



*Australian Government Solicitor*

**DEED OF APPROVAL**

IN RELATION TO APPROVAL OF ABATEMENT PROJECTS UNDER THE  
GREENHOUSE FRIENDLY™ INITIATIVE

**COMMONWEALTH OF AUSTRALIA**, AS REPRESENTED BY THE AUSTRALIAN  
GREENHOUSE OFFICE, DEPARTMENT OF THE ENVIRONMENT AND HERITAGE  
ABN 34 190 894 983

-AND-

**[INSERT LEGAL NAME AND ABN OR ACN OF THE ABATEMENT PROVIDER]**

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## DEED OF APPROVAL

IN RELATION TO APPROVAL OF ABATEMENT PROJECTS UNDER THE GREENHOUSE FRIENDLY™ INITIATIVE

### Date

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This Deed is made on [Insert day(numeric) month(name) year(numeric) in full].

### Parties

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This Deed is made between and binds the following parties:

The Commonwealth of Australia (the Commonwealth), as represented by the Australian Greenhouse Office (the AGO), Department of the Environment and Heritage ABN 34 190 894 983 (the Department)

**(the Commonwealth)**

-and-

[Insert name and ABN or ACN of the Abatement Provider]

**(the Abatement Provider)**

### Context

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This Deed is made in the following context:

- A. The AGO administers the Greenhouse Friendly™ Initiative (the Initiative) on behalf of the Commonwealth. The Initiative aims to encourage a reduction in Australian greenhouse gas emissions and is part of the Commonwealth's wider Greenhouse Challenge Plus™ Programme, which is also administered by the AGO.
- B. As part of the Initiative, the AGO may approve projects that generate additional greenhouse gas abatement and meet the requirements for approval under the Initiative.
- C. The Abatement Provider wishes to transfer abatement, which has been generated from its approved abatement projects and independently verified and approved by the AGO under the Initiative, to other persons who will use that abatement to offset their greenhouse gas emissions under the Initiative or another scheme or programme.
- D. This Deed sets out the Abatement Provider's obligations in relation to its approved abatement projects and sale of its approved abatement.

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## Operative provisions

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In consideration of the mutual promises contained in this document, the parties to this Deed agree as follows:

### 1. Interpretation

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#### 1.1. Definitions

1.1.1. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

<b>Abatement</b>	has the same meaning as in the Guidelines;
<b>Abatement Project</b>	has the same meaning as in the Guidelines;
<b>Abatement Provider</b>	means the second party to this Deed who is either: a. a Project Owner; or b. a person who has the legal right to deal with Approved Abatement from one or more Approved Abatement Projects on behalf of the Project Owner or Project Owners of those Approved Abatement Projects;
<b>Acquittal</b>	means the use or declaration of Approved Abatement to offset greenhouse gas emissions;
<b>the Administrator</b>	means the Greenhouse Friendly™ Administrator and has the same meaning as in the Guidelines;
<b>AGO</b>	means the Commonwealth of Australia as represented by the Australian Greenhouse Office, part of the Department, and includes any other part of the Department, or any other agency, that is from time to time responsible for administering this Deed;
<b>Annual Report</b>	has the same meaning as in Part Two of the Guidelines;
<b>Application</b>	means, in relation to an Approved Abatement Project, the following Project Material that forms the basis for the AGO's approval of the Approved Abatement Project: a. the Eligibility Statement; b. the Emission/Abatement Study; c. the Project Monitoring Plan; and d. the relevant Independent Verifier's report;

<b>Approved Abatement</b>	means Abatement that is generated by an Approved Abatement Project and which has been verified by an Independent Verifier and approved by the AGO in accordance with the Guidelines, and includes Abatement that is approved by the AGO under clauses 3.1.3, 3.2.2 or 3.2.3 of this Deed;
<b>Approved Abatement Project</b>	means an Abatement Project of the Abatement Provider, as described in a Schedule to this Deed, for the period specified in clause 3.1;
<b>Business Day</b>	in relation to the doing of any action in a place, means a weekday other than a public holiday in that place;
<b>Commencement Date</b>	means the date specified on the first page of this Deed, or if no Date is so specified, the date on which this Deed is executed by the parties;
<b>Commonwealth Material</b>	means any Material provided by the AGO or the Administrator to the Abatement Provider or derived at any time from such Material;
<b>CAR</b>	means a corrective action request and has the same meaning as in the Guidelines;
<b>Deed</b>	means this deed and includes the terms and conditions, any annexures, schedules and attachments;
<b>Emission/Abatement Study</b>	has the same meaning as in the Guidelines;
<b>Forest Sink Project</b>	has the same meaning as in the Guidelines and includes a land use project that generates Abatement;
<b>Greenhouse Challenge Plus™ Programme</b>	means the Greenhouse Challenge Plus™ Programme, of which the Initiative is a part;
<b>the Guidelines</b>	means the Greenhouse Friendly™ Guidelines as amended from time to time, a copy of which has been provided to the Abatement Provider;
<b>Independent Verifier</b>	means a member of the Greenhouse Challenge Plus™ Panel of Independent Verifiers;
<b>the Initiative</b>	means the Greenhouse Friendly™ Initiative, details of which currently appear at the following web page:

[www.greenhouse.gov.au/greenhousefriendly/index.html](http://www.greenhouse.gov.au/greenhousefriendly/index.html);

<b>Intellectual Property</b>	means: <ul style="list-style-type: none"><li>a. all copyright (including rights in relation to phonograms and broadcasts);</li><li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</li><li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</li></ul> but does not include: <ul style="list-style-type: none"><li>d. Moral Rights;</li><li>e. the rights of performers; or</li><li>f. rights in relation to confidential information;</li></ul>
<b>LCA</b>	means life-cycle assessment and has the same meaning as in the Guidelines;
<b>LCA Expert</b>	means a member of the Greenhouse Friendly™ Panel of Life-Cycle Assessment Experts;
<b>Material</b>	means the subject matter of any category of Intellectual Property rights;
<b>Moral Rights</b>	includes the following rights of an author of copyright Material: <ul style="list-style-type: none"><li>a. the right of attribution of authorship;</li><li>b. the right of integrity of authorship; and</li><li>c. the right not to have authorship falsely attributed;</li></ul>
<b>Personnel</b>	means a party's officers, employees, agents, contractor staff or professional advisers engaged or involved in the performance or management of this Deed;
<b>Project Material</b>	means Material that is provided by an Abatement Provider to the AGO or the Administrator for the purposes of this Deed or the Initiative or derived at any time from such Material (but excluding Commonwealth Material);
<b>Project Monitoring Plan</b>	has the same meaning as in the Guidelines;

<b>Project Owner</b>	means the legal or equitable owner of an Approved Abatement Project as defined in the Guidelines;
<b>Records</b>	means the records in respect of an Approved Abatement Project including those specified at clause 5.4.2;
<b>Reporting Period</b>	means the 12 month period, or some other period agreed in writing by the parties, in respect of which the Abatement Provider reports to the AGO on the Approved Abatement Projects;
<b>Schedule</b>	means a schedule to this Deed in the form set out in Annexure A which has been signed by both parties and describes: <ul style="list-style-type: none"><li>a. an Approved Abatement Project; and</li><li>b. where applicable, any Abatement generated from that Approved Abatement Project prior to the AGO's approval or re-approval of the Abatement Project and for which the Abatement Provider may seek approval by the AGO under the Guidelines.</li></ul>
<b>Schedule Date</b>	means, in respect of a Schedule, the date on which the Schedule is specified to take effect or if no date is specified for these purposes, the date that the Schedule is signed by the last of the parties to sign;
<b>Term</b>	means the duration of this Deed as specified in clause 2; and
<b>Transfer</b>	means, in relation to Abatement, to sell or otherwise transfer the Abatement to another person; and
<b>Verification Report</b>	means a report prepared by an Independent Verifier.

## 1.2. Interpretation

1.2.1. In this Deed, unless the contrary intention appears:

- a. any reference to the AGO shall include a reference to any person authorised by the AGO, including the Administrator;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;

- d. words importing a person includes a partnership and a body whether corporate or otherwise;
- e. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- f. a reference to an annexure, Schedule or attachment is a reference to an annexure, Schedule or attachment to this Deed, including as amended or replaced from time to time by agreement in writing between the parties;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- h. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

### **1.3. Guidance on construction of this Deed**

- 1.3.1. This Deed records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. A variation of this Deed is binding only if agreed in writing and signed by the parties.
- 1.3.3. Any reading down or severance of a particular provision does not affect the other provisions of this Deed.
- 1.3.4. A provision of this Deed shall not be construed to the disadvantage of a party solely on the basis that it proposed that provision.
- 1.3.5. This Deed is to be construed in accordance with, and any matter related to it is to be governed by, the laws of the Australian Capital Territory and the parties submit to the non-exclusive jurisdiction of the courts of that Territory.

### **1.4. Priority of Documents**

- 1.4.1. The different parts of this Deed shall be read in the following order of priority to the extent of any inconsistency:
  - a. these terms and conditions;
  - b. the Guidelines;
  - c. Annexure A to this Deed;
  - d. any Schedules; and
  - e. any Attachments.

**1.5. Schedules to this Deed**

- 1.5.1. The parties to this Deed may add one or more Schedules to this Deed during the Term by completing and signing the Schedule form at Annexure A.
- 1.5.2. Unless otherwise indicated in this Deed, the terms of this Deed apply to a Schedule for the period that the Abatement Project to which the Schedule relates, remains an Approved Abatement Project under clause 3.

**2. Term of this Deed**

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- 2.1.1. Subject to clause 2.1.2, this Deed commences on the Commencement Date and unless earlier terminated, continues for a period of five (5) years from the Schedule Date of the Schedule that was most recently added to this Deed or such other period as is agreed in writing by the parties.
- 2.1.2. The Term of this Deed may be extended for a period agreed in writing by the parties.

**3. Approval of Abatement Projects**

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**3.1. Approval of Abatement Projects**

- 3.1.1. Each Abatement Project described in a Schedule is an Approved Abatement Project under the Initiative from the Schedule Date relating to that Schedule until:
  - a. the end of five (5) years from the Schedule Date or such other period specified in the Schedule or otherwise agreed in writing by the parties; or
  - b. in the case of termination of this Deed under clause 8, the date of that termination,whichever is the earliest.
- 3.1.2. The Abatement Provider may request that the AGO provide written confirmation that an Abatement Project is approved under the Initiative.
- 3.1.3. Any Abatement generated from an Abatement Project prior to its approval under this Deed, may be approved by the AGO in accordance with the Guidelines from a date specified in the corresponding Schedule, where applicable.

**3.2. Re-approval of Abatement Projects**

- 3.2.1. The Abatement Provider may seek re-approval of an Abatement Project in accordance with the re-approval process set out in the Guidelines.
- 3.2.2. If an Abatement Project is re-approved by the AGO in accordance with the Guidelines:

- a. the parties may add a new Schedule to this Deed in accordance with clause 1.5; and
- b. any Abatement generated from the Abatement Project prior to its re-approval may be approved by the AGO in accordance with the Guidelines from a date specified in the corresponding Schedule, where relevant.

Note: Abatement generated by an Abatement Project prior to the Abatement Project being approved or re-approved by the AGO, may be approved by the AGO once the Abatement Project is approved or re-approved as the case may be. The Schedule should specify the date of the earliest Abatement generated that may be approved by the AGO in these circumstances. See also clause 3.1.3.

- 3.2.3. If the AGO does not re-approve an Abatement Project or this Deed is terminated, the Abatement Provider has three (3) months from the date that the Abatement Project ceases to be an Approved Abatement Project or the Deed is terminated (whichever is the earliest, if these dates differ) to seek AGO approval of Abatement generated from the Abatement Project while it was an Approved Abatement Project.

#### **4. Role of the AGO**

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##### **4.1. General obligations and rights**

- 4.1.1. The Abatement Provider acknowledges that the AGO:
  - a. will administer, control and promote the Initiative as it deems fit in its absolute discretion;
  - b. will monitor and review the activities of the Abatement Provider in respect of the Initiative;
  - c. has the right to obtain documentation, clarification or additional information from the Abatement Provider in respect of each Abatement Project and the Abatement Provider's compliance with its obligations under this Deed as requested by the AGO; and
  - d. in performing its functions in relation to the Initiative, may engage the services of any party it considers appropriate in its absolute discretion.

##### **4.2. Copies of Abatement Provider Documents**

- 4.2.1. The Abatement Provider acknowledges that the AGO may retain copies of all Project Material provided to it or the Administrator.
- 4.2.2. This clause 4.2 survives the expiry or termination of this Deed.

### **4.3. Confidential Information**

- 4.3.1. The AGO will not disclose Confidential Information of the Abatement Provider to a third party without the Abatement Provider's prior written approval except to the extent that the Confidential Information is:
- a. disclosed by the AGO to its Personnel to comply with obligations or exercise rights under this Deed or to enable effective management or auditing of Deed-related activities;
  - b. disclosed by the AGO to its responsible Minister;
  - c. disclosed by the AGO in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - d. disclosed within the AGO or to another agency or department of the Commonwealth or to a State Government body to meet accountability requirements regarding a Commonwealth programme; or
  - e. required or permitted by law to be disclosed.
- 4.3.2. Where the Department discloses Confidential Information in accordance with:
- a. clauses 4.3.1.a to 4.3.1.d - it must notify the person to whom the information is disclosed that the information is confidential; and
  - b. clauses 4.3.1.a and 4.3.1.d - it must only do so if the person to whom the information is disclosed agrees to keep the information confidential.
- 4.3.3. This clause 4.3 survives the expiry or earlier termination of this Deed.
- 4.3.4. For the purposes of this clause, 'Confidential Information' is information that:
- a. is inherently confidential and not in the public domain; and
  - b. the Abatement Provider notifies the AGO is to be treated in confidence; and
  - c. is not in the possession or knowledge of the Commonwealth independently of its disclosure by the Abatement Provider.

## **5. Abatement Provider Obligations**

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### **5.1. Abatement Provider must continue to satisfy the requirements of the Guidelines**

- 5.1.1. Unless otherwise indicated in this Deed, the Abatement Provider must satisfy all of the requirements of the Guidelines that apply in respect of an Abatement Project for the period that it is an Approved Abatement Project under this Deed.
- 5.1.2. The Abatement Provider acknowledges that the AGO may amend the Guidelines at any time and that this may involve changes to the ongoing approval requirements for an Approved Abatement Project.

- 5.1.3. The AGO will notify the Abatement Provider of any substantive changes to ongoing approval requirements during the Term of this Deed.
- 5.1.4. Where the ongoing approval requirements for an Approved Abatement Project under the Guidelines change during the Term, the Provider must satisfy the new requirements as soon as possible (at its own cost) but no later than 3 months from the date that the new requirements are notified to it by the AGO or such other period agreed in writing by the AGO.

## **5.2. Right to deal with Approved Abatement**

- 5.2.1. In respect of each Approved Abatement Project, the Abatement Provider warrants that either:
- a. it is the legal Project Owner of the Approved Abatement Project; or
  - b. it has the legal right to Transfer Abatement from the Approved Abatement Project on behalf of the Project Owner.
- 5.2.2. The Abatement Provider must:
- a. only Transfer Abatement that has been verified by an Independent Verifier and approved by the AGO in accordance with the Guidelines; **and**
  - b. not Transfer any Approved Abatement that has previously been Acquitted.
- 5.2.3. Prior to Transferring Approved Abatement to another person (transferee), the Abatement Provider must enter into a legally binding agreement with the transferee under which the transferee agrees:
- a. once the Approved Abatement has been Acquitted or Transferred by the Transferee, not to Acquit or Transfer it again;
  - b. once the Approved Abatement is Acquitted or Transferred by the Transferee, to provide the AGO with a written statement that contains the following information within 20 Business Days after the date of the Acquittal or Transfer:
    - A. the date on which the Acquittal or Transfer occurred;
    - B. the quantity of Approved Abatement Acquitted or Transferred;
    - C. in the case of a Transfer, the name of the person(s) to whom the Approved Abatement was Transferred;
    - D. the year in which the Approved Abatement was generated and approved by the AGO; and
  - c. if the transferee Transfers the Approved Abatement to another person (new transferee), to require the new transferee to comply with the requirements in this clause 5.2.3 and to impose these requirements on any person to

whom the new transferee subsequently Transfers the Approved Abatement.

- 5.2.4. An Abatement Provider may Transfer Approved Abatement generated from an Approved Abatement Project after the Abatement Project ceases to be an Approved Abatement Project provided that:
- a. the Abatement became Approved Abatement while the Abatement Project was an Approved Abatement Project; or
  - b. the Abatement becomes Approved Abatement in accordance with clause 3.2.3; and
  - c. the Abatement Provider provides the AGO with a written statement that contains the following information within 20 Business Days after the date of the Transfer:
    - A. the date on which the Transfer occurred;
    - B. the name of the person(s) to whom the Approved Abatement was Transferred;
    - C. the quantity of Approved Abatement Transferred;
    - D. the year in which the Approved Abatement was generated and approved by the AGO; and
    - E. any other information regarding Transfers about which the Guidelines require an Abatement Provider to notify the AGO.
- 5.2.5. Clauses 5.2.2, 5.2.3 and 5.2.4 survive the Term.

### **5.3. Independent Verification of Abatement**

- 5.3.1. The Abatement Provider must give the Independent Verifier access to all Records relating to an Approved Abatement Project that are necessary for the Independent Verifier to issue a Verification Report to the Abatement Provider in respect of the Abatement generated from that Approved Abatement Project.
- 5.3.2. This clause survives the Term for the period, if any, necessary for approval of Abatement under clause 3.2.3.

### **5.4. Record Keeping**

- 5.4.1. The Abatement Provider must keep detailed Records relating to the Approved Abatement Projects, all Abatement generated by them and independently verified and approved under the Initiative, and its compliance with its obligations under this Deed.
- 5.4.2. The Records required by clause 5.4.1 include, but are not limited to, the following:

- a. information regarding the production processes, materials (including raw materials), products (including semi-finished products), equipment, execution of services (including procured services), facilities and personnel required for the operation of each of the Approved Abatement Projects;
- b. quality records, including monitoring records, test reports, failure reports, customer complaints and statistics related to each of the Approved Abatement Projects;
- c. information regarding the environmental impacts of each of the Approved Abatement Projects and any environmental licences or permit requirements;
- d. information regarding all corrective action regarding each of the Approved Abatement Projects that has been required by the Administrator;
- e. information regarding the amount of Abatement generated from each of the Approved Abatement Projects;
- f. information regarding Transfers, and any prospective Transfers, of Abatement generated from each of the Approved Abatement Projects;
- g. copies of all Project Material;
- h. copies of all contracts with third parties relating to each of the Approved Abatement Projects, including Transfers of Approved Abatement;
- i. copies of the initial Application for each Approved Abatement Project and all material amendments to any of those documents;
- j. copies of all of the decisions made by the Abatement Provider's Personnel in respect of each of the Approved Abatement Projects, copies of all of the decisions made by the AGO and notified in writing to the Abatement Provider by the AGO or the Administrator and copies of all recommendations made by the Administrator regarding each of the Approved Abatement Projects and notified to the Abatement Provider;
- k. copies of all documents relating to the Abatement Provider's monitoring and auditing of each of the Approved Abatement Projects; and
- l. any other information relevant to the Abatement Provider's compliance with this Deed and the Guidelines.

5.4.3. This clause survives the Term for a period of seven (7) years.

## **5.5. Monitoring and Reporting**

5.5.1. The Abatement Provider must monitor each Approved Abatement Project at its own cost and in accordance with the Project Monitoring Plan for that Approved Abatement Project and the requirements of the Guidelines.

- 5.5.2. The Abatement Provider must update the Emission/Abatement Study or Project Monitoring Plan for an Approved Abatement Project to reflect any changes identified during its monitoring of the Approved Abatement Project.
- 5.5.3. If required by the Independent Verifier, the Administrator or the AGO, the Abatement Provider must revise an Emission/Abatement Study or Project Monitoring Plan in accordance with the requirements of the Guidelines.
- 5.5.4. Within 60 Business Days of the end of each Reporting Period (or part Reporting Period, where relevant) that occurs during the Term of this Deed, the Abatement Provider must provide the AGO with a satisfactory Annual Report for each Abatement Project that was an Approved Abatement Project at any time during the Reporting Period.
- 5.5.5. The Annual Report must contain the information that is required by the Guidelines to be included in the Annual Report and must include in the Annual Report a copy of each Verification Report received during the Reporting Period.
- 5.6. Provision of information by the Abatement Provider**
- 5.6.1. The Abatement Provider must immediately notify the AGO if:
- a. it ceases to comply with a term of this Deed; or
  - b. an Approved Abatement Project becomes funded by Commonwealth, State or local government grants, concessions or discretionary financial assistance that are not primarily for research and development.
- 5.6.2. The Abatement Provider must immediately notify the AGO and all intended acquirers of Abatement from an Approved Abatement Project if the Approved Abatement Project becomes unlikely to generate its forecasted Abatement.
- 5.7. Cooperation with the AGO and the Administrator**
- 5.7.1. The Abatement Provider agrees that the AGO and the Administrator may assess and monitor the performance of an Approved Abatement Project and the Abatement Provider's compliance with its ongoing obligations under the Initiative at any time during the Term of this Deed.
- 5.7.2. The Abatement Provider agrees to fully co-operate with the AGO, the Administrator and the Independent Verifier in relation to assessment and monitoring of the performance of the Approved Abatement Projects and the Abatement Provider's compliance with its obligations under this Deed.
- 5.7.3. The Abatement Provider agrees:
- a. to provide to the AGO or the Administrator copies of all relevant Records and data requested by the AGO or the Administrator;

- b. to give the AGO and the Administrator access to Records, systems, equipment, personnel, sites of the Approved Abatement Projects and the premises of the Abatement Provider for the purpose of auditing compliance with the terms of this Deed; and
- c. to permit the AGO and the Administrator to inspect and take copies of any Material relevant to an Approved Abatement Project and compliance with the Abatement Provider's obligations under this Deed;

within 20 Business Days of any AGO or Administrator request or such other period as agreed between the parties.

- 5.7.4. The rights referred to in clause 5.7.3 are subject to the Abatement Provider's reasonable security procedures.
- 5.7.5. Without in any way affecting the statutory powers of the Auditor-General under the *Auditor-General Act 1997* (Cth), and subject to the provisions of that Act, the Auditor-General is a person authorised for the purposes of clause 5.7.3.
- 5.7.6. The Abatement Provider acknowledges that, apart from the Abatement Provider's right to have a decision of the AGO or recommendation of the Administrator reviewed under this Deed or the Guidelines, all decisions of the AGO in relation to the Initiative are final.
- 5.7.7. This clause 5.7 survives the Term for the period, if any, necessary for approval of Abatement under clause 3.2.3.

## **5.8. Abatement Provider Representations**

- 5.8.1. The Abatement Provider agrees not to misrepresent its relationship with the AGO and not to engage in any misleading or deceptive conduct in relation to the Initiative.
- 5.8.2. This clause survives the Term.

## **5.9. Additional requirements for Forest Sink Projects**

- 5.9.1. In addition to the requirements in clause 5.1.1, where the Abatement Project is a land use project (including an avoided deforestation project) the Abatement Provider must satisfy all of the requirements of the Guidelines that apply to a Forest Sink Project.
- 5.9.2. The Abatement Provider must ensure that the owner (including any successive owner) of a forest that is the subject of a Forest Sink Project is legally obliged to:
  - a. maintain; and/or
  - b. refrain from doing any act that would reduce,

the level of Abatement generated by the project for a minimum of 70 years from the earliest date specified in the Schedule for that project.

Note: This legally-binding obligation may take the form of a positive and/or restrictive covenant on the title to the land on which the forest is located that prevents the current and future owners of the land from, among other things, clearing the forest for a period of at least 70 years from the earliest date specified in the Schedule for that Forest Sink Project.

5.9.3. In addition to the records specified in clause 5.4, the Abatement Provider must keep detailed records of all losses to, and restoration of, forests that are the subject of its Forest Sink Projects.

5.9.4. The Abatement Provider must monitor its Forest Sink Projects. The Abatement Provider must give a written report of any loss to, and restoration of, the forest that is the subject of one of its Forest Sink Projects:

- a. to the AGO; and
- b. to each person (transferee) who is the current owner of Approved Abatement generated by the project,

within 40 Business Days after each loss occurs and each restoration commences. Within 60 Business Days of the completion of each five (5) year period of the minimum life of the Forest Sink Project (being at least 70 years), the Abatement Provider must also provide the persons specified in paragraphs 5.9.4.a. and 5.9.4.b. with a brief written report, which summarises any losses to, and progress towards and completing the restoration of, the forest (that is the subject of that project) that occurred during that five year period.

Note: The Abatement Provider must therefore ensure that it has the necessary rights to obtain information regarding losses to, and restoration of, forests that are the subject of its Forest Sink Projects from all current and successive owners of those forests for a period of at least 70 years from the earliest date specified in the Schedule for each Forest Sink Project.

5.9.5. In addition to the requirements of clause 5.2.3, the Abatement Provider must only transfer Approved Abatement from a Forest Sink Project if the Abatement Provider has entered into a legally binding agreement with the transferee that requires:

- a. the Abatement Provider to ensure that the owner (including any successive owner) of the forest that is the subject of the Forest Sink Project is legally obliged to:

- A. maintain; or
- B. refrain from doing any act that would reduce,

the level of Abatement generated by the project for a minimum of 70 years from the earliest date specified in the Schedule for that project;

- b. the transferee to Transfer the Approved Abatement only to a person who has entered into a legally-binding agreement with the Abatement Provider that contains the terms specified in this clause 5.9.5;
- c. the Abatement Provider to notify the transferee, while the transferee is the most recent transferee, of any partial or total loss to, and restoration of, the forest that is the subject of the Forest Sink Project in accordance with clause 5.9.4; and
- d. where there is a loss to the forest that is the subject of the Forest Sink Project, either:
  - A. the Abatement Provider to ensure that full restoration of the loss to the forest occurs, and that such restoration is commenced within 12 months of the loss occurring; or
  - B. the Abatement Provider or most recent transferee to acquire additional Approved Abatement, within 12 months of the loss occurring, which is equal to the amount of Approved Abatement that was lost as a result of the loss to the forest,

and the parties to acknowledge that, as provided for in the Guidelines, a failure to satisfy either of these requirements will cause the Approved Abatement to cease to be recognised under the Initiative.

Note: One option for managing the risk against carbon sequestration losses is for either of the parties to the agreement to take out and maintain for the duration of the Forest Sink Project insurance that is sufficient to cover any Approved Abatement losses that are incurred.

5.9.6. The Abatement Provider must not Transfer, or seek further approval from the AGO for, Abatement that is generated by the Forest Sink Project until all Approved Abatement, which was previously generated by the Forest Sink Project and was lost as a result of a loss to the forest, has been restored. An amount of Abatement generated from restoration activities must be verified and approved according to the requirements of the Guidelines before that amount of Abatement will be considered to have restored an equivalent amount of lost Approved Abatement.

5.9.7. If any loss to a Forest Sink Project is not addressed in accordance with the requirements of clause 5.9.5.d, the AGO may, without limiting its other rights at law or in equity, cease to recognise any lost Approved Abatement under the Initiative, including Approved Abatement that has previously been Acquired into the Initiative.

5.9.8. For the purpose of this clause 5.9, 'losses' to forests that are the subject of Forest Sink Projects and 'lost Approved Abatement' have the meanings given in

the Guidelines, and 'Abatement' and 'Approved Abatement' refer to sequestered carbon.

- 5.9.9. The AGO is not liable for any loss suffered by the Abatement Provider, including as a result of loss to a forest that is the subject of a Forest Sink Project or a loss of Abatement or Approved Abatement.
- 5.9.10. Clause 9.2.1 does not apply in respect of an event that causes a loss to a forest that is the subject of a Forest Sink Project and in respect of which the restoration requirement in clause 5.9.5.d applies.
- 5.9.11. Notwithstanding clause 5.7.7, clause 5.7.3 applies in respect of an Approved Abatement Project that is a Forest Sink Project for at least 70 years after the earliest date specified in the Schedule for the Forest Sink Project and until all lost Approved Abatement has been fully restored.
- 5.9.12. Clauses 5.9.2 to 5.9.7 and clauses 5.9.9 to 5.9.11 survive the Term for at least 70 years after the earliest date specified in the Schedule for the Forest Sink Project and until all lost Approved Abatement has been fully restored.

## **6. AGO Panel Members**

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### **6.1. No AGO or Administrator Liability**

- 6.1.1. The Abatement Provider acknowledges that:
- a. its use of an Independent Verifier or LCA Expert is at its own cost and risk and, subject to paragraph 6.1.1c and subclause 6.2.2, is solely the decision of the Abatement Provider;
  - b. the AGO and the Administrator are not in any way liable for any act or omission of any Independent Verifier or LCA Expert the Abatement Provider may engage for the purposes of the Initiative; and
  - c. the AGO and the Administrator will determine the appropriateness of an Independent Verifier to verify the matters related to an Approved Abatement Project.

### **6.2. Arrangements with AGO Panel members**

- 6.2.1. The Abatement Provider agrees that it is responsible for the fees and costs it incurs in engaging the Independent Verifier or LCA Expert and must not seek payment or reimbursement from the AGO in respect of any such fees and costs.
- 6.2.2. The AGO or the Administrator may disqualify an Independent Verifier from taking part in a verification or disregard a Verification Report produced by the Independent Verifier in respect of an Approved Abatement Project, if the AGO or the Administrator considers on reasonable grounds that the Independent

Verifier has a conflict of interest in providing such services to the Abatement Provider.

6.2.3. This clause 6 survives the Term.

## **7. Indemnity**

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7.1.1. The Abatement Provider indemnifies the Commonwealth from and against any:

- a. cost or liability incurred by the Commonwealth;
- b. loss of or damage to property (including Intellectual Property) of the Commonwealth; or
- c. loss or expense incurred by the Commonwealth in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Commonwealth,

arising from:

- d. any breach by the Abatement Provider of this Deed;
  - e. failure to comply with the requirements of any CAR; or
  - f. an act or omission involving fault on the part of the Abatement Provider or its Personnel in connection with this Deed.
- 7.1.2. The Abatement Provider's liability to indemnify the Commonwealth under clause 7.1.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Commonwealth or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- 7.1.3. The right of the Commonwealth to be indemnified under this clause is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.
- 7.1.4. This clause 7 survives the Term.

## **8. Termination**

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### **8.1. Termination by the AGO for Abatement Provider default**

- 8.1.1. Without limiting any other right of the AGO under this Deed, the AGO may, by notice in writing to the Abatement Provider, immediately terminate this Deed if the Abatement Provider:
- a. breaches any of the terms or conditions of this Deed;
  - b. fails to comply with the Guidelines;

- c. fails to comply with the requirements of any CAR within the stated timeframe;
- d. being a corporation - comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or has an order made against it for the purpose of placing it under external administration; or
- e. being an individual - becomes bankrupt or enters into a scheme of arrangement with creditors.

8.1.2. Where the AGO terminates this Deed under clause 8.1.1:

- a. the Abatement Provider's Abatement Projects cease to be Approved Abatement Projects;
- b. the Abatement Provider must not falsely represent that Abatement generated after the termination date is Approved Abatement; and
- c. the Abatement Provider must comply with any reasonable directions of the AGO in relation to the Abatement Projects referred to in paragraph a and any Approved Abatement.

## **8.2. Termination by either party**

8.2.1. Either party may, without liability for costs, damages or expenses incurred by the other party, terminate this Deed at any time upon provision of no less than 60 Business Days notice in writing to the other party.

8.2.2. Where a party terminates this Deed under clause 8.2.1, clauses 8.1.2.a - 8.1.2.c apply.

8.2.3. Nothing in this clause 8 prevents the AGO taking other action for breach of contract or otherwise at law.

8.2.4. The Abatement Provider agrees that the AGO will not be liable for any losses suffered or expenses incurred by the Abatement Provider if the AGO terminates this Deed or rejects a claim from the Abatement Provider to approve or re-approve an Abatement Project or Abatement.

## **9. General Provisions**

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### **9.1. Relationship of the parties**

9.1.1. The Abatement Provider acknowledges that it is not by virtue of this Deed an officer, employee, partner or agent of the AGO and that it does not have any power or authority to bind or represent the AGO.

**9.2. Force Majeure**

9.2.1. Delay or failure to perform an obligation under this Deed by either party shall not constitute a default under this Deed or give rise to any claim for damage if and to the extent such delay or failure is caused by any event beyond the control of the party affected which the party had no reasonable way of preventing or grounds to anticipate, including but not limited to an act of war, natural disaster, fire, explosion or labour dispute. The affected party shall immediately notify the other party in writing of the causes and expected duration of any such occurrence.

**9.3. Safety, Health and Environment**

9.3.1. The Abatement Provider must inform the AGO, the Administrator and the Independent Verifiers and any LCA Experts it engages of any real or potential safety, health and environment hazard to which the Personnel of those organisations may be exposed as a result of assessing an Approved Abatement Project for the purposes of the Initiative or Greenhouse Challenge Plus.<sup>TM</sup> The Abatement Provider must provide a safe working environment that accords with all relevant legislation for any Personnel of the AGO, Administrator, Independent Verifiers or LCA Experts who perform work at the Abatement Provider's premises or the site of the Approved Abatement Projects. Those Personnel must as a condition of entry comply with all Occupational Health and Safety requirements imposed on visitors to work sites.

**9.4. Waiver**

9.4.1. A failure or delay by a party to exercise any right or remedy under this Deed or at law does not operate as a waiver of that right or remedy. A single or partial exercise by a party of any right or remedy under this Deed or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

**9.5. Assignment and novation**

9.5.1. The Abatement Provider cannot assign its obligations, and must not assign its rights under this Deed without the AGO's prior written approval.

**9.6. Survival of terms**

9.6.1. Unless the contrary intention appears, the expiry or earlier termination of this Deed will not affect any provision of this Deed which expressly or by implication from its nature is intended to continue.

**9.7. Counterparts**

9.7.1. This Deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same document.

**9.8. Notices**

9.8.1. A notice under this Deed is only effective if it is in writing and dealt with as follows:

- a. if given by the Abatement Provider to the AGO - addressed to [insert name, position and address of AGO Contact Officer]; and
- b. if given by the AGO to the Abatement Provider - addressed to [insert name, position and address of Abatement Provider Contact Officer].

9.8.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand;
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

9.8.3. A notice is deemed to be effected:

- a. if delivered by hand – upon delivery to the relevant address;
- b. if sent by post – upon delivery to the relevant address; or
- c. if transmitted electronically – upon actual receipt by the addressee.

9.8.4. A notice received after 5.00 pm, or on a day that is not a Business Day, is deemed to be effected on the next Business Day.

**ANNEXURE A**

**SCHEDULE [Number] – [Insert short title that describes the Approved Abatement Project]**

**Schedule Date:** .....

**Approved Abatement Project**

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[Insert a description of the Abatement Project approved under this Deed and references to relevant documents].

*[Drafting Note: If the Abatement Project is currently approved and part of the current approval period for the Abatement Project has expired, please include the following sentence to ensure that the approval of the Abatement Project under this Schedule is for the remainder of the current approval period and not for a further full 5 year period.]*

**Clause 3.1.1**

For the purpose of paragraph 3.1.1.a of the Deed of Approval dated [insert date the Deed was or will be signed], the parties agree that the Abatement Project is to be an Approved Abatement Project until [insert the future date on which the AGO's previously granted approval for the project is due to expire].

*[Drafting Note: The AGO may approve Abatement that was generated by the Abatement Project prior to the Schedule Date once the Abatement Project becomes an Approved Abatement Project under this Schedule. In that case, the AGO should specify in this Schedule (under a new heading "Clause 3.1.3") the date of the earliest Abatement generated by the Abatement Project that may be approved by the AGO.]*

**Clause 3.1.3**

For the purpose of clause 3.1.3, Abatement generated from the Abatement Project between [insert date] and the Schedule Date may be approved by the AGO after the Schedule Date in accordance with the Guidelines.

*[Drafting Note: If an Abatement Project is a Forest Sink Project (including a land use project) and is being re-approved by the AGO under this Schedule, the date on which the project was originally approved by the AGO must be included in the following section of this Schedule. This original approval date will be found on the Schedule that first approved the project as an Approved Abatement Project. The Abatement Provider is required to comply with the*

*requirements in 5.9.2 to 5.9.7 and 5.9.9 to 5.9.11 for at least 70 years from the date the Forest Sink Project was originally approved and until all lost Approved Abatement generated by the project is restored.]*

**Clause 5.9**

For the purpose of clause 5.9, the earliest date specified in this Schedule for this Forest Sink Project is [insert the date on which the Forest Sink Project was originally approved].

This Schedule is signed by the AGO and the Abatement Provider on the understanding that once signed, it forms part of, and is subject to the terms of, the Deed of Approval executed by the parties on ..... 2006.

SIGNED for and on behalf of the Commonwealth as represented by the Australian Greenhouse Office, Department of the Environment and Heritage, by its duly authorised officer:

\_\_\_\_\_  
Name and position of Signatory

\_\_\_\_\_  
Signature of Signatory

\_\_\_\_\_  
Date

In the presence of:

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

SIGNED for and on behalf of [insert  
company name] in accordance with  
its constitution:

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Date

In the presence of:

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

***[Execution by company using its common seal]***

THE COMMON SEAL OF [insert  
company name] was hereunto affixed  
in accordance with its constitution:

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Date

In the presence of:

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

**Executed as a Deed**

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SIGNED SEALED AND DELIVERED  
for and on behalf of the  
Commonwealth as represented by  
the Australian Greenhouse Office,  
Department of the Environment and  
Heritage, by its duly authorised  
officer:

\_\_\_\_\_  
Name and position of Signatory

\_\_\_\_\_  
Signature of Signatory

\_\_\_\_\_  
Date

In the presence of:

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

SIGNED SEALED AND DELIVERED  
for and on behalf of [insert company  
name] in accordance with its  
constitution:

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Date

In the presence of:

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

***[Execution by company using its common seal]***

THE COMMON SEAL OF [insert  
company name] was hereunto affixed  
in accordance with its constitution:

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Date

In the presence of:

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date