



The IISD Model Contract Clauses for Responsible Investment in Agriculture:

Customizable legal provisions to help implement international best practices, principles, and guidance on responsible agricultural investment

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International Institute for Sustainable Development

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About the IISD Model Contract Clauses

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Any remaining errors or omissions are the authors' own.

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The online version can be found here: <https://www.iisd.org/toolkits/responsible-investment-agriculture/>

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Introduction and Overview

A. Why Develop Model Contract Clauses for Responsible Investment in Agriculture?

In 2023, as global food systems near breaking point, responsible investment in agriculture is more important than ever. Comprehensive and well-enforced domestic laws remain the best way to govern large-scale investments in agriculture. Despite this, long-term investor–state contracts continue to have a role to play.

The IISD Model Contract Clauses for Responsible Investment in Agriculture (the IISD Model Clauses) build on and update the [IISD Guide to Negotiating Investment Contracts for Farmland and Water](#), (Smaller, C., Bernasconi-Osterwalder, N., Pintér, L., McCandless, M., & Parry, J.-E., 2014). Since 2014, governments and communities in low- and middle-income countries have benefited from a growing body of international and regional guidance on how to ensure responsible, equitable, and sustainable investment contracts, including for land-based agricultural investment (see Box 3). This guidance is underpinned by an expanding ecosystem of international and regional norms, standards, and principles on responsible investment in agriculture and food systems (see Box 2).

The IISD Model Clauses aim to distil this body of guidance and principles into a set of user-friendly, customizable contract provisions. When put into use, the IISD Model Clauses can complement national laws, manage project-specific issues, and give legal effect to international and regional norms, standards, best practices, and principles.

The IISD Model Clauses are gender and climate mainstreamed, with cross-cutting provisions designed to reinforce gender equity and to promote a just and equitable transition toward more climate-resilient production practices.

B. For Whom Are the IISD Model Clauses Intended?

In many countries, most land is owned by the state, or grants of rights over large amounts of agricultural land can only be made by the state.¹ In light of this, the IISD Model Clauses are primarily designed to inform the drafting of investor–state contracts. These are contracts in which a “grantor,” that is, a government entity, grants rights to private (often foreign) investors for the large-scale and long-term lease of agricultural land. But the Model Clauses have been designed so they can be adapted and used by other types of grantors, for example, legitimate tenure rights holders, members of the local community, or private landowners (for more on this use case, see Box 1).

¹ International Institute for the Unification of Private Law and the International Fund for Agricultural Development. (2021). *Legal guide on agricultural land investment contracts*. Paragraph 2.22, p. 37.

Box 1. Using the IISD Model Clauses as a “tripartite” (or three-way) agreement

The IISD Model Clauses can be adapted and used in contexts where the party granting rights over the land to the investor (i.e., the grantor) is not the state.

Where the grantor is, for example, a group of local community landowners or legitimate tenure rights holders, the Model Clauses envisage a tripartite agreement between the grantor, the investor, and the “authority” (a government institution responsible for overseeing the agreement).

Even when the grantor is not the state, the body of best practice guidance on which the Model Clauses are based still foresees a significant role for the state in a responsible agricultural investment project. This includes reviewing and approving impact assessments, overseeing project implementation, and co-financing key elements for project success, such as infrastructure and training. These are roles that will be challenging for a grantor who is not a government institution to undertake, hence the inclusion of “the authority” as a party alongside the grantor in a tripartite, or three-way, contract with the investing company.

Where the grantor and the authority are one and the same (i.e., the government), then one of these two terms should be adopted and used consistently throughout.

It is hoped that the IISD Model Clauses will support agricultural investment negotiators, state lawyers, and policy-makers in helping achieve their country’s sustainable development objectives for investment in agriculture and food systems.

C. How Should the IISD Model Clauses Be Used?

The IISD Model Clauses are organized into chapters addressing three distinct but overlapping elements of the investment life cycle:

- I. **The pre-operations chapter** identifies the parties to the contract and sets out the steps they must take to assess and determine the parameters, feasibility, and impacts of the investment project. This chapter also sets out the conditions which must be met before a binding agreement between the parties can come into force.
- II. **The operations chapter** includes provisions that govern the project’s day-to-day operations across a broad range of subject matter likely to affect and/or be affected by the project. This includes water use, financing, climate change adaptation and mitigation, infrastructure, human and labour rights, tax, soil health, and community inclusion. This chapter is organized into three parts: (a) Part 2A: land- and infrastructure-related provisions, (b) Part 2B: social-, labour- and livelihood-related provisions, and (c) Part 2C: environment- and climate-related provisions.
- III. **The project monitoring, enforcement, and closure chapter** identifies ways to address grievances and disputes between the parties and other stakeholders impacted by the project. It sets out how compliance with the terms of the agreement will be monitored and enforced and what happens when the project ends.

The table of contents can help the user to identify the provision(s) of interest, but also functions as a checklist that can be cross-referenced against an existing contract to ensure key issues are included.

Each clause was drafted based on the international and regional body of guidance, standards, principles, and publications listed in Boxes 2 and 3. Some sections have a “[For more information:](#)”

directing the user to the relevant sources or commentary to explain the issues and themes addressed by the provision.

The IISD Model Clauses have optional or alternative contractual language that the user can choose between based on the specific project or national context, and blanks where details need to be completed by the user. [Optional or alternative language is shown in grey square brackets, and details to be filled in by the user are denoted in italics.]

i. The Primacy of the Domestic Legal System and Local Context

The IISD Model Clauses should not simply be copied and pasted without modification. The relevant clauses should instead be selected and adapted to the legal system and specific context of the relevant country and project. To do this, users should closely review each IISD Model Clause next to the relevant domestic law governing that issue area and make the necessary modifications based on what is provided in the domestic law. Where the domestic law is different or more detailed than the IISD Model Clause, the model clause should not be used. But where the domestic law does not govern an issue—at all, or in sufficient detail—the IISD Model Clause can help fill this gap.

ii. The Need for Local Expert Advice

The IISD Model Clauses may not contain all the necessary or appropriate provisions for a particular agricultural investment project, and so must be closely reviewed by a competent lawyer with a thorough understanding of the legal context and experience in similar investment projects.

The IISD Model Clauses do not replace specific legal and financial advice from local experts, a close understanding of the domestic law, or the development of a rigorous business case for a given agricultural investment project.

iii. The Role of Contract Templates

The IISD Model Clauses may be a useful tool to support the development of a national contract template for responsible investment in agriculture. Templates, when carefully reviewed and vetted by all public stakeholders ahead of time, can be a useful way to develop a comprehensive and well-adapted agreement outside of the pressure of a live negotiation. When developed in a participatory manner, templates can help raise awareness and understanding of anticipated contractual responsibilities and risk allocation among stakeholders impacted by the agricultural investment project.

The IISD Model Clauses should be seen as a starting point and example of what an agricultural investment contract that embodies international best practices and responsible investment guidance could look like. Users should adapt and customize it to suit the domestic legal system and always under the guidance of an experienced local lawyer well versed in national contract law and agricultural investment projects. Governments seeking support and advice on how to use the IISD Model Clauses can also request IISD's [advisory and capacity development services](#).

Box 2. Selected international and regional norms, standards, principles, and legal guides relevant to responsible investment in agriculture

- African Union Framework and Guidelines on Land Policy in Africa (2011)
- United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011).
- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012)
- International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability (2012)
- African Union Guiding Principles on Large Scale Land Based Investments (2014)
- Committee on World Food Security Principles for Responsible Investment in Agriculture and Food Systems (2014)
- United Nations Principles for Responsible Contracts Integrating the Management of Human Rights Risks into State–Investor Contract Negotiations – Guidance for Negotiators (2015)
- Association of Southeast Asian Nations (ASEAN) Guidelines for Promoting Responsible Investment in Food, Agriculture and Forestry (2018)
- International Institute for the Unification of Private Law (UNIDROIT) and the International Fund for Agricultural Development (IFAD) Legal Guide on Agricultural Land Investment Contracts (2021)

Box 3. Selected key publications providing guidance on responsible investment contracts

- *MMDA 1.0: Model Mine Development Agreement* (2011), published by the International Bar Association
- *The IISD Guide to Negotiating Investment Contracts for Farmland and Water* (2014), by Carin Smaller, with contributions from Howard Mann, Nathalie Bernasconi-Osterwalder, Matthew McCandless, and Jo-Ellen Parry, published by IISD.
- *Foreign Investment, Law and Sustainable Development: A handbook on agriculture and extractive industries* (2016), by Lorenzo Cotula, published by the International Institute for Environment and Development.
- *Guide to Land Contracts: Agricultural projects* (2016), published by the International Senior Lawyers Project (ISLP) & Columbia Center on Sustainable Investment (CCSI)
- *Community-Investor Negotiation Guides* (2018), by Sam Szoke-Burke, Rachael Knight, Kaitlin Y. Cordes, and Tehtena Mebratu-Tsegaye, with Marena Brinkhurst, published by CCSI and Namati.
- *Environmental, Social and Economic Development Provisions in Investment Contracts: A Resource for Government Lawyers in the Commonwealth* (2021) by Motoko Aizawa and Howard Mann, published by the Commonwealth Secretariat.

Chapter 1: Pre-Operations

1. Definitions

“Additional Land” has the meaning ascribed to it in Section [20.1](#).

“Affected Party” has the meaning ascribed to it in Section [59.2](#).

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the Company. For the purposes of this definition, “control” means combined ownership greater than 50% of the Company and/or the power to direct, manage, or exercise voting power over the Company.

“Aggrieved Party” has the meaning ascribed to it in Section [60.3](#).

“Agreement” means the present contract.

“Ancillary Document” has the meaning ascribed to it in Section [52.1](#).

“Annual Business Plan” has the meaning ascribed to it in Section [12.3](#).

“Applicable Law” means all laws of the Host State in force and effect as of the Signature Date and which may be promulgated, amended or brought into force and effect hereinafter, including the constitution, any law, statute, bylaw, ordinance, decree, directive, regulation, standard, guideline, rule, code, delegated or subordinated legislation, judicial act or decision, judgment, order, executive order, other legislative measure, binding actions, or enactments of any government authority, as may be in force and effect during the term of this Agreement.

“Applicable Permit” means any and all permissions, consents, clearances, licences, authorizations, consents, no-objections, approvals, and exemptions under or pursuant to any Applicable Law required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by the Agreement or any other Ancillary Document.

“Approved Business Plan” means the business plan developed by the Company in accordance with Section [12](#) and approved by the Authority in accordance with Section [5.2](#) as may be updated and changed from time to time in accordance with this Agreement.

“Authority” means the entity that is the duly authorized representative of the Government of the Host State with responsibility for this Agreement.²

“Breaching Party” has the meaning ascribed to it in Section [60.3](#).

“Business Plan” means the plan required to be produced and submitted to the Authority by the Company under Section [12](#) of this Agreement.

“Citizen” means a natural person holding citizenship of the Host State.

² Where “the Grantor” and “the Authority” are the same party (i.e., the government), then one of these two terms should be adopted and used consistently throughout. For example, the term “Grantor” could be replaced by the term “Authority” throughout the Agreement.

“Commitment Bond” has the meaning ascribed to it in Section [6.1](#).

“Company” means the party to this Agreement which is a duly authorized and constituted corporation existing under the Applicable Law.

“Condition Precedent” means the prerequisites to this Agreement coming into effect under Section [5](#) of this Agreement.

“Conditions Precedent Deadline” has the meaning ascribed to it in Section [7.1](#) of this Agreement.

“Contract Farming Scheme” means a contractual agreement between a farmer or farmers or an organization representing farmers and the Company for the production of agricultural goods.

“Dependent” means the spouse or unmarried minor child of a Worker of the Company or a person otherwise determined to be a dependent by agreement between the Worker and the Company.

“Effective Date” means the date upon which the Grantor [and the Authority] issues notice to the Company confirming that each of the Conditions Precedent has been completed to its satisfaction.

“Environmental and Social Impact Assessment” means the process of identifying, predicting, evaluating, and mitigating the environmental and social effects of the Project as provided for in Section [13](#) of this Agreement.

“Environmental and Social Management Plan” means the document required to be produced and submitted to the Authority by the Company under Section [16](#) of this Agreement.

“Environmental Damage Bond” has the meaning ascribed to it in Section [45.14](#).

“Environmental Performance Payment” has the meaning ascribed to it in Section [39.4](#).

“Essential Utilities” has the meaning ascribed to it in Section [26.1](#).

“Failure to Develop” has the meaning ascribed to it in Section [24.1](#).

“Fair Market Value” has the meaning ascribed to it in Section [66.2](#).

“Feasibility Study” means the document required to be produced and submitted to the Authority by the Company under Section 11 of this Agreement.

“Final Environmental Audit” has the meaning ascribed to it in Section [45.5](#).

“Force Majeure Event” has the meaning ascribed to it in Section [59](#).

“Free, Prior and Informed Consent” (FPIC) means the ability of Indigenous Peoples,³ Legitimate Tenure Rights Holders and members of the Local Community to freely consent, or withhold or

³ Please note, the IISD Model Clauses do not offer a definition of the term “Indigenous Peoples.” This is because “the development of a single definition of Indigenous Peoples that is applicable to all of them in the world, has proved to be extremely difficult, due to the diversity between regions and countries, and the differences in background, culture, history and conditions of indigenous communities” (Food and Agriculture Organization of the United Nations (FAO). (2016). *Free prior and informed consent: An Indigenous Peoples’ right and a good practice for local communities*. <https://www.fao.org/family-farming/detail/en/c/1036908/>. In light of the specific project and country context, the user should develop an appropriate definition of the term “Indigenous Peoples” if it is required, noting that “the recognition

withdraw their consent, prior to the approval or commencement of Project Operations, through a self-directed process undertaken sufficiently in advance of the start of Project Operations, without coercion, intimidation or manipulation, supported by information that is accessible, clear, consistent, accurate, and transparent, and resulting in a collective decision made by the members of the relevant community through their own freely chosen representatives and customary or other institutions.⁴

“Gender-Disaggregated” means data that is cross-classified by gender, presenting information separately for women, men, girls, boys, and gender-diverse people.

“Gender Equality” means the equal rights, responsibilities, and opportunities of women, men, girls, boys, and gender-diverse people.

“Gender Equity” means the process of being fair to women and men, including taking measures to compensate for women’s historical and social disadvantages that prevent them from enjoying the same rights and opportunities as men.

“Gender-Sensitive” means an approach that addresses gender norms, roles, and access to resources.

“Good Agricultural Practices” means practices that address environmental, economic, and social sustainability for on-farm production and post-production processes, and result in safe and quality food and non-food agricultural products.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the agricultural sector.

“Government of the Host State” means the government and any subdivision thereof, any provincial or local governmental authority or any part thereof, any department, authority, instrumentality, agency, or judicial body of the government of the Host State or any such provincial or authority of decentralized entity, and any court, tribunal or independent regulatory agency or body in the Host State having jurisdiction over the Company or the Project or any part thereof.

“Grantor” means the party to this Agreement which is the legal tenure right holder and which transfers tenure and related rights with respect to the Project Area to the Company in accordance with this Agreement.

“Home State” means the state of incorporation or registration of a corporate entity.

“Host State” means the state where the Project takes place.

“Human Rights Due Diligence Report” means a document identifying actual or potential human rights impacts posed by the Project Operations and the business relationships of the Company and its Affiliates, prepared in accordance with Section [14.1](#).

“Human Rights Impact Assessment” means the process of identifying, predicting, evaluating, and mitigating risks to the human rights of individuals and communities who may be affected by the Project.

or identification of certain collectivities as “Indigenous Peoples” shall not be dependent on whether the national government has recognized them as such” (FAO, 2016.) See further FAO (2016).

⁴ Adapted from FAO (2016).

"Independent Expert" has the meaning ascribed to it in Section [61.2](#).

"Initial Environmental Audit" has the meaning ascribed to it in Section [45.5](#).

"Job Targets" has the meaning ascribed to it in Section [28.2](#).

"Legitimate Tenure Rights Holders" means persons of all genders and social groups, including Indigenous Peoples, who have formal, customary, collective, or traditional tenure rights in respect of the Project Area, and persons whose occupation and use of the Project Area is essential for the realization of their rights to food, housing, water, and work.⁵

"Local Community" means one or more groups of persons of all genders with the potential to be significantly negatively or positively impacted by the Project as identified by the Environmental and Social Impact Assessment and Human Rights Due Diligence Report provided for in this Agreement.⁶

"Local Goods and Services" has the meaning ascribed to it in Section [37.1](#).

"New Infrastructure" has the meaning ascribed to it in Section [25.3](#).

"Non-movable Assets" has the meaning ascribed to it in Section [66.1](#).

"Notice" means a notification made or given by one of the Parties to the other in writing and delivered in accordance with Section [68.6](#).

"Parties" means the Company and the Grantor [and the Authority].

"Periodic Review" has the meaning ascribed to it in Section [56.2](#).

"Person" means any natural or legal person.

"Processing Targets" has the meaning ascribed to it in Section [36.1](#).

"Product" has the meaning ascribed to it in Section [18.1](#).

"Project" means all matters necessarily connected with the design, development, finance, construction, and operation of [*insert brief project description*].

"Project Area" means the total area allocated to the Company indicated in the Project Map, as may be updated or amended from time to time in accordance with this Agreement.

"Project Map" means a map, satellite image, or other visual depiction indicating the total area that constitutes the geographical boundaries of the Project Area.

"Project Operations" means all activities undertaken by or on behalf of the Company or any Affiliate in relation to the Project.

⁵ Adapted from Amnesty International. (2021). *Observations on the draft general comment by the UN Committee on Economic, Social and Cultural Rights*. https://www.ohchr.org/Documents/HRBodies/CESCR/GC-Land-ESCR/74_Amnesty_International.docx

⁶ Adapted from the World Bank. (2010). *Community Development Agreement model regulations & example guidelines*. <http://documents.worldbank.org/curated/en/278161468009022969/pdf/614820WP0P11781nal0Report0June02010.pdf>

“Public Infrastructure” has the meaning ascribed to it in Section [25.1](#).

“Rental Amount” has the meaning ascribed to it in Section [19.1](#).

“Resident” means a natural person who was ordinarily resident in the [Host State]/[*insert name of region/province*] at the Signature Date.

“Sexual exploitation” has the meaning ascribed to it in Section [32.1](#).

“Sexual abuse” has the meaning ascribed to it in Section [32.1](#).

“Sexual harassment” has the meaning ascribed to it in Section [32.1](#).

“Signature Date” means the date of signature of this Agreement by the Parties or the date upon which the last Party signs this Agreement where the Parties do not sign on the same day.

“Third-Party Assignee” has the meaning ascribed to it in Section [63.3](#).

“Third-Party Beneficiary” means a person who is not party to this Agreement but who is designated as a Third-Party Beneficiary under Section [58](#) of this Agreement.

“Water-Use Permit” means a permission granted by the government authority with responsibility over water resources to the Company to use water for agricultural purposes related to the Project.

“Worker” means a person with a contract or other arrangement with the Company to do work related to the Project in a personal capacity for a reward.

For more information: See generally Szoke-Burke et al., 2018, Section A (The Role of Definitions in a Contract).

2. Recitals

2.1 Whereas,

- (a) The Company is a commercial entity engaged in the business of [insert];
- (b) The Grantor is a [a duly enacted statutory entity]/[department/ministry/agency of the government of [insert host state name]] [group of persons/organization representing Legitimate Tenure Rights Holders] with responsibility for [insert] whose main purpose is to [insert];
- (c) [The Authority is [insert name of the government entity with responsibility for the Agreement]].
- (d) The Parties intend to enter into a fair and balanced relationship and to collaborate with respect to the Project for the purposes of [insert project aims];
- (e) The Parties recognize the intended contribution of the Project to the sustainable development of the Host State and its people, including all Legitimate Tenure Rights Holders, Indigenous Peoples and the Local Community, and to Gender Equality and Gender Equity, and reaffirm their commitment to realizing the social, economic, and environmental benefits of the Project, to respecting human rights, and to avoiding or minimizing any social, economic, and environmental harms of the Project; and
- (f) The Parties acknowledge that implementation of the Project shall be guided by and aims to complement the objectives of the [insert reference to, for example, the Host State's National Agricultural Investment Plan, sustainable development goals, or economic development, food security and poverty reduction strategy]

2.2 In order to achieve the above objectives, the Parties hereby enter into this Agreement with the intent to be legally bound, in the terms as follows.

For more information: Szoke-Burke et al. (2018), Sections 1 (Parties to the Contract) and 2 (Intention to Be Legally Bound by the Promises in the Contract).

3. Objective

3.1 The Parties affirm their intention to faithfully execute their obligations under this Agreement in accordance with the principles of good faith, reasonableness, efficacy, loyalty, and fair dealing, and shall at all times endeavour to preserve the spirit and intent of this Agreement by behaving consistently and cooperatively and providing necessary information in a timely and transparent manner.

3.2 The Parties agree that this Agreement shall at all times be interpreted and applied in such a way as to give maximum effect to the objectives of the Parties as identified in this Section and in Section 2.

For more information: See generally Smaller, C., & Brewin, S. (2018). *Model agreement for responsible contract farming*. International Institute for Sustainable Development & Food and Agriculture Organization of the United Nations. <https://www.iisd.org/projects/model-agreement-responsible-contract-farming>, Section 2 (The Purpose); Aizawa & Mann, 2021, Section 4.1 (Sustainable Development Objectives in a Contract).

4. Entry Into Force

4.1 The rights and obligations of the Parties under the Agreement, except for those referred to in Section [Error! Reference source not found.](#), shall come into force on the Effective Date, being the date upon which the Company receives confirmation that each of the Conditions Precedent referred to in Section [5.1](#) has been satisfactorily completed.

4.2 Section [4](#) and Sections [5](#), [6](#), [7](#), [8](#), [9](#), [10](#), [11](#), [12](#), [13](#), and [61](#), and any other obligation where the context demands that it come into effect earlier, shall come into effect and be binding upon the Parties from the Signature Date.

5. Conditions Precedent

5.1 The Conditions Precedent that are the responsibility of the Company are as follows:

- (a) provision of written confirmation, with supporting documents, from a bank, financing institution, Affiliate, or duly authorized representative of the Company, evidencing that the Company has access to sufficient financing, and indicating the source of that financing, to implement the Project in accordance with the terms of this Agreement and the Approved Business Plan;
- (b) completion of the Feasibility Study in accordance with Section [11](#);
- (c) completion of the Business Plan in accordance with Section [12](#);
- (d) completion [and review by an [independent expert]/[independent expert panel]/[and approval by the ministry in charge of environment]/[competent government ministry or agency] of the Environmental and Social Impact assessment (ESIA) and Environmental and Social Management Plan (ESMP) in accordance with Section [13](#);
- (e) completion [and review by an [independent expert]/[independent expert panel] of the Human Rights Due Diligence Report in accordance with Section [14](#);⁷
- (f) completion [and review by an [independent expert]/[independent expert panel]/ [and approval by [the ministry in charge of the environment]/[competent government ministry]/[agency] of the Climate Change Risk and Vulnerability Assessment in accordance with Section [15](#).
- (g) provision of written confirmation, obtained from the competent institution of the Government of the Host State, that all Applicable Permits are in place in accordance with Section [10](#), and provision of copies of same;
- (h) provision of a complete and accurate statement of the Company's corporate organization,⁸ including:
 - (i) the full name and nationality of all executive and non-executive directors and senior officers of the Company;
 - (ii) the full name and nationality of each person who is a beneficial owner of [10%]/[insert other percentage based on the relevant threshold in domestic law] or more of the Company's shares or voting rights; and

⁷ See generally Aizawa & Mann, 2021, Section 4.6 (Project Must Respect Human Rights), UNIDROIT & IFAD, 2021, Section 3.59 (Investor Responsibility to Respect Human Rights).

⁸ See generally Cotula, 2016, Section 3.2 (Corporate Structure); UNIDROIT & IFAD, 2021, Section 2.8 (Corporate Organization Disclosure).

(iii) the full name and Home State of each Affiliate of the Company and a description of the relationship between the Company and that Affiliate.

- (i) Provision of written confirmation, supported by evidence, that the Company has obtained Free, Prior, and Informed Consent of all members of the Local Community, Legitimate Tenure Rights Holders, and Indigenous Peoples with respect to the Project.

5.2 The Conditions Precedent that are the responsibility of the Authority are as follows:

- (a) review of the Feasibility Study and Business Plan submitted by the Company, and where the Feasibility Study and Business Plan comply with the requirements of the Applicable Law and Sections [11](#) and [12](#), provision of written approval of same;
- (b) review of the ESIA and ESMP submitted by the Company, and where the ESIA and ESMP comply with the requirements of the Applicable Law and Section [13](#), provision of written approval of same;
- (c) completion of any process of ratification or other means of approval by the national legislature, cabinet, or other institution with legal authority to approve agreements of the nature of this Agreement, where all relevant requirements for such a process have been met.

5.3 The Conditions Precedent that are the responsibility of the Grantor are as follows:

- (a) completion of the Project Map in accordance with Section [20](#);
- (b) *[insert other as appropriate for the Project.]*

5.4 The documents produced in accordance with this Section shall be annexed to this Agreement and shall form part of this Agreement and be binding on all Parties.

5.5 Any changes to the documents referred to in with this Section shall be subject to the approval of Grantor *[and the Authority]*.

For more information: See generally UNIDROIT & IFAD 2021, Section 3.88 (Suspensive and Resolutive Conditions), Section 2.20 (Investment Chain); Aizawa & Mann, 2021, p. 35 (Sequencing of Assessments, Approvals, and Licences and Permits).

6. Commitment Bond

6.1 The Company undertakes to provide and deliver to the Grantor, within 1 month from the Signature Date, an unconditional and irrevocable bank guarantee as security for the achievement of the Conditions Precedent (the Commitment Bond) that are the responsibility of the Company, which shall:

- (a) be in favour of the Grantor;
- (b) be issued by a bank acceptable to the Parties;
- (c) be valid until *[insert date]*;
- (d) be in the amount of *[insert amount and currency]*;
- (e) constitute an on-demand, unconditional, and irrevocable commitment to pay by the bank by which it is issued; and
- (f) be enforceable and drawable by the Grantor in the full amount if the Company does not achieve the Conditions Precedent by the Conditions Precedent Deadline.

6.2 Unless drawn upon by the Grantor in accordance with this Agreement, the Commitment Bond shall be returned to the Company upon:

- (a) completion of the Conditions Precedent by the Conditions Precedent Deadline; or
- (b) termination by the Company of this Agreement upon breach of this Agreement by the Grantor in accordance with Section [60](#).

7. Effective Date and Conditions Precedent Deadline

7.1 Each Party shall satisfy the Conditions Precedent that are under its responsibility or control as set out in Section [5](#), by no later than [\[6\]](#)/[\[12\]](#)/[\[insert other number based on a reasonable assessment of how long the conditions precedent will take the Company to achieve\]](#) months from the Signature Date (the Conditions Precedent Deadline.)

7.2 Extension of Conditions Precedent Deadline: If the Effective Date is not achieved by the Conditions Precedent Deadline because of a failure of the Company to have satisfied the Conditions Precedent for which it is responsible, despite using its best endeavours to fulfil such Conditions Precedent, then upon the reasonable request of the Company to the Grantor (providing all reasons for delay and an explanation of how the Company has used its best endeavours to mitigate such delay) the Grantor may, at its discretion, agree that the Conditions Precedent Deadline shall be equitably extended upon agreement between the Parties, provided that if the Effective Date is not achieved by [\[insert number\]](#) months after the Signature Date then:

- (a) the Grantor shall be entitled to terminate the Agreement; and
- (b) the Grantor shall be entitled to draw on the Commitment Bond in full.

7.3 If the Effective Date is not achieved by the Conditions Precedent Deadline because of a failure of the Company to have satisfied one or more Conditions Precedent for which it is responsible due to its own delay or default, then:

- (a) the Grantor shall be entitled to terminate the Agreement; and
- (b) the Grantor shall be entitled to draw on the Commitment Bond in full.

7.4 If the Effective Date is not achieved by the Conditions Precedent Deadline because of a failure of the Authority or the Grantor to have satisfied the Conditions Precedent for which it is responsible, then the Conditions Precedent Deadline shall be equitably extended upon agreement between the Parties; provided that, if the Effective Date is not achieved by the date that is [\[insert number\]](#) months after the Signature Date then:

- (a) any Party may terminate the Agreement;
- (b) no Party shall have a claim against another for costs, damages, compensation or otherwise; and
- (c) the Commitment Bond shall be returned to the Company.

8. Term

8.1 This Agreement shall remain effective for [\[insert number\]](#) years from the Effective Date, subject to the Applicable Law and the sections of this Agreement governing termination, periodic review, and renewal.

For more information: See generally, IISD, 2014, Section 5.1 (Term and Rights); ISLP & CCSI, 2016, Section 2.3 (Contract Term); Szoke-Burke 2018, Section 4 (Duration of the Contract and Potential for Renewal); UNIDROIT & IFAD, 2021, Section 4.47 (Chapter 4 Part D: Duration in General).

9. Representations, Warranties, and Undertakings

9.1 Entity Status: The Company warrants that it is a corporation duly organized, validly existing, and in good standing under the laws of the Host State.

9.2 No action, suit, proceeding, or investigation: The Company represents and warrants that as of the Signature Date there is no action, suit, investigation or pending proceeding, or to the Company's knowledge, threatened, against or affecting the Company or any property of the Company in any court or before any arbitrator of any kind or by any governmental authority that, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the ability of the Company to perform its obligations under this Agreement, or the validity and enforceability of this Agreement.

9.3 Technical capabilities and financial resources: The Company represents and warrants that it has the necessary technical capability, experience, expertise, human resources, and financial resources to implement the Project in accordance with the Approved Business Plan and to comply in all respects with its obligations under this Agreement.

9.4 No violation: Neither the Company nor any of its Affiliates has been determined under any order, judgment, decree, or ruling of any court, arbitrator or other governmental authority to be in material violation of (i) any law, ordinance, rule, or regulation of any government relating to the protection of the environment, human rights, or labour rights or (ii) any agreement pursuant to which it is entitled to perform activities similar in nature to the Project, under the laws of any government.

9.5 No corruption: The Company, any Affiliate of the Company, or its directors, officers, or employees have not offered, promised, given, authorized, solicited, or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Agreement and that it has taken reasonable measures to prevent subcontractors, agents, or any other third parties, subject to its control or determining influence, from doing so.⁹

For more information: See generally ISLP & CCSI, 2016, Section 2.9 (Representations and Warranties).

10. Permits, Licences, and Other Authorizations

10.1 From the Effective Date onwards, the Company shall obtain and maintain all Applicable Permits.

10.2 The Authority shall, upon request by the Company, make reasonable efforts to assist the Company to obtain an Applicable Permit, subject to the Company making a timely and complete

⁹ This is the International Chamber of Commerce Anti-corruption clause, lightly adapted. See <https://iccwbo.org/publication/icc-anti-corruption-clause/>. See generally Cotula, 2016, Section 5.4 (Anti-Corruption Measures); ISLP & CCSI, 2016, Section 2.15 (Anti-Bribery and Corruption).

application and paying any applicable fees. For greater certainty, this Agreement does not create any right of the Company to obtain any Applicable Permit.

10.3 Cancellation of any Applicable Permit due to a failure by the Company to comply with the terms and conditions of that Applicable Permit shall constitute a Material Breach for the purposes of Section [60](#).

For more information: See generally IISD, 2014, Section 5.1 (Term and Rights – Permits, Licenses and Other Authorization); UNIDROIT & IFAD, 2021, Section 4.146 (Permits and Licenses); Aizawa & Mann 2021, p. 35 (Sequencing of Assessments, Approvals, and Licences and Permits).

11. Feasibility Study

11.1 The Company or an Independent Expert engaged at the expense of the Company shall prepare a Feasibility Study including all elements provided for in Annex [A](#) and any additional elements as the Parties may agree.

11.2 The Feasibility Study shall be conducted in a Gender-Sensitive manner that considers how the abilities of people of different genders and social groups, including Indigenous Peoples, can be drawn on and developed to contribute to the Project’s technical success.

For more information: See generally IISD, 2014, Section 6.1 (Feasibility Study and Business Plan); Aizawa & Mann 2021, p.35 (Sequencing of Assessments, Approvals, and Licences and Permits).

12. Approved Business Plan and Annual Business Plan

12.1 The Company shall prepare a business plan based on the results of the Feasibility Study which shall include key milestones for the development of the Project Area.

12.2 Changes to the Approved Business Plan: Any changes to the business plan approved by the Authority in accordance with Section [5](#) (the Approved Business Plan) shall be subject to review and comment, but not approval or modification, by the Authority, except in the case of material alterations to the Approved Business Plan which shall be subject to the approval of the Authority.

12.3 Annual Business Plans: Within 45 days of the end of the fiscal year, for the duration of the term of this Agreement, the Company shall submit an updated business plan for the coming year which shall be based on the Approved Business Plan (the Annual Business Plan). All subsequent Annual Business Plans submitted by the Company shall be subject to review and comment, but not approval or modification, by the Authority, except where such Annual Business Plan constitutes a material alternation to the Approved Business Plan, which shall be subject to the approval of the Authority.

12.4 For greater certainty, the following shall constitute, inter alia, material alterations for the purposes of the Approved Business Plan and Annual Business Plan:

- (a) a change to the Product;
- (b) a change to the business plan in light of the results of any Supplemental Assessment carried out in accordance with Section [16.7](#)
- (c) *[insert other as appropriate for the Project]*.

12.5 The Company shall report annually on the status of the implementation of the Annual Business Plan and the achievement of the key milestones for the development of the Project Area contained therein no later than 45 days after the end of its fiscal period.

For more information: See generally IISD, 2014, Section 6.1 (Feasibility Study and Business Plan); UNIDROIT & IFAD 2021, Section 3.25 (Business Plans).

13. Environmental and Social Impact Assessment

13.1 In accordance with Section 5, the Company or an independent expert recognized as having expertise in agriculture and engaged by the Company at its own expense, shall prepare an Environmental and Social Impact Assessment (the ESIA) which shall:

- (a) Comply with the requirements of the [Applicable Law]/ [the International Financial Corporation's (IFC's) Performance Standard 1]/[the International Organization on Standardization's ISO 1400 standard for environmental management and the Social Impact Assessment Principles of the International Association for Impact Assessment];
- (b) establish a baseline of environmental conditions, climate parameters, and social and labour conditions, including of gender inequalities pertinent to all Legitimate Tenure Rights Holders, Indigenous Peoples, and members of the Local Community;
- (c) assess the Project-related environmental and social effects and impacts on all Legitimate Tenure Rights Holders, Indigenous Peoples, and the Local Community, including an assessment of impacts on the livelihoods of smallholder farmers as well as women and men of different ages, marital statuses, ethnicities, economic statuses, and other relevant identities; and
- (d) provide guidance as to how negative environmental and social impacts can be avoided or mitigated and how positive impacts can be achieved or enhanced.

For more information: See generally IISD, 2014, Section 6.2 (Impact Assessments and Management Plans); Cotula, 2016, Section 4.2 (Environmental and Social Impact Assessment); ISLP & CCSI, 2016, Section 2.12.1 (Environmental Impact Assessments and Management Plans); Szoke-Burke et al., 2018, Section 9 (Impact Assessments and Compensation for Known or Expected Damages); UNIDROIT & IFAD, 2021, Chapter 3, Part IV (Impact Assessments); Aizawa & Mann, 2021, p. 33 (The Role of the ESIA in Due Diligence).

14. Human Rights Due Diligence

14.1 In accordance with Section 5, an independent expert recognized as having expertise in human rights in the context of agriculture and engaged by the Company at its own expense shall prepare a Human Rights Due Diligence Report¹⁰ which shall:

- (a) be informed by the United Nations Guiding Principles on Business and Human Rights, in particular Foundational Principle 11 and Operational Principles 17 to 21;
- (b) identify actual or potential adverse impacts posed by the Project Operations or the business relationships of the Company and its Affiliates in respect of the human rights of Legitimate Tenure Rights Holders, Indigenous Peoples, the Local Community, Workers, [Contract Farmers] and any other person likely to be impacted by the Project;
- (c) identify, in a manner that is Gender-Sensitive, individuals or groups with a heightened risk of vulnerability or marginalization in light of any adverse human rights impacts identified;
- (d) Provide guidance as to how the Company should integrate the findings of the Human Rights Due Diligence Report into its relevant internal functions, processes, and policies to prevent, mitigate, and remediate any potential or actual human rights impacts identified;
- (e) Provide guidance to the Company in developing an appropriate tracking mechanism for the effectiveness of the Company's response to adverse human rights impacts, including the use of appropriate qualitative and quantitative indicators and the incorporation of external feedback; and
- (f) Provide recommendations to the Company on appropriate external communication and formal reporting of its human rights impacts.

For more information: See generally the United Nations. (2011). *Guiding principles on business and human rights: Implementing the United Nations "protect, respect and remedy" framework*. <https://www.ohchr.org/en/publications/reference-publications/guiding-principles-business-and-human-rights>

15. Climate Change Risk and Vulnerability Assessment

15.1 In accordance with Section 5, the Company or an independent expert recognized as having expertise in agriculture and climate change engaged by the Company at its own expense, shall prepare a Climate Change Risk and Vulnerability Assessment (the Climate Change Assessment), which shall comply with the requirements of the [Applicable Law] /*[insert any other applicable standard for Climate Change Risk and Vulnerability Assessments]*.

15.2 The Climate Change Assessment shall identify:

- (a) Climatic hazards relevant to the Project including projected changes in climatic conditions and how they are likely to potentially affect people of all genders and social groups, including

¹⁰ Projects proposed to operate in situations of high human rights risk, such as contexts affected by civil unrest, internal displacement, and conflict, will warrant a full human rights impact assessment (HRIA). For further resources on HRIsAs see Oxfam International. (2023). *Human rights impact assessment framework*. <https://policy-practice.oxfam.org/resources/human-rights-impact-assessment-framework-621501/> and the Danish Institute for Human Rights. (2020). *Human rights impact assessment guidance and toolbox*. <https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox>

Legitimate Tenure Rights Holders, Indigenous Peoples, the Local Community, Workers, [Contract Farmers] and any other person likely to be impacted by the Project;

- (b) potentially affected Project assets and infrastructure;
- (c) the likelihood of the identified climatic hazards occurring and the resulting consequences of the climate change impacts; and
- (d) the exposure and sensitivity, and adaptive capacity of potentially affected people of all genders and social groups, and potentially affected assets and infrastructure, to the climate change impacts identified.

16. Environmental and Social Management Plan

16.1 The Company or an independent expert recognized as having expertise in agriculture engaged by the Company at its own expense shall prepare an Environmental and Social Management Plan (the ESMP) designed to mitigate negative impacts and achieve or enhance positive impacts identified by the ESIA, Human Rights Due Diligence Report, and the Climate Change Assessment, and which shall:

- (a) comply with the requirements of the [Applicable Law]/[International Financial Corporation's (IFC's) Performance Standard 1 and the International Organization on Standardization's ISO 1400 standard for environmental management and the Social Impact Assessment Principles of the International Association for Impact Assessment];
- (b) include all elements provided for in Annex B and any additional elements as the Parties may agree; and
- (c) be reviewed annually in consultation with all Legitimate Tenure Rights Holders, Indigenous Peoples and members of the Local Community and revised as necessary in light of:
 - (i) any material alteration to the Approved Business Plan or Annual Business Plan that may introduce new or heightened environmental, social or human rights risks;
 - (ii) any new reports, predictions, or recommendations made by the Intergovernmental Panel on Climate Change; or
 - (iii) *[insert other trigger events for revising the ESMP, as relevant to the project context]*.

16.2 Transparency, independence, inclusiveness, and verification: Each of the ESIA, Human Rights Due Diligence Report and Climate Change Assessment shall:

- (a) be based on independently verifiable data;
- (b) include a mechanism for the appeal and review of its findings;
- (c) provide for the active, free, effective, and meaningful participation of Legitimate Tenure Rights Holders, Indigenous Peoples, the Local Community, Workers, [Contract Farmers] and any other person likely to be impacted by the Project;
- (d) be made publicly available in a language and format that is accessible to Legitimate Tenure Rights Holders, Indigenous Peoples, the Local Community, Workers, [Contract Farmers], and any other person likely to be impacted by the Project and accompanied by a plain language summary of no more than *[insert number]* pages in length; and,
- (e) *[insert any special measures necessary to ensure accessibility to people of all genders and social groups.]*

16.3 The Authority reserves the right to submit the ESIA, Human Rights Due Diligence Report and Climate Change Assessment to an appropriately qualified independent expert or panel of experts for verification and review prior to approval by the Authority in accordance with Section 5.2. Such expert review shall be conducted at the expense of [the Company]/[the Authority]/[each Party whereby the Authority contributes [insert amount]%) and the Company contributes [insert amount]%).

16.4 The Company shall report annually on the implementation of the ESMP and Human Rights Due Diligence Report in accordance with Section 5.5, including a description as to how each has been implemented so as to equitably benefit persons from all genders and social groups, including Indigenous Peoples.

16.5 Supplemental impact assessments: The Authority reserves the right to require the Company to carry out and submit for approval one or more additional human rights impact assessments, environmental and social impact assessments and/or climate change risk and vulnerability assessments (a Supplemental Assessment) in the event of a material and unforeseen change to the human rights risks, environmental and social impacts of the Project or the overall operating environment of the Project during the term of this Agreement.

16.6 The cost of any Supplemental Assessment shall be borne equally between the Parties.

16.7 In light of any Supplemental Assessment, the Company shall review and, if necessary, revise:

- (a) the ESMP;
- (b) the Approved Business Plan;
- (c) the Annual Business Plan; and
- (d) the Company's internal functions, processes, and policies for the prevention, mitigation, and remediation of human rights impacts.

16.8 Any revisions to the documents referred to in paragraphs (a) to (c) above shall be submitted to the Authority for review and comment, but not approval or modification, by the Authority, except in the case of material alterations where the Authority has valid grounds for objecting to the alteration.

17. Applicability of Host State Law

17.1 The Company and all Project Operations shall be subject to the Applicable Law as in effect and amended from time to time, including with respect to labour, human rights, the environment, health and safety, and taxation.

17.2 To the extent of any inconsistency between this Agreement and the Applicable Law, the Applicable Law shall prevail.

17.3 For greater certainty, no omission or reference with respect to the Applicable Law in this Agreement shall be construed to limit in any way the applicability of the Applicable Law.

For more information: See generally ISLP & CCSI, 2016, Section 2.27 (Governing Law); Szoke-Burke et al., 2018, Section 16 (Governing Law); Aizawa & Mann, 2021, Section 5.4 (Applicable Law).

Chapter 2A: Project Operations | Land and Infrastructure Provisions

18. Grant of Rights

18.1 The Grantor hereby grants to the Company access to and use of the Project Area, subject to the Applicable Law and the terms of this Agreement, including the rights to:

- (a) engage in the production [and processing] of [*insert description of intended crops/livestock/aquaculture/forestry or other agricultural products*] (the Product);
- (b) transport, market, sell, and export the Product in the Host State and internationally, subject to the Applicable Law/[and subject to any domestic market access limitations in force in the Host State to protect the interests of local producers]/[and subject to any trade-related measures affecting agriculture and agri-food products in force in the Host State to ensure domestic food security]/[and subject to the requirement that the Company make available [*insert number*]% of annual production for purchase in the Host State]; and
- (c) source and, where necessary, construct facilities, import equipment, materials, and inputs required for the implementation of the Project, subject to import duties, taxes, and fees as provided for in the Applicable Law relating to taxation.

For more information: See generally IISD, 2014, Section 5.1 (Term and Rights); ISLP & CCSI, 2016, Section 2.5 (Rights Granted and Obligations Imposed); UNIDROIT & IFAD, 2021, Chapter 4, part B: Tenure and Related Rights).

19. Rent

19.1 The Company shall pay to the Grantor an annual surface rental fee of [*insert currency and amount*] per hectare of land included in the Project Area (the Rental Amount), on or before [*insert date*] date each year.

19.2 Interest for late payment of the Rental Amount shall be accrued at a rate of [*insert figure*] % per day, which shall compound.

19.3 The Parties shall meet every [*insert number of years*]/[*insert other frequency*] following the Effective Date to conduct a joint periodic review of the Rental Amount and to negotiate in good faith any necessary adjustments to the Rental Amount to take into account any currency fluctuations, substantial changes to the operating costs of the Project, or other relevant changes to the economic circumstances affecting the Project.

19.4 Where the Parties cannot agree as to necessary adjustments to the Rental Amount, the Parties shall refer the matter to an Independent Expert for final determination in accordance with Section 61.

For more information: See generally IISD, 2014, Section 7.1 (Rent and Royalties); ISLP & CCSI, 2016, Section 2.11 (Rental Fees, Taxes, and Other Payments); UNIDROIT & IFAD 2021, Chapter 3, Part A (Monetary Contributions).

20. Project Map

20.1 The Grantor shall prepare a Project Map showing:

- (a) the total area of land that constitutes the Project Area identified using global positioning system (GPS) coordinates;
- (b) any land adjacent to the Project Area (the Additional Land) that may be made available to the Company in accordance with Section 22;
- (c) any features on the Project Area, including forested areas, sites of cultural significance to Indigenous Peoples or other individuals and groups, and any other protected areas, that the Company must leave intact;
- (d) any restrictions on the Project activities close to streams, rivers, and other natural resources; and
- (e) any use of the Project Area by women and men who are Legitimate Tenure Rights Holders, Indigenous Peoples, or members of the Local Community for their livelihoods or regular agricultural or other activities.

20.2 The Grantor shall consult women and men who are Legitimate Tenure Rights Holders during the development of the Project Map and shall seek their approval of the final version of the Project Map.

20.3 Demarcation of Project Area: within [*insert number*] days from the Signature Date, the Company shall demarcate the Project Area in accordance with the Project Map using clearly observable physical markers.

20.4 Breach of Project Map boundaries: The Company shall ensure that the Project Operations remain at all times within the Project Area as defined in the Project Map.

20.5 Where Project Operations take place outside of the boundaries of the Project Area as defined in the Project Map:

- (a) The Company shall be liable to pay an additional annual rental fee of [*insert currency and amount*] per hectare of land outside the Project Area where Project Operations have occurred; and
- (b) The Grantor shall consult women and men who are Legitimate Tenure Rights Holders to determine whether the Company shall be required to return the Project Operations to the boundaries of the Project Area as defined in the Project Map, or whether the Company shall be entitled to seek to incorporate the land outside the Project Area where Project Operations have occurred into the Project Area using, *mutatis mutandis*, the procedures set out in Section 22 below.

For more information: See generally IISD, 2014, Section 5.1 (Term and Rights – Geographical Boundaries); Szoke-Burke et al., 2018, Section 5 (Description and Demarcation of the Land Area Required); UNIDROIT & IFAD 2021, Chapter 4, Part A (Identification of the Land).

21. Limitations to Tenure Rights

21.1 The grant of tenure rights to the Company under this Agreement shall not include any right to explore for, develop, or grant rights to any other Person in relation to any subsoil resources within the

Project Area, such as minerals, metals, quarry stone, petroleum, natural gas, shale gas, and other resources.

21.2 The Company shall preserve all forested areas marked on the Project Map, and shall not harvest, fell, or remove any trees in those areas without the permission in writing of the Grantor.

21.3 The Company shall ensure that Legitimate Tenure Rights Holders and members of the Local Community have access to and free use of:

- (a) forested areas used for the purposes of food and livelihood security;
- (b) roads in the Project Area and trails across the Project Area;
- (c) water resources in accordance with Section [41.6](#);
- (d) infrastructure in accordance with Section [25.1](#);
- (e) Essential Utilities in accordance with Section [26.1](#); and
- (f) *[insert other usage rights to be carved out from the lease of land to the Company]*.

21.4 Notwithstanding Section [21.3](#) above, subject to the Applicable Law and with the prior approval of the Grantor, the Company may restrict access to the Project Area to the extent reasonably required to ensure:

- (a) the safety of its Workers and/or the security of its assets; and
- (b) that Project Operations are not prevented or unduly impeded.

21.5 Neither the Company nor the Grantor shall be entitled to sub-let, grant any rights of occupation or use over, or otherwise encumber any part of the Project Area, except as provided for in this Agreement, or:

- (a) where such sub-let, occupation, use or encumbrance is for purposes related to the Project, and
- (b) with the prior written approval of the other *[Party]/[Parties]*, which shall not be unreasonably withheld or delayed.

Fore more information: See generally IISD, 2014, Section 5.2 (Exclusion of Mineral Rights); ISLP & CCSI, 2016, Section 2.5 (Rights Granted and Obligations Imposed); Szoke-Burke et al., 2018, Section 6 (Parties' Rights in and Near the Project Area); UNIDROIT & IFAD, 2021, Section 415 (Rights to Other Resources), 4.16 (Resources Above Ground), 4.17 (Resources Below Ground), 4.19 (Rights Withheld).

22. Option for Additional Land

22.1 The Company shall have an option to expand the Project Operations over the Additional Land which may be exercised as follows:

- (a) No sooner than *[insert number]* *[months]/[years]* after the Effective Date, if the Company intends to exercise its option to expand the Project Operations over all or part of the Additional Land, it shall provide Notice in writing to the Grantor which shall include:
 - (i) a copy of the Project Map indicating the part or parts of the Additional Land which the Company wishes to put to use for the purposes of the Project;
 - (ii) a precise description of the use to which the Company wishes to put the Additional Land;

- (iii) a written report of consultations which the Company has held with Legitimate Tenure Right Holders, Indigenous Peoples, and members of the Local Community in respect of the Additional Land, evidencing Free, Prior and Informed Consent of individuals and groups; and
 - (iv) a written report describing the progress of implementation of the Project and the status of any outstanding obligations or key milestones provided for in this Agreement and the Approved Business Plan.
- (b) The Grantor shall provide a response to the Company within [insert number] days of the receipt of Notice which conforms to the requirements set out in paragraph (a) above.
 - (c) Where the Grantor approves the Company's option to expand the Project Operations over the Additional Land, the Parties shall revise the Project Map and make any consequential variations to the terms of this Agreement in writing in accordance with Section 68.5, upon which the Additional Land shall be incorporated into the Project Area and subject to the terms of this Agreement.
 - (d) Where the Grantor does not approve the Company's option to expand the Project Operations over the Additional Land or where the Company does not seek to exercise its option within [insert number] years from the Effective Date, the option shall be extinguished, and the Grantor may dispose of the Additional Land in accordance with the Applicable Law and subject to the rights of the Legitimate Tenure Rights Holders.
 - (e) Where the Company exercises its option to expand the Project over part of the Additional Land only, the Grantor may dispose of the remainder of the Additional Land in accordance with the Applicable Law and subject to the rights of the Legitimate Tenure Rights Holders.

For more information: See generally Szoke-Burke et al., 2018, Section 5 (Description and Demarcation of the Land Area Required); UNIDROIT & IFAD, 2021, Section 48 (Additional Land), 4.9 (Option Clause).

23. Preference Clause

23.1 Where land adjacent to the Project Area that is not demarcated as Additional Land in the Project Map becomes available during the term of this Agreement with the Free, Prior and Informed consent of all Legitimate Tenure Rights Holders in respect of that land, the Company shall have right of first refusal to incorporate the land into the Project Area and under the terms of this Agreement, subject to any consequential variations to this Agreement deemed necessary by the Parties and made in writing in accordance with Section 68.5.

For more information: See generally UNIDROIT & IFAD, 2021, Section 48 (Additional Land), 4.9 (Option Clause), 4.10 (Preference Clause).

24. Failure to Develop

24.1 Where the Company fails to develop the Project Area in accordance with the milestones established in the Approved Business Plan (a Failure to Develop), the Grantor shall provide Notice to the Company of such failure and shall offer the Company a fair opportunity to consult with the Grantor [and the Authority] to resolve the matter.

24.2 Within sixty (60) days following receipt of Notice, the Company shall provide the Grantor [and the Authority] with a plan to cure the Failure to Develop in a timely fashion.

24.3 If at the end of such sixty (60) day period, the Grantor is of the reasonable opinion that the Company cannot or will not cure the Failure to Develop, then the Grantor shall have power to re-enter the undeveloped portions of the Project Area in accordance with the applicable law, and the project area shall thereupon be revised accordingly.

24.4 Section [24.3](#) shall not apply where the company's failure to develop the project area is due to:

- (a) the fact that all or part of the Project Area is encumbered in such a way as to prevent the Company from meeting the milestones established in the Approved Business Plan;
- (b) any act, omission, or default of the Grantor [and/or Authority] and/or;
- (c) a Force Majeure Event.

24.5 A Failure to Develop shall not constitute a Material Breach for the purposes of Section [60](#) **Error! Reference source not found.** and the sole remedy available to the Grantor shall be that provided for in this Section or otherwise under the Applicable Law.

For more information: See generally UNIDROIT & IFAD, 2021, Chapter 4, Part C (Project Development).

25. Infrastructure

25.1 Existing infrastructure: The Company shall be entitled to access and use all existing public infrastructure on or adjacent to the Project Area (the Public Infrastructure), subject to:

- (a) the payment of any access fees or commercial usage rates as provided for in the Applicable Law;
- (b) any general conditions of use or restrictions imposed by any Applicable Permit;
- (c) the existing rights of use and access of other users of the Public Infrastructure; and
- (d) *[insert any specific restrictions and conditions of use for the Public Infrastructure, for example, maximum weight on trucks on specific roads etc.]*;

25.2 Upgrades or improvements: Where upgrades or improvements may be required to the Public Infrastructure for the purposes of the timely and efficient implementation of the Project, the Company shall provide Notice in writing to the Grantor and the Authority detailing the nature of such upgrades or improvements. The Parties shall, [as soon as practicable]/[within [insert number] days from the date of the Notice], meet to discuss in good faith:

- (a) the necessity and extent of such upgrades or improvements;
- (b) the timeframe within which any such upgrades or improvements shall be carried out;
- (c) the Party or Parties which shall bear the responsibility for carrying out such upgrades or improvements; and
- (d) the Party or Parties which shall bear the responsibility for paying for such upgrades or improvements.

25.3 Rights regarding new infrastructure: The Company shall be entitled to construct and install infrastructure, buildings, machinery, residences, amenities, and other facilities within the Project Area for the use of the Company, its contractors, agents, and its Workers and Dependents (the New Infrastructure), subject to:

- (a) the receipt of any Applicable Permit; and
- (b) the terms of the Approved Business Plan.

25.4 [In constructing and installing New Infrastructure in accordance with this Section, preference shall be given to the use of locally procured construction materials, equipment, and products where available in sufficient quantities and of sufficient quality.]/[The Company shall use locally procured construction materials, equipment and products for the construction and installation of New Infrastructure in accordance with this Section, as set out in the schedule of locally available materials, equipment and products contained in Annex [X].]

25.5 The cost of such construction and installation shall be [borne by the Company]/[borne by the Authority]/jointly borne by the Parties in such proportions and through such co-ownership structure as set out in Annex [X].]

25.6 Repairs to and maintenance of New Infrastructure shall be conducted by the [Company]/[Authority] at the expense of [the Company]/[the Authority]/[each Party whereby the Authority contributes [insert]% and the Company contributes [insert]%]. Such repairs and maintenance shall be conducted in a regular and timely fashion as is necessary to ensure the ongoing function and effective use of the New Infrastructure for the purposes of the Project.

25.7 The Company shall ensure that [sufficient numbers of] /*[insert precise number]* Citizens and Residents are adequately trained in all aspects of the operation, maintenance, and repair of any New Infrastructure. Such training shall be conducted by the Company at the expense of the [Company]/[Authority]/[jointly borne by the Parties whereby the Authority contributes *[insert amount]*% and the Company contributes *[insert amount]*%].

25.8 The Company shall ensure the rights of all [Legitimate Tenure Rights Holders]/[members of the Local Community]/*[insert and define other user-specific groups, e.g., local smallholder farmers]* to access and use any New Infrastructure, subject to:

- (a) such reasonable restrictions as the Company may impose in the interest of the safety of its Workers and the security of its assets;
- (b) such reasonable restrictions as the Company may impose to ensure that such access and use does not materially interfere with Project Operations;
- (c) [the imposition of reasonable usage fees as approved by the Authority.]

25.9 For the duration of this Agreement, any New Infrastructure shall [remain the property of the Company]/[remain the property of the Authority]/[be jointly owned by the Parties through a co-ownership structure as set out in Annex [X]] after which time it shall be disposed of in accordance with Section 66.

25.10 The Authority reserves the right to construct infrastructure within the Project Area at any time. If the Authority intends to construct infrastructure within the Project Area, it shall first provide Notice to the Company and shall ensure that the installation, construction, and use of such infrastructure does not unreasonably or materially interfere with Project Operations or other rights or obligations of the Company.

For more information: See generally ISLP & CCSI, 2016, Section 2.7 (Infrastructure); UNIDROIT & IFAD, 2021, Chapter 4, Part B, Section 2 (Access to Facilities and Utilities).

26. Essential Utilities

26.1 The Company shall be entitled to access and use the existing public water distribution network, electricity distribution network, and waste management system which serves the Project Area (the Essential Utilities), and to construct and install passageways, pipes, pump systems, or other equipment necessary to connect the Project Area to those Essential Utilities, or optimize operations of the Project in accordance with the Feasibility Study and ESIA subject to:

- (a) the payment of any access fees or commercial usage rates for the Essential Utilities as provided for in the Applicable Law;
- (b) any general conditions of use or restrictions imposed by any Applicable Permit;
- (c) the existing rights of use and access of other users of the Essential Utilities; and
- (d) *[insert any specific restrictions and conditions of use for the Essential Utilities]*.

26.2 The Company shall *[where feasible]* procure renewably generated electricity for use by the Project.

26.3 Where access to adjoining land outside the Project Area is necessary to connect the Project Area to Essential Utilities, the Authority shall provide reasonable assistance and facilitation to enable the Company to obtain such access.

26.4 Where upgrades or improvements to the Essential Utilities are required for the timely and efficient implementation of the Project, Section [25.2](#) shall apply *mutatis mutandis*.

For more information: UNIDROIT & IFAD, 2021, Chapter 4, Part B, Section 2 (Access to Facilities and Utilities).

Chapter 2B: Social, Labour, and Livelihood Provisions

27. Human Rights

27.1 The Parties each commit themselves to the respect, protection and promotion of the human rights of all Legitimate Tenure Rights Holders, Indigenous Peoples, the Local Community, Workers, [Contract Farmers] and any other person likely to be impacted by the Project in the implementation of the Project and in the provision of any additional goods or services incidental to this Project provided for under this Agreement, including those relating to health, labour, education, and childcare.

27.2 The Company shall ensure that its operational policies integrate and reflect its responsibility to respect human rights and have the objective of preventing, mitigating, and remediating any potential or actual negative human rights impact.

For more information: See generally Office of the United Nations High Commissioner for Human Rights (OHCHR). (2015). Principles for responsible contracts integrating the management of human rights risks into state–investor contract negotiations: Guidance for negotiators. https://www.ohchr.org/sites/default/files/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf, Principle 5 (Additional Goods or Service Provision); Aizawa & Mann 2021, Section 4.6 (Project Must Respect Human Rights).

28. Employment

28.1 Job targets: The Company envisages that the Project will generate the following positions (the Job Targets):

- (a) [insert number] unskilled permanent positions, of which [insert number]% shall be held by women;
- (b) [insert number] unskilled seasonal positions, of which [insert number] % shall be held by women; and,
- (c) [insert number] financial, accounting, technical, administrative, supervisory, and senior management positions and other skilled positions (Skilled Positions), of which [insert number]% shall be held by women.

28.2 The Company shall use its best endeavours to achieve the Job Targets.

28.3 One year after the Effective Date, if the Company has failed to achieve any one of the Job Targets, the Parties [and representatives of the Legitimate Tenure Rights Holder and Local Community] shall meet to discuss the reasons for the failure and to negotiate in good faith any necessary variations to the Agreement, including but not limited to:

- (a) increases to the Rental Amount;
- (b) variations to the Company's obligations under Section 29;
- (c) revisions to the Job Targets;

- (d) additional obligations regarding any new technology that has impacted the achievement of the Job Targets, including a requirement that the Company provide specialized training and skills development in respect of that technology; and
- (e) *[insert other as appropriate]*

28.4 Where the Parties cannot agree as to any necessary variations in accordance with paragraph 28.3, the Parties shall refer the matter to an Independent Expert for final determination in accordance with Section 61.

28.5 Access to employment: the Company shall hire only *[members of the Local Community]/[Citizens]/[Residents]* for unskilled positions.

28.6 The Company shall provide equitable access to employment for women and men, and shall take all reasonable measures to facilitate women's access to work at the Project Area including:

- (a) providing transportation from the local residential areas to the Project Area;
- (b) providing *[free]/[low-cost]* childcare to Workers with children younger than school age, and for children of school age outside of school hours; and
- (c) *[insert other as appropriate for the Project]*.

28.7 The Company shall give preference to qualified *[members of the Local Community]/[Citizens]/[Residents]*, and in particular to women, for employment in Skilled Positions, it being the objective of the Parties that the operations and activities of the Company under this Agreement should be conducted and managed primarily by *[members of the Local Community]/[Citizens]/[Residents]*.

28.8 The Company shall ensure that *[members of the Local Community]/[Citizens]/[Residents]* hold at least *[insert]*% of all management positions within *[insert]* years of the Effective Date and at least *[insert]*% of such positions within *[insert]* years of the Effective Date.

28.9 Succession plan:¹¹ For each management position held by a Worker who is not a Citizen or Resident, the Company shall prepare and submit to the Authority a plan for transitioning that position to be held by a Citizen or Resident (a Succession Plan).

28.10 The Succession Plan shall include, where necessary, provision for on-the-job mentorship by the incumbent in the position of a Citizen or Resident who shall take over the position. The Authority may, at its discretion, transmit the Succession Plan to the immigration authorities for their consideration in reviewing any application for immigration permits made by the Company.

28.11 Subject to this Section, the Company shall be entitled to freely choose its senior management *[and the Authority shall facilitate such Persons to obtain the necessary immigration approvals and permits for themselves, their spouses, and Dependents]* in accordance with the Applicable Law.

28.12 The Company shall report annually on its compliance with this Section, using Gender-Disaggregated Data, indicating:

- (a) the status of the Company's achievement of the Job Targets;

¹¹ Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), (2018). *Guidance for governments – Local content policies*. Section 5.2.3.1.

- (b) the number of unskilled positions and Skilled Positions held by [members of the Local Community]/[Citizens]/[Residents];
- (c) the percentage of senior management positions held by [members of the Local Community]/[Citizens]/[Residents]; and
- (d) the measures taken by the Company to facilitate women's access to jobs and to ensure equal pay for equal work.

For more information: See generally IISD, 2014, Section 8.1 (Employment); ISLP & CCSI, 2016, Section 2.13.3 (Local Employment and Local Procurement); Szoke-Burke et al., 2018, Section 8 (Employment Creation, Training, and Scholarships); Aizawa & Mann, 2021, Section 4.4 (Maximise Opportunities for Local Economic and Social Development); UNIDROIT & IFAD, 2021, Chapter 4, Part B (Employment Creation, Access to Jobs and Labour Rights).

29. Training and Skills Development

29.1 In order to meet the objectives of Section 28, the Company shall:

- (a) develop and implement on-the-job training for [Members of the Local Community]/[Citizens]/[Residents], to enable them to qualify for Skilled Positions, including programs for women adapted to their needs;
- (b) provide a total of [insert amount and currency] annually in scholarships for [Members of the Local Community]/[Citizens]/[Residents] through a program to be administered by the Company, and establish a quota for women and girl scholarship recipients;
- (c) provide [insert amount and currency] annually in support to the [nominate a relevant national research or academic institution] setting aside [insert amount]% for research and academic training for women and girls;
- (d) deliver or contract to deliver adult literacy (including digital literacy) and basic education programs for Workers, separately for women and men upon request;
- (e) deliver or contract to deliver social and economic education programs for Workers on topics such as HIV/AIDS awareness, household nutrition, managing personal finances, adapted separately to the needs of women and men; and
- (f) [insert other as appropriate for the Project]

29.2 The Company shall prepare a detailed Training and Skills Development Plan including:

- (a) a description of how the Company intends to meet each of its obligations in paragraph 29.1;
- (b) provisional training schedules, content, and curricula;
- (c) an indication of the amount of funding committed to the delivery of the Training and Skills Development Plan; and
- (d) any other information as the Authority may reasonably request.

29.3 The Company shall submit the Training and Skills Development Plan to the Authority no later than [insert number] months from the Effective Date. The Training and Skills Development Plan submitted by the Company shall be subject to review, comment, and request for modification by the Authority.

29.4 The Company shall report annually on its progress in implementing the Training and Skills Development Plan, detailing outcomes separately for women and for men, and notifying the Authority of any challenges to implementation and necessary adjustments to the Training and Skills Development Plan.

For more information: See generally IISD, 2014, Section 8.1.2 (Training and Skills Development); Aizawa & Mann, 2021, Section 4.4 (Maximise Opportunities for Local Economic and Social Development).

30. Labour Standards

30.1 The Company, its Affiliates, contractors, and subcontractors shall follow Good Agricultural Practices and internationally recognized labour standards enshrined in the International Labour Organization agreements or any other international agreement to which the Government of the Host State is or becomes a party, and shall respect as provided therein the right of its Workers to organize.

30.2 The Company, its Affiliates, contractors, and subcontractors shall not use forced labour, or child labour [as defined in the Applicable Law on labour], or employ a child in any manner that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

30.3 The Company shall adopt a health and safety management system that shall meet or exceed IFC Performance Standard 2 and the World Bank Group Environmental, Health and Safety (EHS) Guidelines.

30.4 The Company shall provide a legally binding written contract of employment stipulating at a minimum a job description, working hours, and rate of pay to all Workers, including temporary Workers engaged for 7 days or more.

30.5 For all Workers engaged for at least 3 months in the year, the Company shall provide [insert number] days of sick leave, which shall apply to the needs of women to attend medical appointments related to pregnancy or other reproductive health matters.

30.6 The Company shall provide paid maternity leave [in accordance with the Applicable Law]/[for a minimum duration of 14 weeks¹² and at a minimum of two-thirds pay].

For more information: See generally IISD, 2014, Section 8.1.3 (Labour Standards); IFC Performance Standard 2 (Labour and Working Conditions); ISLP & CCSI, 2016, Section 2.13.4 (Labor, Health and Safety); Cotula, 2016, Section 4.4 (Labour Rights); Aizawa & Mann, 2021, Section 4.3 (Manage Negative and Positive Environmental and Social Impacts); UNIDROIT & IFAD, 2021, Chapter 4, Part II.B (Employment Creation, Access to Jobs and Labour Rights).

31. Non-Discrimination in Labour Practices

31.1 The Company shall not engage in or support discrimination in hiring, remuneration, access to training, promotion, termination, or retirement based on race, national or social origin, caste, birth,

¹² Convention No. 183 Convention Concerning the Revision of the Maternity Protection Convention (Revised), 1952, Article 4.

religion, disability, gender identity, family responsibilities, marital status, HIV/AIDS status, pregnancy, union membership, political opinions, or age.

31.2 The Company shall develop and implement a policy prohibiting such forms of discrimination referred to in paragraph 0 and outlining fair disciplinary measures to be taken against any Worker or manager found to engage in such practices.

31.3 The Company shall not engage in testing for pregnancy or HIV/AIDS status when hiring.

31.4 The Company shall not dismiss any woman for becoming pregnant or for taking or requiring maternity leave.

31.5 The Company shall provide at least two daily breaks for breastfeeding mothers for up to 1 year after the birth of a child.

31.6 The Company shall put in place a policy to prevent, mitigate, and sanction Sexual Harassment, Sexual Exploitation, and Sexual Abuse of and by its Workers.

31.7 The Company shall appoint a female ombudsman or female senior manager to receive Sexual Harassment grievances put forth by women and direct them to managers with disciplinary authority, ensuring that the identity of the survivor is not disclosed and her safety is guaranteed.

For more information: Convention No. 183 Convention Concerning the Revision of the Maternity Protection Convention (Revised), 1952, Article 4.

32. Health and Safety

32.1 For the purposes of this Agreement:

- (a) “Sexual exploitation” means any actual or attempted abuse of a position of vulnerability, differential power or trust for sexual purposes, including, but not limited to, profiting monetarily, socially, or politically from the sexual exploitation of another.¹³
- (b) “Sexual abuse” means actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.¹⁴
- (c) “Sexual harassment” means any unwelcome sexual advances, request for sexual favours, and other verbal or physical conduct of a sexual nature.

32.2 Health and safety standards and equipment: The Company shall comply with the Applicable Law and observe Good Industry Practice for the protection of the general health and safety of its Workers, other persons contracted by the Company on the Project Area, and all other persons near the Project Area whose health and safety are affected by Project activities, including women and children being subjected to sexual violence, in line with or exceeding IFC Performance Standard 4.

¹³ United Nations. (2017). *Glossary on sexual exploitation and abuse*, p. 6.
https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5Bsecond%20Edition%20-%202017%5D%20-%20English_0.pdf

¹⁴ United Nations, 2017, p. 5.

32.3 The Company shall install and use such recognized modern safety devices and equipment and observe such recognized modern safety precautions as are provided for under Applicable Law and observed under Good Industry Practice.

32.4 Workers shall have the right to recuse themselves from tasks they consider dangerous to their safety or health, including risks faced by pregnant or nursing mothers to the health of their unborn or newly born children, without risk or fear of punishment or retaliation.

32.5 The Company shall provide separate toilets, changing rooms, and showers for women and men. The Company shall provide separate rest areas for women and men if requested by Workers.

32.6 Pregnant and nursing women shall not engage in, nor shall they be asked to engage in hazardous or arduous work, such as handling chemicals and heavy lifting.

32.7 Health and safety training, awareness, and reporting: The Company shall train its Workers in accordance with Applicable Law and generally accepted health and safety procedures and practices, including those associated with the management of chemicals, pesticides, and fertilizers and the operation of agricultural machinery, equipment, and infrastructure, and the provision of first aid.

32.8 The Company shall produce an annual health and safety report documenting, separately for women and men, health and safety trainings conducted, accidents and injuries in the workplace, complaints received from Workers, and actions taken by management in response to Worker accidents, injuries, and complaints.

32.9 The Company shall clearly indicate workplace hazards, safety guidelines, and hygiene requirements with signage in the languages spoken by Workers and including pictograms wherever possible to ensure accessibility for Workers with low literacy.

32.10 Health and safety committee: The Company shall facilitate the creation by Workers of a health and safety committee, to have equitable representation of women and men, and to serve as mechanism for communicating Workers' concerns and complaints about workplace safety and health to senior management. The health and safety committee shall be co-headed by one male and one female health and safety officer.

32.11 Emergency Preparedness Plan: The Company shall prepare for submission to the Grantor [and the Authority], in consultation with the Local Community and local authorities, an emergency preparedness plan to respond to climate change-related extreme weather events and other emergencies at or near the Project Area, including:

- (a) a clear identification of the emergency response measures that are the responsibility of the Company in times of emergency, such as early warning and evacuation;
- (b) a clear identification of lines of communication between the Company, Local Community, and local authorities during times of emergency; and
- (c) a communication and outreach strategy to convey the emergency preparedness plan to the Local Community and local authorities.

For more information: See generally IISD, 2014, Section 8.1.4 (Health and Safety); ISLP & CCSI, 2016, Section 2.13.4 (Labor, Health and Safety); Aizawa & Mann, 2021, Section 4.5 (Anticipate and Manage Climate Change Risks).

33. Clean Water and Secure Housing

33.1 The Company shall ensure a regular supply of clean and safe drinking water, to the standard provided for in the Applicable Law or exceeding that standard, for its Workers, and their spouses and Dependents if they reside at the Project Area, and shall ensure that:

- (a) all Workers' residential facilities within the Project Area are supplied on a regular basis with clean and safe drinking water;
- (b) all common water sources are easily accessible from the Workers' residential facilities within the Project Area; and
- (c) Workers and their spouses are provided with equipment to facilitate carrying and storing water, if supplied from a common source.

33.2 The Company shall provide secure, safe, and suitable residential facilities for women and men Workers, including secure tenure, adequate sanitation, including indoor bathrooms, energy for cooking, heating, lighting, food storage and waste disposal, and safe areas for children's recreation.

33.3 The Company shall ensure that all public spaces and shared sanitation facilities are well-lit, secure, and safe.

33.4 The construction of residential facilities shall be subject to Section [25.30](#).

For more information: See generally IISD, 2014, Section 8.1.5 (Clean Water) and 8.1.6 (Housing).

34. Health and Medical Care

34.1 The Company shall construct, maintain, and operate a [hospital]/[clinic]/[health center]/[insert other health or medical facility] to serve Workers and their Dependents [and the Local Community], using modern health devices and equipment and practising modern health procedures and precautions, in accordance with Applicable Law and accepted international medical standards.

34.2 The Company shall provide, free of charge:

- (a) annual medical examinations at the Project Area to Workers [and members of the Local Community];
- (b) medical treatment on demand to Workers suffering a work-related accident, injury, or illness; and
- (c) regular medical examinations to pregnant and nursing mothers and their children under the age of 5 who are [Dependents of Workers]/[Members of the Local Community].

34.3 The Company shall facilitate Workers and their Dependents to access specialized care beyond the Project Area where necessary.

34.4 The Company shall establish and implement policies to prevent and deal with the spread of infectious and contagious diseases in and around the immediate Project Area. In the event of an epidemic, pandemic, or outbreak of disease, the Company shall work with the local authorities in taking measures to ensure health and safety within the Project Area.

34.5 The Company shall facilitate access for Workers and their Dependents to gender-based violence protection services operated by public, private, or civilian institutions.

34.6 The Company shall contribute [*insert amount and currency*] annually to a government-administered and operated education program in the Project Area, with priority for children who are [members of the Local Community]/[Dependents].

For more information: See generally IISD, 2014, Sections 8.1.7 (Housing) and 8.1.8 (Medical Facilities).

35. Contract Farming Scheme

[OPTION 1: this provision can be used where the Project does not include a contract farming scheme from its inception but could in future]

35.1 No later than [*insert number*] years from the Effective Date, the Company shall produce a detailed assessment determining the commercial and technical viability of establishing a contract farming scheme (the Contract Farming Scheme) to procure raw materials for the Project from local smallholder farmers who wish to participate (Contract Farmers). Where, based on this assessment, the Parties agree that the Contract Farming Scheme is likely to be viable and sustainable, the Company shall establish a Contract Farming Scheme in the Project Area in accordance with Section 35.

[OPTION 2: to be used where the Project is expected to include a contract farming scheme from the outset]

35.2 The Company shall establish a contract farming scheme (the Contract Farming Scheme) to procure raw materials for the Project from local smallholder farmers who wish to participate (Contract Farmers). The Contract Farming scheme shall be established after the Project's production model and market/s are fully tested and found to be viable, but in any event no later than [*insert*] years from the Effective Date.

35.3 Where, at least [*insert*] years after the Effective Date, the Project's production model and market/s does not support the establishment of a Contract Farming Scheme, the Parties [and representatives of the Local Community] shall meet to discuss the reasons for this and to negotiate in good faith any necessary variations to the Agreement, including but not limited to:

- (a) Increases to the Rental Amount;
- (b) Additional obligations on the Parties to provide support and technical advice to Contract Farmers to enable them to produce to the quality and quantity required by the Contract Farming Scheme; and
- (c) [*insert other as appropriate for the Project*]

35.4 Where the Parties cannot agree as to any necessary variations in accordance with the previous paragraph, the Parties shall refer the matter to an Independent Expert for final determination in accordance with Section 61.

[The following provisions can be used regardless of option 1 or 2 above]

35.5 The Company shall conduct consultations with Legitimate Tenure Rights Holders, Indigenous Peoples, and members of the Local Community on the design of the Contract Farming Scheme in such a way that ensures active, free, effective, meaningful, and informed participation and ensures that the Contract Farming Scheme adequately reflects the needs and capacities of women and men farmers. The Authority shall, upon request by the Company, facilitate and support such consultations.

35.6 The Company shall take all reasonable measures necessary to achieve equal, or as close to equal as possible, numbers of women and men Contract Farmers.

35.7 The Company shall report annually on the implementation of the Contract Farming Scheme using Gender-Disaggregated Data and assessing women's participation, economic outcomes, obstacles to participation, and the company's progress towards Gender Equality.

[OPTION A: The following provisions can be used if no model contract farming agreement is annexed]

35.8 The Company shall:

- (a) purchase all produce that is of a quality generally accepted in the industry and of a minimum agreed quantity, and shall support Contract Farmers, especially women, to improve the quality of their production when quality differentials are observed;
- (b) support and assist Contract Farmers with the purchase of equipment and fertilizer and the purchase of production materials appropriate to the location, skills and needs of the Company and the Contract Farmers, identifying the differential needs for financing and for farming inputs of women and men farmers, and providing extra resources where necessary to ensure gender equitable production opportunities;
- (c) support and assist Contract Farmers to develop technical knowledge and business management skills, identifying and addressing the different information needs of women and men Contract Farmers;
- (d) establish mechanisms for women who have informal and/or collective land rights to gain the ability to participate in the Contract Farming Scheme; and
- (e) collaborate with the Authority and the Contract Farmers to establish a transparent price-setting mechanism, agreed upon by women and men farmers.

35.9 The Company shall enter into a written agreement with each [Contract Farmer]/[Cooperative of Contract Farmers]/[organization representing Contract Farmers] outlining the terms of the contract and taking measures to ensure the contractual terms are presented in a form that is familiar and understandable to women and men Contract Farmers who face literacy barriers. Such agreement shall include, at a minimum, terms relating to:

- (a) the price or mechanism for determining the price to be paid under the agreement and the terms of payment;
- (b) the quality and quantity of required produce as defined with reference to transparent and objective standards; and
- (c) the quality and timely delivery of an inputs or technical assistance to be provided by the Company.

35.10 The Company shall provide each Contract Farmer with a copy of the written agreement referred to in the previous paragraph no less than 10 days before the signature of the agreement and shall take reasonable measures to ensure that the Contract Farmer has read the agreement or had the agreement read to him/her by an independent third party, legal advisor or producer organization and had a reasonable opportunity to understand the agreement before signature.

[OPTION B: This provision can be used if the agreement annexes the [IISD-FAO Model Agreement for Responsible Contract Farming](#) or similar template contract farming agreement].

35.11 The Company shall enter into a separate contract with each [Contract Farmer]/[Cooperative of Contract Farmers]/[organization representing Contract Farmers] substantially in the form of the Contract Farming Agreement attached to this Agreement as Annex [X].

35.12 The Company may adapt and customize the Contract Farming Agreement to the Project, and the adapted form of the Contract Farming Agreement shall be submitted to the Authority for approval prior to its use.

For more information: See generally Smaller & Brewin, 2018.; IISD, 2014, Section 8.2 (Outgrower Schemes); ISLP & CCSI, 2016, Section 2.13.5 (Outgrower Programs); UNIDROIT & IFAD, 2021, Chapter 4.II.D (Contract Farming, Outgrower Schemes and Supply-Chain Relations). See also the International Institute for the Unification of Private Law, Food and Agriculture Organization of the United Nations, & International Fund for Agricultural Development. (2015). *Legal guide on contract farming*. <https://www.unidroit.org/wp-content/uploads/2021/06/Contract-farming-legal-guide.pdf>

36. Processing Facilities

[OPTIONAL: These provisions can be used where the Project includes processing facilities]

36.1 The Company shall use its best endeavours to ensure that it achieves the following (the Processing Targets);

- (a) no later than [insert number] years from the Effective Date, at least [insert number]% of the total annual production of the Project is processed in the Host State;
- (b) no later than [insert an increased number of years from paragraph (a)] years from the Effective Date, at least [insert an increased percentage from paragraph (a)] % of the total annual production of the Project is processed in the Host State; and
- (c) no later than [insert an increased number of years from paragraph (b)] years from the Effective Date, at least [insert an increased percentage from paragraph (b)] % of the total annual production of the Project is processed in the Host State.

36.2 The Company shall report annually on the status of its achievement of the Processing Targets.

36.3 Where the Company fails to meet its annual Processing Targets, the Parties shall meet to discuss the reasons for such failure and to negotiate in good faith any necessary variations to the Agreement, including but not limited to:

- (a) increases to the Rental Amount;
- (b) [Insert other items as appropriate]

36.4 Where the Parties cannot agree as to any necessary variations in accordance with the previous paragraph, the Parties shall refer the matter to an Independent Expert for final determination in accordance with Section [61](#).

For more information: See generally IISD, 2014, Section 8.3 (Creation of Processing Facilities); UNIDROIT & IFAD, 2021, Chapter 4.II.C (Local Content and Processing); UNIDROIT, 2021; UNIDROIT & IFAD, 2021, Section 4.II.C (Local Content and Processing).

37. Local Sourcing

37.1 When purchasing goods and services related to the Project, the Company shall give first preference to goods produced in the Host State and services provided by natural or legal persons which are, or which are controlled by, [members of the Local Community]/ [Citizens or Residents of the Host State] (the Local Goods and Services), subject to technical acceptability and availability of the relevant goods and services. The Company shall further give preference to Local Goods and Services supplied by [women]/[Indigenous Peoples].

37.2 The Company shall include in each contract for the procurement of goods or services in relation to the Project with a monetary value of [*insert amount and currency*] or more, a provision requiring the other contracting party to comply with the requirements of this Section, and to require any of its subcontractors to comply with the requirements of this Section.

37.3 The Company shall endeavour, where practicable, to divide large contracts for the procurement of goods and services into smaller contracts to facilitate suppliers of Local Goods and Services to bid for those contracts. To facilitate the Company's compliance with the provisions of this Section, the Authority shall, in a transparent manner and in consultation with the Local Community, prepare a list of suppliers of Local Goods and Services that further identifies women suppliers.

37.4 The Company shall provide, in a publicly assessable format and in local languages, information about upcoming tenders for goods and services in relation to the Project to prospective suppliers of Local Goods and Services. The Company shall strive to disseminate information on the bids through media and forms of communication known to be used by women.

37.5 The Company shall report annually on the value of Local Goods and Services procured for the purposes of the Project, which shall specify the value of Local Goods and Services procured from [women]/[Indigenous Peoples].

For more information: See generally IISD, 2014, Section 8.4 (Local Business Development Plan); ISLP & CCSI, 2016, Section 2.13.3 (Local Employment and Local Procurement); UNIDROIT & IFAD, 2021, Chapter 4.II.C (Local Content and Processing); Aizawa & Mann, 2021, Section 4.4 (Maximise Opportunities for Local Economic and Social Development).

38. Community Development Agreement

38.1 No later than [*insert number*] [months]/[years] from the Signature Date and in any event prior to commencing operations, the Company, in consultation with members of the Local Community, shall conclude one or more Community Development Agreements.

38.2 Each Community Development Agreement shall aim to promote sustainable development, Gender Equality and women's empowerment, and enhance the general welfare and quality of life of the Local Community, as well as to recognize and respect the rights, customs, traditions, and religions of the Local Community.

38.3 Each Community Development Agreement shall comply with the Applicable Law and the requirements set out in Annex C to this Agreement.

38.4 The Company shall consult with the Local Community to establish a process, plan, and program for the conclusion and implementation of each Community Development Agreement, including:

- (a) consultations with equal numbers of women and men over the elements contained in the Community Development Agreement, and periodic consultations following the conclusion of the Community Development Agreement to ensure its continued relevance to women and men.
- (b) the creation of institutional arrangements governing the relationship between the Company and the Local Community.
- (c) arrangements for communications, information-sharing and joint decision-making processes between the Company and the Local Community.

38.5 A Material Breach by the Company of a Community Development Agreement shall constitute a Material Breach of this Agreement.

38.6 The Company shall report on the implementation of each Community Development Agreement, specifying progress toward Gender Equality as realized through the activities provided for in the Community Development Agreement.

For more information: See generally IISD, 2014, Section 8.5 (Community Development Agreement); ISLP & CCSI, 2016, Section 2.13.7 (Agreements With Local Communities); Szoke-Burke et al, 2018, p. 11 (Types of Contracts); Aizawa & Mann, 2021, Section 4.4 (Maximise Opportunities for Local Economic and Social Development); UNIDROIT & IFAD, 2021, Chapter 2.III.B (Community Development Agreements).

Chapter 2C: Project Operations: Environment and Climate Provisions

39. Continuous Improvement in Production Methods

39.1 Commitment to continuous improvement: The Company commits to pursuing continuous improvements in methods of production, in ways that produce equal benefits for people of all genders and social groups, including Indigenous Peoples, in order to:

- (a) reduce greenhouse gas emissions generated by the Project;
- (b) capture and store carbon through the Project Operations;
- (c) support [Legitimate Tenure Rights Holders]/[the Local Community]/[Contract Farmers] to build resilience and adapt to climate change, [access climate-resilient production technologies]/[access payments for ecosystem services]/[insert other as appropriate for the project];
- (d) prevent deforestation, restore deforested areas, and restore and protect biodiversity [including through agroecological practices such as agroforestry];
- (e) reduce air and freshwater pollution and land contamination; and
- (f) [insert other environmental objectives, including for example reducing exposure to pesticides and fertilizers, increasing water efficiency, increasing nutrient use efficiency, and controlling soil erosion]

39.2 The Company further commits to upgrading production technology where new technologies become available that would improve production methods in pursuit of the objectives described in paragraph 0.

39.3 The Company shall outline how it intends to implement this Section in the Environmental and Social Management Plan (ESMP), including:

- (a) identification of the specific priority areas and actions;
- (b) a list of indicators and time-bound targets for those actions;
- (c) the distinct or shared benefits for women and men from improvements to methods of production; and
- (d) a description of how the priority areas and actions contribute to or align with the Host State's [national adaptation plan]/[nationally determined contributions under the Paris Agreement under the United Nations Framework Convention on Climate Change]/[just energy transition investment plan]/[insert other policies of the Host State relating to climate change, biodiversity, pollution reduction, or the environment.]

39.4 Environmental Performance Payments: Where the Company identifies a possible improvement in methods of production, acquisition of new technology, or other positive environmental outcome from the Project that is likely to incur a non-minor cost to the Company, the Company may request the Authority to consider the provision of a performance-based incentive, reduction in Rental Fees, or other benefit (the Environmental Performance Payment) agreed by the Parties for the implementation of that method of production, acquisition of that technology or achievement of that environmental outcome. Any such agreement for the provision of an

Environmental Performance Payment shall be evidenced in writing and shall be incorporated into this Agreement as an Annex in accordance with Section [68.5](#).

39.5 The Authority shall give priority consideration to a request for an Environmental Performance Payment for an improvement in methods of production or positive environmental outcomes in the area of [*insert priority areas as appropriate, e.g. reforestation or prevention of deforestation, protection of endangered species, preservation of ecosystem services, climate-sensitive agroecological farming practices*].

39.6 The Company shall report annually on measures undertaken to comply with this Section, using Gender-Disaggregated Data and results, and where necessary, a review and update of the priority areas, indicators, and time-bound targets referred to in Section [39.3](#).

For more information: See generally IISD, 2014, Section 9.2 (Commitment to Continuous Improvement of Production Methods); Aizawa & Mann, 2021, Section 4.5 (Anticipate and Manage Climate Change Risks); UNIDROIT & IFAD, 2021, Chapter 4.V.A.4 (Environmental Performance Bonds).

40. Climate Change

40.1 The Company shall quantify and report annually on the Scope 1 and 2 [and 3] greenhouse gas emissions generated by the Project, in accordance with the [Applicable Law]/[Greenhouse Gas Protocol Corporate Accounting and Reporting Standard.]

40.2 The Company shall reduce the greenhouse gas emissions of the Project annually [and shall in any event aim to achieve net-zero emissions by no later than *insert number*] years after the Signature Date. Where, at least [*insert number*] years after the Signature Date, the Company has not reduced the greenhouse gas emissions of the Project such that the Project is on track to achieve net-zero emissions within this timeframe, the Parties shall meet to discuss the reasons for this and to negotiate in good faith any necessary variations to the agreement, including but not limited to:

- (a) increases to the Rental Amount;
- (b) changes to production practices, product transportation, land use, acquisition of new technologies, or any other aspect of Project Operations; and
- (c) [*insert other as appropriate*].

40.3 The Company shall contribute [*insert amount and currency*] annually to a local climate change adaptation fund which shall be used to finance climate change adaptation projects identified by the Local Community in accordance with the Community Development Agreement referred to in Annex [C](#).

40.4 The Company shall commit [*insert amount and currency*] annually to providing technical support and capacity development for [Legitimate Tenure Rights Holders]/[the Local Community]/[Contract Farmers] on [*climate-resilient technologies and practices*]/[*accessing markets for payments for ecosystem services*]/[*insert other as appropriate for the Project*]. The Company shall report annually on its implementation of this Section.

40.5 The Authority reserves the right at any time to seek renegotiation with the Company of any term of this Agreement as it deems necessary for the Government of the Host State to meet its nationally

determined contributions under the Paris Agreement under the United Nations Framework Convention on Climate Change, as may be adopted or amended from time to time.

40.6 The Parties recognize that the Government of the Host State retains the right to enact and enforce bona fide laws and regulations in relation to the production and distribution of carbon-based energy sources and measures to address climate change, and other public interest issues such as air quality. Nothing in this Agreement shall restrict or alter this right or create or imply any limitation on the Government of the Host State, or any obligation to pay compensation with respect to future measures in this regard.¹⁵

For more information: See generally UNIDROIT & IFAD, 2021, Section 4.120 (Mitigating and Adapting to Climate Change); Aizawa & Mann, 2021, Section 4.5 (Anticipate and Manage Climate Change Risks).

41. Water-Use Permits and Fees

41.1 The Company shall apply to the [*insert relevant Ministry*] for a Water-Use Permit, for which approval shall not be unreasonably withheld upon timely application in accordance with the Applicable Law and payment of any application fees.

41.2 The Water-Use Permit shall include the right, upon payment of a specified fee per cubic decametre of water, to remove specified quantities of surface water from waterways and to withdraw and use specified quantities of groundwater, based on the needs of the Project as determined by the Feasibility Study and subject to the needs of other users as determined by the Environmental and Social Impact Assessment.

41.3 Where the Project's water use exceeds the specified quantity of water provided for in the Water-Use Permit, the Company shall be subject to [*such penalties as provided for in the Applicable Law*]/[a penalty of [*insert currency and amount*] per cubic decametre of water used above the permissible amount].

41.4 The Company shall be entitled, subject to the Applicable Law and to Section 25, to construct water-related infrastructure such as pipes and conduits and to alter the natural flow patterns by building dams, weirs, and reservoirs.

41.5 The Company shall consult separately with women and men Legitimate Tenure Rights Holders, Indigenous Peoples, and members of the Local Community on their water use, to identify and develop Gender-Sensitive strategies to mitigate potential negative impacts of planned water infrastructure and other Project Operations on that water use.

41.6 The Company shall not use water in such a way as to deny, deprive, or otherwise impede access to water for Legitimate Tenure Rights Holders, Indigenous Peoples, and the Local Community.

41.7 The Company shall not endanger aquatic or terrestrial ecosystems on or nearby the Project Area.

41.8 The Company shall report annually on:

- (a) the quantity of water used and released by the Project;

¹⁵ Order 88631 In the Matter of the merger of AltaGas Inc and WGL Holding Ltd., April 4, 2018, Public Service Commission of Maryland, Case 9449, referenced in Aizawa & Mann, 2021, p. 64.

- (b) water quality and availability in and around the Project Area as verified by an independent third party; and
- (c) the impact of Project Operations on water quality and availability for Legitimate Tenure Rights Holders and the Local Community, identifying any differences in impacts on women and men.

41.9 The Authority shall review the grant and terms, including the access and usage fees, of the Water-Use Permit(s) every *[insert number]* years.

41.10 The Authority reserves the right to restrict or withdraw the Water-Use Permit at any time in light of extreme unforeseen circumstances such as acute water shortages, flooding, or drought, to adapt to or mitigate the impacts of climate change.

For more information: See generally IISD, 2014, Section 9.3 (Water-Use Permits and Fees); ISLP & CCSI, 2016, Section 2.12.3 (Watercourses and Water Management); UNIDROIT & IFAD, 2021, Section 4.18. (Water).

42. Soil Management

42.1 The Company shall maintain or improve the quantity and quality of the soil at the Project Area as at the Effective Date, [as established by the Environmental Audit provided for in Section 45.5] and shall manage and mitigate erosion and negative impacts on soil salinity, organic carbon, and nutrient levels [including through the use of the following agroecological farming practices, which shall be further detailed in the ESMP] [*select as appropriate for the project*]:

- (a) low to zero tillage
- (b) use of cover crops
- (c) crop rotation
- (d) intercropping and multi-cropping
- (e) [*insert other regenerative agricultural practice/s as appropriate for the Project*]

42.2 The Company shall at all times monitor the soil at the Project Area for the following (the Soil Quality Indicators):

- (a) organic carbon
- (b) total nitrogen
- (c) total phosphorus
- (d) total potassium
- (e) electrical conductivity
- (f) potential of hydrogen (pH)
- (g) bulk density
- (h) soil depth
- (i) [*insert other as applicable to the Project.*]

42.3 The Company shall report annually on the Soil Quality Indicators and where such report reveals a decline in any parameter of soil quality, the Company shall outline the measures it shall take to improve the quality of the soil.

For more information: See generally IISD, 2014, Section 9.4 (Soil Management); ISLP & CCSI, 2016, Section 2.12.4 (Land Degradation); UNIDROIT & IFAD, 2021, Section 4.116. (Preventing Soil Degradation).

43. Chemical and Waste Management

43.1 The company shall comply with the Applicable Law regarding the handling, transport, storage, and use of all chemicals in the Project Area, including fertilizers, fumigants, fungicides, pesticides, and herbicides. This shall include, where applicable, laws and regulations governing Worker safety and human health as well as environmental protection.

43.2 The Company shall ensure that all Workers working with chemicals are trained and certified (where applicable) in the handling and use of all chemicals. This includes, when appropriate, separate training for women and men that is adapted to the specific activities they perform, the hazards to which they are exposed and the different health consequences of those hazards, and to their literacy levels.

43.3 The Company shall ensure that pregnant and breastfeeding women are not engaged in any work with hazardous chemicals.

43.4 The Company shall follow manufacturers' guidelines and directions regarding the dosage, dilution, application, and expiry dates of all chemicals, and shall report all chemical accidents or spills to the relevant authorities.

43.5 The Company shall maintain a record, using Gender-Disaggregated Data that distinguishes accidents, illnesses, and other incidents related to damage or potential damage from chemicals experienced by women and men.

43.6 The Company shall comply with the Applicable Law relating to waste management and shall endeavour to develop approaches to reduce the consumption of the Project and to recycle production materials and waste products generated by the Project.

For more information: See generally IISD, 2014, Section 9.5 (Pollution and Chemical Management); ISLP & CCSI, 2016, Section 2.12.2 (Pollution Prevention); UNIDROIT & IFAD, 2021, Sections 4.118. (Prohibition of Certain Chemicals in Agriculture) and 4.121. (Adopting Sound Management of Waste).

44. Traditional Knowledge

44.1 The Company shall respect and protect the traditional knowledge and cultural heritage sites and systems of all Legitimate Tenure Rights Holders, Indigenous Peoples, and the Local Community [including but not limited to those identified in the Environmental and Social Impact Assessment (ESIA)] and shall comply with all Applicable Law relating to the same.

For more information: See generally Committee on World Food Security Principles for Responsible Investment in Agriculture and Food Systems (CFS), 2014, Principle 7 (Respect Cultural Heritage and Traditional Knowledge, and Support Diversity and Innovation); UNIDROIT & IFAD, 2021, Section 4.119 (Traditional Knowledge).

45. Implementation and Enforcement of Environmental Obligations

45.1 Compliance with Domestic Environmental Laws:¹⁶ The Company shall comply with the Applicable Law relating to the environment at all times during the term of this Agreement, including laws relating to protection of water quality, air quality, quality of land and soils, the preservation of living natural resources, the protection of biodiversity, the disposal of hazardous and non-hazardous wastes, and the reduction and capture of greenhouse gas emissions.

45.2 A significant and persistent failure to comply with the Applicable Law relating to the environment, the terms of any Applicable Licence relating to the environment, or of the provisions of the Environmental and Social Management Plan, as the same may be revised or changed from time to time, constitutes a Material Breach of this Agreement.

45.3 Monitoring, reporting, and disclosure: The Company shall at all times cooperate with the Grantor [and the Authority] for the monitoring, reporting and enforcement of all provisions of this Agreement and the Applicable Law in relation to the environment, and shall in particular:

- (a) ensure that all reports required under the provisions of this Section are provided in a timely way and with the requisite level of detail, in accordance with Section 55, so as to facilitate effective monitoring by the Grantor [and the Authority] of the Company's obligations under this Agreement and the Applicable Law relating to the environment;
- (b) disclose in a prompt and transparent manner any environmental risks or damage that arises during the term of this Agreement, in such a way as to enable a prompt and effective response to that risk or damage by the Parties;

45.4 Certification and Environmental Audit:¹⁷ The Company shall, within [insert number] years from the Signature Date, obtain certification of the Project from the [insert applicable scheme] and shall at all times comply with the requirements of that certification scheme so as to maintain certification for the duration of this Agreement.

45.5 The Company shall engage an independent professionally qualified auditor to conduct an environmental audit that shall comply with the requirements of [the Applicable Law]/[ISO 14001]/[insert other relevant standard] and that shall be carried out;

- (a) within [insert number] month(s) of the Signature Date (the Initial Environmental Audit); and
- (b) within [insert number] month(s) of the end of this Agreement in accordance with its terms (the Final Environmental Audit); and
- (c) every [insert number] years during the Term of this Agreement.

¹⁶ See generally IISD, 2014, Section 9.1 (Domestic Environmental Laws); Szoke-Burke et al., 2018, Section 10 (Protections Against Environmental Damage and Harm to Human Health).

¹⁷ This provision can be used and adapted for other forms of audit that may be relevant to the project, such as social, labour, or gender audits.

45.6 Each environmental audit shall be carried out [at the expense of the Company]/[at the joint expense of the Parties whereby the Company contributes [insert number]% and the Authority contributes [insert number]%].

45.7 The Company shall provide to the Grantor [and the Authority] the results of each environmental audit, accompanied by an action plan detailing any steps which the Company intends to take to address any areas of concern or non-compliance identified in the environmental audit, and to remediate or compensate for any Environmental Damage identified by the environmental audit, in accordance with this Section.

45.8 Liability for environmental damage: The Company shall bear all responsibility for any environmental damage or contamination caused to the Project Area, surrounding areas and nearby natural resources caused by Project Operations including the Company's use of chemicals, release of pollutants, depletion of soil quality or other adverse environmental impacts (the Environmental Damage).

45.9 The Company shall bear all costs associated with the prevention, control, and clean up of Environmental Damage and shall be liable for the costs of remediation and repair of Environmental Damage and compensation to any affected persons suffering loss caused by Environmental Damage.

45.10 Project closure and restoration of the environment: at the end of this Agreement by way of expiry or termination in accordance with its terms, the Company shall return the Project Area to the Grantor in substantially the same or better condition as that in which it was granted, as identified by the Initial Environmental Audit.

45.11 Where the Final Environmental Audit identifies Environmental Damage that was not identified in the Initial Environmental Audit, such Environmental Damage shall be attributed to the Project Operations and shall be remediated, restored, or compensated at the expense of the Company in accordance with this Section and the Applicable Law.

45.12 Within one month after the submission of the Final Environmental Audit to the Authority, the Parties shall meet to negotiate in good faith an action plan outlining actions to be taken by the Company to remediate or restore any Environmental Damage, and timeframes for the Company to take those actions.

45.13 Where there is Environmental Damage that cannot be reasonably remediated or restored by the Company, the Parties shall negotiate in good faith an amount of monetary compensation payable by the Company to the Grantor or other parties affected by the Environmental Damage, and the currency and payment plan for such compensation.

45.14 Environmental damage bond: The Company shall provide and deliver, within one (1) month after the Signature Date, to the Grantor an unconditional and irrevocable bank guarantee as security for the remediation or restoration of any Environmental Damage (the Environmental Damage Bond) which shall:

- (a) be in favour of the Grantor;
- (b) be issued by a bank acceptable to all Parties;
- (c) be valid until [insert];
- (d) be in the amount of [insert amount and currency];

- (e) constitute an on-demand, unconditional, and irrevocable commitment to pay by the bank by which it is issued; and
- (f) be enforceable and drawable by the Grantor in the amount required to remediate or restore any Environmental Damage identified in accordance with this Section and/or to compensate any affected persons in accordance with this Section.

45.15 Unless drawn upon by the Grantor in accordance with this Agreement, the Environmental Damage Bond shall be returned to the Company upon the return of the Project Area in substantially the same condition as it was granted, in accordance with Section [45.10](#).

45.16 Where the Parties cannot agree as to remedial actions or compensation for the Environmental Damage, and/or the amount to be withdrawn from the Environmental Damage Bond to remediate, restore, or compensate for the Environmental Damage, the Parties shall refer the matter to an Independent Expert for final determination in accordance with Section [61](#).

45.17 This Section is without prejudice to the rights of the Grantor, the Authority, any Third-Party Beneficiary, or any other party affected by Environmental Damage to seek recourse under the Applicable Law for such damage that has not otherwise been remedied or compensated in accordance with this Section.

For more information: See generally Cotula, 2016, Section 4.5 (Environmental Protection – Environmental Standards, Agencies and Liability); UNIDROIT & IFAD, 2021, Sections 4.113 (4.113. Preventing Pollution), 4.122. (Monitoring and Reporting Environmental Protection), and 4.123 (Project Closure and Restoration of the Environment); Aizawa & Mann, 2021, p. 94, Box 5.5 (Financial Mechanisms to Ensure Corrective Action).

Chapter 3. Project Monitoring, Enforcement, and Closure

46. Security

46.1 The Company shall be entitled, pursuant to the Applicable Law, to directly or under contract with other persons, establish and maintain a security force for the purposes of protecting its staff and assets and maintaining security of Project Operations (the Security Force).

46.2 The Company and Security Force shall be subject to the Applicable Law at all times, including with respect to interrogation, apprehension, detention, and exclusion from the Project Area.

46.3 The Company and Security Force shall act in accordance with the International Code of Conduct for Private Security Service Providers, the Voluntary Principles on Security and Human Rights, and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, including as such instruments may be amended from time to time.

46.4 The Company shall, prior to the establishment of the Security Force, develop and submit to the Grantor [and the Authority] for its approval a protocol for the management and implementation of the Security Force, which shall outline in sufficient detail:

- (a) How the Company shall vet, recruit, train, and supervise members of the Security Force, including on Gender-Sensitive methods of security enforcement, responding to reports of Sexual Harassment, Sexual Exploitation, and Sexual Abuse on the project premises so as to ensure that all members of the Security Force comply with the requirements of this Section at all times;
- (b) The situations and manner in which the Security Force will be required to engage and coordinate with members of local public law enforcement and security services and other government authorities; and
- (c) How complaints and grievances related to the activities of the Security Force can be submitted to the grievance mechanism established in accordance with this Agreement.

46.5 The Company shall require all members of the Security Force, as a condition of their engagement, to sign a code of conduct that prohibits Sexual Harassment, Sexual Exploitation, and Sexual Abuse as defined in accordance with this Agreement, and that identifies the actions that the Company shall take if the code of conduct is breached.

46.6 The Company shall at all times monitor the activities of the Security Force and shall be liable for the conduct of all members of the Security Force in accordance with the Applicable Law.

For more information: See generally IISD, 2014, Section 5.4 (Security); OHCHR, 2015, Principle 6 (Physical Security for the Project); ISLP & CCSI, 2016, Section 2.8 (Security); UNIDROIT & IFAD, 2021, Section 4.135 (Security Clauses); Aizawa & Mann, 2021, Section 4.6 (Project Must Respect Human Rights).

47. Insurance

47.1 At all times during the term of this Agreement, the Company shall obtain and maintain at its own cost insurance policies as required by any of the Applicable Permits, the Applicable Law and in accordance with Good Industry Practice, including, at a minimum, coverage for the risk and liability events and in the amounts of coverage as follows:

- (a) fire – [insert amount]
- (b) disease – [insert amount]
- (c) hail – [insert amount]
- (d) climate change event – [insert amount]
- (e) theft – [insert amount]
- (f) damage to property – [insert amount]
- (g) personal injury – [insert amount]
- (h) life and health of Workers – [insert amount]
- (i) crop [insert amount]
- (j) [insert other] – [insert amount]

47.2 The Company shall cause its insurers or agents to provide the Grantor [and the Authority] with certificates of insurance. At least 60 days prior to the expiration of any required insurance policy, the Company shall deliver to the [and the Authority] certificates of insurance evidencing the renewal of such policy.

For more information: See generally UNIDROIT & IFAD, 2021, Chapter 4.V.A.2 (Insurance); Aizawa & Mann, 2021, Section 4.5 (Anticipate and Manage Climate Change Risks).

48. Affiliated Company Transactions

48.1 All transactions between the Company and its Affiliates shall be conducted in accordance with the arm's length principle per the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. Where there is any inconsistency between the Applicable Law governing transfer pricing and the OECD Guidelines, the Applicable Law shall prevail.

48.2 Upon request by the Authority, the Company shall provide to the Authority documentation, including copies of all contracts, evidencing the prices, discounts, and commissions related to any transaction between the Company and its Affiliates, as well as other relevant documentation related to transactions with Affiliates, including evidence of third-party transactions needed to determine the real arm's length price for a like transaction.

For more information: See generally IISD, 2014, Section 7.6 (Transfer Pricing); Cotula, 2016, Section 3.3 (Taxation).

49. Accounts and Records

49.1 The Company shall maintain accurate accounting records in the currency of the Host State in accordance with the [Applicable Law]/[insert reference to relevant international financial reporting standard, e.g., *International Accounting Standards (IAS)* or *International Financial Reporting Standards*].

49.2 The Company shall keep in the Host State complete, accurate, and up-to-date technical and commercial books and records of all agricultural operations under this Agreement.

49.3 The Company shall supply and file such technical and commercial information, reports, returns and statements at such times and in such form as may be required by this Agreement and the Applicable Law.

49.4 All books and records shall be maintained and made available for inspection by an auditor appointed under and in accordance with this Agreement for six (6) years following the calendar year in which the books and records were created or, if longer, the relevant period required by the Applicable Law.

49.5 The Company shall maintain all financial, employment, commercial and other books and records and comply with all other reporting and filing obligations under the Applicable Law and shall conduct its activities in accordance with the Applicable Law.

For more information: See generally IISD, 2014, Section 7.3 (Accounts and Records); ISLP & CCSI, Section 2.14 (Monitoring and Audits); UNIDROIT & IFAD 2021, Section 4.171 (Reporting on Financial and Non-Financial Obligations).

50. Financial Audit

50.1 The Company shall prepare at its own expense and provide to the Authority, no less than 3 months after the end of each financial year, audited financial statements prepared by an independent, professionally qualified auditor.

50.2 The Authority reserves the right to audit the Company's accounts, books and records maintained under this Agreement and the Applicable Law for each calendar year within 2 years from the end of each such calendar year. Any such audit will be at the Authority's sole cost and risk, performed by and through a technical inspector or an independent professionally qualified auditor, completed within twelve (12) months of its commencement, and conducted in a manner that will result in the minimum amount of inconvenience to the Company.

50.3 The Authority's inspector or auditor shall have the right, in connection with such audit, to visit and inspect, during normal business hours on any day, all sites, plants, facilities, warehouses and offices of the Company directly or indirectly serving its activities under this Agreement and to visit and question personnel associated with those activities in accordance with Applicable Law.

50.4 The Authority shall, and shall ensure that any inspector or auditor shall, use such information only for the purpose for which it was disclosed and not for any other purpose and shall keep confidential all information provided to it or any of its agents, advisors, representatives, officers, directors, or employees by or on behalf of the Company or otherwise obtained by it or any of its agents, advisors, representatives, officers, directors or employees in connection with the audit which relates to the Company or the business of the Company.

For more information: See generally IISD, 2014, Section 7.4 (Audit); ISLP & CCSI, 2016, Section 2.14 (Monitoring and Audits); UNIDROIT & IFAD, 2021, Section 4.171 (Reporting on Financial and Non-Financial Obligations).

51. Inspection of Project Area, Books, Records, and Other Information

51.1 The Grantor [and the Authority] shall have the right to visit and inspect, during normal business hours on any day, all sites, plants, facilities, warehouses, offices, and records of the Company and to visit and question personnel associated with those activities, to ensure that all Project Operations are carried out in accordance with this Agreement and the Applicable Law, including elements of each that pertain to Gender Equity and Gender Equality. The Grantor [and the Authority] shall not unduly interfere with the Company's activities or Project Operations.

For more information: See generally IISD, 2014, Section 5.3 (Inspection of Project Site, Books, Records and Other Information).

52. Transparency

52.1 The Parties hereby agree that this Agreement and all documents required to be submitted in accordance with this Agreement by any past and present Parties, including the Feasibility Study, Project Map, Business Plans, Environmental and Social Impact Assessments, Environmental and Social Management Plan, Community Development Agreement, Contract Farming Agreements, and all reports required to be submitted under this Agreement, (the Ancillary Documents), are public documents.

52.2 The Authority shall publish online and [in the Official Gazette]/[insert other place of publication] this Agreement and all Ancillary Documents, immediately after the Signature Date or the submission of the document as the case may be, and after any substantial variation to the Agreement, subject to the redaction of Confidential Information.

52.3 The Authority may at any time publish a summary, translation, or plain language explanatory document incorporating the terms of this Agreement and the Ancillary Documents.

52.4 For the purposes of this Agreement, Confidential Information means:

- (a) information that, if disclosed, would or would be likely to prejudice the commercial interests of any Party;
- (b) trade secrets, commercially sensitive intellectual property rights and know-how of any Party, including all sensitive personal data; and
- (c) information that, if disclosed, would impede law enforcement activities.

52.5 Where the Parties cannot agree as to the redaction of Confidential Information for the purposes of publication in accordance with this Section, the Parties shall refer the matter to an Independent Expert for final determination in accordance with Section 61.

52.6 The Authority shall promptly publish, or otherwise make publicly available, any policies, administrative guidelines, procedures, laws, regulations, international agreements, and fiscal

information of the Government of the Host State, that may affect the Company in its implementation of the Project and its obligations under this Agreement.

52.7 The Grantor [and Authority] shall promptly disclose to the Company any relevant developments or changes regarding the Project Area, including but not limited to any change in title, environmental findings, conflict, or planned infrastructure projects that may affect the Project.

For more information: See generally IISD, 2014, Sections 12 (Disclosure) and 16.1 (Transparency and Public Information); OHCHR, 2015, Principle 10 (Transparency/Disclosure of Contract Terms); Cotula, 2016, Section 5.3 (Transparency and Public Scrutiny); ISLP & CCSI, 2016, Section 2.18 (Confidentiality and Publicity); Szoke-Burke et al., 2018, Section 23 (Confidentiality, Entire Agreement Clause, and Signatures); UNIDROIT & IFAD 2021; Chapter 4.V.B.2 (Reporting and Transparency); Aizawa & Mann, 2021, Section 5.2 (Transparency of Contracts); Southern African Development Community (SADC) Model Bilateral Investment Treaty Template, 2012, Article 24 (Transparency of Investment Information).

53. Corruption and Bribery

53.1 The Company and its directors, officers, and employees shall, at all times in connection with and throughout the course of this Agreement and thereafter, comply with [the Applicable Law relating to bribery and corruption]/[Part I of the International Chamber of Commerce Rules on Combating Corruption 2011].

53.2 The Company shall take all reasonable measures to ensure that its subcontractors, agents, or other third parties, subject to the Company's control or determining influence, comply with [the Applicable Law relating to bribery and corruption]/[Part I of the International Chamber of Commerce Rules on Combating Corruption 2011].

For more information: This is the International Chamber of Commerce Anti-corruption clause, lightly adapted. See <https://iccwbo.org/publication/icc-anti-corruption-clause/>. See generally Cotula, 2016, Section 5.4 (Anti-Corruption Measures); ISLP & CCSI, 2016, Section 2.15 (Anti-Bribery and Corruption).

54. Monitoring

54.1 No later than 30 days following the Signature Date, the Parties shall establish a Joint Monitoring Committee whose purpose shall be to facilitate smooth and effective communication between the Parties, the early and amicable resolution of issues and concerns raised by the Parties, and oversight of the timely implementation of the Project.

54.2 The Joint Monitoring Committee shall be comprised of [insert number] representatives nominated by each Party and [insert number] representatives nominated by [the Local Community]/[Legitimate Tenure Rights Holders]/[Indigenous Peoples]/[Contract Farmers], with equitable representation of women and men, who shall meet regularly on a quarterly basis and additionally on an ad hoc basis as the need arises.

54.3 The Joint Monitoring Committee shall establish and provide to the Parties in writing its operating procedures, which shall include, at a minimum, the following elements:

- (a) protocols and administrative arrangements for conducting regular meetings and calling ad hoc meetings based as the need arises;
- (b) methods of communication and contact points;
- (c) approaches to dispute prevention;
- (d) procedures for reviewing periodic reports and other documents submitted under this Agreement; and
- (e) *[insert other elements as needed]*

For more information: See generally Szoke-Burke et al., 2018, Section 15 (Monitoring for Compliance); UNIDROIT & IFAD, 2021, Section 4.143 (Importance of Open Communications).

55. Reporting

55.1 The Company shall at all times comply with the requirements of the Applicable Law in respect of reporting on its financial and operational activities, in addition to the reporting requirements provided for under this Agreement in respect of:

- (a) the implementation of the Annual Business Plan, per Section [12.5](#);
- (b) the implementation of the Environmental and Social Management Plan (ESMP) and Human Rights Due Diligence Report, per Section [16.4](#);
- (c) the status of the Company's achievement of the Job Targets, per Section [28.12](#);
- (d) the implementation of the Training and Skills Development Plan, per Section [29.4](#);
- (e) the annual health and safety report, per Section [32.7](#);
- (f) the implementation of the Contract Farming Scheme, per Section [35.7](#);
- (g) the status of the Company's achievement of the Processing Targets, per Section [36.2](#);
- (h) the value of Local Goods and Services procured for the purposes of the Project, per Section [37.5](#);
- (i) the implementation of the Community Development Agreement, per Section [38.6](#);
- (j) the Company's continuous improvement in production methods for climate change adaptation and mitigation, per Section [39.6](#);
- (k) the Scope 1 and 2 [\[and 3\]](#) greenhouse gas emissions generated by the Project, per Section [40.1](#);
- (l) the provision of technical support and capacity development under Section [40.4](#);
- (m) the Project's water use, per Section [41.8](#); and
- (n) the Project Area Soil Quality Indicators, per Section [42.2](#).

55.2 The Authority reserves the right to issue a reporting template document for use by the Company in complying with its obligations under this Section. In the absence of such a template document being issued, the Company may, subject to the Applicable Law and this Section, use its discretion in the format of the report and may consolidate multiple reporting obligations into a single report or several reports.

55.3 All reports required under this Agreement shall be submitted in *[insert language]* and shall be of a writing style, level of technicality, length, and format that facilitates comprehension by a layperson with knowledge of the Project.

55.4 All reports required under this Agreement shall use Gender-Disaggregated Data.

55.5 The Authority reserves the right to *[issue page number limits]*/*[impose an administrative handling fee calculated on a per-page basis]* for each report required under this Agreement.

55.6 The Grantor *[and Authority]* reserve(s) the right to provide any report submitted by the Company under this Agreement to a third party for independent verification of the underlying data contained in that report.

For more information: See generally IISD, 2014, Section 16.2 (Reporting, Monitoring, and Implementation); Aizawa & Mann, 2021, Section 5.3 (From Enforcement to Compliance Promotion: Monitor and Report on Project Performance and Material Events); UNIDROIT & IFAD, 2021, Chapter 4.V.B.2 (Reporting and Transparency).

56. Review

56.1 Annual progress review meeting: The Parties shall meet annually to review progress under this Agreement toward achieving the objectives and purposes of this Agreement, and to consider any concerns that may have arisen over the course the previous year.

56.2 Periodic review: *[This Agreement]*/*[insert reference to specific sections of the Agreement that should be subject to review]* shall in addition be subject to periodic review once every five (5) years after the Effective Date (the Periodic Review), in accordance with the following procedure:

- (a) The Party requesting a Periodic Review shall provide Notice of such request to the other Party.
- (b) No later than 14 days following the receipt of Notice, the Parties shall meet for the purposes of good faith discussions to consider any modification(s) to this Agreement as may be necessary or desirable in the light of any substantial changes in circumstances that may have occurred during the previous 5 years, or experience gained during that period.
- (c) Any modification(s) agreed by the Parties shall be incorporated into this Agreement by way of variation in writing in accordance with Section [68.5](#).
- (d) Where the Parties cannot agree as to necessary or desirable modifications to the Agreement, the Parties shall refer the matter to an Independent Expert for final determination in accordance with Section [61](#).

56.3 Defined events for non-Periodic Review: The events provided for in the following Sections shall be subject to the review procedure outlined in Section [56.2](#):

- (a) Section [19.3](#) (adjustment of the Rental Amount in light of currency fluctuations, substantial changes to the operating costs of the Project, or other relevant changes in economic circumstances affecting the Project);
- (b) Section [28.3](#) (non-achievement of the Job Targets);
- (c) Section [35.3](#) (non-establishment of the Contract Farming Scheme);
- (d) Section [36.3](#) (failure to meet the Processing Targets);

- (e) Section [40.2](#) (failure to achieve net-zero emissions);
- (f) Section [40.5](#) (renegotiation to meet nationally determined contributions); and
- (g) Section [60.5](#) (corrective action for breach of this Agreement).

For more information: See generally IISD, 2014, Section 13 (Periodic Review); ISLP & CCSI, 2016, Section 2.26 (Amendments; Periodic Review); UNIDROIT & IFAD 2021, Chapter 5.III.B.3 (Renegotiation and Adaptation of the Agreement) and 4.V.A.5 (Notice and Periodic Review).

57. Grievance Mechanisms

57.1 Local Community and Legitimate Tenure Rights Holders: The Company shall, in consultation with Legitimate Tenure Rights Holders and the Local Community, prepare a proposal for a grievance mechanism for use by them, including all elements provided for in Annex [A](#) and any additional elements as the Parties may agree.

57.2 The Company shall ensure that the grievance mechanism is fully operational in accordance with the grievance mechanism proposal as adapted or revised following consultations with the intended user groups, no less than *[insert number]* month(s) after the Signature Date. The Company shall ensure that women are included equitably in the consultation process, and if necessary, consulted separately from men.

57.3 Workers [and Contract Farmers]: the Company shall, at its own expense, provide a grievance mechanism for Workers regardless of their employment status, and their organizations [and Contract Farmers (and their organizations)] to raise concerns related to the workplace [and/or the Contract Farming Scheme].

57.4 The Company shall ensure that the grievance mechanism:

- (a) is made known to Workers [and Contract Farmers] at the time of their engagement;
- (b) is easily accessible, understandable, and culturally sensitive and appropriate, including for women;
- (c) is accessible in languages spoken by Workers [and Contract Farmers], including people with low literacy;
- (d) provides multiple entry points for grievance settlement, so that it may be accessed differently by people of all genders and social groups, including Indigenous Peoples;
- (e) addresses concerns promptly, using an understandable, predictable, and transparent process that provides timely feedback to those concerned, without any retribution;
- (f) allows for anonymous complaints to be raised and addressed, providing extra measures to ensure the confidentiality of women's complaints and the safety of women who use the Grievance Mechanism; and
- (g) is responsive to Sexual Harassment, Sexual Exploitation, and Sexual Abuse concerns including by safeguarding the confidentiality and safety of the complainants and referring them to service providers when needed.

57.5 The grievance mechanisms provided for in this Agreement are without prejudice to any other judicial or administrative remedies available under the Applicable Law, through existing arbitration procedures, or as provided through collective agreements. The Company shall not make any

representation to grievance mechanism users to the effect that the grievance mechanisms provided for in this Agreement impede or preclude access to other judicial or administrative remedies.

For more information: See generally IISD, 2014, Section 11.1 (Grievance Mechanisms); CFS, 2014, Principle 9 (Incorporate Inclusive and Transparent Governance Structures, Processes, and Grievance Mechanisms); OHCHR, 2015, Principle 9 (Grievance Mechanisms for Harm to Third Parties); ISLP & CCSI 2016, Section 2.13.8 (Grievance Mechanisms); UNIDROIT & IFAD, 2021, Chapter 7.I (Grievance Mechanisms).

58. Third-Party Beneficiaries

58.1 The Parties hereby expressly agree that all Legitimate Tenure Rights Holders, members of the Local Community, Indigenous Peoples, Workers [and Contract Farmers] are Third-Party Beneficiaries of this Agreement and shall be entitled to receive and enforce, including through the use of the procedures set out in Section 61, all of the benefits of this Agreement [other than the following Sections [insert exclusions as appropriate]].

58.2 Without prejudice to the generality to the foregoing paragraph, no Third-Party Beneficiary shall be subject to any liability whatsoever to any Party under this Agreement.

For more information: See generally UNIDROIT & IFAD 2021, Chapter 2.III.C (Contracts With Legitimate Tenure Right Holders as Third-Party Beneficiaries); Aizawa & Mann, 2021, Section 5.1 (Ensure Third-Party Rights Are Protected).

59. Excuses for Non-Performance

59.1 Force majeure: For the purposes of this Agreement, Force Majeure Event means any event that arises after this Agreement has been signed, is unpredictable, unavoidable, beyond the Parties' reasonable control and that objectively prevents any one of them from performing their obligations, including, but not limited to, wars, insurrections, civil disturbances, outbreak of disease, interruption of transportation or communication services, blockades, embargoes, strikes and other labour conflicts, riots, pandemics and epidemics, earthquakes, landslides, storms, droughts, fires, floods, or other exceptionally adverse weather conditions, explosions, lightning, or acts of terrorism.

59.2 For greater certainty, extreme climate change-related weather events identified as a potential risk in the ESIA conducted in accordance with this Agreement are excluded from the definition of a Force Majeure event.

59.3 As soon as reasonably practicable after the start of the Force Majeure Event, the Party that is prevented, hindered, or delayed in or from performing any of its obligations under this Agreement by the 59.4 Force Majeure Event (the Affected Party) shall provide Notice in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any or all of its obligations under the Agreement, and any relevant evidence of the Force Majeure Event.

59.4 The Affected Party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

59.5 Provided it has complied with paragraphs [59.2](#) and [59.3](#) above, the Affected Party shall not be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations under this Agreement.

59.6 All time periods specified in this Agreement for the performance of obligations or the enjoyment of rights that are affected by the Force Majeure Event, except in connection with an obligation to make payments of money, including the term of this Agreement, shall be extended by the period of time that the Force Majeure Event adversely affected the ability of the Affected Party to perform obligations or enjoy rights hereunder.

59.7 If a continuous condition of Force Majeure has existed for a period of one year or more, a Party that is not the Affected Party shall have the right to terminate this Agreement without further obligations or cost (except for any obligations that accrued prior to the commencement of the Force Majeure Event or obligations to make payments of money that accrued prior to such termination) by delivery of Notice to the other party not less than sixty (60) days prior to such termination.

59.8 Change in circumstances: Where a Party's ability to fulfill its obligations under this Agreement has been impeded or severely restricted due to a fundamental change of circumstances that was not contemplated by the Parties at the Signature Date and that is beyond the control of the disadvantaged Party, or a continuous condition of Force Majeure that has existed for a period of 1 year or more, that Party may request a renegotiation and variation of one or more of the terms of this Agreement, or the negotiation of a new agreement, and the other Party or Parties shall consider that request in good faith. For the avoidance of doubt, changes in circumstances do not include events of financial collapse or insolvency of the Company as a result of the Project Operations.

For more information: See generally ISLP & CCSI, 2016, Section 2.21 (Force Majeure); IISD & FAO, 2018, Section 8 (Force Majeure); UNIDROIT & IFAD, 2021, Chapter 5.II.A (Force Majeure); Aizawa & Mann, 2021, Section 4.5 (Anticipate and Manage Climate Change Risks).

60. Remedies

60.1 The Parties shall cooperate in the application of the remedies provided for in this Section and shall apply such remedies in a manner that is commensurate to the seriousness of the breach in question, with a view to preserving, as much as possible, the Parties' ongoing relationship and achieving the purpose of this Agreement.

60.2 Unless a Force Majeure Event takes place, a Party failing to comply with any obligation in this Agreement is in breach of this Agreement.

60.3 Aggrieved Party's duty to mitigate breach: Where a Party (the Aggrieved Party) becomes aware that another Party (the Breaching Party) is or will be in breach of one or more of its obligations under this Agreement, the Aggrieved Party shall notify the Breaching Party in writing and shall take all reasonable measures to minimize and mitigate the effects of the breach. The Aggrieved Party shall be entitled to recover from the Breaching Party any reasonable expenses or difference in value incurred in taking measures in mitigation in accordance with this Section.

60.4 Breaching Party's right to prevent or cure breach: Where the Breaching Party has been notified or otherwise becomes aware that it is or will be in breach of one or more of its obligations under this Agreement, it shall immediately take all reasonable measures at its own cost to prevent or cure the breach [as soon as practicably possible]/[within *[insert number]* days], including by;

- (a) bringing any aspect of the Project Operations that are non-compliant with this Agreement or the Applicable Law into compliance with same;
- (b) replacing any non-conforming goods or services with goods or services which conform with the requirements of this Agreement;
- (c) modifying or correcting any non-conforming production method or other process required by this Agreement, including in accordance with any specific instructions issued by the Aggrieved Party or any relevant certification body; and
- (d) *[insert other possible cures for breach based on the specificities of the Project or delete the words “including by” and do not provide an illustrative list of cures.]*

60.5 Aggrieved Party’s right to take corrective action: Where the Breaching Party does not or cannot cure the breach in accordance with Section [60.4](#), or the Aggrieved Party has a legitimate interest in refusing cure, and the breach does not arise from the Aggrieved Party’s failure to comply with its obligations under this Agreement or from the Aggrieved Party’s obstruction of the Breaching Party’s performance of its obligations, the Aggrieved Party may take such corrective action as is reasonable, necessary, and commensurate to the seriousness of the breach in question, including:

- (a) granting additional time for the Breaching Party to complete performance of one or more of its obligations under this Agreement;
- (b) withholding or delaying counter-performance of one or more of the Aggrieved Party’s obligations under this Agreement, including making a reasonable and proportionate adjustment to payments owing under this Agreement;
- (c) engaging in a substitute transaction, in a timely fashion, for the procurement of goods or services failed to be provided by the Breaching Party in accordance with this Agreement;
- (d) requesting the Breaching Party to engage in good faith in a Non-Periodic Review with a view to negotiating necessary variations to the terms of this Agreement, including an adjustment of the Rental Fee or any other payments owing under the Agreement in light of the Breaching Party’s non-performance, in accordance with Section [56](#);
- (e) requesting specific performance of an obligation under this Agreement, in accordance with the Applicable Law; and
- (f) *[insert any other specific corrective actions as may be applicable to the project].*

60.6 The Aggrieved Party shall be entitled to recover from the Breaching Party any reasonable expenses or difference in value incurred by the Aggrieved Party in taking corrective actions in accordance with Section [60.5](#).

60.7 Any corrective action taken by the Aggrieved Party in accordance with this Section shall be without prejudice to the Aggrieved Party’s entitlement to pursue any other recourse or remedy under this Agreement or under the Applicable Law.

60.8 Termination upon failure to cure or correct: Where the Breaching Party has committed a breach of this Agreement that is not a Material Breach, and an attempt to cure the breach by the Breaching Party, or corrective action by the Aggrieved Party, has failed to cure, prevent, or correct the breach within [\[60\]](#)[\[90\]](#)/*[insert number]* days of Notice of the breach having been provided to the Breaching Party, the Aggrieved Party may, with [\[30\]](#)/[\[60\]](#)/*[insert number]* days notice in writing to the Breaching Party, terminate this Agreement.

60.9 Termination upon Material Breach: Where the Breaching Party commits a Material Breach of this Agreement, the Aggrieved Party may terminate the Agreement with 14 days Notice to the Breaching Party.

60.10 The following events are deemed to be a Material Breach:

- (a) the Company significantly and persistently failing to use the Project Area in accordance with the grant of rights provided in Section [18](#).
- (b) the Company significantly and persistently failing to comply with the Applicable Law relating to human rights, labour protections, public health, or the environment, the terms of any Applicable Licence, or of the provisions of the ESMP, as the same may be revised or changed from time to time in accordance with this Agreement.
- (c) the Company failing to make a payment of the Rental Amount, in accordance with Section 0, and/or a payment for a Water-Use Permit, in accordance with Section [41](#), within sixty (60) days after the Grantor [or the Authority] gives a Notice of the failure to make said payment;
- (d) cancellation or non-renewal of any Applicable Permit due to a failure by the Company to comply with the terms and conditions of that Applicable Permit, in accordance with Section [10](#);
- (e) the Company committing a Material Breach of a Community Development Agreement in accordance with Section [38](#);
- (f) the Company dissolving, liquidating, becoming insolvent, filing for bankruptcy, making an assignment for the benefit of creditors, petitioning or applying to any tribunal for the appointment of a trustee or receiver for itself, or commencing any proceedings concerning itself under a law concerning bankruptcy, or insolvency other than for the purposes of corporate reorganization;
- (g) any one or more of the representations, warranties or undertakings provided by the Company in accordance with Section [9](#) is or proves to have been incorrect or misleading in any material respect when made or deemed to have been made, and such incorrect or misleading representation or warranty having a material adverse effect on any Party's ability to perform its obligations under this Agreement; and
- (h) The occurrence of an Unauthorized Change of Control event in accordance with Section [64](#).
- (i) any other breach of the Agreement that has the effect of substantially depriving the Aggrieved Party of what it was entitled to expect under the Agreement or that is intentional or reckless or is such that the Aggrieved Party has no reason to believe that any performance will be forthcoming.

60.11 Termination by the Company: The Company may terminate this Agreement without prejudice to any other rights it may have:

- (a) without cause at any time, with 365 days written Notice; or
- (b) if the Grantor [or Authority] fails to correct a breach of this Agreement in accordance with paragraph [60.8](#) (h).
- (c) in the case of a continuous condition of Force Majeure existing for a period of 1 year or more, in accordance with paragraph [59.6](#).

60.12 Contractual remedies preserved: The rights provided in this Section are in addition to, and not in derogation of, any remedial right to damages which any Party may have pursuant to the Applicable Law for a breach by another Party to this Agreement.

For more information: See generally Smaller & Brewin, 2018, Section 9 (Remedies); ISLP & CCSI 2016, Section 2.23 (Termination); Szoke-Burke et al., 2018, Sections 18 (Remedies: What Happens If the Company Breaches the Contract?) and 19 (Ending the Contract [Termination]); UNIDROIT & IFAD, 2021, Chapter 5.III (Remedies for Breach).

61. Dispute Settlement

61.1 Amicable resolution: A Party shall provide Notice to the other Party [or Parties] of any dispute concerning the application or interpretation of this Agreement and shall seek to amicably resolve such dispute including, without prejudice to any legal rights or obligations, referring the dispute by agreement to independent mediation.

61.2 Independent Expert: For any disagreement or dispute relating exclusively to issues of a factual or technical nature, the Parties may, by agreement, seek determination of the issues in dispute by an independent expert with qualifications, experience, and professional standing demonstrating a high level of aptitude in the field or matter on which the determination is sought (the Independent Expert).

61.3 An Independent Expert shall be appointed through the following procedure:

- (a) The Parties shall jointly appoint an Independent Expert, giving preference to persons ordinarily resident in the Host State and seeking economy in appointment expenses and fees.
- (b) Where the Parties have not reached an agreement on the appointment of an Independent Expert within 1 month of the provision of Notice referred to in Section 61.1 above, [an Independent Expert shall, at the request of a Party, be appointed by the [insert relevant industry body/arbitral institution]/[each Party shall choose one Independent Expert who jointly shall choose a third Independent Expert, who shall together form a panel of Independent Experts (the Independent Expert Panel) which will make a decision by a majority vote].
- (c) Each Party shall have ten (10) days after the selection of the Independent Expert [or Independent Expert Panel, as the case may be] to submit its positions in writing to the Independent Expert [or Independent Expert Panel]. After considering the Parties' written positions, the Independent Expert shall determine whether there is a need for the Parties to present their positions in an oral hearing, upon the request of a Party or upon the initiative of the Independent Expert [or Independent Expert Panel].
- (d) The Independent Expert [or Independent Expert Panel] shall act as expert and not as arbitrator and shall decide the procedure to be followed in any oral hearing and in making a determination.
- (e) [The draft determination of the Independent Expert shall be rendered in writing within fourteen (14) days after submission of the Parties' positions in writing or oral hearing, as the case may be, and the Parties shall be afforded 5 days to submit any written comments on the draft determination.]
- (f) The final determination of the Independent Expert [or Independent Expert Panel] shall be rendered in writing within thirty (30) days after submission of the Parties' positions in writing

or oral hearing, as the case may be, and such determination shall, in the absence of manifest error, be final and binding on the Parties.

61.4 The costs of the determination, including fees and expenses of the Independent Expert [or Independent Expert Panel] shall be borne equally between the Parties.

61.5 Litigation in national courts: Where the dispute has not been resolved in accordance with the preceding paragraphs within 6 months of the Notice referred to in Section 61.1 above, any Party may submit the dispute to the courts of the Host State for resolution and the law of the Host State shall be the governing law for such dispute.

61.6 The Parties and their Affiliates hereby waive any rights whatsoever, and irrespective of their origin in the Applicable Law or under international law, including international treaties, to additional or alternative dispute settlement processes for any matters relating to the interpretation or implementation of this Agreement or any act by any Party alleged to be in breach of this Agreement.

[OPTIONAL]

61.7 Arbitration by agreement: The Parties may, by written agreement, submit a dispute to international arbitration under rules to be agreed by the Parties at the time but in any event including provisions for:

- (a) the arbitral proceedings to be administered and hosted by an arbitral institution located in [the Host State]/[*insert other country close to the Host State or region in which the Host State is located*];
- (b) the law applicable to the arbitration to be the Applicable Law under this Agreement;
- (c) the disclosure of the existence of any third-party funder to the arbitration, the identity of that funder, and terms of the funding agreement to the arbitral tribunal;
- (d) the participation of non-Parties to the arbitration in the arbitral proceedings, including Legitimate Tenure Rights Holders, the Local Community, and amicus curiae; and
- (e) the incorporation of the United Nations Commission on International Trade Law (UNCITRAL) Rules on Transparency in Treaty-based Investor–State Arbitration.

61.8 For greater certainty, the foregoing Section does not constitute and shall not be construed as an agreement to arbitrate any dispute in relation to this Agreement.

For more information: See generally IISD, 2014, Section 11.2 (Dispute Settlement); ISLP & CCSI, 2016, Section 2.20 (Dispute Resolution); UNIDROIT & IFAD, 2021, Chapter 7.II.B.1 (Expert Determination); Aizawa & Mann, 2021, Section 5.6 (Dispute Avoidance and Dispute Settlement).

62. Renewal

62.1 Upon agreement of the Parties and upon satisfactory completion by the Parties of all obligations under this Agreement, this Agreement may be renewed up to [*insert number*] time(s), each time for an additional term of up to [*insert number*] years, subject to the following:

- (a) The Party wishing to renew the Agreement shall so notify the other Party [or Parties] in writing, no less than 3 months prior to the date of expiry of the Agreement in accordance with the term provided for in Section 8;

- (b) The Parties shall review and may, where necessary, vary in writing in accordance with Section [68.5](#) such terms of this Agreement as necessary to reflect conditions existing at the time of renewal, and conditions foreseeable in the future. In any event, the Parties shall review and where necessary modify the Rental Amount provided for in Section [19](#);
- (c) This Agreement shall remain in effect for the period during which the Parties are reviewing and where necessary modifying the terms of the Agreement in accordance with the previous paragraph; and
- (d) Where the Parties have not reached a satisfactory agreement for the modification of this Agreement for the purposes of renewal within 3 months of the date of expiry of the Agreement in accordance with Section [8](#), the Agreement shall expire, and processes for the return of land and assets in accordance with Sections [65](#) and [66](#) shall commence.

For more information: See generally UNIDROIT & IFAD, 2021, Chapter 4.I.D (Duration and Renewal).

63. Assignment

63.1 Affiliated Company assignment: The Company shall have the right to assign all (but not less than all) its rights, interests, and obligations under this Agreement and any related agreements to an Affiliate subject to the following procedures:

- (a) The Company shall provide Notice to the Grantor no less than 6 months prior to the effective date of the proposed assignment;
- (b) If the Grantor does not reply to such Notice within 30 days of its receipt, the Grantor shall be deemed to consent to the assignment;
- (c) The Affiliate shall acknowledge and agree in writing that it has the capacity to perform all the obligations of the Company under this Agreement.

63.2 Where the Grantor so requires, the Affiliate and the Grantor shall conclude a new Agreement incorporating the terms of this Agreement by reference, subject to any necessary modifications.

63.3 Third-party assignment: The Company shall have the right to assign all (but not less than all) its rights, interests, and obligations under this Agreement and any related agreements to a third party (the Third-Party Assignee), subject to the following procedures:

63.4 The Company shall provide Notice to the Grantor no less than 6 months prior to the effective date of the proposed assignment, including:

- (a) the reason for the proposed assignment; and
- (b) a written report of consultations in respect of the proposed assignment which the Company and the Third-Party Assignee have held with Legitimate Tenure Right Holders, the Local Community, Indigenous Peoples, Workers [[and Contract Farmers](#)], evidencing Free, Prior, and Informed Consent of individuals and groups.

63.5 If the Grantor does not reply to such Notice within 30 days of its receipt, the Grantor shall be deemed to withhold its consent and the assignment shall not take place.

63.6 If the Grantor consents to the assignment, the Third-Party Assignee shall:

- (a) acknowledge and agree in writing that it has the capacity to perform all the obligations of the Company under this Agreement;
- (b) acknowledge and agree in writing that it makes each of the representations, warranties and undertakings of the Company provided for in Section 9;
- (c) provide written confirmation from a bank, financing institution, Affiliate of the Third-Party Assignee or a duly authorized representative of the Third-Party Assignee with supporting documents evidencing that the Third-Party Assignee has access to sufficient financing, and indicating the source of that financing, to deliver the Project in accordance with the terms of this Agreement and as required by the Approved Business Plan; and
- (d) provide a complete and accurate statement of the Third-Party Assignee's corporate organization, including:
 - (i) the full name and nationality of all executive and non-executive directors and senior officers of the Third-Party Assignee;
 - (ii) the full name and nationality of each person who is a beneficial owner of [10%]/[insert other amount] or more of the Third-Party Assignee's shares or voting rights; and
 - (iii) the full name and Home State of each Affiliate of the Third-Party Assignee and a description of the relationship between the Third-Party Assignee and that Affiliate.

63.7 Where the Grantor so requires, the Third-Party Assignee and the Grantor shall conclude a new Agreement incorporating the terms of this Agreement by reference, subject to any necessary modifications.

63.8 On any effective assignment of this Agreement to a Third-Party Assignee approved by the Grantor, the Company shall be released from its liabilities under this Agreement.

63.9 The Grantor shall not transfer or assign its rights or obligations under this Agreement or create or permit to be created any encumbrance or claim on its rights in this Agreement.

For more information: See generally IISD, 2014, Section 14 (Assignment); ISLP & CCSI, 2016, Section 2.16 (Assignment and Novation); Cotula, 2016, Section 3.2 (p. 48. Ensuring That the Company Has the Necessary Capabilities: Investor Identity and Assignments of Rights); Szoke-Burke et al., 2018, Section 13 (Assignment of Rights); UNIDROIT & IFAD, 2021, Chapter 6.I.A (Legality of Transfer, Validity and Effectiveness of Transfer, Required Formalities and Limitations).

64. Change of Control

64.1 For the purposes of this Section, "Control" means the power of a person to ensure that the affairs of the Company are conducted in accordance with the wishes of that person, by means of;

- (a) the holding of shares in or the possession of voting power in relation to the Company; or
- (b) any powers conferred by the constitutional or corporate documents of the Company, or any other document, relating to or regulating the Company.

64.2 For the purposes of this Agreement, "Change of Control" means a body corporate, other than that which was in control of the Company at the Signature Date, acquiring control of the Company.

64.3 The Company shall provide Notice to the Grantor [and the Authority] no later than 10 days following the occurrence of any Change of Control event, and such Notice shall include:

- (a) a written acknowledgement and agreement that the Company continues to have the capacity to perform all the obligations of the Company under this Agreement;
- (b) a written acknowledgement and agreement that the Company continues to make the representations, warranties and undertakings provided for in Section 9; and
- (c) a complete and accurate updated statement of the Company's corporate organization, including:
 - (i) the full name and nationality of all executive and non-executive directors and senior officers of the Company;
 - (ii) the full name and nationality of each person who is a beneficial owner of [10%]/[insert other percentage] or more of the Company's shares or voting rights;
 - (iii) the full name and Home State of each Affiliate of the Company and a description of the relationship between the Company and that Affiliate.

64.4 An Unauthorized Change of Control is any Change of Control event that the Grantor [and the Authority] considers:

- (a) is or would be in violation of the Applicable Law; or
- (b) is designed to avoid compliance with or minimize liability under the Applicable Law; or
- (c) is designed to obtain an undue benefit under the Applicable Law or any investment treaty to which the Government of the Host State is a party, including access to jurisdiction for the purposes of dispute settlement under such treaty;

64.5 The Grantor [and the Authority] may withhold its consent to an Unauthorized Change of Control and Terminate this Agreement in accordance with Section 60.

For more information: See generally ISLP & CCSI, 2016, Section 2.17 (Change of Control); UNIDROIT & IFAD, 2021, Section 6.21 (Change of Control).

65. Return of Land

65.1 No later than 1 month following the termination of this Agreement, or otherwise by agreement of the Parties, the Company shall return the Project Area to the Grantor free of any liens and encumbrances and at no cost to the Grantor, except for compensation for assets in accordance with Section 66, and subject to the requirements in respect of project closure and restoration of the environment in accordance with Section 45.10.

65.2 Unless agreed otherwise between the Parties, any Product remaining on the Project Area at the date of termination shall be the property of the Company and shall be removed from the Project Area at the cost of the Company, subject to Section 65.3 below where the removal of those Products incurs a delay in the vacating of the Project Area.

65.3 The Company shall be liable for the payment of the Rental Fee plus compound interest of [insert]%, pro-rated per day of delay in vacating the Project Area, unless otherwise agreed by the Parties.

For more information: See generally UNIDROIT & IFAD, 2021, Chapter 6.II (Return of Assets Upon End and Termination of the Contract).

66. Return and Disposal of Assets

66.1 Non-movable assets: Upon termination of this Agreement for breach by the Company in accordance with Section 61, all permanent non-movable tangible assets of the Company in the Project Area (the Non-movable Assets) [as identified in the Asset Inventory contained in Annex [X] to this Agreement], which are not otherwise the property of the Grantor, shall become the property of the Grantor without charge and free of any lien and encumbrance.

66.2 Upon termination of this Agreement by the Company for breach by the Grantor [or Authority] in accordance with Section 61, or upon expiry of the term of this Agreement, the Grantor [or the Authority] shall pay the Company the “Fair Market Value” for the Non-movable Assets.

66.3 “Fair Market Value” means the value which is estimated would be paid in an arm’s length transaction by a willing and knowledgeable buyer to a willing and knowledgeable seller on the basis that there are no encumbrances in existence and that there are willing buyers in the market. Such value shall be agreed by the Parties and, if not so agreed within 28 days of termination, any Party may give Notice of its intention to refer the matter to an independent valuation expert with relevant industry knowledge and experience for determination.

66.4 Movable assets: At any time after termination of this Agreement and with respect to each movable asset that is the property of the Company which the Company wishes to sell, the Grantor [or the Authority] shall have the first option to purchase such asset at a Fair Market Value. If the Grantor [or the Authority] does not exercise its option within ninety (90) days of being informed by the Company that it wishes to sell such asset, the Company may sell such asset to any other Person.

66.5 Movable assets provided by the Grantor [or the Authority] to the Company for the purposes of the Project [as identified in the Asset Inventory contained in Annex [X] to this Agreement] shall be returned to the Grantor [or the Authority] upon termination of this Agreement in substantially the same condition as they were provided to the Company save for reasonable wear and tear sustained through normal use of the Asset in accordance with Good Industry Practice.

66.6 The Grantor by Notice to the Company within a reasonable period but no more than one (1) year after termination of this Agreement pursuant to Section 61, may require reasonable disposal or removal, in accordance with the Applicable Law, of any or all movable assets, including unusable assets, remaining within the Project Area after total disposition of assets in accordance with this Section.

66.7 If the Company fails to reasonably dispose of or remove such asset or assets within a reasonable period after said Notice, the Grantor may effect such reasonable disposal or removal at the expense of Company.

66.8 The Company shall be liable to compensate the Grantor for any damage or deterioration to the Non-Movable or Movable Assets that are the property of the Grantor.

For more information: See generally ISLP & CCSI, 2016, Section 2.24 (Disposition of Assets); Szoke-Burke et al., 2018, Section 22 (What Happens to the Land and Improvements After the Contract Ends [Disposition of Assets]); UNIDROIT & IFAD, 2021, Chapter 6.II (Return of Assets Upon End and Termination of the Contract).

67. Survival

67.1 On termination of this Agreement, all of the rights and obligations under this Agreement other than Sections [45.8–45.17](#), [52](#), [58](#), [60](#), [65](#), and [66](#) shall terminate.

68. Miscellaneous

68.1 Entire agreement:¹⁸ This Agreement, all Annexes, and all Ancillary Documents together represent the entire understanding between the Parties in relation to the subject matter thereof and supersede any or all previous agreements or arrangements between the Parties in respect of this Agreement, whether oral or written. The Parties confirm that they have not entered into this Agreement on the basis of any written or oral representation that is not expressly incorporated in this Agreement.

68.2 Fees and expenses: Each Party shall be responsible for its own fees and expenses incurred in connection with this Agreement, the preparation and negotiation of the Project Documents or the Project.

68.3 No waiver: No failure or delay by a Party in exercising any right or remedy under this Agreement shall constitute a waiver of such right or remedy, and no waiver by a Party of any breach by the other Party shall be deemed to be a waiver of any other breach. No single or partial exercise by a Party of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.

68.4 Severability: If any term of this Agreement:

- (a) is held not to be valid or if part of the wording were deleted or modified, then that provision applies with all necessary modifications to make it enforceable; or
- (b) is or becomes illegal, invalid, or unenforceable in any jurisdiction, such illegality, invalidity, or unenforceability shall not affect:
 - (i) the legality, validity, or enforceability in that jurisdiction of any other term of this Agreement; or
 - (ii) the legality, validity, or enforceability in any other jurisdiction of that or any other term of this Agreement.

68.5 Variations in Writing:¹⁹ This Agreement may not be altered, amended, modified, or otherwise changed in any respect except by agreement between the Parties as evidenced in writing and duly executed by each Party.

¹⁸ See generally UNIDROIT & IFAD, 2021, Section 3.73 (Entire Agreement Clause.)

¹⁹ See generally ISLP & CCSI, 2016, Section 2.26 (Amendments; Periodic Review); UNIDROIT & IFAD, 2021, Section 4.159. (Amendments and Renegotiations).

68.6 Notices:²⁰ All notices, deliveries, and other communications pursuant to this Agreement shall be in writing and shall be made by personal delivery, fax, email, or by nationally recognized courier to the Parties at the addresses set forth below. Any such notice, delivery or communication shall be deemed to have been delivered and received:

- (a) in the case of personal delivery, on the date of such delivery;
- (b) in the case of fax or email, on the date of the receipt of confirmation by the delivering Party;
or
- (c) in the case of a nationally recognized express delivery service, on the business day that delivery to the addressee is confirmed pursuant to the service's systems.

68.7 Notices to the Grantor shall be addressed as follows:

[Attention:

Address:

Email:

Fax]

68.8 Notices to the Company shall be addressed as follows:

[Attention:

Address:

Email:

Fax]

68.9 [Notices to the Authority shall be addressed as follows:

[Attention:

Address:

Email:

Fax]]

68.10 Silence as consent: Where the Company requires the approval of the Grantor [or the Authority] pursuant to this Agreement, that approval shall be conclusively deemed to have been provided if, within [60]/[insert longer period] days of application for approval, the Grantor [or the Authority, as the case may be] has not indicated a decision to withhold approval by Notice, unless otherwise provided for in this Agreement or in the Applicable Law.

68.11 Relationship of the Parties: This Agreement shall not be interpreted or construed to create an association, joint venture, partnership, or agency between the Parties or to impose any partnership obligation or liability upon any Party. No Party shall have any right, power, or authority to enter into

²⁰ See generally ISLP & CCSI, 2016, Section 2.25 (Notice); UNIDROIT & IFAD, 2021, Section 4.157 (Notice).

any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Parties. The Company shall be solely responsible for the payment of salaries, wages, and mandatory fringe benefits of its Workers, which will not have any relationship of any kind with the Grantor [or the Authority].

68.12 Language: The language of this Agreement shall be [English]/[insert other language]. All documents, notices, waivers, and all other communications, written or otherwise between the Parties in connection with this Agreement shall be in [English]/[insert other language].

68.13 No Liability for review: No review or approval by the Grantor [or the Authority] of any agreement, document, instrument, drawing, specifications, or design proposed by the Company shall relieve the Company from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specifications, or design or from failure to comply with the Applicable Law with respect thereto, nor shall the Grantor [or the Authority] be liable to the Company or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design.

Annex A. Feasibility Study Requirements

1. The Feasibility Study, as required by Section 11 of this Agreement, shall comply with the requirements of the Applicable Law and shall contain, at a minimum, the following:

- (a) a market survey or analysis, including identification of:
 - (i) levels of demand for the Product;
 - (ii) competitor firms and competing products;
 - (iii) historical prices for similar products; and
 - (iv) projected sales of the Product.

- (b) technical feasibility, including identification of:
 - (i) physical inputs required for production;
 - (ii) assumptions with respect to existing and future environmental, hydrological, and climatological conditions at the Project Area;
 - (iii) appropriateness of the Product and production techniques for existing and future environmental, hydrological, and climatological conditions at the Project Area;
 - (iv) sensitivity of the Project to changes in environmental, hydrological, and climatological conditions and adaptation measures needed to respond to those changes; and
 - (v) The degree to which the Project will impact the exposure and vulnerability to climate change of Legitimate Tenure Rights Holders and members of the Local Community, using Gender-Disaggregated Data.

- (c) financial feasibility, including identification of:
 - (i) total capital requirements, including capital expenditures and operating expenses;
 - (ii) cost of production;
 - (iii) cost of obtaining the Applicable Permits;
 - (iv) cost of compliance with the Applicable Law and implementation of the Environmental and Social Management Plan and Human Rights Due Diligence Report; and
 - (v) expected costs, returns, and profits.

- (d) Social and environmental feasibility, including identification of:
 - (i) a plan for consultations with Legitimate Tenure Rights Holders and the Local Community, ensuring separate discussion spaces for women and for men, which will enable Free, Prior, and Informed Consent of individuals and groups;
 - (ii) the expected impacts of the project (positive and negative) on Legitimate Tenure Rights Holders and the Local Community, using Gender-Disaggregated Data;
 - (iii) yield assumptions of women and men farmers involved in the Project, using Gender-Disaggregated Data and accounting for the productivity gap between women and men farmers;

- (iv) degree of access to productive resources and capital of women and men farmers involved in the Project; and
 - (v) the expected environmental impacts and risks posed by the Project over the term of the Agreement, using Gender-Disaggregated data.
- (e) organizational feasibility, including identification of:
- (i) the proposed business structure;
 - (ii) the most appropriate business model for implementation of the Project.
 - (iii) a plan for development of the managerial and organizational skills of women and men according to their needs.
- (f) a proposal for a grievance mechanism for use by Legitimate Tenure Rights Holders and members of the Local Community, outlining:
- (i) how the Company intends to finalize the design for the grievance mechanism in consultation with its intended users, including a process for identifying:
 - A. the types of complaints likely to be submitted to the grievance mechanism;
 - B. the preferred methods by which the intended users can submit complaints; and
 - C. the availability of other local resources to resolve conflicts, and any integration of these processes into the grievance mechanism.
 - (ii) how the Company intends to administer the grievance mechanism, including identifying how the Company shall:
 - A. commit to building internal support for the grievance mechanism and ensure fairness of its operations and outcomes, and freedom from reprisal for its users;
 - B. ensure the grievance mechanism is culturally appropriate, Gender-Sensitive, and accessible to all Legitimate Tenure Rights Holders and members of the Local Community, including vulnerable groups;
 - C. receive and keep track of complaints from users in relation to a broad range of perceived concerns, through a central coordinator with multiple access points;
 - D. publicize the grievance mechanism procedures and access points among its intended users, taking extra measures where necessary to ensure women receive information about the mechanism directly and in a manner that is understandable and appropriate to them; and
 - E. review, investigate, and develop resolution options for grievances in a way that incorporates a variety of grievance resolution approaches.
 - (iii) how the Company intends to monitor, report on (without attribution), and evaluate the effectiveness of the grievance mechanism to adapt and improve the effectiveness of the grievance mechanism and to improve Project operations.

For more information: Holz-Clause, M., Wright, G., & Hofstrand, D. (2009). *Feasibility study outline*. Iowa State University Ag Decision Maker.
<https://www.extension.iastate.edu/agdm/wholefarm/html/c5-66.html>

Annex B. Environmental and Social Management Plan Requirements

1. The Environmental and Social Management Plan, as required by Section 13 of this Agreement, shall comply with the requirements of the Applicable Law and shall contain, at a minimum, the following:

- (a) an identification of the main areas of environmental concern;
- (b) an identification of the main areas of human rights concern;
- (c) plans for the management, control, and rehabilitation of all environmental aspects of the Project, including historic environmental matters, and human rights and social matters in a manner that equally benefits or equally minimizes harm to people of all genders and social groups, including Indigenous Peoples, including:
 - (i) a plan to ensure that the Company's operational policies integrate and reflect the responsibility to respect human rights throughout the life cycle of the Project and that the policies have the objective of preventing, mitigating, and remediating any potential or actual negative human rights impact;
 - (ii) a plan to ensure that maximum allowable parameters of chemicals, pesticide residues, water withdrawal, soil erosion, deforestation, and other key environmental parameters are not exceeded;
 - (iii) a plan to avoid, minimize, mitigate, and rehabilitate, and, as a last resort, offset, negative impacts on biological diversity within the Project Area;
 - (iv) a plan to avoid, minimize, mitigate, and rehabilitate, and, as a last resort, offset, negative impacts on surface and groundwater quality and quantity to ensure the Project does not cause excessive harm or destruction to human or animal life or vegetation;
 - (v) identification of opportunities for the improved management and conservation of natural resources in the Project Area;
 - (vi) a plan to effectively manage soil resources, including through the use of agroecological farming practices, to ensure parameters of soil quality are maintained and/or enhanced over the term of the Agreement, including in relation to soil organic carbon, nitrogen, phosphorus, potassium, and salinity levels;
 - (vii) a plan to reduce greenhouse gas emissions from the Project, taking into account economically and commercially feasible technology and ability to access Global Environment Facility funding for climate-sensitive technologies;
 - (viii) a plan to reduce the vulnerability of the Project Operations to climate change impacts;
 - (ix) a plan for handling, storing, and disposing of chemicals, pesticides, fertilizers, and fuel, and for managing residues of biohazardous materials; and
 - (x) a plan for the use and protection of traditional knowledge and cultural heritage sites and systems of those groups, in particular as relates to conservation and the protection of biodiversity in or near to the Project Area.

- (d) a description of the monitoring and assessment mechanism for the Environmental and Social Management Plan, and of how that mechanism will be inclusive of people from all genders and social groups, including Indigenous Peoples;
- (e) a description of how the Company intends to implement its commitment to continual improvements in methods of production for climate change adaptation and mitigation in accordance with Section 39;
- (f) an explanation of how the Company shall:
 - (i) recognize the rights of people of all genders and social groups, including Indigenous Peoples, who are Legitimate Tenure Rights Holders, including their rights to continue utilizing land within the Project Area for subsistence purposes such as grazing livestock, using water, cultivating crops, hunting game, collecting fruits and fuel wood, and other activities they deem necessary for livelihoods and subsistence, subject to reasonable restrictions imposed in accordance with Section 21; and
 - (ii) avoid displacement or involuntary resettlement of persons.
- (g) a plan to prevent or minimize the potential adverse impact of the Project operations on Legitimate Tenure Rights Holders and the Local Community, and other persons potentially affected by the production, processing or transport of agricultural products whether using Company-owned infrastructure or infrastructure provided by the Grantor, [the Authority], or third parties;
- (h) provisions to prevent or minimize unreasonable interference with the living conditions of Legitimate Tenure Rights Holders and the Local Community and to ensure that the Company's Workers and contractors respect the customs of Legitimate Tenure Rights Holders and the Local Community, and to prevent or minimize harmful impacts on subsistence activities undertaken by women and men;
- (i) a process to carry out or procure an independent assessment of the potential for human rights impacts from the presence and activities of the Project, and how the Company's policies, procedures, and practices affect the human rights of Legitimate Tenure Rights Holders and the Local Community, as guided by the tenets of transparency, independence, and inclusivity, as defined by international standards.

Annex C. Community Development Agreement Requirements

1. Social and economic benefits: Each Community Development Agreement (CDA) concluded in accordance with Section 38 shall include, at a minimum, terms governing the following elements:

- (a) the goals and objectives of the CDA and the parties' commitment to the principles of cooperation, mutual respect, and good faith in the pursuit of those goals and objectives;
- (b) identification of development opportunities and social and economic benefits presented by the Project, including specific opportunities for women to benefit and mechanisms by which the Local Community can take advantage of those opportunities and share in those benefits;
- (c) a process for the Local Community to identify local climate change adaptation projects in accordance with Section 40.3.
- (d) undertakings with respect to the social and economic contributions that the Project will make to the Local Community, including the amount the Company will pay to a Community Development Fund (CDF), and provisions outlining:
 - (i) the means by which funds are to be disbursed, for what purposes they may be disbursed, what accounts must be kept and by whom, and Gender-Disaggregated reporting and auditing requirements;
 - (ii) how women will be involved in the oversight and administration of the CDF, [including earmarking specific amounts that can only be overseen and administered by groups representing women];
 - (iii) how funds from the CDF will be specifically designated and spent on women's and men's programming; and
 - (iv) how funds from the CDF will be specifically designated and spent on local climate change adaptation projects identified by the Local Community.
- (e) undertakings with respect to any fiscal revenues derived from the Project that will be distributed to the Local Community during the Project cycle and after Project Closure through an escrow account controlled by the Parties, including the method of disbursing such funds to support Local Community livelihoods and the parties to whom such funds are to be paid;
- (f) undertakings with respect to the provision by the Company of social infrastructure for use by the Local Community;
- (g) the roles and obligations of the Local Community to the Company.

2. Joint decision making, consultation, and information sharing: Each CDA shall include, at a minimum, terms governing the following elements:

- (a) identification of the person or body that represents the Local Community for the purposes of the CDA;
- (b) identification of the person/s, board, committee, or other entity which shall oversee the implementation of the CDA;
- (c) the means by which a registry of persons comprising the Local Community for the purposes of the CDA will be developed, maintained, and updated;

- (d) the means by which members of the Local Community and representatives of the Company will participate in joint decision-making processes related to the CDA and the Project;
- (e) the means by which the interests of women, youth, Indigenous Peoples, and minority and marginalized groups and subcommunities of the Local Community will be represented in decision-making processes related to the CDA and implementation of the CDA;
- (f) the frequency and form of information sharing by the Company with respect to the implementation of the CDA and any other relevant information with respect to the Project;
- (g) the means by which the Company will engage in consultations with the Local Community in the planning of Project closure and post-closure measures that seek to prepare the Local Community for the eventual closure of the Project.

3 Community Development Plan: Each CDA shall include a Community Development Plan (the CDA Plan), which shall include, at a minimum, terms governing the following elements:

- (a) objectives of the CDA Plan;
- (b) milestones for the achievement of the objectives of the CDA Plan with metrics by which to measure progress;
- (c) an implementation timetable for the delivery of the CDA Plan;
- (d) minimum financial commitments of the Company to delivering the CDA Plan with a schedule of anticipated expenditures and periodic reporting requirements as to actual expenditures;
- (e) engagement with and linkages between the CDA Plan and other government plans, services, infrastructure and activities provided to or affecting the Local Community;
- (f) how the provision of any service provided by the Company to the Local Community will be terminated or transferred to the Local Community, government, or other entity following the term of the CDA;
- (g) how and when the CDA Plan will be periodically updated;
- (h) how the CDA Plan and any variations to it will be ratified by the Local Community; and
- (i) such other content as may be mutually agreed by the Local Community and the Company.

4. Review, reporting, grievances, and disputes: Each CDA shall include, at a minimum, terms governing the following elements:

- (a) the means by which the CDA shall be reviewed by the Company and the Local Community every (*insert number*) calendar years, and the commitment to be bound by the current agreement in the event that any modifications to the agreement sought by one party cannot be mutually agreed with the other party;
- (b) the consultative and monitoring frameworks between the Company and the Local Community, and the means by which the Local Community may participate in the planning, implementation, management, measurement (including indicators) and monitoring of activities carried out under the CDA;
- (c) the language(s) to be used in the preparation of reports, plans, and other written matters required under the CDA;
- (d) the mechanisms whereby the Local Community and subcommunities and members of the Local Community may lodge a grievance with the Company related to the implementation of the CDA;

- (e) a statement to the effect that both the Company and Local Community agree that any dispute regarding the CDA shall in the first instance be resolved by consultation between the Company and the Local Community representative(s);
- (f) the dispute resolution mechanism to be used when consultation between the Company and the Local Community representative(s) fails;

5. Miscellaneous: Each CDA shall include, at a minimum, terms governing the following elements:

- (a) the process by which the CDA may be modified;
- (b) the applicable law, which shall be the law of the Host State;
- (c) reasons and procedure for declaring force majeure;
- (d) duration of the CDA;
- (e) termination of the CDA;
- (f) assignment of the CDA or any right or obligation thereunder;
- (g) transfer of all CDA rights and obligations to any party to whom the Company assigns its tenure rights in accordance with [63](#);
- (h) how notifications to respective parties shall be made;
- (i) location where the CDA may be accessed by members of the Local Community;
- (j) the CDA signatories, which may for the Local Community be the representatives of the Local Community, representatives of subcommunities comprising the Local Community, Local Community members or any combination thereof, non-governmental organizations, and others as the need requires.

[EXAMPLES OF OTHER POSSIBLE ANNEXES TO BE DEVELOPED BY THE PARTIES, AS REQUIRED BY CONTEXT]

- With respect to new infrastructure:
 - o A list of locally available materials, equipment, and products (see Section [25.4](#))
 - o An agreement for co-financing of construction, and co-ownership (see Section [25.5](#))
 - o An agreement for co-financing of repairs and maintenance (see Section [25.6](#))
- A Contract Farming Agreement (see Section [35.11](#))
- An agreement for the provision of Environmental Performance Payments (see Section [39.4](#))
- An asset inventory (see Section [66.1](#))

For more information: These terms have been lightly adapted from the Community Development Agreement Model Regulations & Example Guidelines:
<http://documents.worldbank.org/curated/en/278161468009022969/pdf/614820WP0P11781nal0Report0June02010.pdf>