

Q890-ZR

The World Bank
 INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
 INTERNATIONAL DEVELOPMENT ASSOCIATION

1818 H Street N.W.
 Washington, D.C. 20433
 U.S.A.

(202) 473-1000
 Cable Address: INTBAFRAD
 Cable Address: INDEVAS

December 10, 2013

H. E. Patrice KITEBI
 Minister of Finance
 Ministry of Finance
 Boulevard du 30 Juin
 Commune de la Gombe
 Kinshasa 1, Democratic Republic of Congo

Kinshasa
 Democratic Republic of Congo

**Re: Democratic Republic of Congo: Advance Agreement for
 Preparation of Proposed Central Africa Backbone Project (Phase 5) -
 Project Preparation Advance No. Q8900**

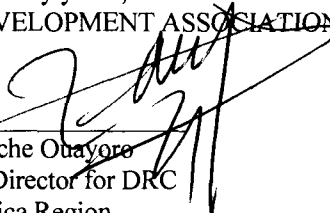
Excellency:

In response to the request for financial assistance made on behalf of Democratic Republic of Congo ("Recipient"), I am pleased to inform you that the International Development Association ("World Bank") proposes to extend to the Recipient an advance out of the World Bank's Project Preparation Facility in an amount not to exceed four million Dollars (US\$ 4,000,000) ("Advance") on the terms and conditions set forth or referred to in this letter agreement ("Agreement"), which includes the attached Annex, to assist in financing the activities described in the Annex ("Activities"). The objective of the Activities is to facilitate the preparation of a proposed project, which constitutes the second phase of the Central Africa Backbone Series of Projects, designed to contribute to increase geographical reach and usage of broadband network services and reduce their prices ("Project"), for the carrying out of which the Recipient has requested the World Bank's financial assistance.

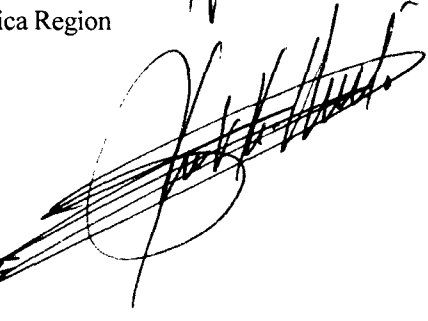
The Recipient represents, by confirming its agreement below, that: (a) it understands that the provision of the Advance does not constitute or imply any commitment on the part of IBRD or IDA to assist in financing the Project; and (b) it is authorized to enter into this Agreement and to carry out the Activities, repay the Advance and perform its other obligations under this Agreement, all in accordance with the provisions of this Agreement.

Please confirm the Recipient's agreement to the foregoing by having an authorized official of the Recipient sign and date the enclosed copy of this Agreement, and returning it to the World Bank. Upon receipt by the World Bank of this countersigned copy, this Agreement shall become effective as of the date of the countersignature.

Very truly yours,
INTERNATIONAL DEVELOPMENT ASSOCIATION

By 
Eustache Obayoro
Country Director for DRC
Africa Region

AGREED:
DEMOCRATIC REPUBLIC OF CONGO

By 
Authorized Representative
Name PATRICE KITEBI
Title MINISTRE DELEGUE
Date: 20/12/2013

Enclosures:

- (1) "Standard Conditions for Advances Made by the World Bank under its Project Preparation Facility", dated January 15, 2008; and
- (2) Disbursement Letter for the Advance, together with "World Bank Disbursement Guidelines for Projects", dated May 1, 2006.
- (3) "Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants", dated October 15, 2006;
- (4) "Guidelines: Procurement of Goods, Works and Non-consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers" dated January 2011;
- (5) "Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers" dated January 2011;

Article I
Standard Conditions; Definitions

1.01. **Standard Conditions.** The Standard Conditions for Advances Made by the World Bank under its Project Preparation Facility dated July 31, 2010 (“Standard Conditions”), constitute an integral part of this Agreement.

1.02. **Definitions.** Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the Standard Conditions, in this Agreement or in this section.

- (a) “CAB5-DRC” means the Central Africa Backbone Project (Phase 5) for the Democratic Republic of Congo.
- (b) COPIREP” or “*Comité de Pilotage de la Réforme des Entreprises du Portefeuille de l’Etat*” means the Steering Committee in charge of the reform of public companies, created pursuant to Décret n°136/2002, dated October 30, 2002.
- (c) “Open Access” means a regime based on a broad approach to telecommunications policy and regulatory issues, which: (i) sets out a technology-neutral framework that encourages innovative, low cost delivery to users; (ii) allows for competition at physical infrastructure, transmission and services layers in the internet protocol (IP) network by allowing a wide variety of physical networks and applications to interact in an open architecture; (iii) provides for transparent, clear and comparative information on prices and services so as to ensure fair trading within and between these layers in the IP network, (iv) allows any authorized service provider to enter the market so as to minimize the risk of any provider taking a position of dominant market power; and (v) encourages the provision of services that are closer to the users than a more centralized system.
- (d) “PPP” or “Public-Private Partnerships” means the contractual, governance, ownership, operational and financing arrangements between a government agency and one or more private sector entities participating in a PPP Arrangement (as hereinafter defined) for the purpose of delivering a project or service (building, operating and commercializing capacity on the fiber optic network) by sharing the risks and rewards of the venture.

Article II
Execution of the Activities

2.01. **Description of the Activities.** The Activities for which the Advance is provided consist of the following parts:

- (a) Carrying out of studies for the preparation of the proposed Project, including:

- (i) technical assistance to design and structure PPP for the management, maintenance, operation and commercialization of fiber optic infrastructure and prepare the recruitment of an internationally experienced private operator for the commercialization of telecommunication capacity under the Open Access Regime;
 - (ii) technical assistance to conduct the technical, economic and surveys for the planned networks to be financed by the project;
 - (iii) CAB5-DRC-related environmental and resettlements consultancies; and
 - (iv) The hiring of key staff for the Project Management Unit.
- (b) Building the capacity of COPIREP's management coordination unit, including the acquisition and installation of a computerized accounting system, the preparation of a manual of procedures for the Project, and acquisition of office equipment and office supplies.

2.02. **Execution of the Activities Generally.** The Recipient declares its commitment to the objectives of the Activities. To this end, the Recipient shall carry out the Activities through its Ministry of Portfolio in accordance with the provisions of: (a) Article II of the Standard Conditions; (b) this Article II; and (c) the "Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants", dated October 15, 2006 and revised in January 2011.

2.03. **Institutional and Other Arrangements.** Without limitation upon Section 2.02 above, the Recipient shall maintain, throughout the implementation of the Activities, the COPIREP with a composition and mandate satisfactory to the World Bank, to be responsible for the administrative and fiduciary aspects of the Advance.

2.04. **Monitoring, Reporting and Evaluation of the Activities.** The Recipient shall monitor and evaluate the progress of the Activities in accordance with the provisions of Section 2.08 of the Standard Conditions.

2.05. **Financial Management.** (a) The Recipient shall ensure that a financial management system is maintained in accordance with the provisions of Section 2.09 of the Standard Conditions.

(b) The Recipient shall ensure that interim un-audited financial reports for the Activities are prepared and furnished to the World Bank not later than 45 days after the end of each calendar quarter, covering the quarter, in form and substance satisfactory to the World Bank.

(c) The Recipient shall have its Financial Statements audited in accordance with the provisions of Sections 2.09 (b) of the Standard Conditions.

(i) If, on or before the Refinancing Date, a Refinancing Agreement has been executed by all of its parties, the Recipient shall have the Financial Statements included in the first audit of financial statements required under the Refinancing Agreement.

(ii) If, by the Refinancing Date, no Refinancing Agreement has been executed by all of its parties, such audit of the Financial Statements shall cover the period of the Advance, commencing with the fiscal year in which the first withdrawal under the Advance was made. The audited Financial Statements for such period shall be furnished to the World Bank not later than six months after the end of the Recipient's fiscal year in which the Refinancing Date occurs.

(iii) Notwithstanding the provisions of paragraphs (i) and (ii) of this Section, the World Bank may request an audit of the Financial Statements prior to the Refinancing Date, covering such period as is indicated in its request. The audited Financial Statements for such period shall be furnished to the World Bank not later than six months after the end of such period.

2.06. **Procurement**

(a) General. All goods and services required for the Activities and to be financed out of the proceeds of the Advance shall be procured in accordance with the requirements set forth or referred to in:

(i) Section I of the "Guidelines: Procurement of Goods, Works and Non-consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers" dated January 2011 ("Procurement Guidelines"), in the case of goods

(ii) Sections I and IV of the "Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers" dated January 2011 ("Consultant Guidelines") in the case of consultants' services; and

(iii) the provisions of this Section, as the same shall be elaborated in the procurement plan prepared and updated from time to time by the Recipient for the Activities in accordance with paragraph 1.18 of the Procurement Guidelines and paragraph 1.25 of the Consultant Guidelines ("Procurement Plan").

(b) Definitions. The capitalized terms used in the following paragraphs of this Section to describe particular procurement methods or methods of review by the World Bank of particular contracts, refer to the corresponding method in Sections II and III of the Procurement Guidelines, or Sections II, III, IV and V of the Consultant Guidelines, as the case may be.

(c) Particular Methods of Procurement of Goods and Non-consultant Services

(i) Except as otherwise provided in sub-paragraph (ii) below, goods and Non-consultants' Services shall be procured under contracts awarded on the basis of National Competitive Bidding subject to additional provisions referred to below:

Additional Provisions for National Competitive Bidding:

National Competitive Bidding may be used subject to using the open procedure ("*appel d'offres ouvert*") set forth in the Recipient's Public Procurement Law No 10/010 dated April 27, 2010 (the "PPL") and the Manual of Procedures of the PPL as per Recipient's Decree

No 10/22 dated June 2, 2010 (the “Manual of Procedures”); provided however that such procedure shall be subject to the provisions of Section I and Paragraphs 3.3 and 3.4 of Section III of the Procurement Guidelines and the additional following modifications:

- (1) **Standard Bidding Documents:** All standard bidding documents to be used for the Project under NCB shall be found acceptable to the World Bank before their use during the implementation of Project;
- (2) **Eligibility:** Eligibility of bidders and acceptability of their goods and services shall not be based on their nationality and/or their origin; and association with a national firm shall not be a condition for participation in a bidding process;
- (3) **Advertising and Bid Preparation Time:** Bidding opportunities shall be advertised at least in a national newspaper of wide circulation and on the website of the Recipient’s Procurement Regulator (*Autorité de Régulation des Marchés Publics*) and bidders should be given at least 30 days from the date of invitation to bid or the date of availability of the bidding documents, whichever is later;
- (4) **Criteria for Qualification of Bidders:** Qualification criteria shall only concern the bidder’s capability and resources to perform the contract taking into account objective and measurable factors. Such criteria for qualification of bidders shall be clearly specified in the bidding documents;
- (5) **Bid Evaluation and Contract Award:** A contract shall be awarded to the substantially responsive and lowest evaluated bidder provided that such bidder meets the qualification criteria specified in the bidding documents. No scoring system shall be allowed for the evaluation of bids, and no “blanket” limitation to the number of lots which can be awarded to a bidder shall apply. The criteria for bid evaluation and the contract award conditions shall be clearly specified in the bidding documents;
- (6) **Preferences:** No preference shall be given to domestic/regional bidders; to domestically/regionally manufactured goods; and to bidders forming a joint venture with a national firm or proposing national sub-contractors or carrying out economic activities in the territory of the Recipient;
- (7) **Publication of Contract Award:** Information on all contract awards shall be published in at least a national newspaper of wide circulation or in the Recipient’s Procurement Regulator (*Autorité de Régulation des Marchés Publics*) web-site;
- (8) **Fraud and Corruption:** In accordance with the Procurement Guidelines, each bidding document and contract shall include provisions stating the World Bank’s policy to sanction firms or individuals found to have engaged in fraud and corruption as set forth in the Procurement Guidelines;
- (9) **Inspection and Audit Rights:** In accordance with the Procurement Guidelines, each bidding document and contract shall include provisions stating the World Bank’s policy with respect to inspection and audit of accounts, records and other documents relating to the bid submission and contract performance;

(10) **Requirement for administrative documents and/or tax clearance certificate:** The bidding documents shall not require foreign bidders to produce any administrative or tax related certificates prior to confirmation of awarding a contract;

(11) **Modifications of a Signed Contract:** Any change in the contract amount which, singly or combined with all previous changes, increases the original contract amount by 15% (fifteen percent) or more must be done through an amendment to the signed contract instead of signing a new contract.

(ii) The following methods, other than National Competitive Bidding, may be used for procurement of goods and Non consultants' Services for those contracts which are specified in the Procurement Plan: (A) Shopping; and (B) Direct Contracting.

(d) Particular Methods of Procurement of Consultants' Services

(i) Except as otherwise provided in sub-paragraph (ii) below, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. For purposes of paragraph 2.7 of the Consultant Guidelines, the short list of consultants for services estimated to cost less than \$100,000 equivalent per contract may comprise entirely national consultants.

(ii) The following methods, other than Quality- and Cost-based Selection, may be used for the procurement of consultants' services for those assignments which are specified in the Procurement Plan: (A) Least Cost Selection; (B) Selection based on Consultants' Qualifications; (C) Single-source Selection; (D) Selection of Individual Consultants; and (E) Sole Source Procedures for the Selection of Individual Consultants.

(e) Review by the World Bank of Procurement Decisions. The Procurement Plan shall set forth those contracts which shall be subject to the World Bank's Prior Review. All other contracts shall be subject to Post Review by the World Bank.

Article III Withdrawal of the Advance

3.01. **Eligible Expenditures.** The Recipient may withdraw the proceeds of the Advance in accordance with the provisions of: (a) Article III of the Standard Conditions; (b) this Section; and (c) such additional instructions as the World Bank may specify by notice to the Recipient (including the "World Bank Disbursement Guidelines for Projects" dated May 2006, as revised from time to time by the World Bank and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the following table. The table specifies each category of Eligible Expenditures that may be financed out of the proceeds of the Advance ("Category"), the amount of the Advance allocated to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

Category	Amount of the Advance Allocated (expressed in Dollars)	Percentage of Expenditures to be Financed (inclusive of Taxes)
Goods, Training, Operating Costs, non-consulting services and consultants' services under the Activities	4,000,000	100%
TOTAL AMOUNT	4,000,000	

For the purpose of this section, the terms:

(a) "Training" means the following expenditures incurred in providing training, seminars or workshops: (i) travel by participants and presenters to the training or workshop site; (ii) per diem allowances of such persons during the training, seminars or workshop; (iii) honoraria for the presenters; (iv) rental of facilities; (v) materials, supplies; and (vi) translation and interpretation services; and

(b) "Operating Costs" means the incremental operating expenses incurred on account of the implementation of the Activities, management and monitoring including on account of operation and maintenance costs of office and office equipment; office supplies, additional staff costs, travel and supervision costs, per diem, but excluding the salaries and indemnities of officials and public servants of the Recipient's civil service.

3.02. **Withdrawal Conditions.** Notwithstanding the provisions of Section 3.01 of this Agreement, no withdrawal shall be made for payments made prior to the date of countersignature of this Agreement by the Recipient.

3.03. **Refinancing Date.** The Refinancing Date is October 15, 2014.

Article IV Terms of the Advance

4.01. **Service Charge.** The Recipient shall pay a service charge on the Withdrawn Advance Balance at the rate of three-fourths of one percent (3/4 of 1%) per annum. The service charge shall accrue from the respective dates on which amounts of the Advance are withdrawn and shall be paid in arrears in accordance with the provisions of Section 4.02 of this Agreement. Service charges shall be computed on the basis of a 360-day year of twelve 30-day months.

4.02. **Repayment.** The Withdrawn Advance Balance shall be repaid by the Recipient to the World Bank (together with any service charges accrued thereon) in accordance with the provisions of Article IV of the Standard Conditions and the following provisions:

(a) *Refinancing under the Refinancing Agreement:* If, on or before the Refinancing Date, a Refinancing Agreement has been executed by all of its parties, then the full amount of the Withdrawn Advance Balance shall be repaid to the World Bank (together with any service charges accrued on the Advance to the date of repayment) as soon as the Refinancing Agreement becomes effective, by means of a withdrawal by the World Bank of an amount of the Refinancing Proceedsequivalent to the Withdrawn Advance Balance plus such service charges, in accordance with the provisions of the Refinancing Agreement.

(b) *Repayment in the absence of a Refinancing Agreement:* If, on or before the Refinancing Date, no Refinancing Agreement has been executed by all of its parties, or if, by such date or at any time thereafter, it has been so executed but terminates without becoming effective, then:

- (i) if the amount of the Withdrawn Advance Balance does not exceed \$50,000, it shall be repaid by the Recipient to the World Bank (together with service charges accrued on the Withdrawn Advance Balance to the date of repayment) on such date as the World Bank shall specify in a notice to the Recipient, which shall in no event be earlier than 60 days following the date of dispatch of such notice; and
- (ii) if the amount of the Withdrawn Advance Balance exceeds \$50,000, it (together with service charges accrued on the Withdrawn Advance Balance to the Notice Date) (the "Aggregate Balance") shall be paid by the Recipient to the World Bank in ten approximately equal semiannual installments, in the amounts and on the dates ("Payment Dates") which the World Bank shall specify in a notice to the Recipient. In no event shall the first Payment Date be set earlier than 60 days following the date ("Notice Date") of dispatch of such notice. The Recipient shall pay a service charge on the Aggregate Balance at the rate of three-fourths of one percent (3/4 of 1%) per annum, payable in arrears on each Payment Date. The service charge shall be computed on the basis of a 360-day year of twelve 30-day months.

Article V Recipient's Representative; Addresses

5.01. *Recipient's Representative.* The Recipient's Representative referred to in Section 9.02 of the Standard Conditions is the Recipient's Minister in charge of finance.

5.02. *Recipient's Address.* The Recipient's Address referred to in Section 9.01 of the Standard Conditions is:

Ministry of Finance
Boulevard du 30 Juin
Commune de la Gombe
Kinshasa 1, Democratic Republic of Congo

Email: cabfinances@minfinrdc.com

Tel.: +243 99 39 000 39

5.03. **World Bank's Address.** The World Bank's Address referred to in Section 9.01 of the Standard Conditions is:

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

Cable:

Telex:

Facsimile:

INDEVAS
Washington, D.C.

248423 (MCI) or
64145 (MCI)

1-202-477-6391