

General Terms and Conditions
for
Japanese ODA Loans

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Japan International
Cooperation Agency (JICA)

General Terms and Conditions for Japanese ODA Loans
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General Terms and Conditions for Japanese ODA Loans

Article I

Introduction; Inconsistency

Section 1.01. Introduction

The purpose of these General Terms and Conditions for Japanese ODA Loans (hereinafter referred to as the “General Terms and Conditions”) is to set forth the terms and conditions generally applicable to the Japanese ODA Loans provided by JICA.

Section 1.02. Inconsistency with Loan Agreement

If any provision of the General Terms and Conditions is inconsistent with any provision of the Loan Agreement, of which the General Terms and Conditions constitute an integral part, or with any provision of the Guarantee, if any, such provision of the Loan Agreement or the Guarantee shall govern.

Article II

Definitions; References to Articles and Sections; Headings

Section 2.01. Definitions

The following terms have the following meanings whenever used in the General Terms and Conditions, unless the parties to the Loan Agreement otherwise agree.

- (a) “Any Other Charges” means any amount payable by the Borrower to JICA, other than principal, interest or Refund under the Loan Agreement.
- (b) “Arbitral Tribunal” means a tribunal consisting of three (3) arbitrators appointed as provided for in Section 8.03., paragraph (1).
- (c) “Award” means an arbitral award made by the Arbitral Tribunal.
- (d) “Borrower” means the party to the Loan Agreement to which the Loan is made.
- (e) “Completion Date” means the date of the completion of disbursement of the proceeds of the Loan to be specified by JICA as Date of Completion of Disbursement in Form No. 3 attached hereto.
- (f) “Disbursement Period” means the period as provided for in the Loan Agreement.
- (g) “Discount Rate” means the yield rate of the Japanese government bonds, as of forty (40) days prior to the Requested Prepayment Date, for the term, which is no more than, and the nearest to, the period from but excluding the Requested Prepayment Date to and including the

scheduled date of repayment of principal in accordance with the amortization schedule attached to the Loan Agreement or the scheduled date of payment of interest thereof, as applicable; provided, however, the above mentioned period shall be calculated on a monthly basis and a fraction of one (1) month shall be rounded up to one (1) month. Notwithstanding the above, if the foregoing period is less than three (3) months, the term applicable to the yield rate of the Japanese government bonds above, shall be three (3) months, or any other similar rate reasonably decided by JICA.

- (h) “Effective Date” means the date as provided for in Section 10.03.
- (i) “Executing Agency” means the organization to implement the Project if designated in the Loan Agreement.
- (j) “FEF Repayment Amount” means an amount as provided for in Section 3.05. (2).
- (k) “Front-End Fee” means a fee to be paid by the Borrower to JICA at the rate of two-tenths percent (0.2%) on the maximum amount of the Loan.
- (l) “Goods and Services” means goods and/or services, as applicable, provided by suppliers, contractors or consultants to be financed out of the proceeds of the Loan.
- (m) “Guarantee” means a written promise to JICA, made by an entity in the country of the Borrower other than the Borrower constituting a guarantee for any and all liabilities arising from or in connection with the obligations of the Borrower under the Loan Agreement.
- (n) “Guarantor” means the entity referred to in item (m) above.
- (o) “Interest Period” means (a) with respect to the initial payment of interest, the period from and including the day on which the first disbursement is made under the Loan Agreement up to but excluding the first Payment Date on or after the day on which the first disbursement is made and (b) with respect to each subsequent payment of interest, the period from and including the immediately preceding Payment Date up to but excluding such each Payment Date.
- (p) “Japanese ODA” means Japan’s Official Development Assistance.
- (q) “Japanese ODA Loans” means the loans provided by JICA for the Japanese ODA under Article 13, paragraph 1, clause (a), item (ii) of the ACT OF THE INCORPORATED ADMINISTRATIVE AGENCY- JAPAN INTERNATIONAL COOPERATION AGENCY (Act No. 136, 2002).
- (r) “JICA” means JAPAN INTERNATIONAL COOPERATION AGENCY.
- (s) “Legal Opinion” means a legal opinion as provided for in Section 10.02., paragraph (1).
- (t) “LIBOR” means, for any Interest Period, the London interbank offered rate (LIBOR) for six (6)-month deposits in Japanese Yen, expressed as a percentage per annum, that appears on the Relevant Telerate Page as of 11:00 a.m., London time, on the LIBOR Reset Date for the Interest Period; provided, however, that if such rate is not available at such

time for any reason whatsoever, any other similar rate that shall be reasonably determined by JICA.

- (u) “LIBOR Reset Date” means the date as set forth below, respectively:
 - (a) with respect to the Interest Period,
 - (i) in the case of the initial Interest Period and the immediately succeeding Interest Period after the initial Interest Period, if the date of signature of the Loan Agreement is on or before nineteenth (19th) of the month in which the Loan Agreement is signed, the day two (2) London Banking Days prior to the first (1st) or fifteenth (15th) day of the month in which the Loan Agreement is signed, whichever day is prior and nearer to the date of signature of the Loan Agreement (provided, however, that if the date of signature of the Loan Agreement falls on the first (1st) or fifteenth (15th) day of such month, the day two (2) London Banking Days prior to the date of signature of the Loan Agreement); and
 - (ii) in the case of each succeeding Interest Period thereafter, the day two (2) London Banking Days prior to the first day of the relevant Interest Period.
 - (b) with respect to the Overdue Period, the day two (2) London Banking Days prior to,
 - (i) the day on which the overdue amount becomes due and payable (for the period on and after such due date up to but excluding the immediately succeeding Payment Date; provided, however, that in case JICA receives an actual payment from the Borrower, up to but excluding such date of actual receipt); and thereafter,
 - (ii) each Payment Date (for the period on and after such Payment Date up to but excluding the immediately succeeding Payment Date; provided, however, that in case JICA receives an actual payment from the Borrower, up to but excluding such date of actual receipt).
- (v) “Lien” means mortgage, pledge, charge, privilege, priority, lien, encumbrance, or other security interest of any kind.
- (w) “Loan” means the loan as provided for in the Loan Agreement.
- (x) “Loan Agreement” means the particular loan agreement, as may from time to time be amended, to which the General Terms and Conditions apply. The Loan Agreement includes the General Terms and Conditions as applicable thereto and all schedules and agreements supplemental to the Loan Agreement.
- (y) “London Banking Days” means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in London.
- (z) “Overdue Charge” means a charge to be paid by the Borrower to JICA calculated at the rate of two percent (2%) per annum over and above

the interest rate specified in the Loan Agreement on the overdue amount of principal, interest, Refund or Any Other Charges (excluding the Front-End Fee and the Prepayment Premium) required under the Loan Agreement for the Overdue Period.

- (aa) “Overdue Period” means a period from the due date of the overdue amount under the Loan Agreement to the day immediately preceding the date of the actual full payment thereof, both inclusive.
- (bb) “Payment Date” means the date when interest is due as provided for in the Loan Agreement.
- (cc) “Prepayment Premium” means a charge to be paid by the Borrower to JICA, calculated by deducting the amount (a) from the amount (b) as set forth below, respectively:
 - (a) the amount of the principal under the Loan Agreement to be prepaid; and
 - (b) the sum of the respective amounts of the following items (i) and (ii) below, each discounted at the applicable Discount Rate, for the period from but excluding the Requested Prepayment Date to and including the respective scheduled date of repayment of principal in accordance with the amortization schedule attached to the Loan Agreement (for item (i) below) or the respective scheduled date of payment of interest thereof (for item (ii) below), as applicable; provided, however, the above mentioned period shall be calculated on a monthly basis and a fraction of one (1) month shall be rounded up to one (1) month:
 - (i) the amount of the principal under the Loan Agreement to be prepaid; and
 - (ii) the amount of the interest which would have accrued on the amount of (i) above, at the interest rate applicable to principal under the Loan Agreement, on the assumption that such principal amount would have been repaid in accordance with the amortization schedule attached to the Loan Agreement.

Notwithstanding the foregoing, if the amount of (a) above is greater than, or equal to, the amount described in (b) above, no Prepayment Premium shall be charged in respect of the principal under the Loan Agreement to be prepaid hereunder.

- (dd) “Project” means the project or program for which the Loan is granted, as described in the Loan Agreement and as the description thereof may from time to time be amended by agreement between JICA and the Borrower.
- (ee) “Public Assets” means assets of the Borrower, of any political or administrative subdivision thereof and of any entity owned or controlled by, or operating for the account or benefit of, the Borrower or any such subdivision, including gold and foreign exchange assets held by any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for the Borrower.

- (ff) “Refund” means repayment of the proceeds of the Loan as provided for in Section 3.01., paragraph (2).
- (gg) “Relevant Telerate Page” means the display page designated on the Reuter Telerate Service as the page for the purpose of displaying LIBOR for deposits in Japanese Yen (or such other page as may replace such page on such service).
- (hh) “Requested Prepayment Date” means a date stipulated in a written notice to JICA on which the Borrower would like to make a prepayment of the principal under the Loan Agreement.
- (ii) “Subsequent Installments” means any installments of repayment of principal for which JICA has already issued the notice set forth in Section 3.11.
- (jj) “Umpire” means a third (3rd) arbitrator as provided for in Section 8.03., paragraph (1).

Section 2.02. References to Articles and Sections

References in the General Terms and Conditions to Articles or Sections are to Articles or Sections of the General Terms and Conditions.

Section 2.03. Headings

The headings of Articles and Sections of the General Terms and Conditions are inserted for convenient reference only and are not a part of the General Terms and Conditions.

Article III

Loan; Repayment; Interest; Front-End Fee;
Overdue Charge; Method of Payment; Currency; Insufficient Payment

Section 3.01. Amount of Loan

- (1) The maximum amount of the Loan, expressed in Japanese Yen, shall be stipulated in the Loan Agreement. The proceeds of the Loan shall be disbursed by JICA within the limit of such amount in accordance with the disbursement procedure provided for in Article V.
- (2) In the event that, in the reasonable opinion of JICA, any part of the proceeds of the Loan has been overpaid or used for any purpose other than those stipulated in the Loan Agreement, the Borrower shall refund to JICA, such overpaid or used amount as determined by JICA together with interest accrued thereon at the interest rate applicable to principal under the Loan Agreement (hereinafter referred to as the “Refund”) for the period from and including the immediately preceding Payment Date up to but excluding the date on which the Refund becomes due, which will be decided by JICA (hereinafter referred to as the “Refund Date”). Notwithstanding the above, if the Refund Date falls before the Disbursement Period expires, the interest accrued thereon shall be paid to

JICA on the Payment Date immediately succeeding the Refund Date.

Section 3.02. Repayment

- (1) The principal of the Loan shall be repayable in accordance with the amortization schedule attached to the Loan Agreement.
- (2) When all disbursements to be made under the Loan Agreement have been completed and the cumulative total of all disbursements is less than the maximum amount of the Loan stipulated therein, the difference between the maximum amount of the Loan and the cumulative total of all disbursements shall be deducted proportionately from all subsequent installments of repayment of principal as indicated in the amortization schedule attached to the Loan Agreement, excluding the Subsequent Installments; provided, however, that all fractions of less than ONE THOUSAND Japanese Yen (¥1,000) of such subsequent installments shall be added to the first installment of such subsequent installments.
- (3) The Borrower may, upon giving a written notice to JICA not less than forty (40) days prior to the Requested Prepayment Date, prepay in whole or in part the principal of the Loan outstanding as of the Requested Prepayment Date together with the interest accrued thereon and the Prepayment Premium. The prepaid amount of the principal of the Loan shall be applied to the installments of repayment of the principal in inverse order of maturity, in principle.
- (4) Any payment made prior to the due date specified in the amortization schedule then applicable without the notice mentioned in paragraph (3) above shall not be deemed prepayment of the Loan and the Borrower shall not be discharged from the payment of interest up to the date immediately prior to the due date.

Section 3.03. Interest

Interest at the rate specified in the Loan Agreement shall be payable semi-annually on the Payment Date for the principal disbursed and outstanding. Interest shall accrue from the respective dates on which the proceeds of the Loan are disbursed.

Section 3.04. Adjustment of Payment Date

Notwithstanding Section 3.03., for each of the following cases, each payment that is required to be paid on each Payment Date shall instead become due and payable on the corresponding date of the month which is one (1) month after such each Payment Date:

- (1) if any Payment Date of interest falls during the period from and including the day on which the first disbursement is made up to and including the Completion Date; and
- (2) if the Payment Date of the first payment of interest on or after the Completion Date falls during the period from and including the Completion Date up to and including the corresponding date of the month which is two (2) months

after the Completion Date.

Section 3.05. Front-End Fee

- (1) The Borrower shall pay the Front-End Fee anytime on or after the Effective Date, but by the date set and notified by JICA to the Borrower upon the Effective Date, which shall be no less than sixty (60) days from but excluding the Effective Date.
- (2) If the Disbursement Period of the Loan Agreement has not been extended and the Completion Date, determined by JICA, has occurred within the original Disbursement Period, the amount equivalent to one-tenth percent (0.1%) of the maximum amount of the Loan (hereinafter referred to as the "FEF Repayment Amount") will be repaid to the Borrower. In repaying the FEF Repayment Amount, JICA may, at its discretion, (i) apply the FEF Repayment Amount in whole or in part, to the amount then due and payable by the Borrower to JICA, if any, and/or, (ii) set off the FEF Repayment Amount against any amount payable by the Borrower to JICA under the Loan Agreement. No interest or overdue charge shall accrue on the amount to be repaid from JICA to the Borrower hereunder.

Section 3.06. Overdue Charge

Should repayment of principal or payment of Refund, the Refund Date of which falls after the Disbursement Period expires, interest or Any Other Charges (excluding the Front-End Fee and the Prepayment Premium) required under the Loan Agreement be delayed, interest specified in Section 3.03. shall cease to accrue on such overdue amount of principal and Refund on and after the due date and the Overdue Charge shall be payable.

Section 3.07. Computation of Interest, Prepayment Premium and Overdue Charge

Interest, the Prepayment Premium and the Overdue Charge shall accrue on a day to day basis and be computed on the basis of three hundred and sixty-five (365) days per annum and the actual number of days elapsed.

Section 3.08. Place and Time of Payment

- (1) The Borrower, by 12:00 noon, Tokyo time, on the due date, shall have all repayment and/or prepayment of principal and payment of Refund, interest and Any Other Charges under the Loan Agreement credited to JICA's account, which shall be designated by JICA.
- (2) If any repayment, payment and/or prepayment to be made by the Borrower under the Loan Agreement falls due on any day which is not a banking business day in Japan, such repayment, payment and/or prepayment shall be made on the immediately succeeding banking business day in Japan.

Section 3.09. Currency

Repayment of principal and payment of Refund, interest and Any Other Charges shall be made in Japanese Yen.

Section 3.10. Insufficient Payment

If the amount paid by the Borrower is less than the total amount due and payable under the Loan Agreement, the Borrower agrees that the amount paid shall be applied and appropriated in the following order: (i) the Front-End Fee, (ii) the Overdue Charge, (iii) the Prepayment Premium, (iv) interest, (v) Refund and (vi) principal. Notwithstanding the foregoing, JICA may apply and appropriate the amount received in the order decided by itself.

Section 3.11. Notice Given by JICA

JICA may, when it deems necessary, send the Borrower a notice concerning principal, Refund, interest and Any Other Charges in Form No. 1 attached hereto, or in any other form that JICA deems appropriate.

Article IV

JICA's Review and Misprocurement

Section 4.01. General

Goods and Services shall be procured in accordance with the guidelines for procurement and the guidelines for the employment of consultants.

Section 4.02. JICA's Review

JICA may review the Borrower's procurement procedures, documents and decisions. The Borrower shall submit to JICA, for JICA's reference, any related documents and information as JICA may reasonably request. The Loan Agreement will specify the extent to which JICA's review will apply in respect of Goods and Services. JICA's right to perform such review shall not be deemed to be an obligation of JICA. The Borrower shall not be exempted from any of its obligations under the Loan Agreement due to JICA's election to perform any such review.

Section 4.03. Misprocurement

- (1) JICA does not finance expenditures for Goods and Services which, in the opinion of JICA, have not been procured in accordance with the agreed procedures and JICA will cancel that portion of the proceeds of the Loan allocated to such Goods and Services that have been misprocured. JICA may, in addition, exercise other remedies under the Loan Agreement. It is JICA's policy to require that the Borrower, as well as bidders and contractors, under contracts funded with Japanese ODA Loans and other Japanese ODA observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JICA:
 - (a) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question; and

- (b) will recognize a contractor as ineligible, for a period determined by JICA, to be awarded a contract funded with Japanese ODA Loans if it, at any time, determines that the contractor has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with Japanese ODA Loans or other Japanese ODA.
- (2) If JICA receives information related to suspected corrupt or fraudulent practices in the competition for, or in the execution of, contracts to be financed out of the proceeds of the Loan, the Borrower shall provide JICA with such information as JICA may reasonably request, including information related to any concerned official of the government and/or public organizations of the Borrower's country.
- (3) The Borrower shall not, and shall cause the Executing Agency not to, unfairly or unfavorably treat the person and/or company which provided the information related to suspected corrupt or fraudulent practices in the competition for, or in the execution of, contracts to be financed out of the proceeds of the Loan to JICA and/or the Borrower/Executing Agency.

Section 4.04. Information to be Made Public

After a contract is determined to be eligible for JICA's financing, the names of all bidders, their bid prices, the name and address of successful bidder concerning the award of contract, the name and address of supplier, and the award date and amount of the contract may be made public by JICA. The Borrower shall have all provisions and measures necessary to ensure that the above information shall be available for being made public incorporated in documents related to procurement, such as tender documents and contracts.

Article V

Disbursement

Section 5.01. Disbursement Procedure

The proceeds of the Loan shall be disbursed by JICA as the progress of the Project renders it necessary and in accordance with the disbursement procedure.

Section 5.02. Constitution of Obligation

A disbursement effected in accordance with the disbursement procedure shall constitute a valid and binding obligation upon the Borrower under the terms of the Loan Agreement with respect to such disbursement as from the date of disbursement.

Section 5.03. Adequacy of Documents

All documents or evidence required under the disbursement procedure must be adequate in form and substance satisfactory to JICA such that it can confirm that all proceeds of the Loan to be disbursed are to be used solely for the purpose

specified in the Loan Agreement.

Section 5.04. Additional Documents

The Borrower shall provide JICA with any additional documents or evidence in support of the documents or evidence mentioned in the preceding Section which JICA may reasonably request.

Section 5.05. Notice of Disbursement

After effecting a disbursement, JICA shall send the Borrower a Notice of Disbursement in Form No. 2 attached hereto.

Section 5.06. Notice of Completion of Disbursement

When (i) the maximum amount of the Loan has been fully disbursed, (ii) the Disbursement Period has expired, or (iii) the Borrower notifies JICA that no further disbursement is required for the Project as set forth in the following paragraph, JICA shall send the Borrower a Notice of Completion of Disbursement in Form No. 3 attached hereto.

When the cumulative total of all disbursements is less than the maximum amount of the Loan and no further disbursement is required for the Project, the Borrower shall give a written notice of such fact to JICA not less than thirty (30) days prior to the requested date of completion of disbursement.

Section 5.07. Conditions Precedent for Making Disbursement

JICA is not obligated to make any disbursement unless all of the conditions set forth in each of the following items are satisfied at the time of making each disbursement. The satisfaction of such conditions shall be determined by JICA.

- (1) The documents set forth in Sections 5.03. and 5.04. satisfy the requirements set forth in such sections and are satisfactory to JICA.
- (2) No order or notice of provisional attachment, preservative attachment, or attachment (including any such procedure taken outside Japan) has been sent out, with respect to any receivables held by the Borrower against JICA.
- (3) The Front-End Fee is paid by the date, as stipulated in the Section 3.05. (1).
- (4) No event that triggers the remedies of JICA set forth in Section 6.01. has occurred.
- (5) The Borrower has not breached any provision of the Loan Agreement, and there is no threat that such breach may occur on or after the relevant disbursement.

Article VI

Remedies; Failure to Exercise Rights; Non-Exemption;
Non-Discrimination; Negative Pledge; Administration

Section 6.01. Remedies of JICA

When any of the following shall occur and be continuing, JICA may by notice to the Borrower and the Guarantor, if any, suspend in whole or in part the rights of the Borrower, and/or demand that the Borrower and/or the Guarantor, if any, fully implement the appropriate remedy satisfactory to JICA. If any of the following shall have continued for a period of thirty (30) days from the date of such notice, JICA may terminate disbursement and/or may declare all the principal then outstanding, with the interest accrued thereon and Any Other Charges, to be due and payable immediately, and upon such declaration such principal, interest and Any Other Charges shall become immediately due and payable:

- (a) Default of the Borrower in repayment of principal and/or payment of Refund, interest or Any Other Charges required under (i) the Loan Agreement and/or (ii) any other loan agreement between JICA and the Borrower and/or (iii) any other guarantee by the Borrower for any other loan agreement with JICA;
- (b) Default of the Guarantor, if any, in repayment of principal and/or payment of Refund, interest or Any Other Charges required under (i) the Guarantee and/or (ii) any other loan agreement between JICA and the Guarantor and/or (iii) any other guarantee by the Guarantor for any other loan agreement with JICA;
- (c) Default in the performance of any other terms and conditions, covenant or agreement on the part of the Borrower or the Guarantor, if any, under the Loan Agreement or the Guarantee, if any;
- (d) The Borrower or the Executing Agency shall, without the consent of JICA, have (i) assigned or transferred, in whole or in part, any of its obligations arising under the Loan Agreement; or (ii) sold, leased, transferred, assigned, or otherwise disposed of any property or assets financed wholly or in part out of the proceeds of the Loan, except with respect to transactions in the ordinary course of business which, in the opinion of JICA, (A) do not materially and adversely affect the ability of the Borrower to perform any of its obligations under the Loan Agreement or to achieve the objectives of the Project, or the ability of the Executing Agency to perform any of its obligations arising under, or entered into pursuant to, the Loan Agreement or to achieve the objectives of the Project; and (B) do not materially and adversely affect the financial condition or operation of the Borrower or the Executing Agency;
- (e) The Borrower or the Executing Agency shall have ceased to exist in the same legal form as that prevailing as of the date of the Loan Agreement;
- (f) Any action shall have been taken for the dissolution, disestablishment, or suspension of operations of the Borrower or the Executing Agency;
- (g) In the opinion of JICA, the legal character, ownership or control of the Borrower or the Executing Agency shall have changed from that prevailing as of the date of the Loan Agreement so as to materially and adversely affect (i)

the ability of the Borrower to perform any of its obligations under the Loan Agreement or to achieve the objectives of the Project; or (ii) the ability of the Executing Agency to perform any of its obligations arising under, or entered into pursuant to, the Loan Agreement, or to achieve the objectives of the Project; and

- (h) Any circumstance (including war, civil war, earthquake, flood, declaration of the Borrower or the Guarantor, if any, of inability to pay its debts, etc.) shall have arisen which makes it improbable, in the reasonable opinion of JICA, that the Project can be carried out or that the Borrower or the Guarantor, if any, will be able to perform its obligations under the Loan Agreement or the Guarantee, if any.

Section 6.02. Failure to Exercise Rights

No failure or delay on the part of JICA in exercising any of its rights under the Loan Agreement or the Guarantee, if any, shall be construed to be a waiver thereof, nor shall any single or partial exercise by JICA of any of its rights under the Loan Agreement or the Guarantee, if any, impair JICA's further exercise of such right(s) or of any other right.

Section 6.03. Non-Exemption of Borrower from Obligations

All claims or disputes in connection with any contract shall be settled among the parties thereto, and no such claims or disputes shall exempt the Borrower from any obligation incurred under the Loan Agreement.

Section 6.04. Non-Discrimination

Regarding repayment of principal and payment of Refund, interest or Any Other Charges required under the Loan Agreement, the Borrower and the Guarantor, if any, shall undertake not to treat debts to JICA less favorably than any other debts other than short-term debts.

Section 6.05. Negative Pledge

- (1) If the Borrower is a sovereign country and any Lien shall be created on any Public Assets, as security for any external debt, which will or might result in a priority for the benefit of the creditor of such external debt in the allocation, realization, or distribution of foreign exchange, such Lien shall, unless JICA shall otherwise agree, ipso facto and at no cost to JICA, equally and ratably secure principal, Refund, interest and Any Other Charges under the Loan Agreement, and the Borrower in creating or permitting the creation of such Lien, shall make an express provision to that effect; provided, however, that if for any constitutional or other legal reason such provision cannot be made with respect to any Lien created on assets of any of its political or administrative subdivisions, the Borrower shall promptly and at no cost to JICA secure principal, Refund, interest and Any Other Charges under the Loan Agreement by an equivalent Lien on other Public Assets satisfactory to JICA.

- (2) The Borrower which is not a sovereign country undertakes, except as when JICA shall otherwise agree in writing, that:
 - (a) if the Borrower shall create any Lien on any of its assets as security for any debt, such Lien will equally and ratably secure the payment of principal, Refund, interest and Any Other Charges under the Loan Agreement, and in the creation of any such Lien express provision will be made to that effect, at no cost to JICA; and
 - (b) if any Lien shall be created by operation of law on any assets of the Borrower as security for any debt, the Borrower shall grant at no cost to JICA, an equivalent Lien satisfactory to JICA to secure the payment of principal, Refund, interest, and Any Other Charges under the Loan Agreement.
- (3) The foregoing provisions of this Section shall not apply to:
 - (a) any Lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property or as security for the payment of debt incurred for the purpose of financing the purchase of such property; or
 - (b) any Lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one (1) year after the date on which it is originally incurred.

Section 6.06. Administration related to Loan Agreement

- (1) The Borrower shall carry out the Project, or cause it to be carried out, with all due diligence and efficiency, and in conformity with appropriate engineering, financial and environmental requirements and practices.
- (2) The Borrower shall at all times operate and maintain, or cause to be operated and maintained, any facilities relevant to the Project in conformity with appropriate engineering, financial and environmental requirements and practices, and promptly as needed, make or cause to be made all necessary repairs and renewals thereof.
- (3) The Borrower shall cause all Goods and Services to be used solely for the implementation of the Project under the Loan Agreement.
- (4) The Borrower shall keep, or cause to be kept, books, accounts, records and documents adequate to identify Goods and Services, to show the use made thereof in the Project, to record the progress of the Project, and to reflect, in accordance with sound and consistent accounting practices, the operations and financial situation of the Borrower or other beneficiaries of the Loan.
- (5) The Borrower shall enable, or take such steps as may be necessary to enable, JICA's representatives to visit any facilities and construction sites included in the Project and to examine Goods and Services and any plant, installation, site, works, building, property, equipment, books, accounts, records and documents relevant to the performance of the obligations of the Borrower under the Loan Agreement.
- (6) The Borrower shall, in the interests of the sound administration of the Loan, furnish JICA with, or cause JICA to be furnished with, all such information on

the status of the execution, completion and performance of the Project and on the operation and management of the Project and any facilities relevant to the Project, at such times, in such form and in such detail, as JICA may reasonably request. Such information may include information with respect to the procurement procedures of the Borrower, the financial and economic situation in the country of the Borrower and its international balance of payments position.

- (7) The Borrower shall make sure that ex-post procurement audit be carried out by independent auditors to be employed by JICA in order to ensure fairness and competitiveness of the procurement procedures, in cases where JICA considers such an audit to be necessary.
- (8) Should any circumstances arise which prevent, or threaten to prevent, the execution, completion and performance of the Project on schedule, or the operation and management of the Project and any facilities relevant to the Project, the Borrower shall promptly notify JICA of such circumstances.
- (9) The Borrower shall send, or cause to be sent, to JICA, promptly upon formulation, details of all plans which would result in any important modification of the Project, and these shall be subject to agreement between JICA and the Borrower.
- (10) Each party to the Loan Agreement shall, from time to time, as the other party thereto may reasonably request, afford the other party all reasonable opportunities for the exchange of views between JICA and the Borrower with regard to any and all matters relating to the Loan Agreement.
- (11) The Borrower shall carry out the Project, or cause the Executing Agency to carry out, the Project, with all due diligence to ensure that the safety of workers and the general public be maintained, thereby avoiding serious construction accidents.

Article VII

Guarantee for Loan

Section 7.01. Non-Requirement of Guarantee

When JICA does not require the Guarantee, this whole Article VII shall be disregarded.

Section 7.02. Guarantee for Loan

When JICA requires, the Borrower shall deliver the Guarantee to JICA, signed by a Guarantor acceptable to JICA, immediately after the execution of the Loan Agreement. The Guarantee shall be made substantially in the form given in Form No. 4 attached hereto.

Section 7.03. Additional Guarantee

When the maximum amount of the Loan is to be increased, the Borrower shall

deliver to JICA an additional Guarantee signed by the Guarantor acceptable to JICA, immediately after JICA and the Borrower have agreed upon such increase.

Article VIII

Arbitration

Section 8.01. Arbitral Tribunal

All disputes arising from the Loan Agreement or the Guarantee, if any, which cannot be settled amicably between JICA and the Borrower (together with the Guarantor, if any), shall be decided, finally and exclusively, by an arbitral tribunal (hereinafter referred to as the “Arbitral Tribunal”) as hereinafter provided.

Section 8.02. Parties to Arbitration

The parties to such arbitration shall be JICA on the one hand and the Borrower and/or the Guarantor, if any, on the other.

Section 8.03. Arbitrators

- (1) The Arbitral Tribunal shall consist of three (3) arbitrators appointed as follows: a first arbitrator shall be appointed by JICA, a second arbitrator by the Borrower and the Guarantor, if any, (where the Borrower and the Guarantor are unable to reach agreement on the choice of an arbitrator, then by the Guarantor) and a third arbitrator (hereinafter referred to as the “Umpire”) shall be appointed by agreement of the parties or, if they are unable to agree, by an appropriate organ for the settlement of international disputes. If either party shall fail to appoint an arbitrator, that arbitrator shall be appointed by the Umpire.
- (2) When any arbitrator appointed pursuant to the preceding paragraph shall resign, die or otherwise become unable to act as an arbitrator, a successor shall be appointed without delay in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of the original arbitrator.
- (3) No person who has a personal or direct financial interest in the matter(s) submitted for arbitration shall be appointed as an arbitrator. The Umpire shall settle all disputes which may arise under this paragraph.
- (4) The Umpire shall not be a person of the same nationality as either of the parties to arbitration.
- (5) Any and all arbitrators appointed in accordance with the provisions hereof shall be bound by the provisions of this Article and shall arbitrate in accordance therewith.

Section 8.04. Arbitration Proceedings

- (1) Arbitration proceedings shall be conducted in the English language and shall be instituted by sending a written request for arbitration by one party to the

other. Such request shall contain a statement setting forth the nature of dispute and the relief sought and/or the solution desired or proposed. Within forty (40) days from sending the request, each party shall notify the other of the full name, occupation, address, career and nationality of the arbitrator appointed by it.

- (2) If, within sixty (60) days from sending such request, the parties have not agreed upon the appointment of the Umpire, JICA shall request an appropriate organ for the settlement of international disputes to appoint the Umpire, as provided for in Section 8.03., paragraph (1).
- (3) The place of meeting of the Arbitral Tribunal shall be determined by agreement between the parties, or, if they are unable to agree, by the Umpire. Within thirty (30) days from the later date of either the appointment of the Umpire or the appointment of an arbitrator by the Umpire as provided for in Section 8.03., paragraph (1), as the case may be, the Umpire shall notify the parties concerned of the place, date and time of the first sitting of the Arbitral Tribunal. The places, dates and times of the second and subsequent sittings of the Arbitral Tribunal shall be fixed by the Arbitral Tribunal.
- (4) The Arbitral Tribunal may, at any stage of the arbitration proceedings, request the parties to present such witnesses, documents, etc., as are considered necessary. The Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. The parties shall, in any case, be afforded an oral hearing in a sitting of the Arbitral Tribunal.

Section 8.05. Arbitral Award

- (1) The Arbitral Tribunal shall make the Award within one hundred and twenty (120) days from the date of the first sitting of the Arbitral Tribunal, provided, however, that the Arbitral Tribunal may extend this period if it considers it necessary.
- (2) The Award and all other matters requiring decisions by the Arbitral Tribunal shall be decided by majority vote and shall be final and binding upon the parties, and each party shall abide by, and comply with the Award. Any arbitrator who disagrees with the majority may append his views on the Award to the documents issued by the Arbitral Tribunal.
- (3) A copy of the Award documents, signed by all three arbitrators, shall be sent without delay to each party.
- (4) The Award shall not be made public without the consent of the parties.

Section 8.06. Costs of Arbitral Tribunal

- (1) The costs of the Arbitral Tribunal shall consist of the followings:
 - (a) Remuneration of the arbitrators and any other persons whose services may be required in the course of the arbitration proceedings;
 - (b) Expenditures incurred by the Arbitral Tribunal, including the expenditures incurred in connection with the notice provided for in Section 8.04.; and
 - (c) Any expenses paid by the parties and deemed by the Arbitral Tribunal to

be costs of the Arbitral Tribunal.

- (2) The amount of the remuneration of an arbitrator other than the Umpire shall be fixed by the party which appoints that arbitrator. The amount of the remuneration of the Umpire shall be fixed by an agreement between both parties, or if they fail to agree, by the Arbitral Tribunal.
- (3) The Arbitral Tribunal may, before it commences its activities, collect equal sums from both parties in such amounts as may be considered necessary to cover its costs. The costs of the Arbitral Tribunal provided for in paragraph (1) above shall finally be borne by one or both parties according to the terms of the Award.

Section 8.07. Dissolution of Arbitral Tribunal

The Arbitral Tribunal shall not be considered dissolved until the signed copies of the Award documents provided for in Section 8.05., paragraph (3) shall have been dispatched to the parties and the costs of the Arbitral Tribunal paid in full.

Section 8.08. Enforcement of Award

If within thirty (30) days from sending the Award documents to the parties, the Award shall not have been complied with, a party may require judgment upon the Award or institute proceedings for enforcement of the Award against the party with obligations to it under the Award in any court of competent jurisdiction. However, no other interference, legal or otherwise, with the enforcement of the Award shall be attempted.

Article IX

Applicable Laws; Taxes and Expenses; Notices and Requests; Execution; Language

Section 9.01. Applicable Laws

The validity, interpretation and performance of the Loan Agreement and the Guarantee, if any, shall be governed by the laws and regulations of Japan.

Section 9.02. Taxes and Expenses

- (1) The Borrower and/or other beneficiaries of the Loan shall pay all taxes, charges and other expenses imposed upon JICA within the country of the Borrower in connection with the Loan Agreement and its implementation.
- (2) The Borrower shall pay, or cause to be paid, all banking charges and/or fees for disbursement of the proceeds of the Loan, repayment of principal or payment of Refund, interest or Any Other Charges under the Loan Agreement.

Section 9.03. Notices and Requests

Any notice or request required to be given or made, or which one or both

parties have the right to give or make under the Loan Agreement or the Guarantee, if any, shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall have been delivered by hand, received by mail or registered mail to the party to which it is to be given or made at such party's address specified in the Loan Agreement or at such other address as that party shall have designated by notice to the party giving the notice or making the request.

Section 9.04. Execution

The Loan Agreement shall be executed in duplicate in the English language, each copy being considered to be an original.

Section 9.05. Fractions

Any fraction of less than ONE Yen (¥1.00) which may appear in the computation of interest or Any Other Charges under the Loan Agreement shall be disregarded.

Section 9.06. Language

The Loan Agreement shall be prepared in English and any notices given under or in connection with the Loan Agreement shall be in English. All documents provided under the Loan Agreement shall be:

- (a) in English; or
- (b) if not in English, accompanied by a certified English translation. In such case, JICA may rely solely on the English translation and the English translation shall prevail, if there is any discrepancy between the original and the English translation unless JICA specifically accepts the English translation for reference purposes only.

Article X

Effectiveness and Termination of Loan Agreement

Section 10.01. Evidence of Authority and Specimen Signatures

- (1) The Borrower shall furnish JICA with satisfactory evidence of authority for the person(s) who will make, sign and deliver documents necessary for the implementation of the Loan Agreement, together with an authenticated specimen signature of each such person.
- (2) When any change has been made relevant to the evidence of authority mentioned in the preceding paragraph, the Borrower shall notify JICA in writing of the fact, providing JICA with satisfactory new evidence of authority.
- (3) When a person(s) has been appointed to replace a person(s) specified in the evidence of authority referred to in paragraph (1) above, the Borrower shall notify JICA in writing of the fact, providing JICA with an authenticated

specimen signature of the newly appointed person(s).

Section 10.02. Legal Opinion

- (1) The Borrower shall provide JICA with a legal opinion (hereinafter referred to as the “Legal Opinion”), made substantially in the form given in Form No. 5, and where required Form No. 6, attached hereto, prepared and certified by a person acceptable to JICA, showing:
 - (a) With regard to the Borrower, that the Loan Agreement has been duly authorized by and executed and delivered on behalf of the Borrower and constitutes a valid and binding obligation upon the Borrower with regard to all its terms and conditions, and that the authorizations and all other procedures necessary for the implementation of the Loan Agreement have been duly effected and completed; and
 - (b) With regard to the Guarantor, if any, that the Guarantee has been duly authorized by and executed and delivered on behalf of the Guarantor and constitutes a valid and binding obligation upon the Guarantor with regard to all its terms and conditions.
- (2) After the Loan Agreement becomes effective, the Borrower shall provide JICA with such additional Legal Opinion(s) prepared and certified by the person mentioned above, on matters relating to the Loan Agreement and the Guarantee, if any, as JICA may from time to time request.

Section 10.03. Effective Date

The Loan Agreement shall become effective on the date (hereinafter referred to as the “Effective Date”) on which JICA declares itself satisfied with the evidence of authority and the specimen signatures referred to in Section 10.01., paragraph (1), the Legal Opinion mentioned in Section 10.02., paragraph (1), and the Guarantee, if any. JICA shall immediately notify the Borrower in writing of the Effective Date of the Loan Agreement.

Section 10.04. Termination of Loan Agreement

- (1) If the Loan Agreement shall not have become effective within one hundred and twenty (120) days (commencing with the date of signature of the Loan Agreement), the Loan Agreement and the Guarantee, if any, shall terminate, unless JICA, after consideration of the reasons for the delay, sets a later date for the purpose of this Section. JICA shall promptly notify the Borrower of such later date.
- (2) When the entire amount of the principal of the Loan shall have been repaid and all Refund, interest and Any Other Charges which shall have accrued under the Loan Agreement shall have been fully paid, the Loan Agreement and the Guarantee, if any, shall forthwith terminate.

(Form No. 1)

Date:
Ref. No.:

(Name and address of the Borrower)

Attention:

Ladies and Gentlemen:

NOTICE CONCERNING INTEREST AND PRINCIPAL

Due Date at Tokyo:

Principal Due: ¥ _____
Interest Due: ¥ _____
Total: ¥ _____

We would like to inform you that the above amount as specified in the attached sheet(s) will be due and payable on _____.

We would appreciate it if, after checking up the amount, you would credit the checked amount to the following account by 12 noon on the due date, Tokyo time.

Account No.: _____
Name of Beneficiary: _____
Beneficiary's Bank: _____

Very truly yours,

(Authorized Signature)

Encl:

(Form No. 2)

(Name and address of the Borrower)

Date:
Ref. No.:

Attention:

Ladies and Gentlemen:

NOTICE OF DISBURSEMENT

We hereby notify you that from _____ to _____ (as per attachment) we have made disbursements totaling _____.

Very truly yours,

(Authorized Signature)

(Form No. 3)

Date:

Ref. No.:

(Name and address of the Borrower)

Attention:

Ladies and Gentlemen:

NOTICE OF COMPLETION OF DISBURSEMENT

With reference to the Loan Agreement No.____ dated____, we hereby notify you that all disbursements under the said Loan Agreement have been completed. The details of disbursements under the Loan Agreement are as follows:

1. Loan Limit (A): ¥_____
2. Cumulative Total of Disbursements (B): ¥_____
3. Unused Balance (A – B): ¥_____
4. Date of the Final Disbursement:
5. Date of Completion of Disbursement:

We also wish to notify you that the said Loan Agreement shall be implemented henceforth as follows:

1. Amortization Schedule:
2. Due Dates of Interest Payments:
 - (1) Due Date of Next Payment:
 - (2) Due Date thereafter:

Very truly yours,

(Authorized Signature)

(Form No. 4)

Date:

Ref. No.:

JAPAN INTERNATIONAL COOPERATION
AGENCY
Tokyo, Japan

Attention: President

Ladies and Gentlemen:

GUARANTEE

In consideration of the maximum amount of the Loan of _____ Japanese Yen (¥ _____) to be extended to (*name of the Borrower*) (hereinafter referred to as the "Borrower") by JAPAN INTERNATIONAL COOPERATION AGENCY (hereinafter referred to as "JICA") under the Loan Agreement No. _____, dated _____, between the Borrower and JICA (hereinafter referred to as the "Loan Agreement"), I, the undersigned, acting for and on behalf of (*name of the Guarantor*) (hereinafter referred to as the "Guarantor"), hereby affirm:

1. That the Guarantor has accepted all the provisions of the Loan Agreement and agrees to guarantee jointly and severally with the Borrower any and all liabilities arising from or in connection with the obligations of the Borrower under the Loan Agreement.
2. That the Guarantor, furthermore, agrees that:
 - (1) The Guarantor guarantees the due and punctual repayment and/or prepayment of principal and payment of interest and any other charges (hereinafter referred to as the "Any Other Charges") under the Loan Agreement as provided for in the Loan Agreement;
 - (2) The Guarantor shall not be exempted from any of its liabilities under this Guarantee by reason of any extension of maturity, forbearance or concession given to the Borrower, any exercise of right or remedy against the Borrower, or any modification or amplification of the provisions of the Loan Agreement (provided that if the maximum amount of the Loan is thereby increased, the Guarantor shall be exempted from its liabilities to the extent of such increase, unless otherwise agreed between the Guarantor and JICA in writing);

Date :

- (3) So long as any part of debts under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:
- i) Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement, and
 - ii) Not, without prior consent of JICA in writing, take any action for the dissolution or disestablishment of the Borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities.
3. That the Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply notice concerning principal, Refund, interest and Any Other Charges, and notice of dishonor or non-payment of any such liabilities.

IN WITNESS WHEREOF, I, the undersigned, have hereunto set my hand and affixed my official seal, this _____ day of _____.

Very truly yours,

(Name of the Guarantor)

(Authorized Signature)

Date:

Ref. No.:

JAPAN INTERNATIONAL COOPERATION
AGENCY
Tokyo, Japan

Attention: President

Ladies and Gentlemen:

LEGAL OPINION ON LOAN AGREEMENT

With respect to the Loan extended by JAPAN INTERNATIONAL COOPERATION AGENCY (hereinafter referred to as "JICA") to (*name of the Borrower*) (hereinafter referred to as the "Borrower") in an aggregate amount of the Loan not exceeding Japanese Yen (¥_____) as principal in accordance with the terms and conditions of the Loan Agreement No.____, dated____, between the Borrower and JICA and other agreements supplemental thereto (hereinafter referred to as the "Loan Agreement"), I, the undersigned, acting as legal counsel for the Borrower, certify as follows:

I have considered and examined, among other things, the following documents:

- (a) The Exchange of Notes between the Government of _____ and the Government of Japan, dated _____;
- (b) The Loan Agreement;
- (c) Evidence of Authority and Specimen Signatures, dated _____, issued by _____;
- (d) Other documents;
- (e) All the laws and regulations in the country of the Borrower relevant to the power and authority of the Borrower to make, sign and deliver the Loan Agreement.

Based upon the foregoing, I hereby certify as follows:

1. That the Loan Agreement has been made, signed and delivered by (*name and title of authorized person*), who has the power and authority to make, sign and deliver on behalf of the Borrower under (*laws or regulations*);

Date:

2. That the Borrower is authorized to borrow foreign currency funds from abroad under (*laws or regulations*) and that the terms and conditions of the Loan Agreement are in compliance with the provisions of (*laws or regulations*);
3. That, therefore, the Loan Agreement has been duly authorized by and made, signed and delivered on behalf of the Borrower and constitutes a valid and binding obligation upon the Borrower with regard to all its terms and conditions; and
4. That the authorization and any other procedures necessary for implementation of the Loan Agreement have been duly effected and completed.

IN WITNESS WHEREOF, I, the undersigned, have hereunto set my hand and affixed my official seal, this ___ day of _____.

Very truly yours,

(Minister of Justice, Attorney-General
or Other Competent Authority)

Date:

Ref. No.:

JAPAN INTERNATIONAL COOPERATION
AGENCY
Tokyo, Japan

Attention: President

Ladies and Gentlemen:

LEGAL OPINION ON GUARANTEE

Referring to the Guarantee given by (*name of the Guarantor*) in respect of the Loan extended by JAPAN INTERNATIONAL COOPERATION AGENCY (hereinafter referred to as "JICA") to (*name of the Borrower*) (hereinafter referred to as the "Borrower") in an aggregate amount of the Loan not exceeding _____ Japanese Yen (¥____) as principal in accordance with the terms and conditions of the Loan Agreement No.____, dated____, between the Borrower and JICA and other agreements supplemental thereto (hereinafter referred to as the "Loan Agreement"), I, the undersigned, acting as legal counsel for (*name of the Guarantor*) (hereinafter referred to as the "Guarantor"), certify as follows:

I have considered and examined, among other things, the following documents:

- (a) The Exchange of Notes between the Government of _____ and the Government of Japan, dated _____;
- (b) *The Loan Agreement*;
- (c) The Guarantee dated _____ (hereinafter referred to as the "Guarantee"); and
- (d) All the laws and regulations in the country of the Borrower relevant to the power and authority of the Guarantor to make, sign and deliver the Guarantee.

Based upon the foregoing, I hereby certify as follows:

1. That the Guarantor has the full power and authority to guarantee debts under the Loan Agreement made by JICA to the Borrower in accordance with the terms and conditions of the Loan Agreement under (*laws or regulations*);
2. That the Guarantee was made and signed on (*date*), by (*name and title*), who is authorized to make and sign it for and on behalf of the Guarantor under (*laws or regulations*);

3. That, therefore, the Guarantee has been duly authorized by and made, signed and delivered on behalf of the Guarantor and constitutes a valid and binding obligation upon the Guarantor with regard to all its terms and conditions; and
4. That neither legislation nor any other procedure is required for the effectiveness of the Guarantee.

IN WITNESS WHEREOF, I, the undersigned, have hereunto set my hand and affixed my official seal, this _____ day of _____.

Very truly yours,

(Minister of Justice, Attorney-General
or Other Competent Authority)