

440

RAILWAY AGREEMENT

Between

The Government of Afghanistan

and

MCC-Jiangxi Copper Consortium

1 July 2010

۲۴۴

EXECUTIVE SUMMARY

The Parties acknowledge that construction of an operable railway is of extreme importance to the economic development of Afghanistan and MCC has committed to construct such a railway on a BOOT basis, subject to an approved positive feasibility study. Therefore the goal of this Railway Agreement is to provide for the construction, initial operation, and a suitable training environment to build and operate that railway. As defined in this Railway Agreement:

1. Based on a positive Feasibility Study outcome, MCC agrees that it will provide the investment to construct and operate the Railway on a timely, cost-efficient, and non-profit BOOT basis. MCC's investment is to be repaid as rapidly as possible, through the operational fees of the Railway.
2. The Government agrees to provide an environment which does not add to the financial burdens of returning MCC's investment, in a manner that is as secure as practical.

This Railway Agreement is designed to provide the general framework under which the Railway can proceed to operation and construction as rapidly as possible. As the details of construction and operation will not be known until the Feasibility Study is completed, those details will be included in a separate Railway BOOT Agreement with a Security annex, immediately upon completion of the Route Study and the Feasibility Study.

٢٤٣

TABLE OF CONTENTS

EXECUTIVE SUMMARY

TABLE OF CONTENTS

RECITALS	1
PART I – GENERAL TERMS AND CONDITIONS.....	2
1. General	2
2. Organization.....	2
3. Definitions	3
4. Incorporation of the Aynak Mining Contract	4
5. MCC's General Rights under the Railway Agreement.....	5
6. MCC's General Obligations under the Railway Agreement	5
7. Environmental Protection	7
8. Government Right of Access	8
9. Use of Subcontractors	9
10. Cooperation of the Parties	9
11. Security.....	10
12. International Coordination.....	10
13. Conditions Precedent.....	11
PART II – RAILWAY ROUTE SELECTION AND FEASIBILITY STUDY.....	11
14. Route Identification and Evaluation.....	11
15. Feasibility Study	12
16. BOOT Agreement.....	13
17. Route Acquisition.....	14
PART III – RAILWAY CONSTRUCTION.....	14
18. Railway Construction – General Requirements.....	14
19. Railway Construction – Technical Requirements.....	16
20. Construction Timetable	17
21. Railway Facilities.....	17
22. Railway Route Land Use.....	18
PART IV – RAILWAY OPERATION	18
23. Railway Operation	18
24. Recovery of Investment by MCC	19
25. Review of Railroad Agreement Economic Terms	20
26. Tax Obligations and Financial Record Keeping.....	20
27. Compliance with Rail Transportation Requirements	22
PART V – RAILWAY TRANSFER	22
28. Railway Transfer Entity	22
29. Railway Transfer Date.....	22
30. Assets to be Transferred	22
31. Warranty	22
32. MCC Use of Railway Following Transfer to Government	22

٢٩٢

**PART VI - RAILWAY SOCIAL AND SUSTAINABLE DEVELOPMENT
COMMITMENTS AND OBLIGATIONS..... 23**

33. Resettlement and Compensation Plan 23

34. Protection and Respect of Religious Belief 23

35. Government's and Third Parties' Rights to Use Company's Facilities. 23

PART VII - LOCAL PURCHASING: PROMOTION OF NATIONAL INTERESTS..... 23

36. Services and Supplies 23

PART VIII - EMPLOYMENT AND TRAINING OF AFGHAN NATIONALS 23

37. Employment of Afghan Nationals 23

38. Training 24

39. Non-Afghan Personnel 24

40. Employee Accident Compensation 24

PART IX - IMPORTS AND RE-EXPORTS 24

41. Imports 24

42. Re-Exports 26

43. Cooperation 26

PART X - DOMICILE; SERVICE OF PROCESS 26

44. General 26

45. Notices 26

PART XI - MISCELLANEOUS PROVISIONS 27

46. Termination 27

47. Notification and Remedy 28

48. Default 29

49. Force Majeure 29

50. Dispute Resolution 30

51. Duration 31

52. Assignment 31

53. Amendments 32

54. Applicable Law 32

55. Complete Agreement 32

APPENDIX 1: RAILWAY ROUTE..... 1

541

RAILWAY AGREEMENT

Between

The Government of Afghanistan ("Government")

And

MCC-Jiangxi Copper Consortium ("MCC")

This Railway Agreement ("Railway Agreement") is made this 22 day of SEP, 2010 between the Government and MCC (the "Parties").

RECITALS

Whereas:

1. The Government and MCC have entered into a Mining Contract under which MCC has been granted the mineral rights for the Aynak Copper Deposit (the "Aynak Mining Contract"). The mineral rights were subsequently transferred from MCC to the MCC-JCL Aynak Minerals Company Ltd ("MJAM") pursuant to Section 61 of the Aynak Mining Contract;
2. The Aynak Mining Contract contains a Memorandum of Agreement between the Parties concerning a Railway (the "Railway MOA") which incorporates MCC's binding commitment to the Government to construct and operate a Railway, at its own cost and consistent with the terms specified in MCC's letter dated September 25, 2007 into the Aynak Mining Contract as an enforceable part of the Aynak Mining Contract.
3. MCC made the following commitments to the Government concerning the Railway in its September 25, 2007 letter:
 - a. MCC will conduct reconnaissance (survey) and prepare a feasibility study according to the schedule provided in MCC's August 16, 2007 letter.
 - b. Upon completion of the feasibility study and on the basis of the Railway project being feasible, MCC will build the Railway on a "BOOT" (Build, Own, Operate, and Transfer) basis.
 - i. MCC will arrange 100% financing for the construction of the Railway.
 - ii. MCC will design and build the Railway on its own.
 - iii. MCC will own the Railway and be responsible for the overall operation and management of the Railway upon completion of the Railway construction and commencement of operations.

MCC

34

- c. Within the two years before the full recovery of MCC's investment, the Government should form an operating entity (or joint venture operating entity with MCC) to work together with MCC for the purpose of studying and formulating relevant issues and policies regarding the operation and management of the Railway following its take-over by the Government.
 - d. After the full recovery of MCC's investment, MCC will transfer the Railway to the Government.
 - e. MCC will provide free training concerning the maintenance, operation and management of the Railway.
4. The Government has made a commitment to MCC in the Railway MOA to use its authorities to assist MCC in securing the land and route necessary to construct the Railway.
 5. The Parties agreed in the Railway MOA that the feasibility study will be provided to the Government for review. In the event that the Government disagrees with the conclusions of the feasibility study, the Government may retain an independent expert to review the feasibility study.
 6. The Parties agreed in the Railway MOA that MCC's Railway activities shall be at MCC's sole expense and in compliance with all applicable requirements under the laws of Afghanistan. In addition, the Government agreed to provide all necessary assistance with respect to making available information and licenses to plan and expedite the necessary Railway development and operation. The Parties agreed that they will work diligently and cooperatively to expedite completion of the Railway, including the preparation of appropriate environmental and social impact studies, route survey, and feasibility study necessary to allow MCC to build and operate the Railway.

Agreement

THEREFORE, in consideration of the commitments and obligations set forth in this Railway Agreement, the Parties agree as follows:

PART I – GENERAL TERMS AND CONDITIONS

1. General

MCC agrees to conduct its railway construction, operations and activities on a non-profit basis.

2. Organization

This Railway Agreement is organized to reflect and address the scope of Railway issues identified by the Parties in the Aynak Mining Contract and the Railway MOA. This Railway Agreement contains 11 parts as described in the Table of Contents above.

209

3. **Definitions**

In this Railway Agreement, the following expressions (except where the context otherwise requires) shall have the following meanings:

- (a) Agreement Period: The term as set forth in Section 51 of this Railway Agreement and any extensions or other modifications to the term agreed to in writing by the Parties.
- (b) Aynak Copper Project: The copper project located in the Aynak area of Logar province for which a Mineral Right has been granted to MCC.
- (c) Build-own-operate-transfer ("BOOT"): An approach to public project development in which a private entity is granted a concession by a governmental authority to undertake the financing, construction, operation and maintenance of a given infrastructure facility in exchange for the right to collect tariffs or fees from its users in order to repay the loans or other financial obligations utilized to make the investment in the project. Under this arrangement the private entity owns the facility and its assets until transferred to the governmental authority, and typically seeks financing on either a limited recourse or a non-recourse basis, where the lender (financing bank) looks only to the project's assets and revenue stream for repayment, and not to additional sources of security, such as the total assets or balance sheet of the private entity.
- (d) BOOT Agreement: The Agreement addressing the specific requirements, details and time schedules for the construction, operation and transfer of the Railway which shall be signed by the Parties as per Section 16 of this Railway Agreement in accordance with the definition of BOOT in this Railway Agreement.
- (e) Commences Commercial Operation: The first day on which the commercial transport of passengers or freight occurs.
- (f) Effective Date of the Railway Agreement: The date _____.
- (g) Environment: Physical factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odors, tastes, artifacts, and biological factors of animals and plants and the social factors of aesthetics.
- (h) Feasibility Study: A study performed to MCC specifications to assess the suitability of the proposed Railway route and associated facility locations, taking into consideration the results of national and regional rail transportation planning and all currently known and forecasted relevant technical, environmental, economic, operational and logistical factors and requirements necessary for the successful construction and operation of the Railway by MCC, including considerations of the environmental and social impact assessment activities conducted as required by Section 7 of this Railway Agreement.

701

- (i) Government: The Government of Afghanistan or any successor entity, acting on behalf of the Government of Afghanistan with respect to the Aynak Mining Contract and the Railway Agreement.
- (j) MCC-Jiangxi Copper Consortium ("MCC"): The entity comprised of China Metallurgical Group Corporation and Jiangxi Copper Company Limited that was selected as the Preferred Bidder during the Aynak Tender Process to negotiate and conclude the Aynak Mining Contract with the Government and which will be bound by the terms of the Aynak Mining Contract and this Railway Agreement, jointly and severally, together with any successor entities.
- (k) Ministry of Mines: The Ministry of Mines of the Government of Afghanistan or any successor entity, acting on behalf of the Government of Afghanistan with respect to the Aynak Mining Contract and the Aynak Copper Project.
- (l) Ministry of Transportation and Civil Aviation: The Ministry of the Government of Afghanistan or any successor entity, acting on behalf of the Government of Afghanistan with responsibility for rail transportation issues.
- (m) Month: All references to months in this Railway Agreement shall be based on the solar calendar specified in Article 18 of Afghanistan's Constitution.
- (n) Pollution: Any direct or indirect alteration of the physical, thermal, chemical, biological, or radioactive properties of any part of the Environment by discharging, emitting, or depositing wastes so as materially to affect any beneficial use adversely, or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants. The term "pollute" shall have a corresponding meaning.
- (o) Railway Construction Plan: A plan that sets forth the sequence and schedule for Railway construction activities.
- (p) Route Study: A study which evaluates the technical merits of various alternative routes or courses for the Railway.
- (q) Waste: Any matter, whether liquid, solid, gaseous or radioactive, which is discharged, emitted or deposited in the Environment in such volume, consistency, or manner as to cause an alteration of the Environment.

4. **Incorporation of the Aynak Mining Contract**

- (a) This Railway Agreement is being entered into by the Parties in accordance with the terms of the Aynak Mining Contract and the Railway MOA.

MR

Gov

(b) The Parties acknowledge and agree that one purpose of this Railway Agreement is to support the development and operation of the Aynak Copper Project through the development of a Railway. The Parties further acknowledge and agree that the Railway developed in accordance with this Railway Agreement is also intended by the Government to become part of a national railway network. As a result, in the event that a conflict arises between the terms of this Railway Agreement and the Aynak Mining Contract, the terms of this Railway Agreement shall control. Matters which are not explicitly covered by the terms of this Railway Agreement shall be governed by the applicable terms, provisions and procedures of the Aynak Mining Contract. Insofar as such matters are not covered by the Aynak Mining Contract or this Railway Agreement, both parties shall resolve such matters through friendly consultation in compliance with the terms of the Minerals Law and all other applicable laws and regulations, from time to time in effect in Afghanistan.

5. MCC's General Rights under the Railway Agreement

- (a) Pursuant to the requirements of the applicable Afghan Law and in accordance with the terms of the Aynak Mining Contract and the Railway MOA, the Government hereby grants to MCC and MCC hereby accepts the rights to develop, design, engineer, finance, procure, construct, own, maintain and operate a railway to conduct all of the operations hereinafter described in such areas and along such route as may be agreed to by the Parties. This Railway Agreement shall remain in effect until MCC's total investment, is actually recovered, or it is terminated in accordance with Section 46 of this Railway Agreement.
- (b) MCC shall have the exclusive right and shall receive the necessary licenses and authorizations required under the laws of Afghanistan to (i) construct the Railway in accordance with the Feasibility Study and Railway Construction Plan, (ii) operate and maintain the Railway and regulate the use of the Railway by third parties until MCC recovers its total investment and (iii) transfer the Railway to the Government in accordance with the terms set forth in this Railway Agreement.
- (c) MCC shall be entitled to charge and collect tariffs or usage fees as a condition of use of the Railway as specified in Section 24 of this Railway Agreement and in accordance with the BOOT Agreement.
- (d) MCC shall be entitled to the protections provided by all applicable provisions of Afghan law, including Article 94 of the Minerals Law, with respect to expropriation, nationalization, deprivation and confiscation of any assets owned and/or used by MCC pursuant to this Railway Agreement.

304

6. **MCC's General Obligations under the Railway Agreement**

- (a) MCC hereby accepts the obligations to conduct its railway construction, operations and activities, on a non-profit BOOT basis, in accordance with all of the applicable terms of, this Railway Agreement, the BOOT Agreement and the applicable laws and regulations of Afghanistan.
- (b) MCC acknowledges and agrees that it shall conduct all such railway operations and activities in a sound manner in accordance with those international railway design, engineering, construction and operational standards and practices which are incorporated in the BOOT Agreement and mutually agreed upon by the Parties as best suited to the physical, social, economic, environmental, political and security conditions found in Afghanistan. All operations and activities under this Railway Agreement shall be conducted in accordance with environmental and social protection plans approved by the Government prior to the commencement of operations so as to protect natural resources against unnecessary damage, to prevent pollution and contamination of the environment and protect affected communities from negative impacts of railway construction and operation.
- (c) MCC shall take all appropriate risk management measures to prevent damage to the rights and property of the Government of Afghanistan or third parties. In the event of negligence or carelessness on the part of MCC or its agents or of any subcontractor carrying on operations or activities for MCC under this Railway Agreement, MCC will be liable for such injuries in accordance with the applicable laws of Afghanistan.
- (d) MCC shall install and utilize such internationally recognized modern safety devices and shall observe such internationally recognized modern safety precautions and risk management measures as are provided and observed internationally under conditions and operations comparable to those undertaken by MCC under this Railway Agreement. MCC shall observe internationally recognized measures, including risk management measures, for the protection of the general health and safety of its employees and of all other persons having legal access to the area covered by this Railway Agreement.
- (e) MCC shall comply with such legally valid instructions as may from time to time be given in writing by the Government. MCC shall be entitled to dispute the legality of any instruction which it believes may adversely affect the rights, interests and protections provided by the Aynak Mining Contract, and this Railway Agreement. Such disputes shall be in accordance with the dispute resolution provisions established in this Railway Agreement and BOOT Agreement.
- (f) MCC shall pay all applicable fees, rents, penalties and other non-tax charges to the Government as set forth in this Railway Agreement, BOOT Agreement and the applicable laws of Afghanistan.

500

- (g) MCC shall have sole responsibility for financing all construction and operations authorized pursuant to this Railway Agreement and determining the terms on which said financing shall be obtained. MCC may, as authorized by the applicable laws of Afghanistan, pledge such rights, licenses and authorizations obtained in accordance with operations authorized by this Railway Agreement.
- (h) MCC shall bear and pay all expenses, costs and charges incurred in the fulfillment of its obligations under this Railway Agreement, except where such expenses, costs and charges are the responsibility of the Government or third parties.
- (i) During the term of this Railway Agreement, MCC shall maintain, with financially sound and reputable insurers, insurance against injury to persons, damage to property and related contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is consistent with international practice. MCC shall provide evidence of insurance to the Government as specified in the BOOT Agreement.
- (j) MCC shall provide open access to commercial use the Railway. The Parties agree that the Railway shall not be operated to the disadvantage of other users (including passengers), and the country of Afghanistan in general as specified in the BOOT Agreement.
- (k) MCC shall comply with all reporting requirements as agreed to and specified in this Railway Agreement, the BOOT Agreement and the laws of Afghanistan.
- (l) Insofar as such obligations are not otherwise covered by the terms of the Railway Agreement or the Aynak Mining Contract, MCC shall comply with the terms of the Minerals Law and all other applicable laws and regulations, from time to time in effect in Afghanistan.

7. Environmental Protection

MCC has made broad environmental and social protection commitments to the Government concerning the Aynak Copper Project including, without limitation, its commitment to comply with the applicable environmental laws and regulations of Afghanistan, Afghanistan's environmental and social protection guidelines and policies, all World Bank Environmental and Social Safeguard Policies, the Equator Principles and the Voluntary Principles on Security and Human Rights. The Parties acknowledge and agree that these commitments shall extend equally to all of MCC's railway activities and operations, in so far as these commitments are applicable to MCC's railway activities. On this basis, MCC's commitments and obligations with respect to environmental and social protection, as more fully specified in Appendix 6 of the Aynak Mining Contract, are specifically adopted and incorporated by reference into this Railway Agreement and are fully enforceable pursuant to the terms of the Aynak Mining Contract and this Railway Agreement. In the event of a conflict between the above referenced laws, regulations, guidelines and policies, the Parties agree to adhere to the most applicable standard or combination of standards to

307

protect Afghanistan's environment and people. In light of these commitments, the Parties acknowledge and agree as follows:

- (a) MCC shall manage its railway activities and operations in a technically, financially, socially, culturally and environmentally responsible manner to achieve the environmental protection and sustainable development objectives and responsibilities required by this Railway Agreement and the Aynak Mining Contract, the laws of Afghanistan and any applicable international conventions to which Afghanistan is or may become a signatory;
- (b) MCC shall prepare on a timely basis and as soon as practical an environmental and social impact assessment of the Railway and related facilities, activities and operations in accordance with the requirements of the Aynak Mining Contract, this Railway Agreement, the environmental laws of Afghanistan, and the above referenced environmental and social protection guidelines, principles and policies. MCC shall submit its environmental and social impact assessment for the Railway and related facilities, activities and operations to the Government for review and approval prior to commencing construction of the Railway and its related facilities and structures. MCC acknowledges and agrees that the Government may require reasonable additional environmental and social impact assessment activities as a condition of approval of the impact assessment;
- (c) As specified in the BOOT Agreement, MCC shall prepare a railway impact management plan that presents a detailed, technically and scientifically sound approach to the management, mitigation or elimination of railway impacts and risks to the environment and local residents. MCC shall submit its railway impact management plan to the Government for review and approval prior to commencing railway construction and operation;
- (d) MCC shall comply with the standards regulating the discharge or emission of pollutants and waste into the environment associated with railway construction and operation as specified in the railway impact management plan; and
- (e) MCC shall provide fair compensation, as specified in the BOOT Agreement and the laws of Afghanistan, for any loss suffered by any local inhabitant resulting from any damage done or any interference with any right to use additional land or water caused by MCC's construction or operation of the Railway under this Railway Agreement. This Section excludes railway land acquisition, resettlement, and relocation activities.

8. Government Right of Access

The Government reserves the right to access any and all areas covered by this Railway Agreement for the purpose of any authorized legal activity, provided that if damage results to MCC's property from such activity, the Government agrees to provide fair and

102

reasonable compensation to MCC for such damage, except in cases where such damage is caused by an act of MCC.

9. Use of Subcontractors

Without in any way detracting from MCC's responsibilities and obligations under this Railway Agreement and the Aynak Mining Contract, MCC may engage subcontractors for the execution of such phases of its railway activities and operations as MCC deems appropriate. MCC will have full responsibility and assume all risks related to the activities of its subcontractors in accordance with the terms and conditions of this Railway Agreement and the Aynak Mining Contract. The records of such subcontractors shall be made available to Government' inspectors as provided in Appendix 3 of the Aynak Mining Contract, which are adopted and incorporated by reference into this Railway Agreement as an enforceable part of this Railway Agreement.

10. Cooperation of the Parties

The Parties will cooperate and take such actions as may be desirable to achieve the mutual objectives of this Railway Agreement.

- (a) The Parties agree that they will at all times use their best efforts to carry out the provisions of this Railway Agreement to the end that the activities authorized by this Railway Agreement may at all times be conducted efficiently and for the optimum benefit of the Parties.
- (b) MCC agrees to plan and conduct all operations under this Railway Agreement in accordance with the standards and requirements imposed elsewhere in this Railway Agreement and the Aynak Mining Contract for the sound and progressive development of rail transportation in Afghanistan, to give at all times full consideration to the aspirations and welfare of the people of Afghanistan and to the development of Afghanistan, and to cooperate in promoting the growth and development of Afghanistan's economic and social structure, and pursuant to the provisions of this Agreement, at all times to comply with the laws and regulations of Afghanistan.
- (c) At any time during the term of this Railway Agreement, upon request by either Party, the Government and MCC may consult with each other to determine whether, in the light of all relevant circumstances, this Railway Agreement requires revision in order to ensure that the Railway Agreement operates equitably and without major detriment to the interests of either Party. Such consultation shall be carried out in a spirit of cooperation with due regard to the intent and objectives of the respective Parties. Both Parties desire to realize the success of the Railway for the benefit of the people of Afghanistan and the economic and social growth and development of the nation.
- (d) The Government shall provide all available data and information to MCC for the preparation of the Feasibility Study.

501

- (e) An adequate reporting procedure is required and will be established for the purpose of enabling each Party to be informed and capable of proceeding with the performance of its activities in a timely and efficient manner.
- (f) An Aynak BOOT Railway Committee will be formed and comprised of MCC and the Government as members to ensure cooperative development of the Railway.

11. Security

- (a) The Parties acknowledge and agree that the Government shall be responsible for the security of all facilities and structures, constructed and operated in accordance with this Railway Agreement and for the security of all persons involved in the preparation of the Feasibility Study, construction and operation of the Railway. Security for the Railway shall be separated into two parts, both of which will be the responsibility of the Government. The purpose of the first part shall consist of security measures necessary for the execution of the Route Study and the Feasibility Study. The second part shall specifically address security measures for the construction and operation of the Railway. The full, detailed description of the second part shall be negotiated by the Parties and referred to as "the Railway Security Agreement," and attached to the BOOT Agreement.
- (b) MCC, through its Feasibility subcontractor, will prepare and deliver a timeline for and description of the execution and completion of the Route Study and Feasibility Study upon award of the Feasibility Study contract as defined in Section 15 of this Agreement. The Government will prepare and deliver to MCC a security plan for the Route Study and Feasibility Study within one month of receipt of MCC's timeline. Upon acceptance of the security plan for the Route Study and Feasibility Study by the Parties, MCC will commence activities in accordance with the timeline.
- (c) In the event MCC believes the Government has failed to fulfill the security responsibilities established under this Railway Agreement, MCC shall notify the Government of such failure. In the event the Government defaults on the obligations of this Section, the Government shall compensate MCC for the actual loss, including human and property loss, attributable to the Government default. If the default is disputed by the Government, the Parties agree to pursue dispute resolution as specified in Section 50 of this Railway Agreement.

12. International Coordination

The Parties acknowledge and agree that the Railway constructed pursuant to this Railway Agreement should be routed, designed, engineered, constructed, operated and maintained in a manner that is consistent with the Government's regional and international rail transportation planning efforts.

301

13. Conditions Precedent

The Parties acknowledge and agree that the rights and obligations granted to MCC pursuant to this Railway Agreement are subject to the full satisfaction by the Parties of the following conditions precedent:

- (a) MCC shall:
 - i. Prepare a Feasibility Study to determine the technical and economic feasibility of constructing and operating the Railway in order to assist MCC's decision making concerning the Railway;
 - ii. Prepare an environmental and social impact assessment for Government review and approval;
 - iii. Prepare a railway construction plan for Government review and approval as described in Section 19(a);
 - iv. Submit the Feasibility Study to the Chinese Government for approval in the event the Feasibility Study shows the Railway project studied is feasible in accordance with the generally accepted principles and standards for judging similar projects;
 - v. After the submission of the Feasibility Study, obtain approval of the Railway project from the Chinese Government;
 - vi. Obtain all necessary licenses and authorizations for railway construction from the Government;
 - vii. Acquire adequate funding provided that the Feasibility Study is acceptable to any lender or lenders selected by MCC.

- (b) The Government shall:
 - i. Obtain the land and rights of way necessary for railway construction and operation in accordance with this railway agreement and the Railway Security Agreement.
 - ii. Grant to MCC the exclusive right to use the surface of such lands and such portions of the subsurface as may be necessary for the construction, operation and maintenance of the Railway.
 - iii. Establish adequate security for survey, railway construction and operation of the Railway in accordance with Railway Security Agreement.

PART II – RAILWAY ROUTE SELECTION AND FEASIBILITY STUDY

14. Route Identification and Evaluation

- (a) The Parties acknowledge and agree that the route of the railway shall run from Torkham at the Pakistan border through Kabul and end at

20

Hairatan on the Uzbekistan border. A spur will extend from Kabul to the Aynak Copper Project. A more detailed route for the Railway and proposed tentative locations for certain Railway facilities including terminals, depots and junctions will be identified by the Parties through good faith discussion and consultation taking into consideration the results of national and regional rail transportation planning and all currently known and relevant technical, environmental, economic, operational and logistical factors and requirements necessary for the successful construction and operation of the Railway by MCC. The Government has proposed a preferred route, which is described in Appendix 1 to this Railway Agreement.

- (b) MCC shall commence its evaluation, referred to in this Railway Agreement as "the Route Study," of the selected Railway route and facility locations as soon as practicable following the establishment of adequate security in the areas to be evaluated. MCC's route evaluation activities may include, but not be limited to, additional surveying, mapping, geotechnical analyses, sampling, and activities related to the development of the Feasibility Study, which are required by this Railway Agreement and more fully described in Section 15 of this Railway Agreement.
- (c) The Parties acknowledge and agree that in the event that they are unable to select a mutually agreeable, proposed general route for the Railway, the disputed portions of the route shall be evaluated in the Feasibility Study as alternatives. The Parties agree that any disputed portion or location of the Railway route which is determined to be infeasible in the Feasibility Study shall not be included as part of the Railway route. The Parties further agree that any dispute concerning the determination that a disputed portion of the Railway route is infeasible shall be resolved per Section 50 of this Railway agreement.
- (d) In accordance with the terms of the Aynak Mining Contract, the Government agrees that it shall take those steps necessary to ensure that access to the proposed route and facility locations is made available to MCC, its employees, contractors, subcontractors and advisors conducting the evaluation.

15. Feasibility Study

- (a) The Parties acknowledge and agree that the completion of a Feasibility Study is a necessary prerequisite for the Railway. In its September 25, 2007 letter, MCC stated that it would proceed with the Railway only on the basis of the Railway being feasible. The Feasibility Study will assess the suitability of the proposed railway route and associated facility locations, taking into consideration the results of national and regional rail transportation planning and all currently known and relevant technical, environmental, economic, operational and logistical factors and requirements necessary for the successful construction and operation of the Railway by MCC and will include consideration of the environmental and social impact assessment required by Section 7(b)

249

of this Railway Agreement. The Parties acknowledge and agree that the Feasibility Study shall be prepared by an independent third party subcontractor selected in a competitive international tender process conducted by MCC. The initiation of the competitive bidding process shall be within 6 months of the signing of this Agreement. The Feasibility Study shall be prepared in sufficient depth and detail so that it would be acceptable to international lending institutions.

- i. The Parties acknowledge and agree that the Feasibility Study must be completed and demonstrate the feasibility of the Railway prior to commencement of railway construction. Upon awarding the Feasibility Study contract and acceptance of the Phase 1 Security Plan (Section 11), the Feasibility study shall be completed within 2 years or as specified in the Feasibility Study contract. MCC shall promptly submit its Feasibility Study to the Government for review. The Government shall use its best efforts to complete its review of the Feasibility Study within three (3) months of receipt from MCC and notify MCC, in writing, of any concerns it may have regarding the Feasibility Study. Within two (2) months of being notified of the Government's concerns, MCC will respond to the Government's concerns, and the Parties shall have two (2) months in which to reach a mutually agreeable resolution of those concerns. At any time, either Party may retain, at its own expense, a recognized railway consulting firm on the matter or matters of concern to recommend the best manner of addressing the concerns.
 - ii. After the efforts described in Section 15(a)(i), the Parties may agree to meet and consider alternate development scenarios, to include the possibility of different means of funding construction and or operation of the Railway. If the Parties are unable to agree on an alternate development scenario, either Party may choose to arbitrate the unresolved issues in the Feasibility Study in accordance with Section 50.
- (b) The Parties agree that MCC shall not be obligated to commence the Route Study and Feasibility Study until each of the following preconditions is satisfied:
- i. This Railway Agreement is signed and in full force and effect;
 - ii. Sufficient security measures have been taken by the Government with respect to the Route Study and Feasibility Study activities;
 - iii. The Government has notified MCC in writing that all necessary actions to ensure MCC's access to the proposed route and facility locations have been taken and such access is available to MCC.

16. BOOT Agreement

- (a) When all conditions precedent established by Sections 13 and 15 of this Railway Agreement are satisfied, the Parties shall:

TSM

- i. Prepare and execute a detailed BOOT Agreement which will identify and allocate the specific rights, obligations and requirements between the Parties and provide the legal basis upon which the construction and operation of the Railway will be undertaken in accordance with the principles of this Railway Agreement;
- ii. Cooperate, and MCC shall obtain all necessary licenses and authorizations for Railway construction from the Government;
- iii. Cooperate, and MCC shall obtain funding, if necessary, for railway construction, provided that the Feasibility Study is bankable and acceptable to lenders selected by MCC.

17. Route Acquisition

Upon completion of the Feasibility Study and signing of the BOOT Agreement, the Government shall obtain, at their own expense, and retain ownership of the railway right-of-way and other property necessary for construction and operation of the Railway. The Government will also conduct, at its own expense, the relocation and resettlement of people displaced by the construction and operation of the Railway. The Government shall then obtain and provide to MCC the proper authorization for the exclusive right to use the surface of such lands and such portions of the subsurface as may be necessary for the construction, operation and maintenance of the Railway. Subject to the applicable laws and regulations of Afghanistan, MCC shall have the right to occupy and utilize for the duration of this Railway Agreement, the surface of such areas selected by the Parties for use pursuant to this Railway Agreement as may be necessary for the construction, operation and maintenance of the Railway.

PART III – RAILWAY CONSTRUCTION

18. Railway Construction – General Requirements

- (a) Following the acquisition of the land necessary for the railway route and associated operations and facilities, MCC shall undertake, at its sole expense, the design, engineering, construction and testing of a railway that meets the service requirements specified in the Feasibility Study and this Railway Agreement. MCC shall be solely responsible for the design, engineering, construction and testing of the Railway. MCC acknowledges and agrees that all construction activities related to the Railway shall be conducted in accordance with the Feasibility Study, all applicable Afghan laws and regulations and all applicable international practice standards and guidelines, including environmental protection standards, adopted in this Railway Agreement.
- (b) All construction and pre-operation costs incurred in connection with the Railway shall be borne by MCC and MCC shall be responsible for arranging all funding necessary to construct the Railway.

FFJ

- (c) The Parties agree that the Government shall be responsible for reasonable improvements to existing infrastructure necessary for the construction and operation of the Railway.
- (d) MCC shall, where possible, award contracts to Afghan contractors and suppliers of materials and services provided that, in its opinion, the quality, delivery times, costs, reliability and other terms are comparable to those offered by foreign contractors and/or suppliers.
- (e) MCC, including its subcontractors, shall use its best efforts to purchase goods and services in Afghanistan if there are available in Afghanistan goods and services of suitable and reasonably comparable quality, and at no higher price than goods available from abroad. In comparing prices of goods available in Afghanistan to the prices of goods imported by MCC, the following conditions shall apply. For goods and services imported during the construction period, customs duties shall not be added to the other expenses incurred up to the time the imported goods are landed in Afghanistan. For goods and services imported during operations, customs duties for raw materials shall be added to the other expenses. The Parties agree that the process of comparing locally available goods and services to imported goods and services shall not delay MCC's construction activities or operations.
- (f) MCC shall be responsible for the importation and transportation of equipment to the Railway site. MCC shall comply with the import and export requirements established in this Railway Agreement.
- (g) The Government shall be entitled, at its own cost, to monitor railway construction. For this purpose, MCC shall:
 - i. Ensure that the Government and any experts appointed by the Government are afforded reasonable access to the Railway site at times to be agreed with MCC provided that such access does not materially interfere with railway construction activities or expose any person on the railway site to any danger;
 - ii. Make copies of all plans and designs available for inspection; and
 - iii. Within two months of the completion of the Railway, supply the Government with one set of reproducible copies, one digital copy in a commonly used format and five sets of white print copies (or equivalent) of all "as built" plans, maps and designs.
- (h) MCC shall in no way represent to any third party that, as a result of any review by the Government, the Government is responsible for the engineering soundness of the Railway and shall, subject to the security provisions of this Railway Agreement, be solely responsible for the economic and technical feasibility, operational capability and reliability of the Railway, until the Railway is transferred to the Government in accordance with the requirements of this Railway Agreement.

۲۴۹

- (i) During construction and operation of the Railway, MCC shall own the Railway and all facilities, machinery and equipment used in connection with the Railway which have been purchased or supplied by MCC. The Railway and all appurtenant structures, facilities, machinery and equipment shall be transferred to the Government in accordance with the transfer provisions of this Railway Agreement.

19. Railway Construction – Technical Requirements

- (a) Railway Construction Plan - The Parties acknowledge and agree that MCC shall prepare a railway construction plan that meets international railway design, engineering and construction standards. The railway construction plan shall include a proposed construction schedule. At a minimum, the railway construction plan shall address the following: track materials (rails, ties, fasteners); rail gauge; track configurations (curves, lengths, clearances); rights of way; road crossings; buildings; signal information; track culverts; track bridges; over track or under track structures; utilities; and trackside devices. A copy of all planning documents shall be provided to the Government.
- (b) General Design and Construction Requirements – Tracks should be designed and constructed in accordance with track design and construction standards as defined in the BOOT Agreement.
- (c) Line Capacity – The railway line must provide adequate capacity so as to allow efficient, reliable and economical movement of rail services in Afghanistan for goods and passengers as determined in the Feasibility Study and specified in the BOOT Agreement.
- (d) Interoperability – The Parties acknowledge and agree that the Railway shall be designed and constructed to allow the efficient transport of international goods and containers. As a result, the Railway and related infrastructure and equipment shall meet international requirements, including those for the transport and transfer of heavy trains carrying goods such as coal, mineral ores, cement and grain. Further, the Parties acknowledge and agree that the Railway design and construction shall take into consideration technical requirements of neighboring countries and endeavor to minimize or eliminate technical barriers to interoperability between railways.
- (e) Construction Monitoring - During the Construction Period, MCC shall furnish to the Government progress reports, as specified in the BOOT Agreement, of actual progress of the construction of the Railway and shall give all such other relevant information as may be required by the Government. For the purposes of determining that construction is being undertaken in accordance with the requirements of this Railway Agreement, MCC shall employ quality assurance and quality control methods as may be necessary and specified in the BOOT Agreement. MCC shall promptly carry out such remedial measures as may be necessary to cure the defects or deficiencies, if any, indicated in such

test results and furnish a report to the Government confirming the curative actions.

140

20. Construction Timetable

The Construction Timetable shall be determined following completion of the Feasibility Study and included in the detailed BOOT Agreement.

21. Railway Facilities

- (a) Railway facilities to be constructed shall include, but not be limited to, the tracks, rail yards, switches, sidetracks, depots, fuel stations, loading and unloading facilities, communication, water supply, and other necessarily related facilities for which MCC is, subject to the rights of third parties, authorized to construct and operate in accordance with such reasonable safety regulations relating to design, construction, and operation as required by international railway practice most suitable for Afghanistan. The facilities may include, but are not limited to:
- i. The tracks (rails, ties and fasteners), road bed, embankments; rail yards; rights of way; drainage structures; road crossings; bridges; switches; depots; fuel stations; and loading and unloading facilities;
 - ii. Access and maintenance roads;
 - iii. A modern wireless communications system that complies with Ministry of Communication requirements;
 - iv. Water supply facilities;
 - v. In addition, the Railway may require other buildings, workshops, warehouses, storage areas, sewage disposal, machine shops, repair shops, and all such additional or other facilities, plant and equipment as MCC shall consider necessary for its operations or to provide services or to carry on activities ancillary or incidental to such operations. The land and all appurtenant structures shall be returned to the Government upon the expiration of this Railway Agreement.
- (b) All Railway facilities and structures shall be the personal property of MCC and may be mortgaged, pledged or otherwise encumbered during the term of this Railway Agreement, with written notification to the Government, by MCC subject to (i) the provisions relating to Assignment and to Termination established in the Aynak Mining Contract which are adopted and incorporated by reference into this Railway Agreement and (ii) the provisions related to Railway transfer established in Part V of this Railway Agreement.

۳۳۳

22. **Railway Route Land Use**

- (a) Subject to the approval of the Government, MCC may appropriate and use gravel, sand, clay, or stone found within the Railway Route Area for purposes necessary and useful to MCC's railway operations and activities under this Railway Agreement. Provided that upon termination of this Railway Agreement, any excavation shall be rehabilitated by MCC in accordance with its approved mine development, environmental management and reclamation plans.
- (b) MCC shall have the right to cut, appropriate and use the brushwood, undergrowth and timber (except protected trees) which may be found on public lands within the Railway route area, subject to the general forestry laws of Afghanistan. Such cutting, appropriation, and use shall be permitted only to the extent necessary to MCC's railway operations and activities. Such cutting, appropriation, and use may be for the purpose of facilitating ingress and egress into and from the Railway route, for the purpose of clearing land for the erection of machinery, plant and buildings connected with MCC's railway operations and activities, and for the purpose of construction required for MCC's railway operations and activities. Provided, however, that such timber shall be sold by MCC only with the prior approval of the Government and subject to such conditions as may be imposed.
- (c) MCC shall describe and provide a detailed estimate of its railroad construction water supply requirements to the Government. Subject to the approval of the Government and consistent with the requirements specified in any water supply agreement reached by the Parties pursuant to the Aynak Mining Contract or the Water Supply Agreement, MCC may appropriate and use water found within or outside the Route Area for MCC's railway construction activities under this Railway Agreement. For water appropriated from outside the Route Area, the Government will facilitate the acquisition of water resources. MCC shall not adversely affect local agricultural water or deprive any lands, villages, houses, or watering places for animals of a reasonable supply of water insofar as such water has, through custom, been utilized for such lands, villages, houses, or animals. Nor shall MCC interfere with any water rights or existing uses of water enjoyed by any persons under the law of Afghanistan.

PART IV – RAILWAY OPERATION

23. **Railway Operation**

Subject to the provisions of this Railway Agreement addressing the recovery of MCC's investment, during the period of its ownership and operational control of the Railway, MCC shall have full and effective control and management of all matters relating to the operation of the Railway. MCC may, subject to complying with the applicable requirements of this Railway Agreement and receiving approval from the Government, make material expansions or modifications of the Railway facilities, and may add new facilities, as MCC

۳۳

shall consider necessary for the operation of the Railway. All such expansions, modifications, improvements, replacements, and additions shall be considered part of the Railway facilities.

- (a) MCC shall, at its own cost, be responsible for the management, operation, testing, inspection, maintenance and repair of the Railway and shall ensure that the Railway is in good operating condition and capable of carrying freight in a safe, uninterrupted manner which is sufficient to meet the transportation requirements agreed to by the Parties in this Railway Agreement.
- (b) MCC shall operate the Railway in accordance with the licenses and authorizations granted by the Government, all applicable Afghan laws and regulations pertaining to railway operation and all applicable international standards and guidelines adopted by the Parties as enforceable requirements of this Railway Agreement, including environmental requirements.
- (c) The Government shall inspect the Railway on a periodic basis to confirm that the Railway is being operated in conformance with applicable Afghan laws and regulations and international standards adopted by the Parties as enforceable requirements of this Railway Agreement. The Parties shall jointly inspect the Railway on a periodic basis to confirm that it meets the applicable structural, engineering, operational and maintenance requirements identified in this Railway Agreement, international practice standards most suitable for Afghanistan, the Feasibility Study and the railway construction plan.
- (d) During the period of its ownership and operational control of the Railway, all operational and maintenance costs incurred in connection with the Railway shall be borne by MCC. Subject to the provisions of this Railway Agreement addressing the recovery of MCC's investment, MCC shall be responsible for obtaining the funds necessary to operate the Railway.
- (e) MCC agrees that it shall provide sufficient training concerning all aspects of railway operations and maintenance to allow the Government to continue normal and established operations of the Railway upon transfer of the Railway from MCC to the Government. As part of this training, MCC shall prepare an operations and maintenance manual for the Government's use following transfer.

24. Recovery of Investment by MCC

The method by which MCC shall recover its investment will be through the collection of tariffs and fees on Railway users.

- (a) MCC shall negotiate with the Government railway authority to establish tariffs and fees. MCC shall have the right at any time to request the Government railway authority authorize an adjustment of tariffs and fees.

55

- (b) If MCC is unable to recover its investment as scheduled due to reasons that are beyond the control of MCC, MCC will notify the Government.
 - i. In the case of a negative operating cash flow, the Government will use its best efforts to assist the Railway to continue operations.
 - ii. In the event either party believes there is reason for early termination of this Railway Agreement, both Parties shall negotiate and mutually agree to the terms of early termination of this Agreement, transfer of railroad assets, and recovery of MCC's outstanding investment.
- (c) One year before commencement of commercial operation, and to set the initial tariff, MCC's investment will be reported to the Government railway authority responsible for establishing railway tariffs and fees.
- (d) For accounting purposes, MCC's Railway investment shall be initially estimated in the Feasibility Study, refined in the BOOT Agreement, with the final amount of the initial investment determined within six (6) months following the date upon which MCC Commences Commercial Operation. MCC's initial investment will include expenditures up to and including the date that MCC Commences Commercial Operation including but not limited to any interest and other charges directly regarding financing of the Railway project over the life of the loan.

25. Review of Railroad Agreement Economic Terms

- (a) The Parties shall, as needed, from the date on which the Railway commences operations, review the economic terms of this Railway Agreement and the BOOT Agreement, to determine whether the existing economic terms of the Railway Agreement require amendment to achieve the outcomes providing for an adjusted allocation of economic benefits between MCC and the Government.
- (b) In undertaking such review, the Parties shall bargain in good faith with a view toward providing a fair and equitable division of profits in light of the economic factors prevailing at the time of the review.
- (c) In undertaking such review the Parties shall be guided by, but not limited to, consideration of the following factors:
 - i. The economic value of the Railway concession,
 - ii. The progress towards the recovery of MCC's investment.

26. Tax Obligations and Financial Record Keeping

- (a) Taxes shall be applied in accordance with the provisions of the Laws of Afghanistan and as agreed to in the Aynak Mining Contract.
- (b) Maintenance of Accounting Books and Records.

25

- i. MCC shall submit accounting and income tax returns for the full term of this Railway Agreement in accordance with the provisions of Afghanistan's Income Tax Law. In determining MCC's taxable income as defined in the Income Tax Law, International Financial Reporting Standards using sound, consistent, and generally accepted accounting principles shall be employed, provided, however, that where more than one accounting practice is found by the Government of Afghanistan to prevail with regard to any item, the Government of Afghanistan shall determine which practice is to be applied by MCC with regard to the particular item.
- ii. MCC shall, at its offices in Afghanistan, maintain books of accounting stated in United States Dollars in accordance with generally accepted accounting principles ("GAAP"). All payments to the Government of Afghanistan shall be calculated in Afghanis in accordance with the official exchange rate of the Da Afghanistan Bank and paid in Afghanis or in such other currencies as may be acceptable to the Ministry of Finance or any Government of Afghanistan agency which is a successor in function thereto. MCC shall within a period as provided by the prevailing law and regulations furnish annually to the Government of Afghanistan audited financial statements prepared in accordance with International Financial Reporting Standards together with production statistics in reasonable detail. The accounts shall be audited by an internationally recognized accounting firm acceptable to the Government of Afghanistan.
- iii. MCC shall permit the Government, through a duly authorized representative, to inspect at all reasonable times the books of account and records of MCC relative to the construction and operation of the Railway. Such books of account and records shall be maintained at MCC's offices in Afghanistan.
- iv. The Government of Afghanistan shall be entitled to audit MCC accounts in accordance with applicable Afghan law in order to confirm MCC's progress towards recovering its investment. MCC shall maintain all relevant records for a period of ten (10) years for each tax year that is necessary to audit MCC's accounts. In the event that MCC fails to maintain all relevant records and make available to the Government of Afghanistan those records upon reasonable request, the Government of Afghanistan shall be entitled to make reasonable estimates of the information normally provided by such records.
- v. In the event that the Government of Afghanistan enters into a similar BOOT Agreement with a third party engaged in a similar BOOT railway that, based on the laws in force in Afghanistan at the time, affords more favorable treatment with respect to the stability of fiscal or other tax terms than have been granted to MCC under the Aynak Mining Contract or this Railway Agreement, the Parties agree that this Railway Agreement and BOOT Agreement shall be amended to apply the more favorable treatment to MCC.

11

27. Compliance with Rail Transportation Requirements

The Parties acknowledge and agree that during the period of MCC's ownership and operational control of the Railway, MCC shall be subject to applicable Afghan laws and regulations governing rail transportation, including the transportation of goods provisions set forth in Afghanistan's Commercial Law. The Parties further acknowledge and agree that MCC shall have a reasonable time period in which to modify its railway operations and activities to achieve compliance with new laws or regulations that may apply to the Railway in the future.

PART V – RAILWAY TRANSFER

28. Railway Transfer Entity

In accordance with the terms of the Railway MOA, the Parties agree that no later than two years prior to the date on which the Parties anticipate that MCC will transfer ownership and operational control of the Railway to the Government, the Government shall identify the entity which the Government intends to operate the Railway. The Parties agree that this entity shall consult with MCC to identify issues and develop policies regarding the operation and management of the Railway after the transfer to the Government.

29. Railway Transfer Date

The Parties agree that ownership and operational control of the Railway shall occur no later than 30 days following a determination by the Parties that MCC has achieved the recovery of its investment specified in Section 24 of this Railway Agreement.

30. Assets to be Transferred

The Parties acknowledge and agree that the Railway assets will be transferred free of charge from MCC ownership to Government ownership upon transfer of the assets from MCC to the Government. The Parties agree that a list of Railway assets and the method of transfer shall be prepared and agreed to by the Parties prior to the transfer date specified in Section 29 of this Railway Agreement.

31. Warranty

The Parties acknowledge and agree that any and all Railway assets transferred to the Government by MCC shall be in good working order and suitable for normal use on the date of transfer. Any issue regarding the transfer of assets that is disputed shall be resolved in accordance with Section 50.

32. MCC Use of Railway Following Transfer to Government

Once the Railway is transferred to the Government, MCC, or its successor, as operator of the Railway, shall have the status of any normal public user of the Railway.

179

**PART VI - RAILWAY SOCIAL AND SUSTAINABLE DEVELOPMENT
COMMITMENTS AND OBLIGATIONS**

33. Resettlement and Compensation Plan

The Government shall be required to compensate local residents adversely affected by development activities authorized by this Railway Agreement. Compensation shall be determined through the application of the Laws of Afghanistan and internationally accepted principles of fairness and reasonableness.

34. Protection and Respect of Religious Belief

MCC has expressed its commitment to respect and protect the religious beliefs of the Afghan people. To demonstrate this commitment, MCC shall provide employees and their families with special places to conduct their religious activities. The Parties acknowledge and agree that MCC shall engage in consultation with appropriate religious and governmental officials concerning the implementation of its commitment to protect and respect religious belief.

35. Government's and Third Parties' Rights to Use Company's Facilities.

Although it is expected that the Government will have laws governing the Railway, MCC shall allow the Government and third parties the use of Railway facilities as more particularly described in the BOOT Agreement and the laws of Afghanistan.

PART VII - LOCAL PURCHASING: PROMOTION OF NATIONAL INTERESTS

36. Services and Supplies

MCC, including its subcontractors, shall use its best efforts to purchase goods and services in Afghanistan if there are available in Afghanistan goods and services of suitable and reasonably comparable quality, and at no higher total price than goods available from abroad including freight. In comparing prices of goods available in Afghanistan to the prices of goods imported by MCC, the following conditions shall apply. For goods and services imported during the Railway construction period, customs duties shall not be added to the other expenses incurred up to the time the imported goods are landed in Afghanistan. For goods and services imported during Railway operations, customs duties for raw materials shall be added to the other expenses. The Parties agree that the process of comparing locally available goods and services to imported goods and services shall not delay MCC's construction activities or operations.

PART VIII - EMPLOYMENT AND TRAINING OF AFGHAN NATIONALS

37. Employment of Afghan Nationals

MCC shall employ Afghan personnel, to the maximum extent practicable, and upon terms which are acceptable to MCC, in all classifications of full-time employment, for its railway construction and operations in Afghanistan. Such percentages and classifications shall be specified in the BOOT Agreement.

2/11

38. Training

As specified in the BOOT Agreement, MCC shall provide for the training of suitable persons of Afghanistan citizenship for Railway employment.

39. Non-Afghan Personnel

- (a) Subject to the requirements established in this Part, MCC and its subcontractors may bring into Afghanistan such non-Afghan personnel as in MCC's judgment are required to carry out railway construction and operations efficiently and successfully, and at MCC's request (which shall be accompanied by information concerning the education, experience, and other qualifications of the personnel concerned), the Government shall cause all necessary permits and visas to be issued within a reasonable time period and without hampering the continuous and efficient performance of MCC under this Railway Agreement. In this connection MCC shall have the right periodically to submit manpower requirement plans and the Government will, within a reasonable time period during which it will conduct its review of MCC's proposal, thereupon issue the necessary permits and visas for all personnel covered by any such plan subject only to completion of the required security checks. MCC shall bear all costs related to the issuance of such permits and visas for non-Afghan personnel. All MCC employees entering Afghanistan shall respect the religious and cultural traditions of Afghanistan.
- (b) The Parties agree that work visas shall, subject to the Laws of Afghanistan, remain valid for one to three years.
- (c) There shall at all times be equal treatment, facilities, and opportunities for all employees, both Afghan and non-Afghan, in the same job classification regardless of nationality.

40. Employee Accident Compensation

MCC shall be responsible for the medical and rehabilitation costs for any Railway employee injured performing his or her duties while employed by MCC. Injured employees shall be entitled to return to the same or similar positions following recovery from injury. In the event that a Railway employee is killed performing his or her duties while employed by MCC, MCC shall be responsible for the payment of an adequate death benefit to the immediate family of the deceased employee.

PART IX - IMPORTS AND RE-EXPORTS


41. Imports

- (a) This Railway Agreement authorizes MCC, including its subcontractors, to import into and use in Afghanistan all equipment and materials, such as machinery, supplies, and equipment necessary for the construction and operation of the Railway, including its Kabul office in accordance with the Laws of Afghanistan and the Aynak

Mining Contract. Some operational items that are difficult to control may receive different treatment with regard to customs and duties as provided in the BOOT Agreement. The import of equipment and materials by MCC shall be in accordance with expedited customs procedures, by routes selected by MCC and identified to the Government and any means of transport. Prior to commencing imports, MCC shall provide a list of equipment and materials to the Government for review and shall provide all necessary documents required by the Customs Office of the Ministry of Finance, as necessary, for customs clearance. This authorization shall apply to the following categories of imports:

225

- i. All of the capital assets, construction materials and raw materials related to the Railway including, but not limited to, machinery, machine units, vehicles (excluding sedan cars), Railway facilities and equipment, office equipment; appliances, office buildings, employee housing, security facility equipment, schools, hospitals, domestic goods and personal effects including household and living equipment and goods belonging to foreign personnel employed in the project and especially provided from abroad shall be exempted from the payment of import duties during the railway construction period;
 - ii. During the operations period which shall commence immediately upon expiration of the construction period, MCC shall be required to pay import duties only on raw materials in accordance with the Customs Law;
- (b) The Government shall have the right to inspect and inventory any articles imported by MCC.
 - (c) If MCC, including its subcontractors, intends to sell or transfer any articles which have been imported free of duty under this Section, a declaration shall be made to the Ministry of Finance before such sale or transfer is effected, and, unless such goods are sold or transferred to another company or contractor entitled to the same exemption, such import duty shall be paid as may be assessed by the Ministry of Finance in accordance with the customs laws and regulations as from time to time in effect.
 - (d) If MCC applies any article which has been imported free of duty under this Railway Agreement to a nonexempt purpose, a declaration shall be made to the Ministry of Finance within thirty days of such initial use of nonexempt purposes and such import duty shall be paid as may be assessed by the Ministry of Finance in accordance with the laws and regulations governing customs.
 - (e) In order to enjoy the benefits granted by this Part, all articles which are imported and for which a duty exemption is claimed must be marked with the name or marks of MCC in a manner difficult to delete.

- 
- (f) MCC, including its subcontractors, shall be liable for violations of the requirements of Afghanistan's Customs Law.
 - (g) MCC shall maintain depreciation records for all imported items subject to the exemptions established by this Section and submit such records to the Ministry of Finance annually.

42. Re-Exports

Any items imported by MCC or its subcontractors for use in connection with the Railway and no longer needed for such use may be sold outside Afghanistan and re-exported free of all customs duties and levies. No imported items shall be sold domestically except after compliance with customs and import laws and regulations which shall at the time of such sale be in effect.

43. Cooperation

All imports and exports of articles under this Railway Agreement shall be handled simply and expeditiously and the Government will, at MCC's request, cooperate with MCC in making appropriate arrangements between MCC and the customs authorities to this end. The Government has agreed to establish a customs facility for the importation by MCC of material necessary for the construction, operation and maintenance of the Railway, which shall be funded, constructed and operated by MCC, to facilitate and complete the customs clearance of such items. The Parties agree that import shipments will receive customs seals at the border, but shall only be opened upon arrival at the railway customs facility.

PART X - DOMICILE; SERVICE OF PROCESS

44. General

MCC shall be licensed to do business in Afghanistan, be subject to the jurisdiction of Afghan courts for disputes that are not subject to the dispute resolution provisions specified in Section 55 of the Aynak Mining Contract, and shall maintain an office or agent in Afghanistan for receipt of service of process or notification or other official or legal communication.

45. Notices

- (a) Notices for the purpose of this Railway Agreement shall be sufficiently served if delivered or sent by registered post:
 - i. In the case of the Government, to the Ministry of Mines.
 - ii. In the case of MCC, to the manager of the Kabul office.
- (b) All notices, requests or other communications required by, provided for in, or relative to this Railway agreement shall be in writing. E-mails, when acknowledged, and facsimiles shall be considered as written communications.

520

PART XI – MISCELLANEOUS PROVISIONS

46. Termination

- (a) In the event that:
- i. MCC assigns to a third party all or a portion of the rights held by MCC under this Railway Agreement without the previous written consent of the Government as provided in Section 53, or
 - ii. MCC has knowingly submitted to the Government false statements which were a material consideration for the execution of this Railway Agreement, or
 - iii. MCC fails to comply with any final decisions by the arbitral tribunal with respect to a dispute with the Government under this Railway Agreement, or
 - iv. There exists another material breach or nonobservance by MCC of any of the terms, obligations, or conditions of this Railway Agreement, or of any law of Afghanistan, or
 - v. MCC fails to construct or operate the Railway in accordance with this Railway Agreement.

The Government may, subject to the provisions of this Section 46, revoke this Railway Agreement and be entitled to recover any damages it may have suffered due to MCC committing one or more of the above actions.

- (b) In the event that:
- i. The Government revokes or otherwise terminates this Railway Agreement without cause or legal justification, or
 - ii. The Government violates MCC's rights under this Railway Agreement, or
 - iii. MCC's operations are interfered so seriously by the Government that MCC is unable to maintain the normal operation of the Railway, or
 - iv. The Government fails to provide sufficient security for the Railway project in accordance with the terms of an executed Railway Security Agreement, or
 - v. The Government fails to comply with any final decisions by the arbitral tribunal in controversy arising with the Government under this Railway project, or
 - vi. There exists another material breach or nonobservance by the Government of any of the terms, obligations, or conditions of this Railway project, or of the laws of Afghanistan.

۲۲۴

- (c) MCC may, subject to the provisions of this Section 46, revoke this Railway Agreement and be entitled to recover any damages it may have suffered due to the Government committing one or more of the above actions. MCC may also be entitled to recover the un-recouped portion of its investment.
- (d) If any Party believes it has suffered damages due to the actions or inactions of the other Party, the Party shall submit the claim of damages for dispute resolution in accordance with Section 50 of this Railway Agreement.

47. Notification and Remedy

- (a) In the event that the Government seeks to terminate the Railway Agreement pursuant to this Part, the Government shall give notice in writing specifying the particular cause for termination and requiring, within three calendar months of such notice (or within such extended time as the Government may deem fair having regard to the circumstances of the particular case), to remedy the same or make reasonable compensation to the Government, as the case may be, in a manner acceptable to the Government. In the event that MCC seeks to terminate this Railway Agreement pursuant to this Part, MCC shall give notice in writing specifying the particular cause of termination and proposing a time period of at least three calendar months during which the Government must remedy the same.
- (b) If MCC or the Government shall fail to comply with said notice, the Government or MCC may, after the expiration of the time period for remedying the cause for termination, terminate this Railway Agreement, provided, however, that where there is any dispute between the Parties as to:
 - i. The existence of the cause for termination identified by the terminating Party, or
 - ii. Whether there has been any breach or nonobservance by MCC or the Government of any term, obligation, or condition of this Railway Agreement, or
 - iii. Whether any cause, breach or nonobservance can be remedied or as to the manner in which it should be remedied,
- (c) MCC or the Government may, within one year of notice refer the dispute to arbitration, and neither the Government nor MCC shall exercise its power of termination until the result of arbitration is known, and then subject to the terms of the award. Provided, however, that if MCC or the Government elects to refer the dispute to arbitration, it shall be prompt in prosecuting its claim before the arbitral tribunal.

۲۲۲

48. Default

- (d) Failure by a Party to perform or comply with any of the terms, provisions or obligations of this Railway Agreement, expressed or implied, shall not automatically terminate this Railway Agreement. In the event of a default, the aggrieved Party may notify the other Party in writing of the default or breach, and the notified Party shall have a period of thirty (30) days after receipt of such notice to cure, or commence and diligently pursue activities if the breach cannot reasonably be cured within thirty (30) days; provided that the period of time for remedying the breach shall be extended by any time that a Party is prevented from acting because of an event of circumstances beyond its control, including Government action or inaction. If a Party fails to commence corrective activities within such time for remedying, the other Party may terminate this Railway Agreement by giving written notice.
- (e) In the event that a failure by a Party to perform or comply with any of the terms, provisions or obligations of this Railway Agreement causes economic loss including the outstanding portion of MCC's investment to the other Party, the defaulting party shall compensate the other Party for the amount of the economic loss sustained by the other Party.

49. Force Majeure

- (a) General.
- (b) Any failure by the Government or any of its Ministries or subdivisions, or by MCC, to carry out any of its obligations under this Railway Agreement shall not be deemed a breach of the Railway Agreement if such failure is caused by *force majeure*. If, through *force majeure*, the fulfillment by either Party of any terms and conditions of this Railway Agreement is delayed, curtailed or prevented, then, anything in this Railway Agreement to the contrary notwithstanding, the time period for fulfilling the obligation thereby affected shall each be extended for a period equal to the total of the periods during which such causes or their effects were operative. For purposes of this Railway Agreement, *force majeure* shall include wars, acts of terrorism, insurrections, civil disturbances, blockades, embargoes, strikes and other labor conflicts, riots, epidemics, earthquakes, storms, floods, or other adverse weather conditions, explosions, fires, lightning, orders or directions of any government *de jure* or *de facto* or instrumentality or subdivision thereof, and acts of God or the public enemy. Provided, however, that only such loss, damage or injury as could not have been avoided by the taking of proper precautions, due care or such reasonable alternative measures as aforesaid shall be regarded as the consequences of any failure caused by *force majeure*.
- (c) Notice.

- (55)
- (d) The Party whose ability to perform its obligations as affected by *force majeure* shall, as soon as possible after the occurrence, notify the other Party thereof in writing, stating the *force majeure* and identifying the additional time period necessary to address the *force majeure*. The Parties shall agree as to the amount of time necessary to address the *force majeure* and the parties shall endeavor to do all reasonable within their power to remove such cause and resume activities within the agreed upon time period; provided, however, that neither party shall be obligated to resolve or terminate any disagreement with third parties, including labor disputes, except under conditions acceptable to it or pursuant to the final decision of any arbitral, judicial, or statutory agencies having jurisdiction to finally resolve the disagreement. As to labor disputes, the Government and MCC will cooperate in a joint endeavor to alleviate any conflict which may arise.

50. Dispute Resolution

Disputes arising under this Railway Agreement, which cannot be amicably resolved by the Parties, shall be settled through the following dispute settlement process:

- (a) Either Party shall have the right, subject to no conditions precedent, to refer the dispute to the International Centre for Settlement of Investment Disputes ("ICSID") for settlement by conciliation and/or arbitration as hereinafter provided. Either Party may commence conciliation or arbitration proceedings by giving notice to the other Party and to the Secretary-General of ICSID (including in such notice a statement of the question or dispute and of the claim or contention of the Party giving the notice). The assignment, transfer, lease or pledge of the right authorized by the Government to build, own, operate and transfer the railway line or any part thereof by MCC as specified in the railway agreement shall not prejudice MCC's right under this section.
- (b) The Rules of Conciliation and Arbitration of ICSID shall govern the conciliation and arbitration. The place of conciliation or arbitration shall be such as may be agreed by the parties and in default of agreement shall be as provided in the Rules of ICSID.
- (c) Pending the issue of a decision or award, the operations or activities that shall have given rise to the arbitration need not be discontinued, but if the decision or award recognizes that a complaint was justified, provision may be made in the award for such reparation or compensation in respect of such continued operations and activities as shall be decided by the arbitrator to be appropriate.
- (d) The decision of the arbitrator shall be final and binding upon the Parties to this Railway Agreement and upon any person who participated as a party in such arbitration proceedings, and they shall comply in good faith with the decision.
- (e) Should ICSID be replaced by, or its functions substantially change, or are transferred to any new international body of similar type and

51

competence, the function of the Arbitration Tribunal of ICSID provided by this Article shall be exercised by the chief officer of such international body without further agreement of the Parties.

- (f) Principles of fairness, good faith and fair dealing shall apply during the arbitration if no applicable law or regulation exists.
- (g) If the services of ICSID are unavailable to the parties to this Railway Agreement, then such unsettled dispute shall be referred to the Arbitration Institute of the Stockholm Chamber of Commerce for arbitration pursuant to the Rules of Arbitration of the United Nations Commission on International Trade Law ("UNCITRAL"). The place of the arbitration shall be in Stockholm and the arbitration tribunal shall be composed of three arbitrators appointed in accordance with the Rules of UNCITRAL. The award of the arbitration tribunal shall be final and binding on the Parties to this Railway Agreement and on any persons who participated as a party in such arbitration proceedings. Both Parties agree to accept the jurisdiction of the Arbitration Institute of the Stockholm Chamber of Commerce and execute voluntarily the award of the said Arbitration Tribunal of this Arbitration Institute of the Stockholm Chamber of Commerce.
- (h) The arbitration fee shall be borne by the losing party.

51. Duration

The Parties agree that this Railway Agreement will take effect immediately upon execution by the Parties. This Railway Agreement shall remain valid until MCC has recovered its total investment regarding the Railway as described in this Railway Agreement. This agreement may also terminate in accordance with the terms and provisions of this Railway Agreement, or as otherwise mutually determined and agreed to in writing by the parties.

52. Assignment

MCC may not assign, transfer, lease or pledge any of the rights, privileges, liabilities or obligations established under this Railway Agreement without the prior written consent of the Government. The consent of the Government shall not be required where:

- i. The assignment is solely for the purpose of providing security for the financing of the Project or,
 - ii. The assignment is to another company controlled by MCC through share-holding, provided that the Government shall be informed of any such assignment with 30 days advance notice prior to the assignment.
- (a) The Government shall not give its consent unless it is satisfied that:
- i. The proposed assignee is itself of good reputation or is a member of a group or groups of companies of good reputation or is owned by a company or companies of good reputation;

- ۲۲.
- 54
- ii. There is likely to be available to the proposed assignee either from its own resources or through other companies in the group of which it is a member, or otherwise, sufficient technical knowledge, experience, know-how and sufficient financial resources to enable it to effectively carry out a program satisfactory to the Government for the operations hereunder; and
 - iii. The proposed assignee is in all other respects acceptable to the Government. The Government may impose such conditions on the assignment as it considers appropriate.

The assignee shall have all the rights and privileges and shall assume all the liabilities and obligations of the assignor with respect to what is assigned without relieving MCC of such liabilities and obligations unless the Government expressly consents to such a release.

53. Amendments

The Parties mutually agree that this Railway Agreement may be amended by the written consent of the Parties and will be revised as necessary. For the purpose of this Railway Agreement, the Ministry of Mines is authorized to approve decisions concerning amendments for the Government and MCC, or its successor, is authorized to approve decisions concerning amendments for MCC.

54. Applicable Law.

This Railway Agreement is subject to and governed by all applicable laws of the Government of Afghanistan.

55. Complete Agreement

This Railway Agreement, consisting of the above Sections 1-55, together with the herein referenced documents, constitutes the complete agreement of the Parties with respect to the Railway for the Aynak Copper Project and supersedes all prior agreements and understandings between the parties regarding the Railway. This Railway Agreement shall be executed in English in four (4) originals with each Party holding two (2) originals and in Dari. In the event that a dispute arises under this Railway Agreement, between the English and Dari versions, the English text shall be definitive as to the terms, conditions, rights and obligations of the Parties under this Railway Agreement.

*** SIGNATURES FOLLOW ON NEXT PAGE ***

٢٢٩

AGREED TO AND ACCEPTED this ٣١ day of July, 2010:

Ministry of Mines

MCC-Jiangxi Copper Consortium



[Handwritten signature]

[Handwritten signature]

Ministry of Public Works

[Handwritten signature]

52a

APPENDIX 1: RAILWAY ROUTE

KKU

The general Railway routing, as shown in Figure 1, is described as transiting the following towns, mine locations and provinces of:

1. At the border with Pakistan near Torkham in Nangarhar; west to
2. Kabul, in Kabul Province; with a spur line to
3. The Aynak Mine, in Logar Province.
4. From Kabul, north to Parwan Province; west to
5. Bamiyan, in Bamiyan Province; north to
6. Baghlan Province; north to
7. Kunduz, in Kunduz Province; west to
8. Naibabad and north to Hairatan, in Balkh Province on the Uzbekistan border.

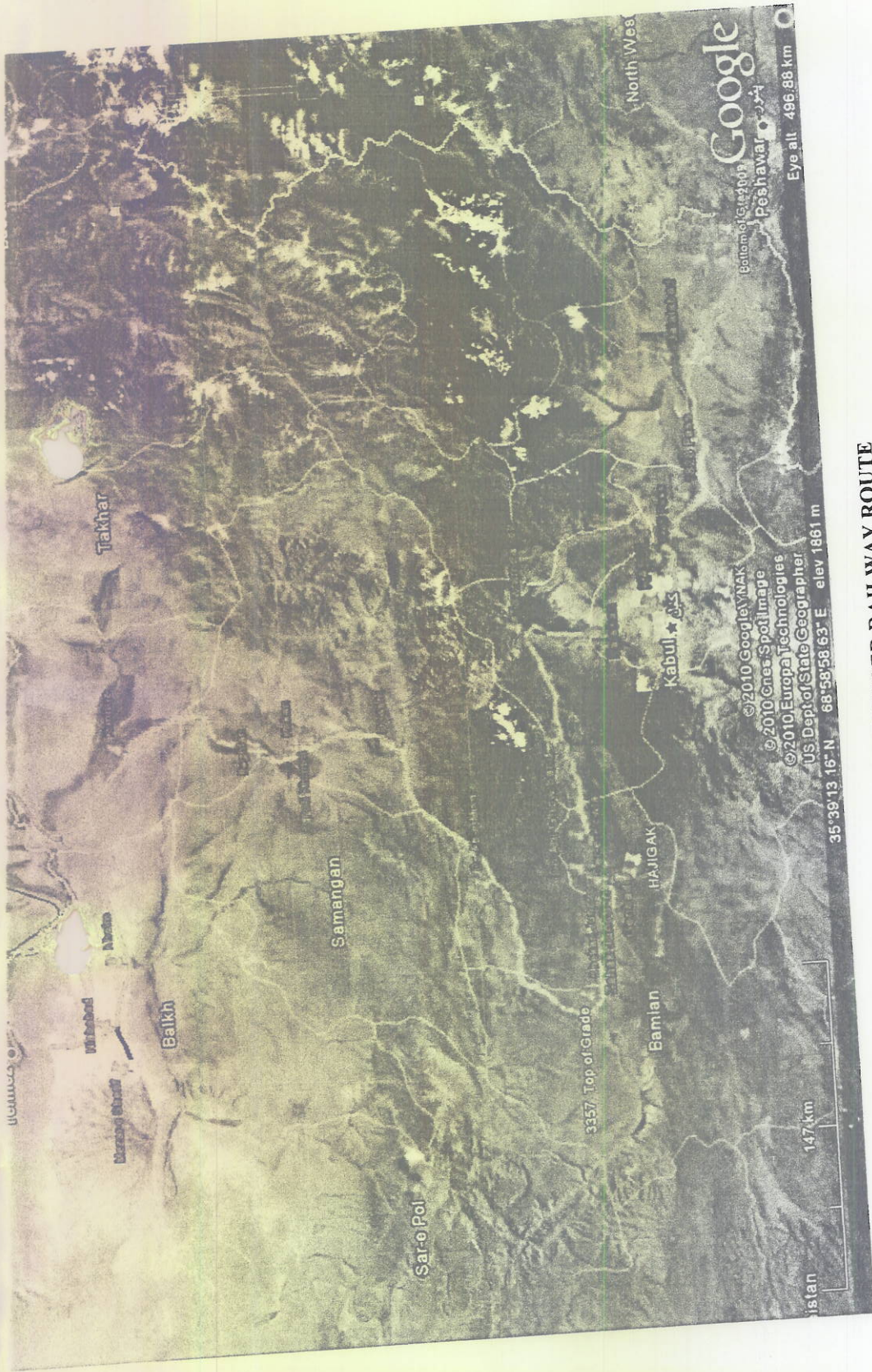


Figure 1. - PREFERRED RAILWAY ROUTE

1 July 2010 *ms*

159