Contract of Guarantee for Shareholder Loans

between

Multilateral Investment Guarantee Agency

and

[Guarantee Holder]

This draft document is subject to MIGA’s approval and as such cannot be considered a contract or an offer to enter into a contract. Only the document executed by MIGA, as approved by MIGA’s senior management and the Guarantee Holder, will contain the terms and conditions that shall bind them.
Contract of Guarantee for Shareholder Loans

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Part I – Special Conditions

This Contract is between the Multilateral Investment Guarantee Agency (“MIGA”) and [_______] (the “Guarantee Holder”), a [_______] organized and existing under the laws of [_______].

CLAUSE 1. Project Enterprise: [_______] a _____ organized and existing under the laws of _______, in which the Guarantee Holder has a [___]% equity ownership interest as of the Effective Date.

CLAUSE 2A. Investment Project: An [approximately] [size] [industry] project located in [specific location within Host Country] [Specify phases, if applicable]

CLAUSE 2B. Host Country: [_______]

CLAUSE 3. Guarantee Currency: [_______]

CLAUSE 4. Guaranteed Loan: The loan in the principal amount of [Amount in Guarantee Currency] made or to be made by the Guarantee Holder to the Project Enterprise under a loan agreement [dated [as of] [_______ __, 20__], [to be concluded] between the Guarantee Holder and the Project Enterprise (the “Loan Agreement”) pursuant to which the Project Enterprise will make payments of principal [and interest] as set out in the Payment Schedule. The Guarantee Holder has furnished to MIGA a correct and complete copy of the [_______ __, 20__, draft of the] [fully executed] Loan Agreement.

CLAUSE 5. Contract Period: (i) The [____] period starting on the Effective Date and ending on [____] and (2) thereafter, the [____] periods ending on the [____] day of each [____] and [____] or, if earlier, the last day of the Guarantee Period.

CLAUSE 6. Guarantee Period: The period commencing at 12:01 AM, Washington, DC time on the Effective Date and ending at 11:59 PM, Washington, DC time on [____].
CLAUSE 7. Covered Risks:

[Transfer Restriction;]
[Expropriation;]
[War and Civil Disturbance;] and
[Arbitral Award Default]

CLAUSE 8. Waiting Period:

Transfer Restriction:
Inconvertibility
[60] consecutive days
Inability to Transfer
[60] consecutive days

Expropriation:
Expropriation of the
Project Enterprise
[180] consecutive days
Expropriation of Lender
Rights
[180] consecutive days
Expropriation of Funds
[60] consecutive days
Expropriation of Collateral
Rights
[180] consecutive days

War and Civil Disturbance:
Loss of Assets
[None]
Permanent Loss of Use
[90] consecutive days

Arbitral Award Default:
[180] consecutive days

CLAUSE 9A. Percentage of Cover:

[95]%

CLAUSE 9B. Percentage of Self-Insurance:

[5]%

Total: 100%

CLAUSE 10A. Current Amount of Guarantee:

[Amount in Guarantee Currency], as adjusted in accordance with Article 13 of the General Conditions

CLAUSE 10B. Standby Option Amount:

[[Amount in Guarantee Currency], as adjusted in accordance with Article 13 of the General Conditions] [Not applicable]

CLAUSE 10C. Payments Covered:

Scheduled Payments of [principal and interest] [principal only]

CLAUSE 10D. Maximum Aggregate Liability:

[Amount in Guarantee Currency]
CLAUSE 11A. Annual Premium Rate: [___]%

CLAUSE 11B. Total Premium for the First Contract Period: [Amount in Guarantee Currency], calculated as follows:

[__________________], payable on or before the Initial Premium Due Date

CLAUSE 12A. Annual Standby Option Fee Rate: [___]% [Not applicable]

CLAUSE 12B. Standby Option Fee for the First Contract Period: [(Amount in Guarantee Currency), calculated as follows:

[__________________], payable on or before the Initial Premium Due Date [Not applicable]

CLAUSE 13. Deductible:

Transfer Restriction:
- Inconvertibility: [Amount in Guarantee Currency][None]
- Inability to Transfer: [Amount in Guarantee Currency][None]

Expropriation:
- Expropriation of the Project Enterprise: [Amount in Guarantee Currency][None]
- Expropriation of Lender Rights: [Amount in Guarantee Currency][None]
- Expropriation of Funds: [Amount in Guarantee Currency][None]
- Expropriation of Collateral Rights: [Amount in Guarantee Currency][None]

War and Civil Disturbance:
- Loss of Assets: [Amount in Guarantee Currency per Loss][None]
- Permanent Loss of Use: [Amount in Guarantee Currency][None]

Arbitral Award Default: [Amount in Guarantee Currency][None]

CLAUSE 14A. Total Premium Amount Due for the First Contract Period: [Amount in Guarantee Currency], calculated as follows:

Clause 11B [+ Clause 12B] less the application fee of [Amount in Guarantee Currency] paid to MIGA on [______________], payable on or before the Initial Premium Due Date

CLAUSE 14B. Initial Premium Due Date: [Date no later than the date falling 15 calendar days after the Effective Date]
CLAUSE 15A. Specified Project Agreement

[1] ______ Agreement dated [as of] ________, 20__, among the Host Government, [Project Enterprise] [Guarantee Holder]; and (2) [describe others if applicable] [Not applicable]

CLAUSE 15B. Specified Contractual Obligation

[The Host Government’s obligations under the Specified Project Agreement[s], as specified in Annex 1] [Not applicable]

CLAUSE 16. Effective Date:

[______]

CLAUSE 17. Notice Addresses:

MULTILATERAL INVESTMENT GUARANTEE AGENCY

1818 H Street, NW
Washington, DC 20433
United States of America
Attention: Contract Management & Portfolio Services MIGA Operations
Facsimile: +1 202-522-2630
Telephone: +1 202-473-0610

[GUARANTEE HOLDER]

[Mailing Address]
[City and Postal Code]
[Country]
Attention: [Name]
[Title]
Facsimile: [Number]
Telephone: [Number]

Email address for Premium receipts only:
[________________________________________]
Each of MIGA and the Guarantee Holder, acting through its duly authorized representatives, is signing this Contract. This Contract is deemed made in Washington, DC, United States of America, and will become effective as of the Effective Date upon (i) on or before the Effective Date, signing by both parties and exchange of scanned counterpart signature pages, (ii) on or before the Initial Premium Due Date, receipt by MIGA of payment in full of the Total Premium Amount Due for the first Contract Period; and (iii) no later than ten (10) Business Days after the Effective Date, receipt by MIGA of the original counterpart signature page signed by the Guarantee Holder.

**MULTILATERAL INVESTMENT GUARANTEE AGENCY**

By:  

______________________________  By:  

______________________________

(signature)  

(signature)

Keiko Honda  

Executive Vice President and Chief Executive Officer  

Authorized Representative  

(name and title)

______________________________

(date)

______________________________

(date)

[GUARANTEE HOLDER]

______________________________

______________________________

Authorized Representative  

(name and title)
Part II – General Conditions

ARTICLE 1. APPLICATION AND INTERPRETATION; DRAFT DOCUMENTS

1.1 Entire Contract; Headings. This Contract of Guarantee (this "Contract") comprises the Special Conditions (Part I), the General Conditions (Part II), and the Annexes, all of which are to be considered for purposes of interpretation. Headings are inserted for convenience of reference only, and do not affect the meaning or interpretation of this Contract.

1.2 Capitalized Terms. Capitalized terms used herein are defined in Article 2 or as applicable in the Annexes. Defined terms in the singular have the corresponding meanings in the plural and vice versa.

1.3 Articles and Sections. Unless otherwise stated, all references herein to Articles, Sections, and Annexes are to those of these General Conditions.

1.4 Business Days. If any obligation to be performed under this Contract falls on a day that is not a Business Day, such obligation shall be performed on the next succeeding Business Day.

1.5 Including. The words “include,” “includes” and “including” mean include, includes and including “without limitation”.

1.6 Delivery of Loan Agreement. On or before the Effective Date, the Guarantee Holder shall have delivered to MIGA either (i) a correct and complete copy of the fully executed Loan Agreement, or (ii) a draft of the Loan Agreement, in either case in form and substance satisfactory to MIGA.

If a draft Loan Agreement has been deemed satisfactory by MIGA as of the Effective Date, the Guarantee Holder shall deliver to MIGA within 30 days of the date of its execution, but in no event later than 90 days after the Effective Date, (x) a correct and complete copy of the fully executed Loan Agreement; and (y) if there has been any change to the schedule for payments thereunder, a proposed revised Annex A.

Any changes to either the Loan Agreement or the schedule for payments thereunder from the drafts previously delivered are subject to MIGA’s consent, which consent shall not be withheld if the Loan Agreement and the schedule for payments thereunder are either (i) similar in all material respects to the draft version previously reviewed and deemed satisfactory by MIGA; or (ii) otherwise in form and substance satisfactory to MIGA in its sole discretion.

ARTICLE 2. DEFINITIONS


“Acts of War or Civil Disturbance” has the meaning set forth in Section 5.1.
“Annual Monitoring Report” has the meaning set forth in Annex 3.

“Applicable E&S Laws” has the meaning set forth in Annex 3.

“Application for Guarantee” means the Definitive Application for Guarantee, including all attachments and any updates thereto, delivered to and registered with MIGA by the Guarantee Holder before the Effective Date.

“Arbitral Award Default” has the meaning set forth in Section 6.1.

"Award" means a decision that is final, binding, and non-appealable under the terms of the Dispute Resolution Procedure itself, rendered against the Host Government in favor of the Guarantee Holder or the Project Enterprise by a competent arbitral tribunal or a court of law in accordance with the Dispute Resolution Procedure that:

(a) has been rendered pursuant to a breach by the Host Government of a Specified Contractual Obligation or repudiation by the Host Government of a Specified Project Agreement; and

(b) is for a specified monetary amount in Guarantee Currency.

“Banking Day” means any day other than a Saturday, Sunday or other day specified in the Loan Agreement as being a day on which the Project Enterprise is not required to make a Scheduled Payment.

“Bona Fide Government Measure” means a bona fide, non-discriminatory measure of general application that governments normally take for the purpose of regulating economic activity, ensuring public safety, raising revenues or protecting the environment, unless the measure is designed by the Host Government to have a confiscatory effect.

“Business Day” means a day on which banks are open for business in New York, New York, USA.

“Cause” (including related forms such as "Causes" and "Caused") means that (A) the Covered Risk would have caused such Loss or deprivation independently of other factors (including commercial events); and (B) but for the Covered Risk, such Loss or deprivation would not have occurred.

“Claim” means an application submitted by the Guarantee Holder to MIGA for payment of compensation for a Loss.

“Coercive Practice” has the meaning set forth in Annex 2.

“Collateral” means any collateral security for, or commercial guaranty of, payment of the Guaranteed Loan.

“Collusive Practice” has the meaning set forth in Annex 2.

“Contract” has the meaning set forth in Section 1.1.

“Contract Default” has the meaning set forth in Section 14.4.
“Contract Period” means the period specified in Clause 5 of the Special Conditions; provided, however, that if the last day of a Contract Period is not a Banking Day, that Contract Period shall extend to and include the next succeeding Banking Day.

“Control” means ownership of a majority of the voting capital of another entity or the power otherwise to direct the management, policies or composition of the board of directors (or equivalent body of that entity) through ownership of voting capital, by operation of law, by contract, or otherwise.

“Corrupt Practice” has the meaning set forth in Annex 2.

“Covered Risk” means any event described in the relevant sections of the General Conditions for any risk specified in Clause 7 of the Special Conditions.

“Current Amount of Guarantee” means the maximum aggregate amount of compensation payable by MIGA under this Contract for a Contract Period, irrespective of the number of Losses, which is (a) the sum of (i) the amount specified in Clause 10A of the Special Conditions, and (ii) the aggregate amounts validly transferred from the Standby Option in accordance with Section 13.4, less (b) the reductions specified in Sections 13.2 and 13.3.

“Date of Loss” means with respect to:

(a) Transfer Restriction, the Scheduled Payment Due Date;

(b) Expropriation,
   (i) with respect to Expropriation of the Project Enterprise, Expropriation of Lender Rights and Expropriation of Funds, the Scheduled Payment Due Date, and
   (ii) with respect to Expropriation of Collateral Rights, the later of (x) the day immediately preceding the day that the deprivation takes place, and (y) the relevant Scheduled Payment Due Date;

(c) War and Civil Disturbance, the Scheduled Payment Due Date; and

(d) Arbitral Award Default, the date of the Award and each Scheduled Payment Due Date thereafter.

“Deductible” means any amount or amounts specified in Clause 13 of the Special Conditions, which the Guarantee Holder shall bear in full with respect to each Loss.

“Development Effectiveness Indicators” has the meaning set forth in Annex 3.

“Disclosing Party” has the meaning set forth in Section 16.3.

“Dispute Resolution Procedure” means the arbitration or adjudication procedure set forth in the applicable Specified Project Agreement. Consultation, mediation or any other preliminary or special dispute resolution procedure other than binding arbitration or adjudication shall not be deemed to be part of the Dispute Resolution Procedure.

“E&S Action Plan” has the meaning set forth in Annex 3.
“Effective Date” means the date specified in Clause 16 of the Special Conditions as the date on which this Contract becomes effective as set forth on the signature page.

“Excluded Information” has the meaning set forth in Section 16.3(c).

“Expropriation” has the meaning set forth in Section 4.1.

“Expropriation of Collateral Rights” means the Covered Risk described as a subset of Expropriation in Section 4.1(d).

“Expropriation of Funds” means the Covered Risk described as a subset of Expropriation in Section 4.1(c).

“Expropriation of Lender Rights” means the Covered Risk described as a subset of Expropriation in Section 4.1(b).

“Expropriation of the Project Enterprise” means the Covered Risk described as a subset of Expropriation in Section 4.1(a).

“Financial Statements” (including any reference to an "audited balance sheet") means, with respect to the Project Enterprise or the Guarantee Holder, as applicable, its audited financial statements (including all footnotes thereto) prepared in accordance with, and based on books and records maintained in accordance with, International Financial Reporting Standards.

“Fraudulent Practice” has the meaning set forth in Annex 2.

“Governing Authority” has the meaning set forth in sub-paragraph (a) of the definition of Host Government.

“Guarantee Currency” means the currency specified in Clause 3 of the Special Conditions.

“Guarantee Holder” means the natural or juridical person designated in the preamble of the Special Conditions, and shall not include any assignee or successor, by operation of law or otherwise, without MIGA’s prior written consent.

“Guarantee Period” means the period specified in Clause 6 of the Special Conditions; provided, however, that, if the last day of the Guarantee Period is not a Banking Day, the Guarantee Period shall extend to and include the next succeeding Banking Day.

“Guaranteed Loan” means the loan denominated in Guarantee Currency in the original principal amount specified in Clause 4 of the Special Conditions or, where the context requires, the amount thereof from time to time outstanding.

“Host Country” means the country specified in Clause 2B of the Special Conditions, into which the Guarantee Holder has made the Guaranteed Loan.

“Host Government” means:

(a) the present or any succeeding governing authority (without regard to the method of its succession or whether it is internationally recognized) in effective control of all or any
part of the territory of the Host Country or any political or territorial subdivision thereof (including any dependent territory) (a “Governed Authority”);  
(b) any public or regulatory authority within the territory of the Host Country (i) that is under the Control of a Governing Authority on the Date of Loss; and (ii) for whose actions a Governing Authority is legally liable; or  
(c) with respect to Arbitral Award Default only, if applicable, (i) a State-Owned Enterprise; and (ii) any other public or regulatory authority within the territory of the Host Country that is (x) under the Control of a Governing Authority on the Date of Loss, and (y) otherwise satisfactory to MIGA as of the Effective Date and specifically designated as part of the Host Government in Annex 1.

“Inability to Transfer” means the Covered Risk described as a subset of Transfer Restriction in Section 3.1(b).

“Inconvertibility” means the Covered Risk described as a subset of Transfer Restriction in Section 3.1(a).

“Initial Premium Due Date” means the date set forth in Clause 14B of the Special Conditions.

“International Financial Reporting Standards” means the accounting standards established and issued by the International Accounting Standards Board, as amended from time to time.

“Investment Project” means the project specified in Clause 2A of the Special Conditions undertaken by the Project Enterprise.

“LIBOR” means the London Interbank Offered Rate for the Guarantee Currency, determined on any date by reference to the six-month LIBOR rate for the Guarantee Currency as published in the “Interest Rates: Market” section (or any successor section) of the Financial Times newspaper two London business days before such date; provided, however, that (i) if LIBOR at any time cannot be determined as set forth above, LIBOR will be deemed to be a reasonably comparable rate selected by MIGA, and (ii) if LIBOR or any other rate is below zero, such rate will be deemed to be zero.

“Loan Agreement” has the meaning set forth in Clause 4 of the Special Conditions.

“Local Currency” means the national currency of the Host Country.

“Loss” means:

 (a) for all Covered Risks other than Expropriation of Collateral Rights, a Scheduled Payment Default that is Caused by such Covered Risk; and  
(b) for Expropriation of Collateral Rights, the inability of the Guarantee Holder to apply Collateral to satisfy an unpaid Scheduled Payment with respect to a Scheduled Payment Default, as set forth in Section 4.1(d), that is Caused by such Covered Risk.

“Loss of Assets” means the Covered Risk described as a subset of War and Civil Disturbance in Section 5.1(a).

“Material Misrepresentation” has the meaning set forth in Section 7.2.
“Maximum Aggregate Liability” means the maximum aggregate amount of compensation payable by MIGA over the Guarantee Period, irrespective of the number of Losses, as specified in Clause 10D of the Special Conditions, subject to reduction as specified in Section 13.3.

“MIGA” has the meaning set forth in the preamble of the Special Conditions.


“Money Laundering” has the meaning set forth in Annex 3.

“Notice of Nonpayment” has the meaning set forth in Section 14.3.

“Notice of Termination” means a notice sent by MIGA or the Guarantee Holder to the other party to terminate this Contract in accordance with Article 14.

“Obstructive Practice” has the meaning set forth in Annex 2.

“Payment Schedule” means the schedule attached as Annex A specifying the Scheduled Payment Due Date and amount of (or basis for calculating) each Scheduled Payment.

“Percentage of Cover” means the percentage of each Loss for which the Guarantee Holder may seek compensation as specified in Clause 9A of the Special Conditions.

“Percentage of Self-Insurance” means the percentage, as specified in Clause 9B of the Special Conditions, of each Loss that the Guarantee Holder is required to bear for its own account as set forth in Section 12.2(n).

“Performance Standards” has the meaning set forth in Annex 3.

“Permanent Loss of Use” means the Covered Risk described as a subset of War and Civil Disturbance in Section 5.1(b).

“Potential Claim” means any Claim: (i) that has not yet been submitted, but may still be submitted within the time limits specified in this Contract, (ii) for which the Date of Loss has not occurred but that pursuant to Section 10.4 may be submitted if the Date of Loss occurs after the Guarantee Period; (iii) that has been submitted, but MIGA has not yet determined its validity; or (iv) that has been submitted, and been determined to be valid, but MIGA has not yet paid compensation.

“Potential Loss” means any event or circumstance that could reasonably be expected to result in, or to materially increase the likelihood or magnitude of, a Loss, including (x) any dispute with the Host Government, including initiation of any Dispute Resolution Procedure, (y) any pending, or to the Guarantee Holder’s or Project Enterprise’s knowledge threatened, action or proceeding by or before any court, arbitral tribunal, or agency that might have a material adverse effect on the Project Enterprise, the Guaranteed Loan, or the Investment Project, or (z) any Scheduled Payment Default (regardless of cause) or deprivation of rights in Collateral.
“Premium” means:

(a) for the first Contract Period, the amount specified in Clause 11B of the Special Conditions; and

(b) for each subsequent Contract Period, the product of (x) the Current Amount of Guarantee as of the first day of such Contract Period; (y) the annual premium rate specified in Clause 11A of the Special Conditions; and (z) a fraction, the numerator of which is the number of days in such Contract Period, and the denominator of which is 365.

“Premium Due Date” means:

(a) for the first Contract Period, the Initial Premium Due Date; and

(b) for each subsequent Contract Period, the first day of such Contract Period.

“Project Enterprise” means the entity specified in Clause 1 of the Special Conditions that owns or conducts the Investment Project and is the borrower of the Guaranteed Loan.

“Provisional Payment” means the amount that MIGA may elect to pay the Guarantee Holder in accordance with Section 6.3.

“Receiving Party” has the meaning set forth in Section 16.3.

“Reference Rate of Exchange” means the effective rate of exchange for conversion of Local Currency into Guarantee Currency determined for any date as follows:

(a) first, the rate for the official exchange rate category generally applied on such date to the applicable remittance for transactions of the type contemplated by the Loan Agreement by the central bank or any other similar regulatory authority charged with the function of establishing the official foreign exchange rate in the Host Country, but, if Guarantee Currency was not generally available at such official exchange rate, then the Reference Rate of Exchange is the average effective exchange rate obtained through other legal exchange mechanisms authorized by the Host Government applicable to the type of remittance involved;

(b) second, if a rate cannot be determined in accordance with sub-paragraph (a) above, the average clearing rate on such date legally used by the largest three commercial banks (measured by volume of foreign exchange transactions cleared in the most recent 60-day period) in the Host Country; and

(c) third, if a rate cannot be determined in accordance with sub-paragraphs (a) or (b) above, the rate of exchange determined by the International Monetary Fund (“IMF”) for the Host Country for such date. Any costs of obtaining a rate of exchange through the IMF shall be equally shared by the parties.

The calculation shall take into account the application of all charges and expenses for conversions and transfers under the prevailing laws, regulations and business practices of the Host Country.

“Scheduled Payment” means, as specified in Clause 10C of the Special Conditions, each repayment of principal of the Guaranteed Loan, [and each payment of interest on the Guaranteed Loan,] scheduled to be due as specified in the Payment Schedule and required to be paid in Guarantee
Currency. "Scheduled Payment" does not include interest accruing at a penalty or default rate (including in connection with any political risk event), mandatory or voluntary prepayments of principal, acceleration of principal, make-whole premiums, break-funding costs, increased costs provisions, payments with respect to withholding taxes and other taxes, payments with respect to interest rate swaps and other derivatives transactions associated with the Guaranteed Loan, and unpaid fees, costs and expenses.

"Scheduled Payment Default" means the non-payment to the Guarantee Holder of a Scheduled Payment on the Scheduled Payment Due Date, irrespective of whether such non-payment then constitutes, or with the giving of notice or the lapse of time or both would constitute, an event of default or otherwise give rise to rights and remedies of the Guarantee Holder under the Loan Agreement.

"Scheduled Payment Due Date" means the date specified in the Payment Schedule with respect to each Scheduled Payment.

"Significant E&S Event" has the meaning set forth in Annex 3.

"Specified Contractual Obligation" means, with respect to Arbitral Award Default, any obligation of the Host Government under a Specified Project Agreement that is identified in Clause 15B of the Special Conditions.

"Specified Project Agreement" means, with respect to Arbitral Award Default, a contract or legally binding commitment that is specified in Clause 15A of the Special Conditions.

"Standby Option" means the commitment for additional coverage in connection with future disbursements of the Guaranteed Loan, as specified in Clause 4B of the Special Conditions.

"Standby Option Amount" means for any Contract Period the initial amount specified in Clause 10B of the Special Conditions, minus the sum of all transfers to the Current Amount of Guarantee and other reductions to the Standby Option Amount made in accordance with Article 13.

"Standby Option Fee" means:

(a) for the first Contract Period, the amount specified in Clause 12B of the Special Conditions; and

(b) for each subsequent Contract Period, the product of (x) the Standby Option Amount as of the first day of such Contract Period; (y) the annual Standby Option Fee rate specified in Clause 12A of the Special Conditions; and (z) a fraction, the numerator of which is the number of days in such Contract Period, and the denominator of which is 365.

"State-Owned Enterprise" means, with respect to Arbitral Award Default only, an entity (other than a public or regulatory authority):

(a) that on the date of the Award is under the Control of a Governing Authority and is performing a public service or fulfilling a governmental function in the Host Country;

(b) for whose obligations a Governing Authority is liable or that is otherwise acceptable to MIGA as of the Effective Date; and
(c) that is designated as part of the Host Government in Annex 1.

“Total Premium Amount Due” means:

(a) for the first Contract Period, the amount specified in Clause 14A of the Special Conditions, consisting of the sum of the Premium, and the Standby Option Fee, as applicable; and

(b) for each subsequent Contract Period, the sum of the Premium, and the Standby Option Fee, as applicable, for such Contract Period.

“Transfer Restriction” has the meaning set forth in Section 3.1.

“Waiting Period” means the number of consecutive days specified in Clause 8 of the Special Conditions that commences on the Date of Loss and must elapse before MIGA may deem a Claim to be complete.

“War and Civil Disturbance” has the meaning set forth in Section 5.1.

“World Bank Group” means the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, and MIGA.

**ARTICLE 3. TRANSFER RESTRICTION COVERAGE**

3.1 Covered Risks for Transfer Restriction. “Transfer Restriction” means any action or inaction by: (i) the Host Government, or (ii) entities or persons authorized by the Host Government to engage in foreign exchange transactions, in either case that Causes, directly or indirectly, both the Guarantee Holder and the Project Enterprise to be unable legally:

(a) to convert into Guarantee Currency the Local Currency held to make a Scheduled Payment, including the denial of conversion in an exchange rate category at least as favorable as that used to determine the Reference Rate of Exchange (“Inconvertibility”);

or

(b) to transfer outside of the Host Country the Guarantee Currency constituting a Scheduled Payment (“Inability to Transfer”),

but in all cases only if each of the Guarantee Holder and the Project Enterprise, as applicable:

(x) had on the Effective Date the legal right within the Host Country to convert such Local Currency and transfer such Guarantee Currency; and

(y) has for the duration of the Waiting Period diligently and with reasonable frequency applied for and been unable to convert such Local Currency or to transfer such Guarantee Currency through all of the exchange mechanisms authorized by the Host Government in accordance with the relevant laws, regulations and procedures of the Host Country;

provided, however, that the deprivation by the Host Government of the use and control of funds held to make a Scheduled Payment is only covered under Expropriation of Funds.
3.2 **Compensation Amount for Transfer Restriction.** Subject to Articles 7, 8, 9, and 10, compensation for a Loss Caused by Transfer Restriction is the Percentage of Cover of:

(a) for Inconvertibility, the Guarantee Currency equivalent of the Local Currency held to make the Scheduled Payment that could not be converted, calculated at the Reference Rate of Exchange for the Date of Loss; or

(b) for Inability to Transfer, the amount of Guarantee Currency constituting the Scheduled Payment that could not be transferred as of the Date of Loss.

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**ARTICLE 4. EXPROPRIATION COVERAGE**

4.1 **Covered Risks for Expropriation.** “Expropriation” means any executive or administrative action or omission, or any legislative action (but in all cases excluding any judicial action or omission), in one or a series of events attributable to the Host Government that directly or indirectly Causes:

(a) the Project Enterprise to be deprived of (x) its ownership or effective control of all or a substantial portion of the Investment Project, or (y) a fundamental right without which it is not financially viable, which deprivation in turn Causes a Scheduled Payment Default (“Expropriation of the Project Enterprise”);

(b) the Guarantee Holder to be deprived of its material rights as a lender under the Loan Agreement that in turn Causes a Scheduled Payment Default (“Expropriation of Lender Rights”);

(c) the Guarantee Holder or the Project Enterprise to be deprived of the use and control of any funds held by it in an account in the Host Country to make a Scheduled Payment (“Expropriation of Funds”); or

(d) the Guarantee Holder to be deprived of its material rights as a secured creditor against Collateral that in turn Causes the Guarantee Holder to be unable to apply such Collateral to satisfy an unpaid Scheduled Payment with respect to a Scheduled Payment Default that occurs (x) for any reason, including commercial reasons, and (y) either before or after, but not more than 180 days after, such deprivation (“Expropriation of Collateral Rights”),

but in all cases **only if**:

(x) such action or omission is not a Bona Fide Government Measure;

(y) without prejudice as to whether such events may constitute Arbitral Award Default, such action or omission (i) is not taken by the Host Government acting in a commercial capacity; and (2) does not constitute mere breach by the Host Government of its obligations under any contractual agreement with the Guarantee Holder, the Project Enterprise, or both; and

(z) the Scheduled Payment remains unpaid (and with respect to Expropriation of Collateral Rights, the deprivation continues) for the duration of the Waiting Period.

4.2 **Compensation Amount for Expropriation.** Subject to Articles 7, 8, 9, and 10, compensation for a Loss Caused by Expropriation is the Percentage of Cover of the Scheduled Payment due and unpaid as of the Date of Loss; **provided**, however, that with respect to Expropriation of Collateral
Rights only, such amount shall not exceed the realizable value as of the Date of Loss of all Collateral of which the Guarantee Holder was deprived.

ARTICLE 5. WAR AND CIVIL DISTURBANCE COVERAGE

5.1 Covered Risks for War and Civil Disturbance. “War and Civil Disturbance” means one or more Acts of War or Civil Disturbance that directly and immediately Causes:

(a) the destruction or disappearance of, or physical damage to, tangible assets (other than precious metals, gems, works of art, money or documents) in the Host Country used for the Investment Project (“Loss of Assets”); or

(b) the total inability of the Project Enterprise to conduct operations essential to its overall financial viability as a going concern for 180 consecutive days (“Permanent Loss of Use”);

which in turn Causes a Scheduled Payment Default that continues for the duration of the Waiting Period.

“Acts of War or Civil Disturbance” means military action, acts of war, revolution, insurrection, civil war, civil commotion, riots or acts of terrorism or sabotage carried out, in each case, by those primarily pursuing political or ideological objectives in the Host Country, (x) including such acts against the government of the country of the Guarantee Holder, the nationality of the Guarantee Holder, or any other foreign government or foreign investment, but (y) in all cases excluding such acts undertaken merely to further labor, student, or other similarly specific interests.

5.2 Compensation Amount for War and Civil Disturbance. Subject to Articles 7, 8, 9, and 10, compensation for a Loss Caused by War and Civil Disturbance is the Percentage of Cover of the Scheduled Payment due and unpaid as of the Date of Loss.

ARTICLE 6. ARBITRAL AWARD DEFAULT COVERAGE

6.1 Covered Risks for Arbitral Award Default. “Arbitral Award Default” means the inability of the Guarantee Holder or the Project Enterprise to enforce an Award against the Host Government, if the Guarantee Holder and the Project Enterprise, as applicable, have made all reasonable efforts to do so, including initiating and participating in appropriate judicial proceedings, for the duration of the Waiting Period; provided, however, that it does not constitute Arbitral Award Default by a State-Owned Enterprise, public authority, or regulatory authority if as of the date of the Award such entity is no longer under the Control of a Governing Authority, unless the Governing Authority is otherwise legally liable for its obligations.

6.2 Compensation Amount for Arbitral Award Default. Subject to Articles 7, 8, 9, and 10, compensation for a Loss Caused by Arbitral Award Default is

(a) the Percentage of Cover of the Scheduled Payments that are due and unpaid as of each Date of Loss; provided, however, that the aggregate amount of such compensation shall not exceed the Percentage of Cover of (x) if the Award is made in favor of the Guarantee Holder, the amount of the Award, or (y) if the Award is made in favor of the Project
Enterprise, the amount as of such Date of Loss to which the Guarantee Holder is entitled through its indirect interest in the Award; less

(b) the amount of any Provisional Payments that have been made pursuant to Section 6.3, as of the Date of Loss.

6.3 Provisional Payments. Prior to payment of compensation for Arbitral Award Default, MIGA may, in its sole discretion, make one or more Provisional Payments (normally corresponding to due and unpaid Scheduled Payments and in an aggregate amount not more than 50% of the Current Amount of Guarantee), if:

(a) the Guarantee Holder or the Project Enterprise, as applicable, has not been able to obtain an Award within a period of 180 consecutive days from initiating the Dispute Resolution Procedure (x) for breach of a Specified Contractual Obligation, or (y) for repudiation of a Specified Project Agreement, and the Guarantee Holder has made a request for Provisional Payments after such time period has elapsed;

(b) MIGA has received an advisory report from an expert following administered expert proceedings as described in Annex 4; and

(c) at MIGA’s request, the Guarantee Holder has provided MIGA with an irrevocable financial guarantee in form and substance, and from a guarantor, acceptable to MIGA, to secure repayment by the Guarantee Holder to MIGA of the Provisional Payments as follows:

(i) if the Award is rendered against the Guarantee Holder, the Project Enterprise or both, the Guarantee Holder shall repay the Provisional Payments in full;

(ii) if the Award is rendered in favor of the Guarantee Holder, the Project Enterprise or both, but the awarded amount is less than the Provisional Payments, the Guarantee Holder shall repay the difference;

(iii) if the Guarantee Holder or the Project Enterprise receives compensation from the Host Government based on the Award, the Guarantee Holder shall repay the Provisional Payments up to the amount of such compensation received by it; or

(iv) if the Guarantee Holder has failed to submit a Claim for Arbitral Award Default within 18 months from the last day of the Guarantee Period in accordance with Section 10.4, the Guarantee Holder shall repay the Provisional Payments in full, in each case, plus interest at LIBOR plus three percent, calculated for the period from the date MIGA makes the Provisional Payment until the date the Provisional Payment (or relevant portion thereof) is repaid.

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ARTICLE 7. EXCLUSIONS; LIMITATION ON LIABILITY

7.1 Exclusions. MIGA shall in no case be liable for any Loss that is directly or indirectly due to:

(a) any law, decree, or regulation in force in the Host Country as of the Effective Date;

(b) any action, inaction, or omission of the Host Government or any other event occurring before the Effective Date;
(c) (i) any wrongful, dishonest, or criminal acts, or omissions, including Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, Money Laundering, or (ii) any violations of any Bona Fide Government Measure, in each case attributable to the Guarantee Holder or the Project Enterprise in connection with the Investment Project;

(d) the non-compliance by the Guarantee Holder or the Project Enterprise with the Performance Standards in connection with the Investment Project;

(e) the failure of the Guarantee Holder or the Project Enterprise (x) with respect to the Loan Agreement, to ensure, or (y) with respect to all other documentation relating to the Investment Project, to use all reasonable efforts to ensure, that such documentation has been duly authorized and executed and that the obligations contained therein are legal, valid, binding, and enforceable in accordance with their terms;

(f) the breach by the Guarantee Holder or the Project Enterprise in any material respect of its contractual obligations to the Host Government in connection with the Investment Project; or

(g) any action or omission of the Host Government that was agreed to by the Guarantee Holder or the Project Enterprise in connection with the Investment Project;

provided, however, that with respect to Arbitral Award Default, any exclusion set forth in Sections 7.1(e) and (f) shall not apply to the extent that the relevant matter was considered in the Dispute Resolution Procedure and an Award was nevertheless rendered against the Host Government.

7.2 Limitation on Liability. This Contract is based on the Guarantee Holder’s representations and warranties made to MIGA. MIGA shall have no liability for any Loss if either (i) any representation or warranty made or deemed made by the Guarantee Holder in this Contract, the Application for Guarantee, or any other written information provided to MIGA proves to be untrue in any material respect when made, or (ii) the Guarantee Holder omits to provide to MIGA any information material to (x) the Loan Agreement, the Guaranteed Loan, the Project Enterprise, or the Investment Project, or (y) the Covered Risks and Losses addressed by this Contract (“Material Misrepresentation”).

ARTICLE 8. SCHEDULED PAYMENTS; COMPENSATION CALCULATIONS, ADJUSTMENTS AND LIMITS

8.1 Scheduled Payments and Prepayments.

(a) MIGA shall only be liable in respect of an unpaid Scheduled Payment as and when originally scheduled to be due in accordance with the Payment Schedule, irrespective of any accelerated principal or mandatory prepayment amounts that have become due;

(b) Notwithstanding Section 8.1(a), if at any time all or any portion of the Guaranteed Loan is then due and payable by reason of acceleration, MIGA may, in its sole discretion, pay to the Guarantee Holder:

(i) the Percentage of Cover, in an aggregate amount not to exceed the Current Amount of Guarantee for the Contract Period in which such payment by MIGA
is made, of [the sum of (x)] the outstanding principal amount of the Guaranteed Loan then due and payable, or portion thereof, [plus (y) any accrued and unpaid interest due on Scheduled Payment Due Dates occurring on or prior to the date of such payment by MIGA]; less

(ii) the amount of Premium payable over the portion of the Guarantee Period corresponding to the Scheduled Payments with respect to which such payment by MIGA is made, calculated based on the amount determined in Section 8.1(b)(i) and assuming that such Scheduled Payments would have been paid when due [and there is no change in interest rates].

8.2 Adjustments and Limits. Compensation amounts determined by MIGA:

(a) shall be determined for each Loss by applying the Percentage of Cover (and any limits) pursuant to Section 3.2, 4.2, 5.2, or 6.2 and then adjusted in accordance with this Contract in this order:

(i) by applying any Deductible;

(ii) by applying any limit pursuant to Section 8.3;

(iii) by reduction in the amount of any other payment, recovery, or benefit with respect to the same Covered Risk received or to be received by the Guarantee Holder (including any amounts received or to be received by the Project Enterprise that have been collaterally assigned to the Guarantee Holder) from any person or entity, including the ratable portion of the Loss payable by any other insurer or guarantor with respect to such Covered Risk; and

(iv) by reduction proportionately if the Guarantee Holder has made loans to the Project Enterprise (other than loans payable in Local Currency) that MIGA has not guaranteed, and after the date of the relevant Scheduled Payment Default the Project Enterprise has paid a greater percentage of the aggregate amount of those loans than of the Scheduled Payments;

(b) shall not in the aggregate for all Losses during any Contract Period exceed the Current Amount of Guarantee for such Contract Period;

(c) shall not in the aggregate for all Losses during the Guarantee Period exceed the Maximum Aggregate Liability; and

(d) shall be zero if the Guarantee Holder submits a Claim for, or MIGA determines the total compensation amount to be, less than $10,000.

8.3 Limit for Under-Insurance. If as of the Date of Loss the outstanding principal amount of the loan under the Loan Agreement exceeds the outstanding principal amount of the Guaranteed Loan as of the Effective Date and such excess amount is not guaranteed by MIGA, then compensation is limited to (i) the Loss amount, multiplied by (ii) (A) the Current Amount of Guarantee, divided by (B) the outstanding amount of such loan.
9.1 Submission of Claims. The Guarantee Holder may submit a Claim at any time from the Date of Loss to the date 180 days after the end of the applicable Waiting Period. The Guarantee Holder shall submit to MIGA promptly all material evidence available to it from time to time as may be necessary to support the Claim, including:

(a) with respect to a Claim for Transfer Restriction, evidence demonstrating the inability of both the Guarantee Holder and the Project Enterprise to convert the Local Currency held to make a Scheduled Payment or transfer the Guarantee Currency constituting a Scheduled Payment, as the case may be, for the duration of the Waiting Period;

(b) with respect to a Claim for Expropriation, (i) the Financial Statements of the Project Enterprise, (ii) the audited balance sheet of the Project Enterprise as of the Date of Loss, and (iii) evidence concerning (A) the cause of the Scheduled Payment Default, and (B) the actions or omissions of the Host Government constituting the Expropriation;

(c) with respect to a Claim for War and Civil Disturbance, (i) in all cases, (x) the Financial Statements of the Project Enterprise, (y) evidence concerning the relevant Acts of War or Civil Disturbance and their effects, and (z) evidence concerning the cause of the Scheduled Payment Default; (ii) in the case of Loss of Assets, (x) a list of the individual tangible assets destroyed, damaged, or that have disappeared, and evidence of the events causing such destruction, damage, or disappearance, (y) invoices or other supporting documentation for the value of such assets, and (z) a reconciliation of the list of such assets to the audited balance sheet of the Project Enterprise as of the Date of Loss; and (iii) in the case of Permanent Loss of Use, (x) all material evidence related to events preventing the Project Enterprise from conducting operations, and (y) the audited balance sheet of the Project Enterprise as of the Date of Loss; and

(d) with respect to a Claim for Arbitral Award Default, (i) evidence concerning the cause of the Scheduled Payment Default, and (ii) a certified copy of the Award.

9.2 Claim Deemed Complete. A Claim will be complete when MIGA is reasonably satisfied that it has received all material evidence required to determine the Guarantee Holder’s right to compensation in accordance with Section 10.1.

9.3 Transfer and Assignment. As a condition to payment by MIGA of compensation for a Loss, the Guarantee Holder shall, and as applicable shall cause the Project Enterprise to, in accordance with MIGA’s instructions:

(a) with respect to a Claim for Transfer Restriction, deliver to MIGA in the Host Country at MIGA’s option (x) in cash, or (y) by check (subject to collection), the Percentage of Cover of the Local Currency that could not be converted or the Guarantee Currency that could not be transferred, as the case may be, to make a Scheduled Payment; provided, however, that

(x) MIGA may, in its sole discretion, require that instead of such delivery the Guarantee Holder and the Project Enterprise, as applicable, assign and transfer
to and for the benefit of MIGA the Percentage of Cover of all right, title, and interest of the Guarantee Holder (including all rights under the Loan Agreement and all rights to related Collateral) and the Project Enterprise with respect to such Local Currency or Guarantee Currency held to make a Scheduled Payment; and

(y) the Guarantee Holder may supplement the Local Currency to be transferred and assigned to MIGA from Local Currency payments made by the Project Enterprise, a guarantor, or from any other source, so that the amount of compensation payable in Guarantee Currency in accordance with Section 3.2(a) is equal to the Percentage of Cover of the unpaid Scheduled Payment;

(b) with respect to a Claim for Expropriation, assign and transfer to MIGA the Percentage of Cover of all right, title, and interest of the Guarantee Holder, including all rights under the Loan Agreement and all rights to related Collateral, with respect to the Scheduled Payments for which compensation is to be paid;

(c) with respect to a Claim for War and Civil Disturbance, assign and transfer to MIGA the Percentage of Cover of all right, title, and interest of the Guarantee Holder, including all rights under the Loan Agreement and all rights to related Collateral, with respect to the Scheduled Payments for which compensation is to be paid;

(d) with respect to a Claim for Arbitral Award Default, assign and transfer to MIGA, the Percentage of Cover of (x) the Guarantee Holder’s rights and causes of action, and (y) the Guarantee Holder’s interests in the Project Enterprise’s rights and causes of action, against the Host Government in respect of such Loss, including:

(i) the Guarantee Holder’s interest in the Award or, in the case of an Award in favor of the Project Enterprise, the pro rata interest therein to which the Guarantee Holder is entitled through its indirect interest in the Award; and

(ii) all right, title, and interest of the Guarantee Holder, including all rights under the Loan Agreement and all rights to related Collateral, with respect to the Scheduled Payments for which compensation is to be paid; and

(e) with respect to all Claims, (i) to the extent not otherwise required by this Section 9.3, assign and transfer to MIGA the Percentage of Cover of (x) the Guarantee Holder’s claims, causes of action, and other rights of recovery, and (y) the Guarantee Holder’s interests in the Project Enterprise’s claims, causes of action, and other rights of recovery, in each case against any person or entity in respect of such Loss, and (ii) deliver evidence satisfactory to MIGA that MIGA is exempt from all sharing provisions to which the Guarantee Holder may be subject, whether pursuant to the Loan Agreement, any intercreditor arrangements, or otherwise.

9.4 No Encumbrances. Each delivery, transfer, or assignment to MIGA pursuant to Section 9.3 shall be made free and clear of any claim, defense, counterclaim, right of set off, liens (including those in favor of senior lenders), security interests, or other encumbrances.
ARTICLE 10. CLAIM DETERMINATION AND PAYMENT

10.1 Onus of Proof. A Claim must demonstrate to MIGA’s reasonable satisfaction the Guarantee Holder’s right to compensation in accordance with this Contract. The responsibility for proving a Loss shall at all times rest with the Guarantee Holder.

10.2 Timing of Determination. MIGA shall determine its liability to pay compensation for a Loss, and shall notify the Guarantee Holder of its determination, no later than 30 days from the later of:

(a) the end of the Waiting Period; and
(b) the date that MIGA deems the Guarantee Holder’s Claim to be complete pursuant to Section 9.2.

If MIGA requests additional information or evidence with respect to a Claim and the Guarantee Holder fails to respond to that request within 90 days, MIGA may deem the Guarantee Holder to have withdrawn that Claim.

10.3 Timing and Currency of Payment; Interest. MIGA shall pay compensation for a Loss in Guarantee Currency not more than 30 days after the date MIGA determines that it is liable to make such payment. Any compensation amount paid by MIGA after such 30-day period shall be paid together with interest thereon to the date of payment at LIBOR plus three percent, which payment discharges all liability for such late payment.

10.4 Deadlines for Claim Submission. The Guarantee Holder may submit a Claim only if the Date of Loss with respect to a Covered Risk occurs during the Guarantee Period (and, if the Contract is terminated pursuant to Section 14.2, 14.3 or 14.4, prior to such early termination); provided, however, that with respect to Arbitral Award Default, if the Dispute Resolution Procedure has been initiated during the Guarantee Period but the Date of Loss occurs after the Guarantee Period, the Guarantee Holder may submit a Claim up to 18 months after the end of the Guarantee Period. In all cases, MIGA shall have no liability for any Loss if a Claim for such Loss is submitted more than 180 days after the end of the Waiting Period.

ARTICLE 11. SUBROGATION; OTHER RIGHTS FOLLOWING CLAIM PAYMENT

11.1 MIGA Subrogated. In addition to its rights as assignee under Section 9.3, MIGA shall be fully subrogated, in the amount of any compensation paid for a Loss, plus interest and expenses, to all claims, causes of action, and other rights of recovery that the Guarantee Holder has against the Host Government, the Project Enterprise, or any other person or entity in respect of such Loss. The Guarantee Holder shall not impair or prejudice MIGA’s rights of subrogation.

11.2 MIGA’s Independent Right. Nothing in this Contract shall impair or be deemed to be a waiver of MIGA’s independent right to effect salvage or other recoveries (without any obligation to share the proceeds thereof) from the Host Government or any other source.

11.3 Covenants Following Claim Payments. Following any payment of compensation for a Loss, (x) at MIGA’s written direction, and (y) in exchange for reimbursement by MIGA of reasonable expenses for which MIGA has given its prior written consent, the Guarantee Holder shall, and shall
use all reasonable efforts to cause the Project Enterprise to, take all commercially reasonable measures to:

(a) cooperate fully with MIGA in the administration, preservation, and protection of assets, rights, claims, causes of action, and other interests obtained by MIGA;

(b) pursue available administrative, arbitral, and judicial remedies arising from the Loss, in cooperation with or on behalf of MIGA, against the Host Government;

(c) negotiate in good faith with the Host Government, in cooperation with or on behalf of MIGA; and

(d) pursue other potential sources of recovery for the Loss.

11.4 Recoveries Held in Trust for MIGA. If the Guarantee Holder or the Project Enterprise receives any compensation or other financial benefit from the Host Government or any other source for a Scheduled Payment for which compensation has been paid by MIGA, it shall hold the Percentage of Cover of the compensation amount or other financial benefit received in trust for the benefit of MIGA, and the Guarantee Holder shall, or shall cause the Project Enterprise to, promptly pay such amount to MIGA.

ARTICLE 12. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF GUARANTEE HOLDER

12.1 Covenants Regarding Project Enterprise. The Guarantee Holder shall (i) cause the Project Enterprise to, and (ii) in addition, diligently enforce its rights under the Loan Agreement to require the Project Enterprise to:

(a) maintain its books and records, and prepare its Financial Statements, in accordance with International Financial Reporting Standards;

(b) retain all material information relating to the Guaranteed Loan and the Investment Project;

(c) obtain and maintain in effect all registrations, filings, declarations, permits, consents, authorizations, concessions and licenses required for the Guaranteed Loan and all Collateral, the establishment of the Project Enterprise and the implementation of the Investment Project;

(d) promptly furnish MIGA with any information that MIGA may reasonably request and permit MIGA’s duly authorized representatives to examine and make copies of books, records, Financial Statements, audits, and any other material information relating to the Guaranteed Loan and the Investment Project whenever required and wherever located;

(e) take all action required to maintain the legal enforceability of all documentation relating to the Guaranteed Loan, all Collateral, and the Investment Project;

(f) in connection with the Investment Project, comply with (i) all Host Country laws and regulations, including Applicable E&S Laws, and (ii) all its contractual obligations to the Host Government;

(g) implement the Investment Project in accordance with the Performance Standards, deliver to MIGA all documents as and when specified in the
E&S Action Plan, and take all actions specified in the E&S Action Plan, all in form and substance satisfactory to MIGA;

(ii) with respect to any Significant E&S Event (A) notify MIGA within two days after its occurrence, specifying the nature of the event and any on-site or off-site impact likely to result therefrom; (B) as soon as practicable, but no later than 30 days after its occurrence, provide MIGA with a report that includes a detailed description of such Significant E&S Event, and the measures that the Project Enterprise plans to take to address it and to prevent any future similar event; and (C) thereafter, promptly keep MIGA apprised of the implementation of those measures; and

(iii) within 90 days after the end of each fiscal year of the Project Enterprise, deliver to MIGA the Annual Monitoring Report, in form and substance satisfactory to MIGA;


(i) notify the Guarantee Holder and MIGA promptly upon learning of any Loss or Potential Loss;

(j) not undertake any activities other than the Investment Project without MIGA’s prior written consent, which consent shall not be unreasonably withheld;

(k) (x) apply the proceeds of the Guaranteed Loan solely to the Investment Project, and (y) not make any material changes to the Investment Project;

(l) use all reasonable efforts to preserve and protect the Guaranteed Loan, all Collateral and the Investment Project and take all reasonable measures, including pursuing administrative, judicial, arbitral, or other available remedies, to avert a Loss, minimize the amount of any Loss that does occur, and obtain compensation therefor, including from any other insurer or guarantor; provided, however, that the Project Enterprise shall not, without MIGA’s prior written consent, waive any right, claim, cause of action, or other remedy, or accept any offer of compensation for any Loss;

(m) upon reasonable prior notice, permit MIGA, or any authorized representative of MIGA, to visit and inspect the Investment Project and any associated facilities, including to conduct environmental, social, and developmental monitoring of the Investment Project and the Project Enterprise;

(n) provide to MIGA the Development Effectiveness Indicators within 90 days after the end of each fiscal year of the Project Enterprise;

(o) provide to the Guarantee Holder promptly all material evidence available to it from time to time as may be necessary to support a Claim; and

(p) not, without MIGA’s prior written consent, (x) amend, modify, supplement, or waive any material rights or obligations with respect to, or (y) assign, transfer, or encumber any rights under, any Award, the Loan Agreement (including the schedule for payments thereunder), any Specified Project Agreement, or any other agreement with the Host Government related to the Investment Project.
12.2 Covenants Regarding Guarantee Holder. The Guarantee Holder shall:

(a) maintain its books and records, and prepare its Financial Statements, in accordance with International Financial Reporting Standards;

(b) retain all material information relating to the Guaranteed Loan and the Investment Project;

(c) obtain and maintain in effect all registrations, filings, declarations, permits, consents, authorizations, concessions and licenses required for the Guaranteed Loan and all Collateral;

(d) promptly furnish MIGA with any information that MIGA may reasonably request and permit MIGA's duly authorized representatives to examine and make copies of books, records, Financial Statements, audits, and any other material information relating to the Guaranteed Loan and the Investment Project whenever required and wherever located;

(e) in connection with the Guaranteed Loan and, to the extent applicable to it, the Investment Project, comply with (i) all Host Country laws and regulations, including Applicable E&S Laws and those that protect core labor standards, and (ii) all its contractual obligations to the Host Government;

(f) to the extent applicable to it, implement and operate the Investment Project in accordance with the Performance Standards, deliver to MIGA all documents as and when specified in the E&S Action Plan, in form and substance satisfactory to MIGA, and take all actions specified in the E&S Action Plan;

(g) in connection with the Guaranteed Loan and the Investment Project, refrain from, engaging in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering;

(h) notify MIGA promptly upon learning of any Loss or Potential Loss;

(i) notify MIGA upon making any additional loans to the Project Enterprise, including information regarding any seniority or subordination of such loans to the Guaranteed Loan;

(j) preserve and protect the Guaranteed Loan, all Collateral, and the Investment Project and take all reasonable measures, including pursuing administrative, judicial, arbitral, or other available remedies, to avert a Loss, minimize the amount of any Loss that does occur, and obtain compensation therefor; provided, however, that the Guarantee Holder shall not, without MIGA’s prior written consent, waive any right, claim, cause of action, or other remedy, or accept any offer of compensation for any Loss;

(k) remain eligible for MIGA coverage in accordance with the MIGA Convention;

(l) not, without MIGA’s prior written consent, assign, transfer, or encumber any rights under this Contract;

(m) not, without MIGA’s prior written consent, (x) amend, modify, supplement, or waive any material rights or obligations with respect to, or assign, transfer, or encumber any rights under, any Award, the Loan Agreement (including the schedule for payments thereunder), any Specified Project Agreement, or any other agreement with the Host
Government related to the Investment Project, or (y) take any steps to change or prejudice its rights to take any action described in clause (x) above;

(n) bear for its own account and remain at risk for at least the Percentage of Self-Insurance of each Loss; and

(o) take no action to limit any of its rights and remedies with respect to any breach by the Project Enterprise of the obligations set forth in Section 12.1.

12.3 Representations and Warranties. The Guarantee Holder represents and warrants, as of (except as otherwise provided below) each of (1) the Effective Date, (2) the first day of each Contract Period, (3) the date any Claim is submitted, and (4) the date any compensation is paid, that:

(a) as of the Effective Date only, all information in the Application for Guarantee is correct and complete in all material respects and does not contain any materially false or misleading statements or omissions;

(b) all information provided (other than in the Application for Guarantee) by or on behalf of the Guarantee Holder to MIGA in writing, including in connection with any Claim, as such information may be updated from time to time, is correct and complete in all material respects and does not contain any materially false or misleading statements or omissions;

(c) the Loan Agreement provides all rights and powers necessary (x) to require the Project Enterprise to perform the obligations set forth in Section 12.1, and (y) to exercise the rights and remedies set forth in Section 12.2(o);

(d) none of (i) the Guarantee Holder, or (ii) the Project Enterprise, or any other shareholder of the Project Enterprise, has engaged in any Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering in connection with the Guaranteed Loan or the Investment Project;

(e) the Project Enterprise is in compliance with the Performance Standards, subject to any E&S Action Plan then in effect;

(f) each of (i) the Guarantee Holder, and (ii) the Project Enterprise has obtained and maintained in effect all registrations, filings, declarations, authorizations, concessions and licenses required for the establishment of the Project Enterprise, the performance of the Loan Agreement, and the implementation of the Investment Project;

(g) except as disclosed pursuant to Section 12.1(i), it has no knowledge after due inquiry of any Loss or Potential Loss; and

(h) with respect to any documentation relating to the Investment Project (including the Loan Agreement), as of (1) the date of execution of such documentation, and the date of each amendment thereto, (2) the Effective Date, (3) the first day of each Contract Period, (4) the date any Claim is submitted, and (5) the date any compensation is paid, such documentation has been duly authorized and executed, and the obligations contained therein are legal, valid, binding, and enforceable in accordance with their terms.
ARTICLE 13. PREMIUM PAYMENTS AND COVERAGE ADJUSTMENTS

13.1 **Premium Payments.** The Guarantee Holder shall pay to MIGA in Guarantee Currency (i) the Total Premium Amount Due for each Premium Due Date, plus (ii) with respect to any portion thereof not paid when due, the unpaid amount plus interest thereon at LIBOR plus three percent.

13.2 **Automatic Coverage Reductions.** The Current Amount of Guarantee is reduced for the remainder of the Guarantee Period by (without double counting):

   (a) the amount of compensation paid by MIGA for any Loss; and

   (b) the Percentage of Cover of the amount of each Scheduled Payment, regardless of whether the Guarantee Holder has received such Scheduled Payment but without prejudice to the Guarantee Holder's right to receive compensation under any Claim therefor, effective on the first day of the Contract Period immediately following the Scheduled Payment Due Date.

13.3 **Election to Reduce Coverage.** The Guarantee Holder, by delivery to MIGA not less than 30 days before the first day of any Contract Period of a notice in the form of Annex 5A, may irrevocably elect to reduce for the remainder of the Guarantee Period (i) the Current Amount of Guarantee, the Standby Option Amount, or both, by a specified amount, and (ii) the Maximum Aggregate Liability by the same amount, but only to the extent that such reductions do not result in the Guarantee Holder being under-insured with respect to the Guaranteed Loan. If so reduced, the Current Amount of Guarantee, the Standby Option Amount, and the Maximum Aggregate Liability may not thereafter be increased.

13.4 **Election to Increase Coverage from Standby Option.**

   (a) If disbursements of the Guaranteed Loan are to be made over time, the Guarantee Holder, by delivery to MIGA not less than 30 days before the first day of the immediately succeeding Contract Period of an irrevocable notice in the form of Annex 5B, (x) may transfer amounts reflecting expected future disbursements and (y) shall, if not already transferred under clause (x), transfer amounts reflecting all disbursements actually made, in each case from the Standby Option Amount, as available, to the Current Amount of Guarantee, effective as of the first day of such Contract Period.

   (b) The Standby Option Amount is reduced for the remainder of the Guarantee Period by any amounts transferred from the Standby Option Amount to the Current Amount of Guarantee.

   (c) If any Potential Loss occurs before the effectiveness of a transfer from the Standby Option Amount, MIGA may suspend the Standby Option by notice to the Guarantee Holder.

   (d) If any Loss occurs before the effectiveness of a transfer from the Standby Option Amount, the Standby Option is automatically suspended until reinstated at MIGA’s sole discretion.
ARTICLE 14. TERM AND TERMINATION; DEFAULTS AND REMEDIES

14.1 Term of Contract; Continuing Obligations. Unless terminated earlier pursuant to Section 14.2, 14.3 or 14.4, this Contract terminates on the last day of the Guarantee Period; provided, however, that (i) the Guarantee Holder may submit Claims thereafter as set forth in Section 10.4, and (ii) during any period after the Guarantee Period in which there is a Potential Claim, all obligations of the Guarantee Holder, and all rights and remedies of MIGA, under this Contract shall remain in effect until MIGA determines liability for, and if applicable pays, any resulting Claim.

14.2 Termination by Guarantee Holder; Termination Fee.

(a) The Guarantee Holder may terminate this Contract, effective as of the last day of any Contract Period, by delivering a Notice of Termination at least 30 days prior to such date.

(b) If the Guarantee Holder terminates this Contract during the first three years of the Guarantee Period, the Guarantee Holder shall pay to MIGA 50% of what would have been the Total Premium Amount Due for the remainder of those first three years but for such termination, based on coverages in effect at the time of termination; provided, however, that this Section 14.2(b) does not apply to (i) liquidation, bankruptcy, insolvency, winding up, dissolution, or similar measure relating to the Project Enterprise; (ii) the sale or assignment of the Guaranteed Loan to an unrelated third party; or (iii) the prepayment or refinancing of the Guaranteed Loan.

14.3 Termination by MIGA for Nonpayment.

(a) With respect to the first Contract Period, if the Guarantee Holder fails to pay MIGA the Total Premium Amount Due on or before the Initial Premium Due Date, then MIGA may terminate this Contract effective retroactively to the Effective Date by delivery to the Guarantee Holder of a Notice of Termination;

(b) With respect to each subsequent Contract Period, if the Guarantee Holder fails to pay MIGA the Total Premium Amount Due on or before the Premium Due Date, and that failure continues for 30 days after notice to the Guarantee Holder (“Notice of Nonpayment”), then MIGA may by Notice of Termination terminate this Contract effective as of 12:01 AM Washington, DC time retroactively to the first day of such Contract Period; and

(c) Irrespective of whether a Notice of Nonpayment or a Notice of Termination has been delivered, MIGA shall have no liability for any Loss arising during any Contract Period for which any part of the Total Premium Amount Due was unpaid.

14.4 Contract Defaults; Remedies.

(a) The occurrence of any of the following events constitutes a “Contract Default” under this Contract:

(i) any Material Misrepresentation;

(ii) the Guarantee Holder fails to comply with the confidentiality provisions of Section 16.3;
(iii) the Guarantee Holder or the Project Enterprise has at any time in connection with the Investment Project engaged in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering;

(iv) the Guarantee Holder is in material non-compliance with any other covenant or obligation specified under this Contract, except (A) a default for non-payment under Section 14.3, for which the remedy set forth in Section 14.3 applies; and (B) non-compliance with the obligation set forth in Section 12.1(n); provided, however, that MIGA may, in its sole discretion, grant a reasonable period of time to cure any Contract Default under this Section 14.4(a)(iv).

(b) If a Contract Default has occurred and, if applicable, has not been cured, then

(i) MIGA shall have no liability for any Loss, including in relation to any Potential Claim; and

(ii) MIGA may terminate this Contract by delivering a Notice of Termination, effective as of the date of such Notice of Termination.

14.5 No Premium Refunds. If this Contract terminates for any reason, MIGA shall not be obligated to return any portion of the Total Premium Amount Due previously paid to it.

ARTICLE 15. DISPUTE RESOLUTION AND APPLICABLE LAW

15.1 Arbitration Final and Binding. Any dispute between the Guarantee Holder and MIGA arising out of or in connection with this Contract shall be settled by final and binding arbitration in accordance with the MIGA Rules of Arbitration.

15.2 Arbitration Procedures; Applicable Law. The arbitral tribunal constituted under the MIGA Rules of Arbitration shall apply this Contract, the MIGA Convention and, to the extent that issues in dispute are not covered by this Contract or the MIGA Convention, general principles of law. The seat of arbitration shall be The Hague, Netherlands, the language of the arbitration shall be English, and the arbitration proceedings shall be held in Washington, DC, United States.

15.3 Arbitration Award. The award of the arbitral tribunal shall be final and binding and shall be carried out without delay.

ARTICLE 16. MISCELLANEOUS

16.1 Survival. The rights and obligations contained in Section 6.3, Articles 10 and 11, Sections 12.3, 14.1, and 14.2(b), Article 15, and Sections 16.1 and 16.3 survive the termination of this Contract.

16.2 Notices. Every notice, request, application, consent, report, approval, or waiver concerning this Contract (including any Claim, any Notice of Non-Payment, and any Notice of Termination) shall be in writing and shall be deemed made when it is delivered (x) by hand, courier, certified mail, or facsimile when transmission has been completed, or (y) in the case of acknowledgement
by MIGA of Premium and other amounts received, by email, to the address for such party specified in Clause 17 of the Special Conditions.

16.3 Confidentiality.

(a) The Guarantee Holder (for purposes of this Section 16.3(a), the “Receiving Party”) shall not at any time, without MIGA’s prior written consent, disclose (x) any terms or conditions of this Contract, or (y) any information (other than Excluded Information) made available to it by MIGA (for purposes of this Section 16.3(a), the “Disclosing Party”) (i) to government regulators in the Host Country, or (ii) to any other third party, other than (A) (i) to the Guarantee Holder’s lawyers, auditors, accountants and financial advisors who need to know such information for purposes of performing professional services for the Guarantee Holder, and (2) to any prospective lenders and rating agencies, in each case on condition that the Guarantee Holder shall require such persons to comply with the terms of this Section 16.3, and be responsible for any breach of this Section 16.3 by any such persons; and (B) to, or as required by, government regulators in the Guarantee Holder’s country.

(b) MIGA (for purposes of this Section 16.3(b), the “Receiving Party”) shall not at any time, without the Guarantee Holder’s prior written consent, disclose any information (other than Excluded Information) made available to it by the Guarantee Holder (for purposes of this Section 16.3(b), the “Disclosing Party”), other than to directors, officers, employees, accountants, consultants, and counsel of MIGA and of other members of the World Bank Group, and to reinsurers; provided, however, that MIGA may disclose certain information in accordance with the Access to Information Policy, including:

(x) summary information relating to the Investment Project, including data relating to the developmental impact of the Investment Project, the name and country of the Guarantee Holder, the Project Enterprise, the Host Country, the Guaranteed Loan, the Maximum Aggregate Liability, and the Covered Risks; and

(y) any environmental studies provided to MIGA with respect to the Investment Project.

MIGA’s degree of care with respect to such information shall be no greater than that which it exercises with regard to its own information of like character.

(c) “Excluded Information” means information that

(i) was available on a non-confidential basis prior to its receipt by the Receiving Party;

(ii) is or becomes available to the public, other than as a result of disclosure by the Receiving Party;

(iii) is obtained by, or becomes available to, the Disclosing Party from any source other than the Receiving Party or any of the Receiving Party’s respective agents or representatives;

(iv) is independently developed by the Receiving Party; or

(v) that the Receiving Party is requested or required in the context of administrative or judicial proceedings or pursuant to applicable law, rule or regulation, to
disclose, in which case (A) the Receiving Party shall, to the extent permissible under applicable law, provide the Disclosing Party with prompt notice of such request so that the Disclosing Party, at its expense, may seek an appropriate protective order or other remedy, or waive the Receiving Party’s obligation to comply with this Section 16.3; and (B) if a protective order or other remedy is not obtained, the Receiving Party shall furnish that portion of the confidential information that, in its opinion, it is required to disclose, without liability hereunder.

16.4 Amendments and Modifications. No provision of this Contract may be amended, modified, supplemented, or waived except in a written agreement executed by authorized representatives of the Guarantee Holder and MIGA; provided, however, that either party may notify the other of a change of its notice address specified in Clause 17 of the Special Conditions.

16.5 Waivers. Without prejudice to Article 34 of the MIGA Rules of Arbitration, neither MIGA nor the Guarantee Holder is deemed to have waived any of its rights under this Contract unless expressly so stated in a notice by the party waiving such right to the other party.

16.6 Rights, Privileges and Immunities. No provision of this Contract shall be deemed to waive, modify, or otherwise impair any of MIGA’s rights, remedies, powers, privileges, and immunities arising from the MIGA Convention or other international agreements, or under applicable law.

16.7 No Third-Party Beneficiaries. The provisions of this Contract are for the sole benefit of MIGA and the Guarantee Holder. No other person or entity shall have rights as a direct or indirect beneficiary of, be entitled to rely on, or have standing or otherwise have any direct or indirect cause of action or claim under, this Contract or any provision hereof, including with respect to any environmental, social, and developmental monitoring of the Investment Project and the Project Enterprise.

16.8 Integration; Entire Agreement. This Contract and any agreement, document or instrument attached hereto integrate all the terms and conditions mentioned herein or incidental thereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof.

16.9 Execution in Counterparts. This Contract may be executed in counterparts, all of which, taken together, constitute one and the same contract.
Annex A – Payment Schedule

All capitalized terms used in this Annex A and not otherwise defined shall have their respective meanings specified in the Loan Agreement.

Specified below under the columns headed “Principal Payment” and “Interest Payment” are the Scheduled Payments with respect to the Guaranteed Loan in the amounts (or, with respect to variable rate interest, based on the rates and in an amount not to exceed the interest payment amount specified below) due on each Scheduled Payment Due Date:

<table>
<thead>
<tr>
<th>Scheduled Payment Due Date</th>
<th>Principal Payment</th>
<th>Principal Balance</th>
<th>Interest Payment*</th>
</tr>
</thead>
<tbody>
<tr>
<td>, 20__</td>
<td>[ ]</td>
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<td>, 20__</td>
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</table>

*Interest column may specify (1) an amount certain, or (2) a capped amount (up to ____), or (3) the word “variable” with reference to the loan agreement for basis of calculation.

[Add for variable interest rate loans:]

(Note: Interest amounts are to be determined for each Contract Period in accordance with the Loan Agreement. Amounts excluded in the definition of “Scheduled Payment” in the General Conditions are not covered.)
Annex 1 – Specified Project Agreements and Specified Contractual Obligations

[NOT APPLICABLE TO THIS CONTRACT]

[List, by Specified Project Agreement and Section number, all Specified Contract Obligations.]

[Note which State-Owned Enterprises, public or regulatory authorities, and other entities are designated as being part of the Host Government, if applicable]
Annex 2 – MIGA’s Anti-Corruption Guidelines

(as in effect on October 15, 2006)

The purpose of these Guidelines is to clarify the meaning of the terms “Corrupt Practices”, “Fraudulent Practices”, “Coercive Practices”, “Collusive Practices” and “Obstructive Practices” in the context of MIGA operations.

CORRUPT PRACTICES

A “Corrupt Practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another person.

Interpretation

1. Corrupt Practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of Corrupt Practices.

2. It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payor’s books and records. Similarly, an investor will not be held liable for Corrupt or Fraudulent Practices committed by entities that administer bona fide social development funds or charitable contributions.

3. In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally accepted industry standards shall not constitute Corrupt Practices unless the action violates applicable law.

4. Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.

5. The World Bank Group does not condone facilitation payments. For the purposes of implementation, the interpretation of “Corrupt Practices” relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.
FRAUDULENT PRACTICES

A “Fraudulent Practice” is any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.

Interpretation

1. An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a “Fraudulent Practice” for purposes of World Bank Group sanctions.

2. Fraudulent Practices are intended to cover actions or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in operations of the International Finance Corporation, a member of the World Bank Group (“IFC”), the Partial Risk Guarantee operations conducted by the Project Finance Group of the International Bank for Reconstruction and Development (“PRG”), or MIGA. Similarly, other illegal behavior is not condoned, but will not be sanctioned as a Fraudulent Practice under the World Bank sanctions program as applicable to IFC, PRG and MIGA operations.

COERCIVE PRACTICES

A “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of a person to influence improperly the actions of a person.

Interpretation

1. Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

2. Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

COLLUSIVE PRACTICES

A “Collusive Practice” is an arrangement between two or more persons designed to achieve an improper purpose, including to influence improperly the actions of another person.
Interpretation

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

OBSTRUCTIVE PRACTICES

An “Obstructive Practice” is: (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice, and/or threatening, harassing or intimidating any person to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede MIGA’s access to contractually required information in connection with a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice.

Interpretation

Any action legally or otherwise properly taken by a person to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

General Interpretation

A person should not be liable for actions taken by unrelated third parties unless the first person participated in the prohibited act in question.
Annex 3 – Selected Definitions

“Annual Monitoring Report” means an annual environmental and social monitoring report: (i) confirming compliance by the Project Enterprise with the Performance Standards, any applicable E&S Management System, the E&S Action Plan, and Applicable E&S Laws; and (ii) identifying any material non-compliance or failure and the actions being taken to remedy any such deficiency.

“Applicable E&S Laws” means all applicable statutes, laws, ordinances, rules, regulations and international conventions or agreements of the Host Country, including all authorizations setting standards concerning environmental, social, labor, health and safety, or security risks of the type contemplated by the Performance Standards.

“Development Effectiveness Indicators” means the set of development metrics to be provided by the Guarantee Holder to MIGA and specified in Annex 3C.

“E&S Action Plan” means the Environmental and Social Action Plan set forth in Annex 3B.

“E&S Management System” or “ESMS” means an environmental, health, safety, and social management system implemented or to be implemented by the Project Enterprise and which enables or will enable the Project Enterprise to identify, assess, and manage environmental and social risks in respect of its operations on an ongoing basis, in compliance with the Performance Standards and Applicable E&S Laws. Such system will include manuals and related documents, including policies, management programs and plans, procedures, requirements, performance indicators, responsibilities, training, and periodic audits and inspections with respect to environmental and social matters designed to identify, assess, and manage environmental, health, safety and social risks in respect of the Investment Project on an ongoing basis.

“Money Laundering” means the acquisition, possession, use, conversion, transfer, or concealment of the true nature of property of any description, and legal documents or instruments evidencing title to, or interest in, such property, knowing that such property is an economic advantage from criminal offences, for the purpose of (a) concealing or disguising the illicit origin of the property; or (b) assisting any person who is involved in the commission of the criminal offence as a result of which such property is generated, to evade the legal consequences of such actions.

“Performance Standards” means, with respect to the Investment Project and the Project Enterprise, the Performance Standards on Environmental and Social Sustainability listed on Annex 3A, as in effect on the Effective Date.

“Significant E&S Event” means: (i) any significant social, labor, health and safety, security or environmental incident, accident, or circumstance relating to the Investment Project, including explosions, spills, any workplace accidents that result in death, serious or multiple injury, material pollution, or any violent labor unrest or dispute between the Project
Enterprise or security forces (assigned to protect the Investment Project) and local communities; or (ii) any other event or circumstance having, or which could reasonably be expected to have, a material adverse effect on the implementation or operation of the Investment Project in accordance with the Performance Standards.

[Include any additional defined terms used in the Action Plan]
Annex 3A – Performance Standards

Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts

Performance Standard 2: Labor and Working Conditions

Performance Standard 3: Resource Efficiency and Pollution Prevention

Performance Standard 4: Community Health, Safety and Security

Performance Standard 5: Land Acquisition and Involuntary Resettlement

Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

Performance Standard 7: Indigenous Peoples

Performance Standard 8: Cultural Heritage

MIGA’s Performance Standards on Environmental and Social Sustainability may be found at: http://www.miga.org/documents/performance_standards_env_and_social_sustainability.pdf
Annex 3B – E&S Action Plan

<table>
<thead>
<tr>
<th>No.</th>
<th>Action</th>
<th>Deliverable</th>
<th>Timeline</th>
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[Defined terms used should be defined in Annex 3]
Annex 3C – Development Effectiveness Indicators

As a member of the World Bank Group, MIGA tracks development outcomes of projects supported. This Annex serves as a means for updating data estimates that were previously provided by the Guarantee Holder to MIGA during the underwriting process. MIGA requires that the following indicators be submitted annually in order to monitor and track the development outcomes of the Investment Project during the Guarantee Period.

The Guarantee Holder or Project Enterprise is to complete the table below. Indicator definitions are included for reference purposes and best estimates are acceptable. All financial values should be denominated in Guarantee Currency.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>[Fiscal Year]</th>
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<tbody>
<tr>
<td>Direct Employment (#)</td>
<td></td>
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<tr>
<td>Female Employment (%)</td>
<td></td>
</tr>
<tr>
<td>Taxes and Fees</td>
<td></td>
</tr>
<tr>
<td>E&amp;S Management Systems (y/n)</td>
<td></td>
</tr>
<tr>
<td>Purchases from Domestic Suppliers</td>
<td></td>
</tr>
<tr>
<td>Sector indicator #1 &lt;additional sector indicators, as defined by project team, to be added to table&gt;</td>
<td></td>
</tr>
<tr>
<td>Sector indicator #2</td>
<td></td>
</tr>
</tbody>
</table>

Definitions:

Direct Employment: Total number of employees working directly for the Project Enterprise as of the end of its fiscal year. The unit of account is a permanent full-time equivalent paid job. To be treated as permanent, the job should have a life expectancy of at least one year at the time of forecast. Part-time jobs are converted to full-time equivalent jobs on a pro rata basis with anything over 30 hours/week treated as full time. If the information is not
available the rule-of-thumb is two part-time jobs equal a full-time job. Seasonal jobs are incidental to the operation. However, if the Investment Project relies heavily on seasonal jobs, as in the tourism sector for example, they should be included on a pro rata basis, a three-month job becoming one-quarter of a full-time equivalent job (i.e., four jobs for three months equals one job on an annual basis).

**E&S Management Systems:** The indicator refers to the Project Enterprise’s E&S Management System and tracks whether the Project Enterprise is compliant with Performance Standard 1 and has an E&S Management System active and in place.

**Female Employment:** Total female employment as a percentage of total employees in the Project Enterprise. This is a sub category of employment and so definition of total direct employment as described above should be used in this calculation. Subcontractor employment should not be reported.

**Purchases from Domestic Suppliers:** The annual purchase of goods and services of the Project Enterprise from local suppliers (including raw materials, civil works, engineering and installation, security, gardening, cleaning, and marketing and research from local companies). This will exclude utility bills, government-provided services and imports handled through a local facilitating agent.

**Taxes and Fees:** All transfers to all levels of the government made by the Project Enterprise or its parent on its behalf, including: income or profit taxes, sales, and excise taxes, and VAT receipts. Other payments collected by the government include royalties, bonuses, dividends, management/concession fees, share of profit, licensing, permitting, etc. Specific subsidies to the Project Enterprise should be deducted.

**Sector definitions:**

[To be added as defined by project team]
Annex 4 – Expert Advisory Report Regarding Provisional Payments

[NOT APPLICABLE TO THIS CONTRACT]

1. In connection with a request for a Provisional Payment pursuant to Section 6.3 of the General Conditions, the Guarantee Holder and MIGA shall submit the matter to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce (“ICC”) in force at the time of such request.

2. The only issues to be reviewed by the expert appointed by the ICC are the allegations forming the basis of the Dispute Resolution Procedure between the Guarantee Holder or the Project Enterprise and the Host Government. The parties shall request that the expert issue an advisory report on (i) the merits of the Guarantee Holder’s or Project Enterprise’s allegations against the Host Government; (ii) the likelihood of the Guarantee Holder’s or Project Enterprise’s success in such Dispute Resolution Procedure; and (iii) a valuation of any Award against the Host Government should one be rendered in favor of the Guarantee Holder or Project Enterprise, as applicable. Any findings of the expert are rendered solely for the purpose of assisting MIGA in its decision whether to make a Provisional Payment. The expert’s advisory report is not binding on MIGA and is of an advisory nature only.

3. The Guarantee Holder shall pay all fees and expenses incurred in connection with the administered expertise proceedings.

4. All documents prepared or produced in connection with the administered expertise proceedings, the statement of the expert’s mission, and the expert’s report and findings are confidential in accordance with Section 16.3 of the General Conditions. Such materials shall not be used or produced by any of the Guarantee Holder, the Project Enterprise, or MIGA in any proceeding with any third party unless such use or production is duly compelled in connection with such proceeding.
Annex 5A – Form of Notice of Reduction in Current Amount of Guarantee and Maximum Aggregate Liability

Must be dated and received by MIGA not less than 30 days before the first day of applicable Contract Period.

[Date]

By Facsimile: +1 202-522-2630

Multilateral Investment Guarantee Agency
1818 H Street, NW
Washington, DC 20433
United States of America

Attn: Contract Management & Portfolio Services
MIGA Operations

Ladies and Gentlemen:

Re: Contract of Guarantee No. [_________] dated [_______], 20[___], (the “Contract of Guarantee”) between the Multilateral Investment Guarantee Agency (“MIGA”) and [_________] (the “Guarantee Holder”).

All capitalized terms used herein and not otherwise defined have their respective meanings specified in the Contract of Guarantee.

The Guarantee Holder hereby certifies as follows:

1. As of the date hereof, (a) the Current Amount of Guarantee is [Amount in Guarantee Currency]; [(b) the Standby Option Amount is [Amount in Guarantee Currency];] and (c) the Maximum Aggregate Liability is [Amount in Guarantee Currency]. The next Scheduled Payment of principal of the Guaranteed Loan is due on [_______], 20[___], in the principal amount of [Amount in Guarantee Currency].

2. The first day of the upcoming Contract Period is [_______], 20[___], on which date the outstanding principal amount of the Guaranteed Loan (assuming that the principal payment specified above is made) will be [Amount in Guarantee Currency]. [Must be consistent with principal balance shown in Payment Schedule]
3. In accordance with Section 13.3 of the General Conditions, the Guarantee Holder irrevocably elects to reduce the Current Amount of Guarantee, the remaining Standby Option Amount, and the Maximum Aggregate Liability as of the first day of the upcoming Contract Period, for such Contract Period and the remainder of the Guarantee Period, so that as of such first day of the upcoming Contract Period: (a) the Current Amount of Guarantee will be [Amount in Guarantee Currency]; (b) the remaining Standby Option Amount will be [Amount in Guarantee Currency]; and (c) the Maximum Aggregate Liability will be [Amount in Guarantee Currency], [sum of (a) and (b)]. [Must be not less than principal amount shown in Section 2 above.]

Sincerely,

[GUARANTEE HOLDER]

By: ______________________________
    (signature)

______________________________
Authorized Representative
   (name and title)

______________________________
   (date)
Annex 5B – Form of Notice of Increase in Current Amount of Guarantee

[NOT APPLICABLE TO THIS CONTRACT]

Must be dated and received by MIGA not less than 30 days before the first day of applicable Contract Period.

[Date]

By Facsimile: +1 202-522-2630

Multilateral Investment Guarantee Agency
1818 H Street, NW
Washington, DC 20433
United States of America

Attn: Contract Management & Portfolio Services
MIGA Operations

Ladies and Gentlemen:

Re: Contract of Guarantee No. [_________] dated [_______], 20[__], (the “Contract of Guarantee”) between the Multilateral Investment Guarantee Agency (“MIGA”) and [_________] (the “Guarantee Holder”).

All capitalized terms used herein and not otherwise defined have their respective meanings specified in the Contract of Guarantee.

The Guarantee Holder hereby certifies as follows:

1. As of the date hereof, (a) the Current Amount of Guarantee is [Amount in Guarantee Currency], and (b) The outstanding principal amount of the Guaranteed Loan is [Amount in Guarantee Currency].

2. The first day of the upcoming Contract Period is [_______], 20[__]. Additional disbursements of the Guaranteed Loan have been made or will be made over time such that the outstanding principal amount of the Guaranteed Loan as of the first day of such upcoming
Contract Period will be [Amount in Guarantee Currency]. Attached hereto is a revised Annex A reflecting such additional disbursements, specifying the revised amounts of each Scheduled Payment on the respective Scheduled Payment Due Dates.

3. In accordance with Section 13.4 of the General Conditions, the Guarantee Holder irrevocably elects to increase the Current Amount of Guarantee as of the first day of the upcoming Contract Period, for such Contract Period and the remainder of the Guarantee Period, by transferring [Amount in Guarantee Currency] from the available Standby Option Amount to the Current Amount of Guarantee, so that as of such first day of the upcoming Contract Period: (a) the Current Amount of Guarantee will be [Amount in Guarantee Currency]; and (b) the remaining Standby Option Amount will be [Amount in Guarantee Currency].

4. It has no knowledge of any Potential Loss as of the date hereof, and in accordance with Section 12.2(h) of the General Conditions it shall notify MIGA of any Potential Loss that occurs before the effectiveness of the transfer described in Section 3 above.

Sincerely,

[GUARANTEE HOLDER]

By:

______________________________
(signature)

______________________________
Authorized Representative
(name and title)

______________________________
(date)