



**Memorandum of Understanding (MOU)**

**regarding**

**Woodland investment and nature restoration in Scotland**

**By and between**

**NatureScot | Hampden & Co. | Palladium | Lombard Odier Asset Management (Europe) Limited**

**February 2023**

**Parties:**

**Palladium Name** (“Palladium”)

**ABN/Company Number/RN (if applicable)**

Address

Representative Name and Title

Representative Phone/Email

**Lombard Odier Name** (“Lombard Odier”)

**ABN/Company Number/RN**

Address

Representative Name and Title

Representative Phone/Email

**NatureScot Name** (“NatureScot”)

**ABN/Company Number/RN (if applicable)**

Address

Representative Name and Title

Representative Phone/Email

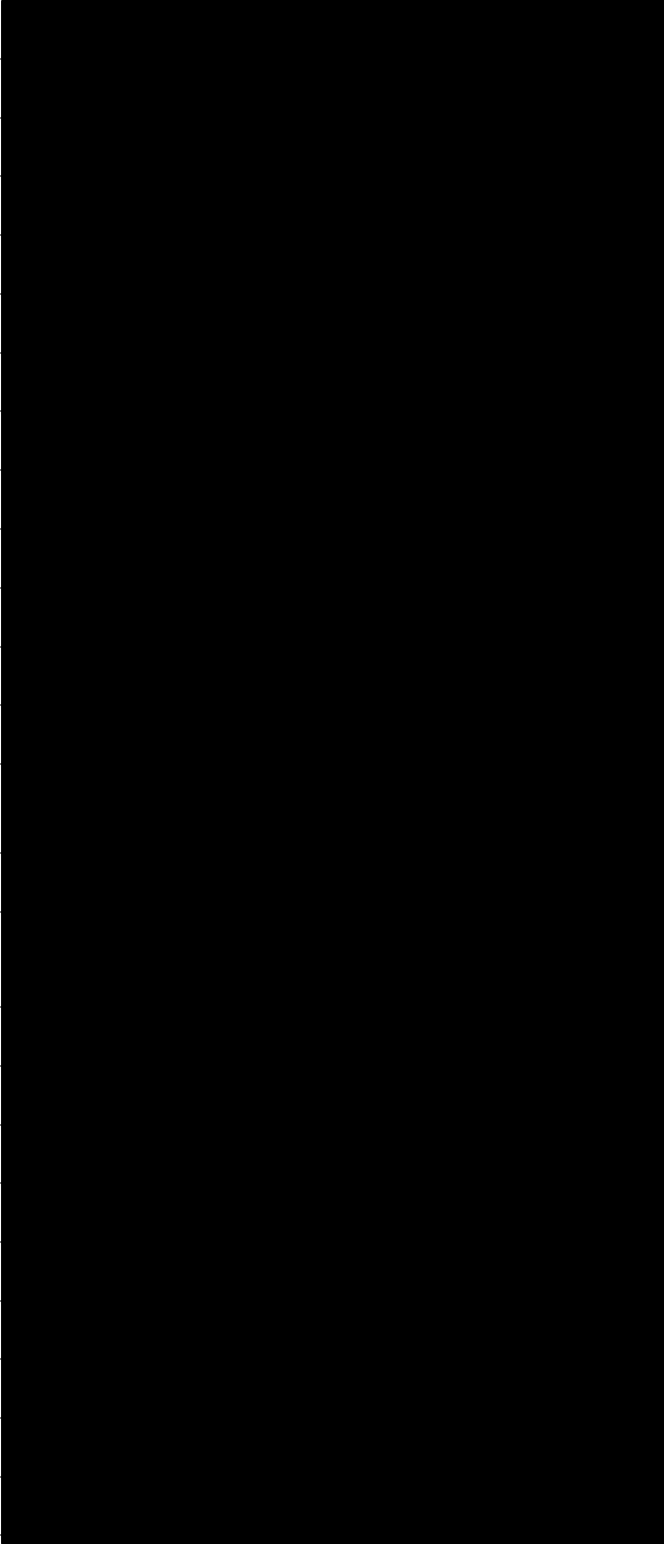
**Hampden Name** (“Hampden & Co”)

**ABN/Company Number/RN (if applicable)**

Address

Representative Name and Title

Representative Phone/Email



## 1. DEFINITIONS

The following capitalized terms shall have the following meaning

“Party” shall mean any of Palladium, Lombard Odier, Hampden & Co or Naturescot  
“Parties” shall mean all of Palladium, Lombard Odier, Hampden & Co and Naturescot  
“Project” shall have the meaning set out in Section 2.

## 2. INTRODUCTION

The Parties are working together to explore the potential for a significant investment in woodland creation in Scotland (the “Project”). The focus is on mixed native woodland which aims to deliver multiple benefits for nature, the communities, the economy, and climate. The Project will also support nature restoration by enhancing other habitats as appropriate. The Project will consist of several subprojects (“SubProjects”) as agreed by the Parties.

This MOU sets out

- a. the planned respective roles of each organisation;
- b. the intended ways in which the investment will be managed;
- c. how the parties will define and enter into necessary arrangements and agreements for the furtherance of the Project and entering into SubProjects.

## 3. SCOPE

This MOU applies to all dialogue between the Parties collectively on woodland investment and nature restoration in Scotland. Further parties may be added to the MOU with the mutual consent of all Parties in writing. A revised MOU will be drawn up each time a new party is added.

This MOU is personal to the Parties.

Without prejudice to a Party’s obligations under this MOU (e.g. confidentiality), this MOU does not apply to dialogue between a Party and other stakeholders in Scotland.

At this stage this MOU is focussed on investment in two locations:

- In the Scottish Borders
- In the Atlantic Rainforest

Other locations may be agreed with the consent of all Parties.

This MOU will be reviewed annually and may be terminated by a Party at any time by written notice to the other Parties. The initial Term of this MOU is set out on the cover sheet of this MOU at which time this MOU will automatically terminate unless extended by the written agreement of the Parties.

## 4. COLLABORATION AGREEMENT

The Parties intend to work together to:

- Catalyse private investment into the Project, at significant scale
- Ensure that the investment meets the aims of the [Interim principles on natural capital investment](#) published by Scottish Ministers in March 2022 and the [Responsible Natural Capital and Carbon Management Protocol – Scottish Land Commission, August 2022](#).
- Collaborate with third parties to ensure that the investment is well designed and supported by wider stakeholders and communities
- Deliver high integrity carbon investment
- Demonstrate how government policy and subsidy support can enable private investment into nature restoration, while providing strong value for money to taxpayers
- Maximise the benefits for nature and communities from the investment
- Communicate effectively with other agencies and organisations to ensure effective collaboration; and
- Learn and share lessons from the Project that can support future projects.

## 5. ROLES

The Parties intended roles and responsibilities are set out below. These roles are provisional and subject to change and do not at this stage create legally binding obligations for the Parties.

### a. NatureScot will, subject to continued confidence in the scale of the returns for nature:

- Provide advice on the design of the Project and the associated land management plan;
- Support stakeholder engagement;
- Liaise with Scottish Government and other agencies to ensure that the investment has wide support;
- Provide advice on Environmental Impact Assessment and other regulatory steps as required, but these processes will be led by the applicant(s); and
- Participate in the Parties' governance dialogue and decision-making processes

NatureScot will not:

- Handle any funds, apart from any Peatland Action grant funding which NatureScot may offer, or any other public funding streams that NatureScot manages;
- Invest funds in the Project, in addition to the public funding streams referred to above;
- Enter into legal agreements with landowners;
- Provide legal or financial advice to any project partners or landowners; and
- Seek any financial return from the investment, including from the sale of carbon credits.

### b. Hampden & Co will

- Provide finance for the investment, subject to loan specific agreement of terms that meet the needs of the bank and other project partners, including providing working capital loans per SPV including for the project design costs;
- In relation to the project(s) envisaged by this MOU:
  - Check all public announcements with NatureScot prior to issue;
  - Inform NatureScot of all dialogue with elected members and the media;
  - Participate in the Parties' governance dialogue and decision-making processes.

### c. Palladium will:

- Design the project with the other Parties and local delivery agents, including ecological restoration plan, operational work plan, economic model, communications strategy, benefit sharing mechanism, risk management process, investment model and offtake model;
- Establish and manage an SPV [per project] which holds contracts with the other parties, other relevant stakeholders, takes on investment in the form of debt and/or equity, deploy capital into the project(s), contract and sell carbon and other ecosystem service outcomes;
- Manage investment capital raised, capital repayments, profit distribution and overall cashflow for each project SPV;
- Second its staff at a cost plus [5%] basis to the SPV to manage the delivery of the project, including financial and operational management, and procurement and oversight of contractors, as per the workplan;
- Liaise with carbon offtaker(s) to sell carbon credits working with Hampden & Co and LOIM
- Liaise with land owners to agree terms of investment and carbon contracts working with Hampden & Co and LOIM
- Liaise with carbon offtaker(s) to sell carbon credits including but not limited to Lombard Odier;
- Work to ensure that carbon credits are sold to businesses with credible carbon reduction pathways and net zero targets;
- Liaise with landowners to agree terms of investment and carbon contracts; and
- Participate in the Parties' governance dialogue and decision-making processes

Palladium will not:

- Provide legal or financial advice to any or the Parties or any third parties (eg. project partners or landowners);

### d. LOIM will:

Subject to due diligence and internal approvals, explore the feasibility of creating a voluntary carbon pooled investment fund which will

- arrange to offtake carbon from the project(s) under terms to be determined and agreed by the parties during the Project(s) design to be offset against business operations in the UK
- Work to ensure that carbon credits are sold to businesses with credible carbon reduction pathways and net zero targets;
- Invest in the Project(s) under terms to be determined and agreed by the Parties during Project(s) design; and
- Participate in the Parties' governance dialogue and decision-making processes.

## **6. GOVERNANCE**

The Parties will set up a Project board which will make key decisions on the Project. The board will comprise of:

- Robbie Kernahan, Director, NatureScot
- James Oliver, Hampden & Co
- Andrew Sutherland, NBS Director, Palladium
- Lorenzo Bernasconi, NBS Director, LOIM
- Hamish Trench, CEO, Scottish Land Commission
- Independent expert (method and funding of appointment will be agreed between the Parties)

Decisions and agreements of the Project board shall only be binding of the Parties if all Parties have unanimously consented in writing to such decisions and agreements.

## **7. PROJECT MANAGEMENT**

Where the Parties agree to enter into SubProjects, the Project board will put in place appropriate Subproject agreements, including *inter alia* the following:

- agree a project management framework and plan for delivery;
- agree an annual work programme to deliver the Project plan;
- agree and implement a risk assessment process;
- agree individual roles and responsibilities;
- agree budget, financing arrangements and remuneration of the Parties;
- agree monitoring and evaluation arrangements; and
- agree reporting arrangements to funders.

## **8. PERFORMANCE MONITORING AND REPORTING**

The project board will review delivery progress on a quarterly basis. An annual report will be prepared by the Parties, agreed by the project board and shared with the respective Parties

## **9. CONFIDENTIALITY**

- a. "Representative" for the purposes of this clause means any director, officer, employee, agent, contractor, financier or professional adviser of a Party, or a potential financier of the Project.
- b. "Express Purpose" means the activities pursued under and in accordance with this MOU by the Parties.
- c. "Confidential Information" means any information provided to a Party (Recipient) by another Party (Provider) or any of its representatives or personnel, whether obtained before or after execution of this MOU, in connection with the Express Purpose. Confidential Information includes all business information, documents, records, financial information, reports, intellectual property, product/service specifications, technical information and forecasts which are clearly marked 'Confidential' or other comparable confidentiality marker or (ii) would under the circumstances reasonably be considered confidential regardless of any markings. For the avoidance of doubt the Parties acknowledge and agree that reports intended as proof of concept for third parties may be disclosed to such parties when such reports have been compiled for the Express Purpose. Confidential Information does not include: any information that: (a) is already in the public domain at the time the Provider communicates it to the Recipient or subsequently becomes available through no breach of this Agreement by Recipient; (b) was lawfully in the possession of the

Recipient prior to disclosure by the Provider; (c) is developed by or for the Recipient independently of the Confidential Information disclosed by the Provider, (d) is disclosed by the Recipient to a third party at the express prior written permission of the Provider; or (e) is subsequently made public by the Provider or becomes subsequently publicly available through no breach of this Agreement.

- d. This MOU is the Confidential Information of each Party.
- e. Obligations of Confidentiality:
  - i. The Recipient acknowledges that the Confidential Information is valuable to the Provider. In consideration of the Provider providing the Confidential Information to the Recipient for the Express Purpose, the Recipient accepts and agrees to be bound by the terms of this clause.
  - ii. The Recipient must keep the Confidential Information secret and preserve its confidential nature and must not use Confidential Information for any purpose other than the Express Purpose.
  - iii. The Recipient must not disclose or permit the disclosure of the information to any person other than its Representatives who need to know the information for the Express Purpose, to the extent that disclosure is required by law or with the Provider's written consent.
  - iv. The Recipient must ensure that all its Representatives who are provided with Confidential Information are made aware that the Confidential Information must be kept confidential and that they must not do or fail to do anything that, if done or not done by the Representative would result in a breach of the Recipient's obligations in this MOU.
  - v. The Recipient must protect the Confidential Information against unauthorized access, use or disclosure, must immediately notify the Provider of any unauthorized access to, use or disclosure of the information, and must comply with any reasonable direction from the Provider in relation to the protection of the information.
- f. This clause does not prohibit the disclosure of Confidential Information by the Recipient to the extent that any of the following terms apply:
  - i. The Provider has consented in writing to such disclosure;
  - ii. The disclosure is to a Representative of the Recipient who needs to know the Confidential Information for purpose set out above; or
  - iii. The disclosure is required by law.
- g. In respect of disclosure to Representatives, the Recipient must ensure that each of the following are complied with:
  - i. Its Representatives are made aware of the confidential nature of the Confidential Information and the terms of this document before any of its Representatives are provided with or have access to Confidential Information.
  - ii. Its Representatives do not do or fail to do anything that, if done or not done by the Recipient, would amount to a breach of the Recipient's obligations in this clause.
- h. A Party shall retain all right, title, and interest in and to its Confidential Information
- i. No Party may make or permit a media release, announcement or public statement about this MOU, without the written consent of the other Parties.
- j. This Confidentiality clause shall survive termination of this MOU for 3 years from the effective date of this MOU.

## **10. STATUS OF THIS MOU**

- a. The Clauses "Status of this MOU", "Freedom of Information", "Intellectual Property Rights", "Confidentiality", "Term and Termination" and "Governing Law and Jurisdiction" of this MOU are legally binding.
- b. The Parties agree that all other clauses of this MOU:

- (a) are indications of the current intention of the Parties and may change;
  - (b) are not intended to be and are not legally binding on the Parties and do not give rise to legally binding rights or obligations; and
  - (c) do not constitute a binding undertaking or representation, even if the Parties subsequently work together and act or refrain from acting on the assumption or in the expectation that further agreements will be executed.
- c. This MOU constitutes the entire agreement between the Parties with respect to the subject matter herein. All prior agreements, representations, and statements with respect to such subject matter and all past courses of dealing or industry custom are superseded. This MOU may be signed in multiple counterparts, each of which counterpart is to be considered an original. No agency, partnership, joint venture, or employment relationship is created as a result of this MOU and no Party has authority of any kind to bind another Party in any respect whatsoever.
- d. Additions and amendments to this MOU shall only be valid if made in writing. The requirement of the written form can itself only be waived in writing.
- e. In carrying out its respective obligations under this MOU, each Party shall comply with all applicable laws and regulations of the local country and of any other applicable country, including any country of export. Each Party agrees not to pay, promise to pay, or authorize the payment of any money or anything of value, whether directly or indirectly, to any person (whether a government official or private individual) for the purpose of illegally or improperly inducing any person (legal or natural) or any government official or any political party or official thereof to make an award decision or illegally or improperly to assist either Party in obtaining or retaining business, or to take any other improper action favourable to either Party in connection with the award of a license, permit, contract or other form of award or approval.
- f. No Party is legally committed to conclude any further agreements related to the Project or subprojects
- g. Each Party shall bear its own - internal and external - costs related to this MOU as well as all other measures mentioned in this MOU.

## **11. FREEDOM OF INFORMATION**

The Parties acknowledge and agree that NatureScot is subject to the requirements of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (jointly referred to as the "FOIA") and the other Parties shall provide reasonable assistance and cooperation to NatureScot to the extent information is requested in connection with the Agreement to enable NatureScot to comply with its disclosure obligations under the FOIA. NatureScot shall consult with other Parties prior to any disclosure of such information pursuant to the FOIA or any application of any exemption under the FOIA and in particular will take into account the other Parties' submissions as to whether information is commercially sensitive information and is exempt from disclosure under the FOIA.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- a. Except as expressly set out herein or within a separate agreement made in writing between the Parties, no Party shall have any right or license to the Intellectual Property Rights (as defined below) of any other Party. A Party shall retain all right, title, and interest in and to its Intellectual Property Rights.
- b. "Intellectual Property Rights" means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, know-how, (including but not limited to frameworks, templates, methodologies, ideas, concepts, techniques, trade secrets, analytical tools or other expertise) trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

## **13. TERM AND TERMINATION**

All intentions and obligations under this MOU, except for the clause 6 Confidentiality and 7 Status of this MOU, 12 Intellectual Property Rights, 13 Term and Termination and 14 Governing Law and Jurisdiction and which shall survive the termination of this MOU for any reason, will be considered at an end upon the date of the first occurrence of any of the following events or conditions:

- i. Completion of the Project
- ii. Mutual written agreement of the Parties to terminate this MOU; Or
- iii. Termination of this MOU by a Party hereto by written notice to the other Parties.

#### **14. GOVERNING LAW AND JURISDICTION**

- a. This MOU is governed by the law of Scotland, or the laws of England and Wales as appropriate, excluding its conflict of law provisions.
- b. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce. The seat of arbitration shall be London, United Kingdom. The language of the arbitration shall be English. The proceedings shall be confidential.
- c. The award shall be final and binding and enforceable in any court of competent jurisdiction.
- d. Each Party shall be entitled to seek necessary and appropriate interim measures of protection from any court of competent jurisdiction to enjoin the other Party from taking actions which may adversely affect the rights of the Party bringing such claim, provided that any proceedings and decisions as to the merits of the dispute are exclusively governed and resolved by arbitration in accordance with this arbitration clause.