

**CONCESSION AGREEMENT**

**FOR**

**[INSERT NAME OF PROJECT]**

**AT [\_\_\_\_\_] , [\_\_\_\_\_] PROVINCE, LAO PDR**

**BETWEEN**

**THE GOVERNMENT OF THE LAO PDR**

**AND**

**[INSERT PROJECT COMPANY]**

**[DD MM YYYY]**

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### **EXHIBITS**

EXHIBIT A	MEMORANDUM OF UNDERSTANDING
EXHIBIT B	LAND LEASE AGREEMENT
EXHIBIT C	FEASIBILITY STUDY
EXHIBIT D	TEMPLATE CONTRACT FARMING AGREEMENT

## CONCESSION AGREEMENT

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

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

and

[\_\_\_\_\_] , a company incorporated and established 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) Government wishes to promote the economic development of the Lao PDR and, for this purpose, supports and promotes the agricultural works which will produce raw materials for the supply of the domestic industrial processing sector and supports and promotes commercial production for domestic sale and export;
- (2) Government wishes to gain appropriate benefits from the country's potential, in particular through the utilization of land and natural conditions favorable to agricultural activities, which will support local development, create employment for the Lao people, and promote domestic businesses. In addition, Government wishes to facilitate the transfer of skills, knowledge, and technology regarding large-scale agriculture and other related works to the Lao people;
- (3) Project Company has experience, technical expertise, advanced techniques, and financial resources available for the development of [DESCRIBE NATURE OF PROPOSED ACTIVITY] and wishes to implement [DESCRIBE NATURE OF PROPOSED ACTIVITY] and, as Project Company may determine feasible in the future, a [DESCRIBE ANY FUTURE PROCESSING OR MANUFACTURING FACILITY], each in accordance with the terms and conditions set forth in this Agreement; and
- (4) 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;
- (5) 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**”), and, in accordance with the MOU, Parent has, among other things, caused a Land Survey to be conducted and Land Use Map prepared, and has prepared a Feasibility Study was issued with Environmental Compliance Certificate certifying its environmental and social impact reports and plans and has selected an area for agricultural development hereunder, referred to as the “Project Area.”



- (6) 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.
- (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 Project Area, which are attached to this Agreement in Exhibit B.

**NOW, THEREFORE**, in consideration of the mutual benefits to be derived hereunder by Government 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 Project Company or Parent. 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 Progress Report”** means the in depth annual report submitted by Project Company to the One Stop Service detailing amongst other things, Project progress, Project Operations, Project Company capital levels, importation of goods for the Project, Project Company employees, environmental and social compliance activities, use of local goods and services and other such information as required.

**“Authorizations”** means, unless otherwise defined, any and all authorizations, certificates, licenses, consents, approvals, resolutions, permits, waivers, filings and registrations with any government agency or administrative department, required for the Project Company, Project Operations and Project under Lao PDR Laws.

**“Certificate of Land Use”** means the official Government document approving the use of all parcel(s) of State land located within the Project Area issued to the 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.

**“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](#).

**“Contract Farming Agreement”** means the agreement(s) entered into between the Project Company and Contract Farmers/Outgrowers in order to purchase Plantation Crops and derivatives thereof.

**“Contract Farmers/Outgrowers”** means local farmers, Persons or farming cooperatives or organized groups, who have access to arable land either through land ownership by private title or collective title, and with whom the Project Company has entered into a Contract Farming Agreement in order to purchase Plantation Crops and derivatives thereof.

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

**“End of Cycle”** means the point in time at which the harvesting of the applicable Plantation Crop in a given area would no longer be considered commercially viable by a prudent owner similarly situated to Project Company. The End of Cycle with respect to crops planted annually or more frequently shall be the harvesting of such crops.

**“Enterprise Law”** means the Enterprise Law N<sup>o</sup> 11/NA dated 9 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 Compliance Certificate”** means the Environmental Compliance Certificate No. [insert] issued on [insert date] by MONRE to the [Parent/Project Company].

**“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 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]],

**“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.

**“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.

**“Fallow”** means the condition during which Plantation areas within the Project Area are left unseeded with Plantation Crops after their respective End of Cycle for the purpose of recovering soil fertility, the period of which is determined with reference to the Plantation Crops and is outlined in the Feasibility Study.

**“Feasibility Study”** means the detailed study [INSERT PLAN NUMBER] submitted to and approved by MAF 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 Project Operations but excluding passenger sedans or vehicles not utilized exclusively in Project Operations.

**“Force Majeure”** shall have the meaning set forth in Section 21.03.

**“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, Processing Factory(ies) or Infrastructure that cannot be removed without causing material damage to the Project 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.

**“Indebtedness”** means, at any time and without duplication, (i) the liabilities of Project Company for borrowed money and the redemption obligations of Parent in respect of mandatorily redeemable shares or other securities of Project Company that are entitled to preference or priority over any other shares of the capital stock of such corporation in respect of payment of dividends or distribution of assets upon liquidation; (ii) the liabilities of Project Company for the deferred purchase price of property acquired by Parent (excluding amounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property); (iii) all liabilities appearing on Project Company’s balance sheet in respect of leases with respect to which Parent is required concurrently to recognize the acquisition of an asset and the incurrence of a liability; (iv) all liabilities for borrowed money secured by any lien upon or with respect to any property or asset of Project Company (whether or not it has assumed or otherwise become liable for such liabilities); (v) all Project Company’s liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions representing or supporting the payment of obligations referred to in clauses (i) through (iv) hereof; and (vi) any guarantee or similar undertaking of Parent with respect to liabilities of a type described in any of clauses (i) through (iv) hereof.

**“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.

**“Infrastructure”** means all facilities forming part of the Project Operations, including the following: (a) employee housing; (b) public welfare facilities (including medical, educational and recreational facilities as applicable); (c) power, water and sewage facilities (including power generating facilities, transmission and power lines, and/or other power facilities, dams, aqueducts, water drains, water supply and sewage systems, pumping stations and systems for disposing of plant waste and sewage); (d) processing, storage and repair facilities, engines, machines, furnaces, and/or compressor stations; (e) administrative, laboratory and research facilities; (f) transportation facilities (including Roads, bridges, and warehouses and loading and unloading facilities); (g) communication facilities; and (h) all other movable and immovable facilities and equipment affixed to, used as an integral part of or used in relation to or in connection with the items described above in clauses (a) through (g).

**“International Standards”** means the standards of professional care, skill, diligence, practices, operations and methods recognized by a consensus of relevant stakeholders (including without limitation 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. Standards are derived from and determined by reference to: (i) all international laws; (ii) World Bank Guidelines; and (iii) EQUATOR Principles.

**“Investment Law”** means the Law on Promotion of Investment N<sup>o</sup> 2/NA dated 8 July 2009.

**“Parent”** means [NAME OF PARENT], a company established and registered under the law of [INSERT COUNTRY OF REGISTRATION] with head office located at [INSERT REGISTERED ADDRESS], or any permitted assignee of the Parent that hereafter executes a written joinder agreement and agrees to assume the obligations as “Parent” hereunder.

**“Labor Law”** means the Labor Law N<sup>o</sup> 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 or Parent for each Project Area. Such Land Lease Agreements shall have annexed to them a Land Use Map and Certificate of Land Use and shall clearly delineate the location and dimensions of the Project Area. An executed copy of each Land Lease Agreement applicable to the Project Area is attached hereto as Exhibit B.

**“Land Use Map”** means the 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 Project Area and as attached to the Certificate of Land Use.

**“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 Government.

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

**“MAF”** means the Ministry of Agriculture and Forestry.

**“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 Infrastructure, Plantation or Processing Factory item that can be removed without causing material damage to the Project Area or any permanent structures thereon.

**“MPI”** means the Ministry of Planning and Investment.

**“Net Worth”** means: (i) the total assets of Project Company which would be shown as assets on a balance sheet of Parent as of such time of preparation; *minus* (ii) the total liabilities of Project

Company which would be shown as liabilities on a balance sheet of Project Company as of such time of preparation.

**“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.

**“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 and Parent.

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

**“Plantation(s)”** means the plantation or plantations of Plantation Crops and related facilities (excluding the Processing Factory (ies)) that may be established by Project Company in the Project Area.

**“Plantation Crops”** means [LIST OF PERMITTED CROPS FOR WHICH CONCESSION IS GRANTED] and derivatives thereof, planted by Project Company in the Plantation(s) in accordance with the terms of this Agreement or by Contract Farmers/Outgrowers in accordance with their respective Contract Farming Agreements.

**“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.

**“Project Operations”** means the planting, nurturing, harvesting, cutting, chipping and/or processing of Plantation Crops for commercial purposes in the Project Area, the sale and/or export of Products and all other activities to be undertaken by Project Company in relation to or in connection with the Plantations, Plantation Crops, Products, the Roads or the Processing Factory(ies).

**“Processing Factory(ies)”** means the processing factory(ies) that may be established by Project Company in the Project Area for the purpose of processing outputs of the Plantation Crops.

**“Product(s)”** means any part of a Plantation Crop after cutting, cross cutting, harvesting, chipping and/or processing.

**“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”** means [INSERT DESCRIPTION OF PROJECT] and all other activities to be undertaken by Project Company in relation to or in connection with the Project Operations.

**“Project Affected Persons** “means a Person, legal entity, or organization directly or indirectly affected by the Project (or are likely to be affected) due to the legal requisition of land or other assets, changes of land use category, and/or impacts on the ecological and environmental system in their settlement areas.

**“Project 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.

**“Project Company”** means [INSERT NAME] incorporated and established in the Lao PDR with the Parent as sole shareholder in accordance with Concession Registration Certificate No. [INSERT] issued on [INSERT DATE] for purpose of developing, owning and operating the Project in accordance with the Enterprise Law and Investment Law.

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

**“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 Government and any related interest, penalty, fine, charge, fee or other amount.

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

**“UXOs”** mean Unexploded Ordnances.

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

- (h) 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 PROJECT AREA AND GRANT OF CONCESSION

- 2.01 **Grant of Concession.** Government grants Project Company the exclusive Concession Rights to implement the Project within the Project Area in accordance with the terms of this Agreement, for the entire Concession Period, unless this Agreement is terminated earlier in accordance with [Article 24](#) herein.
- 2.02 **Location.** The Project 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 as more fully described in the Land Lease Agreement(s), subject to expansion as may be agreed by the Department of Land Use Planning and Development, MONRE and Government, and reflected by an amendment to this Agreement and the execution and delivery of one or more additional Land Lease Agreement(s).
- 2.03 **Land Use Maps.** The Project Area may contain many parcels of land, which shall be clearly defined on the Land Use Map(s) and the Certificate of Land Use and Land Lease Agreement(s) attached hereto in Exhibit B.
- 2.04 **Permitted Farming.** Project Company shall permit independent farming activities within portions of the Project Area that are not, in the sole discretion of Project Company, suitable for Plantations or Processing Factory(ies) or, in the case of Plantation Crop areas, are in Fallow, *provided, however,* that such independent farmers:
- (a) limit farming activities to subsistence cultivation suitable for Lao PDR in the areas designated by the Project Company and in a manner that will not adversely affect Project Operations,
  - (b) be resident(s) within the Project Area or were resident within the Project 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 farming activities.

The Project Company may withhold such permission specified in Section 2.04 (c) or retract any previous permission granted if Project Company reasonably believes such independent farming activities would materially interfere, or are materially interfering, with Project Operations and the performance of any obligations specified under this Agreement; or pose a security risk to Project; *provided, however,* that such permission shall not otherwise be unreasonably withheld or retracted.

- 2.05 **No Right of Ownership.** Nothing in this Article shall give the Project Company the right to ownership of land or to grant any security interests in ownership of the land within the Project 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, license or permissions otherwise as granted or to be granted by this Agreement and to grant security interest in such rights.

### ARTICLE 3 CONCESSION PERIOD

- 3.01 **Initial Term.** The Concession Period shall commence on the Execution Date of this Agreement and continue for [STATE TERM IN WORDS \_\_\_\_] (\_\_) years (the “Initial Term”) unless earlier terminated in accordance with Article 24 of this Agreement (the “Concession Period”).
- 3.02 **Extension of Initial Term.** In the third (3<sup>rd</sup>) 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 under relevant Lao PDR Law, which extension shall be subject to approval of the Government.

### ARTICLE 4 PROJECT DEVELOPMENT

- 4.01 **General.** In addition to the other provisions of this Article 4 and this Agreement, the Project Company shall comply with the following in the development of the Project:
- (a) Project Company shall apply to MAF, MONRE and any other relevant Government agencies for the requisite Authorizations for any required land clearance in accordance with Lao PDR Law.
  - (b) Upon receipt of the requisite Authorizations, Project Company shall proceed with development of the Project in accordance with the Feasibility Study, the Environmental and Social Reports, this Agreement, and Lao PDR Law.
- 4.02 **Authorizations.** Throughout the Concession Period, the Project Company shall at its own cost apply and maintain all Authorizations as may be necessary for implementation of the Project and the Project Operations and which are required to be or can be obtained in the name of the Project Company and shall cause its Contractors to obtain and maintain all Authorizations as are required to be obtained and maintained by them. Such Authorizations shall include without limitation, the Concession Registration Certificate, Environmental Compliance Certificate, certificate of tax payment, company signage approval, and land clearance and construction approvals.
- 4.03 **Planting.**
- (a) Following the Execution Date, Project Company will implement a program to plant and/or replant Plantation Crops in the Project Area as specified in the Feasibility Study, provided that Project Company shall plant and/or replant such number of to meet the following minimum development obligations (the “**Minimum Development Obligations**”);<sup>1</sup>:
    - (i) The second (2<sup>nd</sup>) after the execution of the relevant Land Lease Agreement(s), not less than [\_\_] percent ([\_\_]%) of the Project Area will be planted and/or replanted with Plantation Crops;
    - (ii) The [\_\_] ([\_\_]<sup>th</sup>) year after the date hereof, not less than [\_\_] percent ([\_\_]%) of the Project Area will be planted and/or replanted with Plantation Crops; and

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<sup>1</sup>The Minimum Development Obligations will vary, depending on the size of the Project Area, nature of crops, and terrain of the Project Area. They should be based on planting Annex contained in the Feasibility Study.



- (iii) the [ ] ([--]<sup>th</sup>) year after the date hereof, one hundred percent (100%) of the Project Area will be planted with commercially viable Plantation Crops.
- (b) Project Company agrees that so long as the remainder of the Concession Period is adequate and sufficient to assure the viability of a replanting program, Project Company shall commence replanting relevant parcels of land comprised in the Project Area within [twelve (12)]<sup>2</sup> months of the End of Cycle of each such identified parcel of land, in accordance with Fallow periods and the Feasibility Study ("Replanting Obligations").
- (c) Both Parties agree that the Minimum Development Obligations and Replanting Obligations may be adjusted from time to time, upon approval of MAF and any other relevant Government agencies, taking into account the experience gained by Project Company during implementation of the Project and as reflected in amendments to the Development Plan.

#### 4.04 **Failure to Develop**

- (a) In the event the Project Company fails to use reasonable efforts to develop the Project Area in accordance with the Minimum Development Obligations and Replanting Obligations, as may be amended in accordance with Section 4.02 (c), such failure shall constitute an Event of Default as defined in Section 24.02, and will be subject to the relevant Notice and cure periods listed in Article 24.
- (b) In the event the Project Company fails to cure the breaches listed in Section 4.03(a), or the Project Company notifies the Government that it wishes to relinquish the undeveloped parcels of the land, the Government may in its sole discretion, repossess of any undeveloped parcels of land within the Project Area without terminating this Agreement. The Project Company shall be obliged to restore the proposed land parcels in accordance with the procedures and requirements established in this Agreement and Annex IV (*Integrated Environmental and Social Obligations*) prior to such relinquishment.
- (c) Government shall have the right to impose a penalty on Project Company for any failure to develop the Project Area in accordance with the Minimum Development Obligations, in addition to any remedy available for an Event of Default under Article 24 herein and Lao PDR Law. Penalties imposed on the Project Company are in addition to any costs of remediation, cleanup, and compensation for any damage to the undeveloped parcels of land caused by Project Company. For avoidance of doubt the damages that the Government shall be entitled to include costs for loss of opportunity as determined between the Parties or by order of any court or arbitration tribunal.
- (d) Upon the repossession by the Government of any parcels of land within the Project Area pursuant to Section 4.03(b), this Agreement and the Land Lease Agreement(s) will be revised accordingly to reflect a change in the size of the Project Area.
- (e) In the event that Project Company's failure to fulfill the Minimum Development Obligations, or to replant in accordance with Section 4.03, is due to the fact that the land

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<sup>2</sup> The recommended fallow periods will differ depending on the type of Plantation Crops, and should form part of the Feasibility Study. Longer fallow periods promote more sustainable use of agriculture land.

is not free from other inhabitants or an event of Force Majeure or a breach of Government's obligations, then Project Company shall not be held responsible for the delay or for not developing the Project Area.

- 4.05 **Development of Processing Factory(ies).** At such time as Project Company has determined that the Plantations are adequate in Project Company's sole judgment to support one or more Processing Factory(ies), Project Company may develop such Processing Factory(ies) subject to [completion and approval of an additional Feasibility Study and Environmental and Social Reports as applicable for any such Processing Factory(ies)] or [in accordance with the Feasibility Study for the Project.]

## **ARTICLE 5 PROJECT FINANCING AND CAPITALIZATION**

- 5.01 **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").
- 5.02 **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 total value of the Immovable Assets and Movable Assets of the Project Company must not drop below the Registered Capital.
- 5.03 **Deposit of Registered Capital.** 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. 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 Certificates to the One Stop Service within ten (10) working days of receipt.
- 5.04 **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 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.
- 5.05 **[Maximum Indebtedness to Net Worth Ratio.** As of the date hereof, Project Company shall have a ratio of Indebtedness to Net Worth that is equal to or less than [2:1] (the "**Maximum Indebtedness to Net Worth Ratio**").]
- 5.06 **[Limitation on Incurrence of Additional Indebtedness.** Project Company shall not incur any additional Indebtedness if, following such incurrence the ratio of Indebtedness to Net Worth of Project Company would be greater than the Maximum Indebtedness to Net Worth Ratio.]

- 5.07 **[Limitation on Payment of Dividends and Interest on Shareholder Loans.** Project Company shall not (a) pay any dividends or distributions on, or redeem, repurchase, or otherwise acquire for value, any of its capital stock, or (b) pay interest, repay any principal, or otherwise acquire for value obligation for borrowed money owed by Parent to an Affiliate of Parent, in each case if, following such payment, the ratio of Indebtedness to Net Worth of Project Company would be greater than the Maximum Indebtedness to Net Worth Ratio.]
- 5.08 **[Compliance Reporting.** Prior to incurring any additional Indebtedness, Project Company shall provide written Notice to the One Stop Service setting forth a calculation of the ratio of Indebtedness to Net Worth immediately prior to such action being taken and the ratio that will result immediately after such action is taken. Promptly after its audited financial statements for any fiscal year become available, the Project Company shall report to the One Stop Service details of the ratio of Indebtedness to Net Worth at of the end of such fiscal year and the amounts of all Indebtedness incurred during such year.]

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES**

- 6.01 **Representations and Warranties of Project Company.** The Project Company represents and warrants to the Government as follows:
- (a) The Project Company is a corporation, 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.

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.

- (i) The 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 agricultural production under the laws of any jurisdiction.
- (j) Except as otherwise disclosed in writing to the Government, all written materials furnished in writing by or on behalf of the Project Company, 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 to the Government;
- (k) Project Company has the experience, finance, expertise, technical know-how and systems required for the conduct of the activities contemplated by this Agreement.

6.02 **Ongoing Representations and Warranties of Project Company.** Project Company and Parent shall confirm that the written representations and warranties required under Clause 6.01 are true and correct at the time of any transfer, change of control, acquisition by any Person who, directly or indirectly, assumes Control of the Parent or Project Company.

6.03 **Representations and Warranties of the Government.** Government represents and warrants to the 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.

- (b) That 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:
  - (iv) Any Infrastructure or other property, Movable Assets or Immovable Assets, of the Project Company, Affiliates, and those of their respective employees, agents or representatives, to the extent connected with or affecting the Project Operations;
  - (v) Products in any form resulting from the Project Operations;
  - (vi) Any capital, equity, shares or ownership interests or loans of whatever nature held in or owned or issued by Project Company and Parent;
  - (vii) Any structure or entity put in place by Project Company in connection with the Project or this Agreement;
  - (viii) Any intangible rights, including intellectual property.
- (c) Nothing in this Section 6.05(b) shall prohibit Government from taking title to Immovable Assets of Project Company or Parent up on termination of this Agreement as provided in ARTICLE 24 below. Any violation by Government of this terms of Section 6.05(b) shall entitle Project Company or Parent, 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 24.

## **ARTICLE 7 RIGHTS AND OBLIGATIONS OF GOVERNMENT**

7.01 **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 seeds, machinery, equipment, and tools required for the Project in accordance with Article 11 of this Agreement, including any required inspection of such imported equipment.
- (b) When requested by the Project Company, the Government shall 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 enter and exit the Project Area without advance notice for the purpose of monitoring the Project implementation and the impact of the Project upon local residents in the Project Area, provided that Government shall not damage or materially adversely affect the Project.
- (d) 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 Project Area, the cost of constructing and such additional infrastructure and for all service charges incurred for consumption of such utilities by the Project.

- (e) To provide Project Company, all reasonable assistance in locating and rendering safe or destroying any UXOs or other explosives located within the Project 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.
- (f) To exercise all other rights granted to Government in accordance with this Agreement and the laws of the Lao PDR.

7.02 **Issuance of Authorizations.** The Government shall cause the respective governmental authorities to issue the evidence of the Authorizations as soon as reasonably practicable when each applicable application has been properly completed and is submitted to the application governmental 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 procedure in effect for obtaining such Authorizations.

7.03 **Exploration for Other Natural Resources.** Government reserves the exclusive right to explore for petroleum and mineral resources within the Project 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 Project 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 Project 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 Project Operations 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 Project 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.

7.04 **Government Construction of Infrastructure.** Government reserves the right to construct roads, highways, railroads, and telephone lines and other lines of communication and other utilities within the Project Area and to grant such exclusive rights to any other Licensee. If government or the Licensee intends to construct such Infrastructure within the Project 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 Project Operations 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 Project 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.

## **ARTICLE 8**

### **RIGHTS AND OBLIGATIONS OF PROJECT COMPANY**

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

- (a) To enter and exit, develop, manage and use the Project Area for the purpose of developing and operating the Project in accordance with this Agreement and Lao PDR Law.
- (b) To develop the Project using technical knowledge and expertise, and the necessary equipment, required for the Project Operations.
- (c) 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 Project Area and for all service charges incurred for consumption of such utilities by the Project.
- (d) To train, instruct and provide technical knowledge to employees concerning Project Operations and to provide Plantation Crops' stocks and other necessary supplies.
- (e) 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.
- (f) To exercise all other rights granted to Project Company in accordance with this Agreement and Lao PDR Law.

8.02 **Feasibility Study.** The Project Company shall implement the Project in accordance with the Feasibility Study and the development plan contained therein (the "**Development Plan**"), as approved prior to the execution of this Agreement. Project Company shall update the Development Plan as required by Project circumstances, or otherwise in accordance with the Annex contained in the Feasibility Study. All subsequent Development Plans submitted by Project Company shall be subject to review and comment, but not for approval or modification by Government, except where such Development Plans substantially alter the Development Plan contained in the initial Feasibility Study.

8.03 **Project Company's Construction of Infrastructure and Use of Support Systems.** Subject to the terms and conditions of this Agreement, and only as is necessary or desirable, in the reasonable opinion of Project Company, for Project Company to conduct Project Operations, 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, Infrastructure within the Project Area, *provided, however,* that Project Company shall first obtain approval of Government concerning the design, location, size and environmental and social 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 Infrastructure within the Project Area. All Roads, including Roads and trails across the Project 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 Project Operations; *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 and contractors.
- (b) Subject to the Government's rights over trees as defined in Section 9.01 and in accordance to Lao PDR Law, to plant, cut and use timber within the Project Area to the extent it deems necessary for the construction and maintenance of Infrastructure and for other Project Operations within the Project Area, *provided, however,* that Project Company shall obtain the requisite Authorizations and such harvesting, and the use of timber shall not be for commercial purposes.
- (c) To take and use within the Project Area, 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 Project Operations, *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.

8.04 **Water Use Rights.** 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 Project Area for purposes necessary or useful to Project Operations 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. 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 the Law on Water and Water Resources. Project Company shall ensure that its use of water in no way results in environmental damage, Pollution or creates other hazards.

8.05 **Insurance.** At all times during the Concession Period, Project Company shall 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'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 Project Area. Project Company shall incorporate such information regarding insurance into the Annual Progress Report submitted to One Stop Service, and may additionally be requested to provide evidence of such insurance from time to time by Government.

8.06 **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. In addition, any transactions involving the sale of Plantation Crops or derivatives thereof shall be on the basis of competitive international prices.
- (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.

8.07 **Sales of Agricultural Products to Non-Affiliates.** Project Company shall have the right to sell Plantation Crops and derivatives thereof to unrelated Persons of its choosing at prices it deems appropriate taking into account good, modern and competitive business practices, providing that the details of such sales are incorporated into all sales reports provided to Government.

8.08 **Use of sub-contractors.** Subject to Section 17.03, Project Company may engage sub-contractors (including its Affiliates) to conduct Project Operations and fulfill its obligations under this Agreement, *provided however* that Project Company shall remain fully responsible 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.

8.09 **Contract Farmers/Outgrowers.** Project Company may enter into Contract Farming Agreements with Contract Farmers/Outgrowers for the purpose of purchasing additional Plantation Crops or derivatives thereof, provided, however, that any such Contract Farming Agreements are substantively based on the Template Contract Farming Agreement appearing in Exhibit E, are entered into with the free and informed consent of the Contract Farmers/Outgrowers on fair market terms, conditions and prices, and shall meet the requirements of Lao PDR Laws. Project Company shall incorporate details concerning all arrangements existing between Project Company and Contract Farmers/Outgrowers into the Annual Progress Report submitted to One Stop Service. In addition, Government reserves the right to inspect all such Contract Farming Agreements and inspect the implementation of such agreements to ensure compliance with this Section 8.10.

8.10 **Purchases of Products.** Project Company shall have the non-exclusive right at all times to purchase, without limitation, Plantation Crops and derivatives thereof from Contract Farmers/Outgrowers, local independent farmers, and others in Lao PDR, and to process, market, sell, deal in and export all such Plantation Crops and derivatives thereof in accordance with this Agreement. The minimum price at which Project Company shall purchase Plantation Crops and derivatives thereof from Contract Farmers/Outgrowers, local independent farmers, and others in Lao PDR shall be the determined market price for that product at the time of sale or in the case of Contract Farmers/Outgrowers in accordance with the terms of the Contract Farming Agreement.

Project Company shall incorporate details concerning all such transactions into the Annual Progress Report submitted to One Stop Service. In addition, Government may request from Project Company documentation of such transactions to ensure that they were conducted in a fair and transparent manner.

## **ARTICLE 9 TITLE TO TREES AND CULTURAL HERITAGE OBJECTS**

- 9.01 **Trees.** All existing vegetation in the Project Area(s) at the Execution Date with a diameter equal to or greater than 15 cm, irrespective of species, is the property of Government. All existing vegetation in the Project Area(s) at the Execution Date with diameter of less than 15 cm, irrespective of species, and all Plantation Crops (other than trees) planted by Project Company on the Plantation(s) and Products derived from such Plantation Crops shall be the property of Project Company. The prior written approval of MAF is required for any clearance, harvesting, burning, chipping, or other disposal of existing vegetation in the Project Area that is the property of Government, with such approval submitted through the One Stop Service.
- 9.02 **Cultural Heritage Objects.** Cultural heritage objects and antiquities that may be discovered by Project Company or its representatives during development of the Project are the sole property of Government. Upon discovery of any such items by Project Company, shall not touch, move, or alter such item and shall immediately report such discovery to the relevant Provincial authorities, and the Ministry of Information, Culture and Tourism through the One Stop Service.
- 9.03 **Penalties for Breach.** Any breach by Project Company of its obligations set forth in this Article 9 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.

## **ARTICLE 10     IMPORT AND EXPORT FOR PRODUCTION**

- 10.01 **Generally Applicable Law.** Subject to this Article, Project Company shall strictly comply with applicable import and export limitations and restrictions set forth in applicable Lao PDR Law.
- 10.02 **Importation of Goods.** Project Company may import stocks, equipment, machinery, Field Vehicles and necessary raw materials, though excluding any type of fuel, for direct use in Project Operations, upon certification by the relevant government agencies of payment of applicable import Taxes or exemption there from in accordance with applicable Lao PDR Law.
- 10.03 **Exemption for Equipment, Stocks, etc.** Stocks, equipment, machinery, Field Vehicles and necessary raw materials for direct use in the cultivation, processing and export of Plantation Crops, their derivatives and Products 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 10.05.
- 10.04 **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.
- 10.05 **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 Government of the reason for the delay in filing (such delay in filing not to exceed sixty (60) days). Thereupon, Government 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 for consideration by Government in accordance with applicable Lao PDR Law.

## **ARTICLE 11      TAX OBLIGATIONS AND OTHER PAYMENTS TO GOVERNMENT**

- 11.01 **Highly Promoted Zone.** The Project is a Level [1, 2, 3], Zone [1, 2, 3] project under the Investment Law and is eligible for incentives under the Investment Law and applicable regulations.
- 11.02 **Taxes and Fees.** In accordance with this Agreement and Lao PDR Laws, 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 Articles 10, 11 and 12 of 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 5<sup>th</sup> 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 date that the Project Company commences commercial operations. 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. For the avoidance of doubt, this exemption excludes exemption of the Value-Added Tax.
  - (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, including without limitation the Tax 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 Government for the inspection of the Project as specified in Annex IV (*Integrated Environmental and Social Obligations*).

- 11.03 **Penalties for Late or Underpayment.** In the event of any delay in paying any of the fees or Taxes listed above in Sections 11.02 (a)-(d) 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.
- 11.04 **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 12     ACCOUNTING, BANK ACCOUNT, FOREIGN EXCHANGE AND AUDIT**

### 12.01 **Treatment of Funds.**

- (a) 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.
- (b) Subject to the Lao PDR Law and the required Authorizations under the applicable Lao PDR Laws, the Project Company shall be entitled to establish and maintain offshore bank accounts and to receive, hold and effect payments and distribution in foreign currency outside Lao PDR; provided that the Project Company shall report on the transaction of the offshore bank accounts to the Bank of Lao PDR in accordance with the regulations as set by the Bank of Lao PDR from time to time.

12.02 **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 12.06 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.

12.03 **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.

12.04 **Foreign Currency.**

- (a) Subject to Lao PDR Law and to any Authorizations required under the applicable Lao PDR Laws, 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 in and outside the Lao PDR.
- (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.

12.05 **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 the Audit 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 13      RECORDS, REPORTS AND INSPECTION**

13.01 **Maintenance of Records.** 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:

- (a) an original of all material scientific, agricultural, operational, technical, industrial and commercial records, studies and reports (except correspondence) received or compiled by Project Company in connection with its operations under this Agreement (together with any relevant underlying data); and

- (b) complete, accurate and systematic financial records of all of its transactions, worldwide, relating to its operations under this Agreement, including all sales of Products to Project Company customers or any sales by Project Company's Affiliates of Products where such sales are used to compute any item of income, deduction or other amount affecting the liability of Project Company and of such books of account and other financial records of operations as may be required by Lao PDR Law.
- 13.02 **Reports.** Project Company shall submit such reports or otherwise to the One Stop Service and other relevant Governmental Authorities as relevant, in such form, including the appropriate paper and/or electronic format, in such detail, and at such times as Government may reasonably require, including without limitation the Annual Progress Report and any of the reports listed in the Annex III(*Project Reporting Schedule*) attached hereto, or such other subjects as may be otherwise agreed by the Parties from time to time.
- 13.03 **Inspection of Records.** 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 Article 13 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.

#### **ARTICLE 14      EMPLOYMENT AND LABOR TRAINING**

- 14.01 **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 Operations and Processing Factory(ies), 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.
- 14.02 **Compliance with Labor Law.** Project Company shall strictly comply with Labor Law requirements concerning the hiring, lay-off and dismissal of Project Operations and the Processing Factory(ies) employees.
- 14.03 **Lao Management Personnel Requirements.** Project Company shall seek out qualified Lao personnel for administrative and responsible positions in the Project Operations 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.
- 14.04 **Training.** In furtherance of the objectives stated in Section 14.03, 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. 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 14.03 (including, subject to operational needs and economic conditions, scholarships for qualified Lao employees to pursue relevant advanced studies abroad). 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.

- 14.05 **Visas for Foreign Workers.** Project Company submits a request to that One Stop Service for the necessary visas, work permits and identification cards for 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.
- 14.06 **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.
- 14.07 **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.
- 14.08 **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 Progress Report submitted to the One Stop Service and any other relevant report as listed in Annex III (*Project Reporting Schedule*).

## **ARTICLE 15 PROTECTION, HEALTH AND OCCUPATIONAL SAFETY**

15.01 **Health and Sanitation.**

- (a) Project Company shall provide modern public health facilities, including a sufficient number of clean and accessible toilets, in the Project Area for use by its employees in accordance with generally accepted health and sanitation procedures and standards and in accordance with the Labor Law and other associated Lao PDR Laws.
- (b) Additional specifications for health and sanitation facilities that will be constructed, including the structural design, rate of construction and number of such facilities shall be included in the Feasibility Study(ies) for the Plantations and Processing Factory(ies).
- (c) The Project Company shall provide trainings to its employees as applicable on health and sanitation matters, including those related to disease, virus and drug prevention.

15.02 **Occupational Safety.**

- (a) Project Company shall install and utilise internationally recognized modern safety devices and shall comply with internationally recognized 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 the Labor Law and with any such instructions as may be given in writing by Government and/or the concerned governmental 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, must be reported to the Ministry of Labor and Social

Welfare 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 Governments 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 employees and pay the associated medical and funeral costs as may be appropriate in accordance with the Labour Law. Thereafter, the Project Company coordinate with the Ministry of Labour and Social Welfare to cure the breach and shall take all measures necessary to mitigate and minimise harm and prevent further breaches in the future.

(c) The Project Company shall incorporate details of its compliance with this section and any occupational safety incidents shall be reported in the Annual Progress Report submitted to One Stop Service.

15.03 **[Security.** In the event Project Company considers, in its sole discretion, that it is necessary for the purposes of protecting the security of its assets and the safety of its employees and contractors, Project Company may impose reasonable restrictions on Roads and trails, install fencing, employ security guards and install security cameras within and around the border of the Project Area.]<sup>3</sup>

15.04 **[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 Project Area, 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.]<sup>4</sup>

15.05 **[Medical Facilities.** In the event Project Company considers, in its sole discretion that it is for the purposes of the Project to provide employees with medical facilities within the Project Area, any such construction and operation of medical facilities shall be of a high standards and shall be constructed and operated in accordance with Lao PDR Laws. Such treatment, care, and attention shall be free of charge for Project Company's employees and their dependents.]<sup>5</sup>

15.06 **[Clean Water.** Project Company shall ensure that all employee residential communities and employee housing within the Project Area are being supplied on a regular basis with clean and safe drinking water in accordance with Lao PDR Law.]<sup>6</sup>

## ARTICLE 16 COMMUNITY RESOURCES AND DEVELOPMENT

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

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<sup>3</sup>This clause is optional and its inclusion will depend on the needs of the project.

<sup>4</sup> This clause is optional and its inclusion will depend on the needs of the project.

<sup>5</sup> This clause is optional and its inclusion will depend on the needs of the project.

<sup>6</sup> This clause is optional and its inclusion will depend on the needs of the project.



- (a) Project Company shall assist and advise Government, when requested, in its planning for infrastructures and local development (including the construction of amenities, 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 Project 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 Project Area and/or those directly impacted by the Project due to their proximity to the Project 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").

16.02 **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 hectare of the Project 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 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, and incorporate such information into the Annual Progress Report submitted to the One Stop Service.

16.03 **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 16.03 and to require its sub-contractors to do so, with respect to any activities undertaken in Lao PDR by such Persons (and their sub-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 sub-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 sub-contractors.
- (d) Project Company shall incorporate details regarding activities conducted under this Section 16.03 in the Annual Progress Report submitted to One Stop Service, and shall include information about the value of goods and services acquired from Lao nationals resident in Lao PDR or produced in Lao PDR by Lao nationals.

## **ARTICLE 17 ENVIRONMENTAL AND SOCIAL OBLIGATIONS**

### **17.01 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 (*Integrated Environmental and Social Obligations*) and (iii) the applicable Lao PDR Laws.
- (b) The Project Company shall adhere to and observe the international standards and practices concerning the health, safety, environment and social conditions in accordance with the integrated environmental and social obligations which have been mandated by the Government and are in force and effect and of general applicability in the Lao PDR, as such requirements and obligations have been incorporated into the integrated environmental and social obligations set forth in Annex IV (*Integrated 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 Project 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 (*Integrated 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.
  - (f) 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 Areas and in so doing, shall comply with all environmental requirements set forth in this Article and the Annex IV.
  - (g) 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.
- 17.02 **Environmental and Social Reports.** As required, but not less than every three (3) years, Project Company shall update the Environmental and Social Reports as required by Lao PDR Law to account for any change in environmental or social conditions in the Project Area. Project Company shall report to MONRE on the implementation of the Environmental and Social Reports on a quarterly basis in accordance with Lao PDR Law and shall also incorporate relevant environmental and social information into the Annual Progress Report submitted to One Stop Service.
- 17.03 **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 Government, 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.
- 17.04 **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 (*Integrated 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.
- 17.05 **Government Inspection and Monitoring.**
- (a) Government reserves the right to monitor and make inspections of the Project Area to ensure compliance with this Article 16. 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 16, 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 (*Integrated 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.

17.06 **Environmental Liability and Sanctions.** Project Company or its contractors or subcontractors are 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. In addition to any environmental liabilities, Government may enforce additional sanctions on Project Company in accordance with Lao PDR Laws and Annex IV (*Integrated Environmental and Social Obligations*), and/or may elect to terminate this Agreement in accordance with Article 24 herein.

17.07 **Restoration of Project Area.**

- (a) Project Company be responsible for and shall carry out complete decommissioning the Project and environmental restoration, rehabilitation and cleanup of the Project Area, including the formulation of a “**Rehabilitation Plan**” and creation of a “**Rehabilitation Fund**”, in accordance with the obligations and procedures listed in Annex IV (*Integrated Environmental and Social Obligations*). Project Company shall incorporate details of the accumulated monies held in the Rehabilitation Fund into the Annual Progress Report submitted to One Stop Service.
- (b) Upon approval of the Restoration Plan, Project Company shall provide Government with an Environmental Guaranty in the amount of USD[\_\_\_\_\_] USD (in words) to guarantee performance of all restoration activities deposited into an interest-bearing joint-signatory depository account with a Lao registered financial institution set up specifically to hold these monetary contributions, the use of which shall require the signature of a appointed representative of Government and the signature of the Managing Director of Project Company or other Person of Control of the Project Company as appointed. Following completion of the restoration activities to the satisfaction of MONRE, the full amount of the Environmental Guaranty will be refunded to Project Company. In the event Project Company fails to implement the Restoration Plan within the specified time frame and to the satisfaction of MONRE, the Environmental Guaranty will be confiscated into the State budget and utilized for restoration of the Project Area.

## **ARTICLE 18 ASSIGNMENT AND CHANGE OF CONTROL**

18.01 **Assignment.**

- (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.

18.02 **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.

18.03 **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.

18.04 **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) (“Transfer Fee”). The Transfer Fee shall be calculated [per hectare of the Project Area] and shall be deposited into the State budget.

18.05 **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 Project Area, Infrastructure, and other property (including intellectual property, equipment) necessary for Project Operations (collectively, “**Pledged Assets**”), to finance a portion of the cost of constructing and operating the Project.
- (b) In no event shall the Project Company mortgage, charge, pledge or otherwise encumber interests in the trees, including the Plantation Crops, located within the Project Area.
- (c) Any agreement between Project Company and the holder of such Mortgage must comply with the relevant Lao PDR Laws.
- (d) The holder of such Mortgage shall agree in writing with the Government to all transfer restrictions set forth in this Article 18 and with particularity restrictions on transfers to Prohibited Persons.
- (e) 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

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

- (f) 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.

## **ARTICLE 19      FORCE MAJEURE**

### **19.01    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, as defined in Section 19.05, 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.
- (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.

19.02    **Reinstatement of Suspended Obligations.** If Force Majeure declared under Section 19.01 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 19.01, 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 22 herein.

19.03    **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.

- 19.04 **Termination Due to Force Majeure.** 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 Project Operations or the export or sale of Products in all or any material portion of the Project Area (in each case a “**Prolonged Force Majeure**”), either Party shall have the right to terminate this Agreement. The terminating Party shall deliver a 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.
- 19.05 **Definition.** The term “*Force Majeure*” as used in this Agreement shall mean (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 19.01 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.

## ARTICLE 20 INDEMNITIES; GUARANTIES

- 20.01 **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 20 of this Agreement, 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.

- 20.02 **Joint Responsibilities.** In the event that any such liability, loss, damages, expenses or claims as referred to in this Clause 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.
- 20.03 **Parent Guaranty.** Parent hereby unconditionally guarantees the prompt and full performance by Project Company of the obligations listed in Annex V (*Obligations Guaranteed*) hereunder.

## ARTICLE 21 GOVERNING LAW

- 21.01 **Governing Law.** This Agreement shall be governed by and construed in accordance with Lao PDR Law.
- 21.02 **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 date hereof) 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 22 DISPUTE RESOLUTION

- 22.01 **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 22 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.
- 22.02 **Arbitration.** Any such dispute that cannot be settled according to the provisions of Section 22.01, 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 UNICITRAL Rules. The place of arbitration shall be Singapore and all proceedings shall be conducted in the English language.] [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)].

- 22.03 **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 Parent 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.
- 22.04 **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.
- 22.05 **Waiver of Immunity.** 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.
- 22.06 **Operations During Negotiations or Arbitration.** The Parties agree that Project Company, should it choose, is expressly authorized to continue its operations consistent with the terms of this Agreement during the pendency of any decision of a referee or arbitral tribunal under this Article 22.
- 22.07 **Disputes Involving Local 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, villages, and 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 (*Integrated Environmental and Social Obligations*), and the dispute resolution processes listed in Lao PDR Law.

## **ARTICLE 23      PERIODIC REVIEW AND COOPERATION BETWEEN PARTIES**

- 23.01 **Cooperation.** The Parties shall at all times cooperate with each other to facilitate efficient and economic Project Operations 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.
- 23.02 **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 23.02, 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 I.E. RUBBER] plantation 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.

#### **ARTICLE 24      TERMINATION**

This Agreement shall terminate at the end of the Concession Period, or may earlier terminate by the mutual agreement of the Parties or where an Event of Default occurs (“Event of Default” means the events occurring under 24.01(c), 24.02(c), (d), (e) or (f) herein), or otherwise as provided in this Article.

24.01 **Termination by Project Company.** Notwithstanding any other provision of this Agreement, Project Company shall have the right to terminate this Agreement as follows:

- (a) pursuant to the provisions of Section 19.01; or
- (b) pursuant to the provisions of Section 23.02; or
- (c) 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.

24.02 **Termination by Government.** Government shall have the right to terminate this Agreement if any of the following events shall occur and be continuing:

- (a) pursuant to the provisions of Section 19.01; or
- (b) pursuant to the provisions of Section 23.02; or
- (c) Project Company fails in a serious and prolonged manner to comply with any material obligations under this Agreement; or
- (d) 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;

- (e) 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
- (f) Project Company ceases commercial production 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.

24.03 **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 this Agreement shall be terminated; *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, this Agreement shall terminate.

24.04 **Contract Remedies Preserved.** The termination rights provided in this Article 24 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.

24.05 **Consequences of Termination.**

- (a) Upon termination of this Agreement, each Party will cease to have any rights or obligations to the other Party under this Agreement subject to: (i) any payment obligation which is due; and (ii) any payment obligation that arose, including without limitation the payment obligations of all the damages or compensation incurred, prior to the termination and remained unfulfilled on the date thereof.
- (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 Assets, restoration and rehabilitation of the Project Area, or any other provision of this Agreement which expressly or impliedly are to operate after the termination of this Agreement.

24.06 **Dispossession of Immovable Assets Following Termination.**

- (a) Subject to Section 24.08, upon termination of this Agreement, all permanent Immovable Assets of Project Company in the Project Area, which is not otherwise the property of Government, shall become the property of Government without charge.
- (b) In the event of a termination by Project Company for breach by Government under Section 24.01(c), the fair market value of the Project Company's investment, including the Immovable Assets (valued immediately prior to Project Company's Notice to Government pursuant to Section 24.01) shall be taken into account in determining any amounts payable in respect of termination.
- (c) The Parties will jointly determine the fair market value; *provided, however*, that if such value cannot be agreed upon within thirty (30) days of the termination of this Agreement, either Party may give notice of its intention to refer the matter to an independent valuation expert for determination. Such independent valuation expert shall be jointly appointed by agreement of the Parties and have relevant industry knowledge and experience.

24.07 **Sale of Movable Assets following termination.**

- (a) After termination of this Agreement and with respect to each Movable Asset of Project Company in the Project Area, which Project Company desires to sell, Government shall have the first option to purchase such asset at the fair market value thereof.
- (b) If Government does not exercise such option within ninety (90) days after being informed by Project Company that it desires to sell such asset, Project Company may sell such asset to any other Person, including Government or an Affiliate, for such price as it may be able to obtain, or remove such asset from Lao PDR.

- (c) The proceeds of any such sale shall accrue to Project Company subject to any Taxes or duties payable under Lao PDR Law.
- (d) If Government purchases any such asset, it shall pay the purchase price not later than sixty (60) days after such price has been agreed upon or determined, unless the Parties otherwise agree.

24.08 **Restoration of the Project Area and Removal of Movable Assets.** The Project Company shall take all steps necessary to ensure the Project Area has been fully restored and rehabilitated in compliance with this Agreement, the procedures and obligations contained in Annex IV (*Integrated Environmental and Social Obligations*) and Lao PDR Laws.

## ARTICLE 25 NOTICES

25.01 **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 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:

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

- 25.02 **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 26 CONFIDENTIALITY

- 26.01 **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.
- 26.02 **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.
- 26.03 **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 27 MISCELLANEOUS

- 27.01 **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.

- 27.02 **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.
- 27.03 **Amendments.** This Agreement may not be modified or amended except by an agreement in writing duly executed by each of the Parties. **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.
- 27.05 **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 not arise 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 notarisation fee payable on the notarisation of this Agreement.
- 27.06 **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 AGRICULTURE AND FORESTRY

**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 1<sup>st</sup> of January to the 31<sup>st</sup> of December inclusive in the period of agreement and period from the 1<sup>st</sup> 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. “**Products**” means any part of a Plantation Crop (as defined herein this Agreement) after cutting, cross cutting, harvesting, chipping and/or processing.
3. “**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, equipment and machine tools, which are used in the activities of the Project Company.
  - (b) All expenses with respect to labour 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: of 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.
4. **“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.
5. **“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 Plantation, 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.
6. **“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.
7. **“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 labour cost of workers, labour 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.

8. **“Travel expenses”** will be deductible in an amount of up to 0.6% of total annual turnover.
9. **“Donations”** will be deductible in an amount of up to 0.3% of annual turnover.
10. **“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.
11. **“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.
12. **“ Total revenues”** mean:
  - (a) All revenues received or occurred from the sales of Products.
  - (b) All receivable capital funds.
  - (c) Other revenues realised or received and not classified as above.
13. **“Taxable income”** in a year means the realised 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

<b>Name of Report</b>	<b>Relevant Governmental Authority for Report Submission</b>	<b>Reporting Frequency</b>
Report on EMMP and SMMP Implementation	Department of Environment and Social Impact Assessment, Ministry of Natural Resources and Environment	3months, 6 months, 12months
Planting Progress Report	Department of Planting, Ministry of Agriculture and Forestry	6months, 12 months
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	6months
Annual Progress Report	One Stop Service, Ministry of Planning and Investment	12 months

**ANNEX IV**

**INTEGRATED ENVIRONMENTAL AND SOCIAL OBLIGATIONS**

## ANNEX V

### OBLIGATIONS GUARANTEED BY THE PARENT [IF APPLICABLE]<sup>7</sup>

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<sup>7</sup> 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.

EXHIBIT A

MEMORANDUM OF UNDERSTANDING



EXHIBIT B

LAND LEASE AGREEMENT(S)

EXHIBIT C  
FEASIBILITY STUDY

EXHIBIT D  
TEMPLATE CONTRACT FARMING AGREEMENT<sup>8</sup>

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<sup>8</sup>In the event the Government does not have a template, Project Company to provide their template Contract Farming Agreement as approved by Government.