



**Sherritt International Corporation**

5th Floor, 1133 Yonge Street,  
Toronto, Ontario, M4T 2Y7,  
Canada

Attn: Michael Emmett, EH&S/Training Manager

Fax: +1 416 924 5015  
20<sup>th</sup> October 2014

**RE: NOTICE OF FAILURE BY THE CLIENT TO COMPLY WITH ITS OBLIGATIONS**

Dear Sir,

We hereby wish to notify you that you are presently in breach of two Verification Services Agreements for your CDM project entitled "Energas Varadero Conversion from Open Cycle to Combined Cycle Project (Ref: 0918)", as follows:

- For periodic verification 3: SGS contract number CDM.VER0404 MP3 dated 9<sup>th</sup> February 2011 (including Addendum 1 dated 15<sup>th</sup> June 2011, Addendum 2 dated 4<sup>th</sup> September 2012 and Addendum 3 Rev1 dated 3<sup>rd</sup> December 2013
- For periodic verification 4: SGS contract number CDM.VER0404 MP4 dated 14<sup>th</sup> February 2012.

(together hereafter referred to as the "Agreement") and that, in accordance with Article 8.1(a) of the SGS General Conditions for Greenhouse Gas Validation & Verification Services, we are giving you a 10 day period to remedy such breach, starting from the reception of the present notice. In accordance with the said Article, if you fail to remedy the breach within the expiration of the above delay, SGS shall be entitled to suspend or terminate the Agreement without further notice or delay.

As background information:

SGS completed the verification process for monitoring period MP3 as per the terms of the Agreement; for Monitoring Period MP3, the verification process was followed by a request for issuance submitted to the UNFCCC and the CERs are now ready for issuance with the UNFCCC team. Therefore the periodic verification MP3 is considered fully delivered by SGS and closed.

All invoicing for MP3 was done as per payment terms of Addendum 3 which you signed on 5<sup>th</sup> December 2013. In accordance with these terms, Invoice 5715 dated 26<sup>th</sup> May 2014 was issued for USD 2,745.46 USD and Invoice 5786 dated 23<sup>rd</sup> August 2014 was issued for USD 3,622.82. As per clause 6.5 of Addendum 3, payment should be received within 30 days from issuance of the invoice.

To date SGS has not received payment against these invoices, despite several reminders being sent to Mike Emmett [memmett@sherrittogp.com](mailto:memmett@sherrittogp.com) (on 27<sup>th</sup> August 2014, 22<sup>nd</sup> September 2014 and 25<sup>th</sup> September 2014).

In addition to the above breach of obligations, the following breach on MP4 is also occurring:

As per the first step of the verification process for CDM, the Monitoring Report was published on the UNFCCC website on 10<sup>th</sup> December 2013.

The site visit then took place, as per mutual agreement, on 3<sup>rd</sup> to 5<sup>th</sup> February 2014, following which SGS raised the first set of Findings on 10<sup>th</sup> February 2014, as sent to you ([memmett@sherrittogp.com](mailto:memmett@sherrittogp.com)) and Roger Tulloch ([rtulloch@ENERGASSA.com](mailto:rtulloch@ENERGASSA.com)) via email, with a deadline to respond to the findings of 28<sup>th</sup> February 2014. A response was received on 27<sup>th</sup> February 2014. The Lead Assessor sent the second set of Findings on 18/03/2014 with a new deadline of 28<sup>th</sup> March 2014 to receive the answers to the open issues.

A partial response was received on 30<sup>th</sup> April 2014; however the Lead assessor informed you ([memmett@sherrittogp.com](mailto:memmett@sherrittogp.com)) that the response was not complete.

We understand that due to personal reasons, Mike Emmett was out of the office and was not able to respond to SGS findings. Upon his return in the office, Alicia Fernandez sent a reminder on 21<sup>st</sup> July 2014, stating that the response to findings and the revised Monitoring report (using latest UNFCCC template as of 18<sup>th</sup> July 2014) was still to be received. Further email reminders were sent on 29<sup>th</sup> July and 5<sup>th</sup> August 2014.

SGS UK Climate Change Programme team ([ukclimatechange@sgs.com](mailto:ukclimatechange@sgs.com)) contacted Mike Emmett on 13<sup>th</sup> August 2014, requesting a complete response to the findings and comments (sent on 18<sup>th</sup> March 2014) and the revised Monitoring report (using latest UNFCCC template as of 18<sup>th</sup> July 2014) within 10 days from receipt of the notice, as per clause 8.1(a) of our Terms and Conditions.

On 15<sup>th</sup> August 2014, Mike Emmett responded stating that *"I will have MP 4 back to you by Wednesday August 20, hopefully you will be ok with this date"*.

On 22<sup>nd</sup> August 2014, Mike Emmett contacted Alicia Fernandez to inform her that the response would be delayed but that he was working on it.

On 27<sup>th</sup> August 2014, SGS UK Climate Change Programme team ([ukclimatechange@sgs.com](mailto:ukclimatechange@sgs.com)) sent another email to Mike Emmett, flagging that no response had been received and offering to extend the response timeline until 5<sup>th</sup> September 2014.

This notification was flagged as serving a second 10 days notice period, as per clause 8.1(a) of our Terms and Conditions.

To date we have not received a complete response from Sherritt International Corporation to the findings raised by the SGS lead assessor on 18<sup>th</sup> March 2014.

In accordance with the payment terms of the contract CDM.VER0404 MP4, Invoice 5632 dated 24<sup>th</sup> February 2014 was issued for USD 10,721. As per clause 8.4 of the contract, payment should be received within 30 days from issuance of the invoice.

To date SGS has not received payment against this invoice, despite several reminders being sent to Mike Emmett [memmett@sherrittogp.com](mailto:memmett@sherrittogp.com) (on 27<sup>th</sup> August 2014, 22<sup>nd</sup> September 2014 and 25<sup>th</sup> September 2014).

This letter is intended to remind you that you have a contractual obligation as per clause 4.1 of the General Conditions for Greenhouse Gas Validation & Verification Services (the "General Conditions"), to take all necessary steps to eliminate or remedy any obstacles to, or interruptions in the performance of the services by SGS.

Under clause 8.1(a) of the the SGS General Conditions for Greenhouse Gas Validation & Verification Services, SGS is entitled to terminate the provision of the services in the event that the client does not comply with its obligations under the contract and such failure is not remedied within 10 days that such notice has been notified to the client. Please accept this letter as notice of such failure. Please also refer to clause 8.2 for payment obligations surviving termination of a contract.

We would like to hereby kindly inform you of the final deadline to release the due payment mentioned in this letter and provide a full response to SGS findings sent on 18<sup>th</sup> March 2014, as 10 days from reception of present notice (verifiable evidence of such payment should be provided by then). **Note that obligations to pay SGS survive the termination of the contract and SGS will pursue legal proceedings to recover the fees that are due, if payment (or verifiable evidence of payment) is not received within 10 days of receipt of this letter.**

If by the deadline of 10 days from receipt of this letter, full payment and full response to SGS findings are not received, SGS will have no other option than to terminate the Agreement under clause 8.1 (a) of SGS General Conditions for Greenhouse Gas Validation & Verification Services without further notification from SGS. Please note that the termination shall be without liability to SGS United Kingdom Limited ("SGS").

If by the deadline of 10 days from receipt of this letter, full payment and full response to SGS findings are received, you should be made aware that the following timeline and steps will apply:

Step	Timeline
Audit team reviews your response and issue Final Findings Overview*	7 <sup>th</sup> November 2014
Audit team finalise recommendation to Technical Reviewer team	28 <sup>th</sup> November 2014
Technical Review team feedback:	5 <sup>th</sup> December 2014
UK completeness check and issuance of final report/ submission to UN (if positive opinion)	15 <sup>th</sup> December 2014

\*The above timeline assumes SGS receives full payment and response to the findings by 30<sup>th</sup> October 2014 and only one set of findings to be issued before final opinion is reached (due to delays caused by Sherritt International Corporation).

You are requested to adhere to the above timelines and make planning provisions if you wish for the verification of MP4 services to continue.

Please note that although we hope this will not be the outcome, if the termination of the contract is the outcome, it shall be communicated to the UNFCCC as per the requirements outlined in Validation and Verification Standard.

Please do not hesitate to contact Gaelle Quessada and kindly ensure to use the email address [ukclimatechange@sgs.com](mailto:ukclimatechange@sgs.com) and refer to the contract reference number CDM.VER0404 when writing to us.

Yours sincerely,

**For and on behalf of  
SGS United Kingdom Ltd**



Jonathan Hall  
Business Manager  
Environmental Services