



**K E N Y A**  
Forest Service

**ENVIRONMENTAL SERVICES PRODUCTION AND  
REVENUE SHARING AGREEMENT**

**BETWEEN**

**KENYA FOREST SERVICE**

**AND**

**LOWER IMENTI COMMUNITY FOREST ASSOCIATION**

**AND**

**CLEAN AIR ACTION CORPORATION**

Dated this 15 TH ..... Day of NOVEMBER ..... 2012

## Environmental Services Production and Revenue Sharing Agreement

This Agreement is made this.....15<sup>th</sup>.....day of.....NOVEMBER.....2012.

BETWEEN Kenya Forest Service, a state corporation established under the Forests Act, 2005 and of P.O. Box 30513-00100, Nairobi in the Republic of Kenya (hereinafter referred to as "the Service") and charged with the overall mandate of ensuring sustainable management and conservation of Kenyan forests and forest resources for the socio-economic development of the country, including promotion of community participation in conservation and management of state forests; and has completed and approved a Participatory Forest Management Plan for Lower Imenti Forest Reserve (Attachment 1).

Lower Imenti Community Forest Association of P.O. Box 415, Meru in the Republic of Kenya (hereinafter referred to as "the Association") registered under the Societies Act, Cap. 108, Certificate of Registration No. 34158 dated 15<sup>th</sup> April 2011 and has the interest of rehabilitating, managing and conserving Lower Imenti Forest Reserve.

Clean Air Action Corporation of Post Office Box 1508 – 10400 Nanyuki, Kenya (hereinafter referred to as "CAAC"), a corporation incorporated under the law of Delaware, United States of America, and registered in Kenya under the Companies Act, Cap 486, and has expertise in qualifying farm and forest related eco-system and greenhouse gas projects for the national and international markets.

### WHEREAS:

- (a) The Service and the Association have prepared the Lower Imenti Participatory Forest Management plan which was approved by the Director KFS on 31<sup>st</sup> July 2012 and will enter into a Community Forest management agreement for lower Imenti forest.
- (b) the Service and the Association have agreed to carry out their respective duties under the community Forest Management Agreement (FMA) entered into between the parties aimed at rehabilitation, sustainable management and conservation of Lower Imenti Forest Reserve (the "Forest") in accordance with the provisions of the Forests Act, 2005 (Attachment 2); and
- (c) the Service and the Association find it beneficial to qualify the beneficial ecosystem activities within the Forest for payments from the increase of biodiversity, water quality and quantity and carbon credits capable of being sold in national or international markets; and
- (d) CAAC is a sponsor of The International Small Group and Tree Planting Program (TIST) and has demonstrated its expertise in operating TIST to create Payments for Environmental Services (PES), including carbon credits, and qualifying these PESs for international markets; and
- (e) The service and CAAC entered into an MOU on community forest management dated 6<sup>th</sup> June 2011.
- (f) The parties agree that it would be beneficial to the Forest and the Parties for CAAC to help expand TIST to the Forest and manage the PES and carbon credit component of the Forest.

**THEREFORE**, in consideration of the mutual obligations and undertakings set forth, the Parties covenant and agree as follows:

### **1. Definitions**

**The following words and expressions shall have the meaning set forth:-**

- (a) *Carbon Rights*: shall mean and refer to the carbon sequestered in a tree or by the tree, caused by the beneficial actions of the TIST Small Group or its members.
- (b) *Carbon Credit*: shall a carbon right that has been monitored and quantified under a methodology or certified under a standard and issued under the auspices of the standard.
- (c) *Cluster*: shall refer to an administrative unit of TIST wherein approximately 30-50 TIST Small Groups take beneficial environmental actions, including to plant trees, and work together to achieve the goals of TIST.
- (d) *Environmental Service Rights*: shall mean the right to the environmental benefit caused by the beneficial actions of the TIST Small Group or its members.
- (e) *Forest Carbon Credit and PES Sale Agreement*: shall mean An agreement among a TIST Small Group, the Association and CAAC, that governs their activities and relationship. The *Forest Carbon Credit and PES Sale Agreement* is attached as Annex 3.
- (f) *Net Revenues of Carbon and PES Sales*: shall mean the revenue received from all sales less the cost attributable to the certification or verification process required to render the Rights saleable less any pre-payments made.
- (g) *Payments for Environmental Services or PES*: shall mean a payment or receipt of other value for taking actions that benefit the environment, including, but not limited to, water quality or quantity, biodiversity enhancements or conservation, or other payments in recognition for such services.
- (h) *PES Credit*: shall refer to the appropriate unit of measure of the environmental benefit that is used to monitor and quantify that particular benefit.
- (i) *Project Area*: shall mean a parcel of land within or including the area of the Forest designated by the Service to be used for ecosystem services, including tree planting that has been assigned by the Association to a TIST member or Small Group or Cluster.
- (j) *Project Proponent*: shall refer to this is the entity that registers a PES project or carbon project and receives the PES Credits or the Carbon Credits.
- (k) *Small Group*: refers to a TIST Small Group. An administrative unit of TIST wherein approximately 6 to 12 members contract with one another and CAAC to take beneficial environmental actions, including to plant trees, and work together to achieve the goals of TIST.
- (l) **TIST**: shall mean the International Small Group and Tree Planting Program, a combined environmental and sustainable development program active in Kenya wherein Small Groups of farmers plant trees and take other actions to improve their economic and social well being, **conserve and restore biodiversity, improve their local environment and mitigate greenhouse gas emissions.**

2. **Scope:** Under this Agreement the Service and Association will allow members of TIST that are also members of the Association to enter the forest, plant trees and take other beneficial environmental actions, receive carbon rights and environment service rights, and receive revenue for the sale of associated credits.
3. **Activities of CAAC:** CAAC shall monitor the effort by TIST members, pay them a PES, calculate the results accomplished, qualify the rights and credits, sell the credits and share the revenues in accordance with the terms of this Agreement.
4. **Ownership of Trees:** The Lower Imenti Forest is a state forest and, as defined in the Forestry Act, the owner is the Kenya Forest Service. All trees planted, conserved, or regenerated in the Forest shall vest with the state.
5. **Rights to the Carbon and Environmental Services:** Under the terms of this Agreement, Service and the Association hereby grant all rights to the carbon and to the environmental services associated with the activities undertaken and the trees planted by TIST members to the respective TIST members.
6. **Term:** This Agreement shall be for a period of five(5) years and shall be renewed upon mutual agreement of all the parties.
7. **Responsibilities of the Service:** The Service shall:-
  - (a) Delineate areas of the Forest for environmental services.
  - (b) Grant the Association, CAAC and TIST members access to the delineated areas to plant trees, conserve and restore biodiversity, take other environmentally beneficial actions, maintain the area and monitor the results.
  - (c) Approve a list of tree species that may be planted in the Forest by TIST members.
8. **Responsibilities of the Association:** The Association shall:
  - (a) Allocate Project Areas to individual Small Groups or Clusters on an equitable basis.
  - (b) Grant Association membership to all those TIST members or Clusters that qualify for Association membership.
  - (c) Notify CAAC and the service when a TIST member leaves the Association or otherwise becomes ineligible to participate in the carbon program anticipated by this agreement.
  - (d) Sign the *Forest Carbon Credit and PES Sale Agreement* for each Small Group that is participating in the tree planting contemplated by this agreement.
  - (e) Provide any authorization necessary under the PFMP or regulation to ensure that the Carbon and Environmental Service Rights and Carbon or PES Credits are vested in accordance with this Agreement.
9. **Responsibilities of the CAAC.** CAAC shall:
  - (a) Work with the Association and Small Groups or Clusters to establish the boundaries of each Project Area using a GPS unit and CAAC's monitoring system.
  - (b) Enter into a *Forest Carbon Credit and PES Sale Agreement* for each Small Group or Cluster that is participating in the tree planting contemplated by this Agreement.

- (c) Facilitate training and organizational activities to develop best practices, and to share accurate information among the Small Groups about the carbon business, government policies, sustainable development opportunities, and other matters.
- (d) Facilitate newsletters and other communication approaches to provide regular information to the Small Group.
- (e) Cause the trees and beneficial environmental actions subject to this Agreement to be monitored in a manner that will result in salable Carbon Rights or Carbon Credits, and Environmental Service Rights or PES Credits.
- (f) Maintain the information collected for quantification and make it available for inspection by the Small Group, the Association or the Service.
- (g) Calculate and pay the Small Group or Cluster the Pre-Payment referred to in (Section 12).
- (h) Calculate and pay the Parties their share of the revenues derived from the sale of Carbon Credits or PES Credits referred to in (Section 13).
- (i) Provide the quantification information and other relevant information transparently to the global public so that potential purchasers, regulators, or interested parties have access to the information provided by CAAC's monitoring program.
- (j) Facilitate public information efforts to make the public aware of the challenges and the achievements of the Service, Association and TIST Small Groups.
- (k) Maintain accurate accounting records and make them available for inspection by the Service and Association at reasonable times and places.
- (l) Develop and submit the documentation necessary to qualify the Carbon Rights or Environmental Rights under a standard, hire and pay for the third parties necessary to validate, verify and otherwise certify the Carbon or Environmental Rights as Carbon or PES Credits.
- (m) Use best efforts to sell the Carbon Credits or PES Credits for the maximum benefit of the Parties over the term of this agreement.
- (n) Use best efforts to develop additional markets or compensation for the eco-system benefits the Small Group's efforts have provided to the local, national, and global environment.

**10. Qualifying Carbon Rights and Environmental Service Rights for Sale.** CAAC shall qualify the Carbon Rights or Environmental Service Rights for sale directly or under a national or international standard and shall hold for sale or shall receive all issued Carbon Credits or PES Credits. To be cost effective, CAAC may aggregate the Rights created under this Agreement with other Rights created by other TIST Small Groups outside of this Agreement. CAAC shall be responsible for selecting the Groves or Project Areas and other Small Groups to be aggregated in their qualification of Credits for sale. CAAC shall be responsible for maintaining accurate and transparent records that show the quantity and quality of Carbon or PES Credits that are attributable to this Agreement.

**11. Sale of Carbon or PES Credits.** CAAC shall be responsible for selling the marketable Carbon or PES Credits. CAAC will exercise due diligence and make best efforts to market the Credits to accomplish maximum long-term net revenue income for the Parties.

12. **Pre-payments:** CAAC shall pay the Service \$.004 (exchanged into KES), the CFA \$.0006 (exchanged into KES) and the Small Group \$.0154 (exchanged into KES) per year for each quantified live tree they planted, payable in no more than four installments per year (the "Pre-Payment").

13. **Carbon Credit and PES Revenues:** CAAC shall distribute all net revenues from the sale of carbon credits as follows:-

- (a) 20% of the net revenues to the Service
- (b) 3% of the net revenues to the Association
- (c) The remaining 77% of the net revenues shall be used in accordance with the *Forest Carbon Credit and PES Sale Agreement*.

14. **Assignment of Rights:** CAAC shall not assign and transfer any or all of its rights and obligations under this agreement without written approval by the Service. CAAC shall have the explicit right to and sell or transfer the rights to the Carbon Credits or PES that it received under the *Forest Carbon Credit and PES Sale Agreement* to others without the approval of any party to this Agreement as referred to in Clause 11 above.

15. **Reference Documents:** The following documents shall be deemed to form and shall be read and construed as part of this agreement:

- (a) The Lower Imenti Participatory Forest Management Plan.
- (b) The Lower Imenti Community Forest management agreement.
- (c) The MOU between KFS and CAAC.
- (d) The Forest carbon credit and PES sale agreement.

16. **Amendment and termination:** This agreement shall not be amended or modified except by an instrument in writing signed by the parties hereto.

This agreement may be terminated by either party upon giving the other parties three months notice in writing, or under the following terms:

- (a) By mutual consent or agreement of all the parties on the appointed date.
- (b) If any of the parties is in breach of its obligations herein, and has failed to cure such breach within sixty (60) days notice from either of the other parties.
- (c) If either of the parties ceases to exist or is deregistered.
- (d) By operation of law.
- (e) In the event of termination other than by mutual consent, any rights and obligations that have accrued to any of the parties shall remain with the party and the other parties will be under obligation to fulfil the rights due to the other party.

17. **Severability:** If any one or more of the provisions of this agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions of this agreement shall remain in full force and effect.