PARTICIPATION AGREEMENT

Between

The United States of America,
acting through the Department of State

and

The International Bank for Reconstruction and Development
as trustee for the Third Tranche of the BioCarbon Fund

The offer and sale of interests ("Interests") in the Third Tranche of the BioCarbon Fund ("Fund" or "BioCF") are made solely by means of the confidential Information Memorandum of the Fund, dated December 9, 2013, as the same may be amended, modified or supplemented from time to time ("Information Memorandum").

The Interests are subject to the restrictions on transfer and other terms and conditions set forth in this Participation Agreement and those set forth in the Instrument of the Fund, as the same may be amended from time to time ("Instrument"). The Interests may not be offered for sale, pledged, sold, assigned, or transferred at any time except in compliance with the terms and conditions thereof and the Participant bears the risk of its Contribution for an indefinite period of time.

The United States of America, acting through the Department of State ("Participant"), intending to be legally bound, hereby provides a contribution of six million nine hundred forty-eight thousand US Dollars ($6,948,000) ("Contribution") to the Third Tranche of the Fund. The Third Tranche of the Fund is expected to provide resources for landscape programs that seek to promote and reward reduced greenhouse gas emissions increased sequestration through improved land management, including Reduced Emissions from Deforestation and forest Degradation (REDD+), and from climate-smart agriculture, as well as smarter land-use planning and policies.

I. DEFINITIONS

Section 1.1 Capitalized terms hereinafter appearing in this Agreement, but not otherwise defined, shall have the same meaning as that ascribed to them in the Instrument, and the terms set forth below shall have the following meanings:
(a) "Agreement" or "Participation Agreement" means this participation agreement and the exhibits attached hereto;

(b) "Governmental Authority" means any national, regional or local governmental agency or authority in any country, and any other governmental or quasi-governmental entity, agency, organization, commission, secretariat, executive board, mechanism, conference or authority, including any international, regional or multi-national governmental or political bodies or establishments, including, but not limited to, those established by the parties to the UNFCCC or the member states of the European Union, and any subordinate entity, technical body, expert, validator, certifier, Independent Third Party or authority of, recognized by, reporting to, mandated by, or acting on behalf of any of the foregoing;

(c) "Contribution" means the Contribution specified on the signature page of this Participation Agreement;

II. THE INSTRUMENT

Section 2.1 The parties to this Agreement agree to be bound by all the provisions of the Instrument attached hereto as Exhibit B and incorporated into this Participation Agreement by this reference.

III. PURCHASE OF INTEREST IN THE FUND AND FEES

Section 3.1 The Participant acknowledges and agrees that this Participation Agreement will become irrevocable with respect to the Participant at the time of its signature and that it may not be withdrawn by the Participant without the Trustee’s written consent, which the Trustee may withhold in its sole and absolute discretion.

Section 3.2

(a) The Participant shall deposit the Contribution in cash into such account with such bank designated in a call of funds by the Trustee, promptly following countersignature of this Participation Agreement by the Participant and submission of a demand for payment by the Trustee.

(b) The first demand for payment will be made after the execution of this Agreement and the Participant is given sixty (60) days notice to deposit its Contribution to the Trustee.

(c) If the Contribution is not denominated in US Dollars, the Trustee shall make a demand for payment prior to the signing of every Project Agreement for an amount based on the pro rata share of the Window. Such Contribution will be converted into US Dollars and the Participant’s pro rata share of the relevant Window will be determined as follows:
(i) If the Participant elects to prepay its Contribution in full to a specific Window, such prepaid Contribution will be converted into US dollars in accordance with the Prepaid Trust Fund Agreement and the relevant pro rata share of the Participant will be determined by the US dollar amount so converted. The demand for payment in this case will be made shortly after the receipt of the notification from the Participant to allocate its Contribution to such Window in accordance with Section 5.1(g) of the Instrument.

(ii) If the Participant elects not to prepay its Contribution in full to a specific Window, the Trustee will determine the Participant's pro rata share using the exchange rate on the date of the notification by the Participant to allocate its Contribution to such Window in accordance with Section 5.1(g) of the Instrument.

(d) The conversion rate will be calculated with reference to the spot market exchange rate utilized by the Treasury Department of the World Bank on the date of such conversion.

Section 3.3

(a) In accordance with Section 4.1 (c)(ii) of the Instrument, the Participant may make a Contribution to the Tranche without specifying a Window. This may be done through (i) the issuance and delivery of an executed promissory note made payable on demand; and, if the Participant so wishes, (ii) the prepayment of the partial or entire amount of its Contribution. The Trustee may, where appropriate, allow the Participant to pay the entire amount of its Contribution in cash without providing a promissory note.

(b) Where the Participant makes a contribution to the Tranche in accordance with Section 4.1 (c)(ii) of the Instrument, the arrangements in Section 5.1 (g) of the Instrument will apply. For the avoidance of doubt, the ‘date of the Contribution’ referred to in Section 5.1 (g) of the Instrument in connection with the twelve (12) and forty eight (48) month time periods is, for the Participant, the date of this Agreement.

(c) Where the Participant makes a Contribution to the Tranche in accordance with Section 4.1 (c)(ii) of the Instrument prior to allocation to a Window to be established or an existing Window, the Participant may elect to transfer funds from the Tranche to BioCFplus through notification from the Participant to the Trustee and the execution of a separate administration agreement for the BioCFplus between the Participant and the Trustee.

Section 3.4

(a) The Participant shall be entitled to prepay up to the entire amount of its Contribution to an existing Window of the Tranche.

(b) Pursuant to Section 3.3(a) of this Agreement, the Participant may prepay the partial or entire amount of its Contribution to the Tranche. In the event the Participant
prepays and then opts to withdraw its Contribution in accordance with Section 5.1(g) of the Instrument, the Trustee shall promptly return the prepaid Contribution to the Participant.

Section 3.5 No interest shall be payable by the Participant on any portion of a Contribution not yet demanded by the Trustee or by the Fund on any prepaid portion of a Contribution.

Section 3.6

(a) The Trustee may deduct and retain for its own account, as a deduction from the Contribution, an amount equal to two percent (2%) as an administrative fee for the Fund.

(b) If the Participant makes a Contribution to the Tranche pursuant to Section 4.1(e)(ii) of the Instrument, the Trustee may deduct and retain an amount equal to three quarters of one percent (0.75%) of that contribution for the costs and expenses incurred in connection with the establishment of new Windows in accordance with Section 12.2(d) of the Instrument. If the above arrangement does not suffice to cover the costs for establishing new Windows, the Trustee may charge an additional amount to cover such costs after consulting with the Participant.

(c) Any costs incurred by the Trustee to administer each Window may be paid or reimbursed to the Trustee from the Window Property on an actual basis up to a maximum of four percent (4%) in accordance with Section 12.1 (a)(ii), (iii) and (v) through (xi) of the Instrument.

(d) In addition, costs for development of Projects under each Window may be paid or reimbursed to the Trustee from the Window Property on an actual basis in accordance with Section 12.1 (a)(i) through (vii) of the Instrument.

Section 3.7 The Participant and the Trustee acknowledge the importance of the following four issues and note the need to reach further agreement on these through the appropriate decision making forums in the Third Tranche of the Fund:

- Governance provisions within the new Windows to which the Participant will contribute;
- Governance provisions for the BioCFplus;
- The costs and expenses incurred in connection with the establishment of new Windows referred to in paragraph 3.6 (b); and
- Monitoring and evaluation provisions, including a monitoring and evaluation strategy, results framework, evaluations of the new Windows, and financial provision for these.

IV. ADDITIONAL CONTRIBUTION
Section 4.1 At any time after the execution of this Participation Agreement but prior to the Closing Date of the Tranche to which the Participant made its Contribution, the Participant may make Additional Contributions to any Window(s) in the Tranche. Additional Contributions are in addition to and do not replace the Contribution or other Additional Contributions already made by the Participant.

Section 4.2 The Participant and Trustee acknowledge and agree that the Participant shall not be obligated to make any Additional Contributions.

Section 4.3 Any Additional Contribution shall be made by the Participant completing the form provided in Exhibit A hereto and submitting to the Trustee. The Participant acknowledges and agrees that once that form has been executed by the Parties, the Additional Contribution shall become irrevocable with respect to the Participant and that it may not be withdrawn by the Participant without the Trustee’s written consent, which the Trustee may withhold in its sole and absolute discretion.

Section 4.4 The payments for Additional Contributions shall be effected in accordance with the terms set forth in Section 3.2 and Sections 3.4 through 3.6 of this Agreement.

Section 4.5 The Participant may make an Additional Contribution to the Tranche without specifying a Window subject to the terms set forth in Section 3.3 and Section 3.6 of this Agreement.

Section 4.6 Any Additional Contributions made by the Participant shall be subject to the terms and conditions of this Participation Agreement and of the Instrument.

V. REPRESENTATIONS AND WARRANTIES OF THE TRUSTEE

Section 5.1 The Trustee represents and warrants that it has all necessary power and authority to act as trustee of the Third Tranche of the Fund.

VI. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTICIPANT

Section 6.1 The Participant represents, warrants, acknowledges and agrees with the Trustee as of the time that the Participant makes its Contribution, as follows:

(a) There is no guarantee that Projects included in the Third Tranche of the Fund or any Emission Reductions or Additional Benefits generated by such Projects or otherwise contracted for by Trustee for the Third Tranche of the Fund shall be recognized, documented, confirmed, validated, certified, approved, credited, supported, registered, accounted for or agreed to by any Governmental Authority.

(b) In participating in the Third Tranche of the Fund, the Participant hereby assumes the
following risks:

(i) Post-2020 international agreement on emission reductions in the UNFCCC process may not be developed or that any related agreement adopted by any Governmental Authority may not enter into force or be extended for whatever reason, including reasons that were unforeseen or unexpected at the time this Participation Agreement is entered into or those reasons that would otherwise qualify as force majeure, and that any other current or future facts, circumstances or developments may prevent the Third Tranche of the Fund from achieving its objectives or otherwise materially affect the Projects included in the Third Tranche of the Fund, the Emission Reductions or Additional Benefits generated by Projects of the Fund or otherwise contracted for by the Fund, or the markets for those Emissions Reductions; and

(ii) Any regulatory regime enacted or adopted by any Governmental Authority, including, but not limited to, those regulating, relating to or applicable to climate change, commodities, securities or Emission Reductions, may limit or prevent the Third Tranche of the Fund or the Participant from generating, creating, contracting, producing, selling, transferring, assigning, allocating, distributing, controlling, holding, mortgaging, pledging, disposing, using, benefiting or deriving benefits from, or owning Emission Reductions or Additional Benefits.

Section 6.2 The Participant represents, warrants, acknowledges and agrees with the Trustee as of the time that the Participant makes its Contribution, as follows:

(a) The Interest being purchased by the Participant is purchased for the account of the Participant only and not with a view to, or with any intention of, a distribution or resale thereof, in whole or in part, or the grant of any participation therein by subdivision or otherwise. The Participant also understands that there will be no public market for the Interests and that it may not be possible for the Participant to liquidate its Interest. The Participant is prepared, therefore, to hold its Interest indefinitely.

(b) The Participant has received and carefully reviewed the Information Memorandum and the Instrument, as each has been supplemented, revised or amended, prior to the date hereof, this Participation Agreement, and all appendices, schedules and exhibits to each of the foregoing, understanding that each such document supersedes all prior versions thereof and any inconsistent portions of previously distributed materials relating to the Fund. Based on this review, the Participant has determined that the Interest being purchased for herein is suitable for the Participant, subject to the arrangement referred to in sub-section (c). The Participant recognizes that participation in the Third Tranche of the Fund involves certain risks and it has taken full cognizance of and understands all of the risk factors, including those described in the Information Memorandum relating to the purchase of an Interest.
The Trustee, after notifying the Participant of the issuance of emission reductions or emission reductions units, shall cancel any emission reductions or emissions reductions units which are attributable to the Participant’s interest in the Fund in the reporting system maintained by the Trustee, or any other emissions reduction registry, unless the Participant requests within thirty (30) days of notification of issuance by the Trustee that the emission reductions or emission reductions units be transferred or distributed.

The Participant has all necessary power and authority to enter into this Agreement, to purchase an Interest in the Third Tranche of the Fund in the amount indicated on the first page of this Agreement, and to participate in the Third Tranche of the Fund.

The Participant has duly authorized, executed and delivered this Agreement.

The Participant acknowledges that the tax consequences to the Participant of a Contribution in the Third Tranche of the Fund may depend on its circumstances and that the Participant should consult with its own tax advisor regarding any and all applicable national, federal, state, and local tax considerations applicable to a Contribution in the Third Tranche of the Fund. The Participant is relying solely upon the advice of its own tax and legal advisors, and shall not rely upon the general discussion set forth in the Information Memorandum with respect to such matters.

The Participant has no need for the liquidity of its Contribution and has sufficient knowledge and experience in financial and business matters, as well as the relevant applicable environmental matters, together with sufficient resources, to analyze and evaluate the merits, risks and suitability of the Third Tranche of the Fund in the context of its financial position and particular circumstances.

The Participant has conducted such investigation and analyses of the Trustee and the Fund, participation in the Third Tranche of the Fund, and environmental and other issues affecting the Trustee and the Fund as it deems necessary to arrive at an independent evaluation of the Trustee and the Fund and participation in the Third Tranche thereof. The Participant understands that the Trustee has made no representation or warranty with respect to the information provided in the Information Memorandum. The Participant warrants that its decision to participate in the Third Tranche of the Fund is not as a result of any reliance upon the IBRD or its employees, executive directors, officers or agents for any investment, tax, legal, or other advice in connection with its decision to participate in the Third Tranche of the Fund. More specifically, but without prejudice to the generality of the foregoing, the Participant confirms that it has consulted with its own financial and legal advisors as necessary as to the risks and other considerations arising from acquiring or disposing of an Interest in the Third Tranche of the Fund such as, but not limited to, its eligibility to receive credit under the UNFCCC and any other regulatory regime established or mandated by a Governmental Authority and with its tax advisors as necessary regarding the possible application of income and/or other taxes of any jurisdiction applicable to it.
(i) The signature of this Participation Agreement and any other documents signed by the Participant in connection herewith is in accordance with laws of the Participant.

(j) The Participant understands that the Trustee, the Fund Manager, their respective members, their respective affiliates and various clients advised by one or more affiliates thereof may engage in activities that are competitive with that of the Third Tranche of the Fund and agrees to such activities even though in some circumstances there may be conflicts of interests inherent therein. The Participant agrees that by acquiring an Interest, it shall be deemed to have acknowledged the existence of the actual and potential conflicts of interest identified in the Information Memorandum and, as specified therein, to have waived any claim the Participant or any person claiming through it may have with respect to the existence of any such conflict of interest.

(k) The Participant agrees to make all payments required by this Participation Agreement when the same shall become due and payable.

(l) The Participant agrees, subject only to the acceptance of this Participation Agreement by the Trustee, to be bound by the terms and provisions of the Participation Agreement and the Instrument in the form delivered to it which are applicable to it as a Participant in the Third Tranche of the Fund, and is familiar with, and understands the nature and scope of the rights and remedies provided to the Trustee on behalf of the Third Tranche of the Fund in the event of the Participant's failure to pay any part of its Contribution under the Instrument when due, or other event and is prepared to accept the exercise against the Participant of such rights and remedies in the event of such failure on the Participant's part.

VII. APPROVAL PURSUANT TO UNFCCC COMPLIANCE AND OTHER AGREEMENTS AND REQUIREMENTS

Section 7.1 The Participant covenants, subject to applicable domestic law, to execute any other document, agreement, certification, authorization or instrument, or to take any other action, in each case as reasonably requested by the Trustee, to facilitate, effectuate, approve, support, validate, reinforce, sanction, confirm, authenticate or corroborate the registration of Projects by the UNFCCC, or other relevant regulatory or voluntary or future regime, the issuance of all Emission Reductions generated by Projects or otherwise contracted for by the Trustee, and the transfer, assignment distribution, cancellation, or other agreed disposition of such Emission Reductions.

VIII. AMENDMENT

Section 8.1 This Agreement may only be amended with the written consent of the parties hereto.
IX. TERMINATION

Section 9.1 This Agreement may be terminated by written notice of the Trustee, in accordance with the terms and conditions of the Instrument.

X. NOTICES

Section 10.1 All communications shall be in writing (including telex and facsimile communications), or by telephone (to be promptly confirmed in writing) or, in the case of communications to Participants, by electronic mail. Each communication will be made to the relevant person at the address, facsimile number, telex, telephone number or electronic mail address, from time to time designated by that party to the others for that purpose. The address, facsimile number, telex, telephone number and electronic mail address so designated are set out below:

Name: United States Department of State
Address: 2201 C St, NW
         Washington, DC 20520
         U.S.A.
Attention: Chris Dragisic
           Foreign Affairs Officer
           Office of Global Change (OES/EGC)
           Bureau of Oceans and International Environmental and Scientific Affairs
Telephone: +1 (202) 736-7444
Electronic Mail: DragisicCD@state.gov

Name: International Bank for Reconstruction and Development, as Trustee for the Third Tranche of the BioCarbon Fund
Address: 1818 H Street, N.W.
         Washington, D.C. 20433
         U.S.A.
Attention: Dan Radack
           Fund Manager, BioCarbon Fund
           Landscapes and Forest Climate Finance Unit
           Climate Change Group
Telephone: +1 (202) 473-8003
Electronic Mail: Dradack@worldbank.org
Section 10.2 A communication will be deemed received, if sent by mail, when delivered, if sent by facsimile, when a transmission report shows that the facsimile has been sent, if given by telephone, when made (and promptly followed up in writing), and if sent by electronic mail, when sent to the electronic mail address provided by the Participant to the Trustee provided, however, that any communication which is received outside business hours or on a non-business day in the place of receipt shall be deemed received on the next following business day in such place.

XI. MISCELLANEOUS

Section 11.1 The Participant shall keep confidential and not publish, disclose or otherwise divulge to anyone (and shall cause its officers, directors, employees, agents and representatives to keep confidential, and not publish, disclose or otherwise divulge to anyone) any and all information to which it gains access in relation to the operation of the Fund or as a result of its participation in the Third Tranche of the Fund, unless: (a) specifically authorized to be disclosed under the IBRD’s and, depending on the Project, the International Finance Corporation’s, intermediary’s, or project sponsor’s general disclosure policy, (b) as otherwise agreed in writing by the Trustee, or (c) required to be disclosed under any laws or regulations of the Participant.

Section 11.2 The Participant agrees, subject to applicable domestic law, that, upon demand, it will furnish promptly to the Trustee such information and execute and deliver such documents as may reasonably be required by the Trustee to comply with, or to confirm compliance with, any applicable laws or regulations or other obligations of the Trustee or the Fund.

Section 11.3 The Participant agrees that, where it has an interest in a Project of a Window of the Fund in which it participates or in another investment vehicle having objectives and policies similar to those of such Window, which, as a result, compete with the Window for investment opportunities, it will disclose such interest to the Trustee prior to the review of any Project of the Window. Upon advice of the Trustee, the Participant shall recuse itself from the Participants’ Committee’s deliberations with respect of such Project. If the Participant disagrees with the Trustee’s determination, it shall advise the Participants’ Committee of the conflict or potential conflict and the Participants’ (excluding the Participant making the disclosure) shall decide whether such Participant should be permitted to participate in the Committee’s deliberations on such Project. The failure of a Participant to disclose its interest in a Project or other venture in a timely manner may result in sanctions to be determined by the Trustee after consultation with the other Participants.

Section 11.4 The Participant and Trustee shall agree on the details of the reporting and evaluation of the each Window within six (6) months of the Operational Date of the relevant Window.

Section 11.5 The Participant may review or evaluate activities financed by the Fund at any time up to three (3) months prior to the closure of the Fund. The Participant and the Trustee shall agree on the scope and conduct of such review or evaluation, and the Trustee shall
provide all relevant information within the limits of the Trustee's applicable policies and procedures. All associated costs, including any costs incurred by the Trustee, shall be borne by the Participant. It is understood that any such review or evaluation will not constitute a financial, compliance or other audit of the Fund.

Section 11.6 The Participant understands and agrees that the Trustee, in its sole and absolute discretion, may at any time either withdraw and terminate the offering of the Interests in whole or in part or in respect of any particular jurisdiction if any such offering would, in the Trustee's opinion, adversely affect the Fund, including any Window or Tranche thereto.

Section 11.7 The Participant agrees that, following the provision of information of a proposed Project of the Fund to the Participants, it will not commence any discussions or negotiations with the Project Entity or any shareholder of the Project Entity regarding the purchase by the Participant of any Emission Reductions generated or to be generated by the Project and it will not enter into an agreement with any other person regarding the dealing in or sale of the Emission Reductions generated or to be generated by the Project as a result of any such discussions or negotiations until the earlier of termination of a letter of intent between the Project Entity and the Trustee or signature of an ERPA.

Section 11.8 Words importing the singular number hereunder shall include the plural number and vice versa, and any pronoun used herein shall be deemed to cover all genders.

Section 11.9 This Participation Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof.

Section 11.10 Within fourteen (14) days after the receipt of a written request from the Trustee, the Participant agrees, subject to applicable domestic law, to provide such information and to execute and deliver such documents as reasonably may be necessary to comply with any and all laws and ordinances to which the Third Tranche of the Fund is subject.

Section 11.11 The representations and warranties of the Participant set forth herein shall survive the sale of an Interest to the Participant pursuant to this Participation Agreement.

Section 11.12 Every provision of this Participation Agreement is intended to be severable, and if any term or provision herein is held to be illegal or invalid for any reason whatsoever in any jurisdiction, such illegality or invalidity shall not affect the validity of the remainder hereof or of such term or provision in any other jurisdiction. This Agreement is not an international treaty and is not eligible for registration under Article 102 of the United Nations Charter.

Section 11.13 It is understood that any arbitral award under an arbitration pursuant to Section 19.2 of the Instrument shall not exceed the amount of any unpaid Contribution, if any, under this Agreement.
Section 11.14  For clarification purposes only, any request by the Trustee pursuant to Section 16.5 of the Instrument shall be reasonable and the Participant’s obligations shall be subject to applicable domestic law.

XII. EXECUTION IN COUNTERPARTS

Section 12.1  This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, has signed this Agreement on the date set forth below.

PARTICIPANT: THE UNITED STATES OF AMERICA, ACTING THROUGH THE DEPARTMENT OF STATE

By: 

Name: Judith G. Garber

Title: Acting Assistant Secretary

Date: 9/22/15

TRUSTEE: INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, AS TRUSTEE OF THE THIRD TRANCHE OF THE BIOCARBON FUND

By: 

Name: Simon Whitehouse

Title: Acting Program Manager

Date: 9/23/15