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**International Bank for  
Reconstruction and Development**

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

**Clean Development Mechanism Projects**

**Dated February 1, 2006**

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## **PART A: GENERAL CONDITIONS**

### **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:

**“Adjustment Amount”** has the meaning given to that term in Section 6.04;

**“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 ERs which the Project Entity is to transfer to the Trustee in any given Reporting Year as Contract ERs in accordance with the ERPA;

**“Annual ER Report”** means a report provided by the Project Entity setting out:

- (i) the number of GHG Reductions generated by the Project 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 Project 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 Project Entity each Reporting Year for transferred Emission Reductions, calculated in accordance with the ERPA;

**“Approved Methodology”** means the Baseline and Monitoring methodology for the Project Activity as at the date of Registration;

**“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 GHG that would have occurred in the absence of the Project Activity, subject to any revision by the Trustee as required by the International Rules in order to obtain Registration of the Project Activity or the renewal of the Crediting Period;

**“Call Option”** means the right, but not the obligation, of the Trustee (or its assignee or nominee) to acquire Option ERs up to the Maximum Option Volume for the Exercise Price, in accordance with Article IV;

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

**“CDM Operations Plan”** means a plan agreed by the Trustee and the Project 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 Project Activity;

**“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;

**“Certified Emission Reduction”** or **“CER”** means a unit issued by the Executive Board on the basis of Verification with respect to a CDM project activity in accordance with the International Rules;

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

**“Compliance Bundle”** has the meaning given to that term in Section 16.06(a);

**“Contract ERs”** means the ERs referred to as such 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 Project 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;

**“Default Notice”** means the notice that either Party shall present to the other Party upon becoming aware of any of the Events of Default in accordance with Section 13.02;

**“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 Project Activity or to verify GHG Reductions from CDM project activities in the same sector as the Project Activity or, for the purposes of Verification, an organization which, in the reasonable opinion of the Trustee, has the requisite capacity to perform Verification of the Project Activity;

**“Dispute”** has the meaning given to it in Section 15.031(a);

**“Distribution Letter”** means the letter which will be submitted to the Executive Board as required by the International Rules and which instructs the Executive Board to issue to the Registry Account(s) nominated by the Trustee CERs equivalent to the Contract ERs and/or Option ERs;

**“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;

**“Environmental Management Plan”** means the plan submitted by the Project Entity and approved by the IBRD that describes the mitigation, monitoring, and institutional measures to be taken by the Project Entity during implementation and operation of the Project and Project Activity to eliminate, offset or reduce adverse environmental and social impacts, in accordance with World Bank Operational Policies;

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

**“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 Project Entity must deliver Option ERs, as nominated in an Exercise Notice;

**“Exercise Notice”** means a notice substantially in the form set out in Schedule 2 by which the Trustee exercises its Call 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 ER, as specified in the ERPA;

**“Expected Project Commissioning Date”** means the date on which the Project 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 Project or the Project Activity;

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

**“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;

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

**“GHG Reduction”** means one metric ton of Carbon Dioxide Equivalent reduced, avoided or sequestered by the Project 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;

**“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: (A) the provision of false or misleading information or representations by that Party, (B) an act or omission made with the intent to breach that Party's obligations under the ERPA, or (C) 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 Project 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;

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

**“Kyoto Protocol and Other Costs”** means costs incurred by the Trustee in relation to the Project Activity other than Project Preparation Costs, including but not limited to costs incurred in relation to (as relevant):

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

**“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 ERs which the Trustee has the right to purchase under the Call Option as specified in the ERPA;

**“Methodology Variation”** means any decrease in the estimated GHG Reductions to be generated by the Project Activity during each Crediting Period when the GHG Reductions estimated in the Original Methodology are compared with the actual GHG Reductions calculated in accordance with the Approved Methodology, as provided in Section 6.04;

**“Monitoring”** means the collection and recording of all relevant data necessary for conducting Verification of the Project Activity in accordance with the CDM Operations Plan;

**“Monitoring Implementation Report”** means a report commissioned by the Trustee to ensure all data collection and management systems required by the CDM Operations Plan are in place to allow subsequent successful Verification of GHG Reductions from the Project Activity;

**“Monitoring Plan”** means the plan referred to as such and incorporated in the PDD;

**“Non-Affected Party”** means, with respect to a Force Majeure Event, the Party not affected by that Force Majeure Event, as described in Section 11.01;

**“Non-Compliance Notice”** has the meaning given to that term in Section 16.02(c);

**“Option ERs”** has the meaning given to that term in the ERPA;

**“Original Methodology”** means the Baseline and Monitoring methodology for the Project Activity as at the date that the Parties execute the ERPA;

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

**“Project”** means the project described in the ERPA;

**“Project Activity”** means the activity described in the PDD;

**“Project Commissioning Date”** means the date on which the Project is fully operational and capable of generating GHG Reductions;

**“Project Design Document”** or **“PDD”** is the document that presents technical and organizational aspects of the Project Activity in accordance with the International Rules;

**“Project Documents”** means together or individually the Project Design Document, the Monitoring Plan, and the Validation Report;

**“Project Entity”** means the Party or Parties specified as such in the ERPA;

**“Project Participant”** means (i) an entity listed as such in the Project Design Document or; (ii) any entity added to the Project 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 Project Activity;

**“Project Preparation Costs”** means any costs incurred by the Trustee in relation to the preparation and the execution of the ERPA, the Project and the Project Activity, including, but not limited to, costs incurred in relation to:

- (i) the initial Project assessment including the environmental, social, financial and legal due diligence costs, and Project review and appraisal costs;
- (ii) the preparation or review of the Project Documents and the CDM Operations Plan;
- (iii) Validation of the Project Activity; and
- (iv) preparation and execution of the ERPA;

**“Purchase Commencement Date”** means the period beginning on the later of:

- (i) whichever of the following events occurs first:
  - (a) the first day of the Crediting Period;
  - (b) the date six (6) months after the Project Activity is submitted to the Executive Board for Registration if the Project Activity proposes to use a methodology previously approved by the Executive Board; or

- (c) the date twelve (12) months after the draft PDD is submitted to the Executive Board for review if the Project Activity proposes to use a methodology other than one previously approved by the Executive Board; and
- (ii) the Project Commissioning Date.

**“Registration”** means the formal acceptance by the Executive Board of the Project Activity as a CDM project activity;

**“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:

- (i) 1 January to 31 December, if the Purchase Commencement Date falls between 1 January and 31 March;
- (ii) 1 April to 31 March, if the Purchase Commencement Date falls between 1 April and 30 June;
- (iii) 1 July to 30 June, if the Purchase Commencement Date falls between 1 July and 30 September; and
- (iv) 1 October to 30 September, if the Purchase Commencement Date falls between 1 October and 31 December,

except in all cases the first Reporting Year shall begin on the Purchase Commencement Date, and the last Reporting Year shall end on the last day of the Term;

**“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;

**“Sub-Project”** means the projects identified as such in the ERPA;

**“Sub-Project Agreement”** means a legally binding and enforceable agreement between the Project Entity and a Sub-Project Entity as described in 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 to it in Section 16.07;

**“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 Project Entity or any Sub-Project Entity;

**“Transfer Failure”** means the Project Entity's failure, for any reason except a Force Majeure Event, to transfer to the Trustee:

- (i) sufficient Contract ERs in any Reporting Year to fulfill the Cumulative Amount for that Reporting Year; or
- (ii) the full number of Option ERs over which the Trustee has exercised its Call Option in any Reporting Year; or
- (iii) Contract ERs required to be transferred under Section 3.02(b);

**“Transfer Form”** means the form to be submitted by the Project Entity to the Trustee in the form of Schedule 1;

**“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 Project Activity by a Validator in accordance with the International Rules on the basis of, *inter alia*, the Project Design Document and the CDM Operations Plan;

**“Validation Report”** means the document setting out the Validation;

**“Validator”** means the entity selected to perform Validation of the Project Activity, being a Designated Operational Entity. The Validator shall not be the same entity as the Verifier, unless the Project Activity is considered small scale under the International Rules or 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 Project since the last Verification Report or, in the case of the first Verification, since the start of the first Reporting Year, and includes the written assurance by the Verifier that during the relevant period the Project Activity has achieved the GHG Reductions as reported in the Verification Report;

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

**“Verifier”** means the entity selected to perform Verification of the Project Activity, being a Designated Operational Entity;

**“World Bank”** means the International Bank for Reconstruction and Development;

**“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 Project Activity and the participation of the Project 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 Project 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 the ERPA (unless specified otherwise);
  - (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 Emission Reductions**

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

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

- (i) the Contract ERs; and
- (ii) the Option ERs,

in accordance with the terms of the ERPA.

##### **Section 3.02**      *Transfer of Contract ERs*

- (a) Each Reporting Year until the total number of Contract ERs has been transferred to the Trustee, the Project Entity shall transfer to the Trustee the Annual Amount for that Reporting Year.

- (b) If the Project generates more than the Annual Amount in a particular Reporting Year before the full number of Contract ERs have been transferred to the Trustee, the Project Entity shall transfer, as part of the Contract ERs, all additional ERs generated by the Project in that Reporting Year, except for any additional ERs that the Project Entity is entitled to retain in accordance with the ERPA.

## **ARTICLE IV**

### **Call Option**

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

In consideration of the Trustee entering into the ERPA, the Project Entity irrevocably grants to the Trustee the Call Option.

#### **Section 4.02**      *Exercise of Call Option*

To exercise the Call Option, the Trustee shall provide the Project Entity with a duly completed Exercise Notice during the Exercise Period.

#### **Section 4.03**      *Transfer of Option ERs*

Following receipt of each Exercise Notice, the Project Entity shall transfer, or cause to be transferred, those Option ERs nominated in the Exercise Notice to the person named in the Exercise Notice on the Exercise Completion Date in accordance with Section 5.02.

#### **Section 4.04**      *Termination of Call Option*

- (a) If the Trustee does not provide the Project Entity with an Exercise Notice within the Exercise Period, the Trustee's right to call for the transfer of Option ERs shall lapse for that Reporting Year, and that Reporting Year only.
- (b) The Call Option shall terminate on the earlier of:
  - (i) expiry of the Term; or
  - (ii) notification of termination by either Party if the Trustee fails to exercise the Call Option to acquire any Option ERs for three (3) consecutive Reporting Years following delivery of the full number of Contract ERs.
- (c) If the Call 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 Call Option arising after the date of termination of the Call Option.

**Section 4.05**      *Exercise of Option ERs by Trustee's nominee or assignee*

The Call Option may be exercised by the Trustee's nominee or assignee, in which case references to the Trustee in relation to Option ERs shall be deemed to be references to the Trustee's nominee or assignee, as the case may be.

**ARTICLE V**

**Transfer and Payment**

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

- (a)      Within thirty (30) days of the end of each Reporting Year, the Project Entity shall provide the Trustee with an Annual ER Report for that Reporting Year.
- (b)      The Trustee shall request the Verifier to provide simultaneously the Trustee, Project Entity, and the Executive Board, as appropriate, with a Verification Report for the previous Reporting Year within forty five (45) days of the Trustee's receipt of the Annual ER Report for that Reporting Year from the Project Entity, unless the Trustee has chosen to waive Verification in accordance with Section 8.02.

**Section 5.02**      *Transfer of ERs*

- (a)      Within thirty (30) days of its receipt of a Verification Report, or waiver by the Trustee of its right to Verification for that Reporting Year in accordance with Section 8.02, the Project Entity shall provide to the Trustee a signed Transfer Form specifying the number of Contract ERs transferred.
- (b)      In any Reporting Year where the Trustee has exercised its Call Option, the Project Entity will transfer Option ERs to the Trustee on or before the Exercise Completion Date by submitting to the Trustee a signed Transfer Form specifying the number of Option ERs transferred.

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

- (a)      Within sixty (60) days after receipt of the Transfer Form, the Trustee shall make the Annual Payment to the Project Entity.
- (b)      The Annual Payment shall be calculated in accordance with the formulae established in the ERPA.
- (c)      Legal title to any Contract ERs or Option ERs that are the subject of a signed Transfer Form shall transfer to the Trustee at the time that the Annual Payment is made.
- (d)      If the Trustee waives its right to Verification in accordance with Section 8.02, the Parties will rely on the Transfer Form for the purposes of calculating the Annual Payment.

- (e) If there is a discrepancy between the Annual ER Report and the Verification Report, the Verification Report shall prevail as the basis for the calculation of the Annual Payment and the number of Contract ERs transferred to the Trustee.
- (f) If any subsequent Verification finds that the Project Activity generated fewer GHG Reductions in any Reporting Year than the number of Contract ERs for which the Trustee has made an Annual Payment to the Project Entity for that Reporting Year, then:
  - (i) the Parties shall amend the Transfer Form for that Reporting Year to reduce the number of ERs transferred to the Trustee for the relevant Reporting Year to the number of ERs evidenced by the Verification Report;
  - (ii) the Trustee shall deduct from any subsequent Annual Payments the difference between the Annual Payment it made previously and the amount it would have paid for the number of ERs actually generated by the Project during that Reporting Year according to the Verification Report; and
  - (iii) if the Trustee will not be making any subsequent Annual Payments, the Project Entity shall, upon written request from the Trustee, reimburse the Trustee the difference between the Annual Payments actually made by the Trustee and the amount which the Trustee would have paid for the number of ERs actually generated by the Project during that Reporting Year according to the Verification Report.
- (g) If any subsequent Verification finds that the Project Activity has generated more GHG Reductions in any Reporting Year than the number of Contract ERs for which the Trustee has made an Annual Payment to the Project Entity for that Reporting Year then, if the Trustee would have been entitled to purchase the additional GHG Reductions as Contract ERs, upon the written request of the Trustee:
  - (i) the Parties shall amend the Transfer Form for that Reporting Year to increase the number of ERs transferred to the Trustee for the relevant Reporting Year, up to the number of ERs evidenced by the Verification Report which the Trustee would have been entitled to purchase;
  - (ii) the Trustee shall pay the Project Entity the Unit Price for each ER added to the Transfer Form; and
  - (iii) the total number of ERs in the amended Transfer Form shall count towards the Project Entity's obligations to deliver Contract ERs.

**Section 5.04**      *Costs*

- (a) The Trustee shall deduct from the Annual Payment the Project Preparation Costs and the Kyoto Protocol and Other Costs incurred by the Trustee with respect to the Project or the Project Activity and any Taxes incurred by the Trustee in accordance with Section 5.05(a) during the relevant Reporting Year, together with any such costs or Taxes carried over from a preceding Reporting Year in accordance with Section 5.04(b).

- (b) If deduction of the Project Preparation Costs and/or Kyoto Protocol and Other Costs for any Reporting Year would make the Annual Payment for that Reporting Year a negative number, the Trustee will carry forward any Project Preparation Costs, Kyoto Protocol and Other Costs and any Taxes incurred by the Trustee in accordance with Section 5.05(a) not deducted in that Reporting Year to the following Reporting Year, subject to any caps in the ERPA.
- (c) The Trustee shall provide the Project Entity with documentary evidence of all Costs 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 Project, the ERPA or the transfer of Contract ERs or Option ERs imposed by the Host Country shall be borne by the Project 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 Project Entity. The Trustee shall not deduct any other Taxes from Annual Payments made to the Project Entity.
- (b) The Trustee shall bear any Share of Proceeds or any other deductions levied by the Executive Board or the UNFCCC in relation to the Issuance of CERs to, or to the order of, the Trustee on the basis of the Project Activity, and any Registration fee.

**ARTICLE VI**

**Project Development and Monitoring Implementation Report**

**Section 6.01**      *Project Development*

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

**Section 6.02**      *Monitoring Implementation Report*

Upon receipt of notification by the Project Entity of the Project Commissioning Date, the Trustee, in consultation with the Project Entity or as otherwise provided in the ERPA, shall arrange for a Validator to prepare a Monitoring Implementation Report for the Project and to provide a copy of the Monitoring Implementation Report to both the Trustee and the Project Entity.

**Section 6.03**      *Documentation*

- (a) If any of the Project 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 Project Entity or as otherwise provided in the ERPA, to have the relevant Project 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 Project Documents are amended or revised pursuant to subsection (a) above, the Project Entity shall ensure that, as soon as practically possible, the operation of the Project is made compliant with such amendments or revisions and, in particular, the Project Entity shall implement any revised or amended Monitoring Plan.
- (c) The Trustee, in consultation with the Project 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 Project Entity shall cooperate with the Trustee to ensure that the CDM Operations Plan is consistent with the Project Documents and with the International Rules.
- (d) The Project Entity shall ensure that, as soon as practically possible, the operation of the Project is made compliant with any amendments or revisions of the CDM Operations Plan.

**Section 6.04**      *Original Methodology and Approved Methodology*

- (a) In the event of a Methodology Variation, each Reporting Year the delivery and payment provisions of the ERPA will be modified in the following manner:
  - (i) the Unit Price will be increased by multiplying it by the Adjustment Amount as calculated in accordance with subsection (c) below;
  - (ii) the Exercise Price will be increased by multiplying it by the Adjustment Amount as calculated in accordance with subsection (c) below; and
  - (iii) the Annual Amount will be decreased by dividing it by the Adjustment Amount as calculated in accordance with subsection (c) below.
- (b) For the avoidance of doubt, in decreasing the Annual Amounts in accordance with Section 6.04(a)(iii), the total amount of Contract ERs will also decrease proportionately.
- (c) For the purpose of this Section 6.04, the Adjustment Amount will be calculated in accordance with the following formula:

$$\frac{X}{Y}$$

Where X = the estimated number of GHG Reductions which would have been created by the Project Activity during the Crediting Period adopting the Original Methodology; and

Where Y = the estimated number of GHG Reductions which will be created by the Project Activity during the Crediting Period adopting the Approved Methodology

**Section 6.05**      *Addition of Project Participants*

- (a)      The Project Entity shall, upon the reasonable request of the Trustee at any stage of the Project, execute, within ninety (90) days of such request, any documentation necessary to add additional Project Participants to the Project.
- (b)      The Trustee shall approve the addition of other Project Participants to the Project at the request of the Project Entity, provided that the Project Entity provides satisfactory evidence to the Trustee that such additional Project Participants will be required to:
  - (i)      explicitly recognize the priority of the Trustee's rights to receive CERs corresponding to the Contract ERs and Option ERs from the Project; and
  - (ii)     execute any documentation necessary to achieve the allocation and delivery of CERs corresponding to the Contract ERs and/or Option ERs to or to the order of the Trustee, including the Distribution Letter, during any Reporting Year.
- (c)      Upon the request of the Project Entity, the Trustee shall communicate with the Executive Board and the UNFCCC Secretariat (as relevant) with regard to the Project, in particular with regard to:
  - (i)      the addition or removal of Project Participants; and
  - (ii)     the issuance, to any Third Parties, of CERs from the Project, which the Trustee does not have the right to purchase under the ERPA.

**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 this 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**

**Verification**

**Section 8.01**      *General Requirements*

- (a)      Subject to Section 8.02, the Trustee shall arrange for Verification of all GHG Reductions generated by the Project during the Term.

- (b) The Project Entity may arrange for Verification for a Reporting Year at its own cost:
  - (i) upon receipt of notice that the Trustee has waived its right in accordance with Section 8.02; or
  - (ii) if the Trustee has not exercised its Call Option during the Exercise Period in any Reporting Year in accordance with Section 4.02.
- (c) The Party responsible for arranging Verification shall ensure that any Verification Report shall verify all GHG Reductions generated over the entire period since the last Verification.

**Section 8.02      *Waiver of Rights to Verification***

- (a) The Trustee may waive its right to arrange Verification for any Reporting Year in which the Project Entity is required to transfer Contract ERs by providing notice to the Project Entity no later than thirty (30) days after receipt of the Annual ER Report.
- (b) If the Trustee does not provide a Verification Report to the Project Entity within forty five (45) days of the Trustee's receipt of the Annual ER Report, the Trustee shall be deemed to have waived its right to arrange Verification in that Reporting Year, but may still deduct any Kyoto Protocol and Other Costs actually incurred for that Reporting Year in accordance with Section 5.04, including any costs involved in seeking a Verification Report for that Reporting Year.

**Section 8.03      *Registration***

- (a) The Trustee, in coordination with the Project Entity, or as otherwise provided in the ERPA, will submit the Project 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 Project Activity; and
  - (ii) seek the Crediting Period specified in the ERPA.

**ARTICLE IX**

**Project Operation and Management**

**Section 9.01      *Project Operation***

The Project Entity shall:

- (a) carry out the Project Activity in accordance with the applicable International Rules and the CDM Operations Plan;

- (b) at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and environmental practices;
- (c) satisfy any obligations in respect of applications for all licenses, permits, consents and authorizations required to implement the Project;
- (d) implement and operate the Project in compliance with specific requirements of the Environmental Management Plan and any due diligence plans and covenants listed in the ERPA; and
- (e) cooperate fully with the Trustee and the Verifier in respect of the implementation of the CDM Operations Plan and Verification, including providing relevant staff, employees and contractors of the Trustee and the Verifier with access to all relevant property and records.

## **ARTICLE X**

### **Communication**

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

- (a) The Trustee shall serve as the Focal Point for communications with respect to the Project, although the Trustee shall not be liable for any loss or damage caused to the Project 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) The Project Entity grants to the Trustee, on a non-revocable basis for the duration of the Term, all of the necessary powers and rights to act on its behalf to ensure Registration of the Project Activity, Verification, execution of the Distribution Letter and Issuance of CERs into such Registry Account(s) as the Trustee may designate, and shall provide all necessary assistance and cooperation required by the Trustee for these purposes.
- (c) The Project Entity shall support any request from the Trustee to the Executive Board to forward CERs corresponding to the number of Contract ERs or Option ERs which the Trustee is entitled to purchase under the ERPA, into such Registry Account(s) as the Trustee may designate and shall execute any documentation presented to it by the Trustee to achieve such request.
- (d) If for whatever reason any CERs 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 Project Entity shall, at the request of the Trustee, make reasonable endeavors 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 transferred 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 Project Entity fails to transfer Contract ERs due to a Force Majeure Event, then:
  - (i) the Maximum Option Volume shall increase by the number of ERs with the Project Entity failed to deliver as a result of the Force Majeure Event; and
  - (ii) the price payable by the Trustee to purchase the ERs referred to in subsection (i) as Option ERs 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, and that non-performance continues for a period of sixty (60) 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 Project Entity for any Contract ERs and Option ERs transferred to the Trustee for which no payment has been made; and
- (ii) the Trustee may recover from the Project Entity any Project Preparation Costs and Kyoto Protocol and Other Costs, and if applicable, any Taxes paid and any advance payments made but not deducted from Annual Payments in relation to the Project, which the Trustee has incurred until the date of termination.

## **ARTICLE XII**

### **Representations and Warranties**

#### **Section 12.01      *General***

Each Party represents and warrants to the other Party that:

- (a) it has the power and authority to execute and deliver the ERPA and to perform its obligations under it; and
- (b) 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      *Project Entity Representations and Warranties***

The Project Entity represents and warrants, as of the date of the ERPA, and again upon both the production of the GHG Reductions and the transfer of Contract ERs or Option ERs, that:

- (a) all of the information provided to the Trustee regarding the Project and Project Activity and in particular, in the Project Design Document, is true and correct and may be relied upon by the Trustee;
- (b) there are no actions, suits or proceedings pending or, to the Project Entity's knowledge, threatened against or affecting the Project Entity, the Project Activity or the Contract ERs or Option ERs before any court or administrative body or arbitral tribunal which could reasonably be expected to materially adversely affect the ability of the Project Entity to meet and carry out its obligations under the ERPA;
- (c) it has no outstanding agreements or liabilities, contingent or otherwise (including Taxes), that could reasonably be expected to materially and adversely affect the ability of the Project Entity to meet and carry out its obligations under the ERPA;
- (d) it has full legal and beneficial title to, or it has exclusive rights to, all of the GHG Reductions, Contract ERs and Option ERs, and entitlement to any CERs which can be created from those Contract ERs or Option ERs, free of any interest or claim of a Third Party other than in accordance with the ERPA;

- (e) it has not sold, transferred, assigned, licensed, disposed of, granted or otherwise created any interest in the Contract ERs or Option ERs (including any GHG Reductions or CERs related thereto) generated by the Project Activity to any Third Party other than in accordance with the ERPA; and
- (f) 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 Project (or any portion thereof).

## **ARTICLE XIII**

### **Transfer 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 Project Entity:
  - (i) Transfer Failure;
  - (ii) the dissolution, liquidation, insolvency or bankruptcy (voluntary or involuntary) of the Project Entity or change in the ownership structure of the Project 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 construction of the Project or other materially adverse change in the status of the Project which will prevent the Project from being commissioned by the Expected Project Commissioning Date;
  - (iv) material breach by the Project Entity of any other term of the ERPA;
  - (v) if the Monitoring Implementation Report indicates that the Project does not comply with the International Rules on Monitoring and if, in the opinion of the Validator, there is no reasonable prospect of such compliance being obtained within a further three (3) months from the date of the Monitoring Implementation Report; and
  - (vi) failure to observe, implement and meet all requirements contained in the Monitoring Plan, in the CDM Operations Plan or in the Environmental Management Plan.
- (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 Project 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:
  - (i) full details of the Event of Default;
  - (ii) where the Event of Default is a Transfer Failure, the expected shortfall of Contract ERs or Option ERs; and
  - (iii) the likely delay before the Event of Default can be remedied.

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

- (a) If the Project Entity is the defaulting Party and the Project 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 Transfer Failure which is not an Intentional Breach by the Project Entity:
    - (A) allow the Project Entity to transfer any shortfall of ERs 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 ERs subject to the reduction, if they are purchased as Option ERs, shall be the Unit Price and not the Exercise Price; or
    - (C) if the Transfer Failure has occurred during three (3) consecutive Reporting Years or during any of the last three (3) Reporting Years set out in Schedule 2 of the ERPA, terminate the ERPA and recover from the Project Entity any unrecovered Kyoto Protocol and Other Costs and Project Preparation 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; or
  - (ii) if the Event of Default is a delay in the Expected Project Commissioning Date, 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 ERs subject to the reduction, if they are purchased as Option ERs, shall be the Unit Price and not the Exercise Price; or

- (iii) if the Event of Default (including a Transfer Failure) is a result of an Intentional Breach by the Project Entity, terminate the ERPA and recover any unrecovered Kyoto Protocol and Other Costs and Project Preparation Costs, and, if applicable, 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 Project 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 Project Entity, with interest accruing at a rate of LIBOR; or
- (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 Project Entity any unrecovered Kyoto Protocol and Other Costs and Project Preparation Costs, and, if applicable, any 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**      *Project 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 Project 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 also terminate the ERPA by notice in writing to the Project 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.
- (b) In either of the above cases, the Trustee shall:
  - (i) notify the Project Entity at least three (3) months prior to termination; and

- (ii) after paying or adequately providing for the payment of all liabilities, and upon receipt of all releases it deems necessary, terminate the ERPA.
- (c) If the Trustee intends to terminate the ERPA because the Fund is to terminate and the Trustee does not assign its rights or novate its obligations pursuant to Section 15.06, the Trustee will notify the Project Entity of its intention at least three (3) months prior to termination.
- (d) In the event of termination under this Article, neither Party shall have surviving obligations nor liabilities to the other Party under this ERPA following the date of termination except as provided for in Section 15.09.

## **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 Project 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**      *Arbitration*

- (a) The Trustee and the Project Entity will endeavor to settle amicably any dispute between them arising out of or in connection with the ERPA (“**Dispute**”). Upon the written request of either Party (the “**Initial Request**”), the Parties will meet promptly to discuss the Dispute.
- (b) If the Dispute has not been resolved by the Parties within sixty (60) days of the date of the Initial Request, either Party, within fifteen (15) days following the end of such period of sixty (60) days, may by notice in writing seek to have the Dispute resolved by arbitration in accordance with the UNCITRAL Arbitration Rules, and:
  - (i) the appointing authority shall be the Secretary-General of the Permanent Court of Arbitration at The Hague; and
  - (ii) the arbitration will be held at a place agreed by the Parties or, if the Parties are unable to reach agreement on the place of arbitration, the arbitration will be held in London, England.

**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 Project 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 Project, 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 Project 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 Project Entity may assign its right to receive payments from the Trustee for Contract ERs or Option ERs 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 ERs and its rights under the Call 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 to carry out the Trustee's obligations under the ERPA (“**Substituting Party**”),

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

- (c) The Project 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 Project Entity an assignment substantially in the form of Schedule 3 or a novation agreement substantially in the form of Schedule 4. The Trustee shall promptly notify the Project Entity of any assignment or novation.
- (d) In the event of such assignment or novation as described in paragraph (b) above, the Project 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**      *Sale and Purchase Only*

The Trustee and the Project 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 15.08**      *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 15.09**      *Survival of Provisions*

The respective rights and obligations of the Parties contained within Section 5.03(c), Section 11.02(c), Section 12.01, Section 12.02, Section 13.03, Section 13.04, Section 14.01(c), Section 15.02, Section 15.03, Section 15.04, Section 15.07 and Section 15.09 of these General Conditions will survive any termination under the ERPA, unless the Trustee provides notice in writing to the Project Entity to the contrary.

**Section 15.10**      *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 ERs and the Option ERs 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 15.11**      *Execution in Counterparts; Language*

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

**PART B: AGGREGATED PROJECTS**

**ARTICLE XVI**

**Sub-Projects**

**Section 16.01**      *Sub-Project Development*

- (a)      The Project Entity shall take all necessary steps to ensure that the Sub-Projects are developed and implemented in accordance with any criteria established in the ERPA.
- (b)      The Project Entity shall keep the Trustee regularly informed about the progress of the implementation of the Sub-Projects.
- (c)      The Project Entity shall ensure that the Sub-Projects are implemented in accordance with the International Rules and that the Sub-Project Entities hold full title to all ERs generated by the Sub-Projects.
- (d)      The Project Entity shall enter into a Sub-Project Agreement for each Sub-Project with each Sub-Project Entity.

**Section 16.02**      *Sub-Project Implementation*

- (a)      The Project Entity shall be responsible for ensuring that each Sub-Project:
  - (i)      has implemented all applicable requirements of the CDM Operations Plan;
  - (ii)     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;
  - (iii)    establishes and maintains data measurement and collection systems for all indicators listed in the CDM Operations Plan;
  - (iv)    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
  - (v)    is maintained and prepared to allow for Verification.
- (b)      In addition to subsection (a), the Project Entity shall:
  - (i)      provide training to the Sub-Project Entities to ensure that each Sub-Project is capable of complying with subsection (a);

- (ii) collect, compile and record from each Sub-Project all information required under the CDM Operations Plan;
  - (iii) retain full responsibility for the implementation of the CDM Operations Plan; and
  - (iv) ensure the Project is maintained and prepared to allow for Verification as required by the CDM Operations Plan.
- (c) If the Project Entity is unable to ensure a Sub-Project complies with the requirements of subsection (a) the Project Entity shall immediately provide notice to the Trustee to this effect (a “**Non-Compliance Notice**”) with the details on the non compliance.

**Section 16.03**      *Sub-Project Verification*

The Project Entity shall cause each Sub-Project Entity to cooperate fully with the Trustee and the Verifier in respect of the Verification, including by providing access to all relevant property and records to relevant staff, employees and contractors of the Trustee and the Verifier for the purpose of periodic Verification.

**Section 16.04**      *Sub-Project Operation and Management*

- (a) The Project Entity shall ensure each Sub-Project complies with all of the requirements of Section 9.01.
- (b) If the Project Entity is unable to ensure a Sub-Project complies with the requirements of Section 9.01, the Project Entity shall immediately provide a Non-Compliance Notice to the Trustee to this effect.

**Section 16.05**      *Non-Complying Sub-Projects*

- (a) The Project Entity shall 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 the Sub-Project Entity fails to perform its obligations under the Sub-Project Agreement contained in this Part B;
  - (iii) if the 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 Sub-Project (or any portion thereof) that would materially adversely affect its ability to perform its obligations under the Sub-Project Agreement or

prevent the Project Entity from meeting its obligations contained in this Part B;  
and

- (iv) otherwise as required by this Part B.

**Section 16.06**      *Addition of Sub-Projects*

- (a) If the Project Entity is of the reasonable opinion that it may not be able to transfer the requisite number of Contract ERs and/or Option ERs 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 a number of further Sub-Projects expected to cumulatively generate at least the volume of ERs per year of operation indicated in the ERPA (“**Compliance Bundle**”).
- (b) The Trustee may, at its discretion, accept the proposed Compliance Bundle and, upon such acceptance:
  - (i) the Parties shall prepare a PDD for each Sub-Project in the Compliance Bundle and arrange for Validation and Registration of the relevant Sub-Projects in the Compliance Bundle; and
  - (ii) such Sub-Projects shall be considered part of the Project under this Agreement; and
  - (iii) any costs arising from activities identified in subparagraph (i) shall be borne by the Project Entity.

**Section 16.07**      *Sub-Project Inventory*

- (a) The Project Entity shall at all times maintain an inventory listing all Sub-Projects included in the Project (the “**Sub-Project Inventory**”), including an identification of those Sub-Projects for which a Non-Compliance Notice has been issued.
- (b) The Sub-Project Inventory shall, for each Sub-Project;
  - (i) record the name and location of the Sub-Project and Sub-Project Entity;
  - (ii) record the date the Sub-Project was included in the Project 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 Project Entity shall provide a summary to the Trustee of any changes to the Sub-Project Inventory since the last Annual ER Report.
- (d) The Sub-Project Inventory shall be made available to the Verifier and Trustee upon request.

**Section 16.08**      *Sub-Project Representations and Warranties*

- (a) The Project Entity separately makes each of the representations and warranties in Section 12.01 and Section 12.02 on behalf of each Sub-Project.
- (b) If the Project Entity is no longer able to make the representations and warranties in Section 12.01 and Section 12.02 on behalf of a Sub-Project, the Project Entity shall provide the Trustee with a Non-Compliance Notice with respect to the relevant Sub-Project, and Section 13.03 will apply.

**Section 16.09**      *Project Entity Liability for Sub-Project*

The Project 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 Project Entity knew, or should have known, that the Sub-Project did not comply with the requirements of this Part B at the relevant time.

**Section 16.10**      *Effect of Non-Compliance Notice*

Following the provision of a Non-Compliance Notice in respect of a Sub-Project, the Parties shall have no further rights or obligations with respect to such Sub-Project, except as set forth in Section 16.09.

## SCHEDULE 1: TRANSFER FORM

### [PROJECT ENTITY LETTERHEAD]

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

#### **Transfer Form for *[insert Reporting Year]***

We refer to the *[Insert Fund]* ERPA dated *[insert date]* between *[insert name of Project Entity]* (“**Project Entity**”) and the International Bank for Reconstruction and Development, as Trustee for the *[Insert Fund]* (“**IBRD**” or the “**Trustee**”) (the “**Agreement**”) which includes the International Bank for Reconstruction and Development General Conditions Applicable to Verified Emission Reductions Purchase Agreement: Clean Development Mechanism Projects 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.

#### **1. Transfer of ERs**

In accordance with Article V of the General Conditions, we hereby transfer to the Trustee *[or its assignee]*:

*[Before all Contract ERs have been delivered]*

- *[insert number]* of the Emission Reductions evidenced in the [Verification Report for *[insert Reporting Year]*] or *[##where the Trustee has waived Verification##]* [Annual ER Report], which shall count towards our obligation to deliver Contract ERs under the Agreement

OR *[Once all Contract ERs have been delivered]*

- *[insert number]* Emission Reductions which were the subject of the Exercise Notice from the Trustee dated *[insert date]*, which shall count towards our obligation to deliver Option ERs under the Agreement.

For the avoidance of doubt, by transferring the above Emission Reductions, we also transfer to the Trustee the right to cause CERs corresponding to those Emission Reductions to be issued into the Trustee's account or the account of its nominee(s) in accordance with any modality, procedure, process or mechanism established by the CDM Executive Board and hereby expressly disclaim any right and title to those corresponding CERs.

#### **2. Invoice and Payment**

We calculate that the amount payable for transferred ERs for this Reporting Year is *[insert Unit Price or Exercise Price x number of transferred ERs]*

Please pay this amount to the following bank account, less any costs or taxes which the Trustee is entitled to deduct under the Agreement, within sixty (60) days of receipt of this Transfer Form:

*[insert details of bank account]*

Dated:

**For and on behalf of**  
**[Project Entity]**  
by its Authorized Representative  
in the presence of

)  
)  
)  
)

Authorized Representative

---

Please print name

---

**SCHEDULE 2: EXERCISE NOTICE**

**[IBRD LETTERHEAD]**

TO: [Project Entity]

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

We refer to the [Insert Fund] ERPA dated [insert date] between [insert name of Project Entity] (“**Project 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 Option rights from the Trustee under Assignment dated [date]] (the “**Agreement**”) which includes the International Bank for Reconstruction and Development General Conditions Applicable to Verified Emission Reductions Purchase Agreement: Clean Development Mechanism Projects dated [insert date] (the “**General Conditions**”). Capitalized terms used and not specifically defined herein shall have the meanings assigned thereto in the Agreement and the General Conditions.

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

Transferor: [Project Entity]  
Transferee: [IBRD or Third Party e.g. Fund Participants]  
Quantity of Option ERs:  
Exercise Price: [insert price per ER as specified in ERPA]  
Exercise Completion Date: [Insert date [30] days from the date of this Notice]

Dated:

**For and on behalf of** )  
**the International Bank for Reconstruction** )  
**and Development, as Trustee of the [Insert Fund] [or Assignee(s)]** )  
by its Authorized Representative )  
in the presence of )

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

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

## SCHEDULE 3: ASSIGNMENT NOTICE

### [IBRD LETTERHEAD]

To: [Project 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 Project Entity] (“**Project 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 Option rights from the Trustee under Assignment dated [date]] (the “**Agreement**”) which includes the International Bank for Reconstruction and Development General Conditions Applicable to Verified Emission Reductions Purchase Agreement: Clean Development Mechanism Projects 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 ERs, 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 Project 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 [Project Entity]  
by its Attorney**

Date:

\_\_\_\_\_

## SCHEDULE 4: 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

**[Project Entity] (“Project Entity”)**

### **Recitals:**

- A. This Agreement supplements an Emission Reduction Purchase Agreement made between the Trustee and the Project Entity dated [ ] (the “**Contract**”).
- B. The Trustee wishes to be released and discharged from the Contract and the Project 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 project to which the Contract relates.

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

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

The Project 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 Project Entity from all the Project 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 Project Entity's release**

As from the Effective Date, the Project 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 )  
**[Project 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)