

**CARBON-DIOXIDE STORAGE AGREEMENT**

**La. R.S. 30:209(4)(e) Operating Agreement**

**STATE OF LOUISIANA**

**PARISH OF EAST BATON ROUGE**

THIS Operating Agreement (this “**Agreement**”), is entered into on the \_\_\_\_ day of \_\_\_\_\_, 202\_, to be effective on the Effective Date, by and between:

- (1) The State of Louisiana, and the Louisiana Department of Wildlife & Fisheries and the Louisiana Wildlife & Fisheries Commission (“**DWF**”) (collectively referred to herein as “**State**”) acting through its authorized agent, the Louisiana State Mineral and Energy Board (“**Board**”), represented and undersigned by \_\_\_\_\_ duly authorized and whose mailing address is Post Office Box 2827, Baton Rouge, Louisiana 70821-2827; and
- (2) Capiro Sequestration, LLC, (“**Capiro**” or “**Operator**”), represented herein by \_\_\_\_\_, duly authorized by a resolution of Capiro’s Board of Directors, a copy of which resolution is attached hereto and made a part hereof as Exhibit “A” and whose address is \_\_\_\_\_.

In this Agreement, the State and Capiro may be referred to collectively as the “**Parties**” and individually as a “**Party**.”

**WHEREAS**, the State, DWF, is the owner of the Property located in the Parishes of Ascension, Iberville, Pointe Coupee, St. John the Baptist, St. Martin, and St. Landry, State of Louisiana; and

**WHEREAS**, the properties that are the subject of this Agreement are approximately 44,511 acres in the parishes stated herein and are more particularly described below and depicted on Exhibits “B” and “C”, attached hereto and made a part hereof; and

**WHEREAS**, La. R.S. 56:1 delegates the Louisiana Wildlife & Fisheries Commission with the responsibility for protecting, conserving, and replenishing the natural resources of the State, subject to its supervision and control; and

**WHEREAS**, La. R.S. 56:6(19) requires that the Louisiana Wildlife & Fisheries Commission, through its Secretary, shall in every possible way develop to their fullest proportions the natural resources of the State that are under its jurisdiction; and

**WHEREAS**, La. R.S. 56:8(117) defines Secretary as the secretary of the Department of Wildlife and Fisheries; and

**WHEREAS**, the Louisiana Department of Wildlife & Fisheries is an agency of the State as defined by La. R.S. 30:151; and

**WHEREAS**, DWF and the Board have entered into an Inter-Agency Agreement (“**IAA**”) which authorizes the Board to administer the properties owned by or under the jurisdiction of DWF for purposes of subsurface storage and pore space rights; and

**WHEREAS**, the IAA authorizes the Board to negotiate, award, administer and manage the existing and future oil and gas leases, operating agreements, subsurface storage agreements, and related activities/operations on DWF agency lands, and the Board, through the Office of Mineral Resources (“**OMR**”), has agreed to perform such services; and

**WHEREAS**, pursuant to La. R.S. 30:209, the State has the authority, upon a two-thirds vote of the members of the Board and after a public hearing conducted in the affected parish pursuant to La. R.S. 30:6, to enter into operating agreements whereby the State receives a share of revenues from the storage of Carbon Dioxide in whole or in part, as may be agreed upon by the Parties, in those situations where the Board determines it is in the best interest of the State either in equity or in the promotion of conservation to do so. The Board’s authority expressly extends to, but is not limited to, establishing a contractual agreement on unleased acreage to promote utilization of the State’s resources for Carbon Dioxide Storage. Further, pursuant to La. R.S. 30:209, the Board may do all other things that may appear to be necessary or desirable; and

**WHEREAS**, pursuant to La. R.S. 30:135, the Department of Natural Resources (“**DNR**”), through OMR, shall provide the necessary staff functions to assist the Board in its leasing, supervisory, and other activities; and

**WHEREAS**, this Agreement is entered into for the purpose of injecting Carbon Dioxide into certain geological strata or formations for permanent storage, in the general vicinity of the Properties more fully described below (“**Storage Reservoirs**”); and

**WHEREAS**, the Parties now enter into this Agreement to effect its terms and intent for the Injection, Storage, transportation, shipment, and Withdrawal of Carbon Dioxide Stream(s) and for all other purposes necessary or incidental thereto.

**NOW, THEREFORE**, the Parties, in consideration of the premises and the mutual benefits to be derived respectively by the State and Capiro, and the covenants and conditions set forth below, together with good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged and confessed by both Parties hereto, the State and Capiro do hereby agree and stipulate as follows:

The properties subject to this Agreement constitute approximately 44,511 acres and are situated in the Parishes of Ascension, Iberville, Pointe Coupee, St. John the Baptist, St. Martin, and St. Landry, and are more particularly described as follows:

**“Specific Area of Interest A”** includes a tract comprised of 32,711 acres located in the Maurepas Swamp Wildlife Management Area as more particularly described in Exhibit “B” to this Agreement;

**“Specific Area of Interest B”** includes the tract comprised of 11,800 acres in the Sherburne Wildlife Management Area as more particularly described in Exhibit “C” to this Agreement; and

Hereinafter, Specific Areas of Interest A and B may be referred to collectively as **“Property”** or individually as a **“Specific Area of Interest”**.

**FURTHERMORE**, the Parties agree and acknowledge that this Agreement allows Capiro to inject and store Carbon Dioxide Stream(s) beneath the Property only in the Storage Reservoirs thereof and for all other purposes necessary or incidental thereto and to create a limited relationship between the Parties whereby the State (i) will receive a share of revenues from the Storage of Carbon Dioxide Stream(s), as reflected in this Agreement, and (ii) will assume a portion of the risk of the cost of such activities and the operation of Facilities as reflected in this Agreement, as the Board has determined that it is in the best interest of the State in equity and in the promotion of conservation to do so.

### **Article 1 - Definitions**

1.1 **“Applicable Law(s)”** means any applicable, valid, final, and non-appealable federal or state statute, law, rule, regulation, or order, or any judicial decision, as may now be in effect or which may be enacted, adopted, or made effective at a future date. Applicable Laws include, without limitation, all statutes, laws, rules, regulations, orders, and judicial decisions that pertain to geologic or geophysical assessment of the Property, or construction, operation, monitoring, reporting, verification or closure of the Facilities, and any future amendments thereof, including, without limiting the generality of the foregoing, all such matters that pertain

to protection of the environment, environmental matters, pollutants, minimum water quality standards, dredging, filling, local navigation, and/or health and safety matters.

- 1.2 “**Applicable Procedure(s)**” means the valid, final, and non-appealable standards, public processes, procedures, and rules applicable to the regulation of the Facilities, to the extent applicable, by the U.S. Environmental Protection Agency (“**EPA**”), Louisiana Office of Conservation (“**OC**”), DNR, and the Louisiana Department of Environmental Quality (“**DEQ**”), as well as any other State or federal regulatory bodies having jurisdiction over all or a part of any one or all of the Facilities.
- 1.3 “**Associated Substances**” means substances associated with, contained in, or incidental to the capture and/or Storage of Carbon Dioxide.
- 1.4 “**Carbon Dioxide**” means carbon dioxide including its derivatives and all mixtures, combinations, and phases, whether liquid or gaseous, stripped, segregated, or divided from any other stream, or produced from a chemical reaction.
- 1.5 “**Carbon Dioxide Stream(s)**” means a stream of Carbon Dioxide, plus Associated Substances and any substances added to the stream to enable or improve the Injection process. This subpart does not apply to any carbon dioxide stream, the Injection of which would be prohibited under Applicable Law(s).
- 1.6 “**Contract Year**” means the calendar year beginning on the Effective Date of this Agreement and ending on the first anniversary of the Effective Date and for every year thereafter from anniversary date to anniversary date.
- 1.7 “**Drill**” or “**Drilling**” means the act of boring a hole to reach a proposed location under the Property.
- 1.8 The term “**Capio Group**” as used throughout this Agreement, means and includes Capio and its directors, members, partners (general and limited), officers, agents, employees, contractors, subcontractors (of any tier), other representatives, and insurers, and each of its subsidiaries, successors and assigns and their directors, members, partners (general and limited), officers, agents, employees, contractors, subcontractors, other representatives, and insurers, and each of them.

- 1.9 “**Facility/Facilities**” means the underground storage facility or facilities, including but not limited to, the Storage Reservoirs, and all related surface and subsurface Improvements and Equipment associated with underground Carbon Dioxide Storage in the Storage Reservoirs on or under the Property. When used in the singular it shall refer to one of the facilities located on or under the Property, and when used in the plural it shall refer to all of the facilities located on and under the Property.
- 1.10 “**Improvements and Equipment**” means all wells, pads, fixtures, equipment, machinery, and tools, including all pipelines, pipe, pipe casing, separators, condensers, evaporators, holding tanks, generators, compression equipment, measurement equipment, monitoring or testing devices or equipment, utility lines and facilities and any other surface or subsurface structures or equipment, and all alterations, additions, replacements, materials, parts, and components thereof, made, placed, installed or used, on, in or under the Property by Capio.
- 1.11 “**Injection**” or “**Injected**” means the deposit of a Carbon Dioxide Stream into any of the Facilities.
- 1.12 “**Sequestration Protocols**” means any other protocols, standards, regulations or laws in addition to the obligations imposed by this Agreement, Applicable Law(s) and Applicable Procedure(s) relevant to Capio and its Storage activities conducted pursuant to this Agreement. To remove any doubt, the Sequestration Protocols shall not result in Capio performing its obligations under this Agreement to a lesser standard than required under any Applicable Law(s), any Applicable Procedure(s) or this Agreement.
- 1.13 “**Storage**” means the activity of Injection or subsurface containment and/or Withdrawal of a Carbon Dioxide Stream into or from any of the Facilities, together with related Drilling, well completion, transportation, and all other operations conducted on or within any of the Facilities, and any other activities necessary or incidental thereto.
- 1.14 “**Storage Reservoir(s)**” means the geologic formation(s), reservoirs, saline aquifers, and pore space beneath the Property or Properties that have been or will be approved for Storage prior to Injection by the Louisiana Commissioner of Conservation in accordance with Applicable Law(s) and Applicable Procedure(s).
- 1.15 “**Withdrawal**” means the removal of any portion of a Carbon Dioxide Stream from any of the Facilities for the purpose of pressure or other maintenance or protection of the environment

and public safety, all in accordance with and subject to Applicable Law(s), Applicable Procedure(s) and Sequestration Protocols. Withdrawal shall not include the withdrawal of any portion of a Carbon Dioxide Stream for the purpose of selling Carbon Dioxide, using Carbon Dioxide for other commercial purposes, or intentionally releasing the Carbon Dioxide Stream into the atmosphere, except as contemplated in this definition.

## **Article 2 - Approval Process**

2.1 **Advertisement and Public Hearing.** The Board, through OMR, shall cause this Agreement to be advertised in compliance with Applicable Law(s), and shall conduct a public hearing or hearings pursuant to and in accordance with La. R.S. 30:6, as required by La. R.S. 30:209 (the “**Public Hearing(s)**”).

2.2 **Approval or Disapproval.** Following the Public Hearing(s), the Board shall render its determination regarding approval or disapproval of this Agreement at a Board meeting. If the Board approves this Agreement by a two-thirds vote of its members, as required by La. R.S. 30:209, this Agreement shall be effective as stated in Section 2.3.

2.3 **Effective Date.** The “**Effective Date**” of this Agreement shall be the first date on which both of the following have occurred:

a) This Agreement has been signed by the duly authorized representative of Capio;

AND

b) This Agreement has been approved by the Board in accordance with Section 2.2.

## **Article 3 - Term**

3.1 With respect to the termination and maintenance provisions set forth in the remainder of Article 3, each Specific Area of Interest shall be treated as completely separate areas. Pursuant to the provisions below, an action taken with respect to one Specific Area of Interest shall not apply to or affect another Specific Area of Interest. Thus, pursuant to the remaining provisions of Article 3, this Agreement may be maintained with respect to one Specific Area of Interest, and this Agreement may terminate with respect to another Specific Area of Interest.

3.2 Subject to earlier expiration because of the commencement of the Permit/Construction Term, the first three (3) years following the Effective Date of this Agreement shall be the “**Initial Term**”. This Agreement shall terminate at the end of the Initial Term with respect to a Specific Area

of Interest on which Capiro has failed to apply for a permit to construct a Class VI injection well. However, upon a showing of good cause by Capiro (with such cause to be confirmed by the State), this Agreement may be extended for up to an additional two (2) years at the end of the Initial Term (“**Initial Discretionary Term**”) with respect to any Specific Area of Interest on which Capiro has failed to apply for a permit to construct a Class VI injection well. In order for Capiro to exercise this option, Capiro shall notify the State at least ninety (90) days prior to the expiration of the Initial Term that it wishes to exercise this option. If extended by an Initial Discretionary Term, then this Agreement shall terminate at the end of the Initial Discretionary Term with respect to any Specific Area of Interest on which Capiro has failed to apply for a permit to construct a Class VI injection well.

3.3 If prior to the end of the Initial Term or the Initial Discretionary Term (if applicable), Capiro has applied for a permit to construct a Class VI injection well on any Specific Area of Interest, then this Agreement shall be maintained only with respect to that individual Specific Area of Interest for an additional four (4) years from the end of the Contract Year in which the permit application is made (“**Permit/Construction Term**”). This Agreement shall terminate at the end of the Permit/Construction Term with respect to a Specific Area of Interest on which Capiro has failed to begin Injection. However, at the end of the Permit/Construction Term, this Agreement may be extended, upon a showing of good cause by Capiro (with such cause to be confirmed by the State), for up to four (4) additional one-year periods (“**Permit/Construction Discretionary Term(s)**”) with respect to any Specific Area of Interest on which Capiro has failed to begin Injection. In order for Capiro to exercise this option, Capiro shall notify the State at least ninety (90) days prior to the expiration of the Permit/Construction Term or the Permit/Construction Discretionary Term(s) (if applicable) that it wishes to exercise this option. This Agreement shall terminate at the end of the Permit/Construction Discretionary Term(s) with respect to any Specific Area of Interest on which Capiro has failed to begin Injection.

3.4 If prior to the end of the Permit/Construction Term or the Permit/Construction Discretionary Term(s) (if applicable), Capiro begins Injection at a Specific Area of Interest, then this Agreement shall be maintained with respect to that individual Specific Area of Interest for so long as Injection is occurring without a gap of more than one (1) year (“**Operational Term**”). Except for the rights described in the following subsection 3.5 and all other rights and provisions in this Agreement that expressly remain in effect and survive (or are intended to remain in effect and survive) following Injection, this Agreement shall terminate during the Operational Term with respect to a Specific Area

of Interest on which there has been a gap of more than one (1) year without Injection. However, at the end of the Operational Term, this Agreement may be extended, one or more times, by the State in the State's sole discretion (“**Operational Discretionary Term(s)**”) with respect to any Specific Area of Interest on which there has been a gap of more than one (1) year without Injection. In order for Capio to exercise this option, Capio shall notify the State at least ninety (90) days prior to the expiration of the Operational Term or the Operational Discretionary Term(s) (if applicable) that it wishes to exercise this option. This Agreement, for purposes of Injection, shall terminate at the end of any Operational Discretionary Term with respect to a Specific Area of Interest on which there has been no Injection during the Operational Discretionary Term.

3.5 Following the expiration, termination or release (whichever occurs first) of this Agreement at any point in time on a Specific Area of Interest, Capio shall remain responsible for, and this Agreement shall remain in effect as to, any and all restoration, closure, monitoring or other obligations and requirements imposed by this Agreement, Applicable Law(s) and Applicable Procedure(s), and Capio shall have all necessary and incidental rights to access the Property and utilize the Facilities to undertake such obligations and requirements. Capio shall also retain all rights necessary or incidental to comply with any Sequestration Protocols related to restoration, closure, monitoring or other requirements established under such Sequestration Protocols. Capio shall further retain all rights necessary or incidental to obtaining a Certificate of Completion (as defined in the Sequestration Act (as hereinafter defined)) or other rights, credits, liability limitations, or releases afforded it under Applicable Law(s) or Applicable Procedure(s). For the avoidance of doubt, the right to permanently sequester the Carbon Dioxide Stream(s) shall survive the expiration, termination or release of this Agreement as to any point in time on a Specific Area of Interest.

#### **Article 4 - Payments**

As adequate and total consideration for the rights granted to Capio pursuant to this Agreement, Capio shall make the following payments to the State:

4.1 Capio agrees to pay OMR within ninety (90) days following the Effective Date of this Agreement, a lump sum payment of \_\_\_\_\_ dollars (\$\_\_\_\_\_) for Specific Area of Interest A. Capio agrees to pay OMR within ninety (90) days following the Effective Date of this



Agreement, a lump sum payment of \_\_\_\_\_ dollars (\$\_\_\_\_\_) for Specific Area of Interest B.

4.2 With respect to each Specific Area of Interest, for the period commencing on the Effective Date until its applicable Operational Term commences, Capio shall pay OMR annually in arrears at the rate of \_\_\_\_ dollars (\$\_\_\_\_) per acre contained in each Specific Area of Interest, as calculated in this Article 4. Payments under this Section 4.2 may be adjusted if acreage of an applicable Specific Area of Interest is released by Capio in accordance with this Agreement. Payments under this Section 4.2 shall cease with respect to an applicable Specific Area of Interest if that entire Specific Area of Interest is released by Capio or this Agreement otherwise expires or terminates with respect to a Specific Area of Interest and payments under this Section 4.2 shall further cease if this Agreement is terminated in its entirety. Payments due under this Section 4.2 shall be payable within fifteen (15) business days after the end of each Contract Year. For the avoidance of doubt, payments under this Section 4.2 shall be pro-rated for the number of applicable days within the given Contract Year if the Operational Term commencement occurs during the given Contract Year rather than co-incident with the end of the Contract Year.

4.3 With respect to each Specific Area of Interest, upon the commencement of its applicable Operational Term, (i) the payment obligation set forth in Section 4.2 above shall cease for the given Specific Area of Interest, and (ii) thereafter for the given Specific Area of Interest, Capio shall pay OMR in arrears, due and payable fifteen (15) business days after the end of each Contract Year during its applicable Operational Term (and during any Operational Discretionary Term, if applicable), an amount equal to the greater of (a) the product of the “Annual Injection Fee Per Ton”, as adjusted pursuant to Section 4.5, times the number of metric tons (“ton” or “tons”) of any Carbon Dioxide Stream Injected into a Facility in the given Specific Area of Interest under this Agreement during the

given Contract Year of the Operational Term and/or Operational Discretionary Term, as applicable (such product being the “Annual Injection Fee”) in accordance and consistent with the annual Class VI permit monitoring and verification requirements, or (b) a minimum guaranteed annual payment (“MGAP”) calculated by multiplying the then current Annual Injection Fee Per Ton times the given applicable minimums stated below, determined as follows:

(a) for Specific Area of Interest A, the MGAP shall equal the product of the then current Annual Injection Fee Per Ton multiplied by (i) \_\_\_\_\_ (\_\_\_\_\_) tons per year for the first three (3) year period after commencement of its Operational Term, and (ii) \_\_\_\_\_ (\_\_\_\_\_) tons per year for each year of its Operational Term and/or Operational Discretionary Term, as applicable, thereafter; and

(b) for Specific Area of Interest B, the MGAP shall equal the product of the then current Annual Injection Fee Per Ton multiplied by (i) \_\_\_\_\_ (\_\_\_\_\_) tons per year for the first three (3) year period after commencement of its Operational Term, and (ii) \_\_\_\_\_ (\_\_\_\_\_) tons per year for each year of its Operational Term and/or Operational Discretionary Term, as applicable, thereafter.

The “Annual Injection Fee Per Ton” shall initially be set at \_\_\_\_\_ cents (\$\_\_\_\_\_) per ton, and thereafter shall be subject to adjustment pursuant to Section 4.5.

Each MGAP for a Specific Area of Interest shall be in lieu of, and not in addition to, a Specific Area of Interest’s Annual Injection Fee, and in no event shall both an Annual Injection Fee and MGAP be due by Capio under this Section 4.3. No MGAP payment shall be due with respect to a Specific Area of Interest that is released, expired or terminated from this Agreement. The payments under this Section 4.3 shall cease if and when an Operational Term (or Operational Discretionary Term, if applicable) terminates for an applicable Specific Area of Interest.

4.4 If Capio shall fail to perform any monetary payment obligation under this Agreement, then in such event the State shall cause a written notice to be served on Capio, which notice shall declare it to be the intention of the State to terminate this Agreement if the default is not cured. Capio shall have thirty (30) days after receipt of the aforesaid notice in which to remedy the nonpayment, and, if within such 30-day period, Capio does so remedy by paying the State the applicable monetary payment obligation required herein, then such termination notice shall be withdrawn and this Agreement shall continue in full force and effect. In the event that Capio fails to remedy the nonpayment within such 30-day period, this Agreement shall be terminated and of no further force or effect from and after the expiration of such 30-day period with respect to the applicable Specific Area of Interest that is subject to the payment default. The State shall be entitled to any penalties and interest authorized by Applicable Laws.

4.5 Capio agrees that the Annual Injection Fee Per Ton shall be adjusted in the event the 45Q tax credit received by Capio increases above the base rate of fifty dollars per ton (\$50/ton), as follows: at the close of each Contract Year during the Operational Term (or Operational Discretionary Term, if applicable), the Annual Injection Fee Per Ton shall be increased by an amount equal to \_\_\_ percent (\_\_\_%) of any such increase above such base rate of fifty dollars per ton (\$50/ton) during such Contract Year. For the avoidance of doubt, such adjustment shall mean that the applicable MGAP calculated for each Specific Area of Interest shall also be increased by a proportionate equivalent amount. In no event shall the adjusted Annual Injection Fee Per Ton decrease. When Capio is no longer in receipt of 45Q tax credits, the Annual Injection Fee Per Ton for a given Specific Area of Interest shall be fixed for the balance of the term of this Agreement with respect to such a Specific Area of Interest at its then current value.

4.6 Capiro agrees and acknowledges that by reason of a Withdrawal pursuant to Article 5.4, Capiro shall not be entitled to a refund of the Annual Injection Fee paid to the State for the Carbon Dioxide Stream previously Injected and Withdrawn. However, the State agrees that Capiro shall not be required to pay an Annual Injection Fee for the Withdrawn Carbon Dioxide Stream reinjected into any Storage Reservoirs on the Property. Furthermore, Capiro agrees and acknowledges that it shall not be entitled, by reason of expiration or termination of this Agreement, or voluntary release of acreage by Capiro, to any refund of any bonus, rental or other payments previously paid, nor be released from the obligation required by Article 4.3 to pay the MGAP for each applicable Specific Area of Interest.

4.7 Except as otherwise approved by OMR in writing, Capiro shall make each payment owed to the State under this Agreement by electronic fund transfer using the Automated Clearing House (ACH) Network service pursuant to the institution transfer instructions. The electronic-fund transfer shall be from a banking institution in the United States in U.S. Dollars payable to the "Office of Mineral Resources" into the account identified by OMR, or to any other account as OMR may from time to time designate to Capiro. In the event Capiro is not able to transfer the fund via ACH, it may obtain approval from OMR to use a different method of payment.

4.8 Together with every Annual Injection Fee or MGAP made to the State, Capiro shall include information reasonably required by OMR and readily available to Capiro, detailing the amount of any Carbon Dioxide Stream Injected into each Facility that was used to calculate the Annual Injection Fee or MGAP. The information required herein shall be submitted to OMR in accordance and consistent with the Class VI permit monitoring and verification requirements.

4.9 Capiro shall also pay to the State an amount consistent with the appropriate schedule (either the DWF or State Land Office schedule in effect as of the Effective Date) for pipeline rights-of-way for any pipelines installed on State or DWF owned land or water-bottoms, located inside the Property.

Pipelines as that term is used in this Section shall not include flow-lines or pipelines with a diameter less than \_\_\_ inches, which are located on the Specific Area of Interest and necessary for Storage under the same Specific Area of Interest (“Storage Lines”). Furthermore, Capiro agrees to consult DWF and/or the State Land Office for approval of the placement location of said pipelines (excluding Storage Lines) and Capiro agrees to install the pipelines (excluding Storage Lines) in accordance with the requirements of DWF and/or the State Land Office. This Agreement does not provide for nor address pipeline rights-of-way located outside the Property.

### **Article 5 - Rights**

The State, pursuant to the authority of La. RS. 30:209 and other Applicable Law(s), does herein grant and retain certain rights, subject to the conditions herein set forth and immediately as of the Effective Date the following exclusive rights:

#### **State’s Rights**

5.1 Exploration of Oil and Gas. The Parties acknowledge and agree that the State shall have the right to carry on, in and upon the Property, such operations necessary for and in connection with the discovery, extraction, preparation, utilization, removal and sale of any and all minerals above and below the Storage Reservoirs subject to any requirements or restrictions imposed by Applicable Law(s) and Applicable Procedure(s). However, the State’s rights are to be exercised so as not to unreasonably interfere with, and with due regard for, the operations to be carried on by Capiro in accordance with this Agreement.

5.2 Drill-Through Rights. Capiro agrees and acknowledges that this Agreement does not prohibit a lessee or operator of a state lease or operating agreement granted for the development and production of minerals, oil, or gas on the Property from the right to drill and extract above the Storage Reservoirs or to drill and extract below the Storage Reservoirs, provided that the Storage Reservoirs are not penetrated by such drilling or extraction activities. The lessee or operator of a State lease or operating agreement must exercise its rights in accordance with the rules for a Class VI well or other rules and orders issued by the Commissioner of Conservation and this Section 5.2 in order to protect the applicable Facilities and/or the surrounding properties against pollution and/or against the escape or migration of any Carbon Dioxide Stream from the applicable Storage Reservoirs, and in accordance

with the requirement of Article 5.5 below, and all Applicable Law(s) and Applicable Procedure(s). The State agrees and acknowledges that Capiro shall have the right to drill through any geologic formations, reservoirs, saline aquifers and/or pore spaces beneath the Property, subject to the rules for a Class VI well or other rules and orders issued by the Commissioner of Conservation, and all Applicable Law(s) and Applicable Procedure(s). Notwithstanding the foregoing, and for the avoidance of doubt and to provide additional clarity, the Parties agree that drilling or extraction that penetrates the Storage Reservoirs or its Carbon Dioxide “storage complex” (as such term is defined under the most expansive definition required to ensure certification or classification of the Carbon Dioxide sequestration as permanent under any protocols, standards, regulations or laws relevant to Capiro and its Storage activities conducted pursuant to this Agreement) is prohibited (the “**Drill-through and Extraction Restrictions**”). Further, notwithstanding any provision in this Agreement to the contrary, the Drill-through and Extraction Restrictions set forth in this Section 5.2 of this Agreement shall ensure the “permanence” (as such term is defined under the most expansive definition required to ensure certification or classification of the Carbon Dioxide sequestration as permanent under any protocols, standards, regulations or laws relevant to Capiro and its Storage activities conducted pursuant to this Agreement) of the Sequestered Carbon Dioxide Stream which is currently for at least 100 years.

5.3 Property Access. (a) Pursuant to La. R.S. 30:127(G), Capiro shall maintain and preserve the public’s access to public waterways throughout the Property covered by this Agreement; (b) Subject to the provisions of La. R.S. 30:127(G), Capiro is permitted to enclose (including by way of fencing) and protect the Injection well site portions of the Facilities or other portions of the surface Facilities as may be required by applicable Sequestration Protocols; (c) Capiro shall grant the State, or any other person or entity acting on behalf of the State, access at all reasonable times via any road or waterway to inspect the Property to ensure compliance with all requirements of this Agreement or to exercise any right reserved explicitly or impliedly in this Agreement; and (d) the State retains the right to sell, exchange, transfer, or otherwise dispose of all or any portion of the Property and all rights in the Property not expressly granted to Capiro or necessarily implied by this Agreement. Further, the State shall have the right to use any and all portions of the Property for any purpose or to issue rights-of-ways and servitudes upon the Property, provided doing so does not unreasonably interfere with the rights of Capiro. For the avoidance of doubt, DWF retains the right to access the Properties to carry out its statutory duties, authorities, and programs, subject to Capiro’s rights under this Agreement.

## Capio's Rights

5.4 Permitted Purposes. Capio is hereby granted the right to use the Property for all purposes and rights granted in this Agreement, including, without limitation, the sole and exclusive right to use and occupy the Property for the purposes and rights set forth in this Agreement, and the full control of all operations in connection with the construction, preparation, installation, maintenance, operation, expansion, enlargement, modification, replacement, repair, and disposition of the Facilities, Injecting any Carbon Dioxide Stream into the Storage Reservoirs, the installation, maintenance, repair, replacement and removal of Improvements and Equipment, the Injection, Storage, transportation, shipment, handling, transmission, Withdrawal, or other disposition of Carbon Dioxide Stream(s) Stored, or to be Stored from time to time, in each Facility, and monitoring each Facility and/or Storage Reservoirs (collectively, without limitation, the “**Permitted Purposes**”), subject to Applicable Law(s) and Applicable Procedure(s). Capio shall exercise its rights in accordance with the attached Schedule 1.

Capio agrees that the Carbon Dioxide Stream(s) Injected for Storage in the Storage Reservoirs as contemplated by this Agreement is intended to be permanent. As such, any Withdrawal of Carbon Dioxide from any Storage Reservoirs shall, to the extent reasonably practicable, be reinjected into any of the Storage Reservoirs listed in this Agreement or any other Class VI injection well permitted by the State. For the avoidance of doubt, the de minimis incidental release of any portion of a Carbon Dioxide Stream from any of the Facilities (a) shall not constitute a Withdrawal requiring re-injection or (b) otherwise be prohibited by this Agreement.

5.5 Incidental Rights. Without limiting the foregoing, and for the avoidance of doubt, Capio also shall have the sole and exclusive right to control, conduct, or perform all activities on the Property as may be necessary or incidental to the Permitted Purposes, including, but not limited to: (a) installing (including Drilling), maintaining, replacing, removing, monitoring, inspecting, testing, and/or operating the Improvements and Equipment necessary or incidental to constructing, maintaining, operating, monitoring or testing the Facilities or Storage Reservoirs; (b) performing mechanical integrity tests or other tests as may be desirable to determine Storage Reservoirs' capacity, limits, safety and/or integrity, or to comply with Applicable Law(s); (c) Injecting Carbon Dioxide Stream(s) for pressure maintenance in operations, mechanical integrity activities, or other lawful purposes; (d) transporting of Carbon Dioxide Stream(s); (e) performing any corrective action required pursuant to Applicable Law(s), Applicable Procedure(s) and Sequestration Protocols; (f) dredging in

connection with constructing, maintaining, operating or monitoring the Facilities; (g) constructing, operating, and maintaining utility lines, fuel lines and pipelines and facilities related thereto to construct, operate maintain, or monitor the Facilities; (h) constructing, operating, and maintaining pipelines for the transport of Carbon Dioxide Stream(s); (i) storing and using such quantities of fuel oil and other materials or substances as may be reasonable in connection with the Facilities; (j) accessing the entire Property as necessary to conduct any activities contemplated by this Agreement; and (k) viewing and performing testing, such as geological and geophysical surveys, seismic tests, and other testing and data relating to the Property and Storage Reservoirs to determine the capacity and suitability of the Storage Reservoirs and the Property for the Permitted Purposes. Capio agrees it shall comply with the standard seismic regulations and requirements administered by DWF, for any geophysical or geological surveys and operations conducted within a wildlife-management area or wildlife refuge. These rights do not include the right to withdraw water from State owned water bottoms on the Property, except as may be necessary to support the activities of Capio contemplated by this Agreement, and only to the extent allowed by, and in conformity with, Applicable Law(s) and Applicable Procedure(s).

5.6 In exercising its sole operational control and discretion, Capio shall conduct all operations on or under the Property as a reasonably prudent operator, in a good and workmanlike manner, and in compliance with all Applicable Law(s) and Applicable Procedure(s).

5.7 Without limiting the foregoing, Capio shall be responsible for obtaining all necessary permits and satisfying the insurance, bonding, fee and other obligations mandated by Applicable Law(s) and/or Applicable Procedure(s) regarding each Facility. Once obtained, such permits shall be deemed to be Applicable Law(s) with which Capio will be responsible to comply.

5.8 Except subsequent to a transfer of ownership pursuant to La. R.S. 30:1109(A) or such successor statute thereto, wells, compressors pipelines, tank batteries, and Improvements and Equipment placed in or on the Property after the date hereof and used in connection with operations hereunder, shall be owned and controlled by the Operator and the State shall have no interest (ownership, controlling or otherwise) therein whatsoever. However, nothing herein stated shall deprive the State of the right to file a lien for unpaid cost or damages nor any other agency from levying any other costs or damages or enforcing any other rights commensurate with the authority granted by the State.



5.9 Except for any costs and expenses paid from the Carbon Dioxide Geologic Storage Trust Fund (established by La. R.S. 30:1110) in accordance with Applicable Law(s) and Applicable Procedure(s), all costs and expenses incurred in connection with Storage operations in, on or under the Property or associated with the Facilities, including carrying out any Permitted Purposes or exercising any Incidental Rights, shall be borne solely by the Operator. The State shall be held free and harmless from liability or responsibility for any and all costs and expenses so incurred under the terms of this Agreement.

5.10 Nothing in this Section shall prohibit the State, acting in its capacity as a regulatory authority (through the OC, DEQ, or other regulatory authority), from enforcing all Applicable Law(s) and Applicable Procedure(s), specifically including any applicable environmental or underground injection/storage laws and regulations. For the avoidance of doubt, DWF retains the right to access the Properties to carry out its statutory duties, authorities, and programs, subject to Capiro's rights under this Agreement.

**Correlative Rights.**

5.11 The Parties, their successors and assigns, agree to exercise their respective rights granted herein with reasonable regard for the rights of the other and shall use only so much of the Property, including its surface, as is reasonably necessary to conduct their operations. The exercise of the rights granted herein shall be subject to the provisions of Applicable Law(s) and Applicable Procedure(s), including, without limitation, Articles 11 and 22 of the Louisiana Mineral Code (La R.S. 31.1, *et seq.*).

**Article 6 - Insurance**

6.1 Coverage Required. At least 30 days prior to the installation or construction of any Improvements or Equipment on the Property, Capiro shall pay all costs and/or premiums, for policies of insurance, providing coverage against third party claims relating to the Facilities, including the Property, with a carrier approved in the State of Louisiana and rated by AM Best or a similar agency not lower than "A-" with a surplus size of "VII or higher." The policies of insurance shall be maintained in full force until the termination or expiration of this Agreement and continuing until all obligations are fulfilled. Such commercial general liability policies shall name the State as an

additional insured. Such policies of insurance shall be subject to the terms and conditions of the policies and shall have the following limits:

- A. For bodily injury, One Million (\$1,000,000) Dollars per occurrence, with a Two Million (\$2,000,000) Dollars aggregate.
- B. For property damage which is not considered to be environmental damage, One Million (\$1,000,000) Dollars per occurrence, with a Two Million (\$2,000,000) Dollars aggregate.
- C. For environmental damage, Ten Million Dollars (\$10,000,000) for each occurrence.

6.2 Proof of Insurance. Capio shall provide the State with current certificates of insurance demonstrating compliance with the requirements of Article 6.1 above (a) within forty five (45) days of the payment of all costs and/or premiums required in Article 6.1; (b) within fifteen (15) days following annual policy renewals during the term of this Agreement; and (c) within fifteen (15) days of each reasonable request therefor by the State. Such certificates of insurance shall contain the requirements that (i) those insurance companies provide thirty (30) days' prior written notice of any cancellation or termination of those insurance policies as stated on a standard accord cancellation form or such similar form, and (ii) the insurance companies providing commercial general liability insurance waive any right of subrogation in favor of the State limited to the extent of obligations and liabilities assumed by Capio under this Agreement.

6.3 Insurance Default Remedies, Notice and Cure Rights. In the event notice of cancellation of the insurance required by Section 6.2 is given and another certificate of insurance evidencing the issuance of another policy meeting all the terms and conditions of Section 6.2 is not furnished prior to cancellation (and except where such failure to furnish same is excused due to an Incident or any other provision of this Agreement or Applicable Law(s)), the Injection rights of Capio under this Agreement shall automatically and without further notice to Capio, be suspended (but not terminated) and Capio shall immediately suspend Injection under this Agreement. For avoidance of doubt, rights necessary to maintain the viability of the Storage Reservoirs and the Facility or Facilities for the purposes hereof and as necessary for health, safety, and/or environmental concerns shall be permitted at all times. The reinstatement of the requisite insurance coverage as evidenced by the certificate showing same to the State shall immediately thereon lift the suspension and allow Capio to resume Injection. Should Capio fail to obtain coverage within one hundred twenty (120) days after

receiving a written notice and request to obtain insurance from the State, this Agreement may terminate at the option of the State.

### **Article 7 - Bankruptcy and Security**

7.1 The Operator agrees to acknowledge and verify in any appropriate manner to any bankruptcy court or to any other authority, and hereby also acknowledges and verifies, that the Annual Injection Payments required in Article 4 are not a part of the Capio's estate, and that the estate has no claim or interest therein. Capio further acknowledges that all legal and equitable title to any portion of the payments owed to the State is vested in the State and that Capio relinquishes all dominion, control, and title to the same. Capio and the State agree that so long as this Agreement remains in effect, this Agreement is an executory contract and unexpired within the meaning of Section 365 of the United States Bankruptcy Code.

7.2 The Operator shall furnish any bond or other security, required by Applicable Law(s), to cover the Operator's obligations for closure and post-closure activity.

### **Article 8 – Indemnification**

8.1 The Operator unconditionally agrees that it will respond to, investigate, provide defense for, protect against, save, indemnify, and hold free and harmless the State, the Board, DNR OMR, DWF, the Board members, DNR's, OMR's and DWF's employees and other representatives of, from, and against any and all demands, claims, causes of action, damages, judgments, costs, fees, expenses and attorney's fees arising from any harm, loss, injury or death to any person, or any harm, loss, damage or destruction of any property, THAT MAY ARISE OUT OF, OR BY REASON OF, THE PERFORMANCE OF ALL SERVICES, ACTIVITIES, OBLIGATIONS, DUTIES AND OPERATIONS UNDER THIS AGREEMENT BY CAPIO, THE OPERATOR, OR ANY OF ITS EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, OR OTHER REPRESENTATIVES, OR ANY OTHER MEMBER OF THE CAPIO GROUP due to their negligence, commission or omission, and of and from any and all costs and expenses relating to the defense of any such claims, including reasonable attorney' fees incident thereto.

8.2 As consideration and inducement for the Drill-through and Extraction Restrictions contained in this Agreement, Capio agrees to indemnify, defend and hold the State harmless from any claims, causes of action, or damages caused by the inclusion of the Drill-through and Extraction

Restrictions in this Agreement or efforts to ensure inclusion or enforcement of such Drill-through and Extraction Restrictions through the regulatory process.

### **Article 9 – Inspection, Records and Audit Rights**

9.1 Subject to compliance with Capiro site rules and requirements, and provided that the State treats such information as strictly confidential to the extent allowed by Applicable Law(s) and Applicable Procedure(s), the State, or any person or entity acting as agent, representative or under the authority of the State shall have the right, at all reasonable times and upon reasonable notice, to examine, audit or inspect all books, records, accounts, statements, maps, plans, seismic or geologic data, diagrams and other such documents pertaining to Operator's Storage, Injection and calculation of payments required under Article 4 from the Effective Date of this Agreement. Except as provided in Section 9.2, Capiro shall only be required to maintain the foregoing items for ten (10) years, but Capiro reserves the right to retain any and all such items for such longer period as Capiro deems necessary or desirable to ensure compliance with any Sequestration Protocols.

9.2 Capiro shall preserve all books and records used to calculate the payments required under Article 4 for as long as required by Applicable Law(s). Capiro shall reasonably cooperate with the State in any such audit and the State shall conduct said audit as not to unreasonably interfere with Capiro's operations.

9.3 Capiro shall provide access to accurate records concerning Capiro's payment obligations due under this Agreement with respect to each Facility required by Article 4, including but not limited to all accounts hereunder showing the amounts of Carbon Dioxide that have been Injected, are in Storage or have been Withdrawn from each Facility; provided that the State treats such records as strictly confidential, to the extent allowed by Applicable Law(s) and Applicable Procedure(s). The State may seek penalties in the event such accurate records are not timely provided in accordance with this Agreement and Applicable Law(s). The State and its agents shall, subject to all Capiro site safety rules and requirements, have the right, upon reasonable prior notice to Capiro and during normal business hours, to review such records created and maintained by Capiro concerning the design, construction, maintenance, modification, and physical operation of each Facility only in so far as such records are directly related to the calculation of payments required under Article 4 of this Agreement. Subject to all Capiro site safety rules and requirements, the State and any of its duly authorized representatives shall have access at all times to each Facility, the Property, and to any wells or

Improvements and Equipment associated with the Facilities and to all records and reports directly related to Operator's Injection and to the calculation of payments required under Article 4 of this Agreement. Capiro shall reasonably cooperate with the State in any such review, and any such review shall be at the sole cost of the State and shall be done so as not to unreasonably interfere with Capiro's operations. To the extent that such information is received or acquired by the Operator from or in connection with operations hereunder subsequent to the date hereof, the Operator agrees, upon written request by the State, to furnish timely to the State any and all well data associated with the Facilities, provided that, to the extent allowed by Applicable Law(s) or Applicable Procedure(s), the State treats such records as strictly confidential.

9.4 For avoidance of doubt, all information obtained by the State pursuant to this Article 9 shall be treated as strictly confidential by the State to the fullest extent allowed by Applicable Law(s) and Applicable Procedure(s).

#### **Article 10 - Release of Acreage**

Upon its own initiative, Capiro may release acreage by notifying the State in writing, at least thirty (30) days prior to the release, of its intent to do so and identifying the specific acreage to be released in the manner and format required by the State. Upon release of the acreage, Capiro shall lose any rights for Storage of Carbon Dioxide Stream(s), incidental rights, or undertaking any activities to carry out Permitted Purposes on the portion of the Property released, except for the rights described in Section 3.5 of this Agreement and this Article 10. Additionally, Capiro shall be required to undertake restoration, closure and post-closure activities in accordance with this Agreement for that acreage that has been released. Upon completion of any required restoration, closure, post-closure, and monitoring obligations in this Agreement for the portion of the Property being released, the amount required to be paid to the State by Capiro under its obligation to make payments for acreage included under this Agreement pursuant to Section 4.2 shall be reduced by the amount of acreage released from the date of such release going forward.

#### **Article 11 – Closure, Post-Closure and Monitoring Activities**

11.1 Except for any activities undertaken by the State following issuance of a Certificate of Completion of injection operations (if sought by Capiro) pursuant to the Sequestration Act (or other Applicable Law(s)) at each Facility, upon the termination of this Agreement (for purposes of Injection) or upon release of specific acreage (and then only as to that released acreage), at its sole cost and

expense, Capio shall close the Facilities in conformity with any and all Applicable Law(s), Applicable Procedure(s) and this Agreement (including, without limitation, the Restoration Obligations) regarding closure and post-closure. Capio has the continuing right to use the Property under this Agreement to perform its closure and post-closure activities (including any monitoring of the Storage Reservoirs) following termination of this Agreement for Injection Purposes or a release of acreage.

11.2 Capio shall cause to remain in full force and effect the insurance coverage required by Article 6 and any bond required pursuant to Section 7.2 until such time as the action contemplated by Section 11.1 shall be completed.

11.3 Notwithstanding anything in this Article 11 to the contrary, Capio retains the right to conduct its closure and post-closure obligations in conformance with Sequestration Protocols. As such, even if Capio does seek and obtain a Certificate of Completion in conformance with the Sequestration Act (or other Applicable Law(s)), Capio shall retain all rights necessary or incidental to enable it to conform to any Sequestration Protocols.

## **Article 12 - Surface Use and Restoration**

### **12.1 Surface Use.**

(1) Capio shall comply with and be subject to all Applicable Law(s) which govern: waste disposal, storage, treatment, transportation, or management; environmental quality (regardless of the environmental media involved), geologic Storage of Carbon Dioxide, navigation, archeological resources, cemeteries, coastal resource management, and wetlands protection and restoration.

(2) Capio shall conduct operations as a prudent operator using standard industry practices and procedures and proper safeguards, including taking necessary preparations and precautions to prevent and remedy pollution, fire, explosion, and environmental damage to the Property. Capio shall be responsible, unless otherwise limited by La. R.S. 30:1109 and La. R.S. 30:1111(as amended or any successor statutes thereto), for all damage to the Property caused by Capio's or Capio Group's operations including, but not limited to loss or damage to timber, crops, roads, buildings, fences, bridges, soil, surface and subsurface water, aquifers and vegetation and all environmental damage. Unless otherwise provided by La. R.S. 30:1109 and La. R.S. 30:1111, (as amended or any successor statutes thereto), this responsibility shall be irrespective of whether such damage is due to Capio's or Capio Group's negligence or to the inherent nature of Capio's or Capio Group's activities or operations. For the avoidance of doubt, this provision applies as to the Parties only and it is not intended to apply to or be for the benefit of any third persons.

(3) Capiro shall report all unpermitted and reportable discharges on the Property as required by Applicable Law(s).

(4) Capiro shall, at its sole cost and expense, keep and maintain all Improvements and Equipment on the Property utilized, owned, placed and/or caused to be placed by Capiro and all Facilities appurtenant to such Improvements and Equipment in good order and repair and in the appropriate condition for the safe conduct of any activities or enterprises conducted on the Property pursuant to the rights granted hereunder, in each case as a prudent operator using standard industry practices and procedures and proper safeguards and in accordance with Applicable Law(s).

#### 12.2 Restoration.

(1) Except as otherwise set forth in this Agreement (including this Section 12.2(1)), Capiro shall be obligated to plug and abandon all wells owned, utilized, placed or caused to be placed by Capiro on the Property no longer necessary for the Permitted Purposes; to remove from the Property all Improvements and Equipment owned, utilized, placed or caused to be placed by Capiro which are no longer utilized for the Permitted Purposes; and to the extent caused by Capiro's activities on the Property, restore the surface of the Property, as near as practicable, to the condition existing on the Effective Date of this Agreement ("**Restoration Obligations**"), all at Capiro's sole risk, cost and expense and subject to compliance with Applicable Law(s) and Applicable Procedure(s). Unless doing so would be in violation of Applicable Law(s), Capiro shall complete the Restoration Obligations within a reasonable time (but no later than eighteen (18) months, subject to extension for Force Majeure or any Suspending Events) following: (a) the date said wells, structures or facilities are no longer necessary for Permitted Purposes; or (b) the date this Agreement has expired, terminated or been released (whichever occurs first) as to all or a portion of the Property. Notwithstanding anything contained in this Agreement to the contrary, to the extent permitted by Applicable Law(s) and Applicable Procedure(s), consideration of abandonment in place for such Improvements and Equipment shall be determined after consultation with DWF in accordance with the applicable provisions of Schedule 1 and to the extent adverse impacts to fish and wildlife can be avoided in the short and long-term. The failure of Capiro to timely complete the Restoration Obligations shall subject Capiro to and make Capiro liable for any and all costs or expenses of any kind incurred by the State for plugging said wells or removing said structures or facilities, but in no instance shall title to or ownership of said facilities automatically vest in or transfer to the State nor shall said wells, structures or facilities be deemed "improvements" to the Property for purposes of vesting title in same to the State. Notwithstanding anything in the foregoing to the contrary, Capiro retains the right to perform

its Restoration Obligations and such related obligations in accordance with any other Sequestration Protocols.

(2) The State recognizes Capiro's right to draw and remove casing from wells and, further, to remove any structures and facilities no longer utilized for Permitted Purposes on the Property.

### **Article 13 - Warranty of Title and Use**

13.1 Warranty of Title. Notwithstanding any provision herein to the contrary, this Agreement is granted and accepted without any warranty of title and without any recourse against the State whatsoever, either express or implied. As such, the Parties acknowledge and agree that the State shall not be required to return any payments received pursuant to this Agreement, even notwithstanding any subsequent litigation or judicial decrees, orders, or rulings regarding title to all or any part of the Property or otherwise be responsible to Capiro therefor. Capiro represents that it has investigated the title or is satisfied with such title as the State may have. The State hereby disclaims any covenant of quiet enjoyment or peaceful possession of the Property.

13.2 Warranty of Use. The State makes no warranties as to the condition of the Storage Reservoirs and Capiro accepts the Storage Reservoirs "AS IS". The State has no obligation to make any repairs, additions or improvements to the Storage Reservoirs, and the State does not warrant the suitability of the Storage Reservoirs for any purposes intended by Capiro or contemplated by this Agreement.

13.3 Termination for Lack of Title. Notwithstanding anything stated in this Agreement to the contrary, this Agreement shall terminate, as to the portion of the Property implicated, if it is determined by a court of competent jurisdiction (and any applicable appeal delays have run or have been exhausted) that the State does not have title to the Property.

### **Article 14 - Force Majeure and Suspending Events**

(A)(1) If, at any time this Agreement is being maintained by Injection occurring on a Specific Area of Interest, and Operator is prevented from continuing Injection by the occurrence of a Force Majeure or Suspending Event as defined in this Article, ("**Incident**"), and Operator cannot maintain this Agreement under any other operative provision of this Agreement, then and only then shall the date for Operator to re-commence Injection in order to maintain this Agreement be postponed on a day-for-day basis for so long as the adverse effects of the Incident continue, providing that Operator provides OMR with notice in accordance with section (B) of this Article and that Operator is



diligently, reasonably, and in good faith attempting to mitigate and eliminate the effects of the Incident to the extent such mitigation is within Operator's control. The occurrence of an Incident shall not maintain this Agreement for more than twelve (12) months from the date of the Incident onset unless extended by the State.

(2) A determination as to whether Operator can utilize this Article and whether Operator has complied with the requirements thereof is at the sole, reasonable discretion of the State. If an Incident has occurred, the Operator is still required to make the MGAP and Annual Injection Fee payments required by Article 4 of this Agreement.

(B) Within ninety (90) days of the Incident onset, Operator shall submit a written notice containing the following: (1) the onset date, description and nature of the Incident; (2) the effects preventing continuation of Injection; (3) a description and evidence of Operator's diligent, reasonable and good faith efforts to mitigate and eliminate the effects of the Incident and to resume Injection; (4) an estimated time for resumption of Injection; and (5) any other information or documentation evidencing the existence of the Incident reasonably requested by the State. Notice given beyond ninety (90) days shall not be considered reasonable notice and the application may be denied by the State barring consequential extenuating circumstances.

(C) Every thirty (30) days following the notice required in section (B) of this Article, Operator shall be required to submit written, detailed reports on a monthly basis to OMR giving therein a description and evidence of Operator's diligent, reasonable, and good-faith efforts to mitigate and eliminate the effects of the Incident and to resume Injection. If the reports are not timely submitted or if Operator did not attempt in good faith to mitigate the effects of the Incident, the State, after notice and opportunity to be heard, may declare the Incident recognition to be ended and that Operator may not after such failure utilize this provision to excuse any failure to comply with any obligations of this Agreement relating to the particular Incident involved.

(D) A "**Force Majeure**" event is a fortuitous event that is beyond the Operator's control and is not ultimately determined to be caused by the Operator or due to the Operator's negligent or intentional commission or omission, or failure to take reasonable and timely foreseeable preventative measures that would have mitigated or negated the effects of the event. An example of a Force Majeure event may include, depending on the specific circumstances involved: (1) a major storm, major flood, or other similar natural disaster; or (2) a major accident such as a blowout, fire, or explosion, which prevents the occurrence of an act or event that would otherwise extend the effectiveness of this Agreement or prevent its termination.

(E) “**Suspending Event**” includes: (1) the lack of availability, after the Operator has diligently, timely and in good faith attempted to secure same, of any required equipment, materials and/or personnel, such as the specific type of rig or specific type of casing or drill pipe necessary for the occurrence of an act or event that would otherwise extend the effectiveness of this Agreement or prevent its termination; or (2) the unreasonable or unexpected delay by any government agency or political subdivision in granting, modifying, or reinstating permits necessary for the occurrence of an act or event that would otherwise extend the effectiveness of this Agreement or prevent its termination (e.g., delays relating to permits for the expected Carbon Dioxide source plant or facility); or (3) an order of any federal or state court of competent jurisdiction preventing or suspending the occurrence of an act or event that would otherwise extend the effectiveness of this Agreement or prevent its termination; or (4) the act of a third party, not under the control or at the instigation of the Operator, in shutting down and unreasonably refusing to reopen any pipeline, plant, or facility through which a Carbon Dioxide Stream for a Facility are necessarily emitted or passed through as part of the capture, transport or Injection of a Carbon Dioxide Stream (and provided there is no other reasonably economical method or alternative of carrying on Injection of a Carbon Dioxide Stream) so as to prevent the occurrence of an act or event that would otherwise extend the effectiveness of this Agreement or prevent its termination; or (5) any delays lasting one-hundred eighty (180) days or more due to shut downs, closures, repairs, maintenance or damage events to any pipeline, plant or facility through which a Carbon Dioxide Stream for a Facility is emitted or passed through as part of the capture, transport or Injection of a Carbon Dioxide Stream; or (6) other events not described herein that may be recognized by the State.

#### **Article 15 - Miscellaneous Provisions**

15.1 It is understood and agreed that this Agreement shall not create the relationship of a partnership between the Parties hereto, and that no act done by any Party pursuant to the provisions hereof shall operate to create such relationship, nor shall the provisions of this Agreement be construed as creating such relationship.

15.2 It is expressly provided herein that neither this Agreement, nor anything herein contained, nor any of the data, maps, or exhibits considered in connection herewith, whether attached hereto or not, nor any course of conduct followed by any Party hereto pursuant to this Agreement, shall ever be considered to be or permitted to serve as a basis of estoppel against any Party hereto in question of title, where title to Property or a portion of the Property is in dispute, anything herein

contained to the contrary notwithstanding.

15.3 This Agreement shall extend to and be binding upon the successors, assigns, and successive assigns of the Parties; however, it is understood and agreed that no future assignments of the rights granted hereunder shall be effective unless and until such assignment or assignments are first approved by the State, through DWF, and same shall be subject to any reasonable conditions imposed by DWF in giving its approval, which approval shall not be unreasonably withheld, conditioned, delayed, or denied. Notwithstanding the foregoing, Capio shall have the right to assign this Agreement for the benefit of its creditors without prior approval by the State.

15.4 Payments, notices, reports, statements, and any and all written documents herein required to be given or furnished by any of the Parties hereto shall be in writing and mailed or delivered (via nationally recognized overnight courier or hand delivery), to the following addresses of the Parties hereto, to-wit:

If to the State: Department of Natural Resources  
Attn.: State Mineral and Energy Board  
Post Office Box 2827  
Baton Rouge, Louisiana 70821-2827

If to the Operator: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15.5 This Agreement shall be recorded in the conveyance records of all Parishes where the Property is located in order to notify all interested third parties (including, without limitation, any lessees or other users or occupants of the Property) of the exclusive use of the Storage Reservoirs below the surface of the Property for permanent Carbon Dioxide sequestration and the restrictions pertaining thereto (including, without limitation, the Drill-through and Extraction Restrictions set forth in Section 5.2 of this Agreement). The Operator agrees that it shall execute and record, within ninety (90) days after the expiration or termination of this Agreement covering all or any portion of the Property, an appropriate and legally sufficient release evidencing such expiration or termination, and shall also supply State with a copy or copies thereof with recordation information properly

certified by the recorder of each Parish in which a Property is located. In the event the Operator fails to comply therewith after thirty (30) days of written notice from the State, it shall be liable for reasonable attorney's fees and court costs incurred in bringing suit for such cancellation and for all damages resulting therefrom. Notwithstanding the foregoing, a disclosure filing in mutually agreeable form shall also be recorded in the conveyance records of all Parishes where the Property is located to notify all interested third parties (including, without limitation, any lessees or other users or occupants of the Property) of the exclusive use of the Storage Reservoirs below the surface of the Property for permanent Carbon Dioxide sequestration and the restrictions pertaining thereto (including, without limitation, the Drill-through and Extraction Restrictions set forth in Section 5.2 of this Agreement).

15.6. This Agreement shall be interpreted and construed under the laws of the State of Louisiana. Should any provision, in whole or in part, of this Agreement be declared, found, or held invalid, illegal, or otherwise unenforceable, such declaration, finding, or holding shall not invalidate or render unenforceable the remaining provisions, which shall be construed and enforced as though the invalidated or unenforceable provision, or portion thereof, was not contained herein, provided that such remaining provisions fulfill the primary purpose of this Agreement.

15.7 The Parties hereby agree that this Agreement, and all terms, provisions, and conditions set forth herein are intended to be compatible with, and not limit or contradict any obligations or protections afforded under, the Louisiana Geologic Sequestration of Carbon Dioxide Act, La. R.S. 30:1101, *et seq.* (as amended from time to time in the future, the "**Sequestration Act**").

15.8 The venue for any suit, action, or proceeding instituted, arising out of, or relating to this Agreement, shall only be in the Nineteenth (19<sup>th</sup>) Judicial District Court, East Baton Rouge Parish, State of Louisiana. Each Party irrevocably submits to the exclusive jurisdiction of said courts, waives any objection which it may have now or hereafter to such venue, and waives any other venue to which it may be entitled by virtue of domicile or otherwise.

15.9 This Agreement has been read and understood by each Party. The Parties to this Agreement have freely and voluntarily executed this Agreement for the consideration recited herein. They have not relied on any representation or statement by any Party other than those statements contained herein. They have relied solely and completely upon their own respective judgment and the advice of their own attorneys.

15.10 This Agreement is the result of arms-length negotiations between the Parties and each has had the opportunity to review and revise it prior to execution. As a result, both Parties agree that the rule of construing the terms and provisions of an instrument against the drafting Party is not and

shall not be applicable to this Agreement. This Agreement constitutes the entire agreement as between the Parties, and it shall not be modified or amended, nor shall any of its requirements be waived, except in a subsequent writing executed by all Parties.

15.11 Each Party represents and warrants to each and every other Party that the individuals executing this Agreement, and the agreements contemplated by this Agreement, have been duly authorized by their respective corporate principals and that this Agreement and the other documents contemplated by this Agreement, shall be binding on the Parties hereto in accordance with the provisions of such documents.

15.12 This Agreement may be executed in counterparts and each executed counterpart shall have the same force and effect as the original instrument. If counterparts are executed, the signatures of the Parties to each counterpart may be combined into and used as a single document.

15.13 The article and section headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

15.14 The Parties agree to negotiate in good faith for the purposes of amending this Agreement in the future (subject to the State's approval and sole discretion) in order to (a) ensure compliance with existing, amended, and/or future rules, regulations, and/or administrative guidance promulgated by the EPA, OC, the Internal Revenue Service, or any other regulatory or administrative body having jurisdiction and/or authority over tax credits, economic incentives, or other revenue generating structures applicable to Operator's business and operations, consistent with Operator's desire to execute a successful carbon capture and sequestration project; (b) ensure compliance with the Sequestration Act or other Applicable Law(s) or Applicable Procedure(s); or (c) address operational, market or commercial matters related to carbon capture and sequestration projects. Further, the Parties agree to cooperate in good faith in connection with Operator obtaining regulatory approvals and additional amendments to this Agreement to expand the Property covered by this Agreement if the Carbon Dioxide plume migrates through a pathway unpredicted by the Storage Reservoirs modeling into adjacent State-owned land or water bottoms (to the extent such additional acreage is available).

15.15 Safety Precautions and Other Protocols. Both Parties, and their respective contractors, subcontractors, invitees, and agents shall comply with Occupational Safety and Health Administration rules and regulations applicable to industrial sites when entering any area of the Property on which Capiro's surface facilities are located. The State understands and acknowledges that Capiro may, from time to time, be subject to Sequestration Protocols. Accordingly, and notwithstanding anything contained in this Agreement to the contrary, the State acknowledges and agrees that Capiro retains all

rights necessary or incidental for Capiro to ensure conformance with any such Sequestration Protocols.

**This Part Left Intentionally Blank**

DRAFT

THUS DONE AND SIGNED on the date or dates herein below written, in the presence of the undersigned competent witnesses.

WITNESSES:

**The Louisiana State Mineral and Energy Board**

\_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESSES:

**Capio Sequestration, LLC**

\_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**RESERVED FOR EXHIBIT A**

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DRAFT



## EXHIBIT B

### SPECIFIC AREA OF INTEREST A – PROPERTY DESCRIPTION

“Specific Area of Interest A” includes a tract, title to which is in the State, through the Louisiana Department of Wildlife & Fisheries, and includes all lands of the Maurepas Swamp Wildlife Management Area depicted in blue on the below map and located in Ascension and St. John the Baptist Parishes. This area consists of approximately 32,711 acres. Exact dimensions and final acreage of the area to be determined by survey.



## EXHIBIT C

### SPECIFIC AREA OF INTEREST B – PROPERTY DESCRIPTION

“Specific Area of Interest B” includes several tracts, title to which is in the State, through the Louisiana Department of Wildlife & Fisheries, and includes all lands of the Sherburne Wildlife Management Area depicted in blue on the below map and located in Iberville, Pointe Coupee, St. Martin, and St. Landry Parishes. This area consists of approximately 11,800 acres. Exact dimensions and final acreage of the area to be determined by survey.

