（円借款の供与に関する日本国政府とベトナム社会主義共和国政府との間の交換公文）

（日本側書簡）

（訳文）

書簡をもって啓上いたします。本使は、ベトナム社会主義共和国の経済の安定及び開発努力を促進するために供与される日本国の借款に関して日本国政府の代表者とベトナム社会主義共和国政府の代表者との間で最近到達した次の了解を確認する光栄を有します。

1　八百三十二億百万円（八三、二〇一、〇〇〇、〇〇〇円）の額までの円貨による借款（以下「借款」という。）が、この書簡の付表（以下「付表」という。）1欄に掲げる事業計画を実施することを目的として、各事業計画につき付表2欄に定める配分に応じ、独立行政法人国際協力機構（以下「ＪＩＣＡ」という。）により、日本国の関係法令に従って、ベトナム社会主義共和国政府に供与されることになる。

2(1)　借款は、ベトナム社会主義共和国政府とＪＩＣＡとの間で締結される借款契約に基づいて使用に供さ

れる。借款の条件及び使用に関する手続は、この了解の範囲内で、なかんずく付表３欄、付表４欄及び付表５欄にそれぞれ掲げる利子率、償還期間及び支出期間を含むことになる前記の借款契約によって規律される。

(2) (1)に規定する借款契約の各々は、ＪＩＣＡが当該借款契約に係る付表１欄に掲げる事業計画の実行可能性（環境に対する配慮を含む。）を確認した後に締結される。

(3) 付表５欄に掲げるそれぞれの支出期間は、両政府の関係当局の同意を得て延長することができる。

3
(1) 借款は、ベトナムの実施機関が調達適格国の供給者、請負業者又はコンサルタントに対して行う支払で、付表１欄に掲げる事業計画の実施に必要な生産物又は役務の購入のために両者の間で締結されることのある契約に基づいて行われるものを対象として使用に供される。ただし、当該購入は、調達適格国において、それらの国で生産される生産物又はそれらの国から供給される役務について行われる。

(2) (1)に規定する調達適格国の範囲は、両政府の関係当局間で合意される。

(3) 借款の一部は、付表１欄に掲げる事業計画の実施のための適格な現地通貨の需要に充てるために使用することができる。

4　ベトナム社会主義共和国政府は、３(1)に規定する生産物又は役務がＪＩＣＡの調達のためのガイドライン（国際競争入札の手続が適用できないか又は適当でない場合を除くほか従うべき国際競争入札の手続をなかんずく定める。）に従って調達されることを確保する。

5　ベトナム社会主義共和国政府は、借款に基づいて購入される生産物の海上輸送及び海上保険に関し、海運会社及び海上保険会社の間の公正かつ自由な競争を妨げることのあるいかなる制限を課することも差し控える。

6　３(1)に規定する生産物又は役務の供給に関連してベトナム社会主義共和国においてその役務が必要とされる日本国民は、作業の遂行のためベトナム社会主義共和国への入国及び同国における滞在に必要な便宜を与えられる。

7　ベトナム社会主義共和国政府は、次のものを免除する。

(a)　ＪＩＣＡについて、借款及びそれから生ずる利子に対して又はそれらに関連してベトナム社会主義共和国において課されるすべての財政課徴金及び租税

(b)　供給者、請負業者又はコンサルタントとして活動する日本国の会社について、付表１欄に掲げる事業

計画の実施に必要な自己の資材及び設備の輸入及び再輸出に関してベトナム社会主義共和国において課されるすべての関税及び関連の財政課徴金

8　ベトナム社会主義共和国政府は、次のことを確保するために必要な措置をとる。

(a)　借款が適正にかつ専ら付表1欄に掲げる事業計画のために使用されること。

(b)　借款に基づく施設の建設及び当該施設の使用に当たり、付表1欄に掲げる事業計画の実施に従事する者及びベトナム社会主義共和国の一般公衆の安全を確保し及び維持すること。

(c)　借款に基づいて建設される施設がこの了解に定める目的のために適正にかつ効果的に維持され及び使用されること。

9　情報源及び資料の出所を公正に取り扱うことを確保しつつ、ベトナム社会主義共和国政府は、要請に応じ、日本国政府及びＪＩＣＡに対し、次のものを提供する。

(a)　付表1欄に掲げる事業計画の実施の進捗(ちょく)状況についての情報及び資料

(b)　付表1欄に掲げる事業計画に関連するその他の情報（不正腐敗行為に関するものを含む。）

10　両政府は、この了解から又はそれに関連して生ずることのあるいかなる事項についても相互に協議す

る。

11　付表は、この書簡の不可分の一部を成す。

本使は、更に、この書簡及び前記の了解をベトナム社会主義共和国政府に代わって確認される閣下の返簡が両政府間の合意を構成し、その合意が閣下の返簡の日付の日に効力を生ずるものとすることを提案する光栄を有します。

本使は、以上を申し進めるに際し、ここに重ねて閣下に向かって敬意を表します。

付表

	1	2		3	4	5
	事業計画名	供与限度額		利子率（パーセント）	償還期間	支出期間（借款契約の発効の日の後）
1	ハノイ市都市鉄道建設計画（ナムタンロン－チャンフンダオ間（二号線））（第一期）	百四十六億八千八百万円		〇・二	十年の据置期間の後三十年	七年
			コンサルタントに対する支払部分	〇・〇一		
2	ハイフォン都市環境改善計画（第二期）	二百十三億六百万円		〇・五五	十年の据置期間の後三十年	九年
			コンサルタントに対する支払部分	〇・〇一		
3	第二期ハノイ水環境改善計画（第二期）	二百九十二億八千九百万円		〇・五五	十年の据置期間の後三十年	七年
			コンサルタントに対する支払部分	〇・〇一		
4	国道・省道橋梁（りょう）改修計画（第二期）	百七十九億千八百万円		一・二	十年の据置期間の後二十年	七年
			コンサルタントに対する支払部分	〇・〇一		
	総額	八百三十二億百万円				

JAPAN INTERNATIONAL COOPERATION AGENCY

General Terms and Conditions for Japanese ODA Loans

March 2009

General Terms and Conditions for Japanese ODA Loans

Table of Contents

General Terms and Conditions for Japanese ODA Loans

Article I

Introduction; Inconsistency

Section 1.01. Introduction

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

Section 1.02. Inconsistency with Loan Agreement

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

Article II

Definition; Reference to Articles and Sections; Headings

Section 2.01. Definitions

The following terms have the following meanings wherever used in the General Terms and Conditions.

(a) "JICA" means JAPAN INTERNATIONAL COOPERATION AGENCY.

(b) "Borrower" means the party to the Loan Agreement to which the Loan is made.

(c) "Executing Agency" means, if applicable, the organization designated in the Loan Agreement to implement the Project.

(d) "Guarantee" means a written promise to JICA, made by an entity in the country of the Borrower other than the Borrower constituting a guarantee for the Loan.

(e) "Guarantor" means the entity referred to in item(d) above.

(f) "Letter of Commitment" means an undertaking given by JICA to make disbursement to the issuing bank of a letter of credit for the procurement of goods and services under the Loan.

(g) "Lien" means mortgage, pledge, charge, privilege, priority, lien, encumbrance, or other security interest of any kind.

(h) "Loan Agreement" means the particular loan agreement, as that agreement may from time to time be amended, to which the General Terms and Conditions apply. Loan Agreement includes the General Terms and Conditions as applicable thereto and all schedules and agreements supplemental to the Loan Agreement.

(i) "Loan" means the loan provided for in the Loan Agreement.

(j) "Japanese ODA Loans" means the loans provided by JICA under Clause (a), Item (ii), Paragraph 1, Article 13 of the ACT OF THE INCORPORATED ADMINISTRATIVE AGENCY-JAPAN INTERNATIONAL COOPERATION AGENCY.

(k) "Project" means the project or program for which the Loan is granted, as described in the Loan Agreement and as the description thereof may from time to time be amended by agreement between JICA and the Borrower.

(l) "Public Assets" means assets of such Borrower, of any political or administrative subdivision thereof and of any entity owned or controlled by, or operating for the account or benefit of, such Borrower or any such subdivision, including gold and foreign exchange assets held by any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for such Borrower.

Section 2.02. References to Articles and Sections

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

Section 2.03. Headings

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

Article III

Loan; Repayment; Interest; Overdue Charge; Method of Payment; Currency

Section 3.01. Amount of Loan

The amount of the Loan, expressed in Japanese Yen, shall be stipulated in the Loan Agreement. The proceeds of the Loan shall be disbursed by JICA within the limit of that amount in accordance with the disbursement procedure provided for in Article V.

Section 3.02. Repayment

(1) The principal of the Loan shall be repayable in accordance with the amortization schedule attached to the Loan Agreement.

(2) When all disbursements to be made under the Loan Agreement have been completed and the cumulative total of such disbursements is less than the full amount of the Loan stipulated therein, the difference between such amount of the Loan and the cumulative total of all disbursements shall be deducted

proportionately from all subsequent installments of repayment of principal as indicated in the amortization schedule attached to the Loan Agreement, excluding any installments of repayment of principal for which JICA has already issued the notice set forth in Section 3.08; provided, however, that all fractions of ONE THOUSAND Japanese Yen(¥1,000.-) of such installments of principal shall be added to the immediately subsequent installment of principal.

(3) The Borrower may, upon giving not less than thirty (30) days' notice in writing to JICA, prepay in whole or in part the principal of the Loan then outstanding together with the interest accrued thereon. Any such prepayment shall be applied to the installments in inverse order of maturity, in principle.

(4) Any payment made prior to the due date specified in the amortization schedule without the notice mentioned in the above paragraph shall not be deemed prepayment of the Loan and the Borrower shall not be discharged from the payment of interest up to the day immediately before the due date.

Section 3.03. Interest

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

Section 3.04. Overdue Charge

(1) Should repayment of principal or payment of interest required under the Loan Agreement be delayed, the interest specified in Section 3.03. shall cease to accrue on such overdue amount of principal on and after the due date and an overdue charge calculated at a rate of two percent (2%) per annum over and above the interest rate specified in the Loan Agreement shall be payable on the overdue amount of principal, interest for a period from the due date to the day immediately preceding the day of actual payment thereof, both inclusive.

(2) When the due date is not a banking business day in Japan, the overdue charge shall be exempted if the payment is made on the immediately succeeding banking business day.

Section 3.05. Computation of Interest and Overdue Charge

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

Section 3.06. Place and Time of Payment

The Borrower, by 12:00 noon, Tokyo time, on the due date, shall have all payments of principal and of interest and other charges on the Loan credited to JICA's account, which shall be designated by JICA.

Section 3.07. Currency in which Principal, Interest and Other Charges are Payable

Repayment of principal and payment of interest and other charges shall be made in Japanese Yen.

Section 3.08. Notice Given by JICA

JICA may, when it deems necessary, send the Borrower a Notice concerning Commitment Charge, Interest and Principal (Form No. 1 attached hereto).

Article IV

JICA's Review and Misprocurement

Section 4.01. General

Goods and services (the term "services" as used in this General Terms and Conditions includes consulting services), to be financed out of the proceeds of the Loan shall be procured in accordance with the guidelines for procurement and the guidelines for the employment of consultants.

Section 4.02. JICA's Review

JICA may review the Borrower's procurement procedures, documents and decisions. The Borrower shall submit to JICA, for JICA's reference, any related documents and information as JICA may reasonably request. The Loan Agreement will specify the extent to which review procedures will apply in respect of goods and services to be financed out of the proceeds of the Loan.

Section 4.03. Misprocurement

(1) JICA does not finance expenditures for goods and services which, in the opinion of JICA, have not been procured in accordance with the agreed procedures and JICA will cancel that portion of the Loan allocated to such goods and services that have been misprocured. JICA may, in addition, exercise other remedies under the Loan Agreement. It is JICA's policy to require that the Borrower, as well as bidders and contractors, under contracts funded with Japanese ODA Loans and other Japanese ODA observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JICA;

   (a) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

   (b) will recognize a contractor as ineligible, for a period determined by JICA, to be awarded a contract funded with Japanese ODA Loans if it at any time determines that the contractor has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with Japanese ODA Loans or other Japanese ODA.

(2) If JICA receives information related to suspected corrupt or fraudulent

practices in the competition for, or in the execution of, contracts to be financed out of the proceeds of the Loan, the Borrower shall provide JICA with such information as JICA may reasonably request, including information related to any concerned official of the government and/or public organizations of the Borrower's country.

(3) The Borrower shall not, and shall cause the Executing Agency not to, unfairly or unfavorably treat the person and/or company which provided the information related to suspected corrupt or fraudulent practices in the competition for, or in the execution of, contracts to be financed out of the proceeds of the Loan to JICA and/or the Borrower/Executing Agency.

Section 4.04. Information to be Made Public

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

Article V

Disbursement

Section 5.01. Disbursement Procedure

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

Section 5.02. Constitution of Obligation

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

Section 5.03. Adequacy of Documents

All documents or evidence required under the disbursement procedure must be adequate in form and substance to satisfy JICA that the proceeds of the Loan to be disbursed are to be used solely for the purpose specified in the Loan Agreement.

Section 5.04. Additional Documents

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

JICA may reasonably request.

Section 5.05. Notice of Disbursement

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

Section 5.06. Notice of Completion of Disbursement

(1) When the total amount of the Loan under the Loan Agreement have been disbursed or the Borrower notifies JICA that no further disbursement is required for the Project as set forth in the following paragraph, JICA shall send the Borrower a Notice of Completion of Disbursement (Form No. 3 attached hereto) in duplicate.

When the cumulative total of disbursements is less than the amount of the Loan and no further disbursement is required for the Project, the Borrower shall notify JICA of the fact in order that JICA may know that the final disbursement has been made.

(2) The Borrower shall immediately return to JICA one copy of the Notice of Completion of Disbursement signed by a duly authorized person.

Article VI

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

Section 6.01. Remedies of JICA

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

(a) Default of the Borrower in repayment of principal and/or payment of interest or any other charges required under (i) the Loan Agreement and/or (ii) any other loan agreement between JICA and the Borrower and/or (iii) any other guarantee by the Borrower for any other loan agreement with JICA;

(b) Default of the Guarantor, if any, in repayment of principal and/or payment of interest or any other charges required under (i) the Guarantee and/or (ii) any other loan agreement between JICA and the Guarantor and/or (iii) any other guarantee by the Guarantor for any other loan agreement with JICA;

(c) Default in the performance of any other terms and conditions, covenant or agreement on the part of the Borrower or the Guarantor, if any, under the Loan

Agreement or the Guarantee, if any;

(d) The Borrower or the Executing Agency shall, without the consent of JICA, have (i) assigned or transferred, in whole or in part, any of its obligations arising under the Loan Agreement; or (ii)sold, leased, transferred, assigned, or otherwise disposed of any property or assets financed wholly or in part out of the proceeds of the Loan, except with respect to transactions in the ordinary course of business which, in the opinion of JICA, (A) do not materially and adversely affect the ability of the Borrower to perform any of its obligations under the Loan Agreement or to achieve the objectives of the Project, or the ability of the Executing Agency to perform any of its obligations arising under, or entered into pursuant to, the Loan Agreement or to achieve the objectives of the Project; and (B) do not materially and adversely affect the financial condition or operation of the Borrower or the Executing Agency.

(e) The Borrower or the Executing Agency shall have ceased to exist in the same legal form as that prevailing as of the date of the Loan Agreement.

(f) Any action shall have been taken for the dissolution, disestablishment, or suspension of operations of the Borrower or the Executing Agency.

(g) In the opinion of JICA, the legal character, ownership or control of the Borrower or the Executing Agency shall have changed from that prevailing as of the date of the Loan Agreement so as to materially and adversely affect (i) the ability of the Borrower to perform any of its obligations under the Loan Agreement or to achieve the objectives of the Project; or (ii) the ability of the Executing Agency to perform any of its obligations arising under, or entered into pursuant to, the Loan Agreement, or to achieve the objectives of the Project.

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

Section 6.02. Failure to Exercise Rights

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

Section 6.03. Non-Exemption of the Borrower from Obligations

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

Section 6.04. Non-Discrimination

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

Section 6.05. Negative Pledge

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

(2) The Borrower which is not a sovereign country undertakes that, except as JICA shall otherwise agree:

  (a) if such Borrower shall create any Lien on any of its assets as security for any debt, such Lien will equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and in the creation of any such Lien express provision will be made to that effect, at cost to JICA; and

  (b) if any Lien shall be created by operation of law on any assets of such Borrower as security for any debt, such Borrower shall grant at no cost to JICA, an equivalent Lien satisfactory to JICA to secure the payment of the principal of, and interest and other charges on, the Loan.

(3) The foregoing provisions of this Section shall not apply to: (i) any Lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property or as security for the payment of debt incurred for the purpose of financing the purchase of such property; or (ii) any Lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after the date on which it is originally incurred.

Section 6.06. Administration of Loan

(1) The Borrower shall carry out the Project, or cause it to be carried out, with all due diligence and efficiency, and in conformity with appropriate engineering, financial and environmental requirements and practices.

(2) The Borrower shall at all times operate and maintain, or cause to be operated and maintained, any facilities relevant to the Project in conformity with

appropriate engineering, financial and environmental requirements and practices, and promptly as needed, make or cause to be made all necessary repairs and renewals thereof.

(3) The Borrower shall cause all goods and services financed out of the proceeds of the Loan to be used solely for the implementation of the Project under the Loan Agreement.

(4) The Borrower shall keep, or cause to be kept, books, accounts and records adequate to identify goods and services financed out of the proceeds of the Loan, to show the use made thereof in the Project, to record the progress of the Project, and to reflect, in accordance with sound and consistent accounting practice, the operations and financial situation of the Borrower or other beneficiaries of the Loan.

(5) The Borrower shall enable, or take such steps as may be necessary to enable, JICA's representatives to visit any facilities and construction sites included in the Project and to examine goods and services financed out of the proceeds of the Loan and any plant, installation, site, works, building, property, equipment, books, accounts, records and documents relevant to the performance of the obligations of the Borrower under the Loan Agreement.

(6) The Borrower shall, in the interests of the sound administration of the Loan, furnish JICA with, or cause to be furnished with to JICA, all such information, at such times, in such form and in such detail, as JICA shall reasonably request. Such information may include information with respect to the Borrower's procurement procedures, the financial and economic situation in the country of the Borrower and its international balance of payments position.

(7) Should any circumstances arise which prevent, or threaten to prevent, the execution and completion of the Project on schedule, the Borrower shall promptly notify JICA of such circumstances.

(8) The Borrower shall send, or cause to be sent, to JICA, promptly upon formulation, details of all plans which would result in any important modification of the Project and these shall be the subject of agreement between JICA and the Borrower.

(9) Each party to the Loan shall, from time to time, as the other party thereto shall reasonably request, afford the other party all reasonable opportunity for exchange of views between JICA and the Borrower with regard to any and all matters relating to the Loan.

(10) The Borrower shall carry out the Project, or cause the Executing Agency to carry out, with all due diligence to ensure that the safety of workers and the general public be maintained, thereby avoiding serious construction accidents.

Article VII

Guarantee for Loan

Section 7.01. Non-Requirement of a Guarantee

When JICA does not require a guarantee for the Loan, this whole Article VII shall be disregarded.

Section 7.02. Guarantee for Loan

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

Section 7.03. Additional Guarantee

When the amount of the Loan is to be increased, the Borrower shall deliver to JICA, an additional Guarantee signed by the Guarantor acceptable to JICA, immediately after JICA and the Borrower have agreed upon such increase.

Article VIII

Arbitration

Section 8.01. Arbitral Tribunal

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

Section 8.02. Parties to Arbitration

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

Section 8.03. Arbitrators

(1) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: One arbitrator shall be appointed by JICA, a second by the Borrower and the Guarantor, if any, (where the Borrower and the Guarantor are unable to reach agreement on the choice of an arbitrator, then by the Guarantor) and a third arbitrator (hereinafter referred to as "the Umpire") shall be appointed by agreement of the parties or, if they are unable to agree, by an appropriate organ for the settlement of international disputes. If either party shall fail to appoint an arbitrator, that arbitrator shall be appointed by the Umpire.

(2) When any arbitrator appointed pursuant to the preceding paragraph shall resign, die or otherwise become unable to act as an arbitrator, a successor

shall be appointed without delay in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of the original arbitrator.

(3) No person who has a personal or direct financial interest in the matter(s) submitted for arbitration shall be appointed as an arbitrator. The Umpire shall settle all disputes which may arise under this paragraph.

(4) The Umpire shall not be a person of the same nationality as either of the parties to arbitration.

(5) Any and all arbitrators appointed in accordance with the provisions hereof shall be bound by the provisions of this Article and shall arbitrate in accordance therewith.

Section 8.04. Arbitration Proceedings

(1) Arbitration proceedings shall be conducted in the English language and shall be instituted by the sending of a written request for arbitration by one party to the other. Such request shall contain a statement setting forth the nature of the dispute and the relief sought and/or the solution desired or proposed. Within forty (40) days of the sending of the request, each party shall notify the other of the full name, occupation, address, career and nationality of the arbitrator appointed by it.

(2) If, within sixty (60) days of the sending of such request, the parties have not agreed upon the appointment of the Umpire, JICA shall request an appropriate organ for the settlement of international disputes to appoint the Umpire, as provided for in Section 8.03., paragraph (1).

(3) The place of meeting of the Arbitral Tribunal shall be determined by agreement between the parties, or, if they are unable to agree, by the Umpire.

Within thirty (30) days of the appointment of the Umpire or after the appointment of an arbitrator by the Umpire as provided for in Section 8.03., paragraph (1), the Umpire shall notify the parties concerned of the place, date and time of the first sitting of the Arbitral Tribunal. The places, dates and times of the second and subsequent sittings of the Arbitral Tribunal shall be fixed by the Arbitral Tribunal.

(4) The Arbitral Tribunal may, at any stage of the arbitration proceedings, request the parties to present such witnesses, documents, etc., as are considered necessary.

The Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. The parties shall, in any case, be afforded an oral hearing in a sitting of the Arbitral Tribunal.

Section 8.05. Arbitral Award

(1) The Arbitral Tribunal shall make an arbitral award (hereinafter referred to as "the Award") within one hundred and twenty (120) days of the date of the first sitting of the Arbitral Tribunal, provided, however, that the Arbitral Tribunal may extend this period if it considers it necessary.

(2) The Award and all other matters requiring decisions by the Arbitral Tribunal

shall be decided by majority vote and shall be final and binding upon the parties, and each party shall abide by, and comply with the Award. Any arbitrator who disagrees with the majority may append his views on the Award to the documents issued by the Arbitral Tribunal.

(3) A copy of the Award documents, signed by all three arbitrators, shall be sent without delay to each party.

(4) The Award shall not be made public without the consent of the parties.

Section 8.06. Costs of Arbitral Tribunal

(1) The costs of the Arbitral Tribunal shall consist of the following:

(a) Remuneration of the arbitrators and any other persons whose services may be required in the course of the arbitration proceedings;

(b) Expenditures incurred by the Arbitral Tribunal, including the expenditures incurred in connection with the notice provided for in Section 8.04.;

(c) Any expenses paid by the parties and deemed by the Arbitral Tribunal to be costs of the Arbitral Tribunal.

(2) The amount of the remuneration of an arbitrator other than the Umpire shall be fixed by the party which appoints that arbitrator. The amount of the remuneration of the Umpire shall be fixed by an agreement between both parties, or if they fail to agree, by the Arbitral Tribunal.

(3) The Arbitral Tribunal may, before it commences its activities, collect equal sums from both parties in such amounts as may be considered necessary to cover its costs.

The costs of the Arbitral Tribunal provided for in paragraph (1) above shall finally be borne by one or both parties according to the terms of the Award.

Section 8.07. Dissolution of Arbitral Tribunal

The Arbitral Tribunal shall not be considered dissolved until the signed copies of the Award documents provided for in Section 8.05., paragraph (1) shall have been dispatched to the parties and the costs of the Arbitral Tribunal paid in full.

Section 8.08. Enforcement of Award

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

Article IX

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

Section 9.01. Applicable Laws

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

Section 9.02. Taxes and Expenses

(1) The Borrower and/or other beneficiaries of the Loan shall pay all taxes, charges and other expenses imposed upon JICA within the country of the Borrower in connection with the Loan and its implementation.

(2) The Borrower shall pay, or cause to be paid, all banking charges and/or fees for disbursement of the proceeds of the Loan, repayment of principal or payment of interest or any other charges on the Loan.

Section 9.03. Notices and Requests

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

Section 9.04. Execution

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

Section 9.05. Fractions

Any fraction of ONE Yen (¥1.00) which may appear in the computation of interest or any other charges under the Loan Agreement shall be disregarded.

Article X

Effectiveness and Termination of Loan Agreement

Section 10.01. Evidence of Authority and Specimen Signatures

(1) The Borrower shall furnish JICA with satisfactory evidence of authority for the person(s) who will make, sign and deliver documents necessary for the implementation of the Loan Agreement, together with an authenticated specimen signature of each such person.

(2) When any change has been made relevant to the evidence of authority mentioned in the preceding paragraph, the Borrower shall notify JICA in writing of the fact, providing JICA with satisfactory new evidence of authority.

(3) When a person(s) has been appointed to replace a person(s) specified in the evidence of authority referred to in paragraph (1) above, the Borrower shall notify JICA in writing of the fact, providing JICA with an authenticated specimen signature of the newly appointed person(s).

Section 10.02. Legal Opinion

(1) The Borrower shall provide JICA with a Legal Opinion(s), made substantially in the form given in Form No. 5 and where required No. 6 attached hereto and prepared and certified by a person acceptable to JICA showing:

  (a) With regard to the Borrower, that the Loan Agreement has been duly authorized by and executed and delivered on behalf of the Borrower and constitutes a valid and binding obligation upon the Borrower with regard to all its terms and conditions, and that the authorizations and all other procedures necessary for the implementation of the Loan Agreement have been duly effected and completed;

  (b) With regard to the Guarantor, if any, that the Guarantee has been duly authorized by and executed and delivered on behalf of the Guarantor and constitutes a valid and binding obligation upon the Guarantor with regard to all its terms and conditions.

(2) After the Loan Agreement becomes effective, the Borrower shall provide JICA with such additional legal opinion(s) prepared and certified by the person mentioned above, on matters relating to the Loan Agreement and the Guarantee, if any, as JICA may from time to time request.

Section 10.03. Effective Date

The Loan Agreement shall become effective on the date on which JICA declares itself satisfied with the evidence of authority and the specimen signatures referred to in Section 10.01., paragraph (1), the Legal Opinion mentioned in Section 10.02., paragraph (1), and the Guarantee, if any.

JICA shall immediately notify the Borrower in writing of the effective date of the Loan Agreement.

Section 10.04. Termination of Loan Agreement

(1) If the Loan Agreement shall not have become effective within one hundred and twenty (120) days (commencing with the date of signature), the Loan Agreement and the Guarantee, if any, shall terminate, unless JICA, after consideration of the reasons for the delay, sets a later date for the purpose of this Section. JICA shall promptly notify the Borrower of such later date.

(2) When the entire amount of the principal of the Loan shall have been repaid and all interest and other charges which shall have accrued on the Loan shall have been paid, the Loan Agreement and the Guarantee, if any, shall

forthwith terminate.

(Form No.1)

Date :
Ref.No. :

____
____
(Name and address of the Borrower)

Attention :

Ladies and Gentlemen:

NOTICE CONCERNING COMMITMENT CHARGE, INTEREST AND PRINCIPAL

Due Date at Tokyo :	
Principal Due :	¥____________________
Interest Due :	¥____________________
Commitment Charge Due :	¥____________________
Total :	¥____________________

We would like to inform you that the above amount as specified in the attached sheet(s) will be due and payable on ________________.
We would appreciate it if, after checking up the amount, you would credit the checked amount to the following account by 12 noon on the due date, Tokyo time.

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

Very truly yours,

____
(Authorized Signature)

Encl :

(Form No.2)

____

____

(Name and address of the Borrower)

Date :
Ref.No. :

Attention :

Ladies and Gentlemen :

NOTICE OF DISBURSEMENT

We hereby notify you that from___________to___________(as per attachment) we have made disbursements totaling ___________.

Very truly yours,

____

(Authorized Signature)

(Form No.3)

Date :

Ref. No. :

____

____

(Name and address of the Borrower)

Attention ;

Ladies and Gentlemen:

NOTICE OF COMPLETION OF DISBURSEMENT

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

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

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

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

In confirmation of this Notice, please return to us immediately one copy, signed by a duly authorized person.

Very truly yours,

____

(Authorized Signature)

(Please do not detach.) ·

Date :

We hereby acknowledge receipt of this Notice and confirm that the Loan Agreement shall be implemented as stated above.

____

(Authorized Signature)
(Name of the Borrower)

(Form No.4)

Date :

Ref.No. :

JAPAN INTERNATIONAL COOPERATION AGENCY
Tokyo, Japan

Attention : President

Ladies and Gentlemen :

GUARANTEE FOR THE LOAN

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

1. That the Guarantor has accepted all the provisions of the Loan Agreement and agrees to guarantee jointly and severally with the Borrower any and all liabilities arising from or in connection with the obligations of the Borrower under the Loan Agreement.

2. That the Guarantor, furthermore, agrees that:

   (1) The Guarantor guarantees the due and punctual payment of the principal of and the interest and any other charges on the Loan as provided for in the Loan Agreement;

   (2) The Guarantor shall not be exempted from any of its liabilities under this Guarantee by reason of any extension of maturity, forbearance or concession given to the Borrower, any exercise of right or remedy against the Borrower, or any modification or amplification of the provisions of the Loan Agreement (provided that if the principal of the Loan is thereby increased, the Guarantor shall be exempted from its liabilities to the extent of such increase) ;

Date :

(3) So long as any part of the Loan under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:

i) Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement, and

ii) Not, without prior consent of JICA in writing, take any action for the dissolution or disestablishment of the Borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities.

3. That the Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply notice concerning principal, interest and any other charges, and notice of dishonor or non-payment of any such liabilities.

IN WITNESS WHEREOF, I, the undersigned, have hereunto set my hand and affixed my official seal, this______day of_____________.

Very truly yours,

____

(Name of the Guarantor)

____

(Authorized signature)

(Form No.5)

Date :
Ref.No. :

JAPAN INTERNATIONAL COOPERATION
AGENCY
Tokyo, Japan

Attention : President

Ladies and Gentlemen :

LEGAL OPINION ON LOAN AGREEMENT

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

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

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

Based upon the foregoing, I hereby certify as follows:

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

Date :

2. That the Borrower is authorized to borrow foreign currency funds from abroad under (*laws or regulations*) and that the terms and conditions of the Loan Agreement are in compliance with the provisions of (*laws or regulations*);

3. That, therefore, the Loan Agreement has been duly authorized by and made, signed and delivered on behalf of the Borrower and constitutes a valid and binding obligation upon the Borrower with regard to all its terms and conditions; and

4. That the authorization and any other procedures necessary for implementation of the Loan Agreement have been duly effected and completed.

IN WITNESS WHEREOF, I, the undersigned, have hereunto set my hand and affixed my official seal, this____day of______.

Very truly yours,

____

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

(Form No.6)

Date :
Ref. No. :

JAPAN INTERNATIONAL COOPERATION
AGENCY
Tokyo, Japan

Attention: President

Ladies and Gentlemen:

LEGAL OPINION ON GUARANTEE

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

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

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

Based upon the foregoing, I hereby certify as follows:

1. That the Guarantor has the full power and authority to guarantee the Loan made by JICA to the Borrower in accordance with the terms and conditions of the Loan Agreement under (*laws or regulations*);

Date :

2. That the Guarantee was made and signed on (*date*), by (*name and title*), who is authorized to make and sign it for and on behalf of the Guarantor under (*laws or regulations*);

3. That, therefore, the Guarantee has been duly authorized by and made, signed and delivered on behalf of the Guarantor and constitutes a valid and binding obligation upon the Guarantor with regard to all its terms and conditions; and

4. That neither legislation nor any other procedure is required for the effectiveness of the Guarantee.

IN WITNESS WHEREOF, I, the undersigned, have hereunto set my hand and affixed my official seal, this______day of______.

Very truly yours,

____

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