

# FOREST CONSERVATION CONCESSION CONTRACT<sup>1</sup>

This Forest Conservation Contract is entered into between:

OF THE FIRST PART:

**THE MINISTER OF THE ENVIRONMENT,  
CONSERVATION AND TOURISM**, on behalf of the  
Democratic Republic of Congo

(the “**Grantor**”)

OF THE SECOND PART:

**ERA-CONGO SPRL**, being registered in the New Business  
Registry under the number 3087, having a registered office at #3,  
Botango Avenue, Kinshasa, Lemba, being represented by Mr. John  
Kendall, as duly appointed by Mr. Frederic Jacquemont, Manager

(the “**Grantee**”)

## **Title 1: General**

### **Article 1**

The object of this Contract is to define the rights and obligations of the parties. It is supplemented by the terms of reference<sup>2</sup>, development plan (Project Plans and Specifications)<sup>3</sup>, and Letter of Understanding<sup>4</sup>, dated March 11, 2011 and entered into by the Minister of the Environment, Conservation and Tourism and ERA-Ecosystem Restoration Associates, copies of which are attached hereto.

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<sup>1</sup> Also called the Forest Conservation Contract in this document and the Forestry Preservation Concession Contract in the Social Chapter of the Terms of Reference which is provided in the following appendices.

<sup>2</sup> This document is also called the Cahier de Charges and a copy is provided in the attached appendices. It is made up of the Social Chapter and the Forestry Management Plan of the Area.

<sup>3</sup> This document is described as the “Specifications and Project Plans (collectively referred to as “PDD”)” in Article two of the Social Chapter of the Terms of Reference. The PDD is defined in Section one of the Memorandum of Understanding, a copy of which is provided in the attached appendices, as “the document prepared by ERA in order to register each component of the Project with the Competent Authority so as to ensure the creation, certification, recognition, granting, allocation, award or issuance of the Carbon Certificates resulting from the Project”.

<sup>4</sup> Also called the Memorandum of Understanding a copy of which is provided in the attached appendices.

The terms of reference in the appendix include a management plan prepared by the Grantee and approved by the government, which describes all of investments and the activities that will be undertaken and realised by the Grantee throughout the duration of the Contract.

The terms of reference form an integral part of the Contract.

## **Article 2**

The Contract concerns a Forestry Conservation Grant over an area of 299,640 hectares prior to the establishment of the development plan. The geographic location and boundaries are described as follows:

### **I. Civic Location**

- Province: Bandundu
- District: Mai-Ndombe Lake
- Territory: Inongo
- Sectors: Bolia, Ntomb'enzale and Basengele

### **II. Physical Location**

To the north: along the Bolong'o Lule River to its source, draw a line to the confluence with the Montaba River.

To the south: along the Lobeke River, from its mouth at the lake, to the boundary between the Inongo and Kutu territories, then follow the boundary to the Montaba River.

To the east: along the Montaba River.

To the west: along the Montaba River.

A map of the lands is appended to the Contract.

## **Article 3**

This Contract shall have a term of twenty-five years commencing on the date the Contract is signed by both parties, and may renewed on the terms contained in Article 8 herein.

## **Article 4**

The State guarantees to the Grantee full and complete enjoyment of the rights conferred on by the law, by the Memorandum of Understanding of March 11, 2011, entered into by the Minister of the Environment, Conservation and Tourism and ERA-Ecosystem Restoration Associates Inc., and by this Contract.

Throughout of the duration of the Contract, the Grantee shall be deprived of all or part of its right to exploit the lands, except in the case of a breach of its legal, regulatory or contractual obligations, or for reasons of public use, in which case the Grantee shall be adequately indemnified in accordance with the common law.

### **Article 5**

Subject to article 13 of the Contract, the Grantee has the exclusive rights to sell carbon credits for carbon generated by the project on the lands, as is contemplated by the Letter of Understanding of March 11, 2011, entered into by the Minister of the Environment, Conservation and Tourism and ERA-Ecosystem Restoration Associates Inc., and by the Contract.

### **Article 6**

The Grantee must respect the traditional rights of use of the local communities and/or riverside native peoples resident on the lands, such as are defined in articles 36, 37 and 44 of the Forestry Code.

The Grantee is not permitted to impede the exercise by the local communities and/or riverside native peoples of their pre-existing forestry rights.

### **Article 7**

The Grantee has a right of way over the river beds, which is intended to facilitate access to the conceded land and the removal of its yield. The Grantee must use the right of way only as is absolutely necessary to exercise its right of passage.

The location of any road or any access or departure route from the lands must be submitted for consultation with the local communities and riverside native peoples during the preparation of the development plan.

In the event of disagreement regarding the location of any access or departure route on the land, the Grantee must refer to the dispute resolution procedures in articles 103 and 104 of the Forestry Code.

### **Article 8**

On the termination of the Contract, the Grantee may request a renewal thereof in accordance with the conditions set out in the regulations then in force and on the condition that the obligations imposed by the Contract and contained in the terms of reference have been performed.

At that time, the Grantee must provide its proposal for implementing its development plan and the terms of reference during the renewal period.

The renewal of the Contract may, however, be refused by the Grantor in the event any breach of the terms of the Contract and the terms of reference, particularly in any of the following circumstances:

1. The non-payment of fees relating to the lands and/or all other taxes and forestry fees relating to the exploitation of the land as specified in the Letter of Understanding of March 11, 2011, entered into by the Minister of the Environment, Conservation and Tourism and ERA-Ecosystem Restoration Associates Inc.;
2. The illegal exploitation of the forest;
3. The illegal trading of forestry products;
4. Breach of its social and environmental obligations and its commitment to investment, as imposed by the Contract in accordance with the legal and regulatory provisions then in force, and the development plan;
5. Corruption, fraud or violence.

## **Article 9**

In accordance with the provisions of article 115 of the Forestry Code, the Grantee must establish itself on the lands and must fulfil its rights and obligations as are set out in the Contract, the terms of reference and the management plan contemplated by article 10 herein. Specifically, the Grantee must:

1. Mark the boundaries of the lands;
2. Implement environmental and pro-biodiversity measures as provided by the Contract and the development plan;
3. Establish socio-economic infrastructure and public services for the benefit of the local communities and the riverside native peoples, as contained in the terms of reference;
4. Pay the fees relating to the forested area and all other taxes and fees set out in the Letter of Understanding of March 11, 2011, entered into by the Minister of the Environment, Conservation and Tourism and ERA-Ecosystem Restoration Associates Inc. within the periods prescribed by the tax regulations.

## **Article 10**

The Grantee must commit itself to preparing and submitting to the forestry commission for approval, within a maximum period of four years, a development plan<sup>5</sup> in compliance with the legislation and regulations then in force. This plan must include all of the obligations of the Grantee with a view to ensuring sustainable management of the forest.

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<sup>5</sup> This is the project VCS PDD, also see footnotes on page one of this document.

In the interval between the execution of the Contract and the approval of the plan, the Grantee must manage the forest in accordance with the management plan<sup>6</sup> submitted by the Grantee to the forestry commission and approved at the same time as the Contract. This management plan includes all of the undertakings of the Grantee for the conservation of the forest before the approval of the development plan. The management plan indicates:

1. the extent of the conservation zones, the forests belonging to the local communities and the transition zones;
2. the schedule and methods of consultation with the local communities and native peoples;
3. an explanation of the environmental protection measures and biodiversity conservation measures, including the methods for the reduction, alleviation and offsetting of all negative impacts of the Grantee on the environment.

The terms and undertakings in the management plan shall be incorporated into the terms of reference appended hereto.

If, upon the expiry of the four-year period, the circumstances do not permit the Grantee to present a development plan, the Grantee can, upon providing reasons for the delay, request an extension for a period of not more than one year.

The preparation of the development plan<sup>7</sup> relating to the lands shall include the distribution of the appropriate documentation among the local communities and the native peoples, and regular consultation with them on issues relating to the grant and their rights. The commission can assist with the consultation meetings.

## **Article 11**

The Grantee must comply with the laws relating to the protection of the environment and the conservation of biological diversity.

The Grantee shall contribute, in particular throughout the lands, to the fight against bush fires, poaching and the illegal exploitation of wood.

The Grantee shall ensure that the activities on the conceded land do not provoke or encourage poaching or environmental degradation. To this end, the Grantee identify and implement on the lands appropriate measures to:

1. prohibit the transport of firearms and hunting weapons in company vehicles;
2. close roads and access ways to former forestry sites;

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<sup>6</sup> The management plan is the Forestry Management Plan and the Social Chapter collectively called the Terms of Reference, copies of which are provided in the appendices to this document.

<sup>7</sup> The development plan is the VCS PDD for the project. See also footnotes on page one of this document

3. prohibit access to foreign vehicles, except on public routes;
4. prohibit the involvement of employees in poaching and encourage the supply of alternative food sources;
5. implement adequate environmental safeguards;
6. minimise, reduce and offset on the lands and in the surrounding areas all negative impacts of the development of infrastructure on the environment.

### **Article 12**

The Grantee is required to be physically present on the lands in accordance with the applicable regulations.

### **Article 13**

During the period prior to the approval of the development plan, the Grantee must implement conservation techniques throughout the lands.

### **Article 14**

The Grantee must develop social-economic infrastructure and provide public services for the benefit of the local communities and the native peoples as is provided in the agreement containing the terms of reference and the development plan. During the period for the preparation of the development plan, the Grantee must consult with local communities and the native peoples on the social-economic plan and the infrastructure, subject to terms of reference appended to the development plan. This must be repeated every five years.

Notwithstanding paragraph 1 above, the Grantee must be committed to implementing, within a framework of consultations with the local communities and the native peoples, a social-economic plan, including social-economic infrastructure and public services, for the period of the development plan.

### **Article 15**

The Grantee must attend to payment of all taxes and fees specified in the Letter of Understanding of March 11, 2011, entered into by the Minister of the Environment, Conservation and Tourism and ERA-Ecosystem Restoration Associates Inc. within the prescribed periods.

### **Article 16**

The Grantee must take out civil liability insurance, notably against the risks of theft and fire.

If the insurance policy coverage does not expressly extend to subcontractors, evidence of a specific insurance policy must be provided.

## **Article 17**

The Grantee may, following written notice to the Grantor, subcontract all or part of certain tasks, including:

1. the creation of a development plan for the lands;
2. surveillance of the conservation zones;
3. the construction and maintenance of the road network and observation paths;
4. the construction and maintenance of social-economic infrastructure for the benefit of the local communities;
5. all other activities relevant to the conservation of forestry resources.

At all times, the Grantee remains liable to the Grantor for any potential damages arising with respect to its legal, regulatory and contractual obligations towards third parties,

## **Article 18**

The Grantee is entitled to renounce the benefit of the lands conferred prior to the expiration of the contract.

Notwithstanding such renunciation, the Grantee remains liable for the payment of outstanding taxes and forestry fees such as are specified in the Letter of Understanding of March 11, 2011, entered into by the Minister of the Environment, Conservation and Tourism and ERA-Ecosystem Restoration Associates Inc.

## **Article 19**

In the event the Grantee breaches a term of the Contract and/or the terms of reference, and after issuing a formal notice within a period not exceeding three months, the Grantor shall prescribe all conservation measures necessary to ensure compliance with the Contract and the terms of reference. The Contract shall be terminated in any one of the following cases:

1. the non-payment of taxes and fees linked to the exploitation of the conceded land such as are specified in the Letter of Understanding of March 11, 2011, entered into by the Minister of the Environment, Conservation and Tourism and ERA-Ecosystem Restoration Associates Inc. following the expiry of the period in the formal notice;
2. failure to establish a development plan for the lands within the period of time stipulated in article 10 above;
3. the commission of any act or attempted act of corruption, fraud, or violence;
4. the repeated violation, following the issuance of a formal notice, of its social and environmental obligations contained in the Contract and the terms of reference.

The insolvency of the Grantee constitutes a default and will result in the termination of the Contract.

#### **Article 20**

The breaches mentioned in article 10 shall be reported by the forestry inspectors, civil servants under oath, and other officers of the Criminal Investigation Department within their respective areas of competence in accordance with articles 127 and following of the Forestry Code.

The previous paragraph shall apply equally to the violation of obligations of the Contract and to the terms of reference.

#### **Article 21**

In the event of a breach, the Grantor shall proceed to terminate the contract by way of a by-law. The Grantor shall notify the Grantee of the by-law by registered mail or by courier with an acknowledgment of receipt.

The by-law shall be published in an official bulletin and a copy shall be transmitted to the national and provincial forestry land registries concerned.

#### **Article 22**

In the event of termination of the Contract or forfeiture, the Grantee shall bring all legal proceedings before the competent courts.

#### **Article 23**

Notwithstanding article 8 above, the Contract shall end July 29, 2036. The Grantee may seek to renew the Contract one year prior to the expiry date. The decision to refuse to renew the Contract may be appealed to the courts.

#### **Article 24**

At the end of the grant, the Grantee shall make an inventory and proceed to liquidate all operations in accordance with the legislation then in force.

#### **Article 25**

At the end of the grant, the Grantee shall prepare a statement of the closing of accounts within six months from the expiry date of the Contract.

The Grantee shall recover accounts receivable, settle debts and draw up a summary of its operations and close all financial accounts.

**Article 26**

All disputes relating to the interpretation or performance of the Contract and to the terms of reference shall be resolved amicably.

In the event a dispute cannot be resolved amicably, the courts shall have jurisdiction unless the parties can agree to proceed to arbitration as contemplated by Letter of Understanding of March 11, 2011, entered into by the Minister of the Environment, Conservation and Tourism and ERA-Ecosystem Restoration Associates Inc.

**Article 27**

The Contract and the terms of reference shall be published in the Official Journal filed with the National Forestry land registry, brought to the attention of the competent provincial and local authorities, and made public by all means appropriate in the riverside villages.

The cost of publishing the Contract and the terms of reference in the Official Journal shall be borne by the Grantee.

**Article 28**

The Contract shall come into force once executed in full.

Signed in duplicated at Kinshasa on the 30<sup>th</sup> day of July 2011.

On behalf of the Grantee

On behalf of the Democratic Republic of  
Congo

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John Kendall

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José E. B. Endundo

## **Appendices (Supplemental Documents) to the Forest Conservation Concession Contract**

1. Memorandum of Understanding
2. Terms of Reference
  - i. Social Chapter
  - ii. Forestry Management Plan of the Area
3. DRC Decree 11/27 –Rules for Forestry Conservation Concessions

## MEMORANDUM OF UNDERSTANDING<sup>8</sup>

BETWEEN:

**The Democratic Republic of Congo**, legally represented for the purposes hereof by the minister for the environment, nature conservation and tourism (*Ministre de l'Environnement, Conservation de la Nature*) and president of the designated national authority of the Democratic Republic of Congo (*Président de l'Autorité Nationale Désignée de la République du Congo*) under the Kyoto Protocol, Mr. José E.B. ENDUNDO, having the capacity, authority and mandate to manage renewable natural resources in the Democratic Republic of Congo, and having its head office on Avenue Papa Ileo, Kinshasa/Gombe.

(hereinafter the “**Democratic Republic of Congo**”),

AND:

**Ecosystem Restoration Associates, ERA, Inc.**, a body corporate, duly incorporated pursuant to the laws of the Province of British Columbia, and whose principal office is located at 788 Harbourside Drive, Suite 110 in the City of North Vancouver, British Columbia, V7P 3R7, represented herein for the purposes hereof by Mr. Frédéric Jacquemont, President.

(hereinafter “**ERA**”)

(Individually referred to as “**Party**” and together the “**Parties**”)

PREAMBLE:

**CONSIDERING** the Forestry Code of the Democratic Republic of Congo;

- A. **WHEREAS** the Democratic Republic of Congo is currently the sole owner of the lands west of and near the Mai-Ndombe Lake, which lands shall be contemplated by two Concessions delineated as follows: Bounded to the *north by the Bolong’Odule River; to the south by the Lobeke River; to the east by Mai-Ndombe Lake; and to the west by the Boruampe River*, a map and geographical references of which is attached hereto as Schedule A (hereinafter collectively the “**Concessions**”);

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<sup>8</sup> Also called the Letter of Understanding (see Article one of the Forest Conservation Concession Contract)

- B. **WHEREAS** ERA, a private company specialized in developing and implementing forest-based greenhouse gas (“**GHG**”) emissions offset projects, possesses the knowledge, know-how and capacity to develop, finance and implement forest-based GHG emissions offset projects, in order to assist communities in (i) protecting and managing forests, (ii) avoiding deforestation and forest degradation, and (iii) restoring degraded sites by means of afforestation and reforestation activities in order to optimize the prevention, reduction and sequestration of GHGs;
- C. **WHEREAS** ERA is interested in developing, financing and implementing a GHG emissions offset project consisting of afforestation, reforestation as well as avoidance of deforestation and forest degradation within the Concessions (hereinafter the “**Project**”);
- D. **WHEREAS** ERA has presented to the Democratic Republic of Congo all of the justifications, motivations, and benefits associated with developing and implementing the Project in the Democratic Republic of Congo;
- E. **WHEREAS** the Democratic Republic of Congo is interested in having ERA develop, finance and implement a REDD pilot Project within the Concessions;
- F. **WHEREAS** the Democratic Republic of Congo acknowledges that ERA is not a forest operator, exporter or forest product manufacturer within the meaning of the Forestry Code;
- G. **WHEREAS** the development, financing and implementation of the Project will allow for the creation, certification and recognition of Carbon Certificates resulting from the Project;
- H. **WHEREAS** the Carbon Certificates represent the certification or recognition, by the Competent Authority, of the GHG emission reduction and/or sequestration efforts resulting from the development, financing and implementation of the Project;
- I. **WHEREAS** the Parties want to collaborate closely throughout the term of the Project so as to optimize the creation, certification and recognition of Carbon Certificates resulting from the Project, in order that each of the Parties may optimize the benefits resulting from the Project’s implementation;
- J. **WHEREAS** the Parties acknowledge that the consideration for the development, financing and implementation of the Project by ERA within the Concessions is the transfer to ERA of the Carbon Certificates resulting from the Project;
- K. **WHEREAS** the Parties wish to enter into this Agreement in order to establish a framework for their joint efforts to develop the Project;

**NOW, THEREFORE**, this Agreement witnesses that, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree with each other as follows:

## 1. DEFINITIONS

For the purposes of this Agreement, the terms defined in the recitals above and in the Agreement will have the meanings so ascribed to them, and in addition:

- (a) “Appropriate Registry” means the electronic tool allowing for the creation, issuance, registration, holding, attribution, transfer, acquisition, cancellation and replacement of Carbon Certificates generated by the Project and managed by the Competent Authority.
- (b) “Baseline” means a set of data and underlying conditions of a given baseline against which a change is measured in a forest-based GHG emissions offset project. It might be a "real baseline" representing observable, real conditions, or a "future baseline", namely a projected set of conditions excluding the driving factor of interest.
- (c) “Business Days” means a day (other than Saturday or Sunday) on which banks are generally open for business in the Democratic Republic of Congo.
- (d) “Carbon Certificates” means any and all rights whatsoever related to the prevention, reduction and removal of GHG emissions resulting from the Project during the term of this Agreement, as well as all rights relating to the sequestration of GHGs emissions resulting from the Project during the term of this Agreement.
- (e) “Competent Authority” means any entity having jurisdiction or competence over the creation, certification, recognition, granting, allocation, award, issuance, trading, transfer, assignment or conveyance of the Carbon Certificates.
- (f) “Confidential Information” means any information relating to a Party or this Agreement which a Party obtains under or in connection with this Agreement and which the disclosing Party designates as confidential or which can reasonably be expected to be confidential, but excludes information already known to a Party on the date of this Agreement or information which is or becomes public knowledge other than as a result of a breach of this Agreement or information that is received from a third party having the right to disclose same and who is not bound to the Party at issue by a similar confidentiality agreement.
- (g) “Congolesse Stakeholders” means Congolesse non-governmental organizations, Local Communities and individuals directly involved in the Project, or people living on the Designated Project Land.
- (h) “Contribution in kind” has the meaning ascribed to such term in section 4.1.2 of this Agreement.
- (i) “Cost of the REDD and IFM Components of the Project” means all following fees, costs and expenses associated with the Project: (i) the costs associated with funding the Project provided for in Sections 4.1.1, 4.1.2 and 4.1.3 of this

Agreement, (ii) all wages and other costs incurred by ERA in respect of employees or other personnel, (iii) travelling, accommodation and other costs or expenses incurred to travel to and stay in the Democratic Republic of Congo, (iv) the total amount of any contract associated with the Project that is contracted, managed and paid by ERA (a “**Project Agreement**”), (v) the percentage applicable to the total amount of each Project Agreement representing general fees, which percentage shall apply as follows: 25% of the total amount of each Project Agreement worth US\$50,000 or less, 15% of the total amount of each Project Agreement worth more than US\$50,000, and 10% of the total amount of each Project Agreement worth more than US\$100,000, and (vi) any other tax and/or royalty not provided for herein that might apply to the Project throughout the term hereof.

- (j) “Damaged Trees” means the trees standing on the Designated Project Land that are cut, cut and removed or damaged in such a manner that more than 50% of their biomass is lost, and this as a result of intentional acts or negligence on the part of the Democratic Republic of Congo or of its administrations, representatives, employees, mandataries and subcontractors, or as a result of intentional acts or negligence on the part of ERA.
- (k) “Designated Project Implementation Entity” means, collectively, the non-governmental organizations that are either Congolese or operating on Congolese territory and that have the recognized capacity to manage community forest resource conservation projects, as well as their respective successors and assigns, and/or any other entity ERA may designate.
- (l) “Designated Project Land” means all lands consisting of the two Concessions west of Mai Ndombe, one of 114,000 hectares and the other of 185,645 hectares, designated by the Democratic Republic of Congo and attributed to ERA, as described in Schedule A to this Agreement.
- (m) “Dispute” means any dispute, litigation or action for damages directly or indirectly resulting from or relating to this Agreement or any failure to comply herewith.
- (n) “Force Majeure Event” means an unforeseeable and irresistible event beyond the control of the affected Party or Parties which prevents the latter from performing their obligations under this Agreement, and may include, without limiting the generality of the foregoing, acts of nature (fire, flood, earthquake, storm, hurricane, lightning, accumulation of snow or ice or other natural disaster), any occurrence of a war, threat of war, hostilities, invasion, act of foreign enemies, terrorist act, explosion, blockade, rebellion, revolution, riot, insurrection, military or usurped power, civil commotion, public demonstration or any occurrence of a strike, lockout or other disturbance preventing the supply of goods or the mobility of people.

- (o) “Forestry Code” of the Democratic Republic of Congo means law no. 011/2002 dated August 29, 2002.
- (p) “Greenhouse Gases” or “GHGs” means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), sulphur hexafluoride (SF<sub>6</sub>) or any other gases that are or may be designated as “greenhouse gases” by the United Nations Intergovernmental Panel on Climate Change.
- (q) “IFM” is the acronym for “Improved Forest Management” and commonly refers to any GHG emission reduction resulting from the cessation of legal logging that would have taken place (as established in the Baseline) had it not been for the Project, as determined for the term of this Agreement.
- (r) “IFM Component of the Project” means the Project measures that are implemented to reduce Baseline emissions by putting a stop to legal logging on the Designated Project Land, as described in section 2 of this Agreement.
- (s) “Investment Code of the Democratic Republic of Congo” means law no. 004/2002 dated February 21, 2002 on the investment code.
- (t) “Local Communities” means any Congolese community that has the essential attributes defined in article 1, paragraph 17 of the Forestry Code and is living on or immediately adjacent to the Designated Project Land<sup>9</sup>.
- (u) “Project” has the meaning ascribed to such term in section 2 of this Agreement.
- (v) “Project Design Document” (commonly referred to as the PDD) means the document prepared by ERA in order to register each component of the Project with the Competent Authority so as to ensure the creation, certification, recognition, granting, allocation, award or issuance of the Carbon Certificates resulting from the Project. Two Project Design Documents (PDDs) will describe each component of the Project, its objectives and expected outcomes, methodologies used to quantify GHG emissions and the terms and conditions with regards to selected Baseline scenarios. Project Design Documents (PDDs) are the result of a detailed planning and consultation process involving the concerned Congolese Stakeholders.
- (w) “REDD” is the acronym for “Reduction Emission from Deforestation and Degradation” and commonly refers to any reduction in GHG emissions associated with the avoidance of deforestation and forest degradation.
- (x) “REDD Component of the Project” means the Project measures that are implemented, other than the IFM Component of the Project, designed to reduce

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<sup>9</sup> Article one, paragraph 17 of the Forestry Code defines local communities as “a population traditionally organized on the basis of customs and unified by the clan or parental solidarity relationships that establish its internal cohesion. In addition this population is characterized by its attachment to a determined territory”.

the Baseline emissions that result from avoiding the deforestation and degradation of primary and secondary forests on the Designated Project Land, as described in section 2 of this Agreement.

**1.1** The purpose of this Agreement is to set forth, among other things, (i) the general principles governing the relationship and the cooperation between the Parties in the development, financing and implementation of the Project and (ii) the specific responsibilities of each Party in the development, financing and implementation of the Project.

**1.2** In that respect, the Parties:

1.2.1 agree to be guided by proper business practices in the development, financing and implementation of the Project and in their commercial relationship; and

1.2.2 agree to actively cooperate at all stages of the Project for the best development and implementation of the Project.

## **2. PROJECT DESCRIPTION AND GOALS**

**2.1** The Project consists of reducing Baseline emissions resulting from the deforestation and degradation of primary and secondary forests on the Designated Project Land by means of the REDD Component of the Project and the IFM Component of the Project.

**2.2** The Project shall have a **twenty-five (25) year term**, as set forth in the Project Design Documents (PDDs) that are submitted to the minister for the environment for approval. The term of the Project may be extended by unanimous decision of the Parties to this Agreement.

**2.3** Two separate Project Design Documents (PDDs) will be prepared by ERA for:

2.3.1 the REDD Component of the Project; and

2.3.2 the IFM Component of the Project.

**2.4** The Project is based on the fundamental understanding that healthy and sustainable life conditions of the Local Communities are an essential factor in protecting and managing forest cover within and adjacent to the Designated Project Land. In that respect, the Project will be implemented to increase the means of livelihood of Local Communities so as to substantially reduce the risk of the future deforestation and degradation of existing primary and secondary forests, as well as of new forest cover resulting from the Project, as described in the Project Design Documents (PDDs).

**2.5** Without limiting the generality of the foregoing, the Project shall include:

2.5.1 measures to facilitate revenue generating activities for the Local Communities so as to materially increase the well-being of the Local Communities and their ability to adapt to the negative effects of climate change;

- 2.5.2 measures to improve existing infrastructure and implement new infrastructure that will materially improve the well-being of people living within and adjacent to the Designated Project Land;
- 2.5.3 measures to train, promote awareness among and provide support for women and minority groups living within and adjacent to the Designated Project Land; and
- 2.5.4 measures to provide general training to people living within and adjacent to the Designated Project Land.

### **3. ROLE OF THE PARTIES**

#### **3.1 Role of ERA**

So as to ensure the proper development, financing and implementation of the Project, during the term of this Agreement, ERA shall:

- 3.1.1 provide project management expertise, including operational planning, site preparation, tree planting and forest cover maintenance;
- 3.1.2 supply the trees to be planted on the Designated Project Land and the equipment necessary to plant such trees;
- 3.1.3 provide management expertise for protected areas, protected areas management capacity building expertise and Local Communities benefits support expertise;
- 3.1.4 provide Carbon Certificate management expertise;
- 3.1.5 provide financing of the Project, as described in section 4 below; and
- 3.1.6 ensure and coordinate the Project's implementation, essentially through the Designated Project Implementation Entity, under a contractual agreement to be entered into between ERA and the Designated Project Implementation Entity;

(Collectively, “**ERA’s Services**”).

#### **3.2 Role of the Democratic Republic of Congo**

The Democratic Republic of Congo shall:

- 3.2.1 cooperate in a timely manner with ERA in the development and implementation of the Project in order to, without limitation:
  - (a) collect and provide ERA all information in respect of the Designated Project Land, more specifically geographical maps, existing Project studies, as well as any statistical and environmental data needed to implement and execute the Project within a timeframe not exceeding 30 days following each request;

- (b) obtain all permits, concessions, consents, approvals and authorizations necessary for implementing the Project, including any and all municipal and governmental permits as well as all other necessary documents;
- (c) allow for the recognition, validation, verification, registration and issuance of the Carbon Certificates resulting from the Project; and
- (d) guarantee and facilitate the freedom of movement throughout the territory of the Democratic Republic of Congo of all ERA personnel assigned to perform this Agreement by obtaining the necessary authorizations from the Competent Authorities, by facilitating the appropriate means of transportation and by providing ERA personnel with security throughout the territory of the Democratic Republic of Congo.

3.2.2 designate, no later than one month after the execution hereof, a person (hereinafter the “**Coordinator**”) to liaise between the Democratic Republic of Congo and ERA, it being understood that the said Coordinator must liaise without interruption throughout the term of the Project. If the Democratic Republic of Congo changes this Coordinator, ERA must be informed no later than one month following the effective designation of the new Coordinator. The Coordinator must coordinate and ensure that the public, national and local authorities lend their support and whatever assistance, including technical assistance, that may be necessary to implement the Project as stipulated in section 3.2.1.

3.2.3 ensure that the Project is developed and implemented within the two Concessions west of Mai-Ndombe Lake in accordance with the powers and authority of the ministry for the environment, nature conservation and tourism.

#### **4. PROJECT FINANCING**

##### **4.1 IFM and REDD Components of the Project**

ERA shall:

- 4.1.1 pay all direct costs of the Project relating to the IFM Component of the Project and the REDD Component of the Project and all costs associated with the following elements, as these become payable:
  - (a) biometrics;
  - (b) carbon modeling;
  - (c) transfer and deployment of all necessary quantification and monitoring technologies;
  - (d) REDD and IFM methodology reviews, if necessary;
  - (e) all expenses associated with preparing the Project Design Documents (PDDs);
  - (f) Concessions, permits, approvals and licences;

- (g) purchase of trees, equipment, material and services associated with the Project activities;
- (h) insurance;
- (i) planting of trees;
- (j) audit of tree plantation;
- (k) general maintenance of trees;
- (l) validation and verification of the Project Design Documents (PDDs);
- (m) registration of the Project and Carbon Certificates;
- (n) marketing and sale of Carbon Certificates generated by the Project;
- (o) Community-based conservation activities to protect the Designated Project Land's forest cover;
- (p) Project risk mitigation and community support activities, such as (i) facilitation of revenue generating activities, (ii) gender equity and (iii) infrastructure improvements to increase the well-being of the Local Communities; and
- (q) measures promoting ecotourism within and adjacent to the Designated Project Land.

4.1.2 undertake to provide Local Communities with a Contribution in kind based on the performance of warden and stewardship services (“**Contribution in kind**”) in designated forest units, which Contribution in kind shall be equal to and no less than **fifty (50) cents U.S.** per net ton of GHG emissions avoided in the first three years of the Project's operations. After this three-year period and effective commissioning period of the REDD Component of the Project, the Contribution in kind shall be equal to and no less than **one hundred and fifty (150) cents U.S.** per net ton of GHG emissions avoided, all of which shall be calculated “ex post” after an annual or bi-annual verification by an independent third party. The Contribution in kind will go towards financing the investments specifically provided for in the Project Design Documents (PDDs) for setting up socio-economic infrastructure benefiting Local Communities. Allocation of the Contribution in kind will be subject to the approval of the Local Communities at preliminary consultations between ERA and each Local Community;

4.1.3 pay the Democratic Republic of Congo a royalty representing **fifty (50) cents U.S.** per hectare per year for the 299,645 hectares of the Concessions attributed to ERA, which royalty represents the only royalty and/or tax established under the Forestry Code payable by ERA to the Democratic Republic of Congo;

4.1.4 pay the Democratic Republic of Congo an amount representing **fifty (50) percent** of the difference between the Cost of the REDD Component of the Project and the IFM Component of the Project and the total amount generated by ERA's sale of the Carbon Certificates resulting from the REDD Component of the Project and the IFM Component of the Project (the “**REDD and IFM Contribution to the Democratic Republic of Congo**”). The calculation and payment of the REDD and IFM Contribution to the Democratic Republic of

Congo shall be carried out by ERA no later than six (6) months after ERA's sale of the Carbon Certificates resulting from the REDD Component of the Project.

4.1.5 The Project financing identified in sections 4.1.1, 4.1.2, 4.1.3 and 4.1.4 of this Agreement represents all of the financing that applies to the IFM Component of the Project and the REDD Component of the Project payable by ERA to the Democratic Republic of Congo, which exempts ERA from paying the taxes provided for in Title VIII of the Forestry Code.

## **5. CONSIDERATION AND ASSIGNMENT OF CARBON CERTIFICATES**

**5.1** The Democratic Republic of Congo undertakes to transfer and assign to ERA or its successors and assigns all of the Carbon Certificates resulting from the REDD Component of the Project and the IFM Component of the Project during the term of the Agreement, in application of section 5.3 below.

**5.2** In this respect, the Democratic Republic of Congo shall take all necessary, appropriate or simply useful measures in order to carry out the purpose and intent of this section 5, including, without limitation, to file in due time or at the request of ERA, all the requisite documents with the Competent Authority for the purposes of:

5.2.1 obtaining and maintaining in force all of the Carbon Certificates resulting from the REDD Component of the Project and the IFM Component of the Project during the term of the Agreement;

5.2.2 assigning and transferring to ERA or its successors and assigns a good and marketable title to the Carbon Certificates resulting from the REDD Component of the Project and the IFM Component of the Project free and clear of any lien, mortgage, security interest, charge or encumbrance whatsoever, and any type of claim or restriction on title.

**5.3** The assignment and transfer, by the Democratic Republic of Congo to ERA or to the latter's successors and assigns, of the Carbon Certificates resulting from the REDD Component of the Project and the IFM Component of the Project shall automatically occur upon registration of the Carbon Certificates in the account of ERA in the Appropriate Registry, currently known as the "Markit Environmental Registry, 620 8<sup>th</sup> Avenue, 35<sup>th</sup> Floor, New York, NY 10018, U.S.A.," or any other registry or account that ERA may designate in writing to the Competent Authority following the submission by an independent third party of each audit report of the sequestration and reduction in GHG emissions resulting from the Project.

**5.4** As a consideration for ERA's Services, the Democratic Republic of Congo agrees that all Carbon Certificates resulting from the REDD Components of the Project and the IFM Components of the Project under this Agreement shall, at all times, notwithstanding any applicable law or regulations or other requirements or conditions applicable from time to time, be the sole and exclusive property of ERA or its successors and assigns.

**5.5** For greater clarity, the Parties understand that only the Carbon Certificates resulting from the implementation of the REDD Components of the Project and IFM

Components of the Project on the Designated Project Land shall be the sole and exclusive property of ERA or its successors and assigns.

**5.6** The Democratic Republic of Congo acknowledges, subject to Section 5.7, that ERA or its successors and assigns shall have sole and exclusive ownership of the Carbon Certificates resulting from the Project and, subject to section 5.5, hereby authorizes ERA or its successors and assigns to sell the Carbon Certificates resulting from the Project to any third party.

**5.7** Should the Carbon Certificates resulting from the Project be assigned by ERA or its successors and assigns to any third party whatsoever, ERA acknowledges that its obligations or those of its successors and assigns under this Agreement shall survive throughout the term of the Project. For greater clarity, should the Carbon Certificates resulting from the Project be assigned by ERA or its successors and assigns, ERA undertakes to ensure that its obligations under this Agreement are respected during the term of the Project and to do whatever may be necessary to ensure that its successors or assigns are bound by this Agreement and honour their obligations hereunder.

**5.8** The Democratic Republic of Congo undertakes, during the term of this Agreement, to grant ERA and its successors and assigns all of the tax benefits provided for in the Investment Code of the Democratic Republic of Congo.

## **6. REPRESENTATIONS AND WARRANTIES**

### **6.1 Representations of ERA**

So as to ensure the proper development, financing and implementation of the Project, ERA hereby represents and warrants that, as at the date hereof:

6.1.1 it is a corporation duly organized, validly existing and in good standing under the laws of British Columbia;

6.1.2 all the necessary actions on the part of the directors, officers and other representatives of ERA have been duly adopted and authorized, in order to permit the execution of this Agreement and the performance of ERA's obligations hereunder;

6.1.3 this Agreement has been signed by ERA's duly authorized representatives such that it constitutes a valid and binding obligation enforceable against ERA in accordance with its terms and that there is no requirement for its directors, officers or other representatives to obtain any other authorization, consent or approval in order for this Agreement to be enforceable against ERA.

### **6.2 Representations of the Democratic Republic of Congo**

The Democratic Republic of Congo hereby represents and warrants following as at the date hereof:

6.2.1 all the necessary actions on the part of the representatives of the Democratic Republic of Congo have been duly adopted and authorized, in order to permit the

execution of this Agreement and the performance of the Democratic Republic of Congo's obligations herein;

6.2.2 this Agreement has been signed by the Democratic Republic of Congo's duly authorized representatives such that it constitutes a valid and binding obligation enforceable against the Democratic Republic of Congo in accordance with its terms and that there is no requirement for its representatives to obtain any other authorization, consent or approval in order for this Agreement to be enforceable against the Democratic Republic of Congo;

6.2.3 the execution, delivery and/or performance of this Agreement do not, and will not, violate or conflict with any legal requirement or applicable law or regulation of the Democratic Republic of Congo;

6.2.4 it has not jeopardized, assigned and/or transferred the Carbon Certificates resulting from the Project to any other person, and it undertakes not to jeopardize, assign and/or transfer the Carbon Certificates to any other person.

## **7. OBLIGATIONS OF THE PARTIES**

### **7.1 ERA'S OBLIGATIONS**

During the term of this Agreement, ERA shall:

7.1.1 implement the Project in accordance with (i) the applicable Project Design Documents (PDDs), (ii) the powers, authority and procedures of the Congolese agency responsible for managing forest resources, and (iii) the laws and regulations of the Democratic Republic of Congo, more specifically those relating to the requirement to give notice of REDD+ projects in the Democratic Republic of Congo, all the while taking into consideration local cultural traditions;

7.1.2 use economically feasible and commercially reasonable efforts towards the optimal implementation of the Project, as established in the Project Design Documents (PDDs), so as to:

- (a) significantly contribute to the sustainable development of the Designated Project Land;
- (b) keep the Designated Project Land in good condition by using rigorous scientific methodologies that meet internationally recognized standards;
- (c) significantly reduce the Baseline GHG emissions, as determined in the Project Design Documents (PDDs), that apply to the Designated Project Land; and
- (d) ensure the significant improvement of social benefits to the Local Communities.

7.1.3 prepare and submit annually to the Democratic Republic of Congo the records and reports on the (i) annual amount of Project financing, specifically the Costs of the REDD

and IFM Components of the Project, (ii) annual allocation of the Contribution in kind referred to in section 4.1.2 above, and (iii) net reduction in GHG emissions resulting from the REDD Components of the Project and the IFM Components of the Project;

7.1.4 share the costs of replacing Damaged Trees equally with the Democratic Republic of Congo, as determined in section 7.2.3 below;

7.1.5 inform the Democratic Republic of Congo of any assignment or transfer of the Carbon Certificates resulting from the Project no later than one month after the said assignment or transfer.

## **7.2 OBLIGATIONS OF THE DEMOCRATIC REPUBLIC OF CONGO**

7.2.1 During the term of this Agreement, the Democratic Republic of Congo shall:

- (a) allow ERA to conduct any required or simply useful activities on the Designated Project Land to develop, finance and implement the Project,
- (b) not conduct or allow any activities on the Designated Project Land that could negatively impact the development, financing and implementation of the Project;
- (c) without limiting the generality of the foregoing, ensure that no legal requirement whatsoever prevents the performance of this Agreement or the execution of the Parties' obligations hereunder;
- (d) deduct or remove any GHG emissions reduction resulting from the Project under this Agreement from any existing or future national inventory or international GHG emissions and sinks accounting system creating rights and/or Carbon Certificates other than those recognized under this Agreement, and that may lead to GHG reductions generated by the Project being counted twice.

7.2.2 The Democratic Republic of Congo shall only be liable to ERA, its successors and assigns, or any person acquiring an interest in the Carbon Certificates for the destruction, damage, death or removal of the trees on the Designated Project Land resulting from intentional acts or gross negligence of the Democratic Republic of Congo or its employees, agents and contractors.

7.2.3 Except as set forth in section 7.2.2 above, in the event that there are less than one thousand (1,000) Damaged Trees on the Designated Project Land, the Parties shall equally share the costs of replacing the Damaged Trees by a number of trees that is sufficient to ensure that the sequestration or reduction of GHG emissions resulting from the Project as estimated in the applicable Project Design Documents (PDDs) is achieved at the term of the Project.

7.2.4 Without prejudice to what is set forth in section 7.2.2 above and subject to Section 12, in the event that the number of Damaged Trees is equal to or greater than one thousand (1,000) trees, the Democratic Republic of Congo or ERA, as liability may be established, shall be solely responsible for the costs of replacing the Damaged Trees

exceeding the 1,000 tree limit, and the said Damaged Trees shall be replaced by a number of trees that is sufficient to ensure that the sequestration or reduction of GHG emissions resulting from the Project as estimated in the applicable Project Design Documents (PDDs) is achieved at the term of the Project.

### **7.3 JOINT OBLIGATIONS OF THE PARTIES**

The Parties shall ensure that the attribution of the two Concessions west of Mai-Ndombe Lake (one consisting of 114,000 hectares and the other of 185,645 hectares, as described in Schedule A to this Agreement) to ERA by the ministry for the environment, nature conservation and tourism responsible for managing renewable natural resources is carried out no later than one (1) month after this Agreement is approved by the council of ministers so as to ensure the development and implementation of the Project.

## **8. ASSIGNMENT AND AMENDMENT OF THIS AGREEMENT**

**8.1** The Democratic Republic of Congo may not assign all or part of this Agreement or its rights and obligations hereunder to a third party without the prior consent of ERA, which consent shall not be unreasonably withheld by ERA.

**8.2** Subject to section 8.3 below, ERA may not assign all or part of this Agreement or its rights and obligations hereunder to a third party without the prior consent of the Democratic Republic of Congo, which consent shall not be unreasonably withheld.

**8.3** ERA may assign all or part of its rights relating to the Carbon Certificates to a third party.

**8.4** This Agreement will enure to the benefit of and be binding upon the Parties hereto and their respective executors, administrators, successors and authorized assigns.

**8.5** This Agreement may only be amended by a written agreement executed by the Parties.

## **9. CONFIDENTIALITY**

**9.1** Neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time without the written consent of the other Party, except as permitted by this Agreement.

**9.2** Either Party may only publish, reveal or otherwise disclose the other Party's Confidential Information:

9.2.1 with the other Party's written consent;

9.2.2 to its respective officers, employees, advisors, counsels, consultants, representatives, agents and affiliates who have a need to know that Confidential Information in order for such Party to perform its obligations under this Agreement, and have been instructed not to disclose the Confidential Information and not to use it for any other purpose; and

9.2.3 where required to do so by law or as a result of a court order provided that prior written notice is given to the other Party of its obligations to disclose such information.

## **10. EFFECTIVE DATE AND TERM OF THIS AGREEMENT**

**10.1** This Agreement shall take effect upon the execution hereof by both Parties.

**10.2** This Agreement shall remain in force throughout the term of the Project.

## **11. TERMINATION OF THIS AGREEMENT**

**11.1** The Democratic Republic of Congo may only terminate this Agreement if ERA fails to perform a material obligation under this Agreement and that failure is not remedied within ninety (90) Business Days of the Democratic Republic of Congo giving notice of that failure to ERA.

**11.2** ERA may terminate this Agreement if:

11.2.1 the Democratic Republic of Congo fails to perform its obligations hereunder and that failure is not remedied within ninety (90) Business Days of ERA giving notice of that failure to the Democratic Republic of Congo;

11.2.2 the Concessions provided for in section 7.3 above are not attributed; and

11.2.3 if the council of ministers of the Democratic Republic of Congo does not approve this Agreement.

## **12. FORCE MAJEURE**

**12.1** Subject to section 13 of this Agreement, if a Party is prevented by reason of a Force Majeure Event from fulfilling any obligation under this Agreement, the obligations of the Party will be suspended while the Force Majeure Event continues to prevent the performance of such obligation and for such time thereafter as that Party may reasonably require to commence to fulfil such obligation.

**12.2** A Party asserting Force Majeure shall:

12.2.1 immediately give the other Party notice of the Force Majeure Event and the affected obligations;

12.2.2 prove that all reasonable steps were taken to minimize delay or damages resulting from the Force Majeure.

**12.3** The Party claiming suspension of an obligation shall:

12.3.1 immediately remedy the cause and effect of the Force Majeure, insofar as it is reasonably able so to do, and

12.3.2 immediately give the other Party notice when the Force Majeure ceases to prevent the performance of the applicable obligation.

### **13. EFFECT OF TERMINATION OR SUSPENSION**

Should this Agreement be suspended within the meaning of section 12 above or terminated pursuant to section 11 above, sections 5 and 9 of this Agreement shall survive and continue in full force and effect throughout the term of the Project to ensure the assignment and transfer of all Carbon Certificates resulting from the Project to ERA or its successors and assigns at all times during and after the term of the Project.

### **14. DISPUTE RESOLUTION**

14.1.1 Should a Dispute arise between the Parties in the context of this Agreement, the reasons for the Dispute shall first be sent to the other Party in writing, and the Parties shall then have a period of one (1) month within which to resolve the Dispute.

14.1.2 Should the procedure provided for in section 14.1.1 above fail, the Parties shall refer the Dispute to a mediator they mutually agree upon. The Parties shall have fifteen (15) Business Days to agree on the choice of a mediator, who shall have two (2) months to rule on the matter.

14.1.3 Should the mediation provided for in section 14.1.2 above fail, the Dispute shall be referred to arbitration before the International Chamber of Commerce. The arbitration will be conducted in French.

14.1.4 The hearing will be held in Paris, France.

14.1.5 In the event of an arbitration, the Democratic Republic of Congo explicitly and irrevocably waives the right to avail itself of any protection based on immunity, more specifically jurisdictional immunity, immunity from enforcement and diplomatic immunity.

### **15. NOTICES**

**15.1** Any notice, communication, request or correspondence required or permitted pursuant to this Agreement (“**Notice**”) shall be in writing, in the French language, and shall be delivered personally, or via courier, mail, e-mail or facsimile transmission, to the address and facsimile numbers provided below:

**In the case of the Democratic Republic of Congo:**

Minister for the environment, nature conservation and tourism

Ministry for the environment, nature conservation and tourism

15, avenue Papa Ileo (ex des Cliniques)

Kinshasa/Gombe (RDC)

Fax No: \_\_\_\_\_

Email: cabminecn-t@hotmail.fr

**In the case of ERA:**

Frédéric Jacquemont

ERA Ecosystem Restoration Associates, Inc.

788 Harbourside Drive, Suite 110

North Vancouver, British Columbia

V7P 3R7

CANADA

Fax No: +1 - 778 - 340 - 0827

Email: frederic.jacquemont@eraecosystems.com

**15.2** Any such Notice will be deemed to have been given:

15.2.1 if delivered by hand, on the day delivered,

15.2.2 if sent by facsimile transmission or email, on the day following the day on which such facsimile transmission or email was received, and

15.2.3 if mailed, four (4) Business Days following the date of mailing; provided that if there is at the time of mailing or within four (4) Business Days thereof a mail strike, slowdown, labour dispute or other event that might affect delivery by mail, then the Notice will be effective when delivered.

**15.3** Any Party may from time to time notify the other Party in writing of any change in its address for the purpose of this Agreement.

**16. GENERAL**

**16.1** Relationship of the Parties. The Parties hereby agree, and each Party shall conduct its relations with any person on the basis that, nothing in this Agreement constitutes a partnership, agency or employer-employee relationship between the Parties. Neither Party shall incur any debt or make any commitment for the other Party. All Parties are independent under this Agreement. Neither Party shall have any express or implied right or authority to assume or create any obligation on behalf of or in the name of the other Party or to bind the other Party to any other contract, agreement, or undertaking with any person.

**16.2** Invalidity of Provisions: Each of the provisions contained in this Agreement is distinct and severable, and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Agreement, as they will continue in full force and effect.

**16.3** Evidence of Authority: The Parties shall furnish to each other sufficient evidence of the authority of the person or persons who will, on their behalf, be authorized to take any action or

execute any documents required or permitted to be taken or executed by the respective Parties under this Agreement.

**16.4** Governing law: This Agreement shall be governed and construed in accordance with the laws of the Democratic Republic of Congo.

**16.5** Entire Agreement: The provisions of this Agreement constitute the entire agreement between the Parties hereto.

**16.6** Execution in counterparts: This Agreement shall be executed in two counterparts in French, each of which shall be a legally binding original.

**17. SUSPENDING CLAUSE**

**17.1** This Memorandum of Understanding is executed subject to its approval by the council of ministers within three months following the execution hereof.

**17.2** This approval shall be confirmed to ERA in writing by the minister for the environment, nature conservation and tourism.

IN WITNESS WHEREOF the parties hereto have entered into this Memorandum of Understanding.

**SIGNED IN DUPLICATE IN KINSHASA ON MARCH 14, 2011**

**ERA Ecosystem Restoration Associates, Inc.**

Frédéric Jacquemont

**Democratic Republic of Congo**

José E. B. Endundo

**ERA**  
**Ecosystem Restoration Associates**

**Forestry Preservation Concession  
Terms of Reference**

**Paper presented to the Ministry of the Environment,  
Nature Preservation and Tourism**

**Social Chapter**

## **Agreement constituting the Social Chapter of the Terms of Reference of the Forestry Conservation Concession Contract**

### **BETWEEN:**

The local communities of the districts of Bolia, Basengele and Ntomb'enzale, of which the Bands are as follows:

- Ms. Amba Ebonga, Head Chief;
- Bosobe Iyukwa, Chief of Lobeke;
- Ngoy Wangoy, Chief of Bopambo;
- Nkoy Imana, Chief of d'Ibali;
- Mputu Abalio, Chief of Bosongo;
- Lokoka Henry, Chief of Kesenge;
- Wilondo Baswa, Chief of Lobalu;
- Bola Lobanda, Chief of Ngel'ibenga;
- Honourable Mr. Mbo Balangi of Lobeke;
- Honourable Mr. Balinga Alinos of Lobeke;
- Honourable Mr. Iyolo Dago of Lobeke;
- Honourable Mr. Mpolo Gaby of Lobeke;
- Honourable Ngonga Lok of Lobeke;
- Honourable Boleli Lokoka of Kesenge;
- Mahamoudi Bernard, representative of Kesenge;
- Honourable Mbangi Andre of Kesenge;
- Honourable Mungu Ndende of Kesenge;
- Honourable Yamba Bokobi of Kesenge;
- Honourable Mpia Bolisaki of Kesenge;
- Honourable Yemamvula Vicky of Kesenge;
- Honourable Bakuba Booto of Kesenge;
- Honourable Nyimi Nkanda of Kesenge.

The Lokanga Band is represented by:

- Mr. Bakali Bola, Etoti, Band Chief;
- Mr. Bimi Ombale, Chief of Mbale;
- Honourable Mr. Botikela;
- Honourable Mr. Ikoko Mpianse;
- Honourable Mr. Mputu Basuku;
- Honourable Mr. Nsimbo Botema.

The Ngongo Basengele Band is represented by:

- Mr. Mbalia Lokoli, Band Chief;
- Mr. Mbokungu, Chief of Ntand'enyanga;
- Mr. Bolia Mbali Joseph, Chief of Ngeleko;
- Mr. Balondo, Chief of Bosoli.

- Mr. Nkake Bile, Chief of Mpili;
- Mr. Mpeti Albert, Chief of Wanya;
- Honourable Mr. Ikolo Wanza;
- Honourable Mr. Botikali Iyeli;
- Honourable Mr. Mbonkono W'Epota;
- Honourable Mr. Iwunza Jonas;

And hereinafter referred to as the “local communities”;

**AND:**

The company, ERA-Congo Carbon Offset, having its head office at No. 3, Botango Avenue, in the community of Lemba, in Kinshasa, in the Democratic Republic of Congo, represented by Mr. Jean-Robert Bwangoy, Manager;

And hereinafter referred to as the “concessionaire.

First, it being understood that:

- The company, ERA-Congo Carbon Offset, holds forestry certificates numbers 004/84 over an area of 114,000 hectares and 014/2004 over an area of 185,645 hectares, of which the boundaries are described in the Agreement of Understanding, signed March 4, 2011 between His Excellence The Minister of the Environment, Nature Preservation and Tourism, representing the Government of the Democratic Republic of Congo and Mr. Frédéric Jacquemont, President of ERA-Ecosystem Restoration Associates, representing ERA-Congo Carbon Offset;
- The local communities of the Bands of Ngongo-Basengele, Lokanga and Ntomb'enzale are resident in the two forestry concessions in question;
- This forest is entirely situated in the Inongo region and forms part of the area in which the aforementioned communities enjoy certain customary rights;
- The boundaries of the forestry concession contemplated by the present agreement are fixed by mutual agreement among the parties following several visits and consultation meetings, as set out in the various letters of intention signed by the representatives of the different communities and annexed to this agreement;
- Madam Gabrielle MANGI ISEKA, Governor of Inongo, witnessed the execution of this agreement and guarantees the proper application of thereof.

**IT IS ACKNOWLEDGED THAT:**

Article 1:

This agreement constitutes the Social Chapter of the Terms of Reference of the Forestry Preservation Concession Contract<sup>10</sup>. Its principal object is to provide for the implementation of the commitments of the concessionaire in connection with the realisation of certain socio-economic infrastructure and social services for the benefit of the local communities.

Article 2:

This agreement forms an integral part of the concession's management plan and of the terms of reference which describe all of the investments and the activities that will be undertaken and realised by the concessionaire throughout the duration of the project, in accordance with the Agreement of Understanding<sup>11</sup> of March 4, 2011, and the Specifications and Project Plans (collectively referred to as "PDD"), as have been approved by the Ministry of the Environment, Nature Preservation and Tourism.

**TITLE I: FUNDS AND LOCAL DEVELOPMENT COMMITTEE**

Article 3:

A Local Development Fund has been established to finance the realisation of the infrastructure defined in Article 9 herein.

Article 4:

The Local Development Fund is funded by the sale of carbon offset certificates, such as those defined at Article 4.1.2 of the Agreement of Understanding. The fund is made available to the forestry concessionaire or a third party chosen by mutual agreement of the parties if other banking facilities are not available.

Article 5:

A Local Development Committee (LDC) will determine the direction and execution of the activities contemplated by Article 9 below.

Article 6:

The Local Development Committee comprises a President, a treasurer, a secretary/reporter and several advisors, and elected representatives from local communities. The Chiefs of the lands in question are members of the committee by right.

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<sup>10</sup> Also called the Forestry Conservation Concession Contract

<sup>11</sup> Also called the Memorandum of Understanding and the Letter of Understanding

Article 7:

The members of the Local Development Committee are elected for a renewable term of two years from among members of the local communities.

**TITLE II: ROLES AND OBLIGATIONS OF THE PARTIES**

**Section 1: Roles and Obligations of ERA Congo**

Article 8:

ERA-CONGO Carbon Offset is committed to fulfilling the obligations prescribed in Article 89 of the Forestry Code with the exception of those specifically concerning the exploitation of wood materials and the establishment of roads.

Article 9:

The specific legal obligations incumbent upon the forestry commissionaire in terms of social infrastructure construction centre around the following:

1. Construction during the plan's execution period will include the construction of modern school buildings in durable materials:
  - a) Each of very large capacity in the villages of Lobeke, Kesenge, Ngongo and Lokanga;
  - b) Each of average capacity (primary and secondary) in the villages of Iballi, Mpata Mbalu, Nselenge, Ngando Mbanga, Bosongo and Mbale;
  - c) Each with 8 classrooms in the villages of Inunu, Lobalu, Bokebeni, Nkondi, Bamboka, Bobola Mpinga, Ntuku, Mpili and Wanya;
  - d) The construction of healthcare centres in the villages of Lobeke, Kesenge, Iballi, Bosongo and Mbale;
  - e) Repairing and extending of the secondary hospitals in Lokanga and Ngongo;
  - f) Setting up of 10 cafeterias in the concession in collaboration with the local development committees;
  - g) Within the company's capacity, facilitating the transportation of people and their belongings to the transportation terminals;
  - h) Providing, in conformity with traditional laws, to the Chiefs of the lands in question, prior to the commencement of the project the following items:
    - i) 5 cases of beer and 5 cases of pop;
    - ii) 2 bags of salt;
    - iii) 1 bag of sugar;
    - iv) 4 packets of cigarettes;
    - v) 1 kg of cola nuts.

Article 10:

In order to avoid damage to the forests, and in accordance with the PDD, the concessionaire will assist the local population to improve their agricultural production techniques, and to promote sustainable fishing in the lake and rivers in and on the edges of the project site in the two concessions in question.

Article 11:

The activities contemplated by Article 10 above will be financed by the Local Development Fund.

Article 12:

Pending the sale of the carbon offset certificates, the concessionaire is committed to financing the early stages of the social infrastructure construction and the activities contemplated by Article 9 and 10 of this agreement.

Article 13:

Other infrastructure not contemplated by Articles 9 and 10 above may be integrated in the future by way of an amendment by mutual agreement between the two parties.

Article 14:

Appendices 1, 2 and 3 of this agreement contain more detailed information relating to the commitments anticipated at Article 9, including:

- Infrastructure plans and specifications;
- Location and designation of beneficiaries;
- Provisional costs associated therewith.

Article 15:

Throughout the duration of the project, the infrastructure upkeep and maintenance costs anticipated by Articles 9 and 10 are insured by the Local Development Fund, which is funded by a reserve of 10% of the profits paid to the local communities, as anticipated at Article 4.1.2 of the Agreement of Understanding.

Article 16:

The concessionaire is also committed to recruiting workers from the local community.

Article 17:

The operational costs of the schools and healthcare centres, notably the remuneration of teachers and healthcare workers, falls within the competence of the Congolese State.

**Section II: Roles and Obligations of the Local Communities**

Article 18:

The local communities will contribute towards the sustainable management and the conservation of the concession's forestry resources and promote the full enjoyment by their partner, the forestry concessionaire, of its rights.

Article 19:

Without prejudice to the arrangements anticipated by Article 44 of the Forestry Code, the local communities will refrain from undertaking all activities likely to compromise the sale of carbon offset certificates or to compromise the integrity of the entirety of the conservation zones. To this end, they will abstain from pursuing all agricultural or pastoral activities and all activities relating to the exploitation of the primary forest in the conservation zones as defined by mutual agreement with the concessionaire, which will form part of the Management Plan. Similarly, they will abstain from resorting to bush fires, and will participate in battling such fires alongside the concessionaire in the aforementioned zones.

Article 20:

The activities contemplated by Article 18 above do not concern the agricultural areas located mainly in the secondary forest, and in the buffer zone located between the secondary forest and the conservation zone.

Article 21:

The buffer zone is also defined by mutual agreement between the two parties, in the concession management plan.

Article 22:

Article 18 does not affect the local communities' exercise of their rights of use as recognised by the law, which comprise notably:

- The removal of firewood from the secondary forest;
- The harvesting of wild fruit and caterpillars;
- The harvesting of medicinal plants;
- Small-scale fishing;
- Cultivation of the conservation zones.

Article 23:

The local communities are committed to taking all necessary steps to have its members contribute to the protection of their society's people and heritage, and to the preservation of all of the infrastructure built for its benefit.

Article 24:

Every act of intentional vandalism committed against public property or against the concessionaire's belongings shall be redressed in accordance with the law.

**TITLE II: MONITORING AND EVALUATION**

Article 25:

A Local Monitoring Committee (LMC) is established for the purpose of monitoring and evaluating the various commitments undertaken.

Article 26:

The LMC is presided over by the Governor of the Inongo Territory or his or her delegate. It is also composed a delegate of the concessionaire and six representatives at the rate of two representatives per Band.

Article 25 (*sic*):

The Local Monitoring Committee will hold ordinary session meetings once every quarter in Inongo or in another location within the two concessions at the instance of the Governor of the Inongo Territory. An extraordinary assembly can also be convened as necessary on the same terms.

Article 27:

The LMC will examine the quarterly report of the CLG, particularly as regards the realisation of the socio-economic infrastructure and related schedules. It can, as necessary, hear the President or any other member of the LMC.

The LMC can also call upon a qualified expert to shed light on any matter on the meeting's agenda.

Article 28:

This agreement is replicated in five originals and each one is delivered to each of the parties, to

the Governor of the Inongo Territory, to the Provincial Forestry Commission, and to the Central Forestry Commission and is to be appended to the Forestry Preservation Concession Contract.

**Made at Inongo, the 26<sup>th</sup> day of March 2011**

**For the Concessionaire**

**Jean-Robert Bolambee Bwangoy-Bankanza**

**For the Local Communities**

**Ms. AMBA EBONGA, Chief of the Ntomb'e Nzale Band**

**Mr. BAKALI BOLA ETOTI, Chief of the Lokanga Band**

**Mr. MBALIA LOKOLI, Chief of the Ngongo Band**

**For the Inongo Territory**

**Ms. Gabrielle MANGI ISEKA**  
**Governor of the Territory**

**For the District of Mai-Ndombe**

**Medard P.R. AMUNDALA ODIMO**  
**District Superintendent**

**Environmental Coordinator**  
**MBANGI ESOKO**

**For the Bandundu Province**

**ERA**  
**Ecosystem Restoration Associates**

**Initial Consent of the Local Communities**

**ERA**  
**Ecosystem Restoration Associates**

**Forestry Preservation Concession  
Terms of Reference**

**Paper presented to the Ministry of the Environment,  
Nature Preservation and Tourism**

**Forestry Management Plan of the Area**

## **FORESTRY MANAGEMENT PLAN**

### **1. Introduction**

The government of the Democratic Republic of Congo, represented by His Excellence The Minister of the Environment José B. Endundo, and Ecosystem Restoration Associates Inc. (ERA) have signed an Agreement of Understanding for the development of a greenhouse gas offset project focused on the afforestation and reforestation, as well as the prevention of avoidable deforestation and forestry degradation, of a forestry preservation concession having a total area of 296,400 hectares and being located in the Inongo Territory, in the Mai-Ndombe Lake District.

These two concessions, formerly granted by way of two Supply Guarantee Conventions, dealing with wood products, to the company, Bimpe Agro, were partly exploited under a contract with SOFORMA (Société Forestière et des Matières Ligneuses Africains – Society of Forestry and African Wood Products), between 2003 and 2008, when these two Supply Guarantees were cancelled following the conversion process of former forestry titles, as organised by the Ministry of the Environment, Nature Preservation and Tourism. The execution of the Agreement of Understanding signifies the end of all industrial forestry exploitation activities in the concessions.

In accordance with the provisions of law No. 011/2002 of August 29, 2002, ERA formed a Congolese company, ERA-Congo, charged with the implementation of the project. In anticipation of its execution of the concession contracts, ERA-Congo consulted with the local populations concerned, negotiated and executed the Social Chapter with representatives of the local communities, in the presence of the Governor of the Inongo Territory, and now submits the within forestry management plan, which, together with the Social Chapter, forms part of the Terms of Reference.

ERA-Congo will take the inventory and evaluate the biomass in order to quantify the CO<sub>2</sub> held by the vegetation. In accordance with the Agreement of Understanding, the profits of the sale of carbon offset certificates will be distributed amongst the Government of the Democratic Republic of Congo, ERA and the local communities. The amount reserved to the local communities will be used to finance the public interest activities mentioned in the Social Chapter.

The two sets of specifications (PDD), together with the building plans, will be further developed by ERA-Congo and submitted for approval to the Ministry of the Environment, Nature Preservation and Tourism, specifying the conservation measures, including the afforestation, reforestation, and avoidance of deforestation and forestry degradation.

This document sets out the project's objectives, the biophysical profile and socio-economic profile of the region, and outlines the plan to exploit resources within the context of conservation.

## **2. Objectives**

The project aims to conserve 299,640 hectares of vegetation and forestry resources and protect habitats in the project area. In particular, the project contemplates:

- The protection of the habitats of a significant biodiversity, including, notably, forest elephants, Bonobo chimpanzees, and several other animal species present in the project zone;
- The reduction of greenhouse gas emissions through the protection of vegetation;
- The protection of soils, water basins, and marshy forests which constitute a very large portion of the region's landscape.

In order to attain these objectives, ERA-Congo will work jointly with the local communities and in collaboration with local and international partners in order to:

- Reduce deforestation (of which the current rate is one of the highest in the country);
- Fight poaching and illegal hunting activities which are currently contributing to a noticeable decline in the biodiversity of the region;
- Promote sustainable agriculture and fishing with the people living within the concessions;
- Promote cattle farming and fish farming;
- Restore damaged ecosystems and the local biodiversity.

## **3. Description and biophysical framework**

### **3.1 Location**

The forestry concession encapsulated by permits 004/84 and 014/2000, is located on the west shore of the Mai-Ndombe lake, between the lake and the Boliba Mpe (Boruampe) River, and between the Lokeke River to the south and the Bolong'o Lule River to the north (Fig. 1). It comprises an area of 299,640 hectares, in which the predominant vegetation is dense, marshy forest (Table 1). The north of the concession, covered by permit 014/2000, is dominated by marshy forests. In the middle of the concession and in the far east, there are grassy savannahs and flooded grasslands (Fig. 2).

### **3.2 Climate**

Although situated in a forested area, the region enjoys, in reality, a pre-Soudanien transitional climate, category *Aw* on the Köppen climate classification scheme:

- Average annual precipitation varies between 1600 and 1800 mm per year in Nselenge in the centre of the concession;
- Two dry seasons can be observed: the short dry season (January – February) and the long dry season which lasts from June to August.

### **3.3 Soils**

The soils in the region come from the Busira strata:

- The fluvial lakeside deposits are primarily composed of old or recent alluvium deposits, of sand and clay;
- The depth of the upper level, which is variable (from 10 to 60 cm), is often composed of humus, sand and clay in varying proportions;
- Brownish in colour, its structure is often gritty;
- In certain terrains, the texture is angular from a depth of 60 cm;
- Near the source of the rivers and along the lake are outcrops of laterites:
  - well-developed soils and generally poor in minerals;
  - comprising alluvial-clay sands and gritty silt with a generally higher level of clayey alluvium.

### **3.4 Vegetation**

The region's vegetational features include:

- dense forests on firm ground;
- marshy forests;
- grassy savannahs; and
- flooded grasslands.

#### **3.4.1 Dense forests on firm ground**

- Almost all semi-deciduous trees and dominated by Wenge (*Milletia laurentii* tree) often accompanied by Bosse;
- Surrounded by marshy forests or flooded grasslands;
- Covering a total area of 82,065 hectares, being 27.4% of the concession;
- An important habitat, notably for forest elephants and Bonobo chimpanzees.

#### **3.4.2 Marshy forests**

- In essence, extensive areas of marshland exist due to the absence of slopes;

- They cover a total area of 164,009 hectares, being 54.7% of the concession;
- They comprise an important habitat;
- Epiphytes and lianas are abundant;
- There are two types of marshland: (1) dense and periodically flooded or, (2) open and permanently flooded.
  1. Dense, marshy forest:
    - Experiences significant fluctuations in the water table;
    - Some soil outcrops are visible in the dry season;
    - The *Gilbourtia demeusei*, the *Uapacca guineensis* and the *Gilbertiodendron dewevrei* are dominant;
    - The forest is located along the small rivers, and surrounds the large rivers;
    - The forest occupies a total area of 159,516 hectares (53.2% of the territory).
  2. Open riparian forest:
    - It is located on soils saturated with water throughout the year;
    - Wood and marshy species are missing due to an elevated hydrological energy;
    - Raffia palm groves, small-diameter trees and non-woody species are dominant;
    - The forest occupies a total area of 4,494 hectares of which 994 hectares comprise raffia palm groves.

### **3.4.3 Grassy savannahs**

- They cover a total area of 20, 874 hectares, being 7.0% of the concession;
- They are located on sandy soils on firm ground;
- They extend towards the primary forest from the edge of the deforestation.

### **3.4.4 Flooded grasslands**

- They cover a total area of 20,874 hectares, being 7.0% of the concession;
- They are located on fine sand on water-logged land.

## **3.5 Population and traditional social organisation**

### **3.5.1 Population**

- The population is subdivided into two sub-groups belonging to the Mongo group:
  - The Ntomba are linguistically and culturally of the Mongo and Ngala races:

- ~ The Mongo heritage is preponderant on a linguistic level and is politically organised;
- ~ The social and economic traditions (and particularly fishing) would have been inherited from their Ngala ancestors;
- ~ They occupy the south of the concession;
- ~ Fishing is the principal activity;
- ~ They farm in a north-south corridor, along the lake.
- The Bolia originate from the Mongo people from whom they acquired their linguistic, socio-cultural and political heritage:
  - ~ They are located in the extreme north of the concession;
  - ~ The principal economic activity is agriculture.
- The Sengele people constitute the most southern Mongo tribe:
  - ~ They are located in the extreme west of the concession;
  - ~ The region in which they live is strongly dominated by savannahs and flooded grasslands;
  - ~ The principal economic activity is agriculture;
  - ~ They also rear cattle.

### **3.5.2 Traditional Social Organisation**

- The tribe is a socially and politically regulated entity comprising all members who belong to one and the same ancestry.
- The tribe (group) chiefs are vested by the great spirit of the Mai-Ndombe Lake, Mbomb'ipoku (literally, the lord of the depths), from which they receive their magical-religious power.
- The tribe chiefs are not necessary chiefs of the land; however, the chiefs of the land must give allegiance to them.
- The region's tribes are organised in three chieftainships:
  - Ntomba
    - ~ Headed by the Chief resident in Inongo
    - ~ 10 Ntomba clans occupy the central east and the south of the concession
  - Bolia
    - ~ Headed by the Chief of the Lokanga chieftainship
    - ~ There is only one chef of the land (Bimi Ombale) for all of the Bolia who occupy the north of the concession. He resides in the village of Mbale.
  - Ngongo Basengele

- ~ Several groups with Sengele chiefs occupy the west of the concession.
- ~ They give allegiance to Mbwa e Ngongo, the group's chief who resides in Ngongo.

### **3.5.3 Agriculture**

- Travelling slash-and-burn agriculture is the principal method of farming practised in the region.
- The fallowing period varies between four and ten years. The secondary forests are subjected to these farming practices as soon as the trees attain a diameter of 30 cm.
- The most common types of farming in the regions are: manioc, corn, rice, sweet potatoes, yam, plantain, bananas, groundnuts, sugar cane, squash, onions, peppers, palm fruits, beans and pineapples.
- Manioc is the principal food-producing crop in the region.

### **3.5.4 Cattle**

- Cattle-rearing is not common in the region.
- The rearing methods are often archaic.
- The animals are allowed to roam free, often causing damage to the crops.

### **3.5.5 Fishing**

- Fishing is mainly practised in the lake and along the main tributaries of the Bolongo'o Nsongo River, the Bolong'o Lule River, the Bosongo River and the Lobeke River.
- In the lake, mesh nets are frequently used despite being prohibited.
- In the rivers, fishing with hooks is common.
- The use of unregulated mesh nets and intensive fishing practices have contributed to a severe reduction in fish stocks in the lake.

## **4. Planning the Management of the Region**

### **4.1 Development Premise**

- By consulting the data presently available we can determine the basic situation:
  - Our knowledge is based on inferences and vegetational stratification based on data derived from remote sensing;
  - Definitive results will be produced as soon as the inventory results are made available;
  - Information on biodiversity is based on preliminary information obtained from the local population.

- Projections of population growth are based on an average growth rate of 3% per year.
- The forests in the local communities situated closest to the village, and in which the people carry out traditional activities, most notably the travelling agriculture.
  - Secondary forests and fallow land form part of the forests in the local communities.
  - The forests are affected by the agricultural and pastoral activities of the local people.
  - The buffer zone must be increased in order to take into account the population growth.
- The marshy forests are very vulnerable and as a result are subject to conservation in their entirety regardless of their proximity to the villages.

## **4.2 Available Vegetational Resources**

### **4.2.1 Forestry stratification in the region**

#### **4.2.1.1 Stratification Bases**

- Forestry stratification in the region is based on the interpretation of Landsat ETM+ images obtained in 2010, and put together in such a way as to create a mosaic of images without clouds obscuring the images of the region. The images are taken at a resolution of 60 m.
- The classification algorithm used is the Decision Tree classifier.
- The results are presented in seven vegetational classes: forests on firm ground, marshy forests (with 3 sub-classes), grassy savannahs, wooded savannahs and flooded grasslands.
- Two classes of deforestation are also set out according to the original forestry strata (marshy or firm ground).
- The forests on firm ground are mainly semi-deciduous, being primarily Wenge and Bosse.
- The classification of the marshy forests and the flooded grasslands is completed using images from several sources and of various resolutions:
  - Japanese ALOS (Advanced Land Observing Satellite) PALSAR (Phased Array L-Band Synthetic Aperture Radar) satellite radar images produced at a resolution of 50 metres;
  - Digital elevation model at a resolution of 30 m produced by the North American Space Agency (NASA), based on the SRTM mission (Shuttle Radar Topography Mission);
  - Landsat ETM+ images as referenced previously.

#### **4.2.1.2 Classification Results**

- A forestry map of the concession shows the following vegetational classes.
- A table shows the distribution of the strata in the region (area and percentage coverage of the region).

#### 4.2.1.2.1 Map of the major forested areas of the region<sup>12</sup>

##### Key

Dense marshy forest  
Open riparian forest  
Raffia palm groves  
Flooded grasslands  
Semi-deciduous forests  
Secondary forests  
Wooded savannah  
Grassy savannah  
Deforestation 05-10  
Open water  
Clouds  
Concession borders

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<sup>12</sup> Note, a map is not provided in the document we have. May be in the original French document

## Results Table

Class	Area (Hectares)
Dense rainforest	138,718.033
Dense marshy forest	125,467.052
Open riparian forest	10,219.277
Secondary forest / fallow land	14,379.364
Grassy savannah	9,473.213
Flooded grasslands	1,550.657
Open water	587.201

### 4.2.1.2.2 Interpretation

- The total forested area is currently 278,564 hectares (92% of the territory), of which 14,379 hectares are damaged, being 4.8%.
- The dense rainforest covers the largest part of the territory, being almost 46.2%.
- The rate of deforestation is 2.2% of the concession over a period of five years. This represents the rate of conversion of forestry classes into non-forestry classes.
- The rate of conversion of primary forests into secondary forests (deterioration) has not yet been quantified.
- Deforestation just as easily affects forests on firm ground (1.9% of the total area) as marshy forests (0.3%).
- The secondary forest is the result of damage to the primary forest.
- The progression of the savannahs towards the forested land is visible in the image.

## 4.3 Recommendations

### 4.3.1 Forests in the local communities

- The forests in the local communities are divided into three zones: an **agricultural production zone**, a **cattle-rearing zone** and a **forestry production zone**.

#### 4.3.1.1 Agricultural production zone

- The agricultural production zone is located near the villages. It is supplemented by a buffer zone of two to five kilometres depending on the size of the villages.

- The intensification of agriculture is important in order to increase productivity and therefore the population's income.
- The use of techniques and improved varieties of vegetational matter is necessary, and will be achieved with the support of ERA. It is also a question of using other inputs.
- The use of natural fertilisers such as green manure and animal waste will be strongly encouraged in the concession. Recourse to chemical fertilisers will be strongly discouraged.
- The intensification of agriculture as well as the use of improved varieties of crops will not be imposed on the local population, but will be implemented with their agreement.
- The use of bushfires in the zone bordering on the protected zones and/or the full conservation zones, which activities are defined in the following paragraphs, must be undertaken with care. In all cases, the creator of any such bushfire is fully responsible and must watch over the fire to ensure that it does not spread into the conservation zones.
- ERA can provide technical and practical support (burning techniques, the creation of firebreaks) as far as possible to farmers situated on the border with the protection zone and who request it.
- Amendments to the present plan will be necessary to allocate further agricultural areas in the case of an unexpected increase in the population due primarily to migrations, or to an increase in the birthrate. Preliminary consultations between the partners will be necessary before making such a decision.

#### **4.3.1.2 Cattle-rearing zones**

- The cattle rearing zone is located immediately around the villages.
- ERA and the Local Development Committee (LDC) will support the construction of cattle-rearing farms in order to discourage the animals from wandering.
- The two partners will be able to provide the farmers with select species and supply agricultural technicians and veterinarians, as well as veterinarian supplies.
- They will also jointly fight the spreading of diseases, notably by recourse to vaccinations and other curative methods in respect of livestock diseases.
- The partners will also be able to organise farming communities with a view to discouraging the wandering of livestock which causes damages to crops.
- **The anticipated activities set out in the preceding paragraphs, as well as those in the preceding section, will be financed as set out in the Social Chapter, using the income generated by the sale of carbon offset certificates.**

#### **4.3.1.2 Forestry production zones**

- Small-scale forestry production can be effected in the forests of the local communities, close to the villages, in the secondary forest or in the zones reserved for the expansion of their activities.
- The activity anticipated in the preceding paragraph is excluded in the full protection zones.
- The purpose of such small-scale production is to provide the local people with wood for the fabrication of benches for the schools, doors, windows, and coffins, as well as furniture.
- In all cases, industrial exploitation of wood is prohibited.

#### **4.3.2 Conservation Forests**

- The conservation forests comprise two zones in which no activity that undermines the integrity of the vegetation is allowed. They are the **primary protection zone** and the **full conservation zone**.
- Hunting activities are also prohibited.

##### **4.3.2.1 Primary protection zone**

- The primary protection zone is next to the local communities' forests.
- It is susceptible to influence by the local communities' activities and therefore benefits from particular attention.
- The partners are jointly committed to fighting occasional bushfires and abstaining from causing the spread of bushfires in this zone.
- Being a protection zone, no agricultural or forestry activity is permitted. Some infrastructure for ecological education and for ecotourism may be established.
- Every decision relating to the development of infrastructure, as anticipated by the preceding paragraph, must be at the request of an interested party. An environmental impact study of such activity must be submitted with the request.
- A consultation meeting between ERA and the LDC is to be organised in order to decide whether or not to accede to the request.
- The costs relating to the activities anticipated by the preceding paragraphs are payable by the interested partner.
- A decision to change the class of part of this zone in favour of the local communities can be voted upon and made by mutual agreement between ERA and the Local Development Committee. The partner that seeks the change of class must justify its proposal and put forward the area to be subject to the change of class.
- In the case of a tied vote, the Governor of the Territory will have a casting vote.

#### **4.3.2.2 Full conservation zone**

- The full conservation zone is located the furthest from the local population. It is reputed to be the area the least affected by degradation and contains a significant biodiversity.
- Human activities are limited if not excluded.
- ERA and its partners will provide full protection to the habitats and the biodiversity.
- No activity is authorised with the exception of small-scale fishing in the rivers and watercourses. Ecotourism, research and ecological education can take place in this zone.
- No infrastructure can be established in this zone for the reasons given. To this end, patrols will be organised with a view to discouraging all activities, most notably poaching.
- No decision to change the class of this zone can be made during the life of this project.

**ERA**  
**Ecosystem Restoration Associates**

*Democratic Republic of Congo*

The Prime Minister

**DECREE NO. 11/27 OF MAY 20, 2011 SETTING OUT THE SPECIFIC ALLOCATION  
RULES FOR FORESTRY CONSERVATION CONCESSIONS**

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**THE PRIME MINISTER,**

In view of the Constitution, as amended, particularly at article 92;

In view of Law No. 011/2002 of August 29, 2002 relating to the Forestry Code, particularly at articles 82 to 95 and 119;

In view of Order No. 08/064 of October 11, 2008 relating to the appointment of a prime minister, as head of Government;

In view of Order No. 08/073 of December 24, 2008 relating to the organisation and functioning of government, and practical methods of collaboration between the President of the Republic and the Government, as well as among the members of Government, particularly at articles 9 and 46;

In view of Order No. 08/074 of December 24, 2008 determining the remit of the ministers, particularly at article 1, B-12;

In view of Order No. 10/025 of February 19, 201 relating to the nomination of the Vice-Prime Ministers, Ministers and Vice-Ministers;

In view of Decree No. 08/09 of April 8, 2008, as modified and finalised as at today's date, setting out the allocation procedure for forestry concessions, particularly articles 37 and 39;

In consideration of the necessity to determine some particular rules for the granting of certain forestry conservation concessions, owing to the specificity of their management and their objectives;

At the suggestion of the Minister for the Environment, Nature Preservation and Tourism;

The Ministers' Committee agree;

.../...

**DECREE:**

**CHAPTER I: GENERAL MATTERS**

**Article 1:**

This Decree sets out the specific rules relating to the procedure of allocating forestry conservation concessions, notably:

1. Preliminary procedural formalities;
2. Allocation procedure itself;
3. Method of execution of the forestry concession contract.

**Article 2:**

The allocation of forestry conservation concessions will be implemented by way of mutual agreement, following a well-reasoned decision of the Forestry Minister, in accordance with the provisions of articles 83 and 86 of the Forestry Code and articles 36 and 37 of Decree No. 08/09 of April 8, 2008 setting out the procedure for allocating forestry concessions.

**Article 3:**

In this Decree, the following words will have the meanings respectively ascribed to them as follows:

- conceding authority: the Forestry Minister or the minister having the forests within his remit;
- allocation by mutual agreement: the mode of allocation will not resort to an invitation to tender;
- concessionaire: the individual or legal entity who benefits from the allocation and who signs the forestry conservation concession contract with the conceding authority;
- forestry conservation concession: the portion of forest acquired by a concessionaire in exchange for a contract, which confers on it the right to use the forest for the development of environmental services, excluding all extractive exploitation of resources, without prejudice to the exercise of the resident populations' rights to use the forest and the initial and sought-after ecological equilibrium of the forest;
- technical bid: the document put forward by any applicant for a forestry conservation concession and in which it will set out its proposed management activities, plans regarding the conservation and sustainable development of the forest in question, including a determination of its capacity to generate profits flowing from the various environmental services;

- financial bid: the document setting out the amount of fees that the application commits itself to paying to the State and the advantages and benefits due to the populations resident in the forest, including the costs of investments, infrastructure and other activities to be achieved in order to attain the conservation objectives;
- resident populations: those living in the forest in question or in the immediately surrounding areas and who exercise in those areas their customary rights of access to the natural resources of the said forest;
- environmental services: the totality of activities which produce goods and services, serving to measure, prevent, limit, reduce, at a minimum, or to remedy, damage to the environment.

## **CHAPTER II: PRELIMINARY FORMALITIES**

### **Article 4:**

The forest to be conceded is put forward to the central administration by the provincial forestry administration which will compile a file about it and will ensure that it is free and clear of all encumbrances, excluding those relating to its use, following the public inquiry procedure prescribed by article 84 of the Forestry Code and the regulations in force.

### **Article 5:**

The concession file is created on the directive of the central forestry administration and includes:

1. the location, identification, area and multi-resources inventory data relating to the forest to be conceded;
2. the methods of access to the forest for reconnaissance;
3. the minimum price of the concession per hectare fixed in accordance with the regulations in force as they relate to the procedure for determining the forest reserve price;
4. if the need arises, forestry reconnaissance authorisation, including proof of payment of taxes owing.

### **Article 6:**

The file contemplated at article 5 above is sent to the central forestry administration in order to commence the allocation procedure.

## **CHAPTER III: FORESTRY CONCESSION ALLOCATION PROCEDURE**

### **Section 1: The Request**

**Article 7:**

Any individual or legal entity wishing to acquire a forestry concession can submit a request to the conceding authority.

Three copies of the request should be prepared, two of which are to be sent for informational purposes to the central forestry administration and to the Governor of the Province in which the forest in question is located.

**Article 8:**

The request should be submitted with a written application, and should contain, in addition to the full description of the forest in question, the following information:

- the surname, first name, position, profession, nationality and domicile in the Democratic Republic of Congo of the applicant if an individual;
- corporate name or designation and head office address of the applicant if the same is a legal entity.

The applicant, whether an individual or a legal entity, should append to its file:

1. the registration certificate in the new business registry, showing, as its principal activity, nature and biodiversity conservation or, for the non-profit organizations, the assent granting it legal personality, and for those governed by foreign law, the order authorizing it to carry on business in the Democratic Republic of Congo;
2. the number and particulars of its bank account(s);
3. the valid tax certificate granted by the tax administration, with the exception of legal entities not subject to taxes in the Democratic Republic of Congo.

Furthermore, the applicant that is a legal entity is to produce certified copies of the following documents:

1. notarised constating documents, showing nature and biodiversity conservation as its principal activity, the head office address in the Democratic Republic of Congo and the persons authorised to act on its behalf;
2. a letter appointing the applicant to act in the name of and on behalf of the organisation or company that he represents.

**Article 9:**

In addition to that which is provided in articles 7 and 8 above, the request should contain, supplemental to the technical bid, a financial bid regarding the return on the environmental services that will be procured by the forest for the benefit of the State as well as the profits and income for the resident populations in the proposed conservation forest.

## **Section 2: Consideration of the Request**

### **Article 10:**

Within 8 days from the date of receipt of the request, the conceding authority will hand over the request, via the secretary general in charge of the forests, to the central forestry administration for consideration.

The request is sent by letter, a copy of which is sent to the applicant.

### **Article 11:**

Upon receipt of the request, the central forestry administration combines it with the file for the forest to be conceded from the responsible provincial forestry administration.

If the file on the forest is not available, transmission of the same is urgently demanded in writing by the conceding authority to the governor of the province in question, a copy of which letter is sent to the applicant.

### **Article 12:**

The central forestry administration has a maximum of 30 business days in which to consider the complete file, as is contemplated by article 11 above, verifying the following details:

- The conformity of the file on the forest to be conceded with the regulations in force, particularly as regards the issue of a preliminary public inquiry on the issue of the granting of forestry concessions, initial operations and the setting of the forest's price. Care must be taken in particular as regards ensuring that the forest to be conceded is free and clear of all encumbrances, in accordance with article 4 above;
- The accuracy of the information relating to the complete identification of the applicant;
- The methods of payment of the income agreed upon and contained in the financial bid;
- The basic principles of the management plan for the conceded forest.

## **Section 3: Rejection of the Request**

### **Article 13:**

One of the following acts or occurrences will constitute grounds for rejection of the request:

1. the commission in the last three years of one of the following noted in a statement prepared by a forestry inspector, an officer of the Criminal Investigation Department or a government official on oath:

- a) illegal forestry exploitation;
  - b) the trade or illegal exploitation of forestry products;
  - c) the breach of the terms and conditions of a previous forestry concession contract, notably as regards the protection of the environment and biodiversity and the realisation of socio-economic infrastructure for the benefit of the resident populations;
  - d) default of payment of land taxes for other concessions held;
  - e) attempted corruption of government officials at the central or provincial forestry administrations;
  - f) any violation of the legislation in force as it relates to nature conservation.
2. The final conviction, whether in the Democratic Republic of Congo or abroad, as a participant or accomplice for one of the following offences:
- a) breach of the Forestry Code and its method of implementation;
  - b) money laundering;
  - c) acts of corruption as regards the forests;
  - d) bankruptcy;
  - e) circulation of false bills of exchange;
  - f) forgery and the use of forgeries.

**Article 14:**

If when reviewing the request the central forestry administration notes one of the acts or occurrences prohibited in article 13 above, it must promptly prepare and deliver to the conceding authority its decision to reject the application.

The decision taken by the conceding authority is notified to the applicant.

**Article 15:**

Any person whose request has been rejected can, within a maximum period of 30 days from the date of notification of the rejection decision, appeal to the conceding authority to submit evidence as to the inaccuracy of any facts on which the rejection is based.

If, within 15 days following the date of receipt of the appeal, the conceding authority confirms the rejection, or on the expiry of this period it has not responded, the applicant can, if it feels wronged, submit its case to the competent administrative jurisdiction.

The submission of its case to the competent administrative jurisdiction should conform with the litigation procedure, such as is contemplated by the legislation in force.

## **Section 4: Technical and Financial Bids**

### **Article 16:**

The central forest administration will hold, under the supervision of the secretary general responsible for the forests in question, and in the presence of the applicant, a working session aimed at fixing the terms applicable to the proposed forestry conservation concession.

Taking part in this working session, besides the secretary general and the director of forestry management will be:

1. the conceding authority's forestry consultant;
2. five directors of the administration charged respectively with sustainable development, legal affairs, control and inspection, forestry facilities and inventory and the forestry land registry;
3. a delegate of the Congolese Institution for Nature Conservation;
4. the head of the provincial forestry administration of the forest;
5. a representative of the local populations of the forest and, if the need arises, a representative of the native peoples that make up the local populations.

### **Article 17:**

During the session contemplated by article 16 above, the applicant will explain its technical and financial bids for the conservation of nature and biodiversity and will receive opinions and observations from the officials at the meeting.

An offer should be careful to comply with the regulations in force, notably:

- by making sure that the proposed price is not less than the reserve price applied in the public tender process for similar forests;
- by agreeing to pay, on the basis of a specific contract, the cost of environmental services calculated in accordance with applicable international and national customs, and by specifying those elements that are within the remit of the State and of the forest's resident populations;
- by producing a bank guarantee for the proper execution of its obligations associated with the management of the concession, in accordance with article 82 of the Forestry Code.

The technical bid is examined in accordance with article 16 of this Decree.

**Article 18:**

If, at the end of the working session, an agreement on the technical and financial offer is reached, it will be detailed in a statement drawn up on the spot and signed jointly by the secretary general for forests and the applicant.

Otherwise, the report will detail the disagreement and the reasons for this.

**Section 5: Method of Execution of the Concession Contract**

**Article 19:**

In the case of an agreement being reached on the financial and technical bids, the central forestry administration will prepare a report about it to the conceding authority which will, in writing, notify the applicant and invite it to pay all agreed sums within a period of 30 days following receipt of the letter and in accordance with the regulations in force.

**Article 20:**

If, in the period contemplated by article 19 above, the applicant pays the agreed sums, the conceding authority will confirm the allocation by order and proceed with execution of the contract, and will notify the applicant of the same within seven days of execution.

**Article 21:**

The order granting the concession will be made public by publishing it for 15 days, both at the central forestry administration and at the county town of the province and territory in which the forest is located within 48 hours of execution.

The order will also be published in the press and the Official Journal for at least seven days, and will be registered in the national and applicable provincial forestry land registries.

**Article 22:**

The terms of reference relating to the management of the conceded forest and to the realisation of the socio-economic infrastructures in favour of the resident populations affected will be submitted for approval by the conceding authority and will be appended to the concession contract.

The terms of reference must conform to the precedent prescribed by the regulations in force.

**Article 23:**

In accordance with the legislation in force, the forestry conservation concession contract, the form of which is fixed by order of the Forestry Minister, will be signed by the applicant as concessionaire, and the conceding authority.

When the contract concerns an area in excess of 300,000 hectares, the conceding authority will transmit the contract and the bill or draft regulation pertaining to it, as the case may be, to the offices of the President of the Republic or the National Assembly. The applicant will be duly notified of this.

**Article 24:**

The concessionaire must draw up a development plan in accordance with the standards contemplated by the regulations in force and international customs relating to nature and biodiversity conservation.

**CHAPTER IV: CRIMINAL MATTERS**

**Article 25:**

In accordance with the provisions of articles 147, 148, 149, 149a, 149b, 150 and 150e of volume II of the Criminal Code, acts of corruption, misappropriation of public funds, and influence peddling, as well as pressure or threats exercised against officials or civil servants of the forestry administration or any other person involved in the allocation procedure contemplated by this Decree will be punished.