



CODE OF CDM TERMS[®]

Version 1.0 2006

This Code of CDM Terms has been developed by the International Emissions Trading Association (IETA) to facilitate trading under the Clean Development Mechanism (CDM) and forms the basis of the IETA ERPA. IETA encourages the use of this document by all interested parties.

WAIVER: THE FOLLOWING AGREEMENT WAS PREPARED BY IETA EXERCISING ITS BEST DUE DILIGENCE. HOWEVER, IETA, THE IETA MEMBERS, REPRESENTATIVES AND IETA BOARD OF DIRECTORS INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY INDIVIDUAL CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS MASTER AGREEMENT TO ENSURE THAT ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER'S LEGAL INTEREST.

© International Emission Trading Association (IETA). This document may be freely used, copied and distributed on the condition that each copy shall contain this copyright notice.



Foreword

The International Emissions Trading Association (IETA) is a non profit organization created in June 1999 to establish a functional international framework for trading greenhouse gas emissions reductions. Our 134 international members include leading multinational companies from across the carbon trading cycle: emitters, solution providers, brokers, insurers, verifiers and law firms.

IETA works for the development of an active, global greenhouse gas market, consistent across national boundaries. In doing so IETA focuses on the creation of systems and instruments that will ensure effective business participation.

This version 1.0 of the Code of CDM Terms has been developed by IETA in support of its Emission Reduction Purchase Agreement (ERPA) for the Clean Development Mechanism (CDM), it defines a standardise set of contract terms which can be used as part of the ERPA and will be regularly be updated to reflect any new decisions by the COP/MOP and or CDM Executive Board. The latest version of the ERPA can be downloaded from the IETA website (www.ieta.org). We feel that the current version will assist the market in providing a common set of contract definitions which will help in the contract negotiations and increase liquidity in this rapidly developing market.

Andrei Marcu
President & CEO, IETA

Questions or comments?

For general comments regarding this document and questions concerning the work of IETA please contact Johanna von Arnim, IETA at +41 22 737 0502 or vonarnim@ieta.org.

MARKET SOLUTIONS FOR GLOBAL ENVIRONMENTAL PROBLEMS



This Contract was developed by IETA's "ERPA Working Group".

Chairs of the working group:

- Peter Zaman - Clifford Chance
- Rutger De Witt Wijnen - De Brauw Blackstone Westbroek

Lead authors:

- Peter Zaman, Clifford Chance,
- Sam Headon, Clifford Chance

Drafting group:

- Christopher Norton – Baker & McKenzie
- Julianne Kneen - BP
- Mandy Rambharos – Eskom
- Roop Salotra - SRF Ltd
- Laurent Segalen - European Carbon Fund
- Elisabeth DeMarco - Macleod Dixon LLP
- Michael Parsons - Shell
- Flavia Rosembuj - World Bank

Contributors:

- Neeraj Sharma, Amanda Bennett - Barclays Capital
- Andrew Kingsmill, Gray Taylor - Bennett Jones LLP
- Emily Harman - Centrica
- Marcela Main – Chilean DNA
- Luc Galland - Dalkia
- Phil Gillam - E.ON
- Doug Gessell - EDF Trading
- Eliano Russo - ENEL SpA
- Marleen Meyeringh - Essent
- Brett Orlando - Factor Consulting + Management
- Stephen Taylor - JPMorgan Chase Bank, N.A.
- Christian Tullberg - Law Firm Paul Smith
- Reggie Herhaus, Ministry for the Environment - The Netherlands
- Sascha Bloemhoff - New Values
- Jasmin Kaboui-Voit , Antonio Aguilera Lagos - RWE
- Richard Wilkinson, David Carew - Sindicatum Carbon Capital
- Geert Dhooghe, Vincent Mohy, Edouard Soubry - Suez-Tractebel S.A.
- Basak Beyazay, Karl Apel - Total

Coordination:

Edwin Aalders - IETA
Johanna von Arnim- IETA



Table of Content

Introduction	III
1. Article 1: Definitions And Interpretation.....	1
1.1 Definitions.....	1
1.2 Interpretation And Construction	11
2. Article 2: Conditions Precedent	13
2.1 Conditions Precedent	13
2.2 Notification Of Fulfilment Of Conditions Precedent.....	13
2.3 Disapplication Of Conditions Precedent	13
3. Article 3: Obligations Of The Seller.....	13
3.1 Initial Verification	13
3.2 Selection Of Designated Operational Entity	14
3.3 Validation And Registration	14
3.4 Monitoring Plan	15
3.5 Verification And Certification Of Cers	15
3.6 Project Operation And Management	15
3.7 Delivery Of The Contract Quantity.....	16
3.8 Addition Of Buyer As Project Participant	16
3.9 Invoice	17
4. Article 4: Obligations Of The Buyer.....	17
4.1 Authorisation	17
4.2 Purchase Of The Contract Quantity	17
4.3 Payment.....	17
4.4 Communication With The Executive Board	18
5. Article 5: Representations, Warranties And Undertakings	18
5.1 Representations, Warranties And Undertakings Given By The Buyer	18
5.2 Representations, Warranties And Undertakings Given By The Seller.....	19
6. Article 6: Termination	20
6.1 Events Of Default	20
6.2 Delivery Failure	24
6.3 Illegality.....	25
6.4 Force Majeure	26
6.5 Termination Rights	27
6.6 Consequences Of Termination	27
7. Article 7: Dispute Resolution.....	28
7.1 Jurisdiction.....	28
7.2 Arbitration	28
7.3 Expert Determination	29
8. Article 8: Miscellaneous	30
8.1 Confidentiality	30
8.2 Third Party Rights	30
8.3 Remedies And Waivers	31
8.4 Transfer And Assignment.....	31
8.5 Interest	31



8.6	Share Of Proceeds.....	32
8.7	Taxes	32
8.8	Notices	33



INTRODUCTION

This IETA Code of CDM Terms (version 1.0 2006) ("Code") is designed to complement and be used in conjunction with the IETA ERPA (version 3.0 2006) ("ERPA"). Where an Article or Paragraph of the Code is specified to apply in Schedule 1(A) of the ERPA, that Article or Paragraph of the Code shall be incorporated as set out in full herein, subject to any amendments detailed in Schedule 1(B) of the ERPA. In addition, all or parts of Articles or Paragraphs may be included in the ERPA as appropriate. Unless otherwise agreed between the Parties, the definitions contained in the Code are incorporated in the ERPA by default.

The Code is designed to be used as a reference source for other agreements, which may separately incorporate Articles or Paragraphs contained in the Code. It should therefore be noted that not all provisions contained in the Code are expressly or necessarily referred to in the provisions of the ERPA. The term "Agreement" in the Code is intentionally generic in that it refers to any agreement (not just the ERPA) into which the Code is incorporated by reference.

Users of the Code and the ERPA should note that while the Code and ERPA have been drafted to be consistent, where possible, with the provisions of the IETA Emission Trading Master Agreement (v2.1 2005) ("ETMA") differences do appear between the provisions of the ERPA/Code and the ETMA.



1. ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless otherwise specified in the Agreement or the context otherwise requires:

"Affiliate" means, with respect to any person, any other person that directly or indirectly through one or more intermediaries' controls or is controlled by or is under common control with the person. The terms "controls", "controlled by" and "under common control with" mean the possession, directly or indirectly through one or more intermediaries, of more than 50% of the outstanding voting stock of, or the power to direct or cause the direction of the management policies of, any person, whether through ownership of stock, as a general partner or trustee, by contract or otherwise.

"Agreement" means the Emissions Reduction Purchase Agreement v.3 or newer as published by the International Emissions Trading Association on its website (www.ieta.org) or such other agreement into which this Code of CDM Terms is specifically incorporated by reference.

"Annex I Party" means one of the countries listed in Annex B of the Kyoto Protocol that has ratified, accepted, acceded or approved the Kyoto Protocol.

"Applicable Rules" means:

- (a) the International Rules; and
- (b) any other domestic or international laws, regulations, rules and standards applicable to the relevant Party including, without limitation, administrative, environmental and zoning laws,

in each case as may be amended from time to time.

"Authorisation" or **"Authorised"** each means the process of authorisation of a specific private and/or public entity's participation in the Project by the relevant DNA in accordance with the International Rules.

"Banking Day" means any day (other than a Saturday or Sunday) on which commercial banks are open for general business in the jurisdiction(s) of both the Buyer and the Seller specified in the Agreement.

"Baseline" means the scenario that reasonably represents the anthropogenic emissions by sources or anthropogenic removal by sinks of GHGs that would occur in the absence of the Project as described in the International Rules and/or the PDD.

"Baseline Study" means a written report of the Baseline prepared as part of the PDD.

"Base Currency" means the currency specified in the Agreement.

"Base Rate" means:

- (a) if the Base Currency is Euros, EURIBOR; or
- (b) if the Base Currency is United States Dollars, LIBOR.



"Buyer's Market Damages" means either (as specified in the Agreement):

(a) the sum of:

- (i) the positive difference (if any) between (i) the price the Buyer, acting in a commercially reasonable manner, does or would pay in an arm's length transaction for a quantity of CERs (of a similar type as the Contract Quantity) equal to the Default Quantity and (ii) the Unit Price multiplied by the Default Quantity; plus
- (ii) interest at the Default Rate for the period from (and including) the Scheduled Delivery Date to (but excluding) the date the payment is made on the amount calculated pursuant to sub-paragraph (i) above; plus
- (iii) the amount of such reasonable costs and expenses which the Buyer incurs in respect of the Default Quantity (including, without limitation, broker fees, commissions and legal fees).

or:

(b) the sum of:

- (i) the positive difference (if any) between (i) the price the Buyer, does or would pay for a quantity of CERs (of a similar type as the Contract Quantity) equal to the Default Quantity where the price of CERs is calculated through the numeric average of quotes obtained from three separate independent third party dealers for the CER spot market and, if on such date there is no CER spot market, the market price of CERs (of a similar type as the Contract Quantity) as determined by the Buyer in a commercially reasonable manner, and (ii) the Unit Price multiplied by the Default Quantity; plus
- (ii) interest at the Default Rate for the period from (and including) the Scheduled Delivery Date to (but excluding) the date the payment is made on the amount calculated pursuant to sub-paragraph (i) above; plus
- (iii) the amount of such reasonable costs and expenses which the Buyer incurs in respect of the Default Quantity (including, without limitation, broker fees, commissions and legal fees).

or:

(c) the sum of:

- (i) the positive difference (if any) between (i) the price the Buyer, does or would pay for a quantity of CERs (of a similar type as the Contract Quantity) equal to the Default Quantity where the price of CERs is calculated by reference to the price published by the EU Allowance spot market price provider as specified in the Agreement, which shall be adjusted for a spread as specified in the Agreement, and if on such date there is no EU Allowance spot market price, the market price of CERs (of a similar type as the Contract Quantity) as reasonably determined by the Buyer in a commercially reasonable manner, and (ii) the Unit Price multiplied by the Default Quantity; plus



- (ii) interest at the Default Rate for the period from (and including) the Scheduled Delivery Date to (but excluding) the date the payment is made on the amount calculated pursuant to sub-paragraph (i) above; plus
- (iii) the amount of such reasonable costs and expenses which the Buyer incurs in respect of the Default Quantity (including, without limitation, broker fees, commissions and legal fees).

"Buyer's Registry Account" means an account specified or nominated in the Agreement by the Buyer in the CDM Registry or a National Registry to which CERs are to be Delivered.

"Carbon Dioxide Equivalent" or **"CO₂e"** means the base reference for the determination of Global Warming Potential of Greenhouse Gases in units of carbon dioxide.

"Certification" and **"Certified"** each means the process of certification by the DOE that, during a specified time period, the Project has achieved the GHG Reductions as reported in the Verification Report.

"Certification Report" means the written statement confirming the Certification by the DOE.

"Certified Emission Reduction" or **"CER"** means a unit issued pursuant to Article 12 of the Kyoto Protocol as well as all other relevant International Rules and is equal to one metric tonne of Carbon Dioxide Equivalent, calculated in accordance with the International Rules.

"Clean Development Mechanism" or **"CDM"** means the mechanism referred to in Article 12 of the Kyoto Protocol.

"Commencement Date" means:

- (a) if conditions precedent apply to the Agreement, the date that is five (5) Banking Days after receipt of the notice that the final condition precedent has been fulfilled or waived; or
- (b) if no conditions precedent apply to the Agreement, the date of execution of the Agreement.

"Commercial Terms" means, if appropriate, the relevant part of the Agreement in which the commercial terms of a transaction are reflected.

"Commissioning" or **"Commissioned"** means the satisfactory completion of the Project in accordance with such procedures and tests as from time to time constitute usual and prudent industry standards and practices to demonstrate to the reasonable satisfaction of the Buyer that the Project is capable of commercial operation and of generating GHG Reductions for the purpose of, *inter alia*, the Agreement.

"Confidential Information" means all information which is used in or otherwise relates to a Party's business, customers or financial or other affairs which it has acquired in connection with the Agreement, including the existence of the terms of the Agreement, but does not include information which is made public by, or with the consent of, such Party.



"Contract Quantity" means the quantity of CERs issued in respect of GHG Reductions generated by the Project sold under the terms of the Agreement.

"COP/MOP" means the Conference of the Parties to the UNFCCC serving as the Meeting of the Parties to the Kyoto Protocol.

"Crediting Period" means, unless otherwise specified in the PDD, the period in which GHG Reductions are Verified and Certified by a DOE for the purpose of Issuance and which shall commence after the first GHG Reductions are generated by the Project.

"Credit Rating" means in respect of a person any of the following: (i) the long-term unsecured, unsubordinated (unsupported by third party credit enhancement) public debt rating; (ii) the debt issuer's credit rating; or (iii) the corporate credit rating given to that person, in each of cases (i) to (iii) by Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or Moody's Investor Services Inc. or Fitch Ratings Ltd.

"Credit Support Document" means any agreement or instrument acceptable to the receiving Party and provided by a Credit Support Provider of the other Party for the purposes of securing that Party's obligations to the receiving Party under the Agreement.

"Credit Support Provider" means, in respect of a Party, the person providing a Credit Support Document and/or Performance Assurance (as the case may be) on behalf of such Party.

"Default Quantity" means:

- (a) for the purposes of calculating the Buyer's Market Damages following an election by the Buyer under Paragraph 6.2.2(c) or 6.2.3(b), the Delivery Shortfall;
- (b) for the purposes of calculating a Force Majeure termination payment under Paragraph 6.4.4(b), the Delivery Shortfall; or
- (c) in all other circumstances, it is:
 - (i) in respect of all Scheduled Delivery Dates prior to the Termination Date, the difference between the amount of the Contract Quantity to have been Delivered by such date and the amount, if any, of the Contract Quantity CERs already Delivered and paid for by the Buyer by such date; and
 - (ii) in respect of all Scheduled Delivery Dates following the Termination Date (if any), the amount of such Contract Quantity not yet Delivered.

"Default Rate" means:

- (a) following the resolution of a Dispute or otherwise to correct any mistaken overpayment or underpayment made in good faith where it is determined that one Party owes a payment to the other Party, an annual rate equal to the Base Rate applicable from time to time plus one per cent (1%) compounded monthly from the date when the amount would have been paid or not paid (as applicable) if the dispute, overpayment or underpayment had not occurred to (but excluding) the date payment is made;
- (b) in any other circumstances where one Party fails to pay an amount due to the other Party by the Payment Due Date, an annual rate equal to the Base Rate



applicable from time to time plus three per cent (3%) compounded monthly from and including the Payment Due Date to (but excluding) the date payment is made.

"Defaulting Party" means the Party in respect of which an Event of Default has occurred.

"Delivery" means the crediting of the Buyer's Registry Account with the Contract Quantity in accordance with Paragraph 3.7 (*Delivery of the Contract Quantity*), and **"Deliver"** shall be construed accordingly.

"Delivery Failure" means (as specified in the Agreement):

either:

(a) the failure, for any reason whatsoever, of the Seller to have Delivered to the Buyer the Contract Quantity in accordance with the Delivery Schedule or a Revised Delivery Schedule (as applicable);

or:

(b) the failure of the Seller to have Delivered to the Buyer the Contract Quantity in accordance with the Delivery Schedule or a Revised Delivery Schedule (as applicable); provided, however, that where such failure is caused by the failure of the Project to generate sufficient GHG Reductions or to be Issued sufficient CERs in a given period as a result of the non-Registration or a delay in Registration of the Project, it shall not be a Delivery Failure so long as the Seller can demonstrate to the reasonable satisfaction of the Buyer that it has, at all times, acted as an RPO in securing Registration of the Project.

"Delivery Schedule" means the schedule for delivery provided in the Agreement, as agreed between the Parties.

"Delivery Shortfall" means, unless otherwise provided in the Agreement, the amount of the Contract Quantity not Delivered to the Buyer on or prior to such Scheduled Delivery Date because of either a Delivery Failure or a Force Majeure.

"Designated National Authority" or **"DNA"** means a national CDM authority that has been formally designated and registered by a signatory to the UNFCCC with the Secretariat as required by the International Rules.

"Designated Operational Entity" or **"DOE"** means a person designated by the COP/MOP, based on the recommendation by the Executive Board, as qualified to Validate proposed CDM project activities or to Verify and Certify GHG Reductions.

"Dispute" means any suit, action, proceedings, controversy or claim arising under, out of or in connection with the Agreement between the Parties (including a dispute regarding the existence, validity, interpretation or termination of the Agreement).

"Dispute Resolution" means the method of dispute resolution as specified in the Agreement.

"EU Allowance" means an "allowance" as defined by European Parliament and of the Council in Directive 2003/87/EC of 13 October 2003 establishing a scheme for greenhouse gas emissions allowance trading, as amended from time to time.



"**EUR**", "**Euro**" and "**€**" each means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union.

"**EURIBOR**" means, in relation to an amount owed under the Agreement on which interest is to accrue in Euros:

- (a) the interest rate for Euro deposits for a period of one month that appears on Reuters Page EURIBOR01 (or such other screen display or service as may replace it for the purpose of displaying the interest rates for Euro deposits offered in the euro-zone) as at 11.00 a.m. on the Payment Due Date, and where the amount or any part of it remains overdue one month after the Payment Due Date such interest rate as appears on such page for such deposits as at such time as at the day one month after the Payment Due Date and thereafter as at monthly intervals until the amount is no longer overdue; or
- (b) if no such interest rate appears on Reuters (or such replacement), the arithmetic mean (rounded upwards to 3 decimal places) of the rates per annum at which each of not less than two major banks in the Euro-zone interbank market quoted that they were offering Euro deposits in an amount comparable with that overdue amount to major banks in the Euro-zone interbank market for a period of one month as at 11.00 a.m. on the Payment Due Date or as at the day one month after the Payment Due Date or as at monthly intervals thereafter as the case may be.

"**Event of Default**" means each of the events referred to in Paragraph 6.1 (*Events of Default*) and as specified as being applicable to the relevant Party to the Agreement.

"**Executive Board**" means the executive board of the Clean Development Mechanism that is established pursuant to the International Rules and its associated bodies and panels.

"**Expert**" shall have the meaning ascribed to it in Paragraph 7.3.1 (*Expert Determination*).

"**FM Affected Party**" means the Party affected by a Force Majeure.

"**Focal Point**" means the entity or entities specified in the Modalities as the point of communication with the Executive Board for all official communication to and from Project Participants.

"**Force Majeure**" means the occurrence of any event or circumstance beyond the control of a Party that could not, after using all reasonable efforts, be overcome and which makes it impossible for that Party to perform its obligations under the Agreement. For the avoidance of doubt, lack of funds shall not constitute a Force Majeure.

"**GHG Reduction**" means the removal, limitation, reduction, avoidance, sequestration or mitigation of GHG relative to the Baseline.

"**Global Warming Potentials**" means the global warming potentials used to calculate the carbon dioxide equivalence of Greenhouse Gases as accepted or subsequently revised in accordance with Article 5 of the Kyoto Protocol.

"**Greenhouse Gases**" or "**GHGs**" means the six gases listed in Annex A to the Kyoto Protocol.



"Host Country" means the non-Annex I Party hosting the Project and specified in the Agreement.

"Illegality" shall have the meaning ascribed to it in Paragraph 6.3 (*Illegality*).

"Indebtedness" means any obligations (whether present or future, contingent or otherwise) in respect of borrowed money other than, in the case of a bank only, indebtedness in respect of bank deposits received in the ordinary course of business.

"Initial Verification Report" means a report commissioned during the construction of the Project to ensure all Monitoring Plan-mandated data collection and management systems are in place to allow subsequent successful Verification and Certification of the GHG Reductions.

"International Rules" means the UNFCCC, the Kyoto Protocol, the Marrakesh Accords, any relevant decisions, guidelines, Modalities and procedures made by the COP/MOP and Executive Board, in each case as amended from time to time.

"Issuance" means the issuance by the CDM registry administrator of a specified quantity of CERs into the pending account of the Executive Board in the CDM registry upon being instructed to do so by the Executive Board, and **"Issued"** shall be construed accordingly.

"Kyoto Party" means one of the countries listed in Annex B of the Kyoto Protocol.

"Kyoto Protocol" means the protocol to the UNFCCC adopted at the Third Conference of the Parties to the UNFCCC in Kyoto, Japan on 11 December 1997 as may be amended from time to time.

"Letter of Approval" means the letter through which (as the case may be) the Host Country or the Annex I Party, *inter alia*, approves the Project for the purposes of Article 12 of the Kyoto Protocol.

"LIBOR" means, in relation to an amount owed under the Agreement on which interest is to accrue in United States Dollars:

- (a) the interest rate for United States Dollar deposits for a period of one month that appears on Reuters screen LIBO (or such other screen display or service as may replace it for the purpose of displaying the interest rates for United States Dollar deposits offered in London) as at 11.00 a.m. on the Payment Due Date, and where the amount or any part of it remains overdue one month after the Payment Due Date such interest rate as appears on such page for such deposits as at such time as at the day one month after the Payment Due Date and thereafter as at monthly intervals until the amount is no longer overdue; or
- (b) if no such interest rate appears on Reuters (or such replacement), the arithmetic mean (rounded upwards to 3 decimal places) of the rates per annum at which each of not less than two major banks in the London interbank market quoted that they were offering United States Dollar deposits in an amount comparable with that overdue amount to major banks in the London interbank market for a period of one month as at 11.00 a.m. on the Payment Due Date or as at the day one month after the Payment Due Date or as at monthly intervals thereafter as the case may be.



"Linking Directive" means the Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the EU community, in respect of the Kyoto Protocol's project mechanisms.

"Marrakesh Accords" means Decision 2/CP.7 through Decision 24/CP.7 inclusive of the Conference of the Parties to the UNFCCC in its seventh session, held at Marrakesh, Morocco from 29 October to 10 November 2001 and as adopted by COP/MOP at the 1st meeting of COP/MOP on 28 November to 10 December 2005.

"Material Adverse Change" or "MAC" means the events listed in respect of Paragraph 6.1.7.

"Modalities" means the modalities of communication of Project Participants with the Executive Board which are indicated at the time of Registration by submitting a statement signed by all Project Participants which specify the method for all official communication to and from Project Participants with the Executive Board after submission for Registration of the PDD by a DOE, or any subsequent modalities of communication, which must be signed by all Project Participants, and may be submitted in replacement of the previous or existing modalities of communication.

"Monitoring" means activities of collecting and recording data in accordance with the PDD and (if applicable) the International Rules that allow the assessment of the GHG Reductions resulting from the Project pursuant to the terms of the Monitoring Plan.

"Monitoring Plan" means the plan included in the PDD pursuant to paragraph 53 of Decision 17/CP.7 of the Marrakesh Accords.

"Monitoring Report" means a report by or on behalf of the Project Participants setting out the quantity of GHG Reductions generated by the Project during the previous Crediting Period as monitored in accordance with the Monitoring Plan.

"National Registry" means a registry established by an Annex I Party that contains a number of accounts in compliance with the International Rules.

"Non-Defaulting Party" means the Party that is not the Defaulting Party.

"Payment Due Date" means the date on which a payment is due as specified in the Agreement.

"Performance Assurance" means a letter of credit, cash or other security in a form and amount and from an institution reasonably satisfactory to the Requesting Party.

"Project" means the measure, operation or an action that aims at reducing GHG emissions described in the Agreement to be implemented in accordance with the International Rules.

"Project Commissioning Date" means the date on which the Project is fully Commissioned.

"Project Design Document" or "PDD" means a description of the Project prepared in accordance with the International Rules.



"Project Documents" means together or individually the Baseline Study, the PDD, the Monitoring Report, the Validation Report, the Verification Report, the Certification Report and the Host Country Letter of Approval or any other document as may be agreed between the Parties to be a Project Document.

"Project Participant" means any person that is:

- (a) a Kyoto Party providing the Letter of Approval that has expressly indicated its intention to be a project participant in either the PDD or as otherwise evidenced to the Secretariat; or
- (b) a private and/or public entity who has obtained Authorisation and is either listed as a project participant in the PDD or is otherwise expressly evidenced to the Secretariat.

"Reasonable and Prudent Operator" or **"RPO"** means a person acting in good faith and performing its contractual obligations exercising a degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a skilled and experienced operator complying with the Applicable Rules, engaged in the same type of undertaking, under the same or similar circumstances and conditions, and any reference to the standards of an RPO shall be construed accordingly.

"Registration" or **"Registered"** means the formal acceptance by the Executive Board of a Validated Project as a CDM project activity in accordance with the requirements set in out in the International Rules.

"Replacement CERs" means CERs from the Project or from a CDM project activity which is supplied to the Buyer to replace any shortfall in the Contract Quantity as a result of a Delivery Failure by the Seller, so as to enable full Delivery of the Contract Quantity.

"Requesting Party" means the Party requesting Performance Assurance in accordance with Paragraph 6.1.7.

"Required Authorisations" means all governmental and other licences, authorisations, permits, consents, contracts and other approvals (if any) that are required to enable a Party to fulfil any of its obligations under the Agreement.

"Revised Delivery Schedule" means the revised schedule specified in Paragraph 6.2.2 or Paragraph 6.2.3.

"Scheduled Delivery Date" means the date(s) agreed between the Parties to this Agreement that represents the date(s) by which Delivery is to be completed.

"Secretariat" means the secretariat of the UNFCCC.

"Seller's Market Damages" means either (as specified in the Agreement):

- (a) the sum of:
 - (i) the positive difference (if any) between (i) the Unit Price multiplied by the Default Quantity and (ii) the price the Seller, acting in a commercially reasonable manner, does or would receive in an arm's length transaction for a quantity of CERs (of a similar type as the Contract Quantity) equal to the Default Quantity; plus



- (ii) interest at the Default Rate for the period from (and including) the Scheduled Delivery Date to (but excluding) the date the payment is made on the amount calculated pursuant to sub-paragraph (i) above; plus
- (iii) the amount of such reasonable costs and expenses which the Seller incurs in respect of the Default Quantity (including, without limitation, broker fees, commissions and legal fees).

or:

(b) the sum of:

- (i) the positive difference (if any) between (i) the Unit Price multiplied by the Default Quantity and (ii) the price the Seller, does or would pay for a quantity of CERs (of a similar type as the Contract Quantity) equal to the Default Quantity where the price of CERs is calculated through the numeric average of quotes obtained from three separate independent third party dealers for the CER spot market price for CERs, and if on such date there is no CER spot market, the market price of CERs (of a similar type as the Contract Quantity) as reasonably determined by the Seller in a commercially reasonable manner; plus
- (ii) interest at the Default Rate for the period from (and including) the Scheduled Delivery Date to (but excluding) the date the payment is made on the amount calculated pursuant to sub-paragraph (i) above; plus
- (iii) the amount of such reasonable costs and expenses which the Seller incurs in respect of the Default Quantity (including, without limitation, broker fees, commissions and legal fees).

or:

(c) the sum of:

- (i) the positive difference (if any) between (i) the Unit Price multiplied by the Default Quantity and (ii) the price the Seller, does or would pay for a quantity of CERs (of a similar type as the Contract Quantity) equal to the Default Quantity where the price of CERs is calculated by reference to the price published by the EU Allowance spot market price provider as specified in the Agreement, which shall be adjusted for a spread as specified in the Agreement, and if on such date there is no EU Allowance spot market price, the market price of CERs (of a similar type as the Contract Quantity) as reasonably determined by the Seller in a commercially reasonable manner, and (ii) the Unit Price multiplied by the Default Quantity; plus
- (ii) interest at the Default Rate for the period from (and including) the Scheduled Delivery Date to (but excluding) the date the payment is made on the amount calculated pursuant to sub-paragraph (i) above; plus
- (iii) the amount of such reasonable costs and expenses which the Seller incurs in respect of the Default Quantity (including, without limitation, broker fees, commissions and legal fees).



"Share of Proceeds" means any CERs deducted or other fees charged by the CDM registry administrator in accordance with the International Rules to cover administrative expenses and to assist in meeting costs of adaptation in accordance with the use of the term in the modalities and procedures for the Clean Development Mechanism (Decision 17.CP.7 of the Marrakesh Accords).

"Tangible Net Worth" means the sum of all paid up shareholder contributions to the share capital account or any other capital account ascribed for such purposes and any accumulated earnings less any accumulated retained losses and intangible assets including, but not limited to, goodwill.

"Termination Date" means the date the Agreement is terminated in accordance with Paragraph 6.5 (*Termination Rights*).

"Third Party" means a person other than the Buyer or the Seller.

"Total Debt" means, for a specified period, the sum of a person's Indebtedness (which includes debts payable to Affiliates as well as debt instruments to financial institutions).

"UNFCCC" means the United Nations Framework Convention on Climate Change adopted in New York on 9 May 1992.

"Unit Price" means the price per Contract Quantity CER specified in the Commercial Terms.

"United States Dollars" and **"US\$"** each means the lawful currency of the United States of America.

"Validation" and **"Validated"** means validation in accordance with the use of the term in the International Rules and refers to the process of independent evaluation of the PDD by a DOE in accordance with the International Rules.

"Validation Report" means a written report prepared and issued by the DOE of the Validation.

"VAT" means value added tax.

"Verification" and **"Verified"** each means the periodic review and ex post determination by a DOE of GHG Reductions pursuant to or in accordance with the International Rules and the PDD (that have occurred during the relevant Crediting Period).

"Verification Report" means a written report prepared and issued by the DOE of the Verification which assesses the Monitoring Report.

1.2 Interpretation and construction

1.2.1 Any reference to any document (including the Agreement) is to that document as varied, amended, novated, ratified or replaced from time to time.

1.2.2 Any reference to a **"Party"** includes that Party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee.

1.2.3 A Party shall mean one or other of the parties to the Agreement and **"Parties"** is to be construed accordingly. For the avoidance of doubt, the use of the term



- Party does not mean a "Party" as that term is referred to in the Kyoto Protocol to mean a signatory country to the Kyoto Protocol.
- 1.2.4 A reference to any Applicable Rules, statute or to any treaty or statutory provision includes any statutory modification or re-enactment of it or any treaty or statutory provision substituted for it, and all protocols, rules, Modalities, guidelines, procedures, ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.
- 1.2.5 The terms of the Agreement shall be interpreted in a manner that is consistent with the International Rules.
- 1.2.6 Unless otherwise specified, any reference to "**time**" is to Central European Time and shall include Central European Winter Time and Central European Summer Time, as applicable.
- 1.2.7 Unless otherwise specified, whenever anything is to be done in the Agreement:
- (a) by or not later than a Banking Day, or any period is to run to a Banking Day, such thing may be done by or such period is to run to 17:00 on that Banking Day;
 - (b) from or not earlier than a Banking Day, or any period is to run from a Banking Day, such thing may be done or such period is to run from 09:00 on that Banking Day or;
 - (c) on a Banking Day or Delivery Banking Day, it is to be treated as having been done on the next following Banking Day if it is done after 17:00 on that Banking Day (as the case may be);
 - (d) by or not later than a day or any period is to run to a day, such thing may be done or such period is to run up to the end of that day; and
 - (e) from or not earlier than a day or any period is to run from a day, such thing may be done or such period is to run from the start of that day.
- 1.2.8 Unless otherwise specified, any reference to a sum of money is to that sum of money in the Base Currency.
- 1.2.9 Unless otherwise specified, references to an Article or Paragraph shall be a reference to an Article or Paragraph of this Code of CDM Terms.
- 1.2.10 Headings are for ease of reference only.
- 1.2.11 The singular includes the plural and *vice versa*.
- 1.2.12 References to a "**person**" shall be construed as a reference to any person, firm, company, corporation, government, state and agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.



2. **ARTICLE 2: CONDITIONS PRECEDENT**

2.1 **Conditions precedent**

Unless Paragraph 2.3 (*Disapplication of Conditions Precedent*) applies, the Parties' obligations under the Agreement are, unless otherwise specified, conditional upon the following:

2.1.1 Evidence of Capacity and Authority

- (a) each Party delivering to the other evidence of such Party's capacity and authority to enter into the Agreement, including (if requested by the other Party) evidence of the authority and specimen signatures of the person or persons executing the Agreement on behalf of such Party.

2.1.2 Letter of Approval

- (a) the Seller having obtained a Letter of Approval from the Host Country.

2.1.3 Project requirements

- (a) the Host Country having Authorised the Seller to participate in the Project.

2.1.4 Credit Support

- (a) the Seller having delivered a Credit Support Document, if applicable, to the Buyer; or
- (b) the Buyer having delivered a Credit Support Document, if applicable to the Seller.

2.2 **Notification of fulfilment of conditions precedent**

To the extent that the Party is aware of such fulfilment, each Party shall notify the other Party in writing upon the fulfilment of the conditions precedent applicable to it.

2.3 **Disapplication of conditions precedent**

If this paragraph is specified as applying in the Agreement, then the obligations of the Parties to which this paragraph is specified to apply in the Agreement shall come into effect on the date of the Agreement notwithstanding that the conditions precedent in this Article have not been met.

3. **ARTICLE 3: OBLIGATIONS OF THE SELLER**

3.1 **Initial Verification**

3.1.1 Unless the Project has already been commissioned, the Seller shall notify the Buyer in writing of the expected Project Commissioning Date at least ten (10) Banking Days prior to its Commissioning.

either:

3.1.2

- (a) The Seller shall arrange for an Initial Verification Report to be prepared for the Project by a DOE.
- (b) If Paragraph 3.1.1 applies, upon receipt of notification pursuant to Paragraph 3.1.1, the Buyer has the right (upon giving written notice to the



Seller) to receive copies of evidence of the Seller's instructions to the relevant DOE to prepare an Initial Verification Report.

or:

3.1.3

- (a) If Paragraph 3.1.1 applies, upon receipt of notification pursuant to Paragraph 3.1.1, the Buyer has the right to arrange for an Initial Verification Report to be prepared for the Project by a DOE.
- (b) Acting as an RPO, the Seller shall use its reasonable endeavours to provide the relevant DOE with documents required to enable the Project to be Registered.

3.1.4 In the event that the Initial Verification Report indicates that the Project is not in compliance with the International Rules on Monitoring requirements and, in the opinion of the relevant DOE, there is no reasonable prospect of such compliance being obtained within a further period of three (3) months (or such other period specified in the Agreement) then the Buyer may terminate the Agreement by giving notice to the Seller. In the event of such termination, unless otherwise specified in the Agreement, the Buyer and the Seller shall have no further obligations to each other and any existing obligations, other than those specified to survive the termination of the Agreement, will be discharged.

3.2 Selection of Designated Operational Entity

3.2.1 *either:*

- (a) The Seller shall, acting as an RPO, appoint a DOE for the purpose of Validation of the Project.

or:

- (b) The Seller shall select and contract with a DOE to undertake Validation of the Project from a shortlist of DOEs mutually agreed with the Buyer.

3.2.2 The Seller shall inform the Buyer, if it has not already done so, of the name of the relevant DOE as soon as the DOE has been appointed.

3.3 Validation and Registration

either:

3.3.1 Unless the Project has already been Registered, the Seller shall prepare the PDD, including the Baseline Study, and submit the PDD and any relevant supporting documents as required by the International Rules for Validation.

or:

3.3.2 Unless the Project has already been Registered, the Seller shall ensure that the Project has a Crediting Period of either (a) seven (7) years, to be renewed twice, adding up to a total Crediting Period of twenty-one (21) years or (b) ten (10) years; and shall inform the Buyer of the selected Crediting Period as soon as possible.



or:

- 3.3.3 Unless the Project has already been Registered, the Seller shall instruct the relevant DOE to submit a request for Registration to the Executive Board in the form of the Validation Report. In the event that the Executive Board does not accept Registration of the Project, then the Seller shall use all reasonable endeavours to make the appropriate revisions and resubmit the Project for Validation and subsequent Registration at the earliest possible date.

3.4 **Monitoring Plan**

- 3.4.1 The Seller shall provide the Buyer with a copy of the Monitoring Plan promptly upon the reasonable request of the Buyer.
- 3.4.2 The Seller shall fully implement the Monitoring Plan no later than the Commissioning.
- 3.4.3 The Seller shall ensure the Project is maintained and prepared to allow for Verification and Certification as required by the Monitoring Plan.
- 3.4.4 The Seller shall install, operate and maintain the facilities and equipment, and employ and train staff, necessary for gathering all such data as may be required by the Monitoring Plan.
- 3.4.5 The Seller shall establish and maintain data measurement and collection systems for all indicators listed in the Monitoring Plan.
- 3.4.6 The Seller shall observe, implement and meet all other requirements contained in the Monitoring Plan.

3.5 **Verification and Certification of CERs**

3.5.1 *either:*

- (a) Acting as an RPO, the Seller shall at least once a year (or other monitoring period as may be selected by the Seller) prepare a Monitoring Report and deliver it to the Buyer.

or:

- (b) Acting as an RPO, the Seller shall at least once a year (or more frequently for such other period as reasonably requested by the Buyer) prepare a Monitoring Report and deliver it to the Buyer.

- 3.5.2 The Seller shall contract a DOE to Verify and Certify GHG Reductions generated by the Project sufficiently in advance of a Scheduled Delivery Date to enable Issuance of the Contract Quantity such that they can be Delivered to the Buyer on that Scheduled Delivery Date.

- 3.5.3 In the event of any discrepancy between the Monitoring Report and the Verification Report, the Verification Report shall prevail.

3.6 **Project Operation and Management**

- 3.6.1 The Seller shall carry out the Project in accordance with the Monitoring Plan, all Applicable Rules and the provisions of the Agreement.



- 3.6.2 The Seller shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and environmental practices.
- 3.6.3 The Seller shall satisfy any obligations in respect of applications for all Required Authorisations required by Applicable Rules to implement, operate and maintain the Project.
- 3.6.4 The Seller shall keep the Project insured in accordance with all Applicable Rules and prudent industry practice, which may be in the form of self-insurance.
- 3.7 Delivery of the Contract Quantity**
- 3.7.1 On each Scheduled Delivery Date the Seller shall procure Delivery of the Contract Quantity due on that Scheduled Delivery Date to the Buyer's Registry Account.
- 3.7.2 If, prior to Delivery of the full Contract Quantity, alternative delivery structures are established pursuant to the International Rules, the Buyer may require the Seller to Deliver the remainder of the Contract Quantity by such alternative structure by giving the Seller written notice to this effect, provided that the Seller would not incur any additional costs.
- 3.7.3 Delivery to Affiliates
- (a) The Seller agrees that the Buyer may nominate any of its Affiliates to receive Delivery instead of itself, provided that such Affiliate(s) have secured Project Participant status with respect to the Project.
- (b) If the Buyer nominates an Affiliate to receive Delivery in accordance with this Paragraph:
- (i) the Buyer agrees that the Seller's obligation to Deliver to the Buyer the Contract Quantity shall be discharged upon Delivery to the Affiliate;
- (ii) the Seller shall use reasonable efforts to assist the Affiliate in securing the status of Project Participant as if the references in Paragraph 3.8 (*Addition of Buyer as Project Participant*) below to "the Buyer" were references to the Affiliate; and
- (iii) any additional costs resulting from Delivery to the Affiliate rather than Delivery to the Buyer shall be borne by the Buyer.
- 3.7.4 The Seller may Deliver the Contract Quantity due on a Scheduled Delivery Date in advance of that Scheduled Delivery Date, provided that the Seller gives the Buyer at least thirty (30) Banking Days' written notice of such advance Delivery.

3.8 Addition of Buyer as Project Participant

The Seller shall be obliged to add the Buyer to the PDD as a Project Participant, to the extent that it has obtained an Authorisation, prior to submission of the PDD for Registration. To the extent that Buyer obtains such Authorisation after the PDD has been submitted for Registration or the Project has already been Registered, the Seller will use its reasonable endeavours to add the Buyer as a Project Participant as soon as possible thereafter. Accordingly, the Seller will submit a request for change in Project Participants



and all accompanying documentation to the Executive Board to that effect. The Seller will use its reasonable endeavours to procure that all other Project Participants (if any) will sign any documentation necessary to add the Buyer as a Project Participant.

3.9 Invoice

either:

3.9.1 The Seller shall send an invoice to the Buyer within ten (10) Banking Days of each Delivery.

or:

3.9.2 The Seller shall send an invoice or receipt, as the case may be, upon the written request of the Buyer in respect of the Deliveries specified in the written request.

4. ARTICLE 4: OBLIGATIONS OF THE BUYER

4.1 Authorisation

4.1.1 The Buyer shall, to the standard of an RPO, endeavour to secure Authorisation for the Project.

4.1.2 The Buyer shall establish and maintain account(s) in one or more National Registries and/or the CDM registry to the extent that it is necessary for it to receive Delivery from the Seller. The National Registries shall be in the jurisdiction(s) from which the Buyer obtained the Authorisation. The Buyer shall provide the Seller with details of the account into which Delivery will be effected (if not the Buyer's Registry Account specified in the Agreement) at least ten (10) Banking Days prior to each Delivery.

4.1.3 If at the date of execution of the Agreement, the Buyer has not obtained Authorisation, the Buyer shall provide the Seller with the expected schedule for obtaining such Authorisation(s). The Buyer shall also provide the Seller with a periodic update of such progress when requested by the Seller so long as such requests are no more frequent than on a monthly basis.

4.2 Purchase of the Contract Quantity

4.2.1 The Buyer shall be obliged to accept Delivery of the Contract Quantity when so tendered provided that such tender is pursuant to the terms of the Agreement between the Buyer and the Seller.

4.2.2 Except (for the avoidance of doubt) as provided in Paragraph 8.6 (*Share of Proceeds*), the Buyer shall reimburse the Seller within ten (10) Banking Days of receipt of an invoice for any costs paid by the Seller in connection with the forwarding of the Contract Quantity to the Buyer's Registry Account.

4.3 Payment

4.3.1 The Buyer shall purchase and promptly pay for the Contract Quantity Delivered on a Scheduled Delivery Date no later than the Payment Due Date corresponding to that Scheduled Delivery Date.

4.3.2 Payment by the Buyer shall be to an account in a bank nominated by the Seller as specified in the Commercial Terms or as notified to the Buyer at least ten (10) Banking Days prior to a Payment Due Date.



- 4.3.3 The Seller will be entitled to interest at the Default Rate on the invoiced amount if the Buyer fails to make any payment due within the time specified in the Agreement.

4.4 **Communication with the Executive Board**

either:

- 4.4.1 The Buyer acknowledges that the Seller or such other Project Participant as the Seller may nominate shall be the Focal Point.
- 4.4.2 The Buyer agrees to sign any amendments to the Modalities (including because of the addition of a Project Participant) as requested by the Seller from time to time, provided that such amendments are not to the prejudice of the Buyer's rights under the Agreement.

or:

- 4.4.3 The Seller shall, in order to assist the Buyer to carry out its obligations under this Paragraph, promptly upon written request provide the Buyer with a copy of any communication that it sends to, or receives from, the Executive Board.
- 4.4.4 The Parties agree that the Buyer shall be the Focal Point. The Buyer shall as Focal Point provide the Seller with a copy of any communication that it sends to, or receives from, the Executive Board. Any Executive Board communications sent to or received by the Seller with respect to the Project shall be immediately forwarded to the Buyer.
- 4.4.5 The Buyer shall have the right to veto any proposed Project Participants in respect of the Project until such time as the Contract Quantity has been Delivered.

5. **ARTICLE 5: REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

5.1 **Representations, warranties and undertakings given by the Buyer**

The Buyer makes the following representations, warranties and undertakings on the date of the Agreement and on each date on which it accepts a Delivery of the Contract Quantity:

- 5.1.1 Its obligations under the Agreement and any Credit Support Document which it has obtained constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and to equitable principles of general application.
- 5.1.2 No Event of Default, or event that with notice or lapse of time or both would constitute an Event of Default, has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under the Agreement or any Credit Support Document which it has obtained.
- 5.1.3 No litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or, if applicable, any provider of a Credit Support Document that would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under the Agreement or any Credit Support Document to



which it is a party, or that is likely to affect the legality, validity or enforceability against it of the Agreement or that Credit Support Document or its ability to perform its obligations under the Agreement or that Credit Support Document.

5.1.4 It has entered into the Agreement and any Credit Support Document to which it is a party after a full opportunity to review their terms and conditions, has a full understanding of those terms and conditions and of their risks, and is capable of assuming those risks.

5.1.5 All applicable information (other than, for the avoidance of doubt, audited financial statements, which shall be prepared in accordance with generally accepted accounting principles in the jurisdiction of the Buyer) that is furnished in writing by or on behalf of it to the other Party and is identified as being subject to or connected to the Agreement is, as of the date it is furnished to the other party, true, accurate and complete in every material respect.

5.2 **Representations, warranties and undertakings given by the Seller**

The Seller makes the following representations, warranties and undertakings on the date of the Agreement and on each date on which it makes a Delivery of the Contract Quantity:

5.2.1 Its obligations under the Agreement and any Credit Support Document which it has obtained constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and to equitable principles of general application.

5.2.2 No Event of Default, or event that with notice or lapse of time or both would constitute an Event of Default, has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under the Agreement or any Credit Support Document which it has obtained.

5.2.3 No litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or, if applicable, any provider of a Credit Support Document that would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under the Agreement or any Credit Support Document to which it is a party, or that is likely to affect the legality, validity or enforceability against it of the Agreement or that Credit Support Document or its ability to perform its obligations under the Agreement or that Credit Support Document.

5.2.4 It has entered into the Agreement and any Credit Support Document to which it is a party after a full opportunity to review their terms and conditions, has a full understanding of those terms and conditions and of their risks, and is capable of assuming those risks.

5.2.5 All applicable information (other than, for the avoidance of doubt, audited financial statements, which shall be prepared in accordance with generally accepted accounting principles in the jurisdiction of the Seller) that is furnished in writing by or on behalf of it to the other Party and is identified as being subject to or connected to the Agreement is, as of the date it is furnished to the other Party, true, accurate and complete in every material respect.



- 5.2.6 It has and will construct, operate and maintain the Project, or will procure that the Project is constructed, operated and maintained, in compliance with all Applicable Rules.
- 5.2.7 Other than as contemplated by the Agreement it has not sold, transferred, assigned, licensed, disposed of, granted or otherwise created any interest in the Contract Quantity.
- 5.2.8 At the time of each Delivery, the Buyer will receive good title to the Contract Quantity free of any mortgage, charge, pledge, lien or other security interest in favour of any person created by, or connected to, the Seller.

Promptly upon the reasonable written request of the Buyer, it will provide the Buyer with copies of all Project Documents and any updates to the Project Documents.

6. ARTICLE 6: TERMINATION

6.1 Events of Default

The occurrence at any time with respect to a Party of any of the following events in this Paragraph 6.1 as are specified in the Agreement shall be an Event of Default with respect to such Party:

- 6.1.1 **Non-payment.** The Party fails to pay any amount when due under the Agreement, and that failure is not remedied within three (3) Banking Days of the Non-Defaulting Party giving the Defaulting Party notice of that failure.
- 6.1.2 **Representation or Warranty.** Any representation or warranty made, or deemed to have been made, by the Party in the Agreement, or by the Party or its Credit Support Provider in a Credit Support Document, proves to have been false or materially misleading at the time it was made or was deemed to have been made.
- 6.1.3 **Material Obligations.** The Party fails to perform a material obligation under the Agreement (other than a failure to Deliver or any other obligation specifically referred to in this Article) and that failure is not remedied within five (5) Banking Days of the Non-Defaulting Party giving the Defaulting Party notice of that failure.
- 6.1.4 **Insolvency.** The Party or any Credit Support Provider of the Party:
- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (b) becomes insolvent or is unable to pay its debts generally as they fall due, fails generally to pay, or admits in writing its inability generally to pay its debts as they become due;
 - (c) makes a general assignment, arrangement, composition or other arrangement with or for the benefit of its creditors;
 - (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or



petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not withdrawn, dismissed, discharged, stayed or restrained in each case within thirty (30) days of the institution or presentation of that proceeding or petition;

- (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and that secured party maintains possession, or that process is not withdrawn, dismissed, discharged, stayed or restrained, in each case within thirty (30) days of that event;
- (h) causes or is subject to any event with respect to it that, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in sub-paragraphs (a) to (g) (inclusive) above; or
- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to above.

6.1.5 **Credit Support.** One or more of the following occurs:

- (a) the Party or any Credit Support Provider of the Party fails to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document or Performance Assurance if that failure is not remedied within three (3) Banking Days of notification;
- (b) any Credit Support Document or Performance Assurance expires or terminates, is due to expire or terminate within thirty (30) days or such other period as is specified in the Agreement, or fails or ceases to be in full force and effect for the purpose of the Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of the Party under the Agreement to which that Credit Support Document relates without the written consent of the other Party and such expiration or termination is not remedied within three (3) Banking Days of notification; or
- (c) the Party or any Credit Support Provider of that Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, that Credit Support Document or Performance Assurance or otherwise fails to comply with or perform its obligations under or in respect of a Credit Support Document and that failure is continuing after any applicable grace or cure period.



[Note: if Cross Default applies, please specify the threshold applicable to each Party in the Agreement.]

6.1.6 **Cross Default.** There occurs or exists:

- (a) a default, event of default or other similar condition or event (however described) in respect of the Party or any Credit Support Provider of the Party under one or more agreements or instruments relating to Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the threshold specified in the Agreement that has resulted in that Indebtedness becoming due and payable under those agreements or instruments before it would otherwise have been due and payable; or
- (b) a default by that Party or that Credit Support Provider (individually or collectively) in making one or more payments on the due date for those purposes under those agreements or instruments in an aggregate amount of not less than the threshold specified in the Agreement (after giving effect to any applicable notice requirement or grace period).

[Note: if Material Adverse Change applies, please specify the amounts referred to below in the Agreement.]

6.1.7 **Material Adverse Change.** The Party fails, within three (3) Banking Days of receipt of the notice referred to below, to provide the other Party (the "**Requesting Party**") with, or increase the amount of, Performance Assurance when the Requesting Party believes in good faith that a Material Adverse Change has occurred or its exposure in respect of such Party under a continuing Material Adverse Change has increased and the Requesting Party serves written notice on that Party. For the purposes of this Event of Default, a "**Material Adverse Change**" has occurred if any one or more of the following events has occurred and is continuing:

- (a) **Credit Rating.** If the Credit Rating (where available) of:
 - (i) the Party in question (unless all that Party's financial obligations under the Agreement are fully guaranteed or assured under a Credit Support Document); or
 - (ii) that Party's Credit Support Provider (other than a bank).

is withdrawn or downgraded below the ratings specified in the Agreement.

- (b) **Credit Rating of a Credit Support Provider that is a bank.** If the Credit Rating of a bank serving as the Party's Credit Support Provider is withdrawn or downgraded below Standard & Poor's Rating Group "A-" or Moody's Investor's Service Inc. or Fitch Ratings Ltd. equivalent rating.
- (c) **Impaired Ability to Perform.** If in the reasonable and good faith opinion of the Requesting Party, the ability of the Party or the Party's Credit Support Provider (that is not a bank) to perform its obligations under the Agreement or any Credit Support Document, as the case may be, is materially impaired.



- (d) *Credit Event upon Merger.* If the Party or its Credit Support Provider (that is not a bank) undergoes a change of control, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates or reconstitutes into or as another person, or another person transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates or reconstitutes into or as such Party or its Credit Support Provider (that is not a bank) and:
- (i) the creditworthiness of such Party or its Credit Support Provider (that is not a bank) or the resulting surviving transferee or successor person is, in the reasonable and good faith opinion of the Requesting Party, materially weaker than that of the Party or such Credit Support Provider (that is not a bank), as the case may be, immediately prior to such action;
 - (ii) the resulting surviving transferee or successor person fails to assume all the obligations of that Party or such Credit Support Provider (that is not a bank) under the Agreement or any Credit Support Document to which it or its predecessor was a party either by operation of law or pursuant to an agreement reasonably satisfactory to the Requesting Party; or
 - (iii) the benefits of any Credit Support Document cease or fail to extend (without the consent of the Requesting Party) to the performance by such resulting surviving transferee or successor person of its obligations under the Agreement.
- (e) *Decline in Tangible Net Worth.* If the Tangible Net Worth of any Party or the Party's Credit Support Provider (that is not a bank) falls by twenty per cent (20%) (or such other amount specified in the Agreement) or more in a financial year, measured by reference to the most recently available audited accounts of such Party or the Party's Credit Support Provider.
- (f) *Financial Covenants.* If a Party does not have a Credit Rating, any Party or the Party's Credit Support Provider (that is not a bank) fails to fulfil any of the following requirements as determined by reference to the most recent relevant financial statements:
- (i) the ratio of (1) earnings before interest and taxes to (2) the sum of all interest and any amounts in the nature of interest charged to expense relating to Total Debt is for the Party or its Credit Support Provider (that is not a bank) in any fiscal year greater than the ratio specified in the Agreement,
 - (ii) the ratio of (1) the amount of cash generated or employed by the Party or its Credit Support Provider in its operating activities to (2) Total Debt of the Party or its Credit Support Provider (that is not a bank) in any fiscal year is greater than the ratio specified in the Agreement, and
 - (iii) the ratio of (1) Total Debt to (2) the sum of Total Debt and all paid up shareholder cash contributions to the share capital account or



any other capital account of the Party or its Credit Support Provider (that is not a bank) ascribed for such purposes is less than the ratio specified in the Agreement.

6.1.8 **Withdrawal of Host Country from Kyoto Protocol.** With respect to the Seller only, the Host Country withdraws from the Kyoto Protocol.

6.1.9 **Withdrawal of Annex I Party.**

either:

(a) With respect to the Buyer, the Annex I Party that provided the Buyer's Authorisation withdraws from the Kyoto Protocol or revokes its Authorisation for the Buyer with respect to the Project.

or:

(b) With respect to the Buyer, the Annex I Party that provided the Buyer's Authorisation withdraws from the Kyoto Protocol or revokes its Authorisation for the Buyer with respect to the Project and the Buyer fails, prior to the next Scheduled Delivery Date, to obtain Authorisation from another Annex I Party with respect to the Project that would allow it to take Delivery of the Contract Quantity on that Scheduled Delivery Date.

6.2 **Delivery Failure**

Except to the extent:

- (i) that the Seller's obligations are suspended as a result of the Buyer's default;
- (ii) that the Seller is relieved from complying with a relevant obligation under Paragraph 6.3 (*Illegality*); or
- (iii) that the Seller is relieved from complying with a relevant obligation under Paragraph 6.4 (*Force Majeure*),

then if a Delivery Failure occurs the Paragraphs below that are specified in the Agreement shall apply.

6.2.1 The Seller shall give notice to the Buyer as soon as it is aware that a Delivery Failure has occurred or is likely to occur. The notice will set out in reasonable detail:

- (a) the amount of the Delivery Shortfall;
- (b) the reason for the Delivery Failure and the steps being taken by the Seller to address the Delivery Failure; and
- (c) the anticipated duration of the Delivery Failure.

6.2.2 Within five (5) Banking Days of receipt of the notice referred to in Paragraph 6.2.1, the Buyer shall elect one of the following and shall notify the Seller of its election:

- (a) to receive Replacement CERs in respect of the Delivery Shortfall;



- (b) to agree a revised Delivery Schedule ("**Revised Delivery Schedule**") with the Seller within ten (10) Banking Days of notification to the Seller of election on the following basis:
 - (i) During the continuation of the Delivery Failure, both parties shall use reasonable endeavours to agree on a Revised Delivery Schedule. Upon agreement of the Revised Delivery Schedule, both Parties will resume full performance of their obligations in accordance with the Revised Delivery Schedule.
 - (ii) If, after a period of ten (10) Banking Days, a Revised Delivery Schedule is not agreed between the Parties, the Buyer may make an alternative election in accordance with this Paragraph and shall notify the Seller of its election;
- (c) to receive Buyer's Market Damages in respect of the Delivery Shortfall; or
- (d) to terminate the Agreement.

If the Buyer elects (a), or (c), the Seller shall comply with such election within five (5) Banking Days of receipt of the notice from the Buyer referred to in this Paragraph. If the Seller fails to comply with an election under (a) or (c) within such time, the Buyer may elect to terminate the Agreement.

6.2.3 Within ten (10) Banking Days of receipt of the notice referred to in Paragraph 6.2.1, the Buyer shall agree a revised Delivery Schedule ("**Revised Delivery Schedule**") with the Seller. During the continuation of the Delivery Failure, both Parties shall use reasonable endeavours to agree on a Revised Delivery Schedule. Upon agreement of the Revised Delivery Schedule, both Parties will resume full performance of their obligations in accordance with the Revised Delivery Schedule.

If, after a period of ten (10) Banking Days, a Revised Delivery Schedule is not agreed between the Parties, then within five (5) Banking Days, the Buyer may make an alternative election in accordance with this Paragraph and shall notify the Seller of its election:

- (a) to receive Replacement CERs in respect of the Delivery Shortfall;
- (b) to receive Buyer's Market Damages in respect of the Delivery Shortfall; or
- (c) to terminate the Agreement.

If the Buyer elects (a), or (b), the Seller shall comply with such election within five (5) Banking Days of receipt of the notice from the Buyer referred to in this paragraph. If the Seller fails to comply with an election under (a) or (b) within five (5) Banking Days, the Buyer may elect to terminate the Agreement.

6.3 **Illegality**

If, due to the adoption of, or any change in, any Applicable Law after the date on which this Agreement is entered into, or due to the promulgation of, or any change in, the interpretation of any court, tribunal or regulatory authority with competent jurisdiction of any Applicable Law after that date, it becomes unlawful for a Party or if applicable, a Credit Support Provider of that Party:



- (i) to perform any absolute or contingent obligation to make a payment or Deliver or to receive a payment or receive a Delivery or to comply with any other material provision of this Agreement; or
- (ii) to perform any contingent or other obligation that the Party (or that Credit Support Provider) has under any Credit Support Document,

in either case, an "**Illegality**", then, at the written request of either Party, the Parties shall, in good faith, seek to agree the amendments (if any) to this Agreement necessary or appropriate to take account of those changes, so that this Agreement may continue in force. The obligations of both Parties with respect to the obligations affected by the Illegality will be suspended for the duration of the Illegality.

- (a) Where an Illegality continues for a period of sixty (60) Banking Days and the Parties are unable to agree the necessary amendments to this Agreement, either Party may, by written notice to the other Party, terminate the Agreement.
- (b) If an event or circumstance that would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it is to be treated as an Illegality and not as an Event of Default. If an event or circumstance that would otherwise constitute or give rise to a Force Majeure also constitutes an Illegality, it is to be treated as an Illegality and not as a Force Majeure.

6.4 Force Majeure

6.4.1 Upon the occurrence of a Force Majeure, the FM Affected Party shall notify the other Party in writing of the commencement of the Force Majeure, providing in reasonable detail, to the extent available to the FM Affected Party:

- (a) details of the event causing the Force Majeure;
- (b) the steps being taken by the FM Affected Party to mitigate the effects of the Force Majeure; and
- (c) a non-binding estimate of the extent and the expected duration of its inability to perform its obligations due to the Force Majeure.

6.4.2 The obligations of both Parties with respect to the obligations affected by the Force Majeure will be suspended for the duration of the Force Majeure. During the continuation of the Force Majeure, the FM Affected Party shall use all reasonable endeavours to overcome the Force Majeure. Upon the Force Majeure being overcome or it ceasing to subsist, both Parties will, as soon as reasonably practicable thereafter, resume full performance of their obligations under the Agreement (including, for the avoidance of doubt, any suspended obligations).

6.4.3 Where a Force Majeure continues for a period of sixty (60) Banking Days (or such other period specified in the Agreement), either Party may, by written notice to the other Party, terminate the Agreement.

6.4.4 If the Agreement is terminated in accordance with Paragraph 6.4.3, the Parties' obligations under the Agreement (except those specified to survive termination) will be released and discharged and the Force Majeure termination payment to be made between the Parties (if any) shall be calculated in accordance with



sub-paragraph (a), (b) or (c) below, as selected by the Parties in the Agreement.

either:

(a) **No Termination Payment.** No Force Majeure termination payment shall be made between the Parties; provided, however, that the obligation to pay any amounts accrued but unpaid at the Termination Date shall survive the termination of the Agreement.

or:

(b) **Partial Termination Payment.** In respect of any Scheduled Delivery Dates affected by the Force Majeure, the FM Affected Party shall pay the other Party Buyer's Market Damages or Seller's Market Damages, as the case may be.

or:

(c) **Full Termination Payment.** The FM Affected Party shall pay the other Party Buyer's Market Damages or Seller's Market Damages, as the case may be.

6.4.5 Where an event or circumstance that would otherwise constitute or give rise to an Event of Default also constitutes Force Majeure, it is to be treated as Force Majeure and not as an Event of Default.

6.5 Termination Rights

The Agreement may be terminated:

- 6.5.1 immediately upon written notice by the Non-Defaulting Party, following the occurrence of an Event of Default with respect to the other Party (after giving effect to any applicable grace period);
- 6.5.2 immediately upon written notice by the Buyer in the event of a Delivery Failure and the Buyer electing to terminate pursuant to Paragraph 6.2.2 or 6.2.3;
- 6.5.3 immediately upon written notice by either Party in accordance with Paragraph 6.4.3 (*Force Majeure*) following a Force Majeure;
- 6.5.4 immediately upon written notice by either Party in accordance with Paragraph 6.3(b) (*Illegality*) following an Illegality;
- 6.5.5 immediately upon written notice by either Party following mutual agreement that the Agreement will terminate; or
- 6.5.6 without any written notice being required, upon Delivery of the Contract Quantity and payment of all sums owing between the Parties.

6.6 Consequences of Termination

6.6.1 Upon the termination of the Agreement, except as otherwise provided in this Paragraph 6.6 (*Consequences of Termination*) or specified in the Agreement, each Party's rights and obligations under the Agreement shall be released and discharged in full except for rights and obligations accruing prior to the Termination Date.



- 6.6.2 If the Agreement is terminated in accordance with Paragraph 6.5.1, the Defaulting Party shall pay the Non-Defaulting Party Buyer's Market Damages or Seller's Market Damages, as the case may be.
- 6.6.3 If the Agreement is terminated in accordance with Paragraph 6.5.2, the Seller shall pay the Buyer the Buyer's Market Damages.
- 6.6.4 If the Agreement is terminated in accordance with Paragraph 6.5.3, the provisions of Paragraph 6.4.4 shall apply.
- 6.6.5 If the Agreement is terminated in accordance with Paragraph 6.5.4 or 6.5.5, no termination payment shall be payable by either Party.
- 6.6.6 The termination payments payable under this Paragraph 6.6 (*Consequences of Termination*) are the Parties' reasonable pre-estimate of losses suffered and are not a penalty. Except as otherwise specified in the Agreement, no other amounts (except for interest at the Default Rate on late payments) shall be payable by either Party in the event of termination.
- 6.6.7 For the avoidance of doubt, if at the Termination Date any amount is owing between the Parties but unpaid, that amount shall be paid by the relevant Party and, if payable to the Party making the termination payment, may be set off against any termination payment payable by one Party to the other.

7. **ARTICLE 7: DISPUTE RESOLUTION**

[Note: do not select both Paragraphs 7.1 (Jurisdiction) and 7.2 (Arbitration). Paragraph 7.3 (Expert Determination) may be chosen in addition to either of the above.]

7.1 **Jurisdiction**

either:

- 7.1.1 The Parties submit to the exclusive jurisdiction of the courts of the country of the Governing Law to settle any Dispute. The Parties agree that such courts are the most appropriate and convenient forum to settle any Dispute and, accordingly, that they will not argue to the contrary.

or:

- 7.1.2 The Parties submit to the non-exclusive jurisdiction of the courts of the country of the Governing Law to settle any Dispute.

7.2 **Arbitration**

The Parties agree that any Dispute arising under, out of, or in connection with this Agreement, that the Parties are unable to settle between themselves within thirty (30) days of one Party having sent written notification to the other of the existence of such a dispute, is to be resolved by final and binding arbitration in accordance with the applicable rules of:

either:

- (a) The International Chamber of Commerce Arbitration Rules, as in effect:
- (i) On the date of this Agreement; or
 - (ii) At the time of commencement of arbitration.



or:

(b) The Permanent Court of Arbitration "Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment", as in effect:

- (i) On the date of this Agreement; or
- (ii) At the time of commencement of arbitration.

or:

(c) The "United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules", as in effect:

- (i) On the date of this Agreement; or
- (ii) At the time of commencement of arbitration.

or:

(d) A separate arbitrator as provided for in the Agreement, as in effect:

- (i) On the date of this Agreement; or
- (ii) At the time of commencement of arbitration.

Unless otherwise specified in the Agreement:

- (a) the number of arbitrators shall be one;
- (b) the place of arbitration shall be London, United Kingdom; and
- (c) the language of arbitration shall be English.

The appointing authority is the Secretary General of the Permanent Court of Arbitration unless the rules chosen indicate otherwise.

7.3 Expert Determination

7.3.1 In the event of a Dispute between the Parties, the Parties shall seek in good faith to resolve the Dispute within a period of 15 Banking Days. If no agreement is reached, either Party may, by notice in writing to the other Party, refer such Dispute to a suitably qualified independent expert (the "**Expert**") to be appointed by agreement between the Parties. If the Parties fail to agree upon that appointment within ten (10) Banking Days of a Party notifying the other Party of its decision to refer a Dispute to an Expert, the President of the International Emissions Trading Association may appoint the Expert on the application of either Party.

7.3.2 If a Dispute is referable to the Expert the Parties will, within ten (10) Banking Days of the Experts appointment, make written submissions to the Expert and/or send documents to him. In addition, the Parties shall, if requested, make available to the Expert any documentation which the Expert, in his absolute discretion, considers necessary or helpful in reaching his decision on the dispute. The Parties agree that it is their intention that in the absence of their ability to resolve the Dispute by agreement, the Agreement should continue and not come to an end or be deemed to be void or voidable in accordance with the doctrine of frustration or any other legal theory.

7.3.3 The Expert shall act as an expert and not as an arbitrator and shall give his or her determination in writing.



- 7.3.4 The determination of the Expert shall be final, conclusive and binding upon the Parties unless a Party notifies the other Party that it disputes the Expert's determination within twenty-one (21) days of receipt of that determination, in which case the Dispute is to be referred either to the courts of law of the country of the Governing Law (if Paragraph 7.1 (*Jurisdiction*) applies) or the arbitration (if Paragraph 7.2 (*Arbitration*) applies).
- 7.3.5 The Expert shall determine the procedure to be followed by the Expert for the purpose of making a determination, but the Parties shall use their respective reasonable endeavours to ensure that he or she makes his or her determination within twenty (20) Banking Days of being appointed.
- 7.3.6 Each of the Parties shall bear one half of the costs of the Expert unless the Expert determines otherwise.
- 7.3.7 Pending the determination of any amendments to the Agreement by the Parties or the Expert, the Parties shall continue to the extent possible to perform their obligations under the Agreement.

8. **ARTICLE 8: MISCELLANEOUS**

8.1 **Confidentiality**

Each Party undertakes, for itself and on behalf of its Affiliates, not to use or disclose to any person Confidential Information. This Paragraph does not apply to disclosure of Confidential Information:

- 8.1.1 to a director, officer or employee of the Party whose function requires him to have the Confidential Information;
- 8.1.2 required to be disclosed by law, by a rule of a listing authority by which the Party's shares are listed, a stock exchange on which the Party's shares are listed or traded or by a governmental authority or other authority with relevant powers to which the Party is subject or submits, whether or not the requirement has the force of law provided that the disclosure shall so far as is practicable be made after consultation with the other Party and after taking into account such Party's requirements as to its timing, content and manner of making or despatch;
- 8.1.3 which is lawfully in the public domain (including if such information is readily obtained from a website) other than by breach of this Paragraph 8; or
- 8.1.4 to an adviser for the purpose of advising the Party in connection with the transactions contemplated by the Agreement provided that such disclosure is essential for these purposes and is on the basis that this Paragraph 8 (*Confidentiality*) applies to disclosure by the adviser.

8.2 **Third Party Rights**

either:

- 8.2.1 Subject to the rights that may accrue to any successor or permitted assignees of the Parties, no provision of this Agreement is to be construed as creating any rights enforceable by a Third Party, and all Third Party rights implied by law are, to the extent permissible by law, excluded from this Agreement.

or:



8.2.2 A person who is not a Party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 or any similar law regarding third party rights in any jurisdiction to enforce any term of the Agreement, but this does not affect any right or remedy of a Third Party which exists or is available apart from that Act or similar law.

8.3 Remedies and Waivers

The failure to exercise or delay in exercising a right or remedy provided by the Agreement or by law does not impair or constitute a waiver of the right or remedy or an impairment of or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by the Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy. The Buyer's and the Seller's rights and remedies contained in the Agreement are cumulative and not exclusive of rights or remedies provided by law.

8.4 Transfer and assignment

8.4.1 Subject to Paragraph 8.4.2, neither Party may transfer or assign its rights under the Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

8.4.2 Notwithstanding Paragraph 8.4.1, either Party (the "**Assigning Party**") may transfer or assign all, but not some, of its rights and obligations under the Agreement to an Affiliate with the prior written consent of the other Party (the "**Non-Assigning Party**") (such consent not to be unreasonably withheld or delayed). Such consent may be withheld where, in the reasonable opinion of the Non-Assigning Party:

- (a) the proposed transfer or assignment is to an Affiliate which is not in the same jurisdiction as the Assigning Party;
- (b) the creditworthiness of the Affiliate is not equivalent to, or greater than, the creditworthiness of the Assigning Party at the date of the proposed transfer or assignment;
- (c) any Credit Support in respect of the obligations of the Assigning Party under the Agreement will not be available upon such transfer or assignment for the benefit of the Non-Assigning Party in respect of the obligations of the Affiliate;
- (d) the proposed transfer or assignment would prejudice the performance of a Party's contractual obligations under the Agreement unless the Affiliate were also to become a Project Participant in the Project.

8.4.3 Subject to Paragraph 8.4.1 or Paragraph 8.4.2 (as applicable), the Non-Assigning Party agrees to sign any documentation required to effect the transfer or assignment of such rights and obligations (including any documentation required by the International Rules in relation to Issuance and/or Delivery of CERs) provided that to do so is not, and will not at any time be, prejudicial to the Non-Assigning Party's rights.

8.5 Interest

If a Party fails to pay to the other Party any amount due by the Payment Due Date as set out in the Agreement (or otherwise determined by any dispute resolution process), interest shall be payable on that amount at the Default Rate.



8.6 Share of Proceeds

[Note: choose only one of the options.]

either:

8.6.1 Any Share of Proceeds payable in connection with the Project and/or the Contract Quantity shall be payable by the Seller.

or:

8.6.2 Any Share of Proceeds payable in connection with the Issuance of the Contract Quantity shall be payable by the Buyer.

or:

8.6.3 Any Share of Proceeds payable in connection with the Issuance of the Contract Quantity shall be payable by the Buyer and the Seller in equal proportions.

8.7 Taxes

8.7.1 All amounts referred to in the Agreement are exclusive of any applicable VAT chargeable on the supply or supplies for which such amounts form the whole or part of the consideration for VAT purposes. The VAT treatment of any Delivery or payment shall be determined pursuant to the VAT law of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place. If VAT is properly chargeable on any such supply or supplies, the Buyer shall pay to the Seller an amount equal to the VAT, if any, chargeable in the Seller's jurisdiction; provided, however, that (i) such amount shall only be required to be paid once the Seller provides the Buyer with a valid VAT invoice in relation to that amount and (ii) the Buyer shall be under no obligation to make any payment to the Seller in respect of VAT which the Buyer must self-assess under the reverse charge rule or any similar system in the Buyer's jurisdiction. Each Party shall to the extent permitted by law provide the other with any additional valid VAT invoices as required for the purposes of the Agreement and, to the extent required by law, shall correctly account for any VAT properly due in its jurisdiction.

8.7.2 Subject to each Party's obligations relating to VAT and to Paragraph 8.6 (*Share of Proceeds*), each Party shall cause all royalties, taxes, duties and other sums (including any stamp duty, other documentary taxes, climate change levy or other environmental tax or levy) legally payable by that Party arising in connection with the Agreement to be paid. In the event that the Seller is required by law to pay any tax which is properly for the account of the Buyer, the Buyer shall promptly indemnify or reimburse the Seller in respect of such tax. In the event that the Buyer is required by law to pay any tax which is properly for the account of the Seller, the Buyer may deduct the amount of any such tax from the sums due to the Seller under the Agreement and the Seller shall promptly indemnify or reimburse the Buyer in respect of any such tax not so deducted.

8.7.3 Both Parties shall use reasonable efforts to administer the Agreement and to implement its provisions in accordance with the intent to minimise, where reasonable and possible, the accrual of tax payment obligations.



8.8 Notices

8.8.1 A notice or other communication under or in connection with the Agreement (a "**Notice**") shall be:

- (a) in writing;
- (b) in the English language; and
- (c) delivered to the Party due to receive the Notice to the address set out in the Commercial Terms:
 - (i) personally; or
 - (ii) sent by first class post pre-paid recorded delivery (and air mail if overseas); or
 - (iii) by telex; or
 - (iv) by fax; or
 - (v) by electronic mail,

(in each case, only if the required address or number for that method of communication is specified in the Commercial Terms) or to an alternative address, person, telex, fax number or electronic mail address (as the case may be) specified by that Party by not less than five (5) Banking Days' written notice to the other Party received before the Notice was despatched.

8.8.2 Unless there is evidence that it was received earlier, a Notice is deemed given if:

- (a) delivered personally, when left at the address referred to in Paragraph 8.8.1(c);
- (b) sent by mail, except air mail, two (2) Banking Days after posting it;
- (c) sent by air mail, six (6) Banking Days after posting it;
- (d) sent by telex, when the proper answer-back is received;
- (e) sent by fax, on the day of receipt, if received before 11.00 a.m. on a Banking Day, or otherwise on the first Banking Day after receipt; and
- (f) sent by electronic mail, on the day of receipt, if received before 11.00 a.m. on a Banking Day, or otherwise on the first Banking Day after receipt.