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# **Certified Emission Reduction Purchase Agreement<sup>1</sup>**

**The Norwegian Ministry of Climate and  
Environment**

**[Seller]**

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<sup>1</sup> This is a certified emissions reduction (CER) purchase agreement to be used in relation to the Norwegian Carbon Credit Procurement Program for the purchase of 2016 to 2020 Vintage Certified Emission Reductions that should be used in the following circumstances: (i) when Norwegian Ministry of Climate and Environment (NMoCE) purchases CERs directly from a project developer/seller generated and issued from the underlying CDM project; and (ii) at the time NMoCE enters into the agreement, all or part of the Contract CERs have not yet been generated, thus provisions relating to "project matters" (clause 8) are required. Dated 26 November 2015

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## Date

**Parties**            **The Norwegian Ministry of Climate and Environment** of Kongensgate 20,  
NO-0030 Oslo, Norway (*Buyer*)

[Insert Seller's name and incorporation address] (*Seller*)

(each of the above Parties being referred to individually as a *Party* and together as the *Parties*)

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## Recitals

- A        Seller is or will be entitled to receive Certified Emission Reductions (*CERs*) in respect of a project registered under the Clean Development Mechanism (the *Project*) and which qualifies as either a Vulnerable Project or New CDM Project.
- B        The Buyer has, under the Norwegian Carbon Credit Procurement Program, invited proposals for future deliveries of 2015 to 2020 vintage CERs and has selected the Seller as vendor of the CERs from the Project.
- C        Seller wishes to sell and Buyer wishes to purchase CERs from the Project.
- D        The Parties note that there may be opportunities for the recognition of CERs or equivalent units through the New Mechanism established under the Paris Agreement and that the Parties may consider in future the sale and purchase of CERs, particularly Post-2020 Option CERs under this mechanism.
- E        Buyer and Seller agree to contract on the terms set out in this Certified Emission Reduction Purchase Agreement (the *Agreement*).

## Operative provisions

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### 1        **Term**

- 1.1       This Agreement will commence on its execution by both Parties and terminate on the fulfilment of all obligations, unless terminated earlier in accordance with this Agreement or extended by mutual agreement between the Parties.
- 1.2       The Parties by mutual agreement may extend the term of this Agreement to purchase CERs generated in vintages after 2020. The parties will agree in writing to the terms of such an extension.
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### 2        **Preconditions and Due Diligence**

- 2.1       The obligations to Deliver and purchase CERs in clauses 3, 5 and 6 will not take effect until all of the following conditions have been fulfilled:

- (a) Buyer has notified Seller that it has satisfactorily completed and is satisfied with the results of its Due Diligence review of the Project<sup>2</sup>;
  - (b) Buyer has received a Host Country legal opinion, to Buyer's satisfaction, confirming the validity and enforceability of this Agreement in the Host Country against Seller;
  - (c) the Project has achieved Registration with:
    - (i) Buyer and Seller listed as the Project Participants in the Project; and
    - (ii) Buyer nominated as Focal Point in the Modalities of Communication submitted to the CDM Executive Board (in accordance with clause 10.4 and in the form required by the CDM Executive Board at the time of submission of the request for Registration);[
  - (d) Seller has provided Buyer with a copy of a Completion Bond from the contractor responsible for construction of the Project;]
  - (e) Seller has provided Buyer with evidence of availability of sufficient funds and/or binding loan agreements in a form reasonably acceptable to Buyer to commission and operate the Project;
  - (f) the Project has been successfully commissioned and is capable of generating GHG Reductions; and
  - (g) the Project is a Vulnerable Project.
- 2.2 The Parties will use all reasonable endeavours to satisfy the conditions in clause 2.1 as soon as possible.
- 2.3 The conditions in clause 2.1 are for the benefit of, and may only be waived or deferred by, Buyer.
- 2.4 If the conditions in clause 2.1 have not been satisfied or waived by the Expiry Date, then Buyer may terminate this Agreement by written notice to Seller.
- 2.5 For the avoidance of doubt, all obligations under this Agreement except for the obligations to Deliver and purchase CERs in clauses 3, 4 and 6 will take effect upon execution of this Agreement, regardless of whether the preconditions listed in clause 2.1 have been satisfied. If a failure to satisfy a precondition arises from an Event of Default on the part of a Party, then the provisions of clause 16 shall apply.

### **Due Diligence**

- 2.6 Seller will cooperate in all reasonable respects with Buyer's conduct of its Due Diligence review for a period of ninety (90) days following the execution of this Agreement.

## **3 Purchase and sale of CERs**

- 3.1 Seller agrees to sell and Buyer agrees to purchase the Contract CERs at the CER Price in accordance with the terms of this Agreement.

<sup>2</sup> If the ERPA is in relation to a large hydro project, then the precondition in (a) will be extended to include the words "including being satisfied that the Project has been constructed and will be operated in accordance with World Commission on Dams' Report "Dams and Development - A New Framework for Decision-Making" and also to require Seller to provide the Buyer with a compliance report confirming the project complies with EU requirements in relation to large hydropower projects.

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## 4 Call Option

- 4.1 In consideration of Buyer's agreement to purchase the Contract CERs, Seller irrevocably grants Buyer (or its nominee) the right, but not the obligation, to acquire all or part of the Option CERs at the Option Exercise Price (the *Call Option*).
- 4.2 Buyer may exercise the Call Option after receipt of each Verification Report for the relevant Verification Period within the Option Exercise Period by notifying the Seller in writing of the number of Option CERs to be purchased (*Option Notice*).
- 4.3 Partial exercise of the Call Option by Buyer is permitted, and following a partial exercise of the Call Option, any Option CERs not purchased for that Verification Period shall no longer be available to the Buyer.
- 4.4 If Buyer does not provide Seller with an Option Notice within an Option Exercise Period, the Buyer's right to exercise part or all of the Call Option with respect to the relevant Verification Report terminates.
- 4.5 For the avoidance of doubt, if Buyer fails to provide to the seller an Option Notice during any one Option Exercise Period, Buyer's right to exercise the Call Option during any other Option Exercise Period in relation to subsequent Verification Reports up to the end of the Term remains unaffected.
- 4.6 If Buyer exercises its Call Option under this Agreement:
- (a) Seller must Deliver all exercised Option CERs and Buyer must make payment for such Option CERs in accordance with the terms of this Agreement relating to Contract CERs, save that references in Schedule 1 refer to Option CERs and not Contract CERs; and
  - (b) exercised Option CERs are to be Delivered at the next Delivery Date after the Option Notice is issued.
- 4.7 Where the Option exists to purchase CERs from vintages from 2021 onwards (*Post-2020 Option CERs*), the Parties acknowledge:
- (a) that although the CDM will continue to operate under Article 12 of the Kyoto Protocol and, upon the entry into force of the Doha Amendment, will assist Annex B Parties to meet their commitments under the second commitment period of the Kyoto Protocol, continued utilisation of the CDM post- 2020 in a form acceptable to the Buyer will depend upon future decisions made by the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol; and
  - (b) that under Article 6 of the Paris Agreement a new mechanism is established to contribute to the mitigation of greenhouse gas emissions and support sustainable development for use by Parties on a voluntary basis (*New Mechanism*).
- 4.8 Where the Option exists to purchase CERs from vintages from 2021 onwards, the Buyer must notify the Seller of its intention to exercise that Option on or before 15 December 2020 or that Option is waived in its entirety.

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## 5 Delivery

- 5.1 On or before each Delivery Date, Seller shall Deliver the Periodic CER Delivery Amount with respect to that Delivery Date to the CER Account nominated by Buyer.

- 5.2 In the event that early Delivery by Seller would result in Buyer being required to make a payment for Delivered CERs in a calendar year in which another payment for Delivered CERs has already been made, Seller shall seek Buyer's approval for such early Delivery by notice in writing. After receipt of such notice Buyer may:
- (a) accept such early Delivery;
  - (b) refuse such early Delivery; or
  - (c) accept such early Delivery on the condition that payment will not be made until ten (10) Business Days after the commencement of the next calendar year.
- 5.3 Delivery of CERs under this Agreement is deemed to occur when the relevant CERs are received in the CER Account nominated by Buyer.

#### **Establishment of Accounts**

- 5.4 Buyer may from time to time change its CER Account for receiving Delivery of CERs by giving at least ten (10) Business Days' prior notice to Seller.
- 5.5 Buyer shall use reasonable efforts to establish its CER Account and shall notify Seller of the account details at least thirty (30) Business Days prior to each Delivery Date.
- 5.6 If, having used reasonable endeavours, Buyer is unable to establish its CER Account prior to the first Delivery Date, Delivery will be delayed until such time as Buyer has established its CER Account.
- 5.7 If the National Registry in which Buyer's CER Account is located becomes ineligible to participate in international emissions trading, the provisions of clause 15.1 will apply. However, in such event, Buyer shall make all reasonable efforts to establish an alternative CER Account in an Eligible National Registry in order to allow Delivery to take place.

#### **Transfer of Legal Title**

- 5.8 Legal and beneficial title in each CER Delivered under this Agreement and all corresponding GHG Reductions will pass to Buyer on Delivery.

#### **Buyer Priority**

- 5.9 Seller shall:
- (a) fulfil all its obligations to Deliver CERs pursuant to this Agreement in priority to any other arrangements with any other third party; and
  - (b) ensure that any arrangements to sell CERs from this Project to any other third party will accept Buyer's priority.

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## **6 Payment**

### **Payment for Delivered CERs**

- 6.1 On or after each Delivery of CERs, Seller will issue Buyer with an invoice setting out the amount payable in respect of that Delivery.
- 6.2 Buyer shall pay to Seller the CER Price for each CER Delivered under this Agreement by the relevant Payment Date.

- 6.3 Buyer shall make payments for Delivered CERs by wire transfer in immediately available funds to Seller's Cash Account in the Nominated Currency.
- 6.4 Seller may change its Cash Account for receiving payments by giving at least ten (10) Business Days' prior notice to Buyer in accordance with the procedure for providing notice set out in clause 20.2.

#### **Advance Payment**

- 6.5 Buyer at its sole discretion may make one or more advance payments to Seller in accordance with clause 6.6 for application by Seller in connection with Monitoring, Verification, Certification, Issuance, Inclusion of Contract CPAs and the Adaptation Share of Proceeds (*Advance Payment*).
- 6.6 The Advance Payment will be paid on the terms and conditions determined by Buyer in its absolute discretion, provided that the Advance Payment will be no more than 2.5% of the estimated value of this Agreement (being the CER Price multiplied by the estimated CERs to be delivered under this Agreement) payable by Buyer under this Agreement.
- 6.7 If this Agreement is terminated by Buyer:
- (a) due to a Seller Event of Default; or
  - (b) under clause 2.4 due to the non-fulfilment of a condition precedent,

Seller must refund to Buyer all Advance Payments within twenty (20) Business Days of the termination, unless the Parties otherwise agree.]

#### **Interest on Overdue Amounts**

- 6.8 A Party required to make payment to another under this Agreement [other than an Advance Payment] shall pay interest on demand on any amount due and payable by that Party under this Agreement but unpaid (including interest payable under this clause 6.8 but unpaid).
- 6.9 Interest under clause 6.8 accrues on each unpaid amount from and including the due date for payment to the date of actual payment at the interest rate, being determined by [the Calculation Agent] to be the sum of:
- (a) 2% per annum; and
  - (b) the Screen Rate,
- calculated with reference to successive periods of a length selected by the Calculation Agent or, if no selection is made, of one (1) month starting on the due date for payment.
- 6.10 Interest under clause 6.8:
- (a) accrues from day to day;
  - (b) is calculated on the basis of the actual number of days elapsed (including the first day but excluding the last) and a 360 day year; and
  - (c) is to be compounded by the Calculation Agent at intervals selected by the Calculation Agent or, if no selection is made, at one (1) month intervals.
- 6.11 If a liability under this Agreement becomes merged in a judgment, the Party required to make the payment must, as an independent obligation, pay interest on the amount of that liability to the Party to which payment is due. Interest on the amount of that liability will accrue from

the date the amount becomes due until the date the amount is paid, both before and after judgment, at the rate which is the higher of:

- (a) the rate payable under the judgment; and
  - (b) the rate referred to in clause 6.9.
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## **7 Costs and Taxes**

### **Responsibility for Costs**

- 7.1 Seller shall pay all costs, fees, deductions and charges relating to:
- (a) the preparation of the Project Design Document, including the fees charged by the consultant engaged to prepare the Project Design Document;
  - (b) Validation;
  - (c) Registration;
  - (d) Monitoring (including preparation of the Monitoring Plan and Monitoring Reports);
  - (e) Verification and Certification;
  - (f) Inclusion of further Contract CPAs if applicable; and
  - (g) Issuance of CERs.
- 7.2 Buyer will be responsible for any costs, fees, deductions and charges regarding the creation and maintenance of its own CER Account and the authorisation of its participation in the Project by a Designated National Authority.
- 7.3 Each Party will bear its own costs and expenses in connection with the preparation, negotiation and execution of this Agreement.

### **Responsibility for Taxes**

- 7.4 Taxes shall be paid by the Party which is legally required to pay them in the relevant jurisdiction(s).
- 7.5 Seller is responsible for the Adaptation Share of Proceeds, and the volume of CERs to be Delivered under this Agreement is net of the Adaptation Share of Proceeds.
- 7.6 Other than as expressly set out in this Agreement, all payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any Applicable Law, as modified by the practice of any relevant governmental revenue authority, then in effect.
- 7.7 Despite clauses 7.4 to 7.6:
- (a) Buyer will pay Seller the amount of any value added tax that is payable by Seller conditional on:
    - (i) the provision by Seller to Buyer of a tax invoice or other like document that Buyer requires in order to obtain a credit for the value added tax. The invoice referred to in clause 6.1 will include a tax invoice or other like document; and
    - (ii) Buyer obtaining a credit for the value added tax; and

- (b) Buyer will pay to Seller an additional amount calculated by reference to any deduction or withholding required for Norwegian Taxes, other than Taxes withheld or deducted as a consequence of a connection between Seller and Norway (but excluding a connection arising solely as a consequence of Seller or a related party having executed, delivered or performed its obligations or receiving payment under this Agreement).
- 7.8 The Buyer shall be responsible for the payment of any Taxes, fees, charges or other costs associated with the establishment and maintenance of Buyer's CER Account, and imposed on the transfer of CERs into that CER Account by any Relevant Authority of the country in which the Buyer's CER Account is located.
- 7.9 If, in any circumstance, the Buyer is required to pay for any Taxes that are the responsibility of Seller, the Buyer must provide Seller with documentation evidencing the same and the Buyer will be entitled to deduct all such costs from any payments for Contract CERs due to Seller under this Agreement.
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## **8 PDD Development, Validation, Verification and Certification**

### **PDD Development**

- 8.1 Seller shall contract with the consultant responsible for preparing the Project [/Programme] Design Document and if applicable the CPA Design Document and, shall pay the fees of that consultant in accordance with clause 7.
- 8.2 The Parties agree that the Crediting Period to apply to the Project will be seven (7) years with the option to be renewed twice, where each renewal period is for 7 years.

### **Validation and Registration**

- 8.3 Seller shall contract with a Designated Operational Entity to perform Validation of the Project and shall:
- (a) inform Buyer of the identity of the Designated Operational Entity appointed to perform Validation of the Project; and
  - (b) instruct the Designated Operational Entity to submit a request for Registration to the CDM Executive Board once Validation is complete.
- 8.4 Seller shall:
- (a) make reasonable efforts to ensure that Validation and Registration of the Project is successful;
  - (b) upon the request of Buyer or the Designated Operational Entity responsible for Validation, promptly provide any documentation or information necessary for Validation of the Project; and
  - (c) make reasonable efforts to keep all Project Participants informed of the progress of Validation and Registration of the Project.

### **Verification, Certification and Issuance**

- 8.5 Seller shall contract with a Designated Operational Entity to perform Verification and Certification of all GHG Reductions generated by the Project in each Verification Period, and shall:

- (a) inform Buyer of the identity of the Designated Operational Entity appointed to perform Verification and Certification of the Project, no later than thirty (30) Business Days prior to the start of the first Verification Period; and
  - (b) instruct the Designated Operational Entity to provide Buyer with a copy of each Verification Report prior to the provision of that Verification Report to the CDM Executive Board.
- 8.6 Seller will procure that the Designated Operational Entity prepares and submits to the CDM Executive Board the Issuance Request for all Contract CERs.
- 8.7 Seller shall do everything reasonably necessary to assist the Designated Operational Entity to conduct Verification, Certification and Issuance.
- 8.8 Either Party may request that an additional Verification be undertaken at any time, in which case the other Party will take all measures necessary to effect such Verification. The Party making the request for an additional Verification will be responsible for all related costs. The Focal Point will arrange for CERs Issued pursuant to such additional Verification to be Delivered as soon as possible after Issuance and the Delivery Schedule will be adjusted accordingly.

**Buyer's Step-In Rights**

- 8.9 If Seller fails to comply with its obligations under clause 8, or it appears likely to Buyer that Seller will so fail, Buyer may, subject to giving Seller notice in writing, appoint a Designated Operational Entity to perform Validation and arrange Registration of the Project or to perform Seller's obligations in respect of Verification and Certification of GHG Reductions generated by the Project or Issuance, as appropriate (**Buyer's Step-In Rights**). Buyer may charge all related costs and expenses incurred by Buyer to Seller and/or deduct any such costs and expenses from payments due to Seller for Delivered CERs under this Agreement.
- 8.10 Seller shall cooperate fully with Buyer and/or its appointee in respect of Validation, Registration, Monitoring, Verification, Certification and Issuance carried out pursuant to Buyer's Step-In Rights, including providing access to relevant staff, employees and contractors of Buyer and/or its appointee to all relevant property, facilities and records.
- 8.11 Seller shall irrevocably grant to Buyer all of the necessary power and authority to act on its behalf (should it so require) and shall provide all necessary assistance and cooperation required by Buyer in order to exercise Buyer's Step-In Rights.
- 8.12 For the avoidance of doubt, even where Buyer exercises Buyer's Step-In Rights, Buyer shall not be responsible for preparation of the Project. Design Document, Validation, Registration, Verification, Certification, any documents or processes required for Inclusion of Contract CPAs ( if applicable) or Issuance of CERs.

**9 Monitoring and Reporting**

**Monitoring Plan**

- 9.1 Seller shall:
- (a) fully implement the Monitoring Plan no later than the Commissioning Date;
  - (b) 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;

- (c) establish and maintain data measurement and collection systems for all indicators listed in the Monitoring Plan;
- (d) observe, implement and meet all other requirements contained in the Monitoring Plan, in particular those pertaining to environmental and social performance and operational management systems;
- (e) ensure that the Project is maintained and prepared to allow for Verification and Certification as required by the Monitoring Plan; and
- (f) prepare the Monitoring Reports in accordance with the Monitoring Plan.

9.2 Seller may introduce amendments to the Monitoring Plan in accordance with the approved Monitoring methodology:

- (a) when such amendments are necessary to reflect any guidelines for Monitoring, Verification and reporting under the International Rules;
- (b) when such amendments appear warranted by concerns identified by the Designated Operational Entity; or
- (c) in the event that a renewal of the Baseline leads to an outcome which is substantially different from that in the Verification Report,

provided that such amendments shall only have effect upon the approval in writing of Buyer, such approval not to be unreasonably withheld or delayed.

### **Regular Reporting and Site Access**

9.3 Seller shall provide Buyer, at least once prior to each Delivery Date, and otherwise upon written request, with an update on the development of the Project and expected volumes of CERs for the current and future Verification Periods.

9.4 Throughout the Term of this Agreement, Seller shall allow Buyer or its nominees regular access to the Project (including the site(s) on which the Project is operated) and to any information held by Seller relating to the performance of the relevant Project as requested by Buyer or as necessary to enable carrying out of the Project, compliance with the Monitoring Plan, the International Rules and/or Verification of the GHG Reductions.

## **10 Focal Point, Project Participants and Communications**

10.1 Seller and Buyer will be Project Participants in the Project and Seller shall execute, and ensure that any other Project Participant(s) execute, any document necessary to provide for Buyer to be a Project Participant in the Project under the International Rules.<sup>3</sup>

10.2 Seller may add a Project Participant only with the prior consent of Buyer, such consent not to be unreasonably withheld. The Parties agree that for the purposes of this clause 10, it will not be reasonable for Buyer to withhold consent for the addition of a Project Participant who is:

- (a) an additional buyer of CERs from the Project; or
- (b) a debt provider to whom the Project (or revenue streams derived from the Project) has been granted as security for the provision of debt financing to Seller,

<sup>3</sup> It is necessary for the Buyer to be project participant in the project so that it can receive CERs directly upon issuance from the EB, rather than relying on Seller transferring these to the Buyer. The UNFCCC Secretariat has confirmed that it is necessary for a party to be a registered project participant in order to receive CERs directly from a project.

save that it is expressly acknowledged and agreed that the listing of specific categories of potential Project Participants in (a) and (b) shall in no way prejudice the generality of this clause.

10.3 Where any additional Project Participants are added:

- (a) any such addition will not encumber or lead to any diminution in Buyer's entitlements or ability to receive CERs under this Agreement; and
- (b) Buyer's rights under this Agreement will have priority to those of any subsequently added Project Participant.

**Focal Point**

10.4 The Parties will serve as Focal Points for communications with the CDM Executive Board and the Convention Secretariat regarding the Project, with responsibilities allocated as follows:

<b>Buyer is nominated as Focal Point for:</b>	<b>Sole<sup>4</sup></b>	<b>Shared</b>	<b>Joint</b>
(a) Communicate in relation to requests for forwarding of CERs:	[x]	[x]	[x]
(b) Communicate in relation to requests for addition and/or voluntary withdrawal of project participants and focal points as well as changes to company names, legal status, contact details and specimen signatures:	[x]	[x]	[x]
(c) Communicate on all other project or programme related matters not covered by (a) or (b):	[x]	[x]	[x]

<b>Seller is nominated as Focal Point for:</b>	<b>Sole</b>	<b>Shared</b>	<b>Joint</b>
(a) Communicate in relation to requests for forwarding of CERs:	[x]	[x]	[x]
(b) Communicate in relation to requests for addition and/or voluntary withdrawal of project participants and focal points as well as changes to company names, legal status, contact details and specimen signatures:	[x]	[x]	[x]
(c) Communicate on all other project or programme related matters not covered by (a) or (b):	[x]	[x]	[x]

10.5 In undertaking the obligations of Focal Point, the Parties will:

- (a) act in accordance with the terms of this Agreement so that all requests for distribution of CERs accord with the terms of this Agreement; and
- (b) not hinder or delay any Deliveries required pursuant to the terms of this Agreement.

10.6 Each Party will immediately copy or forward to each other Party all communications:

- (a) made by that Party to the CDM Executive Board or Convention Secretariat; and

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<sup>4</sup> The CDM Project Cycle Procedure requires that the Coordinating/Managing Entity must be the sole, or joint, focal point for each scope of authority - accordingly the Buyer cannot be sole focal point for any scope of authority where the Seller is CME.

- (b) received by that Party from the CDM Executive Board or Convention Secretariat.
- 10.7 The Parties agree to execute a Modalities of Communication giving effect to this clause 10 in the form required by the CDM Executive Board at the time of submission of the request for Registration.
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## **11 Programme of Activities**

### **Coordinating/Managing Entity**

- 11.1 Seller will serve as Coordinating/Managing Entity in respect of the Programme.

### **Inclusion of further Contract CPAs**

- 11.2 Where Seller intends to develop and Include a Potential CPA in the Programme, Seller will notify Buyer of the Potential CPA to be Included in the Programme, by preparing and submitting to Buyer, for each Potential CPA:
- (a) a CPA Design Document in respect of the relevant Potential CPA which shall include a pre-assessment of the number of CERs expected to be generated by the Potential CPA; and
  - (b) Confirmation in respect of the Potential CPA executed by Seller,
- (such documents the *Initial Project Documents*).
- 11.3 Where Buyer determines that a Potential CPA proposed in accordance with this clause is to be Included in the Programme as a Contract CPA, Buyer shall within forty-five (45) Business Days of receiving the Initial Project Documents for the Potential CPA, execute the Confirmation provided by Seller and return a copy of such executed Confirmation to Seller.
- 11.4 Where Buyer considers that Inclusion of the Potential CPA could reasonably be expected to materially adversely affect the fulfilment of Seller's obligations or Buyer's exercise of its rights under this Agreement, Buyer shall inform Seller by providing written notice to Seller within forty-five (45) Business Days of receiving the Initial Project Documents for the relevant Potential CPA.
- 11.5 If Buyer does not return an executed Confirmation to Seller in accordance with clause 11.3 or provide written notice of its refusal of consent in accordance with clause 11.4 for the relevant Potential CPA, Buyer will be deemed to have given its consent to Inclusion of the Potential CPA in the Programme and Seller may deal with any CERs generated by that Potential CPA.
- 11.6 Where both Parties execute the Confirmation with respect to a Potential CPA proposed for Inclusion in the Programme in accordance with this Agreement (or where Buyer is deemed to have consented to the Inclusion of that Potential CPA under clause 11.5), Seller shall:
- (a) procure that the relevant CPA Design Document is submitted to a DOE for consistency checking in accordance with the International Rules; and
  - (b) if the relevant Potential CPA is found by such DOE to be eligible for Inclusion in the Programme, instruct the DOE to Include such Potential CPA in the Programme.
- 11.7 Where a Potential CPA has been Included in the Programme under clause 11.6:
- (a) Seller or its nominee shall notify Buyer in writing of such Inclusion within twenty (20) Business Days of its publication on the website of the UNFCCC; and

- (b) such Potential CPA shall, on the date of such notice, become a Contract CPA for the purposes of this Agreement; and
- (c) the Parties shall adjust the quantity of Contract CERs required to be Delivered under this Agreement to incorporate the number of CERs expected to be generated by the Contract CPA Included under this clause.

### **Review of Erroneous Inclusion of CPA**

11.8 If, following a review of any Contract CPA that has been Included in the Programme, the CDM Executive Board decides to exclude a Contract CPA from the Programme in accordance with the International Rules, the Parties shall use commercially reasonable efforts to revise the quantity of Contract CERs required to be Delivered under this Agreement accordingly, unless such exclusion is due to wilful misconduct, negligence, fraud or reckless acts or omissions on the part of Seller or its Affiliates, in which case it shall be an Event of Default.

## **12 Agreements, Representations and Warranties**

### **Mutual Agreements**

- 12.1 Each Party agrees with the other that, so long as either Party has or may have any obligation under this Agreement, it shall:
- (a) as soon as reasonably practicable, deliver to the other Party or as the other Party reasonably directs:
    - (i) any forms, documents or certificates relating to taxation reasonably required by the other Party; and
    - (ii) any other documents reasonably required by the other Party;
  - (b) use all reasonable endeavours to keep the other Party informed of all changes of addresses and other contact details as required under this Agreement, recognising that any failure to use reasonable endeavours to inform the other Party will not relieve the first Party from any of its obligations under this Agreement;
  - (c) use all reasonable efforts to inform the other Party of any event or circumstance of which it is aware which may impact on the ability of such Party to perform any of its obligations under this Agreement;
  - (d) use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement and will use all reasonable efforts to obtain any that may become necessary in the future;
  - (e) ensure that it has one or more CER Accounts, if required in order to give effect to the transactions contemplated by this Agreement;
  - (f) conduct its affairs so as not to give any Relevant Authority cause to block, suspend, refuse, reject or cancel the transfer (whether in whole or in part) of CERs required to be made pursuant hereto, recognising that any failure to open a CER Account will not relieve the Party from any of its obligations under this Agreement;
  - (g) comply in all material respects with all Applicable Laws and orders to which it may be subject, including the International Rules, if failure so to comply would materially impair its ability to perform its obligations under this Agreement; and

- (h) if required under the terms of this Agreement, it will use reasonable endeavours to assist the other Party in the transfer of CERs to the CER Account(s) nominated by Buyer.

### **Mutual Representations and Warranties**

12.2 Each Party represents and warrants to the other Party upon entry into this Agreement:

- (a) if it is a company, it is duly organised and validly existing and in good standing under the laws of the jurisdiction of its organisation or incorporation (as identified in the description of the parties to this Agreement);
- (b) it has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other relevant documentation and to perform its obligations under this Agreement and any other relevant documentation, and has taken all necessary action to authorise such execution, delivery and performance;
- (c) it has obtained all applicable governmental, statutory, regulatory or other consents, authorisations, licences, waivers or exemptions necessary for it to enter into and to perform its obligations under this Agreement and all such applicable governmental, statutory, regulatory or other consents, authorisations, licences, waivers or exemptions are in full force and effect and without condition or any conditions have been fulfilled;
- (d) the entry into, and observance and performance of its obligations under, this Agreement do not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents or any contract to which it is a party or by which any of its assets are bound or affected, or any Applicable Law;
- (e) its obligations under this Agreement constitute legal, valid and binding obligations, enforceable in accordance with their respective terms by an appropriate legal remedy, subject to applicable bankruptcy laws;
- (f) there are no Insolvency Proceedings pending or being contemplated by or threatened against it;
- (g) there are no threatened or existing actions or suits which may materially and adversely affect its ability to perform its obligations under this Agreement;
- (h) it has no outstanding agreements or liabilities, contingent or otherwise (including taxes) that might adversely affect its financial condition and its ability to fulfil its obligations under this Agreement;
- (i) it is entering into this Agreement as principal (and not as agent or in any other capacity);
- (j) neither the other Party nor any of its Affiliates or agents is acting as a fiduciary for it;
- (k) it is not relying upon any representations except those expressly set forth in this Agreement;
- (l) it has consulted with its own legal advisors to the extent that it has deemed necessary, and it has made its own decision to enter into this Agreement based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other Party or any of its Affiliates or agents; and
- (m) it is entering into this Agreement with a full understanding of the terms, conditions and risks thereof and it is capable of assuming, and willing to assume those risks.

## **Seller Agreements, Representations and Warranties**

- 12.3 Seller represents and warrants to Buyer, on execution of this Agreement and again on each Delivery of CERs, that:
- (a) the Project fully complies with the International Rules and, at the date of submitting to the Project Design Document to the CDM Executive Board for Registration, the information supplied in the Project Design Document is accurate, complete and correct to the best of Seller's knowledge and belief;
  - (b) where the Project is a hydroelectric production project with a generating capacity exceeding 20 MW, it has been constructed and will be operated in accordance with:
    - (i) the World Commission on Dams' Report "Dams and Development - A New Framework for Decision-Making";
    - (ii) any requirements imposed by the European Union in relation to eligibility of CERs from hydroelectric production projects for compliance pursuant to the European Union Emissions Trading Scheme, and in accordance with any other requirements imposed by the European Union in relation to eligibility of CERs for compliance pursuant to the European Union Emissions Trading Scheme; and
    - (iii) any other guidelines and reporting templates issued by the European Commission in respect of hydroelectric production projects with a generating capacity exceeding 20MW;
  - (c) it does not enjoy any right of immunity from set-off, suit, execution, attachment or other legal process with respect to its assets or its obligations under this Agreement;
  - (d) it holds full legal and beneficial title to the CERs and GHG Reductions Delivered under this Agreement, and with respect to each Periodic CER Delivery Amount, Seller will convey, and, on each Delivery Date, has conveyed, such CERs and underlying GHG Reductions, free and clear of liens, security interests, Encumbrances and other third party claims;
  - (e) it has not, and will not seek to, sell, transfer, assign, licence, dispose of, grant or otherwise utilise any Contract CERs under any Domestic Scheme;
  - (f) it has not created and accepted any Domestic Offset Unit for the same activity that gives rise to the Contract CERs;
  - (g) there has and will be no double counting of the emission reductions created by the CERs and the ability to account for the emissions reductions from the CERs shall only be the right of the Buyer;
  - (h) it has, and will continue to have, adequate funding to complete and maintain the Project;
  - (i) it has understood that one of the Buyer's primary aims is to prevent reversal of GHG Reduction activities by procuring credits from existing GHG Reduction projects whose survival or continued GHG Reduction activity depend on a higher carbon price than achievable under the current market conditions; and
  - (j) if the Project is either a New Project or a Vulnerable Project, and
  - (k) all Contract CERs and Option CERs have been generated by the Project and no CERs have been sourced from projects that reduce trifluoromethane (HFC-23) produced as a

by-product of chlorodifluoromethane (HCFC-22); reduce nitrous oxide (N<sub>2</sub>O) from adipic acid production; or coal based energy production without carbon capture or storage.

12.4 Seller agrees that, so long as it has or may have any obligation under this Agreement, it will:

- carry out the Project with all due care, skill and diligence of an RPO, sound and ethical administrative, social and technical practices and in accordance with all Applicable Laws and authorisations;
- (b) take all steps necessary to progress Registration of the Project as a CDM project activity as quickly as possible, and ensure that Buyer is listed as a Project Participant in the final Project Design Document submitted to the CDM Executive Board for Registration of the Project;
- (c) carry out the Project in accordance with the Project Design Document and Monitoring Plan and provide the appointed Designated Operational Entity with all information necessary for the Verification and Certification of the GHG Reductions generated by the Project and Issuance of CERs;
- (d) at all times operate and maintain its plant, machinery and equipment and other property, and promptly make all necessary repairs and renewals thereof as required, with all necessary due diligence and efficiency and all in a safe and prudent manner in accordance with good engineering, financial and environmental practices in the industry and in order to maximise the CERs generated by the Project;
- (e) keep all aspects of the Project insured in accordance with Applicable Laws and prudent industry practice in the Host Country, which may be in the form of self-insurance;
- (f) not sell, transfer, assign, licence, dispose of, grant or otherwise create any interest in the Contract CERs other than as contemplated in this Agreement;
- (g) at all times conduct its business operations in accordance with Corporate Social Responsibility standards;
- (h) immediately inform Buyer of any change to the correctness and validity of Seller's representations and warranties in this Agreement, including but not limited to the Vulnerable Project criteria warranty in clause 12.3(j), and provide information upon Buyer's request regarding the correctness and validity of those representations and warranties as soon as reasonably practicable after that request. Where the Buyer becomes aware of such a change arising, and has not been notified by the Seller, the Buyer may request such information and the Seller must provide it as soon as reasonably practicable; and
- (i) assist Buyer where Seller's execution of documents or cooperation is required for Buyer to comply with any requirements under the International Rules.

12.5 Seller agrees that, so long as it has or may have any obligations under this Agreement, it will provide Buyer with the following financial statements which accurately reflect Seller's assets, liabilities and net worth as at the end of the relevant period specified below:

- (a) consolidated audited financial statements, within ninety (90) days of the receipt of a written request from Buyer, unless this time period has been extended by agreement of the Parties; and

- (b) unaudited consolidated financial reports, within ninety (90) days of the receipt of a written request from Buyer, unless this time period has been extended by agreement of the Parties.

### **Buyer Agreements, Representations and Warranties**

- 12.6 Buyer agrees that, so long as it has or may have any obligation under this Agreement, it will:
- (a) assist Seller where Buyer's execution of documents is required in obtaining approval of the Project from the Designated National Authority of the Host Country, and any other required local approvals, as soon as reasonably practicable after execution of this Agreement;
  - (b) purchase all the CERs that Buyer is obligated to purchase under this Agreement at the agreed CER Price pursuant to the terms of this Agreement;
  - (c) make all payments due and owing by it under this Agreement as and when required under this Agreement;
  - (d) ensure, so far as is reasonably possible, that it has one or more CER Account(s) established in time to receive Delivery; and
  - (e) promptly take all reasonable measures within its power to obtain the authorisation of the Annex I Party for Buyer's participation in the Project and to add Buyer to the Project as a Project Participant.
- 12.7 Buyer represents and warrants to Seller, on execution of this Agreement and again on receipt of CERs, unless otherwise specified, that:
- (a) at the date of submission of the Project Design Document, the information supplied by Buyer for the purposes of inclusion in the Project Design Document is accurate and correct to the best of Buyer's knowledge and belief;
  - (b) subject to the waiver of sovereign immunity in clause 20.23, the Kingdom of Norway does not enjoy any right of immunity from suit or legal processes with respect to its obligations under this Agreement;
  - (c) all records provided by Buyer to a Designated Operational Entity or Relevant Authority in respect of the generation of CERs are accurate and correct to the best of Buyer's knowledge and belief; and
  - (d) it has and will continue to have adequate funding to pay for the Delivered CERs.

### **Accuracy and Interpretation of Representations and Warranties**

- 12.8 Each representation and warranty set out in this clause 11 is true, accurate, complete and not misleading at the date of this Agreement and on each Delivery of CERs and shall remain so until fully discharged by the relevant Party of its obligations under this Agreement.
- 12.9 The Parties mutually agree and acknowledge that each Party is entering into this Agreement on the faith and basis of the other Party's representations and warranties and is relying on the bona fides, accuracy and completeness of such representations and warranties.
- 12.10 The Parties agree that each representation and warranty set out in this clause 11 shall be construed independently and the meaning given to any one such representation and warranty shall not be restricted by reference to any other representation and warranty.

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## 13 Force Majeure Event or Change in Law

### Notice

- 13.1 If a Party (the *Affected Party*) is, or anticipates that it will be, unable to perform an obligation under this Agreement due to the occurrence of a Force Majeure Event or a Change in Law, it will provide the other Party (the *Non-Affected Party*) with written notice providing full details of the Force Majeure Event or Change in Law (the *Event Notice*) within five (5) Business Days of becoming aware of such Force Majeure Event or Change in Law.
- 13.2 The Affected Party must provide any additional information requested by the Non-Affected Party in relation to the Force Majeure Event or Change in Law as it applies to the Project as soon as reasonably practicable after the request.
- 13.3 The Affected Party shall take all reasonable steps to remove or mitigate the relevant effects of the Force Majeure Event or Change in Law.

### Effect of Force Majeure Event or Change in Law

- 13.4 If the Affected Party is unable to perform an obligation under this Agreement due to the occurrence of a Force Majeure Event or Change in Law, such non-performance:
- (a) will be permitted during the time and to the extent that performance is prevented, wholly or in part, by the Force Majeure Event or Change in Law; and
  - (b) will not give rise to any liability to the Non-Affected Party for any losses or damages arising out of, or in any way connected with, such non-performance.
- 13.5 No Party will be relieved by a Force Majeure Event or Change in Law from any obligation in this Agreement which it remains able to fulfil notwithstanding the occurrence of such Force Majeure Event or Change in Law, including any obligation to provide any notice or make any payment pursuant to this Agreement.
- 13.6 If by reason of a Force Majeure Event or Change in Law the Affected Party is unable to perform any obligation or condition required by this Agreement to be performed or the Project ceases to be a Vulnerable Project and that non-performance or cessation continues for a period of two (2) months after the Event Notice without the Parties being able to negotiate a mutually acceptable alternative means of carrying out the intentions of this Agreement by the end of that period, either Party may terminate this Agreement by written notice to the other Party.
- 13.7 Termination under this clause 13 will not affect the liability of either Party to perform any obligations under this Agreement which were not affected by the relevant Force Majeure Event or Change in Law (including payment for Delivered CERs or payment of costs), or the right of either Party to seek remedies for breach of this Agreement for non-performance of any such obligations.
- 13.8 If this Agreement is terminated pursuant to clause 13.6, the amount, if any, payable in respect of the Early Termination Date will be calculated by the Calculation Agent as follows:
- (a) any Unpaid Amount owing to the Non-Affected Party as at the Early Termination Date; minus
  - (b) any Unpaid Amount owing to the Affected Party as at the Early Termination Date.

- 13.9 If the calculations specified above lead to a positive amount, the Affected Party will pay that amount to the Non-Affected Party. If the calculations lead to a negative amount, the Non-Affected Party will pay the absolute value of that amount to the Affected Party.

#### **Other Change in Law from the Paris Agreement**

- 13.10 To the extent that:

- (a) the CDM is not continued post 2020; or
- (b) the New Mechanism is developed in such a way as to supersede, replace or to provide an alternative to the CDM or developed in such a way as to impact on the ability to sell Option CERs under this Agreement,

the Buyer and Seller will discuss in good faith alternative arrangements for the sale of CERs including Post-2020 Option CERs.

- 13.11 To the extent that such future transfer of CERs including Post-2020 Option CERs is taken to involve the use of internationally transferred mitigation outcomes towards nationally determined contributions under Article 6 of the Paris Agreement the parties will ensure that the Host Country Government approves such a transfer of CERs (or their equivalent) to the Buyer and that emissions reduced by the CERs are not counted more than once.

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### **14 Delivery Shortfall**

- 14.1 Seller shall immediately provide Buyer with written notice of any event or circumstance which may lead to a shortfall in the volume of CERs to be Delivered below the Periodic CER Delivery Amount in respect of any Delivery Date.
- 14.1 In the event that on a Delivery Date, the Seller Delivers an amount less than the Periodic CER Delivery Amount to be Delivered on that Delivery Date as set out in **Feil! Fant ikke referansekinden.** and that shortfall is not the result of Seller's or its Affiliate's fraud, negligence or wilful misconduct, then the Seller shall Deliver any shortfall amount of CERs at the next Delivery Date and in full, where possible, by the final Delivery Date. No CERs may be Delivered after the final Delivery Date.
- 14.2 Any shortfall that occurs and where there is no fraud, negligence or wilful misconduct on the part of the Seller or its Affiliate shall be dealt with under this clause 14 unless it is a Force Majeure Event or Change in Law in which case it shall first be dealt with under clause 13 for so long as that clause remains applicable.
- 14.3 Any shortfall that occurs as a result of Seller's or its Affiliate's fraud, negligence or wilful misconduct (even if also a Force Majeure Event or Change in Law) shall be dealt with under clauses 16.6 to 16.10.

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### **15 Delivery Disruption Events**

- 15.1 If on a Delivery Date Seller is prevented from Delivering the Periodic CER Delivery Amount because:
- (a) there is no Operational ITL; or
  - (b) Buyer's CER Account is not in an Eligible National Registry,

(each of (a) and (b) a **Delivery Disruption Event**), then the Delivery Date for the relevant Delivery is deemed to be fifteen (15) Business Days after there is an Operational ITL or Buyer's CER Account is established in an Eligible National Registry, as the case may be.

- 15.2 If an event or circumstance that would otherwise constitute or give rise to an Event of Default or a Force Majeure Event also constitutes a Delivery Disruption Event, it is to be treated as a Delivery Disruption Event and not an Event of Default or Force Majeure Event.

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## 16 Events of Default

### Event of Default

- 16.1 The occurrence at any time with respect to a Party (the **Defaulting Party**) of any of the following events (unless caused by a Force Majeure Event or Change in Law) which is not remedied (if capable of remedy) within thirty (30) days after written notice of such event is provided to the Defaulting Party, constitutes an Event of Default:
- (a) a Party materially breaches any term of this Agreement or covenant or obligation under this Agreement, but excluding a failure to Deliver the Periodic CER Delivery Amount under clause 5.1 where such failure shall be dealt with under clause 14 or clauses 16.6 to 16.10 where such shortfall is due to Seller's or its Affiliate's fraud, negligence or wilful misconduct;
  - (b) a Party provides false, inaccurate or incomplete information, or breaches any representation or warranty made, to the other Party under this Agreement;
  - (c) there is, or has been, an Insolvency Event (whether or not it is continuing or subsisting) in respect of a Party;
  - (d) the Project is not Registered within eighteen (18) months of the execution of this Agreement (in which case Seller is the Defaulting Party);
  - (e) any licence, authorisation or consent of a Party, which is necessary for such Party to fulfil its obligations or to enjoy its rights under this Agreement is:
    - (i) revoked, not renewed or suspended, or any applicable conditions are not complied with; and
    - (ii) such revocation, non-renewal, suspension or non-compliance is not remedied within thirty (30) days after notice of such revocation, non-renewal, suspension or non-compliance is given to the Party; or
  - (f) Seller fails to conduct its business operations in accordance with Corporate Social Responsibility standards.

### Right to Terminate following Event of Default

- 16.2 If at any time an Event of Default with respect to a Party has occurred and is then continuing:
- (a) the Defaulting Party must immediately, upon becoming aware of it, give notice of the Event of Default to the other Party (the **Non-Defaulting Party**); and
  - (b) the Non-Defaulting Party may, by written notice to the Defaulting Party specifying such Event of Default, designate a day not earlier than the day such notice is dated and not later than the day which is sixty (60) days after the day such notice is dated as an Early Termination Date in respect of this Agreement.

- 16.3 For the avoidance of doubt, the right of the Non-Defaulting Party to designate an Early Termination Date is not conditional on the Defaulting Party having given notice of the applicable Event of Default.
- 16.4 If this Agreement is terminated pursuant to clause 16.2, the amount, if any, payable in respect of the Early Termination Date will be calculated by the Calculation Agent as follows:
- (a) any Unpaid Amount owing to the Non-Defaulting Party as at the Early Termination Date; minus
  - (b) any Unpaid Amount owing to the Defaulting Party as at the Early Termination Date.
- 16.5 If the calculations specified above lead to a positive amount, the Defaulting Party will pay that amount to the Non-Defaulting Party. If the calculations lead to a negative amount, the Non-Defaulting Party will pay the absolute value of that amount to the Defaulting Party.

**Right to Terminate following Delivery failure resulting from fraud, negligence or wilful misconduct**

- 16.6 If Seller does not Deliver the Periodic CER Delivery Amount in accordance with clause 5.1 because of Seller's or Seller's Affiliate's fraud, negligence or wilful misconduct, Buyer may, by written notice to Seller, designate a day not earlier than the day such notice is dated and not later than the day which is sixty (60) days after the day such notice is dated as an Early Termination Date in respect of this Agreement.
- 16.7 If notice designating an Early Termination Date is given, the Early Termination Date shall occur on the date so designated, whether or not the failure to Deliver is then continuing.
- 16.8 On, or as soon as reasonably practicable after, the Early Termination Date designated in accordance with clause 16.6, Buyer shall in good faith calculate its Loss in connection with the termination of the Agreement (the **Termination Payment**).
- 16.9 Buyer shall notify Seller of the Termination Payment including detailed support for the Termination Payment calculation. Buyer is not required to enter into replacement transactions in order to determine the Termination Payment.
- 16.10 If the Termination Payment is a positive number, Seller shall pay the Termination Payment to Buyer within three (3) Banking Days of invoice or notification of the Termination Payment amount, which amount shall bear interest in accordance with clause 6.8. If the Termination Payment is a negative number, then no amount shall be payable by either Party.
- 16.11 Buyer may, at its option, set off the Termination Payment against any other amounts owing (whether or not matured, contingent or invoiced) between the Parties under this Agreement or under any other agreements, instruments or undertakings between the Parties. The right of set-off is without prejudice and in addition to any other right of set-off, combination of accounts, lien, charge or other right to which any Party is at any time otherwise entitled (whether by operation of law, by contract or otherwise). If an amount is unascertained, Buyer may reasonably estimate the amount to be set off. The Parties shall make any adjustment payment required within three (3) Banking Days of the amount becoming ascertained.
- 16.12 Disputed Termination Payments are to be paid by Seller subject to refund with interest calculated in accordance with clause 6.8 if the dispute is resolved in favour of Seller.

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## 17 Liability and Indemnity

### Liability

- 17.1 To the extent permissible by Applicable Laws, Buyer shall not, except when exercising the Buyer's Step-in Rights, have any liability whatsoever in relation to the Project, Seller or the operation of the Project by Seller, including but not limited to any liability relation to injury or death to persons or damage to real or personal property caused, directly or indirectly, by the actions, omissions or negligence of Seller or any circumstance arising from the Project or the generation or Issuance of CERs. When exercising the Buyer's Step-in Rights, Buyer is liable for its own actions except to the extent Seller or any of its contractors has caused or contributed to the liability incurred.
- 17.2 Nothing in this clause 17 or otherwise in this Agreement shall exclude or in any way limit a Party's liability for:
- (a) fraud;
  - (b) death or personal injury caused by its negligence (including negligence as defined in section 1 of the *Unfair Contract Terms Act 1977*);
  - (c) breach of terms regarding title implied by section 12 of the *Sale of Goods Act 1979* and/or section 2 of the *Supply of Goods and Services Act 1982*;
  - (d) any damages caused intentionally by either Party; or
  - (e) any liability to the extent the same may not be excluded or limited as a matter of law

### Indemnity

- 17.3 To the extent permissible by Applicable Laws, Seller will indemnify Buyer and its officials, directors, employees, agents, advisors, consultants and legal counsel (each a **Covered Party**) on demand against any loss (including indirect loss), cost, charge, expense, damage or liability that any Covered Party might suffer or incur in connection with, or arising out of the development and operation of the Project, including but not limited to:
- (a) any environmental damage caused by or during the development or operation of the Project;
  - (b) declarations of compliance and statements provided to any Designated National Authority;
  - (c) the function, actions and responsibilities of Seller and Buyer as Project Participants;
  - (d) the exercise of the Buyer's Step-in Rights;; or
  - (e) any third party demand, claim or action (including any claim alleging infringement of third party rights

except where such loss, cost, charge, expense, damage or liability suffered or incurred results from Buyer's fraud or wilful misconduct.

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## 18 Confidential Information

- 18.1 Subject to clause 18.2, the existence and commercial terms of this Agreement may be disclosed by either Party.

- 18.2 The CER Price and Periodic CER Delivery Amount must not be disclosed by either Party until six (6) months after the date of this Agreement, unless such disclosure is:
- (a) required to be disclosed to the Designated Operational Entity for the Project, provided that the Designated Operational Entity acknowledges and complies with confidentiality obligations at least as stringent as those contained in this Agreement;
  - (b) required to be disclosed in proceedings before any court or tribunal arising out of, or in connection with, this Agreement;
  - (c) required to be disclosed by:
    - (i) any Relevant Authority under any law, authority, administrative guidelines, directive, request or policy, whether or not having force of law; or
    - (ii) any stock exchange on which a Party to this Agreement or its Affiliates are listed;
  - (d) required to be disclosed to obtain a Letter of Approval for the Project or under the International Rules to achieve Registration of or Issuance of CERs from the Project; or
  - (e) disclosed by Buyer to a party to whom Buyer wishes to sell or transfer the CERs Delivered under this Agreement, or to whom Buyer may wish to assign and novate its rights and obligations under this Agreement, provided that Buyer requires that party to acknowledge and comply with confidentiality obligations at least as stringent as those contained in this Agreement.
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## 19 Resolution of Disputes

- 19.1 A Party may commence negotiations to resolve any dispute arising out of or in connection with this Agreement (including any question regarding its existence, validity or termination) by giving the other Party written notice of any dispute not resolved in the normal course of business (*Dispute Notice*).
- 19.2 Upon receipt of a Dispute Notice, each Party agrees to promptly transfer the amounts not in dispute to the other Party.
- 19.3 The Parties will attempt in good faith to resolve any dispute promptly by negotiation between executives authorised to resolve such disputes.
- 19.4 If the dispute has not been resolved by negotiation within twenty (20) Business Days of delivery of the Dispute Notice, the complaining Party may, at any time thereafter, submit the dispute to be resolved by arbitration in accordance with the Rules of Arbitration of the London Court of International Arbitration (LCIA) for the time being in force. The Parties agree that, if any dispute is submitted to arbitration:
- (a) the number of arbitrators will be three (3);
  - (b) [option 1] each party will nominate an arbitrator within thirty (30) days of the receipt of the request for arbitration. The two-party nominated arbitrators will reach agreement on the chair of the tribunal. If either party fails to appoint the arbitrator within thirty (30) days or the two-party nominated arbitrators fail to agree on the chair of the tribunal within fourteen (14) days of the date the two arbitrators are nominated, then that nomination and appointment will be made by the LCIA.

[option 2] The number of arbitrators shall be one (1). The LCIA Court shall appoint the sole arbitrator promptly after receipt by the Registrar of the Response to the request for arbitration (as defined in article 2.1 of the LCIA Rules) or, if no Response is received, after 35 days from the Commencement Date (or such other lesser or greater period to be determined by the LCIA pursuant to Article 22.5 of the LCIA Rules of Arbitration);

- (c) the seat, or legal place, of arbitration will be London;
- (d) the language to be used in the arbitral proceedings will be English; and
- (e) all arbitration costs (including legal costs) will be borne by the unsuccessful Party unless otherwise determined by the arbitrator.

19.5 The Parties agree to carry out any arbitral award without delay.

19.6 Nothing in this clause 19 will prevent either Party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

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## 20 General

### Payments

20.1 All payments under this Agreement will be made on the due date for value on that date in the place of the Cash Account specified in the Schedule to this Agreement, in freely transferable funds in the Nominated Currency, in the manner customary for payments in the Nominated Currency.

### Notices

20.2 Any notice given pursuant to this Agreement will be in writing in the English language and will be signed by a single duly authorised representative. It may be served by leaving it at or sending it by telecopier, prepaid registered delivery post, third party courier service or by facsimile to the address listed below (or such other place as a Party may from time to time notify the other):

To Buyer:

Name:

Registered Address:

Telephone:

Fax:

Attention:

To Seller:

Name:

Registered Address:

Telephone:

Fax:

Attention:

A notice is taken to be received at the following time:

- (a) in the case of third party courier service or in the case of notice left at the address, on the date it is delivered;

- (b) in the case of prepaid registered post, on the date it is delivered; and
- (c) in the case of facsimile, on the date that it is received by a responsible employee of the recipient in legible form (it being agreed that a transmission report generated by the sender's fax machine will be proof of delivery).

20.3 If the deemed receipt does not take place during Business Hours in the place of receipt, then the notice is to be deemed to have been received at the start of Business Hours on the next Business Day.

### **Governing Law**

20.4 The construction, validity and performance of this Agreement and all non-contractual obligations (if any) arising from or connected with this Agreement shall be governed by the laws of England excluding that body of law known as conflicts of law.

### **Waiver**

20.5 No variation or waiver of any provision or condition of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties (or, in the case of a waiver, by or on behalf of the party waiving compliance).

20.6 Unless expressly agreed, no variation or waiver of any provision or condition of this Agreement shall constitute a general variation or waiver of any provision or condition of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of variation or waiver, and the rights and obligations of the parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied or waived.

20.7 Any consent granted under this Agreement shall be effective only if given in writing and signed by the consenting party and then only in the instance and for the purpose for which it was given.

### **Entire Agreement**

20.8 This Agreement constitutes the entire agreement of the Parties about its subject matter and supersedes all written or oral previous agreements, understandings and negotiations on that subject matter (including any term sheet).

### **Assignment and Change of Control**

20.9 Buyer may assign and/or novate all or part of its rights and obligations under this Agreement provided that Buyer notifies Seller upon such assignment and novation. Seller cannot assign or novate its rights and obligations under this Agreement without the written consent of Buyer, such consent not to be unreasonably withheld.

20.10 Any novation of obligations under this Agreement must be effectuated by the execution of a novation agreement.

20.11 Any purported assignment or novation that is not in compliance with this clause 20 will be void.

20.12 Each Party undertakes to assist the other Party to effect any assignment or novation of its obligations which is permitted by this clause 20 including by executing any agreement to effect such novation.

20.13 Seller may only undergo a change in ownership or effective control with the prior written consent of the Buyer. For the purposes of this clause, "control" means the ability to determine

either directly or indirectly the voting in respect of more than fifty percent (50%) of the shares in respect of Seller.

### **Third Parties**

20.14 Save for clause 17.3, no third party shall have any right under the *Contracts (Rights of Third Parties) Act 1999* to enforce any terms of this Agreement.

### **Amendment**

20.15 This Agreement may only be amended by agreement in writing signed by Buyer and Seller.

### **Rights are Cumulative**

20.16 The rights, powers and remedies of each Party under this Agreement are cumulative and not exclusive of any rights, powers or remedies which may exist at law.

### **Co-operation**

20.17 The Parties shall do all further acts and execute all documents as are reasonably required to give full effect to the rights of Buyer and Seller under, and the transactions contemplated by, this Agreement.

### **Severability**

20.18 If any one or more of the provisions in this Agreement should be held invalid, illegal or unenforceable in any respect:

- (a) the validity, legality and enforceability of the remaining provisions shall not be affected or impaired; and
- (b) the Parties will endeavour, in good faith negotiations, to replace the offending provision(s) with one or more valid, legal and enforceable provisions, the economic effect of which comes as close as reasonably possible to that of the offending provision.

### **Execution in Counterparts**

20.19 This Agreement will be executed in two (2) counterparts, each of which shall be an original.

### **Language**

20.20 This Agreement will be executed in English in two (2) originals, one for each Party.

### **Time is Essential**

20.21 Where this Agreement specifies that an obligation must be performed by a certain date or time, timing is of the essence and the obligation must be performed by that date or time at the latest, subject only to any cure period explicitly provided for under this Agreement.

### **Survival**

20.22 The following clauses will survive termination of this Agreement:

- (a) clause 6;
- (b) clause 13;
- (c) clause 16;
- (d) clause 17;

- (e) clause 18; and
- (f) clause 20,

and the provisions of this Agreement that are necessary for its interpretation or enforcement, or which are specified to or which by their nature survive termination of this Agreement.

### **Waiver of Sovereign Immunity**

20.23 In the case of Buyer, to the extent that it has or may acquire any right of immunity against Seller or any other person from any legal proceedings upon this Agreement, Buyer irrevocably waives any such immunity, excluding the enforcement or execution against any assets whatsoever of any order or judgement which may be made or given in such legal proceedings.

### **Anti-Money Laundering and Anti-Corruption**

20.24 Seller shall not, in performing its obligations under this Agreement (and shall ensure that its officers, directors, employees, agents and representatives do not) receive, transfer, retain, use or hide the proceeds of any criminal activity whatsoever, or employ or otherwise conduct business with a Designated Person.

20.25 For the purposes of clause 20.24, a **Designated Person** is any person who is publicly identified from time to time by any government or legal authority under applicable trade sanctions, export controls, anti-money laundering, non-proliferation, anti-terrorism and similar laws as a person with whom trade or financial dealings and transactions by Seller and/or its Affiliates are prohibited or restricted, including but not limited to:

- (a) persons designated on the United Nations lists of persons subject to sanctions;
- (b) persons on the Consolidated List of Individuals and Entities subject to the UK's Financial Sanctions Regimes as maintained by Her Majesty's Treasury;
- (c) the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) List of Specially Designated Nationals and Other Blocked Persons (including terrorists and narcotics traffickers);
- (d) the U.S. Department of State's lists of persons subject to non-proliferation sanctions;
- (e) the U.S. Department of Commerce's Denied Parties List, Entity List, Unverified List, General Order 3 to Part 736 List; and
- (f) persons and entities subject to Special Measures regulations under Section 311 of the USA PATRIOT Act and the Bank Secrecy Act and its regulations.

20.26 Seller shall not (nor authorize any Person acting on its behalf to) engage in Corrupt Practices in connection with the Project, including the procurement or the execution of any contract for goods or works, and Seller shall institute, maintain and comply with internal procedures and controls following international best practice standards for the purpose of preventing any action in breach of the provisions of this paragraph.

20.27 Seller undertakes to inform the Buyer promptly if it should, at any time, obtain information in relation to any violation or potential violation of the provisions of clause 20.24.

20.28 If the Buyer notifies Seller of its concern that there has been a violation of any of the provisions of clause 20.24 Seller shall:

- (i) cooperate in good faith with the Buyer and its representatives in determining whether such a violation has occurred;
- (ii) respond promptly and in reasonable detail to any notice from the Buyer; and
- (iii) furnish documentary support for each such response upon the Buyer's request.

20.29 Notwithstanding any provision of this Agreement or any confidentiality undertaking executed between Seller and the Buyer to the contrary, Seller acknowledges that the Buyer may disclose to any competent national or international authority any information obtained by the Buyer in relation to any violation of any of the provisions of clause 20.24.

## 21 Definitions and Interpretation

### Interpretation

21.1 In this Agreement, unless the context indicates a contrary intention:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to any 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;
- (d) a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (f) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (g) references to Parties, clauses, schedules, exhibits or annexures are references to Parties, clauses, schedules, exhibits and annexures to or of this Agreement, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (i) the word "includes" in any form is not a word of limitation.

### Definitions

***Adaptation Share of Proceeds*** means any CERs deducted by the CDM Registry administrator upon Issuance of CERs in accordance with the International Rules.

***Additional*** means that the Project is reducing emissions by sources of Greenhouse Gases below those that would have occurred in the absence of the Project as a registered CDM project activity. The Project will no longer be additional if as a result of the introduction of a

Domestic Scheme, it becomes subject to (i) a requirement to reduce or limit its emissions of Greenhouse Gases or (ii) a carbon tax.

[*Advance Payment* has the meaning given in clause 6.5.]

*Affected Party* has the meaning given to that term in clause 13 of this Agreement.

*Affiliate* means any holding company or subsidiary company of Buyer or Seller or any company which is a subsidiary company of any holding company of Buyer or Seller, and the expressions “holding company” and “subsidiary” shall have the meanings respectively ascribed thereto by Section 736 of the Companies Act 1985, as amended.

*Agreement* means this Certified Emission Reduction Purchase Agreement.

*Annex I* means the Annex I to the Convention.

*Annex I Party* means a Party to the Convention listed in Annex I.

*Applicable Laws* means all the International Rules, legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any governmental authority or arbitrator that apply to any one or more of the Parties or the terms of this Agreement.

*Banking Day* means any day (other than a Saturday or Sunday) on which commercial banks are open for general business in both the United Kingdom and Norway.

*Baseline* means the scenario with respect to the Project accepted by the CDM Executive Board at the time of the Registration that represents the anthropogenic emissions by sources of GHGs that would occur in the absence of the Project, as described in the International Rules.

*Business Day* means a day other than a Saturday, Sunday or public holiday in London, England or the capital city of the Host Country or Oslo, Norway and on which the interlinking element of the TARGET system is open (a "Euro business day").

*Business Hours* means the hours between 9.00 a.m. and 5.00 pm (in the time zone in which the relevant information or notice is being received) on a Business Day.

*Buyer's Step-In Rights* means Buyer's right to take over Validation, Registration, Verification and/or Certification of the Project, and Issuance of CERs, in the event that Seller is not complying with its obligations, as defined in clause 8.9.

*Calculation Agent* means Buyer.

*Carbon Dioxide Equivalent* or *CO<sub>2</sub>-e* means the base reference for measuring GHG Reductions, taking into account the determination of the Global Warming Potential of Greenhouse Gases in comparison to a similar amount of carbon dioxide.

*Cash Account* means, with respect to a Party, the cash account specified by such Party in the Schedule to this Agreement.

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

**CDM Registry** means the registry established and maintained by the CDM Executive Board pursuant to the International UNFCCC/Kyoto Protocol Rules to ensure the accurate accounting of CERs and the Issuance, holding, transfer and acquisition of CERs.

**Certified Emission Reduction or CER** means a unit Issued pursuant to Article 12 of the Kyoto Protocol and requirements thereunder, as well as the relevant provisions in the modalities and procedures of the Clean Development Mechanism and other relevant International Rules, and is equal to one metric tonne of Carbon Dioxide Equivalent reduced by such a project below the Baseline, calculated in accordance with the International Rules using Global Warming Potentials defined by decision 2/CP.3 or as subsequently revised in accordance with Article 5 of the Kyoto Protocol, and includes all rights to underlying GHG Reductions.

**CER Account** means, with respect to Buyer a trading account established by Buyer and notified to Seller (if applicable) in accordance with the terms of this Agreement.

**CER Price** means the price specified as such in Schedule 1.

**Certification** means the written assurance certified by the Designated Operational Entity that, during a time period specified therein, the Project achieved the GHG Reductions as reported in the Verification Report.

**Change in Law** means any changes to the International Rules or Applicable Laws with which either Party is required to comply (whether made at the discretion of any government, governmental body, regulator, competent authority or otherwise) and the change:

- (a) results in the Project being subject to legal liability under a Domestic Scheme to reduce its emissions or to pay a carbon tax;
- (b) results in the Project being issued a Domestic Offset Unit for the same activity which would otherwise generate Contract CERs;
- (c) only allows the Project to be issued Domestic Offset Units for the same activity which would otherwise generate Contract CERs and does not permit CERs to be generated;
- (d) results in the Contract CERs only being eligible for use within the Domestic Scheme; or
- (e) results in the Project no longer being Additional; or
- (f) results in the Project no longer being a Vulnerable Project.

**Clean Development Mechanism or CDM** means the mechanism defined as such in Article 12 of the Kyoto Protocol as supplemented by the International Rules.

**Commissioning Date** means the date on which Seller demonstrates, by means of such procedures and tests as from time to time constitute usual and prudent industry standards and practices, to the reasonable satisfaction of Buyer, that the Project is capable of commercial operation and of generating GHG Reductions.

**Completion Bond** means a form of security, being a bank guarantee, letter of credit or any other guarantee in a form in line with industry standards and acceptable to Buyer from the contractor responsible for construction of the Project to guarantee Seller successful and timely completion of the Project by the Commissioning Date.

**Component Project Activity or CPA** means has the meaning given in the International Rules.

**Confirmation** means in respect of each Potential CPA that the Seller proposes for Inclusion as a Contract CPA, a confirmation executed in accordance with this Agreement and substantially in the form of Schedule 2.

**Contract CERs** means the CERs specified as such in Schedule 1.

**Contract CPA** means a CPA under the Programme, including (from the time they are Included) any CPAs Included in the Programme in accordance with the terms of this Agreement.

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

**Convention Secretariat** means the secretariat of the Convention established under Article 8 of the Convention at the first session of the Conference of the Parties in 1995.

**Coordinating/Managing Entity** means the Programme Participant authorised to propose and oversee the Programme in accordance with the International Rules.

**Corporate Social Responsibility or CSR** means the decision-making and implementation process that guides all company activities in the protection and promotion of international human rights, labour and environmental standards and compliance with legal requirements within its operations and in its relations to the societies and communities where it operates.

**Corrupt Practice** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a person;

**Covered Party** has the meaning given to that term in clause 17.3.

**CPA Design Document** means a Programme Design Document with respect to a Potential CPA to be included in the Programme.

**Crediting Period** means the period during which the Project is eligible to generate CERs, as described in the International Rules and the Project Design Document.

**Defaulting Party** means the Party determined to be such in relation to an Event of Default in accordance with clause 5

**Delivery** or **Deliver** means the completed transfer of CERs to be delivered by Seller in accordance with clause 4 of this Agreement.

**Delivery Date** means each date specified as such in Schedule 1.

**Delivery Disruption Event** means an event that prevents Delivery of CERs by Seller, being the lack of an Operational ITL (for reasons including but not limited to the suspension by the ITL administrator of the national registry in which the Buyer or Seller holds its trading account, due to such events as the non-payment of fees by that Country pursuant to Decision 11/CMP.3 or any equivalent successor COP/MOP decision on payment of national registry fees) or Buyer's CER Account not being in an Eligible National Registry, as defined in clause 15.

**Designated Operational Entity or DOE** means an entity designated by the CDM Executive Board on a provisional basis or designated by conference of parties to the Convention or meeting of parties to the Kyoto Protocol, based on the recommendation by the CDM Executive Board, as qualified to conduct validation, or verification and certification, in accordance with the International Rules.

**Designated National Authority** means a national authority for the CDM designated for the purposes of Section F, Paragraph 29 of the Annex to the draft decision recommended in Decision 17/CP.7 of the Marrakesh Accords.

**Designated Person** has the meaning given to that term in clause 20.25.

**Doha Amendment** means the amendments to the Kyoto Protocol adopted by Decision 1/CMP.8, Annex 1.

**Domestic Offset Unit** means an offset or unit issued in relation to activities that result in GHG Reductions under a Domestic Scheme.

**Domestic Scheme** means any existing or future scheme, tax, law, decision, regulation, decree, guideline or procedure established by any level of government in the Host Country which is aimed at removing, limiting, reducing, avoiding, sequestering or mitigating anthropogenic emissions of Greenhouse Gases or that creates Domestic Offset Units from the reduction of Greenhouse Gases including those similar to CERs and may also include measures that affect the ability of Seller to Deliver Contract CERs to the Buyer in accordance with this Agreement.

**Due Diligence** means the due diligence review of the Project and Seller by Buyer and its advisors, including, but not limited to an investigation into the creditworthiness of Seller, Seller's ability to implement the Project and the viability of the Project.

**Early Termination Date** means the date specified in the notice of early termination provided under clause 16 of this Agreement.

**Eligible National Registry** means a Kyoto registry that meets the eligibility requirements set out in the Annex to Decision 11/CMP.1 (Modalities, rules and guidelines for emissions trading under Article 17 of the Kyoto Protocol) or in Section F of the Annex to Decision 3/CMP.1 (Modalities and procedures for a clean development mechanism as defined in Article 12 of the Kyoto Protocol) of the Conference of the Parties.

**Encumbrance** means any mortgage, charge, pledge, lien, assignment, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person by way of security for the payment of a debt or any other monetary obligation.

**ERPA** means an Emissions Reduction Purchase Agreement.

**Event Notice** has the meaning given to that term in clause 13.

**Event of Default** has the meaning given to that term in clause 16 of this Agreement.

**Executive Board** means the executive board of the Clean Development Mechanism established under the International Rules.

**Expiry Date** means the date nominated as such in Schedule 1.

**Focal Point** means the entity(ies) nominated from time to time to the CDM Executive Board as responsible for the sole and exclusive communication with the CDM Executive Board and Convention Secretariat with respect to the Project under the Modalities of Communication submitted to the CDM Executive Board under the International Rules.

**Force Majeure Event** means any unexpected and unpreventable act beyond the control of the Parties, other than a Change in Law, which makes performance of an obligation under this Agreement impossible arising from an act of God, peril of the sea, war, riot, insurrection, civil commotion, martial law, flood, earthquake, epidemic, quarantine, radiation, or radioactive contamination, an Illegality or a Transfer System Failure, provided that such Party has not played a substantial role in bringing about the act and cannot, after using all reasonable efforts, overcome the act. For the avoidance of doubt, a Transfer System Failure or Illegality will not be a Force Majeure Event if the failure is such that there are contingency arrangements in operation under the International Rules and/or Host Country law by which Seller can reasonably be expected to Deliver CERs, as required, to Buyer's CER Account.

**GHG Reduction** means the removal, limitation, reduction, avoidance, sequestration or mitigation of one metric ton of emissions of GHGs measured in CO<sub>2</sub>-e from the atmosphere.

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

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

**Host Country** means the country or countries referred to as such in Schedule 1.

**Illegality** means an event occurring after the date of this Agreement which makes it unlawful under any Applicable Law or the International Rules for a Party to make or receive a payment or Delivery in respect of this Agreement when due or to punctually comply with any other material obligation, provided that the event is beyond the control of the Affected Party, and which such Party could not, after using all reasonable efforts, overcome, but does not include an event that is a Change in Law.

**"Inclusion" or "Include"** means the process of including a CPA under a registered Programme as described in the CDM Requirements.

**Insolvency Event** means, in relation to a Party, that it:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) either:
  - (i) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head office or home office, 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 by it or such regulator, supervisor or similar official; or

(ii) 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 such proceeding or petition is instituted or presented by a person or entity not described in clause (d)(i) above, and either:

- (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 dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (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 such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (h) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) above (inclusive); or
- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts,

provided that, for the avoidance of doubt, an Insolvency Event shall not occur in relation to a Party as a result of any proceeding, process or other administrative action taken which is vexatious, frivolous or an abuse of the process of the court.

***Insolvency Proceedings*** means, in relation to any person:

- (a) the making of an assignment or arrangement for the benefit of creditors;
- (b) the filing of a petition or commencement of proceedings under any bankruptcy, insolvency or similar law, or having such a petition filed against such person, which petition is not dismissed for a period of thirty (30) days;
- (c) the levy of an attachment for execution against the whole or any material part of its assets;
- (d) such person becoming (or is, or could be, deemed by a law or court to be) insolvent or unable to pay its debts; or
- (e) such person stops, suspends or threatens to stop or suspend payment of all or a material part of its indebtedness or begins negotiations or takes any other step with a view to the deferral, rescheduling or other readjustment of all or a material part of its indebtedness.

***International Rules*** means the Convention, Kyoto Protocol, the Marrakesh Accords, any relevant decisions, guidelines, modalities and procedures made pursuant to them (including

decisions of the CDM Executive Board) and of successor international agreements or supplementary international agreements regarding Greenhouse Gas emissions including but not limited to the Paris Agreement and which include those rules specifically required to be met for the second commitment period of the Kyoto Protocol and the issuance of CERs and the forwarding of CERs by the CDM Executive Board.

**Issuance** means the issuance of CERs by the administrator of the CDM Registry of the specified quantity of CERs into the pending account of the CDM Executive Board in the CDM Registry, upon being instructed to do so by the CDM Executive Board and **Issue** has the corresponding meaning.

**Issuance Request** means an instruction in the required form to the CDM Executive Board which requests that CERs be Issued into the pending account of the CDM Executive Board in the CDM Registry.

**ITL** or **International Transaction Log** means the UNFCCC independent transaction log established under the International Rules.

**Kyoto Protocol** means the optional protocol to the Convention adopted at the Third Conference of the Parties to the Convention in Kyoto, Japan on December 11, 1997 and shall include, upon entry into force, the amendments adopted by Decision 1/CMP.8, Annex 1 (the Doha Amendment).

**Letter of Approval** means the written approval of voluntary participation from a Party involved, provided pursuant to the International Rules.

**Loss** means, for the purposes of clause 16, an amount that Buyer reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with the termination of this Agreement or any uncompleted portion of this Agreement, any loss of bargain, cost of funding (based on the actual costs of Buyer whether or not greater than market costs) or, at the election of Buyer but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing an equivalent trading position (or any gain relating from any of them). Loss does not include legal fees or out-of-pocket expenses. Buyer may (but need not) determine its Loss by reference to quotations of average relevant rates or prices from two or more leading brokers in the CER trading market who are independent of the Parties.

**Marrakesh Accords** means Decision 2/CP.7 through to Decision 24/CP.7 inclusive of the COP in its seventh session, held at Marrakesh, Morocco from October 29 to November 10, 2001.

**Modalities of Communication** means the document submitted to the CDM Executive Board prior to Registration of the Project nominating the Focal Point(s) and the manner in which communications with the CDM Executive Board and Convention Secretariat will be governed, in the form required by the CDM Executive Board at the time of submission of the request for Registration.

**Monitoring** means the monitoring of the Project or Programme in accordance with the Monitoring Plan in order to produce the Monitoring Report.

**Monitoring Plan** means the plan for monitoring the Project or Programme which complies with the International Rules and validated in final Project Design Document Registered by the CDM Executive Board.

**Monitoring Report** means the collection of data in accordance with the Monitoring Plan which is used as a basis for the Verification part of the CER creation and Verification process.

**National Registry** has the meaning given to it by the Kyoto Protocol.

**New Mechanism** has the meaning given to that term in clause 4.7(b).

**New Project** means a not yet commissioned CDM project or Programme of Activities or Potential CPA that as at [1 December 2015] have not yet been commissioned and that do not have any arrangements for the sale of any CERs from that Potential CPA.

**Nominated Currency** means US\$, unless otherwise agreed by the Parties in writing.

**Non-Affected Party** has the meaning given to that term in clause 13.

**Non-Defaulting Party** means the Party determined to be such in relation to an Event of Default in accordance with clause 16.

**Operational ITL** means that the ITL, and the link between the ITL, Community Independent Transaction Log and at least one Registry in which Buyer has nominated a CER Account, is established and functioning.

**Option CER** means the option CERs listed at Schedule 1.

**Option Exercise Period** means the ten (10) Business Day period from the date on which Buyer receives the Verification Report.

**Option Exercise Price** means the price specified as such in Schedule 1.

**Paris Agreement** means the optional agreement adopted at the Twenty-first Conference of the Parties to the Convention in Paris, France on December 12, 2015 contained in the Annex to Draft Decision -/CP.21 (FCCC/CP/2015/L.9/Rev.1), which has yet to enter into force.

**Payment Date** means the due date for payment of Seller's invoices as specified in Schedule 1.

**Periodic CER Delivery Amount** means the volume of CERs described as such in Schedule 1.

**Periodic Option CER Delivery Amount** means the volume of Option CERs described in Schedule 1.

**Post-2020 Option CERs** has the meaning given to that term in clause 4.7 of this Agreement.

**Potential CPA** means any CDM project activity, identified by Seller, as a CDM project activity for potential development by Seller as a CPA under the Programme.

**Programme** means the Programme of Activities described in Schedule 1, and any Contract CPAs as relevant.

**Programme of Activities** has the meaning given in the International Rules.

**Programme Design Document** means the document describing the Programme and estimating the volume of GHG Reductions expected to be generated by the Programme during the Crediting Period, prepared and submitted for Validation and Registration in accordance with the International Rules.

**Programme Participant** means an entity authorised by each relevant Designated National Authority to participate in a CDM Programme of Activities and publically listed as such by the CDM Executive Board.

**Project** means the CDM project activity described in Schedule 1 and reference to Project in this Agreement includes reference to Programme.

**Project Design Document** or **PDD** means the document describing the Project and estimating the volume of GHG Reductions expected to be generated by the Project during the Crediting Period, prepared and submitted for Validation and Registration in accordance with the International Rules.

**Project Participant** means an entity authorised by a Designated National Authority to participate in a CDM project activity and listed by the CDM Executive Board as such in relation to that project activity.

**Reasonable Prudent Operator** or **RPO** means a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with all applicable laws, engaged in the same type of undertaking, under the same or similar circumstances and conditions, and any reference to the standards of a RPO shall be construed accordingly.

**Registration** means the formal acceptance by the CDM Executive Board of the Project, as evidenced by a decision of the CDM Executive Board and the listing of such project(s) as "registered" on the Convention web site.

**Relevant Authority** means the conference of parties to the Convention, the meeting of parties to the Kyoto Protocol, the CDM Executive Board and/or the registry administrator as those terms are defined in the Marrakesh Accords or any other authority having power pursuant to any domestic law or the International Rules to issue, transfer, block, suspend, refuse, reject, cancel or otherwise affect the transfer (whether in whole or in part) of CERs, including the Designated National Authority of the countries in which Buyer holds its CER Account(s), and the Designated National Authority of the Host Country.

**Screen Rate** means, in relation to overnight LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for USD and an overnight period displayed (before any correction, recalculation or republication by the administrator) on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate), or in each case on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Buyer may specify another page or service displaying the relevant rate.

**Taxes** means any present or future tax, fee, levy, impost, duty, charge, assessment, royalties, duties payable pursuant to this Agreement, including without limitation interest, penalties and additions thereto, or any sales, value added tax or stamp duty, but does not include any income or capital gains tax payable on net income.

**Term** means the term of this Agreement as set out in clause 1.

**Termination Payment** has the meaning given to it in clause 16.8.

**Transfer System Failure** means the occurrence of any event or circumstance that arises out of:

- (a) the system established pursuant to the International Rules to facilitate and effect the transfer, Issuance and forwarding of CERs into and between the CER Accounts not being operational and/or fully functional (including the non-existence of, incomplete implementation of and/or failure to function of the Convention international transaction log);
- (b) the issuance, transfer, acquisition or forwarding of CERs as contemplated in this Agreement being blocked, suspended and/or delayed as a result of any non-compliance or breach by any person (other than the Affected Party), government or nation with, or the suspension of any national or international rules, laws or regulations relating to the issuance, transfer, acquisition and/or forwarding of the CERs; or
- (c) any CER Account not being fully operational and/or fully functional such that the Delivery or receipt of CERs into that account can not be effected as contemplated in this Agreement.

**Unpaid Amount** owing to any party means, with respect to an Early Termination Date, the aggregate of the amounts that became, or would have become, payable to such a party in accordance with this Agreement on or prior to the Early Termination Date and that remain unpaid as at the Early Termination Date.

**Validation** means the process of independent evaluation of the Project by a Designated Operational Entity pursuant to the requirements of the CDM in accordance with the International Rules.

**Verification** means the periodic independent review and ex post determination by a Designated Operational Entity of GHG Reductions that have occurred during a Year as a result of the Project being carried out in accordance with the International Rules and **Verify** has the corresponding meaning.

**Verification Period** means the periods specified as such in Schedule 1.

**Verification Report** means a written report prepared by the Designated Operational Entity of the Verification.

**Vulnerable Project** means a Project or Programme that meets the following criteria:

- (i) the Project or Programme has no other revenues than the potential carbon revenues from the sale of the GHG Reductions, or has revenues from other sources than the potential carbon revenues from the sale of the GHG Reductions, but these revenues are insufficient for the continued operations of the Project or Programme on a commercially viable basis;
- (ii) the Project or Programme is such that without entering into an ERPA with the Buyer it will not resume its discontinued operations or will have to discontinue its operations, or it faces a serious and imminent threat of having to discontinue its operations due to inadequate revenues from sales of GHG Reductions;

- (iii) the Contract CERs have never been subject to a sales agreement entered into for the purposes of generating income to the Project or Programme or have been subject to an earlier sales agreement, but this Agreement has been terminated on <date> or is subject to an earlier sales agreement, but this Agreement is in the process of being terminated by negotiation since <date> and it will be terminated before entering into an ERPA with the Buyer; and all the information provided to the Buyer for the assessment of the vulnerability of the Project or Programme is true and accurate in every respect; and
- (iv) that as at 1 December 2015 does not have any arrangement in place for the sale of any CERs from the project including under an existing ERPA.

**Execution**

**IN WITNESS WHEREOF** the Parties have duly executed and delivered this Agreement on the dates specified below with effect from the date set out on the first page of this document.

**Signed** for and on behalf of  
**The Norwegian Ministry of Climate and Environment**  
 by its duly authorised representative  
 in the presence of:

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

\_\_\_\_\_  
 Signature of authorised representative

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

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

**Signed** for and on behalf of  
 (.....)  
 by its duly authorised representative  
 in the presence of:

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

\_\_\_\_\_  
 Signature of authorised representative

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

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

**Schedule 1  
Commercial Terms**

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**(a) Project**

<b>Project or Programme</b>	[insert description]
<b>Host Country</b>	[insert]

**(b) Contract Quantities and Dates**

<b>Contract CERs</b>	[x] percentage of CERs generated by the Project from [x date] / the first day of the Crediting Period until 31 December [2020].		
	<p><b>OR</b></p> <p>The first [x] CERs generated by the Project from the [x date] / first day of the Crediting Period to 31 December [2020].</p> <p><b>OR</b></p> <p>All CERs generated by the Project from [x date] / the first day of the Crediting Period until 31 December [2020].</p> <p><b>OR</b></p> <p>All CERs generated by the Project from [x date] / the first day of the Crediting Period until 31 December [2020], up to a maximum of [specify].</p> <p><b>OR</b></p> <p>All CERs generated by the Project, but subject to a minimum quantity of [insert absolute volume or % of PDD expected volume]</p> <p><b>OR</b></p> <p>[x] CERs generated by the Project in accordance with the Delivery Schedule.</p>		
<b>Periodic CER Delivery Amounts, Verification Periods and Delivery Dates</b>	<b>Verification Period</b>	<b>Periodic CER Delivery Amount</b>	<b>Delivery Date</b>
	01/01/2015 – 31/01/2016	[insert volume]	01/11/2016
	01/02/2016 – 31/01/2017	[insert volume]	01/11/2017
	01/02/2017 – 31/01/2018	[insert volume]	01/11/2018
	01/02/2018 – 31/01/2019	[insert volume]	01/11/2019
	01/02/2019 – 31/01/2020	[insert volume]	01/11/2020
	01/02/2020 – 31/01/2020	[insert volume]	01/11/2021

<b>Option CERs</b>	[insert ]		
<b>Periodic Option CER Delivery Amounts, Verification Periods and Delivery Dates</b>	<b>Verification Period</b> [insert ] [insert ]	<b>Periodic Option CER Delivery Amount</b> [insert volume] [insert volume]	<b>Delivery Date</b> [insert ] [insert ]
<b>Expiry Date</b>	[insert deadline for fulfilment of conditions precedent, including Registration, e.g. 6 months or 12 months.]		

**(c) Payment**

<b>CER Price</b>	[insert]
<b>Option Exercise Price</b>	[insert]
<b>Payment Dates</b>	[10] Business Days after the receipt by Buyer of an invoice from Seller in respect of each Delivery.

**(d) Accounts**

Buyer's CER Account:	[insert details]
Buyer's Cash Account:	[insert details]
Seller's Cash Account:	[please insert details of cash account]

**Schedule 2  
Confirmation**

Date: [Insert]

This Confirmation between:

- (a) **The Norwegian Ministry of Climate and Environment** of Kongensgate 20, NO-0030 Oslo, Norway (the "Buyer"); and
  - (b) [*Insert Seller legal name*] incorporated under the laws of [*insert jurisdiction*] having its registered office at [*insert registered office*](*"the Seller"*),
- (each of the buyer and the Seller a "Party" and together the "Parties"),

is agreed and executed by the Parties on the date specified below pursuant to the Programmatic Emission Reductions Purchase Agreement executed between the Parties and dated [*insert date*] ("Agreement"), and constitutes the agreement between the Parties for the CDM Programme Activity ("CPA") described below to be submitted for Inclusion in the Programme. Unless the context requires otherwise, capitalised terms used in this Confirmation shall have the meaning given in the Agreement.

No	Term	Details
1.	CPA name	[ <i>insert</i> ]
2.	Host Country	[ <i>insert</i> ]
3.	CPA description	[ <i>insert</i> ]
4.	CPA status	[ <i>insert</i> ]
5.	Crediting Period	[ <i>insert</i> ]
6.	Expected Commissioning Dare	[ <i>insert</i> ]

Generation Schedule

Verification Period	Expected Volume (CERs)	Expected Delivery Date (on or before)
[ <i>insert</i> ]	[ <i>insert</i> ]	[ <i>insert</i> ]
[ <i>insert</i> ]	[ <i>insert</i> ]	[ <i>insert</i> ]
[ <i>insert</i> ]	[ <i>insert</i> ]	[ <i>insert</i> ]
[ <i>insert</i> ]	[ <i>insert</i> ]	[ <i>insert</i> ]
[ <i>insert</i> ]	[ <i>insert</i> ]	[ <i>insert</i> ]
[ <i>insert</i> ]	[ <i>insert</i> ]	[ <i>insert</i> ]
[ <i>insert</i> ]	[ <i>insert</i> ]	[ <i>insert</i> ]