

CONFIDENTIAL

CLEARANCES	[DATE]
	SIGNATURE
MIGLC:	
MIGOP:	

**Contract of Guarantee
for Non-Shareholder Loans**

**Non-Honoring of a Financial Obligation
by a State-Owned Enterprise**

between the

**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. Until this document is executed by MIGA and the Guarantee Holder, neither MIGA nor the Guarantee Holder intends to be bound by its terms and conditions. The terms and conditions of this draft document are distributed to the Guarantee Holder on a confidential basis.

Contract of Guarantee for Non-Shareholder Loans

Non-Honoring of a Financial Obligation by a State-Owned Enterprise (NHFO-SOE)

Table of Contents

Part I – Special Conditions 1

Part II – General Conditions 5

Article 1. Application and Interpretation 5

Article 2. Definitions 5

Article 3. Non-Honoring of a Financial Obligation by a State-Owned Enterprise 15

Article 4. Percentage of Self-Insurance 16

Article 5. Deductions and Adjustments 16

Article 6. Exclusions 18

Article 7. Claims Determination and Payment 19

Article 8. Subrogation 20

Article 9. Representations, Warranties and Duties of Guarantee Holder 20

Article 10. Guarantee Period; Conditions for Termination 27

Article 11. Dispute Resolution and Applicable Law 29

Article 12. Coverage Adjustments and Premium Payments 30

Article 13. Miscellaneous 31

Part III – Amendments 34

Part IV – Standby Option (Commitment for Additional Coverage) 35

Annex 1 – MIGA’s Anti-Corruption Guidelines (as in effect on October 15, 2006) 36

Annex 2 – Payment Schedule 39

Annex 3 – Financial Obligation(s) 40

Annex 4A – Performance Standards 41

Annex 4B – Action Plan 42

Annex 4C – Development Effectiveness Indicators 43

Annex 4D – MIGA Exclusion List 45

Annex 5A – Form of Notice of Reduction in Amount of Guarantee 47

Annex 5B – Form of Notice of Increase in Current Amount of Guarantee 49

Annex 6 – Form of Certificate for Non-Honoring of a Financial Obligation by a State-Owned Enterprise 51

Part I – Special Conditions

SPECIAL NOTICE

**This Contract comprises:
Special Conditions (Part I),
General Conditions (Part II),
Amendments (Part III), if applicable,
Standby Option (Part IV), if applicable,
and the Annexes.**

**This Contract must not be read or interpreted without
considering all of Parts I through IV and the Annexes.**

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

CLAUSE 1. State-Owned Enterprise: [_____] a [_____] organized and existing under the laws of [_____].

CLAUSE 2A. Investment Project: [_____].

CLAUSE 2B. Host Country: [_____].

CLAUSE 3. Guarantee Currency: [_____].

CLAUSE 4. Guaranteed Loan: The Guaranteed Loan consists of [Amount in Guarantee Currency], which has been, or will be, lent by the Guarantee Holder to the State-Owned Enterprise under a loan agreement dated as of [_____] between the Guarantee Holder and the State-Owned Enterprise (the “**Loan Agreement**”) pursuant to which the State-Owned Enterprise will make payments of principal [and interest] as set out in the Payment Schedule.

CLAUSE 5.	Contract Period:	The [six]-month periods ending on the [] day of each [] and [], commencing with the period starting on the Effective Date and ending on [] ¹ .
CLAUSE 6.	Guarantee Period:	The period commencing on the Effective Date and ending on [].
CLAUSE 7.	Covered Risk:	Non-Honoring of a Financial Obligation by a State-Owned Enterprise.
CLAUSE 8.	Waiting Period:	[180] consecutive days.
CLAUSE 9A.	Percentage of Cover:	[95]%
CLAUSE 9B.	Percentage of Self-Insurance:	[5]%
	Total:	<u>100%</u>
CLAUSE 10A.	Current Amount of Guarantee:	[Amount in Guarantee Currency], as adjusted in accordance with Article 12 of the General Conditions.
CLAUSE 10B.	Standby Option Amount:	[[Amount in Guarantee Currency], as adjusted in accordance with Article 12 of the General Conditions.] [Not applicable]
CLAUSE 10C.	Payments Covered:	Scheduled Payments of [principal and interest] [principal only] [interest only] or the Covered Mandatory Prepayment.
CLAUSE 10D.	Maximum Aggregate Liability:	[Amount in Guarantee Currency].
CLAUSE 11A.	Annual Premium Rate²:	[]%
CLAUSE 11B.	Premium for the First Contract Period:	[Amount in Guarantee Currency], payable on or before the Initial Premium Due Date.

¹ Drafting note: To match repayment periods in the Loan Agreement.

² Drafting note: Modifications may be necessary in instances where premium is paid upfront or where premium is being covered (future interest option).

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

CLAUSE 12B. Standby Option Fee for the First Contract Period: [Amount in Guarantee Currency], payable on or before the Initial Premium Due Date. [Not applicable.]

CLAUSE 13A. Total Amount Due for the First Contract Period: [Amount in Guarantee Currency], payable on or before the Initial Premium Due Date.

CLAUSE 13B. Initial Premium Due Date: [Insert date no later than the date falling 15 calendar days after the Effective Date.]

CLAUSE 14. Effective Date: []

CLAUSE 15. Notice Addresses:

**MULTILATERAL INVESTMENT
GUARANTEE AGENCY**

[GUARANTEE HOLDER]

1818 H Street, NW
Washington, DC 20433
United States of America

[Mailing Address]
[City and Postal Code]
[Country]

Attention:
Contract Management & Client Services
MIGA Operations
Facsimile: +1 202-522-2630
Telephone: +1 202-473-0610

Attention:
[Name]
[Title]
Facsimile: [Number]
Telephone: [Number]

Email address for Premium receipts only:

[]

IN WITNESS WHEREOF, MIGA and the Guarantee Holder, acting through their duly authorized representatives, have caused this Contract to be signed in their respective names. This Contract is deemed made in Washington, DC, United States of America, and shall come into full force and effect as of the Effective Date upon its execution by both parties and exchange of duly signed scanned counterparts on or prior to the Effective Date, subject to receipt by MIGA of payment in full of the Total Amount Due for the first Contract Period on or before the Initial Premium Due Date.

**MULTILATERAL INVESTMENT
GUARANTEE AGENCY**

[GUARANTEE HOLDER]

By: _____
(signature)

By: _____
(signature)

Hiroshi Matano
Executive Vice President

Authorized Representative
(name and title)

Authorized Representative
(name and title)

(date)

(date)

Part II – General Conditions

ARTICLE 1. APPLICATION AND INTERPRETATION

1.1 The Special Conditions (Part I), the General Conditions (Part II), the Amendments (Part III), if any, the Standby Option (Part IV) and the Annexes, if applicable, shall form the entire Contract of Guarantee for Non-Shareholder Loans Non-Honoring of a Financial Obligation by a State-Owned Enterprise.

1.2 The capitalized terms herein are used as they are defined under Article 2. Such defined terms in the singular shall have the corresponding meanings in the plural and vice versa.

1.3 The terms “Corrupt Practice”, “Coercive Practice”, “Collusive Practice”, “Fraudulent Practice”, and “Obstructive Practice” shall be interpreted in accordance with the Anti-Corruption Guidelines attached as Annex 1.

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

1.5 Notwithstanding any other provision herein, 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.

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

1.7 On or before the Effective Date, MIGA shall have received and deemed satisfactory in writing a true, correct and complete copy of both the Loan Agreement and the Financial Obligation executed by all parties thereto.

1.8 This Contract is based on the Guarantee Holder’s representations and warranties made to MIGA herein and in the Application for Guarantee, as well as on any written information provided by or on behalf of the Guarantee Holder to MIGA.

ARTICLE 2. DEFINITIONS

“**Access to Information Policy**” means MIGA’s Access to Information Policy, which can be found at http://www.miga.org/documents/Access_Information_Policy.pdf, as in effect on the Effective Date.

“**Action Plan**” means the environmental and social action plan set forth in Annex 4B of this Contract.

“**Annual Monitoring Report**” means the annual monitoring report setting out the specific environmental, social, climate and/or applicable developmental impact information in respect of the State-Owned Enterprise and the operations and activities financed by it, including a brief description of the portfolio and information on environmental and social screening of transactions

against applicable requirements, information on training provided, any new policies and procedures developed during the reporting period, compliance with the MIGA Exclusion List, and details of any material environmental and social issues associated with the Sub-borrowers during the reporting period.

“Anti-Corruption Guidelines” means the document entitled “MIGA’s Anti-Corruption Guidelines” attached as Annex 1, which guidelines clarify how the terms Corrupt Practice, Coercive Practice, Collusive Practice, Fraudulent Practice and Obstructive Practice shall be interpreted and enforced.

“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.

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

“Banking Day” means a day defined in the Loan Agreement as being a day on which the State-Owned Enterprise is not excused from the requirement to make a Scheduled Payment, after taking into account Saturdays, Sundays and other days on which relevant banks through which a Scheduled Payment is to be made are not open for business.

“Business Day” means a day on which banks are open for business in New York, New York, USA, and the city where the principal office of the Guarantee Holder is located.

“Category A Activity” means any activity of a Sub-borrower with potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented and may include (i) involuntary resettlement; (ii) risk of adverse impacts on indigenous peoples; (iii) significant risks to or impacts on the environment, community health and safety, biodiversity, cultural heritage; or (iv) significant occupational health and safety risks.

“Category A Sub-borrower” means a Sub-borrower that conducts or will conduct a Category A Activity.

“Change of Control” means any event or transaction that results in the Host Government ceasing to have Control of the State-Owned Enterprise.

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

“Coal-Related Projects” means the development of coal-related projects, including coal mining, coal transportation, as well as infrastructure services exclusively dedicated to support any of these activities, and coal-fired power plants, but excluding captive coal-fired power plants used for certain activities, such as the cement or chemical industries.

“Coercive Practice” means 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.

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

“**Contract**” means this Contract of Guarantee, which includes the Special Conditions (Part I) and these General Conditions (Part II), and which may include the Amendments (Part III), the Standby Option (Part IV) and the Annexes.

“**Contract Period**” means:

- (a) the period commencing on the Effective Date and ending on, and including, the first date specified in Clause 5 of the Special Conditions; and
- (b) each successive period ending on, and including, the dates specified in Clause 5 of the Special Conditions or, if earlier, the end of the Guarantee Period; *provided, however,* that, if the last day of a Contract Period falls on a day that is not a Banking Day, this Contract Period shall extend to and include the next succeeding Banking Day.

“**Control**” means:

- (a) ownership of a majority of the voting capital of another entity; or
- (b) the power, under contract or law or through ownership of voting capital, to direct
 - (i) the management or policies of that entity; or
 - (ii) the composition of the board of directors (or equivalent body) of that entity.

“**Convention**” means the Convention Establishing the Multilateral Investment Guarantee Agency dated October 11, 1985, as amended, and as in force on the Effective Date.

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

“**Covered Mandatory Prepayment**” means, without limiting the provisions of Subsection 5.2(b), a mandatory prepayment of the principal amount of the Guaranteed Loan that under the terms of the Loan Agreement is due and payable immediately upon the occurrence of a Change of Control, plus any interest on such principal amount that also becomes immediately due and payable upon such occurrence and that has accrued and is unpaid.

“**Covered Risk**” means the risk specified in Clause 7 of the Special Conditions.

“**Current Amount of Guarantee**” means, for any Contract Period, the sum of:

- (a) the amount specified in Clause 10A of the Special Conditions; and
- (b) the aggregate amounts validly transferred from the Standby Option prior to the commencement of such Contract Period in accordance with Section 12.3,

less the aggregate amounts reduced from the Current Amount of Guarantee in accordance with Section 12.1, which is the maximum aggregate amount of compensation payable by MIGA under this Contract for such Contract Period, irrespective of the number of Losses.

“**Date of Loss**” means the date on which the event described in the definition of “Loss” shall have occurred.

“Development Effectiveness Indicators” means the set of development metrics to be provided by the Guarantee Holder to MIGA and specified in Annex 4C.

“Directed Payment” means an Excess Payment that is:

- (a) the direct or indirect result of any action or omission of the Guarantee Holder or any party acting on its behalf; and
- (b) made as a result of the Guarantee Holder pursuing such payment from the Host Government or State-Owned Enterprise with respect to the Unguaranteed Loan (whether with respect to such Guarantee Holder’s enforcement of rights, performance of obligations, participation in meetings or negotiations with the Host Government or State-Owned Enterprise in connection with such Unguaranteed Loans) in a more prudent and diligent manner, as an uninsured lender, than it has pursued payment, as an insured lender, with respect to the Scheduled Payment under the Guaranteed Loan,

but excluding any payment deriving from collateral or other security that was provided by the Host Government or State-Owned Enterprise and is directly related to such Unguaranteed Loan.

“E&S Management System” or **“ESMS”** means an environmental, health, safety, and social management system implemented or to be implemented by the State-Owned Enterprise and which enables or will enable the State-Owned Enterprise to identify, assess, and manage environmental and social risks in respect of its operations on an ongoing basis in compliance with the E&S Requirements. Such system will include manuals and related documents, including policies, management programs and plans, procedures, requirements, performance indicators, technical and management capacity, 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 in compliance with the E&S Requirements.

“E&S Requirements” means the environmental and social obligations to be undertaken by the State-Owned Enterprise to ensure its compliance with Subsection 9.1(c)(viii)(F) and to ensure compliance by the Sub-borrowers with: (i) the MIGA Exclusion List; (ii) the Applicable E&S Laws; (iii) the Performance Standards, if applicable pursuant to Subsections 9.1(c)(viii)(G)-(H), and (iv) applicable commodity and sector-specific risk screens for SMEs, if any, established by the ESMS, and (v) any other requirements established by the ESMS.

“Effective Date” means 12:01 AM, Washington, DC time, on the date specified in Clause 14 of the Special Conditions as the date on which this Contract becomes effective.

“Excess Payment” means a payment by the Host Government or State-Owned Enterprise made on an Unguaranteed Loan in a greater proportion of the amount due and payable on such Unguaranteed Loan than that of the Scheduled Payment under the Guaranteed Loan, and which was not made pursuant to any law, order, decree or regulation of the Host Country.

“Exempt Laws” means any law, decree or regulation in the Host Country that (i) comes into force after the Effective Date or (ii) was in effect as of the Effective Date but whose application after the Effective Date could not have been ascertained by the Guarantee Holder prior to the Effective Date with due inquiry, in each case of (i) or (ii),

- (a) which effectively deprives the Guarantee Holder of its rights as a creditor against the Host Government or State-Owned Enterprise; or
- (b) in respect of which the Guarantee Holder is incapable of compliance or, using its best efforts, has not yet been afforded a reasonable period of time within which it could comply;

provided that the responsibility for proving that an Exempt Law applies shall at all times rest with the Guarantee Holder.

“Expedited Claim Deadline” means the date falling 45 days prior to the end of the Waiting Period.

“Financial Obligation” means an unconditional and irrevocable financial obligation of the State-Owned Enterprise to pay a sum certain, either on a date certain or on demand, which obligation is in favor of the Guarantee Holder, and that is not subject to any defenses other than payment. The Financial Obligation(s) covered by this Contract are specified in Annex 3.

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

“Governing Authority” has the meaning specified 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 so designated in the preamble of the Special Conditions and who is party to this Contract, which term shall include such person’s successors and permitted assigns that, in either case, meet the requirements of the Convention and the Operational Policies and are otherwise acceptable to MIGA.

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

“Guaranteed Loan” means the loan in the original principal amount specified in Clause 4 of the Special Conditions made by the Guarantee Holder to the State-Owned Enterprise under the Loan Agreement and denominated in Guarantee Currency or, where the context may require, the amount thereof from time to time outstanding, the proceeds of which shall be applied to the Investment Project.

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

“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 **“Governing Authority”**); or

- (b) any other public or regulatory authority (other than the State-Owned Enterprise) within the territory of the Host Country:
 - (i) which is under the supervision, control and direction of a Governing Authority; and
 - (ii) for whose actions a Governing Authority is liable.

“**Initial Premium Due Date**” means the date set forth in Clause 13B of the Special Conditions.

“**Interest**” means any interest under this Contract owed by or to MIGA, calculated from the date the relevant amount becomes due and payable up to the date payment is received by MIGA or the Guarantee Holder, as the case may be.

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

“**Investment Project**” means the project or set of projects to be undertaken by the State-Owned Enterprise and to which the proceeds of the Guaranteed Loan shall be applied and specified in Clause 2A of the Special Conditions.

“**LIBOR**” means the London Interbank Offered Rate for the Guarantee Currency. For all purposes under this Contract, LIBOR shall be determined on any date (each such date, a “**Determination Date**”) by reference to:

- (a) the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of one percent) appearing on Bloomberg ICE LIBOR page (or any successor page) as the London Interbank Offered Rate for deposits in Guarantee Currency at 11:00 AM (London time) two London business days before such Determination Date for the period commencing on such Determination Date and ending on a date six months after such Determination Date;
- (b) in the event of the unavailability of the applicable Bloomberg page, by the rate per annum (rounded upwards, if necessary to the nearest 1/100 of one percent) appearing on the Reuters LIBOR page as the London Interbank Offered Rate for deposits of Guarantee Currency at approximately 11:00 AM (London time) two London business days before such Determination Date for the period commencing on such Determination Date and ending on a date six months after such Determination Date; or
- (c) in the event of the unavailability of both the applicable Bloomberg page and the Reuters page, 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 Determination 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 the applicable rate is below zero, LIBOR 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 the failure of the Guarantee Holder to receive a Scheduled Payment on a Scheduled Payment Due Date or a Covered Mandatory Prepayment on the Mandatory Prepayment Date, which is due, in either case, to the failure of the State-Owned Enterprise to pay to the Guarantee Holder an amount due under the Financial Obligation.

“**Mandatory Prepayment Date**” means the date on which the Covered Mandatory Prepayment is due and payable in accordance with the terms stated in the Loan Agreement.

“**Maximum Aggregate Liability**” means the maximum aggregate amount of compensation payable by MIGA under this Contract over the term of the Guarantee Period, irrespective of the number of Losses, which shall be the amount specified in Clause 10D of the Special Conditions, as such amount may be reduced in accordance with Article 12.

“**MIGA**” has the meaning specified in the preamble of the Special Conditions.

“**MIGA Exclusion List**” means the list of prohibited activities set forth in Annex 4D.

“**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.

“**Non-Honoring of a Financial Obligation by a State-Owned Enterprise**” means the event described in Section 3.1.

“**Notice of Nonpayment**” has the meaning specified in Section 10.3.

“**Notice of Termination**” means a notice sent by MIGA or the Guarantee Holder to terminate this Contract following the procedures specified in Section 13.3, such notice to be effective at 11:59 PM, Washington, DC time, on the relevant date of termination.

“**Obstructive Practice**” means:

- (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice 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.

“**Operational Policies**” means the Operational Policies adopted by MIGA’s Board of Directors as in force on the Effective Date.

“**Payment Schedule**” means the schedule attached as Annex 2 itemizing the Scheduled Payment Due Date and amount of (or basis for calculating) each Scheduled Payment.

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

“**Percentage of Self-Insurance**” means such percentage of each Loss that the Guarantee Holder is required to bear for its own account specified in Clause 9B of the Special Conditions.

“**Performance Standards**” means with respect to the Investment Project and the State-Owned Enterprise the Performance Standards on Environmental and Social Sustainability listed on Annex 4A, as in effect on the Effective Date.

“**Potential Claim**” means any Claim which has either: (i) not yet been submitted, but in accordance with time limits set forth in this Contract may still be submitted; (ii) been submitted, but a determination by MIGA has not yet been made as to its validity; or (iii) been submitted, and a determination has been made to pay the Claim, but compensation has not yet been paid to the Guarantee Holder.

“**Potential Loss**” means any event, circumstance or default specified in Subsection 9.3(h)(ii)-(iv).

“**Premium**” means:

- (a) for the first Contract Period, the amount payable by the Guarantee Holder specified in Clause 11B of the Special Conditions; and
- (b) for each subsequent Contract Period, the amount payable by the Guarantee Holder for the coverage provided by this Contract, calculated by taking the product of the following amounts:
 - (i) the Current Amount of Guarantee as of the first day of such Contract Period;
 - (ii) the annual premium rate specified in Clause 11A of the Special Conditions; and
 - (iii) a fraction, the numerator of which is the number of days in such Contract Period calculated using a 365-day year, 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.

[“**Relevant Financing Operations**” means [*e.g. trade finance operations of the State-Owned Enterprise*].]³

“**Rules of Arbitration**” means the Rules of Arbitration for Disputes under Contracts of Guarantee of the Multilateral Investment Guarantee Agency, which can be found at <https://www.miga.org/documents/Master-Rules-of-Arbitration.pdf>, as in effect on the Effective Date.

“**Scheduled Payment**” means, to the extent 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, including as the context requires any portion of such payments, scheduled to be due and payable by the State-Owned Enterprise on the Scheduled Payment Due Dates in the amounts (or, with respect to variable rate interest, based on the rates) specified in the Payment Schedule.

“**Scheduled Payment Due Date**” means the date specified in the Payment Schedule on which the applicable Scheduled Payment is due and payable in accordance with the Loan Agreement.

“**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 State-Owned 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.

“**Small and Medium Enterprise**” or “**SME**” means any business or enterprise that satisfies at least two of the three following criteria: (i) annual sales of less than USD 15 million, (ii) total assets of less than USD 15 million and/or (iii) less than 300 employees.

“**Standby Option**” means the commitment for additional coverage in connection with future disbursements of the Guaranteed Loan, specified in Part IV of this Contract.

“**Standby Option Amount**” means, for any Contract Period, the initial amount specified in Clause 10B of the Special Conditions, minus the aggregate amount transferred from the Standby Option to the Current Amount of Guarantee in accordance with Section 12.3 prior to the commencement of such Contract Period.

“**Standby Option Fee**” means:

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

³ Drafting note: this is a project-specific definition that would apply where the Guaranteed Loan is targeted to a specified end use (e.g. funds will be used to provide trade finance or MSME finance). If not applicable, delete.

- (b) for each subsequent Contract Period, the amount payable by the Guarantee Holder for the coverage provided in relation to the Standby Option Amount, calculated by taking the product of the following amounts:
- (i) the Standby Option Amount as of the first day of such Contract Period;
 - (ii) the annual Standby Option Fee rate specified in Clause 12A of the Special Conditions; and
 - (iii) a fraction, the numerator of which is the number of days in such Contract Period calculated using a 365-day year, and the denominator of which is 365.

“State-Owned Enterprise” means the entity, which is performing a public service or fulfilling a governmental function in the Host Country and is under the Control of the Host Government, that is specifically designated in Clause 1B of the Special Conditions.

“Sub-borrower” means any borrower or other natural or juridical person financed directly or indirectly by the [State-Owned Enterprise / Relevant Financing Operations].

“Sub-borrower Operations” means any operations and/or activities of a Sub-borrower or Sub-Borrowers, as applicable, financed directly or indirectly by the [State-Owned Enterprise/Relevant Financing Operations].

“Total Amount Due” means:

- (a) for the first Contract Period, the amount payable by the Guarantee Holder specified in Clause 13A of the Special Conditions, consisting of the sum of the Premium, and the Standby Option Fee, as applicable, for such Contract Period; and
- (b) for each subsequent Contract Period, the sum of the Premium, and the Standby Option Fee, as applicable, for such Contract Period.

“Unguaranteed Loan” means a loan made by the Guarantee Holder to (or guaranteed by) the Host Government or State-Owned Enterprise that MIGA has not guaranteed, except for:

- (a) loans payable in Local Currency; or
- (b) loans made by relending funds to the central bank of the Host Country in connection with the rescheduling of the Host Country’s external debt; or
- (c) loans with a duration of less than one year (unless guaranteed by any export credit agency).

“Waiting Period” means the period of time 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.

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

ARTICLE 3. NON-HONORING OF A FINANCIAL OBLIGATION BY A STATE-OWNED ENTERPRISE

Covered Risk

3.1 The guarantee against Non-Honoring of a Financial Obligation by a State-Owned Enterprise shall cover a Loss, provided that:

- (a) the Financial Obligation is for a specified monetary amount, which is due and payable;
- (b) each of the failure of the State-Owned Enterprise to pay the Financial Obligation when due and payable and the failure of the Guarantee Holder to receive a Scheduled Payment or the Covered Mandatory Prepayment remains uncured for the duration of the Waiting Period; and
- (c) on the Date of Loss, either (i) the State-Owned Enterprise is under the Control of the Host Government, or (ii) in the case of a Change of Control, the Covered Mandatory Prepayment becomes due and payable immediately upon such Change of Control.

Compensation

3.2 Subject to Articles 5, 6, and 7, compensation payable for a Loss due to Non-Honoring of a Financial Obligation by a State-Owned Enterprise shall be the Percentage of Cover in Guarantee Currency, calculated as of the Date of Loss, of the amount of: (i) the Scheduled Payment then due but unpaid that constitutes the Loss or (ii) the Covered Mandatory Prepayment in default as of the Date of Loss.

Submission of Claims

3.3 The Guarantee Holder may submit a Claim for Non-Honoring of a Financial Obligation by a State-Owned Enterprise at any time from the Date of Loss to the date falling 180 days after the end of the 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 such Claim for Non-Honoring of a Financial Obligation by a State-Owned Enterprise, including evidence of the failure of the State-Owned Enterprise to pay the Scheduled Payment or Covered Mandatory Prepayment when due in accordance with the Loan Agreement.

3.4 A Claim shall be deemed by MIGA to be complete when MIGA is reasonably satisfied that it has received from the Guarantee Holder all material evidence of the Loss, including the amount of Loss and the Date of Loss. For purposes of this Section 3.4, submission of a certificate in the form of Annex 6 shall be sufficient evidence of the Loss. MIGA shall make a determination with respect to such Claim in accordance with Article 7.

Transfer and Assignment

3.5 As a condition to payment by MIGA of compensation for a Loss, the Guarantee Holder shall assign and transfer to and for the benefit of MIGA, the Percentage of Cover of:

- (a) the Guarantee Holder's interest in the rights and causes of action against the State-Owned Enterprise, the Host Government, and any other obligor in respect of that portion of the Financial Obligation in relation to which compensation is to be paid in accordance with Section 3.2; and

- (b) the Guarantee Holder's right, title and interest, including all rights to related security, in the Scheduled Payments or Covered Mandatory Prepayment for which compensation is to be paid.

3.6 Any such assignment and transfer pursuant to Section 3.5 shall, with respect to the Guarantee Holder's interests, be free and clear of any claim, defense, counterclaim, right of set off, liens or other encumbrances.

ARTICLE 4. PERCENTAGE OF SELF-INSURANCE

4.1 As a condition to payment by MIGA of compensation for a Loss, the Guarantee Holder shall bear for its own account at least the Percentage of Self-Insurance of each Loss throughout the Guarantee Period.

ARTICLE 5. DEDUCTIONS AND ADJUSTMENTS

5.1 MIGA shall:

- (a) deduct from any compensation due hereunder the Guarantee Holder's share of any other payment, recovery, or benefit received or due to be received by or for the benefit of the Guarantee Holder (including amounts received or due to be received by the State-Owned Enterprise which have been collaterally assigned to the Guarantee Holder) from any source, including the ratable portion of the Loss payable by any other insurer or guarantor, as a result of the Loss for which MIGA is liable to pay compensation;
- (b) without prejudice to Subsection 5.1(d), only be liable in respect of a Scheduled Payment in default:
 - (i) as and when originally scheduled to be due in accordance with the Payment Schedule, irrespective of whether Scheduled Payments on the Guaranteed Loan have been accelerated or mandatory prepayments have become due, provided that if a Change of Control occurs, Subsection 5.1(d) shall apply in lieu of this Subsection 5.1(b); and
 - (ii) if the Guarantee Holder shall have complied with all terms and conditions of this Contract, including paying the Total Amount Due, with respect to the corresponding Contract Period within which such Scheduled Payment falls due;
- (c) without prejudice to Subsection 5.1(b) above, have the option, in its sole discretion and at any time, to accept liability for accelerated payments of all or a portion of the Guaranteed Loan by prepaying to the Guarantee Holder:
 - (i) the Percentage of Cover of the amount of the outstanding principal portion of Scheduled Payments of the Guaranteed Loan; plus
 - (ii) the Percentage of Cover of all the corresponding accrued and unpaid interest portion of Scheduled Payments that were due on Scheduled Payment Due Dates occurring on or prior to the date of such prepayment by MIGA,

but in no event exceeding the Current Amount of Guarantee for the Contract Period in which such payment is made; and

- (d) in the case of the Covered Mandatory Prepayment, be liable:
 - (i) in respect of the Covered Mandatory Prepayment in default as of the Date of Loss and pay compensation according to Subsection 3.2(ii) in one lump sum, but in no event exceeding the Current Amount of Guarantee for the Contract Period in which such payment is made;
 - (ii) if the Guarantee Holder shall have complied with all terms and conditions of this Contract, including paying the Total Amount Due, with respect to the corresponding Contract Period within which such Covered Mandatory Prepayment falls due.
- (e) Notwithstanding Section 10.5, any payment under Subsections 5.1 (c) and 5.1(d) shall be conditional upon the simultaneous payment by the Guarantee Holder to MIGA of the amount of Premium payable over the corresponding balance of the Guarantee Period, calculated based on:
 - (i) the amount of the outstanding principal portion of Scheduled Payments of the Guaranteed Loan, and
 - (ii) any accrued but unpaid interest portion of Scheduled Payments for which compensation is being paid.

5.2 Amounts of compensation determined to be payable by MIGA for any Loss shall:

- (a) in no event exceed the lesser of:
 - (i) the Current Amount of Guarantee during the relevant Contract Period; and
 - (ii) the Maximum Aggregate Liability over the term of the Guarantee Period;
- (b) not include the difference between interest covered and any additional interest accruing at a penalty or default rate (including such interest payable in connection with any political risk event), mandatory prepayments of principal or acceleration of principal (except as provided in Subsections 5.1(c) and (d)), make-whole premiums, break-funding costs, voluntary prepayments of principal, interest rate swaps and other derivatives transactions associated with the Guaranteed Loan, payments with respect to withholding taxes and other taxes, increased costs provisions, unpaid fees, costs and expenses, or any amounts other than the Scheduled Payments or the Covered Mandatory Prepayment, as the case may be, due with respect to the Guaranteed Loan; and
- (c) be subject to reduction if:
 - (i) the Guarantee Holder has made an Unguaranteed Loan;
 - (ii) the State-Owned Enterprise has, after the date of default of the Scheduled Payment or Covered Mandatory Prepayment that is the basis of the Claim, made an Excess Payment to the Guarantee Holder; and
 - (iii) such Excess Payment is a Directed Payment.

If the conditions described in (i), (ii) and (iii) are met, MIGA shall reduce the amount of its compensation for a Loss by compensating the Guarantee Holder for such Loss as if the amounts due and payable on the Scheduled Payment or the Covered Mandatory Prepayment and on all Unguaranteed Loans due and payable during the Waiting Period had been paid on a pro rata basis.

5.3 If there is an increase in the amount of the loan under the Loan Agreement in excess of the Guaranteed Loan as of the Effective Date and such amounts are not guaranteed by MIGA as of the Date of Loss, the Guarantee Holder shall only be entitled to recover compensation hereunder for the portion of any missed payment corresponding to the proportion which the Current Amount of Guarantee bears to the Percentage of Cover of the outstanding amount of such loan as of the Date of Loss.

ARTICLE 6. EXCLUSIONS

6.1 MIGA shall in no case be liable for any Loss which is due to:

- (a) (i) the application of any law, decree or regulation in force in the Host Country as of the Effective Date, where the application of such law, decree or regulation could have been ascertained by the Guarantee Holder prior to the Effective Date with due inquiry; or

(ii) material violation of the laws, decrees or regulations of the Host Country by the Guarantee Holder with respect to the Guaranteed Loan, the Financial Obligation, or, to the extent attributable to the Guarantee Holder, the Investment Project, other than Exempt Laws;
- (b) any criminal acts or omissions, or conduct of the Guarantee Holder constituting Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering, in each case in connection with the Guaranteed Loan, the Financial Obligation, or the Investment Project, where in the case of criminal acts or omissions, the law under which such acts or omissions was deemed to be criminal was not an Exempt Law;
- (c) the non-compliance by the Guarantee Holder with: (i) its obligations hereunder in respect of the Performance Standards; and (ii) to the extent the Guarantee Holder controls the Investment Project, the Performance Standards;
- (d) the failure of the Guarantee Holder to ensure that all documentation relating to the Guaranteed Loan and the Financial Obligation has been duly authorized, executed and delivered and that the obligations contained therein are legal, valid, binding, and enforceable in accordance with their terms; *provided, however*, that if the Guarantee Holder provides a legal opinion or opinions, along with a certificate of incumbency, in form and substance acceptable to MIGA to this effect then the exclusion under this sub-paragraph shall not apply;
- (e) the breach by the Guarantee Holder in any material respect of its contractual obligations to the Host Government or the State-Owned Enterprise in connection with the Guaranteed Loan, the Financial Obligation, or, to the extent applicable, the Investment Project; or

- (f) any action or inaction of the Host Government or the State-Owned Enterprise (as applicable) that was agreed to, absent MIGA's prior written consent, by the Guarantee Holder in connection with the Guaranteed Loan, the Financial Obligation, or, to the extent applicable, the Investment Project.

6.2 MIGA shall not be liable to pay a Claim for any Loss, damage, liability or expense which is directly or indirectly caused by or contributed to or arising from:

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; or
- (e) any chemical, biological, bio-chemical, or electromagnetic weapon.

ARTICLE 7. CLAIMS DETERMINATION AND PAYMENT

7.1 A Claim shall demonstrate to MIGA's reasonable satisfaction the Guarantee Holder's right to compensation under this Contract. The responsibility for proving a Loss under this Contract shall at all times rest with the Guarantee Holder.

7.2 So long as MIGA has received a Claim prior to the Expedited Claim Deadline, MIGA shall determine its liability to pay compensation for a Loss and shall notify the Guarantee Holder of such determination prior to the end of the Waiting Period, provided that MIGA, acting reasonably, deems the Guarantee Holder's Claim to be complete (but for the elapsing of the Waiting Period). In such case, MIGA shall pay compensation on the later of (a) the Scheduled Payment Due Date immediately succeeding the Date of Loss and (b) the last day of the Waiting Period or, if such day is not a Business Day, then the next succeeding Business Day.

7.3 If MIGA deems the Guarantee Holder's Claim submitted prior to the Expedited Claim Deadline to be incomplete, MIGA shall notify the Guarantee Holder accordingly by the end of the Waiting Period, and shall pay compensation for a Loss within 30 days from the date it determines that it is liable to pay a Claim. With respect to Claims submitted after the Expedited Claim Deadline, MIGA shall pay compensation for a Loss within 30 days from the date it determines that it is liable to pay a Claim. In each case, MIGA shall make the determination whether or not it is liable to pay a Claim within 30 days after MIGA, acting reasonably, deems the Guarantee Holder's Claim to be complete.

7.4 MIGA shall pay Interest at LIBOR on any amount of compensation determined to be due but not paid at the end of the period specified in Section 7.2 or 7.3, as applicable, such liability being in lieu of any other liability as a result of such late payment.

7.5 As a condition to payment by MIGA of compensation for a Loss, the Guarantee Holder must submit a complete Claim no later than 180 days after the end of the Waiting Period.

7.6 If MIGA has paid compensation for a Loss, MIGA shall only be liable for subsequent Losses, payable in accordance with Section 3.2, where the Guarantee Holder files a separate Claim demonstrating each such subsequent Loss (provided that a Loss in respect of a Covered Mandatory Prepayment shall require a single Claim for this purpose).

ARTICLE 8. SUBROGATION

8.1 Upon payment of compensation by MIGA, MIGA shall be fully subrogated, up to the amount of such compensation, to all claims, causes of action, recoveries and other rights the Guarantee Holder has against the State-Owned Enterprise, the Host Government or any obligor in respect of the event causing the Loss, and the Guarantee Holder shall take no action whatsoever to prejudice MIGA's rights of subrogation.

8.2 Nothing in this Contract shall in any way be deemed to be a waiver of, or otherwise affect, any independent right of MIGA to effect salvage or other recoveries under this Contract (without any obligation to share the proceeds thereof) through agreements between MIGA and the State-Owned Enterprise, the Host Government or any obligor or by any other means.

8.3 If MIGA pays compensation with respect to any Scheduled Payment or Covered Mandatory Prepayment and the Guarantee Holder subsequently receives all or a portion of such Scheduled Payment or Covered Mandatory Prepayment from the State-Owned Enterprise, the Host Government, or any other source, the Percentage of Cover of such Scheduled Payment or Covered Mandatory Prepayment or portion thereof received shall be held in trust (as property of MIGA) for the benefit of MIGA, and the Guarantee Holder shall promptly upon receipt thereof pay over such amount to MIGA.

ARTICLE 9. REPRESENTATIONS, WARRANTIES AND DUTIES OF GUARANTEE HOLDER

9.1 The Guarantee Holder represents and warrants, as of the Effective Date that:

- (a) both the Loan Agreement and the Financial Obligation are legal, valid, binding and enforceable in accordance with their terms and the laws in force in the Host Country as of the Effective Date, *provided, however*, that if the Guarantee Holder provides a legal opinion or opinions, along with a certificate of incumbency, in form and substance acceptable to MIGA to this effect, then such opinion(s) shall be regarded by MIGA as conclusive evidence of such legality, validity, binding nature, and enforceability;
- (b) it has ensured that MIGA shall be exempt from any provisions regarding the sharing of recoveries to which the Guarantee Holder may be subject, pursuant to intercreditor arrangements or otherwise, if any;

- (c) it is entitled under the Loan Agreement to require the State-Owned Enterprise to:
- (i) maintain audited accounts in accordance with International Financial Reporting Standards and [monthly / quarterly / semi-annual] accounts in accordance with generally accepted accounting principles of the Host Country;
 - (ii) retain any other material information relating to the Guaranteed Loan and the Investment Project;
 - (iii) obtain and maintain all required registrations, filings, declarations, authorizations, approvals, permits, consents, concessions and licenses required for the Guaranteed Loan and the Investment Project in the Host Country;
 - (iv) supply to MIGA:
 - A. within [] days after the end of each financial year of the State-Owned Enterprise, the audited [consolidated] financial statements of the State-Owned Enterprise for that financial year; and
 - B. within [] days after the end of [each month / each quarter / the first half] of each financial year of the State-Owned Enterprise, the [consolidated] financial statements of the State-Owned Enterprise for that [month / quarter / first half] of such financial year;⁴
 - (v) promptly furnish MIGA with such accounts and information as MIGA may reasonably request from time to time and permit MIGA's duly authorized representatives to examine and make copies of audits, accounts, books, financial statements and any other material information relating to the State-Owned Enterprise or the Investment Project whenever required or wherever located;
 - (vi) within 30 days of MIGA's request, submit all material evidence reasonably available to it as MIGA may reasonably request from time to time to evaluate and process a Claim;
 - (vii) comply with and abide by all laws and regulations of the Host Country in implementing and operating the Investment Project, including Applicable E&S Laws, and those that protect core labor standards, and comply with its obligations to the Host Government in connection with the Investment Project;
 - (viii) (A) implement and operate the Investment Project in compliance with the requirements of the Performance Standards, and in furtherance of the foregoing, carry out the actions and deliver to MIGA the documents specified in the Action Plan, in each case, within the required time periods set forth therein and in form and substance satisfactory to MIGA;
 - (B) (1) within two days after its occurrence, notify MIGA of any Significant E&S Event, specifying in each case the nature of the

⁴ Drafting note: Draft to be adapted for individual transaction depending on credit risk of the SOE. This would be subject to management approval.

- incident, accident, or circumstance and any effect or impact (whether on-site or off-site) resulting or likely to result therefrom;
- (2) as soon as practicable, but no later than 30 days after such Significant E&S Event, provide MIGA with a more detailed summary report that includes a description of such Significant E&S Event, and the measures that the State-Owned Enterprise is taking or plans to take to address such Significant E&S Event and to prevent any future similar event; and
 - (3) subsequently keep MIGA informed of the on-going implementation of those measures and plans;
- (C) within 90 days after the end of each fiscal year of the State-Owned Enterprise deliver to MIGA the Annual Monitoring Report, in form and substance satisfactory to MIGA;
- (D) implement and maintain the ESMS to identify, assess and manage the environmental and social performance of Sub-borrowers in compliance with the E&S Requirements; and
- (i) if the State-Owned Enterprise becomes aware that a potential Sub-borrower conducts or intends to conduct operations classified as a Category A Activity, (i) promptly notify MIGA upon becoming aware of such activity or intent; and (ii) provide MIGA with information concerning such matters as MIGA may reasonably request; and
 - (ii) if an existing Sub-borrower becomes a Category A Sub-borrower, ensure that the State-Owned Enterprise has sufficient capacity, including quality of staffing and expertise, to review the environmental and social performance of such Category A Activity on an ongoing basis; and
- (E) [appoint and] retain a senior officer of the State-Owned Enterprise to be responsible for administration and oversight of the ESMS, and if such officer is replaced promptly notify MIGA in writing;
- (F) have and maintain, with regard to its own workforce and physical facilities, policies and plans in compliance with Performance Standard 1 and 2;
- (G) ensure that any applications for financing that are submitted to the State-Owned Enterprise on or after the Effective Date by current or potential Sub-borrowers are screened against (i) the MIGA Exclusion List and (ii) the Applicable E&S Laws, and that any such applications concerning (x) project finance and/or corporate loans are also screened against the Performance Standards, and (y) SME finance are also screened against applicable commodity and sector-specific risks established by the ESMS;

- (H) ensure that any financing that is provided by the State-Owned Enterprise on or after the Effective Date to a Sub-borrower is required to comply with (i) the MIGA Exclusion List and (ii) the Applicable E&S Laws, and that any (x) project finance and/or corporate loans are also required to comply with the Performance Standards, and (y) SME finance loans are also required to comply with applicable commodity and sector-specific requirements of the ESMS;
- (I) obtain, review and investigate information available in the public domain regarding any incidents, significant adverse impact on local communities or the environment or adverse environmental or social performance associated with any potential Sub-borrower and only finance potential Sub-borrower Operations if:
 - (i) any such incident, adverse impact or adverse performance has been resolved in accordance with the ESMS requirements; or
 - (ii) if the relevant potential Sub-borrower has a mitigation, remediation or corrective action plan including, as necessary, an implementation schedule and budget, which has been agreed to with the State-Owned Enterprise and which upon implementation, will enable the relevant Sub-borrower to carry out the potential Sub-borrower Operations in accordance with the ESMS requirements;
- (J) ensure that the State-Owned Enterprise does not provide any of the following types of loans or financings:
 - (i) project finance or corporate finance with a tenor of more than 36 months for Coal-Related Projects;
 - (ii) general purpose corporate finance to power generation companies generating more than 30% of energy from coal-fired power plants; and
 - (iii) project or corporate finance to power generation companies regardless of the energy mix, if the financing provided is used for the development of a coal-fired power plant;

provided, however, that project or corporate finance with a specified use of proceeds that is not coal-related (including for the expansion of electricity generation from renewables, upgrades to the electricity grid to accommodate renewables, investments in storage capacity) shall not be prohibited by this Subsection 9.1(c)(viii)(J);
- (ix) refrain from, in connection with the Investment Project, engaging in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering;
- (x) apply the proceeds of the Guaranteed Loan towards the Investment Project, and to refrain from making any material changes to the Investment Project without the Guarantee Holder's consent as long as the Guaranteed Loan is outstanding;

- (xi) use all reasonable efforts to preserve and protect the Investment Project;
- (xii) refrain from waiving any right, claim, cause of action or other remedy or accepting any offer of compensation in respect of any Loss;
- (xiii) at MIGA's reasonable expense, cooperate fully with MIGA in the administration, preservation and protection of assets acquired by MIGA, and in the prosecution of any rights, claims, causes of action and other interests obtained by MIGA, pursuant to the terms of this Contract;
- (xiv) upon reasonable prior notice, permit MIGA, or any authorized representative of MIGA or any oversight unit of MIGA within the World Bank Group, to examine the Investment Project and conduct environmental, social, and developmental monitoring of (x) the Investment Project and (y) in connection with the Investment Project, the State-Owned Enterprise and Sub-borrowers; and
- (xv) provide MIGA with the Development Effectiveness Indicators annually during the Guarantee Period, to be delivered to MIGA by March 31 of each calendar year.

No compensation for a Loss shall be payable hereunder in the event that any of the representations in this Section 9.1 proves to be untrue in any material respect.

9.2 At all times during the Guarantee Period and any period thereafter during which there may be a Potential Claim, the Guarantee Holder shall diligently enforce its rights pursuant to the Loan Agreement and consistent with local law to cause the State-Owned Enterprise to perform the obligations listed in Subsection 9.1(c). In the event of breach of any of such obligations, the Guarantee Holder shall diligently enforce its remedies against the State-Owned Enterprise and shall take no steps to prejudice its rights to enforce such remedies without MIGA's prior written consent.

9.3 The Guarantee Holder further covenants that it shall:

- (a) maintain audited accounts prepared in accordance with International Financial Reporting Standards;
- (b) retain any other material information relating to the Guaranteed Loan and the Investment Project;
- (c) obtain and maintain all required registrations, filings, declarations, authorizations, approvals, permits, consents, concessions, and licenses required for the Guaranteed Loan in the Host Country;
- (d) upon MIGA's reasonable request, promptly furnish MIGA with such accounts and information relating to the Guaranteed Loan, the Financial Obligation, and, to the extent in its possession, the Investment Project, and permit MIGA's duly authorized representatives to examine and make copies of audits, accounts, books, financial statements and any other material information in its possession relating to the Guaranteed Loan, the Financial Obligation, and, to the extent in its possession, the Investment Project;
- (e) within 30 days of MIGA's request, submit all material evidence reasonably available to it as MIGA may reasonably request from time to time to evaluate and process a Claim;

- (f) (i) comply with and abide by all laws and regulations of the Host Country in implementing the Guaranteed Loan;
- (ii) to the extent applicable to the Guarantee Holder in connection with the Investment Project: (x) comply with and abide by all laws and regulations of the Host Country in respect of which it is capable of compliance in connection with the Investment Project, including Applicable E&S Laws and those that protect core labor standards, and (y) comply with all of its obligations to the Host Country and the State-Owned Enterprise in connection with the Investment Project; and
- (iii) (x) comply with its obligations hereunder in respect of the E&S Requirements; and (y) to the extent the Guarantee Holder controls the Investment Project, ensure that the Investment Project is in compliance with the E&S Requirements; and
- (g) in connection with the Investment Project, the Guaranteed Loan, and the Financial Obligation, refrain from engaging in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering;
- (h) immediately notify MIGA in writing upon learning of:
 - (i) any Loss and any defaults (regardless of cause) on a Scheduled Payment, such notification to be provided no later than five (5) days following the date of non-payment of the Financial Obligation by the State-Owned Enterprise;
 - (ii) any Change of Control;
 - (iii) any event or circumstance that could reasonably be expected to cause, or materially increase the likelihood of, a Loss, including any outstanding or incipient disputes between itself and the State-Owned Enterprise or the Host Government or between the State-Owned Enterprise and the Host Government, or any pending or threatened action or administrative proceeding by or before any court, arbitral tribunal, or agency that might have a material adverse effect on the State-Owned Enterprise or the Investment Project; and
 - (iv) (x) any change in law, proposed change in law, public announcement, or other circumstance that increases the likelihood of a Change of Control, or (y) any change in law, proposed change in law, public announcement, or other circumstance relating to the ownership of some or all of the shares of the State-Owned Enterprise;
 - (v) any newly issued credit rating(s) relating to the State-Owned Enterprise or any of its debt obligations, and any changes to the credit rating(s) of the State-Owned Enterprise or any of its debt obligations;
- (i) deliver concurrently to MIGA a true, correct and complete copy of any written notice, demand, or declaration that the Guarantee Holder sends to the State-Owned Enterprise with respect to an event of default or potential event of default pursuant to the Loan Agreement;
- (j) refrain from waiving any right, claim, cause of action or other remedy or accepting any offer of compensation in respect of any Loss;

- (k) at MIGA's reasonable expense, cooperate fully with MIGA in the administration, preservation and protection of assets acquired by MIGA, and in the prosecution of any rights, claims, causes of action and other interests obtained by MIGA, pursuant to the terms of this Contract;
- (l) at MIGA's request and to the extent within the Guarantee Holder's control, allow MIGA to conduct environmental, social, and developmental monitoring of (x) the Investment Project and (y) in connection with the Investment Project, the State-Owned Enterprise;
- (m) upon becoming aware of any Excess Payment, promptly notify MIGA and inform MIGA whether such Excess Payment constitutes a Directed Payment;
- (n) upon filing a Claim pursuant to Section 3.3 of this Contract, represent and warrant to MIGA as to whether there has been a Directed Payment; and
- (o) for purposes of Section 12.1(c), notify MIGA in the form of Annex 5A no later than 30 days before the first day of any Contract Period of the amount of the Scheduled Payment of interest on the Guaranteed Loan falling due in the immediately preceding Contract Period.⁵

9.4 The Guarantee Holder shall, throughout the Guarantee Period, remain eligible to receive coverage from MIGA in accordance with Article 13 of the Convention.

9.5 The Guarantee Holder shall not without the prior written consent of MIGA, which consent shall not be unreasonably withheld:

- (a) assign, transfer, or encumber any rights under this Contract;
- (b) amend, modify, supplement or waive any conditions precedent to disbursement or any material rights or obligations with respect to the Loan Agreement or the Financial Obligation, including the amount, time of payment thereof or transfer or assign any rights under the Loan Agreement or the Financial Obligation;
- (c) enforce any rights or remedies it may have pursuant to the Loan Agreement or the Financial Obligation, including acceleration of the Guaranteed Loan; or
- (d) take any steps to change or prejudice MIGA's rights to the Loan Agreement or the Financial Obligation.

9.6 The Guarantee Holder hereby represents and warrants as of the Effective Date that, to the best of its knowledge after due inquiry, all information, representations, and warranties made in the Application for Guarantee, as well as any written information provided by or on behalf of the Guarantee Holder to MIGA, are true, correct, and complete in all material respects and do not contain any materially false or misleading statements or omissions.

⁵ Drafting note: covenant to be deleted if interest payments are indicated as an amount certain in the Payment Schedule.

9.7 To the best of its knowledge after due inquiry, as of the Effective Date, the Guarantee Holder is not aware of:

- (a) any Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering engaged in by the State-Owned Enterprise or any of its shareholders in connection with the Investment Project; or
- (b) any non-compliance by the State-Owned Enterprise with the Performance Standards in connection with the Investment Project.

9.8 In the event the Guarantee Holder becomes aware that the State-Owned Enterprise or any shareholder thereof has in connection with the Investment Project engaged in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering, or violated the Performance Standards, the Guarantee Holder shall:

- (a) immediately notify MIGA thereof; and
- (b) diligently enforce any contractual remedies under the Loan Agreement and any related documentation against the State-Owned Enterprise and any other obligor, including if requested by MIGA cancellation of undrawn commitments, acceleration of the Guaranteed Loan and/or enforcement of security.

9.9 In connection with and subsequent to payment of (but not as a condition to payment) compensation by MIGA under this Contract, the Guarantee Holder shall, and shall use all reasonable efforts within its control to cause the State-Owned Enterprise to, when requested by and in consultation with MIGA, take all commercially reasonable measures to:

- (a) pursue available administrative and judicial remedies arising under the Financial Obligation or under law, in cooperation with or on behalf of MIGA, against the State-Owned Enterprise and, if applicable, the Host Government;
- (b) negotiate in good faith with the State-Owned Enterprise and, if applicable, the Host Government, in cooperation with or on behalf of MIGA; and
- (c) pursue other potential sources of recovery for the Loss.

ARTICLE 10. GUARANTEE PERIOD; CONDITIONS FOR TERMINATION

Guarantee Period

10.1 Subject to Section 13.1, this Contract shall terminate at 11:59 PM, Washington, DC time, on the last day of the Guarantee Period, unless terminated earlier pursuant to Section 10.2 or 10.3. Subject to Section 7.5, the terms and conditions of this Contract shall, however, continue to apply to a Loss occurring during the Guarantee Period, even if a Claim is made after the Guarantee Period. Any Loss occurring after the expiry of the Guarantee Period shall not be covered under this Contract.

Termination by Guarantee Holder

10.2 The Guarantee Holder may terminate this Contract on any anniversary of the Effective Date by submitting to MIGA a Notice of Termination at least 30 days prior to such anniversary of the Effective Date.

Termination by MIGA

10.3 If the Guarantee Holder fails to pay to MIGA, on or before the Initial Premium Due Date, the full amount of the Total Amount Due for the first Contract Period, MIGA may by notice to the Guarantee Holder terminate this Contract immediately, retroactively to the Effective Date and without any obligation whatsoever, rendering this Contract null and void and, irrespective of whether a Notice of Termination has been delivered, MIGA shall have no liability to pay compensation for any Loss. With respect to each subsequent Contract Period, if the Guarantee Holder fails to pay the full amount of the Total Amount Due (including any Interest thereon) on the applicable Premium Due Date, and such failure continues for a period of 30 days after written notice to the Guarantee Holder of such nonpayment (“**Notice of Nonpayment**”), MIGA may, by Notice of Termination, terminate this Contract as of 12:00 AM, Washington, DC time, retroactively to the first day of the Contract Period for which the Total Amount Due has not been paid, it being agreed that, irrespective of whether a Notice of Nonpayment or a Notice of Termination has been delivered, MIGA shall have no liability to pay compensation for any Loss arising during any period in which any portion of the Total Amount Due then due and payable was unpaid.

Cessation of Liability

10.4 MIGA’s liability under this Contract will cease, and MIGA will have no further obligation hereunder in relation to any Potential Claim or future Claim and, subject to Section 13.2, will have no ongoing contractual relationship with the Guarantee Holder, if:

- (a) (i) any representation or warranty made or deemed to be made by the Guarantee Holder in this Contract proves to be untrue in any material respect;
- (ii) the Guarantee Holder intentionally omits information material to the Investment Project, the Guaranteed Loan, the Financial Obligation, the Covered Risk, or a Claim; or
- (iii) any representation or warranty made or deemed to be made or information provided by or on behalf of the Guarantee Holder (x) in the Application for Guarantee or (y) to MIGA in connection with this Contract (including any information material to the Covered Risk or a Claim) proves to be untrue in any material respect,

provided, however, that, in the case of subsection (iii) above, MIGA's liability hereunder will not be affected if the representation or warranty given or the information provided was true in all material respects to the best of the Guarantee Holder's knowledge (having made due inquiry) at the time given or provided;

- (b) the Guarantee Holder violates the confidentiality provisions of Section 13.4;
- (c) the Guarantee Holder is in material non-compliance with any other responsibility or obligation specified under this Contract, except:
 - (i) a default for non-payment of any portion of the Total Amount Due under Section 10.3, for which the remedy set forth in Section 10.3 shall apply; and

- (ii) failure of the Guarantee Holder to enforce compliance with the obligation set forth in Subsection 9.1(c)(xv);
- (d) the Guarantee Holder is in material violation of the laws and regulations of the Host Country with respect to the Guaranteed Loan, the Financial Obligation, or, to the extent attributable to the Guarantee Holder, the Investment Project, other than Exempt Laws;
- (e) the non-compliance by the Guarantee Holder with: (i) its obligations hereunder in respect of the Performance Standards; and (ii) to the extent the Guarantee Holder controls the Investment Project, the Performance Standards;
- (f) the Guarantee Holder is engaging in Money Laundering in connection with the Guaranteed Loan, the Financial Obligation, or the Investment Project; or
- (g) the Guarantee Holder is engaging in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices or Obstructive Practices in connection with the Guaranteed Loan, the Financial Obligation, or the Investment Project,

provided, however, that MIGA may grant, at its sole discretion, a reasonable period of time to cure the situations listed in Subsections (c) through (g) above. No other remedy shall be available to MIGA for any of the situations listed in this Section 10.4.

Early Termination Fee; Amounts Previously Paid

10.5 If there is any termination of or cessation of liability under this Contract during the first three years of the Guarantee Period, the Guarantee Holder shall pay to MIGA 50 percent of the Total Amount Due, based on the Current Amount of Guarantee and Standby Option Amount, that the Guarantee Holder would otherwise have paid during the remaining Contract Periods falling within the first three years of this Contract, had it not been for such termination or cessation of liability. This payment shall not apply in cases of:

- (a) liquidation, bankruptcy or legal sale of the State-Owned Enterprise; or
- (b) prepayment of the Guaranteed Loan.

10.6 MIGA shall not be liable to return to the Guarantee Holder any portion of the Total Amount Due previously paid to MIGA if this Contract is terminated or MIGA's liability hereunder ceases at any time over the term of the Guarantee Period.

ARTICLE 11. DISPUTE RESOLUTION AND APPLICABLE LAW

11.1 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 Rules of Arbitration.

11.2 The arbitral tribunal constituted under the Rules of Arbitration shall apply this Contract, the Convention and, to the extent that issues in dispute are not covered by this Contract or the Convention, the arbitral tribunal shall apply general principles of law. The seat of arbitration shall be The Hague, Netherlands and the language of the arbitration shall be English.

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

ARTICLE 12. COVERAGE ADJUSTMENTS AND PREMIUM PAYMENTS

12.1 Both the Current Amount of Guarantee and the Maximum Aggregate Liability shall be reduced for the remainder of the Guarantee Period by (without double counting):

- (a) the amount of compensation paid by MIGA pursuant to any Claim;
- (b) the Percentage of Cover of the amount of each Scheduled Payment [of principal⁶ of the Guaranteed Loan] specified in Annex 2 (regardless of whether such Scheduled Payment has been received by the Guarantee Holder, but without prejudice to any resulting Loss which may have occurred and the Guarantee Holder's right to compensation by MIGA therefor); *provided, however*, that such reduction shall take effect on the first day of the Contract Period immediately following the Contract Period in which such Scheduled Payment is due;
- (c) the Percentage of Cover of the amount of each Scheduled Payment of interest on the Guaranteed Loan notified to MIGA by 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 (regardless of whether such Scheduled Payment has been received by the Guarantee Holder, but without prejudice to any resulting Loss which may have occurred and the Guarantee Holder's right to compensation by MIGA therefor); *provided, however*, that such reduction shall take effect on the first day of the Contract Period immediately following the Contract Period in which such Scheduled Payment is due; and
- (d) the amount of any additional reduction irrevocably elected by 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; *provided, however*, that for any given Contract Period, such election may not reduce the Current Amount of Guarantee to below the Percentage of Cover of the outstanding principal amount of the Guaranteed Loan specified in Annex 2 as of the first day of such Contract Period.

12.2 Where the Guaranteed Loan is disbursed over a period of time, the Standby Option Amount shall be reduced for the remainder of the Guarantee Period by any amounts transferred from the Standby Option Amount to the Current Amount of Guarantee pursuant to Section 12.3 below.

12.3 So long as no Loss or Potential Loss has occurred, the Guarantee Holder may, 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 5B, irrevocably elect to increase the Current Amount of Guarantee for such Contract Period and each successive Contract Period during the Guarantee Period by transferring amounts from the Standby Option Amount to the Current Amount of Guarantee. At any time after a Loss or

⁶ Drafting note: if interest payment is indicated in the Payment Schedule as an amount certain, reference to principal here should be deleted, as well as Section 12.1(c). Section 12.1(d) should be re-numbered accordingly.

Potential Loss has occurred, MIGA shall have the right to suspend the Standby Option until reinstated at MIGA's sole discretion.

12.4 The Guarantee Holder shall pay to MIGA:

- (a) the Total Amount Due on each Premium Due Date; and
- (b) with respect to any amount thereof not paid on the Premium Due Date, such amount plus Interest thereon at LIBOR plus three percent.

ARTICLE 13. MISCELLANEOUS

Survival

13.1 The terms, rights, obligations and conditions contained in Articles 6, 7, 8 and 11, Sections 9.2, 9.9, 10.1, 10.4, 10.5, 13.1 and 13.4, and Subsections 9.3(d), (e), (j), and (k) shall survive the termination of this Contract.

13.2 The terms, rights, obligations and conditions contained in Article 11 and Section 13.4 shall survive the cessation of MIGA's liability pursuant to Section 10.4.

Notices

13.3 Every notice, request, Claim, consent, report, approval, or waiver, including the Notice of Termination, concerning this Contract shall be in writing and shall be made when it is delivered by hand, courier, certified mail, or facsimile when transmission has been completed, or, in the case of acknowledgement of Premium and other amounts received by MIGA, by email, to the address for such party specified in Clause 15 of the Special Conditions.

Confidentiality

- 13.4
- (a) The Guarantee Holder shall not, without MIGA's prior written consent, at any time disclose any terms or conditions of this Contract, or any information made available by MIGA to the Guarantee Holder with respect thereto and designated as confidential, to any third party, other than to government regulators in the country of the Guarantee Holder and the Guarantee Holder's lawyers, auditors, accountants, financial advisors, syndicate and prospective lenders, and rating agencies.
 - (b) Disclosure of this Contract to government regulators of the Host Country, unless required by enforcement of a law or regulation, will require MIGA's prior written consent, such consent not to be unreasonably withheld.
 - (c) Subject to Subsection 13.4(d), MIGA shall take all practicable measures to comply with any reasonable request of the Guarantee Holder to safeguard the confidentiality of all documents, data and other information received by MIGA which are identified as being confidential. Notwithstanding the foregoing, in accordance with the Access to Information Policy, MIGA may disclose certain information, including:
 - (i) 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 State-Owned Enterprise, the Host

- Country, the Guaranteed Loan, the Maximum Aggregate Liability, and the risks covered for purposes of MIGA's annual and quarterly reports; and
- (ii) any environmental impact assessment reports provided to MIGA with respect to the Investment Project.
- (d) Subsection (c) of this Section 13.4 shall not apply to:
- (i) information that is or becomes a matter of public knowledge or is obtained by MIGA from any source other than the Guarantee Holder or any of the Guarantee Holder's respective agents or representatives, including employees, attorneys and financial advisors; and
 - (ii) information disclosed to directors, officers, employees, accountants, consultants, and counsel of MIGA, or of other members of the World Bank Group, and reinsurers, insurers under MIGA's Cooperative Underwriting Program and brokers, agents and finders representing MIGA in connection with the Investment Project, who may require such material for the purpose of evaluating the Investment Project.
- (e) In the event that MIGA is requested or required in the context of administrative or judicial proceedings to disclose any confidential information, MIGA will provide the Guarantee Holder with prompt notice of such request(s) so that the Guarantee Holder may seek an appropriate protective order or other appropriate remedy or waive MIGA's obligation to comply with the provisions of this Section 13.4. In the event that such protective order or other remedy is not obtained, MIGA will furnish that portion of the confidential information which, in the opinion of MIGA, it is legally compelled to disclose.

Amendments and Waivers

13.5 No provision of this Contract may be amended, modified, or supplemented 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 15 of the Special Conditions.

13.6 Without prejudice to Article 34 of the Rules of Arbitration, neither MIGA nor the Guarantee Holder shall be 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.

Entire Agreement

13.7 This Contract, including all its parts and Annexes (as applicable) integrates all the terms and conditions mentioned herein or incidental thereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof.

Counterparts

13.8 This Contract may be executed in counterparts, all of which, taken together, shall constitute one and the same instrument.

No Third-Party Beneficiaries

13.9 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 State-Owned Enterprise.

Rights, Privileges and Immunities

13.10 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 Convention or other international agreements, or under applicable law.

Part III – Amendments

[NOT APPLICABLE TO THIS CONTRACT.]

[The following additional provisions and amendments to the General Conditions of Guarantee for Non-Shareholder Loans, Non-Honoring of a Financial Obligation by a State-Owned Enterprise (Part II of this Contract) are hereby incorporated as Part III of this Contract:]

Part IV – Standby Option (Commitment for Additional Coverage)

[NOT APPLICABLE TO THIS CONTRACT.]

ARTICLE 1.

1.1 This Standby Option (Commitment for Additional Coverage) to commit coverage for future disbursements of the Guaranteed Loan (“Standby Option”) is incorporated into this Contract as Part IV.

1.2 In accordance with Section 12.3 of the General Conditions, upon a written request by the Guarantee Holder and in accordance with the conditions hereinafter specified, MIGA hereby agrees that the Guarantee Holder may increase the Current Amount of Guarantee under this Contract, using the Standby Option Amount elected by the Guarantee Holder hereunder.

ARTICLE 2.

2.1 In accordance with Section 12.3 of the General Conditions, the Current Amount of Guarantee under this Contract may be increased during the Guarantee Period by a maximum amount of [Amount in Guarantee Currency].

Annex 1 – 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 IFC⁷, MIGA, or PRG⁸ operations. 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, MIGA and PRG 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.

⁷ “IFC” means the International Finance Corporation, a member of the World Bank Group.

⁸ “PRG” means the Partial Risk Guarantee operations conducted by the Project Finance Group of the International Bank for Reconstruction and Development.

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 2 – Payment Schedule

All capitalized terms used in this Annex 2 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) due on each Scheduled Payment Due Date, in Guarantee Currency:

Scheduled Payment Due Date	Principal Payment	Principal Balance	Interest Payment ⁹
, 20__	[]	[]	[] / [Up to] / [Variable]
, 20__	[]	[]	[] / [Up to] / [Variable]
, 20__	[]	[]	[] / [Up to] / [Variable]
, 20__	[]	[]	[] / [Up to] / [Variable]

[Add for variable interest rate loans:]

(Note: Interest amounts are to be determined for each Contract Period in accordance with the Loan Agreement, except that amounts excluded pursuant to Subsection 5.2(b) of the General Conditions shall not be covered).

⁹ 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.

Annex 3 – Financial Obligation(s)

The “Financial Obligation[s]” covered by this Contract [is/are] set forth in the following clause[s] of the Loan Agreement:

[]

Annex 4A – Performance Standards

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:
https://www.miga.org/Documents/MIGA_Performance_Standards_October_2013.pdf

Annex 4B – Action Plan

[Document to be inserted.]

Annex 4C – Development Effectiveness Indicators¹⁰

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 State-Owned Enterprise is to complete the table below. Indicator definitions are included for reference purposes and best estimates are acceptable. All financial values should be clearly denominated in either Guarantee Currency or Local Currency.

INDICATOR	[CALENDAR YEAR] (January 1 to December 31)
Direct Employment – Operations and Maintenance (FTEs)	Total:
	Female:
Direct Employment – Construction (FTEs)	Total:
	Female:
Payments to Government [(Guarantee Currency or Local Currency)]	Total:
Domestic Purchases [(Guarantee Currency or Local Currency)]	Total:
E&S Management System	[yes/no]
[Sector indicator(s) <additional sector indicator(s), as defined by project team, to be added to table>]	See sector indicator(s) definition

¹⁰ Drafting note: DEIs to be adapted for individual transaction.

Definitions:

Direct Employment – Operations and Maintenance (FTEs) (Total/Female): Number of total, female and male full-time equivalent (FTE) employees as per local definition working for the State-Owned Enterprise at the end of the calendar year. This includes directly hired individuals and individuals hired through third party agencies as long as those individuals provide on-site services related to the operations and maintenance of the State-Owned Enterprise. Also, this includes full-time equivalent work by seasonal, contractual and part-time employees. Part-time jobs are converted to full-time equivalents on a pro-rata basis, according to the local definition (for example, if according to the local definition a working week equals 40 hours, a 24 hour/week job will be reported as a 0.6 FTE employee). If more detailed information is not available, a part-time job will be reported as a 0.5 employee. Seasonal or short-term jobs are pro-rated on the basis of the portion of the reporting period that was worked (for example, a full-time position for three months will be reported as a 0.25 FTE employee). *NOTE: Employment for the purpose of construction of the State-Owned Enterprise's hard assets is not to be included in this indicator. For such jobs, please use the indicator Direct Employment – Construction.*

Direct Employment – Construction (FTEs) (Total/Female): Number of total, female and male full-time equivalent (FTE) construction workers employed for the construction of the State-Owned Enterprise's hard assets during the calendar year. Part-time jobs for construction are converted to full-time equivalents on a pro-rata basis, according to the local definition (for example, if according to the local definition a working week equals 40 hours, a 24 hour/week construction job will be reported as a 0.6 FTE construction worker). If more detailed information is not available, a part-time construction job will be reported as a 0.5 employee. Seasonal or short-term construction jobs are pro-rated on the basis of the portion of the reporting period that was worked (for example, a full-time construction job for three months will be reported as a 0.25 FTE construction worker). *NOTE: Employment for the State-Owned Enterprise's operations and maintenance is not to be included in this indicator. For such jobs, please use the indicator Direct Employment – Operations and Maintenance.*

Payments to Government: All payments made by the State-Owned Enterprise to all levels of the Host Government during the calendar year, minus direct subsidies received by the State-Owned Enterprise during the calendar year. Payments to the Host Government include: (i) corporate taxes and/or profit taxes, (ii) sales taxes, (iii) net VAT, (iv) royalties, (v) dividends and related taxes, (vi) management and/or concession fees, (vii) license and permit fees, (viii) tax on payment of interest, and (ix) any other material payments. Total amount to be specified in Guarantee Currency or Local Currency.

Domestic Purchases: Monetary value of all goods and services purchased by the State-Owned Enterprise from domestic suppliers during the calendar year. This includes raw materials, engineering and installation, security, gardening, maintenance, cleaning, and marketing and research from local companies). This excludes payments made to the Host Government, including government-provided services, and imports handled through a local facilitating agent. Total amount to be specified in Guarantee Currency or Local Currency.

E&S Management System: The indicator refers to the State-Owned Enterprise's E&S Management System and tracks whether the State-Owned Enterprise is compliant with Performance Standard 1 and has an E&S Management System active and in place.

[Sector definitions: to be added as defined by project team.]

Annex 4D – MIGA Exclusion List

1. Production or trade in any product or activity deemed illegal under the laws or regulations of the Host Country or international conventions and agreements, or subject to international bans, such as pharmaceuticals, pesticides/herbicides, ozone depleting substances, PCB, wildlife or products regulated under the Convention in Trade in Endangered Species (CITES).
2. Production or trade in weapons and munitions.¹
3. Production or trade in alcoholic beverages (excluding beer and wine).¹
4. Production or trade in tobacco.¹
5. Gambling, casinos and equivalent enterprises.¹
6. Production or trade in radioactive materials. This does not apply to the purchase of medical equipment, quality control (measurement) equipment and any equipment where MIGA considers the radioactive source to be trivial and/or adequately shielded.
7. Production or trade in un-bonded asbestos fibers. This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.
8. Drift net fishing in the marine environment using nets in excess of 2.5 km in length.
9. Production or activities involving harmful or exploitative forms of forced labor²/harmful child labor.³
10. Commercial logging operations for use in primary tropical moist forests.
11. Production or trade in wood or other forestry products other than from sustainably managed forests.

If financing microfinance activities in addition to other activities, the State-Owned Enterprise will apply the following items in addition to items 1-11 above:

¹ This restriction does not apply to any clients of the State-Owned Enterprise that are not substantially involved in these activities. "Not substantially involved" means that the activity concerned is ancillary to the client's primary operations.

² Forced labor means all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

³ Harmful child labor means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, spiritual, moral, or social development.

⁴ Indigenous peoples has the meaning ascribed to it in Performance Standard 7.

12. Production, trade, storage, or transport of significant volumes of hazardous chemicals, or commercial scale usage of hazardous chemicals. Hazardous chemicals include gasoline, kerosene, and other petroleum products.
13. Production or activities that impinge on the lands owned, or claimed under adjudication, by indigenous peoples⁴, without full documented consent of such peoples.]

[Drafting note: If financing microfinance activities exclusively, the State-Owned Enterprise will apply items 12 and 13 above instead of items 10 and 11 above.

Annex 5A – Form of Notice of Reduction in Amount of Guarantee

*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 & Client 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 shall have their respective meanings specified in the Contract of Guarantee.

The Guarantee Holder hereby certifies as follows:

1. The Maximum Aggregate Liability as of the date hereof is [Amount in Guarantee Currency]. The Current Amount of Guarantee as of the date hereof is [Amount in Guarantee Currency].
2. The next Scheduled Payment is due on [_____] 20[___], in the principal amount of [Amount in Guarantee Currency] [and interest amount of [Amount in Guarantee Currency]].
3. 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.]**

4. In accordance with Section 12.1 of the General Conditions, the Guarantee Holder irrevocably elects to reduce the Current Amount of Guarantee 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 shall be [Amount in Guarantee Currency]; [***Must be not less than Percentage of Cover of the principal amount shown in Section 3 above.***] (b) the remaining Standby Option Amount shall be [Amount in Guarantee Currency]; and (c) the Maximum Aggregate Liability shall be [Amount in Guarantee Currency, sum of (a) and (b)].

Sincerely,

[GUARANTEE HOLDER]

By:

(signature)

Authorized Representative
(name and title)

(place and 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 & Client 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 shall have their respective meanings specified in the Contract of Guarantee.

The Guarantee Holder hereby certifies as follows:

1. The Current Amount of Guarantee as of the date hereof is [Amount in Guarantee Currency]. As of the date hereof, 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 such that the outstanding principal amount of the Guaranteed Loan as of such first day of such upcoming Contract Period will be [Amount in Guarantee Currency]. Attached hereto is a revised Annex 2 itemizing with respect to the Guaranteed Loan the Scheduled Payment Due Dates and amounts of each Scheduled Payment, reflecting such additional disbursements.

3. No Loss or Potential Loss has occurred as of the date hereof, and in accordance with Subsection 9.3(h) of the General Conditions, the Guarantee Holder shall notify MIGA of any Loss or Potential Loss that occurs before the effectiveness of the transfer described in paragraph 4 below.

4. In accordance with Section 12.3 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 each successive Contract Period during the Guarantee Period, by transferring [Amount in Guarantee Currency] from the 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 shall be [Amount in Guarantee Currency]; and (b) the remaining Standby Option Amount shall be [Amount in Guarantee Currency].

Sincerely,

[GUARANTEE HOLDER]

By:

(signature)

Authorized Representative
(name and title)

(place and date)

Annex 6 – Form of Certificate for Non-Honoring of a Financial Obligation by a State-Owned Enterprise

[LETTERHEAD OF GUARANTEE HOLDER]

[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 & Client 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 shall have their respective meanings specified in the Contract of Guarantee.

The Guarantee Holder hereby certifies, represents, and warrants to MIGA that the following event occurred:

1. On [date], the Guarantee Holder failed to receive the full amount of the [Scheduled Payment due on the Scheduled Payment Due Date] [Covered Mandatory Prepayment]: [Amount in Guarantee Currency], of which the Guarantee Holder received [Amount in Guarantee Currency] and of which [Amount in Guarantee Currency] is still outstanding.
2. The Guarantee Holder immediately notified MIGA of such event pursuant to Section 9.3(h).
3. In accordance with Section 9.3(n), [there has been no Directed Payment][there has been a Directed Payment in the amount of [_____]].

The Guarantee Holder hereby requests that MIGA pay to the Guarantee Holder the [Scheduled Payment] [Covered Mandatory Prepayment] or unpaid portion thereof on the last day of the Waiting Period in the amount of [Amount in Guarantee Currency] in accordance with the terms of the Contract of Guarantee.

Sincerely,

[GUARANTEE HOLDER]

By:

(signature)

Authorized Representative
(name and title)

(place and date)