

CDM Emission Reductions Purchase Agreement[©] v. 2.0 2004

This first Emission Reductions Purchase Agreement under the CDM has been developed by the International Emissions Trading Association (IETA) to facilitate the purchase of CER's from specific projects operating under the Clean Development Mechanism. Although the Agreement may still be subject to changes received from comments of the users IETA encourages the use of this document by all interested parties.

**DE BRAUW
BLACKSTONE
WESTBROEK**

Sponsored by:

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

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



Foreword

The International Emissions Trading Association (IETA) is a non-profit organization created in June 1999 to establish a functional international framework for trading greenhouse gas emissions reductions. Our 90 international members include leading multinational companies from across the carbon trading cycle: emitters, solution providers, brokers, insurers, verifiers and legal compliance.

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

In 2002 the IETA Contracts Working Group identified the need for the timely development of an Emission Reduction Purchasing Agreement for the purchase of CER's through the Clean Development Mechanism. The objective is to facilitate trades and by streamlining the contractual process so helping to reduce transaction cost.

A Work Group subcommittee chaired by De Brauw Blackstone Westbroek has produced this agreement, which was reviewed using a wider stakeholder process. It is envisaged that this agreement will mark the beginnings of a process to develop standardized carbon contracts for different types of transactions.

Andrei Marcu
President & CEO, IETA



This Contract was developed by the sub committee "CDM Contract" of the IETA contracts work group

Coordination: Edwin Aalders, IETA Secretariat

Members:

Rutger de Witt Wijnen (Chair)	De Brauw Blackstone Westbroek
Anthony Hobley	Baker & Mc Kenzie
Peter Hawkes	Baker & McKenzie
Claire Byers	Fortis Bank N.V.
Seb Walhain	Fortis Bank N.V.
Garth Edward	Shell Trading
Robert Dornau	IETA Secretariat
Toby Campbell-Colquhoun	Shell Trading
Stefan Niesler	RWE Trading
Doug Gessell	NUON
Uta Sommer	RWE Trading
Julianne Kneen	BP Legal
Francisco Casanas	ENDESA - MORGAN STANLEY
Juan V Arevalo	Endesa Power Trading Limited
Jean-Francois Lerouge	Tractebel
Lieven Bloeyaert	Electrabel trading
Timo Holzborn	Noerr
Gray Taylor	Davies Ward Phillips & Vineberg
Wendy Poulton	Eskom
Martijn Wilder	Baker & Mc Kenzie
Charlotte Streck	World Bank
Mina Guli	World Bank
Alexander Roeder	Cemex
Ravi Sharma Aryal	Ministry of Law, Justice & Parliamentary Affairs, Nepal
Roon Osman	Shell Trading
Mandy Armbaros	Eskom

Questions or comments?

For general comments regarding this document and questions concerning the work of IETA please contact Edwin Aalders, IETA at +41 22 839 3192 or aalders@ieta.org.



**CDM Emission Reductions
Purchase Agreement -
v 2.0 2004**

(Name of the Project)

by and between

[PROJECT ENTITY]

and

[]**

Dated, [Date]

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



TABLE OF CONTENTS

ARTICLE I

DEFINITIONS; INTERPRETATION; HEADINGS; SCHEDULES

- Section 1.01 Definitions
Section 1.02 Interpretation; Headings; Schedules

ARTICLE II

CONDITIONS PRECEDENT[; KYOTO PROTOCOL]

- Section 2.01 Conditions Precedent
Section 2.02 Waiver
Section 2.03 Date for fulfilling conditions
Section 2.04 Progress report
[Section 2.05 Kyoto Protocol]

ARTICLE III

PURCHASE AND SALE OF CERTIFIED EMISSION REDUCTIONS

- Section 3.01 Purchase and Sale
Section 3.02 Minimum Amount

ARTICLE IV

OPTION TO [ACQUIRE][SELL] [ADDITIONAL][EXCESS] ERs

- Section 4.01 Option
Section 4.02 Exclusivity

ARTICLE V

PRICE AND PAYMENT

- Section 5.01 Unit Price
Section 5.02 Annual Payment
Section 5.03 Form of Payment
Section 5.04 Costs
Section 5.05 Taxes

ARTICLE VI

INITIAL VERIFICATION; VALIDATION AND REGISTRATION; BASELINE

- Section 6.01 Initial Verification
Section 6.02 Operational Entity
Section 6.03 Validation and Registration
Section 6.04 Baseline



ARTICLE VII

MONITORING PLAN

- Section 7.01 Monitoring Plan
- Section 7.02 Annual ER Report
- Section 7.03 Amendments to Monitoring Plan

ARTICLE VIII

VERIFICATION AND CERTIFICATION

- Section 8.01 General Requirements
- Section 8.02 Operational Entity
- Section 8.03 Verification and Certification

ARTICLE IX

PROJECT OPERATION AND MANAGEMENT

- Section 9.01 Project Operation

ARTICLE X

CERTIFIED EMISSION REDUCTIONS

- Section 10.01 Authorization
- Section 10.02 General Communication
- Section 10.03 Establishment of Accounts
- Section 10.04 Delivery of CERs
- Section 10.05 Provisional Issuance of CERs

ARTICLE XI

REPRESENTATIONS AND WARRANTIES

- Section 11.01 The Project Entity Representations
- Section 11.02 Buyer Representations

ARTICLE XII

FAILURE TO GENERATE OR TRANSFER MINIMUM AMOUNT

- Section 12.01 Production Failure or Transfer Failure
- Section 12.02 Buyer's Rights in Event of Production Failure or Transfer Failure
- Section 12.03 Rights in the Event of Gross Negligence, Fraud or Willful Misconduct

ARTICLE XIII

EVENTS OF DEFAULT

- Section 13.01 Events of Default



ARTICLE XIV

TERMINATION

Section 14.01	Suspension on Default
Section 14.02	Termination on Default
Section 14.03	Non-Default Termination
Section 14.04	Automatic Termination

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.01	Amendments to the Agreement
Section 15.02	Confidentiality
Section 15.03	Notices
Section 15.04	Evidence of Authority
Section 15.05	Assignment
Section 15.06	Survival of Provisions
Section 15.07	Execution in counterparts; Language
Section 15.08	Entire Agreement
Section 15.09	Severability
Section 15.10	Applicable Law
Section 15.11	Arbitration
Section 15.12	Waiver of Sovereign immunity

SCHEDULES

Schedule 1	Description of the Project
Schedule 2	Minimum Amount and Contract CERs
Schedule 3	Monitoring Plan
Schedule 4	Option Notice
Schedule 5	Letter of Approval
Schedule 6	Letter of Credit



EMISSION REDUCTIONS PURCHASE AGREEMENT

[**], a [private][public] company [with limited liability] incorporated under the laws of [**], having its seat at [**] ("**Project Entity**")
and
[**], a [private][public] company [with limited liability] incorporated under the laws of [**], having its seat at [**] (the "**Buyer**")

WHEREAS:

- A. [Name of the Host Country] ("**Host Country**") has ratified the United Nations Framework Convention on Climate Change (the "**UNFCCC**") on [date] and has [ratified/acceded] on [date] to the Protocol that was adopted at the Third Conference of the Parties to the UNFCCC in Kyoto, Japan on December 11, 1997 (the "**Kyoto Protocol**").
- B. [Host Country] has authorized the Project Entity to participate in the Project and [**] has authorized the Buyer to participate in the Project.]
- C. The Project Entity intends to carry out the Project, as described in Schedule 1, which is expected to result in reduction in greenhouse gas emissions that are additional to any that would occur in the absence of the Project.
- D. The Project Entity wishes to sell, and the Buyer wishes to purchase, upon the terms and conditions of this Emission Reductions Purchase Agreement (this "**Agreement**"), Certified Emission Reductions generated by the Project.

The Parties hereby agree as follows:

ARTICLE I

Definitions; Interpretation; Headings; Schedules

Section 1.01 *Definitions*

Unless the context otherwise requires, the following capitalized terms shall have the following meanings wherever used in this Agreement and its preamble:

"**Additional ERs**" means in a Year any ERs generated by the Project which are likely to qualify as CERs in excess of the Minimum Amount for such Year as reported in the Annual ER Reports to the extent such ERs are not meant to make up for any Transfer Failure in a previous Year.

"**Annual Payment**" means the amount set out in Section 5.02.

"**Annual ER Report**" means a report provided by the Project Entity setting out the amount of GHG Reductions generated by the Project during the previous Year as monitored in accordance with the Monitoring Plan and which includes all other data as may be required to be collected and recorded by the Monitoring Plan and which shall serve as the monitoring report required to be provided to the Operational Entity under the International UNFCCC/Kyoto Protocol Rules.

"**Assigned Amount Unit**" or "**AAU**" means a unit issued pursuant to the International UNFCCC/Kyoto Protocol Rules and is equal to one metric tonne of carbon dioxide equivalent, calculated in accordance with the International UNFCCC/Kyoto Protocol Rules.

"**Bankruptcy Proceedings**" means, in relation to any person:

MARKET SOLUTIONS FOR GLOBAL ENVIRONMENTAL PROBLEMS



- (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 or similar law, or having such a petition filed against such person, which petition is not dismissed for a period of 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 law or a 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.

"Baseline" means the scenario that reasonably represents the anthropogenic emissions by sources of GHGs that would occur in the absence of the Project as described in the International UNFCCC/Kyoto Protocol Rules.

"Baseline Study" means a written report of the Baseline prepared as part of the Project Design Document.

"Buyer's Account" means the account of Buyer [to be] established in the national CDM registry of [**].

"Carbon Dioxide Equivalent" or **"CO₂e"** means the base reference for the determination of global warming potential of Greenhouse Gases in units of carbon dioxide.

"Certification" and **"Certified"** each means the written assurance by the Operational Entity that, during a specified time period, the Project has achieved the GHG Reductions as reported in the Verification Report.

"Certification Report" means the document setting out the Certification.

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

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

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

"Consents" means any consent, authorization, registration, filing, license, permit, approval, agreement, authority or exemption from, by or with a competent authority, required for the construction, maintenance and operation of the Project.

"Contract CERs" means the CERs sold under, and to be forwarded pursuant to, Section 3.01 arising from the first [**] tonnes of GHG Reductions from the Project regardless of the Year in which they are created.



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

"**Credit Facility**" means the credit facility entered into between [**] and the Project Entity dated [**].

"**Crediting Period**" means the period in which GHG Reductions from the Baseline are Verified and Certified by an Operational Entity for the purpose of Issuance of CERs and which shall commence after the first Emission Reductions are generated by the Project.

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

"**Emission Reductions**" or "**ERs**" means any right, interest, credit, entitlement, benefit or allowance to emit (present or future) arising from or in connection with any GHG Reduction by the Project and includes any right that may be created under any regulatory or legal regime as a result of the GHG Reductions whatsoever.

"**Euro**" or "**€**" means the lawful currency of the participating member states of the European Union that have adopted the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on the European Union.]

"**Event of Default**" has the meaning ascribed thereto in Section 13.01.

"**Excess ERs**" means any ERs generated by the Project which are likely to qualify as CERs in excess of the Contract CERs as reported in Annual ER Reports.

"**Executive Board**" means the executive board of the Clean Development Mechanism that is established pursuant to the International UNFCCC/Kyoto Protocol Rules.

"**Expiry Date**" means [**]

"**Financial Close**" means the first date on which drawdown is permissible under the Credit Facility for the financing of the Project.

"**Force Majeure**" means, in respect of either Party, any occurrence of Physical Force Majeure or one or more of the following event(s) or circumstance(s) (only) which are beyond the reasonable control of the affected Party acting (and having acted) in accordance with prudent operating practice and which results in or causes the failure of the affected Party to perform any of its obligations under this Agreement:

- (a) [strike, lockout or other industrial disturbance affecting [power generators] in [**] generally; or]
- (b) act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration,

provided that a lack of funds shall not be treated as an event of Force Majeure.

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

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

"**GHG Reduction**" means the removal, limitation, reduction, avoidance, sequestration or mitigation of GHGs emissions.

"**Gross Negligence**" means any act or omission, whether deliberate or not, which in the circumstances (including both the probability and seriousness of the consequences likely to result)



would be regarded by those familiar with both the Project activity and surrounding circumstances (including without limitation the Project Entity's obligations under this Agreement) as amounting to the reckless disregarding of the consequences, being more fundamental than a failure to exercise proper skill and care.

"**Host Country**" means[**].

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

"**International UNFCCC/Kyoto Protocol Rules**" means the UNFCCC, the Kyoto Protocol, the Marrakesh Accords, any relevant decisions, guidelines, modalities and procedures made pursuant to them, as amended from time to time.

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

"**Issued CERs**" has the meaning ascribed thereto in Section 5.01.

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

"**Letter of Approval**" means the letter through which the Host Country inter alia approves the Project for the purposes of Article 12 of the Kyoto Protocol [substantially in the form of] [a copy of which is attached as] Schedule 5.

"**Letter of Credit**" means an irrevocable, standby letter of credit issued or confirmed by a bank or financial institution with a credit rating of at least [**] assigned by Standard & Poor's or [**] assigned by Moody's substantially in the form of Schedule 6.

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

"**Minimum Amount**" means the minimum number of GHG Reductions to be generated by the Project in any given Year and to be forwarded to the Buyer as Contract CERs as set out in Schedule 2.

"**Monitoring**" means activities of collecting and recording data in accordance with any relevant standards or conditions provided for under the International UNFCCC/Kyoto Protocol Rules that allow the assessment of the GHG Reductions resulting from the Project pursuant to the terms of the Monitoring Plan.

"**Monitoring Plan**" means the set of requirements for Monitoring incorporated in Schedule 3 of this Agreement, as such schedule may be amended from time to time in accordance with Section 7.03.

"**Operational Entity**" means (i) a Designated Operational Entity, or, in the absence thereof, (ii) an entity, independent from the Buyer, the Host Country and the Project Entity, which has:

- (A) applied for accreditation as a designated operational entity under the International UNFCCC/Kyoto Protocol Rules; and
- (B) not been previously employed on Project related activities, and which unless otherwise authorized by the Buyer and the Executive Board performs either the Validation of the Project or the Verification and Certification of the GHG Reductions generated by the Project.



"**Option**" has the meaning ascribed thereto in Section 4.01(a).

"**Option CERs**" has the meaning ascribed thereto in Section 4.01(d).

"**Parties**" means the Project Entity and the Buyer, and each of them shall be individually referred to as a "**Party**".

"**Physical Force Majeure**" means (except to the extent that any of the same arise from an electrical or mechanical breakdown at the Project) the occurrence of lightning, fire, storm, flood, earthquake, accumulation of snow or ice or explosion which are beyond the reasonable control of the affected Party acting (and having acted) in accordance with prudent operating practice and which results in or causes the failure of the affected Party to perform any of its obligations under this Agreement.

"**Production Failure**" means the failure to generate the Minimum Amount of GHG Reductions in a given Year.

"**Project**" means the project activity described in Schedule 1 of this Agreement to be implemented in accordance with the International UNFCCC/Kyoto Protocol Rules.

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

"**Project Design Document**" or "**PDD**" means a description of the Project [to be] submitted for Validation in accordance with the International UNFCCC/Kyoto Protocol Rules.

"**Project Documents**" means together or individually the Baseline Study, the Project Design Document, the Monitoring Plan, the Validation Report, the Verification Report, the Certification Report and the Letter of Approval.

"**Registration**" or "**Registered**" means the formal acceptance by the Executive Board of a Project as a CDM project activity.

"**Replacement CERs**" means CERs from the Project or from a project approved by the Buyer, supplied to the Buyer to replace any shortfall of GHG Reductions or Contract CERs as a result of a Production Failure or a Transfer Failure by the Project Entity, so as to enable full delivery of the Contract CERs and which may, if the Buyer requests, be substituted with AAUs.

"**Share of Proceeds**" means any share of the Emission Reductions deducted by the CDM registry administrator in accordance with the Kyoto Protocol to cover administrative expenses and to assist in meeting costs of adaptation.

"**Taxes**" means all national, state, regional, provincial, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, fuel, gas import, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever imposed by any governmental entity, whether in effect at the time of this Agreement or thereafter imposed, together with any interest and any penalties, additions to tax or additional amounts with respect thereto.

"**tCO₂e**" means metric tonnes of Carbon Dioxide Equivalent.

"**Third Party**" means a party other than the Buyer or the Project Entity.

"**Transfer Failure**" means the failure, for any reason whatsoever, of the Project Entity to have forwarded to the Buyer a number of Contract CERs equivalent to the Minimum Amount for a particular Year.



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

"**Unit Price**" means [US\$] [€] for each CER measured in tCO₂e.

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

"**Validation**" and "**Validated**" each means the process of independent evaluation of the Project by an Operational Entity against the requirements of the CDM in accordance with the International UNFCCC/Kyoto Protocol Rules.

"**Validation Report**" means a written report prepared by the Operational Entity of the Validation.

"**Verification**" and "**Verified**" each means the periodic independent review and ex post determination by an Operational Entity of GHG Reductions monitored in accordance with the Monitoring Plan that have occurred during the relevant period as a result of the Project being carried out in accordance with the International UNFCCC/Kyoto Protocol Rules.

"**Verification Report**" means a written report prepared by the Operational Entity of the Verification which independently assesses the Annual ER Report and the amount of GHG Reductions generated by the Project for the preceding Year.

"**Year**" means the twelve month period commencing on the Project Commissioning Date and each subsequent 12 month period commencing on the anniversary of the Project Commissioning Date thereafter.

Section 1.02 Interpretation; Headings; Schedules

- (a) In this Agreement unless the context requires another meaning, a reference:
- (i) to any document (including this Agreement) is to that document as varied, amended, novated, ratified or replaced from time to time;
 - (ii) to any Party includes that Party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
 - (iii) to the singular includes the plural and vice versa, and to a gender includes all genders;
 - (iv) to a Party means a Party to this Agreement, and to an Article, Section or Schedule is to an Article, Section or Schedule of this Agreement (unless specified otherwise); and
 - (v) to any International UNFCCC/Kyoto Protocol Rules, statute or to any treaty or statutory provision includes any statutory modification or re-enactment of it or any treaty or statutory provision substituted for it, and all protocols, rules, modalities, guidelines, procedures, ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.
- (b) The terms of this Agreement shall be interpreted in a manner that is consistent with the International UNFCCC/Kyoto Protocol Rules.
- (c) The Schedules to this Agreement are an integral part hereof.
- (d) The headings of the Articles and Sections are inserted for convenience of reference only and do not affect the interpretation of this Agreement.



ARTICLE II

Conditions Precedent[; Kyoto Protocol]

Section 2.01 Conditions Precedent

The provision of this Agreement (other than Articles I, II, VI, VII, IX, XI, XIII, XIV and XV) are conditional upon each of the following occurring:

- (a) the grant of all necessary Consents and such Consents being in full force and effect;
- (b) the Project having been Validated and Registered;
- (c) [the Host Country having authorized the Project Entity to participate in the Project];
- (d) [[**] having authorized the Buyer to participate in the Project];
- (e) [the Host Country having issued the Letter of Approval];
- (f) the Project having reached Financial Close by [**];
- (g) the furnishing of a Letter of Credit in the amount of [**] by the [Buyer]/[Project Entity] to the [Project Entity]/[Buyer] by no later than the date at which the Project achieves Financial Close; and
- (h) the Project having been Commissioned by [**];
- (i) [the Kyoto Protocol having entered into force]¹

Section 2.02 Waiver

The conditions set forth in Section 2.01 sub [a, b, c, d, e, f, and h] are for the benefit of, and may only be waived or deferred by, the Buyer. The condition set forth in Section 2.01 sub g is for the benefit of, and may be waived or deferred by, the [Project Entity]/[Buyer].

Section 2.03 Date for fulfilling conditions

If not all conditions set forth in Section 2.01 have been satisfied (or waived) by [**], unless otherwise provided in Section 2.01, this Agreement (other than Articles I, II, VI, VII, IX, XI, XIII, XIV and XV) shall not become binding and enforceable.

Section 2.04 Progress report

The Project Entity shall provide a report to the Buyer every [30/60/90] days following the date of this Agreement or at such other time as the Buyer may reasonably request, setting out the Project Entity's progress toward fulfilling the conditions precedent set forth in Section 2.01 [other than sub g] and relevant actions taken or events occurring since the latest such report and a statement of the Project

¹ This Agreement provides for an acceptance by the Buyer of ERs in Section 10.01. This conditions precedent should only be inserted if the Buyer is not willing to take the risk of the Kyoto Protocol not entering into force.



Entity's reasonable expectation as to whether and when each such condition precedent that has not yet been fulfilled will be fulfilled.

[Section 2.05 *Kyoto Protocol*²

This Agreement shall be valid and binding also in the event the Kyoto Protocol does not enter into force. In such event the CERs to be delivered hereunder shall be ERs which shall be verified, certified and delivered as provided in this Agreement.]

ARTICLE III

Purchase and Sale of Certified Emission Reductions

Section 3.01 *Purchase and Sale*

The Project Entity agrees to sell to the Buyer and the Buyer agrees to purchase from the Project Entity the Contract CERs together with any Option CERs requested by the Buyer. **[If Share of Proceeds is for the account of the Project Entity:** All CERs to be delivered under this Agreement shall be net of the Share of Proceeds]**[If Share of Proceeds is for the account of the Buyer:** The Share of Proceeds shall deemed to be part of the CERs delivered under this Agreement.

Section 3.02 *Minimum Amount*

- (a) Each Year the Project Entity shall have the Project generate the Minimum Amount set out in Schedule 2 and have CERs corresponding to these GHG Reductions issued and forwarded to the Buyer.³
- (b) Where the Project generates more than the Minimum Amount in a particular Year, any Additional ERs generated in that Year shall be [Verified and Certified and upon Issuance of CERs be forwarded to the Buyer as part of the Contract CERs until the total amount of Contract CERs sold under this Agreement has been forwarded to the Buyer.][at the disposal of the Project Entity]
- (c) Where the Project Entity fails (i) to generate the Minimum Amount and (ii) to have an amount of CERs corresponding to the Minimum Amount forwarded to the Buyer, in a given Year then Article XII shall apply.

² Insert only if condition precedent sub (i) is not used.

³ The sum of all Minimum Amounts should add up to the Contract CERs.



ARTICLE IV

[Option to Acquire [Additional]⁴ [Excess]⁵ ERs

Section 4.01 *Call Option*

- (a) In consideration of the Buyer's purchase of the Contract CERs, the Project Entity grants the Buyer an option exercisable at the Buyer's sole discretion to purchase all or part of any [Additional][Excess] ERs on the same terms and conditions as the Buyer purchases the Contract CERs under this Agreement (the "**Option**"), provided that the purchase price for any [Additional][Excess] ERs shall be the then prevailing market price to be agreed upon by the Project Entity and the Buyer in good faith].
- (b) The Project Entity shall, within [**] days of the provision of the first Annual ER Report in accordance with Section 7.02 finding that [Additional][Excess] ERs have been generated notify the Buyer of the total quantity of such [Additional][Excess] ERs [together with an indication of the then prevailing market price].
- (c) Within [**] days of receipt of the Project Entity's notification meant sub (b) above, the Buyer shall provide written notice in the form of the notice attached hereto as Schedule 4 to the Project Entity of its intention whether or not to exercise the Option for the Year immediately passed [together with an acceptance of the prevailing market price as indicated by the Project Entity or an alternative for the prevailing marketprice indicated by the Project Entity].
- (d) Following notification by the Buyer to the Project Entity of its intention to exercise the Option (whether in whole or part), the Project Entity shall arrange for Verification and Certification of the [Additional][Excess] ERs or part of the [Additional][Excess] ERs (as the case may be) ("**Option CERs**") in accordance with the procedures set out in this Agreement.]

[Option to Sell [Additional]⁴[Excess]⁵ ERs

Section 4.01 *Put Option*

- a) In consideration of the Project Entity's sale of the Contract CERs, the Buyer grants the Project Entity an option exercisable at the Project Entity's sole discretion to sell all or part of any [Additional][Excess] ERs [up to a maximum of [**]] generated by the Project on the same terms and conditions as the Buyer purchases the Contract CERs under this Agreement (the "**Option**"), provided that the purchase price for any [Additional][Excess] ERs shall be the then prevailing market price to be agreed upon by the Project Entity and the Buyer in good faith].
- b) The Project Entity shall, within [**] days of the provision of the first Annual ER Report in accordance with Section 7.02 finding that [Additional][Excess] ERs have been generated notify the Buyer of the total quantity of [Additional][Excess] ERs [together with an indication of the then prevailing market price].
- c) Within [**] weeks of the first Annual ER Report finding that [Additional][Excess] ERs have been generated, the Project Entity shall provide written notice in the form of the notice attached hereto as Schedule 4 to the Buyer of its intention whether or not to exercise the Option for the Year

⁴ Use when Additional ERs are at the disposal of the Project Entity, see Section 3.02(b)

⁵ Use when Additional ERs will be forwarded to the Buyer as part of the Contract CERs, see Section 3.02(b)



immediately passed [together with an acceptance of the prevailing market price as indicated by the Project Entity or an alternative for the prevailing market price indicated by the Project Entity].

- d) Following notification by the Project Entity to the Buyer of its intention to exercise the Option (whether in whole or part), the Project Entity shall arrange for Verification and Certification of the [Additional][Excess] ERs or part of the [Additional][Excess] ERs (as the case may be) ("**Option CERs**") in accordance with the procedures set out in this Agreement.]

Section 4.02 *Exclusivity*

The Project Entity may solicit bids from, and enter into negotiations with, any Third Party to sell the [Additional][Excess] ERs in any given Year [**Add when Call Option alternative is used:** , provided that prior to the expiration of the period in Section 4.01(b) such soliciting and negotiations are made subject to the Call Option right of the Buyer].

ARTICLE V

Price and Payment

Section 5.01 *Unit Price*

The Buyer shall pay the Project Entity the Unit Price for each Contract CER and [the prevailing market price agreed upon for] each Option CER forwarded to the Buyer in accordance with this Agreement (the "**Issued CERs**").

Section 5.02 *Annual Payment*

The Buyer agrees to pay the Project Entity the Annual Payment within [**] days of the date the Issued CERs are credited to the Buyer's Account or are otherwise forwarded with the approval of the Buyer. The Annual Payment shall be equal to (i) the product of the Unit Price and each Contract CER [and each Option CER] [and (ii) the product of the prevailing market price agreed upon and each Option CER] forwarded to the Buyer in accordance with this Agreement.

Section 5.03 *Form of Payment*

Payments will be made by the Buyer:

- (a) in [US\$/€]; and
- (b) to an account which has been nominated in writing by the Project Entity at least [**] days prior to the date the Annual Payment is due and payable.

Section 5.04 *Costs*

- (a) Any costs and expenses regarding the preparation of the Project Documents, Validation, Registration, Verification, Certification and Issuance of CERs, including fees and expenses payable to the Operational Entity and the Executive Board are for the account of the [Project Entity][Buyer].
- (b) Any costs and expenses regarding the Initial Verification Report, if any, the creation and maintenance of the Buyer's Account and the authorization of the Buyer by [**] are for the account of the Buyer.



- (c) Each Party will bear its own costs and expenses in connection with the preparation, negotiation and execution of this Agreement.

Section 5.05 Taxes

Any Taxes that may be payable with regard to the Project and the sale, purchase and transfer pursuant to this Agreement shall be borne by the [Project Entity][Buyer] [, except for Taxes imposed by [**], which shall be for the [Buyer's][Project Entity's] account.]

ARTICLE VI

Initial Verification; Validation and Registration; Baseline

Section 6.01 Initial Verification

- (a) At least [**] days prior to the Commissioning of the Project, the Project Entity shall notify the Buyer in writing of the expected Project Commissioning Date.
- (b) Upon receipt of notification pursuant to Section 6.01(a), the Buyer has the right to arrange for an Initial Verification Report to be prepared for the Project by an Operational Entity.
- (c) The Buyer shall instruct the Operational Entity to provide a copy of the Initial Verification Report to both the Buyer and the Project Entity.
- (d) In the event that the Initial Verification Report indicates that the Project is not in compliance with the International UNFCCC/Kyoto Protocol Rules on monitoring requirements and, in the opinion of the Operational Entity, there is no reasonable prospect of such compliance being obtained within a further [**] months then the Buyer may terminate this Agreement by giving notice to the Project Entity.

Section 6.02 Operational Entity

- (a) The Project Entity shall select and contract with the Operational Entity to undertake Validation of the Project from a shortlist of Operational Entities mutually agreed with the Buyer.
- (b) The Project Entity shall inform the Buyer of the name of the Operational Entity it has contracted with to perform the Validation.

Section 6.03 Validation and Registration

- (a) The Project Entity [shall prepare the Project Design Document, including the Baseline Study, and submit the Project Design Document and any supporting documents as meant in paragraph 37 of Decision 17/CP.7 of the Marrakesh Accords to the Operational Entity for Validation.][has prepared the Project Design Document, including the Baseline Study, and has submitted the Project Design Document and any supporting documents as meant in paragraph 37 of Decision 17/CP.7 of the Marrakesh Accords to the Operational Entity on [date].]
- (b) [The Parties agree to seek a [seven (7) year Crediting Period to be renewed twice, adding up to a total Crediting Period of twenty-one (21) years][10 year Crediting Period]]. [The Crediting Period shall be [seven (7)][ten (10)] years.]



- (c) [The Project Entity shall instruct the Operational Entity to submit a request for Registration to the Executive Board in the form of a Validation Report. In the event that (i) the Operational Entity determines that the Project does not meet Validation requirements, or (ii) the Executive Board does not accept Registration of such Project, then the Project Entity shall make appropriate revisions and resubmit such Project for Validation and subsequent Registration.][The Project has been Registered on [date].]
- (d) Until the earlier of (i) the Kyoto Protocol entering into force, and (ii) the Executive Board accepting request for Registration in anticipation thereof, Registration shall be deemed to occur upon the issue by the Operational Entity of the Validation Report. Upon the occurrence of an event meant sub (i) or (ii) of this paragraph, the Project Entity shall instruct the Operational Entity in accordance with paragraph (c).

Section 6.04 *Baseline*

In the event that a renewal of the Baseline is required by the International UNFCCC/Kyoto Protocol Rules at any time, the Project Entity shall arrange for such renewal of the Baseline.

ARTICLE VII

Monitoring Plan

Section 7.01 *Monitoring Plan*

- (a) The Project Entity shall:
- (i) fully implement the Monitoring Plan set out in Schedule 3 no later than the Commissioning;
 - (ii) 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;
 - (iii) establish and maintain data measurement and collection systems for all indicators listed in the Monitoring Plan;
 - (iv) 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; and
 - (v) ensure the Project is maintained and prepared to allow for Verification and Certification as required by the Monitoring Plan.

Section 7.02 *Annual ER Report*

Each Year the Project Entity shall, within [**] days of the end of that Year, provide the Buyer with an Annual ER Report.

Section 7.03 *Amendments to Monitoring Plan*

Each of the Buyer and the Project Entity may introduce amendments to the Monitoring Plan:

- (a) when such amendments are necessary to reflect any guidelines for Monitoring, Verification and reporting under International UNFCCC/Kyoto Protocol Rules;
- (b) when such amendments appear warranted by concerns identified by the Operational Entity; or

MARKET SOLUTIONS FOR GLOBAL ENVIRONMENTAL PROBLEMS



- (c) in the event that a renewal of the Project Baseline in accordance with the provisions of Section 6.04 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 thereof by both Parties.

ARTICLE VIII

Verification and Certification

Section 8.01 *General Requirements*

All GHG Reductions generated by the Project, until the end of the term of this Agreement, shall be subject to Verification and Certification by an Operational Entity in accordance with and subject to the provisions of this Article.

Section 8.02 *Operational Entity*

- (a) The Project Entity shall select the Operational Entity to undertake Verification and Certification of the GHG Reductions from a shortlist of Operational Entities mutually agreed with the Buyer.
- (b) The Project Entity shall inform the Buyer of the name of the Operational Entity it has selected to perform the Verification and Certification.

Section 8.03 *Verification and Certification*

- (a) The Project Entity shall instruct the Operational Entity to undertake the Verification and Certification of the GHG Reductions each Year within [**] days after receipt by the Buyer of the Annual ER Report.
- (b) In the event that there is a discrepancy between the Annual ER Report and the Verification Report, the Verification Report shall prevail.

ARTICLE IX

Project Operation and Management

Section 9.01 *Project Operation*

The Project Entity shall:

- (a) carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and environmental practices and all other relevant requirements of this Agreement including without limitation the requirements of Section 7.01;
- (b) carry out the Project in accordance with the applicable International UNFCCC/Kyoto Protocol Rules;
- (c) at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in



accordance with sound engineering, financial and environmental practices and the requirements of Section 7.01;

- (d) satisfy any obligations in respect of applications for all Consents and authorizations required by applicable law to implement, operate and maintain the Project; and
- (e) keep the Project insured in accordance with applicable law and prudent industry practice, which may be in the form of self-insurance.

ARTICLE X

Certified Emission Reductions

Section 10.01 *Authorization*

The Project Entity shall direct the Executive Board as to the forwarding of CERs up to an amount equal to the Contract CERs and, if applicable, Option CERs.

Section 10.02 *General Communication*

The Parties agree that the Buyer shall serve as the focal point for all communications with regard to the Project with the Executive Board and the UNFCCC secretariat, in particular with regard to instructions regarding allocations of CERs upon Issuance of CERs. Nevertheless, all communications to the Executive Board shall be copied to the Project Entity. All communications received from the Executive Board shall be immediately forwarded to the Project Entity. Any Executive Board communications sent or received by the Project Entity concerning the Project shall be immediately forwarded to the Buyer.

Section 10.03 *Establishment of Accounts*

- (a) The Project Entity shall, if directed by the Buyer, establish an account to hold CERs under the national CDM registry of [**].
- (b) The Buyer shall establish the Buyer's Account prior to the date of the first Verification Report.

Section 10.04 *Delivery of CERs*

Delivery of CERs under this Agreement takes place upon the CDM registry administrator forwarding such CERs to the Buyer's Account.

Section 10.05 *Provisional Issuance of CERs*

Until the earlier of (i) the Kyoto Protocol entering into force, and (ii) the Executive Board, through the CDM registry administrator, issuing CERs in anticipation thereof, Issuance of CERs and delivery of such CERs hereunder shall be deemed to occur upon the issue by the Operational Entity of the Certification Report and the receipt by the Buyer of an irrevocable written statement by the Project Entity that it has assigned all its right, title and interest in the ERs certified in such Certification Report to the Buyer. Upon the occurrence of an event meant sub (i) or (ii) of this paragraph, the Buyer may instruct the Operational Entity to submit the Certification Reports issued prior thereto to the Executive Board and direct the Executive Board to have the CDM registry administrator forward CERs to the Buyer's Account up to an amount equal to the Contract CERs and, if applicable, Option CERs deemed to be issued and delivered under this Agreement. So long as neither the event meant sub (i),



nor the event meant sub (ii) has occurred, the Buyer shall accept the assignment of ERs described in this Section as due compliance by the Project Entity with its obligation to deliver CERs under this Agreement up to the quantity of the ERs so assigned. Therefore the risk of the Kyoto Protocol not entering into force shall be for the account of the Buyer.

ARTICLE XI

Representations and Warranties

Section 11.01 *The Project Entity Representations*

The Project Entity represents and warrants to the Buyer in each of the following terms as at the date of this Agreement and at the Project Commissioning:

- (a) The Project Entity is duly organized and validly existing under the laws of [**] and is qualified to conduct its business in [**].
- (b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents or any material contract to which it is a party or by which any of its assets are bound or affected, or any law, rule, regulation, order, statement of claim, judgment, decree or other legal or regulatory determination applicable to it.
- (c) All Consents necessary for:
 - (i) the Project Entity to perform its obligations under this Agreement; and
 - (ii) the conduct of the business of the Project Entity and the construction, maintenance and operation of the Project, have been obtained and are in full force and effect. As of the Project Commissioning Date, the Project Entity has not received any notice of violation of any material Consents relating to the Project.
- (d) This Agreement constitutes legal, valid and binding obligations of the Project Entity enforceable in accordance with its terms.
- (e) There are no Bankruptcy Proceedings pending or being contemplated by the Project Entity or[, to its knowledge,] threatened against the Project Entity.
- (f) There are no claims, actions, proceedings or investigations pending or[, to the Project Entity's knowledge,] threatened against or relating to the Project Entity before any competent authority that may materially adversely affect its ability to perform this Agreement.
- (g) The Project Entity is not subject to any judgment, rule, order, statement of claim, injunction or decree of competent authority that materially adversely affects its ability to perform this Agreement.
- (h) This Agreement, the execution and delivery of this Agreement and the fulfillment and compliance with the terms of this Agreement by the Project Entity will not materially conflict with any of, or require the consent of any person under, any loan or security agreement, or other material agreement to which the Project Entity is a party.

Section 11.02 *Buyer Representations*

MARKET SOLUTIONS FOR GLOBAL ENVIRONMENTAL PROBLEMS



The Buyer represents and warrants to the Project Entity in each of the following terms as at the date of this Agreement and at the Project Commissioning Date:

- (a) It is duly organized and validly existing under the laws of [**] and is qualified to conduct its business in [**].
- (b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents or any material contract to which it is a party or by which any of its assets are bound or affected, or any law, rule, regulation, order, statement of claim, judgment, decree or other legal or regulatory determination applicable to it.
- (c) This Agreement constitutes the legal, valid and binding obligations of the Buyer enforceable in accordance with its terms.
- (d) There are no Bankruptcy Proceedings pending or being contemplated by it or[, to its knowledge,] threatened against the Buyer.
- (e) There are no claims, actions, proceedings or investigations pending or[, to the Buyer's knowledge,] threatened against or relating to the Buyer before any competent authority that may materially adversely affect its ability to perform this Agreement.
- (f) The Buyer is not subject to any outstanding judgment, rule, order, statement of claim, injunction or decree of competent authority that materially adversely affects its ability to perform this Agreement.
- (g) This Agreement, the execution and delivery of this Agreement and the fulfillment and compliance with the terms of this Agreement by the Buyer will not materially conflict with any of, or require the consent of any person under, any loan or security agreement, or other material agreement, to which the Buyer is a party.

ARTICLE XII

Failure to Generate or Transfer Minimum Amount

Section 12.01 *Production Failure or Transfer Failure*

- (a) Should the Project Entity know, or reasonably anticipate, at any point in time that there will be or has been a Production Failure or a Transfer Failure in respect of any given Year, then the Project Entity shall immediately give a notice to the Buyer advising the Buyer of this existing or anticipated failure. The notice must include the following information:
 - (i) details as to the Project Entity's failure (or anticipated failure, as the case may be) to generate the Minimum Amount or to have the requisite number of Contract CERs forwarded to the Buyer;
 - (ii) the total shortfall of GHG Reductions and/or Contract CERs;
 - (iii) the likely delay before the shortfall can be recovered and the extent to which the Minimum Amount for the subsequent Year is to be affected; and



- (iv) any other details requested by the Buyer.
- (b) For the purposes of this Article, where the number of Contract CERs, excluding for the avoidance of doubt any Option CERs, forwarded to the Buyer exceeded the Minimum Amount in a preceding Year or Years such that the cumulative aggregate Minimum Amount has been met in the Year the shortfall has occurred or will occur, this shortfall shall not constitute a Production Failure or a Transfer Failure.

Section 12.02 Buyer's Rights in Event of Production Failure or Transfer Failure

On receipt of a notice from the Project Entity under Section 12.01 above, or upon an Annual ER Report or Verification Report finding that the Minimum Amount has not been generated for the Year to which that report relates, such that the Project Entity cannot have the requisite number of Contract CERs issued and forwarded to the Buyer, the Buyer may in its sole discretion:

- (i) accept the shortfall where it believes it can be recovered in the subsequent Year and that the Minimum Amount and the equivalent number of Contract CERs to be forwarded for the subsequent Year will not be affected;
- (ii) require the Project Entity to propose a plan of action to remedy the shortfall and which includes appropriate adjustments to the Minimum Amounts or number of Contract CERs to be forwarded in Schedule 2;
- (iii) require the Project Entity to, at its cost, provide Replacement CERs in the same quantity as the shortfall amount which will enable full delivery of the Contract CERs; or
- (iv) where such Production Failure or Transfer Failure is the result of an event of default under Section 13.01, terminate this Agreement in accordance with Article XIV.

Section 12.03 Rights in the Event of Gross Negligence, Fraud or Willful Misconduct

- (a) Where a Production Failure or Transfer Failure is a result of Gross Negligence, fraud or willful misconduct (including the provision of false or misleading representations or warranties) on the part of the Project Entity, then the Buyer shall, in addition to its rights under Section 12.02 be entitled to exercise the right to:
 - (i) terminate this Agreement and seek to recover all costs and damages from the Project Entity; and
 - (ii) recover liquidated damages from the Project Entity in an amount that represents a genuine estimate of the losses, damages and costs suffered by the Buyer as a result of the Production Failure or Transfer Failure.
- (b) In addition to Section 12.03(a) the Project Entity shall indemnify the Buyer for any additional liabilities incurred as a result of a Production Failure or Transfer Failure.

ARTICLE XIII

Events of Default

Section 13.01 Events of Default

MARKET SOLUTIONS FOR GLOBAL ENVIRONMENTAL PROBLEMS



- (a) The occurrence at any time with respect to a Party of any of the following events constitutes an Event of Default with respect to such Party:
- (i) the Party fails to pay when due any amount payable by it under this Agreement and such failure is not remedied within [**] days after written notice of such failure is given to such Party;
 - (ii) the Party fails to comply in any material respect with or perform in any material respect any of its other obligations under this Agreement other than the events that are specifically and expressly covered elsewhere in this Section 13.01 and (if it is capable of remedy) such failure is not remedied to the reasonable satisfaction of the other Party within [**] days after written notice of such failure is given to the Party by such other Party;
 - (iii) any representation or warranty made or repeated or deemed to have been made or repeated by the Party in this Agreement proves to have been incorrect or misleading (in any material respect when made or repeated or deemed to have been made or repeated);
 - (iv) the commencement of Bankruptcy Proceedings in respect of the [Party][Buyer][or][the Project Entity];
 - (v) the Project Entity fails to maintain all necessary Consents in respect of the Project or the performance of its obligations under this Agreement or fails to comply with all applicable laws;
 - (vi) in respect of the Project Entity:
 - (i) the failure to achieve Financial Close by [**];
 - (ii) the failure to notify the Project Commissioning Date in accordance with Section 6.01(a).
 - (vii) The dissolution or liquidation of the [Project Entity][Buyer] or changes in the ownership structure of the [Project Entity][Buyer] in a manner that detrimentally affects its ability to [carry out the Project in the reasonable opinion of the Buyer][pay any amounts due hereunder in the reasonable opinion of the Project Entity];
 - (viii) Material delay in the construction of the Project or other materially adverse change in the status of the Project construction or delay in the commencement of initial operations which will prevent the Project from achieving the Commissioning on or prior to [**].

ARTICLE XIV

Termination

Section 14.01 *Suspension on Default*

Upon the occurrence of any Event of Default or at any time thereafter while such Event of Default subsists, the non-defaulting Party may by notice to the defaulting Party suspend performance of its obligations under this Agreement. If, prior to the exercise of rights under Section 14.02, such Event of Default is remedied, the notice served under this Section 14.01 shall be deemed to be withdrawn automatically.



Section 14.02 Termination on Default

Upon the occurrence of an Event of Default or at any time thereafter while such Event of Default subsists (subject to any applicable grace period), the non-defaulting Party may terminate this Agreement [**] days after the giving of written notice to the defaulting Party of its intention so to terminate.

Section 14.03 Non-Default Termination

Either Party may terminate this Agreement on or at any time after the occurrence of any of the following events:

- (a) either Party's obligations under this Agreement being suspended by reason of (i) an event of Force Majeure (other than Physical Force Majeure) continuing for more than [**] consecutive days or for more than [**] days in any Year or (ii) an event of Physical Force Majeure continuing for a period in excess of [**] days in any Year; or
- (b) a change in law that renders the Agreement illegal or unenforceable or results in a Party becoming unable to perform its obligations under this Agreement (except to the extent that the Parties agree to amend this Agreement pursuant to Section 15.09).

Section 14.04 Automatic Termination

This Agreement shall terminate automatically on the Expiry Date.

ARTICLE XV

Miscellaneous Provisions

Section 15.01 Amendments to the Agreement

Except as otherwise provided herein, this Agreement may not be amended except by a written agreement executed by Buyer and the Project Entity.

Section 15.02 Confidentiality

The Parties shall treat the terms of this Agreement and all information provided under or in connection with it (collectively, "**Confidential Information**") as confidential and may not either disclose Confidential Information or use it other than for *bona fide* purposes connected with the Agreement without the prior written consent of the other Party, except that consent is not required for disclosure to:

- (a) directors or employees of a Party, as long as they in turn are required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Section 15.02;
- (b) persons professionally engaged by a Party, as long as they (i) are subject to statutory professional secrecy rules or similar legal concepts under applicable law, or (ii) in turn are required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Section 15.02;



- (c) the extent legally required by any government, agency or regulatory authority having jurisdiction over that Party;
- (d) any bank, other financial institution or rating agency to the extent required in relation to the financing of a Party's business activities, as long as the bank or other financial institution or rating agency, as the case may be, is required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Section 15.02 [and then only subject to prior [consultation with][notification to] the other Party];
- (e) the extent required by any applicable laws, judicial process or the rules and regulations of any regulated market or recognised stock exchange [and then only subject to prior [consultation with][notification to] the other Party];
- (f) any intended assignee of the rights and interests of a Party under this Agreement or to a person intending to acquire an interest in a Party or that Party's holding company as long as the intended assignee or acquirer in turn is required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Section 15.02;
- (g) the extent that the Confidential Information is in or lawfully comes into the public domain other than by breach of this Section 15.02; or
- (h) price reporting agencies for the calculation of an index as long as the identity of the other party is not revealed. It must also be a precondition of the disclosure agreement between a Party and the price reporting agency that only the price is released by the price reporting agency and not the identity of either Party.

Section 15.03 Notices

- (a) Any notice, communication, statement, request or correspondence required or permitted under the terms of this Agreement shall be in writing, in the English language (it being understood that any such communication in a language other than English shall be of no force and effect), and shall be delivered personally, or via courier, mail, or facsimile to the address and telecopier numbers provided below.

For the Project Entity:

[**]

For the Buyer:

[**]

- (b) Any notice, communication, statement, request or correspondence made or delivered by a Party to the other Party hereunder will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) If by way of letter, when it has been delivered at the relevant address or [**] days after being deposited in the post postage prepaid in an envelope addressed to such other Party at that address.

Section 15.04 Evidence of Authority

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

MARKET SOLUTIONS FOR GLOBAL ENVIRONMENTAL PROBLEMS



Section 15.05 *Assignment*

- (a) The Project Entity may not assign or transfer its rights or obligations under this Agreement to any party without the prior written consent of the Buyer, such consent not to be unreasonably withheld, except that the Project Entity may assign its right to receive payments from the Buyer for Contract CERs and Option CERs to a Third Party. Any other such purported assignment or transfer without such consent shall be deemed ineffective and void.
- (b) The Buyer may assign all or a part of its rights (including, but not limited to, the right to receive CERs, the option to purchase [Additional][Excess] ERs) under this Agreement at any time to any one or more parties.

Section 15.06 *Survival of Provisions*

The respective rights and obligations of the Parties contained within Sections 12.03, 15.02, 15.03, 15.06, 15.10, 15.11 and 15.12 will survive any termination under this Agreement.

Section 15.07 *Execution in counterparts; Language*

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

Section 15.08 *Entire Agreement*

This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any representations previously given or made with respect to its subject matter other than those given or made in the Agreement, but nothing in this section 15.08 limits or excludes any liability for fraud in relation to those representations.

Section 15.09 *Severability*

If any provision or part of a provision of this Agreement is found by a court, arbitrator or other authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision is to be deemed deleted from this Agreement and the remaining provisions to continue in full force and effect. The Parties shall in this event seek to agree upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void and unenforceable.

Section 15.10 *Applicable Law*

This Agreement is governed by and to be construed in accordance with [**] law.

Section 15.11 *Arbitration*

The Parties agree that any difference or dispute arising under, out of or in connection with this Agreement that the Parties are unable to settle between themselves is to be resolved by arbitration in accordance with the rules for arbitration of disputes relating to natural resources and/or the environment of the Permanent Court of Arbitration, the number of arbitrators shall be three (3) and the place of arbitration shall be [**] . The language of arbitration is English. The appointing authority is the Secretary-General of the Permanent Court of Arbitration.

Section 15.12 *Waiver of Sovereign Immunity*

Each Party hereby irrevocably agrees that, to the extent it or any of its assets or property has or hereafter may acquire any right of immunity as against the other Party or any other Person from any legal proceedings to enforce or collect upon this Agreement or related to any of its other liabilities or

MARKET SOLUTIONS FOR GLOBAL ENVIRONMENTAL PROBLEMS



obligations in connection with this Agreement or the Project, it hereby expressly and irrevocably waives and agrees not to assert any such immunity.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

[**]

By:
Title:

[**]

By:
Title:



SCHEDULE 1

DESCRIPTION OF THE PROJECT



SCHEDULE 2

MINIMUM AMOUNT AND CONTRACT CERs

Year	Period	Minimum Amount of GHG Reductions to be generated by Project and forwarded to the Buyer as Contract CERs
1	Commissioning Date – [*]	
2		
3		
4		
5		
6		
7		
8		



SCHEDULE 3
MONITORING PLAN



SCHEDULE 4

OPTION NOTICE

To: [Project Entity]
[Address Details]

[Additional][Excess] Emission Reductions Option

In accordance with the Option to acquire [Additional][Excess] ERs under the Emission Reductions Purchase Agreement dated [**] (the "Agreement") between:

[Project Entity] ("Project Entity")

and

(the "Buyer")

The Buyer hereby exercises its Option to acquire [Additional][Excess] ERs from the Project Entity on the same terms and conditions as set out in the Agreement. The Buyer proposes the prevailing market price to be [EUR][US\$] [**] per CER.

Place:

Dated:

[**]

By:

Title:



SCHEDULE 5 Example Letter of Approval Host Country

Letter head of Designated National Authority

To: the Operational Entity

Undersigned, as a legal and authorized representative of the Designated National Authority ("National Authority") of the [**] ("Host Country"),

[Preambles, references, political statements.]

referring to: proposal number. <number of proposal indicated by Project Entity>, named <name proposal>, hereafter to be referred to as 'the CDM project', located location> <any other information needed to identify the project> by [**], hereafter to be referred to as 'Project Entity', dated <date proposal>, declares that:

1. Host Country is a Party to the Kyoto Protocol.
2. National Authority recognises the CDM project to be a Clean Development Mechanism project in accordance with article 12 of the Kyoto Protocol.
3. National Authority confirms that the CDM project contributes towards realization of the country's sustainable development goals.
4. National Authority confirms that it is participating in the CDM project voluntarily.
5. National Authority authorizes the Project Entity to participate in the CDM project.
6. National Authority irrevocably accepts the issue of all CERs generated through the CDM project to the Project Entity or its designee during the [**] year crediting period of the CDM project, subject to the deduction corresponding to the share of proceeds to cover administrative expenses and to assist in meeting cost of adaptation as meant in article 12 paragraph 8 of the Kyoto Protocol. For the avoidance of doubt, this acceptance is deemed to be the request to the CDM registry administrator meant in paragraph 6 sub (c) of Appendix D to Decision 17/CP.7 of the Marrakesh Accords.
7. National Authority authorizes the Project Entity to communicate with the CDM executive board on its behalf on the allocation of CERs as provided for in this Letter of Approval.
8. In case the Kyoto Protocol will not enter into force or for as long as the Kyoto Protocol has not entered into force, Host Country agrees that the Project Entity is entitled to, and authorized to sell and transfer, any rights, title and interest in respect of greenhouse gas emission reductions generated by the CDM project.

Drafted <date>, <city, country>

Signed

For the Host Country:

Full Name Country:

Name: