

## ANNEX O – THE GOLD STANDARD CDM EMISSION REDUCTIONS ACQUISITION AGREEMENT (ERAA)

This Gold Standard Emission Reductions Acquisition Agreement is entered into on **[INSERT DATE]** between **[INSERT PROJECT PARTICIPANT]**,<sup>1</sup> a **[INSERT]** company incorporated under the laws of **[INSERT]**, located at **[INSERT ADDRESS]** (the "Project Participant") and The Gold Standard Foundation, a nonprofit organization established under the laws of Switzerland, located at 79 Avenue Louis Casai, CH-1216, Geneva Cointrin, Switzerland (the "Gold Standard").

### RECITALS

**WHEREAS**, the Project Participant intends to implement the Project as a CDM project;

**WHEREAS**, the Project Participant wishes to have the Project Registered as a Gold Standard CDM project and, for the period prior to Registration, as a Gold Standard VER project, in accordance with the Gold Standard Rules;

**WHEREAS**, Registration as a Gold Standard VER project is subject to, among other things, acquisition by the Gold Standard of Project CERs that will be Issued in respect of GHG Reductions generated by the Project in an amount equal to the Project GS VERs (the "Contract CERs");

**WHEREAS**, the Gold Standard wishes to acquire the Contract CERs in order to retire them; and

**WHEREAS**, the Project Participant and the Gold Standard wish to agree on the acquisition by the Gold Standard of the Contract CERs upon the terms and conditions of this Agreement.

**In consideration for the promises made herein, the Parties hereby agree as follows:**

### **1 DEFINITIONS; INTERPRETATION; HEADINGS; SCHEDULES**

#### **1.1 Definitions**

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

"Affiliate" means, in relation to a Party, any other person or entity directly or indirectly controlling, controlled by or under common control with, such Party. The terms "controlling", "controlled by" and "under common control with" when used with respect to any entity mean possession, direct or indirect, of the power to direct or cause the direction of the management policies of such entity, whether through ownership of voting securities, by contract or board representation or otherwise, and cognate expressions shall be construed accordingly.

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<sup>1</sup> To be signed by project participant who has obtained a Letter of Agreement from the Host Country. It will be the responsibility of the entity submitting the project for GS VERs to have the project participant execute this Agreement.

"Agreement" means this Gold Standard CDM Emission Reductions Acquisition Agreement, as may be amended from time to time.

"Applicable Rules" means:

(a) the Kyoto Rules;

(b) the Gold Standard Rules; and

(c) any other domestic or international laws, regulations, rules and standards applicable to the relevant Party and/or to the Project including, without limitation, administrative, environmental and zoning laws, in each case as may be amended from time to time.

"Annex I" means Annex I to the UNFCCC, as may be amended from time to time, being a list of countries that have committed themselves to a quantitative GHG emissions reduction target pursuant to the Kyoto Rules.

"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 Kyoto Rules.

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

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are open for general business in the jurisdiction of the Gold Standard and the Project Participant.

"Carbon Dioxide Equivalent" or "CO<sub>2</sub>e" means the base reference for the measurement of Global Warming Potential of Greenhouse Gases in units of Carbon Dioxide Equivalent whereby one unit equals one metric tonne of carbon dioxide emissions (or its equivalent as provided for under the Kyoto Rules).

"CDM Registry" means the registry established by the Executive Board in accordance with Decision 3/CMP.1.

"Certify", "Certification" and "Certified" each means the written assurance by the DOE that during a Verification Period, the Project has achieved the GHG Reductions as reported in such 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 and the requirements thereunder, as well as the relevant provisions in the Annex to Decision 13/CMP.1, and is equal to one metric Tonne CO<sub>2</sub> Equivalent.

# Gold Standard

"Clean Development Mechanism" or "CDM" means the initiative under Article 12 of the Kyoto Protocol whereby certain parties included in Annex I may use CERs accruing from projects qualifying as CDM projects under the terms of such Article 12.

"Completion Date" means the date that falls six months after the date of this Agreement unless another date has been agreed in writing between the Parties.

"Conditions Precedent" has the meaning ascribed thereto in Section 2.1.

"Consents" means any consent, authorization, registration, filing, license, permit, approval, agreement, authority or exemption from, by or with a competent authority.

"Contract CERs" has the meaning ascribed thereto in the recitals.

"COP" means the Conference of the Parties to the UNFCCC.

"COP/MOP" means the Conference of the Parties to the UNFCCC serving as the Meeting of the Parties to the Kyoto Protocol and "CMP" refers to decisions taken by COP/MOP.

"Crediting Period" means the multi-year period for which GHG Reductions are Verified and Certified in accordance with the Applicable Rules.

"Declaration of Approval" means the letter or other document issued by the relevant national approving authority of the country in whose registry the Delivery Account is established, such letter or other document approving, inter alia, the Project for the purposes of Article 12 of the Kyoto Protocol and authorizing the Gold Standard to be a Project Participant with respect to the Project.

"Delivery" means the delivery of CERs or VERs, as the case may be, as set out in Section 5.1 and "Delivered" and cognate expressions shall be construed accordingly.

"Delivery Account" means the account of the Gold Standard in the National Registry of Switzerland with account number **[INSERT]**.

"Delivery Date" means each of the dates set out in the Delivery Schedule by which Delivery of the relevant tranche of Contract CERs needs to be made.

"Delivery Schedule" means the schedule for Delivery attached hereto as Schedule 2.

"Designated National Authority" or "DNA" means the designated national authority as to be established pursuant to Decision 3/CMP.1.

"Designated Operational Entity" or "DOE" means any 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.

"Event of Default" has the meaning ascribed thereto in Section 11.1.

# Gold Standard

"Executive Board" means the executive board of the Clean Development Mechanism that is established pursuant to the Kyoto Rules.

"Focal Point" means the entity nominated from time to time to the Executive Board as the entity responsible for the sole and exclusive communication with the Executive Board, UNFCCC Secretariat and the CDM Registry administrator with respect to the Project under the modalities of communication submitted to the Executive Board in accordance with the Kyoto Rules.

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

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

"Global Warming Potential" means the global warming potentials used to calculate the Carbon Dioxide Equivalent of Greenhouse Gases, as described in Decision 2/CMP.3, as from time to time revised in accordance with Article 5 of the Kyoto Protocol.

"Gold Standard Rules" means the rules applicable from time to time for obtaining Gold Standard certification, including the Gold Standard Requirements and the Gold Standard Toolkit, as published by the Gold Standard (<http://www.cdmgoldstandard.org>).

"Greenhouse Gases" or "GHGs" means the six gases listed in Annex A to the Kyoto Protocol, being: Carbon dioxide (CO<sub>2</sub>), Methane (CH<sub>4</sub>), Nitrous oxide (N<sub>2</sub>O), Hydrofluorocarbons (HFCs), Perfluorocarbons (PFCs) and Sulphur hexafluoride (SF<sub>6</sub>).

"GS CERs" means CERs certified by the Gold Standard with the Gold Standard label in accordance with the Gold Standard Rules.

"GS VERs" means a unit resulting from the certification by the Gold Standard of a voluntary offset project in accordance with the Gold Standard Rules.

"GS VER Delivery Account" means the account of the Gold Standard in the Gold Standard registry with account number **[INSERT]**.

"Host Country" means the country in which the Project is, or is to be, located and which has authorised, or will authorise, the Project Participant to participate in the Project being **[INSERT]**.

"Independent Brokers" means any commonly recognized broker of CERs that is not related to either the Project Participant or the Gold Standard, is a leading and reputable broker of CERs and is a publicly recognized market leader for the trading of CERs.

# Gold Standard

"Issuance" 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, and "Issue" shall be construed accordingly.

"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.

"Kyoto Rules" means the UNFCCC, the Kyoto Protocol and any relevant decisions, guidelines, modalities and procedures made pursuant to them and of successor international agreements as amended from time to time.

"Letter of Approval" means the letter issued by the Host Country stating, inter alia, that the Host Country recognizes the Project for the purposes of Article 12 of the Kyoto Protocol and authorizes the Project Participant to participate in the Project.

"Market Price" means the weighted average over ten (10) Business Days following the occurrence of the relevant Event of Default of three quotations, obtained from three Independent Brokers selected by the Gold Standard at its sole discretion, for the determination of the market price of GS CERs.

"Monitoring" means activities of collecting and recording data in accordance with any relevant standards or conditions provided for under the Kyoto 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 to be included in the PDD pursuant to paragraph 53 of Decision 3/CMP.1.

"National Registry" means a registry established by an Annex B Country pursuant to Decision 13/CMP.1 for the accurate accounting of the issuance, holding, transfer, acquisition, cancellation and retirement of CERs (amongst other types of emission credits).

"Parties" means the Project Participant and the Gold Standard, and each of them shall be individually referred to as a "Party".

"Pre-Registration Verification Period" means the period, not exceeding two years, starting on the first day of the crediting period of the Project as a Gold Standard VER project in accordance with the Gold Standard Rules and ending on the date of Registration, or, if later, the start of the first day of the Crediting Period.

"Project" means the activity seeking Gold Standard Registration.

"Project CERs" means any CERs issued in respect of GHG Reductions generated by the Project.

"Project Costs" has the meaning ascribed thereto in Section 6.1.

"Project Design Document" or "PDD" means the project design document or business plan in relation to, or description of, the Project to be submitted for Validation in accordance with the Kyoto Rules.

# Gold Standard

"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, the Gold Standard Passport (as defined in the Gold Standard Rules) and the Letter of Approval.

"Project GS VERs" means any VERs issued by the Gold Standard in accordance with the Gold Standard Rules in respect of GHG Reductions generated by the Project during the Pre-Registration Verification Period.

"Registration" or "Registered" means the formal acceptance by the Executive Board of the Project as a CDM project in accordance with the Kyoto Rules.

"Share of Proceeds" means any CERs deducted or other fees charged by the CDM Registry administrator in accordance with the Kyoto Rules to cover administrative expenses and to assist in meeting costs of adaptation in accordance with the use of the term in the modalities and procedures for the Clean Development Mechanism as set out in Decision 3/CMP.1.

"Shortfall Units" has the meaning ascribed thereto in Section 4.1.

"Taxes" means all national, state, regional, provincial, local, foreign and other net income, gross income, gross receipts, use, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupational, premium, property, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, including VAT, 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.

"Terms and Conditions" means the terms and conditions of the Gold Standard that apply between the Gold Standard and the Project Participant.

"Tonnes CO2 Equivalent" means metric tonnes of the base reference for the measurement of Global Warming Potential of Greenhouse Gases, in tonnes of Carbon Dioxide Equivalent, where one unit equals one metric tonne of carbon dioxide emissions and "Tonne CO2 Equivalent" and "tCO2e" shall be construed accordingly.

"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.

"Validate", "Validation" and "Validated" each means the process of independent evaluation of the Project by a Designated Operational Entity against the requirements of the CDM in accordance with the Kyoto Rules.

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

"VAT" means within the European Union such tax as may be levied in accordance with (but subject to derogations from) the Directive 2006/112/EC and outside the European Union any tax levied by reference to added value, sales and/or consumption.

"Verification" and "Verified" each means the periodic independent review and ex post determination by a Designated Operational Entity of GHG Reductions monitored in accordance with the Monitoring Plan that have occurred during the relevant Verification Period as a result of the Project being carried out as a CDM project in accordance with the Kyoto Rules.

"Verification Period" means a period of **[INSERT]**<sup>2</sup> months during the Crediting Period in respect of which Verification is performed, provided that the last Verification Period may be shorter to reflect the end of (i) the Crediting Period, or (ii) the period during which Project CERs can be generated.

"Verification Report" means a written report prepared by the Designated Operational Entity of the Verification which independently assesses the amount of GHG Reductions generated by the Project during a Verification Period.

"Year" means a calendar year, provided that the first Year shall commence on the date of this Agreement and end on the first following December 31.

## 1.2 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 amended, from time to time;
- (ii) to the singular includes the plural and vice versa, and to a gender includes all genders;
- (iii) to an Article, Section or Schedule is to an Article, Section or Schedule of this Agreement (unless specified otherwise); and
- (iv) to any Kyoto 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 Kyoto Rules.

(c) The Schedule to this Agreement is 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.

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<sup>2</sup> The duration of the Verification Period should reflect the agreement between project developer and buyer of the CERs.

## 2 CONDITIONS PRECEDENT

### 2.1 Conditions Precedent

The provisions of this Agreement other than Articles 1, 2, 3, 10, 11, 12, 13 and 14 are conditional upon each of the following (the "Conditions Precedent") occurring:

- (a) the Project having been Registered;
- (b) the Project having been duly registered with the Gold Standard in accordance with the Gold Standard Rules; and
- (c) the Gold Standard having been reimbursed for any cost and expenses in connection with this Agreement, as further set out in Section 6.1.

### 2.2 Date for fulfilling conditions

Subject to Section 2.3, unless all conditions set forth in Section 2.1 have been satisfied prior to the Completion Date, this Agreement, other than Articles 1, 2, 3, 6, 7, 10, 11, 12, 13 and 14, shall not become binding and enforceable.

### 2.3 Right to postpone

It shall be at the Gold Standard's sole discretion to set a new date for fulfilling the Conditions Precedent if prior to the Completion Date the Conditions Precedent shall not have been satisfied, or as soon as it is reasonably foreseeable that such Conditions Precedent will not have been met by that date.

## 3 PROJECT

### 3.1 Project Operation and Management

- (a) The Project Participant shall implement the Project as a CDM project activity and carry out the Project in accordance with the Monitoring Plan, the Applicable Rules and the provisions of this Agreement.
- (b) The Project Participant shall satisfy any obligations under, or in respect of, applications for all Consents required by the Applicable Rules to implement, operate and maintain the Project.
- (c) The Project Participant shall ensure that Verification will at all times be performed by a duly accredited DOE.

## 4 ACQUISITION OF CERTIFIED EMISSION REDUCTIONS

### 4.1 Acquisition

(a) In consideration of the Gold Standard allowing the Project to be registered as a Gold Standard VER project with a crediting period commencing prior to Registration, the Project Participant agrees to Deliver to the Gold Standard and the Gold Standard agrees to acquire all Contract CERs.

(b) If in respect of any Verification Period the number of Contract CERs Delivered is less than the number set out for such Verification Period in the Delivery Schedule, the Project Participant shall at the first request of the Gold Standard Deliver to the Gold Standard such amount of GS CERs or, at the sole discretion of the Gold Standard taking into consideration the fundamental principles of the Gold Standard certification scheme, GS VERs (the "Shortfall Units") to ensure that the aggregate amount of GS CERs and/or GS VERs, as the case may be, received by the Gold Standard in respect of the relevant Verification Period shall equal the amount set out in the Delivery Schedule.

## **5 DELIVERY; DELIVERY DATE**

### **5.1 Delivery**

(a) Delivery of Contract CERs takes place upon the CDM Registry administrator forwarding such CERs to, and the receipt of such CERs by the Gold Standard in, the Delivery Account in accordance with the Kyoto Rules.

(b) Delivery of Shortfall Units takes place, in case of (I) CERs upon (i) the CDM Registry administrator forwarding such CERs to, and the receipt of such CERs by the Gold Standard in, the Delivery Account in accordance with the Kyoto Rules, or (ii) the transfer of such CERs by the Project Participant to the Delivery Account in accordance with the Kyoto Rules, and (II) GS VERs upon the transfer of such VERs by the Project Participant to the VER Delivery Account in accordance with the Gold Standard Rules.

### **5.2 Delivery Date**

(a) The Project Participant shall procure Delivery of all Contract CERs immediately upon their Issuance in accordance with the Delivery Schedule.

(b) Delivery of any Shortfall Units shall be made by the Project Participant not later than twelve (12) weeks after the Gold Standard has requested the Project Participant to make such Delivery.

## **6 COSTS**

### **6.1 Costs**

(a) All costs in connection with the Project and, except as set out in paragraph (b) below, this Agreement, including any development and maintenance cost, any costs and expenses regarding the preparation of the Project Documents, Validation, Registration, Verification,

Certification and Issuance of CERs, any costs in connection with the preparation, negotiation and execution of this Agreement, including such costs incurred by the Gold Standard, the obtaining by the Gold Standard of the Declaration of Approval, including fees and expenses payable to the DOE, the UNFCCC secretariat, the Host Country and the Executive Board, including, any Share of Proceeds, (the "Project Costs") shall be for the account of the Project Participant.

(b) Any costs and expenses regarding the creation and maintenance of Delivery Account and the GS VER Delivery Account are for the account of the Gold Standard.

## **6.2 Taxes**

Any Taxes that may be payable with regard to the Project, the Project Costs and the acquisition by the Gold Standard of CERs or Shortfall Units, as the case may be, pursuant to this Agreement, shall be borne by the Project Participant.

## **7 UNDERTAKINGS**

### **7.1 The Project Participant's covenants**

The Project Participant shall:

- (a) not sell, transfer, assign, license, dispose of, grant, or otherwise create any interest in all or in part of the Contract CERs;
- (b) ensure that it shall at all times have all Consents in full force and effect necessary to perform its obligations under this Agreement and for the conduct of its business and the construction, maintenance and operation of the Project;
- (c) comply with all Applicable Rules and shall ensure that the Project is carried out in accordance with the Project Design Document and with all necessary due diligence and efficiency and in conformity with all Applicable Rules, practices and regulations;
- (d) do everything reasonably necessary to ensure the creation and transfer of any or all of the Project Participant's rights, interests and entitlements in the Contract CERs to the Gold Standard; and
- (e) ensure that the Gold Standard is informed promptly of any events or circumstances which may impact on the ability of the Project Participant to perform any of its obligations under this Agreement, including any issues relating to the Issuance of CERs and the forwarding of the Contract CERs to the Delivery Account.

## **8 VERIFICATION AND CERTIFICATION**

### **8.1 Verification and Certification**

(a) The Project Participant shall ensure that all GHG Reductions generated by the Project during the entire Crediting Period shall be subject to Monitoring, Verification and Certification. The Project Participant shall have CERs issued in respect of all GHG Reductions generated by the Project during the entire Crediting Period.

(b) The Project Participant shall no later than thirty (30) days prior to the anticipated date of Delivery, provide the Gold Standard with the relevant Verification Report and give the Gold Standard written notice of such anticipated date of Delivery.

## 9 PROJECT PARTICIPANT; GENERAL COMMUNICATION

### 9.1 Project Participant

The Project Participant shall procure that the Gold Standard shall become a Project Participant with respect to the Project, solely to allow the Gold Standard to receive Project CERs as contemplated in this Agreement. The Gold Standard shall not be involved in the Project in any way, other than in its capacity as certifier of the gold standard certification. Similarly, if the Gold Standard has requested Delivery of Shortfall Units and Delivery is to be made in accordance with paragraph 5.1(b)(l)(i), the Project Participant shall procure that the Gold Standard shall become a Project Participant with respect to the relevant project, solely to allow the Gold Standard to receive CERs in respect of such project. The Gold Standard shall not be involved in such project in any way, other than in its capacity as certifier of the gold standard certification.

### 9.2 General Communication

The Parties agree that the Project Participant shall serve as the Focal Point. Nevertheless, all communications to the Executive Board shall be copied to the Gold Standard. Any Executive Board communications sent or received by the Project Participant concerning the Project shall be promptly forwarded by the Project Participant to the Gold Standard.

## 10 REPRESENTATIONS AND WARRANTIES

### 10.1 Project Participant Representations

The Project Participant represents and warrants to the Gold Standard in each of the following terms as at the date of this Agreement, the date all Conditions Precedent shall have been fulfilled or waived and as at the date a Delivery: (a) The Project Participant is duly organized and validly existing under the laws of **[INSERT]** and is qualified to conduct its business as currently conducted, which includes the operation of the Project.

(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 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 which have not been obtained.

(c) All Consents necessary for:

(i) the Project Participant to perform its obligations under this Agreement; and

(ii) the conduct of the business of the Project Participant and the construction, maintenance and operation of the Project, have been obtained and are in full force and effect.

(d) This Agreement has been duly executed by the Project Participant and constitutes legal, valid and binding obligations of the Project Participant enforceable in accordance with its terms.

(e) There are no bankruptcy proceedings pending or being contemplated by the Project Participant or, to its knowledge, threatened against the Project Participant.

(f) There are no claims, actions, proceedings or investigations pending or, to the Project Participant's knowledge, threatened against or relating to the Project Participant before any competent authority that may adversely affect its ability to perform this Agreement.

(g) The Project Participant is not subject to any judgment, rule, order, statement of claim, injunction or decree of competent authority that adversely affects its ability to perform this Agreement.

(h) This Agreement, the execution and delivery of this Agreement and the fulfilment and compliance with the terms of this Agreement by the Project Participant will not conflict with, or require the consent of any person under, any loan or security agreement, or other agreement to which the Project Participant is a party, which have not been obtained.

(i) The Project Participant is entitled to Deliver the Contract CERs and, if applicable, Shortfall Units as provided for in this Agreement.

(j) The Project Participant Delivers the Contract CERs and, if applicable, Shortfall Units free and clear of any encumbrances, charges, loans, mortgage or defects in title.

## **10.2 Acknowledgment and Warranty**

The Project Participant acknowledges that it has made the representations and warranties contained in Section 10.1 with the intention of inducing the Gold Standard to enter into this Agreement and that the Gold Standard has entered into this Agreement on the basis of, and in full reliance on, each of such representations and warranties. The Project Participant warrants that it has no knowledge of any additional facts or matters the omission of which makes any of such representations and warranties misleading or which would or might reasonably be expected to affect the judgment of a prospective purchaser of CERs from the Project Participant.

## **11 EVENTS OF DEFAULT; REMEDIES**

### **11.1 Events of Default**

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:

(a) the Party fails to pay when due any amount payable by it under this Agreement and such failure is not remedied within five (5) Business Days after written notice of such failure is given to such Party;

(b) the Party fails to comply in any material respect with, or to perform in any material respect any of its obligations under, this Agreement other than the events that are specifically and expressly covered

elsewhere in this Section 11.1 and (if it is capable of remedy) such failure is not remedied to the reasonable satisfaction of the other Party in respect of whom the obligations are to be performed within ten (10) Business Days after written notice of such failure is given to the Party by such other Party; 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);

## **11.2 Remedies**

(a) If an Event of Default has occurred and is continuing, and has not been caused by Force Majeure, the defaulting Party shall compensate the non-defaulting Party for any loss and/or damage incurred as a result of such Event of Default. If an Event of Default in respect of a non-delivery of Contract CERs or Shortfall Units, as the case may be, has occurred and is continuing, and has not been caused by Force Majeure, (a "Delivery Default") the Project

Participant shall compensate the Gold Standard for any loss incurred as a result of such default which loss shall be deemed to be equal (i) to the Market Price multiplied by number of GS CERs not Delivered as a result of such Event of Default in accordance with the terms of this Agreement, and (ii) any expenses incurred by the Gold Standard, including legal fees and the fees for the Independent Brokers, as a result of the Delivery Default.

(b) The amounts set out in paragraph (a) are the Parties' reasonable pre-estimate of the losses that would result from a Delivery Default, and each Party waives the right to contest those payments as an unreasonable penalty or otherwise.

(c) In addition to the remedies described in this Section 11.2 and the right to terminate described in Article 12, the non-defaulting Party shall be entitled to exercise any remedies available under applicable law and/or the Terms and Conditions for damages or otherwise howsoever.

## **12 TERMINATION**

### **12.1 Termination on Default**

Upon the occurrence of an Event of Default or at any time thereafter while such Event of Default is continuing (subject to any applicable grace period), the non-defaulting Party may terminate this Agreement upon written notice to the defaulting Party of its intention so to terminate observing a notice period of thirty (30) days.

### **12.2 Non-Default Termination**

(a) The Gold Standard may terminate this Agreement by giving notice to the Project Participant to that effect if Registration shall not have occurred ultimately by the Completion Date, as may be extended pursuant to Section 2.3.

(b) Each Party may terminate this Agreement on or at any time after the occurrence of a change in law, including the Kyoto Rules, 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 14.9). For the avoidance of doubt, this Agreement shall remain valid even if the Project would no longer be registered as a Gold Standard project in accordance with the Gold Standard Rules.

(c) the Any Party may terminate this Agreement by giving notice to the other Party upon the occurrence of an event of Force Majeure which continues for more than 180 days.

## **12.3 Consequence of Termination**

Termination of this Agreement will not have retroactive effect, so that obligations duly performed prior to the termination and any compensation due in respect thereof shall not be affected by such termination.

## **13 INDEMNITY**

### **13.1 Indemnity**

The Project Participant assumes full liability for, and agrees to and shall indemnify and hold harmless the Gold Standard and its officers, directors, employees, agents and servants (each: an "Indemnified Person") against and from, any and all liabilities, obligations, losses, damages (compensatory, punitive or otherwise), penalties, claims, actions, Taxes, duties, suits, costs and expenses (including, without limitation, reasonable legal counsel's fees and expenses and costs of investigation) of whatsoever kind and nature, including, without prejudice to the generality of the foregoing, those arising in contract or tort (including negligence) by statute, in law and/or in equity, by strict liability or otherwise, which are imposed on, incurred by or asserted against an Indemnified Person (whether or not also

indemnified by any other person under any other document) and which in any way relate to or arise out of, whether directly or indirectly:

- (a) any of the transactions contemplated by this Agreement or the execution, delivery or performance thereof;
- (b) the operation or maintenance of the Project;
- (c) any losses or expenses arising out of any third party demand, claim or action (including any claim alleging infringement of third party rights) or any misrepresentation, negligence, fraud, willful misconduct or breach of statutory duty of or by the Project Participant or its employees, agents or contractors; or
- (d) the exercise by the Gold Standard of any of its rights and remedies under this Agreement, provided that no Indemnified Person shall have any right to be indemnified hereunder for its own gross negligence or willful misconduct.

## 14 MISCELLANEOUS PROVISIONS

### 14.1 Amendments to the Agreement

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

### 14.2 Non-Confidentiality

The Parties acknowledge and agree that the terms of this Agreement shall not be confidential and may be made public by the Gold Standard on its website or through other means.

### 14.3 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, any document to be provided hereunder in a language other than English, shall be accompanied by an English translation), and shall be delivered personally, or via courier, registered mail, or facsimile to the address and telecopier numbers provided below.

For the Project Participant:

**[INSERT]**

For the Gold Standard:

**[INSERT]**

(b) Any notice, communication, statement, request or correspondence made or delivered by a Party to another 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.

(c) Any communication may be made by electronic mail or other electronic means, if:

(i) the relevant Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

(ii) the relevant Parties notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

(iii) the relevant Parties notify each other of any change to their address or any other such information supplied by them.

(d) Any electronic communication will be effective only when actually received in readable form.

## **14.4 Evidence of Authority**

Each Party shall furnish to the other Party sufficient evidence of the authority of the person or persons who will, on its behalf, take any action or 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.

## **14.5 Assignment**

Neither Party may assign or transfer its rights or obligations under this Agreement to any third party without the prior written consent of the other Party.

## **14.6 Survival of Provisions**

The respective rights and obligations of the Parties contained within Article 13 and Sections 14.1, 14.2, 14.3, 14.6, 14.7, 14.8, 14.9, 14.11 and 14.12 will survive any termination of this Agreement.

## **14.7 Language; Execution in counterparts**

This Agreement shall be executed in an English language version. This Agreement may be executed in counterparts.

## **14.8 Entire Agreement**

Without prejudice to any other agreement between Project Participant and GS, this Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter.

## **14.9 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.

## **14.10 Change in Law**

A "Material Change in Law" means a change in law relevant to this Agreement (including, without limitation, a change in, or discontinuance of the UNFCCC or the Kyoto Protocol, or any permit, consent, approval, registration, or revocation thereof, applicable to a Party) that (i) renders this Agreement illegal or unenforceable; or (ii) results in either the Gold Standard or Project Participant becoming unable to legally perform any of its material obligations under this Agreement, or (iii) causes the UNFCCC or Kyoto Protocol to reject the CERs created in relation to the GHG reductions generated by the Project as capable for use and transfer in the UNFCCC / Kyoto Protocol system. If either the Gold Standard or Project Participant believes a Material Change in Law has occurred, or both Parties agree that such is imminent, it shall as soon as reasonably practicable after becoming aware of same, notify

the other Party. The Parties shall then discuss in good faith how to mitigate the effects of the Material Change in Law such that the Gold Standard and Project Participant may continue with the transaction under this Agreement, always tasking into consideration the principles of the Gold Standard certification scheme. Any such discussion shall in no way prejudice, terminate or otherwise affect any rights or remedies which the Gold Standard may have pursuant to this Agreement.

## 14.11 Applicable Law

This Agreement is governed by and to be construed in accordance with the laws of Switzerland.

## 14.12 Jurisdiction

Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity hereof, shall be settled first by the Parties through good faith negotiations. In case no amicable solution can be found within 10 (ten) days after the first notification of the conflict is received, either Party may choose to commence legal proceedings. The courts at the registered seat of the Gold Standard in Switzerland are exclusively competent for such proceedings.

**IN WITNESS WHEREOF**, The Parties hereto have caused this Agreement to be duly executed and delivered on the date first above written.

**[Project Participant]**

**The Gold Standard Foundation**

\_\_\_\_\_

\_\_\_\_\_

By:

By:

At:

At:

**SCHEDULE 1: DESCRIPTION OF THE PROJECT**

## SCHEDULE 2: DELIVERY SCHEDULE

This schedule is to be completed prior to signing and should set out:

- (1) a column with the Verification Periods during the Crediting Period;
- (2) a column with the anticipated numbers of CERs to be issued in respect of each Verification Period;
- (3) a column with the number of Contract CERs to be Delivered to the Gold Standard in respect of each Verification Period, taking into account the initial two years during which no CERs will have to be Delivered;<sup>3</sup> and
- (4) a column with Delivery Dates, i.e. the dates by which Delivery of the relevant CERs ultimately needs to be made.

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<sup>3</sup> This column should reflect a pro-rated delivery of CERs over the Verification Periods bearing in mind the 2-year grace period.