

CHINA EXIMBANK PBC NO. 2008 (21) TOTAL NO. ( 61)

**PREFERENTIAL BUYER CREDIT LOAN  
AGREEMENT**

**ON ROAD REABILITATION PROJECT  
OSH-SARITASH-IRKESHTAM SECTION  
FROM 123 TO 190 KM WITH THE LENGTH OF 67 KM**

**BETWEEN**

**THE GOVERNMENT OF KYRGYZ REPUBLIC**

**AS BORROWER**

**AND**

**THE EXPORT-IMPORT BANK OF CHINA**

**AS LENDER**

**DECEMBER 10, 2008**

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This **PREFERENTIAL BUYER CREDIT LOAN AGREEMENT** (the "Agreement") is made on 10 December, 2008 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, Xichegn District, Beijing 100031, China) and the Ministry of Finance of Kyrgyz Republic (hereinafter referred to as the "Borrower", with its office at 58 Erkindik Boulevard, Bishkek, Kyrgyz Republic 720040)

## **WITNESSETH**

### **WHEREAS:**

- (A) The Borrower is the Ministry of Finance of Kyrgyz Republic;
- (B) The Ministry of Transport and Communications of Kyrgyz Republic (hereinafter referred to as the " Foreign Importer") and China Road and Bridge Cooperation (hereinafter referred to as the "Chinese Supplier") have entered into the Contract (as defined in Article 1 hereof);
- (C) The Borrower has requested that the Lender make available a loan facility to the Borrower for the purpose of financing one hundred per cent (100%) of the Contract Amount (as defined in Article 1); and
- (D) In accordance with the Memorandum (MOU) entered into by and between the Borrower and the Lender on July 29, 2008, the Lender has accordingly agreed to make a loan facility available to the Borrower on the terms and conditions set out herein.

**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:

**“Borrower’s Chinese Process Agent”** means the Embassy of the Kyrgyz Republic to the People’s Republic of China with its address from time to time at H-10/11, King’s Garden Villas, No.18, Xiaoyun Road, Beijing, 100016 China tel.: 010-64681291, fax: 010-64681291;

**“Business Day”** means a day on which banks and/or other financial institutions are open for banking business in Beijing, [London], [Bishkek] and [New York];

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

**“Contract”** means the contract dated November 25, 2008 with the contract number EIBC/OSI-67 entered into by and between the Chinese Supplier and the Foreign Importer for the construction of the Project<sup>1</sup>, as amended from time to time, with the consent (which consent shall not be unreasonably withheld or delayed) of and approval by the Lender;

**“Contract Amount”** means, in respect of the Contract, the total amount in Seventy Five Million and Two Hundred and Ninety Thousand US Dollar only (US\$75,290,000) payable by the Foreign Importer to the Chinese Supplier in accordance with the Contract;

**“Disbursement”** means the advance of the Facility made in accordance with Article 4;

**“Disbursement Period”** means the period commencing on the effective date of this Agreement and ending on the earlier of (a) the date falling 60 months thereafter, (b) the date on which the Facility is fully disbursed, cancelled or terminated hereunder, (c) the date immediately preceding the expiration of the Grace Period and (d) any date mutually agreed upon in writing by the Lender and the Borrower;

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

**“Event of Default”** means any of the events specified in Article 13;

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<sup>1</sup> Depending upon the particularity of the Project, here the “construction” could be replaced with “purchase”, “sale”, and so forth. This note also applies to the definition of “Contract Amount”.

**“External Indebtedness”** means any payment obligations 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) are:

- (a) denominated, payable or optionally payable otherwise than the currency of the Kyrgyz Republic; and
- (b) payable to a person, domiciled, resident or having its head office or principal place of business outside the Kyrgyz Republic.

**“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. 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;

**“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 Foreign Importer after completion and successful trial under the terms and conditions of the Contract;

**“Grace Period”** means the period commencing on the effective date of this Agreement and ending on the date falling 60 months thereafter, during which period only the interest and no principal is payable by the Borrower to the Lender;

**“Interest Payment Date”** means:

the 21st day of the January and the 21st day of July in each calendar year (where interest is paid semi-annually);

**“Interest Period”** means , in relation to the Loan, any period determined in accordance with Article 5.2;

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

**“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 Drawdown”** means a notice in the form set forth in Form 2 attached hereto;

**“Notice of Effectiveness of Loan Agreement”** means a written notice in the form set forth in Form 1 attached hereto, in which the effective date of this Agreement shall be specified;

**“Project”** means road rehabilitation on Osh-Saritash-Irkeshtam section from 123 km to 190 km with the length of 67km;

**“Repayment Date”** means each date on which a repayment installment is due under Article 6, and the first Repayment Date shall be on the first Interest Payment Date immediately succeeding the date on which the Grace Period expires;

**“Repayment Period”** means, in relation to the Loan, a repayment period being no more than 240 months, commencing on the date on which the Grace Period expires 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;

**“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 requires otherwise, 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; or
- (d) in respect of any indebtedness of any other person whether or not secured by or benefiting from a Encumbrance on any property or asset of such person;
- (e) in respect of any form of off-balance sheet financing;

"law" and/or "regulation" includes any constitutional provisions, treaties, conventions, statutes, laws, decrees, orders, rules and regulations 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;

"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”, “Foreign Importer” and “Chinese Supplier” shall where the context permits include their respective successors and permitted assigns and any persons 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 Seventy Five Million and Two Hundred and Ninety Thousand US Dollar US Dollar only (US\$ 75,290,000).
- 2.2 **Purpose of Loan** The entire proceeds of the Facility shall be applied by the Borrower for the sole purpose of the payment of approximately One Hundred percent (100 %) of the Contract Amount.
- 2.3 **Term of The Loan** The term of the Loan under this Agreement is 20 years from the effective date of this Agreement to the final Repayment Date.

## **Article 3 Conditions Precedent**

- 3.1 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 (or such documents have been waived by the Lender in writing), each in form and substance satisfactory to it in all respects:
- (1) in relation to the Borrower, certified true copies of:
- (a) its constitutional document;
  - (b) documentary evidence of the authority of each person who (i) has signed this Agreement on behalf of the Borrower and (ii) will sign the 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 signed by the Lender and the Borrower and has become effective as evidenced by the Notice of Effectiveness of Loan Agreement;
- (3) a certified true copy of the Contract duly signed by the Chinese Supplier and the Foreign Importer;
- (4) certified true copies of any and all documents evidencing that the Foreign Importer has paid to the Chinese Supplier the Down-Payment as required under the Contract;
- (5) 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 Kyrgyz Republic to ensure the validity, legality and enforceability of such documents;
- (6) certified true copies of any and all 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 5;
- (7) a legal opinion of legal counsel of the Borrower acceptable to the Lender in the form set forth in Form 5 attached hereto;
- (8) the written appointments by the Borrower and related consents of the Borrower's Chinese Process Agent in the form set forth in Form 6-1 and Form 6-2 attached hereto;
- (9) representation of the Borrower that there are no material legal proceedings or arbitration occurred in respect of the Borrower;
- (10) such other documents relating to any of the matters contemplated herein as the Lender may reasonably request.

3.2 The Borrower hereby undertakes that all of the above documents shall be delivered to

the Lender in the shortest possible time from the date hereof.

- 3.3 All the documents and evidence referred to in Article 3 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 party concerned.

#### **Article 4 Disbursement**

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

- (a) all the conditions precedent specified in Article 3 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 [seventh (7th)] 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) no Event of Default has occurred and is continuing nor would an Event of Default result from the making of such Disbursement;
- (d) 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;

- 4.2 **Disbursement Procedure** Subject to conditions in Article 3 and 4.1, the Lender shall disburse the Facility in relation to the Contract in accordance with the following procedures:

- 4.2.1 The Borrower shall issue a Notice of Drawdown via courier / by authenticated SWIFT message / by tested telex to the Lender and designate the account to which the Disbursement shall be made into, which account shall be opened by the Chinese Supplier with the Lender for the purpose of the Contract;

- 4.2.2 Subject to conditions in Article 3, Article 4.1 and Article 4.2 and other terms and conditions of this Agreement, the Lender shall allocate in due course the amount specified in the Notice of Drawdown to the account as designated in the Notice of Drawdown;
- 4.2.3 Forthwith upon the allocation of the Disbursement to the account opened by the Chinese Supplier with the Lender, 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.
- 4.3 **Table of Disbursement** Within the first [seven (7)] 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 3 attached hereto, each of which shall be prima facie evidence of the matters set forth therein.
- 4.4 **No Excess of Facility** 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.
- 4.5 **Confirmation of the Borrower** The Borrower confirms that any dispute between the Foreign Importer and the Chinese Supplier arising from the Contract shall in no event affect the performance of the obligations of the Borrower hereunder.

## **Article 5 Interest and Fees**

- 5.1 **Interest** The Borrower shall pay to the Lender interest on the Loan in accordance with the following provisions of this Article.
- 5.2 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 of the first Disbursement shall commence on the date on which the first Disbursement is made 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 and end on the last day of the then current Interest Period 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 immediately preceding Interest Payment Date (inclusive) and end on the last day of 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.

5.3 The rate of interest applicable to the Loan or the relevant part thereof for each Interest Period shall be Two Percent (2%) per annum.

5.4 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, 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. The certificate issued by the Lender as to the rate and amount of interest payable on any Interest Payment Date 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.

5.5 **Management Fee** The Borrower shall pay to the Lender a Management Fee of Zero Point Twenty Five percent (0.25%) of the Facility equal to One Hundred Eighty Eight Thousand and Two Hundred Twenty Five US Dollar (US\$188,225) in one lump within 30 days after this Agreement becomes effective but not later than the first Disbursement Date of this Agreement.

5.6 **Commitment Fee** The Borrower shall pay to the Lender a commitment fee at the rate of Zero Point Twenty Five percent (0.25%) per annum on the daily unutilized portion of the Facility. Such commitment fee shall accrue from and including the

[30th] day following the effective date of this Agreement 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.

## **Article 6    Repayment and Prepayment**

- 6.1    **Repayment**    The Borrower shall repay the Loan outstanding at the end of the Grace Period by 30 equal successive installments of Two Million and Five Hundred and Nine Thousand and Six Hundred and Sixty Six US Dollar (US\$ 2,509,666) on each Repayment Date to the Lender in accordance with the Repayment Schedule which will be sent by the Lender to the Borrower after the date on which the Grace Period expires.
- 6.2    **Voluntary Prepayment**    Subject to the written consent by the Lender, the Borrower may on any Interest Payment Date after the date on which the Grace Period expires prepay to the Lender all or any part of the Loan in accordance with the terms hereunder.
- 6.2.1    **Conditions to Prepayment**    No voluntary prepayment could made provided that:
- (a)    the Borrower shall have given to the Lender not less than 60 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 Million US Dollars (US\$ 1,000,000) and an integral multiple of one hundred thousand US Dollars (US\$100,000.00) of the Facility herein;
  - (c)    all other sums then due and payable under this Agreement shall have been paid.
- 6.2.2    **Prepayment Indemnity and Interest**    At the time of prepayment which is made in accordance with the above provisions,
- (a)    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 Loan from and including the date of prepayment up to and including the repayment date of

such part of Loan, 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;

(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.

6.2.3 After all the conditions in Article 6.2.1 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 indemnity and interest for prepayment. Any such prepayments shall reduce the amount of repayment installments of the Loan in inverse order of maturity.

6.3 **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.

6.4 **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 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 7    Payments and Currency**

7.1 **Place and Time of Payment** All payments by the Borrower to the Lender hereunder shall be made in US Dollars in freely transferable and immediately available funds not later than 11:00 a.m., New York time on the relevant due date to the account of the Lender (Account No. 36118879, fedwire ABA No. 021000089, CHIPS ABA No. 0008 SWIFT code: CITI US33) 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 “Preferential Buyer Credit Loan Agreement, No.CHINA EXIMBANK PBC NO. 2008 (21) TOTAL NO. (61)”.

- 7.2 **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.
- 7.3 **Payment in US Dollar** US Dollar shall be the currency of account and of payment in respect of sums payable under this Agreement. Notwithstanding any payment being made, pursuant to an order or otherwise, in a currency other than US Dollar, the Borrower's obligations under this Agreement shall be discharged only to the extent that the Lender may purchase US Dollar with such other currency in accordance with normal banking procedures upon receipt of such payment. If the amount in US Dollar 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 Sub-clause shall constitute an obligation of the Borrower separate and independent from its other obligations hereunder.
- 7.4 **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 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 8    Taxes**

- 8.1 **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.

- 8.2 **Advance Notification** If at any time the Borrower becomes aware that any such deduction, withholding or payment in Article 8.1 is or will be required, it shall immediately notify the Lender and supply all available details thereof.
- 8.3 **Indemnification** The Borrower shall promptly pay all present and future stamp and other like duties and taxes and all notaries, 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 9 Change of Law or Circumstances**

- 9.1 **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 such notifying the Borrower by the 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 to the Lender and other sums then due under this Agreement.
- 9.2 **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 8); 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 [30] days prior written notice, prepay the whole (but not only part) of the Loan in accordance with Article 6, and upon the giving of such notice the Facility shall be cancelled.

## **Article 10 Representations and Warranties**

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

- (a) **Status of the Borrower** The Borrower is the Ministry of Finance of Kyrgyz Republic, 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 sign, 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 signing, 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 signed 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 signing, delivery and performance of this Agreement by the Borrower do not and will not contravene, violate or constitute a default under (a) any provisions of any agreements or other instruments 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, which default will have material adverse effect on the Borrower's performance of its repayment obligations hereunder.
- (f) **No Default** The Borrower is not in default under any law, regulation, judgment, order, authorization, agreement or obligation applicable to it or its 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 Kyrgyz Republic, there is no tax imposed (whether by withholding or otherwise) on or by virtue of the signing and delivery of this Agreement or any document or instrument to be signed 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.

- (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 signing 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 Kyrgyz Republic and neither the Borrower nor any of its assets is entitled to any immunity or privilege (sovereign or otherwise) from suit, 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 proceedings in the Kyrgyz Republic 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 Borrower to the non-exclusive jurisdiction of the courts of China and the appointments of the Borrower's Chinese Process Agent are legal, valid, binding and enforceable and any judgment obtained in Chinese court will be, if introduced, evidence for enforcement in any proceedings against the Borrower and its assets in the Kyrgyz Republic.
- (l) **Proper Form** This Agreement is in proper legal form under the laws of the Kyrgyz Republic and based on being governed by the laws of China is capable of enforcement in the courts of the Kyrgyz Republic.
- (m) **No Registration** It is not necessary in order to ensure the legality, validity, enforceability and admissibility in evidence in proceedings in the Kyrgyz Republic 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 Kyrgyz Republic.
- (n) **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 performance by the Borrower 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;

(o) **Status of External Indebtedness** The outstanding amount of the Borrower's External Indebtedness upon the signing of this Agreement is not more than US\$ 2,123,519,000

(p) **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.

10.2 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.

10.3 The Borrower acknowledges that the Lender has entered into this Agreement in reliance upon the representations and warranties contained in this Article.

## **Article 11 Undertakings**

11.1 **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 Contract, including without limitation quarterly reports on the actual progress and status of the Project and the actual utilization of the disbursed Loan;

- (b) **Notifications** promptly inform the Lender of:
  - (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 10.1 (g);
  - (iii) the imposition of any law, decree or regulation materially affecting the Borrower or the Contract;
  - (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 implementation of the Contract; or
- (c) **Approvals and Consents** maintain in full force and effect all such authorisations, approvals and consents as are referred to in Article 10.1 (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** sign 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 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) The Borrower shall cause the relevant authority to issue the long-term multiple entry visa of the Kyrgyz Republic to loan officer of the Lender to facilitate the administration and supervision of the project implementation.

11.2 **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, unless the Lender otherwise expressly agree in writing:

- (a) **No Encumbrances** create or permit to create or have outstanding any Encumbrance to any other person, except that the benefit of such Encumbrance securing External Indebtedness is at the same time extended equally and pro rata to secure the payment of the principal and the repayment of the interest hereunder;
- (b) **Disposition of Assets** sell, transfer or dispose of the whole or any part of its business or (except for good commercial consideration and in the ordinary course of its operation) its assets, whether by a single transaction or by a number of transactions, which disposition will have material adverse effect on the performance by the Borrower of its repayment obligations hereunder;
- (c) **Granting of Loan or Guarantee** grant any loan to or guarantee for any other person, domiciled, resident or having its head office or principal place of business outside the Kyrgyz Republic, except for such loan or guarantee disclosed in advance in writing to and agreed by the Lender in writing;
- (d) **Borrowing or Raising of External Indebtedness** borrow or raise External Indebtedness except from the Lender pursuant to this Agreement or, except for such External Indebtedness disclosed in advance in writing to and agreed by the Lender in writing, incur any other External Indebtedness or permit to subsist any account or financial facilities with any other bank or financial

institution, whose head office or principal place of business is outside the the Kyrgyz Republic, which indebtedness will have material adverse effect on the performance by the Borrower of its repayment obligations hereunder;

- (e) **Contract and Others** make or agree to any material amendment to the Contract;
- (f) **Termination** cancel or otherwise terminate or agree to any termination of the Contract or any other documents related to thereof.

11.3 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 12 Expenses and Indemnities**

12.1 **Expenses** The Borrower shall forthwith on demand and whether or not any Disbursement is made pay to or reimburse the Lender all costs, charges and expenses (including legal and other fees on a full indemnity basis and all other out-of-pocket expenses) which are incurred by it in connection with the negotiation, preparation, signing 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.

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

12.3 **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 13 Events of Default**

13.1 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 fees) payable under this Agreement when due and otherwise in accordance with the provisions hereof, unless the Borrower or the Borrower's Bank can document that such payment has been transferred to the Lender's account in accordance with Article 7 of this Agreement within five (5) business days of the date when such payment is due;
- (b) the Borrower fails duly and punctually to perform, observe or comply with any of its obligations under this Agreement, 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 or any guarantee between the Borrower and any other banks or financial institutions;
- (d) any representation or warranty made or repeated by the Borrower in or in connection with this Agreement or any other statement otherwise made in any certificate, opinion or other document furnished in 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 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, and the amount of such **External Indebtedness will materially and adversely affect the ability of the Borrower to comply with its obligations under this Agreement;**

- (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 for Lender to exercise all or any of its rights, powers and remedies hereunder or thereunder;
- (g) 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);
- (h) 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;
- (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 its obligations under this Agreement 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 material and adverse situation arises or event occurs which, in the reasonable judgment of the Lender, may prevent or interfere with the successful implementation of the Contract or with the performance by the Borrower of its obligations under this Agreement.

13.2 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 both 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 14 Governing Law and Jurisdiction**

- 14.1 **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.
- 14.2 **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.
- 14.3 **Arbitration** Any dispute arising out of or relating to this Agreement shall be submitted to China International Economic and Trade Arbitration Commission (“CIETAC”) for arbitration which shall be conducted in accordance with CIETAC’s arbitration rules in effect at the time of applying for arbitration. The place of arbitration shall be Beijing, China. The arbitral award is final and binding upon the parties.
- 14.4 **Waiver** The Borrower irrevocably and unconditionally waives any objection, which it may now have or hereafter have to the choice of CIETAC as the arbitral tribunal of any disputes 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.

- 14.5 **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, judgment, service of process upon it or any agent, execution on judgment, 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 with respect to this Agreement or any of the transactions contemplated hereby or hereunder.
- 14.6 **Appointment of Agent for Service** Without prejudice to the generality of this Article 14, the Borrower hereby irrevocably designates and appoints the Embassy of the Kyrgyz Republic to the People's Republic of 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 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 15 Effectiveness**

- 15.1 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 the certified true copies of all approvals or consents by the governmental authorities of the Kyrgyz Republic which are required under the laws and regulations of the Kyrgyz Republic approving the borrowing by the Borrower under this Agreement or in respect of the signing, delivery and the performance of this Agreement;
- 15.2 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.

- 15.3 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.

## **Article 16 Miscellaneous**

- 16.1 **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.

- 16.2 **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.

- 16.3 **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.

- 16.4 **Partial Illegality** If at any time any provision hereof becomes illegal, invalid or



To the Borrower : Ministry of Finance of the Kyrgyz Republic  
58 Erkindik Boulevard, Bishkek,  
Kyrgyz Republic 720040  
Facsimile: +996 312 661645  
Tel: +996 312 660504

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 facsimile and confirmed by registered air mail as aforesaid shall be deemed to have been duly given or made when such facsimile is duly received by the recipient.

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

16.9 **Abbreviation** This Agreement may be referred to as “Preferential Buyer Credit Loan Agreement, No. CHINA EXIMBANK PBC NO. 2008 (21) TOTAL NO. (61) for communications between the Borrower and the Lender, as well as in relevant documents.

**IN WITENESS WHEREOF**, the Borrower and the Lender, acting through their duly authorized representatives, have caused this Agreement to be duly signed in duplicate in the English language and signed in their respective names on 10 December, 2008.

**THE EXPORT-IMPORT  
BANK OF CHINA**

**THE MINISTRY OF FINANCE  
OF KYRGYZ REPUBLIC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title:

**Tajikan B. Kalimbetova**

Title: **Minister**

**Form 1**

**Form of Notice of Effectiveness of Loan Agreement**

From: The Export-Import Bank of China  
No. 77, Beiheyuan Street, Dongcheng District, Beijing 100009, China  
People's Republic of China

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

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

Dear Sirs,

Pursuant to Article 15.1 of the Preferential Buyer Credit Loan Agreement No. \_\_\_\_\_ (hereinafter referred to as the "Agreement") dated [ ] 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 15.1 of the Agreement have been satisfied;
- (b) the Disbursement Period, Grace Period, and Term of the Loan (as defined in the Agreement) shall commence on the date hereof; and
- (c) the aggregate principal mount of the Facility to be disbursed during the Disbursement Period shall not exceed [ ] US Dollar only (US\$ [ ])

The Export-Import Bank of China

\_\_\_\_\_

(Signature of Authorized Signatory)

**Form 2**

**Form of Notice of Drawdown**

From: \_\_\_\_\_ (the Borrower)

To: The Export-Import Bank of China

No. 77, Beiheyuan Street, Dongcheng District, Beijing 100009, China

People's Republic of China

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

Dear Sirs,

Pursuant to Article 3 of the Preferential Buyer Credit Loan Agreement No. \_\_\_\_\_ (hereinafter referred to as the "Agreement") dated \_\_\_\_\_ (date) 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)

In Word: \_\_\_\_\_ (Currency: USD)

\_\_\_\_\_ (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 Chinese Supplier)

Account Bank:

Account No.:

Date of Payment:



This payment is made to the \_\_\_\_\_ Invoice (Invoice No. \_\_\_\_\_) under the \_\_\_\_\_ Contract (Contract No.: \_\_\_\_\_), and for the payment of \_\_\_\_\_ (purpose).

We hereby authorize you to debit the account mentioned above with such amount of payment in USD will be disbursed in accordance with Article 4 of the Agreement.

We hereby confirm that your above-mentioned payment shall be deemed a drawing made by us under the Agreement and upon your payment pursuant to this 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 made by us in Article 10 and 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 13 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 Borrower)

(Official Stamp of the Borrower)

\_\_\_\_\_

(Signature of Authorized Signatory)

**Form 3**

**Table of Disbursements**

(concerning the Preferential Buyer Credit Loan Agreement No. \_\_\_\_\_)

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

Dear Sirs:

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

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

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 Preferential Buyer Credit Loan Agreement No. \_\_\_\_\_)

Copy to :

(to be attached to the Form 3)

**THE EXPORT-IMPORT BANK OF CHINA**  
**TABLE OF DISBURSEMENTS**

(concerning the Preferential Buyer Credit Loan Agreement No. \_\_\_\_\_)

(Amounts expressed in US\$)

Date of Disbursement	Amount Disbursed	Outstanding Balance	Remarks
			as of previous month
To be determined (upon receipt of advance payment bank guarantee from CRBC at the date of effectiveness of the Contract)	20% advance of the total Contract price	80% of the total Contract price	
To be determined (after 6 months of actual start of the works)	30%	50%	
To be determined (within 15 days prior to the pavement of the asphalt)	45%	5%	At this, the Employer returns the advance payment bank guarantee
To be determined	5%	0%	The remaining 5 % of the Contract price shall be withheld as the retention money and it shall be released to the Contractor after the Defect Liability Period
Total:	100%		

**Form 4****Repayment Schedule**

(concerning the Preferential Buyer Credit Loan Agreement No. \_\_\_\_\_)

Number of Installments	Date Due	Amount In US Dollars
1	21.07.2009	-
2	21.01.2010	-
3	21.07.2010	-
4	21.01.2011	-
5	21.07.2011	-
6	21.01.2012	-
7	21.07.2012	-
8	21.01.2013	-
9	21.07.2013	-
10	21.01.2014	-
11	21.07.2014	2 509 666,67
12	21.01.2015	2 509 666,67
13	21.07.2015	2 509 666,67
14	21.01.2016	2 509 666,67
15	21.07.2016	2 509 666,67
16	21.01.2017	2 509 666,67
17	21.07.2017	2 509 666,67
18	21.01.2018	2 509 666,67
19	21.07.2018	2 509 666,67
20	21.01.2019	2 509 666,67
21	21.07.2019	2 509 666,67
22	21.01.2020	2 509 666,67
23	21.07.2020	2 509 666,67
24	21.01.2021	2 509 666,67
25	21.07.2021	2 509 666,67
26	21.01.2022	2 509 666,67
27	21.07.2022	2 509 666,67
28	21.01.2023	2 509 666,67
29	21.07.2023	2 509 666,67
30	21.01.2024	2 509 666,67

31	21.07.2024	2 509 666,67
32	21.01.2025	2 509 666,67
33	21.07.2025	2 509 666,67
34	21.01.2026	2 509 666,67
35	21.07.2026	2 509 666,67
36	21.01.2027	2 509 666,67
37	21.07.2027	2 509 666,67
38	21.01.2028	2 509 666,67
39	21.07.2028	2 509 666,67
40	21.01.2029	2 509 666,67
TOTAL		75 290 000,00

**Note:** The amount appeared in this schedule just refer to the Principal of the Facility of the Preferential Buyer Credit Loan Agreement (No. \_\_\_\_\_), while the interest accrued shall be paid according to the provision of Article 5 of the aforesaid Agreement.

**Form 5**

**Legal Opinion  
of Legal Counsel of the Borrower**

To: The Export-Import Bank of China

No. 77, Beiheyuan Street

Dongcheng District

Beijing 100009

China

Fax:

Tel:

Dear Sirs:

I am Legal Counsel of \_\_\_\_\_ (*the Borrower*), and submit this legal opinion in connection with the Preferential Buyer Credit Loan Agreement dated \_\_, 200\_\_ (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 signed Loan Agreement;
- (b) the authorization of the Borrower dated \_\_\_\_\_ approving and authorizing the signing, 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 sign the Loan Agreement on behalf of the Borrower;

- (c) the Commercial Contract No. \_\_\_\_\_ dated \_\_\_\_\_ entered into by and between the Chinese Supplier and the Foreign Importer; 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, signed 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 \_\_\_\_\_ (*the 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 the ministry of finance 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 signing, delivery and performance of the Loan Agreement;
3. the Loan Agreement has been duly signed and delivered, for and on behalf of the Borrower, by \_\_\_\_\_, 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;
5. the signing, 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 signing and performance of the Loan Agreement by the Borrower constitutes 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 legal proceedings or the execution of judgment relating to the Loan Agreement;





**Form 6-1**

**Irrevocable Power of Attorney**

( Appointment of the Borrower's Chinese Process Agent)

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

Dear Sirs:

We refer to the Preferential Buyer Credit Loan Agreement dated \_\_\_\_\_, 200\_\_ (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 China International Economic and Trade Arbitration Commission 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 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 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:

**Form 6-2**

**Consent of the Borrower's Chinese Process Agent**

To: (name of the Borrower)

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

We hereby acknowledge receipt of the letter dated \_\_\_\_\_ from the \_\_\_\_\_ (*the Borrower*) of which the above is a true copy 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 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:

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

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

Dear Sirs:

We refer to the Preferential Buyer Credit Loan Agreement dated \_\_\_\_\_, 200[ ] (No. \_\_\_\_\_, hereinafter referred to as "the Agreement"). We hereby appoint you under the Agreement as our agent for the sole purpose of receiving on our behalf service of any process issued out of \_\_\_\_\_ (name of the arbitration institution chosen by the parties under the Agreement) 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 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

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<sup>2</sup> This Form shall be applied where this Agreement is to be governed by foreign law and/or the disputes arising hereunder will be resolved outside China.

(3) Perform its duties as Chinese 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:

**Form 6-2**

**Consent of the Borrower's Chinese Process Agent**

To: (name of the Borrower)

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

We hereby acknowledge receipt of the letter dated \_\_\_\_\_ from the \_\_\_\_\_ (*the Borrower*) of which the above is a true copy and agree to our appointment under it to receive on behalf of \_\_\_\_\_ (*the Borrower*) service of legal documents issued out of \_\_\_\_\_ (name of the arbitration institution chosen by the parties under the Agreement) 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: