

AMERICAN CARBON REGISTRY

TERMS OF USE

April 2012

The following are the Terms of Use for the American Carbon Registry (the “Registry”), operated and administered by American Carbon Registry, an enterprise of Winrock International Institute for Agricultural Development, an Arkansas non-profit corporation (“ACR” or “Administrator”). “American Carbon Registry”, “American Carbon Registry Standard” (the “ACR Standard”) and ACR’s system for GHG reduction projects and credits, are owned by and constitute the valuable intellectual property of ACR. These Terms of Use are in addition to the Operating Guidelines, ACR Standards and other ACR guidance applicable to your use of the Registry website located online at <http://americancarbonregistry.org> (the “Registry Site”). In the event these Terms of Use conflict or are inconsistent with the General Terms of Use, the provisions of these Terms of Use shall control for the services referenced herein.

1. Acceptance of Terms. Your use of the Registry and the Registry Site is subject to the following Terms of Use, which constitute a binding contract between you (also referred to herein as “Account Holder”) as user of the Registry and Administrator as administrator and owner of the Registry (Account Holder and Administrator, are individually referred to herein as a “Party”, and collectively referred to herein as the “Parties”). BY USING OR ACCESSING THE REGISTRY, YOU ACCEPT AND AGREE TO BE BOUND BY THESE TERMS OF USE AS MODIFIED FROM TIME-TO-TIME IN ACCORDANCE WITH THE TERMS HEREOF, AND YOU AGREE TO TAKE AFFIRMATIVE RESPONSIBILITY FOR THE COMPLIANCE OF YOUR USERS WITH THESE TERMS OF USE. You can review the current version of the Terms of Use at any time at the Registry Site. CONTINUED USE AND ACCESS OF THE REGISTRY BY YOU AND/OR YOUR USERS AFTER MODIFICATION OF THE TERMS OF USE SIGNIFIES YOUR AGREEMENT TO BE BOUND BY THE MODIFIED TERMS OF USE AND YOUR AGREEMENT TO TAKE AFFIRMATIVE RESPONSIBILITY FOR THE COMPLIANCE OF YOUR USERS WITH THESE MODIFIED TERMS OF USE. In addition, when using the Registry, you shall be subject to any rules, guidelines and/or operating procedures applicable to such use which may be posted at the Registry Site from time-to-time, including but not limited to the General Terms of Use and the Registry’s Operating Procedures, each as modified or restated from time-to-time (collectively, the “Operative Documents”). All such rules, guidelines and operating procedures are incorporated by reference into these Terms of Use. Your use of the Registry will also be subject to the rules, guidelines and/or operating procedures of the ACR and ACR Standard, as set forth online at <http://www.americancarbonregistry.org/>, as modified or restated from time-to-time, but only to the extent that such rules, guidelines and operating procedures do not conflict with the Operative Documents or these Terms of Use. If you do not agree to these Terms of Use, you and your users may not access or otherwise use the Registry.

2. Capitalized Terms; Definitions.

Defined terms in these Terms of Use, which may be identified by the capitalization of the first letter of each principal word thereof, have the meanings assigned to them in Appendix A, which is hereby incorporated herein. Any capitalized terms contained herein that are not otherwise defined herein shall have the meanings as such terms are defined in the Operative Documents.

3. Description of Service.

(a) The Registry serves as an informative system for the issuance, transfer, suspension and retirement of, and custodial services for, ERTs within the Registry. The data comprising the Registry shall include emissions information validated, verified and provided to the Administrator by a Verifier.

(b) The Registry is an assembly of data on emission reduction projects and ERTs that is verified, validated and provided by third parties, and serves only for informational purposes. Any issues or disputes that may arise between the Account Holder, other Registry Participants and third parties from the use of the Registry or the data (including without limitation in connection with the validity of project data, with the purchase and sale of ERTs or whether an ownership interest, Beneficial Ownership Rights, security interest or other proprietary interest is created in any ERT, shall be addressed between the Account Holder and such Registry Participant or third party. Neither the Registry nor Administrator will address any such issues and neither shall have any liability with respect to any such issues. Administrator reserves the right to dispose of any disputed ERTs by interpleader or other suitable action in the event of controversy and to deposit any ERTs or other items subject of the interpleader action with the relevant court or arbitral panel.

(c) Administrator reserves the further right, in its sole discretion, to modify, augment, segment, reformat, reconfigure or otherwise alter at any time the content or methods of transmission of the Registry, the Operative Documents or these Terms of Use and create new types or versions of the Registry, the Operative Documents or these Terms of Use. Administrator shall not be required to comply with any provisions of any Operative Document to the extent that Administrator determines in its reasonable discretion that such compliance would have a material adverse effect on the Registry; provided, that Administrator shall report to Account Holder any such non-compliance within thirty (30) days after such non-compliance first occurs. Administrator shall provide Account Holder with at least thirty (30) days' prior notice of material changes to the Registry or these Terms of Use, and such changes shall be effective upon the date set forth in the notice, which may be given by any means including, without limitation, posting on the Registry Site, or by electronic or conventional mail. All other changes shall be effective upon their being posted on the Registry Site. Any use of the Registry by Account Holder after a change has gone into effect shall be deemed to constitute acceptance of such change.

4. Authorized User; Personal Data.

(a) The rights and obligations of these Terms of Use shall run to the named Parties and their successors in interest and authorized assigns. Account Holder shall ensure that any of its owners, trustees, members, officers, directors, employees, agents appointed as Account Holder's agent ("Agents") and/or any other agents to whom it has provided access to the Registry (collectively, the "Representatives" or "Users") agree to comply with the Operative Documents and these Terms of Use.

(b) Account Holder shall execute and return to Administrator a Declaration of Agency ("Declaration") for any Agent it desires to hire and/or contract with to access the Registry on its behalf. A form of Declaration will be available on the Registry Site. Account Holder understands and agrees that only one entity may be granted access to an Account, and that accordingly if Account Holder grants Account access to an Agent, Account Holder shall not have access to that Account unless and until Account Holder revokes the applicable Declaration of Agency.

(c) Account Holder acknowledges and agrees that the rights and licenses provided under these Terms of Use and the Operative Documents are solely for the benefit of Account Holder and are to be exercised only in connection with Account Holder's and its Representatives', if any, use of the Registry. Without limiting the generality of the foregoing, except as set forth in this Section 4 and in Section 20, or except with respect to Beneficial Ownership Rights that are permitted by these Terms of Use, Account Holder may not transfer or sublicense its rights, licenses or Account, or any portion thereof, to any third party.

(d) Having applied to participate in the ACR, Account Holder accepts that Administrator, its representatives, successors and assigns, will need to collect certain Personal Data in connection with its application or transaction with Administrator, including Account Holder's name, address, and contact information, as set forth in the Registry's Privacy Policy ("Personal Data"). Account Holder confirms that it has obtained the express consent from any relevant third parties whose Personal Data it is required to provide to Administrator. Account Holder hereby expressly and freely consents and authorizes Administrator to process, use or export such Personal Data in order to achieve the purposes of these Terms of Use, including to process Account Holder's application for services relating to ACR and participation in the ACR Registry; to complete all verification processes whether the verification is made by the Registry or by third party service providers on their behalf; to share, in accordance with the confidentiality provisions of these Terms of Use, Account Holder's Personal Data with APX, the operator of the ACR project database, as well as any third party service providers, associated companies and agents, as needed and appropriate; and to comply with all of Administrator's legal and regulatory obligations relating to the ACR, the ACR project database and its operator-and their compliance obligations in any jurisdiction. You acknowledge and agree that APX and its affiliates may from time to time acquire, access, retain and use, from publicly available source (including, without limitation, public portions of the Registry Site) information that may contain information identical to Personal Data. Nothing contained herein shall restrict APX and/or its

affiliates from accessing, retaining and using such publicly available information for its own purposes, even if such publicly available information is identical to Personal Data.

5. Ownership and Use of Data and the Registry.

(a) Account Holder acknowledges that (i) Confidential Information, as defined in Section 14(b) hereof, is, and shall remain, the exclusive property of the participant in the Registry, whether a holder of an Account or otherwise (a "Registry Participant"), who submitted it or on whose behalf it was submitted, and (ii) Administrator is and shall remain the sole owner or authorized licensee of all data comprising the Registry (except as provided in Section 14(c) hereof) and of the Registry operating system, including any components, modifications, adaptations and copies thereof. Without limiting any of the foregoing, Account Holder further acknowledges and agrees that any and all Software is proprietary software of Administrator and/or its affiliates and third party providers. Except as provided herein, Account Holder shall not obtain, have or retain any right, title or interest in or to the Registry or the Software or any part thereof. Account Holder acknowledges and agrees that Administrator is and shall remain the sole owner of any registration required to access or use the Registry, including without limitation any and all intellectual property rights therein. The rights granted to Account Holder are solely defined by these Terms of Use and the Operative Documents as in effect from time-to-time and include, but are not limited to, permission to use the Registry as set forth herein and therein. Account Holder's rights under these Terms of Use do not include a transfer of title or any other ownership interest in the Registry, its content or any part thereof to Account Holder. Account Holder agrees not to contest or challenge Administrator's or its third-party suppliers' ownership of the data comprising the Registry, the Software and associated intellectual property rights and not to take any action that would infringe, misappropriate, constitute unfair competition with respect to, or otherwise violate the ACR Standards, Administrator's or their third-party suppliers' ownership of or rights in the data comprising the Registry, the Registry or the Software.

(b) Except as otherwise provided in the Operating Procedures and Section 14(c) hereof, Account Holder acknowledges that once Account Holder transmits data to the Registry, such data becomes the property of Administrator. Except in accordance with Administrator's normal operating procedures, data in the Registry, including Confidential Information, cannot and will not be deleted, removed, or otherwise expunged or segregated, including in the event Account Holder terminates its use of the Registry or any Account or Sub-account in the Registry or is terminated pursuant to Section 12 hereof. To the extent any data submitted by or on behalf of Account Holder is and remains Confidential Information, Account Holder grants Administrator a perpetual, irrevocable, worldwide, royalty-free and non-exclusive license to retain and use such data in the Registry, subject to the obligations set forth in these Terms of Use applicable to such Confidential Information.

(c) Account Holder acknowledges that the data transmitted by the Registry is derived from proprietary and public third-party sources, including but not limited to data from Registry Participants other than Account Holder, ACR and Verifiers.

(d) Account Holder will not use the Registry for any unlawful purpose or in an unlawful manner. Account Holder shall prevent the use or copying of the Registry and any other supporting materials by Account Holder's Representatives except as permitted by the terms of these Terms of Use.

(e) Account Holder represents that it has legal title to, or has been authorized to act on behalf of the holder of legal title to, the data provided to the Registry by Account Holder and acknowledges that Administrator cannot be held liable in the event of misrepresentation of ownership thereof by Account Holder. In the event Account Holder has been authorized to act on behalf of the holder of legal title to data, Account Holder agrees to provide the Administrator with a legally binding document confirming such authorization, which document will be reasonably acceptable to Administrator. Account Holder represents that all data and other information it provides to APX and the Registry shall be true, is complete and is correct to the best of its knowledge, information and belief.

(f) Account Holder will notify Administrator of any issues surrounding the issuance of ERTs deposited to Account Holder.

(g) Administrator grants Account Holder non-exclusive permission to access, retrieve and download data from the Registry subject to these Terms of Use and the Operative Documents, which grant shall not be effective until (i) Account Holder has: (1) completed and submitted to Administrator the online registration available on the Registry Site, and (ii) paid all applicable fees due under the Operative Documents; and (ii) Administrator, in its sole discretion, has accepted Account Holder's registration. Account Holder will take all appropriate steps and precautions to safeguard and protect the access, use and security of the Registry and Account Holder's user access information from unauthorized users.

(h) Administrator reserves all rights in the Registry not expressly granted to Account Holder in these Terms of Use.

(i) To Administrator's actual knowledge, the Software does not infringe any intellectual property rights of third parties.

6. Ownership of ERTs; Action with Respect to ERTs on Behalf of Third Parties.

(a) General Prohibition on Third Party Ownership. Except as otherwise permitted under Sections 6(b) or 6(c) below:

(i) Account Holder will only hold or retire in its Accounts ERTs for which it is the sole holder of all legal title and all Beneficial Ownership Rights, and

(ii) Account Holder may not hold any Accounts, or hold or retire in its Accounts, any ERTs on behalf of one or more third parties.

(b) Retail Aggregator Exception. Account Holder may retire ERTs on behalf of one or more third parties, provided that:

(i) any such retirement may be effected only in a Group Retirement Sub-account, in the manner set forth in the Operating Procedures;

(ii) all legal title to and all Beneficial Ownership Rights in any ERTs retired in a Group Retirement Sub-account must be held by one or more individuals or organizations (collectively, the “Indirect Owners”) that have authorized Account Holder in writing to retire such ERT on their behalf and to provide any data or other information relating to such ERT to Administrator (except to the extent that Account Holder may be deemed to hold or share with the applicable Indirect Owners any legal title to or Beneficial Ownership Rights in such ERT); and

(iii) any retirement of any ERT in a Group Retirement Sub-account shall be effected solely on behalf of the applicable Indirect Owners.

(c) Optional Omnibus Account. Account Holder may hold ERTs in its Account(s) on behalf of one or more Indirect Owners, provided that:

(i) Account Holder is a Regulated Person and has provided Administrator a signed Regulated Person Attestation, available on the Registry Site; provided, however, that Administrator may, in its sole discretion, waive the requirements set forth in this paragraph (i) with respect to Account Holder by providing Account Holder with written notice of such waiver;

(ii) All legal title to and all Beneficial Ownership Rights in any ERT so held by Account Holder is held by one or more Indirect Owners that have authorized Account Holder in writing to hold ERTs on their behalf and to provide any data or other information relating to such ERT to Administrator (except to the extent that Account Holder may be deemed to hold or share with the applicable Indirect Owners any legal title to or Beneficial Ownership Rights in such ERT);

(iii) Account Holder complies with all applicable laws, regulations or other legally enforceable requirements, including without limitation applicable provisions of the USA PATRIOT Act and the regulations of the Office of Foreign Assets Control of the U.S. Department of the Treasury;

(iv) Account Holder maintains a customer identification program that contains reasonable procedures to verify the identity of any individual or organization on whose behalf Account Holder is holding ERTs and maintains records of the information used to verify such identity, which records will be made available to Administrator upon request; and

(v) Account Holder complies with the requirements of Section 6(b) in connection with any retirement of ERTs it holds on behalf of one or more Indirect Owners.

(d) Account Holder acknowledges that neither the Registry nor Administrator (or its third party providers) shall have any liability in connection with any misrepresentation by Account Holder or another Registry Participant relating to the ownership of any ERT in any Account or sub-account held by Account Holder (including without limitation the identity of the person(s) holding any legal title thereto or Beneficial Ownership Rights therein).

7. Representations and Warranties. Throughout the term of these Terms of Use, including without limitation upon each creation, transfer or retirement of an ERT by Account Holder, Account Holder represents and warrants to Administrator as follows:

(a) If other than a natural person, Account Holder is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation;

(b) Account Holder has all corporate and other authority and all regulatory and other consents, approvals and authorizations necessary for it to legally (i) enter into and perform its obligations under these Terms of Use and the Operative Documents and (ii) engage in all of its activity (including the creation, receipt and transfer of ERTs) on or relating to the Registry;

(c) The signatory of these Terms of Use has the authority to execute these Terms of Use on behalf of Account Holder, and these Terms of Use are binding on and enforceable against Account Holder in accordance with their terms;

(d) Account Holder will only use the Registry for creating, transferring and retiring ERTs that are attributable to the GHG reduction projects included in the Registry and specifically acknowledges that it shall not use any other database for the same purpose at the same time as such GHG reduction projects are registered in the Registry;

(e) Account Holder has not registered and will not register any GHG reduction simultaneously both in the Registry and in any other system that tracks the emissions, emission reductions, emission offsets, or other environmental attributes related to emission reduction projects nor will any transaction of the same emissions, emission reductions, emission offsets, or other environmental attributes related to emission reduction projects be conducted outside of the Registry, other than in another ACR approved registry;

(f) Account Holder commits not to claim emissions reduction tons which have already been or are expected to be registered with another compliance or voluntary emissions reduction standards;

(g) Account Holder meets all of the requirements for participation in the Registry, as set forth in the Operative Documents;

(h) Neither Account Holder nor any Indirect Owner, if any, has retired, sold, claimed, represented elsewhere or used, nor will it retire, sell, claim or represent elsewhere or use to satisfy obligations in any jurisdiction outside of the Registry, any of

the GHG reductions by the project associated with Account Holder's ERTs without reporting such disposition within the Registry;

(i) Collectively, Account Holder and the Indirect Owners, if any, having a Beneficial Ownership Right in the ERTs held in one of Account Holder's Accounts or Sub-Accounts have legal title and all Beneficial Ownership Rights with respect to the ERTs issued or to be issued to Account Holder and/or held in Account Holder's Accounts or Sub-accounts and the GHG reductions for which Account Holder is seeking credit, and no other person or entity can claim the right to the ERTs or to the GHG reductions for which Account Holder is seeking credit;

(j) Account Holder has been authorized to act on behalf of the Indirect Owners, if any, having a Beneficial Ownership Right in the ERTs held in Account Holder's Accounts or Sub-accounts;

(k) Account Holder has acted in compliance with any regulatory system or other requirements underlying the GHG reductions for which Account Holder is seeking credit;

(l) All data and other information being provided to ACR, Administrator and the Registry by Account Holder and/or its Representatives are owned legally and beneficially by Account Holder, are derived from public third party sources or, with respect to ERTs held by Account Holder on behalf of an Indirect Owner, by a person or entity on whose behalf Account Holder has been authorized to act, and all such data and other information are true, correct and complete in all material respects.

8. Fees. Account Holder agrees to pay all fees (collectively referred to herein as the "Fees") that Administrator may charge for use of the Registry from time-to-time. The Fees are included in the Registry Fee Schedule (the "Fee Schedule") posted on the Registry Site by Administrator. Account Holder acknowledges that it has received and reviewed the Fee Schedule. Administrator may, upon forty-five (45) days' notice to Account Holder and in its sole discretion, increase or decrease any or all of the Fees at any time. In no event shall any portion of the Fees be prorated or refunded to Account Holder upon termination of the Terms of Use or of any Account or Sub-account.

9. Payments and Taxes. Invoices for Fees will be posted on a secure page on the Registry Site. Account Holder will be notified upon an invoice being posted to the Registry Site. Account Holder shall pay any Fees charged hereunder by check or wire transfer of immediately available funds in United States dollars on the date and to the account identified by Administrator from time-to-time on the invoice, or if no date is indicated, no later than thirty (30) days from the date of the invoice (the "Due Date"), without offset or reduction of any kind. The Fees shall be non-refundable. Account Holder will pay all wire transfer fees and all sales, use, value added taxes, and other consumption taxes, personal property taxes and other taxes and charges imposed by any governmental entity (other than those based on Administrator's net income) (collectively, "Taxes") related to the use of the Registry unless Account Holder furnishes satisfactory proof of exemption. Taxes, if any, are not included in the Fees and, to the

extent that Administrator is required to pay those Taxes, those Taxes will be added to Account Holder's invoices. If not so added, such Taxes are the exclusive responsibility of Account Holder.

10. Late Payments. If Account Holder fails to pay any Fees, Taxes or other amounts or charges which Account Holder is obligated to pay under the Operative Documents or these Terms of Use by the Due Date, then Account Holder shall be responsible to pay interest thereon accruing at a rate of 1½ % per month, or the highest rate permitted by Applicable Law, whichever is lower, together with any additional costs or expenses incurred by Administrator in connection with the collection of such overdue amounts. Acceptance of any interest, cost or expenses shall not constitute a waiver by Administrator of Account Holder's default with respect to such late payment, nor prevent Administrator from exercising any other rights or remedies available to Administrator under the Operative Documents, these Terms of Use or any Applicable Law.

11. Default; Remedies.

(a) **Default.** The occurrence of any of the following shall be considered a "Default":

(i) Account Holder fails to pay any of the Fees, Taxes or other charges due in accordance with the procedures set forth in Sections 8 and 9 above within five (5) days of their Due Date.

(ii) Account Holder or its Representatives alter, tamper with, damage or destroy (1) the Registry or any portion thereof, or (2) the data of other Registry Participants.

(iii) Account Holder uses the Registry in any manner that, directly or indirectly, violates any Applicable Law.

(iv) All or substantially all of Account Holder's assets are attached or levied under execution (and Account Holder does not discharge the same within sixty (60) days thereafter); a petition in bankruptcy, insolvency, for reorganization or a similar arrangement is filed by or against Account Holder (and Account Holder fails to secure a stay or discharge thereof within sixty (60) days thereafter); Account Holder is insolvent and unable to pay its debts as they become due; Account Holder makes a general assignment for the benefit of creditors; Account Holder takes the benefit of any insolvency action or law; the appointment of a receiver or trustee in bankruptcy for Account Holder or its assets if such receivership has not been vacated or set aside within thirty (30) days thereafter; or, dissolution or other failure to exist of Account Holder if Account Holder is an entity.

(v) Account Holder falsifies or misrepresents any data or other information input into the Registry by Account Holder.

(vi) Account Holder makes any false or inaccurate representations in these Terms of Use.

(vii) Account Holder violates its confidentiality obligations set forth in Section 14.

(viii) Account Holder receives written notice of a violation of the performance of any particular material term or condition of the Operative Documents or these Terms of Use three (3) or more times during any twelve (12) month period, regardless of whether such violations are ultimately cured, which conduct shall represent a separate Default.

(ix) Account Holder fails to perform any other duty or obligation under these Terms of Use or the Operative Documents, which default is not cured to the satisfaction of Administrator in its sole discretion within five (5) days after notice is given to Account Holder specifying such default.

(b) **Remedies.** Upon the occurrence of any Default, Administrator shall have the following rights and remedies, in addition to those stated elsewhere in the Operative Documents and these Terms of Use and those allowed by Applicable Law or in equity, any one or more of which may be exercised without further notice to Account Holder:

(i) Account Holder acknowledges that money damages would not adequately compensate Administrator in the event of a breach by Account Holder of its obligations hereunder and that injunctive relief may be essential for Administrator to adequately protect itself hereunder. Accordingly, Account Holder agrees that, in addition to any other remedies available to Administrator at law or in equity, including but not limited to any monetary damages, Administrator shall be entitled to seek injunctive relief in the event Account Holder is in breach of any covenant or agreement contained herein.

(ii) Upon termination of the use of the Registry, Account Holder shall be obligated to pay to Administrator all monies due to it, which in the case of a termination as a result of a Default shall include attorneys' fees incurred to enforce Administrator's rights under the Operative Documents and these Terms of Use, and which in any event shall include any interest and costs and expenses due hereunder.

(iii) Account Holder acknowledges that Administrator may notify purchasers of any erroneous ERTs, suspend Account Holder's Account, levy an administrative fine or prohibit Account Holder's participation in the Registry.

(c) **Nonwaiver of Defaults.** The failure or delay of Administrator in exercising any of its rights or remedies or other provisions of the Operative Documents or these Terms of Use shall not constitute a waiver thereof or affect Administrator's right thereafter to exercise or enforce such right or remedy or other provision. No waiver of any Default shall be deemed to be a waiver of any other Default. Administrator's receipt of less than the full amount of Fees, Taxes, Reinstatement Fees or other amounts due shall not be construed to be other than a payment on account then due, nor shall any statement on Account Holder's check or any letter accompanying Account Holder's check be deemed an accord and satisfaction.

12. Term and Termination.

(a) **Term.** These Terms of Use become operative on the date on which Account Holder indicates on the Registry Site that Account Holder agrees with and accepts the Terms of Use and shall continue in effect until Administrator or Account Holder terminates access to the Registry pursuant to subsections (b), (c) or (d) below.

(b) Termination by Administrator.

(i) Prior to accepting your registration to become an Account Holder, Administrator may in its sole discretion reject your registration and terminate your access to the Registry immediately.

(ii) Administrator may terminate Account Holder's access to the Registry immediately in the event of any Default as set forth in Sections 11(a)(i) through 11(a)(viii).

(iii) Administrator may terminate Account Holder's access to the Registry upon giving five (5) days notice to Account Holder in the event of any other Default.

(iv) Administrator may terminate Account Holder's access to the Registry, for any reason, upon giving thirty (30) days notice to Account Holder.

(c) **Termination by Account Holder.** Account Holder may terminate use of the Registry, for any reason, by providing at least sixty (60) days written notice to Administrator. Account Holder's obligation to pay any and all Fees due under the Operative Documents and these Terms of Use at the time of termination of use shall survive such termination of use.

(d) **Termination Required by Law.** Administrator shall terminate access to, or Account Holder shall cease use of, the Registry if required to do so by any Applicable Law, or by any order or other decision of a court of law, arbitral panel or governmental agency. At least sixty (60) days notice of said termination of access or cessation of use of the Registry shall be given by the Party terminating the access to, or ceasing the use of, the Registry under this subsection, unless a shorter notice period is required by Applicable Law or the relevant order or decision.

(e) **Effect of Termination.** The terms of Sections 6 (Fees), 9 (Payments and Taxes), 12 (Term and Termination), 11 (Default; Remedies), 14 (Confidentiality), 16 (Limitation of Liability), 19 (Indemnification), 20 through 28 and any other provisions meant to survive termination or expiration of these Terms of Use, shall survive termination of the Terms of Use.

(f) Reinstatement.

(i) Upon the request of Account Holder, Administrator, in its sole discretion, may reinstate Account Holder's access to the Registry after termination for

Account Holder's Default, upon Administrator's determination that Account Holder has resolved such Default and upon receipt of Account Holder's full payment of all Fees and Taxes due prior to the termination. Account Holder agrees to pay a reinstatement fee equal to the Fees which would have been due during the period in which Account Holder's Account(s) were terminated ("Reinstatement Fee"). The Reinstatement Fee shall be due prior to reinstatement of Account Holders' access to the Registry.

(ii) Administrator shall reinstate an Account Holder's access to the Registry after termination for Account Holder's Default if directed to do so as a result of the outcome of a dispute resolution proceeding under these Terms of Use. Whether payment of a Reinstatement Fee is required in such an instance shall be determined as part of such dispute resolution proceeding.

13. Intellectual Property. The ACR name and brand, the Registry, and any and all content of the Registry, are protected by copyright and/or other intellectual property laws and any unauthorized use of such intellectual property or information or the Registry may violate such laws related to their protection. Except as expressly provided herein and in the Operative Documents, none of Administrator or any of its affiliates grants any express or implied right or license of any kind to Account Holder under any patents, copyrights, trademarks, or trade secret information with respect to such intellectual property and/or information and/or the Registry. Except as expressly provided by copyright law, the Operative Documents or these Terms of Use, Account Holder may not copy, distribute, modify, publish, sell, transfer, license, transmit, display, participate in the transfer or sale of, or create derivative works of, any of such intellectual property or information or the Registry, either in whole or in part, other than:

- (a) reports or other data created for use by or otherwise dissemination to Account Holder (including Agents of Account Holder) under the Operating Procedures;
- (b) as may be required or compelled by Applicable Law;
- (c) information that it has provided to the Registry, whether or not it is Confidential Information; or
- (d) as Administrator may agree in its sole discretion.

Any authorized use of the Registry's logo and Administrator's trademarks shall be precisely as described in the Operative Documents, and Account Holder shall not alter such logo or trademarks in any respect (including without limitation changing the color scheme thereof). Account Holder acknowledges that Account Holder does not acquire any ownership rights by downloading copyrighted material.

14. Confidentiality.

(a) The Registry, including the selection, arrangement and compilation of data, may be comprised of confidential, market sensitive and trade secret information of the Account Holder and other Registry Participants. Administrator agrees (i) to use and maintain information provided by Account Holder in accordance with the Registry's

Privacy Policy and (ii) not to knowingly use or disclose Confidential Information (as defined below) provided by Account Holder except as authorized by Account Holder or these Terms of Use. Account Holder agrees not to use or disclose the information contained in the Registry, including any other Registry Participant's Confidential Information, except as authorized by the Operative Documents and these Terms of Use. The obligations of confidentiality in these Terms of Use shall survive its termination without limitation in duration for so long as information continues to meet the definition of Confidential Information

(b) As used in these Terms of Use, the following information is deemed "Confidential Information":

(i) If a project is "Private", all project information including documentation (until the project is made public or ERTs are issued in connection with the project, whichever is sooner, at which time, per ACR rules, all project information ceases to be Confidential Information);

(ii) Total number of ERTs in an Account Holder's Accounts and Sub-accounts (other than Sub-accounts made public);

(iii) The amount and timing of specific ERT transfers from or to Account Holder Accounts and transfers among Account Holder's Sub-accounts; and

(iv) Those portions of communications between Account Holder and Administrator regarding the Registry that contain any of the aforementioned information that would be treated as Confidential Information.

Provided, however, that Confidential Information does not include information which can be established by written documentation: (i) to have been publicly known prior to disclosure of such information by the disclosing Party (the "Disclosing Party") to the receiving Party (the "Receiving Party"); (ii) to have become publicly known, without fault on the part of the Receiving Party, subsequent to disclosure of such information by the Disclosing Party to the Receiving Party; (iii) to have been received by the Receiving Party at any time from a source, other than the Disclosing Party, rightfully having possession of and the right to publicly disclose such information; (iv) to have been independently developed by employees or agents of the Receiving Party without access to or use of such information disclosed by the Disclosing Party to the Receiving Party; (v) to be common technical information or know-how readily available in literature; (vi) to be required to be disclosed by Applicable Law, including but not limited to information that must be provided to any governmental entity to confirm compliance with any statute or regulation, administrative proceeding, administrative or court order or discovery, provided that both Parties take such reasonable actions as necessary to ensure that such information is disclosed in as limited a manner possible; (vii) to be already within the knowledge of the Receiving Party at the time of disclosure, which information is not subject to a confidentiality agreement; and (viii) to be information Administrator is otherwise permitted to disclose under the Operating Procedures.

(c) Confidential Information is the sole and exclusive property of the Registry Participant who provided the information to the Registry or on whose behalf the information was provided, and shall not be used by Account Holder for any purpose other than the purposes set forth in the Operative Documents and these Terms of Use.

(d) Confidential Information may be aggregated with other information in the Registry and included in public reports as described more fully in the Operating Procedures, so long as it is sufficiently aggregated such that a third-party reviewer could not determine the portion of such aggregated information that is Confidential Information of a particular Account Holder.

(e) If Account Holder obtains access to data in the Registry that: (i) is not data provided or owned by Account Holder; (ii) is not part of a publicly available Registry report; and (iii) Account Holder is not otherwise authorized to use, then, regardless of whether such data is otherwise considered Confidential Information under these Terms of Use, Account Holder shall:

(i) immediately notify Administrator that Account Holder has obtained such access; and

(ii) not disclose, disseminate, copy, or use any such information.

(f) Except as specifically set forth in this Section 14, Administrator shall have no obligation to protect or maintain the confidentiality of any information provided by Account Holder to Administrator or to the Registry, and Account Holder expressly consents to the disclosure of any such information that is not Confidential Information hereunder.

15. Disclaimer of Warranty.

(a) The data contained in the Registry has been gathered by Administrator from sources believed by it to be reliable, including but not limited to Verifiers, Project Proponents, and Account Holder and Account Holder's Representatives. However, Administrator does not warrant that the information in the Registry is correct, complete, current or accurate, nor does Administrator warrant that the Software will be error free or bug free. Administrator has no obligation to audit, validate or otherwise verify any information contained in the Registry.

(b) THE REGISTRY IS PROVIDED "AS IS," AND ADMINISTRATOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THESE TERMS OF USE, THE OPERATIVE DOCUMENTS OR THE ADEQUACY OR PERFORMANCE OF THE REGISTRY, AND ADMINISTRATOR HEREBY DISCLAIMS TO THE EXTENT PERMITTED BY LAW ANY SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE OR TRADE PRACTICE. ADMINISTRATOR DOES NOT WARRANT THAT THE SERVICES PROVIDED HEREUNDER SHALL BE

UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT THE PROVISION OF SUCH SERVICES SHALL ALWAYS BE EXECUTED WITHOUT ERRORS OR OMISSIONS.

(c) Administrator shall not be responsible for the acts or omissions of any Account Holder or any other party who inputs data into the Registry or from whom data is obtained for inclusion on the Registry.

(d) Account Holder is solely responsible for the protection, security and management of usage and security of its computer network. Administrator shall not compensate Account Holder for damages incurred due to violations of the security of Account Holder's computer network, nor shall Account Holder make deductions or set offs of any kind for Fees resulting therefrom.

16. Limitation of Liability. ACCOUNT HOLDER ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM ITS USE OF THE REGISTRY AND THE REGISTRY SITE. ADMINISTRATOR'S AND APX'S SOLE LIABILITY FOR THE REGISTRY, SERVICE DISRUPTION, PERFORMANCE OR NONPERFORMANCE BY ADMINISTRATOR OR IN ANY WAY RELATED TO THESE TERMS OF USE, REGARDLESS OF WHETHER THE CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, IS LIMITED, TO THE EXTENT PERMITTED BY LAW, TO AN AGGREGATE AMOUNT EQUAL TO THE GREATER OF (X) THE FEES PAID BY ACCOUNT HOLDER HEREUNDER DURING THE CALENDAR YEAR IMMEDIATELY PRECEDING THE DATE ANY SUCH CLAIM IS OR CLAIMS ARE MADE BY ACCOUNT HOLDER AND (Y) THE FEES PAID BY ACCOUNT HOLDER HEREUNDER DURING THE CALENDAR YEAR IN WHICH ANY SUCH CLAIM IS OR CLAIMS ARE MADE BY ACCOUNT HOLDER. ADMINISTRATOR AND APX SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER INDIRECT DAMAGES REGARDLESS OF CAUSE, NOR FOR ECONOMIC LOSS, LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, PERSONAL INJURIES OR PROPERTY DAMAGES SUSTAINED BY ACCOUNT HOLDER OR ANY THIRD PARTIES, EVEN IF ADMINISTRATOR HAS BEEN ADVISED BY ACCOUNT HOLDER OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES. ADMINISTRATOR DISCLAIMS ANY LIABILITY FOR ERRORS, OMISSIONS OR OTHER INACCURACIES IN ANY PART OF THE REGISTRY, OR THE REPORTS, ERTs OR OTHER INFORMATION COMPILED OR PRODUCED BY AND FROM OR INPUT INTO THE REGISTRY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ACCOUNT HOLDER HEREBY RELEASES AND DISCHARGES ADMINISTRATOR, ANY SUBSIDIARIES OR OTHER CORPORATE AFFILIATES THEREOF, THEIR SUCCESSORS AND ASSIGNS, AGENTS, CONTRACTORS, SERVICE PROVIDERS AND VENDORS FROM ANY AND ALL LIABILITY WITH RESPECT TO ANY DAMAGES OR INJURIES INCURRED BY ACCOUNT HOLDER AS RELATES TO THE REGISTRY.

17. Logins, Passwords and Registry IDs. Account Holder agrees to assume sole responsibility for the security of any logins, passwords and Registry IDs issued by Administrator to Account Holder and its Users for accessing the Registry. Account

Holder agrees to immediately notify Administrator of any suspected unauthorized use of Account Holder's login(s), password(s), Registry ID(s) or Account or any other suspected breach of security.

18. Maintenance. Account Holder understands that any project not registered within the Registry within two years from the time such project is listed or submitted therein shall be deactivated in the Registry, unless a grace period is requested by Account Holder. Deactivation does not preclude Account Holder from registering the project with the Registry at a later date, but until such time as the project is registered, the project will no longer be viewable in the Registry.

19. Indemnification. Account Holder agrees to defend, indemnify and hold harmless each of Administrator and its subsidiaries and affiliates and each of their respective owners, directors, trustees, partners, Members, officers, employees, Representatives and Agents (each an "Indemnified Party") from and against any violations by Account Holder or its Users of any Applicable Law and against any and all claims (including third-party claims), causes of action, whether in contract, tort or any other legal theory (including strict liability), demands, damages, costs, liabilities, losses and expenses (including reasonable attorneys' fees and court costs) of any nature whatsoever ("Losses") arising out of, resulting from, attributable to or related to the use of the Registry by Account Holder or its Users, or Account Holder's or its Users' violation of any of the Operative Documents or these Terms of Use, including, but not limited to, any Losses arising out of or related to: (a) any inaccuracy, error, or delay in or omission of (i) any data, information, or service, or (ii) the transmission or delivery of any data, information, or service; (b) any interruption of any such data, information, or service (whether or not caused by such Indemnified Party); or (c) any financial, business, commercial or other judgment, decision, act or omission based upon or related to the information or the Registry. Notwithstanding the foregoing, Account Holder shall not defend, indemnify or hold harmless an Indemnified Party from and against any Losses to the extent that the Losses are caused by the conduct of such Indemnified Party that a court of law or arbitral panel has determined amounted to gross negligence or willful misconduct.

20. No Assignment, Transfer or Encumbrance by Account Holder. Neither any Operative Document nor these Terms of Use nor any rights hereunder or thereunder may be assigned, sublicensed, encumbered, pledged, mortgaged or otherwise transferred by Account Holder, in whole or in part, whether voluntary or by operation of law, without the express prior written consent of Administrator, which consent shall not be unreasonably withheld, conditioned or delayed.

21. Relationship of Parties. Each Party is an independent contractor under these Terms of Use. No Party has the authority to execute documents that purport to bind the others, and nothing in these Terms of Use will be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking.

22. No Third Party Beneficiaries. These Terms of Use and the Operative Documents are for the sole and exclusive benefit of Account Holder and Administrator

and each of their successors and permitted assigns, and except as set forth in Sections 16 and 19 or otherwise specifically provided herein, no third party, including without limitation any third party having Beneficial Ownership Rights in an ERT, will have any rights under these Terms of Use or the other Operative Documents whatsoever.

23. Force Majeure. No Party shall be deemed to have breached any provision of these Terms of Use as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, terrorism, energy crises, fires, floods, strikes or other labor disturbances, riots, embargoes, transportation contingencies, fuel shortages, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are beyond the claiming Party's reasonable control and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided; provided, however, that no such occurrences shall excuse Account Holder's obligation to pay amounts due hereunder by the applicable Due Date.

24. Severability. If any part of these Terms of Use is held to be unenforceable or illegal by a court, arbitral panel or governmental administrative agency, such holding shall not affect the validity of the other parts of the Terms of Use, which shall at all times remain in full force and effect.

25. Waiver. The waiver of a breach or the failure to require at any time performance of any provision of these Terms of Use will not operate or be interpreted as a waiver of any other or subsequent breach nor in any way affect the ability of any Party to enforce each and every such provision thereafter. The express waiver by any Party of any provision, condition or requirement of these Terms of Use shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

26. Notices. All notices permitted or required under these Terms of Use shall be in writing and shall be delivered in person, by email, facsimile, or first class, registered or certified mail, postage prepaid, or by overnight courier service to the following addresses or such other address as either Party may specify in writing:

If to Administrator:

American Carbon Registry
2121 Crystal Drive, Suite 500
Arlington VA 22202
United States of America
Attn: ACR Administrator
Facsimile: 703-302-6512
Email: acr@winrock.org

With a copy to:

APX
224 Airport Parkway, Suite 600
San Jose, CA 95110
United States of America
Attn: Contract Administration
Facsimile: +1 (408) 517-2985
Email: contractadministration@apx.com

If to Account Holder:

To the address provided at the time of registration, as updated by Account Holder from time-to-time.

Service shall be effective on the earlier of actual receipt or the second business day after the day of mailing via first class mail. For service of notice via facsimile, it shall be deemed received on the day said notice was sent to the other Party. For service of notice via email, it shall be deemed received when acknowledgement of its receipt has been given by the Party due to receive the notice.

27. Governing Law and Dispute Resolution.

(a) These Terms of Use shall be governed exclusively by the laws of the State of Virginia without regard to its rules on conflicts of laws.

(b) The Parties shall first attempt in good faith to settle any controversy or claim arising out of or relating to these Terms of Use, or the breach thereof, or any other claim or controversy between the Parties arising out of the Registry (any such claim, a "Dispute"), by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures then in effect. At least thirty (30) days prior to initiating such mediation, the Party seeking to mediate ("Demanding Party") shall give the other Party written notice describing the claim and the amount as to which it intends to initiate the action, as well as providing all supporting documentation available to the Demanding Party.

(c) Any Dispute that has not been resolved by mediation as provided herein within forty-five (45) days after initiation of the mediation procedure shall be finally resolved by arbitration administered by the AAA under its Commercial Arbitration Rules and Supplementary Procedures for Online Arbitration then in effect. The arbitrator(s) will have no authority to award punitive damages nor any other damages not measured by a prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of these Terms of Use. Neither any Party nor the arbitrator(s) may disclose the existence or results of any arbitration hereunder without the prior written consent of all Parties.

(d) Each Party shall be responsible for the payment of all of its costs associated with the resolution of said dispute whether in arbitration or before a court of law, including but not limited to any filing fees, arbitrator fees, its attorneys' fees and other costs incurred in such proceeding, provided that if a dispute is initiated in bad faith, as determined by the arbitrator, the Party initiating the dispute shall be responsible for all of the other Party's defense costs, and provided further that Administrator shall be entitled to payment of its costs and expenses, including without limitation attorneys' fees to the extent set forth in Sections 11(b)(ii) and 19.

(e) The Parties agree that neither may bring a claim nor assert a cause of action against the other, in any forum or manner, more than one (1) year after the cause of action accrued, except where the Party could not have reasonably discovered the wrong giving rise to the claim within one (1) year.

28. Entire Agreement. The Operative Documents, including without limitation the General Terms of Use and these Terms of Use, including any and all exhibits attached thereto and hereto, represent the entire agreement of the Parties with respect to the subject matter thereof and hereof and supersede any conflicting terms in any other prior or contemporaneous oral or written agreements and any and all other communication.

APPENDIX A

DEFINED TERMS

“Account Holder” has the meaning set forth in Section 1.

“Administrator” has the meaning set forth in the preamble.

“Agent” has the meaning set forth in Section 4(a).

“Applicable Law” means any applicable local, state, national, or international law, statute, regulations, ordinance or other means of establishing legal rights and obligations.

“Bank” means any of the following:

- (i) any banking institution chartered by the Office of the Comptroller of the Currency;
- (ii) any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; or
- (iii) any savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or federal authority having supervision over any such institution.

“Beneficial Ownership Rights” with respect to any ERT (as defined below), means any contractual or other right to direct or control the sale or other disposition of, or the retirement of, such ERT.

“Confidential Information” has the meaning set forth in Section 14(b).

“Declaration” has the meaning set forth in Section 4(b).

“Default” has the meaning set forth in Section 11(a).

“Due Date” has the meaning set forth in Section 9.

“Emission Reduction Ton, Emissions Reduction Ton [™] or “ERT” is ACR’s unit of exchange for tradeable, project-based emission reductions. The ACR issues one ERT for each metric ton of CO₂-e emission reduction or removal verified against an ACR Standard.

“Fees” and “Fes Schedule” have the meanings set forth in Section 8.

“General Terms of Use” means the American Carbon Registry General Terms of Use, located at the Registry Site, as updated from time-to-time.

“GHG” means greenhouse gas emissions.

“Indirect Owners” has the meaning set forth in Section 6(b)(ii).

“Operative Documents” has the meaning set forth in Section 1.

“Party” and “Parties” have the meaning set forth in Section 1.

“Privacy Policy” shall mean the ACR Privacy Policy, as set forth on the Registry Site and amended from time-to-time.

“Registry” has the meaning set forth in the preamble.

“Registry Participant” has the meaning set forth in Section 5(a)

“Registry Site” has the meaning set forth in the preamble.

“Regulated Person” means any of the following:

- (i) Any Bank;
- (ii) Any broker or dealer that (A) is registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended; and (B) is a member of all requisite self-regulatory organizations;
- (iii) Any member of the National Futures Association that is registered under the Commodity Exchange Act, as amended, as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or floor broker;
- (iv) (A) any investment company registered under the Investment Company Act of 1940, as amended; (B) any investment adviser registered under the Investment Advisers Act of 1940, as amended; or (C) any fund that has assets under management with an aggregate market value of no less than \$100 million and that is advised or managed by an investment adviser registered under the Investment Advisers Act of 1940, as amended;
- (v) Any “business development company” as defined in (A) Section 2(a)(13) of the Investment Company Act of 1940, as amended, or (B) Section 202(a)(22) of the Investment Advisers Act of 1940, as amended;
- (vi) (A) any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political

subdivisions, for the benefit of its employees; (B) any employee benefit plan within the meaning of title I of the Employee Retirement Income Security Act of 1974, as amended; or (C) any trust fund whose trustee is a Bank and whose participants are exclusively plans of the types identified in the above clause (A) or (B), except trust funds that include as participants individual retirement accounts or H.R. 10 plans;

(vii) any seller that has been granted authorization to engage in sales for resale of electric energy, capacity or ancillary services from the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act, as amended, and the requirements of 18 C.F.R. § 35; or

(viii) any person who demonstrates to the satisfaction of the Administrator that it qualifies as the equivalent of one or more of the foregoing types of entities under the laws of the jurisdiction(s) to which it is subject.

“Reinstatement Fee” has the meaning set forth in Section 12(f)(i).

“Representatives” has the meaning set forth in Section 4(a)

“Software” means any software used in providing, accessing (other than commercially available third party internet browsers) or using the Registry.

“Taxes” has the meaning set forth in Section 9.

“Users” has the meaning set forth in Section 4(a)

“Verifier” means a validator or verifier approved pursuant to the American Carbon Registry Standards or other American Carbon Registry accepted verification approval processes or programs.