

Dated 5 February 2013

THE EMERGING AFRICA INFRASTRUCTURE FUND LIMITED

and

**THE TRUSTEES OF THE PRIVATE INFRASTRUCTURE
DEVELOPMENT GROUP TRUST**

SUBSCRIPTION AGREEMENT (No.1) 2013
relating to shares in The Emerging Africa Infrastructure
Fund Limited

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THIS AGREEMENT is made on 5 February 2013

BETWEEN

- (1) **THE EMERGING AFRICA INFRASTRUCTURE FUND LIMITED**, a limited liability company established under the laws of Mauritius the particulars of which are set out in Schedule 2 hereto ("**EAIF**"); and
- (2) **SG HAMBROS TRUST COMPANY LIMITED**, of Norfolk House, 31 St James's Square, London SW1Y 4JR, United Kingdom, **MULTICONSULT TRUSTEES LTD.** of Rogers House, 5 President John Kennedy Street, PO Box 60, Port Louis, Mauritius, and **MINIMAX LTD.** of Rogers House, 5 President John Kennedy Street, PO Box 60, Port Louis, Mauritius as trustees of **THE PRIVATE INFRASTRUCTURE DEVELOPMENT GROUP TRUST**, a trust created under the laws of Mauritius (the "**PIDG Trust**").

INTRODUCTION

- (A) EAIF has been established for the purpose set out in Clause 2.1.
- (B) The existing equity funding of EAIF was raised from the PIDG Trust which as at 30 September 2012 has subscribed a total of US\$ 194,798,600 for 19,479,860 EAIF Shares (as defined in clause 1.1 below) pursuant to a master agreement originally dated 30 January 2002, as subsequently amended from time to time (the "**Master Agreement**") and subscription arrangements entered into by the PIDG Trust from time to time.
- (C) The PIDG Trust proposes to subscribe for additional EAIF Shares on the terms and subject to the conditions set out in this Agreement with funding provided by DFID.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 In this Agreement:

- 1.1.1 "**Accounting Period**" means the accounting period of EAIF commencing each year on 1 January and ending on the following 31 December;
- 1.1.2 "**Accounts**" mean the unaudited financial statements of EAIF for the period to 30 September 2012;
- 1.1.3 "**Accounts Administration Agreement**" means the agreement entered into on 30 January 2002 between EAIF and various finance parties in relation to the provision of payment, security and custodial agency services with respect to EAIF's bank accounts, as amended by an accession and amendment

agreement dated 17 May 2002, a deed of amendment dated 25 June 2010 and a deed of amendment dated 15 December 2011 and from time to time;

- 1.1.4 "Board" means the board of directors of EAIF, and "Director" means any member of the Board;
- 1.1.5 "Business Day" means a day (other than a Saturday or a Sunday) on which banks are generally open for normal business in London and Mauritius;
- 1.1.6 "Completion" means the implementation of the matters described in Clause 6;
- 1.1.7 "Conditions" means the conditions precedent referred to in Clauses 3.1;
- 1.1.8 "Constitution" means the constitutional documents of EAIF for the time being;
- 1.1.9 "DFID" means the Government of the United Kingdom, acting through the Secretary of State for International Development at the Department for International Development;
- 1.1.10 "DFID MoU" means the arrangement entered into between DFID and the PIDG Trust on 12 March 2012 in relation to the further funding of EAIF and other activities of the PIDG Trust;
- 1.1.11 "EAIF Donors" means those members of PIDG funding EAIF through the PIDG Trust (or directly), being:
- (a) the Government of the Netherlands represented by the Directorate for Sustainable Economic Development – The Netherlands Minister for Development Co-operation;
 - (b) the Swiss State Secretariat for Economic Affairs of the Government of the Confederation of Switzerland;
 - (c) DFID;
 - (d) the Government of Sweden represented by Sida, the Swedish International Development Cooperation Agency; and
 - (e) any additional EAIF donor(s);

- 1.1.12 **"EAIF Funders' Arrangement"** means the arrangement entered into between the EAIF Donors dated 14th March 2003 as amended from time to time;
- 1.1.13 **"EAIF Shares"** means ordinary shares of US\$10 each in the capital of EAIF, having the rights and being subject to the restrictions set out in the Constitution;
- 1.1.14 **"Funding Instruments"** shall have the meaning set out in the EAIF Funders' Arrangement;
- 1.1.15 **"IFRS"** means the International Financial Reporting Standards issued by the International Accounting Standards Board, as amended from time to time;
- 1.1.16 **"Investment Policy"** means the investment policy of EAIF amended from time to time in accordance with the Constitution;
- 1.1.17 **"Manager"** means Frontier Markets Fund Managers Ltd a limited liability company established under the laws of Mauritius (formerly known as Standard Infrastructure Fund Managers (Africa) Ltd) or any other manager of EAIF from time to time;
- 1.1.18 **"Master Agreement"** shall have the meaning attributed to such term in Recital B;
- 1.1.19 **"Material Adverse Effect"** means a material adverse effect (which is continuing) on EAIF's business, operations, assets, financial condition results or general affairs or would adversely affect its ability to fulfil its obligations under this Agreement but in any event, not including any such material adverse effect which has been cured or remedied;
- 1.1.20 **"Needs Letter"** has the meaning assigned thereto in Clause 3.1.3
- 1.1.21 **"PIDG"** means the Private Infrastructure Development Group;
- 1.1.22 **"PMU"** means the Programme Management Unit of the Private Infrastructure Development Group;
- 1.1.23 **"Second Amended and Restated Fund Management Agreement"** means the amended and restated fund management agreement entered into on 20th July 2011 between the Manager and EAIF pursuant to which the Manager agreed to provide to EAIF certain management advisory and support services as amended from time to time;

- 1.1.24 "Shareholder" means the holder of any EAIF Share;
- 1.1.25 "Subscription" means a subscription for EAIF Shares by the PIDG Trust pursuant to the terms hereof;
- 1.1.26 "Subscription Amount" means the amount so specified in any Subscription Request;
- 1.1.27 "Subscription Date" means the date specified in the Subscription Request;
- 1.1.28 "Subscription Request" means a completed, signed and dated written notice from EAIF to the PIDG Trust in the form set out in Schedule 3; and
- 1.1.29 "Warranties" means the warranties contained in Clause 5.
- 1.2 Any express reference to any enactment (which includes any legislation in any jurisdiction) includes references to:
- 1.2.1 that enactment as re-enacted, amended, extended or applied by or under any other enactment before or after the date of this Agreement;
- 1.2.2 any enactment which that enactment re-enacts (with or without modification); and
- 1.2.3 any subordinate legislation (including regulations) made (before or after the date of this Agreement) under any enactment, as re-enacted, amended, extended or applied as described in Clause 1.2.1, or under any enactment referred to in Clause 1.2.2.
- 1.3 References to an "agreement" or "document" shall be construed as a reference to such agreement or document as the same may have been amended, varied, supplemented or novated in writing at the relevant time in accordance with the requirements of such agreement or document and, if applicable, of this Agreement.
- 1.4 References to a "person" shall be construed so as to include any individual, firm, company, government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality).
- 1.5 References to any English legal term for any action, remedy, method or judicial proceeding, legal document, legal status, court, official, or any legal concept or

thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English legal term.

- 1.6 References to "US Dollars" or "US\$" are to the lawful currency from time to time of the United States of America.
 - 1.7 References to "GBP" or "GB pounds sterling" are to the lawful currency from time to time of the United Kingdom.
 - 1.8 Where there is any inconsistency between the definitions set out in this Clause and the definitions set out in any Clause or Schedule, then for the purposes of construing such Clause or Schedule, the definitions set out in such Clause or Schedule shall prevail.
 - 1.9 The singular shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa.
 - 1.10 The index and the headings in this Agreement do not affect its interpretation.
 - 1.11 Any Schedule or Appendix to this Agreement shall take effect as if set out in this Agreement and references to this Agreement shall include its Schedules and Appendices.
 - 1.12 References to (i) a "Party" is to a party to this Agreement, and to (ii) "Clauses", "Paragraphs" and "Schedules" are references to the clauses, paragraphs and schedules of this Agreement.
 - 1.13 Any individual shall be deemed to be connected with:
 - 1.13.1 any person or persons in his or their capacity as trustee or trustees of a trust of which such individual is the settlor, provided that there are no persons beneficially interested under the trust other than that individual or his spouse or any child under the age of 18; or
 - 1.13.2 any person who is the spouse, a sibling, a parent or a child of that individual.
 - 1.14 Clauses 1.1 to 1.13 apply unless the contrary intention appears.
- 2. PURPOSE AND USE OF FUNDS**
- 2.1 The purpose of EAIF is as set out in the Constitution, the Investment Policy and the EAIF Funders' Arrangement.

- 2.2 Subject to Clause 3, the PIDG Trust agrees to subscribe at a subscription price of US\$10 per EAIF Share for, and EAIF agrees to allot to the PIDG Trust, EAIF Shares for a maximum aggregate subscription price which shall in no circumstances exceed the figure set out in Schedule 1 in respect of the relevant year.
- 2.3 The subscription monies received by EAIF pursuant to Clause 2.2 shall be used exclusively by EAIF (i) for the purpose set out in Clause 2.1 and (ii) as working capital in connection therewith, and shall be applied in accordance with any relevant provisions of the Master Agreement and the Accounts Administration Agreement.
- 2.4 As soon as reasonably practicable after the execution of this Agreement, EAIF and the PIDG Trust hereby agree to execute an Amended and Restated EAIF Funders Agreement in a form to be agreed.

3. CONDITIONS PRECEDENT TO SUBSCRIPTION

- 3.1 The obligations of the PIDG Trust in respect of each Subscription are conditional on each of the following being fulfilled to the PIDG Trust's satisfaction (in both form and content):
- 3.1.1 the DFID MoU remaining in full force and effect and the Second Amended and Restated Fund Management Agreement and the Master Agreement remaining in full force and effect and there having been no breach of any such agreement and the effecting of the relevant Subscription shall not cause any such breach to occur;
- 3.1.2 there having been no breach of:
- (a) any of the Warranties given by EAIF at any time hereunder; and
 - (b) any provision of the Investment Policy (unless waived or approved in advance in writing by each of the EAIF Donors);
- 3.1.3 receipt by the PIDG Trust of a needs letter in form and substance acceptable to the PIDG Trust explaining why the amount requested therein is required to meet the financial needs of EAIF during the following six months and attaching an unaudited financial statement on the use of the funds from the previous Subscription (where applicable);
- 3.1.4 receipt by the PIDG Trust of sufficient funds from the EAIF Donors under the relevant Funding Instruments to subscribe for the EAIF Shares as requested under the relevant Subscription Request; and

- 3.1.5 the proposed issue of EAIF Shares to the PIDG Trust pursuant to the terms hereof being approved (i) by the Board, and (ii) by ordinary resolution of Shareholders on the record as at the date thereof.
- 3.2 The PIDG Trust undertakes to provide to EAIF a declaration of effectiveness when the Conditions specified in Clause 3.1 have been fulfilled to its satisfaction.
- 3.3 The PIDG Trust may waive all or any of the Conditions in whole or in part at any time by notice in writing to EAIF. Any such waiver may be subject to further conditions.
- 3.4 Each of the Parties shall use all reasonable endeavours to assist in the fulfilment of the Conditions.
- 3.5 If all the Conditions specified in Clause 3.1 are not fulfilled by EAIF or waived by the PIDG Trust on or before 31 December 2014 (or such later date as the Parties may agree in writing) none of the Parties shall have any rights or obligations under this Agreement so that no Party shall have any claims against the others (or any of them) for costs, damages, compensation or otherwise except:
- 3.5.1 in relation to any previous breach of this Agreement (including Clause 3.4); and
- 3.5.2 the provisions of Clauses 1, 3.5 and 7 to 10 (inclusive) shall continue to apply.

4. SUBSCRIPTION

- 4.1 Subject to Clause 3.1, and in reliance on the Warranties and other covenants and undertakings on the part of EAIF as set out in this Agreement, on receipt of a Subscription Request submitted to it by EAIF in accordance with Clause 4.3 the PIDG Trust shall on the relevant Subscription Date subscribe at a subscription price of US\$10 per EAIF Share for, and EAIF shall allot to the PIDG Trust, such number of EAIF Shares as are represented by the relevant Subscription Amount, provided that the aggregate Subscription Amount under this Agreement shall not in any circumstances exceed the maximum subscription price referred to in Clause 2.2.
- 4.2 If the PIDG Trust makes a Subscription in GBP, EAIF shall allot to the PIDG Trust such amount of EAIF Shares as result from the conversion of the Subscription Amount to US\$ using such exchange rate as may be agreed between the Parties in advance of such Subscription, PROVIDED THAT the aggregate of all Subscriptions shall not exceed the Maximum Aggregate Subscription Amount set out in Schedule 1.

4.3 Subject to Clause 4.2, whenever EAIF desires the PIDG Trust to make a Subscription it shall deliver to the PMU a completed, signed and dated Subscription Request to be received by the PMU not later than 12.00 noon (London time) 30 Business Days prior to the proposed Subscription Date (or such shorter time period as the PIDG Trust shall in its absolute discretion agree from time to time). Each Subscription Request shall attach a Needs Letter and unaudited financial statements in accordance with the provisions of Clause 3.1.3 of this Agreement.

4.4 Subject to the terms of this Agreement, the PIDG Trust shall on the Subscription Date specified in the relevant Subscription Request pay the amount requested in full in cash in US Dollars or such other currency as the PIDG Trust may agree to the credit of EAIF at such bank as EAIF shall designate in the Subscription Request (and references to "payment in cash" shall include payment by means of the electronic transfer of funds) PROVIDED THAT the aggregate of all Subscriptions shall not exceed the Maximum Aggregate Subscription Amount set out in Schedule 1.

4.5 EAIF shall not, unless otherwise agreed with the PIDG Trust, be entitled to serve a Subscription Request after 31 December 2013.

5. WARRANTIES AND UNDERTAKINGS

5.1 The PIDG Trust warrants to EAIF that:

5.1.1 it has the requisite power and authority to enter into and perform this Agreement;

5.1.2 this Agreement constitutes valid and legally binding obligations on it in accordance with its terms;

5.1.3 compliance with the terms of this Agreement does not and will not conflict with or constitute a default under any provision of:

(a) any agreement or instrument to which it is a party; or

(b) its trust deed; or

(c) any order, judgment, injunction, or as far as it is aware any other restriction of any kind or character by which it is bound.

5.2 EAIF warrants to the PIDG Trust on the date of this Agreement and again on each Subscription Date:

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- 5.2.1 EAIF is a limited liability company and duly incorporated under the laws of Mauritius and has the corporate power to own its assets, conduct its business as presently conducted or proposed to be conducted and to enter into, and comply with its obligations under, this Agreement;
- 5.2.2 this Agreement has been duly authorised and executed by EAIF and the obligations expressed to be assumed by it hereunder constitute valid and legally binding obligations of EAIF, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws of general applicability affecting the enforcement of creditors' rights generally;
- 5.2.3 neither the entry into this Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any indenture, mortgage, agreement or other instrument or arrangement to which EAIF is a party or by which it is bound, or violate any of the terms or provisions of the Constitution or any authorisation, judgment, decree or order or any law or other rule or regulation applicable to EAIF;
- 5.2.4 EAIF has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the transactions contemplated hereby. All authorisations required to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement and to make it admissible in evidence in its jurisdiction of incorporation have been obtained and are in full force and effect;
- 5.2.5 in any proceedings taken in its jurisdiction of incorporation in relation to any of this Agreement, the choice of English law as the governing law of this Agreement and any award obtained in England in relation to this Agreement will be recognised and enforced;
- 5.2.6 EAIF is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets to an extent or in a manner which might result in a Material Adverse Effect;
- 5.2.7 all tax returns and reports of EAIF required by applicable law to be filed have been duly filed and all taxes, obligations, fees and other governmental charges upon EAIF, or its properties, or its income or assets, which are due and payable or to be withheld, have been paid or withheld, other than those presently payable without penalty or interest or with respect to which the failure to pay has not resulted in or may reasonably be not expected to result in a Material Adverse Effect;

- 5.2.8 EAIF is not engaged in nor, to the best of its knowledge after due enquiry, threatened by, any litigation, arbitration or administrative proceedings which, if determined in a manner adverse to EAIF by a final non-appealable judgment or decision of a court, arbitral tribunal or administrative or other body would result in or may reasonably be expected to result in a Material Adverse Effect;
- 5.2.9 to the best of its knowledge and belief after due enquiry, EAIF is not in violation of any applicable law or regulation which has resulted in or may reasonably be expected to result in a Material Adverse Effect;
- 5.2.10 under the laws of Mauritius it is not required that this Agreement be filed, recorded, or enrolled with any court or other authority in Mauritius or that any stamp, registration or similar tax be paid on or in relation to this Agreement or the transactions contemplated herein, save for the fact that registration would be required in order for the Agreement to be binding on third parties;
- 5.2.11 EAIF has not established a place of business in the United Kingdom;
- 5.2.12 the particulars of EAIF set out in Schedule 2 (as amended from time to time with the consent of the PIDG Trust) are correct;
- 5.2.13 except as referred to in this Agreement or the EAIF Funders' Arrangement or as set out in the Constitution, no person has any right, contingent or otherwise, to subscribe for or otherwise to acquire any shares or other securities of EAIF;
- 5.2.14 the audited accounts of EAIF for the 12 month period to 31 December 2011 provide a true and fair view of the assets and liabilities (whether present or future, actual or contingent) and state of affairs and financial position of EAIF as at 31 December 2011 and of the profits and losses of EAIF for the period in respect of which they have been prepared; and
- 5.2.15 the management accounts of EAIF for the period to 30 September 2012 have been prepared with due care and attention, on bases consistent with those adopted in the preparation of previous management accounts of EAIF and show with reasonable accuracy the assets and liabilities (whether present or future, actual or contingent) and state of affairs and financial position of EAIF as at 30 September 2012 and of the profits and losses of EAIF for the period in respect of which they have been prepared.

5.3 EAIF hereby undertakes to the PIDG Trust that:

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- 5.3.1 it will at all times conduct its business in accordance with the Investment Policy and comply with OECD Principles of Corporate Governance issued from time to time to the extent applicable for EAIF;
- 5.3.2 it will ensure that procurement of goods and services are made, governed by and affected in accordance with competitive bidding procedures in accordance with the PIDG's procurement policies;
- 5.3.3 internal procedures and controls have been instituted for the purpose of preventing the Manager and EAIF from becoming an instrument for money laundering, the financing of terrorist activities, fraud or other corrupt or illegal purposes or practices;
- 5.3.4 it will comply with its Investment Policy and the Constitution and will ensure that no amendments are made to these documents without the PIDG Trust's consent;
- 5.3.5 it will not enter into any transaction with any person other than in the ordinary course of its business on the basis of arm's length arrangements;
- 5.3.6 it will procure that the audited financial statements it produces in respect of each Accounting Period are prepared in accordance with IFRS;
- 5.3.7 it will retain or cause to be retained until at least seven (7) years after the PIDG Trust has received the audit report for the fiscal year in which the last Subscription was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing EAIF's expenditures and ensure that such records and accounts are included in the annual audit of EAIF and enable the representatives of PIDG Trust and the EAIF Donors to examine such records and accounts of EAIF;
- 5.3.8 it will obtain and retain in force (and where appropriate renew in a timely manner) or procure, where relevant, the obtaining or maintenance of all authorisations, the failure of which to obtain or maintain may reasonably be expected to result in a Material Adverse Effect and comply with all the conditions and restrictions contained in, or imposed upon, EAIF by those authorisations the failure with which to comply may reasonably be expected to result in a Material Adverse Effect;
- 5.3.9 it will comply with all applicable laws and regulations, the failure to comply with which may reasonably be expected to result in a Material Adverse Effect; and
- 5.3.10 it will provide to the PIDG Trust the following:

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- (i) at least 20 days before the start of each Accounting Period, a copy of EAIF's business or annual operating plan and budget for such Accounting Period;
- (ii) within thirty days of the end of each quarter (31 March, 30 June, 30 September, 31 December), an unaudited financial statement for EAIF for each such three month period, which the PIDG Trust will circulate to all members of the PIDG;
- (iii) within thirty days of the end of each quarter (31 March, 30 June, 30 September, 31 December) progress reports on the status of the activities of EAIF including any special reports relating to investments of EAIF in such form and detail as any EAIF Donor may require and a statement from the Board confirming that all loans by EAIF have been reviewed with comments describing any material risks associated with such loans;
- (iv) within one hundred and twenty (120) days after the end of each Accounting Period, a copy of EAIF's audited financial statements for such Accounting Period prepared in accordance with IFRS together with an audit report thereon signed by the EAIF's auditors, which shall include an annual management assertion of the satisfactory financial procedures and controls used by EAIF;
- (v) logframes and reports on the development impact of the projects supported by EAIF in accordance with the methodology and format agreed by the PIDG Trust;
- (vi) prompt notice of any proposed change in the purpose, nature or scope of the business or operations of EAIF;
- (vii) at least fourteen (14) days' notice (or such other period of notice as permitted by the Constitution) of the calling of any meeting of Shareholders indicating the agenda thereof, and as soon as available thereafter the minutes of such meeting;
- (viii) prompt notice of any litigation which is reasonably likely to affect, materially and adversely, EAIF, the PIDG Trust or any EAIF Donor; and
- (ix) without limitation to the above, any information reasonably requested by the PIDG Trust (and it will and allow representatives of the PIDG Trust and the EAIF Donors the right to review the progress of any investment by EAIF and allow the representatives of the PIDG Trust and the EAIF Donors the right to audit the books and records of EAIF

provided that EAIF shall not be obliged to disclose any information which is subject to confidentiality or non-disclosure undertakings in favour of a third party); and

- (x) such reasonable support and assistance as the EAIF Donors may require when undertaking any mid-term or progress review of EAIF.

5.4 Each of the Warranties set out in this Clause 5 is separate and independent.

5.5 In this Clause the following additional definitions and rules of interpretation apply:

“Claim” means a claim under the Warranties;

“Substantiated Claim” means a Claim in respect of which liability is admitted by the party against whom such Claim is brought or which has been adjudicated upon by an arbitrator(s) or a Court of competent jurisdiction and no right of appeal lies in respect of such adjudication or the parties are debarred by passage of time or otherwise from making appeal.

A Claim is “connected” with another Claim or Substantiated Claim if they all arise out of the occurrence of the same event or relate to the same subject matter.

5.5.1 This Clause limits the liability of each Party in relation to any Claim.

5.5.2 The liability of each Party for all Substantiated Claims against it, when taken together, will not exceed such sum as has actually been subscribed by the PIDG Trust for EAIF Shares pursuant to this Agreement, and no Party shall be entitled to recover damages or otherwise obtain reimbursement or restitution more than once in respect of the same loss.

5.5.3 No Party will be liable for a Claim unless:

- (a) the amount of a Substantiated Claim, or of a series of connected Substantiated Claims of which that Substantiated Claim is one, exceeds ten thousand US Dollars (US \$10,000);
- (b) the amount of all Substantiated Claims that are not excluded under Clause 5.5.3(a) when taken together exceeds fifty thousand US Dollars (US \$50,000) in which case, the whole amount (and not just the amount by which the limit in this sub-clause is exceeded) is recoverable.

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- 5.5.4 No Party is liable for any Claim to the extent that the Claim relates to any matter specifically and fully provided for in the Accounts.
- 5.5.5 No Party is liable for a Claim unless the Party making the Claim has given notice in writing of the Claim to the Party against which the Claim is made, specifying in reasonable detail the nature of the Claim and the amount claimed, within the period of (as the case may be) one (1) year beginning with the date of this Agreement or, in respect of any Warranty given by EAIF to the PIDG Trust pursuant to Clause 5.2 one (1) year beginning with the date of each Subscription by the PIDG Trust hereunder.
- 5.5.6 Nothing in this Clause applies to a Claim that arises or is delayed as a result of dishonesty, fraud or wilful concealment by a Party against whom the Claim is made or by its agents or advisers.

6. COMPLETION

- 6.1 Subject to Clause 4, completion of each Subscription shall take place on the Subscription Date set out in the relevant Subscription Request at such time and place as the Parties shall agree.
- 6.2 At completion of each Subscription, EAIF shall, in accordance with Clause 3.1.5, procure that meetings of the Board and of the Shareholders are held or written resolutions passed at/by which it is resolved that subject to receipt of the relevant subscription moneys by EAIF:
- 6.2.1 the PIDG Trust shall be allotted the number of EAIF Shares set out in the relevant Subscription Request;
- 6.2.2 the PIDG Trust shall be entered in the register of members of EAIF as the holders of such EAIF Shares allotted to it and share certificates shall be issued accordingly in accordance with the provisions of clause 6.3.2 below.
- 6.3 Following completion of the matters referred to in Clause 6.2:
- 6.3.1 the PIDG Trust shall pay EAIF in full for the EAIF Shares allotted to it in immediately available funds in accordance with Clause 4.3; and
- 6.3.2 a copy of the certificate for the EAIF Shares allotted shall be delivered to the PIDG Trust (or a nominee thereof) and the original shall be delivered to Barclays Bank Plc as Security Trustee (as defined in the Master Agreement) in connection with the pledge of such EAIF Shares.

7. CONFIDENTIALITY

- 7.1 Subject to Clause 7.2, the PIDG Trust undertakes to EAIF, and the PIDG Trust shall procure that the EAIF Donors shall undertake to EAIF, that it shall keep confidential all information of a secret or confidential nature received by it relating to EAIF.
- 7.2 Clause 7.1 does not apply to the disclosure of information:
- 7.2.1 to the extent that such information comes into the public domain (other than through a breach of this Clause 7) or as required by law or by any court or any other regulatory body; or
- 7.2.2 to any of the PIDG Trust's trustees, their officers and employees and its and their professional advisers provided that any such disclosure is made on the basis that the information is treated as confidential by the recipient and used by him only for the purpose for which it was disclosed.

8. DISPUTES

- 8.1 **Governing Law:** This Agreement is governed by, and all disputes, claims, controversies, or disagreements of whatever nature arising out of or in connection with this Agreement, including any question regarding its existence, validity, termination or enforceability (a "Dispute") shall be resolved in accordance with the laws of England.
- 8.2 **Amicable Settlement:** If any Dispute arises between any of the Parties, they shall use all reasonable endeavours to resolve the matter amicably. If one Party gives any other Party notice that a material Dispute has arisen and the Parties are unable to resolve such Dispute within thirty (30) days of service of such notice, then such Dispute shall be referred to the respective chairmen or chief executives or their equivalents of the Parties in dispute. No Party shall resort to arbitration against any other Party under this Agreement until at least thirty (30) days after such referral. This shall not affect a Party's right, where appropriate, to seek interim relief.
- 8.3 **Arbitration:** All Disputes which are unresolved by the chair or chief executives or their equivalents pursuant to Clause 8.2, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration ("LCIA") Rules, which Rules are deemed to be incorporated herein.
- 8.4 **Constitution and Language:** Arbitration under the LCIA Rules shall consist of one arbitrator who shall be either a barrister or a solicitor admitted to practice in England and Wales for at least fifteen (15) years. The parties to an arbitration

under this Agreement shall attempt to agree the arbitrator within twenty (20) days of the commencement of the arbitration. Failing such agreement the sole arbitrator shall be appointed by the LCIA Court. The seat of the arbitration shall always be, and all arbitration proceedings shall be in London, England (though if the parties to an arbitration agree, any arbitration proceeding may be held in such other venue as may be mutually convenient). The language of the arbitration shall be English.

- 8.5 **Appeals:** None of the Parties shall make an application pursuant to Sections 45 or 69 of the Arbitration Act 1996. The decision of the arbitrator shall be final and binding and non-appealable.
- 8.6 **Aid to Arbitration:** All Parties irrevocably submit to the non-exclusive jurisdiction of the courts of England to support and assist the arbitration process pursuant to Clause 8.3 including, if necessary, the grant of interlocutory relief pending the outcome of that process.
- 8.7 **Agent:** Each Party not resident in the United Kingdom hereby appoints the party set out against its name below as its agent for the service of process in England for any Dispute, service upon whom shall be deemed completed whether or not forwarded to or received by the relevant appointer:

The PIDG Trust
c/o SG Hambros Trust Company Limited
Norfolk House
31 St James's Square
London SW1Y 4JR
United Kingdom
For the attention of:-Jane Minett

The Emerging Africa Infrastructure Fund Ltd
c/o MDY Legal
St Nicholas House
St Nicholas Road
Sutton
Surrey
SM1 1EL
United Kingdom

9. NOTICES

- 9.1 Without prejudice to the provisions of clause 8.7 above, all notices or other communications to be given under this Agreement shall be made in writing and by letter or facsimile transmission (save as otherwise stated) and shall be deemed to be duly given or made when delivered (in the case of personal delivery), when

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despatched (in the case of facsimile transmission, provided that the sender has received a receipt indicating proper transmission and a hard copy of such notice or communication is forthwith sent by prepaid post to the relevant address set out below) or ten days after being despatched in the post, postage prepaid, by the quickest mail available and by registered mail if available (in the case of a letter) to such Party at its address or facsimile number specified in Clause 9.2, or at such other address or facsimile number as such Party may hereafter specify for such purpose to the others by notice in writing.

9.2 The addresses referred to in Clause 9.1 are:

9.2.1 **EAIF:**

C/O Standard Bank Trust Company (Mauritius) Limited
Level 10, Tower A
1 CyberCity
Ebene
Mauritius
Switchboard: + 230 211 2000
Tel: + 230 402 603
For the attention of: Manjoola Chadee
The Company Secretary, The Emerging Africa Infrastructure Fund
Limited

Copied to: The Managing Director
Address: Frontier Markets Fund Managers
Standard Bank Plc
20 Gresham Street
London EC2V 7JE
United Kingdom
Fax: + 44 20 3145 8605

9.2.2 **The Trustees of the PIDG Trust:**

C/O SG Hambros Trust Company Ltd
Norfolk House
31 St James' Square
London SW1Y 4JR
United Kingdom

Facsimile Number: +44 (0)20 7597 3061
For the Attention of: Shirley Baines

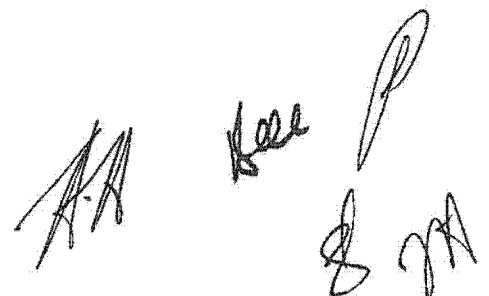
9.3 A notice or other communication received on a day other than a business day, or after business hours, in the place of receipt shall be deemed to be given on the next following business day in such place.

10. GENERAL

- 10.1 Each of the Parties shall, to the extent permitted by law, from time to time do or procure all things as may be required to give effect to this Agreement and to all other agreements referred to in this Agreement, including, without limitation, the execution of all deeds and documents, procuring the convening of all meetings, the giving of all necessary waivers and consents, the passing of all resolutions and otherwise exercising all powers and rights available to them to ensure that the Shareholders and any Directors of EAIF appointed by them (or their alternates) give effect to the terms of this Agreement.
- 10.2 No Party shall make or permit any person connected with it to make any announcement concerning this Agreement or any ancillary matter before, on or after the date of this Agreement except as required by law or any regulatory body.
- 10.3 The Parties shall each bear their own costs and expenses incurred in relation to the preparation, negotiation and execution of this Agreement and all ancillary matters.
- 10.4 This Agreement and the documents referred to in it contain the whole agreement between the Parties relating to the transactions contemplated by this Agreement and supersede all previous agreements between the Parties relating to these transactions.
- 10.5 This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any Party may enter into this Agreement by executing a counterpart.
- 10.6 No amendment or variation of this Agreement or any provision of this Agreement shall be effective unless it is in writing and duly executed by or on behalf of all the Parties hereto.
- 10.7 None of the rights or obligations under this Agreement may be assigned or transferred without each Party's written consent.
- 10.8 Any Party may release or compromise in whole or in part any liability of the other Party under this Agreement or grant any of them any time or other indulgence, but any such action shall not affect any other liability of such other Party hereunder.
- 10.9 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties nor constitute any Party the agent of any other Party for any purpose.
- 10.10 The provisions contained in each Clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others is invalid; if any provision is void but would be valid if some part of


it were deleted, the provision shall apply with such modification as may be necessary to make it valid.

- 10.11 In giving any opinion, approval, consent or waiver or refusing any opinion, approval, consent or waiver under this Agreement, the PIDG Trust may act entirely at its discretion except where explicitly stated otherwise in this Agreement.
- 10.12 Time is not of the essence in relation to any obligations under this Agreement unless:
- 10.12.1 time is expressly stated to be of the essence in relation to that obligation;
- 10.12.2 one Party fails to perform an obligation by the time specified in this Agreement and the other Party serves a notice on the defaulting Party requiring it to perform the obligation by a specified time and stating that time is of the essence in relation to that obligation.
- 10.13 The language of this Agreement is English and all notices, demands, requests, statements, certificates or other documents or communications shall be in English unless otherwise agreed in writing.
- 10.14 Save where expressly stated to the contrary, the Contracts (Rights of Third Parties) Act 1999 of England and Wales shall not apply to this Agreement.

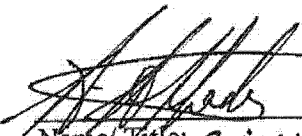
Handwritten signatures and initials at the bottom right of the page. There are three distinct marks: a signature that appears to be 'A.A.', a signature that appears to be 'Kare', and a signature that appears to be 'S.M.'.

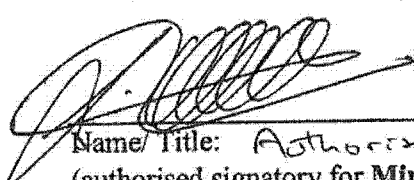
THIS AGREEMENT has been signed by the Parties or their duly authorised representatives on the date which appears on the first page of this Agreement.

EXECUTED by THE EMERGING)
AFRICA INFRASTRUCTURE)
FUND LIMITED)
acting by the identified person(s))
acting on the authority of the said)
company in accordance with the laws)
of Mauritius)


Name: **BEATE BAETKE**
Title: Director
05.02.2013

EXECUTED by THE PRIVATE)
INFRASTRUCTURE)
DEVELOPMENT GROUP TRUST)
acting by its trustees on the authority)
of the said trust in accordance with the)
laws of their respective jurisdictions)
of incorporation)


Name/Title
(authorised signatory for
SG Hambros Trust Co. Limited)

Name/Title: *Anjali Devi Appadoo & Priti Mittal*
(authorised signatory for *Priti Mittal Devedoo*
Multiconsult Trustees Ltd)


Name/Title: *Authorised Signatories*
(authorised signatory for Minimax Ltd)
Shammem Abdoolakhan & Sorita Lutchmiah



1

THIS AGREEMENT has been signed by the Parties or their duly authorised representatives on the date which appears on the first page of this Agreement.

EXECUTED by THE EMERGING)
AFRICA INFRASTRUCTURE)
FUND LIMITED)
acting by the identified person(s))
acting on the authority of the said)
company in accordance with the laws)
of Mauritius)


Name: BEATE BAETHKE
Title: Director
05.02.2013

EXECUTED by THE PRIVATE)
INFRASTRUCTURE)
DEVELOPMENT GROUP TRUST)
acting by its trustees on the authority)
of the said trust in accordance with the)
laws of their respective jurisdictions)
of incorporation)

 
Name/Title RACHEL TOY DIRECTOR
(authorised signatory for CHRISTINE ROSS
SG Hambros Trust Co. Limited) DIRECTOR

Name/ Title:
(authorised signatory for
Multiconsult Trustees Ltd)

Name/ Title:
(authorised signatory for Minimax Ltd)

SCHEDULE 1

THE PIDG TRUST SUBSCRIPTION

| | A | B | C | |
|-----------------------------------|--------------------------------|----------------------------------|-------------|--|
| | 2012 | 2013 | 2014 | Maximum Aggregate Subscription Amount |
| 1 | 4 May 2012 GBP 11,500,000* | January 2013 GBP 2,500,000 | | |
| 2 | 15 May 2012 GBP 10,000,000* | January 2013 GBP 2,000,000 | | |
| Total Available Commitment | GBP 21,500,000 | GBP 4,500,000 | | GBP 26,000,000 |

* Amounts subscribed on 4 May 2012 and 15 May 2012 respectively

See MA P

SCHEDULE 2
PARTICULARS OF THE COMPANY

Share Capital:

| | |
|--------|---------------------------------------|
| Class | Ordinary |
| Issued | 194,798,600 (as at 30 September 2012) |

Shareholders:

| | |
|------|---|
| Name | SG Hambros Trust Company Limited, Multiconsult Trustees Ltd. and Minimax Ltd as trustees of The Private Infrastructure Development Group Trust |
|------|---|

Directors:

Anthony Lea
Roselyne Renel
Saud Siddique
Mahmoud Isa-Dutse
Robert Sack
Beate Baethke
Jerome de Chasteauneuf
KC Li Kwong Wing

Secretary:

Standard Bank Trust Company (Mauritius) Ltd

Registered office:

Level 10, Tower A
1 CyberCity
Ebene
Mauritius

Company number:

39536

Date of incorporation:

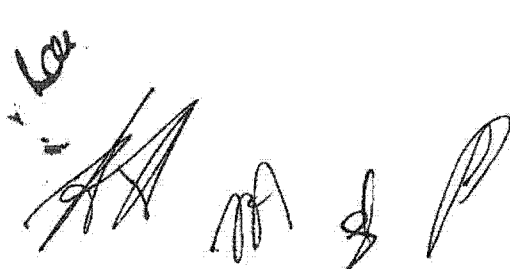
18 December 2001

Accounting reference date:

31 December

Auditors:

KPMG Mauritius

Lea


SCHEDULE 3

FORM OF SUBSCRIPTION REQUEST

To: PIDG Trust

Date

Dear Sirs

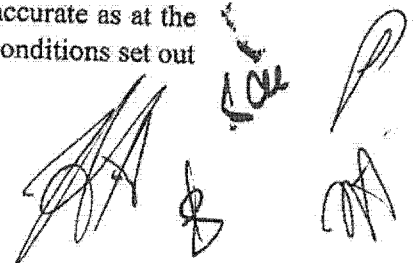
**Subscription Request - Subscription Agreement (No.1) 2013 dated []
between The Emerging Africa Infrastructure Fund Limited and The Private
Infrastructure Development Group Trust (the "Subscription Agreement")**

Terms not defined herein shall have the same meaning as given to them in the
Subscription Agreement.

Pursuant to Clause 4.2 of the Subscription Agreement we hereby request the following
proposed subscription of [] for [] of EAIF Shares in the capital of EAIF:

1. Number of EAIF Shares to be subscribed: [] EAIF Shares
2. Subscription Date: []
3. Subscription Amount: [GBP[]]
[US\$ []]
4. Payment Instructions:
Bank: []
Address: []
A/C Name: []
A/C Number: []

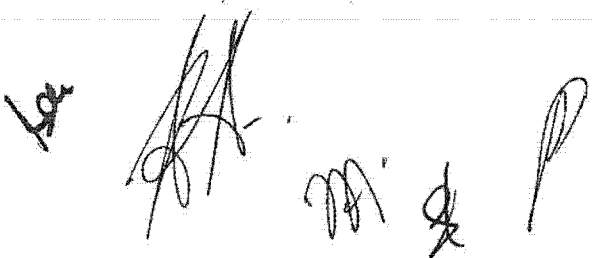
We confirm warrant and represent that (i)(a) the matters warranted by EAIF in Clause 5
of the Subscription Agreement and (i)(b) the matters relating to EAIF which the PIDG
Trust is obliged to confirm, warrant and represent to each EAIF Donor in relation to the
relevant disbursement request(s) under the relevant Funding Instrument(s) are true and
accurate at the date of this Subscription Request and will be true and accurate as at the
Subscription Date specified above as if made at such date, (ii) that the conditions set out



in Clause 3.1 of the Subscription Agreement have been duly complied with and (iii) that immediately following the issue of EAIF Shares pursuant to this Subscription Request, the number of EAIF Shares in issue shall be not more than [] in aggregate (no such EAIF Shares having been issued for a subscription price of more than US\$10.00 per EAIF Share).

Yours faithfully

For and on behalf of
The Emerging Africa Infrastructure Fund Limited
Authorised Signatory

A series of five handwritten signatures in black ink, arranged horizontally from left to right. The first signature is a simple 'L' shape. The second is a large, stylized signature. The third is a smaller, more compact signature. The fourth is a signature with a long horizontal stroke. The fifth is a signature with a large, looped 'P' shape.