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THE EXPORT-IMPORT BANK OF CHINA

as the "Lender"

and

**THE GOVERNMENT OF THE REPUBLIC OF KENYA
REPRESENTED BY THE NATIONAL TREASURY OF KENYA**

as the "Borrower"

Buyer Credit Loan Agreement

**FOR THE KENYA MOMBASA-NAIROBI STANDARD
GAUGE RAILWAY PROJECT**

(Contract No. 1410302052014210766)

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This **BUYER CREDIT LOAN AGREEMENT** (the "**Agreement**") is made on the day of [] 2014 by and between **THE EXPORT-IMPORT BANK OF CHINA** (hereinafter referred to as the "**Lender**", with its principal office at the date hereof at No. 30, Fu Xing Men Nei Street, Xicheng District, Beijing 100031, China) and **THE GOVERNMENT OF THE REPUBLIC OF KENYA REPRESENTED BY THE NATIONAL TREASURY OF KENYA** (hereinafter referred to as the "**Borrower**", with its office at Treasury Building, Harambee Avenue, P.O. Box 30007 ,Nairobi, the Republic of Kenya).

WITNESSETH

WHEREAS:

- (A) The Borrower is the Government of the Republic of Kenya represented by the National Treasury of Kenya of the Republic of Kenya.
- (B) The Borrower intends to undertake the Project as hereinafter defined.
- (C) Kenya Railways Corporation as the owner (hereinafter referred to as the "**End User**") and China Road and Bridge Corporation as the general contractor (hereinafter referred to as the "**EPC Contractor**") have entered into the Commercial Contracts (as defined in Article 1 hereof).
- (D) The Borrower has requested that the Lender make available loan facilities (including buyer's credit and preferential buyer's credit) to the Borrower for the purpose of financing up to ninety per cent (90%) of the Contract Amount and eighty-five per cent (85%) of the insurance premium payable under the Insurance Agreement or the Insurance Policy (as the case may be) (all as defined in Article 1 hereof).
- (E) The Borrower has entered into a preferential buyer credit loan agreement (the "**Preferential Loan Agreement**") with the Lender dated on or about the date of this Agreement, pursuant to which the Lender agrees to lend certain loans (the "**Preferential Loans**") up to ONE BILLION SIX HUNDRED MILLION US Dollar only US\$ 1,600,000,000.00 for the purpose of financing the Line Section of the Project (both as defined in Article 1 hereof).
- (F) The Lender has agreed to make a loan facility available to the Borrower on the terms and conditions set out herein.

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NOW THEREFORE, the Borrower and the Lender hereby agree as follows:

Article 1 Definitions

- 1.1 In this Agreement and in the Annexes and Forms hereto, the following expressions shall, unless the context otherwise requires, have the following meanings:

"Account Bank of the Lender" means The Export-Import Bank of China;

"Borrower's Process Agent" means Embassy of Kenya, Beijing, China with its address from time to time at San Li Tun Xi Liu Street, Chaoyang District, Beijing, China;

"Business Day" means a day on which banks and/or other financial institutions are open for banking business in Beijing and Nairobi and:

- (i) in relation to any date for payment or purchase of US Dollar, New York; and
- (ii) in relation to the determination of LIBOR, London.

"China" means the People's Republic of China;

"Commercial Contracts" means the Commercial Contract (Line Section) and the Commercial Contract (Facilities and Rolling Stocks), and **"Commercial Contract"** means any of them;

"Commercial Contract (Line Section)" means the Construction on the Civil Works of Mombasa-Nairobi Standard Gauge Railway Project EPC Turnkey Commercial Contract between the EPC Contractor and the End User dated 11th July 2012, as amended and supplemented from time to time, for the construction of the Project;

"Commercial Contract (Facilities and Rolling Stocks)" means the Supply and Installation of the Facilities, Locomotives and Rolling Stocks for the Mombasa-Nairobi Standard Gauge Railway Project Contract between the EPC Contractor and the End User dated 4th October 2012, as amended and supplemented from time to time, for the construction of the Project;

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"Contract Amount" means the Contract Amount (Line Section) and the Contract Amount (Facilities and Rolling Stocks), with the total amount of THREE BILLION EIGHT HUNDRED AND FOUR MILLION ONE HUNDRED AND NINETY TWO THOUSAND SEVEN HUNDRED AND EIGHTY FOUR US DOLLAR AND NINETY TWO CENTS only (US\$3,804,192,784.92) payable by the End User to the EPC Contractor in accordance with the Commercial Contracts ;

"Contract Amount (Line Section)" means, in respect of the Commercial Contract (Line Section), the total amount of TWO BILLION SIX HUNDRED AND FIFTY SEVEN MILLION FOUR HUNDRED AND ONE THOUSAND SEVEN HUNDRED AND SEVENTY SIX US DOLLAR AND SEVENTEEN CENTS only (US\$2,657,401,776.17) payable by the End User to the EPC Contractor in accordance with the Commercial Contract (Line Section) which will be partially financed under this Agreement; for the avoidance of doubt, the balance of the purchase price payable by the End User to the EPC Contractor under the Commercial Contract (Line Section) will be from its Self-raised Fund and also financed in accordance with the Preferential Loan Agreement;

"Contract Amount (Facilities and Rolling Stocks)" means, in respect of the Commercial Contract (Facilities and Rolling Stocks), the total amount of ONE BILLION ONE HUNDRED AND FORTY SIX MILLION SEVEN HUNDRED AND NINETY ONE THOUSAND EIGHT US DOLLAR AND SEVENTY FIVE CENTS only (US\$1,146,791,008.75) payable by the End User to the EPC Contractor in accordance with the Commercial Contract (Facilities and Rolling Stocks) which will be partially financed under this Agreement;

"Default" means an Event of Default or any event or circumstance specified in Article 14 which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Loan Documents or any combination of any of the foregoing) be an Event of Default;

"Disbursement" means each advance of the Facility made by the Lender to the Borrower in accordance with Article 5;

"Disbursement Period" means the period commencing on the date of Notice of Commencement of Disbursement Period and ending on the earliest of (a) the date falling sixty (60) months thereafter; (b) the date on which the Facility is fully

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disbursed, cancelled or terminated hereunder; and (c) any date mutually agreed upon in writing by the Lender and the Borrower;

"Drawdown Schedule" means a drawdown schedule with detailed arrangement of all the payments and drawdowns under this Agreement and the Preferential Loan Agreement, including the payments of the self-raised fund made by the End User and the drawdowns under this Agreement and the Preferential Loan Agreement.

"Encumbrance" means any mortgage, pledge, lien, charge, encumbrance or other security interest of any kind or nature whatsoever and howsoever arising;

"End User" means the Kenya Railways Corporation which ultimately utilizes the funds under the Facility as on-lent by the Borrower, including its legal assigns and successors.

"EPC Contractor" means China Roads and Bridge Corporation which has entered into the Commercial Contracts with the End User for the purpose of providing the Engineering, Procurement and Construction (EPC) services to the Project.

"Escrow Account" means the account(s) established and opened by the Borrower in the account banks appointed by the Lender (including without limitation account banks located in the Borrower's Country and the PRC) to deposit the monies and collect the revenue generated by the Project, to secure the payment and repayment under this Agreement and the Preferential Loan Agreement, including without limitation a payment account and a revenue account as stipulated in Article 12.2. The specific name of such accounts shall be subject to the relevant Escrow Account Agreement;

"Escrow Account Agreement" means the agreement(s) entered into among the Lender, the Borrower, the End User and the relevant account bank(s) appointed by the Lender for the purpose of supervising the Escrow Account;

"Event of Default" means any of the events specified in Article 14;

"External Indebtedness" means any payment obligation under loan agreement and/or any guarantee or other encumbrance which (i) by their terms are repayable more than one (1) year from the date incurred and (ii) is:

- (a) denominated, payable or optionally payable otherwise than the currency of the Kenyan Shilling; and

(b) payable to a person, domiciled, resident or having its head office or principal place of business outside the Republic of Kenya;

"Facility" means the loan facility in US Dollar to be made available under this Agreement;

"Final Disbursement Date" means the last day of the Disbursement Period;

"Final Repayment Date" means the date on which the Repayment Period expires.

"Goods and/or Services" means the equipment and/or services to be designed, built, launched, equipped and completed and to be sold and delivered to the End User after completion and successful trial under the terms and conditions of the Commercial Contracts;

"Grace Period" means the period commencing on the date of Notice of Commencement of Disbursement Period and ending on the date falling sixty (60) months thereafter, during which period only the interest and no principal is payable by the Borrower to the Lender;

"Insurance Company" means China Export & Credit Insurance Corporation;

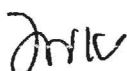
"Insurance Agreement" means the insurance agreement entered into or to be entered into by and between the Lender and the Insurance Company;

"Insurance Policy" means the medium-long term buyer's credit insurance policy issued or to be issued by the Insurance Company;

"Interest Payment Date" means the 21st January and the 21st July in each calendar year and the Final Repayment Date;

"Interest Period" means, in relation to the Loan, any period determined in accordance with Article 6.2;

"Line Section" means the construction contents and items under the Commercial Contract (Line Section);





"Loan" means the aggregate principal amount disbursed and from time to time outstanding under the Facility;

"Loan Documents" means this Agreement and any other document or agreement which may have been or may hereafter be executed in connection with this Agreement;

"Long Term Service Agreement" means any long term service purchase agreement with take-or-pay terms (or similar agreement or arrangement) entered into or to be entered into between the railway operator of the Railway (being the End User as of the date of this Agreement or any of its legal assigns or successors) and users of the Railway (including without limitation the Kenya Ports Authority), in the form and substance reasonably satisfactory to the Lender;

"Month" means a period commencing on a specific day in any calendar month and ending on and including the day immediately preceding the numerically corresponding day in the next succeeding calendar month, provided that if there is no such numerically corresponding day in the next succeeding calendar month, such period shall expire on and including the last day of such next succeeding calendar month, and references to "Months" shall be construed accordingly;

"Notice of Commencement of Disbursement Period" means a written notice in the form set forth in Form 1 attached hereto;

"Notice of Drawdown" means a notice in the form set forth in Form 4 attached hereto;

"On-Lending Agreement" means the loan agreement entered into between the Borrower as lender and the End User as borrower, whereby the Facility is on-lent by the Borrower to the End User to implement the Project;

"Project" means the Kenya Mombasa-Nairobi Standard Gauge Railways Project as described in Annex A;

"Quotation Day" means, for the purpose of fixing the rate of interest, two (2) Business Days prior to:

(a) in relation to the first Interest Period of each disbursement, the Disbursement Date;

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(b) in relation to each of the Interest Periods other than the first Interest Period of each disbursement, the last day of the immediately preceding Interest Period;

"Railway" means the Mombasa-Nairobi Standard Gauge Railway to be established and operated under the Project as described in Annex A;

"RDF" means the Railway Development Fund or similar fund established or to be established by the Government of the Republic of Kenya;

"Reference Banks" means the reference bank(s) at the sole determination of the Lender;

"Repayment Date" means each of the Interest Payment Dates on which a repayment installment is due under Article 7, and the first Repayment Date shall be on the first Interest Payment Date immediately succeeding the expiration of the Disbursement Period (or the Grace Period, if applicable) and the last Repayment Date shall be the Final Repayment Date;

"Repayment Period" means, in relation to the Loan, a repayment period being no more than one-hundred-and-twenty (120) months, commencing on the later of (a) the date on which the Disbursement Period expires; and (b) the date on which the Grace Period expires (if applicable), and ending on the Final Repayment Date;

"Repayment Schedule" means the schedule showing the dates and amounts of repayments of the Loan set forth in Form 5 attached hereto;

"Security Documents" means all the agreement(s) and legal document(s) signed by the relevant parties in connection with the security interests as stipulated in the Article 12.2, including without limitation the Escrow Account Agreements, any Long Term Service Agreement and any other security or similar document as mutually agreed between the Borrower and the Lender from time to time;

"Self-Raised Fund" means an amount not less than ten per cent (10 %) of the Contract Amount payable by the End User to the EPC Contractor as counterpart funding of which an amount of not less than THREE HUNDRED AND EIGHTY MILLION FOUR HUNDRED AND TWENTY THOUSAND FOUR HUNDRED AND TWENTY SEVEN US DOLLAR AND FORTY EIGHT CENTS only (US\$ 380,420,427.48), being fifteen per cent (15 %) of the Contract Amount (Facilities and

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Rolling Stocks), shall be exclusively applied for the Commercial Contract (Facilities and Rolling Stocks);

"US Dollar" or "US\$" means the lawful currency for the time being of the United States of America.

1.2 In this Agreement, unless the context otherwise requires, any reference to:

"including" or "includes" means including or includes without limitation;

"indebtedness" includes any obligation of any person for the payment or repayment of money, whether present or future, actual or contingent, secured or unsecured, as principal or otherwise, including but not limited to any such obligation:

- (a) under or in respect of any acceptance, bill, bond, note or similar instrument;
- (b) under or in respect of any guarantee, indemnity, counter-security or other assurance against financial loss;
- (c) in respect of the purchase, or lease of any asset or service;
- (d) in respect of any indebtedness of any other person whether or not secured by or benefiting from an Encumbrance on any property or asset of such person;
or
- (e) in respect of any form of off-balance sheet financing;

"law" and/or "regulation" includes any constitutional provision, treaty, convention, statute, law, decree, order, rule and regulation having the force of law ;

"order" includes any judgment, injunction, decree, determination or award of any court, arbitration or administrative tribunal;

"person" means an individual, corporation, partnership, joint venture, trust, unincorporated organization or any other juridical entity, or a sovereign state or any agency, authority or administrative subdivision thereof, or any international organization, agency or authority;

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"tax" includes any tax, levy, duty, charge, fee, deduction or withholding of any nature now or hereafter imposed, levied, collected, withheld or assessed by any taxing or other authority and includes any interest, penalty or other charge payable or claimed in respect thereof and "taxation" shall be construed accordingly.

- 1.3 The expressions "Borrower", "Lender", "End User" and "EPC Contractor" shall, where the context permits, include their respective successors and permitted assigns and any person permitted by the Lender deriving title under them.
- 1.4 Reference to "this Agreement" in this Agreement means this Agreement as it may be amended from time to time.
- 1.5 Article and Section headings in this Agreement and the Table of Contents are inserted for ease of reference only and do not form a part of this Agreement and shall have no effect on the interpretation of the provisions hereof.
- 1.6 The Annexes and the Forms to this Agreement shall form an integral part hereof.
- 1.7 Where the context so requires, words importing the singular number shall include the plural and vice versa.

Article 2 Amount of Facility and Purpose of Loan

- 2.1 **Amount** The Lender hereby agrees to make available to the Borrower, on and subject to the terms and conditions of this Agreement, the Facility in US Dollar in an aggregate principal amount not exceeding TWO BILLION THREE MILLION FIVE HUNDRED AND EIGHTY FOUR THOUSAND TWENTY EIGHT US DOLLAR AND EIGHTY SEVEN CENTS only (US\$2,003,584,028.87).
- 2.2 **Purpose of Loan** The entire proceeds of the Facility shall be applied by the Borrower for the sole purpose of:
 - (a) the payment of not exceeding thirty one point ninety five percent (31.95%) of the Contract Amount (Line Section) in an aggregate amount up to EIGHTY HUNDRED AND FORTY NINE MILLION US Dollar only (US\$849,000,000.00);

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- (b) the payment of not exceeding eighty five percent (85%) of the Contract Amount (Facilities and Rolling Stocks) in an aggregate amount up to NINE HUNDRED AND SEVENTY FOUR MILLION SEVEN HUNDRED AND SEVENTY TWO THOUSAND THREE HUNDRED AND FIFTY SEVEN US DOLLAR AND FORTY FOUR CENTS only (US\$ 974,772,357.44);
- 6.9 (c) the payment of not exceeding eighty five percent (85%) of the insurance premium payable under the Insurance Agreement or the Insurance Policy (as the case may be) to the Insurance Company in an aggregate amount up to ONE HUNDRED AND SEVENTY NINE MILLION EIGHT HUNDRED AND ELEVEN THOUSAND SIX HUNDRED AND SEVENTY ONE US DOLLAR AND FORTY THREE CENTS only (US\$ 179,811,671.43).

2.3 **Term of the Facility** The term of the Facility is fifteen (15) years from the date of the Notice of Commencement of Disbursement Period to the Final Repayment Date.

Article 3 Amendment of the Commercial Contracts

- 3.1 **No Amendment to the Commercial Contracts** During the term of this Agreement, the Borrower shall ensure and hereby undertake that the Commercial Contracts shall not be terminated or cancelled and without its written application (substantially in the form set forth in Form 2 hereof) and the prior written consent of the Lender, no material change, amendment or supplement (excluding technical issues which may not affect the commercial terms materially) shall be made to the Commercial Contracts.

Article 4 Conditions Precedent

- 4.1 The Lender shall have no obligation hereunder and no Disbursement shall be made unless and until the Lender has notified the Borrower that the Lender has received all of the following documents, each in form and substance satisfactory to it in all respects:

Section A – Conditions Precedent under this Agreement

- (1) certified true copies of the documentary evidence of the authority of each person who
(i) has signed this Agreement on behalf of the Borrower and (ii) will sign the

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statements, reports, certificates and other documents required by this Agreement and will otherwise act as a representative of the Borrower in relation to the implementation of this Agreement (such documentary evidence includes the authenticated specimen signature of and certificate of incumbency and power of attorney in respect of each person described above);

- (2) this Agreement duly executed by the Lender and the Borrower;
- (3) the Preferential Loan Agreement duly executed by the Lender and the Borrower and the evidence on its having become effective, and the conditions precedent for the first drawdown under the Preferential Loan Agreement have been satisfied;
- (4) a certified true copy of the Commercial Contracts duly executed by the EPC Contractor and the End User;
- (5) the Drawdown Schedule submitted by the Borrower which has been recognized and accepted by the Lender;
- (6) the original Insurance Agreement executed by the Insurance Company and the Lender or the Insurance Policy duly issued by the Insurance Company, in the form and substance satisfactory to the Lender, which insurance premium has been fully paid to the Insurance Company and has come into effect, and a written notice given by the Insurance Company to the Lender, stating that the insurance obligations of the Insurance Company under the Insurance Agreement/Policy have become enforceable;
- (7) if applicable, certified true copies of all approvals or consents by the governmental authorities of the Republic of Kenya which are required under the laws and regulations of the Republic Kenya approving the borrowing by the Borrower under this Agreement or in respect of the execution, delivery and the performance of this Agreement);
- (8) if applicable, certified true copies of all filing, registration and record of this Agreement and any other documents with any governmental agency, court, public office or other authority required under the laws and regulations of the Republic of Kenya to ensure the validity, legality and enforceability of such documents);

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- (9) certified true copies of such documents which could evidence that the fees payable hereunder have been paid by the Borrower to the Lender in accordance with the provisions of Article 6;
 - (10) a legal opinion from the Attorney-General of Kenya in a manner acceptable to the Lender substantially in the form set forth in Form 6 attached hereto or in the form and substance otherwise approved by the Lender;
 - (11) the written appointment by the Borrower and related consent of the Borrower's nominated agent for service of notices as specified in Article 15.6 in the form set forth in Form 7-1 and Form 7-2 attached hereto.
 - (12) document(s) evidencing that the related self-raised fund under the Project (other than the Facility under this Agreement and the Preferential Loans) has been paid to the EPC Contractor, the exact amount of which shall be subject to the Drawdown Schedule approved by the Lender in advance;
 - (13) the executed version of the On-Lending Agreement and the evidence on its having become effective;
 - (14) the executed version of the Security Documents and the evidence on their having become effective and the security interests contemplated thereunder having been duly created and perfected (if applicable) in a manner and form to be specified by the parties
 - (15) document(s) evidencing that the Escrow Accounts under the relevant Escrow Account Agreements have been opened;
 - (16) such other documents relating to any of the matters contemplated herein as the Lender may reasonably request.

Section B Lender's Legal Opinions and Due Diligence Reports

- (17) a Chinese legal opinion issued by Beijing Global Law Office, the PRC counsel to the Lender; for the avoidance of doubt, the Borrower is not required to assume the legal fees on such opinion;

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- (18) The Lender has obtained at their expenses a Kenyan legal opinion issued by Kaplan & Stratton, the Kenyan counsel to the Lender; for the avoidance of doubt, the Borrower is not required to assume the legal fees on such opinion; and
- (19) the Lender has received and approved the legal due diligence report issued by the Kenyan counsel (as appointed by the Borrower and acceptable to the Lender) in relation to the legal and compliance risks of the Project in the Republic of Kenya. For the avoidance of doubt, the Borrower is not required to assume the legal fees on such report.
- 4.2 The Parties hereby undertake that all of the above documents shall be delivered to the Lender in the shortest possible time from the date hereof. For the avoidance of doubt, the Lender will coordinate with the Insurance Company and ask the Insurance Company to provide relevant explanation on the main terms relating to the Borrower in regard to the Insurance Agreement or Insurance Policy to the Borrower for reference.
- 4.3 All the documents and evidence referred to in Article 4 shall be in form and substance satisfactory to the Lender. Copies required to be certified shall be certified in a manner satisfactory to the Lender by a director or responsible officer of the Borrower or other parties concerned.
- 4.4 After all the above conditions stipulated in Article 4 have been fulfilled to the satisfaction of the Lender, the Lender shall issue a Notice of Commencement of Disbursement Period to the Borrower.

In the event that the Borrower fail to fulfill the conditions stipulated in Article 4 within one (1) year after the effectiveness of this Agreement, the Lender shall have the right to reevaluate the implementation conditions of the Project and utilization conditions of the Facility to determine whether to continue the performance of this Agreement or not, in consultation with the Borrower. .

Article 5 Disbursement

- 5.1 **Further Conditions** Any Disbursement to the Borrower is subject to the following conditions:

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- (a) all the conditions precedent specified in Article 4 shall have been satisfied before the issuance of the Notice of Drawdown by the Borrower;
- (b) the Lender shall have received not later than 12:00 noon (Beijing time) on the fifth (5th) Business Day before the date on which the Disbursement is to be made the Notice of Drawdown duly completed and submitted by the Borrower;
- (c) the Drawdown Schedule submitted by the Borrower has been approved by the Lender in advance in writing;
- (d) no Event of Default has occurred and is continuing nor would an Event of Default result from the making of such Disbursement;
- (e) all the representations and warranties made or given by the Borrower herein remain true and accurate in all material respects on and as of the date the Disbursement is to be made with reference to the facts and circumstances then subsisting; and
- (f) document(s) evidencing that the self-raised fund under the Project (other than the Facility under this Agreement and the Preferential Loans) has been paid to the EPC Contractor, the exact amount of which shall be subject to the Drawdown Schedule approved by the Lender in advance.

5.2 **Disbursement Procedure** Subject to conditions in Article 4 and Article 5.1, the Lender shall disburse the Facility in relation to the Commercial Contracts in accordance with the following procedures:

5.2.1 The Borrower shall issue an irrevocable Notice of Drawdown via courier/ by authenticated SWIFT message to the Lender in accordance with the payment schedule set out in the relevant Commercial Contracts and the construction progress of the Project and designate the account to which the Disbursement shall be made, which account shall be opened by the Chinese Contractor with the Lender for the purpose of the Commercial Contracts. For the drawdown of a Loan under the Facility for the payment of insurance premium set out in Article 2.2(c), the Borrower shall designate the account of the Insurance Company or, if such insurance premium has already been paid by the EPC Contractor to the Insurance Company on behalf of the Borrower, the account of the EPC Contractor, to which the Disbursement shall be made. The Notice of Drawdown shall not be issued more than once a month.

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- 5.2.2 Subject to conditions in Article 4, Article 5.1 and Article 5.2 and other terms and conditions of this Agreement, the Lender shall allocate in due course the amount specified in the relevant Notice of Drawdown via the Borrower's Account to the account as designated in the relevant Notice of Drawdown.
- 5.2.3 Forthwith upon the allocation of the Disbursement to the Borrower's Account, the Lender shall be deemed as having completed its Disbursement obligation under this Agreement. Such Disbursement shall become the indebtedness payable by the Borrower under this Agreement.
- 5.3 **Table of Disbursement** Within the first ten (10) days of the month immediately following the month in which a Disbursement was made, the Lender shall notify the Borrower in writing of the dates and amounts of Disbursement made in the preceding month by sending to the Borrower a Table of Disbursement in the form set forth in Form 4 attached hereto, each of which shall be prima facie evidence of the matters set forth therein.
- 5.4 **No Excess of Facility** The Lender shall not be under any obligation to make any further Disbursement under the Facility if after the making of such further Disbursement, the aggregate amount of the Disbursements made under this Agreement would exceed the principal amount of the Facility.
- 5.5 **Confirmation of the Borrower** The Borrower confirms that any dispute between the End User and the EPC Contractor arising from the Commercial Contracts shall in no event affect the performance of the obligations of the Borrower hereunder.
- 5.6 **Notice of Drawdown Irrevocable** A notice of Drawdown once given shall be irrevocable and the Borrower shall be bound to draw a Disbursement in accordance therewith.
- 5.7 **Cancellation** Any part of the Facility undrawn at the end of the Disbursement Period shall be cancelled.
- 5.8 The Borrower may request for the extension of disbursement schedule by submitting a written application to the Lender at least three months in advance, subject to the approval on terms stipulated by the Lender.

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Article 6 Interest and Fees

6.1 **Interest** The Borrower shall pay to the Lender interest on the Loan in accordance with the following provisions of this Article.

6.2 **Interest Period**

The Interest Period applicable to each Disbursement or, as the case may be, the Loan, shall be six (6) Months, provided that:

- (a) the first Interest Period in relation to the first Disbursement shall commence on the date on which the respective Disbursement is made (inclusive) and end on the first Interest Payment Date (exclusive);
- (b) in relation to each Disbursement after the first Disbursement, the first Interest Period shall commence on the date on which the respective Disbursement is made (inclusive) and end on the last day of the then current Interest Period (inclusive) in respect of the Loan, so that all existing Disbursements shall be consolidated upon the expiry of each Interest Period;
- (c) each Interest Period (except the first Interest Period and the last Interest Period in relation to each Disbursement) shall commence on the Interest Payment Date for the immediately preceding Interest Period (inclusive) and end on the last day of the then current Interest Period (inclusive);
- (d) any Interest Period which would otherwise extend beyond the Final Repayment Date shall instead end on the date immediately preceding the Final Repayment Date.

6.3 **Interest Rate**

The rate of interest applicable to the Loan or the relevant part thereof for each Interest Period shall be a floating rate per annum determined by the Lender to be aggregate of LIBOR for that Interest Period plus Margin. Each applicable floating rate shall be unchangeable for six (6) months commencing from the date on which such floating rate is determined.

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“LIBOR” means, in relation to any relevant sum and any relevant period, the rate determined by the Lender to be:

- (a) the rate shown on the relevant Reuters page as being the rate per annum at which US Dollar deposits are offered for a period equal or comparable to six (6) months at or about 11:00 a.m. (London time) on the Quotation Day,

for this purpose, “relevant Reuters page” means the display designated as the page on the Reuters system or such other page as may replace that page on that system for the purpose of displaying offered rates for US Dollar deposits as determined by the Lender; or

- (b) if at or about such time on any relevant day no rate appears on the relevant Reuters page, the arithmetic mean (rounded up if necessary to the nearest integral multiple of 1/16%) of the respective rates notified to the Lender by each Reference Bank as being the rate per annum at which US Dollar deposits in an amount comparable to such sum are offered to that Reference Bank for such period by prime banks in the London interbank market at or above 11:00 a.m. (London time) on the Quotation Day,

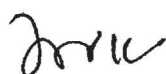
provided that if any Reference bank does not notify such rate to the Lender for any relevant period, LIBOR for such period shall be determined on the basis of the rates notified by the other Reference Banks;

“Margin” means 360 b.p. per annum, and such margin, upon the determination by the Lender, shall not be changed during the whole term of this Agreement.

6.4 Market disruption

- (1) In this Article, each of the following events constitutes a market disruption event:

- (a) The rate as provided in Article 6.3 is not available and none, or the relevant Reuters screen rate (or the relevant replacement service) is zero or negative, or none or only one Reference Bank supplies to the lender a rate on the relevant interest rate fixing date; or



(b) before close of business on the relevant interest rate fixing date, the Borrower receives notifications from the Lender that the cost to it of obtaining matching deposits in the relevant interbank market is in excess of the cost to the Lender as of the signing date of this Agreement..

(2) The Lender shall promptly notify the Borrower of a market disruption event.

(3) If a market disruption event occurs in relation to a Disbursement for any Interest Period, after notification under paragraph (2) above, the rate of interest on that Disbursement for that Interest Period shall be the percentage rate per annum which is the aggregate of:

(a) the Margin; and

(b) the rate notified to the Borrower by the Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the Lender of funding the Loan from whatever source it may reasonably select.

6.5 **Alternative Basis of Interest or Funding**

If a market disruption event occurs and the Borrower so requires, the Borrower and the Lender shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest and/or funding for the affected Loan. For the avoidance of doubt, in the event that no substitute basis is agreed at the end of the thirty (30) day period, the rate of interest shall continue to be determined in accordance with the terms of this Agreement.

6.6 **Calculation of Interest**

Interest at the rates determined as aforesaid shall accrue from day to day, shall be calculated on the basis of the actual number of days elapsed and a 360 day year, and shall be paid in arrears on each Interest Payment Date. The certificate issued by the Lender as to the rate and amount of interest payable on any Interest Payment Date

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shall be conclusive and binding upon the Borrower in the absence of demonstrable error.

Each determination of an interest rate made by the Lender in accordance with this Article shall be promptly notified by the Lender to the Borrower.

- 6.7 **Management Fee** The Borrower shall pay to the Lender an Management Fee of zero point seventy-five percent (0.75%) of the Facility equal to FIFTEEN MILLION TWENTY SIX THOUSAND EIGHT HUNDRED AND EIGHTY US DOLLAR AND TWENTY TWO CENTS only (US\$15,026,880.22) within sixty (60) days from the date of this Agreement becoming effective and in any event prior to the First Disbursement hereunder.
- 6.8 **Commitment Fee** The Borrower shall pay to the Lender a commitment fee at the rate of zero point seventy-five percent (0.75%) per annum on the daily unutilized portion of the Facility. Such commitment fee shall accrue from and including the date of Notice of Commencement of Disbursement Period up to but excluding the Final Disbursement Date. The commitment fee shall be calculated on the basis of the actual number of days elapsed and a 360 day year, and shall accrue on a daily basis and be paid in arrears on each Interest Payment Date.
- 6.9 **Default Interest** In case the Borrower fails to pay any sum payable under this Agreement (including without limitation the principal of the Loan and the Interest accrued thereon) on the due date, the Borrower shall pay to the Lender interest on such overdue amount at a rate determined as follows:
- (a) In the event that the Borrower fails to pay any interest due and payable under this Agreement, but the principal on which the interest arises has not become due and payable at that time, the Borrower shall pay to the Lender interest on such overdue interest at the Interest Rate specified in Article 6.3; or
 - (b) In the event that the Borrower fails to pay any principal and the interest accrued on such principal due and payable under this Agreement, the Borrower shall pay to the Lender interest on such overdue principal and interest at a rate of one per cent (1%) per annum over the Interest Rate specified in Article 6.3; or
 - (c) In the event that the Borrower fails to pay any fees due and payable under Article 6.7 or Article 6.8, the Borrower shall pay to the Lender interest on such overdue fees

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at a rate of one per cent (1%) per annum over the Interest Rate specified in Article 6.3 for the period from and including the due date thereof to the date of actual payment thereof.

Such interest shall accrue from day to day, shall be calculated on the basis of the actual number of days elapsed and a 360 day year and shall be payable from time to time on demand. Default interest (if unpaid) arising on any overdue amount under this Agreement will be compounded with that overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

The certificate of the Lender as to the rate and amount of any interest payable under this Article 6.9 shall be conclusive and binding upon the Borrower in the absence of demonstrable error.

Article 7 Repayment and Prepayment

- 7.1 **Repayment** The Borrower shall repay the Loan outstanding at the end of the Grace Period by twenty (20) equal successive installments on each Repayment Date to the Lender in accordance with the Repayment Schedule which will be sent by the Lender to the Borrower promptly after the expiration of the Disbursement Period.
- 7.2 **Repayment Schedule** Any part of the Facility undisbursed at the close of business on the Final Disbursement Date shall be cancelled and shall not thereafter be available to the Borrower. The Lender shall prepare a Repayment Schedule and furnish the Borrower with a copy of such Repayment Schedule promptly after the expiration of the Disbursement Period. The Repayment Schedule so provided by the Lender shall in the absence of manifest error be conclusive and binding on the Borrower.
- 7.3 **Prepayment** Subject to the written consent by the Lender, the Borrower may on any Interest Payment Date after the Final Disbursement Date prepay to the Lender all or any part of the Loan in accordance with the terms hereunder.
- 7.3.1 **Conditions to Prepayment** No prepayment may be made unless:

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- (a) the Borrower shall have given to the Lender not less than ninety (90) days prior written notice of its intention to make the prepayment, specifying the amount thereof and the date on which it is to be made;
- (b) the amount of any partial prepayment shall be not less than One Hundred Million US Dollars (US\$100,000,000) and an integral multiple of Ten Million US Dollars (US\$10,000,000) of the Facility herein; and
- (c) all other sums then due and payable under this Agreement shall have been paid.

7.3.2 **Prepayment Premium, Indemnity and Interest** At the time of the prepayment which is made in accordance with the above provisions, the Borrower shall pay to the Lender for such prepayment:

- (a) a prepayment premium calculated at one percent (1 %) of the amount prepaid;
- (b) the Borrower shall also pay all interest accrued thereon up to and including the day immediately preceding the date of such prepayment and any other amount then payable hereunder in respect thereof.

7.3.3 After all the conditions in Article 7.3.1 have been fulfilled to the satisfaction of the Lender, the Lender will issue a notice of approval of prepayment to the Borrower, which will specify the date of prepayment and the amount of premium, indemnity and interest for prepayment. Any such prepayments shall reduce the amount of repayment installments of the Loan in inverse order of maturity.

7.4 **Application of Insufficient Prepayment** If the amount of any prepayment made by the Borrower hereunder is less than the total amount due and payable by the Borrower to the Lender as of the date on which such payment is actually made by the Borrower, the Lender may without reference to the Borrower apply and appropriate the prepayment so made by the Borrower in or towards the satisfaction or reduction first of any indemnity and other amounts payable hereunder, secondly of all accrued interest; and thirdly repayment of any principal in inverse order of maturity.

7.5 **Provisions applicable to Prepayments** Any notice of intended prepayment of the Loan or any part thereof given by the Borrower under this Agreement shall be irrevocable and the Borrower shall be bound to make a prepayment in accordance

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therewith. The Borrower may only prepay the Loan or any part thereof in accordance with the express terms of this Agreement and no amount prepaid may be redrawn.

Article 8 Payments and Currency

- 8.1 **Place and Time of Payment** All payments by the Borrower to the Lender hereunder shall be made in the original currency of this Agreement in freely transferable and immediately available funds on the relevant due date to the account of the Lender (US Dollar account No. 778407900258 with Bank of China, Head Office (SWIFT: BKCHCNBJ) in favor of the Export-Import Bank of China) or such other account as the Lender may from time to time specify in the instruction to the Borrower for such payment with a message that such payment is made for "Buyer Credit Loan Agreement, No. 1410302052014210766".
- 8.2 **Payments to be made on a Non-Business Day** If any payment to be made by the Borrower hereunder falls due on any day which is not a Business Day, such payment shall be made on the immediately preceding Business Day.
- 8.3 **Payment Currency** The payment hereunder by the Borrower shall be in the original currency of this Agreement. Notwithstanding any payment being made, pursuant to an order or otherwise, in a currency other than the original currency of this Agreement, the Borrower's obligations under this Agreement shall be discharged only to the extent that the Lender may purchase the original currency of this Agreement with such other currency in accordance with normal banking procedures upon receipt of such payment. If the amount in the original currency of this Agreement which may be so purchased, after deducting any premium or exchange charge, is less than the relevant sum payable under this Agreement, the Borrower shall indemnify the Lender against the deficiency. The indemnity in this clause shall constitute an obligation of the Borrower separate and independent from its other obligations hereunder.
- 8.4 **Insufficient Payment** If the amount of any payment made by the Borrower hereunder is less than the total amount due and payable by the Borrower to the Lender as of the date on which such payment is actually made by the Borrower, then the Borrower shall be deemed to have hereby waived any right which it may have to make any appropriation thereof (and any appropriation made and/or indicated by the

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Borrower in respect of such payment shall be of no effect) and the Lender may without reference to the Borrower apply and appropriate the payment so made by the Borrower in or towards the satisfaction of any or all of the amounts which are due or overdue for payment on such day in the order decided upon by the Lender.

Article 9 Taxes

- 9.1 **No Deduction** All payments by the Borrower under this Agreement shall be paid in full to the Lender without set-off or counterclaim or retention and free and clear of and without any deduction or withholding for or on account of any taxes or any charges. In the event the Borrower is required by law to make any such deduction or withholding from any payment hereunder, then the Borrower shall forthwith pay to the Lender such additional amount as will result in the immediate receipt by the Lender of the full amount which would have been received hereunder had no such deduction or withholding been made. The Borrower shall promptly forward to the Lender copies of official receipts or other evidence of payment to the relevant taxation or other authorities of any tax so deducted or withheld.
- 9.2 **Advance Notification** If at any time the Borrower becomes aware that any such deduction, withholding or payment in Article 9.1 is or will be required, it shall immediately notify the Lender and supply all available details thereof.
- 9.3 **Indemnification** The Borrower shall promptly pay all present and future stamp and other like duties and taxes and all notarial, registration, recording and other like fees which may be payable in respect of this Agreement and any document referred to herein and shall indemnify the Lender against any and all liabilities, costs and expenses which may result from any default in paying such duties, taxes or fees.

Article 10 Change of Law or Circumstances

- 10.1 **Illegality** If at any time the Lender determines that it is or will become unlawful or contrary to any directive of any agency for it to allow all or part of the Facility to remain outstanding, to make, fund or allow to remain outstanding all or part of the Loan under this Agreement, upon appropriate notification and consultation between the Borrower and Lender:



- (a) the Facility shall be cancelled; and
- (b) the Borrower shall prepay such Loan on such date as the Lender shall certify to be necessary to comply with the relevant law or directive with all unpaid accrued interest thereon, all unpaid fees accrued and other sums then due under this Agreement to the Lender.

10.2 **Increased Cost** If the Lender determines that any change in any applicable law or regulation or in the interpretation or application thereof or compliance by the Lender with any applicable direction, request or requirement (whether or not having the force of law) of any competent governmental or other authority does or will:

- (a) subject the Lender to any tax or other payment with reference to sums payable by the Borrower under this Agreement (except (i) tax on the Lender's overall net income in China or (ii) as referred to in Article 9); or
- (b) impose on the Lender any other condition the effect of which is to (i) increase the cost to the Lender of making available the Facility or funding or maintaining the Loan or (ii) reduce the amount of any payment receivable by, or the effective return to, the Lender in respect of the Facility or (iii) impose a cost on the Lender resulting from its making available the Facility or funding or maintaining the Loan;

the Lender may so notify the Borrower, and the Borrower shall from time to time forthwith upon demand pay to the Lender such amount as the Lender may certify to be necessary to compensate it for such tax, payment, increased cost or reduction (each an "increased cost"). Where such increased cost arises from circumstances contemplated above which affect the Lender's business generally or the manner in which or extent to which it allocates capital resources, the Lender shall be entitled to such increased cost as it determines and certifies fairly allocable to the Facility and/or the Loan. The Borrower and the Lender shall discuss whether any alternative arrangement may be made to avoid such increased cost. So long as the circumstances giving rise to such increased cost continue, the Borrower may, after giving the Lender not less than thirty (30) days prior written notice, prepay the whole (but not only part) of the Loan in accordance with Article 7, and upon the giving of such notice the Facility shall be cancelled.

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Article 11 Representations and Warranties

11.1 The Borrower hereby represents and warrants for the benefit of the Lender that:

- (a) **Status of the Borrower** The Borrower is the Government of the Republic of Kenya represented by the National Treasury of Kenya, and has full power, authority and legal right to own its property and assets and to carry on its business as now being conducted;
- (b) **Authorization** The Borrower has full power and authority to enter into this Agreement, to borrow the Facility hereunder and to perform and observe its obligations hereunder. The Borrower has taken and completed all necessary and legal action or procedures necessary to authorize the Borrower to execute, deliver and perform this Agreement;
- (c) **Government Consents and Actions** All authorizations, approvals and consents from any governmental or other authority or creditors of the Borrower which are required for (i) the execution, delivery or performance of this Agreement or the validity and enforceability hereof or (ii) the borrowing of the Facility or (iii) the payment by the Borrower of all sums in US Dollar, have been duly effected, completed and obtained and are in full force and effect;
- (d) **Binding Effect** This Agreement has been duly executed and delivered by the Borrower and constitutes legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms and conditions;
- (e) **No Contravention** The execution, delivery and performance of this Agreement by the Borrower do not and will not contravene, violate or constitute a default under (a) any provision of any agreement or other instrument to which the Borrower is a party or by which the Borrower or any of its assets is or may be bound; or (b) any treaty, law, regulation, judgment or order applicable to the Borrower;
- (f) **No Default** The Borrower is not in default under any law, regulation, judgment, order, authorization, agreement or obligation applicable to it or its

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assets or revenues, the consequences of which default could materially and adversely affect its ability to perform its obligations under this Agreement and no event has occurred and is continuing which constitutes or which, upon the lapse of time or the giving of notice or both, would become an Event of Default;

- (g) **No Litigation** There are no litigation, arbitration or administrative proceedings before or of any court, arbitration tribunal or governmental authority that are pending or to the knowledge of the Borrower, threatened against the Borrower or its assets which would have a material and adverse effect on its operations, business or assets or the Borrower's ability to perform and discharge its obligations and liabilities hereunder;
- (h) **Taxes** Under the laws of the Republic of Kenya, there is no tax imposed (whether by withholding or otherwise) on or by virtue of the execution and delivery of this Agreement or any document or instrument to be executed and delivered hereunder, the performance hereof or thereof or the admissibility in evidence or enforcement hereof or thereof, or on any payment required to be made hereunder or thereunder.

For the avoidance of doubt, goods and services procured under this Agreement for the Project will be free of taxes and where under any law tax or other duty is required by law in Kenya to be imposed by any agency such taxes or duty will be borne by the End User;

- (i) **Pari Passu** The obligations and liabilities of the Borrower under this Agreement are direct, unconditional and general obligations and rank and will rank at least Pari Passu in right of payment and security in all respects with all other present or future unsecured and unsubordinated External Indebtedness (both actual and contingent) of the Borrower;
- (j) **Commercial Activity** The execution and delivery of this Agreement by the Borrower constitute, and the Borrower's performance of and compliance with its obligations under this Agreement will constitute, private and commercial acts done and performed for commercial purposes under the laws of the Republic of Kenya and neither the Borrower nor any of its assets is entitled to any immunity or privilege (sovereign or otherwise) from arbitration, suit,

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execution or any other legal process with respect to its obligations under this Agreement, as the case may be, in any jurisdiction;

- (k) **Proceedings to Enforce Agreement** In any proceeding in the Republic of Kenya to enforce this Agreement, the choice of the laws of China as the governing law hereof will be recognized and such law will be applied. The waiver of immunity by the Borrower, the irrevocable submissions of the arbitration of China International Economic and Trade Arbitration Commission and the appointment of the Borrower's Process Agent are legal, valid, binding and enforceable and any award obtained in arbitration will be, if introduced, evidence for enforcement in any proceedings against the Borrower and its assets in the Republic of Kenya;
- (l) **Proper Form** This Agreement, which is governed by the laws of China, is in proper legal form under the laws of the Republic of Kenya and is capable of enforcement in the courts of the Republic of Kenya;
- (m) **No Registration** It is not necessary in order to ensure the legality, validity, enforceability and admissibility in evidence in proceedings in the Republic of Kenya of this Agreement that it or any other document or agreement be filed, recorded or registered with any court, authority, public office or any other authority of the Republic of Kenya, unless otherwise required by laws of Republic of Kenya (where applicable);
- (n) **Commercial Contracts** The Commercial Contracts, when has been duly executed and delivered will constitute a valid and binding obligation of the Borrower enforceable in accordance with its terms;
- (o) **No Encumbrance** No Encumbrance exists over all or any part of the property, assets or revenues of the Borrower, which will have material adverse effect on the Borrower's performance of its repayment obligations hereunder except as created liens arising by operation of law or as previously disclosed in writing to and agreed by the Lender;
- (p) **Status of External Indebtedness** The outstanding amount of the Borrower's External Indebtedness upon the signing of this Agreement is not more than []

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- (q) **Information Provided** All information supplied to the Lender by or on behalf of the Borrower is true and accurate in all material respects and all forecasts and projections contained therein were arrived at after due and careful consideration on the part of the Borrower and were, in its considered opinion, fair and reasonable when made; the Borrower is not aware of any fact which has not been disclosed in writing to the Lender which might have a material effect on any such information, forecasts or projections or which might affect the willingness of the Lender to lend upon the terms of this Agreement.
- 11.2 The Borrower further represents and warrants to and undertakes with the Lender that the foregoing representations and warranties will be true and accurate throughout the continuance of this Agreement with reference to the facts and circumstances subsisting from time to time.
- 11.3 The Borrower acknowledges that the Lender has entered into this Agreement in reliance upon the representations and warranties contained in this Article 11.

Article 12 Undertakings

- 12.1 **Affirmative Undertakings** The Borrower undertakes and agrees with the Lender that throughout the continuance of this Agreement and so long as the Loan or any other sum remains outstanding, the Borrower will, unless the Lender otherwise agrees in writing:
- (a) **Information** furnish the Lender with the relevant information reasonably requested by the Lender in relation to the Borrower and this Agreement and with such other information (financial or other) as the Lender may reasonably request with respect to the implementation or administration of the Commercial Contracts, including without limitation of the quarterly reports on the actual progress and status of the Project and the actual utilization of the disbursed Loan and utilization plan or drawdown plan for the next quarter;
- (b) **Notifications** promptly inform the Lender of:

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- (i) the occurrence of any Event of Default or prospective Event of Default;
 - (ii) any litigation, arbitration or administrative proceeding as referred to in Article 11.1(g);
 - (iii) the imposition of any law, decree or regulation materially affecting the Borrower or the Commercial Contracts;
 - (iv) the occurrence of any situation or event which may prevent or interfere with the performance by the Borrower of its obligations under this Agreement or the performance by the End User under the Commercial Contracts;
- (c) **Approvals and Consents** maintain in full force and effect all such authorisations, approvals and consents as are referred to in Article 11.1(c), and take immediate steps to obtain and thereafter maintain in full force and effect any other authorisations which may become necessary or advisable for the purposes stated therein and comply with all conditions attached to all authorisations obtained;
- (d) **Punctual Payment** punctually pay all sums due from it and otherwise comply with its obligations under this Agreement;
- (e) **Pari Passu** ensure that its obligations and liabilities under this Agreement will rank at least *pari passu* in all respects with all other existing or future unsecured and unsubordinated External Indebtedness (both actual and contingent) of the Borrower;
- (f) **Further Documents** execute such documents in favor of the Lender and do all such necessary assurances, acts and things as the Lender may reasonably require to secure all obligations and liabilities hereby covenanted to be paid or hereby secured, and also give all notices, and directions which the Lender may reasonably require;
- (g) **Annual Budget** include all amounts due and payable, or to fall due and payable to the Lender hereunder in each of its annual budgets during each

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fiscal year. The Borrower may not justify any of its non-payment in due time by not having included the corresponding allocation in its budget;

- (h) **Insurance** the Insurance Agreement or the Insurance Policy (as the case may be) is duly executed or issued and the insurance premium is paid by the Borrower in accordance therewith. The Borrower provides upon demand to the Lender the evidence of the payment of insurance premium;
- (i) **Acknowledgement of Statement** give a written acknowledgement to the Lender within five (5) Business Days after receiving the statement sent by the Lender at the end of each year which specifies the amount of un-drawn Facility and outstanding principal and interests;
- (j) **Government Policies, Regulations and Approvals** procure that the Government of Kenya or the relevant authorities of Kenya shall stipulate and issue preferential policies, regulations or approvals in relation to the RDF which could be applied in priority to make the repayment of loans in relation to the Project as owing to the Lender, the Long Term Service Agreement and its due performance, the revenues generated from the Project which will be applied in priority to make the repayment of loans in relation to the Project as owing to the Lender (except for the expenditures of operation and management of the Project), the Inland Container Depot (inland port) established in Nairobi and its mandatory customs clearance, and all other necessary policies or approvals, with an aim to ensuring the due operation of the Project and the repayment of such loans in relation to the Project as owing to the Lender.

12.2 **Credit Enhancement Arrangement** The Borrower undertakes and agrees with the Lender that throughout the continuance of this Agreement and so long as the Loan or any other sum remains outstanding, the repayment of principal and payment of interest and fees under this Agreement and the Preferential Loan Agreement shall be credit enhanced and secured by the following arrangements:

- (A) the RDF which could be applied in priority to repay all loans drawn under this Agreement and the Preferential Loan Agreement for the Project;
- (B) a payment account established and opened by the End User in the Account Bank approved by the Lender prior to the establishment of such account, which shall

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be subject to the escrow arrangement contemplated under the relevant Escrow Account Agreement and be used to maintain the agreed minimum amount of balance as a debt service reserve arrangement in favour of the Lender and which shall also be subject to any follow-up security agreement in this regard;

(C) a revenue (proceeds) account established and opened by the End User in an account bank in the Republic of Kenya approved by the Lender prior to the establishment of such account, which shall be subject to the relevant Escrow Account Agreement and be used to collect the revenues generated from the Project in favour of the Lender and which shall also be subject to any follow-up security agreement in this regard;

(D) the Long Term Service Agreement with an aim to guaranteeing a minimum amount of freight throughout the term of this Agreement or the Preferential Loan Agreement (whichever is longer) to be charged and received by the relevant railway operator for the Project, which shall be used to ensure the annual repayment of principal and interest under this Agreement and the Preferential Loan Agreement (including without limitation the funding of the Escrow Account pursuant to the requirements of the relevant Escrow Account Agreement) and which shall also be subject to any follow-up security agreement in this regard.

The detailed arrangements of the above credit enhancement and security arrangements will be set out by the Borrower, the Lender and other relevant parties under the relevant Security Documents. The Borrower shall ensure that the relevant parties will perform their obligations under the relevant Security Documents. The Lender shall be entitled to examine and supervise the execution and performance of the Security Documents.

Notwithstanding the existence of the Security Documents, the Borrower shall be fully liable for the payment and repayment obligations under this Agreement and the Preferential Loan Agreement. The Borrower's obligations under this Agreement and the Preferential Loan Agreement shall not be affected or undermined by the execution, delivery and performance by the relevant parties of such Security Documents and the On-Lending Agreement.

12.3 **Negative Undertakings** The Borrower undertakes with the Lender that throughout the continuance of this Agreement and so long as the Loan or any other sum remains outstanding, the Borrower will not:

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- (a) **No Material and Adverse Effect** engage in the activities which, in the opinion of the Lender, will materially and adversely affect the performance of the Borrower's obligations under this Agreement;
- (f) **Contract and Others** make or agree to any material amendment to the Commercial Contracts;
- (g) **Termination** cancel or otherwise terminate or agree to any termination of any of the two Commercial Contracts or any other documents related to thereof.

12.4 The Borrower hereby represents, warrants and undertakes that its obligations and liabilities under this Agreement are independent and separate from those stated in agreements with other creditors (whether official creditors, Paris Club creditors or other creditors), and the Borrower shall not seek from the Lender any kind of comparable terms and conditions which are stated or might be stated in agreements with other creditors.

Article 13 Expenses and Indemnities

13.1 **Expenses** The Borrower shall forthwith on demand and whether or not any Disbursement is made pay to or reimburse the Lender justifiable and documented costs, charges and expenses (including legal and other fees on a full indemnity basis and all other out-of-pocket expenses other than those specified in Article 4), but excluding the costs) incurred by it in connection with the negotiation, preparation, execution and (where relevant) registration of this Agreement and any other documentation required hereunder and the arrangement of the Facility and any amendment and any inspection, calculation, approval or waiver to be conducted or given by the Lender pursuant to any provision of this Agreement, subject to Article 13.2 (*Enforcement Costs*) below.

13.2 **Enforcement Costs** The Borrower shall from time to time forthwith on demand pay to or reimburse the Lender for all costs, charges and expenses (including legal and other fees on a full indemnity basis and all other out-of-pocket expenses) incurred by it in exercising any of its rights or powers under this Agreement or

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otherwise preserving or enforcing its rights under this Agreement or in defending any claims brought against it in respect of this Agreement.

- 13.3 **Indemnities** The Borrower shall indemnify the Lender against any and all losses, liabilities, damages, costs and expenses which the Lender may incur as a consequence of any Event of Default or any other breach by the Borrower of any of its obligations under this Agreement or any failure to borrow in accordance with a Notice of Drawdown or otherwise in connection with this Agreement (including any loss or expense incurred in liquidating or redeploying funds acquired to maintain the Loan (as the case may be) and any interest or fees incurred in funding any unpaid sum).

Article 14 Events of Default

- 14.1 Each of the following events and circumstances shall be an Event of Default:

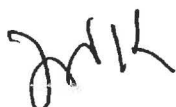
- (a) the Borrower fails to pay any sum (including but not limitation to principal, interest, default interest or any other fee) payable under this Agreement when due and otherwise in accordance with the provisions hereof;
- (b) the Borrower fails duly and punctually to perform, observe or comply with any of its obligations under this Agreement or other Loan Documents to which it is a party, or any other party to any of the other Loan Documents (if any) fails duly and punctually to perform, observe or comply with any of its obligations under such other Loan Documents, and such default continues for a period of more than thirty (30) days without being remedied;
- (c) any of the events described in (a) or (b) above, or any other event which constitutes a default of the Borrower, occurs in respect of any other agreement involving the borrowing of money and any other bank or financial institution;
- (d) any representation or warranty made or repeated by the Borrower or other party to the other Loan Documents (excluding the Lender) in or in connection with this Agreement or other Loan Documents or any other statement otherwise made in any certificate, opinion or other document furnished in

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connection with this Agreement proves to have been incorrect or untrue or misleading in any respect considered by the Lender to be material;

- (e) the Borrower defaults in the payment of any External Indebtedness on its maturity, or any External Indebtedness of the Borrower which is required to be paid prior to its stated maturity, or any External Indebtedness of the Borrower which is payable on demand or after due notice is not paid on demand or, as the case may be, on the expiry of due notice, which default will materially and adversely affect the ability of the Borrower to comply with its obligations under this Agreement and continues for a period of more than thirty (30) days without being remedied;
- (f) this Agreement or any provision hereof ceases for any reason to be in full force and effect or is for any reason terminated or jeopardised or becomes invalid or unenforceable or if there is any dispute regarding the same or if there is any purported termination or repudiation of the same or it becomes impossible or unlawful for the Borrower or any other party thereto to perform any of its respective obligations hereunder or thereunder or for Lender to exercise all or any of its rights, powers and remedies hereunder or thereunder;
- (g) the Borrower stops or suspends payments to its creditors generally or is unable or admits its inability to pay its External Indebtedness as they fall due;
- (h) the validity of this Agreement is contested by the Borrower, or the Borrower denies generally liability under this Agreement (whether by a general suspension of payments or a moratorium on the payment of External Indebtedness generally or otherwise);
- (i) any license, consent, approval or authorization of, or any filing or registration with, any governmental authority or agency necessary from the domicile of the Borrower for the validity or enforceability of this Agreement or the making or performance by the Borrower of their respective obligations under this Agreement, as the case may be, or any agreement or instrument required hereunder or for the admissibility in evidence of this Agreement is revoked, or is not issued or timely renewed, or cease to remain in full force and effect;
- (j) any event which constitutes a default of the relevant parties occurs in respect of the Security Documents;



- (k) any policy or approval issued pursuant to Article 12.1(j) at the appropriate time or any other policy or approval in connection with the credit enhancement and security arrangements issued pursuant to Article 12.1(j) has been changed, revised, revoked, terminated or replaced with any less favourable term without prior written consent of the Lender, which consent shall not be unnecessarily withheld;
- (l) any material and adverse situation arises or event occurs which, in the reasonable judgment of the Lender, and in consultation with the Borrower, may prevent or interfere with the successful implementation of the Commercial Contracts or with the performance by the Borrower of its obligations under this Agreement.

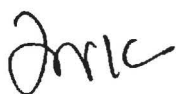
14.2 Upon the occurrence of an Event of Default and at any time or times thereafter (unless such Event of Default has been waived by or remedied to the satisfaction of the Lender), the Lender may, by written notice to the Borrower, take either or all of the following actions (but without prejudice to any other rights and remedies available to it):

- (a) declare the principal of and accrued interest on the Loan and all other sums payable hereunder to be, whereupon the same shall become, immediately due and payable without further demand, notice or other legal formality of any kind, and
- (b) declare the Facility terminated whereupon the obligation of the Lender to make further Disbursement hereunder shall immediately cease.

Article 15 Governing Law and Dispute Resolution

15.1 **Governing Law** This Agreement and the rights and obligations of the parties hereunder shall, in all respects, be governed by and construed in accordance with the laws of China.

15.2 **Good Faith Consultation** The parties hereto undertake to use their best efforts to resolve any dispute arising out of or in connection with this Agreement through



consultation in good faith and mutual understanding, provided that such consultation shall not prejudice the exercise of any right or remedy of either party hereto by any such party in respect of any such dispute.

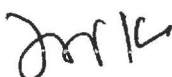
15.3 Submission to Jurisdiction

Any dispute arising out of or in connection with this Agreement shall be resolved through friendly consultation. If no settlement can be reached through such consultation, each party shall have the right to submit such dispute to the China International Economic and Trade Arbitration Commission (CIETAC) for arbitration. The arbitration shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award shall be final and binding upon both parties. The arbitration shall take place in Beijing.

15.4 Waiver The Borrower irrevocably and unconditionally waives any objection which it may now have or hereafter have to the choice of CIETAC to resolve any dispute arising out of or relating to this Agreement. The Borrower also agrees that the arbitral award against it made by such arbitral tribunal shall be final and conclusive and may be enforced in any other jurisdiction and that a certified or otherwise duly authenticated copy of the award shall be conclusive evidence of the fact and amount of its indebtedness.

15.5 Waiver of Immunity The Borrower irrevocably and unconditionally waives, any immunity to which it or its property may at any time be or become entitled, whether characterized as sovereign immunity or otherwise, from any suit, jurisdiction of any arbitral institution or arbitral tribunal, judgment, arbitral award, service of process upon it or any agent, execution on judgment, enforcement of arbitral award, set-off, attachment prior to judgment, attachment in aid of execution to which it or its assets may be entitled in any legal action or proceedings or arbitral proceedings with respect to this Agreement or any of the transactions contemplated hereby or hereunder.

Furthermore, pursuant to the provisions of the Government Proceedings Act, Chapter 40 of the Laws of Kenya (the "**Government Proceedings Act**"), this Agreement and the transactions contemplated thereby constitute commercial activities (rather than Governmental or public activities) of Kenya Government which is subject to private commercial law with respect thereto and Kenya Government shall waive any immunity in relation to this Agreement, subject to the provisions applicable to the Government of Kenya under the Government Proceedings Act.



- 15.6 **Appointment of Agent for Service** Without prejudice to the generality of this Article 15, the Borrower hereby irrevocably designates and appoints Embassy of Kenya, Beijing, China the Borrower's Process Agent in China as its authorized agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment, award or other notice of legal process in China respectively and agrees that any writ, summons, order, judgment, award or other notice of legal process shall be sufficiently served on it if delivered to the relevant agent for service aforesaid at its address for the time being in China whether or not such agent gives notice thereof to the Borrower. The Borrower undertakes to maintain at all times persons or agents for service in China with respect to this Agreement, and in the event that for any reason the relevant agent named above (or its successor) shall no longer serve as agent of the Borrower to receive service of process as aforesaid, the Borrower shall promptly appoint a successor so to serve and shall notify the Lender thereof.

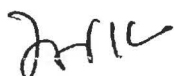
Article 16 Effectiveness

- 16.1 **Effectiveness** This Agreement shall become effective upon the satisfaction of the following conditions:
- (1) the Facility has been approved by the Chinese Government;
 - (2) this Agreement has been duly signed by the Lender and the Borrower; and
 - (3) the Preferential Loan Agreement has been duly signed by the Lender and the Borrower.

Article 17 Miscellaneous

- 17.1 **No Assignment** The Borrower may not assign or transfer any of its rights and obligations under this Agreement without prior written consent of the Lender.

The Lender may at any time at its own expense (and provided that there shall be no additional or increased costs to the Borrower) assign, transfer or novate any of its rights and obligations under this Agreement with notice to the Borrower. The Borrower shall execute and do all such transfers, assignments, assurances, acts and things as the Lender may require for perfecting and completing the assignment of such rights, benefits and obligations. Upon the transfer becoming effective in this manner, the Lender shall be relieved of its obligations under the Agreement to the



extent that they are transferred to the assignee; and references in this Agreement to the Lender shall be construed accordingly as references to the assignee lender or the Lender, as relevant. All agreements, representations and warranties made herein shall survive any assignments made pursuant to this Article and shall inure to the benefit of all assignee lenders as well as the Lender.

- 17.2 **No Release** No claim or dispute arising out of or in connection with any other contract or agreement related to the Project shall have any effect upon the Borrower's obligations under this Agreement.
- 17.3 **No Waiver, Remedies Cumulative** No failure or delay on the part of the Lender in exercising any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender of any right preclude any other or further exercise thereof, or the exercise of any other right. No waiver by the Lender shall be effective unless it is in writing. The rights and remedies herein provided are cumulative and not exclusive of any other right or remedy provided by law.
- 17.4 **Partial Illegality** If at any time any provision hereof becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, neither the legality, validity or enforceability of any other provision hereof shall in any way be affected or impaired thereby nor the legality, validity or enforceability of such provision under the applicable law of any other jurisdiction shall in any way be affected or impaired thereby.
- 17.5 **Change of Evidence of Authority** In the event of any change in the matters referred to in the documentary evidence provided for in sub-clause (b) of Section (1) of Article 4.1, the Borrower shall promptly notify the Lender in writing of such change and, at the same time, furnish to the Lender relevant documentary evidence in respect of such change as well as authenticated specimen signatures of and certificates of incumbency in respect of any person(s) who are referred to in such documentary evidence as changed, if such change involves replacement of or addition to the person(s) referred to in the said sub-clause (b) of the said Section (1) or the said Section (2). The Lender may rely upon and refer to the documentary evidence, authenticated specimen signatures and certificates of incumbency previously received by the Lender until such time as the Lender receives notice from the Borrower of such change as well as the relevant documentary evidence as aforesaid.

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- 17.6 **Amendment** Any amendment or waiver of any provision of this Agreement and any waiver of any default under this Agreement shall only be effective if made in writing and executed by or on behalf of the party against whom the amendment or waiver is asserted.
- 17.7 **Confidentiality** The Borrower shall keep all the terms and conditions hereunder or in connection with this Agreement strictly confidential. Without the prior written consent of the Lender, the Borrower shall not disclose any information hereunder or in connection with this Agreement to any third party unless required by applicable law.
- 17.8 **Communications** Unless otherwise specified herein, all notices, requests, demands and other communications to or upon the parties hereto shall be given or made by registered air mail (or by fax promptly confirmed by registered air mail) addressed as follow:

To the Lender: The Export-Import Bank of China
 (for the attention of Ms. Haimo Wen)
 No. 30, Fu Xing Men Nei Ave.,
 Xi Cheng District,
 Beijing 100031,
 P.R.China
 Fax: +86 10 83578404
 Tel: +86 10 83578346

To the Borrower : The Government of the Republic of Kenya represented by
 the National Treasury of Kenya
 Treasury Building, Harambee Avenue
 P.O. Box 30007 ,Nairobi
 The Republic of Kenya
 (for the attention of the Permanent Secretary)
 Fax: +254 20 250040
 +254 20 316415
 Tel: +254 20 2252299

or in each case to such other address as any party hereto may designate by written notice to the other party hereto.



Notices, requests, demands or other communication given or made as aforesaid by registered air mail shall be deemed to have been duly given or made ten (10) days after being deposited in the mails and that those given or made by fax and confirmed by registered air mail as aforesaid shall be deemed to have been duly given or made when such fax is duly received by the recipient.

17.9 **Use of English Language** All documents, information and materials to be furnished under this Agreement shall be either in English or accompanied by a certified translation thereof into the English Language.

17.10 **Abbreviation** This Agreement may be referred to as "Buyer Credit Loan Agreement, No.1410302052014210766" for communications between the Borrower and the Lender, as well as in relevant documents.

IN WITNESS WHEREOF, the Borrower and the Lender, acting through their duly authorized representatives, have caused this Agreement to be duly executed in duplicate in the English language and executed in their respective names on this day of [] 2014.

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THE EXPORT-IMPORT BANK OF CHINA

By: 

Name: Mr. Li Ruogu

Title: Chairman and President

**THE GOVERNMENT OF THE REPUBLIC OF KENYA REPRESENTED BY THE
NATIONAL TREASURY OF KENYA**

By: 

Name: Mr. Henry K Rotich

Title: Cabinet Secretary National Treasury

Annex A

Project Description

The EPC Contractor agrees to design, build, launch, equip and complete and deliver to the Borrower after completion and successful trial the Mombasa-Nairobi Standard Gauge Railway under the Project, as more fully described as follows hereof (hereinafter called the “**Railway**”), and the Borrower agrees to take delivery, or cause the End User to take delivery, of the aforesaid Railway under the Project from the EPC Contractor for the same in accordance with the terms and conditions hereinafter set forth.

The specifications of the Railway and the Project

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Form 1 Notice of Commencement of Disbursement Period

From: The Export-Import Bank of China

No. 30, Fu Xing Men Nei Ave.,

Xi Cheng District,

Beijing, 100031,

P.R.China

Fax:

SWIFT:

Tel:

To: []

Date:

Dear Sirs,

Pursuant to Article 4 of the Buyer Credit Loan Agreement No. [] (hereinafter referred to as the "Agreement") dated [] between the Government of the Republic of Kenya represented by the National Treasury of Kenya (the "Borrower") and The Export-Import Bank of China (the "Lender"), we hereby inform you that:

- (a) all the conditions as set out in Article 4 of the Agreement have been satisfied or , as the case may be, waived; and
- (b) the Disbursement Period (as defined in the Agreement) shall commence on the date hereof.

The Export-Import Bank of China

(signature of Authorized Signatory)

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[Signature]

**Form 2 Application for Approval of Amendment to the Commercial
Contracts**

(Concerning the Buyer Credit Loan Agreement No. _____)

Date: _____

To: The Export-Import Bank of China

No. 30, Fu Xing Men Nei Ave.,

Xicheng District

Beijing, 100031,

P.R.China

Fax:

SWIFT:

Tel:

Attn: _____

Dear Sirs:

Please refer to the [Commercial Contract (Line Section) (No. _____, dated _____)]
[Commercial Contract (Facilities and Rolling Stocks) (No. _____, dated _____)]
between Kenya Railways Corporation and China Road and Bridge Corporation.

We enclose amendment(s) to the said Commercial Contract. The object of amendment(s) is
as follows:

We shall be grateful if you would confirm in writing your agreement to the proposed
amendment(s) at your earliest convenience.

Yours faithfully

(authorized signature)

Jack

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Form 3 Notice of Drawdown

From: The Government of the Republic of Kenya represented by the National Treasury of Kenya (the "Borrower")

To: The Export-Import Bank of China
No. 30, Fu Xing Men Nei Ave.,
Xi Cheng District
Beijing, 100031,
P.R.China
Fax:
SWIFT:

Tel:

Date: _____

Dear Sirs,

Pursuant to Article 5 of the Buyer Credit Loan Agreement No. _____ (hereinafter referred to as the "Agreement") dated _____ (date) between the Government of the Republic of Kenya represented by the National Treasury of Kenya (the "Borrower") and the Export-Import Bank of China (the "Lender"), we hereby instruct and authorize you to make a payment, via the Borrower's Account, as follows:

Amount: _____ (Currency: US Dollar)

In Word: _____ (Currency: US Dollar)

_____ (Please fill in "Please pay in _____ (foreign currency)" in case that a drawing in a foreign currency approved by the Lender is needed)

Payee: _____ ([the EPC Contractor]) [the Insurance Company])

Account Bank: _____ (This account shall be opened by [the EPC Contractor with the Lender] [the Insurance Company] or a bank designated by the Lender for the purpose of receiving payments under or in connection with the relevant Commercial Contract)

Account No.:

JN/K

[Signature]

Date of Payment:

This payment is made to the _____ Invoice (Invoice No. _____) under the [Commercial Contract (Line Section) (Contract No.: _____)] [Commercial Contract (Facilities and Rolling Stocks) (Contract No.: _____)], and for the payment of _____ (purpose).

We hereby authorize you to debit the account mentioned above with such amount of payment in US Dollar in accordance with Article 5 of the Agreement.

We hereby confirm that forthwith upon the allocation of the above-mentioned amount to the Borrower's Account, this drawing shall be deemed as having been made by us under the Agreement and the amount drawn shall forthwith constitute our indebtedness to you accordingly. We shall repay such amount to you together with any interest accrued thereon in accordance with the terms and conditions of the Agreement.

We further confirm that the representations and warranties made by us in Article 11 of the Agreement remain true and correct as of the date of this Notice of Drawdown, and none of the events referred to in Article 14 of the Agreement has occurred and continuously exists.

Terms not otherwise defined herein shall have the meanings assigned to them in the Agreement.

This notice once given shall be irrevocable.

The Government of the Republic of Kenya
represented by the National Treasury of Kenya

(Official Stamp of the Borrower)

(Signature of Authorized Signatory)

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Form 4 Table of Disbursements

(Concerning the Buyer Credit Loan Agreement No. _____)

Date: _____

Dear Sirs:

We are sending herewith copies of the Table of Disbursements (concerning the Buyer Credit Loan Agreement No. _____).

In case you find any differences from your record, please let us know immediately by mail, telex or fax.

Unless we receive from you any objection within _____ days after the date of this letter, we shall deem that you have confirmed the content of the Table and are bound thereby.

Yours faithfully,

The Export-Import Bank of China

Enclose: Table of Disbursements for _____
(Concerning the Buyer Credit Loan Agreement No. _____)

Copy to :

JWK

JK

(to be attached to the Form 4)

THE EXPORT-IMPORT BANK OF CHINA

TABLE OF DISBURSEMENTS

(Concerning the Buyer Credit Loan Agreement No. _____)

(Amounts expressed in US\$)

Date of Disbursement	Amount Disbursed	Outstanding Balance	Remarks
			as of previous month
Total:			as of this month

2014

2014

Form 5 Repayment Schedule

(Concerning the Buyer Credit Loan Agreement No. _____)

Number of Installments	Date Due	Amount In US Dollars
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
Total		

Note: The amount appeared in this schedule just refer to the Principal of the Facility of the Buyer Credit Loan Agreement (No. _____), while the interest accrued shall be paid according to Article 6 of the aforesaid Agreement.



Form 6 Legal Opinion of Legal Counsel of the Borrower

To: The Export-Import Bank of China

No. 30, Fu Xing Men Nei Ave.,

Xicheng District,

Beijing, 100031,

P.R.China

Fax:

SWIFT:

Tel:

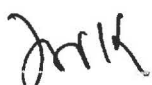
Dear Sirs:

I am Legal Counsel of _____ (*the Borrower*), and submit this legal opinion in connection with the Buyer Credit Loan Agreement dated _____, (No. _____, hereinafter referred to as "the Loan Agreement") between The Export-Import Bank of China (hereinafter referred to as the "Lender") and _____ (*the Borrower*) (hereinafter referred to as the "Borrower").

Unless otherwise defined herein, terms defined in the Loan Agreement shall have the same meanings when used in this opinion.

We have considered and examined all such laws and regulations of _____ (*the Borrower's country*) as are relevant to the Loan Agreement and all such documents, as we have considered necessary or desirable for the opinions hereinafter expressed including, without limitation, the following documents:

- (a) the executed Loan Agreement;
- (b) the authorization of the Borrower dated _____ approving and authorizing the execution, delivery and performance of the Loan Agreement and any other documents in connection therewith, in which all the specimen signatures of the directors of the board have been presented; and the power of attorney issued by the Borrower authorizing Mr./Ms. _____ to execute the Loan Agreement on behalf of the Borrower;



- (c) the Commercial Contracts (respectively with No. _____ dated _____ and No. _____ dated _____) entered into by and between the EPC Contractor and the End User; and
- (d) other documents we deem necessary for the issuance of our legal opinion.

In giving this opinion, we have assumed and this opinion is given on the basis:

- (a) that all documents other than the Loan Agreement have been duly authorized, executed and delivered by or on behalf of each of the parties thereto other than the Borrower;
- (b) that all signatures, seals and chops are genuine and that all the documents submitted to us as copies conform to its originals;
- (c) that this legal opinion is confined to and given on the basis of the laws of _____ (*Borrower's country*) to the date hereof. We have not investigated, and we do not express or imply any opinion on, the laws of any other jurisdiction, and we have assumed that no other laws would affect the opinion expressed below;

This legal opinion is based upon the documents listed above as at the date thereof and we have assumed for the purpose hereof that such documents have not been amended, modified as of the date hereof. Based upon the foregoing, we are of the opinion that:

1. the Borrower is [] of _____ (*the Borrower's country*) and has full power, authority and legal right to assume civil liability with its assets;
2. the Borrower has full power, authority and legal right to enter into and perform its obligations under the Loan Agreement and has taken all necessary action to authorize the execution, delivery and performance of the Loan Agreement;
3. the Loan Agreement has been duly executed and delivered, for and on behalf of the Borrower, by Mr./Ms. _____, who has the power and authority to do so;
4. the Loan Agreement constitutes legal, valid and binding obligations of the Borrower enforceable in accordance with its terms;

Handwritten signature

Handwritten mark

5. the execution, delivery and performance of the Loan Agreement by the Borrower do not and will not violate or conflict with or result in any breach of any provision of any law or regulation of _____ (*the Borrower's country*) and any provisions of any contract or agreement to which the Borrower is a party;
6. all governmental authorizations, approvals, consents and licenses required by the laws of _____ (*the Borrower's country*) for signing, delivery and performance of the Loan Agreement have been duly acquired, effected and completed and are in full force and effect;
7. it is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of the Loan Agreement that it or any other instrument be recorded, registered or enrolled in any court, public office or elsewhere within _____ (*the Borrower's country*);
8. there is no withholding or other tax to be deducted from the payments of principle sums due to be made by the Borrower under the Loan Agreement save that withholding or similar taxes are generally payable or charged in _____ (*the Borrower's country*) on all payments of interest made from _____ (*the Borrower's country*);
9. the Borrower is allowed to make payments of principal and interest and other sums due under the Loan Agreement without any deduction or withholding whatsoever and the Borrower has obtained from relevant competent exchange control authorities the permit to remit such payments in foreign exchange out of the _____ (*the Borrower's country*);
10. no stamp duty, registration, documentary or similar tax is payable by the Borrower in respect of the Loan Agreement;
11. the payment obligations of the Borrower under the Loan Agreement are and will be direct, unconditional and general obligations of the Borrower and rank at least pari passu with all its other unsecured and unsubordinated External Indebtedness;
12. the execution and performance of the Loan Agreement by the Borrower constitute commercial acts rather than governmental acts, and neither the Borrower nor any of its property or assets enjoys any right of immunity on the grounds of sovereignty



from arbitration, suit, execution or any other legal process relating to the Loan Agreement;

13. the Loan Agreement shall not be affected by any agreement made between the _____ (*the Borrower's country*) government and any other third party, including without limitation any agreement relating to the Paris Club;
14. the choice of PRC laws to govern the Loan Agreement is a valid choice of law. The irrevocable appointment of the Chinese Process Agent by the Borrower to accept service of process is valid and binding on the Borrower;
15. the submission of any dispute arising out of or in connection with the Loan Agreement by the Borrower to ☐ the China International Economic and Trade Arbitration Commission under the Loan Agreement does not contravene any law of _____ (*the Borrower's country*);
16. a final and conclusive judgment / any arbitration award given against the Borrower in any such legal actions would be recognized and enforced by the courts of _____ (*the Borrower's country*);
17. any award in the courts of _____ (*the Borrower's country*) in respect of a claim brought with regard to the Loan Agreement may be expressed in ☐ US Dollar; and
18. the Lender is not and will not be deemed to be resident, domicile or having an establishment in _____ (*the Borrower's country*) by reason only of the execution, delivery, performance and/or enforcement of the Loan Agreement.

Although this opinion is dated _____ you may continue to rely on the opinion stated herein until the payment in full of all amounts pursuant to the Loan Agreement unless we shall have notified you in writing of any change in any opinions herein expressed.

IN WITNESS WHEREOF, I, the undersigned, have hereunto set my hand on this day of _____.

Very truly yours,

JHL

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Name:

Title:

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Form 7-1 Irrevocable Power of Attorney

(Appointment of the Borrower's Process Agent)

Date: _____

Dear Sirs:

We refer to the Buyer Credit Loan Agreement dated _____, (No. _____, hereinafter referred to as "the Agreement"). We hereby appoint you under the Agreement as our agent for the sole purpose of receiving for us and on our behalf service of any process issued out of the China International Economic and Trade Arbitration Commission in respect of any legal action or proceedings arising out of or in connection with the Agreement. We hereby confirm that we shall as soon as possible provide you with a true and correct copy of the Agreement and all relevant related documents. We further hereby confirm that your obligations as our agent are limited to those set out in the paragraphs below and that any other services will only be on our specific request and subject to your agreement and to your customary legal fees. Your obligations are:

- (1) Promptly to forward to us (to the extent lawful and possible) by registered or certified post prepaid express airmail addressed as hereafter shown, or by such expeditious means as you may deem appropriate, the original or a copy of any notice of legal process received by you:

Attention:

Tel:

Telex:

or to such other address as we may from time to time request in a notice to you sent by registered or certified post prepaid express airmail and marked "For the Attention of the person in charge of Service of Process/ Re: Service of Process";

- (2) Promptly to give (to the extent lawful and possible) telex notice of receipt thereof to us at telex number _____ or to such other telex number as we may from time to time notify you as in paragraph (a) above; and
- (3) Perform its duties as Process Agent in accordance with the Agreement.



We should be grateful if you accept this appointment and send your consent of it to the Lender.

Yours faithfully,

Name:

Title:

20/11

20/11

Form 7-2 Consent of the Borrower's Process Agent

Date: _____

To: The Export-Import Bank of China

No. 30, Fu Xing Men Nei Ave.,

Xicheng District,

Beijing, 100031,

P.R.China

Fax:

SWIFT:

Tel:

Gentlemen:

Reference is made to the Buyer Credit Loan Agreement date _____ (No _____, hereinafter referred to as "the Agreement") between the Export-Import Bank of China (hereinafter referred to as "the Lender") and _____ (hereinafter referred to as "the Borrower") therein.

Pursuant to the Agreement, as effected by a letter dated _____, the Borrower has appointed the undersigned (with an office on the date hereof at _____) as Chinese Process Agent to receive on behalf of itself and its property service of the original or copy of the summons and complaint and any other process which may be served in any action or proceedings in the China International Economic and Trade Arbitration Commission therefrom arising out of or relating to the Agreement.

The undersigned hereby accepts such appointment as Chinese Process Agent on the basis that:

- (1) the undersigned will not terminate the undersigned's agency as Chinese Process Agent unless the Borrower has appointed a successor Chinese Process Agent satisfactory to yourselves;
- (2) all correspondence with the undersigned shall be marked for the attention of "the person in charge of the Service of Process /Re: Service of Process";





-
- (3) the undersigned will maintain an office in Beijing, China until such time as a successor Chinese Process Agent shall be appointed pursuant to the Agreement and will give prompt notice of any change of address of the undersigned;
 - (4) the undersigned will perform its duties as Chinese Process Agent in accordance with the Irrevocable Power of Attorney;
 - (5) the undersigned will forward forthwith to the Borrower at its address specified in the Irrevocable Power of Attorney the original or copy of any summons, complaint and other process which the undersigned receives in connection with its appointment as Chinese Process Agent.

Subject to the above paragraph, this acceptance shall be binding upon the undersigned and all successors of the undersigned including all persons hereafter acting in the capacity of the undersigned or otherwise in charge of the office of the undersigned.

Very truly yours,

Name:

Title:

DNK

Handwritten mark