

CONCESSION AGREEMENT

FOR

[INSERT NAME OF PROJECT]¹

AT [_____] , [_____] PROVINCE,

LAO PEOPLE’S DEMOCRATIC REPUBLIC (“LAO PDR”)

BETWEEN

THE GOVERNMENT OF THE LAO PDR

AND

[INSERT PROJECT COMPANY NAME]

[DD MM YYYY]

¹ This is a Build, Operate, Transfer concession agreement developed for large-scale hotels and resorts located on state-owned land and negotiated by IPD, MPI. Such projects are likely to be classified at Category II projects under the EIA Decree and have one or more of the following characteristics:

- Hotels or resorts with more than 80 rooms;
- Hotels or resorts with a land area size of more than 50 hectares;
- Be located in the national or provincial protected areas, historical or cultural vestiges, or unique landscape, conservation area of local authorities;
- Have an investment capital ranging from USD5,000,000 to USD20,000,000.

This contract will require some negotiation on its provisions depending on the location, size and operating activities of the project and intentions of the concessionaire. Footnotes have been used to indicate provisions that are of a negotiable nature, all other provisions should be maintained as close as possible to their current text.

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AGREEMENT

THIS AGREEMENT(hereinafter this “**Agreement**” or “**Agreement**”) made and effective as of [_____] at Vientiane Capital, Lao People's Democratic Republic (the “**Lao PDR**”), by and between:

The Government of the Lao PDR, represented by the **Ministry of Planning and Investment**, (hereinafter “**Government**”)

and

[_____] , a company established and registered under the laws of the Lao PDR with head office located at: [_____] in accordance with the Concession Registration Certificate No. [INSERT] issued on [INSERT DATE] (hereinafter “**Project Company**”)

(each of Government and Project Company being a “**Party**” and, collectively, the “**Parties**”).

WHEREAS:

- (1) All land and natural resources located within the territories of the Lao PDR are the national property of the people of the Lao PDR and are controlled and managed by the Government as national assets.
- (2) Government wishes to take advantage of the country's natural environmental assets, in particular its land favorable for the development of tourism sites, to support and promote environmentally and socially sustainable tourism projects, including multi-service resorts, hotels, restaurants, entertainment venues, ecotourism, and natural, historic and cultural sites, to attract and meet the needs of tourists in Lao PDR.
- (3) In permitting the development and use of such natural resources in connection with the tourism, the Government seeks to obtain fair compensation for the use of such natural resources and to foster regional economic development, employment opportunities and the transfer of skills, knowledge, and technology regarding tourism services, operation, management, maintenance of tourism properties and other related activities to the Lao people, and to ensure that the environmental impacts attributable to the tourism operations are minimized and to impose responsibility for social impacts.
- (4) Government and [_____] , a company established and registered under the laws of [_____] with head office located at: [_____] (hereinafter “**Parent**”) entered into a Memorandum of Understanding, dated as of [_____] , relating to the Project (as hereinafter defined), a copy of which is attached as Exhibit C hereto (the “**MOU**”). In accordance with the MOU, Parent has, among other things, caused a Land Survey to be conducted and Land Use Map prepared, has prepared a Feasibility Study, and has obtained an Environmental Compliance Certificate for the Project certifying its environmental and social impact reports and plans, and has selected an area for agricultural development hereunder, referred to as the “**Concession Area**”.
- (5) The Project Company was duly incorporated and established in Lao PDR as a company limited with the Parent as sole shareholder, in accordance with Concession Registration Certificate No. [insert] issued by Government on [insert date] for the purpose of implementing the Project and performing all obligations contained in this Agreement.

- (6) Government and Project Company have jointly proposed the development of an [DESCRIBE NATURE OF PROPOSED ACTIVITY] project at [] District, [] Province, Lao PDR, in accordance with Lao PDR Law and the terms and conditions set forth in this Agreement.
- (7) Concurrently with the execution and delivery of this Agreement, Project Company and Government have or are entering in one or more Land Lease Agreements (as defined herein) relating to the Concession Area, which are attached to this Agreement in Exhibit B.
- (8) The Government and the Project Company enter into this Agreement to set out the terms by which the Government will make, grant and issue to the Project Company all necessary concessions, licenses and permits to operate the Project, with the right of the Government to acquire the Project free of charge at the end of the Concession Period (as hereinafter defined).

NOW, THEREFORE, in consideration of the mutual benefits to be derived hereunder by Government, Parent and Project Company, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.01 Definitions.

In this Agreement, the following terms and expressions shall have the meanings ascribed to them below, except where the context otherwise requires:

“Affiliate” means any corporation, firm, limited liability company, partnership or other entity or Person that, directly or indirectly controls, or is controlled by or is under common control of Parent or Project Company. For purposes of this Agreement, “Control” means the possession, directly or indirectly, by one Person of more than fifty percent (50%) of the equity of or voting power in another Person.

“Annual Monitoring Report” means the in depth annual report submitted by Project Company to the One Stop Service detailing amongst other things, Project progress, Project Company capital levels, importation of goods for the Project, Project Company employees, environmental and social compliance activities, use of local goods and services etc.

“Authorizations” means, any or all permissions, clearances (including environmental clearances, pollution clearance and approvals), authorizations, certificates, licenses consents, no-objections, resolutions, permits, waivers, fillings and registrations with any government agency and approvals of or from the Government or Responsible Government Authority or administrative department, required in connection with the Project and for undertaking, performing or discharging the obligations or fulfillment of the purposes as contemplated in this Agreement.

“Authorized Person” means a Person or Contractor who has been permitted by the Project Company to develop, construct and/or operate activities related to the Project.

“Best Industry Practice” means the exercise of that skill, diligence and prudence and those methods, practices and specifications and standards of engineering, procurement, construction, equipment, security, operation, maintenance and performance as may change from time to time and which would reasonable and ordinarily be expected to be used by a skilled and experienced construction, contractor and/or operator in a project of a similar type and size.

“Certificate of Land Use” means the official Government document approving the use of all parcel(s) of State land located within the Concession Area issued to Project Company for the purpose of implementing the Project. The Certificate of Land Use shall have a Land Use Map attached delineating the location and dimensions of the leased parcels of land, in alliance with the Land Lease Agreement(s) and shall bear the relevant Government stamps evidencing the authenticity of the rights of the less or of such lands.

“Commercial Operation Date (COD)” shall mean the date on which the Operating Permit is issued by the MICT to the Project Company in respect of the Project.

“Compliance Date” means the date of the Construction Permit issued by Ministry of Public Works and Transport for the Project.

“Concession Area” means the parcel or parcels of land within [INSERT LOCATION] allocated by the Government to Project Company for purposes of the Project as defined in the Land Survey and Land Use Map developed and approved during the MOU authorized period and explicitly described in the Land Lease Agreement(s) and Certificate of Land Use.

“Concession Period” means the term of the concession granted to Project Company pursuant to this Agreement as set forth in Article 3, as such term may be extended or terminated in accordance with the provisions hereof.

“Concession Rights” means the rights granted to the Project Company pursuant to this Agreement.

“Confidential Information” has the meaning defined in Section 29.04.

“Construction Period” shall mean the period commencing from the Compliance Date and ending on the Project Completion Date.

“Contractor” means a reputed Person with whom the Project Company has entered into/may enter into a contract relating to the Project and sub-contractors, including contractors for equipment, procurement and engineering and contractors for operation and maintenance of the Project, and manufacturers or suppliers of works or part thereof.

“Detailed Project Report” means a detailed report on the design and construction of Project, and particularly the Construction Works and Operations and Maintenance Works, including the plans, drawings and designs, Project Implementation Schedule and phasing schedule containing critical project construction milestones (**“Project Milestones”**), maintenance schedule and plan, detailed cost estimate, equipment replacement plan, management and marketing plan and any other details required by Lao PDR Laws or as directed by the Responsible Government Authorities.

“Development Site” means the parcel(s) of land on which Project Company shall construct and develop the Project Facility, including buildings and other large, permanent structures and On-site Infrastructure for the purposes of the Project, within the Services Zone(s) of the Concession Area.

“Effective Date” means the date on which this Agreement was signed by the Parties as appearing on Page 1 herein.

“Encumbrance” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amount due on account of taxes, electricity, water and other utility charges and encroachments on the Property and/or Project Facility.

“Enforcement Notice” means a notice issued as such by MONRE to the Project Company to cause the Project Company to rectify its compliance under this Agreement, or to take such steps as may be necessary to avoid a breach, violation or performance failure of this Agreement.

“Enterprise Law” means the Enterprise Law (N^o 11/NA, 09 November 2005).

“Environment” means living and non-living things naturally occurring or man-made, including humans, animals and plants and their surroundings, and the positive and negative interaction of such humans, living things and nature with respect to their life and existence.

“Environmental and Social Reports” means, collectively, the reports, plans and other documents prepared by the Parent and Project Company and submitted and approved by MONRE in fulfillment of their obligations under the MOU, and includes the [LIST SOCIAL AND ENVIRONMENTAL REPORTS i.e. Environmental Impact Assessment [INSERT PROJECT NUMBER OF EIA], Environmental Management and Monitoring Plan [INSERT PLAN NUMBER], Social Management and Monitoring Plan [INSERT PLAN NUMBER], Social Impact Assessment, and Resettlement Plan and/or Ethnic Minority Development Plan or simple Resettlement Plan and/or Land Acquisition and Compensation Report [INSERT PLAN NUMBER]].

“Environmental Compliance Certificate” means the Environmental Compliance Certificate No. [insert] issued on [insert date] by MONRE to the Parent or Project Company.

“Environmental Protection Fund” means the Environmental Protection Fund in Lao PDR established under Decree No 146/PM on 6 June 2005 including all subsequent revisions thereto.

“Feasibility Study” means the detailed study [INSERT PLAN NUMBER] submitted to and approved by the Responsible Government Authorities on [INSERT APPROVAL DATE] regarding the financial viability, technical aspects, options and environmental and social impacts of the Project. The Feasibility Study is attached hereto as Exhibit A.

“Field Vehicles” means motor vehicles utilized or to be utilized in the Project but excluding passenger sedans or vehicles not utilized exclusively in Project.

“Force Majeure” means (i) wars, invasions, revolution, civil war, terrorist acts, (ii) trade or commercial or other restrictions imposed either by any sovereign, embargoes, blockades, or sabotage, (iii) fires, explosions, unavailability of or interference with the usual means of transportation of Products, earthquakes or any other natural disasters (though excluding normal weather patterns such as seasonal flooding), epidemics or public health emergencies, insect plagues and disease epidemics; *provided however*, any such cause was beyond the reasonable control and arising without the fault or negligence of the Party invoking its rights under Section 16.01 as a result of an event of Force Majeure and could not have been avoided or overcome by such Party through the exercise of reasonable investigation or care.

“Government” means the Government of the Lao PDR including all ministries, departments, administration authorities and local administration authorities (provincial, district and village level).

“Immovable Asset” means any permanent structures, Project Facility or On-site Infrastructure that cannot be removed without causing material damage to the Concession Area or permanent structures thereon.

“Import” means the importation of machinery, equipment, Field Vehicles, tools, raw materials, and other goods for the direct use in the Project.

“Inflation Index” means the consumer price inflation index for Lao PDR as determined by the Bank of Lao PDR and the inflation increase between any two periods shall be determined by the ratio (which shall not be less than 1:1) of the Inflation Index for later prior to the Inflation Index for the earlier period.

“Investment Law” means the Law on Promotion of Investment (N^o 2/NA, 08 July 2009).

“Labor Law” means the Labor Law N^o 06/NA dated 27 December 2006.

“Land Lease Agreement” means one or more lease agreements signed by the Department of Land Use Planning and Development, MONRE and Project Company for each Concession Area; an executed copy of each Land Lease Agreement applicable to the Concession Area is attached hereto as Exhibit B.

“Land Use Map” means the topographic land map certified during the authorized period of the MOU by MONRE, showing the zoning and land classification of any existing uses on all parcels of land including, but not limited to, all parcels of land constituting the Concession Area and as attached to the Certificate of Land Use.

“Land Zoning Map” means the land zoning map issued by MICT showing the different land use zones within the Concession Area.

“Lao PDR Law” means the Lao PDR Constitution, all present or future laws duly issued by the National Assembly of the Lao PDR and promulgated by the President of the Lao PDR, and all present or future regulations, decrees, orders and guidelines duly issued by the Government.

“Lenders” refers to any bank or financial institution providing financing to the Project Company for the development, construction and operation of the Project.

“MAF” means the Ministry of Agriculture and Forestry.

“MICT” means Ministry of Information, Culture and Tourism.

“MONRE” means the Ministry of Natural Resources and Environment.

“MOU” means the Memorandum of Understanding between the Government and Parent dated [INSERT DATE OF MOU], a copy of which is attached as Exhibit C hereto.

“Movable Asset” means any machinery, tools, vehicles, supplies, trade fixtures or any other On-Site Infrastructure, Project item that can be removed without causing material damage to the Concession Area, Project Facility or any permanent structures thereon.

“MPI” means the Ministry of Planning and Investment.

“Notice” means all orders, approvals, declarations, consents and/or notices of any kind required, expressly authorized or provided under this Agreement between the Parties in writing and delivered by hand, by telefax, by electronic mail, by postage paid registered mail or by any other means of communication agreed upon by the Parties.

“On-site Infrastructure” means all support infrastructure relating to or connected with the Project, including but not limited to Roads, pavements, sidewalks, perimeter fencing, street lighting within the perimeter, internal water supply and sanitary arrangement, drains, sewerage, electricity sub-stations, electricity mains, transformers, water mains, sewer mains utilities, parking facilities, waste disposal systems, storm water drains, rainwater harvesting systems, firefighting system, logistics center, administrative offices, open space and green belt development, landscaping, maintenance of environmental conditions, arboriculture, etc. constructed on the approved land areas within the perimeter of the Concession Area.

“One Stop Service” means the office of the One Stop Service located in the MPI responsible for coordinating between the Responsible Government Authorities and Project Company.

“Operating Period” means the period commencing from COD and ending on the Transfer Date.

“Operating Permit” means the permit issued by the MICT to the Project Company with respect to the Project, authorizing commercial operation of the Project.

“Parent” means [_____] a company established and registered under the law of [_____] with head office located at [_____] , or any permitted assignee of the Parent that hereafter executes a written joinder agreement and agrees to assume the obligations as “Parent” hereunder.

“Person” means a natural person or a juristic person including a company, partnership, joint venture or corporation established under the laws of any jurisdiction.

“Pollution” means any change, either direct or indirect, to the Environment with respect to its physical, thermal, chemical, biological or radioactive composition through the secreting or emission of hazardous residues, which creates an adverse impact or effect upon the environment or adversely affects the health, security or welfare of the populace, animals, wildlife, fish or other water creatures, plants or the ecosystem.

“Preserved Zone(s)” has the same meaning as in the Tourism Law and means the area(s) in which it is prohibited to undertake any activities, such as construction, modification, land clearance, that could lead to structural or other significant changes to the original condition of the land or historical, cultural or natural sites located on the land, excluding limited and approved renovation that maintains the original condition of the land or sites.

“Prohibited Person” means any Person that (i) has been identified as being subject to sanctions by any member organization of which Government is a member, or with which Government has entered into treaties or other agreements, or (ii) has been identified by Government as a Person

that (a) may pose a serious risk to the national security, public health and safety or the economic or political stability of Government, or (b) has engaged in corrupt activity affecting Lao PDR or has otherwise defaulted in its commercial obligations to Government or other Persons within Lao PDR.

“Project Company” means [insert name] established in the Lao PDR by the Parent in accordance with Concession Registration Certificate No. [INSERT] issued on [INSERT DATE] for purposes of developing, owning and operating the Project in accordance with the Enterprise Law and Investment Law.

“Project Facility” means the [INSERT DESCRIPTION OF MAIN PROJECT FACILITIES i.e. hotel, bars and restaurants, convention venue, leisure facilities] and all Movable Assets and Immovable Assets comprised therein, which Project Company shall provide within the Development Site for the purposes of the Project.

“Project Implementation Schedule” means the project implementation schedule annexed to and defined in the Feasibility Study.

“Project Milestones” means the milestones for project implementation as defined in the Feasibility Study.

“Project” means [INSERT DESCRIPTION OF PROJECT] including the Project Facility, on-Site Infrastructure, Immovable Assets and Movable Assets, as well as the Works and Tourism Operations.

“Reserved Zone(s)” has the same meaning as appears in the Tourism Law and means the area(s) that the Government has identified for small scale development activities for the public benefit, such as camping sites, resting points, paths, walking trails etc.

“Responsible Government Authorities” means the relevant governmental authorities responsible for implementing specific provisions of this Agreement as listed in Annex III and any departments, administration authorities and local administration authorities (provincial, district and village level).

“Road(s)” means any road constructed by Project Company within the Concession Area or roads constructed by Project Company for access from existing Government highways to the Concession Area.

“Scheduled Construction Completion Date” has the same meaning as Section 8.03 (a) in this Agreement.

“Service Zone(s)” has the same meaning as appears in the Tourism Law and means the area(s) that the Government has identified as being suitable for the construction and operation of facilities that support tourism, such as tourism activities, accommodation, food service, trading and other tourism related services.

“Standards” means the standards of professional care, skill, diligence, practices, operations and method recognized by a consensus of relevant stakeholders (including without limitation the Government, industry, labor, financiers, and academia) and generally followed by prudent professionals employed by leading international firms regarding the conduct of similar activities or the provision of similar services in similar circumstances and geographic locations including,

but not limited to, the construction, service, facility, food and hygiene standards for tourism facilities as released by the Responsible Government Authorities.

“**Tax Law**” means the Law on Tax (N° 05/NA, 20 December 2011).

“**Tax(es)**” means all taxes, royalties, imposts, charges, fees, rates, levies, duties (including import and export duties), withholdings or deductions which are levied or imposed by the Government and any related interest, penalty, fine, charge, fee or other amount.

“**Tourism Law**” means the Law on Tourism No. XX (2013).

“**Tourism Operations**” means all tourism activities and services undertaken by Project Company for the purpose of the Project in the Concession Area, including services for the operation and management of the Project Facility, leisure facilities and activities, food and drink facilities and services, trading, access to cultural, historic or natural sites etc.

“**Transfer Date**” means the date immediately following the date of expiry of the Concession Period or the date of earlier termination thereof in accordance with the provisions of this Agreement.

“**User Charges**” means the charges, tariffs, prices, fees, rentals, rates, and all sources of revenue or amounts of money by whatever name called that are determined, charged, demanded, collected, retained and appropriated by the Project Company under this Agreement, including pursuant to sub-leasing, licensing, franchising, subcontracting or any other arrangement, and from the hire, sale and provision of goods and services.

“**UXOs**” mean Unexploded Ordnances.

“**Works**” means the works under and in accordance with the provisions of this Agreement relating to the design, development of the Development Site, construction, completion, testing and commissioning of the Project and Project Facility (the “**Construction Works**”), and the operation and maintenance, rectifying and remedying of defects therein (the “**Operation and Management Works**”) collectively or singularly as the context may admit or require, including the technology, services and other aspects to be designed, engineered constructed, installed, equipped, supplied, executed, manufactured, completed, tested, commissioned, rectified, replaced, carried out and undertaken in respect to the Project and Project Facility and any other permanent, temporary or urgent works required in the relation to the Project.

1.02 **Interpretation.**

In this Agreement, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) any part of speech or grammatical form of a word or phrase defined in this Agreement has a corresponding meaning;

- (d) a warranty, representation, undertaking, indemnity, covenant or agreement on the part of two or more persons binds them jointly and severally;
- (e) any reference to the provisions of any legislation or regulations or of Lao PDR Law made hereunder includes any statutory modification, amendment, revision, replacement or re-enactment thereof;
- (f) where the day on or by which any thing is to be done is not a business day that thing must be done on or by the next business day;
- (g) any reference to “day” shall refer to any day in the Gregorian calendar; and

a reference to a clause, sub-clause, paragraph, Annex (other than a Annex to a statutory provision) shall be a reference to a clause, sub-clause, paragraph, Annex (as the case may be) of or to this Agreement.

ARTICLE 2 CONCESSION AREA AND GRANT OF CONCESSION

2.01 Grant of Concession.

- (a) In consideration of the Project Company agreeing to comply with the terms and conditions of this Agreement and the representations and warranties listed in Article 5 herein, and in accordance with Lao PDR Laws, the Authorizations and this Agreement, the Government grants the Project Company the exclusive Concession Rights solely for the purpose of constructing, financing, developing, operating and managing the Project, Tourism Operations and any other ancillary activity connected with operation and maintenance of the Project within the Concession Area.
- (b) In fulfillment of the above section, the Project Company may regulate the entry and use of the Concession Area by Contractors and Authorized Persons, for the entire Concession Period, unless this Agreement is terminated earlier.

2.02 Location of Concession Area.

The Concession Area is located in [_____] District, [_____] Province, with an area of [##]ha([in words] hectares) as per the Land Use Map and Certificate of Land Use and as described in the Land Lease Agreement(s).

2.03 Development Site.

The Development Site is the land parcel(s) or delineated area zoned as Services Zone(s) within the Concession Area specifically agreed upon between the Parties as being suitable for construction and operation of the Project located in [INSERT LOCATION/COORDINATES] within the Concession Area and indicated on the Land Zoning Map.

2.04 Reserved Zone(s).

- (a) The Reserved Zone(s) is the land parcel(s) or delineated area within the Concession Area specifically agreed upon between the Parties in which the Project Company can construct approved On-site Infrastructure for the public benefit, such as camping sites, resting points, paths and walking trails and undertake restricted Works and Tourism Operations

as indicated on the Land Zoning Map. The Reserved Zone(s) includes [INSERT DESCRIPTION OF RESERVED ZONE(S)].

- (b) The Project Company must obtain approval from the Government prior to commencing any Works or Tourism Operations in the Reserved Zone(s).
- (c) In the event the Project Company fails to comply with this Section 2.03, the Government may impose fines and sanctions, order restoration and rehabilitation of the Reserved Zone and/or terminate this Agreement in accordance with Article 21.²

2.05 **Preserved Zone(s).**

- (a) The Preserved Zone(s) is the land parcel(s) or delineated area within the Concession Area, which has environmental, geographic, cultural or historic importance and is not suitable for Project Facilities and On-site Infrastructure as indicated on the Land Zoning Map. The Preserved Zone(s) includes [INSERT DESCRIPTION OF PRESERVED ZONE(S)].
- (b) The Project Company shall not undertake any Works or Tourism Operations within the Preserved Zone(s), unless such Works relate to the renovation of structures or the Environment contained therein for the purpose of restoring such structures or Environment to its original condition and such Works have been approved by the Government.
- (c) In the event the Project Company fails to comply with this Section 2.04, the Government may impose fines and sanctions, order restoration and rehabilitation of the Preserved Zone and/or terminate this Agreement in accordance with Article 21.³

2.06 **Ownership of Trees and Cultural Heritage Items.**

- (a) All existing vegetation in the Concession Area(s) with a diameter equal to or greater than 15 cm, irrespective of species, is the property of Government. All existing vegetation in the Concession Area(s) with diameter of less than 15 cm, irrespective of species, and trees or otherwise planted by Project Company in the Concession Area shall be the property of Project Company during the Concession Period. The prior written approval of MAF is required for any clearance, harvesting, burning, chipping, or other disposal of existing vegetation in the Concession Area that is the property of Government.
- (b) Cultural heritage objects and antiquities are the sole property of Government and shall form part of the Preserved Zone(s). In the event the Project Company discovers further objects and antiquities during Concession Period not identified on the Land Zoning Map, the Project Company shall not touch, move, or alter such item and shall immediately report such discovery to the Responsible Government Authority.
- (c) Any breach by Project Company of its obligations set forth in the above clauses shall subject Project Company to fines and the obligation to indemnify and compensate for any damages caused by Project Company in accordance with Lao PDR Law.

² This section will only be relevant for projects that have reserved zones within their concession land.

³ This section will only be relevant for projects that have preserved zones within their concession land.

2.08 **Permitted Activities.**

Project Company shall permit independent farming, agroforestry, non-timber forestry products collection activities or other activities within portions of the Concession Area (excluding Preserved Zone(s)) that are not, in the sole discretion of Project Company, suitable for the Project Facility, *provided, however*, that such independent persons:

- (a) limit activities to subsistence cultivation suitable for Lao PDR and conduct such activities in a manner that will not adversely affect the Project,
- (b) be resident(s) within the Concession Area or were resident within the Concession Area but were re-located in connection with resettlement activities relating to the Project or are employees of the Project Company or their dependents, and
- (c) seek the permission of Project Company prior to commencing such activities.

The Project Company may withhold such permission specified in Section 2.09 (c) or retract any previous permission granted if Project Company reasonably believes such independent activities would materially interfere or are materially interfering with the Project, the performance of any obligations specified under this Agreement, and with particularity those listed in Article 15; or pose a security risk to Project; *provided, however*, that such permission shall not otherwise be unreasonably withheld or retracted.⁴

2.09 **No Right of Ownership.**

Nothing in this Article 2 shall give the Project Company the right to ownership of land or to grant any security interests in ownership of the land within the Concession Area. The Project Company's land use rights shall be limited to rights and interests in the land as defined by the Land Lease Agreement(s) and/or Authorizations or permissions otherwise as granted or to be granted by this Agreement.

ARTICLE 3 CONCESSION PERIOD

3.01 **Term.**

The Concession Period shall commence on the Execution Date of this Agreement and continue for [STATE TERM IN WORDS____] () years (the “**Initial Term**”) up until the Transfer Date (including the Construction Period), unless earlier terminated in accordance with Article 21 of this Agreement (the “**Concession Period**”).

3.02 **Extension of Initial Term**

- (a) Unless terminated earlier pursuant to Article 21, in the third (3rd) year prior to the expiration of such Initial Term, the Parties shall, if requested by the Project Company, meet to discuss and negotiate an extension of the Concession Period as may be permitted

⁴ This is an option that may be negotiated or removed on a project-by-project basis depending on the location of the land and the surrounding villages/population.

under relevant Lao PDR Laws, which extension shall be subject to approval of the Government.

- (b) In the event no extension of the Initial Term is granted, the Project Company shall transfer the Project, in its entirety, to the Government free of charge in accordance with Article 21 herein.

ARTICLE 4 PROJECT INVESTMENT

4.01 Total Investment.

The Project Company shall make a total investment in the Project cost of at least [_____] USD (USD) which shall be funded through a combination of Registered Capital, loans from Lenders and/or the Parent, and other equity, including additional paid in capital (the “**Total Capital**”).

4.02 Registered Capital.

The registered capital of the Project Company in cash and in-kind shall be [_____] USD (USD) (the “**Registered Capital**”) consisting of [_____] USD (USD) of cash registered capital and [_____] USD (USD) of in-kind Registered Capital, and shall be funded in accordance with the Enterprise Law. During the Concession Period, the assets of the Project Company must not drop below the Registered Capital.

4.03 Deposit of Registered Capital.

- (a) The investment shall consist of an initial investment of at least twenty percent (20%) of the Registered Capital equaling [_____] USD (USD) to be deposited within ninety (90) working days of the issue of the Concession Registration Certificate, with the remaining amount of Registered Capital to be deposited within two (2) years of the date of issue of the Concession Registration Certificate.
- (b) The Project Company must register each deposit of Registered Capital with the Bank of Lao PDR, obtain a Capital Importation Certificate for the same and provide all such Capital Importation Certificate(s) to the One Stop Service within ten (10) working days of receipt.

4.04 Financing of Project.

Project Company shall be solely responsible for securing the financing necessary for development of the Project, which may consist of loans or equity. Government shall have no responsibility to provide financing to Project Company or to provide financial guarantees to Project Company or any Lender. Government shall cooperate with any reasonable requests by Lenders for standard supplementary documentation in connection with the status of Government and the Department of Land Use Planning and Development, MONRE as counterparties to this Agreement and the Land Lease Agreement(s). In the event that the Project Company wishes to obtain loans from sources outside of the Lao PDR, Project Company shall comply with the regulations of the Bank of Lao PDR.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of Project Company.

The Project Company warrants to the Government as follows:

- (a) The Project Company is a company, duly incorporated and validly existing under Lao PDR Law.
- (b) The Project Company has the power to enter into, perform and deliver, and has taken all necessary action to authorize its entry into, performance and delivery of, this Agreement and the transactions contemplated by this Agreement.
- (c) This Agreement has been duly authorized by all necessary corporate action on the part of Project Company, as witnessed by the Parent, and this Agreement constitutes a legal, valid and binding obligation of Project Company enforceable against Project Company in accordance with its terms.
- (d) All Authorizations required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement have been obtained or effected and are in full force and effect;
- (e) The Parent owns 100% of the equity interests in Project Company and Project Company has no subsidiaries.
- (f) Annex I (*Parent and Project Company Information*) contains (except as noted therein) complete and correct lists or tables setting forth:
 - (i) Parent's shareholders;
 - (ii) Parent's Affiliates showing forth, in each case, its relationship to the Project Company and the jurisdiction in which it is organized;
 - (iii) the directors and senior officers of the Project Company; and
 - (iv) each Person that is the ultimate beneficial owner of 5% or more of (a) the voting rights ordinarily empowered to control the management of Parent, or (b) the rights to share in the profits of Parent, and the chain through which such rights are exercised.
- (g) None of the Affiliates, directors, officers or other Persons identified in Annex I (*Parent and Project Company Information*) is a Prohibited Person.
- (h) The execution, delivery and performance by Project Company of this Agreement will not (i) contravene, result in any breach of, or constitute a default under, any agreement or instrument to which Project Company is a party or by which it or any of its properties are bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or governmental authority, applicable to Project Company or (iii) violate any provision of any statute or other rule or regulation of any governmental authority applicable to Project Company or Parent.

- (i) There are no actions, suits, investigations or proceedings pending or, to the knowledge of Project Company, threatened, against or affecting Project Company or any property of Project Company in any court or before any arbitrator of any kind or before or by any governmental authority that call into question the right of Project Company to enter into and perform its obligations under this Agreement or that, if resolved against Project Company, would materially adversely affect its ability to perform its obligations under this Agreement.
- (j) The Project Company, or Parent, to the knowledge of Project Company, has not been determined under any order, judgment, decree or ruling of any court, arbitrator or governmental authority to be in material violation of (i) any applicable law, ordinance, rule or regulation relating to the protection of the environment of any governmental authority or (ii) any agreement pursuant to which it is entitled to engage in tourism services under the laws of any jurisdiction.
- (k) Except as otherwise disclosed in writing to the Government, all written materials furnished in writing by or on behalf of the Project Company or Parent, with respect to the benefits to be derived by the Government from the Project were accurate in all material respects and no information was omitted or included, the omission or inclusion of which, as the case may be, would make the information furnished misleading in any material respect, in each case as of the date on which such information was furnished by the Project Company or Parent to the Government;
- (l) Project Company has the experience, finance, expertise, technical know-how and systems required for the conduct of the activities contemplated by this Agreement.

5.02 **Ongoing Representations and Warranties of Project Company.**

Project Company and Parent shall confirm that the written representations and warranties required under Clause 5.01 are true and correct at the time of any transfer, change of control, and/or acquisition by any Person who, directly or indirectly, assumes Control of the Parent or Project Company.

5.03 **Parent Guaranty.**

Parent hereby unconditionally guarantees the prompt and full performance by Project Company of the obligations listed in Annex V (*Obligations Guaranteed*) hereunder.⁵

5.04 **Representations and Warranties of the Government.**

Government represents and warrants to the Parent and Project Company as follows:

- (a) That the execution, delivery and performance of this Agreement has received all necessary Authorizations and constitutes the legal, valid and binding obligation of the Government.

⁵ Depending on the corporate structure of the Parent and its relationship to the Project Company, the Government may wish to demand that the Parent guarantees the performance of certain obligations contained in this Agreement for example: the importation of Registered Capital, Environmental and Social Obligations, maintenance of certain levels of capitalization etc.

- (b) That during the Concession Period, it shall not nationalize or expropriate (or take any measure tantamount to nationalization or expropriation with respect thereto) any asset, right or property of Project Company, except upon payment of fair, prompt and adequate compensation, including:
 - (i) Any On-Site Infrastructure or other property, Movable Assets or Immovable Assets, of the Parent or Project Company, Affiliates, and those of their respective employees, agents or representatives, to the extent connected with or affecting the Project;
 - (ii) Products or Tourism Operations in any form resulting from the Project;
 - (iii) Any capital, equity, shares or ownership interests or loans of whatever nature held in or owned or issued by the Project Company;
 - (iv) Any structure or entity put in place by Project Company in connection with the Project or this Agreement;
 - (v) Any intangible rights, including intellectual property.
- (c) Nothing in this Section 6.05(b) shall prohibit Government from taking title of the Project or any Movable Assets or Immovable Assets of Project Company upon termination of this Agreement as provided in Article 21.
- (d) Any violation by Government of this terms of Section 5.05(b) shall entitle Project Company, in addition to any other remedy provided by Lao PDR Law or otherwise by this Agreement, (i) to prompt payment equivalent to the fair market value of the investment, asset or property nationalized or expropriated immediately before the nationalization or expropriation (or the measures tantamount to nationalization or expropriation) took place and (ii) to terminate this Agreement pursuant to Article 21.

ARTICLE 6 RIGHTS AND OBLIGATIONS OF GOVERNMENT

6.01 Implementing Body.

- (a) The Parties agree that (i) MPI represents and acts for and on behalf of the Government in executing and entering into this Agreement; (ii) the Responsible Government Authorities listed in Annex IV (*Responsible Government Authorities*) are authorized to exercise the Government's rights and perform the Government's obligations as contemplated herein this Agreement; and (iii) MONRE is the implementing and monitoring body of all the matters related to the environmental and social obligations of the Project Company as specified in this Agreement and in Annex V (*Standard Environmental and Social Obligations*).
- (b) The Parties further agree that the Project Company throughout the Concession Period shall act for and on behalf of all the Investors in the Project Company in accordance with the applicable Lao PDR Laws.

6.02 Generally.

In addition to the rights and obligations of Government set forth elsewhere in this Agreement, the rights and obligations of Government shall include the following:

- (a) To facilitate the importation by Project Company of raw materials, machinery, equipment, and tools required for the Project in accordance with Article 9 of this Agreement, including any required inspection of such imported equipment.
- (b) Upon request of the Project Company, to arrange for work permits, visa and other travel authorization necessary for the expatriates employed by the Project Company in accordance with Lao PDR Laws and the immigration procedures in Lao PDR.
- (c) To facilitate the use of existing infrastructure, and to facilitate the construction of additional infrastructure as Project Company in its sole discretion may determine to be necessary for implementation of the Project, such as Roads, electricity, water supply and telecommunication facilities by Project Company; provided however that Project Company shall be responsible for the cost of interconnecting such existing infrastructure within the Concession Area, the cost of constructing and such additional infrastructure and for all service charges incurred for consumption of such utilities by the Project.
- (d) To provide Project Company, all reasonable assistance in locating and rendering safe or destroying any UXOs or other explosives located within the Concession Area, which Project Company believes is necessary to safely carry out the Project. In this regard, Government shall supply all required personnel and equipment, with Project Company responsible for all costs.
- (e) To exercise all other rights granted to Government in accordance with this Agreement and the laws of the Lao PDR.

6.03 **Issuance of Authorizations.**

The Government shall cause the respective Responsible Government Authorities to issue the required Authorizations as soon as reasonably practicable when each applicable application has been properly completed and is submitted to the Responsible Government Authorities by the Project Company. Nothing in this Agreement shall be construed as obligating the Government to issue any of the Authorizations in the case that the Project Company has failed to comply with the applicable Lao PDR Laws or procedures in effect for obtaining such Authorizations.

6.04 **Exploration for Other Natural Resources.**

Government reserves the exclusive right to explore for petroleum and mineral resources within the Concession Area and to grant such exclusive rights to any other Person (a “**Licensee**”). If Government or a Licensee intends to explore for petroleum or mineral resources in the Concession Area, Government shall provide Notice at least ninety (90) days in advance to Project Company, and the right of Government or Licensee to explore for petroleum or mineral resources in the Concession Area shall be subject to the following:

- (a) Any exploration activity to be undertaken either by Government or by Licensee shall not unreasonably or materially interfere with the Project or the Concession Rights granted to Project Company herein;

- (b) Government or the Licensee shall enter into a separate written agreement with Project Company that outlines the rights and obligations of the parties with respect to such exploration activities within the Concession Area;
- (c) Government will cause the Licensee to indemnify and compensate Project Company for any damage to Project Company's property or assets and for any economic or other losses (excluding loss of the intrinsic value of any leasehold rights), claims, damages, liability, and costs and expenses of defense (including reasonable attorney fees), arising out of or related to such exploration activities conducted by any Licensee.

6.05 **Government Construction of Infrastructure.**

Government reserves the right to construct roads, and telephone lines and other lines of communication and other utilities within the Concession Area and to grant such exclusive rights to any other Licensee. If Government or the Licensee intends to construct such infrastructure within the Concession Area, it shall first notify Project Company at least ninety (90) days prior to commencing such activities, and the right of Government or the Licensee shall be subject to the following:

- (a) Any development or construction of infrastructure to be undertaken by Government or Licensee shall not unreasonably or materially interfere with the Project or the Concession Rights granted to Project Company herein;
- (b) Government or the Licensee shall enter into a separate written agreement with Project Company that outlines the rights and obligations of the parties with respect to such development or construction of infrastructure within the Concession Area;
- (c) Government or the Licensee shall fully indemnify Project Company for any damage to property and assets and for any economic or other losses, claims, damages, liability, and costs and expenses of defense (including reasonable attorney fees), arising out of or related to such exploration and/or mining activities conducted by Government or a Licensee.

6.06 **Inspection and Monitoring.**

- (a) The Government shall at all reasonable times and on reasonable notice during the Concession Period have the right to enter and exist the Concession Area to monitor and inspect the Project, including any Works or Tourism Operations, to confirm that the Project Company is in compliance with its obligations under this Agreement and all applicable Lao PDR Laws.
- (a) Any failure on the part of the Government and/or the Responsible Government Authorities to undertake inspections or monitoring of the Project, shall not, amount to any consent or approval of the Government or a waiver of any rights of the Government under this Agreement; nor shall it release or discharge the Project Company from its obligations or liabilities under this Agreement with respect to the Project.

ARTICLE 7
RIGHTS AND OBLIGATIONS OF PROJECT COMPANY

7.01 **Generally.** In addition to the Concession Rights and obligations of Project Company set forth elsewhere in this Agreement, and with particularity Article 8, the Concession Rights and obligations of Project Company shall include the following:

- (a) To enter and exit, develop, manage and use the Concession Area for the purpose of developing and operating the Project in accordance with this Agreement and Lao PDR Law.
- (b) To construct, develop and operate the Project using technical knowledge and expertise, and the necessary equipment, required for the construction, development and operation of the Project in accordance with this Agreement and Lao PDR Laws.
- (c) To promote tourism, business and commercial opportunity to the people of Lao PDR.
- (d) To use all existing infrastructure, roads, electricity, water supply and telecommunication facilities as may be required for the development and operation of the Project provided that Project Company shall be responsible for the cost of interconnecting such existing infrastructure within the Concession Area and for all service charges incurred for consumption of such utilities by the Project.
- (e) To employ, train, instruct and transfer knowledge of planning, architecture, engineering, construction, management, information technology and hotel management and operation to employees as may be required to implement and operate the Project and services being provided therein.
- (f) To cooperate with Government in the monitoring of all aspects of the Project and inspection of Project activities and Project Company's records and reports.
- (g) To advertise and set up and display hoardings, billboards and other information panels at and around the Concession Area upon receiving relevant signage approval from the Responsible Government Authorities and to advertise the Project in print and internet media, and through other venues or means as appropriate, in order to attract users to the Project.
- (h) To be solely responsible for the technical feasibility, operational capability and reliability of the Project or any part thereof.
- (i) To exercise all other rights granted to Project Company in accordance with this Agreement and Lao PDR Law.

7.02 **User Charges.**

- (a) Effective from the Commercial Operations Date, the Project Company, either itself or through the Contractors, shall be entitled to determine, revise, charge, demand, collect, recover, and retain User Charges from users of the Project Facility and Tourism Operations and for any other goods, services, and facilities relating to the Project that are provided, arranged or procured by the Project Company or through the Contractors; *provided, however*, that the implementation of such User Charges by the Project

Company in compliance with Lao PDR Laws, Standards, Authorizations and Best Industry Practice.

- (b) In the event any user fails to pay the User Charges, the Project Company, either itself or through the Contractors, may exercise all rights and remedies available under Lao PDR Laws for recovery thereof, including the suspension, termination or cancellation of provision of services to the relevant defaulting user, *provided however*, that such actions are in compliance with Lao PDR Laws, the Authorizations, this Agreement and Best Industry Practice.

7.03 **Project Company's Construction of On-site Infrastructure.**

Subject to the terms and conditions of this Agreement, and only as is necessary or desirable, in the reasonable opinion of Project Company to conduct the Project, Project Company shall have the right, subject to and in accordance with Lao PDR Law:

- (a) To construct, install, maintain and/or repair, at its own expense, On-site Infrastructure within the Services Zone(s) and Reserved Zone(s), *provided, however*, that Project Company shall first obtain approval of Government concerning the design, location, size and environmental impact of any roadway or other ways of transportation, which approval shall not be unreasonably withheld. Project Company shall be responsible for ongoing maintenance and repair of On-site Infrastructure within the Services Zone(s) and Reserved Zone(s). All Roads, including Roads and trails across the Concession Area that have been traditionally used by the local population, shall remain open to free use by the public for commercial and public purposes as long as such use does not unreasonably interfere with the Project; *provided, however*, Project Company may impose reasonable restrictions on such Roads and trails to protect the security of its assets, and the safety of its employees, Contractors and users of the Project Facilities, and the goods, services, and facilities relating to the Project.
- (b) Subject to the Government's rights over trees as defined in Section 2.06 and in accordance to Lao PDR Law, to plant, cut and use timber within the Services Zone(s) to the extent it deems necessary for the construction and maintenance of the Project, *provided, however*, that Project Company obtains the requisite permits from MAF and such harvesting, and the use of timber shall not be for commercial purposes.
- (c) To take and use within the Services Zone(s), subject to the requirements of any Lao PDR Law, free of charge (but not to sell to any other Person without the written approval of Government), such stones, rocks, sand, clay, and gravel having no significant commercial mineral value other than as aggregate, filler or other construction material, as Project Company may consider necessary or useful for the Project, *provided, however*, that such use does not interfere with rights of third parties or with use by Government. This activity shall not be considered to be mining for purposes of any Lao PDR Law.

7.04 **Water Use Rights.**

- (a) Subject to the written approval of the Government and such Lao PDR Laws and conditions as the Government may impose, Project Company may use water found within the Services Zone for purposes necessary or useful to the Project under this Agreement upon payment of all applicable water charges; *provided, however*, that Project

Company shall not deprive any lands, villages, towns, houses, or watering places for animals of a reasonable supply of water.

- (b) Notwithstanding anything to the contrary in this section, Project Company may not dam any streams or use amounts of water that could materially interfere with the activities of farmers or residents being conducted as of the Execution Date. Nor shall Project Company interfere with the rights of water enjoyed by any Person in accordance with Lao PDR Laws. Project Company shall ensure that its use of water in no way results in damage to the Environment, Pollution or creates other hazards.

7.05 **Insurance.**

- (a) At all times during the Concession Period, Project Company will maintain at its own cost and with financially sound and reputable insurers authorized to provide insurance services in Lao PDR, insurance with respect to the Project and the Project's Movable Assets and Immovable Assets and employees located in Lao PDR against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurances and self-insurance, if adequate reserves are maintained with respect thereto) as would be reasonably expected and is comparable with that of leading international companies conducting similar activities of similar size and in similar circumstances and geographic locations. Such insurance shall include comprehensive third-party liability insurance, including injury or death to personnel and representatives of Persons who enter the Concession Area.
- (b) Project Company shall incorporate such information regarding insurance into the Annual Monitoring Report submitted to One Stop Service, and may additionally be requested to provide evidence of such insurance from time to time by Government.

7.06 **Use of Contractors.**

- (a) Subject to Section 14.03, Project Company may engage Contractors (including its Affiliates) of the Project to fulfill part of its obligations under this Agreement, *provided however* that Project Company shall remain fully responsible and liable for the performance of its obligations under this Agreement and Government shall be entitled to deal solely with the Project Company in relation to the matters delegated by such engagement.
- (b) The Government may request to be provided with a copy of any project agreements between the Project Company and Contractors or any amendments or replacements thereto to ensure its compliance with this Agreement.

7.07 **Transactions with Affiliates.**

- (a) All transactions between Project Company and any of its Affiliates shall be on such terms and conditions as would be fair and reasonable had the transaction taken place between unrelated parties dealing at arm's length.
- (b) If Project Company enters into a sale or services agreement (including operation and maintenance agreements) with any of its Affiliates, Government may request to be provided with a copy of such sales or services agreement to confirm Project Company's compliance with this section.

7.08 **Maintenance of Records.**

- (a) Project Company shall, pursuant to its standard record retention policy and otherwise as required by Lao PDR Law, maintain at its principal office in Lao PDR or, upon prior notice to Government, at any other office in Lao PDR:
 - (i) an original of all material construction, operational, technical, and commercial records, studies and reports (except correspondence) received or compiled by Project Company in connection with the Project under this Agreement (together with any relevant underlying data); and
 - (ii) complete, accurate and systematic financial records of all of its transactions, worldwide, relating to its operations under this Agreement, including such books of account and other financial records of operations as may be required by Lao PDR Law.
- (b) Government may, through its authorized representative, at any reasonable time upon not less than twenty-four (24) hours' notice, inspect the records of Project Company described in this Section and, to the extent the Project will not be unreasonably disrupted. Project Company shall make all reasonable arrangements to facilitate any such inspection and shall make its appropriate employees available to render assistance with respect to any such inspection.

7.09 **Reports.**

Project Company shall submit any and all reports required by Lao PDR Law or as directed by the Government or the Responsible Government Authorities to the Government by way of the One Stop Service or otherwise to the Responsible Government Authorities in such form, including the appropriate paper and/or electronic format, in such detail, and at such times as the Government or the Responsible Government Authorities may reasonably require, including without limitation the Annual Progress Report and any or all of the reports listed in Annex IV (*Project Reporting Schedule*), or on such other subjects as may be otherwise agreed by the Parties from time to time.

ARTICLE 8 PROJECT DEVELOPMENT, CONSTRUCTION AND OPERATION

8.01 **Plans, Drawings and Designs.**

- (a) Within ninety (90) days of the execution of this Agreement the Project Company shall submit a Detailed Project Report, including the plans, drawings and designs, project implementation schedule (“**Project Implementation Schedule**”) and phasing schedule containing critical project construction milestones (“**Project Milestones**”), maintenance schedule and plan, detailed cost estimate, equipment replacement plan, management and marketing plan and any other details required by Lao PDR Laws or as directed by the Ministry of Public Works and Transport and/or other Responsible Government Authorities.
- (b) Following the Compliance Date, the Project Company shall, at its own cost and expense, construct and develop the Project, either itself or through its Contractors, in accordance with the Detailed Project Report and Feasibility Study approved by the Responsible Government Authorities, without diversion or modification except in accordance with the

prior written approval from the Responsible Government Authorities, and in accordance with Lao PDR Laws, Authorizations, Best Industry Practice and Standards.

8.02 **Commencing Construction.**

Project Company shall, before commencing any Construction Works for the Project within the Concession Area, undertake the following:

- (a) Submit to the Responsible Government Authorities the Project Implementation Schedule for the Project and any other documents requested by the Responsible Government Authorities;
- (b) Apply for and maintain all Authorizations by the Responsible Government Authorities as required by Lao PDR Laws related to the Construction Works. For the avoidance of doubt, such Authorizations shall include land clearance permits and approvals issued by MAF for any required land clearance, Construction Permit(s) issued by Ministry of Public Works and Transport for construction of the Project Facility and On-Site Infrastructure and Environmental Compliance Certificate(s) issued by MONRE.
- (c) Unless directed otherwise by the Responsible Government Authorities, the Project Company is authorized to commence Construction Works from the date of issue of the Construction Permit (the “**Compliance Date**”).

8.03 **Construction Works and Construction Completion.**

- (a) Project Company shall undertake, do and perform all such acts, deeds and things as may be necessary to complete all Construction Works with respect to the Project Facility and On-Site Infrastructure in accordance with the Project Implementation Schedule, so that the Project is ready and available for operation the second (2nd) year after the Compliance Date (“**Scheduled Construction Completion Date**”).
- (b) In the event Project Company has fails to achieve any Project Milestone contained in the Project Implementation Schedule, the Responsible Government Authorities shall send Notice to the Project Company and provide the Project Company with an opportunity to cure the delay within ninety (90) days from the date of receiving such Notice. In the event the Project Company fails to remedy the delay, the Responsible Government Authorities shall send second Notice to the Project Company and provide the Project Company with further opportunity to cure the delay within ninety (90) days from the date of receiving such Notice. In the event any Project Milestone is not achieved within one-hundred and eighty (180) days from its scheduled date, unless such failure is due to an event of Force Majeure or a breach of Government’s obligations, the Responsible Government Authorities are entitled to order suspension of the Project, enforce fines and penalties, claim damages and/or advise the Government to terminate this Agreement in accordance with Article 21.
- (c) Both Parties agree that the Project Implementation Schedule may be adjusted from time to time, upon approval of the Responsible Government Authorities; *provided, however*, that if any or all Project Milestones or the Scheduled Construction Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in the Project Implementation Schedule shall be deemed to be modified accordingly.

- (d) Without prejudice to the any other Article or Section in this Agreement and in addition to any of its other obligations under this Agreement, during the Construction Period, Project Company shall:
- (i) arrange for, in a timely manner all necessary financial and other resources required for construction and installation of the Project Facility;
 - (ii) engage professionally competent Persons and Contractors for project management and construction and ensure that all works are carried out in compliance with construction Standards, Best Industry Practice and Lao PDR Laws;
 - (iii) obtain Authorizations, comply with Lao PDR Laws and give priority to safety in its construction and planning activities in order to protect life, health, property and Environment;
 - (iv) provide reports on the progress of Construction Works and such other relevant information when requested by the Responsible Government Authorities;
 - (v) allow Ministry of Public Works and Transport, or any independent engineer appointed by Ministry of Public Works and Transport, and any relevant Responsible Government Authorities to access and inspect the Construction Works periodically to ensure compliance with Lao PDR Law, this Agreement the Detailed Project Report, Feasibility Study and Environmental and Social Reports;
 - (vi) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Responsible Government Authorities and ensure timely completion of construction of the Project Facility and On-Site Infrastructure in accordance with this Agreement;
 - (vii) ensure that all materials, equipment, machinery installed and/or utilized in the Construction Works are of sound and merchantable quality, and that all workmanship is in accordance with Best Industry Practices and Standards applicable at the time of installation, construction or repair; and
 - (viii) make appropriate arrangements for security and safety of employees and visitors to the Development Site in accordance with Article 16.

8.04 **Completion of Construction.**

- (a) At least thirty (30) days prior to the proposed Schedule Construction Completion Date, the Project Company shall send Notice to the Government and all relevant Responsible Government Authorities, inviting them to inspect the completion of the Construction Works.
- (b) The Responsible Government Authorities shall either approve the completion of construction of the Project Facility and On-Site Infrastructure or direct the Project Company to undertake further Construction Works to ensure the Project Facility and On-Site Infrastructure comply with this Agreement the Detailed Project Report, Feasibility Study and Environmental and Social Reports, Lao PDR Law and any relevant Standards.

- (c) Completion of the Construction Works shall be certified through the issue of various Authorizations by the respective Responsible Government Authorities, including, but not limited to, a Construction Completion Certificate issued by Ministry of Public Works and Transport and an Operating Permit issued by MICT.
- (d) Unless directed otherwise by the Responsible Government Authorities, from the date of issue of the Operating Permit (the “**Commercial Operations Date**”), the Project shall be deemed open for commercial Tourism Operations and the Project Company shall be entitled to demand and collect User Charges in accordance with the provisions of Section 7.02.

8.05 **Operating Period.**

- (a) From the Commercial Operations Date up until the Transfer Date (“**Operating Period**”), the Project Company shall, at its own cost, be responsible for the commercial operation and maintenance of the Project and shall provide a high level of service to its users in accordance with this Agreement, the Standards, Best Industry Practice and any directives from the Responsible Government Authorities.
- (b) During the Operating Period the Project Company shall obtain and maintain the Authorizations required for operating the Project and implementing its obligations under this Agreement, including with particularity the Operating Permit and Environmental Compliance Certificate.
- (c) During the Operating Period the Project Company shall:
 - (i) Not cause, permit or suffer any use of the Project Facility or any part thereof for any other purpose other than that authorized by the Government, in accordance with the terms of this Agreement and Lao PDR Laws.
 - (ii) Not do anything at any time do, cause or permit any nuisance in or around the Concession Area or anything which shall cause unnecessary annoyance, inconvenience or disturbance to the occupiers of any surrounding property.
 - (iii) Operate and maintain the Project Facility and On-Site Infrastructure and Concession Area in a clean and hygienic condition; removing and disposing of waste in accordance with Article 14; and ensuring that all food and beverage services are of high hygienic standard in accordance with the Authorizations, Lao PDR Law and any directives of the Ministry of Health.
 - (iv) Provide modern public health facilities, including a sufficient number of clean and accessible toilets, in the Concession Area for use by the Project’s users and employees in accordance with generally accepted health and sanitation Standards and in accordance with the Labor Law and other associated Lao PDR Laws.
 - (v) Not store any goods not permitted by Lao PDR Laws, including hazardous, explosive, flammable or combustible in nature that may cause risk by fire, explosion or goods/material which on account of their weight or nature may cause damage or endanger the safety of the Project Facility and/or Concession Area and/or its inhabitants;

- (vi) Provide firefighting equipment in the Project Facility and ensure that periodic fire drills are conducted in order to guide and inculcate the procedures and operations of firefighting/safety; and
- (vii) Take such measures as Project Company considers necessary, or as directed by the Responsible Government Authorities, for the purposes of protecting the security of the Project and the safety of its users, employees and Contractors, including the imposition of reasonable restrictions on Roads and trails, installation of fencing, employment of security guards and installation of security cameras within and around the border of the Concession Area. The Ministry of Public Security is entitled to inspect the Project at any time and from time to time to ensure compliance with this Section.

8.06 **Alteration and Modification.**

- (a) Project Company shall, at its own cost, be at liberty to carry out necessary alterations, modifications and/or construction, to the Project Facility in order to ensure compliance with the agreed upon Standards and this Agreement; *provided, however*, that such alteration or modification is completed in accordance with the Detailed Project Report, Feasibility Study, Authorizations and Lao PDR Laws, shall not at any time cause any damage or have a dangerous effect on either the stability of the Project Facility, or the surrounding Environment, or otherwise adversely affect the safety of the users of the Project Facility.
- (b) If in the opinion of Project Company, the said alteration, modification or new construction requires demolition of any part or whole of the Project Facility (including the removal of trees), then such demolition shall be undertaken only after obtaining prior written approval from the Responsible Government Authorities, which approval shall not be unreasonably withheld. For this purpose, and depending on the size and impact of the alteration, modification or new construction, Project Company shall submit for approval to the Responsible Government Authorities additional feasibility studies and environmental and social reports (as applicable), which clearly describe such demolition and its impact on the structural stability of the Project Facility and the Environment, and any other matters requested by the Responsible Government Authorities.

8.07 **Repairs, Maintenance and Replacement.**

Project Company shall at its own cost:

- (a) Carry out or procure Operation and Maintenance Works and maintain (including routine, regular periodic and preventative maintenance), manage, keep in good operating condition and repair, restore and upgrade, to the extent reasonably necessary, the Project Facility, On-Site Infrastructure, and any other Project Immovable Assets and Movable Assets, normal wear and tear excepted, with skill, diligence and expertise in conformity with this Agreement, the Standards and Lao PDR Law; and
- (b) In performance of the above section, shall maintain the Project with the objective of providing high quality Tourism Operations and ensuring that the Project is transferred to the Government on the Transfer Date in good condition; normal wear and tear excepted.

8.08 **Suspension of Works.**

During the Concession Period:

- (a) The Responsible Government Authorities, may, by written Notice, require the Project Company to suspend the whole or any part of the Works if, in the reasonable opinion of the Responsible Government Authorities, such Works are not in accordance with construction, safety or environmental Standards, particularly those contained in Annex IV (*Standard Environmental and Social Obligations*) or Lao PDR Law.
- (b) Project Company shall, pursuant to the Notice under the foregoing Section, suspend the Works or any part thereof for such time and in such manner as may be specified by the Responsible Government Authorities and thereupon take remedial measures to remedy the defects notified. Upon completion of the remedial measures, the Project Company shall invite the Responsible Government Authorities to inspect the remedial measures, which will in turn revoke the suspension hereunder or direct the Project Company to undertake further remedial measures.
- (c) Any dispute regarding the suspension of Works or the remedial measures proposed, if cannot resolved within thirty (30) days of the suspension or proposal of the remedial measures, shall be submitted for dispute resolution in accordance with Article 19 of this Agreement.

8.09 **Safety.**

- (a) Project Company shall install and utilize modern safety devices and shall comply with modern safety procedures and precautions in the course of the Project under this Agreement (including regular safety training instruction for its employees) and in accordance with Lao PDR Laws, Standards and any directions from the Responsible Government Authorities.
- (b) Any incident or accidents that occur that are directly or indirectly related to Project activities, and with particularity those causing injury(ies), occupational disease or death to Project Company employees or users of the Project Facility or Project, must be reported to the Responsible Government Authorities as soon as reasonably possible and in any event, (i) in respect of any breach which would have a serious impact or where the urgent attention of the Responsible Government Authorities or may be required, within not later than forty-eight (48) hours of becoming aware of such breach, and (ii) in all other cases within seven (7) working days of Project Company becoming aware of such incident. The Project Company shall provide immediate and appropriate assistance to any such injured, diseased or deceased persons and, with respect to Project Company employees, shall pay the associated medical and funeral costs as may be appropriate in accordance with the Labor Law. Thereafter, the Project Company coordinate with the Responsible Government Authorities to cure the breach and shall take all measures necessary to mitigate and minimize harm and prevent further breaches in the future.
- (c) The Project Company shall incorporate details of its compliance with this section and/or any occupational safety incidents into the Annual Progress Report.

ARTICLE 9 IMPORTATION

9.01 **Generally Applicable Law.**

Subject to this Article, Project Company shall strictly comply with applicable import and export limitations and restrictions set forth in the applicable Lao PDR Law.

9.02 **Importation of Goods.**

Project Company may import stocks, equipment, machinery, Field Vehicles and necessary raw materials, (excluding fuel), for direct use in the Project, upon certification by the Responsible Government Authorities of payment of applicable import Taxes or exemption therefrom in accordance with applicable Lao PDR Law.

9.03 **Exemption for Equipment, Stocks, etc.**

Stocks, equipment, machinery, Field Vehicles and necessary raw materials (excluding fuel) for direct use in the construction, development and operation of the Project shall be exempt from all import Taxes excluding Value-Added Tax. Any such goods and materials that the Project Company wishes to import must be specified in the Project Company's Annual Import Plan in accordance with Section 9.05.

9.04 **Exemption for Surplus Items.**

Any item imported by Project Company which is no longer required for use in the Project may be resold or re-exported free of any Taxes, excluding Value-Added Tax. If such item is sold in the Lao PDR, such sale shall be subject to applicable Taxes in accordance with applicable Lao PDR Law.

9.05 **Annual Import Plan.**

Project Company shall file the Project's annual plan for importation of stocks, equipment, machinery, Field Vehicles and necessary raw materials for use by the Project ("**Annual Import Plan**") to the One Stop Service not later than ninety (90) days after the execution of this Agreement during the first year of the Project and not later than 15 November every year thereafter. Project Company shall notify One Stop Service of the reason for the delay in filing (such delay in filing not to exceed sixty (60) days). Thereupon, the Responsible Government Authorities shall review and approve the proposed imported items. In emergency cases, a list of items not included in the Annual Import Plan, shall be provided to the One Stop Service in accordance with applicable Lao PDR Law.

ARTICLE 10 TAX OBLIGATIONS AND OTHER PAYMENTS TO GOVERNMENT

10.01 **Highly Promoted Zone.**

The Project is a Level [1, 2, 3⁶], Zone [1, 2, 3] project under the Investment Law and is eligible for incentives under the Investment Law and applicable regulations.

10.02 **Taxes and Fees.**

⁶ Adjust as necessary and applicable to the Project.

In accordance with this Agreement and Lao PDR Laws, and in particularity the Tax Law, the Project Company shall pay fees and Taxes to the Government as full compensation for the Concession Rights as in effect from time to time to the extent not otherwise specified in this Agreement, as follows:

- (a) Land Lease Fees: Land lease fees shall be as specified in the applicable Lao PDR Law at the time of execution of the relevant Land Lease Agreement and shall be defined in such Land Lease Agreement. Unless specified otherwise in the Land Lease Agreement(s), all land lease fees shall be increased by at least ten percent (10%) of the original fee rate on the 5th anniversary of the Effective Date and the anniversary date every five (5) years thereafter to conform to amounts provided by Lao PDR Law as of such date of such adjustment.
- (b) Profit Tax: As a Level [1, 2, 3], Zone [1, 2, 3] project under the Investment Law, the Project shall be exempt from the profit tax for a period of [ten (10), six (6), four (4), two (2), one (1)] years from the Commercial Operations Date. Following the period of tax exemption, the Project Company shall pay profit tax at the rate of twenty four percent (24%), which shall be calculated in accordance with the principles listed in Annex II (*Rules Of The Computation Of Profit Tax*).
- (c) Personal Income Tax: Project Company shall withhold income tax from its domestic and foreign employees and pay such tax to the Tax Department of the Ministry of Finance in accordance with applicable Lao PDR Law.
- (d) Import and Export Taxes: Project Company shall pay import and export taxes in accordance with Article 10 herein this Agreement and Lao PDR Law.
- (e) Tax on Dividends and Interest Payments: Project Company shall pay the tax on dividends and interest payments in accordance with applicable Lao PDR Law. For purposes of the Tax Law, any interest paid with respect to debt supported or provided by any Person associated with or related to any shareholder shall be treated as interest paid to the shareholder.
- (f) Regulatory Fees: In additions to the Taxes and fees described herein, Project Company shall pay such fees as are generally applicable under Lao PDR Law with respect to driver's licenses, vehicle registrations, corporate registration, residency and work permits, company signage approvals, other similar Authorizations that arise under Lao PDR Law, as well as all the fees and costs demanded from time to time by the MONRE for the inspection and monitoring of the Project as specified in Annex IV (*Standard Environmental and Social Obligations*).

10.03 **Penalties for Late or Underpayment.**

In the event of any delay in paying any of the fees or Taxes listed above in Sections 10.02 (a)-(e) Project Company shall be fined two percent (2%) of each annual fee, for every month that payment is delayed. In the event the Project Company has, pursuant to this Agreement, underpaid its Taxes, Government shall, subject to Lao PDR Law, assess interest and penalties over such unpaid fees or Taxes. If Project Company has overpaid its fees or Taxes, then it shall be entitled to reimbursement or credit against Taxes then or thereafter due to Government, in accordance with Lao PDR Law.

10.04 **Audit and Adjustment.**

In addition to any other powers under Lao PDR Law, Government shall be entitled to audit the tax returns of Project Company for a period of five (5) years from the date of filing and to make such adjustments as may be required to reasonably reflect Project Company's income or tax liability. Project Company shall make such information available to Government as reasonably required to conduct such audit including information, which may be held by affiliated or related Persons outside of Lao PDR.

**ARTICLE 11 BANK ACCOUNT, ACCOUNTING, FOREIGN EXCHANGE AND
AUDIT**

11.01 **Bank Account.**

Project Company shall deposit all Total Capital and Registered Capital that consists of cash (including Project Company loan proceeds) in an account maintained with a commercial bank established or licensed in the Lao PDR. In the use of such funds, Project Company shall at all times comply with applicable Lao PDR Law.

11.02 **Accounting Standards.**

The Project Company shall maintain books of account in line with the Lao PDR Laws on accounting and standards. The Project Company may additionally, and subject to approval of the Ministry of Finance, maintain books of account that are in line with International Financial Reporting Standards as adopted by the International Accounting Standards Board, *provided, however*, that there are no discrepancies between the two books of accounts and both books of accounts are provided for audit in accordance with Article 11.05 below. Project Company shall keep a comprehensive set of its own books and records in Lao PDR at all times and allow Government to inspect such books and records as required in accordance with Lao PDR Laws.

11.03 **Authorized Remittances.**

Subject to payment of applicable Taxes and employee salaries in accordance with Lao PDR Law, the Project Company shall be entitled during the Concession Period to remit outside of the Lao PDR all of the following: (a) dividends and other permitted distributions in the Project Company to the Parent(s); and (ii) repayments of outstanding principal and payments for interest and other fees and commissions payable on loans or facilities of any kind made available by any Lender.

11.04 **Foreign Currency.**

- (a) Subject to Lao PDR Law and to the Authorizations, the Project Company shall have the right and authority throughout the Concession Period to receive its revenues, hold cash and other financial assets and effect payment and distribution in foreign currency.
- (b) Project Company may buy and sell foreign currency necessary for use in the Project in accordance with the prevailing foreign currency exchange rate from, or to, any Lao PDR licensed commercial bank accordance with Lao PDR Law.
- (c) The exchange of foreign currency into Lao Kip shall be accomplished through the Lao PDR banking system in accordance with the exchange rate based on the actual date of sale/purchase at the official rate of the relevant commercial bank.

11.05 **Audit.**

- (a) Project Company shall cause its books of account to be audited within three (3) months, or such longer period of time as the Ministry of Finance may approve, after the close of each fiscal year by the State Audit Authority or by an independent audit company registered in Lao PDR utilizing international accounting standards as selected by Project Company in accordance with Lao PDR Law.
- (b) A copy of the annual financial statement duly certified by an independent auditor and any management letters or similar communications shall be furnished to Government by the Project Company within such period as provided by Lao PDR Law after its receipt by Project Company.
- (c) Government shall have the right to audit such books of account as provided under Lao PDR Law; *provided, however*, that Government shall provide Project Company with a copy of any such audit within forty-five (45) days of receipt.
- (d) Once the Project Company's book of accounts has been audited, and such audit has been agreed upon between the Parties, the financial statement thus audited shall be considered acceptable and the audit results binding and conclusive as to its findings, unless a Party shall have indicated to the contrary within three (3) years after receipt of the same, except in cases of Project Company's fraud or intentional misrepresentation.

ARTICLE 12 EMPLOYMENT AND LABOR TRAINING

12.01 **Priority for Local Employees.**

All else being equal, priority shall be given to local nationals in recruitment, training opportunities and promotions. Project Company may utilize foreign workers and experts in the Project, subject to the limitations set forth in the Labor Law. In the event the Project Company finds it necessary to import foreign workers and/or experts above the limitations listed in the Labor Law, it shall submit a request to the One Stop Service, who will forward it to the Ministry of Labor and Social Welfare for review and approval.

12.02 **Compliance with Labor Law.**

Project Company shall strictly comply with Labor Law requirements concerning the hiring, lay-off and dismissal of Project employees.

12.03 **Lao Management Personnel Requirements.**

Project Company shall seek out qualified Lao personnel for administrative and responsible positions in the Project and shall give preference for employment at all levels of financial, accounting, technical, administrative, supervisory and senior management positions and other skilled positions to qualified Lao citizens as and when they become available, it being the objective of the Parties as soon as is practicable that the operations and activities of Project Company under this Agreement should be conducted and managed primarily by Lao citizens.

12.04 **Training.**

- (a) In furtherance of the objectives stated in Section 12.03, Project Company shall provide for the training of Lao citizens in order to qualify them for the positions described in that Section and, as required by its operations under this Agreement.
- (b) Project Company shall also provide on-the-job training, utilize vocational training facilities in Lao PDR, and undertake whatever other measures are necessary and reasonable to achieve the objectives stated in Section 12.03 (including, subject to operational needs and economic conditions, scholarships for qualified Lao employees to pursue relevant advanced studies abroad). Such training shall include matters related to occupational health, safety and sanitation matters, including those related to disease, virus and drug prevention.
- (c) Project Company shall set out a training plan (training and study) for Lao employees, in order to meet with the work requirement at various levels with full time employment.

12.05 **Visas for Foreign Workers.**

Project Company shall submit a request to that One Stop Service for the necessary visas, work permits and identification cards for any expatriate employees of the Project Company in compliance with Labor Law and this Agreement. Any such request from the Project Company shall include all relevant application fees and forms, fully completed, and other information required by the employment and immigration authorities of Lao PDR.

12.06 **Salary.**

Project Company shall provide salaries for its employees in conformity with Labor Law and the periodical minimum salary announcements of the Ministry of Labor and Social Welfare.

12.07 **Social Security.**

Project Company shall register with the Social Security Office and contribute social security payments to the Social Security Office, Ministry of Labor and Social Welfare on behalf of all Lao employees in compliance with the Labor Law and associated regulations.

12.08 **Employee Housing.**

In the event Project Company considers, in its sole discretion, that it is necessary for the purposes of the Project to provide employees and their dependents with housing within the Services Zone any such living accommodations and facilities provided by the Project Company for its operations shall be of a reasonable standard and shall be constructed in accordance with Lao PDR Laws.⁷

12.09 **Reporting.**

The Project Company shall provide information the progress of activities under this Article in such reasonable detail as Government may prescribe, including identifying the proportion of the work force by level, salary, total payroll composed of Lao employees, and training, in the Annual

⁷ This provision will not be relevant/required for some projects.

Progress Report submitted to the One Stop Service and any other relevant report as listed in Annex IV (*Project Reporting Schedule*).

ARTICLE 13 COMMUNITY RESOURCES AND DEVELOPMENT

13.01 Community Development.

It is the objective of the Parties that the Project shall be carried out in a manner that is consistent with the continuing economic and social viability of communities located in the Concession Area, or that have formed, and may form, as a result of the Project, in the following manner:

- (a) Project Company shall assist and advise Government, when requested, in its planning for infrastructures and local development (including the construction of schooling and health facilities etc.) that the Parties may consider that are useful to the Project and to the existing and future industries and the activities in the immediate vicinity of the Concession Area. Thereafter, Project Company shall in good faith cooperate with Government's efforts concerning the realization of such plans and programs.
- (b) Nothing in this Section shall obligate Project Company to make any significant expenditure or incur any material costs beyond the amounts which it would have made or incurred in the ordinary course of its business in accordance with the terms and conditions of this Agreement.
- (c) Project Company shall contribute development funding to villages surrounding the Concession Area and/or those directly impacted by the Project due to their proximity to the Concession Area as identified on the Land Use Map and agreed between the Parties and in accordance with the Environmental and Social Reports ("**Community Development Fund**").

13.02 Management of Community Development Fund.

- (a) Project Company shall contribute its accrued contribution to the Community Development Fund at the end of each year of USD [_____] per hectare⁸ of the Concession Area during the term of the Agreement, such minimum amount to be increased annually in proportion to any increase in the Inflation Index.
- (b) The Community Development Fund shall be deposited into an interest-bearing depository account with a Lao registered financial institution set up specifically to hold these monetary contributions.
- (c) The Community Development Fund shall be administered by a management team consisting of representatives from the selected villages, the District(s) where the villages are located and the Project Company. The management team shall develop an annual budget in consultation with Government and Project Company or as otherwise required by Lao PDR Law.
- (d) Funds from the segregated account may be disbursed only (i) for direct delivery of services and community infrastructure improvements, and not to fund the general work

⁸ With respect to a project that has large preserved or reserved zones, this calculation may need to be amended.

programs of administrative offices or officials, and (ii) for the benefit of the identified Lao villages. Such contributions by the Project Company shall be tax deductible.

- (e) Project Company shall report to the MONRE on contributions made to the Community Development Fund and any resolutions of the management team, or activities funded by the Community Development Fund in accordance with Annex IV (*Standard Environmental and Social Obligations*), and incorporate such information into the Annual Progress Report submitted to the One Stop Service.

13.03 **Purchase of Local Goods and Services.**

- (a) Project Company shall, when purchasing goods and services related to this Project, give preference to goods produced in Lao PDR by Lao nationals, services provided by Lao nationals resident in Lao PDR, and/or entities incorporated or formed in Lao PDR and are majority owned by Lao nationals resident in Lao PDR; *provided, however*, that such goods and services are at least equal to or better than comparable goods and services obtainable from Persons located outside of Lao PDR or Persons that are majority owned by non-Lao nationals, taking into account price, quality, safety standards, service, quantity, delivery, availability and other terms.
- (b) In addition, Project Company agrees to include in each contract or work order a provision requiring it to adhere to the requirements of this Section and to require its Contractors to do so, with respect to any activities undertaken in Lao PDR by such Persons (and their Contractors), on behalf of Project Company.
- (c) In conducting procurement, Project Company shall use its good faith efforts to seek to maximize the opportunities for Lao nationals to compete. In structuring its procurement Project Company shall take and shall have its Contractors take all reasonable measures to ensure that Lao nationals may reasonably compete in the provision of goods and services to the Project Company and its Contractors.
- (d) Project Company shall incorporate details regarding activities conducted under this Section in the Annual Progress Report submitted to One Stop Service.

ARTICLE 14 ENVIRONMENTAL AND SOCIAL OBLIGATIONS

14.01 **General.**

- (a) The Project Company shall implement the Project in accordance with (i) the Environmental and Social Reports and the Environmental Compliance Certificate; (ii) the obligations of the Project Company as set forth in this Agreement and Annex IV (*Standard Environmental and Social Obligations*) and (iii) the applicable Lao PDR Laws.
- (b) The Project Company shall adhere to and observe the Standards and practices concerning the health, safety, environment and social conditions mandated by the Government and incorporated into the Standard Environmental and social obligations set forth in Annex IV (*Standard Environmental and Social Obligations*).
- (c) The Project Company shall at all times take all reasonable precautions to protect the Environment, both on and off the Concession Area, and to limit damage and nuisance to

people, nature and property resulting from Pollution, contamination, noise and other results of the construction, operation and maintenance of the Project.

- (d) Project Company shall implement the Project in accordance with the resettlement and compensation measures outlined in the Environmental and Social Reports, Lao PDR Laws and Annex IV (*Standard Environmental and Social Obligations*) as applicable.
- (e) The Project Company shall be deemed at all times to have full knowledge of all the environmental and social related legal requirements, including the applicable Lao PDR Laws.
- (e) The Project Company shall at all times manage and be responsible for the handling and proper disposal of all wastes and waste products produced by the Project and in so doing, shall comply with all environmental requirements set forth in this Article and the Annex IV (*Standard Environmental and Social Obligations*).
- (f) The Project Company shall collect, maintain and make available for the Government's inspection all environmental and social information, compliance, violations, claims by other parties, complaints, resolutions, and payments by and on behalf of the Project Company pursuant to the applicable Lao PDR Laws, this Agreement and Annex IV (*Standard Environmental and Social Obligations*).

14.02 **Environmental and Social Reports.**

As required, but not less than every three (3) years, Project Company shall update the relevant Environmental and Social Reports as required by Lao PDR Law to account for any change in environmental or social conditions in the Concession Area. Project Company shall report to MONRE on the implementation of environmental and social measures on a quarterly basis in accordance with Lao PDR Law.

14.03 **Environmental Protection Fund.**

Project Company shall contribute an amount of [##] USD ([in words]USD) at the end of each year to the Environment Protection Fund managed by the Responsible Government Authorities, and shall incorporate details of such payments into the Annual Progress Report submitted to One Stop Service. Such contributions by Project Company shall be tax deductible.

14.04 **Self-monitoring and Reporting.**

Project Company shall engage in continuous, pro-active and comprehensive self-monitoring and reporting of all activities related to the Project's compliance with all environmental and social obligations contained in this Agreement, the Environmental and Social Reports and Environmental Compliance Certificate, in accordance with Lao PDR Laws and Annex IV (*Standard Environmental and Social Obligations*). In addition to these reporting requirements, Project Company shall incorporate details of environmental compliance and any environmental incidents for the preceding year into the Annual Progress Report submitted to One Stop Service.

14.05 **Government Inspection and Monitoring.**

- (a) Government reserves the right to monitor and make inspections of the Concession Area to ensure compliance with this Article. Inspections may be conducted according to a regular system, by notification in advance, or in cases of emergency.
- (b) If upon inspection the Government discovers the existence of an environmental breach, failure to act or violation of this Article, or for a failure to report an environmental breach, failure to act or violation by Project Company, the Government may impose penalties on the Project Company, in addition to any other remedies available under this Agreement, in accordance with Lao PDR Laws and Annex IV (*Standard Environmental and Social Obligations*).
- (c) Government reserves the right to conduct at Project Company's expense such inspection and monitoring of environmental, social, health and/or safety matters as Government deems necessary by utilizing MONRE officers, consultants or other experts, or any combination thereof; *provided, however*, that the cost of such Government inspection and monitoring specifically relates to the Project and the Project Company's activities and shall not exceed that which is necessary to ensure the Project Company's compliance with this Agreement and Lao PDR Law.

14.06 **Environmental Liability and Sanctions.**

- (a) Project Company, including its Contractors, is responsible for environmental liabilities, third-party claims and restoration costs resulting from an environmental breach, violation or action or omission by Project Company. The Project Company shall be liable for, and shall defend, all liabilities, damages, loss, expenses and claims from Pollution caused by the construction, operation and maintenance of the Project, except when such liabilities, damages, loss, expenses or claims are not attributable to the Project Company or the Project.
- (b) In addition to any environmental liabilities, Government may enforce additional sanctions on Project Company in accordance with Lao PDR Laws and Annex IV (*Standard Environmental and Social Obligations*), and/or may elect to terminate this Agreement in accordance with Article 21 herein.

ARTICLE 15

ASSIGNMENT, CHANGE OF CONTROL, MORTGAGE AND STEP-IN RIGHTS

15.01 **Transfer.**

- (a) This Agreement shall not be transferred or assigned to another Person (including for the purpose of seeking loans or equity, whether wholly or partly), without the prior written consent of Government, which consent shall not be unreasonably withheld.
- (b) The consent granted by the Government to a transfer or assignment contemplated in the foregoing section, shall not relieve the Project Company of any of its obligations hereunder this Agreement, except to the extent that the transferee or assignee has given the written consent to accept all these rights and obligations as mentioned in this Agreement. For the avoidance of doubt, the Project Company shall remain liable for any damages or liabilities incurred prior to the date of assignment.

- (c) Project Company shall provide the Government, by way of the One Stop Service, written Notice at least thirty (30) days prior to any such intended transfer or assignment.

15.02 **Change of Control.**

- (a) Any change of control of Project Company as held by the Parent shall require the prior written consent of Government, which consent shall not be unreasonably withheld. Project Company shall provide the Government, by way of the One Stop Service, with written Notice at least thirty (30) days prior to any such intended change of control.
- (b) Any Person acquiring the control over the Project Company from the Parent shall assume all the rights and obligations incurred prior to such change and shall direct the Project Company as its shareholder to perform and observe all the obligations, undertaking and representations as specified under the Agreement at all times until the end of the Concession Period.

15.03 **Prohibition of Assignment or Encumbrance to Prohibited Person.**

In no event may this Agreement be transferred or assigned to any Prohibited Person or any Person directly or indirectly owned or controlled by a Prohibited Person.

15.04 **Fee for Transfer or Assignment.**

Government may request Project Company to pay a fee for the transfer or assignment the Agreement (excluding where such transfer or assignment occurs as part of a Mortgage or Lenders' step-in rights) ("**Transfer Fee**"). The Transfer Fee shall be calculated [per hectare of the Concession Area] and shall be deposited into the state budget.⁹

15.05 **Mortgage Restrictions.**

- (a) The Project Company may, obtain approval of the Government, mortgage, charge or otherwise encumber (collectively, "**Mortgage**") its interest under this Agreement and substantially all of such Concession Area, Project Facility, On-Site Infrastructure, and other Immovable Assets or Movable Assets necessary for the Project (collectively, "**Pledged Assets**"), to finance a portion of the cost of constructing, operating and maintaining the Project.
- (b) Any agreement between Project Company and the holder of such Mortgage must comply with the relevant Lao PDR Laws.
- (c) The holder of such Mortgage shall agree in writing with the Government to all transfer restrictions set forth in this article and with particularity restrictions on transfers to Prohibited Persons.
- (d) Any foreclosure or other exercise of remedies under any Mortgage must result in a transfer of the rights of the Project Company under this Agreement and the Pledged

⁹ This provision and its calculation (based on hectares) may differ between projects or may not be suitable for some projects.

Assets to a single Person who satisfies all the requirements for an assignee set forth in this Article 18.

- (e) Project Company must incorporate details of any such Mortgage and payments made against the loan or equity into the Annual Progress Report submitted to One Stop Service.

15.06 **Lenders' Step-in Rights.**

- (a) Any Lender, shall, without prejudice to any other remedy available to them, have the option to propose to Government the substitution of Project Company by another party ("**Proposed Project Company**"). Any such proposal shall contain in sufficient detail all the relevant information about the Proposed Project Company and the terms and conditions of the substitution.
- (b) Upon receipt of Lender's proposal pursuant to the preceding Section, the Government shall at its discretion have the right to accept substitution of Project Company on such terms and conditions as it may deem fit; *provided, however*, that any such substitution shall be:
 - (i) based on terms and conditions of this Agreement, which are not less favorable to Government than those prevailing at the time of substitution; and
 - (ii) valid for the remaining period of Concession Period only.
- (c) In the event of substitution of the Project Company by a Proposed Project Company, all the rights, privileges and the benefits of the Agreement shall be deemed to have been transferred to and vested in the Proposed Project Company, and Government and the Proposed Project Company shall take such steps and enter into such documents as may be necessary to give effect to the substitution and complete the obligations in accordance with this Agreement.¹⁰

ARTICLE 16 FORCE MAJEURE

16.01 **Application.**

- (a) Any failure by either Party to carry out any of its obligations under this Agreement, other than an obligation to make payments of money, shall not be deemed a breach of contract, an evasion to perform its obligations or a shortcoming if such failure is caused by Force Majeure for which the affected Party has made all efforts to resolve such problem.
- (b) The Party whose ability to perform its obligations is affected by Force Majeure shall immediately provide the other party with written Notice, stating the cause and its impact on such Party and on the Project. Within fifteen (15) days of such receipt of such Notice by Government, the Parties shall meet to discuss methods of resolving or mitigating the effects of such Force Majeure and each Party shall meet endeavor to do all reasonable acts and things within their power to remove such cause.

¹⁰ This section may not be suitable for all projects.

- (c) The Party whose obligation is affected by Force Majeure shall be entitled to suspend performance of any of its affected obligations under this Agreement (other than any obligation to pay money as and when due) to the extent that it is unable to perform such obligation due to an event of Force Majeure or the effects thereof; provided that those obligations shall only be suspended to the extent that, and for so long, as they are genuinely adversely affected by the Force Majeure event.
- (d) The Party whose obligation is affected by the Force Majeure shall use all reasonable efforts, at its own cost, to (a) mitigate the duration, severity and effects or the relevant Force Majeure; (b) remedy its inability to perform its affected obligations; and (c) resume full performance of its affected obligations under this Agreement as soon as practicable.
- (e) Each Party must bear all costs it incurs as a result of any Force Majeure affecting its obligations under this Agreement.

16.02 **Reinstatement of Suspended Obligations.**

If Force Majeure declared under Section 16.01 has ceased, each of the Parties shall have the right to deliver Notice to the other Party declaring that such Force Majeure has ceased and the obligations of the Parties, if suspended in accordance with Section 16.01, shall be reinstated in full force and effect, and shall be enforceable as if such suspension had not occurred. In the event the receiving Party of the Notice disagrees that such Force Majeure has ceased, the Parties must follow dispute resolution processes outlined in Article 21 herein.

16.03 **Revised Timetables, Extension of Concession Period.**

Provided that the affected Party claiming Force Majeure has complied with the notice procedure under this Clause, the Concession Period shall be appropriately extended by a period sufficient to put the Party claiming such Force Majeure in the same position as if such Force Majeure had not occurred.

16.04 **Termination Due to Force Majeure.**

- (a) If a continuous condition of Force Majeure has existed for a period of three hundred sixty-five (365) consecutive days, and which in each case prevents the Project from operating in accordance with the terms of this Agreement in all or any material portion of the Concession Area (in each case a “**Prolonged Force Majeure**”), either Party shall have the right to terminate this Agreement.
- (b) The terminating Party shall deliver Notice to the other Party not less than sixty (60) days prior to such termination, and such termination shall be without further obligations or cost, except for any obligations that accrued prior to the termination, including any obligations to make payments of money that accrued prior to such termination.

ARTICLE 17 INDEMNITIES; GUARANTIES

17.01 **Mutual Indemnities.**

Each party shall indemnify and hold the other Party, their respective employees and, in the case of Project Company and Parent, Affiliates, harmless from:

- (a) All claims and liabilities to third parties and all damages and losses suffered by one Party as a result of contractual breaches by the indemnifying Party, including all costs, expenses, losses and damages suffered by the indemnified Party as a result of any breach of this Agreement by the indemnifying Party, and any failure of the indemnifying Party to honor any commitment or undertaking expressed in this Agreement.
- (b) All claims, damages, losses and liabilities arising from any death or injury to any Person or damage to any property in Lao PDR as a result of the willful misconduct or gross negligence of either Party.
- (c) *Definitions.* For the purpose of this Article 20, the phrase “**willful misconduct or gross negligence**” shall mean such willful or reckless misconduct of either Party (or in the case of Government, any Person acting directly on behalf of at the direction of Government and, in the case of Project Company and Parent, any of their employees, agents, or Affiliates) in connection with this Agreement as constitutes a complete and utter disregard for harmful, foreseeable, and avoidable consequences, but shall not include any simple negligence or mistake or any error of judgment made by either Party in the good faith exercise of any authority or discretion conferred by this Agreement or otherwise.

Should any Party be entitled to indemnity pursuant to this article, the indemnifying Party shall pay such indemnity to the other Party within forty-five (45) days of receipt of written Notice from the Party seeking indemnity stating the facts giving rise to such Party's claim for indemnification and the amount of such claim, including all reasonable legal fees incurred by such Party from such claim.

17.02 **Joint Responsibilities.**

In the event that any such liability, loss, damages, expenses or claims as referred to in this article results from a concurrent act or omission of the Parties, each Party shall be liable to the other only in proportion to its relative degree of responsibility for the resulting liability, loss, damages, expenses or claims caused by its concurrent act or omissions.

ARTICLE 18 GOVERNING LAW

18.01 **Governing Law.**

This Agreement shall be governed by and construed in accordance with Lao PDR Law.

18.02 **Change of Law.**

Except as explicitly provided in this Agreement, the Project Company shall be subject to Lao PDR Law as in effect from time to time, including with respect to labor, environmental, health and safety, customs and tax matters. For the avoidance of doubt,

- (a) to the extent there is any conflict or inconsistency between any Lao PDR Law (including any amendments, additions, revisions, modifications or other changes to any Lao PDR Law made after the Execution Date) and the provisions of this Agreement, the provisions of this Agreement shall govern; and
- (b) the Project Company shall be subject to any amendments, additions, revisions, modifications or other changes to any Lao PDR Law made after the Effective Date that

have the effect of modifying the obligations of Project Company from those in effect on the Effective Date, so long as such amendments, additions, revisions, modifications or other changes do not conflict with and are not inconsistent with the provisions in this Agreement.

ARTICLE 19 DISPUTE RESOLUTION

19.01 **Amicable Settlement.**

Where a dispute, controversy or claim arising under, relating to or concerning this Agreement (including any dispute as to its existence, interpretation, construction, validity or termination) arises between the Parties, all efforts shall be made through mutual discussion to reach an amicable settlement. If such a dispute cannot be resolved, either Party may issue a letter to the other Party referring specifically to this Article and stating that it believes there is a serious dispute that they are considering taking to arbitration. Each Party shall use its best efforts to resolve such dispute in a commercial manner within ninety (90) days after the date of such letter.

19.02 **Arbitration.**

Any such dispute that cannot be settled according to the provisions of Section 19.01, shall be finally settled by binding arbitration [under the United Nations Commission on International Trade Law arbitration rules (the “UNCITRAL Rules”) in effect at the time arbitration was commenced and managed by the Singapore International Arbitration Centre before a single arbitrator appointed under the UNCITRAL Rules. The place of arbitration shall be Singapore and all proceedings shall be conducted in the English language.] or [by Organization for Economic Disputes Resolution in Lao PDR in accordance with the Economic Dispute Resolution Law. The place of arbitration shall be Lao PDR and all proceedings shall be conducted in (English)]¹¹.

19.03 **Arbitrators.**

Any arbitral tribunal constituted pursuant to this Agreement shall consist of one arbitrator to be appointed by Government, one arbitrator to be appointed by Project Company and one arbitrator who shall be president of the tribunal and shall be a citizen neither Lao PDR or [INSERT PARENT COUNTRY OF ORIGIN] to be appointed by the Secretary-General of the selected arbitration center. The Parties must appoint their respective arbitrators within forty-five (45) business days. In the event either Party fails to appoint their respective arbitrator within this time period, the Secretary-General of the selected arbitration center shall select the arbitrators. All arbitrators shall be qualified to serve as arbitrators in the matter submitted for arbitration and no such arbitrator shall have an interest in the matters in dispute.

19.04 **Final and Binding.**

The award the arbitrator shall be final and binding upon the Parties and may not be appealed by any Party to any court or other judicial or governmental body.

19.05 **Waiver of Immunity.**

¹¹ The parties can choose where they wish their arbitration proceedings to take place, what rules they wish to use and which language they wish proceedings to be conducted in. The UNCITRAL Rules are a commonly accepted set of arbitration rules. The Singapore International Arbitration Centre is a common choice for arbitration in the region.

Government irrevocably waives any right to immunity that it may have or may acquire in respect of any legal or arbitral proceeding or judgment or arbitral award or the enforcement of any such judgment or arbitral award in respect of its obligations and liabilities under this Agreement.

19.06 **Operations During Negotiations or Arbitration.**

The Parties agree that, unless the Project Company has been ordered to suspend Works for reasons specified in Section 8.08 (a), the Project Company should it choose, is expressly authorized to continue its Tourism Operations consistent with the terms of this Agreement during the pendency of any decision of a referee or arbitral tribunal under this Article.

19.07 **Disputes Involving Project Affected Persons.**

Any dispute arising out of or in connection with the Project and/or the implementation of this Agreement between Project Company and Project Affected Persons, and/or any other villages or communities directly or indirectly impacted by the Project, shall be resolved in accordance with the terms and conditions of the Environmental and Social Reports, Annex IV (*Standard Environmental and Social Obligations*), and the dispute resolution processes listed in Lao PDR Law.

ARTICLE 20 PERIODIC REVIEW AND COOPERATION BETWEEN PARTIES

20.01 **Cooperation.**

The Parties shall at all times cooperate with each other to facilitate efficient and economic operation of the Project for the mutual benefit of the Parties. Each Party may at any time request a consultation with the other Party with respect to any matter affecting the rights and obligations of the Parties pursuant to this Agreement or the progress of the Project. The Parties shall meet to review the matter raised as soon after such request as is reasonably convenient for them both. Subsequent to such consultation, the Parties shall take such action, if any, that is mutually agreed to address the matter.

20.02 **Profound Changes in Circumstances.**

- (a) In the event there is a Profound Changes in Circumstances from those existing on the Effective Date or on the date of the most recent review of this Agreement pursuant to this Section, either Party, shall at the request of the other Party, consult together to discuss the provisions of this Agreement that are directly related to the Profound Changes in Circumstances. The Party who is of the view that Profound Changes in Circumstances exists shall provide the other Party with reasonable information with respect thereof. The Parties shall meet to review the matter raised as soon after such request as is reasonably convenient for them both.
- (b) In the event that Profound Changes in Circumstances are established to have occurred, the Parties shall effect such amendment or termination of this Agreement that they agree necessary.
- (c) For the purpose of this Section, “**Profound Changes in Circumstances**” shall mean such changes in the economic conditions of the [INSERT PROJECT SPECIFIC SECTOR] industry worldwide or in Lao PDR, or such changes in the economic, political

or social circumstances existing in Lao PDR specifically or elsewhere in the world as to result in such a material and fundamental alteration of the conditions, assumptions and bases relied upon by the Parties at the time during which they entered into this Agreement (or at the time of any subsequent review pursuant to this Section) that the overall balance of equities and benefits reasonably anticipated by both Parties will no longer, as a practical matter, be achievable.¹²

ARTICLE 21 TERMINATION

This Agreement shall terminate at the end of the Concession Period, or may earlier terminated by the mutual agreement of the Parties, or otherwise under this Article.

21.01 **Government's Events of Default.**

Subject to the Government's right to cure under Section 21.03, Project Company shall have the right to terminate this Agreement if any of the following events shall occur and be continuing (each one constituting an "Event of Default"), to the extent such event is not directly or solely due to or arising as a consequence of a breach of this Agreement by the Project Company; or due to an event of Force Majeure or Profound Change of Circumstances:

- (a) Government fails in a serious and prolonged manner to comply with any material obligations under this Agreement and such failure be continuing.

Any such termination shall be subject to the obligations of Project Company under this Agreement that accrued prior to the date of termination.

21.02 **Project Company's Events of Default**

Subject to Project Company's right to cure under Section 21.03, Government shall have the right to terminate this Agreement if any of the following events shall occur and be continuing (each one constituting an "Event of Default"), to the extent such event is not directly or solely due to or arising as a consequence of a breach of this Agreement by the Government; or due to an event of Force Majeure or Profound Change of Circumstances:

- (a) Project Company fails in a serious and prolonged manner to comply with any material obligations under this Agreement, including, but not limited to, failure to operate and maintain the Project in accordance with Lao PDR Laws and this Agreement, achieve the latest outstanding Project Milestone due in accordance with the provisions of the Project Implementation Schedule and continues to be in default for 180 (one-hundred and eighty) days, to maintain insurance in accordance with this Agreement, to make any payments due to the Government within the period specified in this Agreement or in Lao PDR Law, and undertaking transfer or assignment in violation of this Agreement.
- (b) any representation made by or on behalf of the Project Company under the this Agreement was untrue in any material respect when made, or deemed to have been made, or the Project Company is in breach of any warranty under the provisions of this Agreement, and such events would materially and adversely affect the ability of the Government to perform its obligations or to exercise its rights under this Agreement;

¹² The applicability of this section will depend on the specific tourism activities of the Project.

- (c) Project Company, (i) voluntarily makes an assignment of all or substantially all of its assets for the benefit of creditors without the prior approval of Government other than an assignment made to secure indebtedness incurred in the ordinary course of business, (ii) files a petition or application to any tribunal for the appointment of a trustee or receiver for all or any substantial part of the assets of Project Company, (iii) commences any proceedings for its bankruptcy or insolvency under the laws of its jurisdiction of incorporation, whether now or hereafter in effect, or if any such petition or application is filed, or any such proceedings are commenced against it, indicate its approval thereof, consent thereto or acquiescence therein, or not obtain dismissal of such proceedings within ninety (90) days of commencement thereof, or (iv) if any order is entered appointing any such trustee or receiver, or adjudicating Project Company, bankrupt or insolvent, or approving the petition in any such proceedings, not take steps to set aside such order or dismiss such proceedings within ninety (90) days from the date of such order or petition is served on the Project Company; or
- (d) Project Company ceases commercial operation of the Project for more than three hundred sixty-five (365) consecutive days, unless (i) Government consents to such cessation, (ii) it results from Force Majeure or (iii) it results from any act of prevention or material breach by Government of its obligations under this Agreement.

21.03 **Opportunity to cure.**

- (a) In the case of an alleged Event of Default, before taking any further action, the non-defaulting Party shall provide the defaulting Party with Notice of the alleged occurrence of such Event of Default and of that Party's views in that regard and shall offer the defaulting Party a fair opportunity to consult with the non-defaulting to resolve the matter.
- (b) Thereupon, the defaulting Party shall cure such default within ninety (90) days (or such reasonable additional period if such default is not capable of cure within ninety (90) days). Such 90-day period shall be extended for so long as the defaulting Party continues to pursue diligently the actions necessary to cure such occurrence of Event of Default. If such Event of Default has not been cured within such period, then the Government shall issue Notice of Intention to Terminate to the Project Company ("**Termination Notice**") and thereafter this Agreement shall terminate; *provided however*, that, if such breach cannot reasonably be cured within ninety (90) days, but can reasonably be cured by action of the defaulting Party, and the defaulting Party has undertaken necessary steps to cure such failure within such 90-day period, such 90-day period shall be extended for so long as the defaulting Party continues to pursue diligently the actions necessary to cure such breach and completes such cure within twelve (12) months after such Notice. In the event the defaulting Party ceases to pursue diligently such efforts to cure such Event of Default and fails to resume diligent efforts within sixty (60) days after Notice from the non-defaulting Party relating to such cessation, the Government shall issue a Termination Notice to the Project Company and thereafter this Agreement shall terminate.

21.04 **Substitution Rights.**

- (a) On occurrence of a Project Company's Event of Default, the Government shall, through Notice of Intention to Terminate to the Lender(s), invite the Lender(s) to submit a proposal for substitution of the Project Company in accordance with Section 16.06 herein within sixty (60) days of the date of the Notice of Intention to Terminate to the Lender(s).

- (b) In the event the Government receives a proposal for substitution of the Project Company, it shall withhold termination for a period not exceeding 180 (one hundred and eighty) days from the date of the Notice of Intention to Terminate to the Lender(s),
- (c) In the event no Proposed Project Company is nominated by the Lender(s) within the time frame specified in Section 21.04(b) or the Proposed Project Company is not acceptable to the Government, the Government may substitute the Project Company or terminate this Agreement.

21.05 **Consequences of Termination.**

Upon termination of this Agreement for any reason whatsoever, the Project shall be transferred to the Government in its entirety (hereinafter referred to as the “**Transfer Date**”) at no cost to the Government and thereafter:

- (a) The Government shall have the power and authority to enter upon and take possession of the Concession Area and Project, along with the related original construction documents, manuals, instruction booklets, and guarantees/warranty cards in respect of any and all material and equipment.
- (b) Termination of this Agreement will automatically result in a forfeit by the Project Company of its rights under the Land Lease Agreement(s).
- (c) Termination shall not affect rights or obligations relating to the provisions on dispute resolution, transfer of the Project to the Government, transfer of Immovable Assets and Movable Assets or Works; any restoration and rehabilitation of the Concession Area requested by the Government, or any other provision of this Agreement which expressly or impliedly are to operate after the termination of this Agreement.

21.06 **Condition of Project.**

- (a) Upon service of a Termination Notice or three (3) years prior to the expiry of the Concession Period, the Project Company and the Responsible Government Authorities shall form a **Decommissioning Committee**, which shall be responsible for conducting a survey of the Project to ascertain the condition thereof, prepare an inventory of the Project’s Immovable Assets and Movable Assets and verify compliance by the Project Company under this Agreement.
- (b) In the event the Decommissioning Committee becomes aware that any part of the Project has not been operated and maintained in accordance with this Agreement, Authorizations, Government directives or Lao PDR Laws (normal wear and tear excepted), the committee shall direct the Project Company, at its own cost and expense, to take all necessary steps to put the same in good working condition, in accordance with an implementation schedule, to ensure the Project is handed over in good condition on the Transfer Date.
- (c) Notwithstanding anything else contained in this Section, six (6) months prior to the expiry of the Concession Period, the Project Company shall send notice to MONRE to request inspection and evaluation of performance of the Project Company’s environmental and social obligations under this Agreement. MONRE shall direct the Project Company shall take all steps necessary to ensure restoration and rehabilitation of

the Concession Area (as applicable), in compliance with this Agreement and the procedures and obligations contained in Annex IV (*Standard Environmental and Social Obligations*). Upon completion of such restoration measures to the satisfaction of MONRE, MONRE shall issue the Project Company with a letter certifying that the Project Company is discharged from any environmental and social liabilities related to the Project.

21.07 **Obligations Upon Termination.**

- (a) On or before the Transfer Date, the Project Company shall transfer to handover to the Government or Lender(s) or any person nominated by the Government or Lender(s):
 - (i) fully vacant, peaceful, unencumbered and encroached possession of the Project;
 - (ii) all its rights, title and interest in the Project, which are required to be and legally capable of being transferred;
 - (iii) all documents including as built drawings, manuals and records relating to operation and maintenance of the Project;
 - (iv) all technology and up-to-date know-how relating to operation and maintenance of the Project; and
 - (v) all unexpired guarantees and warranties by Contractors and supplies and all insurance policies.

21.08 **Contract Remedies Preserved.**

The termination rights provided in this Article are in addition to, and not in derogation of, any remedial right to damages which either Party may have under any other provisions of this Agreement or pursuant to applicable Lao PDR Law, for a breach by the other Party of this Agreement or of Lao PDR Law, including, but not limited to the Government's right to issue enforcement notices, suspend or revoke operating permits in part or in full, impose fines or penalties, commence criminal prosecutions, disciplinary measures and/or submit a claim for damages or loss of opportunity against the Project Company.

ARTICLE 22 LANGUAGE

22.01 **Generally.**

This Agreement is executed in multiple counterparts in both the English and Lao languages and both versions shall have equal weight. In the event of inconsistency between the English and Lao versions of this Agreement, the English version shall prevail.

ARTICLE 23 NOTICES

23.01 **Notices.**

All notifications, demands and other communications required or allowed under this Agreement shall be made in writing, in [English, Lao] and delivered to the addresses of the Parties set forth

below by personal delivery, registered mail, facsimile (with a copy by registered mail) or e-mail (with a copy by registered mail):

Government: Ministry of Planning and Investment
Investment Promotion Department
Souphanouvong Road
Vientiane Capital 01001, Lao PDR
Tel: (856) 216663, 217005
Fax: (856) 215491
E-mail: fimc@laotel.com

One-Stop-Service
Ministry of Planning and Investment
Souphanouvong Road
Vientiane Capital 01001, Lao PDR

Ministry of Information, Culture and Tourism
Department of Tourism Management
Lanexang Avenue, Chanthabouly District, Vientiane Capital 01001, Lao PDR
Tel: (856-21) 212251; Fax: (856-21) 212769

[Ministry of Agriculture and Forestry
Department of Planning and Cooperation
Lanexang Avenue, Patouxay Square, Vientiane, Lao PDR
Tel: (856) 21415358
Fax: (856) 21412343]

Ministry of Natural Resources and Environment
Department of Land Use Planning and Development
Chao Anou Road, Vientiane, Lao PDR
Tel: (856) 21900987
Fax: (856) 21223485

Project Company
[_____]

23.02 **Effectiveness of Notice.**

Any notice, claim, demand, request or other communication given as provided in this Article, if given personally, shall be effective upon delivery and if given by mail, shall be effective fourteen (14) days after deposit in the mail. Any Party may change the address at which it is to receive notice by giving written Notice to the other Party and notifying the One Stop Service.

ARTICLE 24 CONFIDENTIALITY

24.01 **Confidential information.**

All information, data and documents relating to the Project, not available to the public, disclosed to the other Party shall be considered "Confidential Information," including (i) all written information and documents which have been provided to the other Party, that conspicuously bears a "Confidential," "Proprietary" or similar designation (ii) all oral information of the disclosing

Party that is identified at the time of disclosure as being of a confidential or proprietary nature and (iii) information concerning the internal affairs of that Party. Confidential Information shall in no case include this Agreement.

24.02 **Exceptions.**

The Parties shall maintain all Confidential Information in confidence except to the extent that such information: (i) has become publicly available other than through breach of this confidentiality obligation by a Party or which is obtainable with no more than reasonable diligence from sources other than the Project Company; (ii) may be required for review by Lenders or potential Parents in the Project and their financial, technical and legal advisors; or (iii) is required by the Lao PDR Laws or any other applicable laws and regulations to be disclosed to any Person who is authorized by the Lao PDR Laws to receive the same or pursuant to judicial, administrative or arbitral order; or (iv) may be required by any governmental authority or its personnel for the purpose of enabling such governmental authority to perform its obligations in connection with the Project as contemplated under this Agreement; or (v) which has been published pursuant to applicable Lao PDR Laws; and (vi) which is as agreed between the Parties.

24.03 **Agreement.**

This Agreement shall be made public, except in the case of proprietary information or business secrets not otherwise public and determined to be entitled to confidential protection by Government. In any case where proprietary information is withheld, a copy of the Agreement shall be made public with such proprietary information or business secrets redacted.

ARTICLE 25 MISCELLANEOUS

25.01 **Waivers.**

All waivers must be in writing and executed by Government against whom such waiver is to be enforced. Failure by either Party to enforce, at any time, any provision of this Agreement shall not be construed as a waiver of the breach of such provision or any other provision in this Agreement or as a waiver of any breach of any provision or other provision of this Agreement.

25.02 **Language.**

This Agreement is executed in multiple counterparts in both the English and Lao languages and both versions shall have equal weight. In the event of inconsistency between the English and Lao versions of this Agreement, the English version shall prevail.

25.03 **Amendments.**

This Agreement may not be modified or amended except by an agreement in writing duly executed by each of the Parties.

25.04 **Severability.**

If any provision of this Agreement is held to be illegal or invalid under any present or future Lao PDR Law effective and applicable during the Concession Period, such provision shall be fully severable and the Agreement shall be construed as if such illegal or invalid provision a part of this Agreement and this Agreement shall remain in full force and effect and shall not be affected

by the illegal or invalid provision or by its severance from this Agreement; provided that, in any such event, the Parties shall engage in good faith discussions to appropriately amend this Agreement.

25.05 **Notarization.**

As soon as practicable (and in any case by no later than thirty (30) days from the Effective Date), [Government or Project Company] shall notarize an original counterpart of this Agreement at the Lao Notary Office, as evidenced by such relevant office or affixing its official seal on this Agreement. Project Company shall bear the notarization fee payable on the notarization of this Agreement.

25.06 **Execution.**

This Agreement is executed in eight (8) copies, with three (3) going to each Party, one remaining with the relevant village authority and one remaining with the Lao Notary Office. Each copy shall have identical content, legal significance and binding effect.

The remainder of this page has been left intentionally blank.

*IN WITNESS WHEREOF, the Parties hereto have caused **this Agreement** to be duly executed as of the date appearing at the beginning of **this Agreement**.*

FOR THE GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC:

By: _____

Name:

Title:

MINISTRY OF PLANNING AND
INVESTMENT

By: _____

Name:

Title:

MINISTRY OF INFORMATION, CULTURE
AND TOURISM

WITNESS:

FOR THE PROJECT COMPANY:

By: _____

Name:

Title: Managing Director

WITNESS:

THE PARENT:

By: _____

Name:

Title: Managing Director of the Parent

Notary Stamp

ANNEX I

PARENT AND PROJECT COMPANY INFORMATION

- (i) Parent's shareholders:

[Insert name, country of registration, registered address]

- (ii) Parent's Affiliates showing forth, in each case, its relationship to the Project Company and the jurisdiction in which it is organized:

[Insert name, country of registration/citizenship, registered address, relationship to the Project Company]

- (iii) The directors and senior officers of Project Company:

[Insert name, title, nationality, home address]

- (iv) Each Person that is the ultimate beneficial owner of 5% or more of (a) the voting rights ordinarily empowered to control the management of Parent or (b) the rights to share in the profits of Parent, and the chain through which such rights are exercised.

[Insert name, title, percentage of shares in the Parent or right to share in profits of the Parent, nationality, home address]

ANNEX II

RULES OF THE COMPUTATION OF PROFIT TAX

Government reserves the right to update or amend these rules from time to time during the Concession Period in accordance with Lao PDR Laws.

1. “**Year**” (for any other agreement by parties) means from the 1st of January to the 31st of December inclusive in the period of agreement and period from the 1st of January to the date of termination of the Agreement for the calendar or part of the calendar year as this Agreement is to be terminated.
2. “**Operating expenses**” in a particular year means the total expenses realized for the operations activities of the Project Company that can be subtracted from the income of that year. All expenses shall include the following items which are directly related to the Project Company operation activities:
 - (a) All expenses related to the procurement of materials, equipments and machine tools, which are used in the activities of the Project Company.
 - (b) All expenses with respect to labor and contracted services realised for the activities of the Project Company.
 - (c) All expenses with respect to insurance fees (made within the country and in foreign countries) for those tangible assets, list of assets, business and for disruption of operations and those properties claims by public on the condition that these fees charge payable to the associates of Project Company are not higher than the fees offered by a third party for the comparable business in operation.
 - (d) All expenses related to the damages or losses to the Project Company business in case these damages or losses are not fully compensated by insurance or other sources.
 - (e) All payments made by the Project Company for the resources royalties and bank interests as well as other payments including the payment for the Project Company’s branches with regard to the registration certificate, design, technical data. The amount which is to be paid shall not be higher than the amount which might be paid to another party not in the group of the Project Company for comparable business in operation.
 - (f) All losses due to obsolete and out dated technology, stealing, or destruction of inventory documents.
 - (g) All payment of leasing charges, such as equipments, plant, lands and premise.
 - (h) All payment for land cost, tax on land and buildings, resources royalty payable to Government, value-added tax, tax on luxury goods, stamp duty, transfer tax, personal income tax imposed to employees paid by the Company as specified in Article 7 (a) and (b) of this Annex, import tax and other fees to be paid according to this Agreement, with exception of income tax.
 - (i) Expenses for loading and unloading, packaging, storing, transport and shipment.

- (j) Expenses for maintenance, repair and restoration.
 - (k) Reduction allowed for by Articles 4-9 below.
3. “**Amortization**” in any year means the deduction of an amount of money from the revenue for using in the replacement of assets that can be amortized based on the calculation made accordingly to Lao PDR Laws. The properties which can be amortized are comprised of tangible assets having the operating life time of over twelve (12) months, such as: buildings, machines, equipment, trailing equipment, bridge, building under construction and other tangible properties which may be amortized under the generally acceptable accounting rules of Lao PDR as well as all infrastructure made available by Project Company for the purpose of public usage, which are, among other things, comprised of: roads, school, hospitals including equipments related to these properties.
 4. “**Provision for depreciation**” in any year means the deduction of an amount of money from the revenue for using in the replacement of assets which may be repaid. The calculation is made in accordance with the Tax Law. The assets which may be subjected to provisioning include: (a) registration certificates, special rights, concession certificates, licenses, land lease and other intangible assets for which the provisions can be made under the generally acceptable accounting rules; (b) all expenses occurred prior to the commencement of the concerned operation period including the expenses incurred for the acquisition of land survey rights or the acquisition of information on the Feasibility Study and Environmental and Social Reports ;(c) structures used for industrial purposes, machinery, excavators, clearing and hauling vehicles used in the ProjectFacility, equipment or set of tools, office equipment and supplies and other tangible fixed assets for which the provisions can be made under the generally acceptable accounting rules.
 5. “**Expenses occurred prior to production operations**” that were already paid by the shareholders or by the Project Company and are directly related with the activities of the Project Company may be accumulated in the account of the Project Company so as to become the item that can reduce the tax through provisioning. These expenses occurred prior to the production operations shall be subjected to the audit conducted by and independent auditor and shall be approved, as a special case, by the Customs Department.
 6. “**Expenses related to sale and management**” in twelve (12) months may be subtracted from the revenue and include, but not limited only to, the management cost, all fees and services charges provided in foreign countries, salaries of the executive committee, communication costs, fees, advertising charge and costs on sale, expense on public relations, office expenses, expenses on marketing (but not the analysis of unrelated products), legal charge, audit charge and other cost on preparation works (including the expenses of the Project Company’s branches made for their activities within the limit that these expenses reflect the actual charges of the services provided during that year. Similarly, these items shall be included in the expense on the sale, the general expenses and administrative expenses of the Project Company: (a) wages, salaries and other compensations including labor cost of workers, labor cost of employees who are employed or contracted personnel by the Project Company or affiliates of the Project Company in connection with the Project Company activities and are assigned to carry out the works of the Project Company on a temporary basis, in hours or permanently. All expenses of the Project Company for health care, leave benefit, saving programme and other incentives shall be limited and shall not be higher than the cost that the party that is not the Affiliate of the Project Company would charge for such services.
 7. “**Travel expenses** “will be deductible in an amount of up to 0.6% of total annual turnover.

8. **“Donations”** will be deductible in an amount of up to 0.3% of annual turnover.
9. **“Expenses on interest”** payable or occurred in the year from the loans. The ratio of loans capital to equity shall not be over 75:25 and the interest rate of the loan fund shall not higher than the market rate, which is generally applied at the time of the borrowing.
10. **“Losses”** in any year mean the total sum of all deductible costs and expenses is higher than the total revenues. In the event that the losses are occurred in a year, such losses will be accounted in the following next year, and that previous losses will be firstly deducted from net revenues performed in the following year.
11. **“ Total revenues”** mean:
 - (a) All revenues received or occurred from the sales of Products.
 - (b) All receivable capital funds.
 - (c) Other revenues realized or received and not classified as above.
12. **“Taxable income”** in a year means the realized income in that year after being deducted of all the expenses, charges and all payments including the items described above from Article 2-9 allowable as deductible expenses under this Agreement.

ANNEX III

PROJECT REPORTING ANNEX

Name of Report	Relevant Governmental Authority for Report Submission	Reporting Frequency
Report on EMMP and SMMP Implementation	Department of Environment and Social Impact Assessment, Ministry of Natural Resources and Environment	3 months, 6 months, 12 months
Construction Progress Report	Ministry of Public Works and Transport	6 months, 12 months
Foreign Visitor Report	Ministry of Information, Culture and Tourism	As directed.
Annual Labor Report	Ministry of Labor and Social Welfare	12 months
Annual Import Plan	Department of Customs, Ministry of Finance	12 months
Project Progress Half—Yearly Report	Investment Promotion Department, Ministry of Planning and Investment	6 months
Annual Progress Report	One Stop Service, Ministry of Planning and Investment	12 months

ANNEX II

RESPONSIBLE GOVERNMENT AUTHORITIES

Responsible Government Authority	Role and tasks under CA
<p>One-Stop-Service (located in Ministry of Planning and Investment)</p>	<p>Coordinating body responsible for coordinating activities and reporting between the Project Company and all Responsible Government Authorities.</p>
<p>Ministry of Planning and Investment Investment Promotion Department</p>	<p>Negotiates, executes, monitors compliance and implements all aspects of CA. Issues Concession Registration Certificate.</p>
<p>Ministry of Agriculture and Forestry Department of Forestry</p>	<p>Monitors compliance with land area and presence of protected, conservation and production forest. Approves and monitors any land clearance activities and issues Land Clearance Approval(s).</p>
<p>Ministry of Information, Culture and Tourism Department of Tourism Management</p>	<p>Monitors compliance with Standards, Best Industry Practice, hotel facilities and services and staff training and skill development in tourism services. Determines land use zoning for tourism projects in collaboration with other Responsible Government Authorities. Issues Operating License and inspects Project Facility to ensure compliance.</p>
<p>Ministry of Natural Resources and Environment Department of Environment and Social Impact Assessment</p>	<p>Monitors compliance with environmental and social studies and management plans, investigates incidents related thereto including environmental and social pollution, advises on any restoration activities required. Issues and amends Environmental Compliance Certificate and monitors compliance with the obligations listed thereon.</p>
<p>Ministry of Natural Resources and Environment Land Planning and Development Department</p>	<p>Approves and monitors land concession area and land use rights related thereto.</p>
<p>Ministry of Health</p>	<p>Monitors compliance with hygiene standards through regular inspections, particularly in the preparation of food, food serving place, hygienic condition of persons preparing food, food storage and food quality. The ministry also monitors hygienic and cleanliness of the Project Facility and amenities, particularly toilets and washrooms.</p>

	Issues Safe Food, Good Health Certificate.
Ministry of Public Works and Transport	Monitors compliance with construction obligations, conducting regular inspections, particularly during the Construction Period, but also in case of any renovations, modifications etc. Inspects and approves safety of Project Facility. Issues Construction Permit and Construction Completion Certificate.
Ministry of Public Security	Monitors compliance with standards of general safety, fire hazards, emergency exits and security of the Project Facility and Concession Area.
Ministry of Finance Customs Department	Approves Annual Import Plan, monitors importation of materials for direct use in the Project Facility, export of used materials and collects customs fees where applicable.
Ministry of Finance Taxation Department	Collects Taxes and monitors payment of Taxes. Issues Tax Identification number and Tax Payment Receipts.
Bank of Lao PDR	Monitors the importation and remittance of capital into and out of Lao PDR. Issues Capital Importation Certificates and approves offshore financing.

ANNEX IV

STANDARD ENVIRONMENTAL AND SOCIAL OBLIGATIONS

ANNEX V

OBLIGATIONS GUARANTEED BY THE PARENT [IF APPLICABLE]¹³

¹³ Depending on the corporate structure of the Parent and its relationship to the Project Company, the Government may wish to demand that the Parent guarantees the performance of certain obligations contained in this Agreement for example: the importation of Registered Capital, Environmental and Social Obligations, maintenance of certain levels of capitalization etc.

EXHIBITS

- Exhibit A Feasibility Study
- Exhibit B Land Lease Agreement
- Exhibit C Memorandum of Understanding