

Dated

2004

PROJECT AGREEMENT

**HER MAJESTY THE QUEEN IN RIGHT OF NEW
ZEALAND (the Crown)**

and

***[INSERT FULL LEGAL NAME OF THE
PARTICIPANT]*** (the Participant)

CONTENTS

1. DEFINITIONS AND CONSTRUCTION	4
2. OVERVIEW	8
3. TERM OF AGREEMENT	8
4. PARTICIPANT'S COMMITMENTS	8
5. CROWN'S COMMITMENTS	9
6. TAX	10
7. REPORTING AND VERIFICATION	11
8. ADDITIONAL REPORTING AND INFORMATION REQUIREMENTS	14
9. REIMBURSEMENT OF EMISSION UNITS	14
10. JOINT IMPLEMENTATION PROJECTS	16
11. INDEMNITY	17
12. PARTICIPANT'S WARRANTIES	17
13. CLIMATE CHANGE INITIATIVES	17
14. GREY MARKET	18
15. NO CONSEQUENTIAL LOSS	18
16. DISPUTE RESOLUTION	18
17. CONTINUED PERFORMANCE	19
18. TERMINATION	19
19. FORCE MAJEURE EVENTS	21
20. NOTICES	21
21. ASSIGNMENT	22
22. AMENDMENT AND VARIATION	23
23. GENERAL PROVISIONS	23
EXECUTED AS A DEED	24
SCHEDULE 1 – THE PROJECT	26
SCHEDULE 2 – MEASUREMENT OF EMISSION REDUCTIONS	27
SCHEDULE 3 – PROJECT MILESTONES	30
SCHEDULE 4 – CONTENTS OF ANNUAL REPORTS	31
SCHEDULE 5 – FORM OF THE AUDITOR'S CERTIFICATE	32

[Explanatory Note: This Project Agreement is the form of the agreement to be entered into between the Crown and successful tenderers, and contains standard terms and conditions that will apply to all Participants. The schedules to the agreement will contain the information specific to the individual Project, such as key milestones and contents of Annual Reports.]

PROJECT AGREEMENT

DATED

2004

PARTIES

- (1) Her Majesty the Queen in right of New Zealand (the "**Crown**") acting through the Minister of Finance and the Minister acting as the Convenor, Ministerial Group on Climate Change
- (2) *[Insert the full legal name of the Participant]* (the "**Participant**")

BACKGROUND

- A. New Zealand ratified the Protocol on 19 December 2002. The aim of the Protocol is to reduce the combined Greenhouse Gas emissions of industrialised countries by at least 5% compared to 1990 levels during the period 2008 to 2012.
- B. The Crown has developed a climate change policy framework for meeting New Zealand's Protocol obligation to reduce Greenhouse Gas emissions to 1990 levels during the period 2008 to 2012 or take responsibility for the excess. This framework identifies the role of the Projects to Reduce Emissions Mechanism.
- C. The Crown has determined that the Participant is eligible to participate in the Projects to Reduce Emissions Mechanism by entering into the Project.
- D. The Participant has agreed to undertake the Project, and the Crown has agreed to transfer Emission Units to the Participant, on the terms of this agreement.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND CONSTRUCTION

- 1.1 **Definitions:** In this agreement (including the background), unless the context requires otherwise:

"**AAU**" means "assigned amount unit" as defined in the Act.

"**Act**" means the Climate Change Response Act 2002.

"**Annual Report**" means a report to be produced by the Participant under clause 7.2(b).

"**Business Day**" means any day of the week (other than Saturday, Sunday and statutory holidays) on which registered banks are open for normal banking business in Wellington.

"**Buyer-Created Invoice**" means an invoice which complies with section 24(2) of the Goods and Services Tax Act 1985.

“Chief Executive” means the person holding the position of the chief executive of the Participant.

[Explanatory note: The use of the phrase “Chief Executive” may need to be replaced with a different title to match the Participant’s organisational structure.]

“Commitment Period” means the period from 1 January 2008 to 31 December 2012 (inclusive).

“Commitment Period Annual Report” means an Annual Report relating to a Year during the Commitment Period.

“Dispute” means any dispute, failure to agree or claim arising out of or in connection with this agreement, including any question regarding its existence, validity, interpretation, performance, breach or termination.

“Effective Date” means the date of this agreement.

“Emission Reductions” has the meaning given in clause 4.4.

“Emission Unit” means an AAU or ERU, as applicable.

“ERU” means “emission reduction unit” as defined in the Act.

“Expert” has the meaning given in clause 9.6(a)(i).

“Force Majeure Event” means:

- (a) any event or circumstance that is:
 - (i) an act of God, fire, earthquake, storm, flood or landslide;
 - (ii) a strike, lockout, work stoppage or other labour hindrance;
 - (iii) an explosion, failure of electricity supply from a third party’s transmission or distribution network, or nuclear accident;
 - (iv) a riot, civil disturbance, insurrection, sabotage, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not); or
 - (v) a requirement, restriction or decision of any judicial entity, any arbitral tribunal or any other dispute resolution entity or review body whatsoever, relating to either or both parties or to New Zealand, or
- (b) any event or circumstance beyond the reasonable control of the party claiming the benefit of clause 19 and which that party is unable to overcome by exercise of reasonable diligence and at a reasonable cost,

but does not include a lack of funds for any reason.

“Greenhouse Gases” means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydroflurocarbons (HFCs), perflurocarbons (PFCs) and sulphur hexafluoride (SF₆).

“GST” means goods and services tax as imposed or levied under the Goods and Services Tax Act 1985.

“Inventory” means New Zealand’s annual inventory of Greenhouse Gas emissions prepared in accordance with the Protocol (in particular Articles 5 and 7).

“Milestone” means a milestone (i.e. a significant event in implementation of the Project) set out in Schedule 3.

“Milestone Date” means each date by which the Participant is required to complete a Milestone, as set out in Schedule 3.

“Milestone Report” means a report to be produced by the Participant under clause 7.2(a).

“Nominated Person” has the meaning given in clause 5.3(a).

“Project” means the project set out in Schedule 1.

“Projects to Reduce Emissions Mechanism” means the policy mechanism under which Emission Units are provided by the Crown in return for Greenhouse Gas emission reductions resulting from projects.

“Protocol” means the Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997 as it may be amended from time to time.

“Registry” has the meaning given in the Act.

“Report” means an Annual Report or Milestone Report, as applicable.

“Secretary” means the Secretary for the Environment (or the person in the equivalent position in any organisation that replaces the Ministry for the Environment as being responsible for the administration of the Crown’s climate change policy) or his or her delegate.

“Tax Invoice” means an invoice that complies with section 24(3) of the Goods and Services Tax Act 1985.

“tCO₂-e” means tonnes of carbon dioxide or, for Greenhouse Gases other than carbon dioxide specified in Schedule 2 (if any), their equivalent in tonnes of carbon dioxide calculated in accordance with their respective global warming potential conversion rates specified in Schedule 2.

“Transfer Date” means 5 Business Days after the later of:

- (a) acceptance by the Crown of a Commitment Period Annual Report in accordance with clause 7.3; and
- (b) in the case of non-acceptance by the Crown, resolution of the Dispute (including resolution of the Emission Reductions achieved) in accordance with clause 16.

“Year” means a calendar year (i.e. 1 January to 31 December).

1.2 **Construction:** In the construction of this agreement, unless the context requires otherwise:

- (a) **Business Days:** anything required by this agreement to be done on a day which is not a Business Day may be done on the next Business Day;

- (b) **Clauses and Schedules:** a reference to a clause or a Schedule is to a clause or Schedule of this agreement, and a reference in a Schedule to a clause is a reference to a clause in that Schedule;
- (c) **Currency:** a reference to any monetary amount is to New Zealand currency;
- (d) **Defined terms:** words or phrases appearing in this agreement with capitalised initial letters are defined terms and have the meanings given to them in this agreement;
- (e) **Documents:** a reference to any document, including this agreement, includes a reference to that document as amended or replaced from time to time;
- (f) **Headings:** headings appear as a matter of convenience and do not affect the construction of this agreement;
- (g) **Negative obligations:** a reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done;
- (h) **No contra proferentem construction:** the rule of construction known as the contra proferentem rule does not apply to this agreement;
- (i) **Parties:** a reference to a party to this agreement or any other document includes that party's personal representatives, successors and permitted assigns;
- (j) **Person:** a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- (k) **Related terms:** where a word or expression is defined in this agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (l) **Schedules:** the Schedules form part of this agreement;
- (m) **Singular and plural:** the singular includes the plural and vice versa;
- (n) **Statutes and regulations:** a reference to a statute or any regulations is a reference to that statute or those regulations as amended, or to any statute or regulations substituted for that statute or those regulations;
- (o) **Time:** a reference to time is to New Zealand time;
- (p) **Writing:** a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form; and
- (q) **No limitation:** The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

1.3 **Inconsistency:** In the construction of this agreement in relation to the Schedules, in the event of any inconsistency between clauses 1 to 23 of this agreement and the Schedules, clauses 1 to 23 of this agreement prevail over the Schedules.

2. OVERVIEW

- (a) **The Participant:** The Participant agrees to ensure that the Project results in ●tCO₂-e¹ of Emission Reductions before the Commitment Period and ●tCO₂-e² of Emission Reductions during the Commitment Period, on the terms of this agreement.
- (b) **The Crown:** The Crown agrees to transfer up to ●³ Emission Units to the Participant in respect of Emission Reductions resulting from the Project during the Commitment Period, on the terms of this agreement.

3. TERM OF AGREEMENT

This agreement is effective from the Effective Date until 31 December 2013, unless it is terminated earlier under clause 18.

4. PARTICIPANT'S COMMITMENTS

4.1 **Implementation:** The Participant must implement the Project in accordance with the specifications in Schedule 1 and the Milestone Dates in Schedule 3, including achieving completion of the final Milestone by ●/●/200●. The Participant will have achieved completion of the final Milestone when:

- (a) the Participant has carried out all work necessary to complete the final Milestone; and
- (b) the Crown has accepted, in accordance with clause 7, the Milestone Report in respect of such Milestone or it has been resolved, in accordance with clause 16, that the Participant has carried out all work necessary to complete the final Milestone.

4.2 **Pre-Commitment Period obligations:** The Participant must operate the Project so as to ensure that the Project results in at least the following Emission Reductions⁴ prior to the Commitment Period:

Year	tCO ₂ -e
2005	
2006	
2007	

¹ Explanatory note: Total Emission Reductions to be delivered by the Project before the Commitment Period, as identified in the Participant's tender.

² Explanatory note: Total Emission Reductions to be delivered by the Project during the Commitment Period, as identified in the Participant's tender.

³ Explanatory note: The number of Emission Units requested by the Participant in its tender.

⁴ Explanatory note: The number of Emission Reductions to be delivered by the Project in the relevant Year, as identified in the Participant's tender.

4.3 **Commitment Period obligations:** The Participant must operate the Project so as to ensure that the Project results in at least the following Emission Reductions⁵ during the Commitment Period:

Year	tCO ₂ -e
2008	
2009	
2010	
2011	
2012	

4.4 **Emission Reductions:** In this agreement, “Emission Reductions” means Greenhouse Gas emission reductions where:

- (a) the Participant has achieved completion of the final Milestone in accordance with clause 4.1;
- (b) the Greenhouse Gas emission reductions have been determined in accordance with the requirements of Schedule 2, including the measurement methodology set out in that Schedule; and
- (c) either the Crown has accepted, in accordance with clause 7, the Annual Report in which such Greenhouse Gas emission reductions are reported or, in the case of non-acceptance by the Crown, the Dispute has been resolved in accordance with clause 16 (including resolution of the Greenhouse Gas emission reductions achieved).

5. CROWN’S COMMITMENTS

5.1 **Emission Units:** Subject to clauses 5.2 and 5.3, the Crown must, in respect of Emission Reductions that have resulted from the Project during any Year in the Commitment Period, transfer to the Participant, on or before each Transfer Date, the number of AAUs (or, if and to the extent that clause 10 applies, ERUs) calculated in accordance with the following formula:

$$A = B \times C$$

Where:

A is the number of Emission Units;

B is the Emission Reductions, stated in tCO₂-e, resulting from the Project during the relevant Year of the Commitment Period; and

C is ●⁶.

⁵ Explanatory note: The number of Emission Reductions to be delivered by the Project in the relevant Year, as identified in the Participant’s tender.

5.2 **Maximum:** The maximum number of Emission Units the Crown is obliged to transfer to the Participant under this agreement is ●⁷.

5.3 **Transfer to a Nominated Person:**

(a) If by 31 January in a Year the Participant gives notice to the Crown that it wishes the Crown to transfer to a nominated person or persons (in each case a “Nominated Person”) any of the Emission Units which the Crown is required under clause 5.1 to transfer to the Participant in respect of the Emission Reductions resulting from the Project during the previous Year then, subject to paragraph (b), the Crown must transfer the relevant Emission Units to the Nominated Person or Persons.

(b) If:

(i) the Crown is unable for any reason; or

(ii) in the Crown’s reasonable opinion it is impracticable,

to transfer Emission Units to a Nominated Person, the Crown will not be obliged to transfer the relevant Emission Units to such Nominated Person (and, instead, will transfer such Emission Units to the Participant).

5.4 **No obligation to transfer Emission Units:** Notwithstanding any other provision of this agreement, the Crown has no obligation or liability to transfer Emission Units to the Participant if the Protocol does not come into force or ceases to be in force for any reason.

5.5 **Tradeability:** The Crown has no obligation or liability to the Participant or any Nominated Person in respect of the ability or inability to transfer or trade Emission Units following transfer of Emission Units to the Participant or a Nominated Person, except where the Participant is, during the term of this agreement, unable to transfer Emission Units from the Registry to an overseas registry for the sole reason that New Zealand is not in compliance with the inventory and registry eligibility requirements for transferring and acquiring Emission Units of under Article 17 of the Protocol or established thereunder.

5.6 **In respect of non-performance by the Participant:** The Crown will not seek an order of specific performance or make a claim for damages in respect of the Participant’s non-performance of its obligations under clause 4.

6. TAX

6.1 **Lowest price clause:** The parties acknowledge that:

(a) they are independent parties dealing at arm’s length with each other in relation to the matters contemplated by this agreement; and

(b) for the purposes of Division 2 of Part EH of the Income Tax Act 1994, neither the consideration provided by the Participant under clause 4 nor the consideration provided by

⁶ Explanatory note: C will be a number not more than one which reflects the ratio of Emission Units to Emission Reductions requested by the Participant in its tender in respect of the Commitment Period.

⁷ Explanatory note: This will be the total number of Emission Units requested by the Participant in its tender.

the Crown under clause 5 includes any interest component, and in each case such consideration is the lowest price the parties would have agreed, on the Effective Date, if the obligations imposed on the parties under those respective clauses were required to be paid or discharged in full on the Effective Date.

6.2 **GST:**

- (a) On the date on which the Crown transfers Emission Units to the Participant or a Nominated Person or Persons in accordance with clause 5, the Crown shall issue a Tax Invoice to the Participant for that supply of Emission Units. At that time, the Crown shall also issue to the Participant a Buyer-Created Invoice in respect of the supply of services by the Participant under clause 4 that corresponds to the Emission Units being transferred under that Tax Invoice. The amount to be recorded on both the Tax Invoice, and the Buyer-Created Invoice which corresponds to that Tax Invoice, as:
- (i) the value of the supply, shall equate with the value of the Emission Units being transferred under that Tax Invoice;
 - (ii) the tax charged in relation to the supply, shall be the value mentioned in (i) multiplied by the applicable rate of GST as determined under Part II of the Goods and Services Tax Act 1985.

For the avoidance of doubt:

- (iii) each such invoice shall also record the GST-inclusive amount in relation to the supply, which amount shall equate with the sum of (i) and (ii);
 - (iv) the date on which the Tax Invoice is issued is the time of supply of both supplies for GST purposes.
- (b) For the avoidance of doubt, the parties agree that the GST chargeable in respect of a supply of Emission Units to the Participant, as recorded in a Tax Invoice, and the equivalent amount of GST chargeable in respect of the supply of services by the Participant under clause 4 that corresponds to the Emission Units being transferred under that Tax Invoice (which amount will be recorded in the Buyer-Created Invoice that corresponds to that Tax Invoice) can, be set off against each other.

7. **REPORTING AND VERIFICATION**

7.1 **Purpose of reporting:** The purpose of the reporting obligations in this clause 7 is for the Participant to demonstrate compliance with certain of its obligations under this agreement and for the Crown to satisfy itself as to such compliance.

7.2 **Reports:** The Participant will deliver to the Crown:

- (a) a Milestone Report containing the information required by Schedule 3 within 20 Business Days of completion of each Milestone; and

- (b) an Annual Report containing the information required by Schedule 4 for each Year from 200●⁸ to 2012 (inclusive), to be delivered in each case by 31 January the following Year.
- (c) if a Milestone is not completed by the applicable Milestone Date, within 20 Business Days of the Milestone Date an interim Milestone Report describing:
 - (i) progress towards completion of the Milestone; and
 - (ii) reasons for the delay in completion; and
 - (iii) the date by which the Participant expects to complete the Milestone.

Nothing in an interim Milestone Report or this paragraph (c) affects the Participant's commitments under clause 4.

7.3 Response to Reports: The following procedure must be followed in relation to each Report:

- (a) the Crown must review the Report and may:
 - (i) within 20 Business Days of receipt of the Report from the Participant, request further information or (in the case of any Annual Report) an audit report, or both, in accordance with clause 7.4; and
 - (ii) within 20 Business Days of the later of subparagraphs (i) or (ii) of clause 7.3(b), commence verification of the report in accordance with clause 7.5;
- (b) within 20 Business Days (in the case of a Milestone Report) or 40 Business Days (in the case of an Annual Report) of the later of:
 - (i) receipt of the Report;
 - (ii) receipt of all information and/or an audit report (as applicable) requested by the Crown pursuant to clause 7.4; or
 - (iii) the Participant providing such access and making available such personnel, documents, records and data as requested by the Crown in accordance with clause 7.5,

the Crown must notify the Participant that either:

- (iv) the Crown accepts the Report; or
- (v) the Crown does not accept the Report. If the Crown does not accept the Report, the Crown must also specify the reasons for such non-acceptance;
- (c) if the Crown advises the Participant under clause 7.3(b)(v) that it does not accept the Report, then within 10 Business Days (in the case of a Milestone Report) or 20 Business Days (in the case of an Annual Report) of receipt of the advice from the Crown the Participant must either:

⁸ Explanatory note: This will be the year that the Participant has promised in its tender it will first deliver Emission Reductions.

- (i) modify the Report to address the Crown's reasons for non-acceptance; or
 - (ii) advise the Crown that the Participant does not accept some or all of the Crown's reasons for non-acceptance, together with the Participant's reasons for such non-acceptance; and
- (d) if clause 7.3(c)(ii) applies, the disagreement is a Dispute and clause 16 will apply.

To avoid doubt, if the Crown fails to notify the Participant within the timeframe required under clause 7.3(b), the Crown will not be deemed to have accepted the Report.

7.4 Additional Information and audit:

- (a) The Crown may, within the period specified in clause 7.3(a)(i), request the Participant to:
- (i) provide, or provide access to, any additional information (including supporting documentation) reasonably required to facilitate the review of any Report by the Crown (or its delegate), or to enable the Crown (or its delegate) to verify any information contained in any Report; and
 - (ii) arrange for any Annual Report to be audited by an independent person engaged by the Participant and approved by the Crown (acting reasonably) and submit to the Crown an audit certificate issued by such independent person in the form set out in Schedule 5 (or such other form as agreed by the parties). The Crown must bear the reasonable cost of such audit unless the audit identifies a material inaccuracy in such Annual Report in which case the Participant must bear the cost of the audit.
- (b) The Participant must comply as soon as reasonably practicable with requests by the Crown under clause 7.4(a).

7.5 Verification:

- (a) The purpose of the following provisions is to enable the Crown to verify whether the Participant has complied with this agreement.
- (b) As part of the verification process and in addition to having the right to request information in accordance with clauses 7.4 and 8.2, the Crown has the right to:
- (i) verify the content of each Report, including, on reasonable notice to the Participant, a right to inspect the Project and to interview the Participant's personnel to such extent and in relation to such matters as are reasonably required for verification purposes;
 - (ii) make copies of any documents, records or data for the purposes of verifying a Report; and
 - (iii) appoint a delegate to undertake the verification of each Report, including exercising the Crown's rights under clauses 7.4, 7.5(b)(i) and 7.5(b)(ii).
- (c) In relation to each Report, the Participant must provide all reasonable assistance required by the Crown (or its delegate) as part of the verification process, including:

- (i) providing access to documents, records and data, and the Project site(s) at such times as the Crown may reasonably require; and
 - (ii) making appropriate personnel available to answer queries.
- (d) Each party will bear its own costs associated with the verification process set out in this clause 7.5, unless the Crown identifies a material inaccuracy in a Report in which case the Participant must bear the Crown's verification costs in connection with that Report.

8. ADDITIONAL REPORTING AND INFORMATION REQUIREMENTS

8.1 Material impediments to performance: The Participant must:

- (a) advise the Crown as soon as practicable, and in any event within 10 Business Days, after any event occurring or any circumstances arising at any time which are, or have the potential to be, a material impediment to the implementation or operation of the Project, the achievement of Emission Reductions, or the performance of any of the Participant's other obligations under this agreement; and
- (b) disclose and provide details (with reasonable particularity) of such event or circumstance and how such event or circumstance is or may be such a material impediment.

8.2 Information: Without limiting the Crown's rights under clause 7 or this clause 8, the Participant will within 10 Business Days comply with:

- (a) all requests for additional information required to satisfy New Zealand's reporting obligations in respect of Greenhouse Gas emissions to the Intergovernmental Panel on Climate Change or other international Greenhouse Gas agency; and
- (b) all requests for any other information in connection with this agreement, provided that the Participant shall not be obliged to make available information under this paragraph (b) which would disclose a trade secret or would be likely unreasonably to prejudice the Participant's commercial position.

8.3 Substitute Reporting: Notwithstanding anything else in this agreement, the Crown shall be entitled to require the Participant to comply with any new reporting requirements (including as to content, procedure, review, verification or any other matter related to reporting), which are developed by the Crown in respect of the Projects to Reduce Emissions Mechanism in order to facilitate compliance by New Zealand with its obligations under the Protocol, in substitution for the reporting requirements set out in this agreement.

9. REIMBURSEMENT OF EMISSION UNITS

9.1 Variation: If either party at any time determines that the amount of Emission Reductions resulting from the Project in any Year during the Commitment Period varies from the amount accepted under clause 7.3(b) or clause 7.3(c), or resolved in accordance with clause 7.3(c) in respect of that Year, that party will notify the other party in writing of the amount of and reasons for the variation and the

revised number of Emission Units that should have been transferred to the Participant under clause 5.1.

- 9.2 **Dispute:** If the party receiving the notice given under clause 9.1 (“the Notice”) disagrees with the Notice, that party may trigger clause 16.
- 9.3 **Transfer:** If the party receiving the Notice does not trigger clause 16 within 20 Business Days of receipt of the Notice that party will be deemed to have accepted the Notice and:
- (a) if the number of Emission Units transferred to the Participant in respect of the relevant Year exceeds the number specified in the Notice or resolved in accordance with clause 16, the Participant must transfer to the Crown the number of Emission Units equal to such difference; and
 - (b) if the number of Emission Units transferred to the Participant in respect of the relevant Year is less than the number specified in the Notice or resolved in accordance with clause 16, the Crown must, subject to clauses 5.1, 5.2 and 5.4, transfer to the Participant the number of Emission Units equal to such difference.
- 9.4 **Emission Units:** The Emission Units which the Crown or the Participant, as the case may be, must transfer to the other party under clause 9.3, must be Emission Units of the same type as the Emission Units already transferred in respect of the relevant Year except that any obligation on the Crown under this clause 9.4 to transfer ERUs shall be subject to clause 10.
- 9.5 **International price:** The Participant may satisfy its obligation under clause 9.3(a), by paying to the Crown the prevailing international price for each Emission Unit, of the type required by clause 9.4 to be transferred, as at the date of the Notice. If the Crown does not agree that the price paid is the prevailing international price as at the date of the Notice, the Crown may by notice to the Participant refer the matter for determination by an Expert under clause 9.6.
- 9.6 **Expert procedure:**
- (a) A matter referred by the Crown under clause 9.5 for determination by an Expert shall be determined as follows:
 - (i) the matter shall be referred to an independent expert agreed by the parties or, if the parties cannot agree upon such expert within 10 Business Days of notice of referral being given under clause 9.5, the independent expert shall be appointed by the President for the time being of the Institute of Chartered Accountants of New Zealand (“**Expert**”);
 - (ii) the Expert is entitled to set the procedure for the determination of the matter;
 - (iii) the Expert will obtain and review documents and information that he or she considers relevant and will issue a signed determination regarding the prevailing international price for each Emission Unit as at the date of the Notice;
 - (iv) the Expert will use best endeavours to deliver the determination within 30 Business Days of being appointed;

- (v) the Expert's determination is:
 - (1) made as an expert and not as an arbitrator (and the Arbitration Act 1996 shall not apply); and
 - (2) final and binding on the parties.
- (b) The parties shall co-operate to provide the Expert with all information reasonably required by the Expert to complete the determination.
- (c) Each party will pay half of the costs of the Expert, unless the Expert specifies otherwise in the determination.
- (d) If it is necessary to appoint a replacement Expert, for any reason (including, but not limited to, the Expert originally appointed failing to act through illness or other cause), the replacement Expert will be appointed in accordance with the process set out in paragraph (a)(i) and the replacement Expert shall determine the matter *de novo*.

10. JOINT IMPLEMENTATION PROJECTS

10.1 If the Project meets all of the eligibility requirements for a project under Article 6 of the Protocol, then:

- (a) the Participant may by notice to the Crown require that the type of Emission Units transferred by the Crown under clause 5.1 be ERUs;
- (b) the Crown must transfer ERUs in accordance with such notice but only to the extent that the Emission Reductions resulting from the Project have been verified in accordance with the verification requirements under Article 6 of the Protocol and only up to the maximum number of Emission Units under clause 5.2;
- (c) the Participant shall bear, and reimburse on demand, any costs the Crown incurs as a result of the Participant requiring transfer of ERUs, including any costs incurred by the Crown:
 - (i) to verify, in accordance with the verification requirements under Article 6 of the Protocol, the Greenhouse Gas emission reductions resulting from the Project; and
 - (ii) in ensuring New Zealand complies with its obligations under the Protocol to provide, or make publicly available, information concerning projects under Article 6 of the Protocol; and
- (d) the Crown shall have no obligation or liability to the Participant or any third party in respect of the consequences of any question of implementation of the requirements of Article 6 of the Protocol, including in circumstances where ERUs transferred by the Crown under this clause 10 are (in accordance with Article 6, paragraph 4 of the Protocol) not able to be used by a party to the Protocol to meet its commitments under Article 3 of the Protocol.

11. INDEMNITY

The Participant agrees to indemnify and hold harmless the Crown against all loss, damage, liability or expense (including legal costs) suffered or incurred by the Crown by reason of or in connection with any claim or allegation by a third party against the Crown arising out of or in connection with:

- (a) any notice by the Participant under clause 5.3 requiring the Crown to transfer Emission Units to a Nominated Person or the Crown's obligations in respect of such notice;
- (b) any notice by the Participant under clause 10 requiring the Crown to transfer ERUs or the Crown's obligations in respect of such notice;
- (c) the implementation or operation of the Project; or
- (d) any breach by the Participant of, or any failure by the Participant to perform, any of its obligations under this Agreement.

12. PARTICIPANT'S WARRANTIES

12.1 **Authority:** The Participant represents and warrants to the Crown that it has full power and authority to enter into and perform this agreement and has taken all necessary action to authorise the entry into and performance of this agreement.

12.2 **Information:** The Participant represents and warrants to the Crown that:

- (a) all information provided by the Participant to the Crown in connection with this agreement prior to the Effective Date was at the time it was provided, and is at the Effective Date, accurate and not misleading;
- (b) all information contained in Reports or otherwise provided to the Crown under this agreement will be, when given, accurate and not misleading; and
- (c) it will immediately notify the Crown if it becomes aware that any information referred to in paragraph (a) or (b) above was when given, or has since become, inaccurate or misleading.

13. CLIMATE CHANGE INITIATIVES

13.1 **Other Climate Change Initiatives:** The parties acknowledge that from time to time the Crown may develop and implement a range of Climate Change Initiatives in addition to the Projects to Reduce Emissions Mechanism (in this clause 13 "other Climate Change Initiatives").

13.2 **Participation in other Climate Change Initiatives:** This agreement does not preclude the Participant from being eligible to participate in other Climate Change Initiatives, except that:

- (a) the Participant must not utilise any other Climate Change Initiative (including any project funding or similar policy) to assist in the delivery of the Project or otherwise in the performance of its obligations under this agreement; and

- (b) the Participant must not utilise the Project or any Emission Reductions resulting from the Project to obtain any benefit for the Participant or any other person from any other Climate Change Initiative.

14. GREY MARKET

The Participant must not deal in any way (except in accordance with this agreement) with the first ●⁹ tCO₂-e of Emission Reductions that result from the Project during the Commitment Period. Without limitation, the Participant must not sell or otherwise dispose of any right to or interest in such Emission Reductions on any market that may exist for Greenhouse Gas emission reductions outside the emissions trading regime to be established under the Protocol.

15. NO CONSEQUENTIAL LOSS

Except where clause 11 applies, in no circumstances shall a party be liable to the other, whether in contract, tort (including negligence and breach of duty) or otherwise at law or in equity, for any business interruption or loss of use, profits, contracts, production or revenue, or for any consequential or indirect loss or damage of any kind however arising (even if the party knew or should have known of the possibility of such loss or damage).

16. DISPUTE RESOLUTION

- 16.1 **General:** Except in the case of a Dispute to which clause 9.6 applies, any Dispute will be resolved in accordance with the provisions of this clause 16.
- 16.2 **Dispute Notice:** Either party (the "Notifying Party") may, by written notice (a "Dispute Notice") to the other party, identify a Dispute, and trigger the operation of this clause 16.
- 16.3 **Authorised representatives:** In a Dispute Notice the Notifying Party will summon a meeting of the parties. Each party will attend any such meeting within a reasonable time of the Dispute Notice, and will be represented at the meeting by an individual with knowledge of the Dispute and the necessary authority to settle it.
- 16.4 **Chief Executive/Secretary:** If the authorised representatives do not resolve the Dispute within 10 Business Days of the date of the Dispute Notice, the parties will make the Chief Executive and the Secretary available for discussions to attempt to resolve the Dispute.
- 16.5 **Mediation:**
 - (a) If the Chief Executive and Secretary do not resolve the Dispute within a period of 10 Business Days of the Dispute being referred to them then either party may issue a notice (a "Mediation Notice") requiring the Dispute to be referred to mediation.
 - (b) If the Dispute is referred to mediation, the mediator will be appointed by the agreement of the parties, but if no agreement is reached within 5 Business Days of the date of the Mediation

⁹ Explanatory note: This will be the total number of Emission Reductions resulting from the Project during the Commitment Period, as promised by the Participant in its tender.

Notice, the mediator will be appointed by the chairperson or any other office holder for the time being of LEADR New Zealand Inc.

- (c) Unless otherwise agreed, the then current model mediation agreement issued by LEADR New Zealand Inc will be used.
- (d) The mediation will be conducted as soon as possible, but in any event within 10 Business Days of the appointment of the mediator.
- (e) Each party will share the mediator's costs equally.

16.6 Arbitration:

- (a) If the Dispute is not resolved within 10 Business Days of the appointment of a mediator, either party may issue a notice (an "Arbitration Notice") requiring the Dispute to be referred to arbitration in accordance with the Arbitration Act 1996.
- (b) The tribunal will consist of a sole arbitrator, to be appointed by the agreement of the parties.
- (c) If agreement on the arbitrator cannot be reached within 7 Business Days of the date of the Arbitration Notice, then the arbitrator will be appointed by the President for the time being, or his or her nominee, of the New Zealand Law Society. The arbitrator so appointed will be a retired Master, a retired High Court Judge, a retired Court of Appeal judge or a lawyer of at least 20 years experience in practice.
- (d) The arbitration will be conducted as quickly as is reasonably practicable. When determining the procedure and scheduling of the arbitration, the arbitrator will take this into consideration.
- (e) The terms of the arbitrator's award will allocate the costs of that arbitration between the parties.
- (f) The rules of the First and Second Schedules of the Arbitration Act 1996 will apply, except for clause 1 (default appointment of arbitrators), clause 3(1)(a) (power to adopt inquisitorial process), clause 3(1)(b) (power to draw on own knowledge and expertise), and clause 4 (determination of preliminary point of law by court) of the Second Schedule of the Arbitration Act 1996.

17. CONTINUED PERFORMANCE

The parties will continue to comply with, perform and observe their respective obligations under this agreement despite any question, issue or other matter between the parties being subject to dispute resolution, having been referred to an Expert for determination under clause 9.6, or being subject to legal proceedings (unless this agreement has been terminated).

18. TERMINATION

18.1 Automatic termination: Subject to clause 18.4, this agreement will automatically terminate:

- (a) on 1 January 2008 if the Protocol has not entered into force by that date; or

- (b) if the Crown reasonably considers prior to 1 January 2008 that the Protocol will not enter into force during the Commitment Period, on the date the Crown gives notice to the Participant to that effect.

18.2 Termination by the Crown: Subject to clause 18.4, the Crown may terminate this agreement on giving not less than 20 Business Days notice to the Participant and this agreement will expire on the date specified in that notice, if:

- (a) the Participant fails to achieve a Milestone within 12 months after the relevant Milestone Date; or
- (b) the Project fails to result in more than 10% of the Emission Reductions required under clause 4.2 in any Year prior to the Commitment Period or under clause 4.3 in any Year during the Commitment Period, except where such failure is the direct result of the Participant failing to achieve a Milestone within 12 months after the relevant Milestone Date; or
- (c) the Participant fails to provide any Report within 30 Business Days of the due date; or
- (d) the Participant knowingly included any inaccurate, incomplete or misleading information in its tender in respect of the Project or in any Report, or has otherwise knowingly provided any inaccurate, incomplete or misleading information to the Crown (whether before or after the Effective Date); or
- (e) the Participant included any materially inaccurate, incomplete or misleading information in its tender in respect of the Project or in any Report, or has otherwise provided any materially inaccurate, incomplete or misleading information to the Crown (whether before or after the Effective Date);
- (f) the Participant:
 - (i) is, becomes, or is deemed to be insolvent, liquidated or bankrupt;
 - (ii) makes an assignment for the benefit of or makes any arrangement or composition with its creditors; or
 - (iii) goes into receivership or has a receiver, trustee and/or manager (including a statutory manager) appointed in respect of all or any of its property, or any resolution is passed or proceedings are commenced, for its amalgamation with any person, bankruptcy or liquidation (except for the purposes of a reconstruction approved by the Crown, which approval may be withheld by the Crown in its absolute discretion);

18.3 Termination by either party: Subject to clause 18.4, either party may terminate this agreement on giving not less than 20 Business Days notice to the other party and this agreement will expire on the date specified in that notice, if the other party has committed a material breach of this agreement that is:

- (i) incapable of being remedied; or

- (ii) capable of being remedied but the other party has failed to remedy that material breach within 20 Business Days of receiving written notice of that material breach.

18.4 **Survival of provisions on termination, cancellation or expiry:** The following clauses shall continue in effect after termination, cancellation or expiry of this agreement:

- (a) clauses 9, 11, 12, 15, 16, 18.4, 19, 20 and 23.8; and
- (b) any other provision which by its nature should continue in effect after termination, cancellation or expiry of this agreement.

19. FORCE MAJEURE EVENTS

19.1 **Force Majeure Event:** Notwithstanding any other provision of this agreement, non-performance by either of the parties of any of its obligations under this agreement shall be excused, without liability for non-performance, during the time and to the extent that:

- (a) such performance is prevented by a Force Majeure Event; or
- (b) in the case of a Force Majeure Event referred to in paragraph (e) of the definition of Force Majeure Event in clause 1, such performance would be inconsistent with such Force Majeure Event.

19.2 **Notice:** The party claiming the benefit of this clause 19 shall promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under this agreement and the likely duration of such non-performance or inability. In the meantime such party shall take all reasonable steps to remedy or abate the Force Majeure Event.

19.3 **No obligation to settle:** No party shall, by virtue of this clause, be required against its will to settle any strike, lockout or other industrial disturbances.

19.4 **Resumption of performance:** Performance of any obligation affected by the Force Majeure Event shall be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure Event.

19.5 **Termination:** If non performance by either party to which clause 19.1 applies continues for more than 120 days from the date the relevant notice under clause 19.2 is given, then the other party may terminate this agreement by giving not less than 10 Business Days notice of termination, and the agreement shall terminate on the expiry of such notice period.

20. NOTICES

20.1 **Notice must be in writing and addressed correctly:** Any notice or other communication to be given under this agreement must be in writing addressed to the recipient at the address or facsimile number from time to time notified by that party in writing to each other party. Until a change is so notified, the address and facsimile number of each party are those set out in this clause:

The Crown

Address: Projects to Reduce Emissions
New Zealand Climate Change Office
Level 25, Grand Plimmer Tower, Boulcott Street
PO Box 10 362
Wellington

Facsimile No: (04) 916 7615

Attention: Business Administrator

The Participant

Address: [full name of the Participant]
[full postal address]

Facsimile No:

Attention:

20.2 **Delivery:** Delivery may be effected by hand, or by post with postage prepaid, or by facsimile. A notice or other communication will be deemed to have been received:

- (a) in the case of hand delivery, at the time of actual delivery to the recipient's address;
- (b) in the case of delivery by pre-paid post, on the 2nd Business Day after posting; or
- (c) in the case of delivery by facsimile, at the time of transmission specified in a transmission report from the sending machine which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

20.3 **Next Business Day:** However, if a notice or other communication is received or deemed to have been received after 5 p.m. on a Business Day in the place to which it is sent, or on a day which is not a Business Day in that place, it will be deemed not to have been received until the next Business Day in that place.

21. ASSIGNMENT

21.1 **Assignment and transfer with consent:** The Participant may assign all (but not less than all) of the Participant's rights, interests and obligations under this agreement together if the Crown consents, such consent not to be unreasonably withheld. Without limitation, it shall be reasonable for the Crown to withhold its consent where the Participant cannot satisfy the Crown that the assignee has the financial or technical capacity to carry out the Project for the term of this agreement.

21.2 **No assignment otherwise:** The Participant must not assign any of the Participant's rights, interests or obligations under this agreement except in accordance with clause 21.1.

21.3 **Change in effective control:**

- (a) Subject to paragraph (b), for the purposes of this clause 21, a direct or indirect change in the effective control of the Participant, whether due to the transfer of, or disposal of any interest

in, any shares in the Participant or any associate (where “associate” has the meaning given in the Takeovers Code Approval Order 2000) of the Participant or otherwise, shall be deemed to be an assignment.

- (b) This clause 21.3 shall not apply:
- (i) if the Participant is a company listed on a registered stock exchange; or
 - (ii) to a direct or indirect change in effective control of the Participant due to a change in the control of any other company that is listed on a registered stock exchange.

22. AMENDMENT AND VARIATION

22.1 **Amendment:** No amendment to this agreement shall be effective unless it is in writing and signed by both parties.

22.2 **Variations to the Project:** The Participant may vary the Project with the Crown’s consent, which consent may be given or withheld in the Crown’s absolute discretion.

23. GENERAL PROVISIONS

23.1 **No privity:** The parties acknowledge for the purposes of the Contracts (Privity) Act 1982 that none of the provisions of this agreement, including clauses 5.3 and 10, confer a benefit on, or are intended to be enforceable by, any third party.

23.2 **Further assurances:** Each of the parties agrees to execute and deliver any documents and to do all things as may reasonably be required by the other party to obtain the full benefit of this agreement.

23.3 **Severability:** If any part of this agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this agreement.

23.4 **No waiver:**

- (a) A waiver of any provision of this agreement shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given.
- (b) A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

23.5 **No partnership, joint venture or agency relationship:** Nothing in this agreement shall evidence or be deemed to constitute a partnership or joint venture between the parties, nor will either party constitute an agent for the other party.

23.6 **Entire agreement:** Subject to clause 12, this agreement:

- (a) constitutes the entire understanding and agreement of the parties relating to the matters dealt with in it; and
- (b) supersedes and extinguishes all prior agreements and understandings between the parties relating to those matters.

23.7 **Counterparts:** This agreement may be executed in any number of counterparts. Once the parties have executed the counterparts, and each party has received a copy of each signed counterpart which that party did not execute, each counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by both parties.

23.8 **Governing law and jurisdiction:**

- (a) This agreement shall be governed by and construed in accordance with New Zealand law.
- (b) Subject to clauses 9.6 and 16, each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand for the purpose of hearing and determining any disputes or proceedings arising out of or in connection with this agreement.

EXECUTED AS A DEED

SIGNED for and on behalf of)
HER MAJESTY THE QUEEN in right of)
New Zealand by **Hon Dr Michael Cullen,**)
MINISTER OF FINANCE)

Signature

[Print Name] in the presence of

Witness signature

Full name

Address

Occupation

SIGNED for and on behalf of)
HER MAJESTY THE QUEEN in right of)
New Zealand by **Hon Pete Hodgson,**)
MINISTER ACTING AS THE)
CONVENOR, MINISTERIAL GROUP ON
CLIMATE CHANGE

Signature

[Print Name] in the presence of

Witness signature

Full name

Address

Occupation

SIGNED for and on behalf of)
[FULL LEGAL NAME OF THE)
PARTICIPANT] by)
)

Signature

[Print Name] in the presence of

Witness signature

Full name

Address

Occupation

[Explanatory note: The Participant's attestation clause may need to be amended so that the Participant executes the Project Agreement appropriately. In this Project Agreement the Participant is assumed to be a company that can execute a deed by a director signing with a witness.]

SCHEDULE 1 – THE PROJECT

Explanatory Note:

This schedule will describe the Project. The description may be taken from (or based on) the Project description submitted with the tender. The level of detail of the Project description will be determined by matters such as how much detail is required to:

- *specify Milestones; and*
- *define a conceptual boundary around the Project.*

The Project boundary must be chosen to incorporate all emission sources and activities that are material to establishing the Emission Reductions that the Project will achieve. The Participant commits in this agreement to monitoring and reporting all emissions within the Project boundary, through the term of the agreement. A clearly defined boundary ensures that Emission Reductions included in this Project are not counted in any other project or any other Climate Change initiative.

A Project may form part of a larger plant or site. The definition must be specific enough to ensure that if modifications are made to plants and processes, or if other Projects are established on the same site in future, those emissions and activities that form part of the Project can still be identified.

SCHEDULE 2 – MEASUREMENT OF EMISSION REDUCTIONS

Explanatory Note:

This schedule will specify the methodology for determining the Emission Reductions resulting from the Project. This will need to be tailored to the Project, and will be based on the calculation carried out by the Participant using the Abatement section of the Additionality Tests Model in the tender documents.

It is expected that in most cases a proxy measure will be monitored and a standard calculation carried out to determine the corresponding quantity of emission reduction that has been achieved.

For example, for a renewable electricity generation project the measurement methodology would include:

- (a) obligations around monitoring the annual GWh generation output achieved by the Project, with the metering methodology specified;*
- (b) conversion of the annual GWh generation output achieved by the Project to tCO₂-e. This conversion is calculated by multiplying the GWh of generation by the specified emission factor for electricity.*

In this case the amount of generation may be an adequate proxy for emission reductions. For other types of project, accounting for the net emissions due to the Project will require a more complex calculation.

The emission factors and embodied emission factors, and the global warming potential of the various Greenhouse Gases, to be applied in respect of tenders are set out below.

Emission factors			
Electricity		625 tonnes CO ₂ -e per GWh	
Gas		0.0524 tonnes CO ₂ -e per GJ	
Diesel		0.00271 tonnes CO ₂ -e per litre	
Petrol		0.00232 tonnes CO ₂ -e per litre	
LPG		0.00162 tonnes CO ₂ -e per litre	
Fuel oil		0.00292 tonnes CO ₂ -e per litre	
Coal		2.064 tonnes CO ₂ -e per tonne	
Embodied emission factors			
Cement		0.46 tonnes CO ₂ -e per tonne	
Iron and steel – imported		0 tonnes CO ₂ -e per tonne	
Iron and steel – produced in New Zealand		2.01 tonnes CO ₂ -e per tonne	
Aluminium – imported		0 tonnes CO ₂ -e per tonne	
Aluminium – produced in New Zealand		1.62 tonnes CO ₂ -e per tonne	
Global Warming Potential (GWP)		<i>Formula</i>	<i>GWP</i>
<i>tonnes CO₂-e/tonne of other gas</i>			
Carbon dioxide		CO ₂	1
Methane		CH ₄	21
Nitrous oxide		N ₂ O	310
Sulphur hexafluoride		SF ₆	23,900
Hydrofluorocarbons (HFCs)	HFC-23	CHF ₃	11,700
	HFC-32	CH ₂ F ₂	650
	HFC-125	C ₂ HF ₅	2,800
	HFC-134	CHF ₂ CHF ₂	1,000
	HFC-134a	CH ₂ FCF ₃	1,300
	HFC-143	CHF ₂ CH ₂ F	300
	HFC-143a	CF ₃ CH ₃	3,800
	HFC-152a	CH ₃ CHF ₂	140
	HFC-227ea	C ₃ HF ₇	2,900
	HFC-236fa	C ₃ H ₂ F ₆	6,300
	HFC-245ca	C ₃ H ₃ F ₅	560
	HFC-41	CH ₃ F	150
	HFC-43-10mee	C ₅ H ₂ F ₁₀	1,300
Perfluorocarbons (PFCs)	Perfluoromethane	CF ₄	6,500
	Perfluoroethane	C ₂ F ₆	9,200
	Perfluoropropane	C ₃ F ₈	7,000
	Perfluorocyclobutane	C-C ₄ F ₈	8,700
	Perfluorobutane	C ₄ F ₁₀	7,000
	Perfluoropentane	C ₅ F ₁₂	7,500
	Perfluorohexane	C ₆ F ₁₄	7,400

SCHEDULE 3 – PROJECT MILESTONES

Explanatory Note:

This schedule will define the:

- 1) *Milestones;*
- 2) *Milestone Dates; and*
- 3) *information to be included in each Milestone Report.*

These matters will be tailored for each Project. The following are examples of typical Milestones:

- *application for resource consent(s) lodged;*
- *resource consent approval(s) achieved;*
- *final decision to carry out the Project, e.g. at Board level;*
- *substantive commitment points, e.g. entering into a contract for supply of major equipment making;*
- *start construction; early construction Milestone(s) such as site preparation, equipment delivery or completion of a first stage;*
- *Milestones for the construction process through to completion and commissioning of equipment. The final construction Milestone will include a detailed list of acceptance criteria (including, for example, that the Project is able to operate in accordance with its resource consents) for which Crown acceptance of completion will be required in accordance with clause 7.3; and*
- *Emission reductions commence. .*

SCHEDULE 4 – CONTENTS OF ANNUAL REPORTS

Explanatory Note:

This schedule will define the contents of the Annual Report. It will be tailored for each Project. It is expected that existing industry reporting practices and methodologies will be used where these are suitable for accurate description of the proxy measure(s) that are required for a particular Project.

Each Annual Report will include the following information:

- (a) tCO₂-e Emission Reductions resulting from the Project during the Year, determined in accordance with the specified methodology for determining the Emissions Reductions described in Schedule 2;*
- (b) where another measure is used as a proxy measure to determine the Emission Reductions, then the quantum of that measure shall also be reported;*
- (c) information to support the information reported in (b);*
- (d) details of anything which the Participant is aware of that is, or has the potential to be a material impediment to achieving Emission Reductions during the Commitment Period (without limiting clause 8.1).*

For example, an Annual Report for a windfarm electricity generation project would typically:

- Record the total GWh/Year generated for each turbine on the Project Site in the Year to which the Annual Report relates;*
- Record the total GWh/Year for the Project for the Year to which the Annual Report relates;*
- Include a report that verifies the total electricity generated from the Project and injected into the national transmission system in that Year by the person responsible for the reconciliation of electricity injected into and taken from electricity networks in New Zealand (currently the National Reconciliation Manager appointed under MARIA) or any other person authorised to administer and certify the reconciliation of such data by that person;*
- Record the total tCO₂-e Emission Reductions resulting from the Project during the Year, determined in accordance with the specified methodology for determining the Emissions Reductions described in Schedule 2 and calculated using the stated electricity emission factor.*

SCHEDULE 5 – FORM OF THE AUDITOR’S CERTIFICATE

AUDIT CERTIFICATE IN RESPECT OF THE PARTICIPANT’S ANNUAL REPORT FOR 20●

To: [Insert full name of Participant] (*the Participant*)

AND

To: Her Majesty the Queen in right of New Zealand (*the Crown*)
c/- Secretary of the Ministry for the Environment

I/We have examined the Participant’s Project operations.

The term “Project” is defined in the Project Agreement between the Participant and the Crown dated ● as the Project set out in Schedule 1 of that agreement.

My/Our audit has been limited to the Participant’s Project as described in that Schedule 1.

Auditor’s responsibilities

It is my/our responsibility to express an independent opinion on the Participant’s Project operations and the accuracy of the tCO₂-e Emission Reduction information reported in the Annual Report for 20● (*the Annual Report*), and report my/our opinion to you.

Basis of opinion

This audit included examining, on a test basis, the information provided as part of the Annual Report by the Participant and aspects of the Business operations relevant to that information (including the measurement of tCO₂-e Emission Reductions from the Project).

I/We conducted my/our audit in accordance with best international practice for services similar to this audit. I/We planned and performed my/our audits so as to obtain all information and explanations that I/we considered necessary. I/We obtained sufficient evidence to give reasonable assurance that the information provided as part of the Annual Report by the Participant is free from material misstatement, whether caused by fraud or error.

Other than in my/our capacity as auditor I/we have no relationship with or conflict of interest with the Participant or any other person to whom the audit applies.

Auditor’s opinion

I/We have obtained all the information and explanations I/we have required.

In my/our opinion, having made all reasonable enquiry, to the best of my/our knowledge the Participant has complied with the annual reporting requirements set out in the Project Agreement for 20● and [the information relating to the tCO₂-e Emission Reductions from the Project set out in] that Annual Report is accurate [except to the extent that [*insert the nature and context of any qualification, and the impact on the accuracy of the relevant information in the Annual Report*]].

My/Our audit was completed on [*insert date*] and my/our opinion is expressed as at that date.

I/We acknowledge and agree that each of the Participant and the Crown may rely on the terms of this audit certificate.

Yours faithfully,

[Signature]

[Name of Auditor]