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**PREFERENTIAL BUYER CREDIT LOAN AGREEMENT**

**ON KENYA MOMBASA-NAIROBI STANDARD GAUGE  
RAILWAY PROJECT**

**BETWEEN**

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

**as Borrower**

**AND**

**THE EXPORT-IMPORT BANK OF CHINA**

**as Lender**

**DATED May 11, 2014**

*JMC*

*[Signature]*

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THIS PREFERENTIAL BUYER CREDIT LOAN AGREEMENT

(the "Agreement") is made on the day of May 11, 2014.

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KENYA REPRESENTED BY THE NATIONAL TREASURY OF THE REPUBLIC OF KENYA (hereinafter referred to as the "**Borrower**" ), having its office at Treasury Building, Harambee Avenue, P.O. Box 30007 ,Nairobi, Kenya;

AND

THE EXPORT-IMPORT BANK OF CHINA (hereinafter referred to as the "**Lender**"), having its registered office at No. 30, Fuxingmennei Street, Xicheng District, Beijing 100031, China.

**WHEREAS:**

(A) The Borrower has requested that the Lender make available a preferential loan facility of up to US Dollar One Billion Six Hundred Million only (US\$ 1,600,000,000.00) to the Borrower for the financing needs under the Commercial Contract (as defined in Article 1), and;

(B) The Kenya Railways Corporation as the owner (hereinafter referred to as the "**End-User**") and China Road and Bridge Corporation (CRBC) as the general contractor (hereinafter referred to as the "**EPC Contractor**") have entered into in July and October, 2012, the Construction on the Civil Works of Mombasa-Nairobi Standard Gauge Railway Project EPC Turnkey Commercial Contract and the Supply and Installation of the Facilities, Locomotives and Rolling Stocks for the Mombasa-Nairobi Standard Gauge Railway Project Contract (hereinafter referred to as the "**Commercial Contract**") for the purpose of the implementation of the Project (as defined in Article 1).

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



## ARTICLE 1 DEFINITIONS

Where used in this Agreement, unless the context otherwise requires, the following terms have the following meanings:

1.1 “**Account Bank of the Lender**” means The Export-Import Bank of China.

1.2 “**Agreement**” means this preferential buyer credit loan agreement and its appendices and any amendment to such agreement and its appendices from time to time upon the written consent of the parties.

1.3 “**Availability Period**” means the period commencing on the date on which this Agreement becomes effective and ending on the date falling Eighty-Four (84) months thereafter, during which time all the disbursements shall be made in accordance with the stipulations of this Agreement.

1.4 “**Banking Day**” means a day on which banks are open for ordinary banking business in Beijing, including Saturdays and Sundays on which banks are open for business as required by the provisional regulations of China, but excluding the legal festivals and holidays of China and Saturdays and Sundays falling out of the aforesaid regulations.

1.5 “**Borrower’s Country**” refers to the country where the Borrower locates, being the Republic of Kenya.

1.6 “**Buyer Credit Loan**” means the loans provided or to be provided to the Borrower under the Buyer Credit Loan Agreement for the purpose of financing this Project.

1.7 “**Buyer Credit Loan Agreement**” means the buyer credit loan agreement(s) duly entered into between the Borrower and the Lender on or about the date of this Agreement to provide the Buyer Credit Loan for the purpose of financing the Project.

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- 1.8        “**China**” means the People’s Republic of China.
- 1.9        “**Commitment Fee**” means the fees calculated and paid in accordance with Article 2.2 and Article 2.7.
- 1.10       “**Commercial Contract**” means, the contract for Construction of the Civil Works of Mombasa-Nairobi Standard Gauge Railway Project EPC Turnkey Commercial Contract and the contract for Supply and Installation of the Facilities, Locomotives and Rolling Stocks for the Mombasa-Nairobi Standard Gauge Railway Project Contract entered by and between Kenya Railways Corporation and China Road and Bridge Corporation respectively in July and October, 2012 respectively with the total contract amount of Three Billion Eight Hundred and Four Million One Hundred and Ninety Two Thousand Seven Hundred and Eighty Four US Dollar Ninety Two Cent only (US\$ 3,804,192,784.92).
- 1.11       “**Disbursement**” means the advance of the Facility made in accordance with Article 3 of this Agreement.
- 1.12       “**Drawdown Schedule**” means a drawdown schedule with detailed arrangement of all the payments and drawdowns under this Agreement and the Buyer Credit Loan Agreement, including the payments of the self-raised fund made by the End-User, the drawdowns under the Facility and the Buyer Credit Loan.
- 1.13       “**End-User**” means the Kenya Railways Corporation which ultimately utilizes the Facility.
- 1.14       “**EPC Contractor**” means China Road 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.
- 1.15       “**Escrow Account**” means the account(s) established and opened by the

End-User 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 Buyer Credit Loan Agreement, including without limitation a payment account and a revenue account as stipulated in Article 6.11. The specific name of such accounts shall be subject to the relevant Escrow Account Agreement.

1.16 "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.

1.17 "Event of Default" means any event or circumstance specified as such in Article 7.

1.18 "Facility" has the meaning set forth in Article 2.1.

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

1.20 "First Repayment Date" means the first repayment date of principal and interest after the maturity of the Grace Period.

1.21 "Grace Period" means the period commencing on the date on which this Agreement becomes effective and ending on the date Eighty-Four (84) months after the date on which this Agreement becomes effective, during which period only the interest and no principal is payable by the Borrower to the Lender. The Grace Period includes the Availability Period.

1.22 "Interest Payment Date" means the 21st day of January and the 21st day of July in each calendar year and the Final Repayment Date.

1.23 "Irrevocable Notice of Drawdown" means the notice issued in the form set out in Appendix 5 attached hereto.

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1.24 “**Line Section**” means the construction contents and items under the Construction on the Civil Works of Mombasa-Nairobi Standard Gauge Railway Project EPC Turnkey Commercial Contract.

1.25 “**Loan**” means the aggregate principal amount disbursed and from time to time outstanding under the Facility.

1.26 “**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.

1.27 “**Management Fee**” means the fees calculated and paid in accordance with Article 2.2 and Article 2.6.

1.28 “**Maturity Period**” means the period commencing on the date on which this Agreement becomes effective and ending on the date falling Two Hundred and Forty (240) months thereafter, including the Grace Period and the Repayment Period.

1.29 “**Notice of Effectiveness of Loan Agreement**” means a written notice in the form set forth in Appendix 9 attached hereto, in which the effective date of this Agreement shall be specified.

1.30 “**On-Lending Agreement**” means the loan agreement entered into between the Borrower and the End-User, whereby the Facility is on-lent by the Borrower to the End-User to implement the Project.

1.31 “**Project**” means the Kenya Mombasa-Nairobi Standard Gauge Railways Project.

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1.32 **“Railway”** means the Mombasa-Nairobi Standard Gauge Railway to be established and operated under the Project.

1.33 **“Repayment Date of Principal and Interest”** means each Interest Payment Date and the Final Repayment Date.

1.34 **“Repayment Period”** means the period commencing on date on which the Grace Period expires and ending on the Final Repayment Date.

1.35 **“Repayment Schedule”** means the schedule showing the dates and amounts of repayments of the Loan set forth in Appendix 10 attached hereto.

1.36 **“Security Document”** 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 6.11, including without limitation the Escrow Account Agreement and any Long Term Service Agreement.

1.37 **“Self-Raised Fund”** means an amount not less than ten percent (10%) of the Commercial Contract Amount payable by the End User to the EPC Contractor as counterpart funding, of which fifteen percent (15%) of the Contract Amount for Facilities and Rolling Stocks shall be exclusively applied for the Commercial Contract for Facilities and Rolling Stocks;

1.38 **“US Dollar”** or **“US\$”** means the lawful currency for the time being of the United States of America.

## ARTICLE 2 CONDITIONS AND UTILIZATION OF THE FACILITY

2.1 Subject to the terms and conditions of this Agreement, the Lender hereby agrees to make available to the Borrower a loan facility (hereinafter referred to as the “Facility”) in an aggregate principal amount not exceeding One Billion Six Hundred Million US Dollar only (US\$ 1,600,000,000.00).

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- 2.2 The rate of interest applicable to the Loan shall be Two percent (2%) per annum. The rate applicable to the Management Fee shall be Zero Point Twenty-Five percent (0.25%). The rate applicable to the Commitment Fee shall be Zero Point Twenty-Five percent (0.25%) per annum.
- 2.3 The Maturity Period for the Facility shall be Two Hundred and Forty (240) months, among which the Grace Period shall be Eighty-Four (84) months and the Repayment Period shall be One Hundred and Fifty-Six (156) months.
- 2.4 The entire proceeds of the Facility shall be applied by the Borrower for the sole purpose of the payment of approximately Forty-Two Point Zero Six percent (42.06%) of the Commercial Contract amount and shall be exclusively utilized to make the payment for the Line Section of the Project.
- 2.5 The goods, technologies and services purchased by using the proceeds of Facility shall be purchased from China preferentially.
- 2.6 The Borrower shall pay to the Lender a Management Fee on the aggregate amount of the Facility equal to Four Million US Dollar (US\$4,000,000.00) in one lump within thirty (30) days after this Agreement becomes effective but not later than the first Disbursement Date in any case, which amount shall be calculated at the rate set forth in Article 2.2. The Management Fee shall be paid to the account designated in Article 4.6.
- 2.7 During the Availability Period, the Borrower shall pay semi-annually to the Lender a Commitment Fee calculated at the rate set forth in Article 2.2 on the undrawn and uncanceled balance of the Facility. The Commitment Fee shall accrue from and including the date falling 30 days after the date on which this Agreement becomes effective and shall be calculated on the basis of the actual number of days elapsed and a 360 day year. The Commitment Fee shall accrue on a daily basis and be paid in arrears to the account designated in Article 4.6 on each Interest Payment Date.



### ARTICLE 3 DISBURSEMENT OF THE FACILITY

3.1 The sources of funding for the Project shall comprise the Self-Raised Fund by the Government of Kenya, the loans under this Agreement and the Buyer Credit Loan Agreement. The Facility under this Agreement shall be drawn by the Borrower pursuant to the Drawdown Schedule as proposed by the Borrower and approved by the Lender in advance. Unless the Drawdown Schedule has been approved by the Lender in writing, the Lender shall not be obliged to make any such disbursement under this Agreement to the Borrower.

3.2 The first disbursement is subject to the satisfaction of the conditions precedent set out in Appendix 1 attached hereto (or such conditions precedent have been waived by the Lender in writing).

3.3 In relation to each disbursement after the first disbursement, besides the satisfaction of the conditions set forth in Article 3.2, such disbursement shall also be subject to the satisfaction of the conditions set out in Appendix 2 attached hereto.

3.4 The Availability Period may be extended, provided that an application for such extension is submitted by the Borrower to the Lender thirty (30) days prior to the end of the Availability Period and such application is approved by the Lender. In any event, the Availability Period shall not exceed the Grace Period. Any portion of the Facility undrawn at the end of the Availability Period or the extension thereof shall be automatically canceled. Before the end of the Availability Period, the Borrower shall not, without the consent of the Lender, cancel all or any part of the undrawn Facility.

3.5 The Lender shall not be obliged to make any disbursement under this Agreement unless it has received all the documents set forth in Article 3.2 or 3.3 and has determined after examination that the conditions precedent to the drawdown of the Facility by the Borrower have been satisfied. For those conditions which have not been satisfied by the Borrower, the Lender may require the remedy by the Borrower within a specified period. In the event that the Borrower fails to remedy within a reasonable period of time, the Lender may refuse to make the disbursement.



3.6 Forthwith upon the making by the Lender of the disbursement in accordance with the Irrevocable Notice of Drawdown, the Lender shall be deemed as having completed its disbursement obligation under this Agreement and such disbursement shall become the indebtedness of the Borrower. The Borrower shall repay to the Lender the principal amount drawn and outstanding under the Facility together with any interest accrued thereon in accordance with this Agreement.

3.7 The Lender shall not be under any obligation to make any further Disbursement under the Facility if the aggregate amount of the Disbursements made under this Agreement would exceed the principal amount of the Facility.

#### ARTICLE 4 REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST

4.1 The Borrower is obligated to repay to the Lender all the principal amount drawn and outstanding under the Facility, all the interest accrued thereon and such other amount payable by the Borrower in accordance with the terms and conditions of this Agreement. Without the written consent of the Lender, the Maturity Period shall not be extended.

4.2 The Borrower shall pay interest on the principal amount drawn and outstanding under this Agreement at the rate set forth in Article 2.2. The interest shall be calculated on the basis of the actual number of days elapsed and a 360 day year, including the first day of the Interest Period during which it accrues but excluding the last, and shall be paid in arrears on each Interest Payment Date. If any payment to be made by the Borrower hereunder falls due on any day which is not a Banking Day, such payment shall be made on the immediately preceding Banking Day.

4.3 All the principal amount drawn under this Agreement shall be repaid to the Lender by Twenty-Six (26) equal installments on each Repayment Date of Principal and Interest within the Repayment Period and the Final Repayment Date in accordance with the Repayment Schedule. The first installment shall be payable on the First Repayment



Date falling immediately after the end of the Grace Period and the last installment shall be paid on the Final Repayment Date.

4.4 The Borrower undertakes that, without prejudice to the obligations of repayment and payment under this Agreement, all repayments and payments received under and in terms of the On-Lending Agreement and any other amounts paid to the Borrower under the On-Lending Agreement must be utilized to make the payment of principal, interest and fees under this Agreement preferentially.

The Borrower confirms that any dispute between the End-User and the Borrower arising from the On-Lending Agreement shall in no event affect the performance of the obligations of the Borrower under the Loan Agreement. The Borrower further undertakes to procure that the End-User complies with its obligations under and in terms of the On-Lending Agreement and in the event that the End-User fails to fulfill such obligations, the Borrower's obligations under the Loan Agreement shall not in any way be affected. No claim or dispute arising out of or in connection with the On-Lending Agreement shall have any effect upon the Borrower's obligations under the Loan Agreement.

4.5 The Repayment Schedule of the Loan (in the form set out in the Appendix 10 to this Agreement) will be prepared by the Lender and will be sent to the Borrower promptly after the end of the Availability Period. The Borrower shall inform the Lender of any of its comments or suggestions officially, and shall be deemed to have confirmed the content of the Repayment Schedule if such comments and suggestions have not been received within Thirty (30) days after receipt of the Repayment Schedule. Any Repayment Schedule so provided by the Lender shall in the absence of manifest error be conclusive and binding on the Borrower.

4.6 Any payments or repayments made by the Borrower under this Agreement shall be remitted to the following account or any other account from time to time designated by the Lender on the Repayment Date of Principal and Interest of each year:

Payee: The Export-Import Bank of China

*Jack*

*[Signature]*

(SWIFT CODE: EIBCCNBJXXX)

Opening Bank: Banking Department, Bank of China, Head Office

(SWIFT CODE: BKCHCNBJBKD)

Account No.: 778407900258

4.7 The Lender shall open and maintain in its book a lending account for the Borrower entitled "The Government of the Republic of Kenya represented by the National Treasury of Kenya Account on the Kenya Mombasa-Nairobi Standard Gauge Railways Project" (hereinafter referred to as the "**Borrower's Account**") to record the amount owing or repaid or paid by the Borrower. The amount of the Facility recorded as drawn and outstanding in the Borrower's Account shall be the evidence of the Borrower's indebtedness owed to the Lender and shall be binding on the Borrower in the absence of manifest error.

4.8 Both the Borrower and the Lender shall keep accurate books and records of any disbursement under the Facility and repayment of principal and interest under this Agreement and shall verify such records once a year.

4.9 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 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.

4.10 The Borrower may prepay the principal amount drawn and outstanding under the Facility by giving the Lender a 30 days' prior written notice, and such prepayment shall be subject to the consent of the Lender. At the time of prepayment, the Borrower shall also pay to the Lender all interest accrued on the prepaid principal in accordance with Article 4.2 up to the date of prepayment. Any prepayment made pursuant to this

*John*

*[Signature]*

Article shall reduce the amount of the repayment installments in inverse order of maturity.

4.11 At the time of prepayment which is made in accordance with the above provisions, the Borrower shall pay an indemnity to the Lender for such prepayment at the rate of one percent (1%) per annum accrued on the prepaid principal from and including the date of prepayment up to and including the repayment date of such prepaid amount, which shall be calculated on the basis of actual number of days elapsed and a 360 day year, and shall accrue on a daily basis.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES BY THE BORROWER**

The Borrower hereby represents and warrants to the Lender as follows:

5.1 The Borrower is the Government of the Republic of Kenya and represented by the National Treasury of Kenya and has full power, authority and legal rights to borrow the Facility on the terms and conditions hereunder.

5.2 The Borrower has completed all the authorizations, acts and procedures as required by the laws of the Borrower's Country in order for this Agreement to constitute valid and legally binding obligations of the Borrower in accordance with its terms, including obtaining all the approvals and authorizations from relevant authorities of the Borrower's Country, and effecting all the registrations or filings as required by the laws of the Borrower's Country, and such approvals, authorizations, registrations and filings are in full force and effect.

5.3 As from the date on which this Agreement becomes effective, this Agreement constitutes legal, valid and binding obligation of the Borrower.

5.4 The Borrower is not in default under any law or agreement applicable to it, the consequence of which default could materially and adversely affect its ability to perform its obligations under this Agreement and no Event of Default has occurred under this

Agreement.

5.5 The signing of this Agreement by the Borrower constitutes, and the Borrower's performance of its obligations under this Agreement will constitute commercial acts. Neither the Borrower nor any of its assets is entitled to any right of immunity on the grounds of sovereignty or otherwise from arbitration, suit, execution or any other legal process with respect to its obligations under this Agreement, as the case may be, in any jurisdiction.

5.6 All information supplied to the Lender by the Borrower is true and accurate in all material respects.

5.7 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 avoidance of doubt, goods and services procured under this Agreement for the Project will be free of taxes in Kenya 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.

The Borrower represents and warrants to the Lender that the foregoing representations and warranties will be true and accurate throughout the Maturity Period with reference to the facts and circumstances subsisting from time to time. The Borrower acknowledges that the Lender has entered into this Agreement in reliance upon the representations and warranties contained in this Article.

## ARTICLE 6 SPECIAL COVENANTS

6.1 The Borrower hereby covenants to the Lender that the obligations and liabilities of the Borrower under this Agreement are direct, unconditional and general

*John*

*[Signature]*

obligations and rank and will rank at least pari passu in right of payment and security with all other present or future unsecured and unsubordinated indebtedness (both actual and contingent) of the Borrower. Any preference or priority granted by the Borrower to such indebtedness shall be forthwith applicable to this Agreement without prior request from the Lender.

6.2 The Borrower undertakes with the Lender that it will ensure that all amounts disbursed under this Agreement be used for the purposes specified in Article 2.4 and Article 2.5 and that it will pay the interest and any other payable amounts hereunder and repay the principal to the Lender in accordance with the terms and conditions hereunder. The performance by the Borrower of all its obligations under this Agreement shall be unconditional under all circumstances.

6.3 The Borrower shall include all amounts due and payable, or to fall due and payable to the Lender hereunder in each of its annual budgets during each fiscal year. For the avoidance of doubt, the Borrower may not justify any of its late or non-payment under this Agreement regardless of whether it has allocated the corresponding expenditures in its budgets.

6.4 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.

6.5 The Borrower hereby covenants to the Lender that it will take immediate steps and fulfill all the conditions necessary to maintain in full force and effect all approvals, authorizations, registrations and filings specified in Article 5.2.

6.6 The Borrower shall submit to the Lender the following documents and hereby covenants to the Lender that the information contained in such documents is true and



accurate:

(1) The Borrower shall submit to the Lender semi-annually during the Maturity Period reports on the actual progress and operation status of the Project and the utilization of the disbursed Facility proceeds.

(2) The Borrower shall submit to the Lender the documents which evidence the repayment of principal and payment of interest of the Loan under this Agreement has been included in the annual financial budget of the Government of Kenya during the Maturity Period, the document should be submitted before February of each current financial year.

(3) The Borrower shall supply to the Lender any other information pertaining to the performance of this Agreement at any time reasonably requested by the Lender.

6.7 The Lender shall be entitled to examine and supervise the utilization of the proceeds of the Facility and the performance of this Agreement. The Borrower shall facilitate the aforesaid examination and supervision of the Lender, including without limitation cause the relevant authority to issue the long-term multiple entry visa of Borrower's country to loan officer of the Lender.

6.8 During the Maturity Period, the Borrower shall inform in writing the Lender within 30 days from the date on which the following events occur:

(1) any material decision, change, accident and other significant facts pertaining to the Project or the Borrower;

(2) any change of the authorized persons and the specimen of their signatures involved in the drawdown of the Facility under this Agreement;

(3) any change of the communication address of the Borrower specified in Article 8.7;

(4) the occurrence of any Event of Default specified in Article 7;

(5) any significant amendment or supplement to the Commercial Contract and the On-Lending Agreement;

6.9 The Borrower undertakes with the Lender that so long as any sum remains outstanding under this Agreement, the Borrower will not engage in the activities which, in

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*[Signature]*

the opinion of the Lender, will materially and adversely affect the performance of the Borrower's obligations under this Agreement.

6.10 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.

6.11 The Borrower undertakes that the repayment of principal and payment of interest and fees under this Agreement and the Buyer Credit Loan Agreement shall be credit enhanced and secured by the following arrangements:

(1) the Railway Development Fund (the "RDF") which could be applied in priority to repay all loans drawn under this Agreement and the Buyer Credit Loan Agreement for the Project;

(2) a payment account established and opened in the Account Bank of the Lender or another bank approved by the Lender prior to the establishment of such account, which shall 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;

(3) a revenue (proceeds) account established and opened in an account bank in the Borrower's Country 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;

(4) the Long Term Service Agreement with an aim to guaranteeing a minimum amount of freight throughout the term of this Agreement or the Buyer Credit 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 Buyer Credit Loan Agreement (including without limitation the funding of the Escrow Account pursuant to the requirements of the relevant Escrow Account Agreement).

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 Document. The Borrower shall ensure that the relevant parties will perform their obligations under the relevant Security Document. The Lender shall be entitled to examine and supervise the execution and performance of the Security Document.

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

6.12 The Borrower undertakes to 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.

## ARTICLE 7 EVENTS OF DEFAULT

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

(1) The Borrower, for any reason, fails to pay any due and payable principal, interest, Commitment Fee, Management Fee or other sums in accordance with the provisions hereof;

(2) Any representation and warranty made by the Borrower in Article 5 , Article 6 or other Articles of this Agreement, or any certificate, document and material submitted and delivered by the Borrower pursuant to this Agreement proves to have been untrue or incorrect in any material respect ;

(3) The Borrower fails to punctually perform any of its other obligations under this Agreement or is in breach of any of its covenants and undertakings made under this Agreement (including without limitation those set out in Article 6.11 or Article 6.12 above), and does not remedy such breach to the satisfaction of the Lender within 30 days after receipt of written notice from the Lender requiring it to do so;

(4) Any other event which constitutes a default of the Borrower occurs in respect of any other agreement involving the borrowing of money or any guarantee between the Borrower and any other banks or financial institutions;

(5) Significant changes have occurred with respect to the Project or the Borrower, either of which, in the opinion of the Lender, may have material adverse effect on the ability of the Borrower to perform its obligations under this Agreement;

(6) The Borrower stops or suspends repayment to its creditors generally;

(7) Any event which constitutes a default of the relevant parties occurs in respect of the Security Document;

(8) Any policy or approval issued pursuant to Article 6.12 or any other policy or approval in connection with the credit enhancement and security arrangements pursuant to Article 6.11 has been changed, revised, revoked, terminated or replaced with any less favourable term without prior written consent of the Lender.

7.2 Upon the occurrence of any of the aforesaid Event of Default, the Lender may, by written notice to the Borrower, terminate the disbursement of the Facility, and/or declare all the principal and accrued interest and all other sums payable hereunder to be immediately due and payable by the Borrower without further demand, notice or other

legal formality of any kind.

7.3 Where there occurs any change of the laws or government policies in the country of either the Lender or the Borrower, which makes it impossible for either the Lender or the Borrower to perform its obligations under this Agreement, the Lender may, by written notice to the Borrower, terminate the disbursement of the Facility, and/or declare all the principal and accrued interest and all other sums payable hereunder to be immediately due and payable by the Borrower without further demand, notice or other legal formality of any kind.

## ARTICLE 8 MISCELLANEOUS

8.1 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.

8.2 Without prior written consent of the Lender, the Borrower may not assign or transfer all or any part of its rights or obligations hereunder in any form to any third party. The Lender is entitled to assign or transfer all or any part of its rights, interests and obligations hereunder to a third party with notice to the Borrower. The Borrower shall sign all such documents and do necessary acts and things as the Lender may reasonably require for the purpose of perfecting and completing any such assignment and transfer, provided that any costs incurred by the Borrower in connection therewith shall be borne by the Lender.

8.3 This Agreement is legally independent of the relevant Commercial Contract and the On-Lending Agreement. Any claims or disputes arising out of the Commercial Contract and the On-Lending Agreement shall not affect the obligations of the Borrower

under this Agreement.

8.4 This Agreement as well as the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of China.

8.5 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 friendly consultation within 30 days after one party receiving the written notice concerning the dispute from the other party, each party shall have the right to submit such dispute to China International Economic and Trade Arbitration Commission (CIETAC) for arbitration. The arbitration shall be carried out in accordance with CIETAC's arbitration rules effective as of the date of the submission. The arbitration award shall be final and binding on both parties. The arbitration shall take place in Beijing.

8.6 The Borrower hereby irrevocably designates the Embassy of the Republic of Kenya in Beijing whose address is No.4 Xi Liu Jie, San Li Tun, Beijing, China as its authorized agent to receive and acknowledge on its behalf service of any notice, writ, summons, order, judgment or other legal documents in China. If for any reason the agent named above (or its successor) no longer serves as agent of the Borrower to receive legal documents as aforesaid, the Borrower shall promptly designate a successor agent satisfactory to the Lender. The Borrower hereby agrees that, any such legal documents shall be sufficiently served on it if delivered to the agent for service at its address for the time being in Beijing, whether or not such agent gives notice thereof to the Borrower.

8.7 All notices or other documents in connection with this Agreement shall be in writing and shall be delivered or sent either personally or by post or facsimile to the following respective address or facsimile number of both parties; in the event that the following address or facsimile number of any party hereunder has changed, such party shall immediately inform the other party in the way set out in this Agreement:

To the Lender: Concessional Loan Dept.  
The Export-Import Bank of China  
(for the attention of Mr./Ms. Director of African Division of

Concessional Loan Dept.)  
No.30, FuXingMen Nei Street, Xicheng District, Beijing 100031  
People's Republic of China  
Fax: 86-10-66086308  
86-10-83578516  
Tel: 86-10-83579000

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

Any notice or document so addressed to the relevant party under this Agreement shall be deemed to have been delivered:

- (1) if sent by personal delivery: at the time of delivery;
- (2) if sent by post: 15 days after posting (excluding Saturdays, Sundays and statutory holidays);
- (3) if sent by facsimile, when the notice or document is dispatched by fax machine .

8.8 This Agreement shall be signed in the English language. The notes and other written documents delivered between the Borrower and the Lender under this Agreement shall all be written in English.

8.9 Unless otherwise provided, no failure or delay by the Lender in exercising any of its rights, power or privilege under this Agreement shall impair such right, power or privilege or operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

8.10 The appendices to this Agreement shall be deemed as an integral part of this Agreement and have the same legal effect as this Agreement.

8.11 Matters not covered in this Agreement shall be settled through friendly consultation and signing of supplementary agreements between the Borrower and the Lender.

## ARTICLE 9 CONDITIONS TO EFFECTIVENESS

9.1 This Agreement shall become effective upon the satisfaction of the following conditions:

- (1) This Agreement has been duly signed by the Lender and the Borrower;
- (2) The Lender has received copies of the approval issued by the relevant authorities of the Borrower's Country approving the borrowing by the Borrower hereunder;
- (3) The Lender has received and approved the certified true copies of the On-Lending Agreement duly signed by and between the Borrower and the End-User;
- (4) The Buyer Credit Loan Agreement has been duly signed by the relevant parties.

9.2 The effective date of this Agreement shall be the date specified in the Notice of Effectiveness of Loan Agreement sent by the Lender to the Borrower after all the conditions precedent to the effectiveness of this Agreement have been fully satisfied.

9.3 In the event that this Agreement fails to become effective within one year after signing by the parties, the Lender shall have the right to re-evaluate the implementation conditions of the Project and utilization conditions of the Facility to determine whether to continue the performance of this Agreement or not.

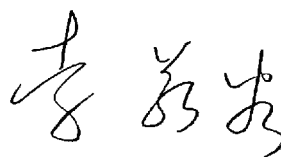
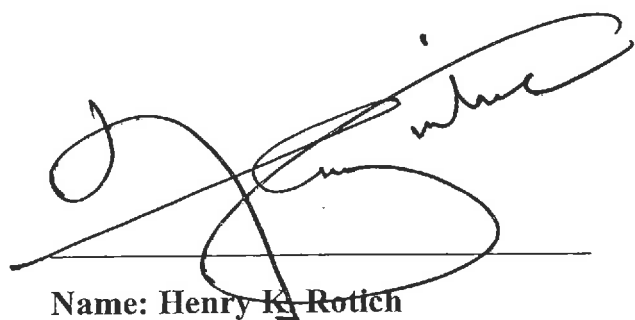
9.4 This Agreement shall be made in two counterparts with equal legal effect.



IN WITNESS WHEREOF, the two parties hereto have caused this Agreement to be duly signed on their respective behalf, by their duly authorized representatives, on the date stated at the beginning of this Agreement.

Signed by:

Signed by:



Name: Henry K. Rotich  
Title : Cabinet Secretary  
National Treasury of Kenya

Name: Li Ruogu  
Title: Chairman and President

On behalf of:  
The Government of the Republic of  
Kenya

On behalf of:  
The Export-Import Bank of China

**Appendices:**

1. Conditions Precedent to the First Drawdown
2. Conditions Precedent to Each Drawdown after the First Drawdown
3. Power of Attorney (for Signing)
4. Power of Attorney (for Drawdown)
5. Form of Irrevocable Notice of Drawdown
6. Form of Legal Opinion
7. Irrevocable Power of Attorney of Borrower's Process Agent
8. Letter of Confirmation
9. Form of Notice of Effectiveness of Loan Agreement
10. Form of Repayment Schedule

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**Appendix 1**  
**Conditions Precedent to the First Disbursement**

Upon the Borrower's application to the Lender for the making of the first disbursement, the Lender shall not be obliged to make any such disbursement to the Borrower unless the Borrower has fulfilled the following conditions and the Lender has received the following documents to its satisfaction:

- (1) Copies of this Agreement which have been duly signed by all parties thereto respectively and have become effective;
- (2) Certified true copies of the Commercial Contract and other relevant documents in connection therewith acceptable to the Lender which have been duly signed by all parties thereto and have become effective;
- (3) Drawdown schedule submitted by the Borrower which has been recognized and accepted by the Lender;
- (4) The authorization of the Borrower, by which the Borrower authorizes one or more representatives to sign this Agreement, Irrevocable Notice of Drawdown and any other documents in relation to this Agreement, and the signature specimen of such authorized representatives;
- (5) Document(s) evidencing that the related Self-Raised Fund under the Project 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;
- (6) The executed version of the Buyer Credit Loan Agreement and the evidence on its having become effective;
- (7) The Lender has received and approved the copies of Sub-Contract Agreements for Design and Construction for the Line Section of the Project which have been duly signed by the EPC Contractor and the Sub-Contractors;

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(8) Certified true copies of any and all documents which could evidence that the Management Fee and Commitment Fee payable hereunder have been paid by the Borrower to the Lender in accordance with the provisions of Article 2.6 and Article 2.7;

(9) An original Irrevocable Notice of Drawdown in the form set out in Appendix 5 attached hereto duly signed by the authorized signatory of the Borrower and sent by courier or TESTED SWIFT not later than the fifteenth (15<sup>th</sup>) Banking Day prior to the date on which the drawdown is scheduled to be made; such Irrevocable Notice of Drawdown authorizes the Lender to pay the relevant amount to the account designated by the Borrower, and such drawdown shall be in compliance with the stipulations of the Commercial Contract;

(10) Legal opinion in the form and substance set forth in Appendix 6 or in the form and substance otherwise approved by the Lender in writing issued by the Attorney General of the Borrower's Country in connection with the transactions contemplated hereunder;

(11) The irrevocable power of attorney to the process agent by the Borrower named in Article 8.6 in the form set forth in Appendix 7 or in the form and substance otherwise approved by the Lender in writing and the Letter of Confirmation of Acceptance of appointment by such process agent in the form of Appendix 8 or in the form and substance otherwise approved by the Lender in writing;

(12) Document(s) evidencing that the headquarters of the Project has been established and organized;

(13) Document(s) evidencing that the Supervisor Agency or Supervising Company for the implementation and construction of the Project has been appointed;

(14) The Lender has received and approved the copies of detailed construction plan and organization and arrangement plan submitted by the EPC Contractor, which shall, if applicable, have been approved by the End-User;

(15) The executed version of the On-Lending Agreement and the evidence on its having become effective;

(16) The executed version of the Security Document as defined in Article 1.36 and the evidence on their having become effective and the security interests contemplated thereunder having been duly created and perfected;

(17) Document(s) evidencing that the following preferential policies, regulations or approvals have been issued or stipulated by the Government of Kenya or the relevant authority of Kenya:

(a) The Government of Kenya or the Authority of Kenya, through enforcement of necessary procedure (if necessary), approves the Railway Development Fund (the "RDF") which could be applied in priority to make the repayment of loans in relation to the Project as owing to the Lender;

(b) The Government of Kenya or the Authority of Kenya and other relative institution approves the signing of Long Term Service Agreement and issue the policy or regulation to ensure its due enforcement;

(c) The Government of Kenya or the Authority of Kenya and other relative institution, through enforcement of necessary procedure (if necessary), approves 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;

(d) The Government of Kenya or the Authority of Kenya approves to establish the Inland Container Depot (inland port) in Nairobi and its mandatory customs clearance, and makes the necessary regulation or plan for its operation and management;

(18) Document(s) evidencing that the Escrow Account under the relevant Escrow Account Agreement have been opened;

(19) The Lender has received and approved the Legal Due-Diligence Report from its counsel in relation to the legal and compliance risks of the Project in the Borrowers Country.

(20) Such other document(s) or condition(s) relating to the transactions under this

Agreement as the Lender may reasonably request with sufficient notice to the Borrower.

In the event that the Borrower fails to fulfill the above conditions within one year after the effectiveness of this Agreement, the Lender shall have the right to re-evaluate the implementation conditions of the Project and utilization conditions of the Facility to determine whether to continue the performance of this Agreement or not.

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## Appendix 2

### Conditions Precedent for Each Disbursement after the First Disbursement

For each disbursement after the first disbursement hereunder, the Lender shall not be obliged to make any such disbursement to the Borrower unless all the conditions precedent set out in Appendix 1 attached hereto have been satisfied, the Borrower has fulfilled the following conditions, including the general conditions for each disbursement after the first disbursement and the particular conditions for such disbursements in relation to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> installment of payment under the Commercial Contract (Line Section), and the Lender has received the following documents to its satisfaction:

#### -General conditions for each disbursement after the first disbursement:

- (1) An original Irrevocable Notice of Drawdown in the form set out in Appendix 5 attached hereto duly signed by the authorized signatory of the Borrower and sent by courier not later than the fifteenth (15<sup>th</sup>) Banking Day prior to the date on which the drawdown is scheduled to be made; such Irrevocable Notice of Drawdown authorizes the Lender to pay the relevant amount to the account designated by the Borrower, and such drawdown shall be in compliance with the stipulations of the Commercial Contract;
- (2) Document(s) evidencing that the Self-Raised Fund under the Project 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;
- (3) No Event of Default has occurred (or will likely to occur as a result of the drawdown being made) under this Agreement;
- (4) All representations, warranties, and undertakings made by the Borrower hereunder shall be true and correct as at the date such drawdown is scheduled to be made with reference to the facts and circumstances then subsisting;
- (5) The Borrower has paid the interest due and payable under this Agreement in accordance with Article 4;

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(6) The Borrower has paid the Commitment Fee due and payable under this Agreement in accordance with Article 2.7;

(7) The Facility hereunder has not been terminated;

(8) Such other document(s) and condition(s) as the Lender may reasonably request.

**-Particular conditions for such disbursement in relation to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> installment of payment under the Commercial Contract (Line Section):**

(1) for the 3<sup>rd</sup> installment: Document(s) evidencing that the optimization design has been approved by the relevant authority (or the relevant consultant) appointed by the Lender.

(2) for the 4<sup>th</sup> installment: Document(s) evidencing that the appropriate institution for the operation and management of the Railway has been established, and the End User has completed appropriate and necessary legal arrangements.

(3) for the 5<sup>th</sup> installment: The Lender has received the detailed operation and management plan of the Project in the form and substance satisfactory to the Lender.

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**Appendix 3**  
**Power of Attorney (for Signing the Agreement)**

I, \_\_\_\_\_ (Name of the Authorizing Person), am \_\_\_\_\_ (Title of the Authorizing Person) of \_\_\_\_\_ (hereinafter referred as the "**Institution**"). I hereby confirm that I have the full legal right and authority to sign the Preferential Buyer Credit Loan Agreement on the Kenya Mombasa-Nairobi Standard Gauge Railways Project dated \_\_\_\_\_ (No. \_\_\_\_\_, hereinafter referred to as the "**Agreement**") on behalf of the Institution. However, in the event that I am not available when the Agreement is required to be signed, I hereby authorize Mr. \_\_\_\_\_ (hereinafter referred as the "**Authorized Signatory**"), \_\_\_\_\_ (Title of the Authorized Signatory) of the Institution, to sign the Agreement and other notices and documents in connection therewith on behalf of the Institution.

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

Specimen Signature of the Authorized Signatory:

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

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

*JMC*

*[Handwritten Signature]*

**Appendix 4**  
**Power of Attorney (for Drawdown)**

I, \_\_\_\_\_ (Name of Authorizing Person), am \_\_\_\_\_ (Title of the Authorizing Person) of \_\_\_\_\_ (hereinafter referred as the “**Institution**”). I hereby confirm that I have the full legal right and authority to make drawdowns on behalf of the Institution in accordance with the terms and conditions of the Preferential Buyer Credit Loan Agreement on the Kenya Mombasa-Nairobi Standard Gauge Railways Project dated \_\_\_\_\_ (No. \_\_\_\_\_, hereinafter referred to as the “**Agreement**”). In the event that I am not available when a drawdown is to be made, I confirm that I hereby authorize Mr. \_\_\_\_\_ (hereinafter referred as the “**Authorized Signatory**”), \_\_\_\_\_ (Title of the Authorized Signatory) of the Institution, to make the drawdown under the Agreement, to sign the documents and to handle other matters in connection therewith on behalf of the Institution. Any one of the Authorized Signatories has the full legal right to sign the documents for drawdown individually and independently.

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

Specimen Signature of the Authorized Signatory:

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

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

*John*

*[Handwritten Signature]*

Appendix 5  
FORM OF IRREVOCABLE NOTICE OF DRAWDOWN  
(BY EXPRESS DELIVERY OR TESTED SWIFT)

From: \_\_\_\_\_ (the Borrower)  
To: The Concessional Loan Department  
The Export-Import Bank of China  
No. 30, Fuxingmennei Street, Xicheng District, Beijing 100031  
People's Republic of China

Serial No: \_\_\_\_\_  
Date: \_\_\_\_\_

Dear Sir or Madam,

Pursuant to Article 3 of the Preferential Buyer Credit Loan Agreement on the Kenya Mombasa-Nairobi Standard Gauge Railways Project dated \_\_\_\_\_ (No. \_\_\_\_\_, hereinafter referred to as the "Agreement") between \_\_\_\_\_ (the "Borrower") and the Export-Import Bank of China (the "Lender"), we hereby instruct and authorize you to make a payment as follows:

Amount: \_\_\_\_\_ (Currency: USD)  
Word Figure: \_\_\_\_\_ (Currency: USD)  
\_\_\_\_\_ (Please fill in "Please pay in \_\_\_\_\_ (foreign currency)" in case that a drawdown in a foreign currency approved by the Lender is needed)

Payee: \_\_\_\_\_  
Account Bank: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
Date of Payment: at your earliest convenience

This payment is made to the \_\_\_\_\_ Invoice (Invoice No.



\_\_\_\_\_ ) under the Kenya Mombasa-Nairobi Standard Gauge Railways Project Contract (Contract No.: \_\_\_\_\_), and for the payment of \_\_\_\_\_ (purpose).

We hereby authorize you to debit the account mentioned in Article 4.7 of the Agreement with such amount of payment in USD in accordance with Article 2.1 of the Agreement.

We hereby confirm that your above-mentioned payment shall be deemed a drawdown made by us under the Agreement and upon your payment pursuant to this Irrevocable Notice of Drawdown, the amount of payment 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 and covenants made by us in Article 5 and Article 6 of the Agreement remain true and correct as of the date of this Irrevocable Notice of Drawdown, and none of the events referred to in Article 7 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.

\_\_\_\_\_ (Full Name of the Borrower)  
\_\_\_\_\_ (Official Stamp of the Borrower)  
\_\_\_\_\_ (Signature of Authorized Signatory)

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**Appendix 6**  
**Form of Legal Opinion**

To: The Export-Import Bank of China

Date: \_\_\_\_\_

Dear Sirs,

**Re: The Preferential Buyer Credit Loan Agreement on the \_\_\_\_\_ Project  
(No. \_\_\_\_\_)**

We are  Ministry of Justice,  Attorney-General,  a law firm  \_\_\_\_\_, qualified and authorized to issue this legal opinion in connection with the Preferential Buyer Credit Loan Agreement on the Kenya Mombasa-Nairobi Standard Gauge Railways Project dated \_\_\_\_\_ (No. \_\_\_\_\_, the "Loan Agreement") between the Export-Import Bank of China as the lender (the "Lender") and \_\_\_\_\_ as the borrower (the "Borrower").

For the purposes of this legal opinion, we have examined copies of the following documents:

- (1) the executed Loan Agreement;
- (2) Such laws and regulations and such other documents, certificates, records and instruments as necessary and appropriate to render the opinions hereinafter set forth.

This legal opinion is given on the basis of the laws of the \_\_\_\_\_ effective as at the date hereof.

Based on the foregoing, we are of the opinion that:

1. The Borrower is an institution duly established and validly existing under the laws of \_\_\_\_\_, and has power, authority and legal right to assume civil liabilities with

*JMK*

*[Signature]*

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 signing, delivery and performance of the Loan Agreement and \_\_\_\_\_ of the Borrower has been duly authorized and has the power to sign the Loan Agreement on behalf of the Borrower.

3. The Loan Agreement has been duly signed by the Borrower, and constitutes legal, valid and binding obligations of the Borrower enforceable in accordance with its terms.

4. The signing, delivery and performance of the Loan Agreement by the Borrower do not violate or conflict with or result in a breach of any law or regulation of \_\_\_\_\_.

5. All authorizations and consents of any authority in \_\_\_\_\_ required in connection with the signing, delivery and performance of the Loan Agreement by the Borrower have been obtained and are in full force and effect, including making payments in foreign currencies under the Loan Agreement and making the Loan Agreement admissible in evidence in the courts of \_\_\_\_\_.

6. No registration fee or similar tax is payable in \_\_\_\_\_ in respect of the Loan Agreement by the Borrower and the Lender. No withholding would be made in respect of any payment to be made by the Borrower to the Lender under the Loan Agreement.

7. The signing and performance of the Loan Agreement by the Borrower constitute commercial acts, and the declaration that the Borrower shall not have any right of immunity in connection with any proceedings or any enforcement of an arbitral award or court decision on the grounds of sovereignty or otherwise is valid and irrevocably binding on the Borrower.

8. The payment obligations of the Borrower under the Loan Agreement rank at least pari passu with all its other unsecured and unsubordinated indebtedness except those which are mandatorily preferred by operation of \_\_\_\_\_ law.

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9. The choice of Chinese law as the governing law under the Loan Agreement is a valid choice of law. The submission of any dispute arising out of or in connection with the Loan Agreement by the Borrower to China International Economic and Trade Arbitration Commission (CIETAC) for arbitration under the Loan Agreement does not contravene any law of \_\_\_\_\_. The appointment by the Borrower of a process agent in Beijing does not violate any provision of any law or regulation of \_\_\_\_\_.

10. The Lender is not and will not be deemed to be resident, domicile or having an establishment in \_\_\_\_\_ by reason only of the execution, delivery, performance and/or enforcement of the Loan Agreement.

This legal opinion is strictly limited to the matters stated herein and may be relied upon only by you in respect of the captioned matter. It may not be relied upon for any other purposes and may not be disclosed to any other persons without our consent.

Yours faithfully,

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**Appendix 7**  
**Irrevocable Power of Attorney**  
( Appointment of the Borrower's Process Agent)

Date: \_\_\_\_\_

Dear Sirs:

We refer to the Preferential Buyer Credit Loan Agreement on the Kenya Mombasa-Nairobi Standard Gauge Railways Project 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 legal documents issued by China International Economic and Trade Arbitration Commission (CIETAC) and its appellate court 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 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 arbitration received by you:

Attention:

Tel:

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

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(2) Perform the duties as Process Agent in accordance with the Agreement.

We should be grateful if you would indicate your acceptance of your appointment by signing the form of acknowledgement contained in the duplicate of this letter and returning the same to us or to such other person as we may identify to you.

Yours faithfully,

Name:

Title:

*JMK*

*[Signature]*

**Appendix 8**  
**Letter of Confirmation**

To: (name of the Borrower)

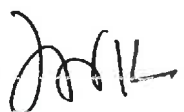
Date: \_\_\_\_\_

We hereby acknowledge receipt of the letter dated \_\_\_\_\_ from the \_\_\_\_\_ (the Borrower), the above is a true copy of which, and agree to our appointment under it to receive on behalf of \_\_\_\_\_ (the Borrower) service of legal documents issued out of China International Economic and Trade Arbitration Commission (CIETAC) and its appellate court in any legal action or proceedings arising out of or in connection with the Agreement referred to in that letter.

Yours faithfully,

Name:

Title:



**Appendix 9**  
**Form of Notice of Effectiveness of Loan Agreement**

From: The Export-Import Bank of China  
No. 30, Fuxingmennei Street, Xicheng District, Beijing 100031.  
People's Republic of China

To: \_\_\_\_\_ (the Borrower)

Date: \_\_\_\_\_

Dear Sirs,

Pursuant to Article 9 of the Preferential Buyer Credit Loan Agreement on the Kenya Mombasa-Nairobi Standard Gauge Railways Project dated \_\_\_\_\_ (No. \_\_\_\_\_, hereinafter referred to as "the Agreement") between \_\_\_\_\_ (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 9.1 of the Agreement have been satisfied;
- (b) The Agreement shall become effective on and from the date hereof.

The Export-Import Bank of China

\_\_\_\_\_  
(Signature of Authorized Signatory)

*Amc*

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Appendix 10

Form of Repayment Schedule

Concerning the Preferential Buyer Credit Loan Agreement on the Kenya  
Mombasa-Nairobi Standard Gauge Railways Project dated \_\_\_\_\_ (No.  
\_\_\_\_\_)

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

**Note:** The amount appeared in this schedule just refer to repayment of the Principal of the Loan under the Preferential Buyer Credit Loan Agreement on the Kenya Mombasa-Nairobi Standard Gauge Railways Project dated \_\_\_\_\_ (No. \_\_\_\_\_), while the interest accrued shall be paid according to the provisions of Article 4 of the aforesaid Agreement.

