

Legal Department  
CONFIDENTIAL DRAFT May 25, 2011

This model is for the purchase of CERs and associated credits from Programmatic CDM programs and should be used for ERPAs signed on or after [INSERT START DATE]. It should be used with the "General Conditions Applicable to Certified Emission Reductions Purchase Agreement for Programmatic Clean Development Mechanism Programs" dated [INSERT DATE]

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**CARBON FUND OF THE CARBON PARTNERSHIP FACILITY**  
**Clean Development Mechanism**  
**Certified Emission Reductions**  
**Purchase Agreement**

**[INSERT NAME OF PROGRAM FROM PDD]**

by and between

**[INSERT NAME OF PROGRAM ENTITY]**

and

**INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT,**  
**AS TRUSTEE OF**  
**THE FIRST TRANCHE OF THE CARBON FUND OF THE CARBON PARTNERSHIP**  
**FACILITY**

**Dated** \_\_\_\_\_ **20\_\_**

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**CARBON FUND OF THE CARBON PARTNERSHIP FACILITY  
CERTIFIED EMISSION REDUCTIONS PURCHASE AGREEMENT**

("Agreement")

**PARTIES:** [COORDINATING / MANAGING ENTITY OR CPA SUB-PROJECT ENTITY], established on [ ], by [ ] registered as [ ] ("Program Entity")

and

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT ("IBRD") in its capacity as trustee ("Trustee") of the FIRST TRANCHE OF THE CARBON FUND OF THE CARBON PARTNERSHIP FACILITY ("Fund") pursuant to the Instrument Establishing the CARBON PARTNERSHIP FACILITY ("Fund Instrument").

**RECITALS:**

- A. Pursuant to the Fund Instrument the Executive Directors of the IBRD have established the Fund for the purposes of:
- (i) assisting developing countries and countries with economies in transition in the transition towards a lower carbon economy and to help global climate change mitigation efforts by establishing a partnership to generate, sell and purchase Emission Reductions from long-term investment Programs or projects capable of generating GHG Reductions; and
  - (ii) supporting GHG emissions mitigation projects that are strategic and have a demonstration or scaling-up impact and contribute to transformational interventions in various sectors in developing countries or in countries with economies in transition.
- B. [Insert Host Country official name] has ratified or acceded to the UNFCCC and the Kyoto Protocol.
- C. The Program Entity wishes to sell and the Trustee wishes to purchase, upon the terms and conditions in this Agreement, Certified Emission Reductions from the Program.

**NOW THEREFORE** the Parties hereby agree as follows:

**ARTICLE I**  
**Application of General Conditions; Definitions**

**Section 1.01**      *Application of General Conditions*

- (a) The International Bank for Reconstruction and Development's "General Conditions Applicable to Certified Emission Reductions Purchase Agreement for Programmatic Clean Development Mechanism Programs dated [insert date of POA General Conditions] ("General Conditions"), set forth the terms and conditions applicable to this Agreement and constitute an integral part of this Agreement, with the modifications set forth in this Article I and elsewhere in this Agreement:

- (b) Unless otherwise defined in this Agreement, any capitalized terms in this Agreement shall have the meaning ascribed to such terms in the General Conditions.
- (c) Any reference made in this Agreement to a specific Article or Section shall, unless expressly provided for otherwise, be deemed to be a reference to the corresponding Article or Section in this Agreement.

**Section 1.02      *Inconsistency with General Conditions***

If any provision of this Agreement is inconsistent with a provision of the General Conditions, the provision of this Agreement shall prevail to the extent of such inconsistency.

**Section 1.03      *[Other Definitions]***

Unless the context otherwise requires, the following capitalized terms shall have the following meanings wherever used in this Agreement:

**##Delete the definitions if variable pricing will not be used.##**

["**Adjustment Factor**"] has the meaning given in Section 4.02(a).

“**Fixed Price**” has the meaning given in Section 4.01 (b).

“**Floating Price**” has the meaning given in Section 4.01 (b).

"**Remaining Value**" has the meaning given in Section 4.02.]

**ARTICLE II  
Program Details**

**Section 2.01      *Description of the Program***

- (a) The Program is: **[Insert name and description of POA and/or CPA the subject of the ERPA – Note that this may require careful drafting if the Sub-Project is only one CPA]**
- (b) The Host Country is: **[Insert Host Country official name]**
- (c) The Crediting Period is: **[Seven (7) year Crediting Period, which may be renewed twice, adding up to a total maximum Crediting Period of twenty-one (21) years] ##OR## [Ten (10) years (fixed Crediting Period)] ##OR## [Twenty eight (28) year Crediting Period] ##OR## [Sixty (60) year Crediting Period]**

**ARTICLE III**  
**Conditions to Sale and Purchase**

**Section 3.01**      *Conditions to be fulfilled*

The obligations to sell and purchase Certified Emission Reductions in Articles III and V of the General Conditions will not take effect until all of the conditions included in Schedule 1 to this Agreement, in form and substance satisfactory to the Trustee, have been fulfilled.

**Section 3.02**      *Conditions for benefit of Trustee*

The conditions in Section 3.01 are for the benefit of, and may only be waived or deferred by, the Trustee.

**Section 3.03**      *Termination of the Agreement and Registration Delay*

- (a) If any of the conditions in Section 3.01 have not been either satisfied, or waived by the Trustee, within [ ] months from the date of this Agreement or within an extended time period notified by the Trustee in accordance with Section 3.03(d) ("**Conditions Fulfillment Date**"), the Trustee may terminate this Agreement by written notice to the Program Entity.
- (b) If condition 1 in Schedule 1 has not been either satisfied, or waived by the Trustee, within [ ] months from the date of this Agreement or within an extended time period notified by the Trustee in accordance with Section 3.03(d), or if any of the remaining conditions in Section 3.01 and Schedule 1 have not been either satisfied, or waived by the Trustee, within [ ] months from the date of this Agreement (each such date being a Conditions Fulfillment Date) *###Note that this date should be set to be later than the date applying to Condition 1##* or within an extended time period notified by the Trustee in accordance with Section 3.03(d), then the Trustee may by written notice to the Program Entity terminate this Agreement or reduce the Contract CER Volume in accordance with Section 4.01(a).
- (c) [If the Trustee terminates this Agreement in accordance with Section 3.03(a) or Section 3.03(b), the Trustee shall provide the Program Entity with documentation evidencing any costs which the Trustee has incurred at the date of termination, and for which the Trustee requires reimbursement, and the Program Entity shall reimburse all such costs to the Trustee within thirty (30) calendar days of receiving the documentation. *###Delete if no Advance Payment is granted##*. In this case, the Program Entity shall also, within thirty (30) calendar days of the request of the Trustee, repay to the Trustee any unrecovered Advance Payment installments made by the Trustee to the Program Entity.]]
- (d) Notwithstanding Section 3.03(a) and Section 3.03(b) above, in the event of a delay in Registration beyond the Conditions Fulfillment Date, the Trustee may, instead of terminating this Agreement in accordance with Section 3.03(a), and provided that the [other] condition[s] *###Complete as appropriate based on the conditions listed in Schedule 1 other than registration##* listed in Schedule 1 to this Agreement [has][have] been fulfilled, extend the Conditions Fulfillment Date until a later date determined by the Trustee in its sole discretion by which the Registration is to be completed and notify the Program Entity of such extension and either:
- (i) add the portion of the Annual Amounts that the Trustee has determined can no longer be delivered to the Trustee in accordance with Schedule 2 to this Agreement due to the delay

in Registration in equal parts to the remaining Reporting Years in Schedule 2, and accordingly notify the Program Entity of the adjusted Schedule 2; or

- (ii) reduce the Contract CER Volume by the portion of the Annual Amounts that the Trustee has determined can no longer be delivered to the Trustee in accordance with Schedule 2 to this Agreement due to the delay in Registration and increase the Maximum Option Volume by an amount equal to such reduction, provided that the price payable for those CERs subject to the reduction shall be the Unit Price, and accordingly notify the Program Entity of the adjusted Contract CER Volume, Maximum Option Volume and adjust Schedule 2.

## **ARTICLE IV**

### **Purchase and Sale of Emission Reductions**

#### **Section 4.01**      *Contract CER Volume and Unit Price*

- (a) Contract CERs are: All of the CERs as set out in Schedule 2 to this Agreement, subject to a maximum number of CERs being the Maximum Value divided by the Unit Price ("**Contract CER Volume**"), including as modified pursuant to Section 4.07.

- (b) The Unit Price is: [##Note that the ERPA provides for two pricing mechanisms: fixed pricing and variable pricing; the Proposed CPF Pricing Approach contemplates a fixed price to switch to a variable price after the first five years of the contract. Select from the options below on the basis of which of these approaches will be used and also on the basis of whether the Unit Price will be subject to a floor and/or ceiling and also whether the Unit Price will vary from fixed to variable pricing, amending Section 4.08 as necessary.##]

[###If fixed pricing##] [EURO]##OR##[a weighed average of the different Unit Prices agreed for each Sub-Project in the Sub-project Agreements entered into by the Project Entity and the Sub-Project Entities, with the prior written consent of the Trustee].

[If variable pricing##] The Unit Price shall be composed of a fixed price component ("**Fixed Price**") and a floating price component ("**Floating Price**") as follows:

(50%) fifty percent \* [INSERT FIXED PRICE which shall be Euro] Fixed Price + (50%) fifty percent \* Floating Price.

#### **Floating Price Calculation**

The Floating Price shall be calculated to be the simple average of daily closing prices for spot CERs published in the Applicable Index for the ten (10) trading days preceding CER Issuance and for the ten (10) trading days after CER Issuance, including the CER Issuance Date. For the



avoidance of doubt, the simple average shall be based on twenty (20) trading days.

The indexes used to calculate the Floating Price are defined under Schedule 6.

The Unit Price shall be subject to a maximum Unit Price of [EURO] and a minimum Unit Price of [EURO] per Contract CER.

- (c) The Maximum Value is:

###Delete this sub-clause if fixed pricing only will be used###

Notwithstanding Section 4.01(a) and (b) above and unless the Trustee, in its sole and absolute discretion, has notified the Program Entity otherwise in writing, the Trustee shall only be obligated to make gross payments to the Program Entity for delivered Contract CERs up to an overall maximum amount of [EURO [INSERT MAXIMUM CONTRACT VALUE (i.e. Fixed Price \* Maximum Contract CER Volume (as determined at ERPA signature)]] (“Maximum Contract Value”).

In the event that the Maximum Contract Value has been reached before the Maximum Contract CER Volume has been delivered in full to the Trustee, the Trustee may reduce the Maximum Contract CER Volume by the outstanding amount of Contract CERs, convert such outstanding Contract CERs into Option CERs and increase the Maximum Option Volume accordingly, provided that the price payable for those CERs subject to the reduction shall be the Unit Price and accordingly notify the Program Entity of the adjusted Maximum Contract CER Volume, Maximum Option Volume and Schedule 2.

- (d) The Minimum Delivery Percentage is:

[insert percentage]%

#### Section 4.02 *Adjustment of Annual Amount and Contract CER Volume*

- (a) ###Include if price is fixed### The Unit Price shall be fixed for the duration of the term of the ERPA.
- (a) ###Include if price is variable### Within fifteen (15) calendar days following the Issuance, the Trustee shall make the following calculation (“Adjustment Factor”):
- (i) the Maximum Value;
- less*

- (ii) the total of all Annual Payments made by the Trustee to the Program Entity under Section 4.04(b);

(with such amount being the "**Remaining Value**").

*less*

- (iii) the Annual Payment payable by the Trustee to the Program Entity in respect of the immediately following Reporting Year, calculated with respect to the date of the publication of the Certification Report for such Annual Amount.
- (b) Where the Adjustment Factor is a negative number, the Annual Amount deliverable by the Program Entity for the immediately following Reporting Year will be calculated by the Trustee as:
- (i) the Remaining Value;
- divided by*
- (ii) the Unit Price payable for the Contract CERs forming the immediately following Annual Amount, or where the Unit Price payable for such volume of CERs is both a Fixed Price and a Floating Price, the weighted average of such prices, in either case calculated with reference to the date upon which the Certification Report was published.
- (c) Where the Annual Amount is reduced under paragraph (b):
- (i) the Trustee shall provide written notice to the Program Entity of such reduction within ten (10) calendar days of the finalization of the Certification Report referred to in paragraph (a); and
  - (ii) the Contract CER Volume and Schedule 2 shall be deemed to have been adjusted accordingly.

#### **Section 4.03**      *Delivery of Contract CERs*

- (a) **[[Include if sweep applies]]** [The Annual Amounts and Cumulative Amounts of Contract CERs to be delivered to the Trustee each Reporting Year in accordance with Section 3.02 of the General Conditions are set out in Schedule 2 to this Agreement.]

**[[Include if no sweep only if price is fixed]]** [The provisions of Section 3.02(b) of the General Conditions do not apply to this Agreement, but if the Program generates more than the Annual Amount in a particular Reporting Year, the Program Entity may deliver to the Trustee, and the Trustee shall accept, all Additional CERs generated by the Program in that Reporting Year, in which case the Additional CERs delivered to the Trustee shall count as Contract CERs.]

**[[Include if Program Entity is allowed to retain a certain number of CERs in accordance with Section 3.02(b) of General Conditions e.g. to sell to second buyer]]** [The Program Entity may retain the first [ ] CERs generated by the Program in excess of the Annual Amount and Cumulative Amount in each Reporting Year, and such CERs shall not constitute part of the Option.]

- (b) The Trustee will notify the Program Entity promptly upon receipt of an Issuance Notice in respect of any CERs that are in addition to the Contract CERs ("**Additional CERs**"). Within ten (10)

calendar days from the date it has received such notification by the Trustee, the Program Entity shall provide the Trustee with a signed notification of delivery, satisfactory to the Trustee, substantially in the form attached as Schedule 3 to this Agreement ("**Delivery Notice**").

- (c) For the avoidance of doubt, any CERs deducted by the Executive Board for the purpose of the Share of Proceeds for meeting adaptation costs shall not be counted toward the number of CERs deemed to be delivered under this Agreement.

**Section 4.04      *Annual Payment***

- (a) The Annual Payment for delivered Contract CERs and/or Option CERs, if any, shall be calculated in the manner set out below.

**Annual Payment for delivered Contract CERs and/or Option CERs (as applicable):**

The Unit Price / Exercise Price	X	(1- Seller Contribution Credit )	X	The number of Contract CERs / Option CERs delivered to the Trustee	- Any Advance Payment(s) made in accordance with Section 4.06	- Any Taxes paid by the Trustee in accordance with Section 5.05(a) of the General Conditions
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- (b) The Trustee shall make the Annual Payment to the Program Entity for the CERs delivered within thirty (30) calendar days following the date of such Issuance of the Contract CERs and/or Option CERs.

**Section 4.05      *Exchange Rate***

For the purposes of Section 4.06 of this Agreement and Article V of the General Conditions, the exchange rate between the Euro (€) and the US Dollar (\$) for purposes of calculating the Euro equivalent will be calculated with reference to the spot market exchange rate between United States Dollar and Euro utilized by the Treasury Department of the World Bank for the date that is the later of the Trustee’s receipt of: (i) a Delivery Notice and (ii) a Confirmation Notice.

**Section 4.06      *Advance Payment***

- (a) If requested by the Program Entity, the Trustee may make advance payments on behalf of the Program Entity to the Executive Board for the Share of Proceeds for administrative expenses, including the Registration fee, payable by the Program Entity in accordance with Section 5.05(b) of the General Conditions ("**Advance Payment**").
- (b) **[[[Include if there is an Advance Payment other than 4.06(a), otherwise delete]]]** [In addition to any Advance Payment made under Section 4.06(a), the Trustee shall make an advance payment to the Program Entity in the amount of the lesser of (x) **[EURO/US\$ [ ]]** (in words: **[ ] [Euros][United States dollars]**) and (y) **[ ]%** of the value of this Agreement (i.e. Unit Price X Contract CERs X **[ ]%**) to be calculated [upon any disbursement] (all together "**Advance Payment**").

- (c) Payments made by the Trustee under Section 4.06(b)] shall be made by the Trustee only on the following conditions:
- (i) **##Delete if a payment will not be made under Section 4.06(b)##** [The Program Entity shall provide the Trustee with one irrevocable letter of credit, in form and substance satisfactory to the Trustee and compliant with all applicable laws, for the amount of the Advance Payment proposed under Section 4.06(a) above ("**Letter of Credit**"), issued by a financial institution having a Standard and Poor's Rating Services or Fitch's Ratings rating of BBB or above, or Moody's Investor Services Limited rating of BAA or above, or such other financial institution acceptable to the Trustee, and being valid and enforceable until the Advance Payment has been recovered by the Trustee in full. In the event the Advance Payment proposed under Section 4.06(a) above is reduced, the Letter of Credit may provide for an automatic corresponding reduction of the covered amount or the Program Entity may provide the Trustee with a new irrevocable letter of credit covering the reduced Advance Payment amount in exchange of the previous Letter of Credit;] [and]
  - (ii) [Fulfillment of all conditions referred to in Section 3.01 and specified in Schedule 1 to this Agreement, in form and substance satisfactory to the Trustee.]
  - (iii) **##Insert additional conditions, such as milestones for advance payment installments, if needed.##**
- (d) Once the conditions for the Advance Payment under subparagraph[s] [(i), (ii) and (iii) **##Include additional references if additional conditions are agreed upon above##**] above are fulfilled, in form and substance satisfactory to the Trustee, **[for any installment]**, the Trustee shall notify the Program Entity accordingly and shall disburse the Advance Payment **[installment]** to the Program Entity within sixty (60) calendar days following receipt by the Program Entity of such notification.]
- (e) The Trustee shall be entitled to deduct the Advance Payment(s) made to the Program Entity from the Annual Payments due in accordance with Section 4.04.
- (f) In the event that CERs are not delivered to the Trustee pursuant to this Agreement, or the Program Entity has not delivered enough Contract CERs to recover the Advance Payment, the Trustee may recover from the Program Entity pursuant to Sections 11.02 and 13.03 of the General Conditions, *inter alia*, amounts equal to any Advance Payment made under this Section 4.06.
- (g) Notwithstanding Section 5.03(c) of the General Conditions, legal title to any Contract CERs for which an Advance Payment is made shall transfer to the Trustee upon delivery of the Contract CERs to the Trustee.

#### **Section 4.07      *Adjustment of Contract CER Volume***

- (a) If by the date falling **[two (2)]** years following the execution of this Agreement the Program Entity has not entered into Sub-Project Agreements in respect of a quantity of CERs the subject of this Agreement totalling the Contract CER Volume, then the following shall occur:
- (i) the Trustee shall reduce the Contract CER Volume, and adjust Schedule 2 to this Agreement accordingly, by the difference between the Contract CER Volume as set out above and the total number of CERs in respect of which the Program Entity has executed Sub-Project Agreements; and

- (ii) increase the Maximum Option Volume by an amount equal to such reduction, provided that the price payable for those CERs subject to the reduction shall be the Unit Price.

The Trustee shall accordingly notify the Program Entity of the adjusted Contract CER Volume, Schedule 2 and Maximum Option Volume, as applicable.

*##Use Section 4.08 only if the Unit Price will switch from fixed price to variable price after a period during the term, or if no other amendment will occur, delete Section 4.08.##*

#### **Section 4.08**      *[Reference Price Revision]*

[The Parties agree that from the date falling [five (5)] years following the execution of this Agreement the Unit Price shall be composed of a Fixed Price and a Floating Price and that they shall replace Section 4.01 to the extent of any inconsistency.]

### **ARTICLE V** **Option**

*##In the following provisions, select from or adapt the available options depending on whether the Option is a call option in favour of the Trustee, a right of first refusal in favour of the Trustee, or a put option in favour of the Program Entity.##*

#### **Section 5.01**      *Option Specifications*

- (a) The Option Grantee is: *##Insert if the Option is a call option or right of first refusal in favour of the Trustee: Trustee] ##OR## [##Insert if Program Entity if the Option is a put option: Program Entity]*
- (b) The Option Grantor is: *##Insert if the Option is a call option or right of first refusal in favour of the Trustee: Program Entity] ##OR## [##Insert if Program Entity if the Option is a put option: Trustee]*
- (c) The Option is: *##Insert if Option is a call option in favour of the Trustee: The exclusive right, but not the obligation, of the Option Grantee to require that the Program Entity deliver Option CERs to the Option Grantee and/or its nominee in accordance with this Section and Article IV of the General Conditions.]*

*##Retain if Option is a right of first refusal in favour of the Trustee or delete if not: The exclusive right, but not the obligation, of the Option Grantee to require that the Program Entity sell and deliver Option CERs to the Option Grantee and/or its nominee in accordance with this Section and Article IV of the General Conditions if the Program Entity receives a Third Party Offer or Third Party Offers in respect of such Option CERs. ]*

*##Retain if Option is a put option in favour of the Program Entity or delete if not: The exclusive right, but not the obligation, of the Program Entity to require that the Option Grantor purchase and pay for Option CERs from the Program Entity in accordance with this*

**Section 5.02** *[[[Include this version if (regular) call option or put option is included, otherwise delete]]] [Option Volume and Exercise Price]*

- (a) [The Option CERs are: *[[[Insert one of the following if Option is a call option or put option in favour of the Program Entity: Some or all of the CERs generated by the Program each Reporting Year up to the Maximum Option Volume until (and including) [insert date] [[Insert if Option covers CERs generated after full Contract CER Volume has been generated]]: After the Contract CER Volume has been generated by the Program in full]] [[Insert if Option covers CERs generated annually in excess of Annual Amount and Cumulative Amount for that Reporting Year]]: after the Annual Amount and Cumulative Amount in any Reporting Year has been generated by the Program. [[Insert if the Option is a right of first refusal: Up to the volume of the number of CERs requested in the Third Party Offer or Third Party Offers received by the Program Entity].*
- (b) Maximum Option Volume is: *[[[Insert if Maximum Option Volume capped]]: [insert number] CERs]] [[Insert if Maximum Option Volume not capped]]: All CERs generated by the Program until (and including) [insert date] [[Insert if Option covers CERs generated after full Contract CER Volume has been generated]]: After the Contract CER Volume has been generated by the Program in full]] [[Insert if Option covers CERs generated annually in excess of Annual Amount and Cumulative Amount for that Reporting Year]]: After the Annual Amount and Cumulative Amount in any Reporting Year has been generated by the Program]].*
- (c) Exercise Price is: *[[[Insert either of the following two options if the Option is a put or call option: [Unit Price][EURO/US\$] per Option CER delivered to the Trustee.] [[Insert if Exercise Price will be the same as the Unit Price]]: Unit Price]*  
*[[[Delete the preceding two options and insert the following if the Option is a right of first refusal: [The price offered for the Option CERs by the Third Party Offeror]*
- (d) Exercise Period: *[[[Use the following if the Option is a call option or put option: Within thirty (30) calendar days after the Trustee's receipt of a Certification Report for a Reporting Year indicating that Option CERs have been generated by the Program.]*  
*[[[Use the following if the Option is a right of first refusal: Within [thirty (30)] calendar days of the date of the Program Entity's notification to the Trustee of a Third Party Offer.]*
- (e) Exercise Completion Date Ninety (90) calendar days following receipt by the Program Entity of

is: the Exercise Notice.

- (f) Increase of Maximum Option Volume: In the event that the Maximum Option Volume is increased by the Trustee under Section 3.03(d)(ii) and/or Section 4.01(a) of this Agreement and/or Sections 11.02(c) and/or 13.03 of the General Conditions, the Option Grantee may exercise the portion of the Option increased due to the exercise of the remedies first before it exercises the portion of the Option granted under Section 5.02(a). For the avoidance of doubt, the Exercise Price payable for the Option CERs increased due to the exercise of the remedies will be the Unit Price.]

**Section 5.03** *[[[Include this version only if no (regular) call option or put option is included, otherwise delete]]] [Option Volume and Exercise Price]*

- (a) The Option CERs are: The amount of CERs equals to some or all of (i) the amount of the Contract CER Volume reduced pursuant to Section 3.03(d)(ii) and/or Section 4.01(a) of this Agreement and/or Section 13.03 of the General Conditions, in the event the Trustee exercises its rights under the respective provisions, and/or (ii) the CERs which the Program Entity failed to deliver as a result of a Force Majeure Event pursuant to Section 11.02(c) of the General Conditions.
- (b) Maximum Option Volume during the Term is: [All the Option CERs]
- (c) Exercise Price is: *[[[Use the following if the Option is a call option or put option, delete if not:]]] Unit Price]*
- (d) Exercise Period: *[[[Retain the following if the Option is a call option or put option, delete if not:]]] Within thirty (30) calendar days after the Trustee's receipt of a Certification Report for a Reporting Year indicating that Option CERs have been generated by the Program.]*
- (e) Exercise Completion Date is: Ninety (90) calendar days following receipt by the Program Entity of the Exercise Notice.]]

**Section 5.04** *[[[Use only where the Option is a right of first refusal]]] [Right of First Refusal]*

- (a) In addition to the obligations imposed by Article IV of the General Conditions, within ten (10) calendar days of receiving any Third Party Offer in respect of Option CERs generated in respect of any Reporting Year, the Option Grantor will provide written notification to the Option Grantee of such Third Party Offer, including in such notification the price offered for such Option CERs, the proposed delivery schedule and any other information reasonably required by the Option Grantee.



- (b) For the avoidance of doubt, the Option Grantor may only sell Option CERs to Third Party Offerors in accordance with this Section.]

## **ARTICLE VI**

### **Program Development and Monitoring, Operation and Management**

#### **Section 6.01**      *Program Development*

- (a) Expected Program Commissioning Date of first Sub-Project is: [Insert date]
- (b) Focal Point: Both the Trustee and the Program Entity shall serve as the joint Focal Points for communications with respect to the Program Activity. The Trustee shall be responsible for preparing and submitting the Distribution Letter.

## **ARTICLE VII**

### **Other Termination Events**

#### **Section 7.01**      *[Other Termination Events]*

[In addition to the other termination events set out in Article 13 or Section 14.01(a) of the General Conditions, the Trustee may terminate this Agreement by notice in writing to the Program Entity in the event that any events are specified below and are the case:

- (a) [##Insert additional Events of Default as appropriate, if none to be added, delete text in square brackets##].

#### **Section 7.02**      *Seller Withdrawal from the Fund*

For the avoidance of doubt, the Program Entity's withdrawal from the Fund will not terminate this Agreement or alter in any other respect the Program Entity's obligations under this Agreement.

## **ARTICLE VIII**

### **Miscellaneous**

#### **Section 8.01**      *Term of the Agreement*

Unless terminated earlier in accordance with the General Conditions or Section 3.03 of this Agreement, this Agreement shall terminate upon delivery of all the Contract CERs and Option CERs, if any (including in both cases, for the avoidance of doubt, as amended under Section 4.07), and the payment of Annual Payments in respect thereof, subject to the survival of provisions as identified in Section 15.11 of the General Conditions, but in any event by no later than [insert date].



**Section 8.02**      *Notices*

Any notice, communication, request or correspondence required or permitted under the terms of this Agreement shall be in writing, in the English language (it being understood that any such communication in a language other than English shall be of no force and effect), and shall be delivered personally, or via courier, mail, or facsimile to the address and telecopier numbers provided below.

For the Program Entity:

[ ]

For the Trustee:

Carbon Fund of the Carbon Partnership Facility  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Facsimile:                      (202) 477-6391

Cable address:                INTBAFRAD  
Washington, D.C.

Telex:                            248423 (MCI) or 64145 (MCI)

Facsimile:                      (202) 477-6391

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

**[PROGRAM ENTITY]**

\_\_\_\_\_

By: \_\_\_\_\_

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

**INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT, AS  
TRUSTEE OF CARBON FUND OF THE CARBON  
PARTNERSHIP FACILITY FIRST TRANCHE**

\_\_\_\_\_

By: \_\_\_\_\_

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

DRAFT

## SCHEDULE 1

### CONDITIONS TO SALE AND PURCHASE

1. Receipt by the Trustee of the Written Approval, in form and substance satisfactory to the Trustee]
2. Registration of the Program before December 31, 2012.
3. Execution by the Program Entity of a Sub-Project Agreement in respect of the first Sub-Project to be added to the Program in respect of a volume of CERs equal to or greater than the Minimum Delivery Percentage of the Contract CER Volume before any amendment of the Contract CER Volume in accordance with the terms of this Agreement *[[[Note that this condition should be deleted if the Program is defined to be one CPA and the Program Entity is the CPA Sub-Project Entity for that Program Entity]]]*

**SCHEDULE 2**  
**ANNUAL AMOUNTS**

<b>Reporting Year</b>	<b>Period</b>	<b>Annual Amount of Contract CERs to be delivered in this Reporting Year</b>	<b>Cumulative Amount of Contract CERs which must be delivered by this Reporting Year</b>
1	First day of the Crediting Period – [ ]		
2	[ ] – [ ]		
3			

DRAFT

**SCHEDULE 3**

**DELIVERY NOTICE**

[Letterhead of Program Entity]

**TO:** The International Bank for Reconstruction and Development as Trustee of the [Carbon Fund] of the Carbon Partnership Facility

**Delivery Notice for [ ] Reporting Year from ..... [Date] ..... to ..... [Date] .....**

We refer to the [Carbon Fund] of the Carbon Partnership Facility Clean Development Mechanism Certified Emission Reductions Purchase Agreement dated [ ] between [ ] ("**Program Entity**") and the International Bank for Reconstruction and Development, as Trustee for the Carbon Asset Development Fund of the Carbon Partnership Facility ("**IBRD**" or "**Trustee**")[, as amended] ("**ERPA**"). Capitalized terms used and not specifically defined herein shall have the meanings assigned thereto in the ERPA.

**1. Notification of Delivery of CERs**

In accordance with the ERPA, we hereby notify the Trustee that the following amount of CERs has been generated to the Trustee in this Reporting Year in accordance with the ERPA:

- \_\_\_\_\_ CERs, as evidenced by the Issuance Notice dated \_\_\_\_\_ of which \_\_\_\_\_ CERs are Contract CERs and, if any, \_\_\_\_\_ CERs are Option CERs.

For the avoidance of doubt, by having delivered the above CERs, we also have transferred and assigned to the Trustee the right to cause those CERs to be forwarded into the Registry Accounts of the Trustee's nominee(s) in accordance with any modality, procedure, process or mechanism established by the Executive Board.

**2. Invoice and Annual Payment**

We calculate that the gross payment amount for delivered CERs for this Reporting Year, before deducting any costs, taxes and advance payments which the Trustee is entitled to deduct under the ERPA, is:

[US\$/€] \_\_\_\_\_ [[US\$][Unit Price] X [Volume of delivered Contract CERs]]  
Plus (if any)

[US\$/€] \_\_\_\_\_ [[US\$][Exercise Price] X [Volume of delivered Option CERs]]

Equals

[US\$/€] \_\_\_\_\_ [gross payment amount]

Please pay the gross payment amount, less any costs, taxes and advance payment(s) which the Trustee is entitled to deduct under the ERPA (Annual Payment) to the following bank account, in accordance with the ERPA:

Name of Payee's Bank: XXX

Swift Code: XXX  
Bank address: XXX  
Bank Account Number: 123456789

Name of Intermediary Bank: XXX  
Swift Code: XXX  
Bank address: XXX

Dated: \_\_\_\_\_, 20[ ]

For and on behalf \_\_\_\_\_ [Program Entity]

by its authorized Representative

Signature: \_\_\_\_\_

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

DRAFT

**SCHEDULE 4: EXERCISE NOTICE**

**[LETTERHEAD OF GRANTEE]**

TO: [Grantor]

**Exercise Notice for [insert Reporting Year]**

We refer to the [Insert Fund] ERPA dated [insert date] between [insert name of Program Entity] ("Program Entity") and the International Bank for Reconstruction and Development, as Trustee for the Carbon Fund of the Carbon Partnership Facility ("IBRD" or the "Trustee") or [Nominee or Assignee of the Option from the Trustee under Assignment dated [date]] (the "Agreement") which includes the International Bank for Reconstruction and Development [General Conditions Applicable to Certified Emission Reductions Purchase Agreement: Programmatic Clean Development Mechanism Programs dated [insert date] (the "General Conditions"). Capitalized terms used and not specifically defined herein shall have the meanings assigned thereto in the Agreement and the General Conditions.

For the Reporting Year beginning [XX] and ending [XX], the Grantee hereby exercises its Option from the Grantor on the same terms and conditions as set out in the Agreement and transferred in accordance with the following:

Transferor:	[Program Entity]
Transferee:	[IBRD or Third Party e.g. Fund Participants]
Registry Account:	[insert if known]
Quantity of Option CERs:	[insert]
Exercise Price:	[insert price per CER as specified in ERPA]
Exercise Completion Date:	[Insert date [30] days from the date of this Notice]

Dated:

**For and on behalf of** )  
**[insert legal name of Grantee]** )  
 by its Authorized Representative )  
 in the presence of )

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Please print name

## SCHEDULE 5

### FORM OF SUB-PROJECT AGREEMENT

##This Schedule should be deleted if the Sub-Project is defined only as one CPA##

**PARTIES:** [COORDINATING/MANAGING ENTITY], established on [ ], by [ ] registered as [ ]  
("Coordinating Entity")

and

[CPA SUB-PROJECT ENTITY], established on [ ], by [ ] registered as [ ] ("Sub-Project Entity").

#### RECITALS:

- A. On [insert ERPA execution date] the Coordinating Entity executed an Emission Reduction Purchase Agreement ("ERPA") with the International Bank for Reconstruction and Development in its capacity as trustee ("Trustee") of the Carbon Fund of the Carbon Partnership Facility First Tranche, pursuant to the Instrument Establishing the Carbon Partnership Facility.
- B. Pursuant to the terms of the ERPA the Coordinating Entity wishes to develop a Sub-Project of Activities, being the Sub-Project, as described in Section 2.01.
- C. The Coordinating Entity wishes to include the Sub-Project in the Sub-Project in accordance with the terms of this Sub-Project Agreement ("Agreement") and the ERPA.

NOW THEREFORE the Parties hereby agree as follows:

### ARTICLE I

#### Definitions, Interpretation, Headings; Schedules

##### Section 1.01 Definitions

Unless the context otherwise requires, the following capitalized terms shall have the following meanings wherever used in this Agreement:

"Affected Party" has the meaning given to it in Section 6.01(a);

"Agreement" means this Sub-Project Agreement;

"Annual Payment" means the payment by the Coordinating Entity to the Sub-Project Entity each Reporting Year for delivered CERs, calculated in accordance with Section 4.04;

"Assets" means the assets required for the development and operation of the Sub-Project;

"Buyer Participant" means a participant in the First Tranche of the Carbon Fund of the Carbon Partnership Facility that has signed a participation agreement with the Trustee to purchase an interest in the First Tranche of the Carbon Fund;



"**Baseline**" means the scenario that reasonably represents the volume of anthropogenic emissions by sources, or anthropogenic removals by sinks, of Greenhouse Gases that would have occurred in the absence of the Sub-Project, subject to any revision as required by the International Rules in order to obtain Registration of the Sub-Project or the renewal of the Crediting Period;

"**Carbon Dioxide Equivalent**" or "**CO<sub>2</sub>e**" means the base reference for the measurement of Global Warming Potential of Greenhouse Gases whereby the radioactive forcing of one unit is equivalent to the radioactive forcing of one metric ton of carbon dioxide emissions;

"**CDM-CPA-DD**" or "**Sub-Project Activity Design Document**" means the document that presents technical and organizational aspects of each CPA in a POA in accordance with the International Rules.

"**CDM-POA-DD**" or "**Sub-Project of Activities Design Document**" means the document that presents technical and organizational aspects of a POA, being the Sub-Project, in accordance with the International Rules, including a Monitoring Plan for the Sub-Project.

"**CDM Sub-Project Activity**" or "**CPA**" means each of the single project activities forming a Sub-Project of Activities, as described in the CDM-CPA-DD and CDM-POA-DD submitted for the Registration of that Sub-Project of Activities or added to the Sub-Project of Activities in accordance with the International Rules;

"**CDM Operations Plan**" means a plan agreed under the ERPA that ensures that all data collection and management systems required by the International Rules are in place to allow subsequent successful Verification of GHG Reductions from the Sub-Project;

"**CDM Registry**" means the registry administered by the Executive Board responsible for Issuance of CERs and forwarding of CERs into the accounts of Project Participants, in accordance with the International Rules;

"**Certification**" means the written assurance by the Verifier that during the relevant period the Sub-Project has achieved the GHG Reductions as Verified in the Verification Report;

"**Certified Emission Reduction**" or "**CER**" means a unit issued by the Executive Board on the basis of Verification and Certification with respect to a CDM Program Activity in accordance with the International Rules, or other Emission Reductions which are: (i) accepted into the European Union emissions trading scheme for the purposes of compliance on a 1:1 basis with European Union allowances as at the date of their receipt by the Buyer Participants into their registry accounts; or (ii) generated under an agreement or agreements which amend, extend or succeed the Kyoto Protocol or the UNFCCC following December 31, 2012;

"**Clean Development Mechanism**" or "**CDM**" means the mechanism established under Article 12 of the Kyoto Protocol

"**Confidential Information**" has the meaning given in Section 10.12(a);

"**Contract CERs**" means the CERs specified in Section 4.01;

"**Crediting Period**" means the period specified in Section 2.01(d) during which the Sub-Project is eligible to create CERs under the International Rules;

**"Debarred Entity"** means an individual or firm that has been declared ineligible in accordance with the World Bank sanctions procedures to be awarded a World Bank financed contract for the periods indicated at

<http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>;

**"Default Notice"** has the meaning given to it in Section 8.02(a);

**"Directive"** means the Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended, supplemented or replaced from time to time;

**"Dispute"** has the meaning given to that term in Section 1.01(a);

**"Emission Reduction"** or **"ER"** means all existing and future legal and beneficial rights arising from one GHG Reduction, including the right to any CERs arising from that GHG Reduction;

**"Encumbrance"** includes:

- (a) any claim, mortgage, charge, pledge, lien, encumbrance, assignment, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person by way of security for the payment of a debt or any other monetary obligation; and
- (b) any restriction of any kind under any regulatory or voluntary regime that may affect the ability of the Coordinating Entity to use a CER or GHG Reduction purchased under this Agreement,

and cognate expressions, including **"Encumber"**, shall be construed accordingly.

**"Environmental Management Plan"** means the plan agreed by the Coordinating Entity and the Trustee under the ERPA that meets the requirements of the World Bank Policy on Environmental Assessment and describes the mitigation, monitoring, and institutional measures to be taken by the Coordinating Entity during implementation and operation of the Sub-Project to eliminate, offset or reduce adverse environmental and social impacts, as well as the means to implement these measures, all in accordance with applicable World Bank Operational Policies;

**"EU Emissions Trading Scheme"** or **"EU-ETS"** means the scheme established by the Directive for imposing carbon dioxide emissions caps on installations in specified sectors and permitting the use and transfer of emission allowances for the purposes of achieving these caps as implemented in each European Union member state under national laws;

**"Event of Default"** means an event specified as such in Section 8.01;

**"Executive Board"** means the executive board of the Clean Development Mechanism that is established by the International Rules;

**"Expected Commissioning Date"** means the date upon which the Sub-Project Commissioning Date is expected to occur, as specified in Section 2.01;

**"Force Majeure Event"** means an extraordinary and unavoidable event which is beyond the reasonable control of the Party concerned;

"**Force Majeure Notice**" has the meaning given to it in Section 6.01(a);

"**Global Warming Potential**" means the estimate of the atmospheric warming resulting from the release of a unit mass of a particular Greenhouse Gas, in relation to the warming resulting from the release of the same amount of carbon dioxide, as accepted by the UNFCCC or as subsequently revised in accordance with Article 5 of the Kyoto Protocol;

"**Greenhouse Gas**" or "**GHG**" means any of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, and any other substance recognized as a greenhouse gas under the International Rules;

"**GHG Reduction**" means one metric ton of Carbon Dioxide Equivalent reduced, avoided or sequestered by the Sub-Project below the Baseline, as created and monitored in accordance with the CDM Operations Plan and Monitoring Plan;

"**Host Country**" means the country specified as such in Section 2.01(c);

"**IBRD Carbon Finance Anti-Corruption Guidelines**" means the IBRD Anti-Corruption Guidelines for World Bank Guarantee and Carbon Finance Transactions as provided to the Sub-Project Entity by the Coordinating Entity;

"**Initial Request**" has the meaning given to that term in Section 1.01(a);

"**International Rules**" means the UNFCCC, Kyoto Protocol, the Marrakesh Accords, any relevant decisions, guidelines, modalities and procedures made pursuant to them (including decisions of the Executive Board) and of successor international agreements and which include those rules specifically required to be met for the Issuance of CERs and the forwarding of CERs by the CDM Registry;

"**Intentional Breach**" means a breach of obligations by a Party under the Agreement that is a result of:

- (i) the provision of false or misleading information or representations by that Party,
- (ii) an act or omission made with the intent to breach that Party's obligations under the Agreement, or
- (iii) conduct by that Party which recklessly disregards the rights of the other Party under the Agreement;

"**Issuance of CERs**" means the issuance of CERs for the Sub-Project by the CDM Registry administrator into the pending account of the Executive Board in the CDM Registry, prior to those CERs being forwarded to Project Participants;

"**Kyoto Protocol**" or "**Protocol**" means the protocol to the UNFCCC adopted at the Third Conference of the Parties to the UNFCCC in Kyoto, Japan on December 11, 1997;

"**Kyoto Protocol and Other Costs**" means costs incurred by the Coordinating Entity in respect of the Sub-Project, including but not limited to costs incurred in relation to (as relevant):

- (i) the POA Monitoring Plan;
- (i) Verification and Certification;

- (ii) communicating with the Executive Board;
- (iii) revision or review of the Baseline;
- (iv) revision or review of the CDM Operations Plan;
- (v) extension of the Program's Crediting Period;
- (vi) supervision of the Program and the Sub-Project; and
- (vii) revising or reproducing any Program Design Documents to the standard required by a Validator, Verifier, or the Executive Board under the International Rules;

"**Land**" means the land required for the operation of the Sub-Project;

"**LIBOR**" means, in respect of any period for which interest is payable, the London interbank offered rate for six-month deposits in the same currency as the Unit Price, expressed as a percentage per annum, that appears on the Relevant Telerate Page as of 11:00 a.m., London time, on the LIBOR Reset Date for said interest period. If such rate does not appear on the Relevant Telerate Page, the Coordinating Entity shall request the principal London office of each of four major banks to provide a quotation of the rate at which it offers six-month deposits in such currency to leading banks in the London interbank market at approximately 11:00 a.m. London time on the LIBOR Reset Date for said interest period. If at least two such quotations are provided, the rate in respect of said interest period shall be the arithmetic mean (as determined by the Coordinating Entity) of the quotations. If less than two quotations are provided as requested, the rate in respect of said interest period shall be the arithmetic mean (as determined by the Coordinating Entity) of the rates quoted by four major banks selected by the Coordinating Entity in the principal financial center for such currency, at approximately 11:00 a.m. in said financial center, on the LIBOR Reset Date for said interest period for loans in such currency to leading banks for a period of six (6) months. If less than two of the banks so selected are quoting such rates, LIBOR in respect of said interest period shall be equal to LIBOR in effect for the interest period immediately preceding that period;

"**LIBOR Reset Date**" means the day two London Banking Days prior to the first day of the relevant period on which interest becomes payable;

"**London Banking Day**" means any day on which commercial banks are open for general business (including dealings in foreign exchange and currency deposits) in London;

"**Monitoring Plan**" means the plan referred to as such and incorporated into the CDM-POA-DD for the Sub-Project;

"**Non-Affected Party**" has the meaning given to it in Section 6.01(a);

["**Option**" means the right granted by the Sub-Project Entity to the Coordinating Entity as specified in this Agreement;]

["**Option CERs**" means the CERs the subject of the Option, as specified in this Agreement;]

"**POA Monitoring Plan**" means a monitoring plan which includes the Monitoring Plan, and a database with technical and financial details of each Sub-Project, frequency of reporting and quality assurance to be provided by the Coordinating Entity;

**"Sub-Project of Activities" or "POA"** means a voluntary coordinated action by a public or private entity which coordinates and implements any policy/measures or stated goal which leads to GHG Reductions that are additional to any that would occur in the absence of the POA, via an unlimited number of CPAs;

**"Sub-Project"** means the POA specified in Section 2.01(a);

**"Sub-Project Design Documents"** means:

- (i) the CDM-POA-DD in respect of the Sub-Project;
- (ii) the POA-specific CDM-CPA-DD with generic information relevant to all the Sub-Projects; and
- (iii) the completed CDM-CPA-DD based on the application of the Sub-Project to one real Sub-Project within the Sub-Project;

as required for the Registration of the Sub-Project under the International Rules;

**"Relevant Telerate Page"** means the display page designated on the Dow Jones Telerate Service as the page for the purpose of displaying LIBOR for deposits in the same currency as the Unit Price (or such other page as may replace such page on such service, or such other service as may be selected by the Coordinating Entity as the information vendor, for the purpose of displaying rates or prices comparable to LIBOR);

**"Resettlement Plan"** means the plan submitted by the Coordinating Entity and approved by the Trustee that meets the requirements of the World Bank Policy on Involuntary Resettlement and describes the mitigation, monitoring and institutional measures to be taken by the Sub-Project Entity during implementation and operation of the Sub-Project and Sub-Project Activity to address involuntary resettlement, as well as the means to implement these measures, all in accordance with applicable World Bank Operational Policies;

**"Reporting Year"** means the year from commencing on 1 January until ending on 31 December, except that the first Reporting Year will commence on the first day of the Crediting Period and the last Reporting Year will conclude on the last day of the Crediting Period and end on December 31 of that calendar year and the last Reporting Year shall begin on January 1 of the last year of the Crediting Period and end on the last day of the Crediting Period.

**"Sanctionable Practice"** means any coercive, corrupt, collusive, obstructive or fraudulent practice, as defined in the IBRD Carbon Finance Anti-Corruption Guidelines, in relation to the Sub-Project;

**"Spot Market Price"** is calculated as the closing price of the CER spot contract traded on an exchange, acceptable to the Coordinating Entity which delivers closest to the date of calculation of the Unit Price. If no such spot contract is traded on the exchange or the CERs to be delivered are not deliverable into the exchange on the relevant date, the Spot Market Price shall be derived by calculating the mid-market price for a volume of CERs equal to the number of CERs to be delivered on the with respect to the date the CERs are to be delivered, as quoted by three (3) independent brokers selected by the Coordinating Entity. If no quotes are available for more than seven (7) consecutive calendar days, the Coordinating Entity shall calculate the Spot Market Price using best efforts to determine a commercially reasonable market value;

**"Sub-Project"** means the CPA specified in Section 2.01;

**"Taxes"** means any tax, duty, fee, assessment or charge of any kind imposed by any governmental entity, including a sales tax, purchase tax, turnover tax or value-added tax, whether in effect at the date of the

ERPA or thereafter imposed, together with any interest and any penalties, additions to tax or additional amounts with respect thereto;

"**Third Party**" means an entity other than the Trustee, the Coordinating Entity or the Sub-Project Entity;

"**Trustee**" means the World Bank, acting as trustee of the Carbon Fund of the Carbon Partnership Facility First Tranche;

"**UNCITRAL**" means the United Nations Commission on International Trade Law;

"**Unit Price**" means the price specified in Section 4.01;

"**United Nations Framework Convention on Climate Change**" or "**UNFCCC**" means the United Nations Framework Convention on Climate Change adopted in New York on 9 May, 1992;

"**Validation**" means the process of independent evaluation of the Sub-Project by a Validator in accordance with the International Rules on the basis of, inter alia, the Sub-Project Design Document and the CDM Operations Plan;

"**Validation Report**" means the document setting out the Validation;

"**Validator**" means the entity selected to perform Validation of the Sub-Project, being a Designated Operational Entity. The Validator shall not be the same entity as the Verifier, unless the Executive Board has provided specific consent for the Validator to be the same entity as the Verifier;

"**Verification**" means the periodic assessment by a Verifier of the amount of GHG Reductions generated by the Sub-Project since the last Verification Report or, in the case of the first Verification, since the start of the Crediting Period, and includes the written assurance by the Verifier that during the relevant period the Sub-Project has achieved the GHG Reductions as reported in the Verification Report and "**Verified**" shall have cognate meaning;

"**Verification Report**" means the document setting out the Verification in accordance with the International Rules and includes without limitation:

- (i) a statement of the amount of verified ERs the Sub-Project has generated in the relevant period since the previous Verification (or, in the case of the first Verification, since the start of the Crediting Period);
- (ii) information on such other matters as may be required by the International Rules; and
- (iii) a report on any other Sub-Project requirements specified in the CDM Operations Plan;

"**Verifier**" means the entity selected to perform Verification and Certification of the Sub-Project, being a Designated Operational Entity;

"**World Bank**" means the International Bank for Reconstruction and Development; "**World Bank Policy on Environmental Assessment**" means the specific World Bank Operational Policy applicable to environmental assessment;

"**World Bank Policy on Involuntary Resettlement**" means the specific World Bank Operational Policy applicable to involuntary resettlement; and

"World Bank Operational Policies" means the social and environmental safeguard policies of the World Bank.

## ARTICLE II Sub-Project Details

### Section 2.01 *Description of Sub-Project*

- (a) The Sub-Project is: [Insert name and description of POA]
- (b) The Sub-Project is: [Insert name and description of relevant CPA or CPAS]
- (c) The Host Country is: [Insert official name of Host Country]
- (d) The Crediting Period is: [Seven (7) year Crediting Period, which may be renewed twice, adding up to a total maximum Crediting Period of twenty-one (21) years] OR [Ten (10) years (fixed Crediting Period)] OR [Twenty eight (28) year Crediting Period], provided that the Crediting Period will end at the end of the Crediting Period of the Sub-Project.
- (e) The Expected Commissioning Date [Insert]

## ARTICLE III Sub-Project Development and Monitoring, Operation and Management

### Section 3.01 *Services Provided by the Coordinating Entity*

The Coordinating Entity shall:

- (a) develop the POA and the CPA;
- (b) collect, compile and record from the Sub-Project Entity all information required under the CDM Operations Plan and a POA Monitoring Plan;
- (c) provide training to the Sub-Project Entity to assist it in fulfilling its obligations under Section 3.02; and
- (d) contract with a Designated Operational Entity for the Verification and Certification of GHG Reductions generated by the Sub-Project after the first two (2) years of the duration of the ERPA;.

### Section 3.02 *Sub-Project Development and Operation by the Sub-Project Entity*

The Sub-Project Entity agrees and undertakes to:

- (a) keep the Coordinating Entity informed of the progress of development of the Sub-Project and any delay in the commissioning of the Sub-Project, including reporting on the development of the CDM Operations Plan;
- (b) provide to the Coordinating Entity all information requested by the Coordinating Entity in respect of the operation of the Sub-Project;
- (c) assist the Coordinating Entity to develop the Monitoring Plan in respect of the Sub-Project and any updates required to the Monitoring Plan or the POA Monitoring Plan;
- (d) operate the Sub-Project in accordance with the International Rules, the Program Design Documents, the CDM Operations Plan, the Monitoring Plan and the POA Monitoring Plan, including as updated from time to time;
- (e) operate the Sub-Project in accordance with the Coordinating Entity's reasonable instructions;
- (f) inform the Coordinating Entity of any modification contemplated for the Sub-Project that could result in a request for modification of any of the Program Design Documents;
- (g) install, operate and maintain the facilities and equipment and retain staff necessary for gathering all such data as may be required by the CDM Operations Plan;
- (h) observe, implement and meet all other requirements contained in the CDM Operations Plan, in particular those pertaining to environmental and social performance and operational management systems;
- (i) at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and environmental practices;
- (j) provide the Coordinating Entity and the Trustee and their nominees with access to the Land and all relevant records without interference for the purposes of this Agreement;
- (k) promptly notify the Coordinating Entity of any compulsory acquisition of the Land;
- (l) not sell, lease or create any Encumbrance in, the Assets, without the prior written consent of the Coordinating Entity;
- (m) not destroy or damage the Assets and ensure that the Sub-Project Entity's contractors, employees or others do not destroy or damage the Assets;
- (n) satisfy all obligations under all licenses, permits, consents and authorizations required to implement the Sub-Project;
- (o) immediately notify the Coordinating Entity of any actual or suspected breach of this Agreement;
- (p) implement and operate the Sub-Project in compliance with the World Bank Operational Policies, including without limitation the Environmental Management Plan, Resettlement Plan applicable to the Sub-Project and any other requirement resulting from the application of the World Bank Operational Policies;



- (q) cooperate fully with the Coordinating Entity, and all Validators and Verifiers engaged under the ERPA, including without limitation in respect of the implementation of the CDM Operations Plan, the Validation of the Sub-Project and the Verification and Certification of GHG Reductions generated by it;
- (r) inform the Coordinating Entity if and when it becomes a Debarred Entity;
- (s) permit the World Bank and its representatives to inspect all of the Sub-Project Entity's accounts and records and other documents in relation with the Sub-Project and to have them audited by, or on behalf of, the World Bank and for the cost and account of the World Bank;]and
- (t) not engage in, or authorize or permit any affiliate or any other person acting on its behalf to engage in, any Sanctionable Practice. The Sub-Project Entity further covenants that should the Coordinating Entity notify the Sub-Project Entity of its concerns that there has been a violation of the provisions of this Section, it shall cooperate in good faith with the World Bank and its representatives in determining whether such a violation has occurred, and shall respond promptly and in reasonable detail to any notice from the World Bank, and shall furnish documentary support for such response upon the World Bank's request.

## ARTICLE IV Purchase and Sale

### Section 4.01 *Contract CER Volume and Unit Price*

- (a) Contract CERs are: All CERs Issued in respect of the Sub-Project, including their underlying GHG Reductions [up to a maximum of [insert quantified maximum volume]]
- (b) The Unit Price is: [EURO/US\$] per Contract CER Issued in respect of the CPA.[To be negotiated in accordance with the Pricing Approach] and to be approved by the Trustee  
  
[If variable pricing## ]The Unit Price shall be composed of a fixed price component (“Fixed Price”) and a floating price component (“Floating Price”) as follows:  
  
(50%) fifty percent \* [INSERT FIXED PRICE which shall be Euro] Fixed Price + (50%) fifty percent \* Floating Price.

#### **Floating Price Calculation**

The Floating Price shall be calculated to be the simple average of daily closing prices for spot CERs published in the Applicable Index for the ten (10) trading days preceding CER Issuance and for the ten (10) trading days after CER Issuance, including the CER Issuance Date. For the avoidance of doubt, the simple average shall be based on twenty (20) trading days.

The indexes used to calculate the Floating Price are defined under Schedule 6.

The Unit Price shall be subject to a maximum Unit Price of [EURO] and a minimum Unit Price of [EURO] per Contract CER.

**Section 4.02**      *Purchase and Sale*

The Sub-Project Entity agrees to sell and the Coordinating Entity agrees to purchase the Contract CERs [and the Option CERs] in accordance with the terms of this Agreement.

**Section 4.03**      *Payment*

The Coordinating Entity agrees to pay for Contract CERs [and for Option CERs] received by the Coordinating Entity under this Agreement by transferring the Annual Payment to the Sub-Project Entity within [twenty (20)] calendar days following the Coordinating Entity's receipt of payment from the purchaser of such Contract CERs [and Option CERs].

**Section 4.04**      *Annual Payment*

The Annual Payment for delivered Contract CERs [and Option CERs] shall be calculated in the manner set out below.

**Annual Payment for delivered Contract CERs [and Option CERs]:**

The Unit Price	X	The number of Contract CERs [and Option CERs] received by the Coordinating Entity in respect of the Sub-Project in respect of the Reporting Year
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**Section 4.05**      *Transfer of Legal Title*

- (a) Full legal and beneficial title in the Contract CERs [and Option CERs] and underlying GHG Reductions shall vest in the Coordinating Entity upon Issuance of each such Contract CER [and Option CER].
- (b) To the extent that the Sub-Project Entity holds, or may hold, any legal or beneficial interest in the Contract CERs, [Option CERs] or underlying GHG Reductions at any time, the Sub-Project Entity irrevocably assigns and transfers in full to the Coordinating Entity, with full legal and equitable title and guarantee, all its right, title, benefit and interest, present and future, in and to any Contract CERs, [Option CERs] or GHG Reductions generated by the Sub-Project whether arising before or after the date of this Agreement.
- (c) The Sub-Project Entity shall take all such steps which may lawfully be performed by it, for the Sub-Project Entity to transfer title in the Contract CERs, [Option CERs] or underlying GHG Reductions to the Coordinating Entity under Section 4.05(b), including by executing any other documents necessary to effect such transfer.

- (d) The Sub-Project Entity shall not, and shall procure that its subsidiaries and affiliates shall not, sell, dispose of, encumber or otherwise deal in or with all or any part of the Contract CERs, [Option CERs] or underlying GHG Reductions generated by the Sub-Project.
- (e) The Sub-Project Entity irrevocably waives in favour of the Coordinating Entity all future and residual right and title in any Contract CERs and GHG Reductions not transferred to the Coordinating Entity under this Agreement.

## ARTICLE V

### Section 5.01 [##Include this version if (regular) Call Option is included, otherwise delete ##]*[Call Option Volume and Exercise Price*

- (a) The Option CERs are:
 

Some or all of the CERs generated by the Sub-Project each Reporting Year up to the Maximum Option Volume until (and including) [INSERT DATE] [##Insert if Call Option covers CERs generated after full Contract CER Volume has been generated##] after the Contract CER Volume has been generated by the Project in full[##Insert if Call Option covers CERs generated annually in excess of Annual Amount and Cumulative Amount for that Reporting Year##] after the Annual Amount and Cumulative Amount in any Reporting Year has been generated by the Sub- Project] and in respect of which the Coordinating Entity may exercise its Call Option.
- (b) Maximum Option Volume is:
 

[##Insert if Maximum Option Volume capped##]: [INSERT NUMBER] CERs[##Insert if Maximum Option Volume not capped##]: All CERs generated by the Sub-Project until (and including) [INSERT DATE] [##Insert if Call Option covers CERs generated after full Contract CER Volume has been generated##] after the Contract CER Volume has been generated by the Sub-Project in full[##Insert if Call Option covers CERs generated annually in excess of Annual Amount and Cumulative Amount for that Reporting Year##] after the Annual Amount and Cumulative Amount in any Reporting Year has been generated by the Sub-Project]].
- (c) Exercise Price is:
 

[Unit Price][EURO/US\$] per Option CER delivered to the Coordinating Entity.
- (d) Exercise Period:
 

Within thirty (30) calendar days after the Coordinating Entity's receipt of a Verification Report for a Reporting Year indicating that Option CERs have been generated by the Sub-Project.
- (e) Exercise Completion Date is:
 

Ninety (90) calendar days following receipt by the Sub-Project Entity of the Exercise Notice.

**ARTICLE VI**  
**Force Majeure Events**

**Section 6.01**      *Notice of Force Majeure Event*

- (a) If a party ("**Affected Party**") is, or anticipates that it will be, unable to perform an obligation under this Agreement due to the occurrence of a Force Majeure Event, it shall provide the other party (the "**Non-Affected Party**") with written notice providing details of the Force Majeure Event (the "**Force Majeure Notice**") within five (5) days of becoming aware of the relevant Force Majeure Event.
- (b) The Affected Party shall take all reasonable steps to remove or mitigate the relevant effects of the Force Majeure Event.

**Section 6.02**      *Effect of Force Majeure Event*

- (a) If the Affected Party is unable to perform an obligation under this Agreement due to the occurrence of a Force Majeure Event, such non-performance:
  - (i) will be permitted only during the time and to the extent that performance is prevented by the Force Majeure Event; and
  - (ii) will not give rise to any liability to the Non-Affected Party for any losses or damages arising out of, or in any way connected with, such non-performance during the occurrence of the Force Majeure Event.
- (b) No Party will be relieved by a Force Majeure Event from any obligation to provide any notice pursuant to this Agreement.
- (c) If by reason of a Force Majeure Event the Affected Party is unable to perform an obligation under this Agreement (including an obligation to deliver CERs), and that non-performance continues for a period of one hundred and eighty (180) consecutive days after the date the Force Majeure Notice is received by the Non-Affected Party without the Parties being able to negotiate a mutually acceptable alternative means of carrying out the intention of this Agreement by the end of that period, the Non-Affected Party may terminate this Agreement by written notice to the Affected Party and the Coordinating Entity shall pay the Sub-Project Entity for any Contract CERs [and Option CERs] delivered to the Coordinating Entity for which no payment has been made.

**ARTICLE VII**  
**Representations and Warranties**

**Section 7.01**      *General*

Each Party represents and warrants to the other Party that:

- (a) the person signing this Agreement on behalf of that Party has been duly authorized to sign this Agreement as representative and on behalf of that Party and this Agreement constitutes legal, valid and binding obligations of that Party enforceable against that Party in accordance with its terms;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate or conflict with, or require any consent or waiver under, any of its constitutional documents or any material contract to which it is a party or to which it or any of its assets is subject, or any law, regulation or permit applicable to it;
- (c) it is a legal entity, which is duly organized and validly existing under the laws of the Host Country, has obtained and provided all corporation authorizations and approvals and has power and authority to carry on its business as conducted and to own its assets and to execute and deliver this Agreement and perform its obligations hereunder; and
- (d) it has taken all necessary action to authorize the entry into, and the observance and performance of, its obligations under this Agreement.

**Section 7.02      *Sub-Project Entity Representations and Warranties***

The Sub-Project Entity represents and warrants, as of the date of this Agreement, and again upon both the production of the GHG Reductions by the Sub-Project and the Issuance of Contract CERs [and Option CERs] in respect of the Sub-Project, that:

- (a) it is a financially viable entity and is not insolvent or at risk of becoming insolvent;
- (b) all of the information provided to the Coordinating Entity by the Sub-Project Entity in respect of the Sub-Project is true and correct and may be relied upon by the Coordinating Entity;
- (c) it has taken all necessary actions and has the capacity to meet all requirements set out in the Monitoring Plan, the POA Monitoring Plan, the CDM Operations Plan, the Environmental Management Plan and the Resettlement Plan, if applicable, as they relate to the Sub-Project;
- (d) to the best of the Sub-Project Entity's knowledge, no litigation is pending or threatened against the Sub-Project Entity in respect of the Sub-Project or the Contract CERs [and Option CERs] which could affect materially and adversely the Sub-Project Entity's ability to fulfill its obligations under the Agreement;
- (e) to the best of the Sub-Project Entity's knowledge, there are no outstanding agreements or liabilities that could affect materially and adversely the Sub-Project Entity's ability to meet its obligations under the Agreement;
- (f) it has not sold, transferred, assigned, licensed, disposed of, granted or otherwise created any interest in the Contract CERs, [Option CERs] or underlying GHG Reductions or ERs related thereto generated by the Sub-Project to any Third Party other than in accordance with this Agreement;
- (g) it has obtained, and is not in default under, any material contract, permit, consent or license relating to the ownership, development, construction, finance, operation or maintenance of the Sub-Project (or any portion thereof)
- (h) it is aware that the Sub-Project will be included in the Sub-Project and agrees to the inclusion of the Sub-Project in the Sub-Project;

- (i) it does not intend to, Register the Sub-Project as a separate CDM project activity or as a CPA in a separate POA, and has not done so;
- (j) it has not, and to the best of its knowledge and belief (after due diligence and due enquiry in accordance with those employment, management and supervisory practices and policies which would reasonably be expected of an internationally reputable person engaged in the same type of undertaking as the Sub-Project) none of its shareholders, directors, officers, employees, agents, affiliates has engaged in any Sanctionable Practice; and
- (k) **[[Update the following to reflect any changes in the International Rules in respect of project de-bundling]]** [it is not involved in a CPA under another POA or any other CDM project activities of the same type or, if any such activity or proposed activity is a small-scale CPA in a POA, within 1 km of the boundary of the Sub-Project].

### **Section 7.03      *Acknowledgment***

The Sub-Project Entity agrees and acknowledges that the Sub-Project Entity and its affiliates and entities controlled by it and controlling it, may be subject to the World Bank sanctions process for coercive, corrupt, collusive, obstructive or fraudulent practices.

## **ARTICLE VIII Events of Default**

### **Section 8.01      *Events of Default***

- (a) The following events are Events of Default on the part of the Sub-Project Entity:
  - (i) any failure by the Sub-Project Entity to transfer to the Coordinating Entity full legal and beneficial title to the Contract CERs, [Option CERs] and underlying GHG Reductions upon Issuance in accordance with this Agreement, including without limitation any failure to assign and transfer to the Coordinating Entity all Contract CERs and GHG Reductions whether arising before or after the date of this Agreement;
  - (ii) failure to observe, implement and meet all requirements contained in the Monitoring Plan, the POA Monitoring Plan, in the CDM Operations Plan, the Environmental Management Plan or in the Resettlement Plan, as they relate to the Sub-Project;
  - (iii) the dissolution, liquidation, insolvency or bankruptcy (voluntary or involuntary) of the Sub-Project Entity or change in the ownership structure of the Sub-Project Entity in a manner that detrimentally affects its ability to perform its obligations under this Agreement in the reasonable opinion of the Coordinating Entity;
  - (iv) material delay in the development of the Sub-Project, or other material adverse change in the status of the Sub-Project which prevents the Sub-Project from being commissioned before the Expected Commissioning Date;
  - (v) determination by the World Bank that the Sub-Project Entity has engaged in, or has authorized or permitted any affiliate or any other person acting on its behalf to engage in, a Sanctionable Practice; and

- (vi) material breach by the Sub-Project Entity of any other terms of this Agreement.
- (b) The following events are Events of Default on the part of the Coordinating Entity:
  - (i) failure to make payment due under this Agreement, which is not reasonably in dispute, within sixty (60) days after delivery of a notice from the Sub-Project Entity to the Coordinating Entity that such amount is past due; and
  - (ii) material breach by the Coordinating Entity of any other terms of this Agreement.

**Section 8.02**      *Notice and Cure of Event of Default*

- (a) If either Party becomes aware or reasonably anticipates that any of the Events of Default specified under Section 6.01 has occurred or will occur, it shall notify the other Party of the Event of Default (the "**Default Notice**").
- (b) Any Default Notice shall include full details of the Event of Default.

**Section 8.03**      *Coordinating Entity's Remedies for an Event of Default*

If the Sub-Project Entity is the defaulting Party and the Sub-Project Entity fails to cure the Event of Default to the reasonable satisfaction of the Coordinating Entity, within sixty (60) days of the Default Notice, the Coordinating Entity may, at its discretion:

- (a) if the Event of Default does not arise from an Intentional Breach by the Sub-Project Entity or if the Event of Default is a delay in the Expected Sub-Project Commissioning Date: or
  - (i) allow the Sub-Project Entity to deliver any shortfall of CERs in the following Reporting Year(s); or
  - (ii) terminate this Agreement and recover from the Sub-Project Entity any Taxes which the Coordinating Entity has incurred in respect of the Sub-Project or the CERs generated by it until the date of termination, with interest accruing at a rate of LIBOR.
- (b) If the Event of Default is a result of an Intentional Breach by the Sub-Project Entity, by written notice to the Sub-Project Entity terminate this Agreement and recover from the Sub-Project Entity any Taxes, which the Coordinating Entity has incurred in respect of the Sub-Project or the CERs generated by it, plus damages from the Sub-Project Entity in an amount that represents any losses, damages and costs suffered by the Coordinating Entity as a result of the Event of Default by the Sub-Project Entity, which shall be, if the Spot Market Price for CERs is higher than the Unit Price, an amount equal to:
  - (i) if the Spot Spot Market Price for CERs is higher than the Unit Price, an amount equal to:
    - (A) the number of Contract CERs outstanding (i.e. the volume of Contract CERs that have not been Issued as a result of the Event of Default);

times

- (B) the Spot Market Price minus the Unit Price, as relevant;
- or
- (ii) if the Spot Market Price for CERs is lower than the Unit Price, an amount equal to:
  - (A) the number of Contract CERs outstanding (i.e. the volume of Contract CERs that have not been transferred as result of the Event of Default);
  - times*
  - (B) the Unit Price, as relevant;

**Section 8.04**      *Sub-Project Entity's Remedies for an Event of Default*

- (a) If the Coordinating Entity is the defaulting Party and the Coordinating Entity fails to cure the Event of Default within sixty (60) days of receiving a Default Notice from the Sub-Project Entity, the Sub-Project Entity may by written notice to the Coordinating Entity:
  - (i) if the Event of Default is a breach of Section 8.01(b), require the Coordinating Entity to make any outstanding payments plus interest at a rate of LIBOR; and/or
  - (ii) terminate this Agreement.

**ARTICLE IX**  
**Other Termination Events**

**Section 9.01**      *Withdrawal from Kyoto Protocol*

- (a) The Coordinating Entity may also terminate this Agreement by notice in writing to the Sub-Project Entity if:
  - (i) the Host Country withdraws from either the UNFCCC or the Kyoto Protocol;
  - (ii) the Trustee terminates the ERPA; or
  - (ii) the World Bank or the International Development Association has declared the Sub-Project Entity ineligible to receive proceeds by the World Bank or the International Development Association or otherwise to participate in the preparation or implementation of any project financed in whole or in part by the World Bank or the International Development Association, as a result of: (i) a determination by the World Bank or the International Development Association that the Sub-Project Entity has engaged in a coercive, corrupt, collusive, obstructive or fraudulent practice in connection with the use of the proceeds satisfied by the World Bank or the International Development Association; and/or (ii) a declaration by any multilateral development bank with which the Bank has entered into an agreement for the mutual enforcement of debarment decisions, that the Sub-Project Entity is ineligible to receive proceeds of any financing made by such multilateral development bank or otherwise to participate in the preparation or implementation of any



project financed in whole or in part by such multilateral development bank as a result of a determination by such multilateral development bank that the Sub-Project Entity has engaged in a in a coercive, corrupt, collusive, obstructive or fraudulent practice in connection with the use of the proceeds of any financing made by such multilateral development bank.

- (b) If the Coordinating Entity terminates the Agreement under Section 9.01(a) the Coordinating Entity shall:
  - (i) notify the Sub-Project Entity at least three (3) months prior to termination; and
  - (ii) after paying or adequately providing for the payment of all liabilities, and upon receipt of all releases it deems necessary, terminate this Agreement.
- (c) In the event of termination under this Article IX, neither Party shall have surviving obligations or liabilities to the other Party under this Agreement following the date of termination except as provided for in Section 10.09.

## **ARTICLE X Miscellaneous**

### **Section 10.01**     *Term of the Agreement*

Unless terminated earlier in accordance with its terms, this Agreement shall terminate upon delivery of all the Contract CERs, [and Option CERs] if any, and the payment of Annual Payments thereto, subject to the survival of provisions as identified in Section 10.09, but in any event by no later than **[Insert date]**.

### **Section 10.02**     *Notices*

Any notice, communication, request or correspondence required or permitted under the terms of this Agreement shall be in writing, in the English language (it being understood that any such communication in a language other than English shall be of no force and effect), and shall be delivered personally, or via courier, mail, or facsimile to the address and telecopier numbers provided below.

For the Coordinating Entity:

**[ ]**

For the Sub-Project Entity:

**[ ]**

### **Section 10.03**     *Amendments to the Agreement*

Except as otherwise provided herein, this Agreement may not be amended except by a written agreement executed by both Parties.

#### **Section 10.04**      *Governing Law*

This Agreement will be governed and construed in accordance with [##INSERT GOVERNING LAW ## OR English law (without giving effect to the laws of England relating to conflict of laws which may lead to the choice of another body of law)].

#### **Section 10.05**      *Dispute Resolution*

- (a) The Coordinating Entity and the Sub-Project Entity shall endeavor to settle amicably any dispute between them arising out of or relating to the ERPA or the breach, termination or invalidity thereof ("**Dispute**"). Upon the written request of either Party (the "**Initial Request**"), the Parties shall meet promptly to consider the Dispute.
- (b) If the Dispute has not been resolved by the Parties within sixty (60) days of the date of the Initial Request, the Parties may seek an amicable settlement of the Dispute by conciliation, which shall take place in accordance with the UNCITRAL Conciliation Rules as at present in force. The Parties shall endeavor to reach agreement on the name of a sole conciliator, failing which either Party may request the Secretary-General of the Permanent Court of Arbitration to appoint the sole conciliator.
- (c) Should either Party refuse to seek an amicable settlement by conciliation, or should the conciliation proceedings be unsuccessfully terminated, either Party may, by notice in writing to the other, refer the settlement of the Dispute to arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration, and the number of arbitrators shall be one.

#### **Section 10.06**      *Assignment and Novation*

Neither Party may assign or transfer its rights or obligations under the Agreement to any Third Party without the prior written consent of the other Party, such consent not to be unreasonably withheld. Any other such purported assignment or transfer without such consent shall be deemed ineffective and void.

#### **Section 10.07**      *Relationship between the Parties*

The Parties hereby irrevocably acknowledge that the relationship created pursuant to this Agreement (including any terms implied by law) is not a partnership and that there are no fiduciary duties owed to one another by virtue of this Agreement howsoever arising.

[Delete Section 10.08 if governing law is other than English Law##]

#### **Section 10.08**      *[Third Party Rights ]*

The Parties do not intend that any term of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this agreement.

#### **Section 10.09**      *Survival of Provisions*

The respective rights and obligations of the Parties contained within Section 7.01, Section 7.02, Section 9.01, Section 10.02, Section 10.04, Section 10.07, Section 10.09 and Section 10.12 of this Agreement will

survive any termination of the Agreement, unless the Coordinating Entity provides notice in writing to the Sub-Project Entity to the contrary.

**Section 10.10**     *Entire Agreement*

This Agreement represents the whole and only agreement between the Parties in relation to its subject matter and supersedes any previous agreement (whether written or oral) between the Parties in relation to the subject matter of any such document save that nothing in this agreement shall exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

**Section 10.11**     *Execution in Counterparts; Language*

This Agreement shall be executed in two counterparts in the English language and in two counterparts in **##INSERT LANGUAGE##**, each of which shall be an original.

**Section 10.12**     *Disclosure of information*

- (a) All information disclosed by the Parties in the commercial negotiations leading to this Agreement, and the Agreement itself ("**Confidential Information**") shall be kept confidential and not disclosed unless:
  - (i) at the time of disclosure, the Confidential Information is public or which after disclosure becomes public other than by disclosure by either Party in violation of this provision;
  - (ii) the disclosing Party has been given prior written consent by the other Party to make that disclosure; or
  - (iii) the Confidential Information is required to be disclosed:
    - (A) by any requirements of the United Nations Framework Convention on Climate Change and/or the Kyoto Protocol for validation, registration, Host Country approval or otherwise under the International Rules; or
    - (B) under any applicable laws and regulations or by any subpoena or similar legal process.
- (b) This Section 10.12 shall survive for a period of five (5) years after any termination under this Agreement, unless the Parties otherwise agree in writing.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

**[INSERT LEGAL NAME OF COORDINATING ENTITY]**

\_\_\_\_\_

By: \_\_\_\_\_

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

**[INSERT LEGAL NAME OF SUB-PROJECT ENTITY]**

\_\_\_\_\_

By: \_\_\_\_\_

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

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## SCHEDULE 6

### INDEXES USED TO CALCULATE FLOATING PRICE

#### Definitions

- (1) “**Applicable Index**” refers to generally accepted indexes that are used to calculate market prices for spot CERs. The default **Applicable Index** is the daily settlement price of BlueNext Spot CER (BNS CER).
- (2) “**CER Issuance**” refers to the issuance of the relevant Contract CERs or Option CERs (as applicable) by the Executive Board
- (3) “**CER Issuance Date**” refers to the date of CER Issuance.
- (4) “**Program Characteristics**” refers to the specific characteristics of the Program, including the technology employed or the location of the program or sub-project.

#### Published Prices

In the event that Applicable Index publishes some but not all of the daily settlement prices required to calculate the Floating Price or the Floating Exercise Price (as applicable), the floating price calculation will be based on the simple average of those prices that are published.

In the event that BlueNext does not publish any of the daily settlement price of BlueNext Spot CER (BNS CER) required to calculate the Floating Price or the Floating Exercise Price (as applicable), the Applicable Index shall be the daily settlement prices in the ICE ECX CER Futures (ECX CER). In the event neither BlueNext nor ICE ECX publish any of the daily settlement prices for BNS CER or ECX CER required to calculate the Floating Price or the Floating Exercise Price (as applicable), another generally accepted index for prices of spot CERs shall be determined by the Trustee following consultations with the Program Entity.

If there is no such other index available, the Trustee, following consultations with the Program Entity, shall request three (3) internationally recognized brokers to submit a market price quote for a Contract CER or Option CER (as applicable) for the CER Issuance Date and the Floating Price or the Floating Exercise Price (as applicable) shall be the average of such three (3) quotes.

#### Prevailing Market Price

In the event that the Applicable Index no longer publishes a price that, in the reasonable opinion of the Trustee, reflects the prevailing market price for the CER based on the Program Characteristics, the Parties shall agree on the manner in which the Floating Price or the Floating Exercise Price (as applicable) is to be determined following CER Issuance.

In the event that the Parties cannot agree on a Floating Price or a Floating Exercise Price (as applicable) within thirty (30) calendar days following the CER Issuance Date, the Trustee shall request three (3) internationally recognized brokers to submit a market price quote for a Contract CER or an Option CER (as applicable) for the CER Issuance Date and the Floating Price or the Floating Exercise Price (as applicable) shall be the average of such three (3) quotes.

#### Multiple Published Prices

In the event that the Applicable Index publishes one or more additional prices for the CER based on the Program Characteristics, the calculation of the Floating Price or the Floating Exercise Price (as applicable) shall be based on such additional price most closely aligned with the Program Characteristics following consultations with the Program Entity.

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