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# **ANNEX 4**

## **PRECEDENT**

### **COOPERATION AGREEMENT TO UNDERTAKE CSR-SUPPORTED**

### **COMMUNITY DEVELOPMENT**

**(long version)**

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**COOPERATION AGREEMENT TO UNDERTAKE  
CSR-SUPPORTED COMMUNITY DEVELOPMENT IN INDONESIA**

**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 undertake community development that will be supported by corporate social responsibility funds and in-kind, non-monetary contributions provided by Party A and that will be for the benefit of the community known as: [insert name of community and its location] \_\_\_\_\_.
- 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/[their] implementing regulations)]], Party A will provide corporate social responsibility funding, contributions and other resources to support the community development and carry out its role as described in this Agreement.
- C. Party B will act as project manager and provide community development knowledge, skills and resources and carry out its role as described in this Agreement.
- D. The Parties are entering into this Agreement to set out their respective rights and obligations and provide a clear framework for their work together.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

“Agreement” means this agreement.

“Agreed Plan” shall have the meaning given to it under Article 2.1 of this Agreement.

“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 proposed by Party B and agreed to by Party A, and/or as agreed to by both Parties.

“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 Agreement.

“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.

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

## **1.2 Interpretation**

Headings shall be ignored in construing this Agreement; 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 Community action plan has been prepared**

The Parties acknowledge that a CAP or other agreed plan(s) for community development initiatives within the Community has been prepared ("Agreed Plan") as described in more detail in Schedule One, and that the relevant planning documents are attached to this Agreement as Attachment "A".

### **2.2 Parties to work together**

The Parties agree to work together in a close and cooperative relationship to implement the Agreed Plan, as it may be amended from time to time by mutual agreement, on the terms and conditions set out in this Agreement.

The Parties agree that their intentions in working together under this Agreement are to implement well designed CSR-supported community development initiatives that:

- a. are based on evidence of needs in the community;
- b. are likely to reduce poverty and bring sustainable benefits to the community;
- c. are considered to follow the local wisdom of local indigenous peoples or groups and allows them to fulfill their aspirations for social and economic development;
- d. are aligned with Party A's business needs and resources;
- e. are appropriate given the experience, skills and expertise of Party B;
- f. will fill gaps in or complement, but not replace, governmental development activities;
- g. that are aligned with, and improve, village plans developed under the Program Nasional Pemberdayaan Masyarakat (PNPM) and in accordance with the Law on Villages (Law No. 6 of 2014) and its implementation regulations; and
- h. that comply with all other relevant aspects of any applicable laws (including the Law on Villages) and relevant local regulations on corporate social responsibility.

## **2.3 Term**

The term of this Agreement will commence on: [insert date] \_\_\_\_\_  
\_\_\_\_\_ and will end on: [insert date]  
\_\_\_\_\_ unless this Agreement terminates earlier by mutual agreement or under another Section of this Agreement.

## **2.4 Performance reviews**

On the performance review dates set out in Schedule Two, both Parties will undertake a review of Party B's performance under this Agreement. The review shall 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 Two.

## **2.5 Intention to be legally bound**

The Parties intend to be legally bound by this Agreement.

# **3. ROLE OF PARTY A**

## **3.1 To provide CSR funds**

Party A agrees to provide the CSR Funds required to implement the Agreed Plan in accordance with all agreed budgets and payment schedules, as those budgets and payment schedules may be amended by mutual agreement from time to time.

## **3.2 To pay CSR Funds into the nominated bank account**

Party A will pay budgeted CSR funds into Party B's nominated Agreed Plan bank account (the Special Bank Account referred to in Section 4.6 (e) below) in accordance with the agreed payments schedule.

## **3.3 To provide Party B with necessary and reasonable support for capacity building**

Party A agrees to provide the additional funding or other contributions (in-kind and non-monetary), 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 Agreement, provided that Party B can demonstrate that this would be beneficial to their work under this Agreement. 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.

## **3.4 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 implementation of the Agreed Plan 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.

### **3.5 To transfer skills and experience**

Party A agrees that, to the extent possible and where appropriate during the implementation of the Agreed Plan, it will transfer its knowledge, skills and the benefit of its experience to Party B and to members of the Community who become involved in the Agreed Plan's implementation, including the knowledge and skills needed to maintain any community development project over time.

### **3.6 In-kind expenditure**

Party A may provide goods, services and other resources and support to any community development project undertaken under this Agreement instead of providing the funds to pay for the acquisition of such goods, services and other resources and support. Party A will provide Party B with prior written notice before providing any of these goods, services or other resources.

### **3.7 Security plan**

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

### **3.8 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 implementation process.

## **4. ROLE OF PARTY B**

### **4.1 To act as project manager**

- a. Party B will be primarily responsible for day-to-day project management of the implementation of the Agreed Plan and each community development project undertaken in accordance with the terms of this Agreement.
- b. Party A must give its approval to Party B's choice of those individuals within Party B who will be responsible for carrying out day-to-day project management activities.
- c. At any time, Party A will have the right to ask Party B to replace any person designated by Party B to be involved in management of the implementation of the Agreed Plan if, in Party A's sole discretion but based on reasonable grounds, the current person fails to, or is incapable of, implementing the Agreed Plan or any project under the Agreed Plan in accordance with the terms and conditions of this Agreement.
- d. To the extent permissible under the prevailing laws and regulations, Party B is entitled to recover all of its reasonable costs of carrying out its role under this Agreement. However, for the avoidance of doubt, nothing in this Agreement can be interpreted to allow Party B to return to its members, patrons (Pembina / Pendiiri), executives (Pengurus), or supervisors (Pengawas) (where relevant) any profit in the form of salary, fees, honoraria, or other

monetised forms whatsoever derived from the performance of its role under this Agreement unless it is permissible under the prevailing laws and regulations and agreed by Party A in advance.

#### **4.2 To apply professional skills**

- a. Party B will use appropriate community development tools, including using a logical framework analysis (LFA) or equivalent objectives-oriented planning and analysis tool and any or all of the other tools listed in Schedule Four, and apply professional community development principles and practices to its role as project manager. It will provide the full benefit of its knowledge of the Community and its skills and experience in community development and social assistance to carrying out its role under this Agreement.
- b. Party B will continue, when appropriate throughout the term of this Agreement, to hold participatory consultations with the Community, through workshops and other means, to enable Community members to understand and contribute to the activities to be undertaken by the Parties under this Agreement. Participatory processes will be designed to enable women, children and marginalised members of the Community to express their views freely without risk of retribution.
- c. In carrying out its role under this Agreement, Party B will ensure it 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 (if relevant).

#### **4.3 To maintain records and accounts**

Party B will establish and maintain, in a separate and secure fashion, accurate records of work undertaken under this Agreement (including but not limited to all originals and copies of 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 principles in Indonesia to record all financial transactions undertaken under this Agreement and will ensure all originals and copies of invoices and receipts are retained in the project records.

#### **4.4 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 Agreement available to be inspected, copied and audited by Party A, its accountants and professional advisors, at any time and from time to time. Party A will try to 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 then agreed budget for the project includes sufficient funding to pay the cost to Party B of providing accounts that have been professionally audited.

#### **4.5 To report and account to Party A and decision makers**

- a. 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.

- b. Party B will also be responsible for providing additional reports from time to time on activities and other relevant information as may be required from time to time to enable the people involved in the decision-making processes outlined in this Agreement to give proper consideration to the issues and make sound decisions. This will include Party B providing all reports on the monitoring and evaluation of work undertaken under this Agreement to all people involved in the decision-making process as soon as such reports become available.

#### **4.6 To manage agreed budgets, payments schedules and timetables of activities**

- a. Party B will, in close consultation with Party A, prepare and manage an agreed budget, payments schedule and timetable of activities for the Agreed Plan as a whole and for each separate community development project to be undertaken by the Parties. The initial agreed budget and payments schedule and timetable of activities, including key performance indicators (KPIs) and deliverables are as set out in Schedule Five.
- b. The payments schedule will ensure that Party B is provided with sufficient funds at or soon after signing of this Agreement to enable it to mobilise the staff and resources required to allow Party B to commence to undertake its obligations under this Agreement in accordance with the timeline 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. Each budget, payments schedule and timetable of activities may 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 funding to be allocated to Agreed Plan implementation activities under this Agreement in the initial budget will be \_\_\_\_\_ Rupiah.
- e. Upon signing this Agreement, 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 Agreement (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 Agreement 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 Agreement, including expenses for its 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 A for performing its role under this Agreement shall be borne solely by Party A.

- g. However, for the avoidance of doubt, nothing in this Agreement can be interpreted to allow Party B to return to its members, patrons, executives, or supervisors (where relevant) any profit in the form of salary, fees, honoraria, or other monetised forms whatsoever derived from the performance of its role under this Agreement unless it is permitted by the prevailing laws and regulations and agreed by Party A in advance.

#### **4.7 To manage payments**

- a. Unless Party A directs otherwise, Party B, in its role as 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 and original invoices that are then retained in Party B's records and made available for inspection, copying and audit as required under this Agreement.
- b. Unless instructed otherwise by Party A, all invoices should state the name of the Agreed Plan and the relevant community development project, be addressed to Party B and clearly state the purpose of the payment.

#### **4.8 To ensure lawful government charges are paid and recorded**

The Parties agree to include in the budget funding for any tax, levy or other governmental charge (including any tax in respect of the transfer of a community development project, if relevant) that is lawfully required to be paid in connection with the work undertaken under this Agreement. 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.

#### **4.9 To manage planning tools**

- a. Party B will be responsible for ensuring that any logical framework analysis (LFA), project planning tool such as ZOPP (objectives-oriented project planning) and timetable of activities that are prepared for a proposed community development project under the Agreed Plan are used as the main point of reference for project work and will work to ensure that agreed milestones or project indicators are met.
- b. The Parties, however, acknowledge that each planning tool is a working document 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.

#### **4.10 To obtain and hold approvals and assets**

- a. The Parties will cooperate to obtain any rights, assets, property, licences or permits required to undertake the implementation of a community development project under the Agreed Plan.
- b. Party B will ensure that it complies with the terms of every licence and permit related to any project under the Agreed Plan.

- c. The Parties will ensure that any rights, assets, property, licences or permits that need to be owned by the Community in order for the Community or its members to obtain the benefit of a development project are properly and legally transferred to the Community in accordance with applicable laws.
- d. For the avoidance of doubt, neither of the Parties may own or have any interests in any development project in the Community that is undertaken under this Agreement.

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

### **5.1 Decision-making process**

- a. The Parties agree to arrange a series of regular meetings during the term of this Agreement for the purpose of discussing, and making decisions about, the implementation of the Agreed Plan, any community development project and other matters arising under this Agreement.
- b. Meetings of those people within Party A and Party B who are involved in the day-to-day management of the Agreed Plan implementation 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 implementation 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. Preference will be given, where possible, to involving in the management and implementation of the Agreed Plan those people within Party A and Party B who have been involved in the planning phase for the Agreed Plan so that their knowledge and experience of the Community and its issues can inform and enrich the implementation phase of the Agreed Plan.
- g. Meetings may be held in person or by telephone or by electronic video conferencing, as the Parties agree from time to time.

### **5.2 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.

### **5.3 Conflict of interest**

If, at any time during the term of this Agreement, 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 Agreed Plan implementation 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.

### **5.4 Compliance with laws**

The Parties will make themselves aware of applicable laws and ensure that their conduct under this Agreement is lawful. Party B acknowledges and agrees that their conduct under this Agreement 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.

## **6. THE IMPLEMENTATION PROCESS**

### **6.1 Standard of work**

- a. The Parties agree to apply professional community development principles and practices to their implementation of the Agreed Plan.
- b. Their aim is to undertake community development work that is based on evidence of need and that holds reasonable potential to improve the quality of life for community members and to reduce the incidence of poverty in the community in an equitable and sustainable way.
- c. Party B acknowledges that the Parties will be guided by Party A's Code of Conduct in the form attached to this Agreement.
- d. Party B also acknowledges that, to enhance effectiveness and sustainability, Party A will require the Agreed Plan implementation process to take into account Party A's existing social impact management, community engagement and local hiring and contracting policies and practices so that community development is aligned and well integrated with Party A's operational activities.

### **6.2 Communications and socialization**

- a. The Parties agree to establish a robust process for communicating with community members and other stakeholders so to enable the Parties to communicate in a clear and transparent way about progress in implementing the Agreed Plan. 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 Agreed Plan, 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 Agreement.

### **6.3 Monitoring and evaluation**

The Parties will build into their Agreed Plan implementation a process to allow each community development 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. The Parties will also monitor and evaluate their progress in implementing the Agreed Plan as a whole.

### **6.4 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 development work 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 community development initiatives set out in this Agreement will be well targeted to achieve a sustainable reduction in poverty in the Community. The Parties agree that they will use any information and guidance 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 work remains on track to fill 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, for example, the local government makes commitments such as the following:
  - (i) to cooperate with the Parties;
  - (ii) to provide an agreed level of funding and/or other kinds of support for the work of the Parties to ensure that it remains on time and within budget;
  - (iii) to allocate the necessary financing for such support in the local government budget; and
  - (iv) to replicate the Parties’ community development work in other locations where appropriate within the government’s jurisdiction.

- d. The Parties will keep themselves up to date with the requirements of the Law on Villages and its implementing regulations (Law No. 6 of 2014) (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.

## **7. CONTRACTORS AND SUPPLIERS**

- a. 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 or the Agreed Plan 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 Agreement such insurance policies as are reasonably required to be put in place in relation to the activities to be undertaken under this Agreement in implementing the Agreed Plan. 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 Agreement if that Party fails to comply with its obligations under this Agreement (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 Agreement.

## **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 [insert jurisdiction of incorporation]\_\_\_\_\_ and had and continues to have the full legal right and power and authority required to enter into, execute and perform this Agreement 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 Agreement 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 to be made available for the implementation process under this Agreement will be provided lawfully and in accordance with its internal corporate authorisation processes; and
- e. carrying out its obligations under this Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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. DISPUTE RESOLUTION**

### **11.1 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 Agreed Plan implementation 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 \_\_\_\_\_.

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

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

## **12. TERMINATION**

### **12.1 Termination for breach**

A Party may terminate this Agreement 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 Agreement and does not remedy that failure within one month (or any other 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 Agreed Plan implementation process into serious disrepute, or otherwise acts so that the intended benefits of the Agreed Plan 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 Agreement or otherwise.

### **12.2 Termination on the basis of a performance review**

Party A may terminate this Agreement 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 Agreement.

### **12.3 Other remedies unaffected**

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

### **12.4 Consequences of termination**

If this Agreement 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 Agreement 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 Agreement 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 Agreement;
- d. Party A and Party B must ensure that any outstanding third party invoices relating to the Agreed Plan implementation process 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 Agreement provided that this Agreement is terminated by Party A;
- f. Party B must return any unused CSR Funds to Party A or use them for a purpose as agreed with Party A; and
- g. The Parties must ensure that any unfinished development project resulted from the termination of this Agreement is properly managed so that the project will not adversely affect the target community in any form whatsoever.

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

For the purpose of termination of this Agreement, 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 Agreement.

### **13. CONFIDENTIALITY**

#### **13.1 Confidential information**

The Parties acknowledge that during the process of working together under this Agreement 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 Agreement shall also be commercial-in-confidence.

#### **13.2 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 Agreement; or
- e. as required by law.

### **13.3 Confidentiality obligations to survive termination**

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

## **14. INTELLECTUAL PROPERTY**

### **14.1 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 sublicense) as at the date of this Agreement 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 Agreement.

### **14.2 Ownership of Intellectual Property Rights developed under this Agreement**

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

### **14.3 Obligations survive termination**

Notwithstanding anything to the contrary in this Agreement, the obligations of each Party under this Article 14 shall survive the termination of this Agreement.

## **15. OTHER ASSETS**

Upon the termination of this Agreement, 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 Agreement 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.

## **16. GENERAL PROVISIONS**

### **16.1 Notices**

A notice given under this Agreement 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:

### **16.2 Relationship of the Parties**

This Agreement 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.

### **16.3 Assignment**

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

### **16.4 Variation**

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

### **16.5 Waiver**

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

#### **16.6 Entire Agreement**

This Agreement 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 including the MOU dated \_\_\_\_\_ signed between the Parties relating to the subject matter hereof and thereof.

#### **16.7 Severance**

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

#### **16.8 Language**

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

#### **16.9 Counterparts**

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

#### **16.10 Governing law**

The laws of Indonesia govern this Agreement.

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

[Insert name of Party A]

a stamp duty of Rp 6,000

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

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

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

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

[Insert name of Party B]

## **SCHEDULE ONE**

### **Detailed Description of the Community Development Initiative or CAP to be Implemented Under This Cooperation Agreement**

Note: Insert here a detailed description of the community development initiative or CAP to be undertaken by the Parties on the terms of this Cooperation Agreement. Any plans, logical framework analysis (LFA) or other planning tool such as ZOPP (Objectives-oriented Project Planning) for the planned community development initiative and other supporting documents for the agreed community development initiative should also be attached to the signed copies of this Cooperation Agreement at the end of all Schedules.



## **SCHEDULE TWO**

### **Performance Reviews**

Note: Set out in this Schedule the dates on which performance reviews will take place (typically twice a year) and also outline the performance review process, with indications of expected performance.

## **SCHEDULE THREE**

### **Initial Agreed Support for Party B's Capacity Building**

Note: Describe in this Schedule the agreed support for Party B from Party A.

# **SCHEDULE FOUR**

## **Community Development Tools**

Note: The tools listed below are suggestions only. You should consider which of these and other tools will allow the Parties to work towards implementing an effective and sustainable community development initiative.

The Parties may use all or any of the following community development tools, as they believe appropriate from time to time.

- Community mapping or other participatory tools to allow community members to map out their community's physical layout and share their expert knowledge of community members and networks.
- 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.
- Risk analysis to identify risks to the planning process, including actual and potential conflicts and disputes within the community and its neighbouring communities that may need to be taken into account in the planning process.
- Stakeholder analysis to identify those within the community and in the wider context who have a legitimate interest in the design process.
- Socioeconomic analysis of the community in its larger context to gather baseline data on issues of potential focus.
- Community scorecards to help empower the community's members to monitor the design process and provide an instrument of accountability for the Parties.

## **SCHEDULE FIVE**

### **Initial Agreed Budget and Payments Schedule and Timetable of Activities**

Note: When preparing the budget and payments schedule, consider, among other things, the following issues:

1. The budget should contain an amount to cover Party B's indirect management and administrative costs as well as amounts to cover the direct costs of performing its obligations under this Cooperation Agreement.
2. Party B may need funding up front, after signing this Cooperation Agreement, in order to mobilise staff and resources to carry out its role as project manager. If so, the payments schedule should allow for this.
3. To enable transparency and accountability and no mixing of funds, the payments schedule should provide funding to Party B in advance of its obligations to make payments.
4. It would be customary for the Party A to withhold payment of the final scheduled payment until the Party B has provided a final satisfactory report and acquittal of funds at the end of the project.
5. The budget should include reference to the in-kind, non-monetary contributions that Party A will provide in support of the work of the Parties under this Cooperation Agreement.
6. This Schedule should also contain an Activities Schedule setting out deliverables and key performance indicators (KPIs) and other aspects of the work to be done under this Cooperation Agreement.

**Attachment “A”: Community Action Plan and/or other relevant planning documents**

**Attachment “B”: Party A’s Code of Conduct**

