

[INSERT COUNTRY HERE]

[RAIL PROJECT CO]

[RAIL PROJECT CO HOLDCO]

[RAIL PROJECT OPCO]

Pro-forma Rail Convention

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RAIL CONVENTION

BETWEEN

- (1) [INSERT COUNTRY HERE], represented by:
[#], acting in capacity as *insert relevant Country Minister responsible for ports infrastructure* and who is duly authorised for the purposes of entering into this Convention, (the “**State**”)

- (2) [RAIL PROJECT CO], which is a limited company with its registered office located at [#], incorporated under the laws of [#] with registration number [#], represented by [#], who is duly authorised for the purposes of entering into this Convention (“**Infrastructure Owner**”)

- (3) [RAIL PROJECT CO HOLDCO], which is a limited company with its registered office located at [#], incorporated under the laws of [#] with registration number, represented by [#], who is duly authorised for the purposes of entering into this Convention (“**Infrastructure Owner Holdco**”)

- (4) [RAIL PROJECT OPCO], which is a limited company with its registered office located at [#], incorporated under the laws of [#] with registration number with [#], represented by [#], who is duly authorised for the purposes of entering into this Convention (“**Infrastructure Operator**”)

Preliminary Statement

Whereas:

- (a) It is recognised that, in view of the special nature of the Rail Project that requires investment on a significant scale and given that the Project Infrastructure is a major investment of strategic importance for the development of **[Country]**:
 - (i) Infrastructure Owner, Infrastructure Owner HoldCo and its shareholders, Infrastructure Operator the Project Contractors and their respective Affiliates shall benefit from all commitments from the State as provided in this Convention;
 - (ii) this Convention must include all terms and conditions which may be required by the Financing Parties, including such terms and conditions which may conflict with any other Laws and Regulations; and
 - (iii) this Convention will be ratified by a specific law.
- (b) This Convention provides for the construction of the Project Infrastructure comprising the works necessary for a railway to be used for the transport of [freight and passengers - *insert nature of contemplated services*].
- (c) Infrastructure Owner is undertaking to finance, construct and own the Project Infrastructure and transfer it to the State under the terms of this Convention.
- (d) The State has agreed to guarantee to each of Infrastructure Owner, Infrastructure Owner HoldCo and its shareholders, and Infrastructure Operator for the entire Term of this Convention including any extension thereof, the free and whole and full enjoyment of the rights granted to it under the terms of this Convention, being specified that the terms of this Convention will prevail over any other applicable law.

Definitions

The terms and expressions used in this Convention have the following meaning, unless the context provides otherwise.

“Additional Facilities and Resources” has the meaning given to it in Article 13.2(a).

“Affiliate(s)” means a company in which a first company holds directly or indirectly more than 50% of the issued equity capital and of the voting rights (and includes any other company which is also controlled in that manner by the first company) or that directly or indirectly holds more than 50% of the issued equity capital and of the voting rights of the first company and their respective successors and assignees and all companies in which they directly or indirectly control more than 50% of the issued equity capital and of the voting rights, are deemed to be Affiliates. For the purposes of this definition, any reference to a ‘company’ shall be to any company, regardless of its place of jurisdiction.

“Appendix” means documents indicated as such in or attached to this Convention. Each Appendix forms an integral part of this Convention.

“Asset” or **“Project Infrastructure Asset”** means all assets, rights, titles and interests present and future, movable or immovable, tangible or intangible, relating to the Rail Project, that belong to Infrastructure Owner, to the Project Contractors or to their respective Affiliates or that are leased or let by (or on behalf of) any one of them, as well as the rights under any conventions, concession contract and / or emphyteutic lease entered into by (or on behalf of) any one of them, including all returns and income deriving from the Rail Project that are paid or due.

“Authorisations” means the authorisations, consents, approvals, certificates, resolutions, licences, permits, exemptions, filings, registrations, visas and all other administrative acts necessary in connection with the Rail Project and / or the Infrastructure Activities pursuant to the Legislation in Force, and **“Authorisation”** means each of them.

“Authority” or **“State Authority”** means the State, including in particular the government, local government and every ministerial, governmental, quasi governmental or other regulatory department, body, instrumentality, agency, territorial administration or official court or tribunal having jurisdiction over the Rail Project and / or the Infrastructure Activities or person acting on behalf of the State, exercising any legislative, executive, administrative, legal or other delegated power or having the mandate to exercise such power, excluding the Independent Regulator.

“Centre” has the meaning given to it in Article 33.2

“Community Development Plan” means the Community Development Plan attached at Appendix 6

“Contractual Documents” means all contracts, conventions, protocols or written agreements, directly or indirectly related to the Infrastructure Activities.

“Contractual Rate of Interest” means the London Interbank Offered Rate (LIBOR) for deposits of three months in Dollars published by the Intercontinental Exchange Benchmark Administration Ltd or such replacement entity responsible from time to time for the administration of LIBOR at or about 11.45am (GMT) plus **[insert relevant percentage e.g. three percent (3%)]**.

“Convention” means this Convention and its Appendices.

“Corridor” means the Original Corridor and / or such other locations identified by Infrastructure Owner and the State pursuant to Article 5.

“Critical Habitat” has the meaning given to it in the IFC’s Performance Standards on Social & Environmental Sustainability Performance Standard 6.

“Day” means a calendar day commencing at 00:00am **[Country/City]** standard time, unless otherwise specifically provided.

“Direct Sub-Contractor” means any enterprise having the necessary competence for providing the services and/or works dedicated to the Project Infrastructure and which has entered into a contract with Infrastructure Owner, Project Contractor, Infrastructure Operator,

an Affiliate or one of their sub-contractors in the exclusive context of the Project. A reference to subcontractor in the Tax Annex shall be deemed to be a reference to Direct Sub-Contractor as defined in this definition.

“**Dollar**” and “**\$**” means the currency having legal tender in the United States of America.

“**Effective Date**” means the date on which all the conditions specified in Article 45 are fulfilled.

“**Environmental Management Plan**” means the plan set out in Appendix 4.

“**Extended Force Majeure Event**” means any Force Majeure Event which continues, and causes any Party to be unable to substantially perform its obligations for [270] Days after Notification of a Force Majeure Event is given pursuant to Article 31(c).

“**Extension**” has the meaning given to it in Article 6.1(b).

“**Financing Activities**” means the raising of finance from the Financing Parties by Infrastructure Owner and/or its Affiliates under the terms of the Financing Documents.

“**Financing Documents**” means each agreement entered into for the purposes of the debt or equity financing or refinancing, or project financing, of the Project Infrastructure, including without limitation the common terms agreement, loan agreements (including shareholder loans), bond documentation, guarantees, completion guarantees, agreements in relation to Security, accounts agreements, subordination agreements, agreements and policies for political risk coverage, agreements relating to hedging of interest rates or currencies and intercreditor arrangements and direct agreements with the Financing Parties and various Project counterparties.

“**Financing Parties**” means each party to a Financing Document, which is providing finance (including by way of guarantee and / or insurance of finance) in relation to the Project Infrastructure and / or any agent, trustee or attorney or account bank acting on behalf of any of them.

“**Force Majeure Event**” has the meaning given to it in Article 31(b).

“**ICSID Convention**” has the meaning given to it in Article 33.2 .

“**IFC**” means the International Finance Corporation, an international organisation established by Articles of Agreement among its member countries.

“**In-country Activities**” has the meaning given to it in Article 2.2(b).

“**Infrastructure Activities**” means the activities relating to the planning, design, financing, construction, commissioning (including the test phase), ownership, modification, expansion, maintenance and operation of the Project Infrastructure, including any acquisition and/or occupation of land.

“**Infrastructure Construction Criteria**” means:

- (a) in relation to any expansion, the design, the content and technical requirements agreed between the Infrastructure Owner and the State, provided that, in each case, such requirements are consistent with the specifications of the Project Infrastructure and would not reduce or adversely affect the operational safety, efficiency or performance of the Project Infrastructure;
- (b) the Protocols; and
- (c) Prudent Infrastructure Practices.

“**Infrastructure Corridor Proposal**” has the meaning given to it in Article 5.

“**Infrastructure Operating Agreement**” means the agreement to be entered into by Infrastructure Owner and the Infrastructure Operator setting out the terms and conditions on which the Infrastructure Operator will be appointed by Infrastructure Owner as an independent contractor to operate, maintain and renew the Project Infrastructure and provide other agreed services, as may be amended from time to time by agreement between the parties thereto.

“**Infrastructure Entities**” has the meaning given to it in Article 15(b).

"Infrastructure Operator" means the entity that the Infrastructure Owner appoints from time to time to operate, maintain and renew the Project Infrastructure.

"Investment Code" means [Draft note: Insert name of relevant Code here]

"Investment Repayment Period" means, subject to any extension to the period agreed between the Infrastructure Owner and the State, the period commencing on the Rail Completion Date and ending on the 50th anniversary of that date.

"Land Rights" means such rights in *rem* (including access and occupation rights as well as surface rights (*droits de superficie*)) as are necessary to secure and ensure the ongoing peaceful enjoyment and occupation of the Project Lands, subject to any limitation to such rights as may be provided for in this Convention.

"Laws and Regulations" means any treaty, law, code, ordinance, decree, arrêté, directive, case law or other legislative or regulatory measure which, in each case, is in force in [Country], as may be amended, modified or replaced.

"Legislation in Force" means the [Country] regulations (treaties, laws, codes, ordinances, decrees, arrêté, directives, case law and so forth) known and existing on [#] and set at this date (excluding, OHADA Uniform Acts and all principles and international agreements to which [Country] adheres which shall apply as amended from time to time), taking into account any reasonable interpretation that is made of them at the same date in [Country] and in compliance with international practice and includes any subsequent more favourable Laws and Regulations that are extended to the applicable Party concerned in accordance with Article 22.3 or 24.

"Material Adverse Effect" means a material adverse effect on the business, assets or financial condition of the non defaulting Party, then or in the future, or on the ability of such Party to perform reasonably and in good faith its obligations under this Convention.

"Material Government Breach" means any of the following events which has a Material Adverse Effect on any Party (other than the State) or any other Protected Entity:

- (a) the State or any State Authority takes any action or other measure having effect equivalent to an expropriation or nationalisation, in whole or in part, but to which Article 27(b) would not otherwise apply;
- (b) repudiation or frustration by the State or any State Authority of this Convention;
- (c) a material breach of any other agreement with respect to the Rail Project entered into by the State or any State Authority and to which any Party (other than the State), its Affiliates, Project Contractors or any third party investor (as referred to in Article 11.7) is a party;
- (d) any change to the Legislation in Force which the State or a State Authority seeks to apply to any Non State Party alone or with others and which adversely affects that person, with respect to their rights or obligations in respect of the Rail Project or this Convention or which results in that person incurring a loss or an additional or increased cost;
- (e) any material breach by the State or any State Authority under Articles 3, 5, 8, 9, 10, **Error! Reference source not found.**, **Error! Reference source not found.**, 13, 15, 17, 18, 19 to 27 (other than 27(a)),

which is not caused by a Material Infrastructure Owner Breach or Force Majeure Event.

"Material Infrastructure Owner Breach" means any of the following events which has a Material Adverse Effect on the State:

- (a) the failure by the Infrastructure Owner to achieve the Rail Completion Date (for the purposes of this Convention, the failure to complete engineering tasks that are not essential to the safe and successful commissioning of the Project Infrastructure is not considered); and
- (b) any material breach by Infrastructure Owner of its obligations under Article 7, 11.1, or 39,

which is not caused by a Material Government Breach or a Force Majeure Event.

"Natural FME" means all Force Majeure Events except Other FME.

means items that are required for completion but that are not essential for the safe and successful commissioning of the Project Infrastructure.

"Non State Party" means any Party to this Convention other than the State.

"Notice" means a formal notification given in accordance with, and that complies with the requirements of, Article 44 and **"Notification"** shall have a corresponding meaning.

"Original Corridor" means the perimeter defined by the geographical coordinates on the map attached at Appendix [1].

"Other FME" means those Force Majeure Events:

- (a) specified in Article 31(b)(ii) which occur within the **[Country]** or involve the State; or
- (b) specified in Article 31(b)(vii).

"Party" means a party to this Convention and **"Parties"** means all of the parties to this Convention. and any permitted successors or assigns.

"Project Activities" means any activities necessary for, incidental or useful to the Rail Project, including Infrastructure Activities.

"Project Contractor" means any validly existing enterprise (including any Affiliate or guarantor thereof) that satisfies the following cumulative conditions:

- (a) having the necessary competence for providing services and/or works for the purposes of the Project Infrastructure, whether as a sub-contractor, supplier or services provider; and
- (b) which has entered into a contract with Infrastructure Owner, Infrastructure Operator or their respective Affiliates or one of their sub-contractors in the dedicated context of the Project Infrastructure.

"Project Infrastructure" means the railway and associated infrastructure to be funded, designed, constructed, commissioned, owned, modified, expanded, operated and maintained by Infrastructure Owner and any other real estate development or infrastructure used to undertake the business activities of the Infrastructure Owner and its Affiliates within the territory of **[Country]**. For these purposes, Project Infrastructure denotes the following:

- (a) a standard gauge heavy haul railway between each mine or site serviced by Infrastructure Owner to applicable train unloading facilities, including:
 - (i) all railway tracks including turning loops and sidings;
 - (ii) associated track structures, over and under track structures, tunnels, bridges, culverts and supports (including supports for equipment or items associated with the use of railway track) and associated plant, machinery and equipment;
 - (iii) rolling stock, including locomotives, wagons, fuel tankers, supplies wagons and maintenance rolling stock ("**Rolling Stock**");
 - (iv) Rolling Stock maintenance facilities and equipment;
 - (v) communication systems, including fibre-optic links within the rail corridor;
 - (vi) train control and signalling systems (including train control facilities and movement and scheduling systems and software);
 - (vii) terminals, yards, depots and weigh bridges;
 - (viii) maintenance facilities and equipment for rail infrastructure;
 - (ix) import and fuel distribution systems and fuel storage and distribution facilities used to supply fuel for the rail infrastructure;

- (x) supplies distribution systems and warehouses and other storage and distribution facilities;
 - (xi) power generation facilities and transmission and distribution lines used to supply power for the Project Infrastructure;
 - (xii) light vehicles and buses used in connection with the rail service;
 - (xiii) administrative offices, employee accommodation, messing facilities, medical facilities and associated infrastructure used in connection with the Rail Project; and
 - (xiv) facilities as required along the railway line for sewage treatment, potable water supply, waste management and disposal;
- (b) Rail Access Roads; and
 - (c) train unloading facilities (including car dumpers), conveyors, stockyards, stackers, reclaimers,
 - (d) power generation facilities (including hydro facilities) and transmission and distribution lines used primarily in connection with the Rail Project;
 - (e) airports and other air transportation facilities;
 - (f) light vehicles and buses used primarily in connection with the Rail Project;
 - (g) other buildings, facilities and equipment required for the implementation and operation of, or otherwise used in connection with the Rail Project.

"Project Infrastructure Ownership Rights" means the ownership rights of the Project Infrastructure Assets., including, without limitation, Project Infrastructure granted to Infrastructure Owner, subject however to any such limitations to those ownership rights as may be provided for in this Convention.

"Project Lands" refers, depending on the context, to all the sites, lands and spaces of whatever nature and location which are necessary or useful for the performance of the Project Activities (including any part of the maritime or fluvial public domain or any other lands belonging to the State's public domain or any other public law legal entity's public domain) to be obtained in accordance with the procedures developed for the Project it being specified that although the majority of Project Lands will, in principle, be located within the Corridor, some Project Lands, such as those necessary for the performance of the access roads, the production and transport of power for Project Activities or for the resettlement of Project Affected Persons may be located, in all or part, outside the limits of the Corridor, where this is necessary.

"Proposed Rail Services" has the meaning given to it in Article **Error! Reference source not found.**(as the case may be).

"Protected Entity" has the meaning given to it in Article 27(a).

"Protocols" means collectively, the protocols referred to in Article 12(a).

"Prudent Infrastructure Practices" means the exercise of that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled, experienced and competent owner or operator which is engaged in the same type of task under the same or similar circumstances in a manner consistent with the technical and operating requirements in accordance with recognised practices, standards and safety procedures.

"Public Crossings" has the meaning given to it in Article 14.1(b).

"Rail Access Roads" has the meaning given to it in Article 14.1(a).

"Rail Completion Date" means the date on which practical completion of the construction of the Project Infrastructure by Infrastructure Owner has been achieved so that the Project Infrastructure has been constructed and is capable of providing the Rail Services.

"Rail Completion Target Date" has the meaning given to it in Article 2.2(c) .

"Rail Conditions" means the conditions listed in Article 2.5(a)(i) to (viii)

"Rail Effective Date" has the meaning given to it in Article 2.4(b)(ii).

"Rail Effective Target Date" has the meaning given to it in Article 2.5(a)

"Rail Feasibility Study" has the meaning given to it in Article 2.2(a).

"Rail Project" or **"Project"** means the design, development, financing, construction, ownership, operation, maintenance, modification or expansion of the Project Infrastructure, and any other related activities necessary for the conduct of Project Activities (including any expropriation of land that is required for these purposes).

"Rail Safety Licensing Regime" has the meaning given to it in Article 15.2.

"Rail Services" means services provided using the Project Infrastructure, including:

- (a) the transportation of product from a mine or other loading facility to a port;
- (b) transporting equipment and supplies from a port to a mine or other unloading facility;
- (c) providing provisioning, maintaining and renewing/ renovating Rolling Stock to provide the services referred to above;
- (d) maintaining and renewing other Project Infrastructure for the purposes of providing the services referred to above; and
- (e) other ancillary services connected to the services referred to above.

"Rail Services Agreement" or **"RSA"** means a rail services agreement between Infrastructure Owner and/or Infrastructure Operator and third parties for the provision of Rail Services as may be amended from time to time by agreement between the parties thereto. **"Rolling Stock"** has the meaning given to it in the definition of Project Infrastructure.

"Security" means any assignment, pledge, mortgage or conditional assignment of equity or shares in Infrastructure Owner or Infrastructure Owner HoldCo or over the Project Infrastructure Assets which is granted by Infrastructure Owner or Infrastructure Owner HoldCo or any shareholder therein, to any Financing Party or otherwise pursuant to any Financing Document.

"Senior Financing Parties" means the Financing Parties other than the Financing Parties providing shareholder loans to finance the Project Infrastructure.

"Share" means a share in the capital of Infrastructure Owner.

"Shareholder" means each person or entity which holds Shares from time to time.

"State Enabling Activities" has the meaning given to it in Article 2.3.

"Target Dates" means the:

- (a) Rail Feasibility Target Date;
- (b) Rail Effective Target Date; and
- (c) Rail Completion Target Date,

and **"Target Date"** means any one of them as the context requires.

"Tax and Customs Regime" means the tax and customs regime established pursuant to the provisions of Articles 19 to 22 and to the Tax Annex.

"Tax Annex" means the document attached at Appendix 2 which specifies the conditions for implementation of all the principles and all the tax and customs rules deriving from this Convention and from certain provisions of the Legislation in Force. This Tax Annex shall form an integral part of this Convention as an implementing measure, and shall always be read in relation with the tax and customs provisions of this Convention.

"Taxes" means any tax, duty, levy, royalty, fee and, more generally speaking, any fiscal (including customs duties) or parafiscal levy payable to the State or to any State Authority.

"Term" has the meaning given to it in Article 4.

"Third Party Access Regime" has the meaning given to it in Article **Error! Reference source not found.**

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"Transfer Date" means the date the Shares are transferred to the State or an entity owned by the State pursuant to Article 39.1(a)

"Unlawful Expropriation" means where any State Authority expropriates or nationalises or, prior to the end of the Investment Repayment Period takes control of, all or any part of the Project Infrastructure Assets in breach of the provisions of Article 27(b), including a failure by the State to pay compensation in accordance with Article 27(b).

"Year" means a period of 365 Days according to the Gregorian Calendar.

Interpretation

The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a section, article or appendix is a reference to a section, article or an appendix to this Convention.
- (d) A reference to an agreement, convention or document (including a reference to this Convention) is to the agreement, convention or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Convention or that other agreement, convention or document.
- (e) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
- (f) A reference to a Party to this Convention or another agreement or document includes the Party's successors, permitted substitutes and permitted assigns.
- (g) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (h) Mentioning anything after words such as includes, including, for example, or similar expressions, does not limit what else might be included.

Section 1.: General Provisions

1 Purpose of the Convention

The purpose of this Convention is to define the legal, tax, administrative, financial, fiscal, customs and social conditions within which:

- (a) Infrastructure Owner will design, finance, construct and commission the Project Infrastructure;
- (b) Infrastructure Owner will own, modify, expand and ensure the maintenance and operation and, following the Investment Repayment Period, transfer the Project Infrastructure to the State;
- (c) The State will not have any right of pre-emption over the rail infrastructure; and
- (d) the State will grant the guarantees required by the Senior Financing Parties for the implementation of the Rail Project.

2 Implementation of the Rail Project

2.1 Overview

- (a) The Parties intend that Rail Project will be implemented in the following stages:
 - (i) Rail Feasibility Study and In-country Activities by the Rail Feasibility Target Date;
 - (ii) Satisfaction of the Rail Conditions by the Rail Effective Target Date; and
 - (iii) Implementation of the Project by the Rail Completion Target Date.

2.2 Rail Feasibility Study and In-country Activities

- (a) Within 12 months after the Effective Date ("**Rail Feasibility Target Date**"), the Infrastructure Owner will prepare and fund a feasibility study of the Rail Project to a bankable standard for the purpose of assessing the commercial feasibility of the development and exploitation of the Project Infrastructure ("**Rail Feasibility Study**"). For the purposes of this Article 2.2(a), "**bankable standard**" means such standard as is required to attract investment and, subject to such confirmatory studies as may be required as a condition precedent, project financing by Financing Parties.
- (b) From and including the Effective Date, the and the Infrastructure Owner are authorised to conduct any or all of the in- country activities as set out in Section 1 of Appendix 3 ("**In-country Activities**") in order to further the development of the Rail Project in parallel with the carrying out of the Rail Feasibility Study. To the extent that the In-country Activities involve the construction of Project Infrastructure, Infrastructure Owner and shall, in undertaking the relevant construction works, comply with Prudent Infrastructure Practices.
- (c) The Rail Feasibility Study shall include a target date for the completion of the construction of the Project Infrastructure ("**Rail Completion Target Date**"), which date may be extended by an Extension pursuant to Article 6

2.3 State Enabling Activities

Concurrently with the Rail Feasibility Study and In-country Activities, the State will ensure that certain activities as set out in Section 2 of Appendix 3 ("**State Enabling Activities**") are implemented within the periods prescribed for each of them in each case as set out in Section 2 of Appendix 3 or such agreed periods as are required to enable the In-country Activities and Rail Feasibility Study to proceed and so as to facilitate the future implementation of the Rail Project as required to meet the Rail Completion Target Date. Any delay in completion of the State Enabling Activities will constitute an Extension to the Rail Completion Target Date.

2.4 State facilitation

- (a) The Parties shall, as and when required, negotiate in good faith and seek to agree any amendments to this Convention as may be necessary or desirable to facilitate:
 - (i) the securing of committed funding for the development of the Project Infrastructure; and / or
 - (ii) the achievement of the Rail Effective Date.
- (b) Without limiting the scope of Article 2.4(a), the State shall co-operate with the Infrastructure Owner to satisfy:
 - (i) the Rail Conditions listed in Article 2.5(a); and
 - (ii) the requirements and any conditions precedent of any Financing Documents, including the State entering into Financing Documents required by the Financing Parties.

2.5 Conditions precedent

- (a) The implementation of the Rail Project by the Infrastructure Owner is subject to and conditional upon all the following actions and conditions which must be undertaken, completed and satisfied promptly:

[Insert Conditions Precedent]

("Rail Conditions") and must in any event be completed within [X months] of the ("Rail Effective Target Date").

- (b) The date on which all the Rail Conditions have been completed and satisfied or waived (as applicable) shall be the "Rail Effective Date" for the purposes of this Convention.
- (c) The Rail Conditions are for the benefit of the Infrastructure Owner and may be waived (in whole or in part) by the Infrastructure Owner in their absolute discretion.

2.6 Commencement of Construction Activities

The Infrastructure Owner undertakes to commence the construction of the Project Infrastructure within [X] months following the Rail Effective Date.

2.7 Review and achievement of Target Dates

- (a) The Parties agree that they shall meet and review progress of the Rail Feasibility Study and the satisfaction of the Rail Conditions and the Rail Effective Date on a regular basis as from the Effective Date.
- (b) At each meeting, the Parties shall work together collaboratively to identify any impediments to the applicable Target Dates being achieved and to explore and agree appropriate solutions so that any such impediments may be minimised or overcome.

3 Co-operation of the Administrative Authorities

By every appropriate means and in accordance with the terms of this Convention and the Legislation in Force, the State will facilitate all Infrastructure Activities and all other activities to be carried out by the Parties (including the Financing Activities) and the Project Contractors under this Convention and, to this end, the State shall undertake the State Enabling Activities within the timeframes specified in Appendix 3.

4 Term

This Convention will come into effect on the Effective Date for a term of 50 years from the completion of the railway (subject to mutual agreement between the Parties) and continue until the Transfer Date, unless terminated earlier in accordance with Article 2 or Article 32 (the "Term").

5 Corridor – Rail Network

- (a) The State agrees that:
 - (i) the Project Lands intended for the railway and associated infrastructure shall be situated within the Original Corridor as identified by or such other locations within the territory of **[Country]** identified by the Infrastructure Owner in the course of preparation of the Rail Feasibility Study, or otherwise identified by Infrastructure Owner, (the "**Infrastructure Corridor Proposal**") and approved in writing by **[insert]**; and
 - (ii) within [60] Days of the date of the submission of the Infrastructure Corridor Proposal the Land Rights therein shall be granted to Infrastructure Owner, for realisation and the exploitation of the Project Infrastructure.
- (b) For the avoidance of doubt, the Parties hereby acknowledge and agree that the State will approve the Infrastructure Corridor Proposal, but may require amendments be made to it that they do not substantially affect the Corridor and that are capable of being promptly implemented at reasonable cost.
- (c) The Parties agree that if for any reason the Corridor identified under Article 5(a) is no longer suitable for the whole or any part of the Project Infrastructure, the Infrastructure Owner may at any time after the Rail Feasibility Study submit a new proposal to the State and the State will grant to the Infrastructure Owner those Land Rights over the land identified in the new proposal within 60 days of the date of the submission of the new proposal.

Section 2.: Construction Activities

6 Infrastructure Completion Date

6.1 Programme of Construction Activities

- (a) The State grants the Infrastructure Owner the right to construct, develop, operate and maintain the Project Infrastructure, both within and outside the Corridor or the Project Lands. The Infrastructure Owner undertakes to construct and complete the Project Infrastructure according to the criteria and conditions contemplated by the Rail Feasibility Study subject to any Extensions.
- (b) For the purposes of this Article 6, there shall be an "**Extension**":
 - (i) if there is:
 - (A) a Force Majeure Event;
 - (B) a government action or failure to act including:
 - (1) a Material Government Breach;
 - (2) any event of delay to access to sites or to the grant of any Authorisations necessary for the conduct of the Rail Project or any related study;
 - (3) any delay in completion of the State Enabling Activities as required pursuant to Articles 2 and 3;
 - (4) any event of delay to the acquisition of Project Lands as contemplated by Article 9 including delays in the relocation or resettlement of persons for the performance of the Project Activities; and
 - (5) any event of delay due to referral of a matter to an independent expert in the circumstances provided for in this Convention or more generally due to a referral of a matter to arbitration pursuant to Article 33;
 - in each case having an evident impact on the ability of Infrastructure Owner to achieve the Rail Completion Date;
 - (ii) if there is any event deemed by another provision of this Convention to be an Extension; or

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- (c) If there is an Extension, the Rail Completion Target Date will be automatically extended by the duration of the event, government action or failure to act or extension that gives rise to the Extension.
- (d) If Infrastructure Owner becomes aware that an event, or series of events, of delay have occurred that may delay the Rail Project schedule, including a State failure to act or provide support as required pursuant to this Convention, then, for information purpose only, Infrastructure Owner will, on a timely basis, notify the State of such event or events in its progress updates the State. The Parties acknowledge and agree that non-reporting of those events shall not in any case be interpreted to have, and shall not have, any impact or consequence for, and will not prejudice, a Party's ability to rely on an Extension as provided for in this Convention, and communication of those events is not a precondition to the Extension arising and applying in the manner set out in this Convention.

7 Construction Activities

7.1 Infrastructure construction obligations

- (a) The Infrastructure Owner is responsible for the management of all planning, design, construction and commissioning activities in relation to the Rail Project including any expansions of the Project.

Section 3.: Land Access and Authorisations

8 Access to Sites

- (a) The State undertakes to ensure that Infrastructure Owner and the Project Contractors are granted a right of access in **[Country]** to the Corridor in order to complete the studies and works necessary to identify the Project Lands, by requiring the competent authorities, including their decentralised departments, to facilitate and coordinate access to the Corridor and to lands of property owners and operators of activities that are regularly carried out in the Corridor, to allow them to implement the above-mentioned studies and works.
- (b) Such right of access is maintained and confirmed by this Convention and will remain in force until the provisions of Article 9 regarding the grant of the Land Rights and right to occupy the Project Lands take effect.

9 Project Lands and Land Acquisition

9.1 Project Lands

The Project Lands shall be made available to the Project in accordance with **[insert description of appropriate law or administrative order]**. The Parties acknowledge that the Project Lands may include part of the river and maritime public domain.

The State shall undertake all actions as required in accordance with this Convention, **[insert description of appropriate law or administrative order]** in order that the Project Lands are granted to the Infrastructure Owner for the exclusive use and occupation of Infrastructure Owner and that all parcels of land required for the resettlement of Project Affected Persons are made available to resettled Project Affected Persons as required for the timely realisation and exploitation of the Project Infrastructure.

9.2 Rights in respect of the Project Lands

- (a) The State hereby grants to the Infrastructure Owner, without the need for any further Authorisations or other formalities (other than those Authorisations or other formalities which are necessary to ensure that Land Rights are fully effective, for a duration not exceeding the duration of this Convention) such Land Rights as are necessary to carry out the Infrastructure Activities.
- (b) The State agrees that it will not grant any competing Land Rights to third parties in the Rail Corridor or any rights that would be inconsistent with the rights of the Infrastructure Owner to carry out the Infrastructure Activities.
- (c) Project Infrastructure Ownership Rights attaching to the Project Infrastructure Assets (which will be fixtures on the Project Lands) are acquired by the Infrastructure Owner, as and when such Project Infrastructure Assets are built and / or installed as fixtures on the Project Lands. These rights include but are not limited to the right to own Assets, and create Security in relation to Assets, on the Project Lands, whatever the legal nature of the Project Lands (including, for the avoidance of doubt, Project Lands belonging to the State's public domain or any other public law legal entity's public domain).
- (d) The State also hereby grants to the Infrastructure Owner, the right to assign, transfer and dispose of, without the need for further Authorisations or other formalities to the Infrastructure Operator, Project Contractors or their Affiliates, all or part of the Land Rights granted under this Article 9.2. The State further agrees that no charges, taxes or levies will be imposed by the State on any transaction giving effect to such an assignment.
- (e) In view of the payment by the Infrastructure Owner in respect of the Project Infrastructure of the costs in relation resettlement and compensation of Project Affected Persons the Parties agree that no royalty, rent, Tax or payment of any kind shall be payable in consideration of the State granting the Land Rights in accordance with this Convention by any of Infrastructure Owner, Project Contractors and their Affiliates benefiting from any right in application of this Article 9.2.

- (f) The State guarantees the holders of all Land Rights referred to in Article 9.2(a) against:
 - (i) any form of legal or de facto eviction; and
 - (ii) any legal action which could be initiated by a third party by reason of the existence or performance of these Land Rights.

In order to minimise the instances of these costs occurring, the Parties will, to the greatest possible extent, in consultation, seek to settle any disputes brought against the Parties in accordance with the grievance mechanism [*insert description of appropriate law or administrative order*].

9.3 Soil and subsoil contamination

The Infrastructure Owner, Infrastructure Operator and Project Contractors their Affiliates and Direct Sub-Contractors shall not be liable towards any person for, and shall not assume any damage, loss or expense incurred in relation to soil, subsoil or water contamination and generally for any kind of pollution whatsoever on the Project Lands existing prior to the effective assumption of the Land Rights by the Infrastructure Owner in accordance with Article 9.2 or not caused by the activities undertaken by or on behalf of the Infrastructure Owner.

10 Authorisations

- (a) In addition to its obligations set out in Articles 8 and 9, and without limiting Article 26, the State:
 - (i) hereby grants, without the need for additional formalities, all Authorisations required for the carrying out of all construction works and operation of the Project Infrastructure in accordance with the Infrastructure Construction Criteria;
 - (ii) shall, if the Infrastructure Owner, Infrastructure Operator, a Project Contractor or their respective Affiliates applies for any other Authorisation, ensure the prompt issue of that Authorisation within 30 Days of the application. If an Authorisation is not issued within 30 Days of the application, it will be deemed to have been granted;
 - (iii) shall facilitate all administrative steps and procedures by all appropriate measures and provide all reasonable assistance, in each case as may be necessary for the planning, design, construction, commissioning, ownership, operation, maintenance, modification and expansion of the Project Infrastructure (including, for the avoidance of doubt, the rights of Infrastructure Owner, Infrastructure Operator, Project Contractors and their respective Affiliates to import consumables and fuel as contemplated by Article 11.5);
 - (iv) shall promptly instruct and direct, as required, all State Authorities in each relevant area to facilitate all the administrative measures required for the issue of such Authorisations which shall be on terms that are acceptable to Infrastructure Owner;
 - (v) shall ensure that such Authorities provide Infrastructure Owner, Infrastructure Operator, Project Contractors and their respective Affiliates with all necessary assistance in relation to Authorisations for the Rail Project and that all other formalities and procedures are carried out; and
 - (vi) shall maintain, or cause to be maintained, the validity and the effectiveness of all Authorisations granted or to be granted by the Authorities and / or any person, entity or Authority in connection with the Rail Project.

Section 4.: Rights and Obligations of Owner

11 Rights and Obligations of Infrastructure Owner

11.1 The rights and obligations of Infrastructure Owner

Infrastructure Owner shall, consistently with its obligations under Article 7:

- (a) be responsible for procuring the planning, design, construction and commissioning of the Project Infrastructure in accordance with the Infrastructure Construction Criteria and without any further input or approvals (including any Authorisations) being required to be obtained from the other Parties, including the State, and in doing so shall be entitled to:
 - (i) subject to Article 5, access lands for the finalisation of studies required for the planning and development of Project Infrastructure;
 - (ii) exercise all rights and take all actions to secure lands required for the construction and commissioning of the Project Infrastructure pursuant to *[insert description of appropriate law or administrative order]*.
 - (iii) undertake the planning, design, construction, commissioning, modification and expansion of the Project Infrastructure;
- (b) own, modify and expand the Project Infrastructure in accordance with the Infrastructure Construction Criteria and transfer it to the State in accordance with Article 39;
- (c) undertake all tasks, actions and requirements, including the obtaining and holding of all necessary lands and Authorisations (the grant or issue of which is in each case the responsibility of the State pursuant to Articles 9 and 10) as necessary to plan, design, finance, construct, commission, modify, expand and own the Project Infrastructure;
- (d) be entitled to appoint one or more Infrastructure Operators to manage, as an independent contractor on behalf of the Infrastructure Owner, the operation and maintenance of the Project Infrastructure and enter into any Infrastructure Operating Agreements;
- (e) be entitled to sub-contract to Project Contractors to provide one or more of the Infrastructure Activities, but will not as a result be relieved of any of those obligations or duties;

11.2 Management Activities

- (a) The Infrastructure Owner shall operate and maintain the Rail Project, in accordance with Prudent Infrastructure Practices, and the terms of this Convention.
- (b) The Infrastructure Owner may (by one or several of its constituent entities) undertake the primary role of operation and maintenance of the Project Infrastructure itself or may appoint an Infrastructure Operator from time to time to undertake the operation and maintenance of the Project Infrastructure.

11.3 Right to quarry

Infrastructure Owner, Infrastructure Operator, Project Contractors and any of their respective Affiliates shall, for the purposes of planning, design, construction, commissioning, modification, expansion, operation and maintenance of the Project Infrastructure, obtain or quarry stone, sand, clay and gravel from or within the vicinity of the Corridor as of right.

11.4 [Country] public procurement

The [Country] public procurement code and its implementing regulations will not be applicable to this Convention and any activities undertaken pursuant to it. Agreements to be entered into by Infrastructure Owner, Infrastructure Owner HoldCo, Infrastructure Operator and Project Contractors and any of their respective Affiliates will be exclusively governed by

private law, with the exception of the benefits) granted by the [*insert name of relevant legislation*] and this Convention.

11.5 Right to import plant, equipment and materials

- (a) Infrastructure Owner, Infrastructure Operator, Project Contractors and any of their respective Affiliates shall have the right, throughout the term of this Convention, to directly import from any jurisdiction of their choosing, all plant, equipment, materials, consumables and fuel needed for the purpose of carrying out the Infrastructure Activities, free of any customs duties or taxes, levies or other government charges. The State will issue any Authorisations without delay required for the purpose hereof.
- (b) The State guarantees that it will not impose any specific requirements on the packaging of any plant, equipment and materials purchased or imported from any country.

11.6 Access to Water

The State agrees to grant the Infrastructure Owner, Infrastructure Operator, Project Contractors and their Affiliates the right to:

- (a) take water from water sources;
- (b) draw on subterranean water; and
- (c) if required, develop a water treatment facility,

for the construction or operation and maintenance of the Project and Project Activities without the need for any further formalities, consents or Authorisations from the State.

11.7 Third Party Investor

It is agreed by the Parties that Infrastructure Owner shall be entitled to contract with independent third parties to provide one or more Project Infrastructure Assets which relate to the provision of fuel, electricity or other categories of goods and services for use by Infrastructure Owner. Those Asset(s) shall not be procured, operated nor maintained by Infrastructure Owner but shall be provided for the use of Infrastructure Owner pursuant to services agreements between the applicable third party and Infrastructure Owner, with any fees payable by Infrastructure Owner thereunder to be treated as an Infrastructure Owner operating expense. In compliance with Legislation in Force, the third party investor owner of those asset(s) will benefit from the same legal and tax regime as applicable to the Project in relation to goods and services provided exclusively to the Project.

11.8 General Obligation

Infrastructure Owner shall enjoy all of the other rights conferred, and comply with all of the other obligations imposed, on it under this Convention.

12 Protocols

- (a) Infrastructure Owner shall develop the following protocols:
 - (A) the process to be followed in the scheduling of Rail Services and the scheduling of associated maintenance services; and
 - (B) the rules relating to Infrastructure Owner's exercise of operational control over all activities involving the Project Infrastructure
- (ii) specifications and standards applying to the Rolling Stock operating on the Rail Project Infrastructure ;
- (iii) specifications and standards applying to the operation and maintenance of Rolling Stock operating on the Rail Project Infrastructure; and
- (iv) specifications and standards applying to the operation and maintenance of the Rail Project Infrastructure, including with respect to the Project Infrastructure's availability and reliability ;the tariff schedules for rail services;
- (v) the security rules for the railway; and
- (vi) statistics for railway transport activities.

Section 5.: Coordination with the State

13 Coordination of Operations

13.1 Activities in the Corridor and the surrounding perimeter

- (a) The State shall:
- (i) monitor, and wherever possible, control the creation of transient camps and other settlements in, or in the vicinity of, the Project Lands (other than transient camps or settlements set up by Infrastructure Owner, Infrastructure Operator, Project Contractors or their respective Affiliates);
 - (ii) ensure that traffic, market and other activities in the vicinity of the Project Lands do not impinge on, or interfere with, the Rail Project and the State shall provide support to Infrastructure Owner, Infrastructure Operator and Project Contractors with respect to the Rail Project in addressing such activities, including by the passing of appropriate Laws and Regulations (that, for the avoidance of doubt, shall apply to the Non State Parties to the extent they convey benefits on them over and above the Legislation in Force) and, where necessary, the provision of police and other armed security forces;
 - (iii) ensure that no toll or access fees for use of the Rail Access Roads or Public Crossings for access between the Project Infrastructure is imposed on the Infrastructure Owner, the Infrastructure Operator, Project Contractors, their Affiliates or the public; and
 - (iv) ensure that the assistance of public, administrative, and/or judicial authorities (whether local or central) is provided to Infrastructure Owner, Infrastructure Operator, Project Contractors and their respective Affiliates at the cost of the State, if necessary or required by Infrastructure Owner to exercise its rights in relation to the Project Lands as provided under this Convention, it being agreed and understood that:
 - (A) Infrastructure Owner or the Infrastructure Operator shall arrange, manage and pay for, the provision of security (in and within the direct vicinity of the Project Lands) for personnel engaged in the construction, expansion, modification, maintenance and operation of the Project Infrastructure and for the assets comprising the Project Infrastructure;
 - (B) the State shall, in the regional areas surrounding the Project Lands, arrange, pay for and manage the provision of armed security as required to promote the general safety and security of personnel engaged in the construction, maintenance and operation of the Project Infrastructure and for the assets comprising the Project Infrastructure, including the provision of traffic police for security purposes and enforcement of Laws and Regulations; and
 - (C) if the Infrastructure Owner requires the specific assistance of law enforcement agencies mentioned above or different to that provided during the normal course of the State performing these duties, then the obligation to provide such assistance is contingent upon the Infrastructure Owner requesting such assistance from the State on a timely basis (and providing such information as is reasonably required to facilitate the provision of such assistance).
- (b) Without limiting the economic development contribution to be made by the Infrastructure Owner the State shall remain responsible for the supply of services and amenities to inhabitants in the vicinity of the Project Lands.

13.2 Provision of additional facilities and resources

- (a) In the event that additional land, buildings, timber, quarries or other sources of material, roads, watercourses or other facilities ("**Additional Facilities and**

Resources") are or become necessary for Infrastructure Activities or for the planning, design, construction, commissioning, ownership, operation, maintenance, modification or expansion of the Project Infrastructure, then at Infrastructure Owner's or Infrastructure Operator's request the State shall ensure that such Additional Facilities and Resources are made available.

- (b) Without limiting Article 13.2(a), the State shall grant to the Infrastructure Owner Land Rights to additional land identified by the Infrastructure Owner as being required for the construction and operation of a water treatment plant in connection with the Project.

14 Roads

14.1 Rail Access Roads and Public Crossings

Infrastructure Owner has the right to design, construct, operate and maintain:

- (a) railway access and maintenance roads connecting from the public road network to the railway at appropriately designated locations (the "**Rail Access Roads**"); and
- (b) crossings to be situated at appropriately designated locations as are necessary to enable the public to cross the Project Infrastructure (the "**Public Crossings**"),

to the standard required for the purposes of their operations together with all warning devices, bridges and other infrastructure as may be necessary for the use of the Rail Access Roads and Public Crossings.

14.2 Use of the Rail Access Roads and Public Crossings by the State and the public

- (a) Infrastructure Owner is entitled to regulate and control the use of the Rail Access Roads and the Public Crossings, including by appropriate security activities in accordance with the Security and Public Safety Protocol.
- (b) Infrastructure Owner has the right to access and use the Rail Access Roads and the Public Crossings in absolute priority to all other users, subject to the requirements of the Security and Public Safety Protocol. If the use of a Rail Access Road by the public is such that it effectively becomes a public highway, the State shall pay to Infrastructure Owner an equitable proportion of the cost of maintaining the Rail Access Road having regard to the public use of that road.

14.3 Use of public roads by Infrastructure Owner and Project Contractors

- (a) Infrastructure Owner, Infrastructure Operator, Project Contractors and their respective Affiliates have the right to use any public roads in the vicinity of the Corridor without any toll or access fees being imposed for such use.
- (b) To the extent upgrades are required to be made to the public road network (including to bridges and other associated infrastructure) in order to facilitate the construction of infrastructure for the Project and to achieve the Rail Completion Date, the Infrastructure Owner has the right to undertake such upgrades, and will be responsible for the costs of their design and construction.
- (c) The Infrastructure Owner will not be responsible for the operation and maintenance of any public roads upgraded or used as part of the Rail Project, or for any costs of operation and maintenance (unless expressly agreed with the State on a case by case basis).

15 No Interference by the State

- (a) The State undertakes during the Term of this Convention, that no Authority will agree any claim or application, grant any right, interest or authorisation of any kind or generally take any measure enabling the realisation of activities, works, structures or installations of any kind that adversely affects the Project Activities.
- (b) The State shall ensure that the railway network, Corridor and the Project Lands remain zoned for exclusive occupation and use by Infrastructure Owner, Infrastructure Operator, the Project Contractors and their respective Affiliates (the

"**Infrastructure Entities**") and that such zoning is maintained throughout the duration of the design, construction, commissioning, operation, expansion and modification and maintenance of the Project Infrastructure so that the activities of the Infrastructure Entities may be undertaken and carried out within the railway network, Corridor or the Project Lands without any restriction or interruption by the State or any State Authority, including on the grounds that such activities have become contrary to any land use, town planning or zoning bylaw, similar Laws and Regulations or reservation of the railway network, the Corridor or the Project Lands.

15.2 Rail safety licensing regime

The State and the Infrastructure Owner will discuss in good faith any Rail Safety Licensing Regime that may be developed, but agree that it will only apply to the Rail Project and to the Infrastructure Owner, Infrastructure Operator, Project Contractors and their respective Affiliates if the regime (including the legislation establishing the regime) is agreed in advance by the Infrastructure Owner and the State (with such approval not to be unreasonably withheld). The Parties agree that any Rail Safety Licensing Regime that may be developed:

- (a) will relate only to matters of rail safety;
- (b) will not impose higher standards in relation to the Rail Project than the standards required of railways in **[Country]**;
- (c) will not impose higher standards in relation to the Rail Project than the standards required under this Convention;
- (d) will not result in the Infrastructure Owner being unable to enjoy the rights or carry out the obligations respectively conferred on them under this Convention, or otherwise amount to material interference with such rights or obligations; and
- (e) will operate in a manner broadly similar to rail safety licensing regimes operating internationally.

Section 6.: Procurement and Employees

16 Local Procurement

As far as possible, Infrastructure Owner, Infrastructure Operator and Project Contractors shall use services and raw materials sourced in **[Country]** and products manufactured in **[Country]** in so far as these services and products are available on price terms that are competitive at an international level and on terms of quality, guarantees and delivery that are likewise competitive.

17 Recruitment of Employees

- (a) Subject to Article 18, and for the duration of this Convention, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors undertake to:
- (i) employ in priority **[Country]** nationals and / or residents to fill their unskilled labour requirements, on payment terms in accordance with local practice in **[Country]**;
 - (ii) implement a training and promotion programme for the **[Country]** national employees in order to permit them to acquire the necessary experience to take management/senior management positions within the company leadership; and
 - (iii) comply with Laws and Regulations relating to health.

Subject to Legislation in Force, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors shall not be subject to any restriction as regards methods for the selection, recruitment, appointment, promotion or dismissal of their employees.

- (b) The State undertakes to grant to Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors any necessary Authorisations to enable employees to work over-time and to work at night or on days that are normally days off or holidays, in accordance with Laws and Regulations.
- (c) Subject to the provisions of this Article 17 and of Legislation in Force, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors shall not be subject to any restriction in the selection, hiring, appointment, promotion or dismissal of employees.

18 Recruitment of Expatriate Employees

For their activities in **[Country]**, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors shall be completely free to recruit any expatriate employee whose profile and qualifications in their opinion (as applicable), will be necessary for the efficient operation of the Infrastructure Activities and for their success. The permits and Authorisations required for expatriate employees shall be issued by the State under the following conditions:

- (a) A work permit shall be issued on an individual basis to each expatriate employee at the request of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors (as applicable). The permit shall be issued within the legal time frames that apply, in accordance with relevant Laws and Regulations, after the date of submission of the complete file with the appropriate administrative department unless when for reasons of public security it would not be appropriate to deliver such a permit.

The work permits shall be issued for the normal duration of an expatriate employment contracts. The renewal of the work permit shall be made under the same conditions as the one described in the previous paragraph notwithstanding anything to the contrary in any Laws or Regulations.

- (b) Expatriate employees and members of their family (spouses, dependent children) shall likewise be holders of a resident visa permitting them to stay in **[Country]**. The

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visa shall be issued on an individual basis, at the request of the applicant or of the company.

The visa shall be issued within the legal time frames that apply, in accordance with relevant Laws and Regulations, after the date of submission of the complete file with the appropriate administrative department, unless for reasons of public security it would not be appropriate to deliver such a visa.

The renewal of visas shall be made in accordance with the same procedures as those specified in the previous paragraphs notwithstanding anything to the contrary in any Laws or Regulations.

- (c) A permanent entry and exit visa shall be granted to expatriate employees at the request of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors (as applicable).

Section 7.: Tax and Custom Regime

19 General Provisions

- (a) In view of the special nature of the Rail Project that requires investment on an exceptional scale, has and will have a significant impact on the national economy and which is normally developed by the State, Articles 19 to 22 together with the Tax Annex determine the preferential treatment applicable to the Rail Project. This regime is applicable from the Effective Date of this Convention and until the expiry of the Term as contemplated in Article 4. The Tax Annex applies to the Infrastructure Activities except where inconsistent with the provisions of this Convention.
- (b) With the exception of the Taxes expressly mentioned in this Convention and that will apply in accordance with the terms and conditions set forth herein and in the Appendices, those companies participating directly in the implementation of the Project and to the extent of their participation shall not be subject to any other Taxes in [Country].
- (c) In the case of providers of project finance for the Project it is specifically agreed that those providers shall be exempt from any fees, duties or other taxes payable in connection with the financing of the Project, including without limitation, any amounts which may otherwise be payable in connection with the registration or perfection of any security which may be provided in respect of any such financing.

20 Stabilisation of Tax and Customs Regime

- (a) Subject to the provisions of this Convention, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors shall not be liable by virtue of Infrastructure Activities to any Taxes including export fees and duties and value added tax that are not expressly contemplated in this Convention.
- (b) By virtue of this Convention, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors shall be entitled for Project Activities to the stabilisation of Tax and Customs Regime in force on the day of signing of the Convention throughout the Term, as much in terms of bases, rates and methods of declaration and control.

21 Calculation of Taxes and Charges

- (a) The calculation of Taxes is carried out on the basis of an accounting system and an accounting currency always expressed in Dollars which are then converted to [insert country currency] as follows:
 - (i) for Taxes based on a reference period of 12 months (such as corporate income Tax), the applicable rate of exchange will be the average rate of the Central Bank of the [Country] (Central Bank) applicable to this reference period; and
 - (ii) for any other duty, tax or contribution, the applicable rate of exchange will be that of the Central Bank in force on the date of payment of the Tax.
- (b) The exchange rates specified above shall also apply for the calculation of any subsequent adjustments, interest and penalties, and for any reimbursement of any excess Tax payment.

22 Sundry Provisions

22.1 Accounting Principles

- (a) Each company involved in the Rail Project will maintain an accounting system that is compatible with the [insert relevant accounting principles] and the applicable law.
- (b) Financial statements will be presented in accordance with the rules of the [insert relevant accounting principles] (balance sheet, income statement, cash flow statement, related statements, etc.).

22.2 Transfer of assets, loans, shares, sell out, merger, de-merger, partial transfer of assets

No Taxes are applicable to transfers of assets, loans, shares, sell-outs, mergers, de-mergers, bringing in assets or similar operations carried out for the purposes of, or in connection with, the Rail Project between any of the Parties and their Affiliates.

22.3 More favourable provisions

The Infrastructure Owner and its Affiliates are free at any time to elect to be governed by the more favourable fiscal and customs provisions deriving from Changes in Law or that are granted in the future to any competitor of Infrastructure Owner or its Affiliates or to companies operating in the same business sector.

22.4 No discrimination

Without limiting the operation of this Section 8, the State shall not:

- (a) impose, nor shall it permit or authorise any State Authority to impose, discriminatory taxes, rates or charges of any nature whatsoever on or in respect of the land, property or other assets, products, materials or services used or produced by or through the activities of Infrastructure Owner, Infrastructure Operator and their respective Affiliates or Direct Sub-Contractors in connection with Infrastructure Activities or Project Infrastructure; or
- (b) take or permit to be taken by the State or any State Authority any other discriminatory action which would deprive Infrastructure Owner, Infrastructure Operator and their respective Affiliates or Direct Sub-Contractors of the full enjoyment of the rights granted or intended to be granted under this Convention.

Section 8.: State Guarantees and Environment Provisions

23 Guarantees under the Investment Code

- (a) For the purposes of this Article 23, each of Infrastructure Owner and Infrastructure Owner HoldCo and their respective Affiliates and the shareholders in these Affiliates shall be collectively referred to as the "**Investors**").
- (b) Each Investor and each Project Contractor shall benefit from the automatic protections conferred by the general regime of the Investment Code and may apply to benefit from one or more special regimes recognised by the Investment Code.

24 General Guarantees

- (a) The State undertakes to guarantee to each of Infrastructure Owner, Infrastructure Operator, Project Contractors and their respective Affiliates as applicable the continuation of any economic or financial advantages and fiscal and customs provisions contemplated in this Convention. Any modifications that have been or are made to the Legislation in Force, including the introduction of any Laws and Regulations purporting to regulate the operation and use of the Project Infrastructure in a manner which is inconsistent with the provisions of this Convention (including without limitation those protocols referred to in Article 12), will not apply to each of Infrastructure Owner, Infrastructure Operator, Project Contractors and their respective Affiliates without prior agreement. Any such modifications that are adopted subsequent to the signature of this Convention within the context of general legislation and that are regarded as favourable for to each of Infrastructure Owner, Infrastructure Operator, Project Contractors and their respective Affiliates must, at their request, be extended by the State to those requesting the extension.
- (b) The State guarantees to Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors and those who are regularly employed by them that they will never and in no way be subjected to any unfavourable legal or administrative discrimination either in law or in fact and that they will receive fair and equitable treatment.
- (c) The State guarantees Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors the safety of their employees and property, and the stability and non-disruption of the Project Activities during the Term of this Convention through various security measures.
- (d) The State, during the Term of this Convention, shall not instigate or promulgate any measure that involves a restriction to the terms by which the Laws and Regulations accords to Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors any of the following freedoms:
 - (i) the free choice of manufacturers, sub-contractors, suppliers and services providers (subject to the provisions of Article 16);
 - (ii) the free access to raw materials;
 - (iii) the free import of goods, materials, equipment, machines, facilities, spare parts, inputs and services, directly or indirectly necessary to the Rail Project; or
 - (iv) the free circulation throughout **[Country]** of staff and equipment and assets contemplated in the previous paragraph, as well as any service provided in connection with the Project Infrastructure.
- (e) The State undertakes to comply, and to procure that all State Authorities comply, with all of its obligations in each Contractual Document and this Convention, in particular as and when required to ensure that the Rail Completion Date occurs by the Rail Completion Target Date.
- (f) The State further represents and warrants that this Convention and any other Contractual Documents are in conformity with the **[Country]** Constitution and any international treaties in force on the Effective Date.

25 Guaranteed Maintenance of Foreign Currency Account and Transfer

- (a) For income deriving from the provision of Rail Services and for all other revenue generated from the Rail Project, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors are each authorised to open offshore foreign currency accounts with foreign commercial banks of international standing. Each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors shall not be obliged to repatriate to **[Country]** the sums credited on those foreign currency accounts, with the exception of the sums required for expenditures necessary to Project Activities.
- (b) Each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors are guaranteed the free transfer abroad of any dividend and return on capital invested and of any interest payment as well as the free transfer of any proceeds from liquidation or from the realisation of its assets without any limitation or cost (except for normal bank fees that are applicable to such transfer).
- (c) These guarantees are also granted to foreign staff resident in **[Country]** who are employed by each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors or any **[Country]** company participating in the Rail Project for the free conversion and the free transfer to their country of origin of all or part of the wages or other items of remuneration that are paid or otherwise owing to them, so long as their Taxes have been settled in accordance with the provisions of this Convention.

26 Administrative and Land Guarantees

- (a) In addition to the other provisions of this Convention, in particular Articles 9 and 10, the State guarantees each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors, in accordance with this Convention, all rights of way and easements on the Project Lands which are necessary for the transport and freightage infrastructure required by the Rail Project. It is specified that, although the majority of Project Lands will, in principle, be located within the Corridor, some Project Lands, such as those necessary for the performance of the Rail Access Roads, the production and transport of power for Project Activities or for the resettlement of Project Affected Persons, may be located, in all or part, outside the limits of the Corridor where this is necessary.
- (b) The access, occupation and use of the said lands shall not give rise to a requirement for Infrastructure Owner, Infrastructure Operator and their respective Affiliates or Project Contractors to make any payment of Tax other than those specified in this Convention.
- (c) At the request of Infrastructure Owner, the State shall undertake the resettlement and/or compensation (subject to payment in a timely manner by Infrastructure Owner as required by this Article) for the benefit of any Project Affected Person whose presence and/or right on the said lands would impede the Infrastructure Activities. Such resettlement shall take place in compliance with the standards set out in the **[insert description of relevant legislative framework, regulation or agreement]**. The Infrastructure Owner will pay, in accordance with the **[insert description of relevant legislative framework, regulation or agreement]**, compensation to the Project Affected Persons.
- (d) The State represents and warrants that all Authorisations granted for the carrying out of the Infrastructure Activities as at the Effective Date, including, for the avoidance of doubt, those referred to in Article 10, have been granted in strict compliance with the Legislation in Force, and that any additional Authorisations and renewals of Authorisations (on terms at least as favourable) which may be required after the Effective Date will also be granted in strict compliance with the Legislation in Force.
- (e) Infrastructure Owner shall have the right without the need for additional formalities or consents from the State to carry out the following activities so long as they are necessary for the Project and in compliance with the Legislation in Force:

- (i) clearing of the land of all trees, bushes and other obstacles and felling of timber outside the lands of which the Infrastructure Owner is holder;
- (ii) the development of water sources that are not used nor reserved and the harnessing and storage of such water for the requirements of the activities in question;
- (iii) take water from any water sources, draw on subterranean water and develop a water treatment facility;
- (iv) the setting up of power plant and electricity stations;
- (v) the creation or improvement of roads, canals, pipelines, channels, conveyor belts or other surface structures serving for the transport of output beyond the lands of which the Infrastructure Owner is holder; and
- (vi) the creation or improvement of railways, rivers, sea ports and waterways.

27 Guarantees of Protection of Property, Rights, Title and Interests

- (a) Subject to the provisions of this Convention, Infrastructure Owner and its Infrastructure Operator, Project Contractors, Affiliates and shareholders (individually referred to as a "**Protected Entity**") have the right and the unlimited freedom to hold, administer, maintain, use, enjoy and dispose of all their property, rights, titles and interests, and to organise their business in their best interest.
- (b) The State undertakes not to expropriate nor to nationalise all or part of the property, rights, titles and interests of a Protected Entity unless such an expropriation or nationalisation measure complies with the rules of international law and:
 - (i) is taken for reasons of national interest, and in compliance with Legislation in Force, in particular the Constitution of **[Country]**;
 - (ii) is not discriminatory; and
 - (iii) gives the Protected Entity the right to compensation in an amount equal to the fair market value of the interest concerned.

The fair market value will be the amount at which those interests concerned could be exchanged in an arm's length transaction between informed and willing parties, assuming the expropriation did not occur and other than in a forced or liquidation sale. Such fair market value shall be determined at the request of the State or the Protected Entity by an independent expert experienced in the valuation of infrastructure assets appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules for Expertise of the International Chamber of Commerce. The compensation referred to in Article 27(b)(iii) as determined by this independent expert will be payable on demand to the Protected Entity in Dollars or in any other freely convertible currency acceptable to it, with no other compensation nor deduction other than any sum that may be owing by it to the State by virtue of this Convention. The compensation will bear interest with effect from the date of the expropriation or of the nationalisation, at the Contractual Interest Rate.

In the event that the Protected Entity concerned in the application of this Article 27 is Infrastructure Owner, Infrastructure Operator or a Project Contractor, Infrastructure Owner or Infrastructure Owner HoldCo can elect at its discretion to demand compensation equal to the fair market value of the entire Project Infrastructure Assets, irrespective of whether the expropriation or nationalisation relates to all or part of the property rights, titles and interests of the Infrastructure Owner, Infrastructure Operator or a Project Contractor.

In the event that Infrastructure Owner or Infrastructure Owner HoldCo so elects to receive such compensation, then following payment of this compensation, this Convention shall be deemed to be terminated and all the Shares transferred to the

State in accordance with 32.3(a). If Infrastructure Owner or Infrastructure Owner HoldCo does not elect to demand compensation for the entire Project Infrastructure Assets, it shall be entitled to compensation for the interests concerned, and this Convention will continue.

The State and Infrastructure Owner acknowledges that these provisions shall benefit the Protected Entity until the end of the Term of this Convention and expressly waive their rights to revoke such benefit.

- (c) The State undertakes not to interfere with the full enjoyment by a Protected Entity of the lawful rights that it holds to its property, rights, titles and interests.
- (d) If there is an unforeseen modification of the essential economics underpinning the feasibility and viability of the Rail Project prevalent at the time of completion of the Rail Feasibility Study that makes the long term continuation of the Rail Project impossible for Infrastructure Owner (with reasonably satisfactory rates of return, account being taken of the risk inherent in any project of this magnitude) and that is not a result of a breach of this Convention by the Infrastructure Owner or a Force Majeure Event, the State undertakes to take the appropriate measures in order to re-establish the economic balance that has been lost. Those measures shall be discussed and finalised by the Infrastructure Owner and the State, and the State shall take any appropriate measures agreed with Infrastructure Owner.
- (e) **(Financing of the Rail Project)** The State acknowledges and agrees that Infrastructure Owner may undertake the Financing Activities, including, without limitation, by way of contribution of equity or loans by its shareholders or their Affiliates and loans from the Senior Financing Parties or their Affiliates. Where Infrastructure Owner undertakes the Financing Activities, the State shall do, or cause to be done, everything that is within its control, which may reasonably be required to assist Infrastructure Owner to complete the Financing Activities as soon as practicable with respect to Senior Financing Parties, including assisting Infrastructure Owner to meet all requirements of the Senior Financing Parties in relation thereto, including the entry into one or more direct agreements with the Senior Financing Parties which may be required to provide certain clarifications and assurances in relation to the Project and address any other specific requirements thereof.
- (f) **(Security)** Further to the provisions of Article 27(e), The State acknowledges and agrees that all Project Infrastructure Assets (including all Land Rights attached to the Project Infrastructure) and all Shares and any other rights as applicable can, and if required by the Senior Financing Parties, will, be provided as Security as required for the financing of the Rail Project or as required to secure the right of step-in as set out in Articles 32.4, it being agreed that no Taxes (including any registration fees or other duties) shall be payable, and no Authorisations or approval shall be required, in relation to the creation or enforcement of such Security, including the transfer of any Project Infrastructure Assets to any third party following such enforcement.

Notwithstanding the above, the State agrees and undertakes, in relation to the matters the subject of this Article 27(f), to facilitate and grant any Authorisation or provide for the completion of any perfection requirements as prescribed by the applicable Legislation in Force.

- (g) It is agreed by the Parties that Infrastructure Owner may assign, including by way of Security, its rights under this Convention to the Senior Financing Parties or to any third party and no Authorisations or approval shall be required, in relation to the creation or enforcement of such assignment, including the assignment of these rights to any third party following such enforcement.

28 Guarantees for the Protection of the Environment and the Cultural Heritage

28.1 Environmental Management plan

- (a) Infrastructure Owner undertakes:
 - (i) to manage and preserve the environment and the Project Infrastructure within the Corridor and the Project Lands for the Term in accordance with the Environmental Management Plan; and
 - (ii) to repair any damage caused to the environment and to the Project Infrastructure in accordance with the Environmental Management Plan.
- (b) The State acknowledges and agrees that compliance with the Environmental Management Plan will be deemed to satisfy all Laws and Regulations regarding hazardous waste, natural resources and environmental protection.

28.2 Cultural Heritage

In the event of discovery of items of national cultural heritage, moveable or immovable, in the course of the Infrastructure Activities, Infrastructure Owner undertakes not to move the objects in question, and to give Notice to the State so that appropriate measures are taken without causing delay to the Infrastructure Activities.

28.3 Community Development

- (a) The State and Infrastructure Owner acknowledge that Infrastructure Owner has submitted to the State, and the State has approved, the Community Development Plan, which complies with all relevant Laws and Regulations.
- (b) The Parties agree that, subject to Infrastructure Owner's compliance with the Community Development Plan, Infrastructure Owner shall have no further obligations under relevant Laws and Regulations.

Section 9.: Other Provisions

29 Insurance

- (a) Infrastructure Owner undertakes to obtain and maintain policies of insurance as are commonly maintained for projects similar to the Infrastructure Project.
- (b) All insurances must be on terms and conditions consistent with prudent risk management practice.
- (c) The Parties acknowledge and agree that the obligations of Infrastructure Owner with respect to the insurances are subject to customary market availability provisions whereby Infrastructure Owner will not be in breach of any obligation to obtain or maintain the insurance where such insurance (including the limits, deductibles or any other terms thereunder) is not available to them or with respect to the Infrastructure Project on reasonable commercial terms (including cost).

30 Indemnity

30.1 General Provisions

- (a) In the event of breach of this Convention, the Party in breach shall compensate each other Party for the loss incurred by that Party with such compensation covering the full amount of the damage.
- (b) The term "damage" comprises any direct, actual and positive loss and includes in particular any cost, expense, interest and fee for lawyers, legal advisors and experts and other expenses that the Party suffering the loss may have to incur.

30.2 Calculation of Compensation Payments

- (a) The amount of any compensation calculated pursuant to Article 30.1 shall be paid within ninety (90) Days after the occurrence of the damage deriving from the breach of this Convention. Each relevant Party to be compensated shall endeavour to agree, with the Party in breach, the amount of compensation to be paid to it within sixty (60) Days of such damage occurring. In the event that the Parties concerned cannot agree on the amount of compensation, the provisions of Article 33 shall apply.
- (b) In every case, the payment of compensation shall be subject to interest with effect from the date of the occurrence of the damage, until the actual payment of the compensation. Such interest shall be calculated at the Contractual Rate of Interest.

30.3 Currency of Compensation Payments

Unless there is a prior agreement to the contrary between the Party in breach and the Parties to be compensated, any compensation shall be paid in Dollars only.

31 Force Majeure Event

- (a) None of the Parties nor their respective Affiliates and Project Contractors shall be liable for the failure to carry out their obligations under this Convention due to the occurrence of a Force Majeure Event. Throughout the term of the Force Majeure Event, and subject to the provisions of this Convention, the obligations affected by the Force Majeure Event shall be suspended.
- (b) For the purposes of this Convention, and subject to Article 27, "**Force Majeure Event**" means any unforeseeable, insurmountable act or event beyond the control of the Party relying on such act or event that substantially prevents this Party from fulfilling one or more of its obligations under this Convention including the following events and circumstances or their consequences to the extent they satisfy the requirements contained in this Article 31(b):
 - (i) epidemic, plague or quarantine;
 - (ii) act of war (whether declared or undeclared; and whether [**Country**] is a participant or not), invasion, armed conflict or act of foreign enemy, blockade,

- embargo, revolution, riot, insurrection, civil commotion or act of terrorism or sabotage or kidnapping;
- (iii) explosion, accident, chemical contamination or fire;
 - (iv) lightning, typhoons, floods, earthquake, sandstorm, tornado, cyclone or other unusually severe weather conditions or other natural disaster;
 - (v) the discovery of an archaeological site or Critical Habitat within the Corridor or the Project Lands;
 - (vi) any strikes and/or other work stoppage or labour dispute;
 - (vii) any Force Majeure Event described in this Article 31(b) affecting the performance of any Rail Services Agreement; and
 - (viii) any event or circumstance of a nature analogous to the foregoing.
- (c) The Party who invokes a Force Majeure Event shall immediately, and in any event within fifteen (15) Days after the occurrence or the discovery of a Force Majeure Event, submit to the other Parties a Notice specifying the factors that constitute the Force Majeure Event and their possible consequences for the implementation of this Convention.
 - (d) In any event, the Party concerned shall take every useful step to minimise the impact of the Force Majeure Event on the performance of its obligations and ensure, within the shortest possible time, the normal resumption of the execution of the obligations affected by the case of Force Majeure Event.
 - (e) If, following a Force Majeure Event, the suspension of obligations were to exceed one (1) month, the Parties shall convene at the earliest possible opportunity in order to examine the implications of the said events on the execution of this Convention and, in particular, on the financial obligations of every kind involving Infrastructure Owner , its Affiliates, the State and Project Contractors. In the latter case, the Parties shall search for any solution that will enable the original Rail Project to be adapted to the changed circumstances, adopting in particular any measure that would enable Infrastructure Owner, Infrastructure Operator and their respective Affiliates, the State and Project Contractors to return to the economic equilibrium and enabling them to proceed with the Rail Project.
 - (f) In the event of any dispute arising out of, relating to or in connection with the measures to be adopted three (3) months after the occurrence of the Force Majeure Event, the negotiation process may be brought into action immediately at the request of the first Party to take action and the provisions of Article 33 shall apply as a whole.
 - (g) In the event that the Force Majeure Event becomes an Extended Force Majeure Event, it is acknowledged and agreed by the Parties that this Convention may be terminated pursuant to Article 32.1(d).

32 Early Termination

32.1 Cases of Early Termination

The early termination of this Convention may only take place in cases set out in Articles 32.1(a) to 32.1(f).

- (a) **(Mutual Agreement)** By any Party if Infrastructure Owner and the State mutually agree to terminate it.
- (b) **(Material Infrastructure Owner Breach)** By the State, in the case of Material Infrastructure Owner Breach upon Notice by the State to the other Parties that this Convention is terminated.
- (c) **(Material Government Breach)** By the Infrastructure Owner (or Infrastructure Owner HoldCo), in the case of Material Government Breach upon Notice by Infrastructure

Owner (or Infrastructure Owner HoldCo) to the other Parties that this Convention is terminated.

- (d) **(Extended Force Majeure Event)** If an Extended Force Majeure Event has occurred then this Convention may be terminated by Infrastructure Owner upon Notice by Infrastructure Owner to the other Parties that this Convention is terminated.
- (e) **(Unlawful Expropriation)** By the Infrastructure Owner (or Infrastructure Owner HoldCo), in the case of Unlawful Expropriation, upon Notice by the Infrastructure Owner (or Infrastructure Owner HoldCo) to the other Parties that this Convention is terminated.
- (f) **(Expropriation or Nationalisation)** Following payment in full of compensation by, and transfer of all Shares to the State as a consequence of any nationalisation or expropriation which occurs, in each case as provided in Article 27(b), this Convention shall be deemed to be terminated.

In the cases of Articles 32.1(b) (Material Infrastructure Owner Breach) and 32.1(c) (Material Government Breach), Notice of termination may not be issued unless the non-defaulting Party has issued a Notice of its intention to terminate to the defaulting Party and, at the end of a period of 180 Days calculated with effect from the date of receipt by the defaulting Party of the Notice of intention to terminate, the default which is the subject of the Notice has not been remedied to the reasonable satisfaction of such non-defaulting Party. However, in the event that the State were to have the right to terminate within the context of Article 32.1(b) (Material Infrastructure Owner Breach), it may decide not to declare the termination but the simple suspension of certain benefits granted to Infrastructure Owner under this Convention, in particular regarding fiscal and customs matters that are appropriate and reasonable to compensate the State for such breach.

32.2 Consequences

- (a) In the event of the early termination of this Convention under Article 32.1, the provisions of this Article 32.2 shall apply, it being understood and agreed by the Parties that in all cases, subject to and in accordance with the provisions of Article 32.3, all Shares will be transferred to the State.
- (b) **(Mutual Agreement)** If this Convention is terminated under Article 32.1(a) (Mutual Agreement), then Infrastructure Owner will be entitled to compensation as agreed between the State and the Infrastructure Owner. This compensation will be evaluated by an independent expert chosen by mutual agreement between the State and the Infrastructure Owner or if there is a lack of an agreement, an independent expert nominated by the International Centre for Expertise according to the Rules for Expertise of the International Chamber of Commerce.
- (c) **(Material Infrastructure Owner Breach)** If this Convention is terminated under Article 32.1(b) (Material Infrastructure Owner Breach), then the compensation payable by the State to Infrastructure Owner shall be the greater of:
 - (i) all liabilities of Infrastructure Owner under all Financing Documents concluded with Senior Financing Parties which shall be reimbursed in order for Infrastructure Owner to obtain full discharge of liabilities from the Senior Financing Parties; and
 - (ii) an amount which is equal to 50% of the capital cost or budget (as applicable) for the Project Infrastructure as at the date of Notice of termination, divided by 600 and multiplied by the number of months remaining from the date of Notice of termination until the end of the Investment Repayment Period.

The State shall be entitled to compensation payable by the Infrastructure Owner in an amount equal to the definite actual direct damages or loss sustained by the State as a direct result of Material Infrastructure Owner Breach.

- (d) **(Material Government Breach)** If this Convention is terminated under Articles 32.1(c) (Material Government Breach), then Infrastructure Owner shall be entitled to compensation equal to the fair market value of the Project Infrastructure Assets immediately prior to the Material Government Breach occurring (and assuming it does

not occur) and which shall be the amount at which the Project Infrastructure Assets could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale. Such fair market value shall be determined on the basis set out in this Article 32.1(d) by an independent expert experienced in the valuation of infrastructure assets appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules for Expertise of the International Chamber of Commerce, and which in all cases shall be no less than:

- (i) all liabilities of the Infrastructure Owner (including interest payable to the Infrastructure Owner's lenders due to the damage caused by the Material Government Breach) under all Financing Documents concluded with Senior Financing Parties which shall be reimbursed in order for Infrastructure Owner to obtain full discharge of liabilities from the Senior Financing Parties;
 - (ii) the total amount of equity contributed by Infrastructure Owner HoldCo to Infrastructure Owner as at the date of Notice of termination divided by 600 and multiplied by the number of months remaining from the date of Notice of termination until the end of the Investment Repayment Period; and
 - (iii) the current and future costs, operating costs and loss of profit (for the remaining period of the Convention); other costs, expenses, interests, legal fees, legal and judicial and administrative costs, and any disbursements and fiscal charges, incurred by the Infrastructure Owner and its Affiliates in respect of any procedure or formality arising in connection with the entitlement to compensation, without prejudice to their rights under this Convention and the rules of international law.
- (e) **(Extended Force Majeure Event)** If this Convention is terminated under Article 32.1(d) (Extended Force Majeure Event) on the basis of Other FME, then Infrastructure Owner shall be entitled to compensation equal to:
- (i) the greater of:
 - (A) all liabilities of Infrastructure Owner under all Financing Documents concluded with Senior Financing Parties which shall be reimbursed in order for Infrastructure Owner to obtain full discharge of liabilities from the Senior Financing Parties; and
 - (B) an amount which is equal to 50% of the capital cost or budget (as applicable) for the Project Infrastructure as at the date of Notice of termination, divided by 600 and multiplied by the number of months remaining from the date of Notice of termination until the end of the Investment Repayment Period; less
 - (ii) the total amount of any expenses incurred by the State in repairing any damage directly caused to the Project Infrastructure by the Force Majeure Event which amount cannot be greater than the amount referred to in Article 32.2(e)(i) above. Full documentary evidence of such expenses will be provided upon the Infrastructure Owner's request, and must be validated by an independent auditor or an expert appointed by the Infrastructure Owner.
- It being agreed and understood by the Parties that in the event of termination on the basis of Natural FME, neither the State nor the Infrastructure Owner nor any other Party shall be entitled to compensation but the Infrastructure Owner shall instead rely on the proceeds of insurance received in respect of such event to compensate it for any loss it may suffer or incur.
- (f) **(Unlawful Expropriation)** If this Convention is terminated under Article 32.1(e) (Unlawful Expropriation) Infrastructure Owner, its Affiliates and Shareholders shall be entitled to compensation no less than:
- (i) an amount equal to the fair market value of the entire Project Infrastructure Assets calculated in the manner provided in Article 27(b);

- (ii) all liabilities of the Infrastructure Owner (including interest payable to the Infrastructure Owner's lenders due to the damage caused by the Unlawful Expropriation) under all Financing Documents concluded with Senior Financing Parties which shall be reimbursed in order for the Infrastructure Owner to obtain full discharge of liabilities from the Senior Financing Parties; and
 - (iii) the current and future costs, operating costs and loss of profit (for the remaining period of the Convention); other costs, expenses, interests, legal fees, legal and judicial and administrative costs, and any disbursements and fiscal charges, incurred by the Infrastructure Owner and its Affiliates in respect of any procedure or formality arising in connection with the entitlement to compensation, without prejudice to their rights under this Convention and the rules of international law.
- (g) Should the Parties disagree on the calculation of the compensation specified in Articles 32.1(a) to 32.1(f) (inclusive), then the provisions of Article 33 will apply.
- (h) All payments required to be made by the State to Infrastructure Owner, its Affiliates and Shareholders pursuant to this Article 32.2 shall, to the maximum extent possible, be set-off against other payments required to be made by the Infrastructure Owner to the State pursuant to this Article 32.2 and, with respect to the balance remaining after such set-off, shall be payable as follows:
- (i) all payments made by the State to Infrastructure Owner pursuant to this Article 32.2 and any compensation that is paid pursuant to Article 27 shall be denominated in Dollars and paid to an offshore account nominated by Infrastructure Owner, its Affiliates or Shareholders (as the case may be) free of all Taxes and other taxes, duties and withholdings imposed in **[Country]**; and
 - (ii) all payments made by Infrastructure Owner to the State pursuant to this Article 32.2 shall be paid by Infrastructure Owner to the State denominated in Dollars and paid to the account of the public treasury free of all taxes, duties and withholdings imposed outside **[Country]**.

On receipt by Infrastructure Owner, its Affiliates and Shareholders, and the State, as the case may be, of such payments in full (and, in the case of payments made to Infrastructure Owner, upon transfer of those payments to Infrastructure Owner HoldCo prior to any transfer of Shares which may be required), the Parties shall jointly and severally waive any other rights or remedies which they may have against each other under this Article 32 and the Shares shall be transferred by the Infrastructure Owner HoldCo or Infrastructure Owner (as applicable) to the State or its nominee. The State shall be free to procure that a third party make payment of any amounts required to be paid by it to the Infrastructure Owner, its Affiliates and Shareholders pursuant to Article 32.2 on its behalf.

32.3 Transfer of Shares or Project Infrastructure Assets upon Early Termination

- (a) In the event of the termination of this Convention, the completion of the transfer of the Shares to the State will only be effective after the payment of all compensation which is due pursuant to this Article 33. The transfer of Shares shall take place at a location and date agreed by the State and Infrastructure Owner (and failing agreement at the registered office of the Infrastructure Owner) which shall, other than in the case of termination pursuant to Article 32.1(b) (on the basis of Material Infrastructure Owner Breach) or 32.1(d) (on the basis of Other FME), be no later than 90 Days from the date that the compensation payable to the Infrastructure Owner pursuant to Article 32 has been completed. In the case of termination pursuant to Article 32.1(b) (on the basis of Material Infrastructure Owner Breach) or (d) (on the basis of Other FME), the payment of all compensation pursuant to this Article 32.2 and the completion of the transfer of the Shares to the State shall take place at a location and date agreed by the State and Infrastructure Owner (and failing agreement at the registered office of

the Infrastructure Owner) which shall be no later than 360 Days from the date that compensation of the Infrastructure Owner has been completed unless it is agreed by the Infrastructure Owner and the State that the Notice of termination is withdrawn.

- (b) All amounts payable under this Article 32 shall accrue interest at the Contractual Rate of Interest as from 90 Days after the date of Notice of termination until such time as they are paid in full.
- (c) It shall be a condition of any termination which occurs pursuant to Article 27(b) taking effect, that payment in full occurs to the Infrastructure Owner, or at the option of the Infrastructure Owner HoldCo, to Infrastructure Owner HoldCo, of all amounts required to be paid pursuant to Article 27(b) and satisfaction of all applicable requirements with respect to Rail Services pursuant to Article 39. Only upon satisfaction of each of these conditions will the Infrastructure Owner HoldCo or Infrastructure Owner (as applicable) be obliged to transfer all of the Shares to the State (including all rights and liabilities attaching to such Shares following which, this Convention shall terminate with immediate effect subject to the provisions of Article 43. It is specifically agreed that for the purposes of this Article 32.3(c) and Article 27(b) that to the extent that any Project Infrastructure Assets are subject to third party rights, encumbered or otherwise unable to be transferred to the State as required, they shall only be transferred to the State when it is legally possible for such transfer to occur.
- (d) As from the date on which Notice of termination is given pursuant to Articles 32.1(b) (on the basis of Material Infrastructure Owner Breach) or 32.1(d) (on the basis of Other) and until such time as payment in full has been made of all amounts required to be paid pursuant to this Article 32, or expiry of the period for payment as referred to in Article 32.3(a), whichever happens earlier, the Infrastructure Owner shall:
 - (i) if requested to do so by Notice from the State, be obliged to take such steps as are necessary to keep the Project Infrastructure on a care and maintain basis; and
 - (ii) if requested to do so by Notice from the State, have the right, but not the obligation (subject to its obligations under any Rail Services Agreement), to continue to operate the Project Infrastructure for its own commercial benefit;subject in all cases to the requirements that:
 - (iii) any reasonable costs incurred by Infrastructure Owner in performing the obligations referred to in Article 32.3(d)(i) shall be added to the amounts required to be paid to it by the State pursuant to this Article 32.2 and paid in the same manner;
 - (iv) in the case of Notice of termination being given on the basis of Other FME pursuant to Article 32.1(d), Infrastructure Owner shall not be required to perform the obligations referred to in Article 32.3(d)(i) if, in view of the Other FME which has occurred, it would in the opinion of Infrastructure Owner, be unsafe or unreasonable for it to do so; and
 - (v) in the event that the State intends to make payment of all amounts required to be paid to the Infrastructure Owner pursuant to this Article 32, prior to the expiry of the period referred to in Article 32.3(a), then it shall give Notice of its intention to do so, no less than 30 Days' before, to Infrastructure Owner in order that Infrastructure Owner is able to take such steps as are required to wind down in an orderly manner the performance of its rights and obligations as set out in Articles 32.3(d)(i) or 32.3(d)(ii).
- (e) Any termination of this Convention which may occur pursuant to Article 2 shall not be subject to, nor trigger the application of, this Article 32.

32.4 Financing Parties' Step In Rights

- (a) The State shall not, in the circumstances to which Article 32.1(b) (Material Infrastructure Owner Breach) applies, give Notice of termination of this Convention

without first giving a Notice of its intention to terminate as required by Article 32.1 to Infrastructure Owner, and copied to each other Non State Party and the Senior Financing Parties, requiring the default to be remedied.

- (b) If the default remains unremedied for 90 Days after the date of the copy Notice being given pursuant to Article 32.4(a), then the Senior Financing Parties may, but shall have no obligation to:

- (i) remedy or procure the remedy of such default; or
- (ii) assume, or arrange for a substitute company or companies to assume, all of the interests, rights and obligations of the defaulting Infrastructure Owner under this Convention, Infrastructure Operator Agreement and any Rail Services Agreement,

at any time within 90 Days after the rights under this Article 32.4(b) have arisen, all pursuant to the terms of a direct agreement entered into by the State and any other person on behalf of the Senior Financing Parties.

- (c) If the Financing Parties or their nominees, as the case may be, remedies or procures the remedy of, the default by the Infrastructure Owner which was the subject of Notice of intention to terminate given by the State or have assumed all of the interests, rights and obligations of the defaulting Infrastructure Owner under this Convention, Infrastructure Operator Agreement and any Rail Services Agreement pursuant to this Article 32.4, the State shall not be entitled to terminate this Convention and the Notice of intention to terminate previously issued by it in respect of such default shall be deemed to have been withdrawn and be of no further effect, without prejudice to the State's rights under Article 29.

33 Settlement of Disputes

33.1 Prior Negotiation

The Parties agree to attempt to settle any dispute arising out of, relating to or in connection with this Convention amicably through negotiations. If the dispute has not been settled by negotiation within 90 Days following the notification in writing by one of the Parties of the existence of the dispute or within such other period as the parties may agree in writing, the dispute shall be finally settled by way of arbitration in accordance with Article 33.2.

33.2 Arbitration

- (a) Any dispute arising out of, relating to or in connection with this Convention that:

- (i) is not settled in accordance with Article 33.1; or
- (ii) is required by this Convention to become the subject of administered expertise proceedings and:
 - (A) if those proceedings have not resulted in, or will not be able to result in, a determination by the expert within 90 Days of the initiation of the expert determination procedure; or
 - (B) if there is manifest error in the determination by the expert,

shall be finally settled by the International Centre for the Settlement of Investment Disputes (the "**Centre**") pursuant to the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**ICSID Convention**"). It is hereby agreed that:

- (iii) Although Infrastructure Owner is a national of the **[Country]**, it is controlled by nationals of other Contracting States of the ICSID Convention and shall be treated as a national of other Contracting States for the purposes of the ICSID Convention.
- (iv) The transaction to which this Convention relates is an investment.
- (v) The arbitration proceedings shall be held in **[insert relevant venue]** and the language of arbitration shall be **[insert relevant language]**.

- (vi) Without prejudice to the power of the arbitral tribunal to recommend provisional measures, any party may request any judicial or other authority to order any provisional or conservatory measure, including attachment, prior to the institution of the arbitration proceeding, or during the proceeding, for the preservation of its rights and interests.
- (b) If for any reason a dispute referred to the Centre pursuant to Article 33.2(a) cannot be decided, in whole or in part, on the merits (in particular, but not exclusively, should the Centre refuse to register the request for arbitration or should the Centre or the arbitral tribunal find that it does not have jurisdiction to decide the dispute, in whole or in part), then the dispute (or that part of the dispute which cannot be decided on the merits) shall be finally resolved under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Paris and the language of arbitration shall be French.
- (c) The **[Country]** hereby waives irrevocably with respect to itself and its property any sovereign immunity from jurisdiction and execution from which it may benefit.

33.3 Applicable Law

The law applicable to this Convention is the law of **[Country]** and the rules of international law. With regard specifically to **[Country]** law, where it is silent, the arbitral tribunal shall refer in the first instance to **[Country]** case law, or failing that, to *[insert relevant jurisdiction]* case law relevant to the matter, in particular administrative law, or failing that, to general principles of law as applicable in *[insert relevant jurisdiction]*.

Section 10.: Final Provisions

34 Authorisation of Investment and of Transfer

- (a) Ratification of this Convention amounts to the authorisation for direct foreign investment in **[Country]**.
- (b) All transfers of funds to foreign destinations are hereby authorised to be carried out within the context of the Rail Project by Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors, both with regard to current operations and relating to capital transactions that might be otherwise restricted by Laws and Regulations relating to exchange control.

35 Precedence

- (a) In the event of any conflict between the provisions of this Convention and the PPP Law and the Laws and Regulations, the provisions of this Convention shall prevail.
- (b) In the event of any conflict between this Convention and any other Contractual Documents relating to the Project, the terms of this Convention will prevail.

36 Good Faith Behaviour

Each Party undertakes to transmit to the other Parties the legal instruments necessary to implement this Convention. In addition, each Party undertakes to conduct itself in a manner that will fully implement the provisions of this Convention, in the best interest of the Project.

37 Amendments

This Convention may only be amended by an amendment which will come into force according to the same procedures applicable to this Convention coming into force.

38 Assignment, Successors and Beneficiaries

- (a) This Convention binds the Parties, their successors and respective beneficiaries.
- (b) Any shareholder in Infrastructure Owner or Infrastructure Owner HoldCo may at any time assign or acquire part or all of its shares in Infrastructure Owner or Infrastructure Owner HoldCo (or any direct or indirect interest in those shares) as permitted by and in accordance with the applicable Shareholders Agreement (if any) and Articles of Association or by way of Security to those Financing Parties jointly providing finance directly to Infrastructure Owner, without the need for any approval Authorisation and free of any Taxes (payable by any Party or the transferring shareholder or new transferee shareholder).
- (c) The Parties agree that, notwithstanding any Law or Regulation to the contrary, Infrastructure Owner HoldCo may transfer some or all of its shares in Infrastructure owner or interest in such shares and Infrastructure Owner may transfer any Asset, or interest in such Asset, to a third party without:
 - (i) restriction and notwithstanding any change of control that may occur in relation to Infrastructure Owner or any other entity;
 - (ii) the need for any consent from the State or any Minister or any other person or entity; and
 - (iii) incurring any tax, levy, duty or other fiscal liability.

39 Ownership of Project Infrastructure Assets

39.1 Transfer of the Project Infrastructure upon expiry of Investment Repayment Period

- (a) On the last Day of the Investment Repayment Period Infrastructure Owner HoldCo or the Infrastructure Owner (as applicable) shall transfer all Shares to the State or an

entity owned by the State (as directed by the State) free of charge on an as is where is basis.

- (b) Infrastructure Owner and Infrastructure Owner HoldCo will do any act required to be done by Laws and Regulations in order to render the transfers provided for in Article 39.1(a) legally valid and binding, including obtaining all necessary Authorisations and taking all steps to transfer the Shares, and shall execute any document and take such other actions as may be necessary in order to effect a prompt and valid transfer.
- (c) On and from the Transfer Date, the State shall ensure that the Infrastructure Owner (including for the avoidance of doubt the State or any entity to which the Shares are transferred pursuant to Article 39.1(a)) complies with its obligations under this Convention, and any Rail Services Agreement.

40 Partial Waiver

Implicit or other waiver of the rights deriving from any provision of this Convention cannot be construed as a waiver of the rights deriving from other provisions (similar or not) of this Convention and any repudiation of this kind may only be temporary, unless the waiving Party has submitted a declaration in writing and duly signed to this effect.

41 Confidentiality

- (a) The State undertakes not to disclose to third parties or to use for the benefit of third parties any industrial, financial, commercial, scientific, technical or personal information supplied by Infrastructure Owner, Infrastructure Operator, the Project Contractors and their respective Affiliates or obtained by the State other than those naturally found in the public domain and regularly treated by Infrastructure Owner, and its Affiliates in a non-confidential manner, without the express prior consent of Infrastructure Owner.
- (b) Infrastructure Owner undertakes to treat as confidential any information of a similar nature that the State communicates to it.

42 Language of the Agreement and Measuring System

- (a) This Convention is written in *[insert relevant language]* language. All reports or other documents drawn up or to be drawn up pursuant to this Convention must be written in *[insert relevant language]*. However, the documents and appended papers may be presented in English, it being specified that in the event of understanding difficulties, Infrastructure Owner undertakes to have any important document or paper translated without delay.
- (b) The translation of this Convention into any other language will be carried out for the exclusive purpose of facilitating its understanding. In the event of any contradiction between the *[insert relevant language]* text and the text translated into a foreign language, the *[insert relevant language]* text shall prevail.
- (c) The measuring system used will be the metric system.

43 Continuation

When the general context so requires, the rights and obligations of Infrastructure Owner, and its respective Affiliates, of Infrastructure Operator, Infrastructure Owner HoldCo, and of the State shall survive beyond the Term of this Convention. This particularly will apply to this Article 43 and the Definitions and Articles 29, 31, 33, 34, 35, 38, 40, 41, 42, 44.

44 Notifications

44.1 Form of Notification

- (a) Any Notice under or in connection with this Convention shall be in writing and signed by an authorised representative of the sender.

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- (b) All Notices (other than email Notices) must be delivered to its addressee by registered letter or by a special courier to the address specified in Article 44.1(d)below.
- (c) Notices sent by email must be sent to the email address specified in Article 44.1(d)below. Email Notices must state the first and last name of the sender and are taken to be signed by the named sender.
- (d) For the purposes of this Convention, the relevant details for each Party for the service of Notices are as follows:
 - (i) For the **[Country]: [#]**:
 - Attention: [#]
 - Address: [#]
 - Email: [#]
 - Fax: [#]
 - (ii) For Infrastructure Owner:
 - Attention: [#]
 - Address: [#]
 - Email: [#]
 - Fax: [#]
 - (iii) For Infrastructure Owner HoldCo:
 - Attention: [#]
 - Address: [#]
 - Email: [#]
 - Fax: [#]
 - (iv) For Infrastructure Operator:
 - Attention: [#]
 - Address: [#]
 - Email: [#]
 - Fax: [#]

44.2 When effective

Notices take effect from the time they are received or deemed to have been received under Article 44.3 (whichever happens first) unless a later time is specified in the Notice.

44.3 Constructive Delivery

A Notice is deemed to have been received:

- (a) if delivered by hand or by special courier, on the Day of its delivery to its addressee subject to there being proof of receipt or by special courier;
- (b) if sent by post, the eighth working Day after posting; or
- (c) if sent by email:

- (i) when the sender receives an automated message confirming delivery; or
- (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

44.4 Other means of Notification

In the event of failure of the means of transmission contemplated herein, the Parties shall make use of any other means of transmission that enables them to ensure that the Notice has reached its addressee within the shortest possible time.

44.5 Change of Address

Any change of address, fax or email details of one Party shall be Notified to the other Parties within the shortest possible time.

44.6 Documents

Any documents addressed to any Party shall be sent using the details specified in Article 44.1(d) of this Convention.

44.7 Entire Agreement

This Convention constitutes the entire agreement of the Parties and supersedes all previous agreements, understandings and negotiations in respect of the Rail Project.

45 Entry into Force

- (a) This Convention, having been duly approved by the authorised bodies of, and signed by, the duly authorised representatives of the Parties, shall enter into force on **[insert relevant date or mechanism for fixing the date of commencement]**.
- (b) The Parties undertake to make every effort so that the Effective Date of this Convention shall occur with the least delay.

Pro-forma Rail Convention

Executed in [City]

On [*Insert*]

For the [Country]

The [Relevant Minister/s of State]

.....
[*Insert name*]

Pro-forma Rail Convention

For [RAIL PROJECT CO]

.....
[Insert]

For [RAIL PROJECT CO HOLD CO]

.....
[Insert]

For [RAIL PROJECT OPCO]

.....
[Insert]

Appendix 2

TAX AND CUSTOMS REGIME

[Insert applicable tax regime here]

Appendix 3

In-country Activities and State Enabling Activities

1 In-country Activities

[Note to draft: To reflect anticipated In-country Activities.]

- (a) Any necessary earthworks, dredging and construction
- (b) Any necessary road upgrades
- (c) Camp construction locations to be identified
- (d) Environmental activities to support field activities
- (e) Drilling activities
- (f) Housing review and update
- (g) Operational readiness review
- (h) Build up of project management and oversight team, engaging supplementary EPC and associated resources within country
- (i) Extensive government permitting and approvals activities
- (j) Enablers such as explosives and other consumables strategy, project fuel strategy, and logistics and freight strategy
- (k) Tender and submission of bankable estimate study components for large vertical turnkey packages
- (l) Packages to be tendered on the basis of in-country activities and representative offices by selected contractors
- (m) Validate & Consolidate Feasibility Study Information
- (n) Rail Feasibility Study Report
 - (i) Report
 - (ii) Integrated Estimate
 - (iii) Integrated Schedule

2 State Enabling Activities

The State undertakes to:

[Note to draft: Required State Enabling Activities to be considered and populated.]

- (a) establish the necessary dedicated administrative services to accommodate the volume of the project activities the necessary dedicated administrative services to accommodate the volume of the Project Activities;
- (b) in accordance with a schedule to be agreed with Infrastructure Owner within **[6]** months of the Effective Date which sets out milestone dates for implementation, establish rules, regulations, protocols, user guides or any other required documents in respect of all relevant tax and customs matters contemplated by this Convention, the Tax Annex and the Legislation in Force and achieve implementation within the period prescribed in the agreed schedule;
- (c) establish all necessary administrative authorities, systems and capabilities:
 - (i) for the purposes of land acquisition, resettlement and compensation in accordance with **[insert description of appropriate law or administrative order]**; and
 - (ii) so as to align the timing for the implementation of land acquisition for the Project Infrastructure (on the basis of scheduling information advised by the Infrastructure Owner);

- (d) ensure security measures and establish administrative measures and documentation, to be agreed with the Infrastructure Owner within [*insert*] months of the Effective Date, for the importation of dangerous goods, consumables, fuel, cement, plant, equipment and materials necessary for the construction and operation of the Project (including, without limitation, explosives, hydrocarbons and specialty chemicals);
- (e) issue all necessary visas in accordance with Article 18 for the purposes of constructing and operating the Project, as well as initial construction, expansion and operation of the Project (including, for the avoidance of doubt, an undertaking to issue upon request visas for the purposes of replacing workers from time to time and not to introduce or invoke quotas or other restrictions upon the numbers of visas that may be issued from time to time);
- (f) facilitate priority use of river and sea public domain; and
- (g) implement any other enabling activities that are reasonably necessary in connection with the construction of the Project Infrastructure,

(collectively, the "**State Enabling Activities**") within the period prescribed in each section in this Appendix 3 and, where no period is prescribed, within [*insert*] months of the Effective Date.

Appendix 4

Environmental Management Plan

[Note to draft: To be included once settled.]

Appendix 4

Appendix 5

Third Party Access Regime

[Note to draft: To be included once settled.]

Appendix 6

Community Development Plan

[Note to draft: To be included once settled.]

