

ANNEXES

**Note that each of the annexes to this report is also available as a stand-alone document that can be downloaded without cost from TNP2K's website:
<http://www.tnp2k.go.id>**

ANNEX 1

PRECEDENT

MEMORANDUM OF UNDERSTANDING TO PLAN CSR-SUPPORTED COMMUNITY DEVELOPMENT

(Long Version)

Contents

Parties & Background

1. Definitions and interpretation
 - 1.1 Definitions
 - 1.2 Interpretation
2. Agreement to work together
 - 2.1 Parties to work together
 - 2.2 Term
 - 2.3 Performance reviews
 - 2.4 Intention to be legally bound
3. The planning process
 - 3.1 Standard of work
 - 3.2 Communications and socialization
 - 3.3 Community development tools
 - 3.4 Sustainability
 - 3.5 Consultations with governmental agencies
 - 3.6 Preparation of a plan
 - 3.7 Use of planning tools
 - 3.8 Final plan must be in form agreed by both Parties
 - 3.9 Monitoring and evaluation
4. Role of Party A
 - 4.1 To provide CSR funds and in-kind support
 - 4.2 To pay CSR funds into nominated bank account
 - 4.3 To provide Party B with support for capacity building
 - 4.4 To provide other resources
 - 4.5 To provide guidance on future CSR funding budget
 - 4.6 Security plan
 - 4.7 To work to prevent or resolve community disputes
5. Role of Party B
 - 5.1 To undertake project management and apply professional skills
 - 5.2 To manage the agreed budget, payments schedule and timetable of activities
 - 5.3 To manage payments
 - 5.4 To report and account to Party A
 - 5.5 To allow records and accounts to be audited by Party A and its advisors
 - 5.6 To ensure any lawful government charges are paid and recorded
6. Good governance and decision making
 - 6.1 Decision-making process
 - 6.2 Commitment to ethical conduct
 - 6.3 Conflicts of interest
 - 6.4 Compliance with laws

7. Contractors and suppliers
8. Insurance
9. Events beyond a Party's control
10. Representations
 - 10.1 Representations by Party A
 - 10.2 Representations by Party B
11. Consequences of agreement on a plan
12. Inability to agree or commit
13. Dispute resolution
 - 13.1 Dispute resolution procedure
 - 13.2 Right to approach a court for urgent relief unaffected
14. Termination
 - 14.1 Termination for breach
 - 14.2 Termination on the basis of the results of a performance review
 - 14.3 Other remedies unaffected
 - 14.4 Consequences of termination
 - 14.5 Waiver of Article 1266 of the Indonesian Civil Code
15. Confidentiality
 - 15.1 Confidential information
 - 15.2 Confidential information to be kept secret
 - 15.3 Confidentiality obligations to survive termination
16. Intellectual Property Rights
 - 16.1 No transfer of pre-existing Intellectual Property Rights
 - 16.2 Ownership of Intellectual Property Rights developed under this MoU
 - 16.3 Obligations to survive termination
17. Other assets
18. General provisions
 - 18.1 Notices
 - 18.2 Relationship of the Parties
 - 18.3 Assignment
 - 18.4 Variation
 - 18.5 Waiver
 - 18.6 Entire agreement
 - 18.7 Severance
 - 18.8 Languages
 - 18.9 Counterparts
 - 18.10 Governing law

Signature page

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

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: [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 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: [insert date] _____ and will end on: [insert date] _____ 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: [insert 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 [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 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.

[Insert name of Party A]

[Insert name of Party B]

a stamp duty of Rp 6,000

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

ANNEX 2

**EXPLANATORY NOTES FOR
PRECEDENT MEMORANDUM OF UNDERSTANDING TO PLAN CSR-SUPPORTED
COMMUNITY DEVELOPMENT
(long version)**

Introduction

These notes explain briefly how to use the long version of the precedent Memorandum of Understanding (MoU) to plan community development.

The MoU is designed as a practical knowledge tool to facilitate effective planning and design of CSR-supported development work in Indonesian communities.

It is primarily intended for use as the basis for preparing a legally-binding contract between:

- a company or an Indonesian state-owned enterprise; and
- a registered not-for-profit community-based or civil society organisation with expertise in community development,

that propose to work together on planning CSR-supported community development.

By making the precedent document available, TNP2K encourages companies and state-owned enterprises to work together with civil society organisations to design and plan community development initiatives that are thoughtful, well-targeted and likely to achieve a sustainable reduction in poverty in Indonesian communities.

However, the precedent MoU could also be useful for:

- a philanthropic organisation that contributes funding for community development from sources other than CSR; and
- organisations involved in disaster relief within Indonesia that need to quickly document the agreed terms on which they will jointly contribute to planning social assistance in disaster-affected communities.

Important note on seeking legal advice

Each party should seek its own legal advice before signing any legally-binding contract based on the precedent MoU to ensure that its legal rights and interests are properly protected.

Further, the parties should ensure that signing a contract based on the MoU does not in any way contravene the prevailing laws and regulations. For instance, the funding for designing and planning (and implementing) community development must not be derived from any illegal activities or money laundering or contravene any other regulations that specifically apply to the parties due to their status and/or business activities.

Legal disclaimer

Please note that the important legal disclaimer on the reverse of the cover of the report to which this document is annexed applies to the long and short versions of the precedent MoU and these explanatory notes.

Contents of the precedent MoU

The MoU suggests ways of providing for the rights and obligations of each of the parties and the process they will follow in forming a working partnership to design and plan community development initiatives.

Although the precedent aims to strike a fair balance between the parties where their interests may be different, the parties should always carefully consider whether the provisions set out in the MoU are

fair and appropriate for their own particular needs and circumstances. The MoU should not be used as a rigid precedent. It should be used as a guide and should always be amended as necessary to reflect your actual circumstances.

Note that the MoU refers to Party A and Party B throughout but you should feel free to replace these terms with the names of the actual parties or use the terms “company” and “civil society organisation” if you prefer.

The following paragraphs are designed to help you understand the purpose of each provision in the precedent document and to prompt you to consider if the provision is suitable for your needs or if it should be changed or deleted.

You may need to draft and insert new provisions to cover issues that are not included in the precedent MoU but that need to be covered to meet the needs of the parties and their particular circumstances.

The following numbers refer to the numbered articles and sections in the MoU.

1. PARTIES AND BACKGROUND

Is each party a legal entity?

The parties must be legal entities if they wish to use the MoU to form a legally-binding contract.

If a community-based organisation is not a registered legal entity, it could still use the MoU as a source of ideas and language for a less formal, non-legally-binding document that sets out the intentions of the group and a company to work together on community development planning work with the support of CSR funding.

What are you planning to do?

Delete the reference to a community action plan (and the definition of a community action plan in section 1) if you wish to plan only one or more community development initiatives rather than a complete community action plan.

Do any CSR laws apply?

The Background should refer to any Indonesian legislation that applies to CSR activities and spending by the company so it is clear what legal obligations the company needs to meet. If no CSR laws apply, delete the references to legislation.

Definitions and interpretation

Check that the existing definitions make sense for your needs. When amending the document to suit your needs, add new definitions for any new terms that you use a lot in your document, to make it easier to read.

The interpretation section explains that headings (although they help the reader) are of no legal importance when interpreting the document and that certain words will be legally interpreted as including other words.

2. AGREEMENT TO WORK TOGETHER

Why are you entering this MoU?

Section 2.1 should explain accurately what the parties intend to do in their work together.

Term of the MoU

Insert the dates on which you intend the MoU to start and finish and the anticipated dates for the performance reviews. Agree on the details of a performance review from the start, including the aspects of performance that will be assessed and the expectations of the company as to the standards of work to be met by civil society organisation staff. Set these out in writing as a guide for the civil society organisation. This guide can be inserted in a schedule to the MoU.

Performance reviews

Section 2.3 provides for regular performance reviews.

Do you intend to be legally bound by the MoU?

If you are using the MoU as the basis for a less formal, non-legally-binding agreement, delete section 2.4.

3. THE PLANNING PROCESS

Standards of work to apply

Article 3 commits the parties to using professional community development principles and practices in their planning work, including undertaking a participatory needs assessment to identify community needs and priorities.

Communications and public awareness process

Section 3.2 requires the establishment of a robust communications and public awareness process and gives the civil society organisation the responsibility for arranging and carrying out public communications, provided the company has first approved them. Develop the communications protocol early in the relationship, setting out an agreed regime for communicating or exchanging information when needed between the parties and other stakeholders. It could also cover ethics, confidentiality and the approvals required for internal and external communications, media announcements and publications.

Potentially useful community development tools

A number of potentially useful community development tools are listed in section 3.3 to prompt you to consider whether it would be appropriate to use any or all of them.

The civil society organisation may be best placed to advise whether any particular tool should be used and, if so, whether section 3.3 should be reworded to explain how and when the tool will be applied.

The aim is sustainable development

The parties commit in section 3.4 to aim for a sustainable improvement in the community with which they are working.

They also agree that their work should be aligned with the company's existing code of conduct and sustainability principles (if any) and its prior community engagement activities.

The importance of working with government

Section 3.5 deals with the issue of understanding relevant governmental development plans and priorities for the community so you can ensure your work complements and supplements government-budgeted community development initiatives but does not replace them.

Consider drawing on all the resources that government ministries and agencies have to offer that could assist your planning work. In particular, take advantage of the information and guidance available from the National Team for the Acceleration of Poverty Reduction (TNP2K) and the relevant regional poverty reduction coordination teams (TKPKD) to ensure that your initiatives will be well targeted to achieve a sustainable reduction in poverty in the relevant community.

Consider if you should enter into a technical cooperation agreement with a government agency under which the agency commits to cooperating with your work. Many legal regulations relate to government funding and budgeting processes and some of these could apply in this context so obtain legal advice on such matters before signing any agreement with a government agency.

If there is a CSR forum comprising local government and companies (and sometimes civil society organisations) actively coordinating CSR activities in the area, you may benefit from working with it, particularly in identifying gaps in development needs and the potential for synergies with other companies' CSR-funded initiatives and government development programmes.

Working with the CSR forum could also help you identify lessons learnt from previous community development activities in the area and prevent you from repeating mistakes.

Form of your planning work

If necessary, change the descriptions of the community action plan and the planning tools to be used in sections 3.6 and 3.7 to reflect your actual intentions and to add further helpful detail.

Both parties must agree on a plan before they can implement it

Section 3.8 states that the parties cannot proceed to implement their planning work unless and until both of them have agreed on its form. The consequences for the parties if they cannot agree are set out in article 12.

Monitoring and evaluation

Given the importance of being able to measure the effectiveness of your work together, section 3.9 deals with building monitoring and evaluation into your plans. This section could be expanded to give more detail if required.

4. ROLE OF THE COMPANY ("Party A")

To provide CSR funds and in-kind support

In accordance with an agreed budget and payments schedule, the company agrees to pay the CSR funding into a special bank account set up by the civil society organisation to receive these funds. The parties should prepare the budget and payments schedule and attach it to the MoU. This schedule should also contain details of in-kind, non-monetary support that the company will contribute to the design work under the MoU. It may be amended from time to time to reflect changed circumstances but only if both parties agree to the amendment.

To provide the civil society organisation with support for capacity-building

It is important that the civil society organisation brings competent professional community development skills and up-to-date knowledge to the CSR partnership. It is also important that the civil society organisation has strong managerial and administrative capabilities. Strengthening these aspects of a civil society organisation working in the community is itself a form of sustainable

community development because the benefits should flow into the community and through to future development work by the organisation.

The MoU recognises the difficulties that civil society organisations can experience in obtaining funding for their staff to attend training courses, conferences and other capacity building activities. It contemplates that the company may provide additional funding as required to enable the civil society organisation to build its capabilities in ways that will benefit their work together. The company may also decide to offer mentoring, business coaching and training in reporting and keeping financial accounts, as appropriate, as well as to provide relevant template documents. All of these should improve the standard of the civil society organisation's work and the effectiveness of the company's investment under the MoU.

To provide other resources

Although the MoU contemplates that the civil society organisation will take on the role of project manager for the parties' activities (see article 5 below), the company agrees, in section 4.4, to contribute the full benefit of its technical and business knowledge, skills and experience to the planning work. It may be helpful to add further detail to this section to describe the actual technical assistance that the company will provide.

To provide guidance on future CSR funding budget

In order for the parties to build realistic budgeting into their planning work, the company will give the civil society organisation guidance on the amounts of future CSR funding that may be available to implement proposed community development initiatives.

Security plan

Where the community location is affected by conflict, the company will take responsibility for working with the civil society organisation on appropriate security arrangements to ensure that employees and contractors remain safe during the activities.

To work to prevent or resolve community disputes

The company will be primarily responsible for preventing or resolving actual or potential disputes within the community. The civil society organisation agrees to assist if required.

5. ROLE OF THE CIVIL SOCIETY ORGANISATION ("Party B")

To undertake project management

The civil society organisation, applying professional standards to its work, will act as project manager.

To manage the agreed budget

The civil society organisation will be primarily responsible for preparing and managing the budget, payments schedule and timetable of activities.

However, the civil society organisation will need to work closely with the company when preparing these documents to ensure the company agrees with them. The documents can be changed if necessary as work proceeds but only with both parties' consent.

The payments schedule must provide sufficient funds at the start of the term of the MoU to allow the civil society organisation to mobilise the staff and other resources it will need to carry out its role.

The civil society organisation will need to set up a special purpose bank account to receive CSR funding paid by the company. This account will ensure that the company's CSR funds do not become mixed with the organisation's general funds or with funding from another source. This will help bring transparency and accountability to the organisation's financial management.

The total budget for work under the MoU should be inserted in section 5.2(d).

The parties should include funding in the budget to cover the civil society organisation's indirect costs and administrative overheads. This component of the budget may be referred to as a "management fee" and in this case the relevant percentage of the total budget amount should be inserted in section 5.2(f). The amount allocated for this purpose is a matter for negotiation and should reflect a realistic assessment of the actual indirect costs the civil society organisation will incur in operating at a professional standard while undertaking its obligations under the MoU.

To manage payments

The civil society organisation is given responsibility for paying valid invoices from third party contractors and suppliers. Invoices should be addressed to the civil society organisation, include the name of the community and planning project and state the purpose of the payment.

Payments are to be made from the funds deposited by the company in the special bank account. However, to allow for flexibility, section 5.3 does contemplate that the company could decide to pay third party contractors and suppliers directly.

The company will have the right to audit payment invoices.

To report and account to the company

Section 5.4 obliges the civil society organisation to maintain and retain proper records and accounts for its work under the MoU.

Financial accounts should be prepared in accordance with the "generally accepted accounting standards" in Indonesia.

The civil society organisation should prepare periodic reports on activities that allow the company: to understand progress against objectives and key performance indicators; to identify promised and actual deliverables; and to identify and understand the reasons for (and any consequences of) any delays or deficiencies in performance. These reports should also include suggestions for improvements. It would be wise to agree on the format for periodic reports from the start and attach this format to the MoU.

The parties also need to agree on the frequency of reporting on financial and operational matters. Once agreed, reference to the agreed reporting periods could be inserted into section 5.4.

To allow records and accounts to be audited by the company and its advisors

The company will be entitled to audit the civil society organisation's records and accounts from time to time. The company should give the organisation reasonable notice of an audit and try to carry it out during regular business hours. If the company requires the organisation to provide audited accounts, the company should include funding for the cost of auditing in the budget.

To ensure any lawful government charges are paid and recorded

The budget should include any amounts to be paid to any government agency by way of a tax, levy or other charge and required by law. The civil society organisation will be responsible for making such lawful payments and ensuring that it receives written acknowledgement of them.

6. GOOD GOVERNANCE AND DECISION MAKING

Decision-making process

Design a process for making decisions that encourages trust to grow as your work together progresses. The process should allow effective and timely decision making in a transparent and accountable manner.

Section 6.1 sets out a suggested process under which the parties' representatives at various levels could meet at different intervals to make and review decisions. The suggested process involves the following elements:

- ☐ Those people involved in day-to-day planning meet together at least twice a week;
- ☐ Those same people meet together with their respective immediate supervisors at least once each week; and
- ☐ All those from the weekly meetings meet together with their appropriate higher level managers and any other relevant stakeholders at least once a month.

Section 6.1 suggests that, as is customary in Indonesia, decisions are made by consensus rather than by each party having a vote that carries a percentage value.

It is important for good governance that all decisions are documented and that minutes are circulated for comment, reviewed, amended as necessary and signed when correct.

Section 6.1 builds in flexibility in how meetings are held. This should be changed if necessary to reflect the parties' preferences.

Commitment to ethical conduct

Section 6.2 contains a commitment to ethical practices and states the importance of training and monitoring staff for ethical conduct.

Conflicts of interest

If either party becomes affected by a conflict of interest, it must work to remove or resolve that conflict as soon as possible so that neither party's reputation is damaged and their work together is not adversely affected by the conflict.

Compliance with laws

The parties should commit to abide by relevant laws. Where the company or the civil society organisation has international connections, these laws could include laws of foreign jurisdictions that deal with matters such as corrupt conduct, privacy or the protection of children. This issue needs to be explored during negotiations so both parties are clear as to what laws apply to their work together.

7. CONTRACTORS AND SUPPLIERS

In article 7, the civil society organisation is given responsibility for procuring contractors and suppliers and contracting directly with them. It commits to using good procurement practices that also comply with the company's tender requirements under its procurement policies or under the law. For example, state-owned enterprises are subject to regulations that specify the tender requirements to be followed.

To the extent possible, the civil society organisation agrees to give preference to local community contractors and suppliers.

Provision is made for the company to approve procurement decisions made by the civil society organisation where the value of the contract is above a certain value. The parties need to agree on and insert this threshold contract value in section 7(f).

8. INSURANCE

The civil society organisation will be responsible for obtaining any agreed insurance policies. If the company does not require the organisation to do this, article 8 can be deleted.

9. EVENTS BEYOND A PARTY'S CONTROL

A party will not be in breach of the MoU if it cannot perform its obligations due to events beyond its control. This exemption from breach does not apply to any failure by the company to pay the agreed CSR funding.

Article 9 allows one party to terminate the MoU if the other party is unable to perform its obligations for longer than three months (or some other agreed period) due to events beyond the affected party's control.

The unaffected party is not, however, obliged to terminate the MoU. It could continue to wait longer than the agreed period for the other party to resume operating.

The parties should consider whether three months is appropriate or if some other period would better suit their circumstances.

10. REPRESENTATIONS

Each party should have made inquiries to check the reputation and capabilities of the other well before they get to the stage of negotiating an MoU. Article 10 provides formal representations from each party as to their legal nature, their legal capacity to contract and ability to carry out their obligations under the MoU without giving rise to any conflict of interest or breach of regulations or ethical principles.

11. CONSEQUENCES OF AGREEMENT ON A PLAN

If the parties complete their planning work under the MoU to their mutual satisfaction and the civil society organisation wishes to work with the company to implement any agreed community development initiative, the parties would need to agree the terms on which they would do so.

They could use the precedent Cooperation Agreement as the basis for their negotiations because it has deliberately been drafted to contain similar terms to this MoU and so should be easy to use.

Article 11 allows the company to set a reasonable period to conclude those negotiations. If at the end of that period the parties have not come to an agreement, the company will be free to work with another civil society organisation or to undertake the proposed plan itself.

12. INABILITY TO AGREE OR COMMIT

If the parties decide to stop working together under the MoU or if the company notifies the civil society organisation that for unexpected reasons or reasons outside its control it will not be able to provide CSR funding to implement the parties' planning, the MoU will terminate.

In such a situation, article 12 provides that the company will fund the civil society organisation's reasonable costs of closing down the CSR partnership's work.

13. DISPUTE RESOLUTION

Dispute resolution procedure

If a dispute arises between the parties that cannot be settled by senior management, article 13 provides for the dispute to be referred to mediation by a respected independent person. If mediation fails, the parties agree to refer the dispute to be settled by a court in the relevant jurisdiction.

Right to approach a court for urgent relief unaffected

The above procedure does not stop a party approaching a court for urgent relief at any time.

14. TERMINATION

Termination for breach

Article 14 sets out a number of reasons why the MoU could terminate. These are, in brief:

- ☐ breach of contractual obligations;
- ☐ conduct likely to damage the parties' work;
- ☐ insolvency;
- ☐ corrupt conduct; or
- ☐ the company has reasonable grounds to believe, as the result of a performance review, that the civil society organisation does not have the capabilities required to carry out its obligations.

Other remedies unaffected

A party terminating the MoU for breach under article 14 does not lose any other remedies it may have under Indonesian law.

Consequences of termination

Section 14.4 sets out the consequences of termination, including the need for the parties to settle outstanding business between them and with third party suppliers and contractors, and close down their work.

The civil society organisation must give the company a final report and acquittal of expenditure and deal properly with records and accounts as agreed with the company.

The section allows the civil society organisation to retain copies of documents needed for internal governance purposes and documents that would enable it to retain the benefit of professional learning.

Unused CSR funds must be returned to the company unless the company agrees that the civil society organisation may apply them for another purpose.

Waiver of article 1266 of the Indonesian Civil Code

The parties agree to waive their legal right to ask a court to approve the termination of the MoU.

15. CONFIDENTIALITY

Confidential information

Section 15.1 is an acknowledgement by both parties that they may exchange confidential information. For example, the civil society organisation may learn confidential information about the company's business and financial affairs. The section also provides that the MoU, once signed, is a confidential document and that the parties should keep its terms and conditions confidential.

Confidential information to be kept secret

Each party agrees to keep any confidential information provided to it secret and not to use it for its own benefit or to the detriment of the other. There are exceptions given, including the right of the civil society organisation to disclose confidential information on a confidential basis to any civil society network it belongs to, where the disclosure is required to enable it to perform its obligations under the MoU.

Confidential obligations to survive termination

It is important to understand that section 15.3 means that confidentiality obligations will survive termination of the MoU for an indefinite period.

16. INTELLECTUAL PROPERTY RIGHTS

No transfer of pre-existing Intellectual Property Rights

Intellectual Property Rights is a defined term.

Section 16.1 provides that the pre-existing Intellectual Property Rights of either party are not transferred to the other party when the parties enter into the MoU. Those pre-existing rights remain with the party that owns them.

Ownership of Intellectual Property Rights developed under the MoU

However, Intellectual Property Rights that are developed by either party in performance of its duties under the MoU will become the joint property of both parties. Accordingly, the party that creates the rights (for example, by preparing copyright material or creating a trade mark or an industrial design or patentable device) must immediately disclose information about them to the other party.

If this regime for ownership of intellectual property does not suit the parties, amend this provision to reflect your agreed regime.

Obligations to survive termination

The obligations to disclose jointly-owned Intellectual Property Rights survive termination of the MoU for an indefinite period.

17. OTHER ASSETS

Article 17 provides that, if and when the MoU terminates, assets other than intellectual property will be transferred to the community with which the parties have been working, unless the company and civil society organisation agree that the organisation could make better use of those assets.

18. GENERAL PROVISIONS

Notices

Section 18.1 sets out how each party should communicate with the other and contains address details.

Relationship of the parties

Section 18.2 makes it clear that the parties are not forming a legal partnership or a relationship of employment or agency by working together under the terms of the MoU.

It is important that employees of each party do not represent to anyone that they are authorised to represent or to bind the other party contractually.

Assignment

Neither party is allowed to assign its rights under the MoU unless the other party first agrees to that assignment.

Variation

No change can be made to the MoU unless both parties agree in writing to make that change.

Waiver

Any waiver by a party of a right under the MoU has no effect unless it is evidenced in writing.

Entire agreement

Section 18.6 provides that the MoU represents the whole agreement between the parties with respect to its subject matter. If the parties wish to preserve the effect of earlier related documents they have signed, they should mention them specifically in this section 18.6.

Severance

If any provision of the MoU is void, illegal or not enforceable, it can be deleted and the remaining provisions of the MoU will remain in effect.

Languages

If the MoU is prepared in English and in Bahasa Indonesia, the English version can be signed first and take effect before the Bahasa Indonesia version is signed. However, if there is any inconsistency between the versions, the meaning of the section of the MoU written in Bahasa Indonesia will prevail.

Counterparts

To assist with the practicalities of signing, the parties may sign identical copies of the MoU. If they do, the copies together will constitute one legal document.

Governing law

The laws of Indonesia govern the MoU.

SIGNING THE MoU

Each party should formally authorise in writing, in accordance with its internal governance procedures, the person who is entitled to sign the MoU on behalf of that party.

ANNEX 3

PRECEDENT

MEMORANDUM OF UNDERSTANDING TO PLAN CSR-SUPPORTED COMMUNITY DEVELOPMENT INDONESIA

(short version)

The First Party

Name :

Authorised representative :

Contact details :

The Second Party

Name :

Authorised representative :

Contact details :

Both the First Party and the Second Party shall be referred to as the “**Parties**”.

BACKGROUND

The Parties wish to work together on the terms of this Memorandum of Understanding (MOU), supported by corporate social responsibility (CSR) funding and in-kind support from the First Party, to design a community development initiative for the village named: _____, located in _____, Indonesia.

- 1. Parties will work together closely:** The Parties agree to work together closely to design a community development initiative as set out in this MOU. The Second Party agrees to comply with the First Party’s code of conduct (as attached in Attachment 1) during the course of its work under this MOU.
- 2. The First Party will provide CSR funding:** The First Party will provide funding and in-kind contributions to support the design work, as set out in the Budget and Payments Schedule in Schedule One.
- 3. The Second Party will set up a special bank account:** The Second Party will ensure that all CSR funds are deposited in a special bank account set up for that purpose and are not mixed with the Second Party’s other money.
- 4. The Second Party is accountable for funds management:** The Second Party is accountable for keeping accurate records of payments made into and from the special bank account and will prepare financial accounts and reports in the form required by the First Party. On giving the Second Party reasonable notice, the First Party will be entitled to audit the Second Party’s financial and other records of work done under this MOU. If the First Party requires the Second Party to provide audited accounts to the First Party, the First Party will include in the budget sufficient funding to pay the cost to the Second Party of preparing audited accounts.
- 5. Parties will apply professional tools and standards:** The Parties will apply professional community development principles and practices to their work, 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 Two. They will also set up a robust process for communicating with, and receiving complaints and other feedback from the community and other stakeholders.
- 6. Initiative will be carefully designed:** The Parties agree to design a CSR-supported community development initiative that:
 - a. is based on evidence of needs in the community;

- b. takes into account information and guidance available from The National Team for the Acceleration of Poverty Reduction (TNP2K) and the relevant Regional Poverty Reduction Coordination Team (TKPKD) and is well targeted and likely to reduce poverty and bring sustainable benefits to the community;
 - c. 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;
 - d. is aligned with the First Party's business needs and resources;
 - e. is appropriate given the Second Party's experience, skills and expertise;
 - f. will fill gaps in or complement, but not replace, governmental development activities;
 - g. that is aligned with, and improves, 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 implementing regulation; and
 - h. that complies with all other relevant aspects of any applicable law (including the Law on Villages) and relevant local regulations on corporate social responsibility.
- 7. The Second Party will act as project manager:** The Second Party will be responsible for managing the design process, in close consultation with the First Party. As a first step the Parties agree to develop a road map that identifies potential initiatives that may be of value to the community and that match up with what the Parties have to offer by way of experience, expertise, skills and other resources.
- 8. Proper tendering process will be used:** The Second Party will be responsible for carrying out a tender process for selecting any third party contractors and suppliers. The process must comply with the First Party's policies and requirements for selecting approved vendors. Both Parties must agree on the appointment of all third party contractors and suppliers. The Second Party will be responsible for contracting directly with the approved contractors and suppliers.
- 9. The First Party will support capacity building of the Second Party:** The First Party agrees to support the Second Party to increase its administrative, managerial and professional capabilities by providing technical assistance, business coaching and training on matters such as occupational safety and health from time to time, provided the Parties agree that such support will benefit the Parties' design work under this MOU. This support will include that set out in Schedule Three.
- 10. Decision-making process:** The authorised representatives of the Parties will meet to discuss progress and make decisions on the design process as set out in Schedule Four. All decisions will be made by consensus and recorded in writing signed by the representatives.
- 11. Socialization and ownership:** While the Parties will encourage the community to be part of the design process for a community development initiative, they will also ensure that their respective contributions are fairly and publicly acknowledged within the community and with relevant government agencies and other stakeholders. An agreed form of communications protocol to manage the communication of information, including identification of responsible people, approval procedures and ethical and confidentiality issues is attached to this MOU as Attachment 2.

- 12. Monitoring and evaluation:** The Second Party will establish a process for monitoring and evaluating the effectiveness of its planning work under this MOU. The process must be acceptable to the First Party and must involve community participation by way of informal consultation and feedback or through more formal methods, such as use of community scorecards or citizen report cards, as agreed between the Parties.
- 13. Periodic performance reviews:** On the performance review dates set out in Schedule Five, the Parties will undertake a review of the Second Party's performance. The review will allow both Parties an opportunity to assess the Second Party's performance, to provide the Second Party's management with professional development evaluations, and to identify areas for continuous improvement by both Parties. The review will cover the items described in Schedule Five.
- 14. Confidential information and intellectual property:** The Parties will protect and not misuse any confidential information that they exchange during their work together. Any information obtained from The National Team for the Acceleration of Poverty Reduction's (TNP2K) Basis Data Terpadu will be used only for poverty alleviation purposes and not for commercial gain or political purposes. Each party will respect the intellectual property rights of the other Party. Any intellectual property created during the design work will belong jointly to both Parties.
- 15. Commitment to ethical practices:** The Parties will demonstrate a commitment to ethical practices, accountability and transparency throughout their work together. If a Party is affected by any conflict of interest, it will disclose that conflict to the other Party and work to resolve it.
- 16. Dispute resolution:** Any dispute that cannot be resolved by senior management executives of the Parties will be referred for resolution to a respected independent mediator who is acceptable to both Parties. If the dispute is not settled by mediation within a reasonable period of time, either Party may refer the dispute to the court of _____ in _____.
- 17. Term of this MOU:** The Parties intend to work together during the period starting on: [insert date] _____ and ending on [insert date] _____ provided that the First Party may terminate this MOU at any time with a 7 (seven) business days' prior notice if the results of any periodic evaluation of the Second Party's performance are not reasonably satisfactory to the First Party. A Party may terminate this MOU if the other Party is in breach of its terms and that breach is not remedied within a reasonable period or cannot be remedied, by giving the other Party at least 7 (seven) business days' prior written notice.
- 18. Consequences of termination:** When the Parties' work together under this MOU ends, they will do whatever is needed to close down their activities in a professional manner, including paying any invoices that are due and payable. The Second Party will prepare a final report to the First Party on work performed and a set of final financial accounts that provides an acquittal for all CSR funding and in-kind contributions received. The First Party will, if necessary, provide the Second Party with sufficient funding to cover the costs of preparing the final report and accounts. The Parties agree to waive their legal right under Article 1266 of the Indonesian Civil Code to ask a court to approve the termination of the MOU.
- 19. MOU legally binding:** The Parties intend to be legally bound by this MOU. The laws of Indonesia govern this MOU.

SIGNATURE PAGE

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 below.

**Signed by the First Party
by its Authorised Representative:**

**Signed by the Second Party
by its Authorised Representative:**

a stamp duty of Rp 6,000

Name : _____

Name : _____

Title : _____

Title : _____

Date : _____

Date : _____

Schedules follow:

Schedule One : Budget and Payments Schedule

Schedule Two : Community Development Tools

Schedule Three : Activities in support of the Second Party's capacity building

Schedule Four : Decision-making Process

Schedule Five : Performance Reviews

Attachments:

1. The First Party's Code of Conduct
2. Communications Protocol

SCHEDULE ONE

Budget and Payments Schedule

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

1. The budget should contain an amount to cover the Second Party's indirect management and administrative costs as well as amounts to cover the direct costs of performing its obligations under the MOU.
2. The Second Party may need funding up front, after signing the MOU, 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 the Second Party in advance of its obligations to make payments
4. It would be customary for the First Party to withhold payment of the final scheduled payment until the Second Party 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 support that the First Party will provide in support of the design work under this MOU.

SCHEDULE TWO

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 design an effective and sustainable community development initiative. One of the important outputs of their work under this MOU could be a logical framework analysis or other objectives-oriented planning tool such as ZOPP (objectives-oriented project planning) for the planned 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 THREE

Activities in support of the Second Party's capacity building

Note: Describe in this Schedule the agreed support by way of training, mentoring and business coaching and funding the attendance of the Second Party's staff and consultants at external training workshops and conferences and any other educational initiatives that the First Party is willing to provide to assist the Second Party to build its capabilities and enhance the Parties' work together under this MOU.

SCHEDULE FOUR

Decision-making Process

Note: Describe in this Schedule a decision-making process that suits your needs, naming the people who will be involved in making decisions at each level.

An example of a decision-making process with regular meetings is:

1. the people from each Party who are involved in day-to-day activities meet twice each week;
2. those people and their immediate supervisors meet once each week; and
3. all of the above people and senior management executives from each Party meet once each month.

SCHEDULE FIVE

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 the First Party's expectations of the Second Party's performance.

ATTACHMENTS:

1. The First Party's Code of Conduct

Note: A copy of the First Party's Code of Conduct, sustainability principles or equivalent document, setting out the standards of behaviour expected of the First Party's employees and contractors in areas such as occupational safety and health, equality of treatment, and cultural issues, should be attached to the signed MOU.

2. Communications Protocol

Note: A communications protocol should be developed early in the relationship 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, media announcements and publications.

ANNEX 4

PRECEDENT

COOPERATION AGREEMENT TO UNDERTAKE CSR-SUPPORTED

COMMUNITY DEVELOPMENT

(long version)

Contents

Parties & Background

1. Definitions and interpretation

- 1.1 Definitions
- 1.2 Interpretation

2. Agreement to work together

- 2.1 CAP has been prepared
- 2.2 Parties to work together
- 2.3 Term
- 2.4 Performance reviews
- 2.5 Intention to be legally bound

3. Role of Party A

- 3.1 To provide CSR funds
- 3.2 To pay CSR Funds into nominated bank account
- 3.3 To provide Party B with support for capacity building
- 3.4 To provide other resources
- 3.5 To transfer skills and experience
- 3.6 In-kind expenditure
- 3.7 Security plan
- 3.8 To work to prevent or resolve Community disputes

4. Role of Party B

- 4.1 To act as project manager
- 4.2 To apply professional skills
- 4.3 To maintain records and accounts
- 4.4 To allow records and accounts to be audited by Party A and its advisors
- 4.5 To report and account to Party A and decision-makers
- 4.6 To manage agreed budgets, payments schedules and timetables of activities
- 4.7 To manage payments
- 4.8 To ensure any lawful government charges are paid and recorded
- 4.9 To manage planning tools
- 4.10 To obtain and hold approvals and assets

5. Good governance and decision making

- 5.1 Decision-making process
- 5.2 Commitment to ethical conduct
- 5.3 Conflicts of interest
- 5.4 Compliance with laws

6. The implementation process

- 6.1 Standard of work
- 6.2 Communications and socialization
- 6.3 Monitoring and evaluation
- 6.4 Consultations with governmental agencies

7. Contractors and suppliers

8. Insurance

9. Events beyond a Party's control

10. Representations

- 10.1 Representations by Party A
- 10.2 Representations by Party B

11. Dispute resolution

- 11.1 Dispute resolution procedure
- 11.2 Right to approach a court for urgent relief unaffected

12. Termination

- 12.1 Termination for breach
- 12.2 Termination on the basis of the results of a performance review
- 12.3 Other remedies unaffected
- 12.4 Consequences of termination
- 12.5 Waiver of Article 1266 of the Indonesian Civil Code

13. Confidentiality

- 13.1 Confidential information
- 13.2 Confidential information to be kept secret
- 13.3 Confidentiality obligations to survive termination

14. Intellectual Property Rights

- 14.1 No transfer of pre-existing Intellectual Property Rights
- 14.2 Ownership of Intellectual Property Rights developed under this Agreement
- 14.3 Obligations to survive termination

15. Other assets

16. General provisions

- 16.1 Notices
- 16.2 Relationship of the Parties
- 16.3 Assignment
- 16.4 Variation
- 16.5 Waiver
- 16.6 Entire agreement
- 16.7 Severance

- 16.8 Languages
- 16.9 Counterparts
- 16.10 Governing law

Signature page

Schedule One - Detailed Description of the Community Development Initiative to be Implemented Under This Cooperation Agreement

Schedule Two - Performance Reviews

Schedule Three - Initial Agreed Support for Party B's Capacity Building

Schedule Four – Community Development Tools

Schedule Five - Initial Agreed Budget and Payments Schedule and Timetable of Activities

Annexure "A" – Community Action Plan and/or other relevant planning documents

Annexure "B" – Party A's Code of Conduct

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]

[Insert name of Party B]

a stamp duty of Rp 6,000

Name : _____

Name : _____

Title : _____

Title : _____

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

ANNEX 5

EXPLANATORY NOTES FOR PRECEDENT COOPERATION AGREEMENT TO UNDERTAKE CSR-SUPPORTED COMMUNITY DEVELOPMENT (Long Version)

Introduction

These notes explain briefly how to use the long version of the precedent Cooperation Agreement (the Agreement) to undertake community development.

The Agreement is designed as a practical knowledge tool to facilitate the effective implementation of agreed plans for CSR-supported development work in Indonesian communities.

It is intended primarily for use as the basis for preparing a legally-binding contract between:

- a company or an Indonesian state-owned enterprise; and
- a registered not-for-profit community-based or civil society organisation with expertise in community development,

that propose to work together on implementing agreed plans for CSR-supported community development.

By making the precedent document available, TNP2K encourages companies and state-owned enterprises to work together with civil society organisations in undertaking community development that is well targeted and likely to achieve a sustainable reduction in poverty in Indonesian communities.

However, it could also be useful for:

- a philanthropic organisation that contributes funding for community development from sources other than CSR; and
- organisations involved in disaster relief within Indonesia that need to quickly document the agreed terms on which they will jointly contribute to implementing agreed plans for social assistance in disaster-affected communities.

Important note on seeking legal advice

Each party should seek its own legal advice before signing any legally-binding contract based on the precedent Agreement to ensure that its legal rights and interests are properly protected.

Further, the parties should ensure that signing a contract based on the precedent Agreement does not in any way contravene the prevailing laws and regulations. For instance, the funding for community development must not be derived from any illegal activities or money laundering or contravene any other regulations that specifically apply to the parties due to their status and/or business activities.

Legal disclaimer

Please note that the important legal disclaimer on the reverse of the cover of the report to which this document is annexed applies to the long and short versions of the precedent Cooperation Agreement and these explanatory notes.

Contents of the precedent Cooperation Agreement

The Agreement contains suggested ways of providing for the rights and obligations of each of the parties and the process they will follow in forming a working partnership to implement community development initiatives.

Although it tries to strike a fair balance between the parties where their interests may be different, the parties should always consider carefully whether the provisions set out in the Agreement are fair and appropriate for their own particular needs and circumstances. The Agreement should not be used as a rigid precedent. It should be used as a guide and should always be amended as necessary to reflect your actual circumstances.

Note that the Agreement refers to Party A and Party B throughout but you should feel free to replace these with a reference to the actual parties' names or use the terms "company" and "civil society organisation" if you wish to do so.

The following paragraphs are designed to help you understand the purpose of each of the provisions in the precedent document and to prompt you to consider if the provision is suitable for your needs, or needs to be changed or deleted.

Please remember that you may need to draft and insert new provisions to cover issues that are not included in the precedent Agreement but that need to be covered to meet the needs of the parties and their particular circumstances.

The following numbers refer to the numbered articles and sections in the precedent Agreement.

1. PARTIES AND BACKGROUND

Is each party a legal entity?

The parties must be legal entities if they wish to use the precedent Agreement to form a legally-binding contract.

If a community group is not a registered legal entity, it could still use the precedent Agreement as a source of ideas and language for a less formal, non-legally-binding document that sets out the intentions of the group and a company to work together on community development work with the support of CSR funding.

Do any CSR laws apply?

The background should refer to any Indonesian legislation that applies to CSR activities and spending by the company so it is clear what legal obligations the company needs to meet. If no CSR laws apply, delete the references to legislation.

Definitions and interpretation

Check that the existing definitions make sense for your needs. Add new definitions for any new terms that you will use a lot in your document to make it easier to read.

The interpretation section explains that headings (although they help the reader) are of no legal importance when interpreting the document and that certain words will be legally interpreted as including other words.

2. AGREEMENT TO WORK TOGETHER

Parties to work together to implement agreed plans for community development

Sections 2.1 and 2.2 deal with the fundamental agreement of the parties to work together on the terms of the Agreement. Schedule one should set out a detailed description of the agreed community development initiative or community action plan, including a copy of the relevant logical framework

analysis or other planning and analysis tool. All relevant planning documents should be attached to the signed agreement.

If the initiative does not involve a community action plan, replace the references to a community action plan (CAP) with references to the relevant initiative.

Term of the Agreement

Insert in section 2.3 the dates on which you intend the Agreement to start and finish.

Performance reviews

Agree on the details of a performance review from the start, including the aspects of performance that will be assessed and the expectations of the company as to the standards of work to be met by civil society organisation staff. Set these out in writing as a guide for the civil society organisation. This guide can be inserted as schedule two.

Do you intend to be legally bound by the Agreement?

If you are using the precedent Agreement as the basis for a less formal, non-legally-binding agreement, section 2.5 should be deleted.

3. ROLE OF THE COMPANY ("Party A")

To provide CSR funds

In accordance with an agreed budget and payments schedule, the company agrees to pay the CSR funding required for the activities into a special bank account set up by the civil society organisation to receive these funds. The parties should prepare the initial agreed schedule and include it as schedule three to the Agreement prior to signing. Note that it may be amended from time to time to reflect changed circumstances but only if both parties agree to the amendment.

To provide support for the civil society organisation's capacity-building activities

It is important that the civil society organisation brings competent professional community development skills and up-to-date knowledge to the CSR partnership. It is also important that the organisation has strong managerial and administrative capabilities. Strengthening these aspects of a civil society organisation working in the community is itself a form of sustainable community development because the benefits should flow into the community and through to future development work by the organisation.

The Agreement recognises the difficulties civil society organisations can experience in obtaining funding for their staff to attend training courses, conferences and other capacity-building activities. It contemplates the idea that the company may provide additional funding as required to enable the organisation to build its capabilities in ways that will benefit their work together. The company may also decide to offer mentoring, business coaching and training in reporting and keeping financial accounts, as appropriate, as well as to provide relevant template documents. All of these should improve the standard of the civil society organisation's work and the effectiveness of the company's investment under the Cooperation Agreement. The types of support agreed from the start can be inserted in schedule four.

To transfer skills and experience

Although the Agreement contemplates that the civil society organisation will take on the role of project manager for the parties' activities (see article 4 below), the company agrees, in sections 3.4 and 3.5, to contribute the full benefit of its technical and business knowledge, skills and experience to the planning work and to transfer skills where possible, particularly where these will enable the community to maintain the assets created by the parties. Add further detail to this section to describe the actual technical assistance that the company will provide.

To provide in-kind expenditure

Section 3.6 allows the company to provide in-kind assistance to the parties' work together instead of providing cash payments.

Security plan

Where the community location is affected by conflict, the company will take responsibility for working with the civil society organisation on appropriate security arrangements to ensure that employees and **contractors remain safe during the planning work.**

To work to prevent or resolve community disputes

The company will be primarily responsible for preventing or resolving actual or potential disputes within the community. The civil society organisation agrees to provide assistance if required.

4. ROLE OF THE CIVIL SOCIETY ORGANISATION ("Party B")

To act as project manager

The civil society organisation, applying professional standards to its work, will act as project manager. Schedule five sets out suggested professional community development tools that could be applied.

Records, accounts and approvals

Article 4 sets out the responsibilities of the civil society organisation for: preparing and managing records and accounts; reporting on progress; managing budgets, schedules and payments to third parties; managing planning tools; and obtaining approvals and required assets.

The total amount of CSR funding to be allocated to work under the Agreement should be inserted in section 4.6(d). The initial agreed budget and payments schedule should be inserted in schedule three.

The civil society organisation will need to set up a special purpose bank account to receive CSR funding paid by the company. The purpose of this account is to ensure that the company's CSR funds do not become mixed with the organisation's general funds or with funding from another source. This helps bring transparency and accountability to the organisation's financial management.

The parties should include funding in the budget to cover the civil society organisation's indirect costs and administrative overheads. This component of the budget may be referred to as a management fee. The amount to be allocated for this purpose is a matter for negotiation and should reflect a realistic assessment of the actual indirect costs the organisation will incur in operating at a professional standard while undertaking its obligations under the Agreement.

5. GOOD GOVERNANCE AND DECISION MAKING

Decision-making process

Design a process for making decisions that encourages trust to grow as your work together progresses. The process should allow effective and timely decision making in a transparent and accountable manner.

Section 5.1 sets out a suggested process under which the parties' representatives at various levels could meet at different intervals to make and review decisions. The suggested process involves the following elements:

- ❖ Those people involved in day-to-day planning meet together at least twice a week;
- ❖ Those same people meet together with their respective immediate supervisors at least once each week; and
- ❖ All those from the weekly meetings meet together with their appropriate higher level managers and any other relevant stakeholders at least once a month.

Section 5.1 suggests that, as is customary in Indonesia, decisions are made by consensus rather than by each party having a vote that carries a percentage value.

It is important for good governance that all decisions are documented and that minutes are circulated for comment, reviewed, amended as necessary and signed when correct.

Section 5.1 builds in flexibility in how meetings are held. This should be changed if necessary to reflect the parties' preferences.

Commitment to ethical conduct

Section 5.2 contains a commitment to ethical practices and states the importance of training and monitoring staff for ethical conduct.

Conflicts of interest

If either party becomes affected by a conflict of interest, it must work to remove or resolve that conflict as soon as possible so that neither party's reputation is damaged and their work together is not adversely affected by the conflict.

Compliance with laws

The parties should commit to abide by relevant laws. Where the company or the civil society organisation has international connections, these laws could include laws of foreign jurisdictions that deal with matters such as corrupt conduct, privacy or the protection of children. This issue needs to be explored during negotiations so both parties are clear as to what laws apply to their work together.

6. THE IMPLEMENTATION PROCESS

Standard of work

Article 6 commits the parties to using professional community development principles and practices in their work and working towards evidence-based community development that reduces the incidence of poverty in the community in an equitable and sustainable way.

Communications and public awareness process

Section 6.2 requires the establishment of a robust communications and public awareness raising process for the community development work and gives the civil society organisation the responsibility for arranging and carrying out public communications, provided the company has first approved them.

Monitoring and evaluation

Given the importance of being able to measure the effectiveness of your work together, section 6.3 deals with building monitoring and evaluation into your plans. This section could be expanded to give more detail if required.

Government

Section 6.4 deals with the issue of understanding relevant governmental development plans and priorities for the community so you can ensure your work complements and supplements rather than replaces government community development initiatives.

Consider drawing on all the resources that government ministries and agencies may have to offer that could assist your work. In particular, take advantage of the information and guidance available from the National Team for the Acceleration of Poverty Reduction (TNP2K) and the relevant regional poverty reduction coordination team to ensure that your initiatives will be well targeted to achieve a sustainable reduction in poverty in the relevant community.

Consider if you should enter into a technical cooperation agreement with a government agency under which the agency commits to cooperating with your work. Many legal regulations relate to government funding and budgeting processes and some of these could apply in this context so obtain legal advice on such matters before signing any agreement with a government agency.

If there is a CSR forum comprising local government and companies (and sometimes civil society organisations) actively coordinating CSR activities in the area, you may benefit from working with it, particularly to identify gaps in development needs and potential for synergies with other CSR-funded initiatives and government development programmes.

Working with the CSR forum could also help you identify lessons learnt from previous community development activities in the area and prevent you from repeating mistakes.

7. CONTRACTORS AND SUPPLIERS

In article 7 the civil society organisation is given responsibility for procuring contractors and suppliers and contracting directly with them. The organisation commits to using good procurement practices that also comply with the company's tender requirements under its procurement policies or under the law. For example, state-owned enterprises are subject to regulations that specify the tender requirements to be followed.

To the extent possible, the civil society organisation agrees to give preference to local community contractors and suppliers.

Provision is made for the company to approve procurement decisions made by the civil society organisation where the value of the contract is above a certain value. The parties need to agree on and insert this threshold contract value in section 7(f).

8. INSURANCE

The civil society organisation will be responsible for obtaining any agreed insurance policies. If the company does not require the organisation to do this, article 8 can be deleted.

9. EVENTS BEYOND A PARTY'S CONTROL

A party will not be in breach of the Agreement if it cannot perform its obligations due to events beyond its control. This exemption from breach does not apply to any failure by the company to pay the agreed CSR funding.

Article 9 allows one party to terminate the Agreement if the other party is unable to perform its obligations for longer than three months (or some other agreed period) due to events beyond the affected party's control.

The unaffected party is not, however, obliged to terminate the Agreement. It could continue to wait longer than the agreed period for the other party to resume performance.

The parties should consider whether three months is appropriate or if some other period would better suit their circumstances.

10. REPRESENTATIONS

Each party should have made inquiries to check the reputation and capabilities of the other well before they get to the stage of negotiating an agreement. Article 10 provides formal representations from each party as to their legal nature, their legal capacity to contract and ability to carry out their obligations under the Agreement without giving rise to any conflict of interest or breach of regulations or ethical principles.

11. DISPUTE RESOLUTION

Dispute resolution procedure

If a dispute arises between the parties that cannot be settled by senior management, article 11 provides for the dispute to be referred to mediation by a respected independent person. If mediation fails, the parties agree to refer the dispute to be settled by a court in the relevant jurisdiction.

Right to approach a court for urgent relief unaffected

The above procedure does not stop a party approaching a court for urgent relief at any time.

12. TERMINATION

Termination for breach

Article 12 sets out a number of reasons why the Agreement could terminate. They are, in brief:

- ❖ breach of contractual obligations;
- ❖ conduct likely to damage the parties' work;
- ❖ insolvency;
- ❖ corrupt conduct; or
- ❖ the company has reasonable grounds to believe, as the result of a performance review, that the civil society organisation does not have the capabilities required to carry out its obligations.

Other remedies unaffected

A party terminating the Agreement for breach under article 12 does not lose any other remedies it may have under Indonesian law.

Consequences of termination

Section 12.4 sets out the consequences of termination, including the need for the parties to settle outstanding business between them and with third party suppliers and contractors and close down their work. The company will fund reasonable closing down costs incurred by the civil society organisation.

The civil society organisation must give the company a final report and acquittal of expenditure and deal properly with records and accounts as agreed with the company. The section allows the organisation to retain copies of documents needed for internal governance purposes and documents that would enable it to retain the benefit of professional learning.

Unused CSR funds must be returned to the company unless the company agrees that the organisation may apply them for another purpose.

Waiver of article 1266 of the Indonesian Civil Code

The parties agree to waive their legal right to ask a court to approve the termination of the Agreement.

13. CONFIDENTIALITY

Confidential information

Section 13.1 is an acknowledgement by both parties that they may exchange confidential information. For example, the civil society organisation may learn confidential information about the company's business and financial affairs.

Confidential information to be kept secret

Each party agrees to keep any confidential information provided to it secret and not to use it for its own benefit or to the detriment of the other. There are exceptions given, including the right of the organisation to disclose confidential information on a confidential basis to any civil society network it belongs to where the disclosure is required to enable it to perform its obligations under the Agreement.

Confidential obligations to survive termination

It is important to understand that section 13.3 means that confidentiality obligations will survive termination of the Agreement for an indefinite period.

14. INTELLECTUAL PROPERTY RIGHTS

No transfer of pre-existing Intellectual Property Rights

Intellectual Property Rights is a defined term.

Section 14.1 provides that pre-existing Intellectual Property Rights of either party are not transferred to the other party when the parties enter into the Agreement. Those pre-existing rights remain with the party that owns them.

Ownership of Intellectual Property Rights developed under the Cooperation Agreement

However, Intellectual Property Rights that are developed by either party in performance of its duties under the Agreement will become the joint property of both parties. Accordingly, the party that creates the rights (for example, by preparing copyright material or creating a trademark or an industrial design or patentable device) must immediately disclose information about them to the other party. If you do not want to adopt this regime, amend this provision to insert your agreed regime for ownership of intellectual property created during the parties' work together under the Agreement.

Obligations to survive termination

The obligations to disclose jointly-owned Intellectual Property Rights survive termination of the Agreement for an indefinite period.

15. OTHER ASSETS

Article 15 provides that, if and when the Agreement terminates, assets other than intellectual property will be transferred to the community with which the parties have been working, unless the company and civil society organisation agree that the organisation could make better use of those assets.

16. GENERAL PROVISIONS

Notices

Section 16.1 sets out how each party should communicate with the other and contains address details.

Relationship of the parties

Section 16.2 makes it clear that the parties are not forming a legal partnership or a relationship of employment or agency by working together on the terms of the Agreement.

It is important that employees of each party do not represent to anyone that they are authorised to represent the other party or bind it contractually.

Assignment

Neither party is allowed to assign its rights under the Agreement unless the other party first agrees to that assignment.

Variation

No change can be made to the Agreement unless both parties agree in writing to make the change.

Waiver

Any waiver by a party of a right under the Agreement has no effect unless it is evidenced in writing.

Entire agreement

Section 16.6 provides that the Agreement represents the whole agreement between the parties with respect to its subject matter. If the parties wish to preserve the effect of earlier related documents they have signed, they should mention them specifically in this section 16.6.

Severance

If any provision of the Agreement is void, illegal or not enforceable, it can be deleted and the remaining provisions of the Agreement will remain in effect.

Languages

If the Agreement is prepared in English and in Bahasa Indonesia, the English version can be signed first and take effect before the Bahasa Indonesia version is signed. However, if there is any inconsistency between the versions, the meaning of the section of the Agreement written in Bahasa Indonesia will prevail.

Counterparts

To assist with the practicalities of signing, the parties may sign identical copies of the Agreement. If they do, the copies together will constitute one legal document.

Governing law

The laws of Indonesia govern the Agreement.

SIGNING THE AGREEMENT

Each party should formally authorise in writing, in accordance with its internal governance procedures, the person who is entitled to sign the Agreement on behalf of that party.

ANNEX 6

PRECEDENT COOPERATION AGREEMENT TO UNDERTAKE CSR-SUPPORTED COMMUNITY DEVELOPMENT (Short Version)

The First Party

Name:

Authorised Representative:

Contact details:

The Second Party

Name:

Authorised Representative:

Contact details:

Both the First Party and the Second Party shall be referred to as the “**Parties**”.

BACKGROUND

The Parties wish to work together as partners on the terms of this Cooperation Agreement to implement an agreed community development initiative, supported by corporate social responsibility (CSR) funding and in-kind support from the First Party, for the village named: _____, located in _____, Indonesia.

1. **Parties will work together closely:** The Parties agree to work together closely to implement the community development initiative described in Schedule One and in the logical framework analysis (LFA) and plans in Attachment 1. The Second Party agrees to comply with the First Party’s code of conduct in Attachment 2 during the course of its work under this Cooperation Agreement.
2. **The First Party will provide CSR funding:** The First Party will provide CSR funding and in-kind contributions to support the implementation work, as set out in the Budget and Payments Schedule in Schedule Two.
3. **The Second Party will set up a special bank account:** The Second Party will ensure that all CSR funds are deposited in a special bank account set up for that purpose and are not mixed with the Second Party’s other money.
4. **The Second Party is accountable for funds management:** The Second Party is accountable for keeping accurate records of payments made into and from the special bank account and will prepare financial accounts and reports in the form required by the First Party. On giving the Second Party reasonable notice, the First Party will be entitled to audit the Second Party’s financial and other records of work done under this Cooperation Agreement. If the First Party requires the Second Party to provide audited accounts to the First Party, the First Party will include in the budget sufficient funding to pay the cost to the Second Party of preparing audited accounts.
5. **Parties will apply professional tools and standards:** The Parties will apply professional community development principles and practices to their work, 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 Three. They will also set up a robust process for communicating with, and receiving complaints and other feedback from community members and other stakeholders.
6. **Initiative to be carefully designed:** The Parties agree to implement a CSR-supported community development initiative that:
 - a. is based on evidence of needs in the community;

- b. takes into account information and guidance available from the National Team for the Acceleration of Poverty Reduction (TNP2K) and the relevant Regional Poverty Reduction Coordination Team (TKPKD) and is well targeted and likely to reduce poverty and bring sustainable benefits to the community;
 - c. 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;
 - d. is aligned with the First Party's business needs and resources;
 - e. is appropriate given the Second Party's experience, skills and expertise;
 - f. will fill gaps in or complement, but not replace, governmental development activities;
 - g. that is aligned with, and improves, 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 implementing regulation; and
 - h. that complies with all other relevant aspects of any applicable laws (including the Law on Villages) and relevant local regulations on corporate social responsibility.
7. **The Second Party will act as project manager:** The Second Party will be responsible for managing the implementation process, in close consultation with the First Party.
 8. **Proper tendering process will be used:** The Second Party will be responsible for carrying out a tender process for selecting any third party contractors and suppliers. The process must comply with the First Party's policies and requirements for selecting approved vendors. Both Parties must agree on the appointment of all third party contractors and suppliers. The Second Party will be responsible for contracting directly with the approved contractors and suppliers.
 9. **The First Party will support capacity building of the Second Party:** The First Party agrees to support the Second Party to increase its administrative, managerial and professional capabilities by providing technical assistance, business coaching and training on matters such as occupational safety and health from time to time, provided the Parties agree that such support will benefit the Parties' work under this Cooperation Agreement. This support will include that set out in Schedule Four.
 10. **Decision-making process:** Representatives of the First Party and the Second Party will meet to discuss progress and make decisions on the implementation process as set out in Schedule Five. All decisions will be made by consensus, recorded in writing and signed by the representatives.
 11. **Monitoring and evaluation:** The Second Party will establish a process for monitoring and evaluating the effectiveness of the community development initiatives being implemented under this Cooperation Agreement. The process must be acceptable to the First Party and must involve community participation by way of informal consultation and feedback or through more formal methods, such as use of community scorecards or citizen report cards, as agreed between the Parties.

12. **Socialization and ownership:** While the Parties will encourage the community to be part of the process of implementing the community development initiative, they will also ensure that their respective contributions are fairly and publicly acknowledged within the community and with relevant government agencies and other stakeholders. An agreed form of communications protocol to manage the communication of information, including identification of responsible people, approval procedures and ethical and confidentiality issues is attached to this Cooperation Agreement as Attachment 3.
13. **Periodic performance reviews:** On the performance review dates set out in Schedule Six, the Parties will undertake a review of the Second Party's performance. The review will allow both Parties an opportunity to assess the Second Party's performance, to provide the Second Party's management with professional development evaluations, and to identify areas for continuous improvement by both Parties. The review will cover the items described in Schedule Six.
14. **Confidential information and intellectual property:** The Parties will protect and not misuse any confidential information that they exchange during their work together. Any information obtained from The National Team for the Acceleration of Poverty Reduction's (TNP2K) Basis Data Terpadu will be used only for poverty alleviation purposes and not for commercial gain or political purposes. Each Party will respect the intellectual property rights of the other Party. Any intellectual property created during their performance of their obligations under this Cooperation Agreement will belong jointly to both Parties.
15. **Commitment to ethical practices:** The Parties will demonstrate a commitment to ethical practices, accountability and transparency throughout their work together. If a Party is affected by any conflict of interest, it will disclose that conflict to the other Party and work to resolve it.
16. **Dispute resolution:** Any dispute that cannot be resolved by senior management executives of the Parties, will be referred for resolution to a respected independent mediator who is acceptable to both Parties. If the dispute is not settled by mediation within a reasonable period of time, either Party may refer the dispute to the court of _____ in _____.
17. **Term of this Cooperation Agreement:** The Parties intend to work together during the period starting on: [insert date] _____ and ending on [insert date] _____, provided that the First Party may terminate this Cooperation Agreement, at any time with a 7 (seven) business days' prior notice, if the results of any periodic evaluation of the Second Party's performance are not reasonably satisfactory to the First Party. A Party may terminate this Cooperation Agreement if the other Party is in breach of its terms and that breach is not remedied within a reasonable period or cannot be remedied, by giving the other Party at least 7 (seven) business days' prior written notice.
18. **Consequences of termination:** When the Parties' work together under this Cooperation Agreement ends they will do whatever is needed to close down their activities in a professional manner, including paying any invoices that are due and payable. The Second Party will prepare a final report to the First Party on work performed and a set of final financial accounts that provides an acquittal for all CSR funding and in-kind contributions received. The First Party will, if necessary, provide the Second Party with sufficient funding to cover the costs of preparing the final report and accounts. The Parties agree to waive their legal right under Article 1266 of the Indonesian Civil Code to ask a court to approve the termination of this Cooperation Agreement.
19. **Cooperation Agreement legally binding:** The Parties intend to be legally bound by this Cooperation Agreement. The laws of Indonesia govern this Cooperation Agreement.

SIGNATURE PAGE

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 below.

Signed by the First Party by its Authorised Representative:

Signed by the Second Party by its Authorised Representative:

a stamp duty of Rp 6,000

Name : _____

Name : _____

Title : _____

Title : _____

Date : _____

Date : _____

Schedules follow:

Schedule One: Detailed description of the Community Development Initiative

Schedule Two: Budget and Payments Schedule

Schedule Three: Community Development Tools

Schedule Four: Activities in support of the Second Party's capacity building

Schedule Five: Decision-making Process

Schedule Six: Performance Reviews

Attachments:

1. Logical Framework Analysis and Plans for the agreed Community Development Initiative or Community Action Plan
2. The First Party's Code of Conduct
3. Communications Protocol

SCHEDULE ONE

Detailed Description of the Community Development Initiative(s) to be implemented under this Cooperation Agreement

Note: Insert here a detailed description of the agreed community development initiative(s) or Community Action Plan to be undertaken by the Parties on the terms of this Cooperation Agreement. Any logical framework analysis and other plans and supporting documents for the planned community development should also be attached to the signed copies of this Cooperation Agreement at the end of all the schedules.

SCHEDULE TWO

Budget and Payments Schedule

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

1. The budget should contain an amount to cover the Second Party's indirect management and administrative costs as well as amounts to cover the direct costs of performing its obligations under this Cooperation Agreement.
2. the Second Party may need funding up front, after signing the 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 the Second Party in advance of its obligations to make payments.
4. It would be customary for the First Party to withhold payment of the final scheduled payment until the Second Party 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 the First Party 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.

SCHEDULE THREE

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 neighboring 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 FOUR

Activities in support of the Second Party's capacity building

Note: Describe in this Schedule the agreed support by way of training, mentoring and business coaching and funding the attendance of the Second Party's staff and consultants at external training workshops and conferences and any other educational initiatives that the First Party is willing to provide to assist the Second Party to build its capabilities and enhance the Parties' work together under this Cooperation Agreement.

SCHEDULE FIVE

Decision-making Process

Note: Describe in this Schedule a decision-making process that suits your needs, naming the people who will be involved in making decisions at each level.

An example of a decision making process with regular meetings is:

1. the people from each Party who are involved in day-to-day activities meet twice each week;
2. those people and their immediate supervisors meet once each week; and
3. all of the above people and senior management from each Party meet once each month.

SCHEDULE SIX

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 the First Party's expectations of the Second Party's performance

ATTACHMENTS

1. **Logical Framework Analysis**, Plans and Other Supporting Documents for the Agreed Community Development Initiative(s) or Community Action Plan to be implemented under this Cooperation Agreement

Note: Insert here a list of all plans and other documents that are attached to this Cooperation Agreement.

2. **The First Party's Code of Conduct**

Note: A copy of the First Party's Code of Conduct, sustainability principles or equivalent document, setting out the standards of behaviour expected of the First Party's employees and contractors in areas such as occupational safety and health, equality of treatment, and cultural issues, should be attached to the signed Cooperation Agreement.

3. **Communications Protocol**

Note: A communications protocol should be developed early in the relationship 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, media announcements and publications.