

APX VCS REGISTRY

TERMS OF USE LAST MODIFIED ON SEPTEMBER 17, 2008

The following are the Terms of Use for using the APX VCS Registry (the “Registry”) operated and administered by APX, Inc. (“APX”). The “Voluntary Carbon Standard” and “VCS” trademark and name as well as the VCS-labeling system for greenhouse gas (“GHG”) emissions reduction projects and credits are owned by the Voluntary Carbon Standard Association (the “VCSA”). The Registry is owned and developed by APX, and all data in the Registry is owned by APX.

1. Acceptance of Terms. Your use of the Registry and the Registry website located online at <http://vcsregistry.apx.com> (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 APX as administrator and owner of the Registry (Account Holder and APX, 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. You can review the current version of the Terms of Use at any time at the Registry Site. YOUR CONTINUED USE AND ACCESS OF THE REGISTRY AFTER MODIFICATION OF THE TERMS OF USE SIGNIFIES YOUR AGREEMENT TO BE BOUND BY THE MODIFIED TERMS OF USE. In addition, when using the Registry, you shall be subject to any rules, guidelines and/or operating procedures, including but not limited to (a) the Voluntary Carbon Standard 2007, as modified or restated from time to time (the “Standard”), (b) the Voluntary Carbon Standard Program Guidelines, as modified or restated from time to time (the “Guidelines”), (c) the Voluntary Carbon Standard Styleguide (the “Styleguide”) and (d) the Registry Operating Procedures, as modified or restated from time to time (the “Operating Procedures” and, together with the Standard, Guidelines, Styleguide, and such other rules, guidelines and/or operating procedures, the “Operative Documents”) applicable to such use which may be posted at <http://vcsregistry.apx.com> 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. All such rules, guidelines and operating procedures are incorporated by reference into these Terms of Use. If you do not agree to these Terms of Use, you may not access or otherwise use the Registry.

2. Description of Service.

(a) The Registry serves as an informative system for the issuance, transfer, suspension and retirement of, and custodial services for, Voluntary Carbon Units (“VCUs”) within the Registry. One VCU shall be created for each tonne of CO₂e GHG emission reduction or removal issued by the Voluntary Carbon Standard (“VCS”) Program. The data comprising the Registry shall include emissions information validated, verified and provided to the Registry Administrator by a VCS Program validator/verifier (“Verifier”).

(b) The Registry, as an assembly of emission reduction projects and VCU data verified, validated and provided by third parties, serves only for informational purposes. Any

legal issues that may arise between the Account Holder and third parties from the use of such data, namely in connection with the validity of project data or with the purchase and sale of VCUs, shall be addressed between the Account Holder and such third party. Especially, any issues that may arise regarding whether an ownership interest, security interest or other proprietary interest is created in any VCU, or any other issues related thereto, shall be addressed between the transferor and transferee of the VCU. The Registry will not address any such substantive issues and APX shall not have any liability with respect to any such substantive issues.

(c) APX 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. APX shall not be required to comply with any Operative Document that APX determines in its reasonable discretion would have a material adverse effect on the Registry; provided, however, that APX shall report to Account Holder any such non-compliance, along with an explanation of the reasons for such non-compliance, within 30 days after such non-compliance first occurs. APX shall provide Account Holder with at least seven days' prior notice of material changes to the Registry or these Terms of Use. Such changes, modifications, additions, or deletions 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. Any use of the Registry by Account Holder after the effective date set forth in the notice shall be deemed to constitute acceptance of such changes, modifications, additions, or deletions.

3. Authorized User. The rights granted herein are granted only to Account Holder. 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 agree to be bound by the Operative Documents and these Terms of Use.

4. Ownership and Use of Data and the Registry.

(a) Account Holder acknowledges that APX is and shall remain the sole owner of all data comprising the Registry 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 used in providing, accessing (other than commercially available third party internet browsers) or using the Registry ("Software") is proprietary software of APX. 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 APX 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 the APX'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 VCSA's, APX's or their third-party suppliers' ownership of or rights in the data, Registry or the Software.

(b) Except as otherwise provided in the Operating Procedures, Account Holder acknowledges that once Account Holder transmits data to the Registry, such data becomes the property of APX and cannot and will not be deleted, removed, or otherwise expunged or segregated, including in the event Account Holder terminates its subscription to use the Registry or any Account or subaccount in the Registry, except in accordance with APX's normal operating procedures.

(c) 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 employees and Agents except as permitted by the terms of these Terms of Use.

(d) 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 VCUs to be issued to Account Holder and to the data provided to the Registry by Account Holder and acknowledges that APX 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 the VCUs and the data, Account Holder agrees to provide the Registry Administrator with a legally binding document confirming such authorization, which document will be reasonably acceptable to APX. Account Holder will cancel any VCUs from the Registry if the accreditation or approval of those VCUs is revoked.

(e) Account Holder represents that all data and other information it provides to APX and the Registry shall be true, is complete, and correct to the best of its knowledge, information and belief. Account Holder acknowledges that all data transmitted to the Registry with respect to it or to any emissions reduction project registered in the Registry by it is either owned by Account Holder or is derived from public third party sources.

(f) APX 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 Account Holder has: (1) completed and submitted to the Registry Administrator the Consent of Account Holder available on the Registry Site, (2) paid all applicable fees due under the Operative Documents, and (3) completed and submitted to APX the online registration available on the Registry Site, all for the APX's review and prior approval. 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.

(g) Account Holder shall be subject to the following limitations:

(i) Account Holder shall not loan, share, publish, republish, copy, reproduce, disclose, transmit, display, sell, license, lease or distribute any portion of the Registry or any data thereon to any third-party, or use the Registry as a basis for a directory or database prepared for commercial sale or distribution; provided, however, nothing shall prohibit internal business use or reporting to governmental agencies or Account Holder's end use customers;

(ii) Account Holder shall not remove any copyright, trademark, or other proprietary notices contained in the Registry;

(iii) Account Holder shall not disassemble, decode, decompile or otherwise reverse engineer any interfaces or software programs comprising the Registry;

(iv) Account Holder shall not access, download, transfer or manipulate data and databases comprising the Registry using protocols or interfaces other than those provided by APX as part of the Registry;

(v) Account Holder shall not have access to or make any use of the source code for the Registry; and

(vi) Account Holder shall not infringe or misappropriate the Registry or take any action inconsistent with APX's ownership of and rights in the Registry and the Software.

(vii) Account Holder shall not violate any law or regulations concerning data protection.

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

(i) To the extent any bulletin board, chat room or any other similar forum on the Registry or the Registry Site (together the "Boards") exists, APX is not responsible for any material posted on the Boards, or the accuracy of any information on any VCU provided by any Account Holder or any third party. If such Boards are established, APX would merely be providing access to such material in any Boards as a service to Account Holder and would merely be administering the material in the Boards, and APX would not be obligated to monitor the content of any such Boards. The Boards shall be used only in a non-commercial manner. In using any Boards, Account Holder agrees not to upload, transmit, distribute or otherwise publish on such Boards any material that is, to the best of Account Holder's reasonably obtained knowledge: libelous, defamatory, obscene, abusive, pornographic, threatening, inaccurate, or an invasion of privacy; an infringement of the intellectual property rights, including, but not limited to, copyrights and trademarks, of any person or entity; material that is illegal in any way or advocates illegal activity under any applicable local, state, national, or international law, statute, regulation, ordinance or other means of establishing legal rights and obligations in any geographic area (collectively, "Applicable Law"); an advertisement or solicitation of funds, goods or services; a message posted by a user impersonating another; personal information such as messages which identify personal phone numbers, account numbers, personal addresses, or employer references; or chain letters or serial communications of any kind. Account Holder also agrees to indemnify APX for any claims or suits arising from Account Holders posting of such material on any such Boards. APX reserves the right to monitor and delete any postings deemed

inconsistent with the Operative Documents, their policies or these Terms of Use. APX does not assume any obligation to monitor materials in the Board or any liability for failing to either monitor the Boards or remove specific material.

(j) In using the Registry Site, Account Holder agrees:

- not to disrupt or interfere with the security of, or otherwise abuse, the Registry Site, or any services, system resources, accounts, servers, or networks connected to or accessible through the Registry Site or affiliated or linked sites;
- not to disrupt or interfere with any other user's permitted enjoyment of the Registry Site or affiliated or linked websites in accordance with the Terms of Use and the Operative Documents;
- not to upload, post, or otherwise transmit through or on the Registry Site any viruses or other harmful, disruptive, or destructive files;
- not to use, frame, or utilize framing techniques to enclose any VCSA or APX trademark, logo, or other proprietary information (including the images found at the Registry Site, the content of any text, or the layout/design of any page or form contained on a page) without the express written consent of the owner of such information;
- not to use meta tags or any other "hidden text" utilizing an APX or VCSA name, trademark, or product name except in accordance with the Manual and these Terms of Use;
- not to "deeplink" to the Registry Site without APX's express written consent;
- not to create or use a false identity on the Registry Site;
- not to collect or store personal data about others obtained through the Registry;
- not to attempt to obtain unauthorized access to the Registry Site or portions of the Registry Site that are restricted from general access;
- not to post any material that is false and/or defamatory, inaccurate, abusive, vulgar, hateful, harassing, obscene, profane, sexually oriented, threatening, invasive of a person's privacy, or otherwise in violation of any Applicable Law; and
- not to post any copyrighted material unless the copyright is owned by Account Holder, which such posting shall be deemed consent by Account Holder of the publication of such copyrighted material on the Registry Site.

In addition, Account Holder agrees that it will comply with all Applicable Law that relate to its use of or activities on the Registry Site including but not limited to United States export restrictions, that relate to its use of or activities on the Registry Site.

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

5. Fees.

(a) Account Holder agrees to pay all fees (collectively referred to herein as the "Fees"), that APX may charge for use of the Registry from time to time. The Fees are included in the Registry Fee Schedule (the "Fee Schedule") previously provided to Account Holder by APX. Account Holder acknowledges that it has received and reviewed the Fee Schedule. APX 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 subaccount

(b) Account Holder acknowledges that that the Fees and the Fee Schedule are confidential and proprietary to APX. Account Holder agrees not to use or disclose the Fees or any other information contained in the Fee Schedule except to employees and Agents of Account Holder and solely to extent required for such employees and Agents to perform their functions in connection with the Registry.

6. Payments and Taxes. Invoices for Fees will be sent electronically and will be posted on a secure page on the Registry Site. Account Holder shall pay any Fees charged hereunder by wire transfer of immediately available funds in United States dollars or in euros on the date and to the account identified by APX 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 APX'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 APX 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.

7. Late Payments. If Account Holder fails to pay when due 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 APX in connection with the collection of such overdue amounts. Acceptance of any interest, cost or expenses shall not constitute a waiver of Account Holder's default with respect to such late payment by, nor prevent APX from exercising any other rights or remedies available to APX under the Operative Documents, these Terms of Use or any Applicable Law.

8. 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 APX or Account Holder terminates access to the Registry pursuant to Section 8(b), (c) or (d) hereof.

(b) Termination by APX.

(i) APX may terminate Account Holder's access to the Registry upon giving five (5) days notice to Account Holder (except as set forth in Sections 8(b)(ii)) if Account Holder Defaults in the performance of any of its obligations under the Operative Documents or these Terms of Use as set forth in Section 9(a)(i) hereof.

(ii) APX may terminate Account Holder's access to the Registry immediately in the event of any Default or breach of the Terms of Use as set forth in Sections 9(a)(ii) through (a)(ix).

(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 APX. 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.** APX 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 or governmental agency, as required by Applicable Law. 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.

(e) **Effect of Termination.** The terms of Sections 5 (Fees), 6 (Payments and Taxes), 8 (Term and Termination), 9 (Default; Remedies), 11 (Confidentiality), 13 (Limitation of Liability), 17 (Indemnification), 18-25, 27 (Capitalized Terms), 28 (Entire Agreement) 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, APX, in its sole discretion, may reinstate Account Holder's access to the Registry after termination for Account Holder's Default, upon APX's determination that Account Holder has resolved such Default and upon receipt of Account Holder's full payment of all Fees 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) APX 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.

9. Default; Remedies.

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

(i) Account Holder fails to abide by the Operative Documents or fails to perform any of its duties or obligations under these Terms of Use, other than those set forth below in Sections 9(a)(ii) through (a)(ix), which default is not cured to the satisfaction of APX in its sole discretion within five (5) days after notice is given to Account Holder specifying such default.

(ii) Account Holder fails to pay any of the Fees, Taxes or other charges due in accordance with the procedures set forth in Sections 6 and 7 above within five (5) days of their Due Date.

(iii) Account Holder, its employees, agents or contractors alter, tamper with, damage or destroy (1) the Registry or any portion thereof, or (2) the data of other users of the Registry.

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

(v) 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.

(vi) Account Holder falsifies or misrepresents any data or other information input into the Registry by Account Holder in contravention of Section 4(d).

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

(viii) Account Holder violates its confidentiality obligations set forth in Section 11.

(ix) In addition to the defaults described above, the Parties agree that if 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, then such conduct shall represent a separate Default.

(b) **Remedies.** Upon the occurrence of any Default, APX 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 APX in the event of a breach by Account Holder of its obligations hereunder and that injunctive relief may be essential for APX to adequately protect itself hereunder. Accordingly, Account Holder agrees that, in addition to any other remedies available to APX at law or in equity, including but not limited to any monetary damages, APX 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 APX 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 APX'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.

(c) **Nonwaiver of Defaults.** The failure or delay of APX 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 APX'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. APX'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.

10. Intellectual Property. The VCS 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, APX does not grant 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 created for use by or dissemination to Account Holder (including authorized employees and agents of Account Holder) under the Operating Procedures, (b) as may be required or compelled by Applicable Law, or (c) as APX may agree in its sole discretion. Any authorized use of the Registry's logo and APX'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 limiting

changing the color scheme thereof). Account Holder acknowledges that Account Holder does not acquire any ownership rights by downloading copyrighted material.

11. 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 users of the Registry. APX agrees to use and maintain information provided by Account Holder in accordance with Section 5.3 of the Operating Procedures and the Registry's Privacy Policy. Account Holder agrees not to use or disclose the information contained in the Registry except as authorized by the Operative Documents and these Terms of Use. As used in these Terms of Use, "Confidential Information" means any information that has been designated in writing by any subscriber to the Registry to be confidential or proprietary; provided, however, that Confidential Information does not include information which another Party can establish by written documentation: (i) to have been publicly known prior to disclosure of such information by the disclosing Party to such other Party; (ii) to have become publicly known, without fault on the part of such other Party, subsequent to disclosure of such information by the disclosing Party to the other Party; (iii) to have been received by such other 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 such other Party without access to or use of such information disclosed by the disclosing Party to such other 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 recipient at the time of disclosure, which information is not subject to a confidentiality agreement; and (viii) to be information APX is otherwise permitted to disclose under the Operating Procedures. 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) Confidential Information is the sole and exclusive property of the user who provided the information to the Registry and shall not be used by Account Holder for any purpose other than the purposes set forth in the Operating Procedures.

(c) 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 APX that Account Holder has obtained such access;
- and
- (ii) not disclose, disseminate, copy, or use any such information.

(d) Except as specifically set forth in this Section 11, APX shall have no obligation to protect or maintain the confidentiality of any information provided by Account Holder to APX or to the Registry, and Account Holder expressly consents to the disclosure of any such information that is not Confidential Information hereunder.

12. Disclaimer of Warranty.

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

(b) THE REGISTRY IS PROVIDED "AS IS," AND APX 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 APX 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. APX 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 HUMAN ERRORS OR OMISSIONS.

(c) APX 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 in the Registry.

(d) Account Holder is solely responsible for the protection, security and management of usage and security of its computer network. APX 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.

13. Limitation of Liability. ACCOUNT HOLDER ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM ITS USE OF THE REGISTRY AND THE REGISTRY SITE. APX'S SOLE LIABILITY FOR THE REGISTRY, SERVICE DISRUPTION, PERFORMANCE OR NONPERFORMANCE BY APX 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. APX SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY 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 APX HAS BEEN ADVISED BY ACCOUNT HOLDER OR ANY THIRD PARTY OF SUCH DAMAGES. APX DISCLAIMS ANY LIABILITY FOR ERRORS, OMISSIONS OR OTHER INACCURACIES IN ANY PART OF THE REGISTRY, OR THE REPORTS, VCUS 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 PROTECTS APX, 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.

14. Logins, Passwords and Registry IDs. Account Holder agrees to assume sole responsibility for the security of any logins, passwords and Registry IDs issued by APX to Account Holder for accessing the Registry. Account Holder agrees to immediately notify APX 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.

15. Viruses. APX does not assume any responsibility, and shall not be liable for, any damages to, or viruses that may infect Account Holder's equipment or other property on account of Account Holder's access to or use of any information or the use of the Registry or the Registry Site.

16. Maintenance. Account Holder understands that any project not registered within the Registry within a year from the time such project is listed therein shall be deactivated in the Registry, unless a grace period of three (3) months 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.

17. Indemnification. Account Holder agrees to defend, indemnify and hold harmless APX and its subsidiaries and affiliates and their respective owners, directors, trustees, officers, employees and agents (each an "Indemnified Party") from and against any Account Holder violations 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 attorney's fees and court costs) of any nature whatsoever ("Losses") arising out of, resulting from, attributable to or related to Account Holder's use of the Registry, or Account Holder's 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 which a court of law has determined amounted to gross negligence or willful misconduct.

18. 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 APX, which consent shall not be unreasonably withheld, conditioned or delayed.

19. 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.

20. No Third Party Beneficiaries. These Terms of Use are for the sole and exclusive benefit of Account Holder and APX and its successors and permitted assigns, and no third party will have any rights under these Terms of Use whatsoever.

21. 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.

22. Severability. If any part of these Terms of Use is held to be unenforceable or illegal by a court 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.

23. 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.

24. 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 APX:

APX, Inc.
5201 Great America Parkway #522
Santa Clara, CA 95054
Attn: APX VCS Registry Administrator
Facsimile: (408) 517-2985
Email: vcsregistryadmin@apx.com

If to Account Holder:

To the address provided at the time of registration

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 email or facsimile, it shall be deemed received on the day said notice was sent to the other Party.

25. Governing Law and Dispute Resolution.

(a) These Terms of Use shall be governed exclusively by the federal laws of the United States of America and the laws of the State of New York 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 (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 Parties 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 arbitrators 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 arbitrators 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 reasonable 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.

(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.

26. Representations and Warranties. Throughout the term of these Terms of Use, Account Holder represents and warrants to APX as follows:

(a) Account Holder will only use the Registry for creating, transferring and retiring its VCUs for the emission reductions 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 projects are registered in the Registry. Account Holder has not registered and will not register any emission reduction project 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 project, emissions, emission reductions, emission offsets, or other environmental attributes related to emission reduction projects be conducted outside of the Registry, other than in another VCSA-approved registry. Account Holder commits not to claim emissions reduction credits over and above the crediting period and expected volumes they are registered for under the Registry from other independent or proprietary Voluntary Emissions Reduction standards, neither before nor after the VCS crediting period.

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

(c) Account Holder has not 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 CO₂e GHG emission reductions by Account Holder's project associated with Account Holder's VCUs without designating the disposition of the VCUs as such within the Registry.

(d) Account Holder has legal title to, or has been authorized to act on behalf of the holder of the legal title to, the CO₂e GHG emission reductions for which Account Holder is seeking credit, and no other entity can claim the right to the CO₂e GHG emission reductions for which Account Holder is seeking credit. Account Holder has acted in compliance with any regulatory system or other requirements underlying the CO₂e GHG emission reductions for which Account Holder is seeking credit.

(e) All data and other information being provided to the VCSA, APX and the Registry by Account Holder and/or its agents and employees are owned by Account Holder and are true and correct in all material respects.

27. Capitalized Terms. Any capitalized terms contained herein that are not otherwise defined herein shall have the meanings as such terms are defined in the Operative Documents.

28. Entire Agreement. The Operative Documents 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.

29. Links. APX makes no claim or representation regarding, nor does APX accept any responsibility for, the quality, content, nature, or reliability of sites accessible by hyperlink from the Registry Site, or sites linking to the Registry Site. The linked sites are not under the control of APX and APX shall not be responsible for the content of any linked site or any link contained in a linked site, or any review, changes, or updates to such sites. The inclusion of any link does not imply affiliation, endorsement, or adoption by APX of the Registry Site or any information contained therein. When leaving the Registry Site, you should be aware that the Registry Site's terms and policies no longer govern, and therefore you should review the applicable terms and policies, including privacy and data-gathering practices, of that site.