Agreement.
- 24.13 Consider appropriate enforcement mechanisms and remedies:
- (a) interim measures to protect rights during the dispute and to ensure that the parties must continue to perform their obligations under the Agreement notwithstanding the dispute;
 - (b) clear consequences for failing to participate in the process; and
 - (c) enforcement mechanisms for resolution of agreed outcomes (e.g. mediation agreements).

25 Intellectual Property Rights

KEY CONSIDERATIONS

- 25.1 Intellectual Property is about protecting ideas and creations of the mind. In the context of carbon projects, intellectual property rights are important for clarifying who owns and can use materials developed before and during the Project, including project documentation, data, maps, media, reports and so on.
- 25.2 One aspect of intellectual property that may be of particular significance to affected communities is cultural and traditional knowledge systems and know-how.
- 25.3 These rights are important for protecting community contributions, ensuring fair use and commercialisation, and preventing unauthorised exploitation of cultural or environmental knowledge.
- 25.4 The rights also may be particularly important for traditional Landholders as a mechanism of protecting how their story is told. For example, if videos, films or photos are being produced (including as part of any media related to the Project), it is important to consider who will own the images and have the right to control how they are used (including how they are copyrighted and licensed).
- 25.5 IP may include:
- (a) Project data (e.g. carbon sequestration or emissions reduction data, maps, reports);
 - (b) media (e.g. photos, videos, interviews);
 - (c) traditional knowledge or practices (e.g. fire management, land use); and
 - (d) proprietary software, methodologies, or systems used in the Project.
- 25.6 Ownership of IP should be clearly stated:
- (a) Who owns IP created during the Project?
 - (b) Who owns background/pre-existing IP brought into the Project (i.e. not developed during the Project, or developed separately to the Project)?
 - (c) Are shared rights or licensing arrangements required for the Landholder to make use of any IP?
- 25.7 The scope of any licence which is required by the Developer to use the Landholder's IP is also important:
- (a) Is it the licence 'exclusive' or 'non-exclusive'? Global or limited to a certain geography? Time-limited or perpetual (i.e. no expiry date)?
 - (b) What rights does the licence grant and for what purpose? Is the licence limited to use for Project implementation, or does it extend reproduction or derivative works? Can it be used for promotional, commercial or educational use?
 - (c) Can the licence be revoked? Under what conditions?

25.8 IP clauses may also allow:

- (a) use of IP by the Developer for project reporting, certification, or sale of carbon credits;
- (b) sublicensing of IP to third parties (e.g. auditors, regulators);
- (c) retention of ownership by the Landholder, with limited use rights granted to the Developer; and
- (d) use of pre-existing IP only with permission or under agreed terms.

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 25.9 A common position is that each party owns their own IP that was prepared before the commencement of the Agreement (often referred to as 'Background IP' or 'Pre-existing IP') and will continue to own that IP during and after the Agreement.
- 25.10 The position may not be the same for IP created during the Agreement, which could be wholly owned by one party, or may vest in the party who created it (depending on the terms of the Agreement). IP created during the Agreement may also be subject to further licensing arrangements governing how it may be used by the other party (or third parties).
- 25.11 Consider whether there are relevant IP rights including traditional/specific knowledge of the Landholder, and whether protections are needed to prevent misuse, exploitation or unauthorised sharing.
- 25.12 Where media is involved (e.g. documentaries, promotional videos, photos), the Agreement should specify ownership, permitted uses and duration. It might also be appropriate to consider inserting a right for review and community consent/veto rights as the Landholder may wish to protect how their story is told.
- 25.13 Consider attaching the following requirements to use of traditional/cultural IP:
- (a) requiring FPIC before use;
 - (b) prohibiting commercialisation without community agreement;
 - (c) ensuring attribution and respectful representation of culture;
 - (d) recognising community ownership of cultural knowledge; and
 - (e) prohibiting use in ways that misrepresent or exploit the community.
- 25.14 Consider duration and scope of IP use. How long can the Developer use the IP, and for what purposes? What happens to rights to use the IP after the Agreement ends, should it still be capable of being used?

- 25.15 Ensure the Agreement defines “Intellectual Property” and “Background IP/Pre-existing IP” clearly, including what is covered and what is excluded.
- 25.16 Include specific remedies for a breach of intellectual property rights, rather than relying on general remedies for a breach of the Agreement. Breaches of intellectual property rights often result in damages such as reputational harm or lost opportunity, rather than direct monetary losses, which can be harder to prove and recover. These types of indirect losses are often referred to as ‘consequential loss’. Many contracts exclude ‘consequential losses’ from a party’s liability to the other party, meaning it can then be difficult or impossible to recover for those breaches.
- 25.17 As a result, it is common industry practice to:
- (a) include an indemnity protecting the disclosing party for any losses suffered in connection with a breach of intellectual property rights (however those losses arise, and whether they are consequential or not, even if there is an exclusion of consequential loss); and/or
 - (b) specifically exclude (i.e. ‘carve out’) intellectual property breaches from both the exclusion on consequential loss, and the limitation of liability if those concepts are contained in the Agreement.

26 Confidentiality

KEY CONSIDERATIONS

- 26.1 This clause is designed to protect sensitive information exchanged between parties during (and after) the Agreement.
- 26.2 In Carbon Development Project Agreements, confidentiality provisions are particularly important due to the involvement of intellectual property such as proprietary methodologies, Landholder personal information and data, and commercial arrangements.
- 26.3 Confidential Information typically includes information such as technical data, documentation for the Project, intellectual property, commercial terms involved in the Project, personal information, and any other information identified as confidential by either party.
- 26.4 It may also include information that is inherently confidential due to its nature or context or information which is notified to the other party to be confidential (or which the other party ought to know is confidential information).
- 26.5 While disclosure of Confidential Information is restricted, exceptions are usually made where:
- (a) required to be disclosed by law or government policy;
 - (b) necessary for regulatory reporting or compliance;
 - (c) permitted under the Agreement for operational purposes (e.g. for purpose of trading carbon credits);
 - (d) disclosing to professionals advisers, employees, agents, consultants or contractors under equally strict confidentiality obligations and often on a 'need-to-know' basis; or
 - (e) the confidential information is already in the public domain.
- 26.6 Disclosure may also be required to facilitate reporting or a transaction under the relevant carbon standard (otherwise it could be impossible to give effect to the purpose of the Agreement).

PRACTICE NOTES AND CONTRACTING CONSIDERATIONS

- 26.7 Clearly define "Confidential Information" to avoid ambiguity as to whether information is covered or not.
- 26.8 Include carve-outs for permitted disclosures, such as legal and regulatory disclosures, and where disclosure is necessary for professional advisers.
- 26.9 Ensure the confidentiality agreement obligations survive termination of the Agreement to ensure ongoing protection.
- 26.10 Consider whether confidentiality requirements need to be balanced against media requests and statements and whether terms are required to summarise how confidentiality is dealt with for media requests.
- 26.11 Consider whether there are public reporting or compliance requirements that need to be accounted for (especially where government oversight is involved).

- 26.12 Include specific remedies for a breach of confidentiality, rather than relying on general remedies for a breach of the Agreement. Breaches of confidentiality often result in damages such as reputational harm or lost opportunity, rather than direct monetary losses, which can be harder to prove and recover. These types of indirect losses are often referred to as 'consequential loss'. Many contracts exclude 'consequential losses' from a party's liability to the other party, meaning it can then be difficult or impossible to recover for those breaches.
- 26.13 As a result, it is common industry practice to:
- (a) include an indemnity protecting the disclosing party for any losses suffered in connection with a breach of confidentiality (however those losses arise, and whether they are consequential or not, even if there is an exclusion of consequential loss); and/or
 - (b) specifically exclude (i.e. 'carve out') confidentiality breaches from both the exclusion on consequential loss, and the limitation of liability if those concepts are contained in the Agreement.



The Rainforest Foundation UK

Suite 201, Pill Box Studios, 115 Coventry Rd, London E2 6GG,
United Kingdom
Tel: +44 (0) 20 7485 0193

© Rainforest Foundation 2026 (Charity No. 1138287. Registered Company
No. 7391285)



SDSG
SUSTAINABLE DEVELOPMENT
STRATEGIES GROUP

Sustainable Development Strategies Group (SDSG)

1031 33rd Street, Suite 133, Denver, CO 80205,
United States of America