



Mangroves for the Future
INVESTING IN COASTAL ECOSYSTEMS

Incentive allocation for mangrove protection



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Incentive allocation for mangrove protection

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Preface

Mangroves provide an array of benefits to coastal communities, including wood and non-wood forest products and environmental services encompassing coastal hazard protection, erosion control, water filtration and bio-diversity conservation. Mangroves are also valuable in terms of climate change mitigation due to high rates of primary productivity and the large amounts of carbon contained in above- and below-ground biomass and mangrove soils.

In spite of their many values, mangroves in Asia continue to be converted to other land uses and sustainable financing for their protection has not been forthcoming. This has resulted from limited length project cycles, lack of established Payment for Ecosystem Service (PES) schemes covering mangroves, unclear tenure in many mangrove areas, and the limited size of mangrove areas in relation to the economies of scale necessary to offset costs associated with accessing carbon payments.

This publication was prepared for the 'Income for coastal communities for mangrove protection' project (2015-2016) which aimed to develop a low-cost mechanism enabling public and private entities to responsibly promote mangrove conservation, carbon emissions reduction and sustainable development through the provision of incentives to local communities. The project was funded by the Swedish International Development Cooperation Agency (SIDA) through the International Union for Conservation of Nature (IUCN) and within the framework of the Mangroves for the Future (MFF) initiative. The project was implemented by the FAO Regional Office for Asia and the Pacific (RAP) in partnership with the USAID Lowering Emissions in Asia's Forests (USAID LEAF) Programme and UN-REDD. Pilot activities and information collection took place in Pakistan, Thailand and Viet Nam.

This is the fourth in a series of four publications intended to be used in conjunction in establishing sustainable financing for mangrove protection in Asia. The titles of the four publications are as follows:

1. Financing for mangrove protection;
2. Mangrove-related policy and institutional frameworks in Pakistan, Thailand and Viet Nam;
3. Mangrove carbon estimator and monitoring guide;
4. Incentive allocation for mangrove protection.

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1 Introduction

This publication guides the establishment of systems for allocating performance-based incentives to coastal communities in exchange for mangrove restoration and protection. It is aimed at potential financiers of mangrove restoration and protection including private entities, development organizations, government agencies and/or other proponents interested in supporting long-term mangrove restoration and protection initiatives. The material included here is based on meetings with mangrove stakeholders and physical inspection of mangrove sites in Pakistan, Thailand and Viet Nam in 2016, consultations with specialists from a number of organisations¹ and a review of relevant literature.

The proposed incentive allocation system involves five entities: a financier, a local community, the government, a Technical Assistance Body (TAB) and a third-party auditor. Based on the organisations selected to fill these positions and a mutual understanding of their designated roles and responsibilities, a project agreement between the financier and the local community is developed. As well as formalising roles and responsibilities, the project agreement outlines rules concerning activities, incentives, administration and monitoring.

The guidance assumes that a mangrove area and key participating entities have been identified. It also assumes existence of institutional and technical capacity to perform roles such as community representation and basic financial administration – roles typically assumed by a village committee or equivalent entity. As such, the proposed system is suitable for uptake by existing mangrove projects to facilitate provision of long-term financing for continued protection and restoration following project closure. It may, however, also be used in other situations where capacities are adequate or can be sufficiently strengthened.

The publication is designed to be used in conjunction with the ‘Mangrove carbon estimator and monitoring guide,’ which outlines procedures for collecting information on the carbon content and condition of mangroves upon which incentive allocation is based (FAO and IUCN, 2016a). The guidance included here and in the monitoring guide is not intended to be prescriptive and may be adjusted according to wants and needs of the parties involved.

Section 2 describes roles and responsibilities of the five entities involved in implementing the project. Section 3 provides step-by-step overview of the project set-up and implementation process, and Section 4 provides guidance on financial management of the project. Section 5 provides guidance on developing a project agreement based on the template included in Annex 1.

¹ Including the Food and Agriculture Organisation of the United Nations (FAO), USAID Lowering Emissions in Asia’s Forests (USAID LEAF), UN-REDD, Mangroves for the Future (MFF), Mangrove Action Project (MAP) and Global Forest Watch (GFW).

2 Roles and responsibilities of parties

To link incentive allocation to mangrove-related activities and results in a fair and effective way, rights and responsibilities of participating entities need to be defined in several key areas:

1. Mangrove ownership and use rights;²
2. Project administrative and financial management;
3. Activity implementation; and
4. Monitoring.

By clarifying mangrove ownership and use rights, allocating administrative responsibilities and defining implementation and monitoring rules, the fundamentals of an incentive allocation system are established.

To build procedural legitimacy and ensure the effectiveness of the system, an inclusive consultation process through which key decisions are made is essential (Luttrell et al, 2013; Pham et al. 2013).³ Additionally, as mangroves are often situated in rural areas where institutional and technical capacities are limited, facilitation, capacity assessment and training/technical services are likely to be required. In this context, the publication outlines anticipated roles and responsibilities for five entities:

1. **Financier:** provides monetary or in-kind incentives⁴ to the local community for mangrove restoration and protection, and finances activities of the TAB and the auditor;
2. **Local community:** undertakes mangrove restoration and protection activities, conducts mangrove monitoring and provides financial and monitoring reports to the financier;
3. **Government:** provides consent for the project, oversight and governance-related services, and may also perform some of the functions of the TAB;

² Mangrove-related policy and legislation for Pakistan, Thailand and Viet Nam are set out in a companion publication (FAO and IUCN, 2016b).

³ Community engagement and socio-economic assessment processes such as free, prior, and informed Consent (FPIC), participatory rural appraisal (PRA) and resilience analysis are beyond the scope of this publication but should be considered for integration into the project development process according to needs in the target area.

⁴ Incentives can include monetary payments or in-kind goods and services, e.g. capacity building, municipal infrastructure and services, land and forest resource rights, information and knowledge sharing. See Costenbader, Broadhead and Stanley (2015) for further detail.

4. **Technical Assistance Body (TAB):** provides technical assistance to the local community;
5. **Third-party auditor (“auditor” from here on):** conducts independent inspections of the project.

Figure 1 shows relationships between these entities and the flows of information and incentives related to mangrove restoration and protection.

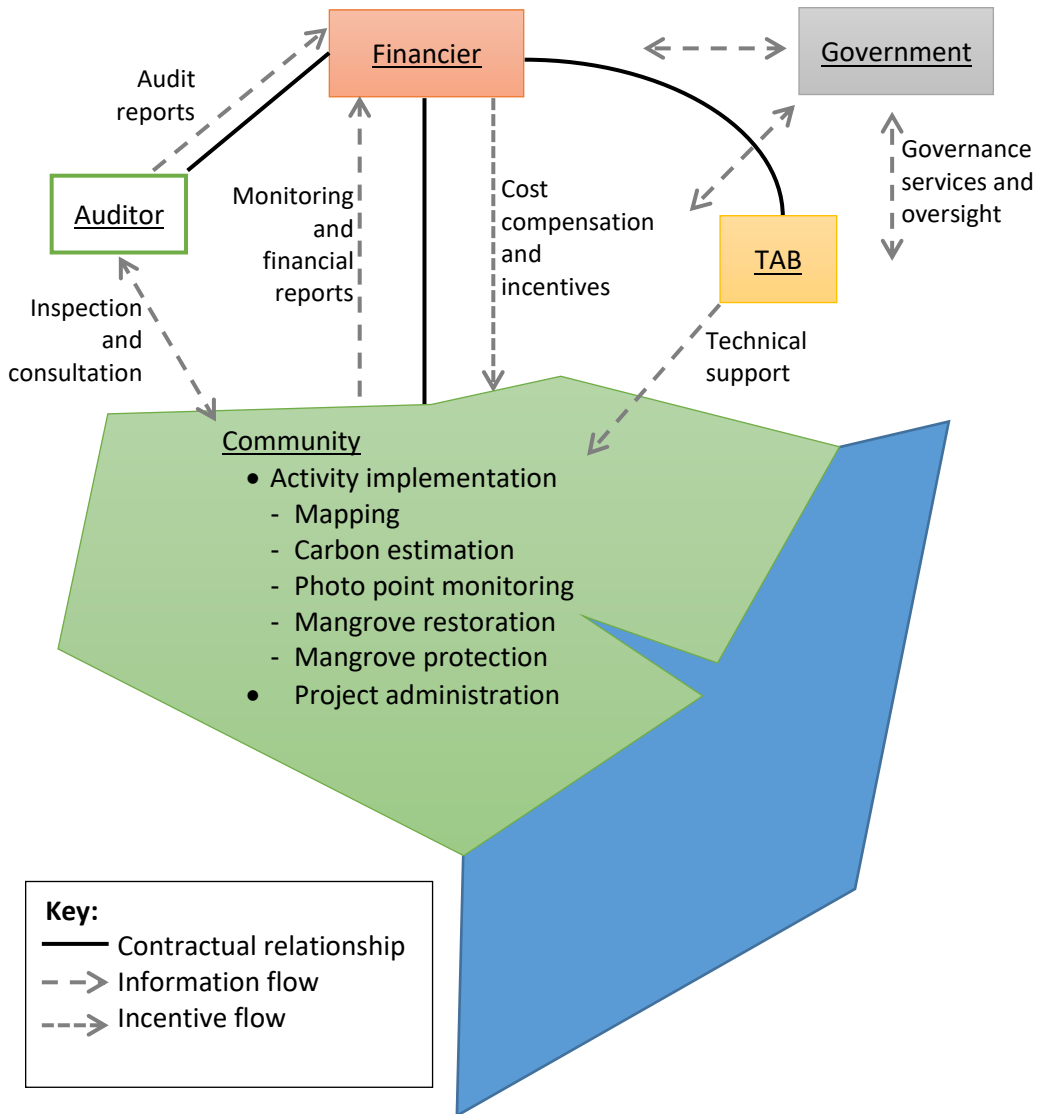


Figure 1. Relationships between the entities and activities.

In some cases, there may be a limited number of service providers that can perform required functions. For example, there may be only one government agency with responsibility over mangrove areas, and only a small number of institutions with the technical capacities required to support the project. Additionally, communities will only want to enter into agreements with financiers they see as trustworthy and against whom they feel they can have recourse if grievances arise.

To determine and allocate roles and responsibilities, consultations and capacity assessments involving project parties should be carried out by the TAB at the local level using techniques such as organizational mapping or stakeholder analysis.⁵ To reduce set-up and recurring costs and to ensure that the project operates effectively within the national context, partnership with existing institutions and systems should be considered. Based on the outcomes of the consultation, roles and responsibilities can be formalised in the project agreement based on the template provided in Annex 1.

The prospective roles, responsibilities and necessary capacities of each party are further detailed in the sub-sections below. Focal areas include:

- The rights of the local community and its technical and administrative capacities;
- Options for obtaining technical support;
- The financier's capacity to finance project activities; and
- Ensuring no objection from the government.

2.1 Financier

The financier may be a public or private entity⁶ whose role is to provide the local community with financial or in-kind incentives in return for mangrove protection and restoration. Its motivation may include pursuit of institutional policy objectives or fulfillment of corporate social responsibility commitments.

The financier provides incentives to promote overall mangrove protection and is also expected to cover the costs of most project activities, including mangrove restoration, patrolling and monitoring activities implemented by the local community; technical assistance to the local community provided by the TAB; and project audits conducted by the auditor.

⁵ This publication does not cover processes used for consultation and assessment given the wide availability of guidance available in these areas.

⁶ A detailed description of potential financing entities for mangrove projects (with emphasis on Pakistan, Thailand and Viet Nam) is provided in the companion publication 'Financing for mangrove protection.'

The financier needs to ensure that it can assume and effectively manage any potential liability that may arise under the agreement with the community, including through its agreements with the TAB and the auditor. Responsibilities of the financier include:

- Making payments as and when due under its agreement with the local community;
- Contracting and financing the TAB to provide training and technical support to the local community;
- Contracting and financing the auditor to undertake independent audits of the project to ensure that the project is functioning effectively and that environmental and social standards are being maintained; and
- Seeking alternative financing if funding is to be discontinued (best-efforts obligation only).

During consultation and capacity assessment activities carried out by the TAB, the financier needs to demonstrate the legal and practical competences necessary to enter into agreements, and laws need to be checked for restrictions. It is important to verify the financial security of the financier and to seek the long-term commitment necessary for effective mangrove restoration and protection.

2.2 Local community

The local community is a group of households or a village near the specified mangrove area where interest exists in engaging in mangrove restoration and/or protection in return for financial or in-kind incentives.

To enter into an agreement with the financier, the local community must have rights to manage and exclude outsiders from the mangrove areas to be covered by the agreement. Because communities act in their capacity as sellers of the mangrove restoration and protection activities that are the goal of the agreement, a lack of underlying right could later disrupt such activities, potentially damaging the reputation of the financier. To identify whether or not such rights are in place, an assessment should be made of statutory and customary land use rights, including identification of whether local communities' and indigenous groups' rights are recognized and protected (Luttrell et al., 2013).

Ideally, formal land tenure arrangements should give local communities clear title to land or mangroves in the areas being considered (see Box 1). In cases where the state retains rights to the mangrove area (as is frequently the case in Pakistan, Thailand and Viet Nam), an additional land use agreement between the state and communities may be necessary. Through such agreement, the state allocates land and/or forest rights to communities in exchange for their

successful management of such lands, as agreed under the terms of the agreement between the financier and community.⁷ The land use agreement should be in a written form and included as Annex 2 in the project agreement.

Because the incentive allocation mechanism entails a contractual agreement between the financier and a local community, the entity representing the community must have legal personality under national law to be a party to the agreement. In some cases, villages or communities may need to apply for a change in status to receive the necessary legal standing (see Box 2). To receive a status change, conditions related to administrative structures, process and capacity may need to be met.⁸ The extent to which village committee members are bound by the agreement in their individual capacities would depend on the legal structure of the community.

Box 1. Land tenure security

Land tenure security has been defined as ‘the certainty that a person’s rights to land will be recognized by others and protected in cases of specific challenges’ (FAO, 2002). In rural areas in many countries, land rights are not clearly or validly vested in local users, and land use arrangements are poorly defined and recorded (Costenbader 2009).

Box 2. Legal personality of villages in Pakistan, Thailand and Viet Nam

In Pakistan, Thailand and Viet Nam, villages do not have legal personality and cannot enter into legal agreements (FAO and IUCN, 2016b). However, in Pakistan, community-based organisations (CBOs) are formal, government-registered agencies which represent all households within a community (typically a village), and many examples exist of agencies such as IUCN and WWF entering into agreements with CBOs to plant and protect mangroves. In Viet Nam, the Minh Phu Company has entered into contracts directly with households, and there have also been pilot projects where forest land has been allocated to agricultural, forestry and environmental cooperatives for community-based forest protection (EU REDD Facility 2016). In Thailand, informal mangrove conservation groups are often formed, but financier-community agreements have been rare.

Further details on policy and institutional frameworks for mangrove protection and key examples of past mangrove projects are provided in FAO and IUCN (2016b).

⁷ In Viet Nam, for example, Forest Management Boards (FMBs) allocate mangrove land to individual households in exchange for prescribed management of such lands. These arrangements usually provide a range of rights to the communities or individuals, but fall short of providing a full land title and are usually limited in duration.

⁸ In some co-management agreements in Viet Nam, local administrations appear to represent communities. However, such agreements are often framed as local legislative acts, hence not reflecting the mutual agreement of both parties.

Once the community's rights and legal standing are established, its roles and responsibilities can be elaborated. Where possible, activity implementation and monitoring should be undertaken by the community with support from the TAB. The eventual aim should be for the community to assume full responsibility, with support from the TAB minimised. However, communities should not assume responsibilities that they cannot reasonably bear, and should not assume risks that they cannot reasonably manage and mitigate. Roles and responsibilities of the local community include:

- Undertaking mangrove restoration, protection and monitoring, as outlined in FAO and IUCN (2016a);
- Preparing monitoring and financial reports, and submitting them to the financier (see FAO and IUCN 2016a and Section 4.4 for further detail);
- Not taking any actions that would reverse work done or decrease mangrove area or condition;
- Adhering to agreed environmental or social standards as may be agreed to;
- Cooperating with the TAB in receiving technical assistance and training on topics including mangrove restoration, protection and monitoring, and financial management; and
- Cooperating with the auditor by providing access to project areas and project documents.

To execute the responsibilities listed above, technical capacities in the following areas are necessary:

- Mangrove restoration, including site assessment and preparation, hydrological repair, seedling planting and tending, etc.⁹
- Forest mensuration and mapping, including basic use of Global Positioning Systems (GPS), Geographical Information Systems (GIS) and digital cameras, as outlined in FAO and IUCN (2016a);
- Information technology, including basic use of computers (spreadsheets, e-mail, internet), smartphones and apps; and
- Financial management, including transparent operation of a community bank account, transparent distribution of finances and maintenance of records (see Section 4 for further detail).

⁹ See Lewis and Brown (2014) for a full list of activities undertaken as part of community-based mangrove restoration.

If the capacity assessment carried out by the TAB identifies deficits related to any of the above-mentioned capacities, appropriate training should be delivered by the TAB.

It is recommended that the community form a Mangrove Protection Group (MPG) to oversee implementation of project activities and manage financial and administrative matters. The MPG may include members of the village committee to facilitate oversight and expedite administrative matters.

2.3 Government

In many countries, mangroves are owned by the state, as discussed in Section 2.2. To conform to legal requirements, the government must therefore vest communities with rights that enable them to carry out their mangrove restoration and protection responsibilities.¹⁰

Written agreement should be sought with the appropriate government agency in order to reduce the risk of the project agreement being overruled if recognition is received from a level of government that does not have the requisite authority. The relevant government agencies in Pakistan, Thailand and Viet Nam are the Sindh and Balochistan Forestry Departments (Pakistan),¹¹ the Department of Marine and Coastal Resources (Thailand) and the Ministry of Agriculture and Rural Development (Viet Nam). The government should also provide a 'letter of no objection' or act as a signatory witness to the project agreement (see Section 5.1).

Additionally, the government is responsible for ensuring that the project does not suffer from deficiencies in relation to law enforcement and governance or other issues that are under its purview. Government forestry or coastal area management agencies may also act in the role of TAB by providing technical support for mangrove management activities.

2.4 Technical Assistance Body (TAB)

The TAB provides technical assistance to the community and also has coordination, facilitation and monitoring roles. The role of the TAB can be filled by a domestic or an international NGO, an academic institution or a government agency involved in mangrove protection and monitoring (see Box 3). The responsibilities of the TAB can also be shared between multiple agencies, e.g. an NGO supporting project implementation, and a forestry institute supporting mangrove measurement and monitoring. Key prerequisites for a TAB are

¹⁰ Agreements are often the appropriate form where the government is vesting a lesser form of right in the community, for example a forest management contract or time-limited land allocation contract. Where the government provides a more complete right, i.e. those that are equal or similar to ownership, then a land title is usually be issued.

¹¹ Sindh and Balochistan provinces contain the bulk of Pakistan's mangroves.

mangrove management expertise and presence in the project area. The main roles of the TAB include:

- Facilitation, capacity assessment and coordination during the initial project stages, up to and including agreement signing;
- Technical assistance to the local community in mangrove restoration and protection, as outlined in FAO and IUCN (2016a):
 - Project area mapping;
 - Carbon estimation;
 - Photo point monitoring;
 - Satellite image analysis;
 - Mangrove restoration;
 - Mangrove patrolling;
- Technical assistance to the local community in project administration:
 - Purchasing and installing equipment;
 - Record keeping and basic accounting;
 - Producing monitoring and financial reports;
 - Setting up and maintaining a project database;
- Ensuring effective communication between all project entities.

The TAB should transfer technical knowledge to the local community to enable the latter to eventually assume full responsibility for project implementation.

Box 3. Potential Technical Assistance Bodies in Pakistan, Thailand and Viet Nam

Although *ad hoc* Technical Advisory Bodies may be formed to support communities to implement mangrove restoration and protection agreements, a number of existing institutions in Pakistan, Thailand and Viet Nam have profiles that correspond to requirements for a TAB, e.g.:

- **Pakistan:** WWF, IUCN, Sindh Forestry Department, Balochistan Forestry Department;
- **Thailand:** Mangrove Management Units (MMUs) under the Department of Marine and Coastal Resources, Mangrove Action Project (MAP), IUCN, RECOFTC;
- **Viet Nam:** Forest Management Boards (FMBs) under MARD for physical monitoring, Southern Sub-Institute of the Forest Inventory and Planning Institute (FIPI) for analysis of satellite images, IUCN.

2.5 Third-party auditor

The key responsibility of an auditor is to conduct independent annual audits of the project to ensure that monitoring and financial reports reflect realities on the ground, and that the project is not resulting in adverse social or environmental outcomes. The auditor should further ensure the financier is performing its responsibilities according to the project agreement. The audit process improves the credibility of the project, and provides the financier with independent assurance that their investment is resulting in positive outcomes.

The auditor is contracted by the financier and may be a company, or a domestic or international NGO. Key prerequisites are extensive experience in environmental and social audits, and independence from the project.

3 Project set-up and implementation

This section outlines steps entailed in setting up and implementing a project aimed at incentivising mangrove restoration and protection, based on the guidance in this publication and the companion ‘Mangrove carbon estimator and monitoring guide’ (FAO and IUCN 2016a).

3.1 Project set-up

Step 1: Identification of parties to be involved in the project

Identification of the local community, the financier, the appropriate government agency, the TAB and the auditor should be undertaken by the project proponent (i.e. the party with initial interest in developing the project).

Step 2: Assessment and/or amendment of land use rights

An assessment of land use rights should be undertaken by the TAB and, where necessary, subsequent steps should be taken to secure rights to manage the project area and receive associated incentives under the project agreement, as described in Section 2.2.

Step 3: Capacity assessments and division of responsibilities among project parties

An assessment of each party’s capacities in relation to proposed responsibilities, as outlined in Section 2, should be initiated by the TAB. Based on the assessment, parties agree on their respective roles and necessary training (see Step 6).

Step 4: Village committee status change and Mangrove Protection Group (MPG) establishment

If necessary, the village committee or equivalent entity should apply for a change in status to acquire legal personality as discussed in Section 2.

With guidance from the TAB, the community should also form an MPG to oversee project implementation.

Step 5: Signing of the project agreement, financier-TAB agreement and financier-auditor agreement

The project agreement is drafted and signed by the financier and the village committee with the government agency signing as a witness. Separate financier-TAB and financier-auditor agreements are established and included in Annexes 4 and 5 of the project agreement respectively.¹²

¹² In some cases, third-party auditors may be contracted on an *ad hoc* basis. If this is the case, only the agreed responsibilities of the auditor should be included in Annex 5.

Step 6: Training of the MPG in project administration and financial management, and preparation of the annual work plan, budget and benefit sharing plan

The TAB provides the MPG with necessary training in project administration and financial management and the MPG then develops the first work plan and budget, and a benefit sharing plan (see Section 4.3).

Step 7: Establishment of project bank accounts and a project database

Following signing of the project agreement, the village committee opens two bank accounts as detailed in Section 4.

With guidance from the TAB, the MPG establishes an online project database (e.g. a project website or a Google Drive account) to store project documents and share them among project parties.

3.2 Project implementation

Step 8: Payment of initial six-month instalment

Once the project agreement is signed and an annual work plan and budget, and benefit sharing plan have been approved, the financier transfers funding covering the first six months of activities into the project operations account.

Step 9: Procurement of materials and equipment and training of MPG on mangrove management

With guidance from the TAB and using funds from the operations account, the MPG procures equipment for mangrove restoration and protection related activities (GPS unit, digital camera, seedlings, fencing materials, etc.).

The TAB provides the MPG with training in mangrove mapping, carbon estimation, restoration and monitoring and reporting, etc.

Step 10: Project area mapping and carbon estimation

With guidance from the TAB, the MPG maps the project area and undertakes carbon stock estimation following FAO and IUCN (2016a). The information acquired is stored on the project database and attached as Annex 1 to the project agreement.

Step 11: Mangrove restoration

Where appropriate, the MPG undertakes mangrove restoration with support from individuals selected according to the benefit sharing plan and guidance from the TAB.

Step 12: Mangrove monitoring and patrolling

Mangrove monitoring is undertaken by the MPG following FAO and IUCN (2016a) and patrolling is undertaken by community members selected according to the benefit sharing plan.

Step 13: Preparation and submission of monitoring and financial reports

A mangrove monitoring report and a financial report are prepared by the MPG every six months (see FAO and IUCN, 2016a and Section 4.4 respectively). Both reports are submitted to the financier and posted on the project online database.

Step 14: Biannual transfers into project accounts and allocation of incentives

The financier replenishes the operations and incentives accounts every six months, following their review and approval of the mangrove monitoring report and the financial report (see Sections 4.1 and 4.2).

Step 15: Annual third-party audits

Audits are undertaken by a third-party auditor every 12 months as outlined in Section 4.5.

Step 16: Preparation and approval of second annual work plan and budget

Within 12 months of project commencement, the MPG prepares the second annual work plan and budget. Following its review and approval the financier provides funding for the first six months of activities, thus restarting the project cycle.

4 Financial management

This section details financial management modalities, work planning and budgeting, and financial reporting. The framework establishes a system that assigns management responsibilities to community members, engages community members in paid activities associated with mangrove restoration and protection, and incentivises the community as a whole to protect mangroves.

Separate financial management modalities are proposed for:

- (i) Payments for undertaking mangrove restoration and monitoring activities (paid to involved individuals);
- (ii) Performance-based incentives for overall mangrove protection (paid to the community as a whole); and
- (iii) Performance-based incentives associated with seedling survival following restoration (paid to involved individuals).

Although payments for labour associated with mangrove restoration and protection activities provide an incentive in themselves, they are managed separately to performance-based incentives for several reasons. Firstly, restoration and protection activities cannot be expected to go ahead without equipment and timely payments for labour inputs (Costenbader, Broadhead and Stanley, 2015). Secondly, there may be few activities implemented beyond monitoring after the initial phase of the project, and thirdly, performance-based incentives that benefit the entire community are more likely to promote widespread commitment to the project's goals than payments to individuals (Trémolet, 2011; Wertz-Kanounnikoff and Angelsen, 2009).

In establishing the financial management system, decisions will need to be made on the type of incentives (monetary vs. in-kind) and rates to be applied, timing and methods of payment, conditions for payments to be made and required proof of payment. Along with information on assigned roles and responsibilities, the decisions made guide development of the project agreement, and the work plan and budget. Rules on selection of individuals to perform activities and use of incentives also need to be detailed in a benefit sharing plan which forms Annex 6 in the project agreement (see Box 4).

Following signing of the project agreement, establishment of the financial management system begins with the MPG opening two bank accounts: one for managing operational expenses for mangrove restoration- and protection-related activities ("operations account"), and one for incentive payments ("incentives account"). Sub-sections 4.1 and 4.2 outline approaches for managing these accounts, and sub-sections 4.3 and 4.4 outline work planning and financial reporting activities. Sub-section 4.5 summarises activities to be undertaken by the auditor.

Box 4. Equity and gender considerations

Given the frequent role of mangroves in underpinning the livelihoods of vulnerable members of the community, provisions in selecting individuals to perform activities and allocating incentives may be included in the project agreement. This is important not just in ensuring that work is appropriately rewarded but also because inequitable allocation of incentives poses a risk to the project and the financier. Equity and gender are key areas to be considered:

- **Equity:** The agreement should clarify that the community will ensure that payments are distributed to those active in performing some activity (e.g. restoring, managing, protecting mangroves) central to the agreement's goals.
- **Gender:** The agreement should include provisions to ensure women's rights are recognized and they do not lose ownership or access rights, and that women receive equal compensation to men for their efforts.

Due consideration should also be given to equity and gender in determining how performance-based incentives for overall mangrove protection are used.

4.1 Operational expenses

Operational expenses cover equipment and activities deemed eligible for financing under the terms of the agreement (see Section 5.4), and may include the following:

1. **Equipment**, e.g. nursery equipment, seedlings, equipment for planting, equipment for photo point monitoring (digital camera, tripod, posts, etc.), equipment for mapping and fencing (GPS units, fencing materials);
2. **Labour**, e.g. for mangrove planting, mangrove patrolling, physical inspection of restored mangrove areas, photo-point monitoring, project administration;
3. **Travel**, e.g. boat hire and fuel;
4. **Other direct costs.**

An operations account is established and managed by the MPG with support from the TAB. A lump sum based on estimated costs for six months, as detailed in the annual work plan and budget, is deposited in advance by the financier. The MPG is responsible for producing a biannual financial report which, along with the monitoring report, triggers further biannual instalments (see Section 4.4). The account is audited annually by the auditor.

Withdrawals from the operations account are made by the MPG, which is also responsible for procurement of equipment and services. Payments to community members for labour inputs are made by MPG and records of individuals involved, details of work and allotted hours are signed by both parties. Invoices and receipts for all transactions are collected and submitted together with subsequent biannual financial reports.

Labour rates are agreed between the financier and the local community through consultations facilitated by the TAB, and are included in the project agreement and updated as necessary in the annual work plan and budget. Where possible, output-based payments (e.g. per number of seedlings planted, per inspection) should be pursued but input-based payments may also be used (e.g. per hour of administrative work).

Box 5 lists information related to operational expenses that should be included in the project agreement.

Box 5. Operational expenses – key information for inclusion in the project agreement

1. Key payment terms, i.e. the level of payments from financier to the local community, and what payments are made in return for;
2. Activities and equipment eligible for funding;
3. Modalities for distributing labour among community members;
4. Labour rates to be applied;
5. Method of payment;
6. Timing of payments;
7. Procedural conditions for payments to be made (e.g., submission of plans, budgets, reports and proof of activities having been undertaken).

4.2 Performance-based incentives

Two types of performance-based incentives are provided: to the community as a whole for overall mangrove protection, and to individuals involved in mangrove restoration for achieving higher seedling survival rates.

4.2.1 *Payments for overall mangrove protection*

The financier provides incentive payments based on the area and condition of the mangroves in the project area relative to the beginning of the project, as detailed in Annex 1 of the project agreement and successive monitoring reports. The payments seek to promote collective and continuous efforts by the community to protect mangroves, which includes abstention from clearing or degrading mangroves and preventing outsiders from doing so.

The payments should be provided for the term of the project agreement, and should be used in a way that is agreed by the community and that benefits the community as a whole. Eligible uses of incentive are specified in the benefit sharing plan attached to the project agreement and could include activities that address drivers of mangrove clearance or degradation, particularly if alternative livelihood activities or welfare improvements within the community can achieve these outcomes (Costenbader, Broadhead and Stanley, 2015).

Conditions for incentive payments to be made and rules defining their use are to be agreed by the financier and the local community during consultations facilitated by the TAB, and clearly stipulated in the project agreement and benefit sharing plan. Rates of payment should be included in the project agreement and updated as necessary in the annual work plan and budget. Higher incentive rates might be considered in mangrove areas with larger carbon stocks, greater environmental values, higher opportunity costs, higher threat levels or where poverty levels are greater (Costenbader et al. 2015).

Incentive payments are transferred by the financier into the incentives account every six months, based on the results of the monitoring and financial reports. If there is no evidence of mangrove clearance or degradation, the full amount is transferred; if not and if issues cannot be resolved, payments may be reduced or withheld. The MPG manages the disbursement of funds, and invoices and receipts associated with use of funds should be stored and submitted with biannual financial reports.

4.2.2 Payments based on seedling survival

Where mangrove restoration takes place, participating community members (selected according to the benefit sharing plan) are paid for site preparation and planting from the operations account as outlined above. They are also provided with incentives for tending seedlings for the first 12 months.¹³ To unify responsibility for seedling survival and improve the efficacy of incentive payments in maximising survival, planting and tending should be carried out by the same individuals.

Payments based on mangrove seedling survival rates are made to involved individuals from the incentives account at six-month intervals following the financier's approval of financial and monitoring reports. Rates of payment per surviving seedling should be included in the project agreement and updated as necessary in the annual work plan and budget.

Box 6 below provides a list of items related to performance-based incentives that should be included in the project agreement.

¹³ As an example, in a 40-hectare restoration project in Pakistan's Thatta District in 2009, IUCN provided incentive payments to the Fishermen Rural Development Organization (FRDO). These consisted of PKR 0.5 per surviving plant after three months, PKR 0.75 per surviving plant after six months and PKR 1 per surviving plant every 6 months until 18 months. Payments were ceased 18 months after planting, leaving FRDO to protect the mangroves at its own expense.

Box 6. Performance-based incentives – key information for inclusion in the project agreement

1. Key payment terms – the level of payments from financier to the local community, and what payments are made in return for;
2. Type of incentives to be provided for mangrove protection, and rates;
3. Types of incentives to be provided for seedling survival, and rates;
4. Eligible uses of incentives provided for mangrove protection;
5. Method of payment;
6. Timing of payments;
7. Procedural conditions for payments to be made (e.g., submission of monitoring report and proof of activities having been undertaken).

4.3 Work planning, budgeting and benefit sharing

Following the development of the project agreement (see Section 5), an annual work plan and budget are developed by the MPG with guidance from the TAB. In projects which focus on mangrove protection, there may be few activities other than monitoring; restoration projects, on the other hand, include activities such as hydrological restoration and planting and tending of seedlings.

The work plan should outline activities, outputs, parties responsible and timelines. The budget should detail equipment, labour, transport and other direct costs for the first 12 months of the project, split into two six-month periods. The community should also develop a benefit sharing plan which outlines how individuals are selected to perform project activities and how performance-based incentives are spent.

The work plan and budget, and the benefit sharing plan are reviewed and approved by the financier and shared with the remaining project parties. The work plan and budget are included in Annex 3 of the project agreement and the benefit sharing plan in Annex 6.

4.4 Financial reporting

A financial report is produced every six months by the MPG with assistance from the TAB. At a minimum, the report should provide details on the use of funds during the reporting period and any deviations from the work plan. It should also include evidence of payment for all budget items.

Financial reports should be linked to monitoring reports and include progress in solving issues identified in the previous reports, as well as new issues and how they will be addressed. The reports should be posted on the project online database and distributed to project parties.

4.5 Third-party auditing

The auditor conducts annual audits of the project to ensure that monitoring and financial reports reflect realities on the ground, and that the project is not resulting in adverse social or environmental consequences. The auditor should also ensure the financier is performing its responsibilities according to the project agreement.

Overall, the audit should include the following activities:

1. Reviewing mangrove monitoring reports and inspecting mangrove stands to ensure that conditions align with those reported;
2. Reviewing financial reports, project accounts and physical evidence of use of funds and incentives received from the project to ensure that documented activities align with those in the project agreement, work plans and reports;
3. Reviewing project management (e.g. selection of individuals to participate in project activities such as planting and patrolling, effectiveness of activity implementation, use of incentives);
4. Assessing the project's environmental, economic and social impacts with particular attention to vulnerable groups; and
5. Determining the adequacy of project parties in performing their respective roles.

The findings of the audit are documented in a report, which is made available to all project entities. If negative impacts are identified, mitigation actions are discussed by project parties, and a plan is developed and implemented. The identified impacts and responses are reviewed during the subsequent monitoring visits to ensure they have been adequately addressed.

5 Project agreement development

The project agreement sets out duties of the local community and the financier, and creates a contractual obligation to perform these duties. To facilitate establishment of the agreement, a planning and consultation process facilitated by the TAB is necessary. The process should bring together relevant parties to elaborate aims and expectations, clarify respective roles and ensure a clear understanding of what the agreement entails.

To avoid misunderstanding or potential conflict the language of the agreement should be as simple as possible without compromising necessary detail. The agreement should be translated into the language of the community and hard and soft copies of the signed agreement kept by all parties and posted on the project database. A template project agreement is provided in Annex 1, and guidance on completing the agreement is provided below.

5.1 Listing of signatory parties

The project agreement is signed by the village committee and the financier, with approval provided by the government either through a letter of no objection or by signing as a witness.

It is necessary to specify who is legally entitled to represent and sign on behalf of the community. This will depend on the organizational structure of the community. Cooperatives, for example, frequently have internal by-laws governing who is entitled to enter into agreements, while in the case of local administrations this is often determined by statute. In each case, it is also essential to ensure that any requirements on consultation with community members are met before signing. As mentioned in Section 2.2, the extent to which community representatives are bound by the agreement in their individual capacities would depend on the legal structure of the community.

5.2 Recitals

The purpose of the recitals is to provide the relevant background to the agreement. They should be kept brief and limited to the basic facts that are necessary to understanding and provide context to the operative provisions. Examples of recitals include defining the objectives of the agreement and the motivation of the parties for entering into it, and references to relevant legislation and mangrove-related tenure arrangements. The suggested recitals are provided in the template agreement.

5.3 Definitions of key terms

This section guides the interpretation of the agreement by defining its key terms. Great care must be taken to ensure terms are defined accurately and based on mutual understanding of the parties, since the structure of a definition can

materially impact on concrete rights and obligations of the parties. However, a balance should be struck in defining terms and activities in order to ensure the agreement is precise enough to be meaningful for parties, and yet allow for flexibility. An indicative list of key terms is provided in the template agreement.

5.4 Roles and responsibilities of parties

This section sets out activities to be undertaken to achieve mangrove restoration and protection and the corresponding responsibilities of parties. These can be framed broadly to provide flexibility or more specifically, depending on the requirements of the project. If necessary, eligible activities to be included under the agreement can be listed in this section.

To enter into an agreement with the financier, communities must guarantee their rights to the mangrove areas covered by the agreement as outlined in paragraph 6 on the 'Rights of communities to enter into contract' in the template agreement.

5.5 Monitoring of performance

This section should clarify performance monitoring modalities in terms of quantities (e.g. area and condition of mangrove restored or protected). Measurement of results can only be defined following this initial determination; guidance on recommended measurements is provided in FAO and IUCN (2016a). The agreement also needs to clearly identify who is responsible for monitoring, reporting and verification, as described in the preceding sections of this report.

5.6 Payments

This section consists of a number of provisions, which are described below.

Key payment terms define the level of payments from financier to the local community, and what payments are made in return for. Payments may be made either for implementation costs or in return for achievement of results as indicated in monitoring reports.

The level of payment from financier to the local community depends on costs of equipment or services and agreed labour and incentive rates. Categories and rates of payment can be specified with a level of detail deemed appropriate by the parties to the agreement.

Payment conditionalities describe conditions that must be met by either party before the agreement or certain parts of the agreement come into effect (known as "conditions precedent"), and conditions that release either party from their duties to the other party ("conditions subsequent"). Examples of conditions precedent would be that the local community complies with certain obligations such as producing a benefit sharing plan or that the local communities receive an advance payment instalment from the financier.

Regarding conditions subsequent, an example of a condition that protects the community might be that the financier ceases financing, while a condition protecting financiers may be that communities cease performing activities included in the agreement.

Payment modalities define timing of payments and procedural conditions for payments to be made (e.g., submission of a work plan, report and/or proof of activities having been undertaken) and how payments are made (e.g., bank transfer, cash payments). The form of proof that payment has been made and received also needs to be defined.

Cost and benefit sharing provisions specify how responsibilities of the local community and the consequent payments are shared between the members of the community.

5.7 Breaches, remedies and grievance procedures

This section consists of a number of provisions, which are described below.

Remedies are contractual provisions available to one party where the other does not comply with its obligations. Generally, the goal in the event of non-compliance is to ensure a quick return to compliance, so the focus of the grievance procedure should be to ensure that the non-complying party implements its obligations. In the event that this cannot be achieved, the goal should either be to restore the injured party to its situation had the agreement been performed or else its situation prior to the agreement. Which of these goals applies depends in each case on the facts and in particular the severity of the loss. In the event of non-performance, remedies include:

- Termination (see below);
- Payment of interest, in the case of late payments;
- Repayment of monies, in the event of certain reversals (particularly intentional ones).

Unavoidable incident (or force majeure) is a standard provision, partially or fully releasing parties from obligations where they are prevented from carrying them out due to certain events outside their control (e.g., war, acts of God). Relevant events that could arise to trigger this clause include storms and significant weather events that prevent fulfilment of the contract. This is an important clause to bring to parties' attention and for communities to understand and discuss in agreement negotiations, as it limits their continuing liability following events beyond their control.

Grievance procedures are procedures to be initiated where one party has a grievance concerning the performance of the agreement. Typically, the first step is informing the other party of the grievance and giving that party the opportunity to rectify the situation. If this does not lead to a satisfactory result,

negotiation, often with conciliation by an independent party, will often follow. Parties may want to provide in the agreement that only when these methods have been exhausted can a party bring its complaint before a body with the power to issue a binding decision. In the event disputes are not resolved amicably, parties may want to provide for resolution through the courts or an alternative method such as arbitration.

This process should be distinguished from processes to resolve grievances arising within the local community. While these do not necessarily involve the interpretation of this agreement, the agreement may provide for the establishment of such a process, and the financier may seek to keep some oversight (for example, reserving the right to discontinue payments where there are unresolved complaints regarding the distribution of finances).

The **governing law** provision states that the laws of a mutually agreed jurisdiction govern the interpretation and enforcement of the agreement. This is particularly relevant for parties from different jurisdictions (e.g. an overseas financing entity). As it may not be that either party's law is the most appropriate for the subject of the agreement, some agreements may choose a governing law that have no relation to either party. It is important not only to choose a law that is reliable and effective, but some jurisdictions may require a reasonable connection to an agreement in order to honour a choice of law provision. Accordingly, informed advice would be worthwhile. Also, such clauses should be careful not to pick a jurisdiction that has more than one jurisdiction within it.

A **jurisdiction clause** indicates that the parties agree for courts of a named country or a state to take jurisdiction over (i.e., have the right to resolve) any disputes that may arise from the agreement, support an arbitration and enforce awards. The parties may alternatively provide for an independent arbitration tribunal to have jurisdiction to decide any dispute arising from the agreement.

Termination provision sets out conditions under which either party may terminate the agreement. Aside from by mutual agreement or expiry of the term, it may provide for one party to terminate the agreement unilaterally in the event that the other party has not complied with one or more material obligations and this has not been resolved under the procedures set out above. It may also provide for the financier to terminate the agreement in the event that funding is discontinued and no replacement funding can be secured.

5.8 Miscellaneous

This section consists of a number of provisions, which are described below.

Duration of the agreement is a provision that defines the beginning and end of the agreement. Given the long-term nature of mangrove conservation and restoration, an agreement duration of at least 10 years is recommended. If the agreement is to be for an indefinite period ending upon the occurrence of some

event, the agreement should specify the exact nature of the event. Duration clauses could be drafted in the form of the following:

- Actual dates (e.g. “This Agreement shall be effective as of July 1, 2013, and shall remain in full force and effect through June 30, 2015”). An alternative is to specify the period (e.g. “This Agreement shall remain in force for 10 years from the date of its execution”);
- Events described in clauses elsewhere in the agreement (e.g. “This agreement shall become effective on the date it is executed following the completion of the conditions subsequent as defined in paragraph 7.b.ii and continue until completion of the conditions subsequent as defined in paragraph 7.b.ii and/or terminated in accordance with the provisions of paragraph 13 above, unless terminated earlier as provided herein”); or
- Events outside the agreement, or combination of actual date and event (e.g., “This Agreement shall become effective on the date it is executed by the parties and shall remain in effect for ten (10) years or until the Financier’s written acceptance of the final progress report, whichever date is later.”

The **assignment clause** requires parties to alert each other should their rights be transferred to another party. This is more likely to happen for the financier, as many start-up companies that expect to be acquired by other companies. These buyers will want a permissive assignment clause so that they are able to transfer their contractual rights and obligations at acquisition. The clause may also limit the right to assignment, i.e. the right of a party to transfer its obligations to another party.

The **survival clause** specifies which contract provisions will remain in effect after the termination or expiration of the agreement. Though some agreements include a clause providing for general survival (i.e. of any provision that imposes an obligation after termination of the agreement), such provisions would likely be less relevant in the case of agreements with communities, and would be difficult to monitor. Survival clauses would likely be best drafted to specify specific provisions (e.g. confidentiality), and the duration of the surviving provision (e.g. one year).

5.9 Annexes

The annexes to the project agreement include a description of the resources covered by the project and key documents supporting implementation of the agreement. They include:

- **Annex 1: Activity area description, carbon stock, boundary map and monitoring criteria.** This annex contains key information about the mangrove area obtained by the MPG following guidance provided in

FAO and IUCN (2016a). Information on the project location, area and carbon stock is included along with a boundary map and satellite image. Information to be included in biannual monitoring reports provided by the MPG is also listed.

- **Annex 2. Land title document (or substitute agreement).** This annex provides evidence that the local community has a right to manage the mangrove area in question, either in form of a land title or a land use agreement with the government.
- **Annex 3. Work plan and budget.** The 12-month work plan and budget developed by the MPG as outlined in Section 4.3.
- **Annex 4. Agreement between financier and the TAB.** This section outlines the responsibilities of the TAB (as described in preceding sections of this report).
- **Annex 5. Agreement between financier and the third-party auditor.** This section outlines the responsibilities of the third-party auditor in conducting annual audits of the project.
- **Annex 6. Benefit sharing plan.** This document outlines how individuals are selected to perform project activities and how performance-based incentives are used.

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Annex I: Template project agreement

Section I. Parties

Between:

1. The [Community(ies)] , represented by [Representatives of the respective Communities] (individually a “Community Representative” and collectively, the “Community Representatives,” who shall each be [individually] [jointly and severally] bound by the terms of this Agreement; and
2. The [Financing Entity] (“[Financier]”), acting through _____;

Hereinafter each is referred to as a “Party” and jointly referred to as the “Parties.”

3. Also, the [Government] (“[Government]”) acting through _____, signs this Agreement as witness.

Section II. Recitals

Whereas:

The Parties recognize the following:

- the importance of the _____ mangrove area (“[Activity Area]”) and the importance the mangroves hold for the livelihoods and cultural values of the _____ communities (together, the “Community”);
- the need to secure a sustainable source of revenue for the ongoing management of the Activity Area and to share costs and benefits in support of the Community’s role as partners in mangrove restoration and protection;
- the global, regional, and local importance of protecting mangroves for the ecosystem services they provide to humankind;
- the advantages of local community management, protection and monitoring of mangroves;
- the potential to develop a mangrove protection agreement (“the Agreement”) to: i) provide a long-term source of revenue to manage the Activity Area; and ii) provide the Community with a means to implement activities supporting mangrove protection and community development.
- the Financier intends to work together with the Community to develop activities in the Activity Area;
- the [Chosen Technical Advisory Body] will provide technical and administrative assistance on an as-needed basis to the work foreseen in the Agreement.
- the purpose of this Agreement is to set out the Parties’ intent regarding roles and responsibilities in protecting the mangroves in the Activity Area and associated activities and payments, as outlined in the terms below;
- [the land within the Activity Area remains the property of [name of Government/company] (the “Landowners”), but that the responsibility for managing the Activity Area and the resources contained therein rests with the Community, in accordance with the agreement entered into between the

Landowners and the Community dated XX/XX/XX and other current and future applicable legislation, contract or other legal instrument;]

- under [legal instrument(s) establishing a village committee or equivalent as a legal entity], the Community Representatives are recognized as having the power to represent the Community;
- under [legal instrument(s) regarding the Activity Area], the inhabitants of the Community have certain rights to enter the forest for certain specified purposes, which may include passing through the forest from place to place on recognized footpaths and collecting the following _____ for personal use as long as it does not damage any tree or the ecosystem within the Activity Area;
- the Parties met on the [date] to conclude this Agreement on the future distribution and sharing of roles, responsibilities, and associated benefits based on the following terms.

Section III. Definitions

1. Definition of terms

- a. "Activity" is the work to restore, protect and monitor mangroves in the Activity Area, as described in the Work Plan.
- b. "Activity Area" shall mean the area on which the project will occur, to be delimited following boundary protocols in agreement with the Community, and described in Annex [1].
- c. "Business Day" is any calendar day other than: (i) A Saturday or Sunday; or (ii) Any official banking holiday in the country and locality specified in Clause 11 (Governing Law).
- d. "Commencement date" shall mean [date of start of agreement].
- e. "Community" shall mean the legitimate inhabitants of the Activity Area prior to the Commencement Date, represented by the Community Representatives.
- f. "Default Notice" shall mean the notice, given to the defaulting party by the non-defaulting party under Clause 8.a.i below, that a party is in default under this agreement.
- g. "Event of Default" shall mean an event that runs contrary the terms of the agreement, either in relation to mangrove restoration and protection or financing for mangrove protection and restoration.
- h. "Mangrove" refers to the ecosystem type in the Activity Area (i.e., intertidal forest ecosystems).
- i. "Parties" shall mean Financier and Community Representatives, and "Party" shall mean either of them.
- j. "Unavoidable Incident" has the meaning given in paragraph 9.
- k. "Work Plan" is the document describing Activities, which is attached as Annex [3].

Section IV. Roles and responsibilities of Parties

2. Definition of activities

- a. The parties intend to achieve the objectives of the project through, *inter alia*, the following activities:
 - i. mangrove protection activities;
 - ii. mangrove restoration activities;
 - iii. mangrove monitoring and reporting activities.

3. Responsibilities of the Community

- a. In addition to the activities outlined in paragraph 2, the Community agrees to the following responsibilities:
 - i. Mitigation of risk (e.g., from fire, illegal logging), including not taking any actions that would reverse work done or decrease mangrove area or condition;
 - ii. Consulting with and reporting to the Financier as agreed;
 - iii. Undertaking monitoring and reporting of results (see also paragraph 5.c);
 - iv. Adhering to environmental or social standards as may be agreed; and
 - v. Allowing access to and cooperating with persons nominated by the financier for purposes of, *inter alia*, training, capacity building, monitoring, and preparation of promotional material.

4. Responsibilities of the Financier

- a. Make payments as and when due under paragraph 7;
- b. Nominate organization(s) or individual(s) to provide support to the Community (e.g., for training, provision of materials); and
- c. Seek alternative funding where current sources of funding are discontinued (best-efforts obligation only).

5. Monitoring of performance

- a. Performance will be monitored in the Activity Area in terms of mangrove area and condition, and seedling survival where restoration is undertaken, according to the agreed monitoring criteria set out in [Annex 1].
- b. Carbon stock in the Activity Area and the boundary of the Activity Area, which can be used for monitoring results, will be established according to the methodology [for assessing mangrove carbon stocks and mangrove project area] [as defined in [FAO and IUCN (2016) Mangrove carbon estimator and monitoring guide]].
- c. Monitoring and reporting will be conducted by the [Mangrove Protection Group established by the Community]
- d. Annual project auditing will be conducted by an [independent third-party auditor] contracted by the Financier [Annex 5]

- e. The monitoring system will reflect mangrove area restored and protected, and improved mangrove condition, with the exception of any mangrove loss due to Unavoidable Incident as defined in paragraph 9.

6. Rights of communities to enter into contract

- a. [Formal land title] [Land tenure sufficient to carry out terms of the agreement] is established in the name of the Community for the Activity Area contemplated prior to the project's commencement, as evidenced by a copy of such document in [Annex 2].]

OR

- b. [As the Government retains land and/or forest rights to the Activity Area, the following arrangement is established:
 - i. The Government has granted rights to the Community for the land and forest of the Activity Area, as defined by the terms of this contract. This agreement is attached in [Annex 2].]

OR

- c. [As formal land title is not feasible to establish in the Activity Area, the following arrangement is established:
 - i. [The Government] [Landholder] has granted land and forest rights to the Community for the Activity Area, as defined by the terms of this contract. This agreement is attached in [Annex 2].]

Section V. Payments

7. Payments

a. Key payment terms

- i. Payments of [XX per hour/day/patrol/seedling planted] will be made to cover costs associated with implementation of activities set out in paragraph 2.
- ii. Payments of [XX per year] will be made for mangrove protection performance monitored according to the process set out in paragraph 5 above.
- iii. Payments of [XX] per surviving seedling will be made for mangrove restoration performance monitored according to the process set out in paragraph 5 above.
- iv. Payment rates in i-iii above will be reviewed and updated as necessary in the annual work plan and budget [Annex 3]

b. Payment conditionalities

i. The Parties agree that:

- 1. The Financier will establish an agreement with [chosen Technical Advisory Body] for [chosen Technical Advisory Body] to provide technical and administrative support to the Community [and attach this agreement in [Annex 4]].
- 2. The Financier will pay the Community in instalments covering agreed costs for equipment, labour, travel and other direct costs for six months, as set out in the annual work plan and budget [Annex 3].

3. The Financier will pay the Community an initial instalment upon the signing of this agreement and then subsequent instalments on the basis of results as agreed in [Annex 3], upon receipt and acceptance of biannual monitoring and financial reports from [the Mangrove Protection Group] and annual audit reports from [an independent third-party auditor], verifying that the Community has met its agreed performance obligations under the contract, as set out in paragraph 5 above.
 - a. The Community will receive its instalments from the Financier [no later than 30 days] following the delivery of biannual monitoring and financial reports.
 - b. Support is required from the [chosen Technical Advisory Body] for the Community to fulfil the Activities, unless the Agreement is modified and signed duly by all Parties to no longer require assistance from the [chosen Technical Advisory Body].
- ii. **Conditions precedent and conditions subsequent**
1. The Financier need not begin payments to the Community until the Financier has received and accepted an annual work plan and budget, which shall be attached to this agreement [Annex 3.] and a plan for sharing benefits among Community members (as outlined in paragraph 7.d.i), which shall also be attached to this Agreement [Annex 6].
 2. The Community need not begin performance until it receives the first instalment from the Financier.
 3. The Financier need not continue payment upon receiving either of the following: notice that the Community no longer continues performance, or a report that does not verify Community performance of mangrove restoration or protection, as set out in paragraph 5 above.
- c. **Payment modalities**
- i. Payments are made within 30 calendar days of the receipt by the Financier of a valid biannual monitoring and financial reports from the [Community] for the relevant instalment, as set out in paragraph 5 above.
 - ii. The [Community] [Community Representatives] shall have a bank account to receive payments under the Agreement from the Financier.
 - iii. All payments and transfers made by the Financier to the [Community] shall be inclusive of any taxes (including but not limited to local income tax and withholding taxes), levies or charges.
 - iv. Operational expenses associated with activities set out in paragraph 2 above shall be covered separately from payments for performance as set out in paragraph 5 above. All such expenses shall be included in the annual work plan and budget (Annex 3), and approved in advance. Expenses anticipated during the first six months will be paid in advance, and itemized expenses as agreed in the work plan and budget shall be submitted accompanied by receipts and biannual financial reports.
- d. **Cost and benefit sharing**
- i. [With technical assistance [chosen Technical Advisory Body],] The Community will develop a plan detailing how individuals are selected for performing activities towards the fulfilment of the Agreement in the Activity Area and

- how performance-based incentives from the project are spent (“Benefit Sharing Plan”).
- ii. The Benefit Sharing Plan shall ensure the following:
 - 1. The participation and benefit rights of Community members are equal across gender, class, and ethnic groups, no members lose ownership or access rights, and that members receive equitable compensation for their efforts.
 - 2. Though the Community Representatives are to lead the development of the Plan, the Plan shall be developed via a participatory process, with equal participation from men and women. The Plan shall ensure that free, prior informed consent from all Community members in the Project is obtained.
 - iii. [The biannual monitoring and financial reports shall verify that Community members are sharing in the project’s costs and benefits as envisioned under the Benefit Sharing Plan.]

Section VI. Breaches, remedies and grievance procedure

8. Remedies

- a. The parties agree that, in the event of non-performance, remedies include:
 - i. Default Notice:
 - 1. If either party becomes aware that an Event of Default has occurred on the part of the other party, it shall promptly notify the other party in writing of the Default (the “Default Notice”).
 - ii. Repair Period
 - 1. Unless a Default is due to material breach of a representation in this Agreement, is intentional, or is the result of gross negligence, the defaulting party may “repair” the Default within [five] [10] business days of delivery of the Default Notice, thereby precluding remedies under this clause.
 - iii. Remedies
 - 1. In case a Default by the Community is not repaired in a timely manner as agreed in (i) and (ii) of this section:
 - a. The Financier is limited to the remedies expressly provided in this agreement.
 - b. The Financier may terminate this agreement (see paragraph 13 below) and, if the Default is intentional or due to gross negligence on the part of the Community, the Community shall return advance payments detailed in 7.c.iv, if any were made not later than [10 business days] after the Community receives the Default Notice.
 - 2. In case a Default by the Financier is not repaired in a timely manner as agreed in (i) and (ii) of this section:
 - a. The Community is limited to the remedies expressly provided in this agreement.

- b. The Community may terminate this agreement (see paragraph 13 below) and, if the Default is intentional or due to gross negligence on the part of the Financier, the Community is entitled to [(x) amount money] in damages not later than [10 business days] after the Financier receives the Default Notice.
- 3. The parties further agree that, where financial remedies are chosen, these should be decided based on *reasonableness* in relation to the situation.

9. Unavoidable Incident

- a. If an Unavoidable Incident occurs, the party that is prevented by that Unavoidable Incident from performing any one or more obligations under this agreement (the “Nonperforming Party”) will be excused from performing those obligations, on condition that it complies with its obligations under part (c) of this section.
- b. For purposes of this agreement, “Unavoidable Incident” means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party, is beyond the control of either party, and that prevents a party from complying with any of its obligations under this agreement [(other than an obligation to pay money)], on condition that the Nonperforming Party that uses reasonable efforts to do so, except that a Unavoidable Incident will not include [any strike or other labor unrest that affects only one party, an increase in prices, or a change of law].
- c. Upon occurrence of an Unavoidable Incident, the Nonperforming Party shall promptly notify the other party of occurrence of that Unavoidable Incident, its effect on performance, and how long that party expects it to last. Thereafter, the Nonperforming Party shall update that information as reasonably necessary. During an Unavoidable Incident, the Nonperforming Party shall use reasonable efforts to limit damages to the Performing Party and to resume its performance under this agreement.
- d. [If the Unavoidable Incident continues for more than [a reasonable time] [(interval agreed by both/all parties)] the Performing Party has the right to terminate the contract.]

10. Grievance procedure

- a. Informal Discussion:
 - i. In the event a dispute arises under, out of, or relating to the interpretation, application, or performance of this agreement, the parties shall first attempt to resolve the dispute by discussion and negotiation, or an alternative method such as arbitration.
 - ii. Only when these methods have been exhausted can a party bring its complaint before a body with the power to issue a binding decision.

11. Governing law

- a. This agreement is governed by, and is to be construed in accordance with, the laws of the [x country] and [state or province], as applicable.

12. Jurisdiction or Arbitration

- a. In the event arbitration is chosen by mutual agreement, the parties further agree that each is entitled to nominate one arbitrator, and a third arbitrator is nominated either by the parties, by the nominated arbitrators, or by a designated arbitral institution.
- b. [The courts of [x country] and [state or province] are able to support an arbitration and enforce awards to either party.]

13. Termination

- a. In the case of an Event of Default by either Party that is not repaired in a timely manner as agreed in paragraphs 8.a.i and 8.a.ii above, the other Party may terminate this agreement.
- b. Due to foreseen or unforeseen circumstances, the Parties also may mutually agree to terminate the agreement.

Section VII. Miscellaneous

14. Duration of agreement

- a. [This Agreement shall be effective as of [date agreed by parties], and shall remain in full force and effect through [date agreed by parties].], unless terminated in accordance with provisions in paragraph 13.

OR

- b. [This agreement shall become effective on the date it is executed following the completion of the conditions precedent as defined in paragraph 7.b.ii and continue until completion of the conditions subsequent as defined in paragraph 7.b.ii and/or terminated in accordance with the provisions of paragraph 13 above, unless terminated earlier as provided herein.]

OR

- c. [This Agreement shall become effective on the date it is executed by the parties and shall remain in effect for [duration agreed by parties] or until the Financier's written acceptance of the final progress report, whichever date is later.]

15. Assignment

- a. Neither party shall assign or transfer its rights or obligations under this agreement to a third party without the prior written consent of the other party to this agreement, such consent not to be unreasonably withheld.

Annex 1: Activity area description, carbon stock, boundary map and monitoring criteria.

Annex 2. Land title document (or substitute agreement).

Annex 3. Work plan and budget.

Annex 4. Agreement between financier and the TAB.

Annex 5. Agreement between financier and the third-party auditor.

Annex 6. Benefit sharing plan.

Mangroves provide a wide array of benefits to coastal communities, including wood and non-wood forest products and a wide range of environmental services encompassing coastal hazard protection, erosion control, water filtration and bio-diversity conservation. Mangroves are also valuable in terms of climate change mitigation due to high rates of primary productivity and the large amounts of carbon contained within above- and below-ground biomass and mangrove soils. In spite of their many values, mangrove areas continue to diminish in size around Asia and sustainable financing for their protection has not been forthcoming.

This publication was prepared for 'Income for coastal communities for mangrove protection' project (2015-2016) which sought to develop a low cost mechanism enabling investors to responsibly promote mangrove conservation, carbon emissions reduction and sustainable development through the provision of funding to local communities.

This is the fourth in a series of four publications intended to be used in conjunction in establishing sustainable financing for mangrove protection in Asia. The titles of the four publications are as follows:

1. Financing for mangrove protection with emphasis on Pakistan, Thailand and Viet Nam
2. Mangrove-related policy and institutional frameworks in Pakistan, Thailand and Viet Nam
3. Mangrove carbon estimator and monitoring guide
4. Incentive allocation for mangrove protection



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