

**International Bank for  
Reconstruction and Development**

**General Conditions  
Applicable to  
Certified Emission Reductions  
Purchase Agreement**

**Programmatic Clean Development Mechanism  
Programs**

**Dated [insert]**

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## ARTICLE I

### Relationship with ERPA

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

These General Conditions set forth the terms and conditions applicable to the ERPA, to the extent of and subject to any modifications set forth in the ERPA.

#### Section 1.02 *Inconsistency with ERPA*

If any provision of the ERPA is inconsistent with a provision of these General Conditions, the provision of the ERPA shall govern to the extent of the inconsistency.

## ARTICLE II

### Definitions; Interpretation; Headings; Schedules

#### Section 2.01 *Definitions*

Unless the context otherwise requires, the following capitalized terms shall have the following meanings wherever used in these General Conditions and the ERPA:

"**Additional CERs**" has the meaning given to the term in the ERPA;

"**Advance Payment**" has the meaning given to the term in the ERPA;

"**Assets**" means all the assets required for the operation of the Program;

"**Affected Party**" means, with respect to a Force Majeure Event, the Party affected by that Force Majeure Event, as described in Section 11.01;

"**Annual Amount**" means the number of CERs which the Program Entity is to deliver to the Trustee for the relevant Reporting Year as Contract CERs in accordance with Schedule 2 of the ERPA;

"**Annual ER Report**" means a report provided by the Program Entity in accordance with these General Conditions setting out:

- (i) the number of GHG Reductions generated by the Program during the previous Reporting Year as monitored in accordance with the CDM Operations Plan;
- (ii) all other data as may be required to be collected and recorded by the CDM Operations Plan; and
- (iii) in a separate annex, evidence satisfactory to the Trustee that the Program Activity is in compliance with the Environmental Management Plan,

and which shall serve as the Monitoring report required to be provided for Verification under the International Rules;

"**Annual Payment**" means the payment by the Trustee to the Program Entity for delivered CERs for the relevant Reporting Year, calculated in accordance with the ERPA;

"**Assignee**" has the meaning given to it in Section 15.06(b)(i);

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

"**Buyer Participant**" means a participant in the Fund that has signed a participation agreement with the Trustee to purchase an interest in the Fund;

"**Buyer Participant Payment Failure**" has the meaning provided to that term in Section 15.08;

"**Calculation Date**" means, for the purposes of Article XIII, the date of termination of the ERPA;

"**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 tonne of carbon dioxide emissions;

"**CDM-CPA-DD**" or "**Program 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 Operations Plan**" means a plan agreed by the Trustee and the Program Entity 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 Program Activity;

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

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

"**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 Program Activity has achieved the GHG Reductions as Verified in the Verification Report;

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

"**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 EU (ETS) 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;

"**Confirmation Notice**" means a confirmation from the Executive Board that the payment for Share of Proceeds to cover administrative expenses for the CERs has been made;

"**Compliance Sub- Project**" has the meaning given to that term in Section 9.04;

"**Conditions Fulfillment Date**" has the meaning given to that term in the ERPA;

"**Confidential Information**" has the meaning given to that term in Section 15.07;

"**Contract CERs**" means the CERs referred to as such in the ERPA;

"**Contract CER Volume**" means the volume of Contract CERs specified in the ERPA;

"**COP**" means the Conference of the Parties to the UNFCCC;

"**COP/MOP**" means the COP serving as the Meeting of the Parties to the Kyoto Protocol;

"**Crediting Period**" means the period specified in the ERPA during which the Program Activity is eligible to create CERs under the International Rules;

"**Cumulative Amount**" means, for any Reporting Year, the sum of all the Annual Amounts for the preceding Reporting Years up to and including the relevant Reporting Year, as specified in the ERPA;

"**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 in Section 13.02(a);

"**Delivery Failure**" means:

the Program Entity's failure, for any reason except a Force Majeure Event or otherwise provided in the ERPA, to generate:

- (a) sufficient Contract CERs for any Reporting Year to fulfil the Cumulative Amount for that Reporting Year;
- (b) the full number of Option CERs over which the Grantee has exercised its Option;
- (c) Contract CERs required to be delivered under Section 3.02(b); or
- (d) the Annual Amount as specified in the ERPA for two consecutive Reporting Years.

"**Delivery Notice**" means the notice specified in the ERPA;

"**Designated Operational Entity**" or "**DOE**" means an entity designated by the COP/MOP as qualified to validate proposed CDM project activities in the same sector as the Program Activity or to verify and certify GHG Reductions from CDM project activities in the same sector as the Program Activity;

"**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 it in Section 15.03(a);

"**Distribution Letter**" means the letter which will be submitted to the Executive Board with each Certification Report (or otherwise as required by the International Rules) and which instructs the Executive Board to issue to the Registry Account(s) nominated by the Trustee the Contract CERs and/or Option CERs;

"**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:

- (i) 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
- (ii) any restriction of any kind under any regulatory or voluntary regime that may affect the ability of the Trustee 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 submitted by the Program Entity and approved by the Trustee 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 Program Entity during implementation and operation of the Program and Program Activity 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;

"**ERPA**" means the Certified Emission Reductions Purchase Agreement between the Trustee and the Program Entity providing for the sale and purchase of Certified Emission Reductions. ERPA includes these General Conditions, and all schedules and agreements supplemental to the ERPA;

"**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;

"**European Union Allowance**" or "**EUA**" means an assigned amount unit converted into an allowance for the purposes of the EU ETS in accordance with Article 45 of the Registries Regulation;

"**Event of Default**" means an event specified as such in Section 13.01;

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

"**Exercise Completion Date**" means the date by which the Program Entity must deliver Option CERs, as nominated in an Exercise Notice;

"**Exercise Notice**" means a notice substantially in the form set out in a Schedule to the ERPA by which the Grantee exercises its Option for a particular Reporting Year, as provided in Article IV;



**"Exercise Period"** means the period defined as such in the ERPA;

**"Exercise Price"** means the price for each exercised Option CER as specified in the ERPA;

**"Expected Program Commissioning Date"** means the date on which the Program Commissioning Date is expected to occur, as nominated in the ERPA;

**"Focal Point"** means the entity nominated as the point of contact with the UNFCCC Secretariat and the Executive Board under the International Rules for any communications in relation to the Program or the Program Activity in accordance with the ERPA;

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

**"Force Majeure Notice"** means a notice of a Force Majeure Event as required under Section 11.01;

**"Fund"** means the carbon fund referred to in the ERPA for which the World Bank is Trustee;

**"Fund Instrument"** means the instrument establishing the Fund;

**"Fund Participants"** means the entities which have signed agreements with the Trustee for participation in the Fund;

**"Fund Pricing Approach"** means the approach to pricing CERs purchased by the Trustee;

**"General Conditions"** means these General Conditions;

**"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;

**"Grantee"** means the Party granted the Option pursuant to Section 4.01, as specified in the ERPA.

**"Grantor"** means the Party which grants the Option under Section 4.01, as specified in the ERPA.

**"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;

**"Gross Negligence"** means any act or omission, whether intentional or unintentional, which, in view of the seriousness of the negative consequences of such act or omission and the probability of their occurrence, would be regarded by reasonable persons familiar with the Program and its surrounding circumstances as amounting to a reckless disregard for the consequences of the act or omission, being more serious than a failure by the person undertaking the act or omission to exercise proper skill and care;

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

**"Host Country"** means the country(ies) specified as such in the ERPA;

"**IBRD**" means the International Bank for Reconstruction and Development;

"**IBRD Carbon Finance Anti-Corruption Guidelines**" means the IBRD Anti-Corruption Guidelines for World Bank Guarantee and Carbon Finance Transactions as set out in Schedule 3;

"**Initial Request**" has the meaning given to it in Section 15.03(a);

"**Intentional Breach**" means a breach of obligations by a Party under the ERPA 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 ERPA, or
- (iii) conduct by that Party which recklessly disregards the rights of the other Party under the ERPA;

"**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;

"**Issuance of CERs**" means the issuance of CERs for the Program Activity 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;

"**Issuance Notice**" means a notice from the Executive Board confirming the Issuance of CERs generated by the Program and their availability for distribution;

"**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;

"**Land**" means the land required for the operation of the Program;

"**Letter of Credit**" has the meaning given to that term in the ERPA;

"**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 Trustee 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 Trustee) 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 Trustee) of the rates quoted by four major banks selected by the Trustee 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;

"**Marrakesh Accords**" means those Decisions adopted at the COP/MOP in its first session held at Montreal, Canada from November 28 to December 9, 2005 as they were forwarded by the COP in its seventh session held at Marrakesh, Morocco from October 29 to November 10, 2001;

"**Maximum Option Volume**" means the maximum number of Option CERs which the Grantee has the right or the obligation (as the case may be) to purchase under the Option as specified in the ERPA;

"**Minimum Delivery Percentage**" means the percentage specified as such in the ERPA;

"**Monitoring**" means the collection and recording of all relevant data necessary for conducting Verification and Certification of the Program Activity in accordance with the CDM Operations Plan;

"**Monitoring Plan**" means the plan referred to as such and incorporated in the Program Design Documents;

"**Non-Affected Party**" has the meaning given to that term in Section 11.01;

"**Non-Compliance Notice**" has the meaning given to that term in Section 9.03;

"**Option**" means the right granted by the Grantor to the Grantee under Section 4.01 and as specified the ERPA.

"**Option CERs**" means the CERs the subject of the Option, as specified in the ERPA;

"**Parties**" means the Program Entity and the Trustee, and each of them shall be individually referred to as a "**Party**";

"**Program**" means the project described in the ERPA;

"**Program Activity**" means the activity described in the Program Design Documents;

"**Program 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, and Registered as a CDM Program Activity;

"**Program Commissioning Date**" means the date on which the first CPA is fully operational and capable of generating GHG Reductions;

"**Program Documents**" means together or individually the Program Design Documents, the Monitoring Plan, and the Validation Report;

"**Program Entity**" means the Party or Parties specified as such in the ERPA;

"**Program Design Documents**" has the meaning given in the ERPA:

"**Project Participant**" means :

- (i) an entity listed as such in the Program Design Documents or,
- (ii) any entity added to the Program as such after Registration by consent of the existing Project Participants in accordance with the International Rules; and
- (iii) where provided under the International Rules, any country party to the Kyoto Protocol which has provided a Written Approval with respect to the Program Activity;

**"Registration"** means the formal acceptance by the Executive Board of the Program Activity as a CDM Program Activity;

**"Registries Regulation"** means Commission Regulation (EC) No 2216/2004 for a standardized and secured system of registries pursuant to the Directive and Decision 280/2004/EC of the European Parliament and of the Council;

**"Registry Account"** means an account capable of receiving CERs, being either:

- (i) a temporary account in the CDM Executive Board registry linked to a Kyoto Protocol Annex I party's national registry,
- (ii) a permanent account in the CDM Executive Board registry linked to the Host Country, or
- (iii) a permanent account in a Kyoto Protocol Annex I party's national registry.

**"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 Trustee as the information vendor, for the purpose of displaying rates or prices comparable to LIBOR);

**"Reporting Year"** means January 1 to December 31, except the first Reporting Year shall begin on the first 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;

**"Resettlement Plan"** means the plan submitted by the Program 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 Program Entity during implementation and operation of the Program and Program Activity to address involuntary resettlement, as well as the means to implement these measures, all in accordance with applicable World Bank Operational Policies;

**"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 Program;

**"Seller Contribution Credit"** means an amount calculated by the Trustee as two percent (2%) of any Annual Payment;

**"Share of Proceeds"** means any CERs deducted or any other deductions levied by the CDM Registry administrator upon Issuance of CERs in accordance with the International Rules to cover administrative expenses and to assist in meeting costs of adaptation;

**"Spot Market Price"** means the closing price of the CER spot contract traded on an exchange acceptable to the Trustee, which delivers closest to the Calculation Date, provided that the CERs

to be delivered are deliverable into the exchange on that date, as calculated by the Trustee. 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 with respect to the date the CERs are to be delivered, as quoted by three (3) independent brokers selected by the Trustee. If no quotes are available for more than seven (7) consecutive calendar days, the Trustee shall calculate the Spot Market Price using best efforts to determine a commercially reasonable market value;

"**Sub-Project**" means a CPA added to the Program in accordance with the terms of these General Conditions and the ERPA and the International Rules;

"**Sub-Project Agreement**" means a legally binding and enforceable agreement between the Program Entity and a Sub-Project Entity substantially in the form provided in Schedule 4 of the ERPA;

"**Sub-Project Entity**" means an entity owning and implementing a Sub-Project, as described in the ERPA and/or the Sub-Project Inventory;

"**Sub-Project Inventory**" has the meaning given in the ERPA;

"**Substituting Party**" has the meaning given to it in Section 15.06(b)(ii);

"**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;

"**Term**" means the term of the ERPA, as specified in the ERPA;

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

"**Trustee**" means the World Bank, acting as trustee of the Fund;

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

"**UNFCCC Secretariat**" means the secretariat to the United Nations Framework Convention on Climate Change;

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

"**Unit Price**" has the meaning given to that term in the ERPA;

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

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

"**Validator**" means the entity selected to perform Validation of the Program Activity, 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 Program 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 Program Activity 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 Program 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 Program requirements specified in the CDM Operations Plan;

"**Verifier**" means the entity selected to perform Verification and Certification of the Program Activity, 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;

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

"**Written Approval**" means a document issued by the government department of the Host Country responsible for approving CDM projects that approves the Program Activity and the participation of the Program Entity as required under the International Rules and the laws and policies of the Host Country.

## **Section 2.02** *Interpretation; Headings; Schedules*

- (a) In these General Conditions unless the context requires another meaning, a reference:
  - (i) to the ERPA, any document created under the International Rules or any of the Program Documents is to that document as varied, amended, novated, ratified or replaced from time to time;
  - (ii) to any Party includes that Party's executors, administrators, successors and permitted assigns, including any person who is Party to the ERPA by way of novation and, in the case of the Trustee, includes any substituted or additional trustee to the Fund;
  - (iii) to the singular includes the plural and vice versa;

- (iv) to a Party means a Party to the ERPA, and to an item, Section or Schedule is to an item, Section or Schedule of these General Conditions (unless specified to be a Section or Schedule of the ERPA or as otherwise specified);
  - (v) to any International Rule, or to any treaty includes any modification or re-enactment of it or any treaty substituted for it, and all protocols, rules, modalities, guidelines, procedures, ordinances and regulations (however described) issued under it; and
  - (vi) to a word or phrase with a defined meaning incorporates any other part of speech or grammatical form of that word or phrase as having a corresponding meaning.
- (b) The terms of these General Conditions shall be interpreted in a manner that is consistent with the International Rules.
  - (c) The headings of the Articles and Sections are inserted for convenience of reference only and do not affect the interpretation of these General Conditions.

### **ARTICLE III**

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

##### **Section 3.01**      *Purchase and Sale*

The Program Entity agrees to sell and the Trustee agrees to purchase:

- (i) the Contract CERs; and
  - (ii) the Option CERs in respect of which the Trustee has exercised its Option,
- in accordance with the terms of the ERPA.

##### **Section 3.02**      *Delivery of Contract CERs*

- (a) Until the total number of Contract CERs has been delivered, the Program Entity shall deliver, or cause to be delivered, the Annual Amount for the relevant Reporting Year into the Registry Account(s) nominated by the Trustee.
- (b) If the Program generates more than the Annual Amount in a particular Reporting Year before the full number of Contract CERs has been delivered, the Program Entity shall deliver to the Registry Account(s) nominated by the Trustee, as part of the Contract CERs, all additional CERs generated by the Program in that Reporting Year.

### **ARTICLE IV**

#### **Option**

##### **Section 4.01**      *Grant of Option*

In consideration of the Grantee entering into the ERPA, the Grantor irrevocably grants to the Grantee the Option.

**Section 4.02**      *Exercise of Option*

To exercise the Option, the Grantee shall provide the Grantor with a duly completed Exercise Notice at any time during the Exercise Period and the Grantor shall take any actions required of it under the EPRA in order for the Grantee to do so.

**Section 4.03**      *Delivery of Option CERs*

Following receipt of each Exercise Notice, the Program Entity shall deliver, or cause to be delivered, those Option CERs nominated in the Exercise Notice to the Registry Account(s) of the person(s) named in the Exercise Notice on the Exercise Completion Date in accordance with Section 5.02.

**Section 4.04**      *Termination of Option*

- (a) If the Grantee does not provide the Grantor with an Exercise Notice within the Exercise Period, the right of the Grantee to exercise the Option shall lapse for that Reporting Year, and that Reporting Year only.
- (b) The Option shall terminate on the earlier of:
  - (i) expiry of the Term; or
  - (ii) notification of termination by either Party if the Grantee fails to exercise the Option to acquire any Option CERs for the three (3) consecutive Reporting Years following delivery of the full number of Contract CERs.
- (c) If the Option terminates under Section 4.04(b), then without prejudice to the rights and obligations of the Parties already existing under the ERPA, neither Party shall be liable to the other Party for any damages, expenses, losses, actions, claims or demands with respect to the Option arising after the date of termination of the Option.

**Section 4.05**      *Exercise of Option by Nominee or Assignee of Grantee*

The Option may be exercised by the nominee or assignee of the Grantee, in which case references to the Grantee in relation to Option CERs shall be deemed to be references to the nominee or assignee of the Grantee, as the case may be and the Grantee shall perform all actions reasonably required for the Grantor to fulfill its obligations under this Article IV in respect of any such nominee.

**ARTICLE V**

**Delivery and Payment**

**Section 5.01**      *Annual ER Report and Verification and Certification Reports*

- (a) Within thirty (30) days following the end of each Reporting Year, the Program Entity shall provide the Trustee with an Annual ER Report for that Reporting Year.
- (b) The party responsible under the ERPA for Verification and Certification shall request the Verifier to start Verification and Certification within forty five (45) calendar days of the Trustee's receipt of the Annual ER Report from the Program Entity.



**Section 5.02**      *Delivery of CERs*

- (a) Delivery of the Contract CERs and Option CERs (as relevant) will occur upon Issuance of CERs into the Pending Account in accordance with all applicable laws and International Rules governing the Issuance of CERs.
- (b) The Trustee shall take all reasonable steps required to assist the Program Entity to deliver the CERs sold under the ERPA into the nominated Registry Account(s).

**Section 5.03**      *Payment and Transfer of Legal Title*

- (a) The Trustee shall make the Annual Payment to the Program Entity in accordance with the ERPA.
- (b) The Annual Payment shall be calculated in accordance with the formulae established in the ERPA.
- (c) Legal title to any delivered Contract CERs or Option CERs shall transfer to the Buyer Participants at the time of payment of the Annual Payment for the relevant delivered CERs.

**Section 5.04**      *Costs*

- (a) The Trustee shall deduct from each Annual Payment the Seller Contribution Credit and any Taxes incurred by the Trustee in accordance with Section 5.05(a), together with any such Seller Contribution Credit or Taxes carried over from a preceding Reporting Year in accordance with Section 5.04(b).
- (b) If deduction of the Seller Contribution Credit and/or Taxes incurred by the Trustee in accordance with Section 5.05(a) for any Reporting Year would make the Annual Payment for that Reporting Year a negative number, the Trustee will carry forward any Seller Contribution Credit and/or Taxes incurred by the Trustee in accordance with Section 5.05(a) not deducted in that Reporting Year to the following Reporting Year.
- (c) The Trustee shall provide the Program Entity with documentary evidence of all Taxes incurred by the Trustee in accordance with Section 5.05(a) deducted from an Annual Payment within thirty (30) days of the Annual Payment.

**Section 5.05**      *Taxes and Share of Proceeds*

- (a) Any Taxes that may be payable with regard to the operation of the Program, the sale of CERs under the ERPA or the delivery of Contract CERs or Option CERs imposed by the Host Country shall be borne by the Program Entity and, if such Taxes are payable in the first instance by the Trustee, it shall deduct such Taxes from any Annual Payments made to the Program Entity in accordance with Section 5.04. The Trustee shall not deduct any other Taxes from Annual Payments made to the Program Entity.
- (b) The Program Entity shall bear any Share of Proceeds or any other deductions levied by the Executive Board or the UNFCCC in relation to the delivery of Contract CERs or Option CERs to, or to the order of, the Trustee on the basis of the Program Activity, and any Registration fee.

## ARTICLE VI

### Program Development

#### Section 6.01 *Program Development*

The Program Entity shall keep the Trustee regularly informed about the progress of the development of the Program and shall notify the Trustee of the Program Commissioning Date no later than thirty (30) days after the occurrence thereof, and, in the event that the Program Entity becomes aware or has reason to believe that there will be some delay in the Expected Program Commissioning Date, the Program Entity shall notify the Trustee immediately.

#### Section 6.02 *Documentation*

- (a) If any of the Program Documents are not approved in whole or part by the Validator or the Executive Board, or are otherwise non-compliant with the International Rules, the Trustee may arrange, in consultation with the Program Entity or as otherwise provided in the ERPA, to have the relevant Program Documents revised or reproduced to a standard which will be approved by the Validator or the Executive Board or which will bring them into compliance with the International Rules.
- (b) If any of the Program Documents are amended or revised pursuant to subsection (a) above, the Program Entity shall ensure that, as soon as practically possible, the operation of the Program is made compliant with such amendments or revisions and, in particular, the Program Entity shall implement any revised or amended Monitoring Plan.
- (c) The Trustee, in consultation with the Program Entity, shall prepare or arrange for preparation of the CDM Operations Plan and any amendments or revisions thereto, or as otherwise provided in the ERPA. The Program Entity shall cooperate with the Trustee to ensure that the CDM Operations Plan is consistent with the Program Documents and with the International Rules.
- (d) The Program Entity shall ensure that, as soon as practically possible, the operation of the Program is made compliant with any amendments or revisions of the CDM Operations Plan.

#### Section 6.03 *Addition of Project Participants*

Each Party shall, upon the reasonable request of the other Party at any stage of the Program, execute, within thirty (30) days of such request, any documentation necessary to add additional Project Participants to the Program, provided that any request by the Trustee to add a Fund Participant as a Project Participant shall be deemed to be a reasonable request.

## ARTICLE VII

### Distribution Letter

#### Section 7.01 *Distribution Letter*

- (a) The Focal Point shall prepare the Distribution Letter as required by the International Rules in accordance with the Trustee's entitlements under the ERPA and shall ensure that the Verifier submits the Distribution Letter to the Executive Board.

- (b) If either Party is required to sign the Distribution Letter under the International Rules, it shall, within fifteen (15) days of the Focal Point's written request, sign and return such Distribution Letter to the Focal Point.

## **ARTICLE VIII**

### **Registration, Verification and Certification**

#### **Section 8.01**      *Registration*

- (a) The Trustee, shall, in consultation with the Program Entity and any other relevant entities, arrange for the Validation of the Program and shall contract with a Validator for that purpose and shall submit the Program Activity to the Executive Board for Registration.
- (b) The Parties agree to:
  - (i) cooperate in order to obtain Registration and all other approvals of the Program Activity; and
  - (ii) seek the Crediting Period specified in the ERPA.

#### **Section 8.02**      *Verification and Certification*

- (a) The Trustee shall, in consultation with the Program Entity, or as otherwise provided in the ERPA, arrange for Verification and Certification of all GHG Reductions generated by the Program during the first two (2) years of the Term and during that period shall arrange for one Verification and Certification with respect to each Reporting Year and shall contract with a Verifier for these purposes..
- (b) Following the expiry of the period specified in Section 8.02(a) under the end of the Term, or if there should be more than one Verification or Certification during the first two (2) years of the Term, the Program Entity shall arrange for Verification and Certification of all GHG Reductions generated by the Program and shall arrange for one or more Verifications (and Certifications) with respect to each Reporting Year during that period and shall contract with a Verifier for these purposes, bearing the costs of such Verification and Certification.

## **ARTICLE IX**

### **Program Operation and Management**

#### **Section 9.01**      *Program Operation*

The Program Entity shall in operating the Program:

- (a) promptly notify the Trustee of the occurrence of any event that makes it unlikely that the Program Entity will be able to comply with its obligations under this Agreement, including, but not limited to, its obligation to deliver the Annual Amounts and Cumulative Amounts of Contract CERs each Reporting Year in accordance with the ERPA, or any actual breach of such obligations;

- (b) keep the Trustee informed of the progress of development of the Program;
- (c) inform the Trustee of any modification envisaged to the Program that would require a request for modification of the Program Design Documents;
- (d) provide to the Trustee all information requested by the Trustee in respect of the operation of the Program;
- (e) carry out the Program in compliance with the World Bank Operational Policies;
- (f) operate the Program in accordance with the Trustee's reasonable instructions;
- (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, including by establishing maintaining such data measurement and collection systems as are necessary;
- (h) ensure the Program is maintained and prepared to allow for Verification as required by the CDM Operations Plan;
- (i) provide the Trustee and its nominees with access to the Land and all relevant records without interference for the purposes of this Agreement;
- (j) promptly notify the Trustee of any compulsory acquisition of the Land;
- (k) not sell, lease or create any Encumbrance in, the Assets, without the prior written consent of the Trustee;
- (l) not destroy or damage the Assets and ensure that its contractors, employees or others do not destroy or damage the Assets;
- (m) satisfy all obligations under all licenses, permits, consents and authorizations required to implement the Program;
- (n) permit the Trustee and its representatives to inspect all of the Program Entity's accounts and records and other documents in relation with the Program and to have them audited by, or on behalf of, the Trustee and for the cost and account of the Trustee; and
- (o) not engage in, or authorize or permit any affiliate or any other person acting on its behalf to engage in, any Sanctionable Practice. The Program Entity further covenants that should the Trustee notify the Program Entity of its concerns that there has been a violation of the provisions of this Section or of Section 12.02 (k) of this Agreement, it shall cooperate in good faith with the Trustee and its representatives in determining whether such a violation has occurred, and shall respond promptly and in reasonable detail to any notice from the Trustee, and shall furnish documentary support for such response upon the Trustee's request.

**Section 9.02**      *Sub-Project Operation*

- (a) The Program Entity shall keep the Trustee regularly informed about the progress of the implementation of the Sub-Projects and inform the Trustee immediately upon becoming aware of any material delay in the commissioning of a Sub-Project;
- (b) The Program Entity shall take all necessary steps to ensure that the Sub-Projects are developed and implemented in accordance with the Program Design Documents and this Agreement;
- (c) The Program Entity shall enter into a Sub-Project Agreement for each Sub-Project with each Sub-Project Entity substantially in the form of Schedule 4 of the ERPA, only with the prior written consent of the Trustee which shall not be unreasonably withheld;
- (d) The Program Entity shall be responsible for ensuring that each Sub-Project Entity:
  - (i) has implemented all applicable requirements of the CDM Operations Plan;
  - (ii) implements its Sub-Project in accordance with the International Rules;
  - (iii) installs, operates and maintains the facilities and equipment and retains staff necessary for gathering all such data as may be required by the CDM Operations Plan;
  - (iv) establishes and maintains data measurement and collection systems for all indicators listed in the CDM Operations Plan;
  - (v) holds full title to all CERs generated by the Sub-Projects at the time that such CERs are issued to the Program Entity and that title is transferred to the Buyer Participants in accordance with this Agreement;
  - (vi) observes, implements and meets all other requirements contained in the CDM Operations Plan, in particular those pertaining to environmental and social performance and operational management systems; and
  - (vii) maintains and prepares its Sub-Project to allow for Verification and Certification.
- (e) The Program Entity shall:
  - (i) provide training to the Sub-Project Entities to ensure that each Sub-Project Entity is capable of complying with Section 9.02;
  - (ii) collect, compile and record in respect of each Sub-Project all information required under the CDM Operations Plan;
  - (iii) retain full responsibility for the implementation of the CDM Operations Plan;
  - (iv) take all necessary steps to ensure that the Sub-Projects are developed and implemented in accordance with this Agreement;
  - (v) ensure that each Sub-Project Entity carries out its Sub-Project in accordance with the International Rules, CDM Operations Plan and the agreed Monitoring Plan;

- (vi) enter into Sub-Project Agreements in the form provided by the Trustee once these have been previously agreed with the Trustee;
- (vii) provide to the Trustee copies of all Sub-Project Agreements executed by the Program Entity in respect of the Program, within five (5) calendar days of their execution;
- (viii) manage the administration of each Sub-Project Agreement such that both the Program Entity and the relevant Sub-Project Entity fulfill its obligations under each such Sub-Project Agreement;
- (ix) immediately notify the Trustee of any actual or suspected breach of any Sub-Project Agreement executed under this Agreement, whether such breach occurs in respect of the Program Entity or a Sub-Project Entity;
- (x) communicate with the Host Country, the Executive Board and all other relevant authorities to obtain a Written Approval with the respect to the Program Activity and to fulfill all approval and notification requirements under the International Rules with respect of the addition of Sub-Projects to the Program, as appropriate;
- (xi) provide to the Trustee a Monitoring Plan for the Program, which shall be agreed between the Parties and which shall include a database with technical and financial details of each Sub-Project, including the frequency of reporting, quality assurance standards for the Sub-Projects;
- (xii) ensure that each Sub-Project Entity satisfies any obligations in respect of applications for all licenses, permits, consents and authorizations required to implement its Sub-Project;
- (xiii) ensure that each Sub-Project Entity implements and operates its Sub-Project in compliance with the World Bank Operational Policies, including without limitation the Environmental Management Plan, Resettlement Plan and any other requirement resulting from the application of the World Bank Operational Policies;
- (xiv) cooperate fully with the Trustee, the Program Entity, and all Validators and Verifiers engaged under this Agreement, in respect of the implementation of the CDM Operations Plan, the Validation of the Program and the Verification and Certification of GHG Reductions generated by it; and
- (xv) shall not enter into a Sub-Project Agreement for such Sub-Project or any related agreement with a Sub-Project Entity or any other entity that is a Debarred Entity.

**Section 9.03      *Non-Complying Sub-Projects***

- (a) If the Program Entity is unable to ensure that a Sub-Project complies with the requirements of Section 9.02 the Program Entity shall immediately provide notice to the Trustee to this effect (a "**Non-Compliance Notice**").
- (b) The Program Entity shall also provide a Non-Compliance Notice to the Trustee immediately:
  - (i) in the event of dissolution, liquidation, insolvency or bankruptcy (voluntary or involuntary) of the Sub-Project Entity;

- (ii) in the event that the Program Entity or a Sub-Project Entity fails to perform its obligations under any executed Sub-Project Agreement ;
- (iii) if a Sub-Project Entity fails to enter into or obtain in a timely manner, or any default under, any material contract, permit, consent or license relating to the ownership, development, construction, finance, operation or maintenance of the relevant Sub-Project (or any portion thereof) that would materially adversely affect its ability to perform its obligations under a Sub-Project Agreement or prevent the Program Entity from fulfilling its obligations under this Agreement

**Section 9.04      *Addition of Compliance Sub-Projects***

- (a) If the Program Entity is of the reasonable opinion that it may not be able to transfer the requisite number of Contract CERs and/or Option CERs to the Trustee due to circumstances in relation to Sub-Projects with respect to which it has provided a Non-Compliance Notice, it may propose to the Trustee one or more CPAs expected to individually or cumulatively generate at least the volume of CERs per year of operation indicated in this Agreement ("**Compliance Sub-Projects**").
- (b) The Trustee may, at its discretion, accept a Compliance Sub-Projects and, upon such acceptance:
  - (i) the Parties shall prepare Program Design Documents for each Sub-Project in the Compliance Sub-Projects and arrange for Validation and Registration of the relevant in the Compliance Sub-Projects, as required by the International Rules;
  - (ii) such CPAs shall be considered as Sub-Projects and part of the Program under this Agreement and this Agreement shall apply to the Program Entity in respect of such Sub-Projects mutatis mutandis as if they had originally been included in the Program; and
  - (iii) any costs arising from activities identified in subparagraph (i) shall be borne by the Program Entity.

**Section 9.05      *Sub-Project Inventory***

- (a) The Program Entity shall at all times maintain an inventory listing all Sub-Projects included in the Program (the "**Sub-Project Inventory**"), including an identification of those Sub-Projects included in the Program.
- (b) The Sub-Project Inventory shall, for each Sub-Project;
  - (i) record the name and other relevant details of the Sub-Project and Sub-Project Entity;
  - (ii) record the date the Sub-Project was included in the Program or the date a Non-Compliance Notice was issued, including reasons for the Non-Compliance Notice;

- (iii) record the number of GHG Reductions the Sub-Project has generated each Reporting Year and any other data for the Sub-Project required by the CDM Operations Plan; and
  - (iv) contain a copy of the Sub-Project Agreement for that Sub-Project.
- (c) In each Annual ER Report the Program Entity shall provide a summary to the Trustee of any changes to the Sub-Project Inventory immediately preceding the Annual ER Report.
- (d) The Sub-Project Inventory shall be made available to the Verifier and Trustee upon request.

**Section 9.06      *Program Entity Liability for Sub-Project***

The Program Entity shall be fully responsible and strictly liable for any costs, loss or damage incurred by the Trustee as a result of any conduct on the part of a Sub-Project Entity of a Sub-Project with respect to which a Non-Compliance Notice was *not* issued at the time that the Trustee incurred such costs, loss or damage, if the Program Entity knew, or should have known, that the Sub-Project did not comply with the requirements of this Part B at the relevant time.

**ARTICLE X**

**Communication**

**Section 10.01      *Communication with Respect to CERs***

- (a) Unless otherwise provided in the ERPA, the Trustee and the Program Entity shall serve as joint Focal Points for communications with respect to the Program, although, the Trustee shall not be liable for any loss or damage caused to the Program Entity or any Third Party as a result of any acts or omissions with regard to such communications, unless such loss or damage was caused by the Trustee's Intentional Breach.
- (b) If for any reason any CERs that are not or cannot be issued and forwarded as directed by the Trustee or if the Trustee has not provided details of a Registry Account by the date on which such CERs are to be issued and forwarded, then the Program Entity shall, at the request of the Trustee, make reasonable endeavours to open an account in the CDM Registry and shall hold the relevant CERs on trust in that account for the absolute benefit of the Trustee or such other party as the Trustee shall direct, and shall:
  - (i) deal with those CERs in accordance with any directions of the Trustee; and
  - (ii) give all assistance reasonably required to have those CERs delivered to or to the order of the Trustee.

**ARTICLE XI**

**Force Majeure Events**

**Section 11.01      *Notice of Force Majeure Event***

- (a) If a party ("**Affected Party**") is, or anticipates that it will be, unable to perform an obligation under the ERPA 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 11.02**      *Effect of Force Majeure Event*

- (a) If the Affected Party is unable to perform an obligation under the ERPA 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 the ERPA.
- (c) If the Program Entity fails to deliver Contract CERs due to a Force Majeure Event, then:
  - (i) the Maximum Option Volume shall increase by the number of CERs which the Program Entity failed to deliver as a result of the Force Majeure Event; and
  - (ii) the price payable by the Trustee to purchase the CERs referred to in subsection (i) as Option CERs shall be the Unit Price, rather than the Exercise Price.
- (d) If by reason of a Force Majeure Event the Affected Party is unable to perform an obligation under the ERPA (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 the ERPA by the end of that period, the Non-Affected Party may terminate the ERPA by written notice to the Affected Party and:
  - (i) the Trustee shall pay the Program Entity for any Contract CERs and Option CERs delivered to the Trustee for which no payment has been made; and
  - (ii) the Trustee may recover from the Program Entity any Taxes paid and any advance payments made but not deducted from Annual Payments in relation to the Program, which the Trustee has incurred until the date of termination.

## **ARTICLE XII**

### **Covenants, Representations and Warranties**

#### **Section 12.01**      *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; and
- (c) it has taken all necessary action to authorize the entry into, and the observance and performance of, its obligations under the ERPA.

#### **Section 12.02      *Program Entity Representations and Warranties***

The Program Entity represents and warrants, as of the date of the ERPA, and again upon both the production of the GHG Reductions and the delivery of Contract CERs or Option CERs, that:

- (a) it is a financially viable entity and is not insolvent or at risk of becoming insolvent;
- (b) all of the information provided by the Program Entity to the Trustee regarding the Program and Program Activity and in particular, in the Program Design Documents, is true and correct and may be relied upon by the Trustee;
- (c) there are no actions, suits or proceedings pending or, to the Program Entity's knowledge, threatened against or affecting the Program Entity, the Program Activity or the Contract CERs or Option CERs before any court or administrative body or arbitral tribunal which could reasonably be expected to affect materially and adversely the ability of the Program Entity to meet and carry out its obligations under the ERPA;
- (d) it has no outstanding agreements or liabilities, contingent or otherwise (including Taxes), that could reasonably be expected to affect materially and adversely the ability of the Program Entity to meet and carry out its obligations under the ERPA;
- (e) to the best of the Program Entity's knowledge, no litigation is pending or threatened against the Program Entity in respect of the Program which could materially adversely affect the Program Entity's ability to fulfill its obligations under this Agreement;
- (f) it does not intend to Register the Program as a separate CDM Program Activity or as a CPA in a separate POA, and has not done so;
- (g) 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 Program;
- (h) it has full legal and beneficial title to, or it has exclusive rights to, all of the GHG Reductions, Contract CERs and Option CERs, free of any interest or claim of a Third Party other than in accordance with the ERPA;
- (i) it has not sold, transferred, assigned, licensed, disposed of, granted or otherwise created any interest in the Contract CERs or Option CERs (including any GHG Reductions or ERs related thereto) generated by the Program Activity to any Third Party other than in accordance with the ERPA;

- (j) 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 Program (or any portion thereof); and
- (k) 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 Program) none of its shareholders, directors, officers, employees, agents, affiliates nor any Sub-Project Entity, has engaged in any Sanctionable Practice.

**Section 12.03      *Sub-Project Representations and Warranties***

- (a) In addition to the representations and warranties made by the Program Entity in Section 12.02 above, the Program Entity represents and warrants in respect of each Sub-Project, as of the date of this Agreement, and again upon both the production of the GHG Reductions and the delivery of Contract CERs and/or Option CERs, that:
  - (i) to the best of the Program Entity's knowledge, no litigation is pending or threatened against the Program Entity in respect of the Sub-Project which could materially adversely affect the Program Entity's ability to fulfill its obligations under this Agreement;
  - (ii) to the best of the Program Entity's knowledge, there are no outstanding agreements or liabilities that could materially affect the ability of the relevant Sub-Project Entity to meet its obligations under a Sub-Project Agreement executed pursuant to this Agreement;
  - (iii) the Sub-Project Entity has not Registered the Program as a separate CDM Program activity or as a CPA in a separate POA; and
  - (iv) the Sub-Project Entity 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 Program.
- (b) If the Program Entity is no longer able to make the representations and warranties in Section 12.03(a) on behalf of a Sub-Project, the Program Entity shall provide the Trustee with a Non-Compliance Notice with respect to the relevant Sub-Project.

**Section 12.04      *Sanctionable Practices***

The Program Entity shall not engage in, or authorize or permit any affiliate or any other person acting on its behalf to engage in, any Sanctionable Practice. The Program Entity further covenants that should the Trustee notify the Program Entity of its concerns that there has been a violation of the provisions of this Section or of Section 12.02 (k), it shall cooperate in good faith with the Trustee and its representatives in determining whether such a violation has occurred, and shall respond promptly and in reasonable detail to any notice from the Trustee, and shall furnish documentary support for such response upon the Trustee's request.

## ARTICLE XIII

### Delivery Failure, Events of Default and Remedies

#### Section 13.01 *Events of Default*

- (a) The following events are Events of Default on the part of the Program Entity:
- (i) Delivery Failure;
  - (ii) the dissolution, liquidation, insolvency or bankruptcy (voluntary or involuntary) of the Program Entity or change in the ownership structure of the Program Entity in a manner that detrimentally affects its ability to perform its obligations under the ERPA in the reasonable opinion of the Trustee;
  - (iii) material delay in the development of the Program or other materially adverse change in the status of the Program which will prevent the Program from being commissioned by the Expected Program Commissioning Date;
  - (iv) material breach by the Program Entity of any other term of the ERPA;
  - (v) failure to observe, implement and meet all requirements contained in the Monitoring Plan, in the CDM Operations Plan or in the Environmental Management Plan; and
  - (vi) determination by the World Bank that the Program 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.
- (b) The following events are Events of Default on the part of the Trustee:
- (i) failure to make payment due under the ERPA, which is not reasonably in dispute, within sixty (60) days after delivery of a notice from the Program Entity to the Trustee that such amount is past due; and
  - (ii) material breach by the Trustee of any other term of the ERPA.

#### Section 13.02 *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 13.01 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 the following information, to the extent possible:
- (i) full details of the Event of Default or anticipated Event of Default; and
  - (ii) where the Event of Default is a Delivery Failure, the expected shortfall of Contract CERs or Option CERs.

**Section 13.03**      *Trustee's Remedies for an Event of Default*

- (a) If the Program Entity is the defaulting Party and the Program Entity fails to cure the Event of Default to the reasonable satisfaction of the Trustee, within ninety (90) days of the Default Notice, the Trustee may, at its discretion:
- (i) if the Event of Default is a Delivery Failure which is not an Intentional Breach by the Program Entity, or if the Event of Default is a delay in the Expected Program Commissioning Date:
    - (A) allow the Program Entity to deliver any shortfall of CERs in the following Reporting Year(s); or
    - (B) reduce one or more Annual Amounts 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, if they are purchased as Option CERs, shall be the Unit Price and not the Exercise Price.
  - (ii) if the Event of Default (including without limitation one arising from a Delivery Failure) is a result of an Intentional Breach or Gross Negligence by the Program Entity, terminate the ERPA and recover any Taxes paid and any advance payments made and not deducted from Annual Payments, which the Trustee has incurred until the date of termination, *plus* damages from the Program Entity in an amount that represents any losses, damages and costs suffered by the Trustee as a result of the Event of Default by the Program Entity, which shall be calculated as:
    - (A) if the Spot Market Price for CERs is higher than the Unit Price, an amount equal to:
      - (1) the number of Contract CERs or Option CERs outstanding (i.e. the volume of Contract CERs or exercised Option CERs that have not been transferred as at the termination date);
      - times*
      - (2) the Spot Market Price *minus* the Unit Price or the Exercise Price, as relevant; or
    - (B) if the Spot Market Price for CERs is lower than the Unit Price, an amount equal to:
      - (1) the number of Contract CERs or Option CERs outstanding (i.e. the volume of Contract CERs or exercised Option CERs that have not been transferred);
      - times*
      - (2) the Unit Price or the Exercise Price, as relevant; or

(iii) if the Event of Default (including without limitation a Delivery Failure) is a result of an event of default by a Sub-Project Entity under a Sub-Project Agreement (as defined thereunder):

(A) require by written notice to the Program Entity that the Program Entity propose to the Trustee the inclusion in the Program of a Sub-Project from the Compliance Bundle able to generate a volume of CERs equal to or greater than the volume of CERs not delivered to the Trustee as a result of such Sub-Project Agreement event of default, in which case:

- (1) the Program Entity shall provide written notification to the Trustee of such potential Sub-Projects within five (5) calendar days of receiving the Trustee's notice;
- (2) the Trustee shall provide written notification to the Program Entity of the potential Sub-Projects the subject of the Program Entity's notice to the Trustee in respect of which the Trustee wishes the Program Entity to contract;
- (3) the Program Entity shall use its best endeavors to execute, in accordance with the terms of the ERPA and within one (1) month of receiving the Trustee's written notice, Sub-Project Agreements necessary for such potential Sub-Projects to be included in the Program for the purposes of the ERPA; and
- (4) following such one (1) month period the Trustee shall adjust one or more Annual Amounts and the Maximum Option Volume by an amount equal to the expected generation of Contract CERs and Option CERs to reflect the inclusion in the Program of the new Sub-Projects, provided that the price payable for such included CERs, if they are purchased as Option CERs, shall be the Unit Price and not the Exercise Price; or

(B) reduce one or more Annual Amounts and increase the Maximum Option Volume by an amount equal to the volume of the any reduction in the expected generation of Contract CERs and/or Option CERs by the Program following such default, provided that the price payable for those CERs subject to the reduction, if they are purchased as Option CERs, shall be the Unit Price and not the Exercise Price; or

(C) if the relevant Sub-Project Agreement is terminated and such termination results in, according to the Trustee's reasonable calculations, a reduction of the generation by the Program of Contract CERs of more than fifty percent (50%), calculated with reference to the volume specified in the Registered Program Design Documents, terminate the ERPA and recover any unrecovered Taxes paid and any Advance Payments made

and not deducted from Annual Payments, which the Trustee has incurred until the date of termination.

- (iv) if the Event of Default is an event not those described in subparagraphs (i), (ii) or (iii), terminate the ERPA and recover from the Program Entity any unrecovered Taxes paid and any Advance Payments made and not deducted from Annual Payments, which the Trustee has incurred until the date of termination, with interest accruing at a rate of LIBOR.

#### **Section 13.04      *Program Entity Remedies for an Event of Default***

If the Trustee is the defaulting Party and the Trustee fails to cure the Event of Default within ninety (90) days of the Default Notice, the Program Entity may:

- (a) in the event of a breach under Section 13.01(b)(i), require the Trustee to make any outstanding payments plus interest at a rate of LIBOR; and/or
- (b) terminate the ERPA.

### **ARTICLE XIV**

#### **Other Termination Events**

#### **Section 14.01      *Withdrawal from Kyoto Protocol or Termination of Fund***

- (a) The Trustee may terminate the ERPA by notice in writing to the Program Entity if:
  - (i) the Host Country withdraws from either the UNFCCC or the Kyoto Protocol; or
  - (ii) the Fund is to terminate and the Trustee does not assign its rights or novate its obligations pursuant to Section 15.06; or
  - (iii) the World Bank or the International Development Association has declared the Program 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 Program 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 Program 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 Program Entity has engaged 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) In any of the above cases, the Trustee shall:
  - (i) notify the Program Entity at least three (3) months prior to termination; and

- (ii) if the termination event is an event described in Paragraph 14.01(a)(i) or (ii) above, after paying or adequately providing for payment of all liabilities, and upon receipt of all releases necessary, terminate the ERPA; or
  - (iii) if the termination event is an event described in Paragraph 14.01(a)(iii) above, terminate the ERPA and recover from the Program Entity any unrecovered costs and, if applicable, any Taxes paid and any Advance Payments made and not deducted from the Annual Payments, which the Trustee has incurred until the date of termination, with interest accruing at a rate of LIBOR.
- (c) In the event of termination under this Article, neither Party shall have surviving obligations or liabilities to the other Party under this ERPA following the date of termination except as provided for in Section 15.11.

## **ARTICLE XV**

### **Miscellaneous Provisions**

#### **Section 15.01      *Amendments to the ERPA***

Except as otherwise provided herein, the ERPA may not be amended except by a written agreement executed by the Trustee and the Program Entity.

#### **Section 15.02      *Governing Law***

The ERPA will be governed and construed in accordance with 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) and each Party agrees to submit to the jurisdiction of the dispute resolution body described in Section 15.03.

#### **Section 15.03      *Dispute Resolution***

- (a) The Trustee and the Program 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 15.04**      *IBRD Capacity; Non-Recourse; Privileges and Immunities*

- (a) The ERPA is entered by the IBRD, not personally or in its individual capacity, but as trustee of the Fund.
- (b) The Program Entity agrees to look solely to the assets of the Fund for the enforcement of any obligations, claims or liabilities under or in connection with the ERPA or the Program, as neither the Trustee, IBRD, any of its affiliated entities, the Fund Participants, other beneficiaries of the Fund, nor any of their respective officers, directors, employees, partners, members or shareholders, assume or shall be subject to any personal liability for any of the obligations, claims or liabilities entered into, or incurred hereunder, on behalf of the Fund.
- (c) Nothing in the ERPA shall be considered to be a waiver of any privileges or immunities of the IBRD, the Trustee, or, where applicable, the Fund Participants or their respective officers, employees, representatives or agents, under the Articles of Agreement of the IBRD or any applicable law. All such privileges and immunities are expressly reserved.

**Section 15.05**      *Evidence of Authority*

The Parties shall furnish to each other sufficient evidence of the authority of the person or persons who will, on their behalf, take any action or execute any documents required or permitted to be taken or executed by the respective Parties under the ERPA.

**Section 15.06**      *Assignment and Novation*

- (a) The Program Entity may not assign or transfer its rights or obligations under the ERPA to any Third Party without the prior written consent of the Trustee, such consent not to be unreasonably withheld, except that the Program Entity may assign its right to receive payments from the Trustee for Contract CERs or Option CERs to a Third Party without the consent of the Trustee. Any other such purported assignment or transfer without such consent shall be deemed ineffective and void.
- (b) The Trustee may at any time:
  - (i) assign all or a part of its rights under the ERPA (including, but not limited to, the right to receive CERs and its rights under the Option) to any one or more Third Parties ("**Assignee(s)**"); and
  - (ii) novate its obligations under the ERPA (including, without limitation, the obligation to make the Annual Payments) to a Fund Participant or other Third Party whom the Trustee has reasonably determined has the skills and capacity (including financial capacity) to carry out the Trustee's obligations under the ERPA ("**Substituting Party**"),

and the Program Entity irrevocably consents to such assignment and novation by the Trustee.

- (c) The Program Entity irrevocably appoints the Trustee, the senior management of the Trustee, and the legal counsel of the Trustee, severally, to execute on behalf of the Program Entity an assignment substantially in the form of Schedule 2 or a novation agreement substantially in the form of Schedule 3. The Trustee shall promptly notify the Program Entity of any assignment or novation.

- (d) In the event of such assignment or novation as described in paragraph (b) above, the Program Entity shall continue to perform its obligations hereunder for the benefit of such Assignee(s) or Substituting Party, it being understood that any reference to the Trustee, the Fund, or the Fund Participants herein, shall, following such assignment or novation, be deemed to be a reference to such Assignee(s) or the Substituting Party, as the case may be.

**Section 15.07**      *Disclosure of information*

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:

- (a) 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;
- (b) the disclosing Party has been given prior written consent by the other Party to make that disclosure; or
- (c) the Confidential Information is required to be disclosed:
  - (i) 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
  - (ii) under any applicable laws and regulations or by any subpoena or similar legal process.

Notwithstanding the foregoing, the Program Entity agrees that the Trustee may disclose the Confidential Information to the Fund Participants.

This Section shall survive for a period of five (5) years after any termination under this Agreement, unless the Parties otherwise agree in writing.

**Section 15.08**      *Buyer Participant Payment Failure*

In addition to Section 15.04, the Program Entity agrees and understands that:

- (a) the payment obligations of the Trustee under or in connection with this Agreement are limited to assets of the Fund, which consist primarily of the funding to be provided to the Trustee by Buyer Participants. Under the Instrument, Buyer Participants are required to make payment to the Trustee up to their respective contribution to the Fund upon periodic demands for payment issued by the Trustee. In the event one or more Buyer Participants fails to make payment to the Trustee for whatever reason ("**Buyer Participant Payment Failure**"), the Trustee may not have sufficient funds available to meet its payment obligations when due under this Agreement, in which case the Trustee shall not have any liability whatsoever in connection with such lack of available funding; and
- (b) the payment obligations of each Buyer Participant towards the Trustee under and in connection with the Instrument are separate and no Fund Participant is obliged to make additional payments to the Trustee in excess of its respective contribution to the Fund to compensate for any shortfall in funds available to the Trustee to make payments under or in connection with this Agreement.

The Program Entity represents and warrants that, prior to the execution of this Agreement, it has availed itself or has been provided with all the information which the Program Entity considered necessary to assess the risk of the occurrence of a Buyer Participant Payment Failure, and that the Program Entity understands this risk.

**Section 15.09**      *Sale and Purchase Only*

The Trustee and the Program Entity hereby irrevocably acknowledge that the relationship created pursuant to the ERPA and these General Conditions (including any terms implied by law) is one of buyer and seller on an arm's length basis. For the avoidance of all doubt, the Parties agree (and have relied upon the agreement) that there are no fiduciary duties owed to one another by virtue of the ERPA or these General Conditions howsoever arising.

**Section 15.10**      *Third Party Rights*

The Parties do not intend that any term of these General Conditions or the ERPA 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 15.11**      *Survival of Provisions*

The respective rights and obligations of the Parties contained within Article I, Article II, Section 5.03(c), Article XII, Article XIII, Section 14.01, Section 15.02, Section 15.04, Section 15.07, , Section 15.09 and Section 15.11 of these General Conditions will survive any termination under the ERPA, unless the Trustee provides notice in writing to the Program Entity to the contrary.

**Section 15.12**      *Entire Agreement*

These General Conditions and the ERPA together represent the whole and only agreement between the Parties in relation to the sale and purchase of the Contract CERs and the Option CERs and supersede 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 15.13**      *Execution in Counterparts; Language*

The ERPA shall be executed in two counterparts in the English language, each of which shall be an original.

## SCHEDULE 1: ASSIGNMENT NOTICE

### [IBRD LETTERHEAD]

To: [Program Entity]  
[Address Details]

[date]

#### **Assignment of Rights under [Insert Fund] Emission Reduction Purchase Agreement**

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 [Insert Fund] ("**IBRD**" or the "**Trustee**") or [Nominee or Assignee of the Options 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: 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.

By contract with [Third Party] dated [insert date] the IBRD has assigned the following rights under the Agreement to [Third Party]:

[insert rights: for example, the right to receive the Contract CERs, the right to exercise the Option etc]

A copy of the relevant provisions of this contract is annexed hereto.

The contact details for [Third Party] are:

[insert contact details]

Please copy any further correspondence regarding the Agreement to [Third Party] at the contact details provided above.

Please sign and return this letter as soon as possible to acknowledge the assignment.

Yours sincerely

---

**For and on behalf of  
the International Bank for Reconstruction  
and Development, as Trustee of the  
[Insert Fund]**

**Acknowledgement**

The Program Entity acknowledges receipt of a letter from the IBRD dated [*date*] confirming assignment of certain rights under the Agreement to [Third Party].

Signature

\_\_\_\_\_  
**For and on behalf of [Program Entity]  
by its Attorney**

Date:

\_\_\_\_\_

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## SCHEDULE 2: NOVATION AGREEMENT

This agreement is made on [## specify date ##]

between

The International Bank for Reconstruction and Development, as Trustee for the [Insert Fund] ("Trustee")

[party to whom interest is being assigned or novated] ("Substituting Party")

and

[Program Entity] ("Program Entity")

### Recitals:

- A. This Agreement supplements a Certified Emission Reduction Purchase Agreement made between the Trustee and the Program Entity dated [ ] (the "**Contract**").
- B. The Trustee wishes to be released and discharged from the Contract and the Program Entity has agreed to release and discharge the Trustee upon the Substituting Party undertaking to perform the Contract and to be bound by its terms.
- C. The Substituting Party wishes to assume the Trustee's rights and obligations under the Contract.

### 1. Assumption of obligations

#### 1.1 The Substituting Party's performance

The Substituting Party:

- (a) is substituted for the Trustee as a Party to the Contract on and from [date novation takes place] (the "**Effective Date**");
- (b) undertakes to perform the Trustee's obligations and be bound by the Trustee's liabilities under the Contract arising on and after the Effective Date; and

#### 1.2 The Trustee's performance

The Trustee:

- (a) consents to the Substituting Party's substitution as a Party to the Contract on and from the Effective Date; and
- (b) agrees to comply with all its obligations and be bound by all its liabilities due and arising under the Contract up to but not including the Effective Date;
- (c) agrees to execute any documentation necessary to add the Substituting Party as a project participant in the Program to which the Contract relates.

## **2. The Program Entity's consent**

### **2.1 The Program Entity's acknowledgments**

The Program Entity:

- (a) acknowledges that the Contract is in full force and effect;
- (b) accepts the Substituting Party's substitution for the Trustee as a Party to the Contract on and from the Effective Date;
- (c) agrees that, on and from the Effective Date, the Substituting Party shall be bound by present and future obligations and liabilities and shall be entitled to present and future benefits of (and causes of action relating to) the Contract, as if the Substituting Party had been originally named in the Contract as the Trustee; and
- (d) acknowledges that the Substituting Party shall not be entitled to the benefits of, or be responsible for any obligations and liabilities, under the Contract for the period before the Effective Date.

## **3. Releases**

### **3.1 The Trustee's release**

As from the Effective Date, the Trustee releases and discharges the Program Entity from all the Program Entity's obligations and liabilities to the Trustee under or in connection with the Contract, except for:

- (a) any obligation, liability or cause of action arising under or in connection with the Contract before the Effective Date which is unsatisfied; or
- (b) any default by the Continuing Party under the Contract which occurred before the Effective Date.

### **3.2 The Program Entity's release**

As from the Effective Date, the Program Entity releases and discharges the Trustee from all the Trustee's obligations and liabilities under or in connection with the Contract, except for:

- (a) any obligation, liability or cause of action arising under or in connection with the Contract before the Effective Date which is unsatisfied; or
- (b) any default by the Continuing Party under the Contract which occurred before the Effective Date.

**Signed** for and on behalf of )  
**International Bank for Reconstruction and** )  
**Development, as Trustee for the** [*Insert*  
*Fund*] **Fund**  
by its duly authorized representative )  
in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorized representative

\_\_\_\_\_  
Name of witness (please print)

\_\_\_\_\_  
Name of authorized representative  
(please print)

**Signed** for and on behalf of )  
**[Substituting Party]** )  
by its attorney )  
in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Name of witness (please print)

\_\_\_\_\_  
Name of authorized representative  
(please print)

**Signed** for and on behalf of )  
**[Program Entity]** )  
by its duly authorized representative )  
in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorized representative

\_\_\_\_\_  
Name of witness (please print)

\_\_\_\_\_  
Name of authorized representative  
(please print)



### **SCHEDULE 3: IBRD CARBON FINANCE ANTI-CORRUPTION GUIDELINES**

The purpose of these Guidelines is to clarify the meaning of the terms “Corrupt Practices,” “Fraudulent Practices,” “Coercive Practices,” “Collusive Practices” and “Obstructive Practices” in the context of World Bank Guarantee (Partial Risk Guarantee and Partial Credit Guarantee) operations and carbon finance transactions, where the World Bank, as trustee of a carbon fund, purchases emission reductions under an emission reductions purchase agreement.

#### **1. CORRUPT PRACTICES**

A “Corrupt Practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

##### **INTERPRETATION**

- A. Corrupt practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of corrupt practices.
- B. It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payor's books and records. Similarly, an investor will not be held liable for corrupt or fraudulent practices committed by entities that administer bona fide social development funds or charitable contributions.
- C. In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute corrupt practices unless the action violates applicable law.
- D. Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.
- E. The World Bank Group does not condone facilitation payments. For the purposes of implementation, the interpretation of “Corrupt Practices” relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.

#### **2. FRAUDULENT PRACTICES**

A “Fraudulent Practice” is any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial benefit or to avoid an obligation.

## **INTERPRETATION**

- A. An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a “Fraudulent Practice” for purposes of World Bank Group sanctions.
- B. Fraudulent Practices are intended to cover actions or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in World Bank Guarantee or carbon finance operations. Similarly, other illegal behavior is not condoned, but will not be sanctioned as a Fraudulent Practice under the World Bank sanctions program as applicable to World Bank Guarantee or carbon finance operations.

### **3. COERCIVE PRACTICES**

A “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

#### **INTERPRETATION**

- A. Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.
- B. Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

### **4. COLLUSIVE PRACTICES**

A “Collusive Practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

#### **INTERPRETATION**

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

### **5. OBSTRUCTIVE PRACTICES**

An “Obstructive Practice” is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice, and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of the World Bank’s access to contractually required information in connection with a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice.

## **INTERPRETATION**

Any action legally or otherwise properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

## **GENERAL INTERPRETATION**

A person should not be liable for actions taken by unrelated third parties unless the first party participated in the prohibited act in question.

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