



## GENERAL TERMS AND CONDITIONS

These General Terms and Conditions (these “**General Terms**”) contains the terms and conditions that govern your participation in the Program (as defined below) and access to and use of ESMC’s Eco-Harvest Producer Portal, Measurement, Reporting, and Verification Platform (“**MRV Platform**”), and any related services and documentation provided on or in connection with such online services (collectively, the “**ESMC Platform**”). These General Terms are an agreement between Ecosystem Services Market Consortium (“**ESMC**”) and you, or the entity you represent (the “**Producer**” or “**you**”). ESMC and Producer may be referred to herein collectively as the “**parties**” or individual as a “**party**.” These General Terms take effect when you click an “I Agree” button (or something similar) or check box presented with these General Terms, or, if earlier, when you access the ESMC Platform or register for the Program (“**Effective Date**”). When you access or use the ESMC Platform, or by clicking a button or checking a box marked “I Agree” you signify that you have read, understood, and agree to be bound by these General Terms whether or not you are a registered Program participant. You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

These General Terms set forth the terms and conditions under which Producer may access certain products and services of ESMC and participate in the Program, as may be set forth in one or more order forms or other ordering documents executed by the parties that reference these General Terms (each, a “**Producer Agreement**”). Each Producer Agreement will be incorporated into, and is fully governed by, these General Terms upon execution of the Producer Agreement by both parties. In the event of any conflict or inconsistency between these General Terms and a Producer Agreement, these General Terms shall control, except where the Producer Agreement specifically states the intent to supersede a specific provision of this Agreement. Producer also understands and acknowledges that its information will be collected, used, and otherwise processed in accordance with ESMC’s Producer Privacy Policy available at <https://www.ecoharvest.ag/privacy-policy>.

### Article I. DEFINITIONS

**Section 1.01 Defined Terms**. Capitalized terms used in these General Terms are defined either in the body of these General Terms or below. The capitalized term “**Agreement**” shall refer in the aggregate to the Producer Agreement and these General Terms, together with the other documents incorporated by reference in either document.

- (a) “**Approved Agricultural Management Practices**” means practices and plans for increasing carbon retention in soil and reducing greenhouse gas emissions associated with agriculture that have been approved by ESMC and to which a Producer has committed as part of the Program. Such practices may include the use of cover crops, crop rotation, tillage modifications, nutrient management and other actions, all to the extent approved by ESMC as part of a Producer’s “Approved Agricultural Management Practices.”

- (b) **“Implementation Partner”** means a Person engaged by ESMC to facilitate data collection and submission by the Producer and to assist Producer in complying with its obligations under this Agreement.
- (c) **“Losses”** mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers.
- (d) **“Person”** means any individual, corporation, partnership, joint venture, association, joint stock landowner, trust, unincorporated organization, limited liability company, or other entity.
- (e) **“Producer Portal”** means Ecosystem Services Market Consortium’s Eco-Harvest Producer Portal.
- (f) **“Producer Privacy Policy”** means ESMC’s Producer Privacy Policy in a form referenced in the Producer Agreement or found on ESMC’s website, as may be changed by ESMC from time to time, found at <https://www.ecoharvest.ag/privacy-policy>.
- (g) **“Program”** ESMC’s program designed to generate marketable environmental credits based on reductions in emissions or removal of carbon dioxide or other greenhouse gases
- (h) **“Property”** has the meaning set forth in the Producer Agreement, or if no Producer Agreement has been executed, the real property owned or controlled by Producer.

## **Article II. ESMC PLATFORM ACCESS RIGHTS**

**Section 2.01 General.** Subject to the terms and conditions of this Agreement, Producer may access and use, on a non-exclusive and non-transferrable basis, solely as reasonably necessary for its participation in the Program, and only in accordance with any end user documentation provided by ESMC for the ESMC Platform. To access most features of the ESMC Platform, Producer must register for an account. Producer’s account on the ESMC Platform (**“Producer Account”**) provides access to the ESMC Platform.

**Section 2.02 Permitted Users.** Producer may permit its employees, agents, independent contractors and consultants (including any Implementation Partner) to use the ESMC Platform on its behalf (**“Permitted Users”**), provided Producer remains responsible for the acts and omissions of each such Permitted User. Different types of Permitted Users may have access to different functionality and features of the ESMC Platform, including but not limited to entering data on Producer’s behalf or signing agreements on Producer’s behalf. ESMC will not be liable for any losses caused by any unauthorized use of the Producer Account, or for any actions taken or not taken by any Permitted User, including any individual with administrator- or delegate-level access to the Producer Account.

**Section 2.03 Security.** Producer shall require that all Permitted Users keep user ID and password information strictly confidential and not share such information with any unauthorized Person. Producer shall promptly notify ESMC: (i) if Producer has reason to suspect that any user ID or password has been lost, stolen, compromised, or misused, and (ii) of any unauthorized access to or use of the ESMC Platform. Producer shall be responsible for any and all actions taken using Producer’s accounts and passwords.

### **Article III. PURPOSE OF THE PROGRAM**

**Section 3.01** The purpose of the Program is to collect and analyze data related to operations on the Property to assess and quantify the marketable environmental credits based on reductions in emissions or removal of carbon dioxide or other greenhouse gases (on a carbon dioxide equivalent basis, or “CO<sub>2</sub>e”) from the atmosphere (“**Environmental Benefits**”) resulting from the implementation of Approved Agricultural Management Practices. The Program will monetize the outcomes through the creation of reportable carbon emissions reductions measured by defined units (the “**Credits**”) representing measured improvements in environmental impact.

**Section 3.02** Under the Program, ESMC processes data provided by the Producer and/or Implementation Partners to quantify Environmental Benefits. ESMC’s goal in the Program is to generate Credits that will be sold to third parties, resulting in payments to the Producer based on a market-based value for those Credits.

**Section 3.03** If applicable, the producer representative identified on page 1 of the Producer Agreement (“**Producer Representative**”) is authorized to act on behalf of the Producer in communications with ESMC and its Implementation Partner regarding this Agreement, and ESMC and Implementation Partner may rely upon the statements and actions of such Producer Representative.

**Section 3.04** It will be the responsibility of the Producer, working with Implementation Partners, to manage and coordinate the input and processing of data, for the purpose of producing Credits. The Producer authorizes ESMC to access and use data provided to such Implementation Partner for purposes of administering the Program. The Producer authorizes such Implementation Partner to enter data and take certain other actions on the ESMC Platform on Producer’s behalf (subject to any additional agreements or communications between Producer and Implementation Partner). ESMC will not be a party to or have any obligation to monitor any interaction between Producer and Implementation Partner and ESMC shall have no liability for Producer’s interactions with such Implementation Partner, or for any Implementation Partner’s action or inaction.

**Section 3.05** If applicable, ESMC may by written notice to the Producer Representative change the identity and/or contact information of the Implementation Partner. The Producer may by written notice to ESMC change the identity and/or contact information of the Producer Representative.

### **Article IV. RESPONSIBILITIES OF PARTIES**

**Section 4.01 ESMC Responsibilities.** ESMC will implement the Program, which will include an Implementation Partner working with the Producer to collect and record data relating to the Producer’s land management practices and site conditions. Subject to the terms and conditions of this Agreement, ESMC will provide Producer access to and use of the ESMC Platform. ESMC will analyze changes in greenhouse gas emissions in an effort to generate Credits.

#### **Section 4.02 Producer Responsibilities.**

The Producer agrees to perform the following responsibilities with respect to the Property:

- (a) Producers will participate in the generation of Environmental Benefits and Credits as further provided in this Agreement. Producer will not pay to participate in the Program or be required to purchase products or enroll in other programs or share data with other partners as a requirement of participation.

- (b) Producer agrees to implement specific Approved Agricultural Management Practices and to accurately record data using the Producer Portal that documents Environmental Benefits associated with the Producer's use of the Property. Producer is willing and able to provide historical data on production systems and operation/management as required by the ESMC protocol and will provide ongoing annual data on operation and management for each field included in the Property. Historical data is defined as a minimum of three (3) years of pre-enrollment data, or one full rotation, whichever is longer (e.g., a 4-year crop rotation would need to provide 4 years of pre-enrollment data).
- (c) Producer agrees to provide complete and accurate information about its agricultural management practices to ESMC and to ensure all information entered into the Producer Portal is complete and accurate. Producer agrees not to undertake actions that would cause the Producer's representations set forth in Article VIII to be false, and agrees to confirm the accuracy of the representations upon reasonable request by ESMC in connection with any sale or license of Credits or receipt of compensation.
- (d) Producer will fully cooperate with and allow ESMC representatives or contracted third parties (including the Implementation Partner) access to Producer's farm and records as needed for the purposes of the Program, including (a) implementing the Program, (b) verifying Producer's data and land management practices, and (c) completing required sampling, field measurements and other data collection. Producer understands and agrees that ESMC or its representatives may employ aerial surveys to obtain information about Producer's operations, and may use other public records or readily available data to supplement or correct data entries by the Producer.
- (e) The Producer authorizes ESMC to use the data collected from the Producer through the Producer Portal to generate Credits and for other purposes described in this Agreement. Producer agrees to promptly complete and return requests for information from ESMC that are related to the purposes of this Agreement.
- (f) Producer agrees to conduct and continue conducting its business at the Property in material compliance with Applicable Law. Producer confirms that it will conduct its business at the Property in material compliance with the following policies and requirements:
  - (i) AVMA Standards: Producer shall maintain a valid Veterinary-Client-Patient-Relationship (as defined by the AVMA) for an operation with livestock.
  - (ii) Non-Discrimination: Producer shall not engage in or permit discrimination among persons on the basis of race, religious belief, gender, sexual orientation or any other legally prohibited criteria in performing its obligations under this Agreement.
  - (iii) Harassment: Producer shall not engage in or permit harassment of any kind, including forms of harassment that are gender-based, sexual, or restrictive of an individual's rights in performing its obligations under this Agreement.
  - (iv) Anti-Corruption: Producer shall not engage in or permit engaging in corrupt acts, such as bribery, in the performance of its obligations under this Agreement.

**Section 4.03 Property; Changes to Boundaries or Acreage.** Following the initial enrollment of a Producer in the Program, Producer may not increase acreage or change the boundaries of acreage enrolled in the Program under this Agreement. Any such additions to the acreage or boundaries enrolled in the

Program may only be implemented by Producer and ESMC through a written amendment to this Agreement or a new and separate Producer Agreement. Such changes may not propose reductions in acreage or removal of acreage from the Program.

**Section 4.04 Unpermitted Reversals.** An “**Unpermitted Reversal**” occurs with respect to the Property or a defined area within Property (e.g., a field or section of a farm) when the Producer intentionally ceases to implement Approved Agricultural Management Practices, or takes actions that prevent implementation of Approved Agricultural Management Practices, with respect to the Property or such defined area in a manner that (a) reduces the carbon levels in the soil or that produces a net increase in greenhouse gas emissions associated with the Property, (b) prevents the generation, verification, reporting or certification of Credits from the operation of the Property, or (c) renders previously generated Credits invalid, in each case, for reasons other than Force Majeure Event (defined below). Unpermitted Reversal includes the cessation of any Approved Agricultural Management Practices by the Producer for any reason, including the termination of the Producer’s right to use the Property, such as through sale (for a Producer that is a landowner) or termination of a lease (in the case of a Producer who is a tenant farmer), unless the successor owner or tenant agrees with ESMC to continue implementing the Approved Agricultural Management Practices or ESMC otherwise approves such changes in writing.

**Section 4.05 Notice.** Producer shall provide written notice as soon as reasonably possible (but not more than fifteen (15) calendar days) after an event that:

- (a) Results in the Producer losing the ability to control operations upon the Property, including termination of any lease, foreclosure, sale or Force Majeure Event;
- (b) Constitutes an Unpermitted Reversal affecting more than five percent (5%) of the acreage in the Property; or
- (c) Constitutes a breach of Producer’s obligations under this Agreement, including the receipt of information or any action or omission that could reasonably be expected to result in the invalidation of any Credits previously issued or the inability to generate Credits on the basis of the Producer’s operations on the Property.

## **Article V. CREDITS AND COMPENSATION**

**Section 5.01 Ownership and Transfer of Credits.** Subject to this Agreement, the Producer owns and will continue to own the Producer’s personal information and data regarding agricultural management practices entered into the Producer Portal, plus the Environmental Benefits and Credits generated through the Program using the Producer’s data. The Producer conveys to ESMC a power of attorney to act on behalf of the Producer, and conveys to ESMC all rights and authorities, as necessary or helpful for ESMC to create credits, offsets or other marketable certificates pursuant to this Agreement, whether under a voluntary greenhouse gas registry or regulatory program. ESMC will control and utilize the data regarding the Environmental Benefits to satisfy requirements of third parties for the use and generation of Credits that will be maintained in an account by ESMC on behalf of the Producer, to be licensed or sold to third-party users or buyers. The Producer designates ESMC as its exclusive agent for purposes of the Program and authorizes ESMC to enter and analyze data, and buy, sell, and license Credits and otherwise interact with the host of relevant registries, and will execute such additional document or provide such additional information as may be required to give effect to this authorization. ESMC will have complete and exclusive control over sales and licensing of Credits to third parties subject to sharing of revenues with the Producer set forth in this Agreement. Ownership of Credits will remain with the Producer until ESMC transfers or licenses such Credits to a third-party buyer.

**Section 5.02 Taxes.** The Producer shall be responsible for the payment of any sales, use, value-added, or other taxes based on the sale or other transfer of rights to use the Environmental Benefits owned by Producer. All revenues allocated under Section 6 of the Producer Agreement are allocated after the collection and payment of any sales or use taxes, or other taxes imposed as a result of the sale or license of the Credits to a third party. Each party shall be responsible for any and all taxes assessed or payable with respect to property it owns or operates, and for any taxes payable with respect to income received by a party. Each party is responsible for all employment and employment related taxes with respect to its employees or contractors.

## **Article VI. TERM AND TERMINATION**

**Section 6.01 Term.** This Agreement is effective as of the Effective Date and will continue in effect until terminated as set forth below. Unless a different Term is identified on the cover page of the Producer Agreement, each Producer Agreement will continue in full force from the effective date of such Producer Agreement until the later of March 31 of the sixth full calendar year following the effective date of such Producer Agreement, or the date on which the parties' respective obligations hereunder have been completed (the "**Initial Term**"). Thereafter, each Producer Agreement will automatically renew for successive renewal terms of five (5) years, (each, a "**Renewal Term**", and together with the Initial Term, the "**Term**") unless the Producer or ESMC shall have given written notice of termination to the other party on or before the date that is 180 days prior to such termination. ESMC will send written notice to the Producer at least 365 days prior to such date of termination reminding the Producer of such termination date and automatic renewal. For Producers who have participated in ESMC's original pilot program, the five-year Term of this Agreement shall include any calendar years in which such Producers completed their data submission as part of the Program.

### **Section 6.02 Termination.**

- (a) Each party may terminate this Agreement effective upon written notice to the other party:
  - (i) if the other party materially breaches this Agreement and such other party fails to cure such breach within thirty (30) days after its receipt of written notice of such breach;
  - (ii) if the other party becomes insolvent or admits its inability to pay its debts generally as they become due; becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; is dissolved or liquidated or takes any entity action for such purpose; makes a general assignment for the benefit of creditors; or has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or
  - (iii) upon the occurrence of an Force Majeure Event that results in the inability of a party to perform such party's obligations hereunder for a period of more than one hundred eighty (180) days.
- (b) ESMC may terminate this Agreement at any time upon the death of the Producer who is an individual, except if this Agreement is assigned to or assumed by a successor within sixty (60) days after the death of the Producer, provided that the assignee or successor provides ESMC with written notice of such assignment or assumption at or prior to the time the assignment or assumption is effective and ESMC provides its written consent to such assignee or successor.

- (c) ESMC may terminate this Agreement with respect to all or part of the Property upon five (5) business days' prior written notice in the case of an Unpermitted Reversal occurring with respect to any part of the Property.
- (d) ESMC may terminate this Agreement upon five (5) business days' prior written notice if the Producer has provided materially false or misleading information to ESMC in connection with the Program.

**Section 6.03 Effects of Termination.** In the event of a termination of this Agreement pursuant to Section 6.02, the following provisions shall apply:

- (a) Upon a termination under Section 6.02(a)(i) or (ii), the non-defaulting party may recover from the defaulting party any damages owed to the non-defaulting party under ordinary contract law principles, but not exceeding the amounts specified in Section 10.05 (Limitations of Liability);
- (b) Upon a termination under Sections 6.02(a)(iii) or 6.02(b), neither party shall have further obligations to the other party, other than obligations that may survive under Section 6.04; and
- (c) Upon a termination by ESMC under either Section 6.02(c) or (d), neither party shall have further obligations to the other party, except that ESMC shall be responsible to Producer for payment to Producer of revenues from the sale or licensing of Credits prior to such termination, provided that ESMC shall be authorized to deduct from any payments due to be made by ESMC to Producer after such date of termination the amount of any damages incurred by ESMC up to the amounts permitted under Section 10.5 (Limitations of Liability).

**Section 6.04 Survival.** Except as otherwise expressly set forth herein, early termination of this Agreement shall not affect rights accrued prior to termination or terminate obligations required to be performed prior to termination that have not yet been performed, provided that ESMC shall not have any further obligations to generate Credits or sell or license rights to Credits that have not been generated, sold or licensed prior to such termination. Obligations of the parties under Article VI (Intellectual Property), Article VII (Confidentiality; Data Privacy) and under Article IX (Indemnification; Limitation of Liability) shall remain in force after termination of this Agreement for five years. Any other right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement until fully performed.

## **Article VII. INTELLECTUAL PROPERTY**

**Section 7.01 Ownership.** Producer expressly agrees that ESMC owns and shall continue to own all right, title, and interest (including all patent, copyright, trade secret and other intellectual property rights) in and to: (a) the Program, the ESMC Platform, ESMC's analytical methods and data management systems, ESMC's monitoring, reporting and verification system, and all related and underlying technology, methodologies, templates, software, documentation, and other information (but not, for purposes of clarify, systems or technology owned by any Implementation Partner); (b) any and all deliverables generated by and intellectual property developed by ESMC hereunder, and (c) all improvements or modifications to the foregoing (a) and (b) (individually and collectively, "**ESMC Technology**").

**Section 7.02 Producer Access Restrictions.** Producer shall not, and shall not allow any third party to: (a) sell, rent, lease or use any ESMC Technology; (b) use any ESMC Technology to help develop, or help

provide to any third party, any product or service similar to or competitive with any ESMC Technology; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code of any ESMC Technology; (d) copy, modify or create derivative works from any ESMC Technology, except as expressly permitted herein; (e) remove or obscure any copyright or proprietary or other notice contained in any ESMC Technology; (f) propagate any virus, Trojan horse, or other malware or programming routine intended to damage any system or data; (g) use any ESMC Technology in a manner that violates any Applicable Law, regulation, or legal requirement or obligation or in violation of any third-party rights of privacy or intellectual property rights; (j) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark any ESMC Technology; (k) upload, transmit or provide any data that ESMC reasonably deems to be unlawful, fraudulent, harmful, abusive or otherwise objectionable.

**Section 7.03 License to Producer Information.** “**Producer Information**” means information, data, and other content, in any form or medium, that is uploaded, or otherwise received, directly or indirectly (including via a third-party provider), from Producer (including from a Permitted User on Producer’s behalf) by or through the ESMC Platform, or provided by Producer to ESMC hereunder. Producer is solely responsible for the accuracy, content and legality of all Producer Information, subject to ESMC’s right (but not obligation) to make corrections or supplement such information to the extent ESMC determines from collection of information from other sources that the Producer Information is inaccurate. As between the parties, Producer shall retain all right, title and interest (including any and all intellectual property rights) in and to the Producer Information. Producer hereby grants to ESMC a non-exclusive, worldwide, irrevocable, transferable, sublicensable (through multiple tiers), fully paid-up, royalty-free right and license to use, copy store, transmit, modify, and display the Producer Information in order to: (a) provide and administer the Program, including the generation of Credits; (b) for the further development of the Program, the ESMC Platform, and associated technologies, and (c) as expressly permitted in writing by Producer. Producer represents and warrants to ESMC that Producer has sufficient rights in the Producer Information to grant this license and that the Producer Information does not infringe or otherwise violate the rights of any third party. Notwithstanding anything to the contrary, data related to Producer’s participation in the Program, including management practices and operational details, may be collected, reported to, and used by ESMC and authorized third parties for research and other purposes or as otherwise outlined in the Producer Privacy Policy.

**Section 7.04 License to Program Information.** “**Program Information**” means all content, data, information, reports, records, documents, or other output produced by ESMC or its advisors pursuant to the Program. As between the parties, ESMC shall retain all right, title and interest (including any and all intellectual property rights) in and to the Program Information. To the extent Producer or its Permitted Users receive any Program Information from ESMC, ESMC grants Producer a non-sublicensable, non-transferrable, non-exclusive, limited license to use the Program Information during the Term of this Agreement solely for Producer’s internal use as reasonably necessary for its participation in the Program and subject to the terms and conditions of this Agreement. Producer shall not share the Program Information with any third party without the prior approval of ESMC.

## **Article VIII. CONFIDENTIALITY; DATA PRIVACY**

### **Section 8.01 Confidential Information.**

- (a) “**Confidential Information**” means (i) the terms and conditions of this Agreement and (ii) any information that is treated as confidential by a party, including, but not limited to, all non-public information about its business, products or services. “Confidential Information” shall not include information that: is already known to the receiving party, is generally known by the public, is independently developed by a party or is received from a third party, in all cases, without breaching an obligation to the disclosing party.



- (b) Each party agrees not to disclose or otherwise make available Confidential Information of the other party to any third party without the prior written consent of the other party; except that a party may disclose the Confidential Information of the other party to (i) its affiliates, and representatives (such as directors, officers, members, shareholders, employees, agents, consultants, independent contractors, auditors and other advisors) who are bound by nondisclosure obligations; and (ii) Gold Standard, SustainCERT, or other third party verification body or registry, and their respective representatives or affiliates to the extent required to comply with any applicable verification, registration or other legal requirements.
- (c) Each party agrees to use the Confidential Information of the other party only for the purposes described in this Agreement.
- (d) ESMC may use and include in public reports data regarding the Property as part of aggregated reporting of carbon sequestration or related data.
- (e) ESMC may use and communicate information or data in a manner not otherwise permitted hereunder if the Producer consents to such use or communication.

**Section 8.02 Data Privacy.** A Producer's individual personal information, e-mail address, data, and model results may be used by ESMC only as described in ESMC's Producer Privacy Policy. Aggregated, anonymized information including management practices and operational details may be collected, reported to, and used by ESMC and authorized third parties. Such aggregate level information will not identify the Producer's personal information. Producer acknowledges also that data will be stored and utilized by ESMC to quantify, verify, and/or certify Credits generated as a result of operational activities; and that process will require that data and the Producer's personal information be confidentially shared with ESMC modelers, technical contractors, verifiers, and other program staff and advisors to whom access is required or has otherwise been granted by the Producer. ESMC may disclose certain information in response to subpoenas, governmental requests, legal processes, or otherwise in legal proceedings as necessary to defend claims or protect its rights in connection with the Program. In such cases, ESMC will provide the Producer with notice of the need for disclosure and the opportunity to contest the disclosure.

## **Article IX. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 9.01 Mutual Representations, Warranties and Covenants.** Each party represents and warrants to the other party as of execution of this Agreement that:

- (a) it has the full right, power, and authority to enter into this Agreement, to grant the rights granted hereunder, and to perform its duties and obligations hereunder;
- (b) this Agreement is executed and delivered as the legal, valid, and binding obligation of such party and will be enforceable against such party to the extent authorized or required under Applicable Law; and
- (c) there are no actions, suits or proceedings or other circumstances existing, pending or, to such party's knowledge, threatened against such party that may affect the validity or enforceability of this Agreement or such party's ability to perform the obligations and transactions anticipated by this Agreement.

**Section 9.02 Producer’s Representations and Warranties.** As of the date of execution of this Agreement and each date on which Producer provides data to ESMC using the Producer Portal, Producer represents and warrants to ESMC that:

- (a) to the Producer’s knowledge, Producer’s execution, delivery and performance of this Agreement does not violate or contradict any Applicable Law (defined below) or any provision of its organizational documents or any other material agreement by which it is bound;
- (b) the Producer is the owner or lessee of the Property and holds all rights to the enrolled land necessary to enter into this Agreement and generate environmental attributes pursuant to the Program;
- (c) if the Producer is a tenant, Producer has the consent of the landowner, or no consent or authorization is required from the landowner, for the Producer to participate in the Program or retain and transfer ownership of the environmental attributes or Credits;
- (d) the environmental attributes generated by the Producer and any rights to Credits held by the Producer are transferred to ESMC free and clear of liens or other restrictions;
- (e) Producer confirms that the Property is not subject to any agreement with another program that generates credits, offsets, assets, supply chain reporting, or claims related to soil carbon sequestration, changes in greenhouse gas emissions, improvements in water quality, and/or water use efficiencies that could conflict with the creation of or result in double counting of the Credits that are subject to the Program (excluding regulations, easements or contracts that restrict the Property to agricultural uses);
- (f) Producer is unaware of any plan or intention to sell the Property to a new owner or to terminate Producer’s rights to occupy and use the Property consistent with this Agreement;
- (g) the Property has not, within the past 10 years, been converted from forested or natural grassland to cropland;
- (h) the Property is not owned by a governmental entity;
- (i) Producer confirms that it conducts its business at the Property in material compliance with applicable laws, rules, regulations, ordinances, permits, governmental orders and other legally binding governmental actions (“**Applicable Law**”), including, but not limited, to those related to:
  - (i) Natural resources (such as water, wetlands, land erosion, and conservation areas) and cultural, historic, and religious resources,
  - (ii) Endangered species (including protection of habitats),
  - (iii) Pollution and waste management (including hazardous materials),
  - (iv) Use and application of chemical inputs (e.g., pesticides, fungicides, fertilizers), and
  - (v) Occupational health and safety requirements for the agricultural sector;

- (j) to Producer's knowledge, Producer is under no other legal obligation or party to any legal proceeding that prevents or would prevent the Producer from participating in the Program or conveying environmental attributes or Credits to ESMC or third parties; and
- (k) the field or pasture information and operational details that have been provided to ESMC or provided in the Producer Portal are true, accurate and complete to the best of their knowledge.

**Section 9.03 Corporate Producer Representations.** Each Producer that is a corporate entity, such as a corporation, limited liability company or trust, represents and warrants as follows:

- (a) It is duly organized, validly existing and in good standing as an entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;
- (b) The execution of this Agreement by its representative whose signature is set forth on the signature page hereof has been duly authorized by all necessary entity action of such party; and
- (c) When executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party and will be enforceable against such party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other such laws affecting the rights of creditors generally and subject to general equitable principles.

## **Article X. INDEMNIFICATION; LIMITATION OF LIABILITY**

**Section 10.01 Indemnification by Producer.** Producer shall indemnify, defend and hold harmless ESMC, its affiliates and contractors, including Implementation Partners, and its and their respective directors, officers, employees, agents, managers, members, shareholders, representatives, contractors, successors and permitted assigns (referred to as "**ESMC Persons**") and any third-party buyer of Credits from and against all Losses arising out of any third-party claim, suit, action, or proceeding resulting from: (a) any untrue representation, statement or data supplied by Producer, or other failure of Producer to comply with this Agreement; (b) bodily injury, death of any individual, or damage to real or tangible or personal property suffered by any ESMC Person resulting from Producer's negligence, fraud or willful misconduct in connection with this Agreement; or (c) any and all environmental conditions or contamination on or related to the Property (except those that was caused by an ESMC Person), whether or not caused by Producer.

**Section 10.02 Indemnification by ESMC.** ESMC shall indemnify, defend and hold harmless Producer, Producer's affiliates, and its and their respective directors, officers, employees, agents, managers, members, shareholders, representatives, contractors, successors, personal representatives and permitted assigns from and against all Losses arising out of any third-party claim, suit, action, or proceeding resulting from: (a) any untrue representation, statement or data supplied by ESMC, or any other failure of ESMC to comply with its obligations to the Producer set forth in this Agreement; or (b) bodily injury, death of any individual, or damage to real or tangible or personal property resulting from negligence, fraud or willful misconduct of ESMC.

**Section 10.03 Indemnification Procedures.** The party seeking indemnification under this Article VII shall promptly notify the indemnifying party in writing of any notice, complaint, claim, dispute or proceeding (an "**Action**") concerning any matter that is indemnified under Section 10.01 or 10.02, and shall

cooperate with the indemnifying party at the indemnifying party's sole cost and expense in connection with such Action. The indemnifying party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party shall not settle any Action in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. The indemnified party's failure to perform any obligations under this Section 10.03 shall not relieve the indemnifying party of its obligations under this Section 10.03 except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

**Section 10.04 Exclusions from Indemnification.** Notwithstanding any provision of this Agreement to the contrary, the indemnifying party shall not be obligated to indemnify, defend or hold harmless the indemnified party against any claim to the extent such claim or corresponding Losses arise out of or result from the indemnified party's: (a) negligence or culpable act or omission (including recklessness or willful misconduct); or (b) failure to comply with any of its obligations set forth in this Agreement.

**Section 10.05 Limitations of Liability.**

- (a) EXCEPT AS OTHERWISE SET FORTH IN SECTION 10.05(c), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE PROVIDED IN SECTION 10.05(c), IN NO EVENT WILL (i) ESMC'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNT OF REVENUES PAYABLE TO PRODUCER PURSUANT TO THIS AGREEMENT THAT ARE UNPAID AND REQUIRED TO BE PAID BY ESMC TO PRODUCER WITH RESPECT TO THE SALE OR LICENSING OF CREDITS, or (ii) PRODUCER'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNT OF REVENUES PAYABLE TO PRODUCER PURSUANT TO THIS AGREEMENT THAT ARE UNPAID AND REQUIRED TO BE PAID BY ESMC TO PRODUCER WITH RESPECT TO THE SALE OR LICENSING OF CREDITS.
- (c) THE EXCLUSIONS AND LIMITATIONS SET FORTH IN SECTION 10.05(a) AND SECTION 10.05(b) SHALL NOT APPLY TO: (i) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10.01 OR SECTION 10.02, AS APPLICABLE; (ii) DEATH OR BODILY INJURY OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; AND (iii) A PARTY'S OBLIGATION TO PAY ATTORNEYS' FEES AND COSTS IN ACCORDANCE WITH SECTION 14.08. NOTWITHSTANDING

ANYTHING TO THE CONTRARY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ESMC'S AGGREGATE LIABILITY EXCEED ANY INSURANCE PROCEEDS IT RECEIVES FOR THE APPLICABLE CLAIM.

#### **Article XI. FORCE MAJEURE**

**Section 11.01 Force Majeure Event.** Neither party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts, events or circumstances beyond the impacted party's reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event**"): (a) acts of God; (b) flood, fire, earthquake, epidemic, pandemic or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the Effective Date; (f) national or regional emergency; (g) disease or pest infestation; and (h) other similar events beyond the reasonable control of the impacted party. The impacted party shall give notice within 15 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue, and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized, and shall resume the performance of its duties and obligations under this Agreement as soon as reasonably practicable after cessation of the Force Majeure Event unless this Agreement has been terminated due to the Force Majeure Event. If the Force Majeure Event cannot be mitigated to a permit the parties to continue performing their obligations under this Agreement within one hundred eighty (180) days, this Agreement may be terminated by either party under Section 10.02(a)(iii).

#### **Article XII. ASSIGNMENT; TRANSFER OF PROPERTY; DEATH OF LANDOWNER**

**Section 12.01 Assignment of Agreement.** This Agreement is intended to be for the benefit of each party and upon execution shall be binding upon each of them and their respective heirs, personal representatives, successors and permitted assigns, as applicable during the term of the Producer Agreement. Neither party may assign any of its rights or delegate any of its duties or obligations under this Agreement to any person without the prior written consent of the other party, provided however, that ESMC may assign this Agreement to a successor entity that is assuming responsibility for substantially all of ESMC's business and operations in connection with this Agreement.

#### **Section 12.02 Transfer of Property; Death of Individual Producer.**

- (a) If Producer elects to sell or transfer all or part of the Property at any time during the Term (a "**Transfer**"), Producer shall provide ESMC with written notice of the Transfer at least thirty (30) days prior to the consummation of the Transfer, which written notice shall specify, at a minimum, the name of the purchaser or transferee (referred to as the "**Transferee**"), the date on which the Transfer is intended to occur, whether some or all of the Property is intended to be sold or otherwise transferred as part of the Transfer.
- (b) Upon the death of the Producer that is an individual (not a corporate entity), this Agreement may be terminated by ESMC without further obligation to the Producer unless the executor, heir or other successor to the interests of the Producer enters into an assignment and assumption of the Agreement by executor, heir or other successor.

## **Article XIII. DISPUTE RESOLUTION; GOVERNING LAW AND VENUE**

**Section 13.01 Meet and Confer; Mediation; Court.** If any dispute arises out of, or in relation to, this Agreement, the parties agree that they will meet, if requested by the other party, to discuss such dispute. In the event that the parties are unable to resolve the dispute informally, the parties agree that such dispute shall then be submitted to non-binding mediation and that they will mediate such dispute in good faith before one or more mediators chosen by mutual agreement. If the dispute is not resolved by meetings or mediation within 30 days from the date on which either party requests a meeting pursuant to the first sentence of this Section 13.01, either party may, subject to Section 13.02, initiate court proceedings to pursue any available legal remedies and provide notice of such proceedings to the other party.

**Section 13.02 Governing Law; Venue.** With respect to any matters arising under this Agreement that involve ESMC, this Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Virginia, without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Virginia or any other jurisdiction). With respect to any suit, action or proceedings involving ESMC and relating to any dispute arising out of or in connection with this Agreement, including, without limitation, any informal meetings, mediation, or litigation, each party irrevocably: (a) submits to the exclusive jurisdiction of the Circuit Court and General District Court for the 17<sup>th</sup> District of the Commonwealth of Virginia and the United States District Court for the Eastern District of Virginia; and (b) waives (i) any objection which it may have at any time to the laying of venue of any proceedings brought in any such court, (ii) any claim that such proceedings have been brought in an inconvenient forum and (iii) the right to object, with respect to such proceedings, that any such court does not have any jurisdiction over such party.

## **Article XIV. MISCELLANEOUS**

**Section 14.01 Further Assurances.** Each party shall, upon the reasonable request of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

**Section 14.02 Entire Agreement.** This Agreement, together with all terms and conditions, attachments, exhibits and schedules referred to herein and any other documents incorporated herein by reference, including the Producer Agreement, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

**Section 14.03 No Third-party Beneficiaries.** This Agreement is for the sole benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns, and the indemnitees expressly set forth in Section 10.01 or Section 10.02 of these General Terms and Conditions. Nothing herein is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy, under or by reason of this Agreement.

**Section 14.04 Notices.** All notices, claims, demands, waivers, and other communications between or among the parties hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when submitted online through a portal or online data entry form; (c) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (d) on the date sent by email (with confirmation of receipt) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (e) on the 3<sup>rd</sup> day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the Producer at the address set forth on Page 1 of the Producer Agreement. Notices to ESMC shall be sent to:

ESMC Contract Administrator

Email Address: [Contracts@ecoharvest.ag](mailto:Contracts@ecoharvest.ag)

Either party may change its notice address as specified in a written notice given to the other party. ESMC may modify its email address for notices by posting a revised version of these General Terms and Conditions.

**Section 14.05 Amendments; Waivers.** This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each party. Except as otherwise expressly set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**Section 14.06 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**Section 14.07 Publicity.** Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's names, trademarks, service marks, logos, symbols or brand names, in each case, without the prior written consent of the other party, provided however that ESMC may use and disclose the Producer's Confidential Information as set forth in Article VI hereof and may disclose and use the Producer's Information as set forth in the Producer Privacy Policy. ESMC will liberally authorize disclosure by Producer of Producer's participation in the Program (without details concerning the terms and conditions of this Agreement). Neither party shall make untrue or disparaging comments about the other party in any public forum.

**Section 14.08 Attorneys' Fees.** If any action, suit, or other legal or administrative proceeding is instituted or commenced by either party against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party.

**Section 14.09 Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.