

CONTRACT NO. <00000>

CONFIDENTIAL DRAFT

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		SIGNATURE
MIGLC:		
MIGOP:		

## Contract of Guarantee for Non-Shareholder Loans

between the

**Multilateral Investment  
Guarantee Agency**

and

**[Guarantee Holder]**

This draft document is subject to MIGA's approval, and as such cannot be considered a contract or an offer to enter into a contract. Only the document executed by MIGA, as approved by MIGA's senior management and the Guarantee Holder, will contain the terms and conditions that shall bind them. Until this document is executed by MIGA and the Guarantee Holder, neither MIGA nor the Guarantee Holder intends to be bound by its terms and conditions. The terms and conditions of this draft document are distributed to the Guarantee Holder on a confidential basis.

# Contract of Guarantee for Non-Shareholder Loans

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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 4. Guaranteed Loan:**

The Guaranteed Loan consists of [Amount in Guarantee Currency] which [has been] [will be] lent by the Guarantee Holder to the Project Enterprise under a loan agreement [dated as of [ ]] [to be concluded] between the Guarantee Holder and the Project Enterprise (the “**Loan Agreement**”) pursuant to which the Project Enterprise will make payments of principal [and interest] as set out in the Payment Schedule. A true, correct, and complete copy of the [draft] Loan Agreement was furnished to MIGA by the Guarantee Holder on [ ].

<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 the Project Enterprise	[180] continuous days.
	Expropriation of Lender Rights	[180] continuous days.
	Expropriation of Funds	[60] continuous days.
	Expropriation of Collateral Rights	[180] continuous days.
	War and Civil Disturbance:	
	Loss of Assets	[None.]
	Loss of Use	[90] continuous days.
	Breach of Contract:	[180] continuous days.
<b>CLAUSE 9A.</b>	<b>Percentage of Cover:</b>	[95]%
<b>CLAUSE 9B.</b>	<b>Percentage of Self-Insurance:</b>	[5]%
	<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>Payments Covered:</b>	Scheduled Payments of [principal and interest] [principal only] [interest only].
<b>CLAUSE 10D.</b>	<b>Maximum Aggregate Liability:</b>	[Amount in Guarantee Currency.]
<b>CLAUSE 11A.</b>	<b>Annual Premium Rate:</b>	[ ]%
<b>CLAUSE 11B.</b>	<b>Total Premium for the First Contract Period:</b>	[Amount in Guarantee Currency], calculated as follows: [ ], payable on or before the Initial Premium Due Date.
<b>CLAUSE 12A.</b>	<b>Annual Standby Option Fee Rate:</b>	[ ]% [Not applicable.]
<b>CLAUSE 12B.</b>	<b>Standby Option Fee for the First Contract Period:</b>	[Amount in Guarantee Currency], calculated as follows: [ ], payable on or before the Initial Premium Due Date.] [Not applicable.]
<b>CLAUSE 13A.</b>	<b>Annual Facility Fee Rate:</b>	[ ]% [Not applicable.]
<b>CLAUSE 13B.</b>	<b>Facility Fraction:</b>	[ ].] [Not applicable.]
<b>CLAUSE 13C.</b>	<b>Facility Fee for the First Contract Period:</b>	[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	[Amount in Guarantee Currency][None.]
Inability to Transfer	[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 Loss] [None.]
Loss of Use	[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 will come into force on 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 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 MIGA shall have received, on or before the Effective Date, either a true, correct, and complete copy of the Loan Agreement executed by all parties thereto or a draft of the Loan Agreement, in either case in form and substance satisfactory to MIGA. If a draft of the Loan Agreement has been delivered to and deemed satisfactory by MIGA, the Guarantee Holder shall deliver to MIGA within 30 days of the date of its execution, but in no event later than 90 days after the Effective Date:

- (a) a true, correct, and complete copy of the Loan Agreement, including the schedule for payments thereunder, executed by all parties thereto; and
- (b) if there has been any change to the schedule for payments under the Loan Agreement, a proposed revised Annex 2.

If there have been any changes to either the Loan Agreement or the schedule for payments thereunder, such changes shall be subject to consent in writing by MIGA and Annex 2 shall be amended accordingly, if the Loan Agreement and the schedule for payments thereunder, as applicable, are either:

- (a) similar in all material respects to the draft version previously reviewed and deemed satisfactory by MIGA; or
- (b) otherwise in form and substance satisfactory to MIGA in its sole discretion.

1.7 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 4B 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 environmental and social 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 Definitive Application for Guarantee, 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.

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

“**Breach of Contract**” means the Covered Risks 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; *provided, however*, that, if the last day of a Contract Period falls on a day that is not a Banking Day, such Contract Period shall extend to and include the next succeeding Banking Day.

**“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 3.

**“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 15.3,

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 Scheduled Payment Due Date;
- (b) Expropriation,

- (i) with respect to Expropriation of the Project Enterprise, Expropriation of Lender Rights and Expropriation of Funds, the Scheduled Payment Due Date, and
  - (ii) with respect to Expropriation of Collateral Rights, the day before the deprivation takes place;
- (c) War and Civil Disturbance, the Scheduled Payment Due Date; and
- (d) Breach of Contract, the date of the Award and each Scheduled Payment Due Date thereafter.

**“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 4B.

**“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 4A, in each case as in effect on the Effective Date.

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

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

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

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

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

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

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

**“Host Government”** means:

- (a) the present or any succeeding governing authority (without regard to the method of its succession or whether it is internationally recognized) in effective control of all or any part of the territory of the Host Country or any political or territorial subdivision thereof (including any dependent territory) (a **“Governing Authority”**);
- (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 3; 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 Loan shall be applied, and specified in Clause 2A of the Special Conditions.

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

- (a) the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of one percent) appearing on Bloomberg ICE LIBOR page (or any successor page) as the London Interbank Offered Rate for deposits in Guarantee Currency at 11:00 AM (London

time) two London business days before such Determination Date for the period commencing on such Determination Date and ending on a date six months after such Determination Date;

- (b) in the event of the unavailability of the applicable Bloomberg page, by the rate per annum (rounded upwards, if necessary to the nearest 1/100 of one percent) appearing on the Reuters LIBOR page as the London Interbank Offered Rate for deposits of Guarantee Currency at approximately 11:00 AM (London time) two London business days before such Determination Date for the period commencing on such Determination Date and ending on a date six months after such Determination Date; or
- (c) in the event of the unavailability of both the applicable Bloomberg page and the Reuters page, 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.

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

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

“**Loss**” means:

- (a) for all Covered Risks other than Expropriation of Collateral Rights, the failure of the Guarantee Holder to receive a Scheduled Payment on a Scheduled Payment Due Date if such Scheduled Payment would have been paid but for the occurrence of a Covered Risk; and
- (b) for Expropriation of Collateral Rights, the deprivation of the Guarantee Holder of its material rights as a creditor as set forth in Subsection 4.1(d).

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

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

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

**“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.

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

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

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

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

**“Potential Claim”** means any Claim which has either: (i) not yet been submitted, but in accordance with time limits set forth in this Contract may still be submitted; (ii) been submitted, but a determination by MIGA has not yet been made as to its validity; or (iii) been submitted, and a determination has been made, 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 14A 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 (whose rights have been collaterally assigned to the Guarantee Holder) and the Host Government,

and which are, in either case, directly related to the Investment Project, specified in Annex 3.

**“Project Enterprise”** means the enterprise specified in Clause 1 of the Special Conditions that is responsible for conducting the Investment Project and is the borrower of the Guaranteed Loan under the Loan Agreement.

**“Provisional Payment”** means the amount in Guarantee Currency that MIGA may elect to pay the Guarantee Holder in accordance with Section 6.7 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 servicing private foreign debt 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.

“**Scheduled Payment**” means, to the extent specified in Clause 10C of the Special Conditions, each repayment of principal of the Guaranteed Loan, and each payment of interest on the Guaranteed Loan, including as the context requires any portion of such payments, scheduled to be due and payable by the Project Enterprise on the Scheduled Payment Due Dates in the amounts (or, with respect to variable rate interest, based on the rates) specified in the Payment Schedule.

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

“**Significant E&S Event**” means: (i) any significant social, labor, health and safety, security or environmental incident, accident, or circumstance relating to the Investment Project, including, 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 future disbursements of the Guaranteed Loan, specified in Part IV of this Contract.

“**Standby Option Amount**” means, for any Contract Period, the initial amount specified in Clause 10B of the Special Conditions, minus the aggregate amount transferred from the Standby Option to the Current Amount of Guarantee in accordance with Section 15.3 prior to the commencement of such Contract Period.

“**Standby Option Fee**” means:

- (a) for the first Contract Period, the amount payable by the Guarantee Holder specified in Clause 12B of the Special Conditions; and
- (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 3.

**“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.

**“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 held to make a Scheduled Payment, 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 Scheduled Payment (**“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 that constituted a Scheduled Payment.

3.2 A Loss due to the deprivation by the Host Government of the use and control of funds held to make a Scheduled Payment shall only be covered under Expropriation of Funds pursuant to Subsection 4.1(c).

### **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 held to make the Scheduled Payment which could not be converted, 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 constituting the Scheduled Payment that could not be transferred 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 held to make a Scheduled Payment or transfer the Guarantee Currency constituting a Scheduled Payment, as the case may be, for the duration of the 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 to make a Scheduled Payment; 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 (including all rights to related security) of the Guarantee Holder and the Project Enterprise in such Local Currency or Guarantee Currency held to make a Scheduled Payment;

*provided that:*

- (x) 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; and
- (y) in cases where the Guarantee Holder itself has insufficient Local Currency, the Guarantee Holder may, local laws permitting, supplement the Local Currency to be transferred and assigned to MIGA from Local Currency payments made by the Project Enterprise, a guarantor, or from any other source, so that the amount of compensation payable in the Guarantee Currency by MIGA is equal to the Percentage of Cover of the unpaid Scheduled Payment at the Reference Rate of Exchange in accordance with Subsection 3.3(a).

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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) interferes with the ownership or control of all or a substantial part of the Project Enterprise, or otherwise deprives the Project Enterprise of a substantial benefit constituting a fundamental right essential to the overall financial viability of the Investment Project and which results in the Guarantee Holder not receiving a Scheduled Payment ("**Expropriation of the Project Enterprise**");
- (b) deprives the Guarantee Holder of its material rights as a lender under the Loan Agreement and, as a consequence thereof, the Guarantee Holder does not receive a Scheduled Payment ("**Expropriation of Lender Rights**");
- (c) deprives the Guarantee Holder or the Project Enterprise, as applicable, of the use and control of any funds in an account in the Host Country held to make a Scheduled Payment ("**Expropriation of Funds**"); or
- (d) deprives the Guarantee Holder of its material rights as a creditor against collateral security or commercial guaranties of repayment in respect of a Scheduled Payment in any period during which such Scheduled Payment is in default for any reason, including commercial reasons ("**Expropriation of Collateral Rights**"),

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 the Scheduled Payment (excluding any accelerated amounts) in default as of the Date of Loss, and, with respect to Expropriation of Collateral Rights, shall not exceed the realizable value of the collateral security or commercial guaranties 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 evidence concerning the cause of the failure to pay the Scheduled Payment when due in accordance with the Loan Agreement and 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, 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, the Percentage of Cover of the Guarantee Holder's rights, title, and interest, including all rights to related security, in the Scheduled Payments for which compensation is to be paid.

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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 for a continuous period of 180 days ("**Loss of Use**");

provided that:

- (x) 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; and
- (y) the Scheduled Payment default giving rise to the Loss continues for the duration of the applicable Waiting Period.

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 the Percentage of Cover of the amount of the Scheduled Payment (excluding any accelerated amounts) in default as of 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) evidence concerning the cause of the failure to pay the Scheduled Payment when due in accordance with the Loan Agreement;
- (b) in the case of Loss of Assets, copies of inventories and audited book entries concerning the assets destroyed, damaged or that have disappeared; and
- (c) in the case of Loss of Use, all material evidence related to events preventing the Project Enterprise from conducting operations, in the case of Loss of Use.

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 rights, title, and interest, including all rights to related security, in the Scheduled Payments for which compensation is to be paid.

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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 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:

- (a) the Percentage of Cover in Guarantee Currency, calculated as of the Date of Loss, of the lesser of:
  - (i) the amount of the Award owed to the Guarantee Holder (or, in the case of an Award in favor of the Project Enterprise, the Guarantee Holder's security interest therein); and
  - (ii) the Scheduled Payments (excluding any accelerated amounts) that are in default as of the Date of Loss; less
- (b) the amount of any Provisional Payments that have been made pursuant to Section 6.4.

**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, corresponding to unpaid Scheduled Payments and 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 5; 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 evidence concerning the cause of the failure to pay the Scheduled Payment when due in accordance with the Loan Agreement and 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. MIGA shall make a determination with respect to such Claim in accordance with Section 10.1.

### **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 interests in the rights and causes of action against the Host Government in respect of such Loss, including:

- (a) the Guarantee Holder's interest in any Award or, in the case of an Award in favor of the Project Enterprise, the Guarantee Holder's pro rata interest therein; and
- (b) the Guarantee Holder's rights, title and interest, including all rights to related security, in the Scheduled Payments for which compensation is to be paid.



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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, ADJUSTMENTS AND PREPAYMENTS**

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8.1 MIGA shall:

- (a) deduct from any compensation due hereunder the Guarantee Holder's share of any other payment, recovery, or benefit received or due to be received by or for the benefit of the Guarantee Holder (including any amounts received, or due to be received, by the Project Enterprise and which have been collaterally assigned to the Guarantee Holder) from any source, including the ratable portion of the Loss payable by any other insurer or guarantor, as a result of the Covered Risks which caused the Loss for which MIGA is liable to pay compensation;
- (b) only be liable in respect of a Scheduled Payment in default:
  - (i) as and when originally scheduled to be due in accordance with the Payment Schedule, irrespective of whether Scheduled Payments on the Guaranteed Loan have been accelerated or mandatory prepayments have become due;
  - (ii) if the Guarantee Holder shall have complied with all terms and conditions of this Contract, including paying the Total Amount Due, with respect to the corresponding Contract Period within which such Scheduled Payment falls due; and
- (c) notwithstanding Subsection 8.1(b) above, have the option, in its sole discretion and at any time, to accept liability for accelerated payments of all or a portion of the Guaranteed Loan by prepaying the Guarantee Holder:
  - (i) the Percentage of Cover of the amount of outstanding principal of the Guaranteed Loan; plus
  - (ii) the Percentage of Cover of all corresponding accrued and unpaid Scheduled Payments of interest that were due on Scheduled Payment Due Dates occurring on or prior to the date of such prepayment by MIGA,

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

Any payment under clause (c) shall be conditional upon the simultaneous payment by the Guarantee Holder to MIGA of the amount of Premium payable over the corresponding balance of the Guarantee Period, calculated based on the Payment Schedule (assuming that Scheduled Payments are paid when due and, with respect to variable rate interest, there is no change in interest rates), and the Percentage of Cover of the outstanding principal amount of the Guaranteed Loan and such accrued but unpaid interest for which compensation is being paid.

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;
- (c) not include interest accruing at a penalty or default rate (including such interest payable in connection with any political risk event), mandatory prepayments of principal, acceleration of principal (except as provided in Subsection 8.1(c)), make-whole premiums, break-funding costs, voluntary prepayments of principal, interest rate swaps and other derivatives transactions associated with the Guaranteed Loan, payments with respect to withholding taxes and other taxes, increased costs provisions, unpaid fees, costs and expenses, or any amounts other than Scheduled Payments due with respect to the Guaranteed Loan; and
- (d) be subject to reduction if the Guarantee Holder has made or guaranteed loans to the Project Enterprise (other than loans payable in Local Currency) which MIGA has not guaranteed, and the Project Enterprise has, after the date of default of the Scheduled Payment that is the basis of the Claim, paid a greater percentage of the aggregate amount of the corresponding portions of such loans not guaranteed by MIGA than of the Scheduled Payments.

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

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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 in connection with the Investment Project;

- (c) the non-compliance by the Guarantee Holder with the Performance Standards or the Environmental Guidelines in connection with the Investment Project;
- (d) the failure of the Guarantee Holder to use all reasonable efforts 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 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 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 supply, or to make reasonable efforts to supply, such information or evidence.

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.

10.7 As a condition to payment by MIGA of compensation for a Loss, MIGA shall be exempt from any and all sharing provisions to which the Guarantee Holder may be subject, pursuant to the Loan Agreement, intercreditor arrangements, or otherwise.

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

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

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12.1 The Guarantee Holder covenants that it is entitled under the Loan Agreement to require the Project Enterprise to, and that, during the Guarantee Period and any period thereafter during which there may be a Potential Claim, the Guarantee Holder shall diligently enforce its rights pursuant to the Loan Agreement and consistent with local law to cause the 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 Loan 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 Loan Agreement and 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 all of 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; and
  - (iii) during the operational phase of the Investment Project, within 60 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) 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) promptly notify the Guarantee Holder in writing upon learning of any outstanding or incipient disputes between 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) apply the proceeds of the Guaranteed Loan towards the Investment Project, and to refrain from making any material changes to the Investment Project as long as the Guaranteed Loan is outstanding;
- (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.

At all times during the Guarantee Period and any period thereafter during which there may be a Potential Claim, the Guarantee Holder shall diligently enforce its rights pursuant to the Loan Agreement and consistent with local law to cause the Project Enterprise to perform the obligations listed in this Section 12.1. In the event of breach of any of such obligations, the Guarantee Holder shall diligently enforce its remedies against the Project Enterprise and shall take no steps to prejudice its rights to enforce such remedies without MIGA's prior written consent.

12.2 The Guarantee Holder further covenants that it shall:

- (a) maintain:
  - (i) audited accounts prepared in accordance with International Financial Reporting Standards;
  - (ii) any other material information relating to the Guaranteed Loan and the Investment Project; and
  - (iii) all required registrations, filings, declarations, authorizations, approvals, permits, consents, concessions and licenses required for the Guaranteed Loan in the Host Country;
- (b) upon MIGA's reasonable request, promptly furnish MIGA with such accounts and information relating to the Guaranteed Loan and the Investment Project, and permit

MIGA's duly authorized representatives to examine and make copies of audits, accounts, books, financial statements and any other material information relating to the Guaranteed Loan and the Investment Project;

- (c) 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;
- (d) to the extent applicable to it:
  - (i) 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
  - (ii) implement and operate the Investment Project in compliance with the requirements of the Performance Standards and the Environmental Guidelines;
- (e) comply with all of its obligations to the Host Government in connection with the Guaranteed Loan and the Investment Project;
- (f) in connection with the Investment Project and the Guaranteed Loan, refrain from engaging in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering;
- (g) immediately notify MIGA in writing upon learning of: (i) 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; or (ii) any payment defaults (regardless of cause) under the Guaranteed Loan;
- (h) 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;
- (i) refrain from waiving any right, claim, cause of action, or other remedy or accepting any offer of compensation in respect of any Loss; and
- (j) 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.

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

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

- (a) assign, transfer, or encumber any rights under this Contract;

- (b) amend, modify, supplement or waive any material rights or obligations with respect to the Loan Agreement, the Project Agreement, or an Award, or assign, transfer, or encumber any rights under the Loan Agreement, the Project Agreement, or an Award; or
- (c) take any steps to change or prejudice its rights to amend, modify, supplement, or waive material rights or obligations with respect to the Loan Agreement, or to assign, transfer, or encumber any rights under the Loan Agreement.

12.5 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, to the best of its knowledge after due inquiry with respect to Subsections (b) through (f):

- (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 Project Enterprise has 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 Subsection 12.2(g), 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 threatened.

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

- (a) immediately notify MIGA thereof; and



- (b) diligently enforce its contractual remedies under the Loan Agreement and any related documentation against the Project Enterprise, including if requested by MIGA cancellation of undrawn commitments, acceleration of the Guaranteed Loan and/or enforcement of security.

12.7 In connection with and subsequent to payment of compensation by MIGA under this Contract, the Guarantee Holder shall, and shall use all reasonable efforts to 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 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) failure of the Guarantee Holder to enforce compliance with the obligation set forth in Subsection 12.1(p);
- (d) the Guarantee Holder is in material violation of the laws and regulations of the Host Country with respect to the Guaranteed Loan or the Investment Project;
- (e) the Guarantee Holder is in material violation of the Performance Standards or the Environmental Guidelines in connection with the Investment Project;
- (f) the Guarantee Holder is engaging in Money Laundering in connection with the Investment Project; or
- (g) the Guarantee Holder is engaging in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices or Obstructive Practices in connection with the 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 Premium and Standby Option Fee 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;
- (b) prepayment or a refinancing of the Guaranteed Loan; or

- (c) sale or assignment of the Guaranteed Loan 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 (without double counting):

- (a) the amount of compensation paid by MIGA pursuant to any Claim;
- (b) the Percentage of Cover of the amount of each Scheduled Payment of principal of the Guaranteed Loan specified in Annex 2 (regardless of whether such Scheduled Payment has been received by the Guarantee Holder); *provided, however*, that such reduction shall take effect on the first day of the Contract Period immediately following the Contract Period in which such Scheduled Payment is due; and
- (c) the amount of any additional reduction irrevocably elected by the Guarantee Holder by delivery to MIGA not less than 30 days before the first day of any Contract Period of a notice in the form of Annex 6A; *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 outstanding principal amount of the Guaranteed Loan specified in Annex 2 as of the first day of such Contract Period.

15.2 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 15.3 below.

15.3 So long as no event, circumstance, or default specified in Subsection 12.2(g) 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 6B, 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, circumstance, or default specified in Subsection 12.2(g) has occurred, MIGA shall have the option to suspend the Standby Option until reinstated at MIGA's sole discretion.

15.4 The Guarantee Holder shall pay to MIGA:

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

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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, Sections 12.1, 12.7, and 16.3, and Subsections 6.6(a), 12.2(c), (i), and (j) 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 names of other uncovered lenders to the

Investment Project, the Host Country, the Guaranteed Loan, the Maximum Aggregate Liability, and the Covered Risks; and

- (ii) any environmental impact assessment reports 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 Non-Shareholder Loans (Part II of this Contract) are hereby incorporated as Part III of this Contract:]

## **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) to commit coverage for future disbursements of the Guaranteed Loan is incorporated into this Contract as Part IV.

1.2 In accordance with Section 15.3 of the General Conditions, upon a written request by the Guarantee Holder and in accordance with the conditions hereinafter specified, MIGA hereby agrees that the Guarantee Holder may increase the Current Amount of Guarantee under this Contract, using the Standby Option Amount elected by the Guarantee Holder hereunder.

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#### **ARTICLE 2.**

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2.1 In accordance with Section 15.3 of the General Conditions, the Current Amount of Guarantee under this Contract may be increased during the Guarantee Period by a maximum amount of [Amount in Guarantee Currency].

## **Annex 1 – MIGA’s Anti-Corruption Guidelines**

**(as in effect on October 15, 2006)**

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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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**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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<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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## 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 – Payment Schedule

All capitalized terms used in this Annex 2 and not otherwise defined shall have their respective meanings specified in the Loan Agreement.

Specified below under the columns headed “Principal Payment” and “Interest Payment” are the Scheduled Payments with respect to the Guaranteed Loan in the amounts (or, with respect to variable rate interest, based on the rates) due on each Scheduled Payment Due Date, in Guarantee Currency:

Scheduled Payment Due Date	Principal Payment	Principal Balance	Interest Payment <sup>3</sup>	
, 20__	[ ]	[ ]	[ ]	[Variable]
, 20__	[ ]	[ ]	[ ]	[Variable]
, 20__	[ ]	[ ]	[ ]	[Variable]
, 20__	[ ]	[ ]	[ ]	[Variable]

*[Add for variable interest rate loans:]*

**(Note:** Interest amounts are to be determined for each Contract Period in accordance with the Loan Agreement, except that amounts excluded pursuant to Subsection 8.2(c) of the General Conditions shall not be covered.)

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

## **Annex 3 – Project Agreement and Contractual Obligations**

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

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## **Annex 4A – 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 4B – Action Plan**

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## **Annex 4C – 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.

<b>Indicator</b>	<b>Fiscal Year*</b>
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 5 – 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 6.7 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 6A – 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 next Scheduled Payment of principal of the Guaranteed Loan is due on [\_\_\_\_\_] 20[\_\_\_], in the principal amount of [Amount in Guarantee Currency].
3. The first day of the upcoming Contract Period is [\_\_\_\_\_] 20[\_\_\_], on which date the outstanding principal amount of the Guaranteed Loan (assuming that the principal payment specified above is made) will be [Amount in Guarantee Currency]. **[Must be consistent with principal balance shown in Payment Schedule.]**

4. In accordance with Section 15.1 of the General Conditions, the Guarantee Holder irrevocably elects to reduce the Current Amount of Guarantee and the Maximum Aggregate Liability as of the first day of the upcoming Contract Period, for such Contract Period and the remainder of the Guarantee Period, so that as of such first day of the upcoming Contract Period: (a) the Current Amount of Guarantee shall be [Amount in Guarantee Currency]; (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)*]. ***[Must be not less than principal amount shown in Section 3 above.]***

Sincerely,

**[GUARANTEE HOLDER]**

By: \_\_\_\_\_

(signature)

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

\_\_\_\_\_  
(place and date)

## Annex 6B – 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]. The outstanding principal amount of the Guaranteed Loan as of the date hereof is [Amount in Guarantee Currency].
2. The first day of the upcoming Contract Period is [\_\_\_\_], 20[\_\_\_\_]. Additional disbursements of the Guaranteed Loan have been made or will be made such that the outstanding principal amount of the Guaranteed Loan as of such first day of such upcoming Contract Period

will be [Amount in Guarantee Currency]. Attached hereto is a revised Annex 2 itemizing with respect to the Guaranteed Loan the Scheduled Payment Due Dates and amounts of each Scheduled Payment, reflecting such additional disbursements.

3. No event, circumstance, or default specified in Subsection 12.2(g) of the General Conditions has occurred as of the date hereof, and in accordance with Subsection 12.2(g) 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, and any defaults (regardless of cause) on a Scheduled Payment.

4. In accordance with Section 15.3 of the General Conditions, the Guarantee Holder irrevocably elects to increase the Current Amount of Guarantee as of the first day of the upcoming Contract Period, for such Contract Period and each successive Contract Period during the Guarantee Period, by transferring [Amount in Guarantee Currency] from the Standby Option Amount to the Current Amount of Guarantee, so that as of such first day of the upcoming Contract Period: (a) the Current Amount of Guarantee shall be [Amount in Guarantee Currency]; and (b) the remaining Standby Option Amount shall be [Amount in Guarantee Currency].

Sincerely,

**[GUARANTEE HOLDER]**

By: \_\_\_\_\_

(signature)

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

\_\_\_\_\_  
(place and date)