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**GRANT NUMBER H595-ZR**

# **Financing Agreement**

**(Multimodal Transport Project)**

**between**

**DEMOCRATIC REPUBLIC OF CONGO**

**and**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**Dated July 14, 2010**

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**GRANT NUMBER H595-ZR**

**FINANCING AGREEMENT**

AGREEMENT dated July 14, 2010, entered into between the DEMOCRATIC REPUBLIC OF CONGO (“Recipient”) and the INTERNATIONAL DEVELOPMENT ASSOCIATION (“Association”). The Recipient and the Association hereby agree as follows:

**ARTICLE I — GENERAL CONDITIONS; DEFINITIONS**

- 1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

**ARTICLE II — FINANCING**

- 2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a grant in an amount equivalent to one hundred sixty eight million eight hundred thousand Special Drawing Rights (SDR 168,800,000) (“Financing”) to assist in financing the project described in Schedule 1 to this Agreement (“Project”).
- 2.02. The Recipient may withdraw the proceeds of the Financing in accordance with Section IV of Schedule 2 to this Agreement.
- 2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.
- 2.04. The Payment Dates are April 15 and October 15 in each year.
- 2.05. The Payment Currency is Dollar.

### **ARTICLE III — PROJECT**

- 3.01. The Recipient declares its commitment to the objectives of the Project. To this end, the Recipient shall carry out Parts B.3, B.4, B.5, C and D of the Project through the Ministry of Transport (MoT) and cause Part A of the Project to be carried out by the SNCC, Part B.1 (a) of the Project to be carried out by ONATRA, Part B.1 (b) of the Project to be carried out by RVA, Part B.1 (c) and B.2 of the Project to be carried out by RVF, and Part B.1 (d) of the Project to be carried out by RVM, all in accordance with the provisions of Article IV of the General Conditions and the Project Agreements.
- 3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

### **ARTICLE IV — REMEDIES OF THE ASSOCIATION**

- 4.01. The Additional Events of Suspension consist of the following:
  - (a) The Project Implementing Entities Legislations have been amended, suspended, abrogated, repealed or waived, in whole or in part, so as to affect materially and adversely the ability of the Project Implementing Entities to perform any of their respective obligations under the Project Agreements.
  - (b) A situation has arisen which shall make it improbable that the SNCC Recovery Plan, or a significant part of it, will be carried out.

### **ARTICLE V — EFFECTIVENESS; TERMINATION**

- 5.01. The Additional Conditions of Effectiveness consist of the following:
  - (a) The SNCC Subsidiary Agreement has been executed on behalf of the Recipient and the SNCC.
  - (b) The Recipient has modified the order establishing the CEPTM under terms of reference satisfactory to the Association, and has appointed the following staff to the Project Unit for Part A of the Project within the CEPTM to assist in managing Part A of the Project, all under terms of reference and with qualifications and experience satisfactory to the Association: a Project unit manager and experts in administration and finance, accounting, procurement, and monitoring and evaluation.

- (c) The Recipient has caused the CEPTM to adopt an Administrative Financial, Accounting and Procurement Manual (AFAPM) in a form and substance satisfactory to the Association.
- (d) The SNCC Stabilization Contract has been modified in form and substance satisfactory to the Association.

5.02. The Additional Legal Matters consist of the following:

- (a) The SNCC Subsidiary Agreement has been duly authorized or ratified by the Recipient and the SNCC and is legally binding upon the Recipient and the SNCC in accordance with its terms and the Recipient's laws.
- (b) The SNCC Retirement Plan Agreement has been duly authorized or ratified and is legally binding upon the Recipient and the SNCC in accordance with its terms

5.03. The Effectiveness Deadline is the date of one ninety (90) days after the date of this Agreement.

5.04. For purposes of Section 8.05 (b) of the General Conditions, the date on which the obligations of the Recipient under this Agreement shall terminate is ten years after the date of this Agreement.

**ARTICLE VI — REPRESENTATIVE; ADDRESSES**

6.01. The Recipient's Representative is the Recipient's minister responsible for finance.

6.02. The Recipient's Address is:

Minister of Finance  
Ministry of Finance  
*Boulevard du 30 juin*  
BP 12997  
Kinshasa I - Gombe  
Democratic Republic of Congo

Facsimile:

243 880 23 81

6.03. The Association's Address is:

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable:

Telex:

Facsimile:

INDEVAS  
Washington, D.C.

248423 (MCI)

1-202-477-6391

AGREED at Kinshasa, July 14, 2010, as of the day and year first above written.

**DEMOCRATIC REPUBLIC OF CONGO**

**By //s// Matata Ponyo Mapon**

**Authorized Representative**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**By //s// Marie Françoise Marie-Nelly**

**Authorized Representative**

## **SCHEDULE 1**

### **Project Description**

The objectives of the Project are (a) to improve transport connectivity in the Recipient's territory to support national economic integration, (b) to restore the SNCC's financial and operational viability, and (c) to implement a sector wide governance plan and strengthen transport state-owned enterprises' operational performances.

The Project consists of the following parts:

#### **Part A: SNCC Recovery Plan:**

1. Provision of support for the carrying out of the reform of SNCC management and operations through:

- (a) preparation, signing, implementation and independent monitoring of a five year management contract with a private operator selected in accordance with Section III of Schedule 2 of this Agreement;
- (b) financing of the payments of the departure indemnities and social security pension contributions of up to 1675 voluntarily departing retirees of the SNCC (who are eligible for retirement through December 31, 2012) pursuant to the SNCC-Unions Agreement dated May 26, 2009 as amended on February 13, 2010, and certification of each eligible retirees' departure indemnities and social security contribution by an independent auditor;
- (c) rehabilitation and upgrade of (i) railway tracks and (ii) rolling stock;
- (d) financing of eligible operational costs (mainly fuel, electricity and water bills, spare parts and locomotive leasing) of the SNCC;
- (e) provision of training for key new and existing SNCC personnel;
- (f) carrying out of monitoring activities and surveys related to the impact of the Project on rail passengers and voluntarily departing retirees;
- (g) preparation of a new tariff policy and model contract designed to mobilize future investment financing from mining companies to SNCC under terms satisfactory to the Association; and
- (h) carrying out of financial and procurement audits of SNCC financial accounts and procurement activities and preparation of new financial and procurement manuals for SNCC in form and substance satisfactory to the Association.

**Part B: Operational performance strengthening and improved governance of the sector**

1. Provision of transport and navigational equipment and carrying out studies for (a) ONATRA, (b) RVA, (c) RVF and (d) RVM.
2. Financing of the payments of the departure indemnities and social security pension contributions of up to 77 voluntarily departing retirees of the RVF.
3. Carrying out of an internal diagnostic of the MoT to recommend possible reorganizational scenarios and provision of training for selected MoT's staff and procurement of administrative/office equipment.
4. Carrying out of annual procurement and financial audits of ONATRA, RVA, and RVM.
5. Develop a transport sector wide governance plan which can be tailored for adoption by ONATRA, RVA, RVM and SNCC.

**Part C: International trade procedures simplification**

1. Development of an international trade procedures simplification strategy and the associated action plan (including actions related to materials, equipments and basic infrastructure investments) to facilitate the flow of goods along the Recipient's main international trade transport corridors, in line with the Recipient's international trade agreements commitments and the results and recommendations of the study on the facilitation of international trade.

**Part D: Project management**

1. Provision of support to carry out Project management activities assigned to the CEPTM Project Unit for Part A of the Project.
2. Provision of support to carry out Project management activities, other than under paragraph 1 above.



## SCHEDULE 2

### Project Execution

#### Section I. Implementation Arrangements

##### A. Institutional Arrangements

1. The Recipient shall maintain, throughout the implementation of the Project, a Project Steering Committee (PSC), including high-level representatives of the Recipient's concerned ministries and entities with terms of reference, composition and resources satisfactory to the Association, which shall be responsible for providing overall strategic guidance for the Project at the national level.
2. The MoT shall be responsible for the: (a) overall coordination and facilitation of the implementation of the Project; (b) examination of the consolidated progress reports for the Project submitted by the CEPTM; (c) resolution of any conflicts that may arise between the different entities involved in the implementation of the Project; and (d) follow-up on the orientations and recommendations of the PSC.
3. The Recipient shall maintain the CEPTM, including a Project Unit for Part A of the Project based in Lubumbashi and a Project Unit for Parts B and C of the Project based in Kinshasa, throughout implementation of the Project, all with terms of reference, composition and resources satisfactory to the Association, which, *inter alia*, shall be responsible for the: (a) day-to-day financial management of the Project, including audits and management of the Designated Accounts; (b) oversight of all technical, social, and environmental matters relating to Project implementation; (c) monitoring and evaluation of Project activities; (d) carrying out of the procurement of goods, works and services of the Project; and (e) managing of any Training activity carried out under the Project.
4. The Recipient shall cause the SNCC to establish by not later than March 31, 2011 and thereafter maintain an Environmental Unit throughout implementation of the Project, with terms of reference, composition and resources satisfactory to the Association, responsible for the coordination and follow-up activities related to managing the environmental and social impacts of SNCC activities and safety of the SNCC railway transport network.

**B. Subsidiary Agreement**

1. To facilitate the carrying out of Part A of the Project, the Recipient shall make part of the proceeds of the Financing available in the form of a grant to the SNCC under a subsidiary agreement between the Recipient and the SNCC, under terms and conditions approved by the Association, which shall include (a) the principal amount of such financing denominated in Dollars; (b) the Recipient's right to suspend, terminate or seek refund, of such financing to the SNCC in the event the SNCC fails to perform its obligations under the subsidiary agreement; and (c) the rights and obligations of the SNCC and the Recipient, including the obligation of the Recipient to promptly transfer the ownership of goods and equipment purchased by the Recipient for the SNCC ("SNCC Subsidiary Agreement").
2. To facilitate the carrying out of Part B.1 (a) of the Project, the Recipient shall make part of the proceeds of the Financing available in the form of a grant to the ONATRA under a subsidiary agreement between the Recipient and the ONATRA, under terms and conditions approved by the Association, which shall include (a) the principal amount of such financing denominated in Dollars; (b) the Recipient's right to suspend, terminate or seek refund, of such financing to the ONATRA in the event the ONATRA fails to perform its obligations under the subsidiary agreement; and (c) the rights and obligations of the ONATRA and the Recipient ("ONATRA Subsidiary Agreement").
3. To facilitate the carrying out of Part B.1 (b) of the Project, the Recipient shall make part of the proceeds of the Financing available in the form of a grant to the RVA under a subsidiary agreement between the Recipient and the RVA, under terms and conditions approved by the Association, which shall include (a) the principal amount of such financing denominated in Dollars; (b) the Recipient's right to suspend, terminate or seek refund, of such financing to the RVA in the event the RVA fails to perform its obligations under the subsidiary agreement; and (c) the rights and obligations of the RVA and the Recipient ("RVA Subsidiary Agreement").
4. To facilitate the carrying out of Parts B.1 (c) and B.2 of the Project, the Recipient shall make part of the proceeds of the Financing available in the form of a grant to the RVF under a subsidiary agreement between the Recipient and the RVF, under terms and conditions approved by the Association, which shall include (a) the principal amount of such financing denominated in Dollars; (b) the Recipient's right to suspend, terminate or seek refund, of such financing to the RVF in the event the RVF fails to perform its obligations under the subsidiary agreement; and (c) the rights and obligations of the RVF and the Recipient ("RVF Subsidiary Agreement").

5. To facilitate the carrying out of Part B.1 (d) of the Project, the Recipient shall make part of the proceeds of the Financing available in the form of a grant to the RVM under a subsidiary agreement between the Recipient and the RVM, under terms and conditions approved by the Association, which shall include (a) the principal amount of such financing denominated in Dollars; (b) the Recipient's right to suspend, terminate or seek refund, of such financing to the RVM in the event the RVM fails to perform its obligations under the subsidiary agreement; and (c) the rights and obligations of the RVM and the Recipient ("RVM Subsidiary Agreement").
6. The Recipient shall exercise its rights and carry out its obligations under the Subsidiary Agreements in such manner as to protect the interests of the Recipient and the Association and to accomplish the purposes of the Financing. Except as the Association shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive the Subsidiary Agreements or any of their provisions.

**C. Anti-Corruption**

1. The Recipient shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines and the Anti-Corruption Plan.

**D. Manual**

1. Except as the Association shall otherwise agree, the Recipient shall carry out the Project and/or cause the project to be carried out in accordance with the AFAPM, and except as the Association shall otherwise agree, not amend, abrogate, waive, or permit to be amended, abrogated, or waived, the aforementioned, or any provision thereof, without the prior written agreement of the Association.
2. In the event of any conflict between the provisions of the AFAPM and those of this Agreement, the provisions of this Agreement shall prevail.

**E. Safeguards**

1. The Recipient shall carry out the Project, and/or cause the Project to be carried out, in accordance with the ESMF, RPF and the IPDF.
2. The Recipient shall: (a) ensure that all measures necessary for the carrying out of the ESMF, RPF and IPDF are taken in a timely manner; (b) ensure that adequate resources are made available for the proper implementation of the ESMF, RPF and IPDF; and (c) ensure that the Project Reports referred to in Section II of this Schedule will include adequate information on monitoring the measures defined in the ESMF, RPF and IPDF.

3. The Recipient shall not suspend, amend, abrogate, waive or otherwise modify, whether in whole or in part, any of provision of the ESMF, RPF and IPDF without the prior written agreement of the Association.
4. The Recipient shall carry out and cause the Project Implementing Entities to carry out the Project in accordance with the provisions of the Environmental Management Plan (EMP), the Environmental and Social Impact Assessment (ESIA), the Resettlement Action Plan (RAP), the Indigenous People Plan (IPP), as the case may be, under terms and conditions satisfactory to the Association and, except as the Association shall otherwise agree, the Recipient shall not amend, abrogate, or waive, or permit to be amended, abrogated, or waived, the aforementioned, or any provision of either one thereof, without the prior written agreement of the Association.
5. In the event of any conflict between the provisions of the ESMF, RPF, IPDF, EMP, ESIA, RAP or IPP, and those of this Agreement, the provisions of this Agreement shall prevail.

## **Section II. Project Monitoring, Reporting and Evaluation**

### **A. Project Reports**

1. The Recipient shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of the indicators agreed with the Association. Each Project Report shall cover the period of one calendar semester, and shall be furnished to the Association not later than forty-five (45) days after the end of the period covered by such report.
2. For purposes of Section 4.08 (c) of the General Conditions, the report on the execution of the Project and related plan required pursuant to that Section shall be furnished to the Association not later than six months after the Closing Date.

### **B. Financial Management, Financial Reports and Audits**

1. The Recipient shall establish or cause to establish by not later than three (3) months following the Effectiveness Date and thereafter maintain or cause to be maintained a financial management system (including related staff, software and an internal auditor for the Project Unit for Part A of the Project and an internal auditor and accountant for the Project Unit for Parts B and C of the Project under terms and with qualifications satisfactory to the Association) in accordance with the provisions of Section 4.09 of the General Conditions.

2. Without limitation on the provisions of Part A of this Section, the Recipient shall prepare and furnish to the Association as part of the Project Report not later than forty-five (45) days after the end of each quarter, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Association.
3. The Recipient shall have its Financial Statements audited in accordance with the provisions of Section 4.09 (b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one fiscal year of the Recipient, commencing with the fiscal year in which the first withdrawal was made under the Preparation Advance of the Project. The audited Financial Statements for each such period shall be furnished to the Association not later than six months after the end of such period.

### **Section III. Procurement**

#### **A. General**

1. **Goods, Works and Non-consultant Services.** All goods, works and non-consultant services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.
2. **Consultants' Services.** All consultants' services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.
3. **Definitions.** The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular contracts, refer to the corresponding method described in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

#### **B. Particular Methods of Procurement of Goods, Works and Non-consultant Services**

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods, works and non-consultant services shall be procured under contracts awarded on the basis of International Competitive Bidding.
2. **Other Methods of Procurement of Goods, Works and Non-consultant Services.** The following table specifies the methods of procurement, other than International Competitive Bidding, which may be used for goods, works and

non-consultant services. The Procurement Plan shall specify the circumstances under which such methods may be used:

<b>Procurement Method</b>
(a) National Competitive Bidding
(b) Limited International Bidding
(c) Direct Contracting
(d) Force Account
(e) Shopping

**C. Particular Methods of Procurement of Consultants' Services**

- 1. Quality- and Cost-based Selection.** Except as otherwise provided in paragraph 2 below, consultants' services shall be procured under contracts awarded on the basis of Quality and Cost-based Selection.
- 2. Other Methods of Procurement of Consultants' Services.** The following table specifies methods of procurement, other than Quality and Cost-based Selection, which may be used for consultants' services. The Procurement Plan shall specify the circumstances under which such methods may be used.

<b>Procurement Method</b>
(a) Selection based on Consultants' Qualifications
(b) Least Cost Selection
(c) Single Source Selection
(d) Selection of Individual Consultants
(e) Quality Based Selection

**D. Review by the Association of Procurement Decisions**

- 1.** The Procurement Plan shall set forth those contracts which shall be subject to the Association's Prior Review. All other contracts shall be subject to Post Review by the Association.

**Section IV. Withdrawal of the Proceeds of the Financing**

**A. General**

1. The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Association shall specify by notice to the Recipient (including the “World Bank Disbursement Guidelines for Projects” dated May 2006, as revised from time to time by the Association and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.
2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Financing (“Category”), the allocations of the amounts of the Financing to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

<b>Category</b>	<b>Amount of the Grant Allocated (expressed in SDR)</b>	<b>Percentage of Expenditures to be Financed (inclusive of Taxes)</b>
(1) (a) Goods, works, non-consultant services, and consultants’ services and Operating Costs for Part A.1 (other than Part A.1 (b) and Part A.1 (c) (ii)) of the Project	114,390,000	100%*
(b) SNCC departure indemnities and social security pension contributions under Part A.1 (b) of the Project	13,240,000	100%
(c) Goods under Part A.1 (c) (ii) of the Project	17,210,000	100%*
(2) Goods, works, non-consultant services and consultants’ services for Part B.1 (a) of the Project	5,560,000	100%*
(3) Goods, works, non-consultant services and consultants’ services for Part B.1 (b) of the Project	6,620,000	100%*
(4) (a) Goods, works, non-consultant services and consultants’ services for Parts B.1 (c) of the Project	2,050,000	100%*
(b) RVF departure indemnities and social security pension contributions under Part B.2 of the Project	500,000	100%

(5) Goods, works, non-consultant services and consultants' services for Part B.1 (d) of the Project	930,000	100%*
(6) (a) Goods, works, non-consultant services and consultants' services for Part D.1 of the Project Operating Costs of Project Unit for Part A	2,330,000	100%*
(6) (b) Goods, works, non-consultant services and consultants' services for Parts B.3, B.4, B.5, C and D.2 of the Project	4,630,000	100%*
(7) Refund of Preparation Advance	1,340,000	Amount payable pursuant to Section 2.07 of the General Conditions
<b>TOTAL AMOUNT</b>	<b>168,800,000</b>	

\* Exclusive of taxes on turnover, import rights and all applicable import taxes and fees

**B. Withdrawal Conditions; Withdrawal Period**

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made:

(a) For payments made prior to the date of this Agreement, except that withdrawals up to an aggregate amount not to exceed \$51,000,000 equivalent may be made for payments made within one year prior to this date but on or after June 30, 2009 for Eligible Expenditures under the Project.

(b) (i) Under Category (1) (b) for: (i) a first installment for the payment of departure indemnities and social security pension contributions of all SNCC eligible voluntarily departed retirees as of the Effectiveness Date, unless Recipient has provided evidence satisfactory to the Association that the salary arrears, departure indemnities and social security pension contributions and any outstanding SNCC social debt of these retirees have been fully accounted and certified, under terms and conditions satisfactory to the Association, by an independent auditor under terms and conditions satisfactory to the Association; and (ii) subsequent quarterly installments for the payment of departure indemnities and social security pension contributions of additional SNCC eligible voluntarily departed retirees unless the Recipient has provided the same type of evidence as under paragraph (i) above.

(ii) Under Category (1) (c) unless the Recipient has provided evidence satisfactory to the Association that SNCC has adopted a legal asset



protection plan for its rolling stock, satisfactory to the Association and consistent with Recipient law.

(iii) Under Category (2) unless the Recipient has provided evidence satisfactory to the Association that:

- the Recipient has adopted the reform strategy note for ONATRA under terms and conditions satisfactory to the Association; and
- ONATRA Subsidiary Agreement has been executed on behalf of the Recipient and ONATRA and a legal opinion of counsel acceptable to the Association has been issued showing that said agreement has been duly authorized or ratified by the Recipient and ONATRA and is legally binding upon the Recipient and ONATRA in accordance with its terms.

(iv) Under Category (3) unless the Recipient has provided evidence satisfactory to the Association that the RVA Subsidiary Agreement has been executed on behalf of the Recipient and the RVA and a legal opinion of counsel acceptable to the Association has been issued showing that said agreement has been duly authorized or ratified by the Recipient and RVA and is legally binding upon the Recipient and RVA in accordance with its terms.

(v) Under Category (4) (a) and (b) unless the Recipient has provided evidence satisfactory to the Association that the RVF Subsidiary Agreement has been executed on behalf of the Recipient and the RVF and a legal opinion of counsel acceptable to the Association has been issued showing that said agreement has been duly authorized or ratified by the Recipient and RVF and is legally binding upon the Recipient and RVF in accordance with its terms.

(vi) Under Category (4) (b) unless the Recipient has provided evidence satisfactory to the Association that the salary arrears for the employees of the RVF have been fully accounted, certified and paid by the RVF, or alternatively by the Recipient, to the RVF employees and voluntarily departing eligible employees pursuant to the RVF Retirement Plan Agreement in accordance with the Recipient's laws.

(vii) Under Category (5) unless the Recipient has provided evidence satisfactory to the Association that the RVM Subsidiary Agreement has been executed on behalf of the Recipient and the RVM and a legal opinion of counsel acceptable to the Association has been issued showing that said agreement has been duly authorized or ratified by the

Recipient and RVM and is legally binding upon the Recipient and RVM in accordance with its terms.

2. The Closing Date is December 31, 2015.

**Section V. Other Undertakings**

1. The Recipient shall by not later than December 31, 2011 adopt the governance plan referred to in Part B.5 of the Project under terms satisfactory to the Association and immediately thereafter take all measures and provide sufficient resources to implement said plan in a manner satisfactory to the Association and shall not suspend, amend, abrogate, waive or otherwise modify, whether in whole or in part, any provision of said plan without the prior written agreement of the Association.
2. The Recipient shall cause the Project Implementing Entities to respectively adopt by not later than June 30, 2012 the tailored governance plans referred to in Part B.5 of the Project under terms satisfactory to the Association and immediately thereafter take all measures and provide sufficient resources to implement said plans in a manner satisfactory to the Association and shall not suspend, amend, abrogate, waive or otherwise modify, whether in whole or in part, any of provision of said plans without the prior written agreement of the Association.
3. The Recipient shall by not later than December 31, 2010 hire external financial and procurement auditors for the SNCC, ONATRA, RVA, and RVM and an external financial auditor for the CEPTM under terms and conditions and with qualifications and experience satisfactory to the Association.
4. The Recipient shall cause the Project Implementing Entities by not later than January 1, 2013 to maintain for the remainder of the implementation of the Project the expenses related to their respective Board of Directors at or below the rate of 0.5% of the annual turnover of their respective companies.
5. The Recipient shall throughout the implementation of the Project avoid, and shall cause entities under its authority to avoid, taking any action or omitting to take any action which might jeopardize the financial and operational viability of the Project Implementing Entities.
6. The Recipient shall ensure that the Project Implementing Entities do not, throughout the implementation of the Project, enter into arrangements or contracts (including employees' promotions and salary increases) that could materially and/or adversely affect the ability of the Project Implementing Entities to perform any of their respective obligations under the Project Agreements

and/or affect their financial viability, unless otherwise agreed in writing with the Association.

7. The Recipient shall adopt by not later than December 31, 2011 a national plan for the cross-debt annulment of state owned enterprises, including the Project Implementing Entities, under terms and conditions satisfactory to the Association and shall cause said entities to implement the plan thereafter.
8. The Recipient shall cause the SNCC by not later than December 31, 2011 to enter into a management contract with a private operator referred to in Part A.1 (a) of the Project under terms and conditions satisfactory to the Association and shall not suspend, amend, abrogate, waive or otherwise modify, whether in whole or in part, any of provision of said contract without the prior written agreement of the Association.
9. The Recipient shall maintain and carry out the SNCC Stabilization Contract until such date as the private operator and the SNCC shall have signed the management contract referred to in Part A.1 (a) of the Project and paragraph (8) above, under terms satisfactory and conditions satisfactory to the Association and shall not suspend, amend, abrogate, waive or otherwise modify, whether in whole or in part, any provision of said contract without the prior written agreement of the Association.
10. The Recipient shall provide, promptly as needed, the funds, facilities, goods, services and other resources required for the Project and shall allocate by not later than October 31, 2010 the necessary resources in its annual budget for the purpose of the Project. Without limitation to this, the Recipient shall:
  - (a) open and maintain an account by not later than September 15, 2010 (the Counterpart Account) in a commercial bank on terms and conditions satisfactory to the Association;
  - (b) promptly thereafter, and by no later than September 30, 2010, make an initial deposit into the Counterpart Account, in an amount equivalent to US\$22,000,000 and by not later than June 30, 2011 add an amount equivalent to US\$22,000,000 to finance the Recipient's financial contribution to the Project;
  - (c) ensure that amounts deposited into the Counterpart Account shall be used exclusively to finance expenditures made or to be made by SNCC in respect of reasonable cost of works, goods and services for the Project.
11. The Recipient shall cause the SNCC to carry out the SNCC Retirement Plan Agreement under terms satisfactory to the Association and shall ensure that the SNCC shall not suspend, amend, abrogate, waive or otherwise modify, whether

in whole or in part, any of provision of said agreement without the prior written agreement of the Association

12. (a) The Recipient shall cause the SNCC to carry out by not later than March 31, 2011 a plan for the liquidation of the SNCC salary arrears and social debt, not financed with the financial assistance of the Association, for all its employees and voluntarily departed eligible retirees as of December 31, 2010, under terms satisfactory to the Association.
- (b) To this effect, the Recipient shall:
  - (i) By not later than January 31, 2011 or any other later date agreed with the Association, adopt the report, prepared under terms satisfactory to the Association, by an independent auditor, hired under terms and qualifications and experience satisfactory to the Association, certifying the amount of salary arrears and outstanding social debt owed by the SNCC to its employees and voluntarily departed retirees of the SNCC as of December 31, 2010, under terms satisfactory to the Association.
  - (ii) Unless otherwise agreed with the Association, by not later than March 31, 2011, March 31, 2012, March 31, 2013, March 31, 2014 and March 31, 2015, deposit or cause the SNCC to deposit the sum equivalent to 20% of the certified amount referred to paragraph (i) above in a commercial bank account, under terms satisfactory to the Association, and thereafter promptly pay or cause the SNCC to promptly pay the *pro rata* amounts to each employee of the SNCC and each of the voluntarily departed retirees of the SNCC on account of salary arrears and outstanding social debt not financed by the Association, in accordance with the Recipient's law.
13. The Recipient shall cause the Project Implementing Entities to prepare and implement by not later than December 31, 2011 and throughout the implementation of the Project an HIV/AIDS prevention and treatment program under terms and conditions satisfactory to the Association.

## APPENDIX

### Section I. Definitions

1. “Administrative Financial, Accounting and Procurement Manual” or “AFAPM” means the manual outlining the administrative, financial, accounting and procurement arrangements for the implementation of the Project, as the same may be amended by agreement of the Recipient and the Association from time to time, and such term includes any schedules to the AFAPM.
2. “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006 with the modifications set forth in Section III of this Appendix.
3. “Anti-Corruption Plan” means the Recipient’s anti-corruption action plan to be adopted by the Recipient of this Agreement which sets forth the measures and actions to be taken during implementation of the Project with respect to disclosure, civil society oversight, collusion mitigation, mitigation of forgery and fraud, complaints handling and sanctions and remedies.
4. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement.
5. “*Cellule d’Execution du Projet de Transport Multimodal*” or “CEPTM” is the Project management entity in charge of the overall management of the Project pursuant to the Recipient’s Decree No. 409/CAB/MIN/TVC/016/2010 dated February 16, 2010 (which Decree is to be amended under Section 5.01 (b) of this Agreement) and which shall include the Project Unit for Part A of the Project and the Project Unit for Parts B and C of the Project (both as defined hereinafter).
6. “Consultant Guidelines” means the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” published by the Bank in May 2004 and revised in October 2006 and May 2010.
7. “Counterpart Account” means the account to be opened by the Recipient under terms satisfactory to the Association pursuant to paragraph 10 of Section V of Schedule 2 to this Agreement.
8. “Designated Accounts” means the account to be opened and maintained by the Recipient in accordance with the provisions of Article II of the General Conditions, Section IV.A.1 of Schedule 2 of this Agreement, and such additional instructions as the Association shall specify by notice to the Recipient (including the “World Bank Disbursement Guidelines for Projects” dated May 2006, as revised from time to time by the Association).

9. “Displaced Person(s)” means any person who, on account of the execution of the Project, has experienced or would experience direct economic and social impacts caused by: (a) the involuntary taking of land, resulting in (i) relocation or loss of shelter; (ii) loss of assets or access to assets; or (iii) loss of income sources or means of livelihood, whether or not such person must move to another location; or (b) the involuntary restriction of access to legally designated parks and protected areas, resulting in adverse impacts on the livelihood of such person.
10. “Environmental and Social Impact Assessment” or “ESIA” means an environmental and social impact assessment of a particular activity under the Project, required pursuant to the ESMF, which is acceptable to the Association, giving details of the status of the natural environment, social and potential risks and adverse impacts thereto, which are specific to the activity, along with proposed mitigation measures and “ESIAs” means all of them collectively.
11. “Environmental and Social Management Framework” or “ESMF” means the Recipient’s framework, dated January 21, 2010, setting out the rules, guidelines and procedures to assess environmental and social impacts of the Project’s activities, and measures to reduce, mitigate or offset adverse social and environmental impacts and enhance positive impacts of said activities including public consultation, institutional arrangements for the implementation, monitoring and supervision of said measures, as the ESMF may be amended from time to time with the prior written approval of the Association.
12. “Environmental Management Plan” or “EMP” means an environmental management plan required pursuant to the ESMF for an activity proposed to be included under the Project, which is acceptable to the Association, giving details of measures appropriate or required to maximize the benefits of the Project, eliminate, offset or mitigate any adverse environmental impacts, or reduce such impacts to acceptable levels, together with budget and cost estimates, sources of funding, adequate institutional, monitoring and reporting arrangements capable of ensuring proper implementation of, and regular feedback on compliance with, such Environmental Management Plan, and “EMPs” means all of them collectively.
13. “Environmental Unit” means the Recipient’s entity to be established pursuant to Section I.A.4 of Schedule 2 to this Agreement.
14. “Fiscal Year” means the period between January 1 and December 31 for the calendar years 2010 to 2020.
15. “General Conditions” means the “International Development Association General Conditions for Credits and Grants”, dated July 1, 2005 (as amended through October 15, 2006), with the modifications set forth in Section II of this Appendix.

16. “Indigenous Peoples Development Framework” or “IPDF” means the Recipient’s document dated January 21, 2010, defining specific measures to be implemented for the indigenous population in order to protect them and to ensure that members of said minorities be granted equal legal, financial and organizational opportunities under the Project.
17. “Indigenous Peoples Plan” or “IPP” means the Recipient’s plan to be prepared for a particular activity under the Project, required pursuant to the IPDF, and which is satisfactory to the Association, describing the measures and processes to be implemented in accordance with said framework, as such plan may be amended from time to time with the prior written approval of the Association, and “RAPs” means all of them collectively.
18. “Ministry of Finance” or “MoF” means the Recipient’s ministry in charge of finance or its successor thereof acceptable to the Association.
19. “Ministry of Transportation” or “MoT” means the Recipient’s ministry in charge of transport, or its successor thereof acceptable to the Association.
20. “*Office National des Transports*” or “ONATRA” means the Recipient’s public enterprise legally established in charge of transports at the national level pursuant to the Recipient’s Decree of the Prime Minister No. 0051 dated November 7, 1995
21. “ONATRA Subsidiary Agreement” means the agreement referred to in Section I.B.2 of Schedule 2 to this Agreement pursuant to which the Recipient shall make part of the proceeds of the Financing available to the ONATRA.
22. “Operating Costs” means the incremental expenses incurred by the Recipient on account of Project implementation, management, and monitoring, for office space rental, utilities, and supplies, bank charges, communications, vehicle operation, maintenance, and insurance, building and equipment maintenance, advertising expenses, travel and supervision (including supervision activities in connection with Part A of the Project), salaries of contractual and temporary staff, but excluding salaries, fees, *honoraria*, and bonuses of members of the Recipient’s civil service.
23. “Preparation Advance” means the advance referred to in Section 2.07 of the General Conditions, granted by the Association/Bank to the Recipient pursuant to the letter agreement signed on behalf of the Association/Bank on March 29, 2007 and November 3, 2009 and on behalf of the Recipient on May 3, 2007 and November 24, 2009 respectively.

24. “Procurement Guidelines” means the “Guidelines: Procurement under IBRD Loans and IDA Credits” published by the Bank in May 2004 and revised in October 2006 and May 2010.
25. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated November 16, 2009 and referred to in paragraph 1.16 of the Procurement Guidelines and paragraph 1.24 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.
26. “Project Agreements” means the agreements of even date entered between on the one hand the Association and on the other the Project Implementing Entities: ONATRA, RVA, RVF, RVM, SNCC respectively.
27. “Project Implementing Entities” means together the SNCC, ONATRA, RVA, RVF and RVM.
28. “Project Implementing Entities Legislations” means the following decrees and laws cited under paragraphs 18, 30, 32, 35 and 39 as well as the Recipient’s laws on the transformation of the largest state owned enterprises into commercial companies dated July 7, 2008 as well as the Recipient’s Decrees No. 09/11 and No. 09/12 dated April 24, 2009.
29. “Project Steering Committee” or “PSC” means the Recipient’s committee established pursuant to the Recipient’s Decrees No. 409/CAB/MIN/TVC/011/2009 and No. 007/MIMPF/LM/OOA/JML/2009 dated June 15, 2009.
30. “Project Unit for Part A of the Project” means the unit within CEPTM based in Lubumbashi to manage the implementation of Part A of the Project under terms and conditions, with resources and with qualified and experience staff satisfactory to the Association.
31. “Project Unit for Parts B and C of the Project” means the unit within CEPTM based in Kinshasa to manage the implementation of Parts B and C of the Project under terms and conditions, with resources and with qualified and experience staff satisfactory to the Association.
32. “*Régie des Voies Aériennes*” or “RVA” means the Recipient’s state-owned enterprise legally established in charge of air transports pursuant to the Recipient’s Order-Law No. 72-013 dated January 21, 1972, Order No. 80-202 dated August 14, 1980 and Order No. 78-200 dated May 5, 1978.
33. “*Régie des Voies Fluviales*” or “RVF” means the Recipient’s state owned enterprise legally established and in charge of fresh water transports pursuant to



the Recipient's Order-Law No. 71-004 dated January 26, 1971, Decree No. 09/12 dated April 24, 2009 and Decree No. 09/60 dated December 3, 2009.

34. “*Régie des Voies Maritimes*” or “RVM” means the Recipient’s state owned enterprise legally established and in charge of maritime transports pursuant to the Recipient’s Order-Law No. 71-003 dated January 26, 1971 as modified by the Recipient’s law No. 008/2002 on the transformation of the largest SOEs into commercial companies and the Decree No. 9/12 dated April 24, 2009.
35. “Resettlement Action Plan” or “RAP” means the resettlement action plan for a particular activity under the Project, required pursuant to the Resettlement Policy Framework (as defined hereinafter), and which is satisfactory to the Association, describing the social impacts of such activity and providing measures for the compensation, resettlement and rehabilitation of Displaced Persons including institutional arrangements for implementation, supervision and monitoring of such measures, budget, environmental protection, participation and consultation of Displaced Persons and grievance processes available to them, as such plan may be amended from time to time with the prior written approval of the Association, and “RAPs” means all of them collectively.
36. “Resettlement Policy Framework” or “RPF” means the Recipient's policy framework, dated January 21, 2010, providing procedures and guidelines for the preparation, adoption, implementation, supervision and monitoring of a Resettlement Action Plan or Plans, as said framework may be amended from time to time with the prior written approval of the Association.
37. “RVA Subsidiary Agreement” means the agreement referred to in Section I.B.3 of Schedule 2 to this Agreement pursuant to which the Recipient shall make part of the proceeds of the Financing available to the RVA.
38. “RVF Retirement Plan Agreement” means the agreement to be entered into between the RVF and the staff of the RVF under terms satisfactory to the Association for the payment of the salary arrears and departure indemnities and social security pension contributions owed to the voluntarily departed retirees of the RVF.
39. “RVF Subsidiary Agreement” means the agreement referred to in Section I.B.4 of Schedule 2 to this Agreement pursuant to which the Recipient shall make part of the proceeds of the Financing available to the RVF.
40. “RVM Subsidiary Agreement” means the agreement referred to in Section I.B.5 of Schedule 2 to this Agreement pursuant to which the Recipient shall make part of the proceeds of the Financing available to the RVM.

41. “*Société Nationale du Chemin de Fer du Congo*” or “SNCC” means the Recipient’s state owned enterprise established and operating pursuant to the Recipient’s Decree No. 0050, dated November 7, 1995 “*portant création et statuts d’une entreprise publique dénommée SNCZ*”.
42. “SNCC Recovery Plan” means the plan adopted by the Recipient’s *Commission Economique et de Reconstruction* (Economic and Reconstruction Commission - ECOREC) on December 22, 2009 to delineate the various restructuring steps of the SNCC over years 2010-2015 as well as the Recipient’s commitment to complement the Association’s financing using its own funds.
43. “SNCC Subsidiary Agreement” means the agreement referred to in Section I.B.1 of Schedule 2 to this Agreement pursuant to which the Recipient shall make part of the proceeds of the Financing available to the SNCC.
44. “SNCC Retirement Plan Agreement” means the plan for the payment of departure indemnities and social security pension contributions and salary arrears agreed between the SNCC and the unions of workers representing the staff of the SNCC, dated May 26, 2009, as amended on February 13, 2010, as said agreement may be further amended from time to time, including all appendices, schedules and supplemental agreements.
45. The "SNCC Stabilization Contract" means the contract entered into between SNCC and the firm Vecturis SA in form and substance satisfactory to the Association and which may be amended from time to time and includes all appendices, annexes and supplementary agreements to the SNCC Stabilization Contract.
46. “SNCC Management Contract” means the contract, in form and substance satisfactory to the Association, to be entered into between the Recipient and a private sector firm or company recruited in accordance with the provisions of Section III of Schedule 2 to this Agreement for the management of the business and operations of SNCC (as hereinafter defined) under the Project.
47. “SNCC – Unions Agreement” means the agreement agreed between the SNCC and the unions of workers representing the staff of the SNCC, dated May 26, 2009, as amended on February 13, 2010, as said agreement may be further amended from time to time, including all appendices, schedules and supplemental agreements.
48. “Subsidiary Agreements” means the agreements referred to in Section I.B of Schedule 2 to this Agreement pursuant to which the Recipient shall make part of the proceeds of the Financing available to the SNCC, ONATRA, RVA, RVF and RVM respectively.

49. “Training” means the training and training-related activities, including seminars, workshops and study tours, travel and subsistence allowances for training participants, trainers’ fees, rental of training facilities, preparation and reproduction of training materials and other activities incidental to the preparation and implementation of training activities.

**Section II. Modifications to the General Conditions**

The modifications to the General Conditions for Credits and Grants of the Association, dated July 1, 2005 (as amended through October 15, 2006) are as follows:

1. Section 2.07 is modified to read as follows:

“Section 2.07. *Refinancing Preparation Advance*

If the Financing Agreement provides for the repayment out of the proceeds of the Financing of an advance made by the Association or the Bank (“Preparation Advance”), the Association shall, on behalf of the Recipient, withdraw from the Financing Account on or after the Effective Date the amount required to repay the withdrawn and outstanding balance of the advance as at the date of such withdrawal from the Financing Account and to pay all accrued and unpaid charges, if any, on the advance as at such date. The Association shall pay the amount so withdrawn to itself or the Bank, as the case may be, and shall cancel the remaining unwithdrawn amount of the advance.”

2. Paragraph (1) of Section 6.02 is modified to read as follows:

“Section 6.02. *Suspension by the Association*

... (1) *Ineligibility*. The Association or the Bank has declared the Project Implementing Entity ineligible to receive proceeds of any financing made by the Association or the Bank or otherwise to participate in the preparation or implementation of any project financed in whole or in part by the Association or the Bank, as a result of: (i) a determination by the Association or the Bank that the Project Implementing Entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of any financing made by the Association or the Bank; and/or (ii) a declaration by another financier that the Project Implementing Entity is ineligible to receive proceeds of financings made by such financier or otherwise to participate in the preparation or implementation of any project financed in whole or in part by such financier as a result of a determination by such financier that the Project Implementing Entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of a financing made by such financier.”

3. The following terms and definitions set forth in the Appendix are modified or deleted as follows, and the following new terms and definitions are added in alphabetical order to the Appendix as follows, with the terms being renumbered accordingly:
  - (a) The term “Project Preparation Advance” is modified to read “Preparation Advance” and its definition is modified to read as follows:

“‘Preparation Advance’ means the advance referred to in the Financing Agreement and repayable in accordance with Section 2.07.”

### **Section III. Modifications to the Anti-Corruption Guidelines**

The modifications to the Anti-Corruption Guidelines are as follows:

1. Section 5 is re-numbered as Section 5(a) and a new Section 5(b) is added to read as follows:
  - “... (b) These Guidelines also provide for the sanctions and related actions to be imposed by the Bank on Borrowers (other than the Member Country) and all other individuals or entities who are recipients of Loan proceeds, in the event that the Borrower or the individual or entity has been debarred by another financier as a result of a determination by such financier that the Borrower or the individual or entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of a financing made by such financier.”
2. Section 11(a) is modified to read as follows:
  - “... (a) sanction in accordance with prevailing Bank’s sanctions policies and procedures (fn 13) a Borrower (other than a Member Country) (fn 14) or an individual or entity, including (but not limited to) declaring such Borrower, individual or entity ineligible publicly, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; (ii) to benefit from a Bank-financed contract, financially or otherwise, for example as a sub-contractor; and (iii) to otherwise participate in the preparation or implementation of the project or any other project financed, in whole or in part, by the Bank, if at any time the Bank determines (fn 15) that such Borrower, individual or entity has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in connection with the use of loan proceeds, or if another financier with which the Bank has entered into an agreement for the mutual enforcement of debarment decisions has declared such person or entity ineligible to receive proceeds of financings made by such financier or otherwise to participate in the preparation or implementation of any project financed in whole or in part by such financier as a result of a determination by such financier that the Borrower or the individual or entity has

engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of a financing made by such financier.”

Footnotes:

“13. An individual or entity may be declared ineligible to be awarded a Bank financed contract upon completion of sanctions proceedings pursuant to the Bank’s sanctions policies and procedures, or under the procedures of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding, or following a sanction by another financier with whom the Bank has entered into a cross debarment agreement, as a result of a determination by such financier that the firm or individual has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of a financing made by such financier.”

“14. Member Country includes officials and employees of the national government or of any of its political or administrative subdivisions, and government owned enterprises and agencies that are not eligible to bid under paragraph 1.8(b) of the Procurement Guidelines or participate under paragraph 1.11(c) of the Consultant Guidelines.”

“15. The Bank has established a Sanctions Board, and related procedures, for the purpose of making such determinations. The procedures of the Sanctions Board sets forth the full set of sanctions available to the Bank. In addition, the Bank has adopted an internal protocol outlining the process to be followed in implementing debarments by other financiers, and explaining how cross-debarments will be posted on the Bank’s website and otherwise be made known to staff and other stakeholders.”