

**CONFIDENTIAL DRAFT**

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## **Contract of Guarantee for Equity Investments**

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 Equity Investments

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## Part I – Special Conditions

### SPECIAL NOTICE

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

**CLAUSE 1. Project Enterprise:** [ ]

**CLAUSE 2A. Investment Project:** [ ]

**CLAUSE 2B. Host Country:** [ ]

**CLAUSE 3. Guarantee Currency:** [ ]

**CLAUSE 4A. Total Equity Investment of the Guarantee Holder:** [Amount in Guarantee Currency.]

**CLAUSE 4B. Guaranteed Investment:**

Shares: [ ] shares of par value [ ] each, representing a [ ]% ownership interest in the Project Enterprise, provided that such number of shares shall be adjusted to reflect a stock split, stock dividend or similar measure.]

Tangible Assets: [Not applicable.] [Describe.]

Ownership Interest: [Not applicable.] [Describe.]

	Other Form:	[Not applicable.] [Describe.]
	Amount:	[Amount in Guarantee Currency.]
<b>CLAUSE 5.</b>	<b>Contract Period:</b>	(1) The [____] period starting on the Effective Date and ending on [____] and (2) thereafter, the [____] periods ending on the [____] day of each [____] and [____].
<b>CLAUSE 6.</b>	<b>Guarantee Period:</b>	The period commencing on the Effective Date and ending on [____].
<b>CLAUSE 7.</b>	<b>Covered Risks:</b>	[Transfer Restriction;] [Expropriation;] [War and Civil Disturbance;] and [Breach of Contract].
<b>CLAUSE 8.</b>	<b>Waiting Period:</b>	
	Transfer Restriction:	
	Inconvertibility	[60] continuous days.
	Inability to Transfer	[60] continuous days.
	Expropriation:	
	Expropriation of Investment	[180] continuous days.
	Expropriation of Funds	[60] continuous days.
	War and Civil Disturbance:	
	Loss of Assets	[None.]
	Permanent Loss of Use	[180] continuous days.
	Breach of Contract:	[180] continuous days.
<b>CLAUSE 9A.</b>	<b>Percentage of Cover:</b>	[90]%
<b>CLAUSE 9B.</b>	<b>Percentage of Self-Insurance:</b>	[10]%
	<b>Total:</b>	<u>100%</u>
<b>CLAUSE 10A.</b>	<b>Current Amount of Guarantee:</b>	[Amount in Guarantee Currency], as adjusted in accordance with Article 15 of the General Conditions.
<b>CLAUSE 10B.</b>	<b>Standby Option Amount:</b>	[Amount in Guarantee Currency, as adjusted in accordance with Article 15 of the General Conditions.] [Not applicable.]
<b>CLAUSE 10C.</b>	<b>Maximum Aggregate Liability:</b>	[Amount in Guarantee Currency.]

**CLAUSE 11A. Annual Premium Rate:** [ ]%

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

[\_\_\_\_\_],

payable on or before the Initial Premium Due Date.

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

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

[\_\_\_\_\_],

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

**CLAUSE 13A. Annual Facility Fee Rate:** [ ]% [Not applicable.]

**CLAUSE 13B. Facility Fraction:** [\_\_\_\_\_] [Not applicable.]

**CLAUSE 13C. Facility Fee for the First Contract Period:** [Amount in Guarantee Currency], calculated as follows:

[\_\_\_\_\_],

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

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

Clause 11B [+ Clause 12B] [+ Clause 13C] less the application fee of [Amount in Guarantee Currency] paid to MIGA on [\_\_\_\_\_],

payable on or before the Initial Premium Due Date.

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

**CLAUSE 15. Deductible:**

Transfer Restriction:  
Inconvertibility  
Inability to Transfer

[Amount in Guarantee Currency.][None.]  
[Amount in Guarantee Currency.][None.]

Expropriation:  
 Expropriation of Investment [Amount in Guarantee Currency.][None.]  
 Expropriation of Funds [Amount in Guarantee Currency.][None.]

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

Breach of Contract: [Amount in Guarantee Currency.][None.]

**CLAUSE 16. Effective Date:** [\_\_\_\_\_.]

**CLAUSE 17. Notice Addresses:**

**MULTILATERAL INVESTMENT  
 GUARANTEE AGENCY**  
 1818 H Street, NW  
 Washington, DC 20433  
 United States of America

**[GUARANTEE HOLDER]**  
 [Mailing Address]  
 [City and Postal Code]  
 [Country]

Attention:  
 Contract Management & Portfolio 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, subject to: (a) 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; and (b) no later than seven (7) calendar days after the Effective Date, the receipt by MIGA of a counterpart of this Contract which shall have been duly executed by the Guarantee Holder on or before the Effective Date.

**MULTILATERAL INVESTMENT  
GUARANTEE AGENCY**

**[GUARANTEE HOLDER]**

By: \_\_\_\_\_ By: \_\_\_\_\_  
(signature) (signature)

Keiko Honda  
Executive Vice President and  
Chief Executive Officer

\_\_\_\_\_  
Authorized Representative  
(name and title)

\_\_\_\_\_  
Authorized Representative  
(name and title)

Washington, DC

[ ]  
\_\_\_\_\_  
(place and date)

[City]

[ ]  
\_\_\_\_\_  
(place and date)

## Part II – General Conditions

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### ARTICLE 1. APPLICATION AND INTERPRETATION

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1.1 The Special Conditions (Part I), the General Conditions (Part II), the Amendments (Part III), if applicable, the Standby Option (Part IV), if applicable, and the Annexes shall form this entire Contract.

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 This Contract is based on the Guarantee Holder’s representations and warranties made to MIGA herein.

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### ARTICLE 2. DEFINITIONS

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“**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](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 3B of this Contract.

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

“**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, without limitation, all authorizations setting standards concerning environmental, social, labor, health and safety, or security risks of the type contemplated by the Performance Standards and the Environmental Guidelines.

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

“**Award**” means a final, non-appealable, and binding decision rendered on the merits by a competent arbitral tribunal, a court of law, or similar judicial forum in accordance with the Dispute Resolution Procedure which:

- (a) is for a specified monetary amount; and
- (b) has been rendered pursuant to a breach of a Contractual Obligation in a Project Agreement or repudiation of such Project Agreement by the Host Government.

“**Book Value**” means the book value of any assets of the Project Enterprise calculated in accordance with International Financial Reporting Standards and determined by MIGA in accordance with the audited accounts of the Project Enterprise.

“**Breach of Contract**” means the Covered Risk described in Section 6.1.

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

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

“**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**” has the meaning specified in the “Special Notice” section of the Special Conditions.

“**Contract Period**” means:

- (a) the period commencing on the Effective Date and ending on the first date specified in Clause 5 of the Special Conditions; and
- (b) each successive period ending on the dates specified in Clause 5 of the Special Conditions or, if earlier, the end of the Guarantee Period.

“**Contractual Obligation**” means an obligation or obligations to be performed by the Host Government under a Project Agreement for the benefit of the Project Enterprise or the Guarantee Holder which are covered against Breach of Contract under Article 6 and specified in Annex 2.

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

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

“**Current Amount of Guarantee**” means, 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 15.4,

less the aggregate amounts reduced from the Current Amount of Guarantee in accordance with Article 15, 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, with respect to a Covered Risk of:

- (a) Transfer Restriction, the date of the action or inaction constituting the Covered Risk for which compensation is claimed as described in Article 3;
- (b) Expropriation, the date of the action or inaction constituting the Covered Risk for which compensation is claimed as described in Article 4;
- (c) War and Civil Disturbance,
  - (i) with respect to Loss of Assets, the date that the destruction, disappearance, or damage occurs,
  - (ii) with respect to Permanent Loss of Use, the date as of which the Project Enterprise is unable to conduct operations essential to its overall financial viability,in each case, as a direct and immediate result of the events described in Section 5.1; and
- (d) Breach of Contract, the date of the Award

“**Deductible**” means the amount or amounts specified in Clause 15 of the Special Conditions for which the Guarantee Holder may not submit a Claim for a given Loss.

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

“**Dispute Resolution Procedure**” means the arbitration, adjudication, or other dispute resolution procedure specified in the applicable Project Agreement.

“**E&S Management System**” or “**ESMS**” means an environmental, health, safety, and social management system implemented or to be implemented by the Project Enterprise and which enables or will enable the Project Enterprise to identify, assess, and manage environmental and social risks in respect of its operations on an ongoing basis, in compliance with the Performance Standards, the Environmental Guidelines, and Applicable E&S Laws. Such system will include manuals and related documents, including, but not limited to, policies, management programs and plans, procedures, requirements, performance indicators, responsibilities, training, and periodic audits and inspections with respect to environmental and social matters designed to identify, assess, and manage risk in respect of the Investment Project on an ongoing basis.

“**Effective Date**” means 12:01 AM, Washington, DC time, on the date specified in Clause 16 of the Special Conditions as the date on which this Contract becomes effective.

“**Environmental Guidelines**” means, with respect to the Investment Project and the Project Enterprise: (i) the General Environmental, Health and Safety Guidelines of the World Bank Group; and (ii) the Industry Sector Guidelines specified in Annex 3A, in each case as in effect on the Effective Date.

“**Expropriation**” means the Covered Risks described in Section 4.1.

“**Expropriation of Funds**” means the Covered Risk described as a subset of Expropriation in Subsection 4.1(b).

“**Expropriation of Investment**” means the Covered Risk described as a subset of Expropriation in Subsection 4.1(a).

“**Facility Fee**” means:

- (a) for the first Contract Period, the amount payable by the Guarantee Holder specified in Clause 13C of the Special Conditions; and
- (b) for each subsequent Contract Period, the amount payable by the Guarantee Holder calculated by taking the product of the following amounts:
  - (i) the sum of the Current Amount of Guarantee and the Standby Option Amount as of the first day of such Contract Period;
  - (ii) the Facility Fraction;
  - (iii) the annual Facility Fee rate specified in Clause 13A of the Special Conditions; and
  - (iv) a fraction, the numerator of which is the number of days in such Contract Period, and the denominator of which is 365.

“**Facility Fraction**” means the portion of the Maximum Aggregate Liability subject to reinsurance by MIGA, as specified in Clause 13B of the Special Conditions.

“**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 Holder’s Share**” means, as applicable:

- (a) the percentage of the total number of shares in the Project Enterprise which are directly or indirectly owned by the Guarantee Holder and guaranteed under this Contract, adjusted to reflect any stock splits, stock dividends, and other events having similar effects;
- (b) the percentage of the total equity ownership interest (other than shares) in the Project Enterprise which is directly or indirectly held by the Guarantee Holder and guaranteed under this Contract, adjusted to reflect any events analogous to stock splits, stock dividends and other events having similar effect;
- (c) the ownership by the Guarantee Holder of tangible assets held, directly or indirectly, in the Project Enterprise and guaranteed under this Contract (expressed as a percentage of the total assets of the Project Enterprise); or
- (d) the percentage interest of the Guarantee Holder in an Award (or, in the case of an Award in favor of the Project Enterprise, the portion of such Award corresponding to the Guaranteed Investment).

“**Guarantee Period**” means the period specified in Clause 6 of the Special Conditions.

“**Guaranteed Investment**” means the amount and type of investment made or to be made, directly or indirectly, by the Guarantee Holder in the Project Enterprise (which may include retained earnings) and guaranteed under this Contract to the extent specified in Clause 4B of the Special Conditions, 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 Investment 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**”);

- (b) any other public or regulatory authority within the territory of the Host Country:
  - (i) which on the Date of Loss was under the supervision, Control, and direction of a Governing Authority; and
  - (ii) for whose actions a Governing Authority is liable;
- (c) with respect to Breach of Contract only, any other public or regulatory authority within the territory of the Host Country which:
  - (i) is under the supervision, Control, and direction of a Governing Authority on the Date of Loss; and
  - (ii) is otherwise satisfactory to MIGA as of the Effective Date and specifically designated as part of the Host Government in Annex 2; or
- (d) with respect to Breach of Contract only, a State-Owned Enterprise.

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

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

“**Initial Premium Due Date**” means the date set forth in Clause 14B 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 Project Enterprise and to which the proceeds of the Guaranteed Investment 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, the six-month LIBOR rate for the Guarantee Currency as published in the “Interest Rates: Market” section (or any successor section) of the Financial Times newspaper two London business days before such Determination Date;

*provided*, that if any such rate is below zero, LIBOR will be deemed to be zero.

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

“**Loss**” means any loss incurred by the Guarantee Holder that would not have been incurred but for the occurrence of a Covered Risk.

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

“**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 10C of the Special Conditions, as such amount may be reduced in accordance with Article 15.

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

“**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.

“**Net Book Value**” means an amount equal to the excess (if any) of the book value of total tangible assets (excluding in all cases any goodwill and any deferred foreign exchange gains or losses and other deferred charges) of the Project Enterprise over the aggregate amount of liabilities of the Project Enterprise, as such items are calculated in accordance with International Financial Reporting Standards and determined by MIGA from the audited accounts of the Project Enterprise or, where applicable hereunder, the portion thereof corresponding to the Guaranteed Investment.

“**Notice of Nonpayment**” has the meaning specified in Section 13.3.

“**Notice of Termination**” means a notice sent by MIGA or the Guarantee Holder to terminate this Contract following the procedures specified in Section 16.2, 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, 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.

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

**“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 Project Enterprise, the Performance Standards on Environmental and Social Sustainability listed on Annex 3A, as in effect on the Effective Date.

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

**“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, but compensation has not yet been paid to the Guarantee Holder.

**“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, and the denominator of which is 365.

**“Premium Due Date”** means:

- (a) for the first Contract Period, the Initial Premium Due Date; and
- (b) for each subsequent Contract Period, the first day of such Contract Period.

**“Project Agreement”** means, with respect to Breach of Contract, one or more of the agreements, contracts, or binding commitments, in each case either:

- (a) between the Guarantee Holder and the Host Government; or
- (b) between the Project Enterprise and the Host Government,

and which are, in either case, directly related to the Investment Project, specified in Annex 2.

**“Project Enterprise”** means the enterprise specified in Clause 1 of the Special Conditions that is responsible for conducting the Investment Project.

**“Provisional Payment”** means the amount in Guarantee Currency that MIGA may elect to pay the Guarantee Holder in accordance with Section 6.4 pending the issuance of an Award.

**“Reference Rate of Exchange”** means with respect to any date the effective rate of exchange on such date for conversion of Local Currency into Guarantee Currency determined as follows:

- (a) first, the exchange rate category generally applied on such date for purposes of remittance of earnings with respect to foreign equity investments by the central bank or any other similar regulatory authority charged with the function of establishing the official foreign exchange rate in the Host Country, but, if Guarantee Currency was not generally available at such official exchange rate, then the Reference Rate of Exchange shall be the average effective exchange rate obtained through other legal exchange mechanisms sanctioned by the Host Government applicable to the type of remittance involved;
- (b) second, if a rate cannot be determined in accordance with sub-paragraph (a) above, the average clearing rate on such date legally used by the largest three commercial banks (measured by volume of foreign exchange transactions cleared in the most recent 60-day period) in the Host Country; and
- (c) third, if a rate cannot be determined in accordance with sub-paragraphs (a) or (b) above, the rate of exchange determined by the International Monetary Fund (“IMF”) for the Host Country. Any costs of obtaining such rate of exchange through the IMF shall be equally shared by the parties.

The Reference Rate of Exchange shall be calculated taking into account the application of all charges and expenses due in case of conversions and transfers by or on behalf of the Guarantee Holder under the prevailing laws, regulations and business practices of the Host Country.

**“Rules of Arbitration”** means the Rules of Arbitration for Disputes under Contracts of Guarantee of the Multilateral Investment Guarantee Agency, dated January 1990.

**“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, without limitation, explosions, spills, any workplace accidents that result in death, serious or multiple injury, material pollution, or any violent labor unrest or dispute between the Project Enterprise or security forces (assigned to protect the Investment Project) and local communities; or (ii) any other event or circumstance having, or which could reasonably be expected to have, a material adverse effect on the implementation or operation of the Investment Project in accordance with the Performance Standards and the Environmental Guidelines.

**“Standby Option”** means the commitment for additional coverage in connection with phased-in portions of the Guaranteed Investment or the reinvestment of retained earnings, 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 15.4 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
- (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, and the denominator of which is 365.

**“State-Owned Enterprise”** means, with respect to Breach of Contract only, an entity (other than a public or regulatory authority):

- (a) which on the Date of Loss is under the supervision, Control and direction of a Governing Authority and is performing a public service or fulfilling a governmental function in the Host Country;
- (b) for whose obligations a Governing Authority is liable or which is otherwise acceptable to MIGA as of the Effective Date; and
- (c) which is specifically designated as part of the Host Government in Annex 2.

“**Total Amount Due**” means:

- (a) for the first Contract Period, the amount payable by the Guarantee Holder specified in Clause 14A of the Special Conditions, consisting of the sum of the Premium, the Standby Option Fee, and the Facility Fee, as applicable; and
- (b) for each subsequent Contract Period, the sum of the Premium, the Standby Option Fee, and the Facility Fee, as applicable, for such Contract Period.

“**Total Equity Investment of the Guarantee Holder**” means the total amount of investment made or to be made, directly or indirectly, by the Guarantee Holder in the Project Enterprise, as such amount as of the date hereof is specified in Clause 4A of the Special Conditions, which amount may be increased over the duration of this Contract as additional investments are made.

“**Transfer Restriction**” means the Covered Risks described in Section 3.1.

“**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.

“**War and Civil Disturbance**” means the Covered Risks described in Section 5.1.

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

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### **ARTICLE 3. TRANSFER RESTRICTION**

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#### **Covered Risks**

3.1 The guarantee against Transfer Restriction shall cover a Loss due to any action or inaction by: (i) the Host Government or (ii) entities or persons authorized by the Host Government under the laws of the Host Country to engage in foreign exchange transactions, in either case which prevents, directly or indirectly, both the Guarantee Holder and the Project Enterprise from legally:

- (a) converting into the Guarantee Currency the Local Currency constituting:
  - (i) dividends, profits, or other monetary benefits derived from the Guaranteed Investment;
  - (ii) proceeds from the disposal of, or other return of, the Guaranteed Investment;  
or
  - (iii) any other return on the Guaranteed Investment;

including the denial of such conversion in an exchange rate category at least as favorable as that used to determine the Reference Rate of Exchange (“**Inconvertibility**”); or

- (b) transferring outside of the Host Country the Guarantee Currency constituting a return of, or a return on, the Guaranteed Investment (“**Inability to Transfer**”),

provided that the Guarantee Holder or the Project Enterprise, or both, as required:

- (x) has for the duration of the applicable Waiting Period continually applied for and failed to convert the Local Currency or to transfer the Guarantee Currency through the legal exchange mechanisms sanctioned by the Host Government in accordance with the relevant laws, regulations and procedures of the Host Country; and
- (y) had on the Effective Date the legal right within the Host Country to convert the Local Currency and transfer the Guarantee Currency.

3.2 A Loss due to the deprivation by the Host Government of the use and control of funds constituting dividends, profits, or other monetary benefits derived from the Guaranteed Investment shall only be covered under Expropriation of Funds pursuant to Subsection 4.1(b).

### **Compensation**

3.3 Subject to Articles 8, 9, and 10, compensation payable under Transfer Restriction shall be the Percentage of Cover of:

- (a) for Inconvertibility, the Guarantee Currency equivalent of the Local Currency which could not be converted in respect of the Guaranteed Investment, calculated on the basis of the Reference Rate of Exchange on the Date of Loss; or
- (b) for Inability to Transfer, the amount of Guarantee Currency that could not be transferred in respect of the Guaranteed Investment as of the Date of Loss.

### **Submission of Claims**

3.4 The Guarantee Holder may submit a Claim for Transfer Restriction at any time from the Date of Loss to the date 180 days after the end of the applicable Waiting Period. The Guarantee Holder shall submit to MIGA promptly all material evidence available to it from time to time as may be necessary to support such Claim for Transfer Restriction, including copies of certifications by the Host Government, or other entities or persons authorized by the Host Government to conduct foreign exchange transactions, demonstrating the inability of both the Guarantee Holder and the Project Enterprise to convert the Local Currency or transfer the Guarantee Currency, as the case may be, for the duration of the applicable Waiting Period.

3.5 A Claim shall be deemed by MIGA to be complete when MIGA is reasonably satisfied that it has received all of the material evidence required to determine the Guarantee Holder's right to compensation under this Contract. MIGA shall make a determination with respect to such Claim in accordance with Section 10.1.

### **Transfer and Assignment**

3.6 As a condition to payment by MIGA of compensation for a Loss, the Guarantee Holder shall, or shall cause the Project Enterprise to:

- (a) deliver to MIGA in the Host Country in cash (or, at MIGA's option, by draft subject to collection) the Percentage of Cover of the Local Currency that could not be converted or the Guarantee Currency that could not be transferred in respect of the Guaranteed Investment; or
- (b) at MIGA's option, assign and transfer to and for the benefit of MIGA the Percentage of Cover of all rights, title, and interest of the Guarantee Holder and/or the Project Enterprise, as applicable, in such Local Currency or Guarantee Currency,

provided that any such delivery or assignment to MIGA shall be made free and clear of any claim, defense, counterclaim, right of set off, liens, security interests, or other encumbrances.

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## ARTICLE 4. EXPROPRIATION

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### Covered Risks

4.1 The guarantee against Expropriation shall cover a Loss due to any legislative action or any executive or administrative action or omission (but excluding any judicial action or omission), in one or a series of events, attributable to the Host Government which, directly or indirectly:

- (a) deprives or prevents the Guarantee Holder from exercising its ownership rights in, or effective control of, all or a substantial portion of the Guaranteed Investment; or otherwise deprives the Guarantee Holder or the Project Enterprise of a substantial benefit of the Guaranteed Investment constituting a fundamental right essential to the overall financial viability of the Guaranteed Investment or the Project Enterprise (“**Expropriation of Investment**”); or
- (b) deprives the Guarantee Holder or the Project Enterprise, as applicable, of the use and control of any funds held by the Guarantee Holder or the Project Enterprise in an account in the Host Country and constituting dividends, profits, or other monetary benefits derived from the Guaranteed Investment (“**Expropriation of Funds**”);

provided that such Loss continues for the duration of the applicable Waiting Period.

4.2 No measure shall constitute an Expropriation under Section 4.1 if it constitutes a bona fide, non-discriminatory measure of general application that governments normally take for the purpose of regulating economic activity, ensuring public safety, raising revenues or protecting the environment, unless the measure is designed by the Host Government to have a confiscatory effect.

4.3 A Loss due to a breach by the Host Government of its obligations under any agreement between or among the Host Government and the Guarantee Holder, the Project Enterprise, or both, where the Host Government is acting in a commercial capacity shall not constitute an Expropriation under Section 4.1.

### Compensation

4.4 Subject to Articles 8, 9, and 10, compensation payable under Expropriation shall be the Percentage of Cover of:

- (a) in the case of Expropriation of Investment, the Guarantee Holder’s Share of:
  - (i) the Net Book Value of the Project Enterprise (or the portion thereof that has been expropriated); or
  - (ii) if the Guaranteed Investment constitutes only tangible assets as specified in the Special Conditions, the Book Value of such tangible assets (or the portion thereof that has been expropriated),

in both cases calculated as of the day immediately preceding the Date of Loss; and

- (b) in the case of Expropriation of Funds:
  - (i) the Guarantee Currency equivalent of the Local Currency amount distributable in respect of the Guaranteed Investment, calculated on the basis of the Reference Rate of Exchange prevailing on the Date of Loss; or
  - (ii) the Guarantee Currency amount distributable in respect of the Guaranteed Investment of which the Guarantee Holder or the Project Enterprise was deprived as of the Date of Loss.

### **Submission of Claims**

4.5 The Guarantee Holder may submit a Claim for Expropriation at any time from the Date of Loss to the date 180 days after the end of the applicable Waiting Period. The Guarantee Holder shall submit to MIGA promptly all material evidence available to it from time to time as may be necessary to support such Claim for Expropriation, including the audited accounts and financial statements of the Project Enterprise in respect of the Investment Project and other evidence concerning the actions or inactions of the Host Government constituting the Expropriation.

4.6 A Claim shall be deemed by MIGA to be complete when MIGA is reasonably satisfied that it has received all of the material evidence required to determine the Guarantee Holder's right to compensation under this Contract. MIGA shall make a determination with respect to such Claim in accordance with Section 10.1.

### **Transfer and Assignment**

4.7 As a condition to payment by MIGA of compensation for a Loss, the Guarantee Holder shall, or shall cause the Project Enterprise to, in accordance with MIGA's instructions, assign and transfer to and for the benefit of MIGA, free and clear of any claim, defense, counterclaim, right of set off, liens, or other encumbrances:

- (a) in the case of Expropriation of Investment, the Percentage of Cover of the Guarantee Holder's Share of the Project Enterprise, or of the tangible assets, as the case may be, (or the portion thereof corresponding to the portion of the Guaranteed Investment that has been expropriated), including all rights, title, and interest therein; and
- (b) in the case of Expropriation of Funds, the Percentage of Cover of the Guarantee Holder's or the Project Enterprise's rights, title, and interest in the Local Currency or the Guarantee Currency amount, as the case may be.

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## **ARTICLE 5. WAR AND CIVIL DISTURBANCE**

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### **Covered Risks**

5.1 The guarantee against War and Civil Disturbance shall cover a Loss that is a direct and immediate result of:

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

- (b) the total inability of the Project Enterprise to conduct operations essential to its overall financial viability as a going concern for the duration of the applicable Waiting Period (“**Permanent Loss of Use**”);

provided that the Loss is a direct and immediate result of military action, acts of war, revolution, insurrection, civil war, civil commotion, riots or acts of terrorism or sabotage carried out, in each case, by those primarily pursuing political or ideological objectives in the Host Country, including acts against the government of the country of the Guarantee Holder, the nationality of the Guarantee Holder, or any other foreign government or foreign investment.

5.2 A Loss due to acts undertaken merely to further labor, student, or other specific interests shall not constitute War and Civil Disturbance under Section 5.1.

### **Compensation**

5.3 Subject to Articles 8, 9, and 10, compensation payable under War and Civil Disturbance shall be, without duplication, the Percentage of Cover of the Guarantee Holder’s Share of:

- (a) in the case of Loss of Assets:
  - (i) the lesser of the replacement cost of such tangible assets with assets of like kind and quality and the reasonable cost of repair of such tangible assets, provided that such compensation is actually utilized for replacement or repair of such assets, as applicable; or
  - (ii) if the relevant assets are neither being replaced nor repaired, the Book Value of the affected tangible assets, determined as of the day immediately preceding the Date of Loss; and
- (b) in the case of Permanent Loss of Use, the Net Book Value of the Project Enterprise calculated as of the day immediately preceding the Date of Loss.

### **Submission of Claims**

5.4 The Guarantee Holder may submit a Claim for War and Civil Disturbance at any time from the Date of Loss to the date 180 days after the end of the applicable Waiting Period. The Guarantee Holder shall submit to MIGA promptly all material evidence available to it from time to time as may be necessary to support such Claim for War and Civil Disturbance, including:

- (a) in the case of Loss of Assets, copies of inventories and audited book entries concerning the assets destroyed, damaged, or that have disappeared, and evidence of the events causing such destruction, damage, or disappearance; and
- (b) in the case of Permanent Loss of Use, all material evidence related to events preventing the Project Enterprise from operating or carrying out viable business operations.

5.5 A Claim shall be deemed by MIGA to be complete when MIGA is reasonably satisfied that it has received all of the material evidence required to determine the Guarantee Holder’s right to compensation under this Contract. MIGA shall make a determination with respect to such Claim in accordance with Section 10.1.

### **Transfer and Assignment**

5.6 As a condition to payment by MIGA of compensation for a Loss, the Guarantee Holder shall, or shall cause the Project Enterprise to, assign and transfer to and for the benefit of MIGA, free and clear of any claim, defense, counterclaim, right of set off, liens, or other encumbrances, the Percentage of Cover of the Guarantee Holder's Share of:

- (a) the affected tangible assets with respect to a Claim for Loss of Assets; or
- (b) the Project Enterprise with respect to a Claim for Permanent Loss of Use,

including all rights, title, and interest therein.

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## **ARTICLE 6. BREACH OF CONTRACT**

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### **Covered Risks**

6.1 The guarantee against Breach of Contract shall cover a Loss that is a direct result of the inability of the Guarantee Holder or the Project Enterprise (on behalf of the Guarantee Holder) to enforce an Award rendered in its favor against the Host Government, provided that the Guarantee Holder and/or the Project Enterprise, as applicable, have made all reasonable efforts to enforce the Award against the Host Government, including initiating and participating in appropriate judicial proceedings, for the duration of the Waiting Period.

6.2 No compensation shall be payable for any Loss due to Breach of Contract by:

- (a) a State-Owned Enterprise or public authority which, on the Date of Loss, is no longer under the supervision, Control, and direction of a Governing Authority, unless the Governing Authority is otherwise legally liable for the obligations of such State-Owned Enterprise or public authority; or
- (b) a public or regulatory authority for whose obligations the Governing Authority was liable on the Effective Date, but is no longer liable on the Date of Loss.

### **Compensation**

6.3 Subject to Articles 8, 9, and 10, compensation payable under Breach of Contract shall be the Percentage of Cover of the Guarantee Holder's Share of the Award, less the amount of any Provisional Payments that have been made pursuant to Section 6.4, payable in Guarantee Currency calculated as of the Date of Loss.

### **Provisional Payments**

6.4 Prior to payment of compensation for Breach of Contract, MIGA may, in its sole discretion, make one or more Provisional Payments (normally in an aggregate amount not to exceed 50 percent of the Current Amount of Guarantee), provided that:

- (a) the Guarantee Holder and the Project Enterprise, as applicable, have not been able to obtain an Award within a period of 180 consecutive days from initiating the Dispute Resolution Procedure against the Host Government for breach of a Contractual Obligation in a Project Agreement, or repudiation of a Project Agreement, and the

Guarantee Holder has made a written request for Provisional Payments after such time period has elapsed;

- (b) MIGA has received an advisory report from an expert following administered expert proceedings as described in Annex 4; and
- (c) if requested by MIGA, the Guarantee Holder has provided MIGA with an irrevocable financial guarantee, in a form and from a guarantor each acceptable to MIGA, to secure repayment of the Provisional Payments as follows:
  - (i) if the Award is rendered against the Guarantee Holder, the Project Enterprise or both, the Provisional Payments shall be repaid in full;
  - (ii) if the Award is rendered in favor of the Guarantee Holder, the Project Enterprise or both, but the awarded amount is less than the Provisional Payments, the Provisional Payments shall be repaid in the amount of such shortfall;
  - (iii) if the Guarantee Holder or the Project Enterprise receives compensation from the Host Government based on the Award, the Provisional Payments shall be repaid to the extent of such compensation received; or
  - (iv) if the Guarantee Holder has failed to submit a Claim for Breach of Contract within 18 months from the last day of the Guarantee Period in accordance with Section 10.6, the Provisional Payments shall be repaid in full,

in each case, plus Interest at LIBOR plus one percent, calculated for the period from the date MIGA makes the respective Provisional Payment until the date such Provisional Payment (or relevant portion thereof) is repaid in full.

### **Submission of Claims**

6.5 The Guarantee Holder may submit a Claim for Breach of Contract at any time from the Date of Loss to the date 180 days after the end of the applicable Waiting Period. The Guarantee Holder shall submit to MIGA promptly all material evidence available to it from time to time as may be necessary to support such Claim for Breach of Contract, including a certified copy of the Award.

6.6 A Claim shall be deemed by MIGA to be complete when MIGA is reasonably satisfied that it has received all of the material evidence required to determine the Guarantee Holder's right to compensation under this Contract.

### **Transfer and Assignment**

6.7 As a condition to payment by MIGA of compensation for a Loss, the Guarantee Holder shall, or shall cause the Project Enterprise to, assign and transfer to and for the benefit of MIGA, free and clear of any claim, defense, counterclaim, right of set off, liens, or other encumbrances, the Percentage of Cover of the Guarantee Holder's rights and causes of action, or the Guarantee Holder's Share of the Project Enterprise's rights and causes of action, as applicable, against the Host Government in respect of such Loss, including such rights and causes of action in respect of the Award.

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**ARTICLE 7. PERCENTAGE OF SELF-INSURANCE**

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7.1 Throughout the Guarantee Period, the Guarantee Holder shall bear for its own account at least the Percentage of Self-Insurance of each potential Loss.

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**ARTICLE 8. DEDUCTIONS AND ADJUSTMENTS**

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8.1 MIGA shall 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, or the Project Enterprise, from any source, including the ratable portion of the Loss payable by any other insurer or guarantor, as a result of the Covered Risks which caused the Loss for which MIGA is liable to pay compensation.

8.2 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) be reduced, before application of any other reduction or adjustment, by any Deductible amount that may be specified under Clause 15 of the Special Conditions; and
- (c) be in Guarantee Currency and, when applicable, calculated by converting the Local Currency value of all assets and liabilities into Guarantee Currency at the Reference Rate of Exchange prevailing on the day immediately preceding the Date of Loss in cases where the audited financial statements used to calculate the Net Book Value of the Project Enterprise, or the Book Value of the tangible assets, have been prepared in Local Currency.

8.3 If, as of the Date of Loss, any of (i) the Total Equity Investment made by the Guarantee Holder, (ii) the Net Book Value of the Project Enterprise, or (iii) if applicable, the Book Value of tangible assets guaranteed hereunder and specified in the Special Conditions as a Guaranteed Investment exceeds the Guaranteed Investment, then the Guarantee Holder shall be entitled to compensation only for such proportion of any Loss as the Current Amount of Guarantee bears to the greater of (i) the Total Equity Investment of the Guarantee Holder, (ii) the Guarantee Holder's Share of the Net Book Value of the Project Enterprise, or (iii) if applicable, the Guarantee Holder's Share of the Book Value of such tangible assets in each case calculated as of such Date of Loss.

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**ARTICLE 9. EXCLUSIONS**

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

- (a) the application of any law, decree, or regulation in force in the Host Country as of the Effective Date, or any action or inaction of the Host Government or any other event occurring prior to the Effective Date;

- (b) any wrongful, dishonest, or criminal acts, or omissions, including without limitation Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, Money Laundering, or violations of any bona fide non-discriminatory laws or regulations of general application not designed by the Host Government to have a confiscatory effect, in each case attributable to the Guarantee Holder or the Project Enterprise in connection with the Investment Project;
- (c) the non-compliance by the Guarantee Holder or the Project Enterprise with the Performance Standards or the Environmental Guidelines in connection with the Investment Project;
- (d) the failure of the Guarantee Holder or the Project Enterprise to ensure that all documentation relating to the Investment Project has been duly authorized and executed and that the obligations contained therein are legal, valid, binding, and enforceable in accordance with their terms;
- (e) the breach by the Guarantee Holder or the Project Enterprise in any material respect of its obligations to the Host Government in connection with the Investment Project; or
- (f) any action or inaction of the Host Government that was agreed to by the Guarantee Holder or the Project Enterprise in connection with the Investment Project.

9.2 MIGA shall have no liability for any Loss under this Contract if any representation or warranty made or deemed to be made by the Guarantee Holder in this Contract, the Application for Guarantee, or in any other written information provided to MIGA in connection with this Contract, proves to be untrue in any material respect, or if the Guarantee Holder intentionally omits to provide to MIGA any material information.

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## **ARTICLE 10. CLAIMS DETERMINATION AND PAYMENT**

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10.1 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.

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

- (a) the end of the applicable Waiting Period for each Covered Risk; and
- (b) the date that MIGA deems the Guarantee Holder's Claim to be complete.

MIGA may deem the Guarantee Holder to have withdrawn a Claim if, within 90 days after a request by MIGA for additional information or evidence with respect to such Claim, the Guarantee Holder fails to respond to such request.

10.3 MIGA shall pay compensation for a Loss within 30 days from the date it determines that it is liable to pay a Claim.

10.4 MIGA shall pay Interest at LIBOR on any amount of compensation determined to be due but not paid at the end of such 30-day period, calculated from the date on which MIGA was due to pay any such amount, such liability being in lieu of any other liability as a result of such late payment.

10.5 MIGA shall have no liability for any Claim submitted by the Guarantee Holder after 180 days from the end of the applicable Waiting Period for each Covered Risk.

10.6 MIGA shall have no liability for any Loss occurring after the expiration of the Guarantee Period. Notwithstanding the foregoing, with respect to Breach of Contract, MIGA may be liable to pay compensation for a Loss if the Dispute Resolution Procedure is initiated before the end of the Guarantee Period but the Award is rendered after the Guarantee Period and a Claim is submitted in writing to MIGA within a period of 18 months from the last day of the Guarantee Period.

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#### **ARTICLE 11. SUBROGATION**

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11.1 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 Host Government, the Project Enterprise, or any obligor in respect of the Covered Risk causing the Loss, and the Guarantee Holder shall take no action whatsoever to prejudice MIGA's rights of subrogation.

11.2 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 Host Government or any obligor.

11.3 If MIGA pays compensation for a Loss and the Guarantee Holder or the Project Enterprise subsequently receives compensation for all or a portion of the Guaranteed Investment or the Loss from the Host Government or any other source, the Percentage of Cover of the Guaranteed Investment or portion thereof received shall be held in trust (as property of MIGA) for the benefit of MIGA, and the Guarantee Holder shall, or shall cause the Project Enterprise to, promptly upon receipt thereof pay over such amount to MIGA.

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#### **ARTICLE 12. REPRESENTATIONS, WARRANTIES, AND DUTIES OF GUARANTEE HOLDER**

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12.1 During the Guarantee Period, and during any period thereafter during which there may be a Potential Claim, the Guarantee Holder shall, and shall cause the Project Enterprise to:

- (a) maintain audited accounts of the Project Enterprise prepared in accordance with International Financial Reporting Standards;
- (b) retain any other material information relating to the Guaranteed Investment and the Investment Project;
- (c) obtain and maintain all required registrations, filings, declarations, authorizations, approvals, permits, consents, concessions and licenses required for the establishment

of the Project Enterprise and the implementation and operation of the Investment Project in the Host Country;

- (d) 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 Investment Project whenever required or wherever located;
  - (e) submit all material evidence reasonably available to it as MIGA may reasonably request from time to time to evaluate and process a Claim within 30 days of such request;
  - (f) 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;
  - (g) (i) implement and operate the Investment Project in compliance with the requirements of the Performance Standards and the Environmental Guidelines, 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;
    - (ii) (A) within two days after its occurrence, notify MIGA of any Significant E&S Event, specifying in each case the nature of the incident, accident, or circumstance and any effect or impact (whether on-site or off-site) resulting or likely to result therefrom;
    - (B) 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 Project Enterprise is taking or plans to take to address such Significant E&S Event and to prevent any future similar event; and
    - (C) subsequently, keep MIGA informed of the on-going implementation of those measures and plans;
  - (iii) within 90 days after the end of each fiscal year of the Project Enterprise, deliver to MIGA the Annual Monitoring Report, in form and substance satisfactory to MIGA; and
  - (iv) without prejudice to Subsection 12.3(b), immediately notify MIGA if the Project Enterprise intends to undertake any activities other than the Investment Project and prior to commencement of such other activities;
- (h) refrain from, in connection with the Investment Project, engaging in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering;

- (i) immediately notify MIGA in writing upon learning of: (i) any Loss; or (ii) any event or circumstance that could reasonably be expected to cause, or materially increase the likelihood of, a Loss, including, without limitation, any outstanding or incipient disputes between itself or the Project Enterprise and the Host Government, or any pending or threatened action or administrative proceeding by or before any court, arbitral tribunal, or agency which might have a material adverse effect on the Project Enterprise or the Investment Project;
- (j) notify MIGA in writing upon making any additional investments in the Project Enterprise (including phased-in investment and the reinvestment of retained earnings);
- (k) use all reasonable efforts to preserve and protect the Investment Project and take all reasonable measures, including pursuing administrative, judicial, arbitral, or other available remedies, to avert or, if a Covered Risk giving rise to a Loss occurs, to minimize, a potential Loss;
- (l) upon reasonable prior notice, permit MIGA, or any authorized representative of MIGA, to examine the Investment Project;
- (m) refrain from waiving any right, claim, cause of action, or other remedy, or accepting any offer of compensation in respect of any Loss;
- (n) 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;
- (o) at MIGA's request, upon reasonable prior notice, allow MIGA to conduct environmental, social, and developmental monitoring of the Investment Project and the Project Enterprise and, if applicable, any associated facilities; and
- (p) provide MIGA with the Development Effectiveness Indicators annually during the Guarantee Period, to be delivered to MIGA within 90 days after the end of the Project Enterprise's fiscal year.

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

12.3 The Guarantee Holder shall not, without the prior written consent of MIGA:

- (a) assign, transfer, or encumber any rights under this Contract;
- (b) make, or permit the Project Enterprise to make, any material changes to the Investment Project; or
- (c) with respect to Breach of Contract only, amend, modify, supplement, or waive any material rights or obligations with respect to the Project Agreement or an Award, or assign, transfer, or encumber any rights under the Project Agreement or an Award, or permit the Project Enterprise to do any of the foregoing.

12.4 The Guarantee Holder hereby represents and warrants, as of the Effective Date, and shall be deemed to represent and warrant during the Guarantee Period and at any period thereafter during which there may be a Potential Claim, that:

- (a) 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 from time to time, including in connection with any Claim, are true, correct, and complete in all material respects and do not contain any materially false or misleading statements or omissions;
- (b) neither the Project Enterprise nor any of its shareholders, in connection with the Investment Project, has engaged in any Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering;
- (c) the Project Enterprise, in connection with the Investment Project, is in compliance with the Performance Standards and the Environmental Guidelines;
- (d) the Guarantee Holder and the Project Enterprise have obtained in full force and effect all required registrations, filings, declarations, authorizations, approvals, permits, consents, concessions, and licenses required for the establishment of the Project Enterprise and the implementation and operation of the Investment Project in the Host Country;
- (e) all documentation relating to the Investment Project has been duly authorized and executed and the obligations contained therein are legal, valid, binding, and enforceable in accordance with their terms; and
- (f) except as disclosed to MIGA pursuant to Section 12.1(i), there are no outstanding or incipient disputes between itself or the Project Enterprise and the Host Government; and no action or administrative proceeding by or before any court, arbitral tribunal, or agency which might have a material adverse effect on the Project Enterprise or the Investment Project is pending or, to the best of the Guarantee Holder's knowledge, threatened.

12.5 In connection with and subsequent to payment of compensation by MIGA under this Contract, the Guarantee Holder shall, and shall cause the Project Enterprise to, when requested by and in consultation with MIGA, take all commercially reasonable measures to:

- (a) pursue available administrative and judicial remedies arising from the Loss, in cooperation with or on behalf of MIGA, against the Host Government;
- (b) negotiate in good faith with the Host Government, in cooperation with or on behalf of MIGA; and
- (c) pursue other potential sources of recovery for the Loss.

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## **ARTICLE 13. GUARANTEE PERIOD; CONDITIONS FOR TERMINATION**

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### **Guarantee Period**

13.1 Subject to Section 16.1, this Contract shall terminate at 11:59 PM, Washington, DC time, on the last day of the Guarantee Period, unless terminated earlier pursuant to Sections 13.2 through 13.4. Subject to Sections 10.5 and 10.6, the rights and obligations under this Contract shall, however, extend to Covered Risks commencing before the end of the Guarantee Period, if the Date of Loss occurred during the Guarantee Period, even if a Claim is submitted after the Guarantee Period.

#### **Termination by Guarantee Holder**

13.2 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**

13.3 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 (“Notice of Termination”) 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 notice to the Guarantee Holder of such nonpayment (“**Notice of Nonpayment**”), MIGA may by Notice of Termination terminate this Contract as of 12:01 AM Washington, DC time retroactively to the first day of the Contract Period for which the Total Amount Due has not been paid. 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.

13.4 MIGA may terminate this Contract, without any further obligation, including in relation to any Potential Claim, or future Claim hereunder, effective on the date of MIGA’s Notice of Termination, if at any time MIGA reasonably determines that:

- (a) any representation or warranty made or deemed to be made by the Guarantee Holder in this Contract, the Application for Guarantee, or in any other written information provided to MIGA in connection with this Contract, including any information material to a Covered Risk, proves to be untrue in any material respect or the Guarantee Holder intentionally omits to provide to MIGA any material information;
- (b) the Guarantee Holder fails to comply with the confidentiality provisions of Section 16.3;
- (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 13.3, for which the remedy set forth in Section 13.3 shall apply; and
  - (ii) non-compliance with the obligation set forth in Section 12.1(p);

- (d) the Guarantee Holder or the Project Enterprise, as applicable, is in material violation of the laws and regulations of the Host Country with respect to the Guaranteed Investment or the Investment Project;
- (e) the Guarantee Holder or the Project Enterprise, as applicable, is in material violation of the Performance Standards or the Environmental Guidelines in connection with the Investment Project;
- (f) the Guarantee Holder or the Project Enterprise, as applicable, is engaging in Money Laundering in connection with the Investment Project; or
- (g) the Guarantee Holder or the Project Enterprise, as applicable, is engaging in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, or Obstructive Practices in connection with 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.

#### **Early Termination Fee; Amounts Previously Paid**

13.5 If there is any termination of 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. This payment shall not apply in cases of:

- (a) liquidation, bankruptcy, insolvency, winding up, dissolution, or similar measure relating to the Project Enterprise; or
- (b) the sale or assignment of the Guaranteed Investment to an unrelated third party.

13.6 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 at any time over the term of the Guarantee Period.

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#### **ARTICLE 14. DISPUTE RESOLUTION AND APPLICABLE LAW**

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14.1 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.

14.2 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, the language of the arbitration shall be English, and the arbitration proceedings shall be held in Washington, DC, United States.

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

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**ARTICLE 15. COVERAGE ADJUSTMENTS AND PREMIUM PAYMENTS**

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15.1 Both the Current Amount of Guarantee and the Maximum Aggregate Liability shall be reduced for the remainder of the Guarantee Period by the amount of compensation paid by MIGA pursuant to any Claim.

15.2 If the Guarantee Holder's Share of the Net Book Value of the Project Enterprise or the Book Value of the tangible assets guaranteed hereunder and specified in the Special Conditions as a Guaranteed Investment, if applicable, has decreased, both the Current Amount of Guarantee and the Maximum Aggregate Liability may also be reduced for the remainder of the Guarantee Period by the amount of any corresponding 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 for such Contract Period or the Maximum Aggregate Liability to below the Percentage of Cover of the Guarantee Holder's Share of the Net Book Value of the Project Enterprise or the Book Value of the tangible assets guaranteed hereunder and specified in the Special Conditions as a Guaranteed Investment, in each case as of the first day of such Contract Period.

15.3 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 15.4 below.

15.4 Where the Guaranteed Investment is made over a period of time (including phased-in investment and the reinvestment of retained earnings), so long as no event or circumstance specified in Subsection 12.1(i) 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 any event or circumstance specified in Subsection 12.1(i) has occurred, MIGA shall have the option to suspend the Standby Option until reinstated at MIGA's sole discretion.

15.5 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.

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**ARTICLE 16. MISCELLANEOUS**

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**Survival**

16.1 The rights and obligations contained in Articles 10, 11, and 14, and Sections 12.1, 12.5, and 16.3 shall survive the termination of this Contract.

**Notices**

16.2 Every notice, request, application, 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 17 of the Special Conditions.

### **Confidentiality**

- 16.3 (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 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 (d) of this Section 16.3, 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 and clearly labeled on the face as "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 Host Country, the Guaranteed Investment, the Maximum Aggregate Liability, and the Covered Risks; and
  - (ii) any environmental studies provided to MIGA with respect to the Investment Project.
- (d) Subsection (c) of this Section 16.3 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 16.3. 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**

16.4 No provision of this Contract may be amended, modified, supplemented, or waived except in a written agreement executed by authorized representatives of the Guarantee Holder and MIGA.

16.5 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**

16.6 This Contract and any agreement, document or instrument attached hereto integrate all the terms and conditions mentioned herein or incidental thereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Contract and any such agreement document or instrument, the terms, conditions and provisions of this Contract shall prevail.

#### **Counterparts**

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

## **Part III – Amendments**

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**[NOT APPLICABLE TO THIS CONTRACT.]**

[The following additional provisions and amendments to the General Conditions of Guarantee for Equity Investments (Part II of this Contract) are hereby incorporated as Part III of this Contract:]

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## **Part IV – Standby Option (Commitment for Additional Coverage)**

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[NOT APPLICABLE TO THIS CONTRACT.]

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### **ARTICLE 1.**

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1.1 This Standby Option (Commitment for Additional Coverage) for phased-in portions of the Guaranteed Investment and the reinvestment of retained earnings is incorporated into this Contract as Part IV.

1.2 In accordance with Section 15.4 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.

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### **ARTICLE 2.**

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2.1 In accordance with Section 15.4 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)**

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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.

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### **CORRUPT PRACTICES**

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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.

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**FRAUDULENT PRACTICES**

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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 IFC<sup>1</sup>, MIGA, or PRG<sup>2</sup> 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.

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**COERCIVE PRACTICES**

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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.

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<sup>1</sup> “IFC” means the International Finance Corporation, a member of the World Bank Group.

<sup>2</sup> “PRG” means the Partial Risk Guarantee operations conducted by the Project Finance Group of the International Bank for Reconstruction and Development.

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**COLLUSIVE PRACTICES**

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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.

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**OBSTRUCTIVE PRACTICES**

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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 – Project Agreement and Contractual Obligations**

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**[NOT APPLICABLE TO THIS CONTRACT.]**

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## **Annex 3A – Performance Standards and Environmental Guidelines**

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### **Performance Standards**

- Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts
- Performance Standard 2: Labor and Working Conditions
- Performance Standard 3: Resource Efficiency and Pollution Prevention
- Performance Standard 4: Community Health, Safety and Security
- Performance Standard 5: Land Acquisition and Involuntary Resettlement
- Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources
- Performance Standard 7: Indigenous Peoples
- Performance Standard 8: Cultural Heritage

MIGA's Performance Standards on Environmental and Social Sustainability may be found at:  
[http://www.miga.org/documents/performance\\_standards\\_env\\_and\\_social\\_sustainability.pdf](http://www.miga.org/documents/performance_standards_env_and_social_sustainability.pdf)

### **Environmental Guidelines**

***Please select one of the following:***

#### ***For Banking Contracts:***

The General Environmental, Health, and Safety Guidelines and Industry Sector Guidelines may apply.

#### ***For All Other Contracts:***

The General Environmental, Health, and Safety Guidelines and Industry Sector Guidelines for [insert applicable industry], but also including any other sector guideline that may apply.

The General Environmental, Health, and Safety Guidelines may be found at:

[http://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/our+approach/risk+management/ehsguidelines](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/ehsguidelines)

## **Annex 3B – Action Plan**

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## Annex 3C – Development Effectiveness Indicators

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

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

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

**Definitions:**

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

be included on a pro rata basis, a three-month job becoming one-quarter of a full-time equivalent job (i.e., four jobs for three months equals one job on an annual basis).

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

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

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

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

**Sector definitions:**

[To be added as defined by project team]

## **Annex 4 – Expert Advisory Report Regarding Provisional Payments**

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**[NOT APPLICABLE TO THIS CONTRACT.]**

1. In connection with a request for a Provisional Payment pursuant to Section 6.4 of the General Conditions, the Guarantee Holder and MIGA shall submit the matter to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce (“ICC”) in force at the time of such request.
2. The only issues to be reviewed by the expert appointed by the ICC will be the allegations forming the basis of the Dispute Resolution Procedure between the Guarantee Holder or the Project Enterprise and the Host Government. The expert will issue an advisory report on the merits of the Guarantee Holder’s or Project Enterprise’s allegations against the Host Government and the likelihood of success in any Dispute Resolution Procedure. Such report shall also include a valuation of any award against the Host Government should one be rendered in favor of the Guarantee Holder or Project Enterprise, as applicable. The findings of the expert shall be rendered solely for the purpose of assisting MIGA in its decision on making a provisional payment. The expert’s advisory report shall not be binding on MIGA and shall be of an advisory nature only.
3. All fees and expenses incurred in connection with the administered expertise proceedings shall be borne and paid by the Guarantee Holder.
4. Any documents prepared or produced in connection with the administered expertise proceedings, the statement of the expert’s mission and the expert’s report and findings shall be confidential in accordance with Section 16.3 of the General Conditions. In no case will such materials be used or produced by any of the Guarantee Holder, the Project Enterprise or MIGA in any proceeding with any third party unless such use or production is duly compelled in connection with such proceeding.

## Annex 5A – Form of Notice of Reduction in Current Amount of Guarantee and Maximum Aggregate Liability

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

[Date]

By Facsimile: +1 202-522-2630

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

Attn: Contract Management & Portfolio Services  
MIGA Operations

Ladies and Gentlemen:

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

All capitalized terms used herein and not otherwise defined 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 first day of the upcoming Contract Period is [\_\_\_\_\_] 20[\_\_\_], on which date the Guarantee Holder’s Share of [the Net Book Value of the Project Enterprise] [the Book Value of tangible assets guaranteed] will be [Amount in Guarantee Currency].
3. In accordance with Section 15.2 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]; (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

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[NOT APPLICABLE TO THIS CONTRACT.]

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

[Date]

By Facsimile: +1 202-522-2630

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

Attn: Contract Management & Portfolio Services  
MIGA Operations

Ladies and Gentlemen:

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

All capitalized terms used herein and not otherwise defined 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].
2. The first day of the upcoming Contract Period is [\_\_\_\_], 20[\_\_\_]. Additional portions of the Guaranteed Investment have been phased-in or will be phased-in such that the amount of the Guaranteed Investment as of such first day of such upcoming Contract Period will be [Amount in Guarantee Currency].

3. No event or circumstance specified in Subsection 12.1(i) has occurred as of the date hereof, and in accordance with Subsection 12.1(i) of the General Conditions, the Guarantee Holder has notified MIGA in writing upon learning of any event or circumstance prior to the date hereof that could cause, or materially increase, the likelihood of a Loss.
  
4. In accordance with Section 15.4 of the General Conditions, the Guarantee Holder irrevocably elects to increase the Current Amount of Guarantee as of the first day of the upcoming Contract Period, for such Contract Period and 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)