



Australian Government Solicitor

DEED OF CERTIFICATION

IN RELATION TO CERTIFICATION OF PRODUCTS OR SERVICES 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 PROVIDER]

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DEED OF CERTIFICATION

IN RELATION TO CERTIFICATION OF PRODUCTS OR SERVICES UNDER THE GREENHOUSE FRIENDLY™ INITIATIVE

Date

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

Parties

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 Provider]

(the Provider)

Context

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. The AGO has determined that the Provider's product or service has met the technical requirements for certification under the Initiative. By entering into this Deed, the Provider obtains certification of its product or service under the Initiative.
- C. The continuing certification of the Provider's product or service is conditional on it complying with the terms and conditions of this Deed.

Operative provisions

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

1. Interpretation

1.1. Definitions

1.1.1. In this Deed, unless the context indicates otherwise:

Abatement	has the same meaning as in the Guidelines;
Abatement Provider	means the provider of Approved Abatement generated from an Approved Abatement Project under the Initiative;
Acquittal	means the use or declaration of Approved Abatement to offset greenhouse gas emissions;
the Administrator	means the Greenhouse Friendly™ Administrator and has the same meaning as in the Guidelines;
AGO	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;
Annual Report	has the same meaning as in Part One of the Guidelines;
Approved Abatement	means Abatement which has been verified by an Independent Verifier and approved by the AGO in accordance with the Guidelines;
Approved Abatement Project	has the same meaning as in the Guidelines;
Business Day	in relation to the doing of any action in a place, means a weekday other than a public holiday in that place;
Certified Products or Services	means products or services of the Provider that have been certified under this Deed – a description of which appears at Item A of each Schedule;
Commencement Date	means the date specified on the first page of this Deed, or if no date is specified, the date on which this Deed is executed by the parties;
CAR	means a corrective action request and has the same meaning as in the Guidelines;
Deed	means this deed and includes the terms and conditions, any annexures, schedules and attachments;

Emissions Monitoring Plan	has the same meaning as in the Guidelines;
Forest Sink Project	has the same meaning as in the Guidelines;
Greenhouse Challenge Plus™ Programme	means the Greenhouse Challenge Plus™ Programme, of which the Initiative is a part;
the Guidelines	means the Greenhouse Friendly™ Guidelines, as amended from time to time, a copy of which has been provided to the Provider;
Independent Verifier	means a member of the Greenhouse Challenge Plus™ Panel of Independent Verifiers;
the Initiative	means the Greenhouse Friendly™ Initiative, details of which currently appear at the following web page: www.greenhouse.gov.au/greenhousefriendly/index.html ;
Intellectual Property	means: <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: <ul style="list-style-type: none"> d. Moral Rights; e. the rights of performers; or f. rights in relation to confidential information;
LCA	Means life-cycle assessment and has the same meaning as in the Guidelines;
LCA Expert	means a member of the Greenhouse Friendly™ Expert Panel of Life-Cycle Assessors;
Material	means the subject matter of any category of Intellectual Property rights;

Moral Rights	includes the following rights of an author of copyright Material: a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed;
Personnel	means a party's officers, employees, agents, contractor staff or professional advisers engaged or involved in the performance or management of this Deed;
Reporting Period	means the 12 month period, or some other period agreed in writing by the parties, in respect of which the Provider reports to the AGO on its Certified Products and Services;
Schedule	means a schedule to this Deed of Certification, in the form set out at Annexure B which has been signed by both parties and describes a Certified Product or Service of the Provider;
Schedule Date	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;
Term	means the duration of this Deed of Certification as specified in clause 2;
Transfer	means, in relation to Abatement, to sell or otherwise transfer the Abatement to another person; and
the Trade Mark	means the Greenhouse Friendly™ logo appearing at Annexure A;
Trade Mark Rules	means the Rules for the Use of the Trade Mark, as amended from time to time;
Visual Style Guide	means the Greenhouse Friendly™ Visual Style Guide applicable to use of the Trade Mark as amended from time to time.

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 an attachment is a reference to the 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 to 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. 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. the Trade Mark Rules;
 - b. these terms and conditions;
 - c. the Guidelines;
 - d. the Visual Style Guide;

- e. Annexure A;
- f. Annexure B;
- g. any Schedules; and
- h. 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 B.
- 1.5.2. Unless otherwise indicated in this Deed, the terms of this Deed apply to a Schedule for the period that the product or service to which the Schedule relates, remains a Certified Product or Service.

2. Term of the Deed

- 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 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. Certification requirements

3.1. Certification of products and services

- 3.1.1. A product or service described in a Schedule is a Certified Product or Service 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;
 - b. in the case of a suspension of certification under clause 8.1, the date of that suspension;
 - c. in the case of revocation of certification under clause 8.1, the date of that revocation;
 - d. in the case of termination of this Deed under clause 9, the date of that termination,whichever is the earliest.
- 3.1.2. The Provider may request that the AGO provide written confirmation that its products or services are certified under the Initiative.

3.2. Continuing obligations for certification

- 3.2.1. Subject to clause 3.2.4, the Provider must satisfy all of the ongoing requirements for certification of the Certified Products or Services under this Deed and the Guidelines in order to retain certification.
- 3.2.2. The Provider acknowledges that the AGO may amend the Guidelines at any time and that this may involve changes to the ongoing certification requirements for the Certified Products or Services.
- 3.2.3. The AGO will notify the Provider of any substantive changes to the ongoing certification requirements during the Term of this Deed.
- 3.2.4. Where the ongoing requirements for certification 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.

3.3. Monitoring emissions

- 3.3.1. The Provider must, at its own cost, monitor and have the emissions associated with its Certified Products or Services independently verified in accordance with the requirements of the Guidelines and as part of its annual reporting obligations under the Initiative.
- 3.3.2. The Provider must update the relevant LCA or Emissions Monitoring Plan to reflect any changes to systems and processes that effect the greenhouse gas emissions associated with each Certified Product or Service.
- 3.3.3. If required by the Independent Verifier, the Administrator or the AGO, the Provider must revise its LCA or Emissions Monitoring Plan in accordance with the requirements of the Guidelines.

3.4. Acquiring Approved Abatement

- 3.4.1. Subject to clause 3.4.2, the Provider must acquire Approved Abatement to offset all of the greenhouse gas emissions associated with its Certified Products or Services for a given Reporting Period by the time it submits an Annual Report for that Reporting Period in order to meet the ongoing certification requirements of the Initiative as set out in the Guidelines.
- 3.4.2. If a Provider's Certified Product or Service was certified under the Initiative before 30 April 2006, the Provider is only required to comply with clause 3.4.1 in respect of that Certified Product or Service from the earlier of 31 December 2008 or the date of re-certification of the product or service. Until that time, the Provider must acquire Approved Abatement to offset all of the greenhouse gas emissions associated with that Certified Product or Service for a given

Reporting Period by the time it submits an Annual Report for the following Reporting Period.

- 3.4.3. The Provider must not acquire, Acquit or Transfer any Approved Abatement, including Abatement acquired by the Provider for the purposes of complying with clauses 3.4.1 or 3.4.2, if that Abatement has previously been Acquitted.
- 3.4.4. The Provider must ensure that it produces or obtains sufficient documentary evidence to demonstrate to the reasonable satisfaction of the Independent Verifier, the Administrator and the AGO that Approved Abatement acquired by it:
 - a. has been independently verified and approved in accordance with the Guidelines; and
 - b. has not been previously Acquitted.
- 3.4.5. Contractual arrangements between the Provider and Abatement Providers must comply with the requirements of the Guidelines. If the Provider acquires Approved Abatement (being sequestered carbon) that has been generated from a Forest Sink Project, this includes a requirement for appropriate arrangements to be in place between the Provider and the Abatement Provider in relation to restoration and permanence of the Forest Sink Project and ownership of the sequestered carbon.

3.5. Annual reporting

- 3.5.1. The Provider agrees to prepare an Annual Report which contains the information that is required by the Guidelines to be included in the Annual Report in relation to each of the Certified Products or Services listed in the Schedules.
- 3.5.2. The Provider agrees to have its Annual Report independently verified in accordance with the requirements of the Guidelines and to allow the Independent Verifier access to all documentation and information relevant to the verification of the Annual Report, including where necessary, access to the Provider's premises.
- 3.5.3. 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 Provider must submit its independently verified Annual Report to the AGO in accordance with the Guidelines or as otherwise agreed in writing by the AGO.

3.6. Re-certification

- 3.6.1. The Provider may seek re-certification of a Certified Product or Service in accordance with the process set out in the Guidelines. If the product or service is approved for re-certification by the AGO in accordance with the Guidelines,

the parties may add a new Schedule to this Deed in accordance with clause 1.5.

3.7. Provider's general obligations

- 3.7.1. The Provider must fully co-operate with the AGO, the Administrator and the Independent Verifier in complying with the requirements of this Deed and the Initiative.
- 3.7.2. The Provider must comply with any reasonable directions of the AGO, the Administrator and the Independent Verifier in relation to ongoing certification of its Certified Products or Services.
- 3.7.3. The Provider will ensure that its contracts relating to its Certified Products and Services are maintained in accordance with the requirements of the Initiative.
- 3.7.4. The Provider will keep the AGO, the Administrator and the Independent Verifier informed of any significant changes to its Certified Products or Services.
- 3.7.5. The Provider must not engage an Independent Verifier to undertake independent verification of its products or services under the Guidelines in circumstances where that Independent Verifier may have a conflict of interest in providing such services to the Provider.
- 3.7.6. The AGO or the Administrator may disqualify an Independent Verifier from taking part in a verification or disregard an independent verification report produced by the Independent Verifier in respect of any of the Provider's Certified Products or Services, 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 Provider.
- 3.7.7. The Provider must:
 - a. keep records of all actions relating to certification, assessment, monitoring and independent verification of its Certified Products or Services under the Initiative, for a period of seven (7) years after the Term of this Deed;
 - b. provide the AGO with copies of all relevant documentation and records relating to certification, assessment, monitoring and independent verification of any of its Certified Products or Services under the Initiative within 20 Business Days from any request in writing by the AGO; and
 - c. allow the AGO access to their premises for purposes relating to certification, monitoring and independent verification of any of the Certified Products or Services under the Initiative within 20 Business Days from any request in writing by the AGO.

- 3.7.8. The Provider acknowledges that, apart from the Provider's right to have a decision of the AGO or recommendation of the Administrator reviewed under the Guidelines, all decisions of the AGO in relation to the Initiative are final.

4. Licence to use the Trade Mark

4.1. Grant of licence

- 4.1.1. The AGO hereby grants the Provider a non-exclusive, royalty-free, world-wide licence to use the Trade Mark in respect of each Certified Product or Service on the terms and conditions set out in this Deed and for such time as the relevant product or service remains a Certified Product or Service under the Initiative.

4.2. Use of the Trade Mark

- 4.2.1. The Provider must:

- a. use the Trade Mark in accordance with these terms and conditions, the Guidelines, the Visual Style Guide, and any other directions notified by the AGO in writing to the Provider;
- b. use the Trade Mark only in relation to the Certified Products or Services; and
- c. comply with the Trade Mark Rules in respect of its use of the Trade Mark.

- 4.2.2. The Provider acknowledges that any breach of the Trade Mark Rules will constitute infringement of the AGO's rights in respect of the Trade Mark.

- 4.2.3. The Provider must not use the Trade Mark in a manner which directly or indirectly:

- a. misrepresents the nature of certification of the Provider's Certified Products or Services under the Initiative; or
- b. indicates that the Provider is itself certified, approved or endorsed under the Initiative or in any other manner by the AGO or the Commonwealth.

4.3. Quality control

- 4.3.1. The Provider will submit samples of products, packaging, promotional and advertising material bearing the Trade Mark for examination by the AGO, within 20 Business Days of any written request by the AGO.

- 4.3.2. The Provider will, at any other time, submit evidence of its compliance with the terms and conditions of use of the Trade Mark in the manner and form requested by the AGO, upon the provision of reasonable notice in writing by the AGO.

4.3.3. Without limiting any other rights of the AGO under this Deed, the AGO has the right to inspect the Provider's business and production premises and any relevant documentation in order to verify the Provider's compliance with the conditions of use of the Trade Mark, provided that the AGO agrees to comply with any reasonable security requirements of the Provider associated with this process.

4.4. Rights, reputation and goodwill in respect of the Trade Mark

4.4.1. The Provider acknowledges that all right title and interest in the Trade Mark and all related marks (whether or not the subject of a corresponding trade mark application or registration) vest in the Commonwealth.

4.4.2. Nothing in this Deed confers upon the Provider any right title or interest in the Trade Mark.

4.4.3. All reputation and goodwill attaching to the use of the Trade Mark by the Provider will enure exclusively for the benefit of the Commonwealth.

4.4.4. Except where expressly stated in this Deed or otherwise agreed in writing between the parties, any statutory or common law rights that may be granted to authorised users of the Trade Mark are expressly excluded.

4.5. Maintenance of trade mark rights

4.5.1. The Provider must refrain from taking any steps which may call into question the Commonwealth's rights in respect of the Trade Mark (including the registrability or the validity of the Trade Mark or any related mark).

4.5.2. The Provider must notify the AGO immediately if it detects or reasonably suspects any infringement of its rights in respect of the Trade Mark (including the Rules), and agrees to provide all reasonable assistance to the AGO in respect of proceedings brought by the AGO in relation to infringement of those rights.

4.6. Sublicensing

4.6.1. The Provider agrees not to sublicense use of the Trade Mark without the prior written consent of the AGO.

4.7. Ceasing use of the Trade Mark

4.7.1. Where a product or service is no longer a Certified Product or Service under clause 3.1 of this Deed, the Provider must, within 20 Business Days of the product or service no longer being certified or such other period agreed in writing by the AGO:

- a. discontinue the use of the Trade Mark on or in connection with the product or service (including ceasing sale and distribution of any product bearing the Trade Mark);
- b. remove all references to the Trade Mark on or in connection with the Provider's premises, retail outlets, vehicles, stationery, invoices, labels and other material, and destroy any advertisements, catalogues, directories and other promotional material bearing the Trade Mark where such references relate to the product or service;
- c. otherwise cease to use the Trade Mark and any other indication of a connection with the Commonwealth or the AGO in relation to the product or service; and
- d. comply with any reasonable direction of the AGO in relation to the Trade Mark or the Initiative.

5. Role of the AGO

5.1. General obligations and rights

5.1.1. The Provider acknowledges that the AGO:

- a. will administer, control and promote the Initiative as it deems fit in its absolute discretion;
- b. has the right to obtain copies from the Provider of documentation held by the Provider or its contractors, which relate to certification, assessment, monitoring and independent verification of any of the Provider's Certified Products or Services under the Initiative;
- c. has the right to obtain clarification or additional information from the Provider in respect of any of its Certified Products or Services as required;
- d. will monitor and review the activities of the Provider and relevant Abatement Providers in respect of the Initiative;
- e. in performing its functions in relation to the Initiative, may engage the services of any party it considers appropriate in its absolute discretion.

5.2. Confidential Information

5.2.1. The AGO will not disclose Confidential Information of the Provider to a third party without the 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.

5.2.2. Where the Department discloses Confidential Information in accordance with:

- a. paragraphs 5.2.1.a to 5.2.1.d - it must notify the person to whom the information is disclosed that the information is confidential; and
- b. paragraphs 5.2.1.a and 5.2.1.d - it must only do so if the person to whom the information is disclosed agrees to keep the information confidential.

5.2.3. This clause 5.2 survives the expiry or earlier termination of this Deed.

5.2.4. For the purposes of this clause, 'Confidential Information' is information that:

- a. is inherently confidential and not in the public domain; and
- b. the 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 Provider.

6. AGO panel members

6.1. No Liability of the AGO or the Administrator

6.1.1. The 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 3.7.6, is solely the decision of the 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 Provider may engage for the purposes of the Initiative; and
- c. the AGO or the Administrator will determine the appropriateness of an Independent Verifier to verify the matters related to each of the Provider's Certified Products or Services under the Guidelines.

6.2. Arrangements with AGO Panel members

6.2.1. The 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.

7. Indemnity

- 7.1.1. The 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 Provider of this Deed;
 - e. any breach by the Provider of a provision of the Trade Mark Rules;
 - f. failure to comply with the requirements of any CAR; or
 - g. an act or omission involving fault on the part of the Provider or its Personnel in connection with this Deed.
- 7.1.2. The 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. Suspension and Revocation

8.1. Suspension and revocation of certification

- 8.1.1. Without limiting any other right of the AGO under this Deed, the AGO may by notice in writing to the Provider, immediately suspend or revoke certification of a Certified Product or Service, at its absolute discretion, if the Provider:
- a. breaches any of the terms and conditions of this Deed;
 - b. breaches any provision of the Trade Mark Rules;
 - c. fails to comply with the Guidelines or the Visual Style Guide; or
 - d. fails to comply with the requirements of any CAR within the stated timeframe,

in respect of the Certified Product or Service.

9. Termination

- 9.1.1. 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 that other party.
- 9.1.2. The AGO may also by notice in writing to the Provider immediately terminate this Deed if:
- a. any of clauses 8.1.1.a - 8.1.1.d applies;
 - b. the AGO suspends or revokes certification of any of the Provider's Certified Products or Services under clause 8.1;
 - c. the Provider *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
 - d. the Provider *being an individual* – becomes bankrupt or enters into a scheme of arrangement with creditors.
- 9.1.3. The Provider agrees that the AGO will not be liable for any losses suffered or expenses incurred by the Provider if the AGO suspends or revokes certification of a Certified Product or Service under clause 8 or terminates the Deed in accordance with this clause 9.

10. General provisions

10.1. Relationship of the parties

- 10.1.1. The 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 Commonwealth or the AGO.
- 10.1.2. The Provider agrees:
- a. not to misrepresent its relationship with the AGO; and
 - b. not to engage in misleading or deceptive conduct in relation to:
 - A. its use of the Trade Mark; or
 - B. its provision of Certified Products or Services under the Initiative.

10.2. Force Majeure

- 10.2.1. Except in circumstances where clause 3.4.5. (restoration and permanence arrangements for Forest Sink Projects) applies, 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.

10.3. Safety, Health and Environment

10.3.1. The 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 the Certified Products or Services for the purpose of the Initiative. The 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 Provider's premises. Those Personnel must as a condition of entry comply with all Occupational Health and Safety requirements imposed on visitors to work sites.

10.4. Waiver

10.4.1. 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.

10.5. Assignment and novation

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

10.6. Survival of terms

10.6.1. 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.

10.7. Counterparts

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

10.8. Notices

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

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

10.8.2. 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.

10.8.3. 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.

10.8.4. 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

the Trade Mark



ANNEXURE B

SCHEDULE [Number] – [Insert Short title that describes the Certified Product or Service]

Schedule Date:.....

Certified Product or Service

[Insert a description of the product or service certified under this Deed and in respect of which the Trade Mark may be used by the Provider].

[Drafting Note: If the product or service is currently certified and part of the current certification period for the product or service has expired, please include the following sentence to ensure that the product or service remains a Certified Product or Service under this Schedule for the remainder of the current certification 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 Certification dated [insert date the Deed was or will be signed], the parties agree that the product or service is to be a Certified Product or Service until [insert the future date on which the AGO's previously granted certification for the product or service is due to expire].

This Schedule is signed by the AGO and the Provider on the understanding that once signed it forms part of, and is subject to the terms of, the Deed of Certification executed by the parties on [insert date the Deed was or will be signed].

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

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