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# **Bilateral Framework Agreement for Engagement in Cooperative Approaches Involving Internationally Transferred Mitigation Outcomes**

**Between**

**Republic of Kenya and  
Kingdom of Sweden**

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**Title**                      **Bilateral Framework Agreement for Engagement in Cooperative Approaches Involving Internationally Transferred Mitigation Outcomes**

**Parties**                      **The Republic of Kenya** represented by **the Ministry of Environment, Climate Change and Forestry - State Department for Environment and Climate Change** duly authorized representative for the negotiation of this Agreement (**Host Country**)

**The Kingdom of Sweden** represented by the **Swedish Energy Agency** duly authorized representative for the negotiation of this Agreement (**Acquiring Country**)

## **Preamble**

- A      Recalling the long-term temperature goal of the Paris Agreement of pursuing efforts to limit the global average temperature increase to 1.5°C, and the United Nations Sustainable Development Goals, and recognizing the intrinsic relationship between climate action and sustainable development.
- B      Having regard to Article 6.2 of the Paris Agreement and its implementing provisions which provide the option for parties to engage in cooperative approaches that involve the use of Internationally Transferred Mitigation Outcomes (ITMOs) towards Nationally Determined Contributions (NDCs) as well as for Other International Mitigation Purposes.
- C      Confirming the Parties' joint interest in such cooperative approaches to support the development and implementation of Greenhouse Gas mitigation activities with a view of generating Mitigation Outcomes of high environmental integrity that may be authorized and transferred among the Parties in line with the Paris Agreement Rules.
- D      Noting the mechanism established by Article 6.4 of the Paris Agreement and its forthcoming implementing provisions and affirming the Parties' joint interest in exploring opportunities for future collaboration under it.
- E      Recognizing the importance of Non-State Actors in climate action, including business, industries, energy utilities, financial institutions, not-for-profits, regional and local authorities and the special role of Parties in incentivizing and facilitating private sector participation, including by authorizing private entities to participate in Mitigation Activities and the transfer of Mitigation Outcomes.
- F      Therefore, the Parties agree to engage in a Cooperative Approach under Article 6.2 of the Paris Agreement leading to the creation of Mitigation Outcomes and enabling the authorization and transfer of those Mitigation Outcomes, in accordance with high standards of environmental integrity and sustainable development.

## Operative provisions

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### 1. Definitions and Interpretation

#### Glossary of Terms

##### 1.1

**Additionality** has the meaning given to the term in the rulebook for Article 6.4 (decision 3/CMA.3 (sec. 38)) or as agreed in the Coordinating Committee. **Additional** has the corresponding meaning.

**Agreement** means this Bilateral Framework Agreement for Engagement in Cooperative Approaches Involving Internationally Transferred Mitigation Outcomes – herein referred to as the Agreement.

**Article 6 Database** has the meaning given to that term in the Article 6.2 Guidance.

**Article 6.2 Guidance** means the "Guidance on cooperative approaches referred to in Article 6, paragraph 2, of the Paris Agreement", set out in Decision 2/CMA.3 of the CMA.

**Authorization** has the meaning given to the term under the Paris Agreement Rules. **Authorizes** and **Authorized** has the corresponding meaning.

**Buyer** means the Acquiring Country, or any Non-State Actor within the Acquiring Country, that intends to purchase MOs from the Mitigation Activity Owner.

**Cancel** means a process in which the Host or the Acquiring Country takes out of circulation or sets aside a certain quantity of ITMOs for the purposes of contributing to achieve Overall Mitigation in Global Emissions.

**Carbon Dioxide Equivalent** or **CO<sub>2</sub>e** means the base reference for the determination of global warming potential of GHG, against which other GHGs are measured.

**Change in Law** has the meaning given to the term in Section 20.1.

**CMA** means the Conference of the Parties serving as the meeting of the parties to the Paris Agreement as defined in the Paris Agreement Rules.

**Confidential Information** means all information which is used in or otherwise relates to a Party's financial or other affairs which it has acquired in connection with the Agreement, but does not include information which is made public by, or with the consent of, such Party. The recipient of such Confidential Information is the "Receiving Party" and the provider of such the "Disclosing Party".

**Cooperative Approaches** has the meaning given to the term under the Paris Agreement Rules.

**Coordinating Committee** has the meaning given to that term in Section 7.2.

**Corresponding Adjustment** has the meaning given to the term in the Paris Agreement Rules.

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

**Crediting Standard** means an internationally recognised set of certification rules and requirements to enable Validation of Mitigation Activities and Verification of Mitigation Outcomes generated by the Mitigation Activity, including the Gold Standard, the Verified

Carbon Standard, ISO-14064 or such other standard that the parties agree is an applicable standard.

**Delayed Performance** has the meaning set forth in Section 19.3 (Force Majeure).

**Dispute** has the meaning given to it in Section 21.1 (Settlement of Disputes).

**Entity** means any partnership (general or limited), limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization or other legal entity.

**Event of Default** has the meaning set forth in Section 16 (Event of Default).

**First Transfer** means for a Mitigation Outcome Authorized for use towards:

- (a) the achievement of an NDC: the first international transfer of the Mitigation Outcome; or
- (b) Other International Mitigation Purposes: (i) the Authorization, or (ii) the Issuance, or (iii) the use or cancelation of the Mitigation Outcome, as specified by the Authorizing Party.

**FM Affected Party** has the meaning set forth in Section 19 (Force Majeure).

**Force Majeure Event** means any unexpected and unpreventable act beyond the control of the Parties, other than a Change in Law, which makes performance of an obligation under this Agreement impossible arising from unforeseen circumstances such as, peril of the sea, war, riot, insurrection, civil commotion, martial law, flood, earthquake, epidemic, quarantine, radiation, or radioactive contamination, provided that such Party has not played a substantial role in bringing about the act and cannot, after using all reasonable efforts, overcome the act. For the avoidance of doubt, a Delivery Disruption Event, as such term is defined in an applicable MOPA, will not be a Force Majeure Event if the failure is such that there are contingency arrangements in operation by which the Host Country or a transferring Entity can reasonably be expected to transfer Mitigation Outcomes, as required, to the Acquiring Country's Registry Account.

**Greenhouse Gas** or **GHG** means the atmospheric gases responsible for causing global warming and climate change. The major GHGs are carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O). Other greenhouse gases are hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF<sub>6</sub>).

**International Registry** means the registry implemented or for implementation by the UNFCCC Secretariat for parties that do not have access to a registry.

**Internationally Transferred Mitigation Outcome** or **ITMO** has the meaning given to it in the Paris Agreement Rules.

**Issue** or **Issuance** means the issuance by the applicable authority of a specified quantity of Mitigation Outcomes in the form of a uniquely identifiable unit of measure into the Registry account of the Mitigation Activity Owner.

**Letter of Authorization** has the meaning given to it in Section 3.1 and 3.5.

**Methodology** means any of the methodologies, tools, methodological guidelines or protocols used to quantify the Mitigation Outcomes generated by the Mitigation Activity in line with a Crediting Standard.

**Mitigation Activity** means an activity generating Mitigation Outcomes Authorized by the Host Country.

**Mitigation Activity Design Document** or **MADD** means the detailed documentation describing the Mitigation Activity in accordance with a Crediting Standard.

**Mitigation Activity Owner** means an Entity that will generate Mitigation Outcomes with respect to one or more Mitigation Activities.

**Mitigation Outcome** or **MO** means a real, additional, and verified reduction in GHG emissions or removal of GHGs from the atmosphere, measured in tCO<sub>2</sub>e and representing one (1) tCO<sub>2</sub>e in accordance with methodologies approved under the Paris Agreement Rules, and generated by a specific Mitigation Activity from 2021 onwards.

**Mitigation Outcome Purchase Agreement** or **MOPA** for the purpose of this agreement, means a purchase agreement(s) between the Buyer(s) and Mitigation Activity Owner(s), specifying the Mitigation Activity which is intended to produce Mitigation Outcomes.

**MtCO<sub>2</sub>e** means Metric tonnes of Carbon Dioxide Equivalent.

**Nationally Determined Contribution** or **NDC** shall have the meaning given to the term in Article 4 of the Paris Agreement.

**Non-State Actor** are business, industries, energy utilities, financial institutions, not-for-profits, regional and local authorities that have an active role within the framework of this Agreement.

**Other International Mitigation Purposes** means International Mitigation Purposes and Other Purposes as those terms are defined in the Paris Agreement Rules.

**Paris Agreement** means the international treaty on climate change adopted at the 21<sup>st</sup> Conference of the Parties to the UNFCCC in Paris, on 12 December 2015.

**Paris Agreement Rules** means the Paris Agreement and all relevant decisions, guidelines, rules, modalities and procedures made by the CMA and any relevant constituted body, as amended from time to time, including the Article 6.2 Guidance.

**Party** means contracting party(ies) to this Agreement.

**Positive Examination** means the determination by the Host Country or the Acquiring Country that the MOs generated have been Verified and deemed compliant with the sustainable development requirements for each Mitigation Activity.

**Registry** means an electronic database or system that is established or operated pursuant to the Paris Agreement Rules and/or a Crediting Standard in order to ensure accurate accounting of the Issuance, holding, transfer, acquisition, surrender, cancellation and replacement of all MOs/ITMOs, including the assignment of Unique Identifiers.

**Secretariat** refers to the United Nations Framework Convention on Climate Change (UNFCCC) Secretariat.

**Sustainable Development Tools** means an internationally recognised sets of tools, methods, and modalities to enable assessment of the Mitigation Activity's contribution to sustainable development.

**Technical Expert Review** has the meaning given to it in the Paris Agreement Rules.

**Third Party** means a party that is not a Party to this Agreement.

**UNFCCC** means the United Nations Framework Convention on Climate Change, which is the parent treaty of the 1997 Kyoto Protocol and the Paris Agreement.

**Unique Identifiers** has the meaning given to it in the Article 6.2 Guidance.

**Validator** means an organisation or body designated by mutual agreement of the Parties and accredited or recognised under the Paris Agreement Rules and/or the rules of a Crediting Standard to carry out Validation of the Mitigation Activities according to those rules.

**Validation** means validation in accordance with the Paris Agreement Rules and/or the rules of a Crediting Standard by a Validator that a Mitigation Activity meets the criteria as set by the Crediting Standard and includes the process of independent evaluation of a Mitigation Activity Design Document in accordance with those rules. **Validated** has a corresponding meaning.

**Validation Report** means a written report prepared and issued by the Validator in respect of the Validation conducted, in accordance with the requirements of the Paris Agreement Rules and/or the rules of a Crediting Standard.

**Verification** means the periodic review and ex-post determination by a Verifier in accordance with the requirements of the Paris Agreement Rules and/or the rules of a Crediting Standard of the amount of Mitigation Outcome achieved by the Mitigation Activity in a given monitoring period. **Verified** has a corresponding meaning.

**Verification Report** means a written report prepared and issued by the Verifier in respect of the Verification conducted, in accordance with the requirements of the Paris Agreement Rules and/or the rules of a Crediting Standard for a monitoring period.

**Verifier** means an organisation or body designated by mutual agreement of the Parties and accredited or recognised under the Paris Agreement Rules and/or the rules of a Crediting Standard and Methodology to carry out Verification of Mitigation Outcomes.

## Other Terms

- 1.2 Capitalized terms defined in this Agreement shall have the meaning given to them in the Paris Agreement Rules.
- 1.3 Reference to any legal instruments or approved Crediting Standards includes amendments, consolidations, re-enactments, and replacements of it.
- 1.4 Words in the singular are to be interpreted as including the plural, and vice versa, to the extent the context permits or requires.
- 1.5 All references to a Party or Parties being required to act or refrain from acting in respect of obligations set out in this Agreement include their officers and employees.

## Purpose

- 1.6 The purpose of this Agreement is to establish a legal framework and procedures for engagement in cooperative approaches including Authorization of MOs and their transfers as ITMOs based on the provisions of Article 6.2 of the Paris Agreement and on the Paris Agreement Rules related to this Article.
- 1.7 In case any provisions in this Agreement conflict with the provisions set out in Article 6.2 of the Paris Agreement and/or with the Paris Agreement Rules related to this Article, the latter two shall prevail.
- 1.8 Any Mitigation Activities in the Host Country, that the Buyer intends to acquire ITMOs from, will be regulated in a separate MOPA between the Buyer and Mitigation Activity Owner(s).

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## **2. Participation Requirements**

### **Participation**

- 2.1 Each Party shall ensure that its participation in Cooperative Approaches under this Agreement, including Authorization, any transfer of ITMOs, and any use of ITMOs, is in compliance with the participation requirements in the Article 6.2 Guidance.

### **Regulatory and Institutional Arrangements**

- 2.2 Within a period of up to 30 months of the entry into force of this Agreement:
- (a) The Host Country shall ensure that it is legally and operationally in the position to Authorize, Issue and transfer, use and/or cancel the MO in its Registry in accordance with Section 3 (Authorization) and Section 4 (Issue and Transfer).
  - (b) The Acquiring Country shall ensure that it is legally and operationally in the position to receive, use and/or cancel the ITMOs in its Registry in accordance with Section 4 (Issue and Transfer).
- 2.3 Each Party shall notify the other Party that the relevant regulatory and institutional arrangements are operational, providing details of the specific rules, policy or guidance and institutions established, including but not limited to the body or official in the Host Country which has the authority to Authorize MOs and transfer ITMOs.

### **Registries**

- 2.4 Each Party ensures that from 30 months of the entry into force of this Agreement, it will have access to and continuously maintain a Registry for ITMO tracking purposes.
- 2.5 A Party may instead use the International Registry, subject to it being operational.

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## **3. Authorization**

- 3.1 The Host Country shall provide a Letter of Authorization for each Mitigation Activity specifying that it Authorizes MOs generated from the Mitigation Activity for use towards the NDC of the Acquiring Country or Other International Mitigation Purposes in accordance with the Paris Agreement Rules.
- 3.2 The Parties agree that Other International Mitigation Purposes may include, but are not limited to, the use of MOs:
- (a) for achievement of the Acquiring Country's emission targets or sustainable development goals;
  - (b) by the Acquiring Country in the voluntary carbon market; or
  - (c) for such other purposes as the parties agree, acting reasonably, to be International Mitigation Purposes.
- 3.3 The Host Country Authorization is contingent on its Positive Examination of the Verification Report and the sustainable development requirements specified for each Mitigation Activity.
- 3.4 The Host Country shall only Authorize MOs from a given Mitigation Activity provided that the Host Country has determined that the Mitigation Activity is not anticipated to jeopardize their NDC fulfilment at the end of the NDC period, and provided that the Mitigation Activity has



been Validated and determined to be in compliance with sustainable development requirements specified for each Mitigation Activity.

- 3.5 The Host Country's Letter of Authorization of a Mitigation Activity shall include all of the following:
- (a) the relevant information as set out in the Article 6.2 Guidance
  - (b) a reference to the Validation Report;
  - (c) the maximum amount of MOs to be issued and transferred;
  - (d) the method for applying Corresponding Adjustments;
  - (e) a reference to the Mitigation Activity's contribution to sustainable development in accordance with Section 8 (Environmental Integrity and Sustainable Development); and
  - (f) confirmation by the Host Country that the Mitigation Activity is not anticipated to jeopardise the achievement of the Host Country's NDC.
- 3.6 The Acquiring Country shall provide a Letter of Authorization for each Mitigation Activity specifying that it Authorizes MOs generated from the Mitigation Activity for use towards its NDC or Other International Mitigation Purposes in accordance with the Paris Agreement Rules.
- 3.7 The Acquiring Country's Authorization is contingent on its Positive Examination of the Verification Report and the sustainable development requirements specified for each Mitigation Activity.
- 3.8 By no later than 15 April of each calendar year, the Host Country shall notify the Acquiring Country annually of all Authorizations of MOs Issued by the Host Country under this agreement during the previous calendar year.
- 3.9 The Parties shall also provide updates on authorizations during the year under this Section 3.

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## **4. Issuance and Transfer**

### **Issuance**

- 4.1 Provided that the MOs from a given Mitigation Activity have been Verified and received a Positive Examination by the Host Country and the Acquiring Country, the Host Country shall promptly issue MOs into its Registry.

### **Transfer**

- 4.2 Upon Issuance of the MOs in accordance with Section 4.1 the Host Country shall promptly transfer the MOs to the Acquiring Country.
- 4.3 The Host Country shall notify the Acquiring Country upon the transfer from the Registry of the Host Country.
- 4.4 Transfers comprise and are complete only once the notification has been made and both the Host Country and Acquiring Country Registries have recorded the transfer.

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## **5. Corresponding Adjustments**

### **Approach**

- 5.1 The Parties must apply Corresponding Adjustments for all ITMOs in accordance with the Paris Agreement Rules.
- 5.2 Without limiting Section 5.1, the Parties shall strive to apply international best practice concerning the use of Corresponding Adjustment methods and the application of Corresponding Adjustments.
- 5.3 Corresponding Adjustments by the Host Country are required in respect of the First Transfer of ITMOs and applied in accordance with one of the methodologies for a single-year NDC or multi-year NDC as applicable.
- 5.4 Corresponding Adjustments are required for First Transfers of ITMOs independent of whether the Mitigation Activities from which they are generated are covered by the Host Country's NDC or not.

### **Avoidance of Double Counting and/or Double Claiming**

- 5.5 The Parties shall ensure that no double counting and/or double claiming concerning any ITMOs delivered shall occur, including from or with respect to participating stakeholders and voluntary carbon markets.

### **Voluntary Cancellation**

- 5.6 For the avoidance of doubt, the Acquiring Country may choose at any time to voluntarily cancel any ITMOs transferred without consequence for the Corresponding Adjustment made by the Host Country.

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## **6. Information Sharing**

- 6.1 The Parties shall make publicly available in English:
  - (a) any Authorization of MOs in accordance with Section 3 of this Agreement; and
  - (b) details of each international transfer and Corresponding Adjustment in accordance with Section 5 of this Agreement.

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## **7. Coordination**

### **Implementing Entities**

- 7.1 The Parties shall inform each other of the national entities designated to implement this Agreement. In the event of changes to these entities the Host Country or the Acquiring Country will notify the other Party in writing.

### **Coordinating Committee**

- 7.2 The Parties hereby establish a Coordinating Committee for the purpose of coordinating the technical implementation of this Agreement.
- 7.3 The Coordinating Committee will consist of representatives of each Party, as required by circumstances.

- 7.4 The Coordinating Committee is to convene meetings in person or remotely, as required, upon 14 days' notice of one of the Parties unless otherwise urgent.
- 7.5 The functions of the Coordinating Committee may include providing guidance on matters related to:
- (a) Crediting Standards, including any Methodology;
  - (b) Validation and Verification;
  - (c) Authorization of MOs;
  - (d) Issuance and transfers of MOs;
  - (e) Corresponding Adjustments;
  - (f) monitoring and reporting;
  - (g) environmental integrity and sustainable development in accordance with Section 8 (Environmental Integrity and Sustainable Development);
  - (h) the share of gross proceeds of any ITMO transfer that shall be reserved as a contribution to adaptation as well as the recipient of such proceeds;
  - (i) capacity building in accordance with Section 10 (Capacity Building);
  - (j) to consider any amendment in respect of this Agreement; and/or
  - (k) any Disputes in accordance with Section 21.1.
- 7.6 The Coordinating Committee shall have no decision-making authority and its mandate and activities shall not conflict with the existing or proposed national institutional entities of the Parties.
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## **8. Environmental Integrity and Sustainable Development**

### **Environmental Integrity**

- 8.1 Prior to Issuing MOs, the Host Country and the Acquiring Country shall confirm, through Validation and Verification, the environmental integrity of the MOs as described in the Paris Agreement Rules, especially:
- (a) that Mitigation Outcomes are real, Additional and Verifiable;
  - (b) that there is no net increase in global emissions within and between NDC implementation periods;
  - (c) through robust, transparent governance and the quality of MOs, including through conservative reference levels, baselines set in a conservative way and below 'business as usual' emission projections (including by taking into account all existing policies and addressing uncertainties in quantification and potential leakage); and
  - (d) by minimizing the risk of non-permanence of mitigation across several NDC periods and when reversals of emission removals occur, ensuring that these are addressed in full.

## **Sustainable Development**

- 8.2 Mitigation Activities implemented in the Host Country as a result of this Agreement shall be consistent with and contribute to sustainable development objectives of both the Host Country and the Acquiring Country, including any respective strategies, policies or long-term low emission development strategies.
- 8.3 Mitigation Activities shall be subject to appropriate Sustainable Development Tools to identify and monitor sustainable development impacts delivered by the activity.
- 8.4 Mitigation Activities shall further be subject to appropriate tools, methods, and/or modalities to
- (a) prevent any negative social or environmental-related impacts caused by the activity, including on air and water quality, biodiversity, worksite safety, social inequality and discrimination against population groups based on gender, ethnicity or age,
  - (b) respect national and international environmental laws and regulations,
  - (c) be in line with long-term low emission development strategies and promote sustainable development in the Host Country, and
  - (d) ensure such activities do not lead to or exacerbate social conflict and violation of human rights as defined by international law.
- 8.5 Mitigation Activity Owners shall undertake consultation with local and otherwise affected stakeholders with regard to sustainable development and have established an independent grievance mechanism process that may be accessed by all stakeholders.
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## **9. Non-State Actor Participation**

- 9.1 Non-State Actors may participate in identifying and implementing a Mitigation Activity, as well as selling and buying MOs, according to the terms of this agreement and in line with the laws of the Acquiring Country and/or the Host Country and the country's/countries' relevant national policy frameworks on Article 6 of the Paris Agreement.
- 9.2 The Acquiring Country may Authorize a Third Party to receive, register and/or transfer MOs on the Acquiring Country's behalf.
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## **10. Capacity Building**

- 10.1 The Parties agree to collaborate on capacity building of the host country regarding the Paris Agreement Rules instruments including assistance with the development of the institutions, competencies, and infrastructure necessary to fulfil the terms of this agreement.
- 10.2 The Parties may contribute resource and capacity support (as applicable) to implement this cooperation and to support technical analysis to inform the design and implementation of Mitigation Activities and the development of national institutional infrastructure supporting Article 6 of the Paris Agreement.
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## **11. Reporting and Review to the Secretariat**

- 11.1 Each Party shall comply with the requirements on initial reporting, annual information, and biennial transparency reporting (including all Regular Information under the Paris Agreement Rules) in accordance with the Paris Agreement Rules.

- 11.2 The Parties shall at all times cooperate with and take best efforts to implement any recommendations from the Technical Expert Review proceedings as foreseen in the Paris Agreement Rules.
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## **12. Ambition in Mitigation and Adaptation Actions**

- 12.1 The Parties shall promote enhanced climate action and ambition in accordance with their respective low-emission development strategies.
- 12.2 The Parties will strive to ensure that for each Cooperative Approach under Article 6.2 guidance in which they participate a share of gross proceeds of any ITMO transfer shall be reserved as a contribution to adaptation through a mutually agreed upon fund. The modalities for the determination of the amount and recipients shall be dealt within the Coordinating Committee.
- 12.3 The Parties will strive to ensure that from each transaction a share of ITMOs shall be cancelled for purposes of contributing to the overall mitigation in global emissions.
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## **13. Representations and Warranties**

### **Mutual Representations and Warranties**

- 13.1 Each Party represents and warrants to the other Party on the date hereof that
- (a) it is duly authorized and has the power and authority to execute and deliver this Agreement and to perform its obligations under it and has taken all necessary actions to authorize the entry into and the observance and performance of its obligations under this Agreement and shall maintain all relevant authorizations, and that
  - (b) the Person signing this Agreement on behalf of a Party is duly authorized to sign the Agreement as a representative of the Party.
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## **14. Miscellaneous**

- 14.1 Participation in this Agreement does not affect the right of each Party to enter into other agreements with respect to Article 6 of the Paris Agreement.
- 14.2 Participation in this Agreement does not affect the obligations of each Party under the UNFCCC or the Paris Agreement.
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## **15. Entry into Force and Amendments**

- 15.1 This Agreement shall enter into force upon the date on which the Parties exchange instruments of ratification, acceptance or approval establishing the consent of the Party to be bound by the Agreement.
- 15.2 The Parties are to exercise reasonable endeavours to exchange instruments of ratification, acceptance or approval following execution of this Agreement.
- 15.3 This Agreement may only be amended by agreement in writing executed by the Parties, following consideration by the Coordinating Committee under Section 7.5.

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## **16. Event of Default**

- 16.1 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) any representation or warranty made or repeated by the Party in this Agreement is false or misleading in any material respect when made or repeated;
  - (b) any Party fails to enter into direct negotiations through diplomatic channels when requested by the other Party in accordance with Section 21.2 (Settlement of Disputes);
  - (c) any Party fails to comply with Section 18 (Anti-Bribery and Anti-Money Laundering);
  - (d) any Party disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of, or expressly refuses to perform this Agreement (or such action is taken by any Entity or person appointed or empowered to operate it or act on its behalf); or
  - (e) a Party fails to comply in any material respect with or perform in any material respect any of its other obligations or covenants under this Agreement and such failure is not remedied to the reasonable satisfaction of the other Party within 120 days after written notice of such failure is given to the Party by such other Party.

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## **17. Remedies**

- 17.1 Upon the occurrence of an Event of Default and while such Event of Default is continuing, the non-defaulting Party, at its option, may
- (a) suspend performance of any obligation under this Agreement, and/or
  - (b) terminate this Agreement upon 90 days written notice to the defaulting Party.

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## **18. Anti-Bribery, Anti-Corruption and Anti-Money Laundering**

### **Engagement with Designated Persons**

- 18.1 The Parties shall not, in performing its obligations under this Agreement or any MOPA pursuant to this Agreement (and shall ensure that its officers, directors, employees, agents and representatives do not) receive, transfer, retain, use or hide the proceeds of any criminal activity whatsoever, or employ or otherwise conduct business with a Designated Person.
- 18.2 For the purposes of this Section 18, a Designated Person is any person who is publicly identified from time to time by any government or legal authority under applicable trade sanctions, export controls, anti-money laundering, non-proliferation, anti-terrorism and similar laws as a person with whom trade or financial dealings and transactions by the Parties are prohibited or restricted.

### **Corrupt Practices**

- 18.3 The Parties shall not (nor authorize any person acting on its behalf to) engage in Corrupt Practices in connection with this Agreement or any MOPA pursuant to this Agreement, including the procurement or the execution of any contract for goods or works. The Parties shall institute, maintain and comply with internal procedures and controls following international best practice standards for the purpose of preventing any action in breach of the provisions of this clause.

## **Notification of Violation**

- 18.4 Each Party undertakes to inform the other promptly if it should, at any time, obtain information in relation to any violation or potential violation of the provisions of this Section 18.
- 18.5 If a Party notifies the other Party of its concern that there has been a violation of any of the provisions of Section 18.1, the Party receiving that notice shall
- (a) cooperate in good faith with the notifying Party and its representatives in determining whether such a violation has occurred,
  - (b) respond promptly and in reasonable detail to any notice from the notifying Party, and
  - (c) furnish documentary support for each such response upon the notifying Party's request.
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## **19. Force Majeure**

- 19.1 Upon the occurrence of a Force Majeure, the Party affected by the Force Majeure (the "FM Affected Party") shall notify the other Party in writing of the commencement of the Force Majeure. The FM Affected Party shall provide details of the Force Majeure and a non-binding estimate of the extent and the expected duration of its inability to perform its obligations due to the Force Majeure.
- 19.2 During the continuation of the Force Majeure, the FM Affected Party shall use reasonable efforts to mitigate and overcome the Force Majeure and to update the other Party with any change to its estimate of the expected duration of its inability to perform its obligations due to Force Majeure and providing full details for such change.
- 19.3 The obligations of both Parties under this Agreement which cannot be performed due to the Force Majeure will be suspended for the duration of the Force Majeure and shall not be required to be performed until the day that is 90 days after the Force Majeure is overcome or ceases to exist (the "Delayed Performance").
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## **20. Change in Law**

- 20.1 In the event of a change to the Paris Agreement Rules or other such International Law that adversely affects a Party's ability to perform under this Agreement or renders any term or condition inconsistent with such change (Change in Law), the Parties shall in good faith attempt to make amendments to reflect such Change in Law so as to be able to perform their respective obligations while retaining the intent of this Agreement.
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## **21. Settlement of Disputes**

- 21.1 Any dispute between the Parties arising out of, or in connection with this Agreement, including any question concerning the interpretation or application of this Agreement or the breach, termination or invalidity thereof (Dispute) shall first be promptly referred to the Coordinating Committee to seek to resolve the Dispute through negotiation.
- 21.2 If the Dispute has not been resolved within 180 days of its referral to the Coordinating Committee, the Parties shall seek to resolve the Dispute by direct negotiations in bilateral diplomatic channels.

- 21.3 If the Dispute has not been resolved through bilateral diplomatic channels within a further 180 days, it shall be resolved in accordance with Article 14 of the UNFCCC on settlement of disputes.
- 21.4 Nothing in this Section 21 prevents a Party seeking urgent injunctive or declaratory relief.
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## **22. Confidentiality**

- 22.1 Each Party undertakes not to use or disclose any Confidential Information relating to any person. This does not apply to disclosure of Confidential Information:
- (a) which is lawfully or will be lawfully brought to public domain other than by breach of this Agreement;
  - (b) shown to be known to a Party before receipt thereof from the other Party;
  - (c) received by a Third Party which is received from that Third Party without restraints as to the use thereof;
  - (d) where disclosure is required under an approved Crediting Standard or an applicable Methodology;
  - (e) where disclosure is required under the laws of the Acquiring Country or the Host Country;
  - (f) where disclosure is to a competent national or international authority in relation to any violation of any of the provisions of Section 18; and/or
  - (g) in cases referred to in Section (c) above, the receiving Party is not, however, entitled to disclose to Third Parties that the same information has also been received from the other Party.
- 22.2 This confidentiality undertaking is unlimited in time and shall survive termination of this Agreement.
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## **23. Governing Law**

- 23.1 This Agreement shall be governed by and construed in accordance with International Law and, where applicable, each Party's respective domestic laws.



## Execution

**Executed** as an agreement.

**Signed** for and on behalf  
of **the Republic of Kenya**  
by the Cabinet Secretary, Ministry of  
Environment, Climate Change and Forestry,  
its duly authorized representative:



\_\_\_\_\_  
Date and Place



\_\_\_\_\_  
Dr Deborah Mlongo Barasa  
Cabinet Secretary  
Ministry of Environment, Climate Change  
and Forestry

**Signed** for and on behalf  
of **the Kingdom of Sweden**  
by the Acting Director General of the  
Swedish Energy Agency, its duly authorized  
representative:



\_\_\_\_\_  
Date and Place



\_\_\_\_\_  
Caroline Asserup  
Acting Director General,  
Swedish Energy Agency