

# Key Legal Considerations for any Carbon-Related Agreement

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Before entering into any type of agreement, there are a number of legal considerations that producers should keep in mind. This is certainly true with any type of carbon or greenhouse gas emissions contract.

consider asking the company for the name and contact information of a producer who has been involved with the carbon program for more than a year to ask about their experience.

- 1. Read the agreement and all appendices and attachments.** Reading complex documents, especially those that are legal in nature, is not something most farmers or ranchers are excited about doing. However, taking the time to carefully read and understand the document in its entirety (including all appendices and attachments) is the most important step that a producer can take prior to signing any agreement. Many times, especially with carbon-related documents, the details are found in the fine print and will not be caught by merely doing a quick scan of the document. Keep in mind that some carbon-related agreements, particularly those for carbon inset programs, may simply be a price sheet or program summary rather than a formal contract. The need to read, understand, and consider all the points included here remains true.
- 2. Who has the authority to sign the contract?** If the property has a lease, it is important for the landowner and the tenant to communicate prior to entering into any carbon-related agreement. Both parties must be aware of any agreements made regarding production on the land.
- 3. Research the company prior to signing.** A producer should take time to research the company with whom they are considering signing an agreement with. Many companies have their carbon program information posted online, which is a good place to start. A producer could also
- 4. Ensure terms used in the agreement are defined.** In reviewing the document, a producer should ensure the document explains any technical terms that are used. For example, terms like “climate-smart practice” or “regenerative grazing” should be further defined in an agreement to ensure both parties are on the same page when it comes to what practices the producer is required to adopt.
- 5. Understand measurement units.** In carbon-related agreements, it is critical to understand the unit of measurement being used. Many carbon contracts utilize a carbon dioxide equivalent (“CO<sub>2</sub>e”) measurement. CO<sub>2</sub>e is recognized as a standard measure to compare emissions from different sources. Carbon contracts often refer to a “carbon credit,” which is 1 metric ton of CO<sub>2</sub>e.
- 6. Identify payment terms.** Oftentimes, a carbon-related agreement may contain payment terms. There are currently three common payment structures. First, a contract may offer a payment for the amount of carbon sequestered. This is typically paid in the form of dollars per metric ton of CO<sub>2</sub>e. Second, some contracts may provide a payment for practices adopted. This is typically a per-acre or per-bushel payment if certain practices are undertaken. Third, a premium may be offered, or a discount could be avoided, for a crop produced using certain “climate-smart” practices when the crop is sold. For example, corn produced with a previous cover crop under no-till production could earn a premium over corn produced without these types of practices. Taking time to be sure the producer is clear on exactly what must be done to achieve payment and how the payment will be calculated is important.

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**7. What penalty results from noncompliance?**

Many agreements will include terms related to what happens if either party fails to comply with the agreement. Such noncompliance could result from intentional actions that breach the contract or from unintentional actions over which the parties may have little control. Take the time to carefully review and understand the consequences of noncompliance. Additionally, producers should review the circumstances under which the company can choose to terminate the contract.

**8. What data must the producer collect and provide?**

A producer should carefully consider the types of data they will be required to collect, what that collection will require, and how the data must be provided. This could include a variety of potential data points, such as drone photos, shape files, production histories, and soil sampling, to name a few. Producers need to be clear on what they will be required to gather and what rights other companies may have to gather this information on their properties. Additionally, ownership of any data provided to the company should be addressed in the agreement.

**9. Understand any assignment rights in the agreement.**

Many carbon-related agreements contain assignment provisions that allow the company to assign its rights under the contract to any other company without consent from the producer. Understand that just because one company signs the agreement, that may not be the company the producer ends up dealing with for the duration of the contract.

**10. Seek review from an experienced attorney.**

Before entering into any sort of carbon-related agreement or program, it is highly recommended that producers seek the advice of an attorney licensed in their jurisdiction who has experience with agricultural law in general and ideally with carbon contracts specifically. Although this is an added expense for producers on the front end, it is money well spent to ensure the agreement is clear and their rights are protected. For more tips on finding an agricultural lawyer, download our fact sheet [How to Find an Agricultural Lawyer](#).



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