

# **ANNEX 1**

**PRECEDENT**

**MEMORANDUM OF UNDERSTANDING TO PLAN CSR-SUPPORTED  
COMMUNITY DEVELOPMENT**

**(Long Version)**

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## MEMORANDUM OF UNDERSTANDING TO PLAN CSR-SUPPORTED COMMUNITY DEVELOPMENT IN INDONESIA

DATED: \_\_\_\_\_

### THE PARTY CONTRIBUTING FUNDING ('Party A')

Name : \_\_\_\_\_  
Authorised representative : \_\_\_\_\_  
Street address : \_\_\_\_\_  
Postal address : \_\_\_\_\_  
Telephone : \_\_\_\_\_  
Email address : \_\_\_\_\_

### THE OTHER PARTY ('Party B')

Name : \_\_\_\_\_  
Authorised representative : \_\_\_\_\_  
Street address : \_\_\_\_\_  
Postal address : \_\_\_\_\_  
Telephone : \_\_\_\_\_  
Email address : \_\_\_\_\_

### BACKGROUND

- A. The Parties wish to work together to develop a community action plan or community development initiative that will be supported by corporate social responsibility funds and in-kind, non-monetary contributions provided by Party A and that will be designed for the benefit of the Indonesian community known as: \_\_\_\_\_.
- B. [In order to comply with the obligation to implement corporate social responsibility as required under Law No. 40 of 2007 on Limited Liability Companies [and Law No. 19 of 2003 concerning State Owned Enterprises (including its implementing regulations)], the Parties are entering into this Memorandum of Understanding to provide a clear framework for their work in preparing a community action plan or community development initiative for the community named above.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

**“Business Day”** means a day on which commercial banks are open for business in [the Special Capital Region of Jakarta [or Indonesia]].

**“CAP”** means a community action plan comprising one or more community development projects for the benefit of the community as a whole or for the benefit of members of the community as will be described further herein.

**“Community”** means the community named in Paragraph A of the Background.

**“CSR”** means corporate social responsibility.

**“CSR Funds”** means money and other assets or benefits provided by Party A to fund and support implementation of the Parties’ obligations under this MoU.

**“Intellectual Property Rights”** means confidential know-how, patent rights, trademarks, service marks, trade names, design rights, copyright (including rights in computer software) or any rights or property similar to any of the foregoing in any part of the world, whether registered or not, together with the right to apply for the registration of any such rights, and all rights or forms of protection having equivalent or similar effect, in any part of the world.

**“MoU”** means this Memorandum of Understanding.

**“Party”** means a party to this MoU or collectively, “Parties”.

### 1.2 Interpretation

Headings shall be ignored in construing this MoU; reference to a person shall include a reference to a corporation, partnership, limited liability company or other form of organisation and vice versa; reference to any Party shall include its successors, assignees and transferees; reference to statutes shall be deemed to include all statutes amending, consolidating or replacing them and shall be deemed to include all regulations, proclamations, ordinances, articles of association and by-laws made pursuant to them; a reference to a thing includes the whole or any part of that thing; a reference to any agreement, licence or other instrument or document shall be deemed to include all recitals, schedules and annexure to such agreement, licence or other instrument or document and all of them as varied, amended, supplemented or replaced from time to time.

## 2. AGREEMENT TO WORK TOGETHER

### 2.1 Parties to work together

The Parties agree to work together in a close and cooperative relationship to develop a CAP for, or one or more community development projects within, the Community on the terms and conditions set out in this MoU.

## **2.2 Term**

The term of this MoU will commence on: \_\_\_\_\_ and will end on: \_\_\_\_\_ unless it terminates earlier by mutual agreement or under another section of this MOU.

## **2.3 Performance reviews**

On the performance review dates set out below the Parties will undertake a review of Party B's performance under this MOU. The review will allow both Parties an opportunity to (i) assess Party B's performance, (ii) provide Party B's management with professional development evaluations, and (iii) identify areas for continuous improvement by both Parties. The Parties will agree upon the specific aspects of Party B's performance that will be evaluated in advance of the first evaluation and details of the performance review process are set out in Schedule One.

Performance review dates: \_\_\_\_\_

## **2.4 Intention to be legally bound**

The Parties intend to be legally bound by this MOU.

# **3. THE PLANNING PROCESS**

## **3.1 Standard of work**

The Parties agree to apply professional community development principles and practices to their design and planning work. Their aim is to design each community development initiative so that it:

- a. complies with the requirements of applicable laws, including the procedural and other requirements of the Law on Villages, Law No. 6 of 2014 and its implementing regulations and relevant local regulations on corporate social responsibility (if applicable);
- b. is based on evidence of needs in the Community in a form and substance satisfactory to Party A and is considered to follow the local wisdom of local indigenous peoples or groups and allows them to fulfill their aspirations for social and economic development;
- c. is aligned with the Party A's business needs and resources and is appropriate given the Party B's experience, skills and expertise;
- d. will fill gaps in or complement, but not replace, governmental development activities;
- e. that is aligned with, and improves, village plans developed under the Program Nasional Pemberdayaan Masyarakat (PNPM); and
- f. that holds reasonable potential to improve the quality of life for Community members, to encourage advocacy for community needs and/or to reduce the incidence of poverty in the Community in an equitable and sustainable way.

In particular the Parties agree to ensure that there is wide participation by Community members in the process of identifying Community needs and setting priorities.

### **3.2 Communications and socialization**

- a. The Parties agree to establish a robust process for communicating with Community members and other stakeholders to enable the Parties to communicate in a clear and transparent way. Their aim will be to maximise transparency, spread accurate information, correct misinformation, explain the potential value of the development projects and manage Community expectations. As part of this, a communications protocol will be developed that sets out an agreed regime for the communication of information when needed to and from the Parties and other stakeholders and covers ethics, confidentiality and the approvals required for internal and external communications.
- b. Party B will be responsible for preparing arrangements for appropriate promotional events relating to the CAP, including media announcements, and will ensure that Party A approves all such arrangements before they are carried out.
- c. Funding for communications and socialization will be included within the budgets prepared under this MOU.

### **3.3 Community development tools**

The Parties acknowledge that they may use all or any of the following community development tools, as they believe appropriate from time to time, in the course of their design and planning work under this MOU.

- a. Community mapping to allow Community members to map out their Community's physical layout and share their expert knowledge of Community members and networks.
- b. Analysis of the various institutions that function within, or affect, the Community, to identify current formal and traditional leaders, decision-making processes and service provision networks.
- c. Risk analysis to identify risks to the planning process, including actual and potential conflicts and disputes within the Community and its neighboring communities that may need to be taken into account in the planning process.
- d. Stakeholder analysis to identify those within the Community and in the wider context who have a legitimate interest in the CAP planning process and any resulting development project.
- e. Socio-economic analysis of the Community in its larger context to gather baseline data on issues of potential focus for development projects, such as nutritional knowledge, maternal morbidity and mortality, women's levels of literacy, children in school, children with birth certificates, health services and livelihood needs for young people.
- f. Community score cards to help empower the Community's members to monitor the planning process and provide an instrument of accountability for the Parties.



### **3.4 Sustainability**

- a. The Parties agree that their aim is to target evidence-based community needs and to do so in ways that will lead to sustainable improvements in the Community and will discourage ongoing dependency on the Parties.
- b. Party B acknowledges that the Parties will be guided by Party A's code of conduct, sustainability principles or equivalent document in the form attached to this MOU.
- c. Party B also acknowledges that, to enhance effectiveness and sustainability, Party A will require the planning process and the CAP to take into account Party A's existing social impact management, community engagement and local hiring and contracting policies and practices so that any community development project is aligned and well integrated with Party A's operational activities.

### **3.5 Consultations with governmental agencies**

- a. The Parties will consult with relevant Community authorities and government agencies on a regular basis as may be needed to obtain up-to-date data on local social and economic conditions and to understand and incorporate into their planning all relevant governmental plans and development priorities for the Community. This will include seeking information and guidance from The National Team for the Acceleration of Poverty Reduction ("TNP2K") and the relevant Regional Poverty Reduction Coordination Team ("TKPKD") to ensure that the development initiatives will be well targeted to achieve a sustainable reduction in poverty in the Community. The Parties agree that they will use any information made available to them from TNP2K's Basis Data Terpadu only for the purpose of poverty alleviation and not for commercial gain or political purposes.
- b. The Parties will aim to ensure that their CAP fills gaps in governmental assistance and is aligned with, and does not compete with, duplicate or replace, governmental projects.
- c. If they believe it would be appropriate and would strengthen the effectiveness of their community development work, the Parties may enter into a technical cooperation agreement with the local government under which the local government commits to cooperate with the Parties and to provide an agreed level of funding and/or other kinds of support for the work of the Parties under this MOU so as to ensure that the planning process proceeds on time and within budget.
- d. The Parties will make themselves aware of the requirements of the Law on Villages (Law No. 6 of 2014) and its implementing regulations, if applicable, and the impact of the Program Nasional Pemberdayaan Masyarakat ("PNPM") on the Community and try, where possible and appropriate, to use competent and experienced Community facilitators and to build on the participatory processes and structures already established in the Community.
- e. If there is a local CSR Forum, the Parties may consider working with that CSR Forum and with local government agencies and with other companies and organisations active in the area to share information and coordinate the planning for CSR-supported community development projects.

### **3.6 Preparation of a plan**

The Parties acknowledge that they intend to develop a CAP for the Community (and any other neighbouring or affected communities as agreed between the Parties). The CAP should include a description of prioritised needs and problems, strategies and potential ways to meet those needs and deal with those problems, and a work programme for one or more community development projects to address those needs and problems. The CAP may include or be based on or contribute to development projects that are already under way in the Community.

### **3.7 Use of planning tools**

A logical framework analysis (LFA) or objectives-oriented project planning tool such as ZOPP (Objectives-Oriented Project Planning), a timetable of activities and budget will be prepared for each proposed community development project. They will be designed to be used as working documents that will be reviewed and amended by agreement between the Parties when necessary to take account of changes in the Community or in other circumstances or changes in the Parties' requirements as the planning and implementation processes develop.

### **3.8 Final plan must be in a form agreed by both Parties**

The CAP as a whole, and each logical framework for a project that is included within it, must be in a form agreed by both Parties before the CAP can become the basis for the Parties to negotiate and enter into any definitive legally-binding agreement to implement any part or all of the CAP.

### **3.9 Monitoring and evaluation**

The Parties will build into their CAP a process to allow each project to be monitored and evaluated during the project cycle. The process will allow stakeholder participation and will incorporate methods for both quantitative and qualitative measurements of results and effectiveness.

## **4. ROLE OF PARTY A**

### **4.1 To provide CSR Funds and in-kind support**

Party A agrees to provide the CSR Funds and in-kind, non-monetary contributions required to undertake the CAP planning work under this MOU in accordance with the agreed budget and payments schedule in Schedule Two, as that budget and payments schedule may be amended by mutual agreement from time to time. For avoidance of doubt, the CSR Funds for the implementation of the CAP will be further regulated in the definitive implementation agreement to be entered into by the Parties.

### **4.2 To pay CSR Funds into nominated bank account**

Party A will pay budgeted CSR Funds into Party B's nominated bank account (the Special Bank Account referred to in Section 5.2(e) in accordance with the agreed payments schedule.

#### **4.3 To provide Party B with support for capacity building**

Party A agrees to provide the additional funding or other contributions, such as mentoring, business coaching and provision of template documents, required to allow Party B's staff to participate in relevant training and other capacity building, or to include Party B's staff in Party A's internal training activities, during the term of this MOU, provided that Party B can demonstrate that this would be beneficial to the CAP planning process or the implementation of any project under the CAP. The initial agreed capacity-building support is set out in Schedule Three. Party A may, but is under no obligation to, grant any request from Party B for additional capacity-building support at any time. Any request for funding must be made at least seven days in advance of the training or other capacity building.

#### **4.4 To provide other resources**

Party A agrees that it will provide the full benefit of its technical and business knowledge, skills and experience to the design of the proposed CAP when and where it believes it appropriate to do so and it is permitted under the relevant laws and regulations or any agreements (including its articles of association or constitution) to which it is a party or subject.

#### **4.5 To provide guidance on future CSR funding budget**

Party A agrees that it will provide guidance on the amount of CSR funding that may be available from Party A and/or other sources to support agreed community development projects under a CAP, if and when appropriate during the planning process, to ensure that the Parties can factor possible future available CSR funding limits into the planning process.

#### **4.6 Security plan**

Party A, in consultation with Party B, will work out a suitable security plan if and when the Parties' work under this MOU is in an area that is affected by conflict.

#### **4.7 To work to prevent or resolve Community disputes**

Party A will, with the assistance of Party B when required, work to prevent or resolve any actual or potential conflicts or disputes within the Community or with other stakeholders in relation to the CAP planning process.

### **5. ROLE OF PARTY B**

#### **5.1 To undertake project management and apply professional skills**

Party B will be primarily responsible for project management under this MOU. It will design and manage a planning process for the CAP that uses appropriate community development tools and applies professional community development principles and practices. It will provide the full benefit of its knowledge of the Community and its skills and experience in community development and social assistance to its participation in the planning that takes place under this MOU.

## 5.2 To manage agreed budget, payments schedule and timetable of activities

- a. Party B will, in close consultation with Party A, prepare and manage an agreed budget, a payments schedule and a timetable of activities for the planning process under this MOU. The payments schedule will include in-kind support to be provided by Party A.
- b. The payments schedule will be designed to ensure that Party B is provided with sufficient funds at or soon after signing of this MOU to enable it to mobilise the staff and resources required to allow Party B to commence to undertake its obligations under this MOU in accordance with the timetable of activities. The payments schedule will be designed to provide funds in advance of the need for their expenditure except that the final payment may be made conditional upon Party B's providing a final project report and financial report in agreed form to Party A.
- c. The budget, payments schedule and timetable of activities may each be amended by agreement between the Parties if necessary from time to time to reflect changes in circumstances or the intentions of the Parties.
- d. The total amount of CSR cash funding to be allocated to planning activities under this MOU in the initial budget will be \_\_\_\_\_ Rupiah. In-kind and non-monetary contributions are set out in the budget in Schedule Two.
- e. Upon signing this MOU, Party B will provide Party A with details of Party B's special purpose bank account that will be used to meet the expenses incurred in carrying out its role under this MOU (the "Special Bank Account"). Party B will ensure that the Special Bank Account is used only for CSR Funds provided by Party A under this MOU and that Party A's CSR Funds are not mixed with Party B's money or with money from a third party.
- f. Party A acknowledges that Party B will need sufficient funds to cover the expenses of carrying out its role under this MOU, including expenses for its salaried employees, consultants and reasonable management and administration activities. Accordingly, the Parties agree that Party B will be entitled to include in the budget an agreed amount by way of administrative overheads, management and maintenance costs of [\*]% of the total budget amount. Unless agreed otherwise by Party A, the Parties hereby acknowledge that any excess costs that are not included in the agreed budget but are incurred in any way by Party B for performing its role under this MOU shall be borne solely by Party B.
- g. However, for the avoidance of doubt, nothing in this MOU can be interpreted to allow Party B to return to its members patrons (*Pembina*), executives (*Pengurus*), or supervisors (*Pengawas*) (where relevant) any profit in the form of salary, fees, honoraria, or other monetised forms whatsoever from the performance of its role under this MOU unless it is permitted by the prevailing laws and regulations and agreed by Party A in advance.

## 5.3 To manage payments

- a. Unless Party A directs otherwise, Party B, in its role as project manager, will pay third party contractors and suppliers from CSR Funds deposited by Party A into the Special Bank Account, provided it does so only on the basis of valid invoices that are then retained in Party B's records and made available for inspection, copying and audit as required under this MOU.

- b. Unless instructed otherwise by Party A, all invoices should state the name of the Community and the relevant community development project, be addressed to Party B and clearly state the purpose of the payment.

#### **5.4 To report and account to Party A**

Party B will keep separate and accurate records of work undertaken under this MOU (including but not limited to all invoices, letters, approvals, licences, email correspondence and any other documents related to the Project). Party B will also have financial accounts prepared in accordance with generally accepted accounting standards in Indonesia to record all financial transactions undertaken under this MOU and will ensure all invoices and receipts are retained in the project records. Party B will provide regular periodic project reports and financial reports at agreed times and in agreed form to Party A. The project report will detail activities undertaken during the reporting period and the financial report will give an acquittal for all expenditure of Party A's CSR Funds during the reporting period.

#### **5.5 To allow records and accounts to be audited by Party A and its advisors**

Party B will make all correspondence, records, reports, invoices, financial accounts and other documents and electronic records generated in the course of its work under this MOU available to be inspected and audited by Party A, its accountants and professional advisors at any time and from time to time. Party A will give Party B reasonable notice of its wish to inspect, copy or audit those documents or electronic records and will, to the extent reasonably practicable, carry out such work during usual business hours. If Party A requires Party B to provide audited accounts to Party A, then Party A will ensure that the agreed budget for the project includes sufficient funding to pay the cost to Party B of providing accounts that have been professionally audited.

#### **5.6 To ensure any lawful government charges are paid and recorded**

The Parties agree to include in the budget funding for any tax, levy or other governmental charge (if any) that is lawfully required to be paid in connection with the planning work undertaken under this MOU. Party B, using Party A's CSR Funds, will pay such tax, levy or other charge (if any) to the relevant authority and will ensure that all such payments are correctly and promptly acknowledged in writing and properly included in the financial accounts.

## **6. GOOD GOVERNANCE AND DECISION MAKING**

### **6.1 Decision-making process**

- a. The Parties agree to arrange a series of regular meetings during the term of this MOU for the purpose of discussing, and making decisions about, the planning process and other matters arising under this MOU.
- b. Meetings of those people within Party A and Party B who are involved in the day-to-day planning process will take place at least twice each week.
- c. Those within Party A and Party B who are involved in the day-to-day planning process will also meet together with their immediate superiors at least once each week.
- d. All those mentioned above will meet, together with the appropriate higher managers from each of Party A and Party B and any other relevant stakeholders, at least once each month.

- e. Decisions will be reached by consensus and recorded in writing. Minutes of each meeting will be circulated to attendees to inspect, amend if necessary and sign when correct.
- f. Meetings may be held in person or by telephone or by electronic video conferencing as the Parties may agree from time to time.
- g. Details of the decision-making process, venues for meetings and the names and titles of those who will be involved in the decision-making process are set out in Schedule Four.

## **6.2 Commitment to ethical conduct**

The Parties agree to demonstrate a commitment to ethical practices and behaviours and to make sure that ethical practices are implemented and ethical behaviours are promoted through proper and appropriate staff training and monitoring.

## **6.3 Conflicts of interest**

If, at any time during the term of this MOU, either Party believes on reasonable grounds that it or the other Party, or any of their members, directors, managers, employees, consultants or other stakeholders, has become affected by a conflict of interest that threatens, or is likely to threaten, the reputation or effectiveness of the CAP planning process or the reputation of either Party, then the affected Party must do all it can to resolve or otherwise deal with that conflict of interest as soon as possible.

## **6.4 Compliance with laws**

The Parties will make themselves aware of applicable laws and ensure that their conduct under this MOU is lawful. Party B acknowledges and agrees that their conduct under this MOU may, in some instances, be governed by laws of a foreign jurisdiction that apply to Party A and its management, including laws as to corrupt practices, treatment of children and privacy.

## **7. CONTRACTORS AND SUPPLIERS**

- a. If necessary, Party B, as project manager, will be primarily responsible for procuring contractors and suppliers. All contracting by Party B will be done on the basis of reasonable procurement standards that are acceptable to Party A.
- b. In particular, Party B will undertake due diligence inquiries on potential contractors and suppliers so as ensure that they are selected carefully on the basis that they are competent to do the work or supply the required goods and services, are of good reputation, are free of any conflict of interest or corrupt practices and will not bring the Parties into disrepute.

For this purpose, if required by Party A, the relevant contractors and suppliers will provide Party A with a written statement confirming this condition has been met.

- c. The Parties acknowledge that the appointment of contractors and suppliers may be subject to tender requirements that are regulated by law or internal policies of Party A (or, where Party A is a State-Owned Enterprise, be subject to tender requirements regulated under certain regulations of the Ministry of State-Owned Enterprises). They agree to comply with any such requirements from time to time.

- d. The Parties will try to provide work for local community contractors and suppliers to the extent permissible under Party A's hiring and contracting policies from time to time.
- e. Party B agrees that Party A will be entitled to participate in the selection process and make the final decision on the selection of all contractors and suppliers where the value of the contract exceeds [\*] Rupiah or such other amount agreed between the Parties from time to time.
- f. Unless otherwise agreed, all contracts will be entered into between Party B and the contractor or supplier. For the avoidance of doubt, Party B acknowledges that it is not authorised to enter into any contract on behalf of, or as the agent for, Party A.
- g. Party B must ensure that the appointed contractors and suppliers will provide a proper and sufficient guarantee and/or insurance with regard to the work assigned to them.

## **8. INSURANCE**

Party B agrees to obtain and keep current throughout the term of this MOU such insurance policies as are reasonably required to be put in place in relation to the activities to be undertaken under this MOU. Party B also acknowledges that the benefit of the insurance (including but not limited to any insurance proceeds) shall be for the community and to the extent possible, any loss suffered by any of the Parties related to the insured objects.

## **9. EVENTS BEYOND A PARTY'S CONTROL**

A Party will not be in breach of this MOU if that Party fails to comply with its obligations under this MOU (other than an obligation to provide funding) because an event occurs or circumstance arises that is reasonably beyond its control and unable to be predicted. The affected Party must use reasonable efforts to overcome the problem so as to resume performance of its obligations as soon as possible. If the Party cannot resume performance within three months or some other agreed period of time, the other Party may, but is not obliged to, terminate this MOU.

## **10. REPRESENTATIONS**

### **10.1 Representations by Party A**

Party A represents to Party B that:

- a. it is duly established and validly existing under the laws of the \_\_\_\_\_ and had and continues to have the full legal right and power and authority required to enter into, execute and perform this MOU and to fully perform its obligations hereunder;
- b. it has provided to Party B true copies of its most recent and complete constitutional documents;

- c. this MOU has been duly and validly executed and delivered by Party A and therefore constitutes a valid and binding obligation of Party A and is enforceable against Party A in accordance with its terms;
- d. the CSR Funds and in-kind, non-monetary contributions to be made available for the CAP planning process under this MOU will be provided lawfully and in accordance with its internal corporate authorisation processes; and
- e. carrying out its obligations under this MOU will not give rise to any actual or potential conflict of interest or breach of any regulations or agreements to which it is subject or any other ethical principle.

## **10.2 Representations by Party B**

Party B represents to Party A that:

- a. it is duly established and validly existing under the laws of the Republic of Indonesia and had and continues to have the full legal right and power and authority required to enter into, execute and perform this MOU and to fully perform its obligations hereunder;
- b. it has provided to Party A true copies of its most recent and complete constitutional documents and the approval of its constitutional documents from the Indonesian Ministry of Law and Human Rights;
- c. this MOU has been duly and validly executed and delivered by Party B and therefore constitutes a valid and binding obligation of Party B and is enforceable against Party B in accordance with its terms;
- d. it has the necessary community development knowledge, skills and experience to perform its obligations under this MOU including in dealing with the target community (upon request by Party A, it will provide sufficient documentation to support this representation); and
- e. carrying out its obligations under this MOU will not give rise to any actual or potential conflict of interest or breach of any regulations or agreements to which it is subject or any other ethical principle.

## **11. CONSEQUENCES OF AGREEMENT ON PLAN**

- a. If at any time during the term of this MOU both Parties are satisfied that they have developed a CAP that they are willing to implement, they will proceed to negotiate in good faith the terms of an agreement under which they will work together to implement it. Party A may set a reasonable period in which negotiations towards such an agreement will take place.
- b. For the avoidance of doubt, Party A is not under an obligation to take any actions or provide any funds to implement the CAP, or any community development project contemplated by it, until the Parties have agreed upon and signed a definitive and legally-binding agreement to implement the CAP.



- c. Nothing in this MOU obliges the Parties to agree to work together to implement an agreed CAP.
- d. If the Parties cannot, within the time nominated by Party A or, if no time has been nominated, within a reasonable time, reach a definitive legally-binding agreement to implement an agreed CAP, Party A may give a written notice to Party B that terminates this MOU automatically on the date of the notice, whereupon Party A will be entitled to work with any other organisation to implement the CAP developed by the Parties under this MOU.

## **12. INABILITY TO AGREE OR COMMIT**

If, at any time during the term of the MOU:

- a. both Parties agree in writing to cease working together under this MOU; or
- b. Party A serves a 7 (seven) Business Days' prior written notice to Party B that, for unexpected operational or other reasons related to its business affairs or on account of any event outside its control and unable to be predicted, it is no longer in a position to commit CSR Funds to implement a CAP in the Community,

then this MOU will terminate automatically on the date of the written agreement or the termination date specified in the Party A's notice, as the case may be. Party A will reimburse all reasonable expenditure up to the date of notice incurred by Party B in pursuance of the agreed budget, together with any costs agreed between the Parties to be reasonable expenses entailed in closing down the activities.

## **13. DISPUTE RESOLUTION**

### **13.1 Dispute resolution procedure**

If a dispute arises between the Parties that cannot be settled by good faith negotiations between the authorised representatives of each of the Parties:

- a. the dispute must first be referred for resolution by the most senior management executive of each of Party A and Party B;
- b. if the dispute cannot be resolved by the senior management executives, either Party may request that a respected independent person who is not involved in the CAP planning process or in the dispute, and who is acceptable to both Parties, be engaged as a mediator to assist the Parties to resolve the dispute amicably through negotiations; and
- c. if the dispute is not resolved by the mediator within three months of the mediator's appointment or such other time as the Parties may agree, the Parties agree to refer the dispute to the court of \_\_\_\_\_ in \_\_\_\_\_.

### **13.2 Right to approach a court for urgent relief unaffected**

Nothing in this MOU prevents a Party approaching a court for urgent interlocutory, injunctive or declaratory relief at any time.

## **14. TERMINATION**

### **14.1 Termination for breach**

A Party may terminate this MOU by giving at least 7 (seven) Business Days' prior written notice to the other Party if:

- a. the other Party fails to comply with any of its material obligations under this MOU and does not remedy that failure within one month (or any other reasonable period specified in the notice) of receiving a notice from the other Party requiring it to remedy the failure;
- b. the other Party, or any of its members, directors, managers, employees or consultants, engages in conduct that threatens to damage, or damages, the Party's reputation or threatens to bring, or brings, the CAP planning process into serious disrepute or otherwise acts so that the intended benefits of the CAP are unlikely to be achieved;
- c. the other Party becomes bankrupt, insolvent, takes steps to obtain, or obtains, or is granted, a court decision for the suspension of its payment obligations or institutes liquidation or any similar proceedings;
- d. the Party can show reasonable grounds for a belief that the other Party, or any of its members, directors, managers, employees or consultants, has engaged in fraudulent or corrupt conduct, whether in relation to the work being done under this MOU or otherwise.

### **14.2 Termination on the basis of the results of a performance review**

Party A may terminate this MOU by giving at least 7 (seven) Business Days' prior written notice to Party B if, as a result of any performance review of Party B, Party A has reasonable grounds for believing that Party B does not have, or does not have to a sufficiently high standard, the competence, knowledge, skills and experience required to carry out its obligations under this MOU.

### **14.3 Other remedies unaffected**

The right to terminate this MOU under this Section is in addition to any remedies available under Indonesian law or any other applicable law to the Party wishing to terminate.

### **14.4 Consequences of termination**

If this MOU terminates for any reason:

- a. within one month of the date of termination, Party B must provide Party A with a full and detailed final report on work done under this MOU and an acquittal for all CSR Funds contributed by Party A that have been spent by Party B but not yet accounted for, together with originals of all supporting documents;
- b. Party B must ensure that all or any of the original correspondence, records, reports, invoices, financial accounts and other documents and electronic records generated in the course of its work under this MOU are provided to Party A or stored or otherwise dealt with as agreed with Party A;

- c. Party B may retain copies of such documents as are reasonably necessary to meet its internal governance requirements and to allow it to keep, for capacity building and training purposes, the benefit of the professional learning gained during its work under this MOU;
- d. Party A and Party B must ensure that any outstanding third party invoices are paid;
- e. if required, Party A will reimburse all reasonable expenditure up to the date of termination incurred by Party B in accordance with an agreed budget together with any costs agreed between the Parties to be reasonable expenses entailed in closing down the activities under this MOU provided that this MOU is terminated by Party A; and
- f. Party B must return any unused CSR Funds to Party A or use them for a purpose as agreed with Party A.

#### **14.5 Waiver of Article 1266 of the Indonesian Civil Code**

For the purpose of termination of this MOU, the Parties agree to expressly waive the provisions of Article 1266 of the Indonesian Civil Code to the extent that the Parties agree not to seek any approval from the courts or require the other Party to seek any approval from the courts in order to effectuate the termination of this MOU.

## **15. CONFIDENTIALITY**

### **15.1 Confidential information**

The Parties acknowledge that during the process of working together under this MOU they will exchange confidential information. In particular, Party B acknowledges that it may be provided with confidential information about Party A's business and financial affairs, including information about its engagement with the Community and local suppliers and contractors and its internal decisions in relation to potential CSR activities and budgets. The terms and conditions of this MOU shall also be commercial-in-confidence.

### **15.2 Confidential information to be kept secret**

Each Party agrees to keep secret, and not to use for its own benefit or to the detriment of the other Party, any confidential information that is disclosed to it by the other Party. Each Party is, however, entitled to disclose the other Party's confidential information:

- a. in confidence to its professional advisors;
- b. in the case of Party A, in confidence to another member of its corporate group;
- c. in the case of Party A, to any stock exchange where its rules require disclosure;
- d. in the case of Party B where it is a non-governmental organisation that is part of a network of non-governmental organisations, in confidence to another member of that network but only where the disclosure is required to allow Party B to perform its obligations under this MOU; or
- e. as required by law.

### **15.3 Confidentiality obligations to survive termination**

The obligations of confidentiality in this MOU will continue to apply after the date of termination of this MOU unless the information ceases to be confidential through no fault of the Party that is under the obligation of confidentiality.

## **16. INTELLECTUAL PROPERTY**

### **16.1 No transfer of pre-existing Intellectual Property Rights**

Any Intellectual Property Rights, know-how, results, data, inventions and information owned by either Party (or owned by a third party but which a Party has the right to disclose or sub-license) prior to the date of this MOU will remain the property of that Party (or, as the case may be, the third party). No right, title or interest of any kind in or to any pre-existing Intellectual Property Rights of a Party is transferred by this MOU.

### **16.2 Ownership of Intellectual Property Rights developed under this MOU**

All Intellectual Property Rights, know-how, results, data, inventions and information developed by either Party in the performance of its duties under this MOU, and all related documents, electronic records, data, precedents, plans, specifications and similar materials, shall become the joint property of the Parties when prepared or created, and shall be immediately disclosed to the other Party.

### **16.3 Obligations to survive termination**

Notwithstanding anything to the contrary in this MOU, the obligations of each Party under this Article 16 shall survive the termination of this MOU.

## **17. OTHER ASSETS**

Upon the termination of this MOU, any assets (other than Intellectual Property Rights) that have been created or acquired for the purpose of a Party's performing its obligations under this MOU will be transferred to the Community unless the Parties agree that it would be a better use of such assets to transfer them to Party B for use in Party B's future community development activities.

## **18. GENERAL PROVISIONS**

### **18.1 Notices**

A notice given under this MOU must be in writing and written in [both] Bahasa Indonesia [and English]. A notice may be given by hand, by registered prepaid post or by fax or email to the authorised representative at the addresses given below (as updated by a Party from time to time in writing). A notice is deemed to be received on the date of sending if sent by fax or email (unless it is sent after 4:00 p.m., in which case it is deemed received on the next Business Day) or on the date three Business Days after sending if sent by registered prepaid post.

Party A : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Street address : \_\_\_\_\_

Postal address : \_\_\_\_\_

Telephone : \_\_\_\_\_

Fax : \_\_\_\_\_

Email address : \_\_\_\_\_

Party B : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Street address : \_\_\_\_\_

Postal address : \_\_\_\_\_

Telephone : \_\_\_\_\_

Fax : \_\_\_\_\_

Email address : \_\_\_\_\_

**18.2 Relationship of the Parties**

This MOU does not create a partnership or a relationship of employment or agency between the Parties. The Parties must ensure that their employees do not represent that they are able to represent or bind the other Party.

**18.3 Assignment**

A Party is not permitted to assign this MOU unless it has first obtained the written consent of the other Party.

**18.4 Variation**

Any variation of the terms of this MOU must be in writing and signed by both Parties.

**18.5 Waiver**

Any waiver of rights under this MOU must be in writing and signed by the Party granting the waiver.

**18.6 Entire Agreement**

This MOU contains the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes and cancels any and all prior oral and written agreements or representations.

**18.7 Severance**

If any provision of this MOU is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this MOU.

**18.8 Languages**

- a. This MOU may be executed in a bilingual format (English-Bahasa Indonesia). If the Bahasa Indonesia version of this MOU has not been prepared yet, the English version of this MOU may be signed first and when the Bahasa Indonesia version of this MOU is available, the Parties will sign it accordingly.
- b. The Parties agree that, if the MOU is executed in bilingual format, and if there is any inconsistency between the Bahasa Indonesia version and the English language version of any section of this MOU, the Bahasa Indonesia version will prevail.]

**18.9 Counterparts**

If the Parties sign two identical copies of this MOU, the signed copies will together constitute one legal document.

**18.10 Governing Law**

The laws of Indonesia govern this MOU.

IN WITNESS WHEREOF each of the Parties has caused this MOU to be executed by its duly authorised representative on the date first set forth above.

Name : \_\_\_\_\_

Name : \_\_\_\_\_

Title : \_\_\_\_\_

Title : \_\_\_\_\_

**SCHEDULE ONE**

Performance Review Process, with Indications of Party A's Expectations of Party B's Performance

**SCHEDULE TWO**

Budget and Payments Schedule

**SCHEDULE THREE**

Initial Agreed Support for Party B's Capacity Building

**SCHEDULE FOUR**

Decision-Making Process

**Attachment "A": Party A's Code of Conduct**