
**International Bank for
Reconstruction and Development**

**General Conditions
Applicable to
Emission Reductions
Payment Agreements**

for

**Forest Carbon Partnership Facility
Emission Reductions Programs**

Dated November 1, 2014

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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 ERs**" means ERs that have been generated and Verified under the ER Program within the ER Program Accounting Area and for which the Grantee has been granted an Option, as specified in the ERPA;

"**Advance Payment(s)**" means the Advanced Expense Payment, the Upfront Advance Payment, the Interim Advance Payment and the ER Advance Payment, as applicable and specified in the ERPA;

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

"**Affected Party**" means, with respect to a Force Majeure Event, the Party affected by that Force Majeure Event, as described in Section 13.01;

"**Assignee**" has the meaning given to it in Section 18.06(b)(i);

"**Beneficiary**" means a recipient of Monetary and Non-Monetary Benefits identified in the Benefit Sharing Plan which may include Sub-Project Entities and other relevant stakeholders, such as forest-dependent indigenous peoples and other forest dwellers, affected communities or groups and local civil society organizations;

"**Benefit Sharing Plan**" means a plan developed by the Program Entity in accordance with the ER Program Document and the Methodological Framework and submitted to the Trustee on how the Program Entity will share Monetary and Non-Monetary Benefits generated by the implementation and operation of the ER Program with Beneficiaries, as may be updated from time to time;

"**Buffer ERs**" means ERs that have been generated and Verified under the ER Program within the ER Program Accounting Area and are to be transferred to the ER Program Buffer in accordance with ARTICLE XI and the ER Program Buffer Guidelines;

"**Buffer Manager**" means the Trustee or any other entity or registry, acceptable to the Trustee, that manages the ER Program Buffer on behalf and for the exclusive benefit of the Carbon Fund in accordance with these General Conditions and the ER Program Buffer Guidelines;

"**Call Option**" means the exclusive right, but not the obligation, of the Grantee to require the Grantor to transfer Additional ERs to the Grantee or its nominees, as specified in the ERPA;

"**Carbon Dioxide Equivalent**" or "**CO₂e**" 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;

"**Carbon Fund**" means the trust fund established under the Facility to receive funding from Carbon Fund Participants, referred to in the ERPA, for which the World Bank is acting as Trustee;

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

"**Carbon Fund Participant Payment Failure**" has the meaning provided to that term in Section 18.08;

"**Charter**" means the Charter Establishing the Forest Carbon Partnership Facility, as amended from time to time;

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

"**Conditions Fulfillment Date**" means the end date of the time period in which the Program Entity has to fulfill all Conditions of Effectiveness, as specified in the ERPA;

"**Conditions of Effectiveness**" means the conditions that have to be fulfilled by the Program Entity by the Conditions Fulfillment Date, in form and substance satisfactory to the Trustee, in order for the obligations to sell, transfer and pay for ERs in ARTICLE III and ARTICLE V to become effective, as specified in the ERPA;

"**Confidential Information**" has the meaning given to that term in the ERPA, if either Party requests the ERPA terms to be confidential;

"**Contesting Party**" means a Third Party, community or group that undertakes a Title Contest;

"**Contract ERs**" means ERs that have been generated and Verified under the ER Program within the ER Program Accounting Area and have been contracted for under the ERPA, as specified in the ERPA;

"**Contract ER Volume**" means the total volume of Contract ERs specified in the ERPA;

"**Cost Recovery Discount**" has the meaning given to the term in the ERPA;

"**Cumulative Amount**" means, for any Reporting Period, the sum of all the Minimum Reporting Period Amounts for the preceding Reporting Periods up to and including the relevant Reporting Period, 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 16.02(a);

"**Dispute**" has the meaning given to it in Section 18.03(a);

"**Distribution Letter**" means the letter which will be submitted to the Registry with each Verification Report (or otherwise as required by the International Rules, if any, or applicable Registry rules) and which instructs the Registry to issue and forward to the Registry Account(s) nominated by the Trustee or retire Contract ERs and/or Additional ERs;

"**Emission Reduction**" or "**ER**" means one metric tonne of Carbon Dioxide Equivalent reduced, avoided, removed or sequestered within the ER Program Accounting Area under the ER Program below the Reference Level, as measured, reported and Verified in accordance with the ER Monitoring Plan, the Methodological Framework and the General Conditions;

"**Encumbrance**" means 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 cognate expressions. "**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 ER Program and ER Program Measure(s) 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, as modified, adjusted or supplemented from time to time with the prior approval of the World Bank;

"**ERPA**" means the Emission Reductions Payment Agreement between the Trustee and the Program Entity providing for the sale and transfer of and payment for ERs which includes these General Conditions, and all schedules and agreements supplemental to the ERPA;

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

"**ER Monitoring**" means the measurement, collection, compilation and recording of all relevant data necessary for estimating ERs generated within the ER Program Accounting Area (including the occurrence of any Reversal Event(s)) in accordance with the REDD Country Participant's MRV System and the Methodological Framework and for conducting Verification in accordance with the ER Monitoring Plan;

"**ER Monitoring Plan**" means the plan referred to as such and incorporated in the ER Program Document that guides the Program Entity in its ER Monitoring activities and ensures that all data

collection and management systems are in place to allow subsequent successful ER Monitoring and Verification of ERs generated under the ER Program Measure(s);

"ER Monitoring Report" means a report provided by the Program Entity, and in form and substance satisfactory to the Trustee, in accordance with the REDD Country Participant's MRV System, the ER Monitoring Plan and the Methodological Framework, setting out:

- (i) the number of ERs generated by the ER Program during the previous Reporting Period as monitored in accordance with the ER Monitoring Plan;
- (ii) the occurrence of any Reversal Event(s) (together with a detailed description of the cause and impact of such event(s) and the measures taken to minimize or mitigate the adverse effect of such event(s) on the ER Program and/or the Program Entity's performance of its obligations under the ERPA);
- (iii) any inability, in full or in part, to transfer Title to ERs to the Trustee or any Title Contest by any Contesting Party (including the identification of the Contesting Party and a detailed description of the nature of the challenge, of the area in the ER Program Accounting Area that is affected by such challenge and of how the Program Entity endeavored to address and resolve such challenge) during the previous Reporting Period, and how and to which extent the Program Entity resolved such inability or Title Contest during the previous Reporting Period; and
- (iv) all other data as may be required to be collected and recorded by the ER Monitoring Plan.

"ER Program" means the program described in the ER Program Document;

"ER Program Accounting Area" means the geographic area for which the Reference Level is established and over which emissions and removals from forests or ER Program Measure(s) are being measured, reported and Verified;

"ER Program Buffer" means one or more ER Program-specific buffer reserve account(s) in an ER registry agreed upon between the Parties that serves as a mechanism to manage certain risks that may affect the existence, validity or ownership of transferred Contract ERs and/or Additional ERs during the Term, as further specified in ARTICLE XI;

"ER Program Buffer Guidelines" means the guidelines and procedures set up by the Carbon Fund or, if applicable, the Registry, in form and substance satisfactory to the Trustee, which shall govern the establishment, operation and implementation of the ER Program Buffer and provide risk assessment tools for each risk category covered by the ER Program Buffer under an ER Program to help, among others, determine the amount of Buffer ERs to be deposited in the ER Program Buffer;

"ER Program Document" is the document that presents technical and organizational aspects of the ER Program and the ER Program Measure(s) in accordance with the Methodological Framework;

"ER Program Measure(s)" means one or more policies, measures or projects to reduce deforestation and/or forest degradation and enhance and conserve carbon stocks that directly address the key drivers of deforestation and/or forest degradation, as described in the ER Program Document;

"ER Program Measure(s) Area" means the geographic area(s) (which may contain more than one discrete area of land) within the ER Program Accounting Area delineating the ER Program Measure(s), as described in the ER Program Document;

"ER Program Start Date" means the date on which the ER Program or ER Program Measure(s) (including any Sub-Project(s)) begins generating ERs contracted for under the ERPA;

"ER Transfer" mean the transfer of Contract ERs and/or Additional ERs, as applicable, contracted for under the ERPA;

"ER Transfer Failure" means the Program Entity's failure, for any reason except a Force Majeure Event or otherwise provided in the ERPA, to transfer to the Trustee:

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

"ER Transfer Form" means the form specified in the ERPA, to be issued by the Program Entity, and in form and substance acceptable to the Trustee, that documents ER Transfers and related payment requests;

"Event of Default" means an event specified as such in Section 16.01;

"Exercise Completion Date" means the date by which the Program Entity must transfer Additional ERs, 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 Period, as provided in ARTICLE IV;

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

"Exercise Price" means the price to be paid for each sold and transferred Additional ER, as specified in the ERPA;

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

"Facility" means the Forest Carbon Partnership Facility;

"Focal Point" means the entity nominated as the point of contact with all relevant authorities, entities and registries for any communications in relation to the issuance, serialization, acquisition, holding, retirement, cancellation and/or transfer of ERs generated under the ER Program or the ER Program Measure(s) and the submission of the Distribution Letter in accordance with the ERPA;

"Force Majeure Event" means an extraordinary and unavoidable event beyond the reasonable control of the Party affected by it, including but not limited to, cyclone, storm, flood, fire and insect

plague, except that such an event will not be considered a Force Majeure Event if the occurrence of the event could have been prevented or mitigated by the Party affected by it;

"Force Majeure Notice" means a notice of a Force Majeure Event as required under Section 13.01;

"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 which is 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;

"Host Country" means the REDD Country Participant 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;

"Independent Reviewer" means an entity that is independent from the World Bank, the Trustee, the Program Entity, any participant of the Facility or any body established under the Facility and that has been approved by the Facility's participants committee and agreed on by the Program Entity and the Trustee to carry out an ex post Verification of the ER Monitoring Reports to verify the actual amount of ERs generated under the ER Program during a given Reporting Period in accordance with the REDD Country Participant's MRV System and the Methodological Framework;

"Indigenous Peoples Plan" means the plan submitted by the Program Entity and approved by the Trustee that meets the requirements of the World Bank Policy on Indigenous Peoples and describes any and all required mitigation, monitoring and institutional measures to be taken by the Program Entity during implementation and operation of the ER Program and ER Program Measure(s) to address indigenous peoples issues, as well as the means to implement these measures, all in accordance with applicable World Bank Operational Policies, as modified, adjusted or supplemented from time to time with the prior approval of the World Bank;

"Initial Request" has the meaning given to it in Section 18.03(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;

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

"Interim Progress Report" has the meaning given to the term in the ERPA;

"International Rules" means the UNFCCC, UNFCCC Guidance on REDD, any international climate change agreement(s) reached under UNFCCC that are relevant to REDD+ and any decisions, guidelines, modalities and procedures relevant to REDD+ and adopted thereunder;

"Land" means the land and territories within the ER Program Accounting Area;

"Letter of Approval" means a document issued by the government department of the Host Country responsible for approving REDD+ projects that approves the ER Program and the ER Program Measure(s) and authorizes the participation of the Program Entity in the ER Program and the ER Program Measure(s);

"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;

"Maximum Option Volume" means the maximum number of Additional ERs which the Grantee has the right to request transfer of or sell (as the case may be) under the Option as specified in the ERPA;

"Methodological Framework" means the 'FCPF Carbon Fund Methodological Framework' dated December 20, 2013 and any related further written guidance and specifications by the Carbon Fund, as modified, adjusted, updated or supplemented prior to ERPA signature;

"Minimum Reporting Period Amount" means the minimum number of ERs which the Program Entity has to generate and transfer to the Trustee for each relevant Reporting Period as Contract ERs on a seniority basis in accordance with the ERPA;

"Monetary and Non-Monetary Benefits" means, as specified in the ER Program Document, the Benefit-Sharing Plan and, as relevant, the Safeguards Plans, any (1) monetary or non-monetary goods, services or other benefits related to payments received under the ERPA by the ER Program Entity, or funded with such received payments, and (2) other monetary or non-monetary benefits which (i) are directly related to the implementation and operation of the ER Program, (ii) provide a direct incentive to Beneficiaries to help implement the ER Program, and (iii) can be monitored in an objective manner.

"Non-Affected Party" has the meaning given to that term in Section 13.01;

"Non-Carbon Benefits" means any benefits produced by or in relation to the implementation and operation of the ER Program, other than ERs and Monetary and Non-Monetary Benefits, as specified in the ER Program Document, and, as relevant, any Safeguards Plans, in accordance with the Methodological Framework;

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

"Option" means the Call Option, the Put Option or the Right of First Refusal, as applicable, granted by the Grantor to the Grantee under Section 4.01 and 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"**;

"Periodic Payment" means the payment by the Trustee to the Program Entity for transferred ERs for the relevant Reporting Period, calculated in accordance with the ERPA;

"Post-ERPA Reversal Management Mechanism" has the meaning ascribed to the term in Section 11.03;

"Pricing Approach" means the approach to pricing ERs sold to the Trustee under the ERPA following the guidance received from the Facility's participants committee in the 'Methodological Framework and Pricing Approach for the Carbon Fund of the FCPF' (as approved in Resolution PC/12/2012/3) and as further specified by Carbon Fund Participants;

"Priority Non-Carbon Benefits" means any Non-Carbon Benefits that have been identified in the ER Program Document to be generated and/or enhanced through the ER Program on a priority basis;

"Program Documents" means together or individually the ER Program Document and the ER Monitoring Plan;

"Program Entity" means the Party or Parties specified as such in the ERPA and who has or have been authorized by the Host Country, if applicable, to implement the ER Program and enter into an ERPA with the Trustee;

"Put Option" means the exclusive right, but not the obligation, of the Grantee to require the Grantor to accept transfer of and pay for Additional ERs, as specified in the ERPA;

"**REDD+**" or "**REDD**" means REDD plus, i.e. reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks, as may be modified to be consistent with the UNFCCC Guidance on REDD;

"**REDD Country Participant**" means the country that has become a REDD Country Participant in accordance with Section 6.2 of the Charter;

"**REDD Country Participant's MRV System**" means all the laws, regulations, procedures, guidelines and other rules of the Host Country in relation to how to measure, report and verify ERs generated under the ER Program;

"**Reference Level**" means a scenario that reasonably represents the volume of emissions from the ER Program Accounting Area, expressed in tonnes of Carbon Dioxide Equivalent per year, relative to which ERs are measured, reported and Verified in accordance with the Methodological Framework;

"**Registration**" means the formal acceptance by a Registry of the ER Program, if required under Registry rules and procedures;

"**Registry**" means a registry set up, or determined to be used for the purposes of the Facility in accordance with the Methodological Framework, to document and record, among others, the issuance, serialization, acquisition, holding, retirement, cancellation and/or transfer of ERs generated under the ER Program;

"**Registry Account**" means an account in a Registry capable of receiving, holding and transferring ERs;

"**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 Period**" means each time period specified in the ERPA for which the Program Entity has to measure and report on ERs generated under the ER Program in the form of ER Monitoring Reports;

"**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 ER Program and ER Program Measure(s) to address involuntary resettlement, as well as the means to implement these measures, all in accordance with applicable World Bank Operational Policies, as modified, adjusted or supplemented from time to time with the prior approval of the World Bank;

"**Reversal**" means a situation at any given point in time during the Term where a Reversal Event has resulted in the aggregate amount of ERs measured and Verified within the ER Program Accounting Area for one Reporting Period being less than the aggregate amount of ERs measured and Verified within the ER Program Accounting Area for the previous Reporting Period;

"**Reversal Event**" means the occurrence of one or more events at any given point in time during the Term that may result in a Reversal;

"Reversal Management Mechanism" means, in accordance with the terms of the Methodological Framework, a robust Reversal management mechanism, appropriate for the ER Program's assessed level of risk, to cover Reversals that may occur during the Term;

"Reversal Risks" mean the risks associated with the occurrence of a Reversal after ER Transfer and its impact on the amount of Contract ERs, Additional ERs and Buffer ERs that have been transferred to the Trustee or deposited in the ER Program Buffer;

"Right of First Refusal" means the right, but not the obligation, of the Grantee to require the Grantor to transfer Additional ERs to the Grantee or its nominees pursuant to a Third Party Offer, as specified in the ERPA;

"Safeguards Plans" means, as applicable, the Environmental Management Plan, the Resettlement Plan, the Indigenous Peoples Plan and any other environmental or social related plan or document required under the World Bank Operational Policies and describing measures to be implemented by the Program Entity during the implementation and operation of the ER Program and the ER Program Measure(s) to eliminate, offset or reduce any adverse environmental and social impacts of the ER Program and ER Program Measure(s), in accordance with World Bank requirements;

"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 ER Program;

"Sub-Project" means a sub-project or other set of activities implemented by a Sub-Project Entity as part of the ER Program Measure(s) in accordance with the terms of the ERPA;

"Sub-Project Arrangement" means an agreement or other arrangement between the Program Entity and a Sub-Project Entity which includes the principal terms provided for in a schedule to the ERPA;

"Sub-Project Entity" means a private or public entity or other group or community owning and implementing a Sub-Project under the ER Program, as described in the ERPA and/or the Sub-Project Inventory;

"Sub-Project Inventory" has the meaning given in Section 9.05;

"Substituting Party" has the meaning given to it in Section 18.06(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 or the Program Entity;

"Third Party Offer" means an offer from a Third Party to the Program Entity to acquire Additional ERs in accordance with the terms of the ERPA;

"Title Contest" means an event in which a Contesting Party contests the validity of any past or future transfer of Title to ERs, free of any interest, Encumbrance or claim of a Third Party other than in accordance with the ERPA, from the Program Entity to the Trustee during the Term;

"**Title to ERs**" means, subject to Section 3.01(b) and in accordance with all applicable laws, the full legal and beneficial title and exclusive right to any Contract ERs and/or Additional ERs generated under the ER Program within the ER Program Accounting Area and contracted for under the ERPA;

"**Title to ER Risks**" mean the risks associated with any potential dispute regarding the validity of the transfer of Title to ERs and its impact on the Carbon Fund Participants' Title to ERs;

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

"**Uncertainty**" means the level of uncertainties related to the estimation of ERs to be generated during the ERPA term under the ER Program which include, among others, uncertainties related to Reference Level setting and ER Monitoring and reporting and its impact on the measurement and reporting of the amount of ERs generated under the ER Program;

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

"**UNFCCC Guidance on REDD**" means the body of rules, modalities, procedures and guidelines on REDD that is adopted under the auspices of the UNFCCC;

"**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**" means the price to be paid for each sold and transferred Contract ER, as specified in the ERPA;

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

"**Verification**" means the periodic assessment by an Independent Reviewer of the amount of ERs generated by the ER Program since the last Verification Report or, in the case of the first Verification, since the ER Program Start Date in accordance with the REDD Country Participant's MRV System and the Methodological Framework, and includes the written assurance by the Independent Reviewer that during the relevant Reporting Period the ER Program Measure(s) have achieved the ERs 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 REDD Country Participant's MRV System and the Methodological Framework and includes without limitation:

- (i) a statement of the amount of Verified ERs the ER Program has generated in the relevant Reporting Period since the previous Verification (or, in the case of the first Verification, since the ER Program Start Date); and
- (ii) information on such other matters as may be required by the REDD Country Participant's MRV System and the Methodological Framework;

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

"**World Bank Policy on Environmental Assessment**" means the specific World Bank Operational Policy dedicated and applicable to environmental assessment;

"World Bank Policy on Indigenous Peoples" means the specific World Bank Operational Policy dedicated and applicable to indigenous peoples;

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

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

Section 2.02 *Interpretation; Headings; Schedules*

- (a) In these General Conditions, unless the context requires another meaning, a reference:
 - (i) to the ERPA, the Program Documents, or the Methodological Framework is to that document as varied, amended, novated 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 Carbon 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 Charter and the Methodological Framework.
- (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

Sale of and Payment for Emission Reductions

Section 3.01 *Sale and Payment*

- (a) The Program Entity agrees to sell and transfer and the Trustee agrees to accept transfer and pay for:
 - (i) the Contract ERs; and

- (ii) the Additional ERs in respect of which the Grantee has exercised its Option, in accordance with the terms of the ERPA.
- (b) The sale and transfer of and payment for ERs under the ERPA shall relate to ERs only and shall not affect any beneficial, legal or customary interests or rights in the Land.
- (c) Buffer ERs shall not count as Contract ERs or Additional ERs.

Section 3.02 *Transfer of Contract ERs*

- (a) Until the total number of Contract ERs has been transferred, the Program Entity shall transfer, or cause to be transferred, the Minimum Reporting Period Amount for the relevant Reporting Period to the Trustee on a seniority basis.
- (b) Unless agreed otherwise in the ERPA, if the ER Program generates more than the Minimum Reporting Period Amount in a particular Reporting Period before the full number of Contract ERs has been transferred, the Program Entity shall transfer to the Trustee, as part of the Contract ERs, all such excess ERs generated by the ER Program in that Reporting Period.

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 ERPA in order for the Grantee to do so.

Section 4.03 *Transfer of Additional ERs*

Following receipt of each Exercise Notice, the Program Entity shall transfer, or cause to be transferred, those Additional ERs nominated in the Exercise Notice to the Registry Account(s) of the person(s) named in the Exercise Notice by 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 Period, and that Reporting Period only.

- (b) The Option shall terminate on the earlier of:
 - (i) expiry of the Term; or
 - (ii) written waiver of the Option by the Grantee for the remainder of the Term.
- (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.

ARTICLE V

Transfer and Payment

Section 5.01 *ER Monitoring Report and Verification Reports*

- (a) Within forty five (45) calendar days following the end of each Reporting Period, the Program Entity shall provide the Trustee with an ER Monitoring Report for that Reporting Period, in form and substance satisfactory to the Trustee.
- (b) As a separate annex to the ER Monitoring Report, the Program Entity shall provide
 - (i) evidence satisfactory to the Trustee that the ER Program Measure(s) are being implemented in accordance with the Safeguards Plans and that the Benefit Sharing Plan has been implemented in accordance with its terms (including any feedback and grievance redress mechanism set up under any of such documents); and
 - (ii) information on the generation and/or enhancement of Priority Non-Carbon Benefits (to the extent not yet provided for under any relevant Safeguards Plan, if applicable) under the ER Program.
- (c) The Party responsible for arranging Verification in accordance with Section 8.02(a) and the terms of the ERPA shall request the Independent Reviewer to start Verification within forty five (45) calendar days of the Trustee's receipt of the ER Monitoring Report from the Program Entity.

Section 5.02 *Transfer of ERs*

- (a) Within thirty (30) calendar days following receipt of the final Verification Report and subject to ARTICLE XI and Section 15.01(c), the Trustee, following consultations with the Program Entity, shall determine, or have the Buffer Manager determine, as applicable, in accordance with the ER Program Buffer Guidelines and notify the Program Entity of (i) the amount of generated and Verified ERs that the Program Entity has to transfer and deposit into the ER Program Buffer as Buffer ERs for each covered risk category in accordance with the ER Program Buffer Guidelines and (ii) the amount of generated and Verified ERs for which the Program Entity has demonstrated its ability to transfer Title to ERs and which form part of the ER Transfer.

- (b) Within thirty (30) calendar days following confirmation by the Buffer Manager of receipt of the Buffer ERs in the ER Program Buffer and subject to Section 16.02(e) and Section 5.02(a), the Program Entity shall provide the Trustee with a signed ER Transfer Form.
- (c) In the event that a Registry system has not been set up or has not been determined at the time of the ER Transfer, any ER Transfer will be deemed completed upon receipt by the Trustee of:
 - (i) a final Verification Report verifying the amount of ERs generated and measured under the ER Program during a given Reporting Period and contracted for under the ERPA; and
 - (ii) an ER Transfer Form.
- (d) In the event that a Registry system has been set up or has been determined at the time of the ER Transfer, any ER Transfer will be deemed completed upon:
 - (i) receipt by the Trustee of a final Verification Report verifying the amount of ERs generated and measured under the ER Program during a given Reporting Period and contracted for under the ERPA, and an ER Transfer Form; and
 - (ii) crediting of such Verified ERs to one or more Registry Account(s) nominated by the Trustee in accordance with the rules of the respective Registry system.
- (e) The Trustee shall take all reasonable steps required to assist the Program Entity in the ER Transfer.
- (f) Subject to Section 3.01(b), any ER Transfer shall include the transfer of all rights, titles and interests attached to such transferred ERs.
- (g) Contract ERs and Additional ERs, as well as any underlying reduced tonnes of CO₂e, may only be used or claimed once. The Program Entity shall not use such Contract ERs and/or Additional ERs, as well as any underlying reduced tonnes of CO₂e, for sale or public relations (as far as such latter use implies or suggests the Program Entity's continued ownership of or right to claim such ERs). The Program Entity may only use or claim the reduced tonnes of CO₂e underlying transferred Contract ERs and/or Additional ERs for compliance with domestic commitments if and in so far as the Trustee, following consultations with Carbon Fund Participants, has provided its express prior written consent.
- (h) In the event that transferred Contract ERs and/or Additional ERs can be converted into any other form of right, credit, offset or similar unit created under any voluntary or regulatory system or scheme or existing or future compliance carbon market and the Trustee elects to effect such a conversion on behalf of one or more Carbon Fund Participant(s), the Program Entity shall cooperate with the Trustee, any Carbon Fund Participant and other relevant authorities and entities to help the Trustee or Carbon Fund Participant convert such transferred ERs into other ER credits that may be used by Carbon Fund Participants. If the conversion process requires changes to any Program Document or the ERPA, the Parties shall work together in good faith to change the relevant documents accordingly, provided that such changes do not adversely affect the Program Entity's rights under the ERPA.

Section 5.03 *Payment and Transfer of Legal Title*

- (a) Within thirty (30) calendar days following completion of an ER Transfer, the Trustee shall make the Periodic Payment to the Program Entity in accordance with the ERPA.
- (b) The Periodic Payment shall be calculated in accordance with the formulae established in the ERPA.
- (c) Unless provided for otherwise in the ERPA with respect to ER Advance Payment(s), legal title to any transferred Contract ERs or Additional ERs shall transfer to the Trustee at the time of payment of the Periodic Payment for the relevant transferred ERs.

Section 5.04 *Costs and Taxes*

- (a) The Program Entity shall bear any fees, charges, costs or other expenses charged by a Registry system or any other relevant authority or entity in relation to Registration, issuance and forwarding of Contract ERs or Additional ERs or the ER Transfer.
- (b) Any Taxes that may be payable with regard to the operation of the ER Program, the sale of ERs under the ERPA or the transfer of Contract ERs or Additional ERs 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, the Trustee shall deduct such Taxes from any Periodic Payments to be made to the Program Entity. The Trustee shall not deduct any other Taxes from Periodic Payments to be made to the Program Entity.

ARTICLE VI

ER Program Development

Section 6.01 *ER Program Development*

The Program Entity shall notify the Trustee of (i) any material delays or problems in the development, operation and implementation of the ER Program and (ii) the ER Program Start Date no later than thirty (30) calendar 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 ER Program Start Date, the Program Entity shall notify the Trustee immediately.

Section 6.02 *Documentation*

- (a) If any of the Program Documents become non-compliant with the REDD Country Participant's MRV System or the International Rules, if any, 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, in accordance with the Methodological Framework, will bring them into compliance with the REDD Country Participant's MRV System and the International Rules, if any.
- (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 ER Program is made compliant with such amendments or revisions and, in particular, the Program Entity shall implement any revised or amended ER Monitoring Plan.

Section 6.03 *Benefit Sharing Plan*

- (a) The Program Entity shall share a significant part of the Monetary and Non-Monetary Benefits achieved in connection with the implementation of the ER Program (including received payments for transferred Contract ERs and Additional ERs and Advance Payments) with Beneficiaries. For this purpose, the Program Entity shall develop and submit to the Trustee a Benefit Sharing Plan.
- (b) The Benefit Sharing Plan shall be in full compliance with applicable World Bank Operational Policies, the International Rules and any relevant domestic laws and regulations.
- (c) The Benefit Sharing Plan shall be consistent with the ER Program Document and shall be developed in accordance with the Methodological Framework.
- (d) Any material changes, modifications or updates of the Benefit Sharing Plan (including the exclusion of categories of Beneficiaries or the inclusion of additional categories of Beneficiaries) are subject to the Trustee's prior written consent, not to be unreasonably withheld.

Section 6.04 *Priority Non-Carbon Benefits*

- (a) The Program Entity is encouraged to generate and/or enhance Priority Non-Carbon Benefits under the ER Program.
- (b) The Program Entity shall provide information on its efforts to generate and/or enhance Priority Non-Carbon Benefits (to the extent not yet provided for under any relevant Safeguards Plan, if applicable) as part of each ER Monitoring Report and Interim Progress Report.

ARTICLE VII

Distribution Letter

Section 7.01 *Distribution Letter*

- (a) The Focal Point shall prepare the Distribution Letter as required by the International Rules, if any, or applicable Registry rules in accordance with the Trustee's entitlements under the ERPA and shall ensure that such Distribution Letter is submitted to the relevant Registry or any other relevant authority or entity in charge of the ER issuance and/or forwarding process.
- (b) If either Party is required to sign the Distribution Letter under the International Rules or applicable Registry rules, it shall, within fifteen (15) calendar days of the Focal Point's written request, sign and return such Distribution Letter to the Focal Point.

ARTICLE VIII

Registration and Verification

Section 8.01 *Registration*

- (a) If and as far as required under Registry rules and procedures, the ER Program and/or the ER Program Measure(s) shall be submitted to the relevant Registry or any other relevant authority or entity for Registration. Unless agreed otherwise in the ERPA, the Trustee, shall, if applicable, in consultation with the Program Entity and any other relevant authorities and entities, submit or arrange for the submission of the ER Program and/or the ER Program Measure(s) for Registration.
- (b) The Parties agree to cooperate in order to obtain Registration and all other approvals of the ER Program and/or the ER Program Measure(s), as deemed necessary for this purpose.

Section 8.02 *Verification*

- (a) All ERs generated by the ER Program during each Reporting Period shall be subject to Verification by an Independent Reviewer. Unless agreed otherwise in the ERPA, the Trustee shall, in consultation with the Program Entity, arrange for such Verification and shall contract an Independent Reviewer for Verification purposes.
- (b) The Party responsible for arranging Verification shall ensure that each Verification Report shall verify all ERs generated under the ER Program within the ER Program Accounting Area during each Reporting Period.

ARTICLE IX

ER Program Operation and Management

Section 9.01 *ER Program Operation and Implementation*

The Program Entity shall:

- (a) operate and implement the ER Program and the ER Program Measure(s) in accordance with the terms of the ERPA, the REDD Country Participant's MRV System, the Methodological Framework, the Benefit Sharing Plan, the Program Documents (including any feedback and grievance redress mechanism set up under and in connection with the ER Program) and any applicable laws and regulations and in accordance with sound engineering, financial and environmental practices;
- (b) 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 ERPA, including, but not limited to, its obligation to transfer the Minimum Reporting Period Amounts and Cumulative Amounts of Contract ERs for each Reporting Period in accordance with the ERPA, or any actual breach of such obligations;
- (c) inform the Trustee of any modification envisaged to the ER Program that would require a modification of any Program Document;
- (d) provide to the Trustee all information requested by the Trustee in respect of the operation of the ER Program;

- (e) operate and implement the ER Program and carry out and manage the ER Program Measure(s) in compliance with the World Bank Operational Policies and any Safeguards Plans provided for under the ERPA;
- (f) ensure installation, operation and maintenance of the facilities and equipment and retention of staff necessary for gathering all such data as may be required by the ER Monitoring Plan, including by establishing and maintaining all related data measurement and collection systems as are necessary;
- (g) provide the Trustee and its nominees or use all reasonable efforts to ensure that the Trustee and its nominees are provided with access to the Land and all relevant records without interference for the purposes of the ERPA;
- (h) if gaining knowledge of any change to the policies, laws and regulations of the Host Country that could materially affect the legal status, including tenure, of any part of the Land and thereby adversely affect the Program Entity's ability to perform its obligations under the ERPA, promptly notify the Trustee of such event;
- (i) comply with all obligations under all licenses, permits, consents and authorizations granted to the Program Entity that are required to operate and implement the ER Program;
- (j) permit the Trustee and its representatives to inspect all of the Program Entity's accounts and records and other documents in relation with the ER Program and for the purposes of the ERPA and to have them audited by, or on behalf of, the Trustee and for the cost and account of the Trustee;
- (k) cooperate fully with the Trustee and the Independent Reviewer in respect of the implementation of the ER Monitoring Plan and the periodic Verification of ERs;
- (l) cooperate fully with the Trustee and other relevant registries, entities and authorities regarding the issuance, transfer and forwarding of Contract ERs and Additional ERs to any Registry Account(s) nominated by the Trustee and the conversion of any transferred Contract ERs and/or Additional ERs into any ER credit that may be used by Carbon Fund Participants for compliance purposes under any existing or future compliance carbon market or for resale purposes; and
- (m) 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 14.02(g), 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 and Implementation*

- (a) Without prejudice to the Program Entity's responsibility for the operation and implementation of the ER Program and ER Program Measures(s) under the ERPA, the Program Entity may enter into Sub-Project Arrangements with Sub-Project Entities to help the Program Entity operate and implement the ER Program and ER Program Measure(s), as further specified in the ERPA. Prior to signing the first Sub-Project Arrangement, the

Program Entity shall provide the Trustee an opportunity to review and comment on the terms of the Sub-Project Arrangement, shall reflect such comments in the Sub-Project Arrangement and shall use such Sub-Project Arrangement as a sample for all other Sub-Project Arrangements.

- (b) The Program Entity shall take all necessary steps to ensure that the Sub-Projects are developed, operated and implemented in accordance with the Program Documents and the terms of the ERPA.
- (c) The Program Entity shall keep the Trustee informed about the progress of the implementation of the Sub-Projects and inform the Trustee immediately upon becoming aware of any delays which could materially and adversely affect the Program Entity's ability to perform its obligations under the ERPA.
- (d) The Program Entity shall be responsible for ensuring that each Sub-Project Entity:
 - (i) has implemented all applicable requirements of the ER Monitoring Plan;
 - (ii) implements its Sub-Project in accordance with the terms of the ER Program Document;
 - (iii) installs, operates and maintains the facilities and equipment and retains staff necessary for gathering all such data as may be required by the ER Monitoring Plan, including by establishing and maintaining all related data measurement and collection systems as are necessary;
 - (iv) transfers to the Program Entity, or provides the Program Entity with exclusive rights to transfer to the Trustee, Title to ERs generated by its respective Sub-Project(s) and to be transferred as Contract ERs and/or Additional ERs to the Trustee under the ERPA, free of any interest, Encumbrance or claim of a Third Party, prior to any ER Transfer under the ERPA;
 - (v) observes, implements and meets all other requirements contained in the ER Monitoring Plan, in particular those pertaining to environmental and social performance and operational management systems;
 - (vi) informs the Program Entity immediately after becoming aware of the occurrence of a Reversal Event under a Sub-Project;
 - (vii) operates and implements its Sub-Project in compliance with the World Bank Operational Policies and any Safeguards Plans provided for under the ERPA; and
 - (viii) maintains and prepares its Sub-Project to allow for Verification.
- (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 ER Monitoring Plan;

- (iii) retain full responsibility for the implementation of the ER Monitoring Plan;
- (iv) take all necessary steps to ensure that the Sub-Projects are developed and implemented in accordance with the ERPA;
- (v) provide the Trustee with copies of all Sub-Project Arrangements executed by the Program Entity in respect of the ER Program;
- (vi) manage the administration of each Sub-Project Arrangement such that both the Program Entity and the relevant Sub-Project Entity fulfill their obligations under each such Sub-Project Arrangement;
- (vii) notify the Trustee of any actual or suspected breach of any Sub-Project Arrangement, whether such breach occurs in respect of the Program Entity or a Sub-Project Entity;
- (viii) maintain a database with technical and financial details of each Sub-Project, including the frequency of reporting and quality assurance standards for the Sub-Projects;
- (ix) ensure that each Sub-Project Entity satisfies any obligations in respect of applications for all licenses, permits, consents and authorizations required to operate and implement its Sub-Project; and
- (x) not enter into a Sub-Project Arrangement 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 ("**Non-Compliance Notice**").
- (b) The Program Entity shall also provide a Non-Compliance Notice to the Trustee:
 - (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 Arrangement; or
 - (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 and adversely affect its ability to perform its obligations under a Sub-Project Arrangement or prevent the Program Entity from fulfilling its obligations under the ERPA.

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 ERs and/or Additional ERs to the Trustee due to circumstances

in relation to Sub-Projects with respect to which it has provided a Non-Compliance Notice within ninety (90) calendar days of the receipt by the Trustee of the Non-Compliance Notice, it may propose to the Trustee one or more Sub-Projects expected to individually or cumulatively generate at least the volume of ERs per year of operation indicated in this Agreement ("**Compliance Sub-Projects**").

- (b) The Trustee may, at its discretion, accept a Compliance Sub-Project and, upon such acceptance:
 - (i) the Parties shall modify the ER Program Document to include one or more Compliance Sub-Projects as part of the ER Program and take all appropriate action required to include such Compliance Sub-Projects into the ER Program, as required by the rules of the respective Registry system, applicable laws and regulations and, if applicable, the International Rules;
 - (ii) such Compliance Sub-Projects shall be considered as Sub-Projects and part of the ER Program under the ERPA and the ERPA shall apply to the Program Entity in respect of such Sub-Projects *mutatis mutandis* as if they had originally been included in the ER 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 ER Program ("**Sub-Project Inventory**"), including an identification of those Sub-Projects included in the ER 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 of the Sub-Project Arrangement and, if applicable, the date a Non-Compliance Notice was issued, including reasons for the Non-Compliance Notice;
 - (iii) record any other data for the Sub-Project required by the ER Monitoring Plan; and
 - (iv) contain a copy of the Sub-Project Arrangement for that Sub-Project.
- (c) In each ER Monitoring Report, the Program Entity shall provide a summary to the Trustee of any changes to the Sub-Project Inventory immediately preceding the ER Monitoring Report.
- (d) The Sub-Project Inventory shall be made available to the Independent Reviewer and the Trustee upon request.

ARTICLE X

Communication

Section 10.01 *Communication with Respect to ERs*

- (a) Unless agreed otherwise in the ERPA, the Trustee and the Program Entity shall serve as joint Focal Points, 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 ERs that are not or cannot be issued, transferred 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 ERs are to be issued, transferred and forwarded, then the Program Entity shall, at the request of the Trustee and at the expense of the Trustee, make reasonable endeavors to open an account in the Registry, if available at that time, and shall hold the relevant ERs 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 ERs in accordance with any directions of the Trustee; and
 - (ii) give all assistance reasonably required to have those ERs transferred and forwarded to or to the order of the Trustee.
- (c) The Parties will cooperate in good faith with respect to how they communicate with the media and other Third Parties on issues related to the ER Program.

ARTICLE XI

ER Program Buffer

Section 11.01 *Establishment and Management of ER Program Buffer*

- (a) The Parties shall establish an ER Program Buffer to be managed by the Buffer Manager in accordance with these General Conditions and the ER Program Buffer Guidelines.
- (b) Both Parties shall cooperate with each other and with the Buffer Manager in the establishment and management of the ER Program Buffer throughout the Term in accordance with the terms of these General Conditions and the ER Program Buffer Guidelines.
- (c) The ER Program Buffer shall cover the following risk categories:
 - (i) Uncertainty; and
 - (ii) Reversal Risks, unless the Program Entity has opted for and adopted another Reversal Management Mechanism, acceptable to the Trustee.

In addition, the ER Program Buffer may also cover Title to ER Risks, provided that the ER Program Buffer Guidelines provide for this additional risk category.

Section 11.02 *Operation of ER Program Buffer*

- (a) The ER Program Buffer shall be operated in accordance with the terms of these General Conditions and the ER Program Buffer Guidelines.
- (b) Prior to each ER Transfer and in addition to the amount of Contract ERs and/or Additional ERs to be transferred as part of such ER Transfer, a certain amount of Buffer ERs generated and Verified under the ER Program during the preceding Reporting Period shall be transferred and deposited for each covered risk category into the ER Program Buffer. The transfer and deposit of such Buffer ERs into the ER Program Buffer shall be free of charge to the Trustee.
- (c) The amount of Buffer ERs to be transferred and deposited into the ER Program Buffer for each covered risk category shall be determined in accordance with the ER Program Buffer Guidelines and shall have seniority over any Third Party rights towards ERs that have been generated by the ER Program.
- (d) Upon being transferred and deposited into the ER Program Buffer Buffer ERs shall be non-tradable unless they have been released from the ER Program Buffer in accordance with the ER Program Buffer Guidelines.
- (e) In the event that the ER Program Buffer is the Program Entity's Reversal Management Mechanism and a Reversal occurs during the Term, the Trustee shall, in consultation with the Program Entity, calculate the amount of Contract ERs, Additional ERs and/or Buffer ERs that are affected by such Reversal, notify the Program Entity and the Buffer Manager, if applicable, of such amounts and, as applicable, cancel or request the Buffer Manager to cancel an amount of Buffer ERs in the ER Program Buffer that is equivalent to the amount of affected Contract ERs, Additional ERs and/or Buffer ERs.
- (f) In case the ER Program Buffer Guidelines provide for Title to ER Risks as an additional risk category to be covered by the ER Program Buffer, and provided that, in accordance with Section 15.01(d), (i) an assessment of a Title Contest regarding any previous transfer of Title to ERs concludes that such Title Contest may have merit and (ii) the Trustee has notified the Program Entity and the Buffer Manager, if applicable, of the amount of Contract ERs, Additional ERs and/or Buffer ERs that are affected by such Title Contest, the Trustee shall, as applicable, set aside or request the Buffer Manager to set aside an amount of Buffer ERs in the ER Program Buffer that is equivalent to the amount of affected Contract ERs, Additional ERs and/or Buffer ERs pending instructions by the Contesting Party on the further disposal of such set-aside Buffer ERs.

Section 11.03 *End of Term and Post-ERPA Reversal Management Mechanism*

- (a) By the end of the Term, all remaining Buffer ERs transferred and deposited into the ER Program Buffer to cover Uncertainty and, if applicable, Title to ER Risks shall be dealt with in accordance with the ER Program Buffer Guidelines.
- (b) No later than one (1) year prior to the end of the Term, the Program Entity shall have in place a robust mechanism, in form and substance satisfactory to the Trustee, that allows the Program Entity to continue to manage any potential reversal risks under the ER Program beyond the Term ("**Post-ERPA Reversal Management Mechanism**"). In the event that such Post-ERPA Reversal Management Mechanism includes a buffer reserve or another mechanism which uses ERs from the ER Program to manage Reversal Risks, the Trustee shall, upon request by the Program Entity, transfer or allow for the transfer of the remaining

Buffer ERs that have been transferred and deposited into the ER Program Buffer to cover Reversal Risks, as determined in accordance with the ER Program Buffer Guidelines, to a registry account of such mechanism under the Post-ERPA Reversal Management Mechanism nominated by the Program Entity. In the event that a Post-ERPA Reversal Management Mechanism is not in place one (1) year prior to the end of the Term and unless the Parties agree otherwise, all remaining Buffer ERs that have been transferred and deposited into the ER Program Buffer to cover Reversal Risks shall be cancelled.

ARTICLE XII

Reversal Events

Section 12.01 *No Reversal of ERs*

- (a) During the Term, the Program Entity shall apply and shall ensure that each Sub-Project Entity will apply all reasonable measures to prevent the occurrence of any Reversal Event, not cause, help cause, tolerate or authorize the occurrence of any Reversal Event and, if a Reversal Event occurs, undertake, in consultation with the Trustee, all reasonable measures to minimize and mitigate the adverse effect of such event(s) on the ER Program and/or the Program Entity's performance of its obligations under the ERPA.
- (b) The Program Entity shall inform the Trustee of a Reversal Event within ninety (90) calendar days after becoming aware of the occurrence of such Reversal Event. The occurrence of a Reversal Event shall be identified in accordance with the ER Monitoring Plan and reported as part of the ER Monitoring Report. In the event that the Program Entity and the Trustee disagree on the occurrence, cause and/or scope of a Reversal Event, if requested by the Trustee, the occurrence, cause and/or scope of a Reversal Event shall be assessed and Verified by an Independent Reviewer.

Section 12.02 *Reversal Management Mechanism*

- (a) The Program Entity shall adopt a Reversal Management Mechanism, acceptable to the Trustee, to cover any Reversals during the Term.
- (b) If a Reversal occurs during the Term, the Reversal Management Mechanism shall be used to ensure that any Contract ERs and/or Additional ERs previously transferred to the Trustee under the ERPA remain unaffected by the Reversal and the Parties shall cooperate with each other to implement the Reversal Management Mechanism.

ARTICLE XIII

Force Majeure Events

Section 13.01 *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 ("**Non-Affected Party**") with written notice providing details of the Force Majeure Event ("**Force Majeure Notice**") within fifteen (15) calendar 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 13.02 *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 transfer Contract ERs due to a Force Majeure Event, then:
 - (i) the Maximum Option Volume shall increase by the number of ERs which the Program Entity failed to transfer as a result of the Force Majeure Event; and
 - (ii) the price payable by the Trustee for the ERs referred to in subsection (i) as Additional 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 (including an obligation to transfer ERs), and that non-performance continues for a period of one hundred and eighty (180) consecutive calendar 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 ERs and Additional ERs transferred 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 Payment(s) made but not deducted from Periodic Payments in relation to the ER Program, which the Trustee has paid or incurred until the date of termination.

ARTICLE XIV

Representations, Warranties and Covenants

Section 14.01 *General*

Each Party represents and warrants to the other Party that:

- (a) the person signing the ERPA on behalf of that Party has been duly authorized to sign the ERPA as representative and on behalf of that Party and the ERPA 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 the ERPA 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 14.02 *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 ERs and the ER Transfer, 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 ER Program and the ER Program Measure(s) and in particular, in the ER Program Document, 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 ER Program or the Contract ERs or Additional ERs 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 ER Program which could materially and adversely affect the Program Entity's ability to fulfill its obligations under the ERPA;
- (f) it has not sold, transferred, assigned, licensed, disposed of, granted or otherwise created any interest in the Contract ERs or Additional ERs generated by the ER Program and the ER Program Measure(s) to any Third Party other than in accordance with the ERPA;
- (g) 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 14.03 *Sub-Project Representations and Warranties*

- (a) In addition to the representations and warranties made by the Program Entity in Section 14.02, the Program Entity represents and warrants in respect of each Sub-Project, as of the date of the ERPA, and again upon both the production of the ERs and the transfer of Contract ERs and/or Additional ERs, 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 and adversely affect the Program Entity's ability to fulfill its obligations under the ERPA;
 - (ii) to the best of the Program Entity's knowledge, there are no outstanding agreements or liabilities that could materially and adversely affect the ability of the relevant Sub-Project Entity to meet its obligations under a Sub-Project Arrangement executed pursuant to the ERPA; and
 - (iii) to the best of the Program Entity's knowledge, the Sub-Project Entity has not committed itself to any other program or project developer to generate ERs on the respective part of the ER Program Measure(s) Area and transfer such ERs to any Third Party that could materially and adversely affect the ability of the relevant Sub-Project Entity to meet its obligations under a Sub-Project Arrangement executed pursuant to the ERPA.
- (b) If the Program Entity is no longer able to make the representations and warranties in Section 14.03(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 14.04 *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 14.02(g), 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 XV

Transfer of Title to ERs

Section 15.01 *Title to ERs*

- (a) The Program Entity shall ensure throughout the Term and in accordance with the Methodological Framework that the Program Entity has the ability to transfer Title to ERs to the Trustee, free of any interest, Encumbrance or claim of a Third Party other than in accordance with the ERPA.
- (b) In the event that the Program Entity becomes aware during any given Reporting Period (i) of its inability, in full or in part, to transfer Title to ERs to the Trustee or (ii) of any Title Contest by any Contesting Party, regarding any ERs that have been transferred or are to be transferred to the Trustee under the ERPA as Contract ERs and/or Additional ERs, the

Program Entity shall endeavor to resolve such inability or Title Contest (potentially by using an available grievance redress mechanism under the ER Program) within the same Reporting Period and report any remaining inability to transfer Title to ERs or any remaining Title Contest as part of its ER Monitoring Report. Together with the ER Monitoring Report, the Program Entity shall also provide the Trustee with documentary and other evidence demonstrating the Program Entity's ability to transfer to the Trustee Title to ERs regarding ERs that have been generated during the preceding Reporting Period.

- (c) In the event that, prior to an ER Transfer, the Trustee, in its reasonable opinion, determines that the Program Entity has failed, in full or in part, to demonstrate its ability to transfer Title to ERs, the Trustee shall determine, following consultations with the Program Entity, the amount of Contract ERs and/or Additional ERs that are affected by such failure and notify the Program Entity accordingly. The Program Entity shall not transfer and the Trustee shall not be obligated to accept the transfer of and make payment for such affected Contract ERs and/or Additional ERs.
- (d) In the event of a Title Contest regarding any previous transfer of Title to ERs, and provided that such Title Contest cannot be resolved between the Program Entity and the Contesting Party within a reasonable time period, to be determined by the Trustee following consultations with the Program Entity, the Trustee shall assess or have assessed, on a prima facie basis, whether the Title Contest may have any merit. If such assessment concludes that the Title Contest may have merit, the Trustee shall, in consultation with the Program Entity, calculate the amount of Contract ERs, Additional ERs and/or Buffer ERs that are affected by such Title Contest, and notify the Program Entity and the Buffer Manager, if applicable, of such amounts.

ARTICLE XVI

Events of Default and Remedies

Section 16.01 *Events of Default*

- (a) Each of the following events are Events of Default on the part of the Program Entity:
 - (i) ER Transfer Failure;
 - (ii) the occurrence of a Reversal, as determined by the Trustee, and failure by the Program Entity to ensure through the Reversal Management Mechanism, within ninety (90) calendars days following the Trustee's determination of the occurrence of a Reversal, that any Contract ERs and/or Additional ERs previously transferred to the Trustee under the ERPA remain unaffected by such Reversal;
 - (iii) the occurrence of a Title Contest, as determined by the Trustee pursuant to Section 15.01(d), and failure by the Program Entity to ensure through the ER Program Buffer, if applicable, or otherwise, within ninety (90) calendars days following the Trustee's determination of the occurrence of a Title Contest, that the transfer of Title to ERs regarding any Contract ERs and/or Additional ERs previously transferred to the Trustee under the ERPA remain unaffected by such Title Contest;

- (iv) 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 adversely affects its ability to perform its obligations under the ERPA in the reasonable opinion of the Trustee;
 - (v) material delay in the development of the ER Program or other materially adverse change in the status of the ER Program which will prevent the ER Program from starting by the Expected ER Program Start Date;
 - (vi) material breach by the Program Entity of any other term of the ERPA;
 - (vii) failure to observe, implement and meet all requirements contained in the ER Monitoring Plan, the Benefit Sharing Plan or a Safeguards Plan provided for under the ERPA (including any feedback and grievance redress mechanism provided for under the ER Program, the Benefit Sharing Plan and/or a Safeguards Plan); and
 - (viii) 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) Each of the following events are Events of Default on the part of the Trustee:
- (i) subject to Section 18.04 and Section 18.08, failure to make payment when due under the ERPA, which is not reasonably in dispute (“**Payment Failure**”); and
 - (ii) material breach by the Trustee of any other term of the ERPA.

Section 16.02 *Notice and Cure of Event of Default or Action Plan*

- (a) If either Party becomes aware or reasonably anticipates that any of the Events of Default specified under Section 16.01 has occurred or will occur, it shall notify the other Party of the Event of Default (“**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 an ER Transfer Failure, the expected shortfall of Contract ERs or Additional ERs.
- (c) As of receipt of the Default Notice and provided that (i) in the reasonable opinion of the non-defaulting Party, such Event of Default is curable, and (ii) an Action Plan has not been requested or submitted in accordance with Section 16.02(d), the defaulting Party shall have a period of ninety (90) calendar days to cure the Event of Default (“**Cure Period**”).
- (d) As of receipt of the Default Notice, the non-defaulting Party may, at its own discretion and as an alternative to the Cure Period, request the defaulting Party to submit, within thirty (30) calendar days following such request, an action plan, acceptable to the non-defaulting Party, to implement specific measures to cure the Event of Default during a certain time period (“**Action Plan**”).

- (e) Without prejudice to Section 16.03(a)(iv), in the event of the Program Entity's failure to observe, implement and meet all requirements contained in a Safeguards Plan provided for under the ERPA (including any feedback and grievance redress mechanism provided for in a Safeguards Plan), the Program Entity's rights to transfer any amount of ERs affected by such failure and to request payment for such affected ERs shall be suspended from the date of receipt of the Default Notice until such failure has been cured.

Section 16.03 *Trustee's Remedies for an Event of Default*

- (a) If the Program Entity is the defaulting Party and, if applicable, the Program Entity fails to cure the Event of Default to the reasonable satisfaction of the Trustee within the Cure Period or within the time period provided for in the Action Plan, the Trustee may, at its discretion:
- (i) if the Event of Default is an ER Transfer Failure which is not an Intentional Breach by the Program Entity:
- (A) allow the Program Entity to submit another Action Plan; or
 - (B) allow the Program Entity to transfer any shortfall of ERs in the following Reporting Period(s); or
 - (C) reduce one or more Minimum Reporting Period Amounts equivalent to the shortfall in ERs and, if the ERPA provides for an Option with the Trustee being the Grantee, 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 sold and transferred as Additional ERs, shall be the Unit Price and not the Exercise Price; or
 - (D) in the event that the ER shortfall equals or exceeds 20% of the Cumulative Amount, terminate the ERPA and recover from the Program Entity, if applicable, any Taxes paid and any Advance Payment(s) made and not yet deducted from the Periodic Payments, which the Trustee has paid until the date of termination.
- (ii) if the Event of Default is a delay in the Expected ER Program Start Date:
- (A) allow the Program Entity to transfer any expected delay-related shortfall of ERs in the following Reporting Period(s); or
 - (B) reduce one or more Minimum Reporting Period Amounts equivalent to the expected delay-related shortfall in ERs and, if the ERPA provides for an Option with the Trustee being the Grantee, 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 sold and transferred as Additional ERs, shall be the Unit Price and not the Exercise Price.
- (iii) if the Event of Default (including, without limitation, an ER Transfer Failure) is a result of an Intentional Breach by the Program Entity, terminate the ERPA and recover from the Program Entity, if applicable, any Taxes paid and any Advance Payment(s) made and not yet deducted from Periodic Payments, which the Trustee has paid until the date of termination, with interest accruing at a rate of LIBOR, *plus*

damages from the Program Entity in an amount that represents any losses, damages and costs suffered by the Trustee and/or the Carbon Fund Participants as a result of the Event of Default by the Program Entity.

- (iv) if the Event of Default is an event not those described in subparagraphs (i), (ii) or (iii) above:
 - (A) allow the Program Entity to submit an Action Plan; or
 - (B) terminate the ERPA and recover from the Program Entity, if applicable, any unrecovered Taxes paid and any Advance Payment(s) made and not yet deducted from Periodic Payments, which the Trustee has paid until the date of termination.

Section 16.04 *Program Entity Remedies for an Event of Default*

- (a) If the Trustee is the defaulting Party and, if applicable, the Trustee fails to cure the Event of Default to the reasonable satisfaction of the Program Entity within the Cure Period, the Program Entity may, at its discretion:
 - (i) if the Event of Default is a Payment Failure which is not an Intentional Breach by the Program Entity:
 - (A) require the Trustee to make any outstanding payments due; and/or
 - (B) terminate the ERPA.
 - (ii) if the Event of Default (including, without limitation, a Payment Failure) is a result of an Intentional Breach by the Trustee, terminate the ERPA and, if applicable, require the Trustee to make any outstanding payments due plus interest at a rate of LIBOR, *plus* damages from the Trustee in an amount that represents any losses, damages and costs suffered by the Program Entity as a result of the Event of Default by the Trustee.
 - (iii) if the Event of Default is an event not those described in subparagraphs (i) or (ii) above, terminate the ERPA.

ARTICLE XVII

Other Termination Events

Section 17.01 *Termination of Carbon Fund*

- (a) The Trustee may terminate the ERPA by notice in writing to the Program Entity if:
 - (i) the Carbon Fund is to terminate and the Trustee does not assign its rights or novate its obligations pursuant to Section 18.06; or
 - (ii) the World Bank or the International Development Association has declared the Program Entity ineligible to receive proceeds from 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 of any financing made by the World Bank or the International Development Association; and/or (ii) a declaration by any multilateral development bank with which the World Bank or the International Development Association 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 Section 17.01(a)(i), 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 Section 17.01(a)(ii), 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 yet deducted from the Periodic Payments, which the Trustee has paid or 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 the ERPA following the date of termination except as provided for under Section 18.11.

ARTICLE XVIII

Miscellaneous Provisions

Section 18.01 *Amendments to the ERPA*

Except as otherwise provided herein, the ERPA may not be amended except by a written agreement executed by the Parties.

Section 18.02 *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 18.03.

Section 18.03 *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 ("**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) calendar 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. Unless agreed otherwise in the ERPA, the place of conciliation shall be the capital of the Host Country.
- (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. Unless agreed otherwise in the ERPA, the place of arbitration shall be London.

Section 18.04 *IBRD Capacity; Non-Recourse; Privileges and Immunities*

- (a) The ERPA is entered into by the IBRD, not personally or in its individual capacity, but as trustee of the Carbon Fund.
- (b) The Program Entity agrees to look solely to the assets of the Carbon Fund for the enforcement of any obligations, claims or liabilities under or in connection with the ERPA or the ER Program, as neither the Trustee, IBRD, any of its affiliated entities, the Carbon Fund Participants, other beneficiaries of the Carbon 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 Carbon 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 Carbon 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 18.05 *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 18.06 *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 transferred Contract ERs or Additional 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 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 Periodic Payments) to a Carbon 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 1 or a novation agreement substantially in the form of Schedule 2. 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 Carbon Fund, or the Carbon 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 18.07 *Disclosure of information*

- (a) Unless the ERPA provides otherwise, all the terms of the ERPA shall be public (non-confidential) and be disclosed.
- (b) Notwithstanding Section 18.07(a), all reports (including, but not limited to, ER Monitoring Reports, Verification Reports, Interim Progress Reports) and plans (including, but not limited to, Benefit-Sharing Plans, Safeguards Plans, ER Monitoring Plans, Reversal Event Mitigation Plans and Action Plans) to be issued under the ERPA as well as these General Conditions shall be public (non-confidential) and be disclosed.

Section 18.08 *Carbon Fund Participant Payment Failure*

In addition to Section 18.04, the Program Entity agrees and understands that:

- (a) the payment obligations of the Trustee under or in connection with the ERPA are limited to assets of the Carbon Fund, which consist primarily of the funding to be provided to the Trustee by Carbon Fund Participants. Under the Charter, Carbon Fund Participants are

required to make payment to the Trustee up to their respective contribution to the Carbon Fund upon periodic demands for payment issued by the Trustee. In the event one or more Carbon Fund Participants fails to make payment to the Trustee for whatever reason ("**Carbon Fund Participant Payment Failure**"), the Trustee may not have sufficient funds available to meet its payment obligations when due under the ERPA, 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 Carbon Fund Participant towards the Trustee under and in connection with the Charter are separate and no Carbon Fund Participant is obliged to make additional payments to the Trustee in excess of its respective contribution to the Carbon Fund to compensate for any shortfall in funds available to the Trustee to make payments under or in connection with the ERPA.

The Program Entity represents and warrants that, prior to the execution of the ERPA, 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 Carbon Fund Participant Payment Failure, and that the Program Entity understands this risk.

Section 18.09 *Sale and Payment Only*

The Trustee and the Program Entity 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 18.10 *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 the ERPA.

Section 18.11 *Survival of Provisions*

The respective rights and obligations of the Parties contained within ARTICLE I, ARTICLE II, Section 5.03(c) , ARTICLE XIV, ARTICLE XVI, Section 17.01, Section 18.02, Section 18.04, Section 18.07, Section 18.08, Section 18.09 and Section 18.11 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 18.12 *Entire Agreement*

These General Conditions and the ERPA together represent the whole and only agreement between the Parties in relation to the sale and transfer of and the payment for the Contract ERs and the Additional 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 the ERPA shall exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

Section 18.13 *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 Carbon Fund] Emission Reductions Payment Agreement

We refer to the [Insert Carbon 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 Carbon Fund] ("**IBRD**" or the "**Trustee**") ("**Agreement**") which includes the International Bank for Reconstruction and Development General Conditions Applicable to Emission Reductions Payment Agreements for Forest Carbon Partnership Facility Emission Reductions Programs dated [insert date] ("**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 the Agreement 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 Carbon 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]

Date:

SCHEDULE 2: NOVATION AGREEMENT

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

between

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

[Insert name of party to whom interest is being novated] ("Substituting Party")

and

[Insert name of Program Entity] ("Program Entity")

Recitals:

- A. This Agreement supplements the Emission Reductions Payment Agreement made between the Trustee and the Program Entity dated [] ("**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*] ("**Effective Date**"); and
- (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.

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;
- (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; and

- (c) agrees to execute any documentation necessary to add the Substituting Party as a program participant in the ER 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 Program Entity

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 Program Entity under the Contract which occurred before the Effective Date.

3.2 Trustee

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 Trustee under the Contract which occurred before the Effective Date.

Signatures:

[Trustee]

[Substituting Party]

[Program Entity]

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 project-based guarantee operations and carbon finance transactions, where the World Bank, as trustee of a carbon fund, acquires emission reductions under an Emission Reductions Payment 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.