

CLIMATE ACTION RESERVE

TERMS OF USE

JULY 2023

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CLIMATE ACTION RESERVE TERMS OF USE

These Terms of Use set out the terms by which the Climate Action Reserve (the “Reserve”), a non-profit public benefit corporation having its principal place of business at 601 West Fifth Street, Suite 650, Los Angeles, California 90071, has agreed to provide the User with access to use the Climate Action Reserve program of the Reserve (the “Program”). The Reserve serves as (1) a voluntary greenhouse gas (“GHG”) registry to protect, encourage, and promote early actions to reduce GHG emissions; and (2) as a California Air Resources Board (ARB) approved Offset Project Registry that meets the requirements of California Code of Regulations section 95986 and lists offset projects, collects Offset Project Data Reports, facilitates verification of Offset Project Data Reports, and issues Registry Offset Credits (or “ROCs”) for offset projects being implemented using a Compliance Offset Protocol as well as early action offset credits (recorded as CRTs on the Reserve’s system) for offset projects being implemented using an Early Action Offset Protocol; and (3) as a Washington State Department of Ecology (Ecology) approved Offset Project Registry that meets the requirements of Washington Administrative Code section 173-446-590 and lists offset projects, collects Offset Project Data Reports, facilitates verification of Offset Project Data Reports, and issues Registry Offset Credits (or “ROCs”) for offset projects being implemented using a Compliance Offset Protocol.

1. Service

- (a) User’s use of the Program, any corresponding software, and the Reserve website, located online at www.climateactionreserve.org, is subject to these Terms of Use, which constitute a binding contract between User and the Reserve. BY USING OR ACCESSING THE PROGRAM, USER ACCEPTS AND AGREES TO BE BOUND BY THESE TERMS OF USE AS MODIFIED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS HEREOF. User can review the current version of the Terms of Use at any time at <http://www.climateactionreserve.org/how/program/documents/> In addition to these Terms of Use, when using the Program User shall be subject to any general, industry-specific and project-specific guidelines, protocols, and/or operating procedures, including but not limited to the Reserve’s General Reporting Protocols and the Program’s Operating Procedures, applicable to such use (collectively, the “Reserve Protocols”), but only to the extent that the Reserve Protocols do not conflict with the Terms of Use. Certain of the Reserve Protocols may be posted at <http://www.climateactionreserve.org/how/protocols/> from time to time. The Reserve Protocols are incorporated by reference into these Terms of Use. In addition, User agrees to comply with any and all applicable ARB Offset Program Rules and Requirements and Ecology Cap-and-Invest Program Rules and Requirements, as ARB and Ecology may impose and update from time to time. If User does not agree to these Terms of Use, User may not access or otherwise use the Reserve.
- (b) User recognizes that the Program, and all software, hardware, and data comprising the Program, are either owned by the Reserve or licensed to the Reserve by APX,

Inc. (the “Service Provider”). User further recognizes that the compilation of data on the Program is owned entirely by the Reserve.

- (c) User is responsible for providing and maintaining all communications lines, telephone/transmission services, and all equipment and technology, necessary for User to access and use the Program, and all costs and expenses associated with its accessing and using the Program. User shall take all appropriate steps and precautions to safeguard and protect the access, use, and security of the Program and User’s access information from unauthorized users.
- (d) As between the Reserve and User, the Reserve reserves the right, in its sole discretion, to alter, augment, segment, reformat, reconfigure, or otherwise modify at any time the content or methods of transmission of the Program or these Terms of Use and create new versions of the Program or these Terms of Use. If the Reserve creates any such modification of these Terms of Use or any new version of these Terms of Use, the Reserve shall provide notice thereof to User. Following provision of such notice, User shall be entitled to indicate, through a website maintained by the Reserve or the Service Provider, User's agreement to be bound by such modification or new version. If User does not indicate such agreement within fourteen (14) days following the date on which such notice is provided, User shall thereafter cease to have access to the Program until such time as User indicates such agreement.
- (e) The Reserve, through the Program, provides an electronic system to serialize, transfer, track, and report carbon dioxide-equivalent emission reductions, Climate Reserve Tonnes (“CRTs”) as defined in the Climate Action Reserve Program Manual available at <http://www.climateactionreserve.org/how/program/program-manual/> and ROCs as defined by ARB in its Cap and Trade Regulation- ~~and Ecology in its Ecology Cap-and-Invest Regulation.~~ One CRT and/or ROC shall be created for each metric ton of carbon dioxide-equivalent reduction and each CRT shall be assigned a unique serial number indicating: (i) the CRT or ROC type; (ii) the Project country; (iii) the Project ID; (iv) the Project type; (v) the Project Developer ID; (vi) the State; (vii) the CRT or ROC Vintage; (viii) the CRT or ROC Batch; (ix) the Block Start; and (x) the Block End (each as described in the Reserve Protocols ~~and or the~~ Cap and Trade Regulation, ~~and or the Cap-and-Invest Program~~).
- (f) The Program is a venue for exchanging information pertaining to business transactions. The Reserve shall post information provided to it by Users in an effort to enable its Users, if they so choose, to undertake transactions or arrangements with other Users; neither the Reserve nor the Service Provider acts as a buyer or seller, or holds title to any product listed on the Program. User acknowledges and agrees that once project information has been uploaded or posted to the Program, such project information cannot and shall not be deleted, removed, expunged or altered, except in accordance with the Reserve’s normal operating procedures or as required by ARB ~~or Ecology~~. Any subsequent changes

or additions to information previously posted shall be posted as an update/amendment, but shall not replace the original posting.

- (g) User acknowledges and agrees that the Reserve, the Program and the Service Provider do not and will not provide any matching services whereby User will be matched with any potential buyer or seller of CRTs or ROCs or services related to the aggregation, verification or certification of emissions data. In the event that User does enter into a CRT or ROC transaction or an aggregation, verification or certification arrangement with any third party using the Program, the Reserve does not guarantee and shall not be responsible for any obligation arising out of such transaction or arrangement or provide any assurance or guaranty that any such transaction or arrangement ultimately will be consummated.
- (h) Any issues or disagreements that may arise between User and any third party in connection with the use of the Program or any CRT or ROC, or other data in the Program, including, without limitation, relating to whether an ownership or security interest is created in any transferred CRT or ROC, whether any transferred CRT or ROC is considered a “forward contract” under the United States Bankruptcy Code, whether the transferor and/or the transferee of any CRT or ROC are “forward contract merchants” within the meaning of the United States Bankruptcy Code, whether the transferor and/or the transferee of any CRT ROC are “Eligible Contract Participants” as defined in Section 1a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(12), or any other issues or disagreements related to such matters, shall be addressed solely between the User and such third party. The Reserve will have no responsibility to address any of the foregoing issues and disagreements, and shall have no liability to User or any third party with respect thereto. The Reserve reserves the right to dispose of any disputed CRTs or ROCs by interpleader or other suitable action in the event of controversy and to deposit any CRTs, ROCs or other items subject to the interpleader action with the relevant court or arbitral panel.
- (i) In order for User to add to the Program any CRTs or ROCs created by any project developed by User, User must provide to the Reserve with respect to each such project, (i) prior to the initial addition of CRTs created by such project, a signed Project Developer’s Attestation of Title, available at <http://www.climateactionreserve.org/how/program/documents/> and (ii) prior to such initial addition of CRTs or ROCs and on an annual basis thereafter, a signed Project Developer's Attestation of Regulatory Compliance, available <http://www.climateactionreserve.org/how/program/documents/> (each attestation referenced in the foregoing clauses (i) and (ii), a "Project Developer's Attestation").

2. **Fees**

- (a) Fees. User agrees to pay when due the fees and costs for the use of the services provided under these Terms of Use as set forth in the Fee Structure Schedule available at <http://www.climateactionreserve.org/how/program/program-fees/>

which may be amended from time to time. All payment of fees and costs shall be made within thirty (30) days after the invoice date.

- (b) Payment. Invoices for Fees will be posted on a secure page within the Program. User will be notified that payment is due upon an invoice being created. User shall pay any Fees charged hereunder by check or wire transfer of immediately available funds in United States dollars on the date and to the account identified by Administrator from time-to-time on the invoice, or if no date is indicated, no later than thirty (30) days from the date of the invoice (the “Due Date”), without offset or reduction of any kind. Offset Credit Issuance Fees will be automatically invoiced within five (5) months of approval of the reporting period for offset credit issuance if an invoice has not yet been generated by the User within these five (5) months. Late Payment. If User fails to pay when due any fees, costs or other amounts which User is obligated to pay under these Terms of Use, such amounts will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to, but excluding, the date on which the delinquent amount is paid in full. Acceptance of late payment of any such amounts or of any interest accrued thereon shall not constitute a waiver by the Reserve of User’s default with respect to such late payment, nor prevent the Reserve from exercising any other rights or remedies available to it under the Reserve Protocols, these Terms of Use or any applicable law. If delinquent fees are not paid by User within thirty (30) days of the Due Date, the Reserve maintains the right to freeze User’s access to its account until such time as User pays all outstanding fees, inclusive of interest. Reserve shall bear no liability to User or any third party in connection with Reserve’s exercise of its rights and remedies hereunder.
- (c) Billing Information. User shall provide User’s billing information prior to any Program activity. Invoices will be sent to User by email and will be posted on a secure page accessible by User on the Reserve website. All payments made to the Reserve should be made by wire transfer in immediately available funds in United States dollars to the Reserve account set forth in the Fee Structure Schedule. All payments made to the Reserve will be non-refundable.
- (d) Changes in Fees and Costs. The Reserve may, upon thirty (30) days’ notice to User and in its sole discretion, increase or decrease any or all of the fees and costs payable hereunder at any time. In no event shall any portion of such fees and costs be prorated or refunded to User upon termination of these Terms of Use or termination or suspension of User’s access to the Program. Any use of the Program or the Reserve website by User after the effective date set forth in the notice shall be deemed to constitute acceptance of such changes to the fees and costs payable hereunder.
- (e) Taxes and Other Charges. User shall be responsible for all taxes and charges imposed by a governmental authority related to the use of the Program and all related hardware, software, and services, and any other costs User incurs in connection with the purchase, sale, posting, or transfer of CRTs or ROCs or any

other use of the Program. As used herein “taxes” includes, but is not limited to, any or all ad valorem, property, occupation, severance, first use, conservation, gross receipts, privilege, sales, use, consumption, excise, lease, and transaction taxes, and any other taxes and governmental charges, fees, and assessments, or increases therein, other than taxes based on the Reserve’s net income or net worth.

3. **Representations, Warranties and Covenants**

- (a) **Representations and Warranties of User.** On the Effective Date and throughout the term of these Terms of Use, User represents and warrants to the Reserve that:
- (i) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation;
 - (ii) it has all corporate and other authority and all regulatory and other consents, approvals and authorizations necessary for it to legally (A) enter into and perform its obligations under these Terms of Use and the Reserve Protocols and (B) engage in all of its activity (including the creation, receipt and transfer of CRTs and/or ROCs) on or relating to the Program;
 - (iii) the person indicating User's acceptance of these Terms of Use through a website maintained by the Reserve or the Service Provider has the authority to enter into these Terms of Use on behalf of User, and these Terms of Use are binding on User and enforceable against User in accordance with their terms;
 - (iv) it has examined and is familiar with the statements and other data and information submitted by it or on its behalf to the Reserve, and, to the best of its knowledge and belief, such statements and information are true, accurate, and complete;
 - (v) any CRTs added to the Program by it have been created and Verified in accordance with the Reserve Protocols, and any ROCs added to the Program by it have been created and Verified in accordance with the Compliance Offset Protocols;
 - (vi) all legal title to and all Beneficial Ownership Rights in (A) each CRT or ROC held or retired in any account held by User (except for any CRT or ROC retired in a Group Retirement Subaccount) are held by User and (B) each CRT or ROC retired in any Group Retirement Subaccount held by User are held in accordance with the requirements set forth in Section 9(b)(i);
 - (vii) all rights, title and interest in all data and other information provided to the Reserve or input into the Program by User are held by User or, with respect to any data or other information relating to any CRT or ROC retired in a Group Retirement Subaccount held by User, the applicable

CRT or ROC Owner (as defined in Section 9(b)(i)), and all such data and other information are true and correct in all material respects;

- (viii) it has made, and will make, its own review of any potential CRT or ROC brokers, sellers, or buyers, and it has not relied on any representation of the Reserve, express or otherwise, with respect to any CRT or ROC brokers, sellers, or buyers, nor has the Reserve made any such representation to User; and
- (ix) any other representation, warranty, attestation or certification made to the Reserve by or on behalf of User, whether prior to, on or following the Effective Date (including without limitation any of the foregoing contained in any Project Developer's Attestation, any Regulated Person Attestation provided pursuant to Section 9(c)(i), or any certification provided pursuant to clause (C) of Section 9(b)(iii), each of which is incorporated herein by reference, is true and correct in all respects.
- (x) it will not tokenize, digitize, or otherwise place or transact CRTs or ROCs on-chain.
- (xi) it will not create, market, or transact any credit or instrument that is legally distinct from, but connected, subset, linked, or related to a CRT or ROC.
- (xii) it will not sell a single CRT or ROC to more than one entity at a given time (i.e., double selling), including through both discrete registry operation or by way of contractual arrangement outside of the registry.
- (xiii) It will follow the Reserve's program rules to avoid double counting of GHG reductions or removals issued by the Reserve.

(b) Covenants of User. On the Effective Date and throughout the term of these Terms of Use, User covenants to the Reserve that:

- (i) it will maintain its user ID and password in strict confidence, will allow only its employees and other representatives access to its account(s) and will promptly notify the Reserve of any suspected unauthorized use of the Program or other breach of security; and
- (ii) it will comply at all times with the Reserve Protocols and/or Compliance Offset Protocols as applicable, these Terms of Use, the Reserve's program rules, and all laws applicable to its use of the Reserve.

(c) Representations and Warranties of the Reserve. On the Effective Date and throughout the term of these Terms of Use, the Reserve represents and warrants to User that:

- (i) to the Reserve's knowledge, (A) the Program, the Reserve Protocols and these Terms of Use comply in all material respects with any applicable

laws, regulations and orders to which they may be subject, and (B) the Reserve possess any applicable licenses, authorizations, permits, consents and approvals of any governmental entity or other governmental authority that may be required to be possessed by the Reserve in connection with the operation of the Reserve and the Program; and

- (ii) to the Reserve's knowledge, use of the Program by User in accordance with the provisions of this Agreement does not and will not infringe the intellectual property rights of any third party in the United States.

4. **Certain Acknowledgements and Agreements**

- (a) **Relationship of the Parties.** User acknowledges and agrees that the Reserve is merely providing a service and, accordingly, that: (i) neither the Reserve nor the Service Provider has any special or fiduciary relationship to User or any other user of the Reserve; (ii) neither the Reserve nor the Service Provider is User's agent or advisor; and (iii) these Terms of Use create no relationship of partnership, joint venture, employment, franchise, or agency between the Reserve or the Service Provider and User.
- (b) **Program Transfers.** User acknowledges and agrees that all CRT and/or ROC transactions shall be performed or settled by it and any third party in accordance with such separate agreements as may exist between User and the relevant third party. User acknowledges and agrees that neither the Reserve nor the Service Provider assumes any responsibility for the performance or settlement of any transactions. Moreover, User acknowledges and agrees that the Reserve is not in any way involved with ARB's or Ecology's CITSS process and has no control over the disbursement of ARBOCs or on the CITSS system. User acknowledges and agrees that it shall perform or settle any ARBOC or Ecology Offset Credit transactions in accordance with such separate agreements as may exist between User and any third party(ies).
- (c) **Overissuance.** User acknowledges and agrees that in the event that the Reserve, ARB, or ARB Ecology determines that GHG reductions or removals for a project were incorrectly quantified or reported, such that the number of CRTs or ROCs issued to the User was in excess of the correct number according to the requirements of the applicable protocol, it is the User's responsibility to compensate for the over-issuance of CRTs or ROCs, irrespective of whether the CRTs or ROCs are still held by the User. Additional details relating to CRT or ROC overissuance are included in the Reserve's Program Manual. The obligation to compensate for any over-issuance of CRTs or ROCs survives the end of the term of these Terms of Use.
- (d) **Issuance of ROCs.** User acknowledges and understands that the Reserve's issuance of ROCs or CRTs is no guarantee of ARB's issuance of ARBOCs, and that ARB may determine, pursuant to the ARB Offset Program Rules and Requirements, that fewer or no ARBOCs will be issued relative to the quantity of

CRTs or ROCs issued by the Reserve. User also acknowledges and understands that the Reserve's issuance of ROCs is no guarantee of Ecology's issuance of Ecology Offset Credits, and that Ecology may determine, pursuant to the Ecology's Program Rules and Requirements, that fewer or no Ecology Offset Credits will be issued relative to the quantity of ROCs issued by the Reserve. In such instances, the Reserve maintains the right to cancel the quantity of CRTs or ROCs that it issued in excess of the number of ARBOCs issued by ARB or Ecology Offset Credits issued by Ecology, or take other action that it deems appropriate, in light of the circumstances and facts available to the Reserve.

(e) Registry Oversight. User acknowledges and understands that Reserve will conduct audits of Program data and other external information (including project information and related data on other registries) to ensure against double counting, double issuance, double claiming and doubling selling of CRTs or ROCs.

5. **Limitation of Liability and Indemnification**

(a) LIMITATION OF LIABILITY. USER ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM ITS USE OF THE PROGRAM. OTHER THAN WHERE LIABILITIES ARE DETERMINED BY FINAL ADJUDICATION TO HAVE BEEN CAUSED BY THE RESERVE'S WILLFUL MISCONDUCT, THE RESERVE'S SOLE LIABILITY RELATING IN ANY WAY, WHETHER DIRECTLY OR INDIRECTLY, TO THE PROGRAM (INCLUDING WITHOUT LIMITATION ANY SERVICE DISRUPTION) OR TO THESE TERMS OF USE (INCLUDING WITHOUT LIMITATION THE PERFORMANCE OR NONPERFORMANCE BY THE RESERVE OF ITS OBLIGATIONS HEREUNDER), WHETHER CAUSED BY THE NEGLIGENCE OF THE RESERVE OR OTHERWISE, AND REGARDLESS OF WHETHER ANY CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, IS LIMITED TO AN AGGREGATE AMOUNT EQUAL TO THE FEES PAID BY USER TO THE RESERVE DURING THE ONE-YEAR PERIOD IMMEDIATELY PRECEDING THE EARLIEST DATE ON WHICH ANY SUCH CLAIM IS OR CLAIMS ARE MADE BY USER. IN NO EVENT SHALL THE RESERVE BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR INDIRECT DAMAGES, FOR ANY ECONOMIC OR COMMERCIAL LOSSES, OR FOR ANY LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, PERSONAL INJURIES, OR PROPERTY DAMAGES SUSTAINED BY USER OR ANY THIRD PARTIES, EVEN IF THE RESERVE HAS BEEN ADVISED BY USER OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES. USER HEREBY RELEASES AND DISCHARGES THE RESERVE, ANY WHOLLY OWNED SUBSIDIARIES OF THE RESERVE, ANY OTHER CORPORATE AFFILIATES OF THE RESERVE, THEIR SUCCESSORS AND ASSIGNS, AGENTS, DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, SERVICE PROVIDERS (INCLUDING, WITHOUT LIMITATION, THE SERVICE PROVIDER), AND VENDORS FROM ANY AND ALL LIABILITY

WITH RESPECT TO ANY DAMAGES OR INJURIES INCURRED BY USER AS RELATES TO THE PROGRAM.

- (b) No Counterparty Liability. The Reserve shall not be liable (i) for the acceptability of or for any action or omission of any counterparty to or other third party involved in any transaction or arrangement that relates to CRTs and/or ROCs or that is entered into or consummated with the use of the Program (including without limitation any CRT or ROC provider or buyer and any verification or certification provider) or (ii) for the enforceability of or for any loss, expense or other liability arising from any such transaction or arrangement.
- (c) Indemnification. User agrees to indemnify, defend, and hold harmless the Reserve and its independent contractors (including, without limitation, the Service Provider) and their respective officers, directors, owners, employees, agents, affiliates, successors and assigns (collectively, the “Indemnified Party”) against and from any losses, liabilities, damages, judgments, awards, fines, penalties, actions, claims, costs, and expenses, including, without limitation, any amounts paid in settlement or compromise and any fees and costs of counsel and experts, (collectively, "Losses") incurred, directly or indirectly, in connection with or by reason of, or in any way relating to or arising out of:
- (i) User’s use of the Program or the Reserve’s website and/or any violation of any law, rule, or regulation arising from such use;
 - (ii) any breach of any representation or warranty set forth in, and any failure to perform any covenant, obligation or agreement under, these Terms of Use by User, or any violation by User of these Terms of Use or the Reserve Protocols;
 - (iii) any claim, action or proceeding asserted or brought by a third party arising out of any actual or alleged act or omission of User;
 - (iv) any failure of any CRTs or ROCs posted or transferred by User on the Program to conform with the Reserve’s ~~or~~, ARB’s, or Ecology’s requirements;
 - (v) any information supplied by or through User, any transaction or arrangement entered into by User with any third party, or any misuse or improper disclosure of any information by User;
 - (vi) any dispute between User and any third party with respect to any CRTs or ROCs (including, without limitation, any such dispute arising from or relating to any transaction between User and a third party with respect to the purchase, sale, or exchange of CRTs or ROCs, or to the aggregation, verification or certification of emissions data);
 - (vii) any loss suffered by or other harm to any person or property (including, without limitation, any personal injuries or death of any third person) in

any way relating to or caused in whole or in part by the posting, purchase, sale or exchange of CRTs or ROCs by User or any other activity of User conducted using the Program;

- (viii) any action (including, without limitation, any message, request to buy, offer to sell, bid to buy, and request for new suppliers) taken by any third person through User's account or using User's password on the Program, whether or not such third person gains access to such account or password as the result of any negligence or lack of vigilance by User; and
- (ix) the enforcement of the release, indemnity and other obligations referred to in this Section 5.

in any case, except to the extent any such Losses result from the Indemnified Party's fraudulent conduct or willful misconduct.

With respect to any claim or action for which indemnification will be sought by the Indemnified Party, such Indemnified Party will promptly, after it becomes aware of such claim or action, notify User in writing in as much detail as reasonably practicable as to the existence and nature of such claim or action. Provided that User has acknowledged in a written notice delivered to the Reserve that it is obligated under this Section 5(c) to indemnify, defend and hold harmless such Indemnified Party against and from all Losses incurred, directly or indirectly, in connection with or by reason of, or in any way relating to or arising out of such claim or action, User shall have the right to conduct, at its own expense, with counsel of its own selection (provided such counsel is reasonably acceptable to the Reserve), the defense and any settlement negotiations with respect to such claim or action. The Indemnified Party, at User's expense, shall render all reasonable assistance requested by User in the defense of such claim or action.

6. Limited Warranty; Disclaimer of Warranty

- (a) The data contained in the Program has been gathered by the Reserve from sources believed by the Reserve to be reliable. However, neither the Reserve nor the Service Provider warrants that the information in the Program is correct, complete, current, or accurate, or that the software programs in the Program will be error or bug-free, secure or free from service disruption.
- (b) USER ACKNOWLEDGES, UNDERSTANDS AND ACCEPTS THAT THE PROGRAM IS PROVIDED ON AN "AS IS" BASIS AT USER'S SOLE RISK. NEITHER THE RESERVE NOR THE SERVICE PROVIDER MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THESE TERMS OF USE, THE RESERVE PROTOCOLS OR COMPLIANCE OFFSET PROTOCOLS, OR THE ADEQUACY OR PERFORMANCE OF THE PROGRAM, AND THE RESERVE AND THE SERVICE PROVIDER HEREBY DISCLAIM ANY SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF

MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE. USER ACKNOWLEDGES THAT SERVICE OR MAINTENANCE DISRUPTIONS MAY OCCUR FROM TIME TO TIME. THE RESERVE AND THE SERVICE PROVIDER FURTHER DISCLAIM ANY LIABILITY FOR (1) ERRORS, OMISSIONS, OR OTHER INACCURACIES IN ANY PART OF THE PROGRAM, OR THE REPORTS, CRTS, ROCS, OR OTHER INFORMATION COMPILED OR PRODUCED BY OR FROM OR INPUT INTO THE PROGRAM, (2) ANY DELAYS, OMISSIONS OR INTERRUPTIONS THEREIN, AND (3) FOR THE ACTS OR OMISSIONS OF ANY BROKER OR AGENT AUTHORIZED WITHIN THE PROGRAM BY USER TO UTILIZE THE PROGRAM SERVICES ON BEHALF OF USER.

- (c) The Reserve and the Service Provider are not responsible for the acts or omissions of parties who aggregate, input, verify or certify data for the Program or from whom data is obtained for inclusion in the Program, nor is the Reserve or the Service Provider responsible for any obligation of any User to provide or deliver a product or service or to pay any User for a product or service.
- (d) Neither the Reserve nor the Service Provider assumes any responsibility for, and neither shall be liable for, any damages to, or viruses that may infect, User's equipment or other property on account of User's access to and use of the Program.
- (e) User is solely responsible for the protection, security, and management of its computer network and of all usage thereof. Neither the Reserve nor the Service Provider will compensate User for damages incurred due to violations of the security of User's computer network, nor shall User make deductions or set offs of any kind from or against fees due to the Reserve in respect of any such damages.

7. **Term; Termination and Suspension**

- (a) The term of these Terms of Use shall commence on the Effective Date and shall continue until User's access to the Program is terminated pursuant to Section 7(b) or (c) hereof. The following, however, shall survive any termination of such term: (i) the provisions of Section 5 (Limitation of Liability and Indemnification), Section 6 (Limited Warranty; Disclaimer of Warranty), this Section 7, Section 8 (Confidentiality and Intellectual Property Rights), Section 9(b)(v) (Ownership of CRTs and/or ROCs) and Section 10 (Miscellaneous); (ii) any provision of these Terms of Use that by its terms survives such termination, such as, but not limited to Section 4(c) (Certain Acknowledgments and Agreements); and (iii) any obligation to pay any fees, costs or other amounts incurred by User prior to or concurrently with such termination.
- (b) User may terminate its access to the Program, for any reason, by providing at least thirty (30) days prior written notice to the Reserve.

- (c) The Reserve may terminate or suspend User's access to the Program at any time with or without cause and without prior notice to User. Without limiting any other remedies or limiting the foregoing, the Reserve may terminate or suspend User's access to the Program if User is found to have engaged in fraudulent, unethical, or illegal activity in connection with the Program, the Reserve or its website, tampered with, damaged or destroyed the Program or any portion thereof or any data therein, failed to pay any fees, costs or other amounts required to be paid under these Terms of Use within five (5) Business Days of the applicable due date, breached any representation, warranty, covenant or agreement contained herein, or otherwise failed to abide by these Terms of Use, the Reserve Protocols, or the Compliance Offset Protocols. In the event that the Reserve terminates or suspends User's access to the Program pursuant to the preceding sentence or otherwise for cause, User shall be liable for all attorneys' fees and other amounts incurred by the Reserve and/or the Service Provider in connection with such termination or suspension and the events and conditions leading to such termination or suspension. The Reserve shall provide User with written notice via email of any termination or suspension effected pursuant to this subsection (c) within fifteen (15) Business Days following such termination or suspension.
- (d) The Reserve, in its sole discretion, may reinstate User's access to the Program after termination for cause upon the Reserve's determination that User has resolved the issue(s) that prompted the termination and upon receipt of User's full payment of all fees and other amounts due prior to the termination. Any such reinstatement, however, shall be conditioned upon User's payment to the Reserve in advance thereof of a reinstatement fee equal to the fees which would have been due during the period in which User's access to the Program was terminated. In addition, the Reserve shall reinstate User's access to the Program after termination for cause if directed to do so as a result of the outcome of a dispute resolution proceeding under these Terms of Use. Whether payment of the reinstatement fee described above is required in such an instance shall be determined as part of such dispute resolution proceeding. The term of these Terms of Use shall be reinstated concurrently with any reinstatement of User's access to the Program pursuant to this subsection (d).
- (e) User acknowledges that the Reserve may, in its sole discretion, with or without cause or prior notice to the User, temporarily or permanently cease to operate the Program, temporarily or permanently cease to make CRTs or ROCs or other services described hereunder available, or terminate or suspend User's access to the Program.

8. Confidentiality and Intellectual Property Rights

- (a) Confidentiality.
 - (i) The Reserve agrees to use and maintain Confidential Information provided by User in accordance with the Reserve Protocols and Compliance Offset Protocols, except as may be otherwise required or permitted under this

Section 8(a), under Section 9(b)(v), or as requested by ARB pursuant to its Offset Program Rules and Requirements-, or as requested by Ecology pursuant to its Program Rules and Requirements. User acknowledges that the Reserve will relay Confidential Information to the Service Provider for the purpose of maintaining the Program and consents to and authorizes data sharing between the Reserve and the Service Provider. The Reserve and User shall each use commercially reasonable efforts to protect any Confidential Information of the other party from unauthorized disclosure or use, using at least the same level of care as it uses to protect its own Confidential Information. The Reserve and User each agree not to use or disclose Confidential Information of the other party except to the extent that such use or disclosure is (A) reasonably necessary to perform under the Reserve Protocols, the Compliance Offset Protocols, or these Terms of Use (including, without limitation, in connection with the production of reports or information requested by ARB or Ecology); or (B) authorized in writing by the other party. Neither the Reserve nor User shall be deemed to have breached these Terms of Use on account of the use or disclosure of any Confidential Information of the other party if (i) such use or disclosure is reasonably necessary to comply with any applicable law, regulation, order or other legally enforceable requirement, or any request by any governmental authority having jurisdiction over the Reserve (including ARB or Ecology), User CRTs or ROCs and (ii) the party using or disclosing such Confidential Information provides to the other party, as soon as reasonably practicable and, in any event, in advance of such use or disclosure, written notice of such use or disclosure so that the other party may seek a protective order or other appropriate remedy. With respect to requests from ARB or Ecology for Confidential Information relating to a particular offset project in connection with ARB's or Ecology's review or crediting of that project, the Reserve may disclose User information to ARB or Ecology without providing written disclosure to User.

- (ii) If a User retires one or more CRTs and/or ROCs, notwithstanding anything to the contrary in these Terms of Use, the following information related to such retirement shall be subject to public disclosure by or at the direction of the Reserve, in such manner (including, without limitation, by inclusion in one or more reports posted on the Reserve's website) ~~and at such times as the Reserve may determine in its sole discretion:~~ (A) the name of User, (B) the number of retired CRTs or ROCs, (C) the vintage and serial numbers of the retired CRTs or ROCs, (D) the date of such retirement, (E) the name, type and identification number of the project and the location of the project site associated with the retired CRTs or ROCs, (F) if applicable, a statement to the effect that the retirement was effected on behalf of another person or organization, and (G) any information not covered by the preceding clause (F) voluntarily disclosed by User to the Reserve regarding the reason for such retirement; *provided, however*, that nothing in this paragraph (ii) shall be construed to permit the public disclosure of any ~~name~~, email address ~~or reason for the retirement of any~~

~~CRT or ROC~~ that is deemed to be Confidential Information pursuant to Section 9(b)(~~iv~~) or to limit any provision of Section 9(b)(~~iv~~). If User specifies that information related to (F) and (G) are confidential and not to be disclosed, refer to Section 9(b)(iii).

- (iii) If User obtains access to data in the Program that: (A) is not data provided or owned by User; (B) is not part of a publicly available Program report; and (C) User is not otherwise authorized to use, then, regardless of whether such data is otherwise considered information subject to the provisions of this Section 8(a), User shall: (X) immediately notify the Reserve that User has obtained such access; and (Y) not disclose, disseminate, copy, or use any such information.
- (iv) The Reserve and User will each be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the obligations of the other party under this Section 8(a).

(b) Intellectual Property.

- (i) User hereby grants to the Reserve and the Service Provider, subject to Section 8(a), a perpetual, royalty-free license to (A) use, reproduce, distribute, display and prepare derivative works from data provided by User (“User Data”) and Confidential Information provided by User, and (B) grant sublicenses to such User Data and Confidential Information to subcontractors and other third parties, in each case to the extent reasonably necessary to perform any obligations of the Reserve under these Terms of Use, the Reserve Protocols, and the Compliance Offset Protocols, ~~and to fulfill the purposes of the Program~~ to fulfill the purposes of the Program, and to participate in various international efforts to coordinate and consolidate data across multiple registries, such as the Climate Action Data Trust and similar efforts that seek to better communicate integrated data across multiple registries and markets.
- (ii) The rights and obligations of these Terms of Use shall run to the named parties and their successors in interest and permitted assigns. User shall ensure that any of its owners, trustees, members, officers, directors, employees and agents to whom it has provided access to the Program agree to be bound by these Terms of Use.
- (iii) User acknowledges and agrees that the rights and licenses provided to User under these Terms of Use and the Program's Operating Procedures are solely for the benefit of User and are to be exercised only in connection with User's use of the Program. User may not transfer, assign or sublicense its rights, licenses or account, or any portion thereof, to any third party without the prior written consent of the Reserve, which consent the Reserve may withhold in its sole discretion.

- (iv) User acknowledges that (A) the Reserve is and shall remain the sole owner of all aggregated data embodied in the Program, and of the selection, arrangement and compilation of such aggregated data, (B) the Service Provider has granted the Reserve a limited license to the Program operating system, including any components, modifications, adaptations and copies thereof (the “System”), and the software used in providing, accessing (other than commercially available third party internet browsers) or using the Program (“Software”), and (C) the Service Provider is the sole owner of the System and the Software. Except as provided herein, User shall not obtain, have or retain any right, title or interest in or to the Program, the System or the Software or any part thereof, and without limiting the generality of the foregoing, no person or organization on whose behalf User is authorized to act shall acquire any rights or license under these Terms of Use. The rights granted to User are solely defined by these Terms of Use and the Reserve Protocols and include, but are not limited to, permission to use the Program as set forth herein. User’s rights under these Terms of Use do not include a transfer of title or any other ownership interest in the Program, its content or any part thereof, to User. User agrees not to contest or challenge the Reserve’s or the Service Provider’s ownership of the Program, the System, the Software and associated intellectual property rights and not to take any action that would infringe, misappropriate, constitute unfair competition with respect to, or otherwise violate the Reserve’s or the Service Provider’s ownership of or rights in the Program, the System or the Software.
- (v) User shall prevent the use or copying of the Program and any other supporting materials by User’s employees and agents except as permitted by the terms and conditions of the Reserve Protocols and these Terms of Use.
- (vi) The Reserve grants User non-exclusive, non-transferable permission to access, retrieve and download data from the Program subject to these Terms of Use and the Reserve Protocols, which grant shall not be effective until User has: (A) indicated User's acceptance of these Terms of Use through the Reserve website, (B) paid all applicable fees due under these Terms of Use and the Reserve Protocols, and (C) completed and submitted to the Reserve the online registration available on the Reserve website. User will take all appropriate steps and precautions to safeguard and protect the access, use and security of the Program and User’s user access information from unauthorized users.
- (vii) User shall be subject to the following limitations:
 - (1) User shall not loan, share, publish, republish, copy, reproduce, disclose, transmit, display, sell, license, lease or distribute any portion of the Program or any data thereon to any third party, or use the Program as a basis for a directory or database prepared for

commercial sale or distribution; provided, however, nothing shall prohibit internal business use or reporting to governmental agencies or User's end use customers;

- (2) User shall not remove any copyright, trademark, or other proprietary notices contained in the Program;
 - (3) User shall not disassemble, decode, decompile or otherwise reverse engineer any interfaces or software programs comprising the Program;
 - (4) User shall not access, download, transfer or manipulate data and databases comprising the Program using protocols or interfaces other than those provided by the Reserve as part of the Program;
 - (5) User shall not have access to or make any use of the source code for the Program; and
 - (6) User shall not infringe or misappropriate the Program or take any action inconsistent with the Reserve's and the Service Provider's ownership of and rights in the Program and the Software.
- (viii) The Reserve and the Service Provider reserve all rights in the Program (to the extent of their interests therein) not expressly granted to User in these Terms of Use.
- (ix) To the extent any bulletin board, chat room or any other similar forum on the Program (together, the "Boards") exists, neither the Reserve nor the Service Provider is responsible for the content or accuracy of any material posted on the Boards, including without limitation any information regarding any CRT or ROC provided by any user of the Program or any other third party. If any Boards are established, the Reserve would merely be providing access to the material posted thereon as a service to User. The Boards shall be used only in a non-commercial manner. In using any Boards, User agrees not to upload, transmit, distribute or otherwise publish thereon any material that is, to the best of User's knowledge after reasonable investigation: libelous, defamatory, obscene, abusive, pornographic, threatening, inaccurate, or an invasion of privacy; an infringement of the intellectual property rights, including, but not limited to, copyrights and trademarks, of any individual or organization; material that is illegal in any way or that advocates illegal activity under any applicable local, state, national, or international law, statute, regulation, ordinance or other means of establishing legal rights and obligations; an advertisement or solicitation of funds, goods or services; a message posted by a user impersonating any other person; personal information such as messages which identify personal phone numbers, account numbers, personal addresses, or employer references; or chain letters or serial

communications of any kind. User also agrees to indemnify the Reserve and the Service Provider for any claims or suits arising from User's posting of such material on any such Boards. The Reserve and the Service Provider reserve the right to monitor and delete any postings deemed inconsistent with the Reserve Protocols, their policies or these Terms of Use. Neither the Reserve nor the Service Provider assumes any obligation to monitor material in the Boards or any liability for failing to either monitor the Boards or remove specific material.

- (x) In using the Program, User agrees:
- (1) not to disrupt or interfere with the security of, or otherwise abuse, the Program, or any services, system resources, accounts, servers, or networks connected to or accessible through the Program or affiliated or linked websites;
 - (2) not to disrupt or interfere with any other user's permitted enjoyment of the Program or affiliated or linked websites in accordance with the Terms of Use, the Reserve Protocols, ~~and~~ ARB Offset Program Rules and Requirements, Ecology Program Rules and Requirements, as applicable;
 - (3) not to upload, post, or otherwise transmit through or on the Program any viruses or other harmful, disruptive, or destructive files;
 - (4) not to use, frame, or utilize framing techniques to enclose any Reserve or Service Provider trademark, logo, or other proprietary information (including the images found at the Program website, the content of any text, or the layout/design of any page or form contained on a page) without the express written consent of the owner of such information;
 - (5) not to use meta tags or any other "hidden text" utilizing the Service Provider's or Reserve's name, trademark, or product name except in accordance with the Reserve Protocols and these Terms of Use;
 - (6) not to "deeplink" to the Program website without the Reserve's express written consent;
 - (7) not to create or use a false identity on the Program;
 - (8) not to collect or store personal data about others obtained through the Program;
 - (9) not to attempt to obtain unauthorized access to the Program or portions of the Program website that are restricted from general access;
 - (10) not to post any material that is false and/or defamatory, inaccurate, abusive, vulgar, hateful, harassing, obscene, profane, sexually

oriented, threatening, invasive of a person's privacy, or otherwise in violation of any applicable law; and

- (11) not to post any copyrighted material unless the copyright is owned by User, which posting shall be deemed consent by User of the publication of such copyrighted material on the Program website.

9. **Ownership of CRTs and/or ROCs; Action with Respect to CRTs and/or ROCs on Behalf of Third Parties**

- (a) Except as otherwise permitted under Sections 9(b) or 9(c), (A) User will only hold or retire in its account(s) CRTs and/or ROCs for which it is the sole holder of all legal title and all Beneficial Ownership Rights, and (B) User may not hold any account(s), or hold or retire in its account(s) any CRTs and/or ROCs on behalf of one or more third parties.
- (b) User may retire CRTs and/or ROCs on behalf of one or more third parties, provided that any such retirement may be effected only in a specialized type of subaccount, referred to herein as a "Group Retirement Subaccount," and that User shall comply with the following requirements applicable to such subaccounts:
- (i) All legal title to and all Beneficial Ownership Rights in any CRT or ROC retired in a Group Retirement Subaccount must be held by one ~~or more~~ individuals or organizations (collectively, a "CRT Owner" or "ROC Owner") that have authorized User in writing to retire such CRT or ROC on their behalves and to provide any data or other information relating to such CRT or ROC to the Reserve (except to the extent that User may be deemed to hold or share with the applicable CRT Owner or ROC Owner any legal title to or Beneficial Ownership Rights in such CRT or ROC).
- (ii) Any retirement of any CRT or ROC in a Group Retirement Subaccount shall be effected solely on behalf of the applicable CRT Owner or ROC Owner.
- (iii) If User retires ~~more than an aggregate of 99~~ CRTs or ROCs in one or more Group Retirement Subaccounts during a calendar year on behalf of any individual or organization, ~~in effecting each retirement in excess of 99 CRTs or ROCs,~~ (A) User shall concurrently report to the Reserve through an electronic interface comprising part of the Program the name and email address of such individual or organization (and, if applicable, of each other individual or organization comprising the CRT Owner or ROC Owner on whose behalf such retirement is effected), (B) User shall concurrently report to the Reserve through an electronic interface comprising part of the Program the reason for such retirement of CRTs or ROCs, which information shall ~~not be disclosed by the Reserve unless User chooses to have it made public,~~ be subject to public disclosure by the Reserve unless User chooses to have it remain confidential (note that any

request not to publicly acknowledge the name of the third party retiring any credits and the reason for the retirement may adversely affect the perceived quality of those credits, including either not receiving or revoking the highest quality designation from the Integrity Council for the Voluntary Carbon Market (ICVCM)), and (C) User shall concurrently provide to the Reserve through an electronic interface comprising part of the Program a certification, having content reasonably satisfactory to the Reserve, that User has received from such individual or organization (and, if applicable, from each other individual or organization comprising the CRT Owner or ROC Owner on whose behalf such retirement is effected) an authorization of the variety contemplated by the above paragraph (i) with respect to the CRT(s) or ROC(s) so retired.

- ~~(iv) If User effects any retirement of one or more CRTs or ROCs in one or more Group Retirement Subaccounts on behalf of any individual or organization and, including the CRTs or ROCs so retired, the aggregate number of CRTs or ROCs retired by User in one or more Group Retirement Subaccounts on behalf of such individual or organization during the applicable calendar year does not then exceed 99 CRTs or ROCs, User may voluntarily concurrently report to the Reserve through an electronic interface comprising part of the Program the types of information specified in the above clauses (A) and/or (B) with respect to such retirement.~~
- ~~(v) All information reported pursuant to clause (A) or (B) of the above paragraph (iii) or pursuant to the above paragraph (iv) shall be deemed to be Confidential Information for all purposes of these Terms of Use (including, without limitation, Section 8(a)); provided, however, that if User retires more than an aggregate of 99,999 CRTs and/or ROCs in one or more Group Retirement Subaccounts during a calendar year on behalf of any individual or organization, notwithstanding anything to the contrary in these Terms of Use, all information that has been reported or that is subsequently reported pursuant to clause (A) or (B) of the above paragraph (iii) or pursuant to the above paragraph (iv) (except for any email addresses so reported) with respect to any CRTs and/or ROCs retired by User on behalf of such individual or organization during such calendar year, (X) shall thereafter be deemed not to be Confidential Information for any purpose of these Terms of Use (including, without limitation, Section 8(a)) and (Y) shall be subject to public disclosure by or at the direction of the Reserve, in such manner (including, without limitation, by inclusion in one or more reports posted on the Reserve's website) and at such times as the Reserve may determine in its sole discretion.~~

~~Solely for purposes of applying the 99 and 99,999 CRT and/or ROC thresholds set forth in the above paragraphs (iii), (iv) and (v), respectively, if a CRT or ROC is retired on behalf of a CRT Owner or ROC Owner~~

~~comprised of multiple individuals and/or organizations, it shall be deemed to have been retired on behalf of each such individual and/or organization.~~

- (c) User may hold CRTs or ROCs in its account(s) on behalf of one or more third parties, provided that:
- (i) User is a Regulated Person and has provided to the Reserve a signed Regulated Person Attestation, available at <http://www.climateactionreserve.org/how/program/documents/>; *provided, however,* that the Reserve may, in its sole discretion, waive the requirements set forth in this paragraph (i) with respect to User by providing User with written notice of such waiver;
 - (ii) All legal title to and all Beneficial Ownership Rights in any CRT or ROC so held by User is held by one or more CRT Owners or ROC Owners that have authorized User in writing to hold CRTs or ROCs on their behalves and to provide any data or other information relating to such CRT or ROC to the Program and the Reserve (except to the extent that User may be deemed to hold or share with the applicable CRT Owner or ROC Owner any legal title to or Beneficial Ownership Rights in such CRT or ROC);
 - (iii) All legal title to and all Beneficial Ownership Rights of any CRT Owners or ROC Owners are limited to: (1) holding CRTs or ROCs in User's account for the purpose of voluntary retirement per the requirements of Section 9(b); and/or (2) holding CRTs or ROCs (owned by CRT Owners or ROC Owners only) for the purpose of future transfer to other Users of the Reserve Program per the requirements of Section 4(b).
 - (iv) Under no circumstances may any CRT Owners or ROC Owners that are not Users meeting the requirements of Section 9(c)i maintain any Beneficial Ownership Rights, or provide any CRT or ROC custodial services to any third party or organization.
 - (v) User complies with all applicable laws, regulations or other legally enforceable requirements, including without limitation applicable provisions of the USA PATRIOT Act and the regulations of the Office of Foreign Assets Control of the U.S. Department of the Treasury;
 - (vi) User maintains a customer identification program that contains reasonable procedures to verify the identity of any individual or organization on whose behalf User is holding CRTs or ROCs and maintains records of the information used to verify such identity, which records will be made available to the Reserve upon request; and
 - (vii) User complies with the requirements of Section 9(b) in connection with any retirement of CRTs or ROCs it holds on behalf of one or more third parties.

- (d) User acknowledges that neither the Reserve nor the Service Provider shall have any liability in connection with any misrepresentation by User relating to the ownership of any ROC or CRT in any account or subaccount held by User (including without limitation the identity of the person(s) holding any legal title thereto or Beneficial Ownership Rights or other proprietary rights therein).

10. Miscellaneous

- (a) Assignment. User shall not assign these Terms of Use or any of its rights, benefits, duties, and obligations hereunder without the prior written consent of the Reserve, which consent the Reserve may withhold in its sole discretion. These Terms of Use shall be binding upon and inure to the benefit of the respective parties and their respective successors and permitted assigns.
- (b) Entire Agreement. These Terms of Use and the Reserve Protocols or, as applicable, the Compliance Offset Protocols, constitute the entire agreement of the parties relating to the matters herein provided or contemplated and supersede any prior agreement between the parties in that regard.
- (c) Governing Law and Dispute Resolution.
 - (i) These Terms of Use shall be governed by the laws of the State of California without regard to its rules on conflicts of laws.
 - (ii) In the event of any claim or controversy arising out of or relating to these Terms of Use, or the breach thereof, or any other claim or controversy between the parties (any such claim or controversy, a “Dispute”), the parties first shall attempt in good faith to settle such claim or controversy by mediation administered by J·A·M·S under its International Mediation Rules then in effect, which mediation shall take place in Los Angeles, California. At least fifteen (15) days prior to the commencement of such mediation, the party seeking to mediate (the “Demanding Party”) shall give the other party written notice describing the Dispute and the amount as to which it intends to initiate the action, as well as providing all supporting documentation available to the Demanding Party.
 - (iii) Any Dispute that has not been resolved by mediation as provided herein within thirty (30) days after commencement of the mediation shall be finally resolved by arbitration administered by J·A·M·S and all proceedings shall be held in Los Angeles, California. The arbitration will be conducted in accordance with the provisions of J·A·M·S's Comprehensive Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The parties will cooperate with J·A·M·S and with one another in selecting an arbitrator from J·A·M·S panel of neutrals, and in scheduling the arbitration proceedings. The parties shall participate in the arbitration in good faith and shall share equally in its costs.

- (iv) The provisions of this Section 10 may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees, and expenses, including attorneys fees, to be paid by the party against whom enforcement is ordered. The parties shall continue to perform their respective obligations under these Terms of Use during the pendency of dispute resolution proceedings, including mediation and arbitration. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any Dispute.
- (v) Excepts as otherwise provided herein, each party shall be responsible for the payment of all of its costs associated with the resolution of any Dispute, whether in mediation, arbitration or before a court of law, including but not limited to any filing fees, mediator or arbitrator fees, its reasonable attorneys fees, and other costs incurred in such proceeding, provided that if a Dispute is initiated in bad faith, as determined by the mediator, arbitrator or court, the party initiating the Dispute shall be responsible for all of the other party's defense costs.
- (vi) The parties agree that neither may bring a claim nor assert a cause of action against the other, in any forum or manner, more than one (1) year after the later of (A) the date on which the claim or cause of action accrued and (B) the earliest date on which the aggrieved party could have reasonably discovered the wrong giving rise to the claim or cause of action.
- (d) No Third Party Beneficiaries. Except as set forth elsewhere in these Terms of Use, these Terms of Use confer no rights whatsoever upon any person other than the parties and shall not impose, or be interpreted as imposing, any standard of care, duty, or liability upon any person other than a party.
- (e) Severability. If any term or provision of these Terms of Use is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby.
- (f) Force Majeure. To the extent the Reserve is prevented by Force Majeure from fully performing any of its obligations under the Reserve Protocols or these Terms of Use, then the Reserve shall be excused from the performance of such obligations for as long as the Force Majeure event is continuing. The Reserve shall seek to remedy the Force Majeure using commercially reasonable efforts. The User shall not be required to perform or resume performance of its obligations under the Reserve Protocols or these Terms of Use corresponding to the obligations of the Reserve excused by Force Majeure.
- (g) Audit. The Reserve has the right, at its sole expense, upon reasonable notice and during normal working hours, to examine, audit, and obtain copies of the records

of User to the extent reasonably necessary to verify (i) the accuracy of any representation, warranty or attestation made by User to the Reserve and (ii) User's performance during the prior (12) month period of its obligations under the Reserve Protocols or, as applicable, the Compliance Offset Protocols, and these Terms of Use. This right to examine, audit, and obtain copies shall not be available with respect to any information that is not directly relevant to the subject matter of the Reserve Protocols or, as applicable, the Compliance Offset Protocols, or these Terms of Use.

- (h) Injunctive Relief. User acknowledges that money damages would not adequately compensate the Reserve and the Service Provider in the event of a breach by User of its obligations hereunder and that injunctive relief may be essential for the Reserve and the Service Provider to adequately protect themselves hereunder. Accordingly, User agrees that, in addition to any other remedies available to the Reserve and the Service Provider at law or in equity, including but not limited to any monetary damages, the Reserve and the Service Provider shall be entitled to seek injunctive relief in the event of any breach by User of any covenant, agreement, representation or warranty contained herein or in the Reserve Protocols.
- (i) Notices. Except as otherwise provided in Section 2(c) with respect to invoices, all notices and other communications under these Terms of Use must be in writing and will be duly given hereunder (i) upon delivery, if personally delivered, delivered by email or facsimile, or delivered by overnight courier with confirmation of delivery, and (ii) on the fourth business day after the postmark date, if mailed by certified or registered mail with postage prepaid. Street and email addresses and facsimile numbers of each party are as indicated below or as subsequently modified by written notice to the other party.

If to the Reserve: Climate Action Reserve
Attn: Reserve Administrator
601 W. Fifth Street, Suite 650
Los Angeles, CA 90071
Email: reserve@climateactionreserve.org
Facsimile: 213-623-6716

If to User: The street address, email address and facsimile number provided in User's account application.

- (j) Hyperlinks. The Reserve and the Service Provider make no claim or representation regarding, and accept no responsibility for, the quality, content, nature, or reliability of sites accessible by hyperlink from the Program, the Program website, the Reserve website, or sites linking to such websites. The linked sites are not under the control of the Reserve or the Service Provider and the Reserve and the Service Provider are not responsible for the content of any linked site or any link contained in a linked site, or any review, changes, or updates to such sites. The inclusion of any link does not imply affiliation,

endorsement, or adoption by the Reserve or the Service Provider to such website or any information contained therein. When leaving the Reserve website or the Program website, User should be aware that the Reserve's terms and policies no longer govern, and therefore User should review the applicable terms and policies, including privacy and data-gathering practices, of that site.

- (k) Headings. The headings used herein are for convenience and reference purposes only.

11. Definitions

- (a) "ARB Offset Credit or ARBOC" means a credit issued by the Air Resources Board for a GHG reduction or GHG removal enhancement of one metric ton of carbon dioxide equivalent, pursuant to a Compliance Offset Protocol or an Early Action Offset Protocol.
- (b) "ARB Offset Program Rules and Requirements" means those rules and requirements adopted by the California ARB, and set forth in the Cap and Trade Regulation, ARB's formal guidance documents, and any additional direction provided by ARB as part of its implementation of the Cap and Trade Program.
- (c) "Bank" means any of the following:
- (i) any banking institution chartered by the Office of the Comptroller of the Currency;
 - (ii) any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; or
 - (iii) any savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or federal authority having supervision over any such institution.
- (d) "Beneficial Ownership Rights," with respect to any CRT or ROC, means any contractual or other right to direct or control the sale or other disposition of, or the retirement of, such CRT or ROC.
- (e) "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Pacific Prevailing Time.
- (f) "Cap and Trade-Invest Program" means Chapter 173-446 of the Washington Administrative Code adopted by the Washington Department of Ecology, and which may be amended from time to time.

- ~~(f)~~(g) “Cap and Trade Regulation” means Sections 95800 to 96023 of the California Code of Regulations adopted by the California Air Resources Board, and which may be amended from time to time.
- ~~(g)~~(h) “Compliance Offset Protocols” means those standardized methodologies adopted by ARB or Ecology.
- ~~(h)~~(i) “Confidential Information” shall mean (i) all information (A) to which User, the Reserve or the Service Provider, or any third party (to the extent such third party owes a duty of confidence to User, the Reserve or the Service Provider) has rights, and (B) which is marked to expressly indicate its confidential, restricted, or proprietary nature by the party having rights in the same, or which, under all of the circumstances, a reasonable business person should know to treat as confidential, restricted, and/or proprietary; and (ii) all information that, at the applicable time, is deemed to be Confidential Information pursuant to Section 9(b)(v). Notwithstanding the foregoing and any provision of Section 9(b)(v), Confidential Information does not include information: (i) that is, as of the time of its disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party; (ii) that was known to the receiving party as of the time of its disclosure; (iii) that is independently developed by the receiving party without reference to the Confidential Information of the disclosing party; (iv) that subsequent to its disclosure, is received by the receiving party from a third party not subject to an obligation of confidentiality with respect to the information disclosed; or (v) with respect to which the disclosing party provides to the receiving party in accordance with Section 10(i) or through an electronic interface comprising part of the Program an express waiver of any confidentiality protection under these Terms of Use.
- ~~(i)~~(j) “Early Action Offset Protocol” means one of those protocols listed in Section 95990(c)(5) of the Cap and Trade Regulation.
- (k) “Ecology Offset Credit” means a credit issued by Ecology for a GHG reduction or GHG removal enhancement of one metric ton of carbon dioxide equivalent, pursuant to a Compliance Offset Protocol.
- (l) “Ecology Program Rules and Requirements” means those rules and requirements adopted by Washington’s Department of Ecology and set forth in the Climate Commitment Act Program Rule, Ecology’s formal guidance documents, and any additional direction provided by Ecology as part of its implementation of the Cap-and-Invest Program.
- ~~(j)~~(m) “Effective Date” means the date on which User indicated User's acceptance of these Terms of Use through a website maintained by the Reserve or the Service Provider.
- ~~(k)~~(n) “Force Majeure” means an event or circumstance which prevents the Reserve from performing its obligations under these Terms of Use, which event or circumstance was not anticipated as of the date these Terms of Use were agreed

to, which is not within the reasonable control of, or the result of the negligence of, the Reserve, and which, by the exercise of reasonable commercial efforts, the Reserve is unable to overcome or avoid or cause to be avoided.

~~(h)~~(o) “Interest Rate” means, for any date, the per annum rate of interest equal to the prime lending rate published in *The Wall Street Journal* on such day (or if not published on such day, on the most recent preceding day on which published), plus two percent (2%).

~~(m)~~(p) “Registry Offset Credit or ROC” means a credit issued by the Climate Action Reserve as an Offset Project Registry for a GHG reduction or GHG removal enhancement of one metric ton of carbon dioxide equivalent, pursuant to a Compliance Offset Protocol.

~~(n)~~(q) “Regulated Person” means any of the following:

- (i) A banking institution or similar entity, as specified below:
 - a. A banking institution chartered by the Office of the Comptroller of the Currency;
 - b. A banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; or
 - c. A savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or federal authority having supervision over any such institution.
- (ii) A broker or dealer that is registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended; and is a member of all requisite self-regulatory organizations.
- (iii) A futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, floor broker or floor trader as specified below:
 - a. A member of the National Futures Association that is registered, pursuant to the Commodity Exchange Act and the Commodity Futures Trading Commission’s regulations, as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor floor broker or floor trader; or
 - b. A commodity pool operator or commodity trading advisor that is exempt from registration pursuant to Part 4 of the Commodity Futures Trading Commission’s regulations and has filed a notice of such exemption from registration with the National Futures Association pursuant to the Commodity Futures Trading Commission’s regulations.

- (iv) A registered investment company or adviser, as specified below:
 - a. An investment company registered under the Investment Company Act of 1940, as amended; or
 - b. An investment adviser registered under the Investment Advisers Act of 1940, as amended.
- (v) A fund that has assets under management with an aggregate market value of no less than \$100 million and that is advised or managed by an investment adviser registered under the Investment Advisers Act of 1940, as amended.
- (vi) A "business development company" as defined in (A) Section 2(a)(13) of the Investment Company Act of 1940, as amended, or (B) Section 202(a)(22) of the Investment Advisers Act of 1940, as amended.
- (vii) An employee benefit plan or trust fund, as specified below:
 - a. A plan established and maintained by a State, its political subdivisions, or any agency or instrumentality of a State or its political subdivisions, for the benefit of its employees; or
 - b. An employee benefit plan within the meaning of title I of the Employee Retirement Income Security Act of 1974, as amended.
 - c. A trust fund whose trustee is a Bank and whose participants are exclusively plans of the types identified in this item G above, except trust funds that include as participants individual retirement accounts or H.R. 10 plans.
- (viii) A seller that has been granted authorization to engage in sales for resale of electric energy, capacity or ancillary services from the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act, as amended, and the requirements of 18 C.F.R. § 35.
- (ix) A broker, trader or similar person explicitly approved by the Reserve for an account that trades only in environmental commodity transactions that are intended to be physically settled and are:
 - a. Excluded from the definition of "swap," as defined in section 1a(47) of the Commodity Exchange Act, pursuant to section 1a(47)(B)(ii) of the Commodity Exchange Act and related Commodity Futures Trading Commission and/or Securities and Exchange Commission regulations; and/or
 - b. Transacted in the spot (cash) market (i.e., shipment or delivery is not deferred).
- (x) A non-U.S. entity which is engaged in an "Investment-Related" (e.g., pertaining to securities, commodities, banking, insurance or real estate) business and which is regulated by a Foreign Financial Regulatory Authority (e.g., a foreign securities authority; other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign

government to administer or enforce its laws relating to the regulation of Investment-Related activities).

- (xi) A non-U.S. entity acting in the capacity of a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, floor broker or floor trader which is engaged in a “Derivatives-Related” (e.g., pertaining to commodities for future delivery, security futures products, swaps, commodity options, options on futures or swaps, etc.) business and which is regulated by a “Foreign Derivatives Regulatory Authority” (e.g., a foreign securities authority; other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of Derivatives-Related activities.

~~(e)~~(r) “State” means any state of the United States of America.

~~(p)~~(s) “User” means the entity agreeing to these Terms of Use and shall include such representative as the entity shall appoint and designate by completing the Project Developer’s Designation of Authority Form, which is available at <http://www.climateactionreserve.org/how-it-works/projects/register-a-project/documents-and-forms/>

~~(e)~~(t) “Verify” means the activity of verifying that GHG emissions reductions data submitted to the Reserve has been collected and quantified in accordance with the guidelines put forth in the Reserve Protocols.