

NO.1420103052018210863

CHINA EXIMBANK PBC 2018 NO. 11 TOTAL NO. 468

PREFERENTIAL BUYER'S CREDIT LOAN AGREEMENT

on

The Chico River Pump Irrigation Project

BETWEEN

THE EXPORT-IMPORT BANK OF CHINA

as Lender

AND

**THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES,
ACTING BY AND THROUGH THE DEPARTMENT OF FINANCE**

as Borrower

DATED April 10th, 2018



Contents

ARTICLE 1 DEFINITIONS.....	4
ARTICLE 2 CONDITIONS AND UTILIZATION OF THE FACILITY.....	7
ARTICLE 3 DISBURSEMENT OF THE FACILITY.....	8
ARTICLE 4 REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST.....	9
ARTICLE 5 REPRESENTATIONS AND WARRANTIES BY THE BORROWER.....	11
ARTICLE 6 SPECIAL COVENANTS.....	12
ARTICLE 7 EVENTS OF DEFAULT.....	15
ARTICLE 8 MISCELLANEOUS.....	17
ARTICLE 9 EFFECTIVENESS.....	21
Appendix 1.....	24
Appendix 2.....	26
Appendix 3.....	27
Appendix 4.....	28
Appendix 5.....	29
Appendix 6.....	31
Appendix 7.....	35
Appendix 8.....	37
Appendix 9.....	38
Appendix 10.....	39

THIS PREFERENTIAL BUYER'S CREDIT LOAN AGREEMENT (hereinafter referred to as this "Agreement") is made on the 10th day of April 2018 between:

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, acting by and through the Department of Finance (DOF) (hereinafter referred to as the "**Borrower**"), having its registered office at the DOF Building, Roxas Boulevard, Malate, Manila 1004, Philippines; and

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

hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**", to finance the Chico River Pump Irrigation Project (hereinafter referred to as the "**Project**")

WHEREAS:

(A) The Memorandum of Understanding (MOU) on Financing Cooperation between the Republic of the Philippines, represented by the DOF, and the Export-Import Bank of China was signed on October 20, 2016 to facilitate the promotion of financing cooperation between the Parties and utilization of the financing being extended by the Lender to the Borrower for the purpose of financing projects mutually identified and agreed upon between the Government of the Republic of the Philippines and the Government of the People's Republic of China (hereinafter collectively referred to as the "**Governments**");

(B) On March 3, 2017, the Government of the Republic of the Philippines, through the Department of Foreign Affairs, sent a Note Verbale no. 17-1049 to the Government of the People's Republic of China (PRC), through the Ministry of Commerce, related to the procedures and arrangements of the utilization of concessionary loans committed by the PRC to support priority projects of the Borrower, which was confirmed by PRC on March 8, 2017 (hereinafter referred to as the "**Note Verbale**");

(C) On June 29, 2017, on behalf of both Governments, the DOF and the Embassy of the People's Republic of China in the Republic of the Philippines executed the Clarificatory Letter on the Procedures and Arrangements for the Implementation of the Note Verbale to further implement and clarify the said Note Verbale (hereinafter referred to as the **"Clarificatory Procedures and Arrangements"**);

(D) On November 15, 2017, the Republic of the Philippines, represented by the DOF, and the Export-Import Bank of China signed the Financing Cooperation Agreement on the Chico River Pump Irrigation Project and New Centennial Water Source-Kaliwa Dam Project on the summary of the progress and arrangements in implementing the two (2) projects to be financed by the Preferential Buyer's Credit facility;

(E) The Project, approved by National Economic and Development Authority (NEDA) Board on December 5, 2017, aims to provide substantial and timely delivery of water supply for irrigation in support of agricultural development;

(F) Pursuant to the MOU and the abovementioned Note Verbale and Clarificatory Procedures and Arrangements, China CAMC Engineering Co., Ltd. has been selected as the Contractor (hereinafter referred to as the **"Chinese Contractor"**) for the Project following the Borrower's procurement laws, rules and regulations;

(G) The National Irrigation Administration (hereinafter referred to as the **"End-User"**) and the Chinese Contractor have entered into the Chico River Pump Irrigation Project Contract Agreement (hereinafter referred to as the **"Commercial Contract"**) with the contract number CRPIP-ICB-C-1 on March 8, 2018 for the purpose of the implementation of the Project; and

(H) The Borrower, on March 9, 2018, has requested the Lender to make available a loan facility of up to US\$ Dollar Sixty Two Million Eighty Six Thousand Eight Hundred and Thirty Seven and Eighty Two Cents only (US\$ 62,086,837.82) to the Borrower for the financing of the Commercial Contract.



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

ARTICLE 1 DEFINITIONS

Unless the context otherwise requires, under this Agreement and its Appendixes, the following terms shall have the following meanings:

- 1.1 “**Account Bank of the Lender**” means the Export-Import Bank of China.
- 1.2 “**Agreement**” means this preferential buyer’s credit loan agreement and its appendixes and any amendment to such agreement and its appendixes from time to time mutually agreed upon in writing by the Parties.
- 1.3 “**Availability Period**” means the period commencing on the Effective Date and ending on earlier of (a) the date falling sixty (60) months thereafter, or (b) the date on which the Facility is cancelled or terminated hereunder, or ending on any date mutually agreed upon in writing by the Parties, during which time all the disbursements shall be made in accordance with the stipulations of this Agreement.
- 1.4 “**Borrower’s Country**” refers to the country where the Borrower is located, i.e., the Republic of the Philippines.
- 1.5 “**Business Day**” means a day on which banks are open for ordinary banking business in Beijing, China, Metro Manila, Philippines, and New York, USA.
- 1.6 “**China**” means the People’s Republic of China.
- 1.7 “**Commitment Fee**” means the fees calculated and paid in accordance with Article 2.6.
- 1.8 “**Commercial Contract**” means, the Chico River Pump Irrigation Project Contract Agreement with the contract number CRPIP-ICB-C-1 for the purpose of the implementation of the Project entered by and between National Irrigation Administration

and China CAMC Engineering Co., Ltd. on March 8, 2018 with the total amount of Three Billion Six Hundred Eighty Eight Million Six Hundred Eighty Eight Thousand Six Hundred Pesos only (PHP 3,688,688,600.00).

1.9 “**Disbursement**” means the advance of the Facility made in accordance with Article 3 of this Agreement.

1.10 “**End-User**” means National Irrigation Administration, which is the implementing agency of the Project and ultimately utilizes the Facility.

1.11 “**Effective Date**” means the date upon which this Agreement becomes effective pursuant to Article 9 of this Agreement.

1.12 “**Event of Default**” means any event or circumstance specified as such in Article 7.

1.13 “**External Indebtedness**” means any indebtedness for money borrowed (including guarantees for money borrowed) which is (i) dominated or payable in currency other than the lawful currency of the Republic of the Philippines and (ii) owed by the Borrower to a person other than a person that is organized under the laws of, or is a resident of the Republic of the Philippines.

1.14 “**Facility**” has the meaning set forth in Article 2.1.

1.15 “**Final Repayment Date**” means the date on which the Maturity Period expires.

1.16 “**First Repayment Date**” means the first repayment date of principal and interest after the maturity of the Grace Period.

1.17 “**Grace Period**” means the period from the Effective Date to the date following Eighty Four (84) months thereafter, during which period only the interest and no principal is payable by the Borrower to the Lender. The Grace Period includes the Availability Period.

1.18 “**Interest Payment Date**” means the 21st day of January and the 21st day of July in each calendar year and the Final Repayment Date.

1.19 “**Interest Period**” means, in relation to the Loan, any period determined in accordance with Article 4.2.

1.20 “**Irrevocable Notice of Drawdown**” means the notice issued in the form set out in Appendix 5 attached hereto.

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

1.22 “**Management Fee**” means the fees calculated and paid in accordance with Article 2.5.

1.23 “**Maturity Period**” means the period from the Effective Date to the date falling Two Hundred and Forty (240) months thereafter, including the Grace Period and the Repayment Period.

1.24 “**Notice of Effectiveness of Loan Agreement**” means a written notice in the form set forth in Appendix 9 attached hereto, in which the Effective Date of this Agreement shall be specified in accordance with Article 9 of this Agreement.

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

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

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

1.28 “**US Dollar**” or “**US\$**” means the lawful currency for the time being of the United

States of America.

ARTICLE 2 CONDITIONS AND UTILIZATION OF THE FACILITY

2.1 **Amount** Subject to the terms and conditions of this Agreement, the Lender hereby agrees to make available to the Borrower a loan facility (hereinafter referred to as the "Facility") in an aggregate principal amount not exceeding Sixty Two Million Eighty Six Thousand Eight Hundred and Thirty Seven US Dollars and Eighty Two Cents only (US\$ 62,086,837.82).

2.2 **Interest rate** The rate of interest applicable to the Loan shall be two percent (2%) per annum.

2.3 **Maturity Period** The Maturity Period for the Facility shall be 20 years, among which the Grace Period shall be 7 years and the Repayment Period shall be 13 years.

2.4 **Purpose** The entire proceeds of the Facility shall be applied by the Borrower for the sole purpose of the payment up to Eighty Five percent (85%) of the Commercial Contract Amount, and not be used for payment of brokerage fees, agency fees or commission.

2.5 **Management Fee** The rate applicable to the Management Fee shall be zero point three percent (0.3%). The Borrower shall pay to the Lender a Management Fee in the aggregate amount of the Facility equal to One Hundred and Eighty Six Thousand Two Hundred and Sixty US Dollars and Fifty One Cents (US\$ 186,260.51) in one lump within Thirty (30) days after this Agreement becomes effective but not later than the first Disbursement Date. The Management Fee shall be paid to the account designated in Article 4.4.

2.6 **Commitment Fee** The rate applicable to the Commitment Fee shall be zero point three percent (0.3%) per annum. During the Availability Period, the Borrower shall pay

semi-annually to the Lender a Commitment Fee calculated on the undrawn and uncanceled balance of the Facility. The Commitment Fee shall accrue from and including the date falling Thirty (30) days after the date on which this Agreement becomes effective and shall be calculated on the basis of the actual number of days elapsed and a 360 day year. The Commitment Fee shall accrue on a daily basis and be paid in arrears to the account designated in Article 4.4 on each Interest Payment Date.

ARTICLE 3 DISBURSEMENT OF THE FACILITY

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

3.2 In relation to each disbursement after the first disbursement, besides the satisfaction of the conditions set forth in Article 3.1, such disbursement shall also be subject to the satisfaction of the conditions set out in Appendix 2 attached hereto.

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

3.4 The Lender shall not be obliged to make any disbursement under this Agreement unless it has received all the documents set forth in Article 3.1 or 3.2 and has determined after examination that the conditions precedent to the drawdown of the Facility by the Borrower have been satisfied. For those conditions which have not been satisfied by the Borrower, the Lender may require the remedy by the Borrower within a specified period. In the event that the Borrower fails to remedy within a reasonable period of time, the Lender may refuse to make the disbursement.

3.5 Subject to conditions in Article 3.1 and 3.2 and other terms and conditions of this Agreement, in case the Borrower issues an Irrevocable Notice of Drawdown via courier/ by authenticated SWIFT message to the Lender during the Disbursement Period, the Lender shall allocate in due course the amount specified in the Irrevocable Notice of Drawdown via the Borrower's Account as referred to in Article 4.5 of this Agreement to the Chinese Contractor's account as designated in the Irrevocable Notice of Drawdown. Such account shall be opened by the Chinese Contractor with the Lender for the purpose of the Commercial Contract. The Irrevocable Notice of Drawdown shall not be issued more than once a month.

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

3.7 The Lender shall not be under any obligation to make any further Disbursement under the Facility if the aggregate amount of the Disbursements made under this Agreement would exceed the total amount of the Facility as provided in Article 2.1 of this Agreement.

ARTICLE 4 REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST

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

4.2 The Borrower shall pay interest on the principal amount drawn and outstanding under this Agreement at the rate set forth in Article 2.2. The interest shall be calculated on the basis of the actual number of days elapsed and a 360 day year, including the first day of the Interest Period during which it accrues but excluding the last, and shall be paid in

宋



arrears on each Interest Payment Date. If any payment to be made by the Borrower hereunder falls due on any day which is not a Business Day, such payment shall be made on the immediately preceding Business Day.

4.3 **Repayment** All the principal amount drawn under this Agreement shall be repaid to the Lender by Twenty Six (26) equal installments on each Repayment Date of Principal and Interest within the Repayment Period and the Final Repayment Date in accordance with the Repayment Schedule as Appendix 10 sent by the Lender to the Borrower after the expiration of the Availability Period.

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

Payee: The Export-Import Bank of China
Opening Bank: Bank of China, New York Branch
Account No.: 01000130
SWIFT CODE: BKCHUS33

4.5 The Lender shall open and maintain on its book a lending account for the Borrower entitled “ The Government of the Republic of the Philippines, acting by and through, the Department of Finance Account on Chico River Pump Irrigation Project” (hereinafter referred to as the “**Borrower’s Account**”) to record the amount owing or repaid or paid by the Borrower. The amount of the Facility recorded as drawn and outstanding in the Borrower’s Account shall be the evidence of the Borrower's indebtedness owed to the Lender and shall be binding on the Borrower in the absence of manifest error.

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

4.7 **Voluntary Prepayment** The Borrower may prepay the principal amount drawn and outstanding under the Facility by giving the Lender a 30 days prior written notice, and

宋

such prepayment shall be subject to the consent of the Lender. At the time of prepayment, the Borrower shall also pay to the Lender all interest accrued on the prepaid principal in accordance with Article 4.2 up to and including the date of prepayment. Any prepayment made pursuant to this Article shall reduce the amount of the repayment installments in inverse order of maturity.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES BY THE BORROWER

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

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

5.2 The Borrower has completed all the authorizations, acts and procedures as required by the laws of the Borrower's Country in order for this Agreement to constitute valid and legally binding obligations of the Borrower in accordance with its terms, including obtaining all the approvals and authorizations from relevant authorities of the Borrower's Country, except for the final approval of the Monetary Board of Bangko Sentral ng Pilipinas, which shall be secured after the signing of this Agreement, and effecting all the registrations or filings as required by the laws of the Borrower's Country, and such approvals, authorizations, registrations and filings are in full force and effect.

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

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

5.5 The signing of this Agreement by the Borrower constitutes, and the Borrower's performance of its obligations under this Agreement will constitute commercial acts. Neither the Borrower nor any of its assets is entitled to any right of immunity on the grounds of sovereign or otherwise from arbitration, suit, execution or any other legal process with respect to its obligations under this Agreement, as the case may be, in any jurisdiction. Notwithstanding the foregoing, the Borrower does not waive any immunity of its assets which are (i) used by a diplomatic or consular mission of the Republic of the Philippines, (ii) of a military character and under control of a military authority or defense agency of the Republic of the Philippines, or (iii) located in the Philippines and dedicated to a public or governmental use (as distinguished from patrimonial assets and assets dedicated to commercial use).

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

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

ARTICLE 6 SPECIAL COVENANTS

6.1 **Pari Passu** The Borrower hereby covenants to the Lender that 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 with all other present or future unsecured and unsubordinated External Indebtedness (both actual and contingent) of the Borrower. Any preference or priority granted by the Borrower to such indebtedness shall be forthwith applicable to this Agreement without prior request from the Lender.

6.2 The Borrower undertakes with the Lender that it will ensure that all amounts

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

6.3 All payments by the Borrower under this Agreement shall be paid in full to the Lender without set-off or counterclaim or retention and free and clear of and without any deduction or withholding for or on account of any taxes or any charges. In the event the Borrower is required by law to make any such deduction or withholding from any payment hereunder, then the Borrower shall forthwith pay to the Lender such additional amount as will result in the immediate receipt by the Lender of the full amount which would have been received hereunder had no such deduction or withholding been made.

6.4 The Borrower hereby covenants to the Lender that it will take immediate steps and fulfill all the conditions necessary to maintain in full force and effect all approvals, authorizations, registrations and filings specified in Article 5.2, which for the avoidance of doubt, shall include the final approval of the Monetary Board of Bangko Sentral ng Pilipinas.

6.5 The Borrower will 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. However, the Borrower's failure to include corresponding allocation in its budget shall not in any way reduce or affect its obligations under the Loan Agreement or to be used as a defense for the failure to make any payment due under the Loan Agreement.

6.6 The Borrower undertakes with the Lender that within 15 days after each disbursement made by the Lender, the Borrower will submit to the Lender the documents evidencing that all taxes and fees due and payable under the related settlement has been paid in full by the End-User according to the Commercial Contract and applicable law.

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

accurate:

- (1) The Borrower shall submit to the Lender semi-annually during the Maturity Period reports on the actual progress and operation status of the Project and the utilization of the disbursed Facility proceeds;
- (2) The Borrower shall supply to the Lender any other information pertaining to the performance of this Agreement at any time reasonably requested by the Lender.

6.8 The Lender shall be entitled to examine and supervise the utilization of the proceeds of the Facility and the performance of this Agreement. The Borrower shall facilitate the aforesaid examination and supervision of the Lender.

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

- (1) any material decision, change, accident and other significant facts or events pertaining to the Project or the Borrower;
- (2) any change of the authorized persons and the specimen of their signatures involved in the drawdown of the Facility under this Agreement;
- (3) any change of the communication address of the Borrower specified in Article 8.7;
- (4) the occurrence of any Event of Default specified in Article 7;
- (5) any significant amendment or supplement to the Commercial Contract.

6.10 The Borrower is obliged to notify the Lender, without delay, upon becoming aware of the occurrence of any event or dispute which may limit, restrict, interfere with or otherwise adversely affect the performance by any Party of its obligations under the Commercial Contract, including but not limited to any event or dispute in connection with:

(1) taxation; and

(2) any party's failure to timely perform its relevant obligations under such Commercial Contract.

To ensure the due performance of the Commercial Contract, the Borrower shall promptly do all such acts and coordinate with relevant parties to remedy and minimize the impact arising out of such aforementioned event or dispute.

6.11 The Borrower undertakes with the Lender that so long as any sum remains outstanding under this Agreement, the Borrower will not engage in the activities which, in the opinion of the Lender, will materially and adversely affect the performance of the Borrower's obligations under this Agreement.

6.12 The Borrower undertakes with the Lender that at the request of the Lender, the Borrower will provide the Lender within six months of completion of the Project with the Project completion summary report and provide within the period as required by the Lender the documents and materials for the post evaluation for the Project. The Borrower shall ensure the authenticity, accuracy, validity and integrity of the documents and materials provided.

6.13 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 (including but not limited to official creditors and Paris Club 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 7 EVENTS OF DEFAULT

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

(1) The Borrower, for any reason, fails to pay any amount due and payable under this Agreement (including but not limited to principal, interest, and other fees 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 4 of this Agreement within five (5) Business Days of the date when such payment is due;

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

(3) The Borrower fails to punctually perform any of its other obligations under this Agreement or is in breach of any of its covenants and undertakings made under this Agreement, and does not remedy such breach to the satisfaction of the Lender within 30 days after receipt of written notice from the Lender requiring it to do so;

(4) Any other event which constitutes a default of the Borrower occurs in respect of any other agreement(s) involving External Indebtedness of the Borrower between the Borrower and any other banks or financial institutions, the aggregate amount of which External Indebtedness is equal to or more than US\$25 million or its equivalent in other currency, and such default shall continue for more than the period of grace, if any, expressly provided under such agreement(s) when originally agreed and executed;

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

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

7.2 Upon the occurrence of any of the aforesaid Event of Default (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 the following actions without prejudice to any other rights and remedies available it:



a) suspend any Disbursement under this Agreement;

and if such event shall remain unremedied for a period of thirty (30) Business Days for payment obligations and sixty (60) Business Days for non-payment obligations after such written notice by the Lender, the Lender may, by further written notice to the Borrower:

b) cancel any further Disbursement under this Agreement; and

c) declare the principal of and accrued interest in accordance with this Agreement 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.

ARTICLE 8 MISCELLANEOUS

8.1 **Waiver of Immunity** The Borrower hereby irrevocably waives any immunity on the grounds of sovereign or otherwise for itself or its property in connection with any arbitration proceeding pursuant to Article 8.5 hereof or with the enforcement of any arbitral award thereto. Notwithstanding the foregoing, the Borrower does not waive any immunity of its assets which are (i) used by a diplomatic or consular mission of the Republic of the Philippines, (ii) of a military character and under control of a military authority or defence agency of the Republic of the Philippines, or (iii) located in the Philippines and dedicated to a public or governmental use (as distinguished from patrimonial assets and assets dedicated to commercial use).

8.2 Without prior written consent of the Lender and the Monetary Board of the Bangko Sentral ng Pilipinas, the Borrower may not assign or transfer all or any part of its rights or obligations hereunder in any form to any third party. At its own expense, the Lender is entitled to assign or transfer all or any part of its rights, interests and obligations hereunder to a third party with notice to the Borrower. The Borrower shall sign all such

documents and do necessary acts and things as the Lender may reasonably require for the purpose of perfecting and completing any such assignment and transfer, provided that any costs incurred by the Borrower in connection therewith shall be borne by the Lender.

8.3 This Agreement is legally independent of the relevant Commercial Contract . Any claims or disputes arising out of the Commercial Contract shall not affect the obligations of the Borrower under this Agreement.

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

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

8.6 The arbitral award obtained in accordance with this Article against the Borrower will be recognized and be enforceable in the Republic of the Philippines provided that:

(a) the arbitral tribunal had jurisdiction over the subject matter of the action in accordance with the jurisdictional rules; (b) the Republic of the Philippines had notice of the proceedings; (c) the arbitral award was not obtained through collusion or fraud, and such award was not based on a clear mistake of fact or law; and (d) the arbitral award is not contrary to public policy in the Republic of the Philippines.

8.7 **Borrower's Process Agent** Without prejudice to the generality of this Article 8, the Borrower hereby irrevocably designates and appoints the Consul General of the Philippines in Beijing, China with its address at 23 XiuShui Beijie, Jianguomenwai, Chaoyang District, Beijing, as its authorized agent to receive and acknowledge on its behalf service of any notice, writ, summons, order, judgment or other legal documents in China. If for any reason the agent named above (or its successor) no longer serves as

agent of the Borrower to receive legal documents as aforesaid, the Borrower shall promptly designate a successor agent satisfactory to the Lender. The Borrower hereby agrees that, any such legal documents shall be sufficiently served on it if delivered to the agent for service at its address for the time being in Beijing, whether or not such agent gives notice thereof to the Borrower.

8.8 **Confidentiality** The Borrower shall keep all the terms, conditions and the standard of fees hereunder or in connection with this Agreement strictly confidential. Without the prior written consent of the Lender, the Borrower shall not disclose any information hereunder or in connection with this Agreement to any third party unless required to be disclosed by the Borrower to any courts of competent jurisdiction, relevant regulatory bodies, or any government institution and/or instrumentalities of the Borrower in accordance with any applicable Philippine law.

8.9 **Communications** Unless otherwise provided herein, all notices or other documents in connection with this Agreement shall be in writing and shall be delivered or sent either personally or by post or facsimile to the following respective address or facsimile number of both Parties; in the event that the following address or facsimile number of any Party hereunder has changed, such Party shall immediately inform in writing the other Party in the way set out in this Agreement:

To the Lender: Concessional Loan Dept.
The Export-Import Bank of China
No. 30, Fu Xing Men Nei Street, Xicheng District, Beijing, 100031
People's Republic of China
Fax No.: 0086-66086308
Telephone: 0086-83578486
Contact Person: Country Officer of the Republic of the Philippines

To the Borrower: The Department of Finance (DOF) of the Republic of the Philippines
DOF Building, Roxas Boulevard, Malate, Manila 1004, Philippines
Fax No.: 632-523-9216
Telephone: 632-526-9990

Contact Person: Undersecretary of the International Finance Group

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

(1) if sent by personal delivery: at the time of the actual delivery as acknowledged by the recipient;

(2) if sent by post: 15 days after posting (excluding Saturdays, Sundays and statutory holidays);

(3) if sent by facsimile, when the notice or document is dispatched by fax machine.

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

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

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

8.13 Matters not covered in this Agreement shall be settled through friendly consultation in good faith and mutual understanding and signing of supplementary agreements between the Borrower and the Lender.

8.14 **Amendment** Any amendment or waiver of any provision of this Agreement and any waiver of any default under this Agreement shall be effective only if made in writing upon mutual agreement between the Parties and executed on their respective behalf by

their duly authorized representatives.

ARTICLE 9 EFFECTIVENESS

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

(1) This Agreement has been duly signed by the Lender and the Borrower through their duly authorized representatives;

(2) The Lender has received copies of the approval issued by the relevant authorities of the Borrower's Country approving the borrowing by the Borrower hereunder, including but not limited to the certified true copy of the Bangko Sentral ng Pilipinas' Monetary Board Final approval on the financing;

(3) The Lender has received the certified true copy of the Environmental Compliance Certificate issued by the authorized government agency of the Borrower's Country; and

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

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

9.4 This Agreement shall be executed in two original copies with equal legal effect, one for each Party.



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

**On behalf of
The Government of the Republic of the
Philippines**

By:



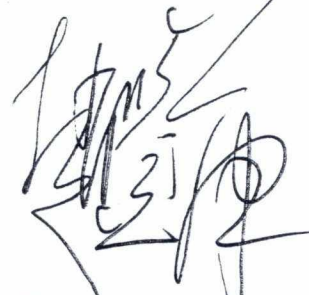
CARLOS G. DOMINGUEZ III

Secretary

Department of Finance of the Government of
the Republic of the Philippines

**On behalf of
The Export-Import Bank of China**

By:



ZHAO JIAN HUA

Ambassador Extraordinary and
Plenipotentiary of the
People's Republic of China to the
Republic of the Philippines

Appendixes:

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



Appendix 1
Conditions Precedent to the First Disbursement

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

- (1) Copies of this Agreement which have been duly signed by all parties thereto respectively and have become effective;
- (2) Certified true copies of the Commercial Contract and other relevant documents in connection therewith acceptable to the Lender which have been duly signed by all parties thereto and have become effective;
- (3) Drawdown schedule submitted by the Borrower which has been recognized and accepted by the Lender;
- (4) The authorization of the Borrower, by which the Borrower authorizes one or more representatives to sign this Agreement, Irrevocable Notice of Drawdown and any other documents in relation to this Agreement, and the signature specimen of such authorized representatives;
- (5) Certified true copies of any and all documents evidencing that the End-User has paid to the Chinese Contractor certain amount, which is equivalent to 15% of the advance payment under the Commercial Contract minus tax and fees due and payable related to the full amount of the advance payment under the Commercial Contract;
- (6) Certified true copies of any and all documents which could evidence that the Management Fee and Commitment Fee payable hereunder have been paid by the Borrower to the Lender in accordance with the provisions of Article 2.5 and Article 2.6;

(7) An original Irrevocable Notice of Drawdown in the form set out in Appendix 5 attached hereto duly signed by the authorized signatory of the Borrower and affixed with the official stamp of the Borrower not later than the fifteenth (15th) Business Day prior to the date on which the drawdown is scheduled to be made; such Irrevocable Notice of Drawdown authorizes the Lender to pay the relevant amount to the account designated by the Borrower, and such drawdown shall be in compliance with the stipulations of the Commercial Contract;

(8) A legal opinion in the form and substance set forth in Appendix 6 or in the form and substance otherwise approved by the Lender in writing issued by the Secretary of Justice of the Borrower's Country in connection with the transactions contemplated hereunder;

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

(10) Certified true copies of the implementation plan for the land acquisition and resettlement confirmed by the End-User and the written claim issued by the Contractor to confirm that the actual status of the land acquisition and resettlement could satisfy the commencement of the Project and to ensure the timely completion as the schedule required in the Commercial Contract;

(11) Such other document(s) or condition(s) relating to the transactions under this Agreement as the Lender may reasonably request.

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

Appendix 2

Conditions Precedent for Each Disbursement after the First Disbursement

For each disbursement after the first disbursement hereunder, the Lender shall not be obliged to make any such disbursement to the Borrower unless all the conditions precedent set out in Appendix 1 attached hereto have been satisfied, the Borrower has fulfilled the following conditions and the Lender has received the following documents to its satisfaction:

- (1) An original Irrevocable Notice of Drawdown in the form set out in Appendix 5 attached hereto duly signed by the authorized signatory of the Borrower and affixed with the official stamp of the Borrower, and sent by courier or by authenticated SWIFT not later than the fifteenth (15th) Business Day prior to the date on which the drawdown is scheduled to be made; such Irrevocable Notice of Drawdown authorizes the Lender to pay the relevant amount to the account designated by the Borrower, and such drawdown shall be in compliance with the stipulations of the Commercial Contract.
- (2) No Event of Default has occurred (or will likely to occur as a result of the drawdown being made) under this Agreement.
- (3) All representations, warranties, and undertakings made by the Borrower hereunder shall be true and correct as at the date such drawdown is scheduled to be made with reference to the facts and circumstances then subsisting.
- (4) The Borrower has paid the interest due and payable under this Agreement in accordance with Article 4.
- (5) The Borrower has paid the Commitment Fee due and payable under this Agreement in accordance with Article 2.6.
- (6) The Facility hereunder has not been terminated.
- (7) Such other document(s) and condition(s) as the Lender may reasonably request.

宋

SA

Appendix 3
Power of Attorney (for Signing the Agreement)

I, _____ (Name of the Authorizing Person), am _____ (Title of the Authorizing Person) of _____ (hereinafter referred as the “**Institution**”). I hereby confirm that I have the full legal right and authority to sign the Preferential Buyer’s Credit Loan Agreement on the _____ Project dated _____ (No. _____, hereinafter referred to as the “**Agreement**”) on behalf of the Institution. However, in the event that I am not available when the Agreement is required to be signed, I hereby authorize Mr. _____ (hereinafter referred as the “**Authorized Signatory**”), _____ (Title of the Authorized Signatory) of the Institution, to sign the Agreement and other notices and documents in connection therewith on behalf of the Institution.

Signature: _____

Title: _____

Date: _____

Specimen Signature of the Authorized Signatory:

Name: _____

Title: _____



Appendix 4
Power of Attorney (for Drawdown)

I, _____ (Name of Authorizing Person), am _____ (Title of the Authorizing Person) of _____ (hereinafter referred as the "**Institution**"). I hereby confirm that I have the full legal right and authority to make drawdowns on behalf of the Institution in accordance with the terms and conditions of the Preferential Buyer's Credit Loan Agreement on the _____ Project dated _____ (No. _____, hereinafter referred to as the "**Agreement**"). In the event that I am not available when a drawdown is to be made, I confirm that I hereby authorize Mr. _____ (hereinafter referred as the "**Authorized Signatory**"), _____ (Title of the Authorized Signatory) of the Institution, to make the drawdown under the Agreement, to sign the documents and to handle other matters in connection therewith on behalf of the Institution.

Signature: _____

Title: _____

Date: _____

Specimen Signature of the Authorized Signatory:

Name: _____

Title: _____



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

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

Serial No: _____
Date: _____

Dear Sir or Madam,

Pursuant to Article 3 of the Preferential Buyer's Credit Loan Agreement on the _____ Project dated _____ (No. _____, hereinafter referred to as the "**Agreement**") between _____ (the "**Borrower**") and the Export-Import Bank of China (the "**Lender**"), we hereby instruct and authorize you to make a payment as follows:

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

Payee: _____
Account Bank: _____
Account No.: _____
Date of Payment: _____

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 in Article 4.5 of the Agreement with such amount of payment in USD in accordance with Article 2.1 of the Agreement.

We hereby confirm that your above-mentioned payment shall be deemed a drawdown made by us under the Agreement and upon your payment pursuant to this Irrevocable Notice of Drawdown, the amount of payment shall forthwith constitute our indebtedness to you accordingly. We shall repay such amount to you together with any interest accrued thereon in accordance with the terms and conditions of the Agreement.

We further confirm that the representations and warranties and covenants made by us in Article 5 and Article 6 of the Agreement remain true and correct as of the date of this Irrevocable Notice of Drawdown, and none of the events referred to in Article 7 of the Agreement has occurred and continuously exists.

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

This notice once given shall be irrevocable.

_____ (Full Name of the Borrower)

_____ 

Appendix 6
Form of Legal Opinion

To: The Export-Import Bank of China

Date: _____

Dear Sirs,

**Re: The Preferential Buyer's Credit Loan Agreement on the _____
Project (No. _____)**

I am the Secretary of Justice of the Republic of the Philippines, qualified and authorized to issue this legal opinion in connection with the Preferential Buyer's Credit Loan Agreement on the _____ Project dated _____ (No. _____, the "Loan Agreement") between the Export-Import Bank of China as the lender (the "Lender") and the Government of the Republic of the Philippines acting through by the Department of Finance as the borrower (the "Borrower").

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

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

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

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

Based on the foregoing, I am of the opinion that:

1. The Borrower is an institution duly established and validly existing under the laws of the Republic of the Philippines, and has power, authority and legal right to assume civil liabilities 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 and Secretary Carlos G. Dominguez of the Borrower has been duly authorized and has the power to sign the Loan Agreement on behalf of the Borrower.
3. The Loan Agreement has been duly signed by the Borrower, and constitutes legal, valid and binding obligations of the Borrower enforceable in accordance with its terms.
4. The signing, delivery and performance of the Loan Agreement by the Borrower do not violate or conflict with or result in a breach of any law or regulation of the Republic of the Philippines.
5. All authorizations and consents of any authority in the Republic of the Philippines required in connection with the signing, delivery and performance of the Loan Agreement by the Borrower have been obtained and are in full force and effect, including making payments in foreign currencies under the Loan Agreement and making the Loan Agreement admissible in evidence in the courts of the Republic of the Philippines.
6. All amount payable by the Borrower under the Loan Agreement may be made free and clear of and without deduction for or on account of any tax, levy, deduction or charge by the Republic of the Philippines or any political subdivision or taxing authority thereof. No withholding would be made in respect of any payment to be made by the Borrower to the Lender under the Loan Agreement.
7. The signing and performance of the Loan Agreement by the Borrower constitute commercial acts, and the declaration that the Borrower shall not have any right of immunity in connection with any proceedings or any enforcement of an arbitral award or

court decision on the grounds of sovereignty or otherwise is valid and irrevocably binding on the Borrower. Notwithstanding the foregoing, the Borrower does not waive any immunity of its assets which are (i) used by a diplomatic or consular mission of the Republic of the Philippines, (ii) of a military character and under control of a military authority or defense agency of the Republic of the Philippines, or (iii) located in the Philippines and dedicated to a public or governmental use (as distinguished from patrimonial assets and assets dedicated to commercial use).

8. The payment obligations of the Borrower under the Loan Agreement rank at least *pari passu* with all its other unsecured and unsubordinated external indebtedness of the Borrower.

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

10. The arbitral award obtained in accordance with Article 8.5 of the Loan Agreement against the Borrower will be recognized and be enforceable in the Republic of the Philippines provided that:

(a) the arbitral tribunal had jurisdiction over the subject matter of the action in accordance with the jurisdictional rules;(b) the Republic of the Philippines had notice of the proceedings;(c) the arbitral award was not obtained through collusion or fraud, and such award was not based on a clear mistake of fact or law; and (d) the arbitral award is not contrary to public policy in the Republic of the Philippines.

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

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

As to the questions of fact material to my conclusions expressed herein, to the extent I have not independently established the facts, I have relied upon the statements of fact contained in the documents I have examined and on certificates or representations of responsible officers and other representatives of the Republic and other parties to the relevant agreements. Nothing has come to my attention which leads me to believe that such certificates and representations are not accurate.

Yours faithfully,



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

Date: _____

Dear Sirs:

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

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

Attention:

Tel:

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


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



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

Yours faithfully,

Name:

Title: 

Appendix 8
Letter of Confirmation

To: _____ (name of the Borrower)

Date: _____

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

Yours faithfully,

Name:

Title: 

Appendix 9
Form of Notice of Effectiveness of Loan Agreement

From: The Export-Import Bank of China

No. 30, Fuxingmennei Street, Xicheng District, Beijing 100031

People's Republic of China

To: _____ (the Borrower)

Date: _____

Dear Sirs,

Pursuant to Article 9 of the Preferential Buyer's Credit Loan Agreement on the _____ Project dated _____ (No. _____, hereinafter referred to as "the Agreement") between _____ (the "Borrower") and the Export-Import Bank of China (the "Lender"), we hereby inform you that:

- (a) all the conditions as set out in Article 9.1 of the Agreement have been satisfied;
- (b) the Agreement shall become effective on and from the date hereof.

The Export-Import Bank of China

(Signature of Authorized Signatory)

采

SA

Appendix 10

Form of Repayment Schedule

Concerning the Preferential Buyer's Credit Loan Agreement on the _____
Project dated _____ (No. _____)

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

Note: The amount appeared in this schedule just refer to repayment of the Principal of the Loan under the Preferential Buyer's Credit Loan Agreement on the _____ Project dated _____ (No. _____), while the interest accrued shall be paid according to the provisions of Article 4 of the aforesaid Agreement.

