

fifth Schedule

COMMUNITY DEVELOPMENT AGREEMENT

BETWEEN

.....**COMMUNITY IN COUNTY**

AND

.....**(PROPONENT)**

A. STATEMENT OF AGREEMENT

This Community Development Agreement (hereinafter referred to as the “CDA”), is made on this..... day of 20..... between Limited of P.O. Box(include physical address) (which shall include its successors and assigns where the context so admits) hereinafter referred to as the “proponent”) of the one part, and Community in County of P.O. Box(hereinafter referred to as the “Community” and represented by the members of the Community Development Agreement Committee) and whose respective definition and composition are as set out in the Interpretation Section of this Agreement, on the other part.

WHEREAS:

1. The Community is an affected community;
2. The Community Development Agreement Committee (hereinafter the “Committee”) forcommunity in County (hereinafter the “Committee”) was formed through(e.g registration, gazette notice);
3. The Committee has since conducted consultations with the Community, and subsequent to that conducted negotiations with the Proponent, in respect of the CDA for the Community.

NOW THEREFORE:

In consideration of the mutual conditions contained in this Agreement, the Proponent and the Community **HEREBY AGREE** as follows:

1. Interpretation Section

In this Agreement, unless the context otherwise requires-

“**Administrative Expenses**” has the meaning given in clause 21(2)(b);

“**Administrative Expenses Account**” has the meaning given in clause 21(4);

“**Affected community**” shall have the meaning implied in the definition of the word “stakeholder” in the interpretation section of the Climate Change (Amendment) Act, 2023 respect of carbon projects;

“**Aggregate Earnings**” shall have the meaning ascribed by the Climate Change (Amendment) Act, 2023;

“**Community**” for purposes of this Agreement is made up of the
Community in County;

“**Committee**” refers to theCDA Committee;

“**Financial year**” means the 12-month period commencing on the day of signing this Agreement;

“**aggregate earnings**” has the meaning ascribed in the Climate Change (Amendment) Act, 2023;

“**Parties**” refers to both the Proponent and the Community;

“**Procurement Policies**” means the Proponent’s policies, procedures, standards and requirements relating to procurement under the laws of Kenya from time to time;

2. Commencement and duration of the Agreement

This Agreement commences immediately upon the signing of this Agreement by the Parties and shall be in force for the Productive Life of the Carbon project.

3. Mutual Understanding

(1) The Proponent commits to the sustainable economic and social development of the Community and its environs by complying with this Agreement. In addition, the Proponent shall, at all times, reasonably promote peace and harmony between itself and the Community.

- (2) The Community commits to discussions and consultations with the Proponent on issues of mutual interest arising under this Agreement and, at all times, reasonably promote peace and harmony between itself and the Proponent.
- (3) The Parties herein agree to abide by the principles of openness and the sharing of information that will enable them to understand each other's perspectives on issues of mutual interest arising under this Agreement.
- (4) The Parties hereby further agree to take steps to maintain trust, sustain good working relations and resolve challenges arising from the implementation of development projects under this Agreement and other conflicts through negotiations and discussions in accordance with this Agreement.

4. Objectives of the Agreement

The objectives of this Agreement are to:

- (1) Implement projects that contribute to the sustainable development of the Community;
- (2) Provide the Community with the opportunity to participate in the Proponent's decisions and plans that may affect Community development in its environs;

- (3) Set out the key principles and directions on how the Parties will work together for their mutual benefit;
- (4) Provide a clear, transparent and explicit statement of the commitments of the Parties herein;
- (5) Define the key issues that the Parties intend to address; and
- (6) Provide a platform for Parties to deliberate on the implementation of the Agreement herein.

5. Nature of the Agreement

- (1) This document sets forth the Parties' agreement regarding community development initiatives for the Community.
- (2) The Parties further confirm that this Agreement has been prepared solely to record the mutual understandings reached after extensive negotiations.

6. Guiding Principles

This Agreement shall be guided by the following principles:

- (1) Sustainable development;
- (2) Transparency and accountability;
- (3) Effectiveness and efficiency;
- (4) Social justice;
- (5) Inclusiveness;
- (6) Equity;
- (7) Equality;
- (8) Value for money;
- (9) Non-discrimination.

7. Obligations of the Community

- (1) Cooperate with the proponent and mobilize social capital;
- (2) Provide any relevant information to aid the CDA Projects implementation;
and
- (3) Follow up on CDA project implementation and raise any concerns with the relevant Parties.

8. Obligations of the Proponent

- (1) Make payments equal toper centum out of the Aggregate earnings in each financial year towards community development projects;
- (2) The Proponent and the Committee shall in joint consultation source, evaluate and select service providers (or as the case may be) in accordance with the Proponent's Procurement Policies taking into account local content;
- (3) Ensure timely disbursement of amounts required to be set aside by it and paid for projects to be implemented under this Agreement, with any final payments to service providers (or as the case may be) to be paid only on recommendation of the Committee (unless such recommendation is to be provided after the payment deadline under the relevant contract);
- (4) Maintain clear and up-to-date records of all disbursements made by the Proponent for projects under this Agreement;
- (5) Provide an annual report to the Committee setting out the Proponent's annual aggregate earnings for the applicable financial year in accordance with this Agreement; and
- (6) Prepare annual implementation reports for the Community project.

B. GOVERNANCE FRAMEWORK

9. The Community Development Agreement Committee

- (1) The Committee shall have oversight responsibility for implementing this Agreement.
- (2) The Committee shall comprise the following:
 - (a) A representative appointed by the Governor;
 - (b) A national government representative in charge of administration in the county;

- (c) The County Assembly representative of the electoral area within which the Community is located;
 - (d) One representative of women elected by the Community;
 - (e) One representative elected from among the village elders of the Community;
 - (f) Two representatives of the youth of either gender from the Community;
 - (g) One representative elected by civil society organisations working in the area of extractives in the County;
 - (h) One representative of marginalised groups, ethnic and other minorities;
 - (i) One representative of persons with disability from the Community;
 - (j) The Member of Parliament of the constituency of the Community; and
 - (k) Three representatives of the Proponent.
- (3) The Committee members shall at the first meeting of the Committee elect the Chairperson and Secretary from among the members.
- (5) The position of Chairperson or Secretary shall not be held by persons occupying a political office such as the Governor or his representative, Member of Parliament or County Assembly member.

10. Functions of the Committee

The Committee shall-

- (1) monitor and evaluate compliance with the terms of this Agreement;
- (2) provide a platform for the Community to debate whether the use of revenues provided by the Proponent to fund programmes under the Agreement conform to the development priorities of the Community;
- (3) provide adequate notice to a media accessible to the Community before it conducts a consultation exercise;
- (4) facilitate continuous engagement and serve as the link between the Community and the Proponent on relevant issues pertaining to Community development;
- (5) review existing development priorities by the National and County Government and develop an action plan to implement CDA priorities in recognition of development projects underway or planned by said governments. Parties acknowledge that such review had already been undertaken and action plan

developed prior to the date of this Agreement, with the outcome of both being the projects specified in Schedule 5 to this Agreement.;

- (6) together with the Proponent, ensure there are transparent and accountable systems in place by maintaining clear and up to date records;
- (7) submit quarterly written reports to the Proponent on status of implementation of the community development projects and amounts paid. The quarterly report shall include the nature of the payment, amount paid, names of the recipients, attestation by the Chairperson that the details in the report are true and accurate, and any other information reasonably requested by the Proponent;
- (8) sensitize the Community on the projects agreed to be implemented under this Agreement;
- (9) engage with the County and National government in implementation of development projects;
- (10) settle all disputes that may arise between parties to the Agreement in respect of any matter in connection with or under the Agreement according to Schedule 1 in this Agreement; and
- (11) settle any other issue, matter, grievance or complaint that is not related to the Agreement that may be raised by the Proponent or the Community to the Committee for resolution according to Schedule 1 in this Agreement.

11. Term of Office of the Committee Members

- (1) Every member of the Committee whose membership is by virtue of occupation of a particular office, be it political, traditional, position at the Proponent or other, shall continue to retain that membership until he or she ceases to occupy such position and the person who next occupies the position shall automatically replace him/her.
- (2) Every other member of the Committee shall serve for a period of three (3) years, which may be renewed once.

- (3) A member of the Committee may resign by giving thirty (30) days written notice to the Chairperson, or Secretary, in case of a resignation by the Chairperson.

12. General Meetings and Decisions of the Committee

- (1) The Committee shall meet at such time and place as the Chairperson may determine for the discharge of its business.
- (2) The Committee shall meet quarterly in each financial year.
- (3) The quorum at a meeting shall be two-thirds majority of the members.
- (4) The Committee shall determine its own procedures for every meeting.
- (5) All the Committee decisions shall be arrived at through consensus or as shall be otherwise agreed upon by all the Committee members.
- (6) The Secretary of the Committee shall take minutes of each meeting of the Committee and make such minutes available to Committee members for review and comment and reflect all reasonable comments provided by the Committee members.
- (7) Should the need arise, a special meeting(s) of the Committee may be convened in consultation between the Parties. Any such meeting shall have a clear statement of matters to be discussed.
- (8) The Committee may invite any person(s) or representative(s) of any organisation/body to attend its meetings to participate based on expertise.
- (9) After every general meeting, the Committee shall submit a quarterly report.

13. Sub-committees of the Committee

- (1) The Committee shall constitute the following sub-committees for the effective and efficient execution of its mandate:
 - (a) The Monitoring, Evaluation and Reporting sub-committee
 - (b) The Grievance Resolution sub-committee;
- (2) The Parties agree that the number of meetings of both sub-committees shall not exceed fifteen (15) in total in each financial year.
- (3) Each sub- committee shall elect a Chairperson and Secretary

- (4) The Secretary shall take minutes of each meeting of that sub-committee and must make the minutes so taken available to the other members for review and comment and reflect all reasonable comments provided by such other members.

14. The Monitoring, Evaluation and Reporting sub-committee

- (1) There shall be a Monitoring, Evaluation and Reporting Sub-Committee of the Committee.
- (2) The composition of the Monitoring, Evaluation and Reporting Sub-Committee shall be as follows:
 - (a) the Chairperson;
 - (b) the Secretary
 - (c) five (5) other members of the Committee, with at least one (1) of the members being a representative of the Proponent on the Committee;
 - (d) the sub-committee shall co-opt experts, such as structural engineers, civil engineers, quantity surveyors, and others on an “as needs” basis, depending on the nature of the project to assist them in their work. The co-opted experts shall have no decision-making rights.

15. Functions of the Monitoring, Evaluation and Reporting sub-committee

The Monitoring, Evaluation and Reporting Sub-Committee shall:

- (1) Monitor and evaluate progress on the implementation of the projects as per the monitoring sheet in Schedule 5 to this Agreement;
- (2) Provide oversight of the Agreement’s activities including its operations, control, monitoring and evaluation;
- (3) Ensure the projects under this Agreement are implemented in accordance with the agreed specifications and schedules as defined in the relevant contract(s);
- (4) Provide quarterly written and oral reports to the Committee ensuring that the oral reports are presented in languages understood by all members;
- (5) Together with the Proponent, approve the award of all contracts for goods and services to be delivered under this Agreement, including any services to be provided by any experts contemplated in clause 14(2)(d);

- (6) Provide guidance for those directly involved in projects to be implemented under this Agreement on project planning, implementation and management;
- (7) Address any issue that has major implications for a project to be implemented under this Agreement;
- (8) Develop a work plan for projects to be implemented under this Agreement, which shall contain indicators agreed with the Proponent to serve as the basis for the monitoring and evaluation of progress made in the implementation of such projects; and
- (9) Ensure the Community is adequately consulted as part of the implementation of projects under this Agreement.

16. Tenure of the Monitoring, Evaluation and Reporting Sub-Committee Members

- (1) A member of the sub-committee shall continue to be a member until he/she ceases to be a member of the Committee, resigns or dies.
- (2) A member of the Sub-Committee may resign by giving thirty (30) days written notice to the Chairperson of the Committee.

17. Meetings and Decisions of the Monitoring, Evaluation and Reporting Sub-Committee

- (1) The sub-committee shall not convene more than eight (8) times in each financial year unless there are exceptional circumstances that warrant the holding of an additional meeting(s).
- (2) Should the need arise, a special meeting(s) of the Committee may be convened in consultation with the Parties. Any such meeting shall have a clear statement of matters to be discussed.
- (3) Pursuant to sub-section (2), the additional meeting(s) shall only be convened after adequate consultations between the Parties.

18. The Grievance Resolution Sub-Committee

- (1) There shall be a Grievance Resolution Sub-Committee which shall be responsible for resolving any complaints relating to the implementation of this Agreement.
- (2) The composition of the Grievance Resolution Sub-Committee shall be as follows:

- (a) The Chairperson
 - (b) The Secretary;
 - (c) Five (5) other members of the Committee, provided that at least two (2) of the members are representatives of the Proponent on the Committee; and,
 - (d) The members of the sub-committee shall have capability or experience in conflict management.
- (3) The Sub-Committee shall:
- (a) settle all disputes that may arise between the Parties in respect of any matter in connection with or under this Agreement;
 - (b) settle any other issue, matter, grievance or complaint that is not related to the Agreement that may be raised by the Proponent or the Community to the sub-Committee for resolution;
 - (c) manage disputes, issues, concerns, matters or grievances referred to in paragraph (a) and (b) in accordance with the procedure set out in Schedule 1 to this Agreement; and
 - (d) Develop the relevant forms that are easy to use in lodging issues, grievances and disputes in respect of any matter in connection with or under this Agreement with the sub-committee.
- (4) Parties agree that where any issue of potential conflict is identified or where any conflict arises between them, they shall exercise patience and tolerance and make an attempt to resolve the issue through dialogue and negotiation so as to maintain good working relations.
- (5) Where requested by the Committee, the Proponent shall in consultation with the Committee assist in capacity building by providing training for people who will participate in the different aspects of conflict identification, management and resolution.
- (6) Parties agree to recognise and support the grievance resolution management mechanism.

19. Tenure of the Grievance Resolution Sub-Committee Members

- (1) A member of the sub-committee shall continue to be a member until he/she ceases to be a member of the Committee, resigns or dies.
- (2) A member of the Sub-Committee may resign by giving thirty (30) days written notice to the Chairperson of the Committee.

20. Meetings and Decisions of the Grievance Resolution Sub-Committee

- (1) The Grievance Resolution Sub-Committee shall meet at such times and places as the Chairperson of the sub-committee may decide and shall meet, in consultation with the Proponent, whenever it becomes necessary to resolve a complaint relating to the implementation of this Agreement and referred to it as per the channels specified in Schedule 1 to this Agreement.
- (2) Should the need arise, a special sub – committee meeting(s) of the Committee may be convened in consultation between the Parties. Any such meeting shall have a clear statement of matters to be discussed.
- (3) The quorum for a meeting shall be two-thirds of the membership of the sub-committee.
- (4) Decisions shall be by consensus or as shall be agreed by the sub-committee members.

21. Financial Disbursement and Management

- (1) In each financial year, the Proponent shall make payments equal to of the Annual Aggregate e a r n i n g s for development projects and Administrative Expenses under this Agreement.
- (2) The allowable expenditure payable under this Agreement includes:
 - (a) payment of costs incurred in connection with projects to be implemented under this Agreement;
 - (b) payment to the Administrative Expense Account for the allowances set out in this Agreement for the members of the Committee, rent for an office for the

Committee and minor incidental costs associated with such office (“Administrative Expenses”); and

- (c) payment of other costs incurred for the proper and effective functioning of the Committee and the sub-committees as agreed by parties.
- (3) Parties further agree that payments for Administrative Expenses shall not exceed% of the Annual Aggregate Earnings.
- (4) The Parties, agree to run an account to be referred as, the Administrative Expenses Account, for purposes of payment of Administrative Expenses. The signatories to the Administrative Expenses Account shall be the Chairperson, one representative of the Proponent and another party agreed by the Parties.
- (5) The Parties agree that the Committee shall furnish the Proponent with all the information required in the preparation of the annual report.
- (6) The Chairperson shall provide the required attestation in respect of the information provided to the Proponent confirming that the said information is truthful and accurate.

22. Procurement of Goods and Services

- (1) The Proponent and the Committee shall in joint consultation source, evaluate and select service providers in accordance with the Proponent’s Procurement Policies taking into account local content. The Proponent shall subsequently enter into a contract with the selected service provider.
- (2) The procurement of all goods and services under this Agreement shall be in accordance with the requirements of the Proponent’s Procurement Policies.
- (3) The bidding for, award of contracts and terms of contracts shall be in accordance with the requirements of the Proponent’s Procurement Policies.
- (4) The Proponent shall make payment to the service providers for projects to be implemented under this Agreement in accordance with the applicable contract terms.
- (5) Final payments to the service providers may only be made upon recommendation of the relevant sub-Committee (unless such recommendation will only be provided after the deadline for payment under the relevant contract).

23. Remuneration

Members of the Committee shall not be entitled to a salary. However, members of the Committee shall be entitled to allowances as outlined in Schedule 4 to this Agreement.

C. COMMUNITY DEVELOPMENT PROJECTS

24. Types of Projects to be Funded under this Agreement

- (1) The projects to be implemented under the Agreement may include, but are not limited to:
 - (a) Educational scholarship, apprenticeship, technical training and employment opportunities for the people;
 - (b) Employment for members from the communities;
 - (c) Financial or other forms of support for infrastructural development and maintenance including education, health, roads, water and power;
 - (d) Assistance with the setting up of and support to small-scale and micro-enterprises;
 - (e) Special programmes that benefit women, youth and persons with disabilities;
 - (f) Agricultural product marketing;
 - (g) Protection of the environment and natural resources;
 - (h) Support for cultural heritage and sports;
 - (i) Protection of ecological systems.

25. Selection and prioritization of Community Development Projects

- (1) The Committee has approved all the development projects in Schedule 5 for implementation under this Agreement, with such projects ordered according to their priority.
- (2) The following process was followed in the selection of the projects under this Agreement:
 - (a) Potential community development projects were identified by the Committee and a shortlist of projects considered feasible for implementation were produced, bearing in mind the immediate identifiable needs of the

Community following consultation and the availability of funds to complete the projects.

- (b) The shortlisted projects were agreed between the Parties.
- (3) The Committee shall regularly update the Community on all proposed development projects and those chosen to be implemented in a given financial year.
- (4) Parties shall agree on any other projects to be implemented under this Agreement.

26. Restrictions on the use of CDA Funds

- (1) Notwithstanding any other provision to the contrary, the Proponent shall not be required to provide any funds under this Agreement for:
 - (a) the provision of any vehicle to any individual or single family unit of the Community other than a specialized purpose vehicle such as an ambulance, fire engine, water truck, or bus for the benefit of the entire Community;
 - (b) the provision of any monetary amount, service, good, or facility for the sole benefit of any group, an individual, clan or single family unit in the Community, political party or other person; or
 - (c) any matter that is illegal under any written law.

D. PARTICIPATION AND TRANSPARENCY MANAGEMENT

27. Information and communication management

- (1) The Parties agree to recognise and support the Committee, and its principles and activities.
- (2) The Parties agree to manage information and communication according to the plans outlined in Annex 1 to this Agreement.

28. Project-Closure Consultations

The Committee shall ensure information about the Proponent's closure programmes is disseminated to the Community.

29. Local Employment

The Proponent shall ensure the continued employment of skilled and unskilled labour from the Community and share such information with the Committee during each quarterly meeting.

E. REVIEW AND AMENDMENT OF THE AGREEMENT

- (1) The Agreement may only be modified or amended with the prior written consent of both Parties.
- (2) Without limiting the foregoing, the review or amendment of any part of this Agreement shall be in accordance with Schedule 2 to this Agreement.

F. TRANSFER

In the event that the Proponent transfers the Carbon Project to a third party, the transferee shall be deemed to have assumed all rights and obligations of the transferor under this Agreement.

G. APPLICABLE LAW

This Agreement shall be governed by the Laws of Kenya.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by as of the Agreement Date first above written.

SIGNED for and on behalf of the

PROPONENT

Name:

Signature:

SIGNED for and on behalf of the **COMMUNITY**

Chairperson of the Committee

Name:..... .

Signature:.....

Agreement Witnessed by a Representative of the Ministry of Petroleum and Carbon project

Name:

Signature:

PREPARED BY:

.....

SCHEDULES

Schedule 1: Grievance Management and Resolution Procedure

- (1) Parties agree that whenever any issue, concern, complaint, grievance or dispute relating to the implementation of this Agreement arises, it shall seek to be resolved through dialogue and negotiation in an atmosphere of understanding, patience and tolerance.
- (2) Pursuant to subsection (1) herein, the following procedures shall be used to seek to resolve a complaint or dispute relating to the implementation of this Agreement:
 - (a) If a Party has such an issue, concern, grievance or dispute, it shall lodge the dispute with the Chairperson of the Grievance Resolution Sub-Committee.

- (b) The Chairperson of the Grievance Resolution Sub-Committee shall within ten (10) days of receipt of the dispute, grievance or complaint acknowledge receipt of the dispute, grievance or complaint.
- (c) Subsequent to sub-section (b), and not longer than sixty (60) days, the Chairperson shall invite in writing the concerned parties to a meeting(s) of the sub-committee indicating the venue and time.
- (d) The sub-committee shall then seek to resolve the dispute, grievance or complaint within thirty (30) days.
- (e) Where the Grievance Resolution Sub-Committee considers that the dispute, grievance or complaint does not directly relate to the Agreement or implementation of the Agreement, it shall refer the same to other existing formal grievance resolution mechanisms, authorities or bodies and advise the complainant thereof.
- (f) If the Grievance Resolution Sub-Committee is unable to resolve a dispute, issue, concern, matter, grievance or complaint, it shall be referred to the Committee for resolution at its next meeting or at an emergency meeting convened for that purpose.

Schedule 2: Procedures for the Review/Amendment of the Agreement

- (1) Any person proposing the review or Amendment of any part of this Agreement shall present the proposed review/amendment with reasons thereof through and endorsed by a member of the Committee to the Chairperson of the Committee.
- (2) In the case of an amendment, the proposed amendments shall be received a month before the Committee's last quarterly meeting in the year is convened.
- (3) The proposals and recommendations for review/amendment of the Agreement shall be discussed by members of the Committee and the decision to review/amend any part of the agreement shall be by consensus.
- (4) No review/amendment shall be valid unless at least two-thirds of the members of the Committee are present.

- (5) Additionally, no amendment of any provision(s) of this Agreement shall be done unless there is full consultation between the Parties and there is prior written consent in that regard.

Schedule 3: Rules, Regulations and Bye-laws

- (1) Every member of the Committee shall be committed to the implementation of this Agreement and any Rules, Regulations and bye-laws made hereunder.
- (2) Any member of the Committee who knowingly, directly or indirectly obstructs or causes the obstruction of the implementation of this Agreement shall be cautioned.

Schedule 4: Allowances payable to Committee members for Meetings

- (1) The allowances payable for attending a full General Committee meeting shall be as follows:
- (a) Chairperson: Kshs.;
 - (b) Secretary: Kshs.
 - (c) Members: Kshs.....
- (2) The allowances payable for attending a Sub-Committee meeting shall be as follows:
- (a) Sub – committee Chairperson: Kshs.....
 - (b) Sub – committee Secretary: Kshs.....;
 - (c) (c) Members: Kshs.....
- (3) For the avoidance of doubt, the Proponent’s representatives in the Committee shall donate their allowances for charitable purposes or to a charity in the Sub-County identified by the Committee.

Schedule 5: Prioritization of Community Development Projects

- (1).....
- (2).....

Schedule 6: Community Development Agreement Project Monitoring Sheet

Project Name	Location/ward	Project cost	Expected project outputs	Start date	End date	Expenditure	Implementation status	Remark

I. ANNEXES

Annex 1 Information and Communication Management Plan

- (1) The Committee shall after every meeting prepare a summary of issues discussed and decisions taken for dissemination in the Community. Such dissemination shall only occur once all Committee members have had a reasonable opportunity to review and comment on the summary of issues and all reasonable comments have been incorporated.
- (2) The Committee, in consultation with the Proponent, shall organize radio, television and newspaper announcements and give a summary of issues discussed, decisions taken and progress on the implementation of this Agreement for the benefit of the Community.
- (3) The Proponent shall produce an annual flyer/bulletin on the Committee's decisions and all matters of interest relating to this Agreement and its implementation and distribute copies of the flyer/bulletin to members of the Committee for distribution to the Community.

Annex 2 Project closure Consultations

- (1) The Parties agree to work together through consultations during project closure.
- (2) The Proponent shall assist the Community in capacity building especially for those who will participate in the project-closure programmes.

