
LOAN NUMBER 2471-PRC

LOAN AGREEMENT
(Ordinary Operations)

(Lanzhou-Chongqing Railway Development Project)

between

PEOPLE'S REPUBLIC OF CHINA

and

ASIAN DEVELOPMENT BANK

DATED 26 AUGUST 2009

LAL:PRC 35354

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 26 August 2009 between PEOPLE'S REPUBLIC OF CHINA (hereinafter called the "Borrower") and ASIAN DEVELOPMENT BANK (hereinafter called "ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Government of the Borrower has also applied to the Clean Energy Fund under Clean Energy Financing Partnership Facility administered by ADB for a technical assistance grant in the amount of eight hundred thousand Dollars (\$800,000) for preparing railway sector energy efficiency strategy; and

(C) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said Ordinary Operations Loan Regulations as so modified being hereinafter called the "Loan Regulations"):

(a) Section 3.03 is deleted and the following is substituted therefor:

Commitment Charge; Credit. (aa) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(bb) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the amount of the credit against the interest payable by the Borrower.

- (b) Section 3.06(b) is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

- (c) Section 3.07(b) is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined

by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the Loan Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) “ADB’s Anticorruption Policy” means ADB’s Anticorruption Policy dated 1998, as amended to date;

(b) “ADB’s Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook dated January 2007, as amended from time to time;

(c) “CMG” means Chongqing Municipal Government or any successor thereto;

(d) “Consulting Guidelines” means ADB’s Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers dated February 2007, as amended from time to time;

(e) “EIA” means the environmental impact assessment prepared by MOR and approved by State Environmental Protection Administration of the Borrower on 1 August 2008 in respect of the Project railway;

(f) “FCTIC” means the Foreign Capital and Technical Import Center of MOR or any successor thereto;

(g) “Goods” means equipment and materials to be financed out of the proceeds of the Loan; and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

(h) “GPG” means Gansu Provincial Government or any successor thereto;

(i) “MOR” means the Ministry of Railways of the Borrower or any successor thereto;

(j) “Procurement Guidelines” means ADB’s Procurement Guidelines dated February 2007, as amended from time to time;

(k) “Procurement Plan” means the procurement plan for the Project dated 10 October 2008 and agreed between the Borrower and ADB, as updated from time to time

in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(l) “Project area” means the area through which the Project railway will pass;

(m) “Project Company” means Lanzhou Chongqing (Lanyu) Railway Limited Company, a limited liability company incorporated by MOR, GPG, SPG and CMG and referred to in paragraph 1 of Schedule 5 to this Loan Agreement;

(n) “Project Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means MOR, which is responsible for the carrying out of the Project;

(o) “Project facilities” means the Project railway and facilities to be constructed and installed, and equipment to be provided under the Project;

(p) “Project Implementing Agency” means the Project Company, or any successor thereto, which is responsible for construction, operation and maintenance of the Project railway;

(q) “Project railway” means the railway to be constructed under the Project between Lanzhou and Chongqing in the Borrower’s Gansu, Shaanxi, Sichuan Provinces and Chongqing Municipality;

(r) “RP” means the resettlement plan dated 28 November 2007 and prepared for the Project;

(s) “SPG” means Sichuan Provincial Government or any successor thereto; and

(t) “Works” means construction or civil works to be financed out of the proceeds of the Loan, and including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of three hundred million Dollars (\$300,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of twenty (20) years, and a grace period as defined in paragraph (c) of this Section.

(c) The term “grace period” as used in paragraph (b) of this Section means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing sixty (60) days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 May and 15 November in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a “Conversion”, as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The Goods, Works and consulting services to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works and consulting services shall be in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where Goods, Works or consulting services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all Goods, Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. Except as ADB and the Borrower may otherwise agree, no procurement of Works is envisaged under the Project. In the event any procurement of Works is considered necessary, then the method of procurement and related threshold values will be updated in the Procurement Plan.

Section 3.06. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2016, or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental, and railway practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall cause MOR to make available, promptly as needed, the funds, facilities, services, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project and for the operation and maintenance of the Project facilities.

Section 4.03. (a) In the carrying out of the Project, the Borrower shall cause competent and qualified consultants and contractors, acceptable to ADB, to be employed to an extent and upon terms and conditions satisfactory to the Borrower and ADB.

(b) The Borrower shall cause the Project to be carried out in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The Borrower shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 4.04. The Borrower shall cause MOR to ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.05. (a) The Borrower shall cause MOR and the Project Company to (i) maintain separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for statement of expenditure), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Borrower shall enable ADB, upon ADB's request, to discuss MOR's and the Project Company's financial statements for the Project, and their financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to Section 4.05(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of MOR and/or the Project Company unless MOR and/or the Project Company shall otherwise agree.

Section 4.06. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

Section 4.07. The Borrower, through MOR, shall ensure that the Project facilities are operated, maintained and repaired in accordance with sound administrative, financial, engineering, environmental, railway, and maintenance and operational practices.

ARTICLE V

Effectiveness

Section 5.01. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Ministry of Finance
Sanlihe, Xicheng District
Beijing 100820
People's Republic of China

Facsimile Number:

(8610) 6855 1125.

For ADB

Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2428.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

PEOPLE'S REPUBLIC OF CHINA

By 

JIANCHAO LIU
Authorized Representative

ASIAN DEVELOPMENT BANK

By 

HARUHIKO KURODA
President

SCHEDULE 1

Description of the Project

1. The impact of the Project is expected to be improved transport system in the region in support of socioeconomic development and the western development strategy of the Borrower. The outcome is expected to be creation of the conditions necessary for developing local resources and generating employment and income-enhancing opportunities by providing efficient, affordable, environment-friendly and energy-efficient railway transportation in unserved and less developed areas.
2. The scope of the Project consists of the following:
 - (i) Construction of about 820 kilometers of double track electrified standard gauge class I railway from Lanzhou to Chongqing;
 - (ii) Construction of 31 new railway stations complete with facilities;
 - (iii) Undertaking safety initiatives, including, but not limited to, provision of modern technology and equipment for enhancing safety;
 - (iv) Provision of signaling, communication and management information system;
 - (v) Provision of training on the use and maintenance of modern equipment;
 - (vi) Land acquisition and resettlement;
 - (vii) Environmental protection and mitigation of adverse environmental effects;
 - (viii) Construction supervision, monitoring and evaluation, and marketing and business development; and
 - (ix) Strengthening of institutional capabilities.
3. The Project includes the provision of consulting services. The Project is expected to be completed by 31 December 2015.

SCHEDULE 2**Amortization Schedule****(Lanzhou-Chongqing Railway Development Project)**

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 May 2016	0.827816
15 Nov 2016	0.869207
15 May 2017	0.912667
15 Nov 2017	0.958301
15 May 2018	1.006216
15 Nov 2018	1.056526
15 May 2019	1.109353
15 Nov 2019	1.164820
15 May 2020	1.223061
15 Nov 2020	1.284214
15 May 2021	1.348425
15 Nov 2021	1.415846
15 May 2022	1.486639
15 Nov 2022	1.560971
15 May 2023	1.639019
15 Nov 2023	1.720970
15 May 2024	1.807019
15 Nov 2024	1.897369
15 May 2025	1.992238
15 Nov 2025	2.091850
15 May 2026	2.196442
15 Nov 2026	2.306264
15 May 2027	2.421578
15 Nov 2027	2.542657
15 May 2028	2.669789
15 Nov 2028	2.803279
15 May 2029	2.943443
15 Nov 2029	3.090615
15 May 2030	3.245146

Schedule 2

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 Nov 2030	3.407403
15 May 2031	3.577773
15 Nov 2031	3.756662
15 May 2032	3.944495
15 Nov 2032	4.141720
15 May 2033	4.348806
15 Nov 2033	4.566246
15 May 2034	4.794558
15 Nov 2034	5.034286
15 May 2035	5.286000
15 Nov 2035	5.550311
TOTAL	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal

Schedule 2

in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

SCHEDULE 3**Allocation and Withdrawal of Loan Proceeds**General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, and consulting services to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the "Table"). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

Reallocation

3. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

4. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works and consulting services shall be disbursed in accordance with ADB's Loan Disbursement Handbook.

Imprest Account; Statement of Expenditures

5. (a) Except as ADB may otherwise agree, the Borrower shall cause MOR to establish immediately after the Effective Date, an imprest account at a bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest account shall be Dollar.

Schedule 3

The initial amount to be deposited into the imprest account shall not exceed the equivalent of (i) the estimated expenditures for the next 6 months, or (ii) the 10% of the Loan amount, whichever is lower.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with ADB's Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$200,000.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Lanzhou-Chongqing Railway Development Project)			
CATEGORY			ADB FINANCING BASIS
Number	Item	Total Amount Allocated for ADB Financing \$ Category	Percentage of ADB Financing from the Loan Account
1	Equipment and Materials	284,700,000	100 percent of total expenditure claimed
2	Consulting Services (including Capacity Development)	300,000	100 percent of total expenditure claimed
3	Unallocated	15,000,000	
	Total	300,000,000	

SCHEDULE 4

Procurement of Goods and Works, and Consulting Services

A. General

1. All Goods and Works, and consulting services, to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement for Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding
National Competitive Bidding
Shopping

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

4. Domestic Preference. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods.
5. National Competitive Bidding. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Modifications or clarifications to such procedures agreed, and to be agreed, between the Borrower and ADB shall be set out in the Procurement Plan and shall become effective only after written approval of the Borrower and ADB.
6. Procurement Agent. The MOR may appoint Procurement Agent/s to carry out international competitive bidding and national competitive bidding for Goods and Works in accordance with the terms and conditions set out in the Procurement Plan. The MOR shall ensure that the Procurement Agent/s follows all of the requirements of this Schedule and the Procurement Plan.

C. Selection of Consulting Services

7. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

D. Industrial or Intellectual Property Rights

8. (a) The Borrower shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

9. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

E. ADB's Review of Procurement Decisions

10. All contracts procured under international competitive bidding and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Financial Matters

Implementation Arrangements

1. The MOR shall be the Project Executing Agency responsible for overall implementation of the Project. The Project Company shall be the Project Implementing Agency, responsible for day-to-day implementation of the Project through the on-site construction management units set up along the route of the Project railway. The Project Company shall (a) assist in the construction of the Project railway and manage and operate the Project railway after completion of the construction, and (b) develop and implement adequate and transparent business development mechanisms, and accounting and reporting systems. The Project Company shall employ an adequate number of suitably qualified professional staff, experienced in railway engineering, financial and administrative matters and with past experience in implementing projects financed by international financial institutions.
2. FCTIC shall be responsible for (a) coordination of the Project management activities, and (b) procurement, withdrawals, and reporting to ADB.

Reform Measures

3. The Borrower shall take necessary measures to continue implementation of the Railway Development Plan (2004) including (a) separation of the core railway operations from non-core transportation business operations, (b) rationalization of staff, and (c) encouragement of the Project Company to outsource some activities currently handled by railways, including to the private sector.

Construction Quality

4. The Borrower shall cause MOR and the Project Company to ensure that the Project railway is constructed in accordance with the Borrower's national technical standards, and that construction supervision, quality control, and contract management are carried out satisfactorily.

Connecting Railway Lines

5. The Borrower shall cause MOR and the Project Company to ensure that (a) capacity enhancement operations for connecting railway lines are completed by commencement of commercial operations of the Project railway; and (b) necessary measures are promptly taken to mitigate any capacity constraint on connecting railway lines, identified during operation of the Project railway, to ensure smooth flow of traffic generated by the Project railway.

Container Traffic

6. The Borrower shall cause MOR to construct two (2) extra large container terminals at Urumuqi and Lanzhou, and container handling facilities at Longnan and Guangyuan by commencement of commercial operations of the Project railway.

Supply of Rolling Stock

7. The Borrower shall ensure that MOR and the Project Company provide sufficient rolling stock, at all times, for effective operation of the Project railway.

Safety

8. The Borrower shall cause MOR and the Project Company to ensure that all safety measures are fully implemented with respect to the construction, operation and maintenance of the Project railway in accordance with Borrower's relevant laws and regulations.

Safety Dissemination

9. The Borrower shall ensure, through MOR, that the Project Company, in cooperation with the local prefecture, city, and county governments, formulates and implements appropriate public safety campaigns through media, public announcements, households, and schools to familiarize people living along the Project railway route with safety issues related to railways.

Station Access and Link Roads

10. The Borrower shall cause the local prefecture, city and county governments to (a) construct station access roads in a timely manner prior to commencement of commercial operations of the Project railway, and (b) apply ADB safeguard policies in construction of such roads.

Financial Ratios and Reporting

11. (a) The Borrower, through MOR, shall cause the Project Company to maintain, starting after the second full year of commencement of the commercial operations of the Project railway, (a) an operating ratio of not more than 70%, (b) a debt-service coverage ratio of at least 1.2, and (c) a debt to equity ratio of not more than 65:35 to ensure operating efficiency and financial sustainability.

(b) For the purpose of this section,

- (i) the "operating ratio" shall be calculated by dividing "total operating expenses" by "total operating revenues";
- (ii) the term "total operating expenses" means all expenses related to the Project railway operations, including administration,

- adequate maintenance, and provision for depreciation and major repairs;
- (iii) the term “total operating revenues” means revenues from all sources related to the Project railway operations;
 - (iv) the “debt-service ratio” shall be calculated by dividing the total amount of “internally generated funds” by the total amount of “debt-service requirements”;
 - (v) the term “internally-generated funds” means total operating revenues and net non-operating income from all sources less operating expenses and business tax but before provisions for depreciation and major repairs and for other non-cash charges and interest and other charges on debt;
 - (vi) the term “debt-service requirements” means the aggregate of principal repayments and interest and other charges on debt;
 - (vii) the term “debt” means any debt of the Project Company maturing more than one year after the date on which it was originally incurred;
 - (viii) the term “net non operating income” means the difference between:
 - i. revenues from all sources other than those related to operations; and
 - ii. expenses including taxes and payments in lieu of taxes incurred in the generation of revenues in (vii)(a) above;
 - (ix) the “debt to equity ratio” shall be calculated by dividing “total debt” by “total equity”;
 - (x) the term “total debt” means the aggregate of all interest bearing debt of the Project Company; and
 - (xi) the term “total equity” means the aggregate of paid-in capital and reserves and retained earnings or losses of the Project Company.

(c) The Borrower, through MOR, shall cause the Project Company to establish and maintain an internal audit unit to undertake timely audit of Project accounts in accordance with generally accepted accounting principles.

Tariff

12. The Borrower shall ensure that MOR and the Project Company set the tariffs, with respect to the Project railway, at rates sufficient to ensure full cost recovery including the

management cost of the Project Company and working (operation and maintenance) costs of the Project railway, depreciation, debt service, taxes, and a reasonable profit.

Tariff Study

13. The Borrower, through MOR, shall also ensure that the Project Company, carries out a tariff study six (6) months prior to the trial operation of the Project railway, and advises ADB of the tariffs applied during such trial operation.

Anticorruption

14. During project implementation, the Borrower shall follow ADB's Anticorruption Policy. The Borrower agrees that ADB reserves the right to investigate directly or through its agents, any alleged corrupt, fraudulent, collusive, or coercive practices relating to the Project. The Borrower shall cause MOR to ensure that (a) a supervisory body is established for prevention of undue interference in business practices, and adequate resources are made available for its effective operation; (b) a leading group of officials from the Discipline Unit and Supervision Department of MOR are located in offices involved in the bidding, construction, and other operational activities under the Project; (c) periodic inspections on the contractors' activities related to fund withdrawals and settlements are carried out; (d) relevant provisions of ADB's Anticorruption Policy are included in all bidding documents for the Project; and (e) all contracts financed by ADB in connection with the project include provisions specifying the right of ADB to audit and examine the records and accounts of MOR and all contractors, suppliers, consultants, and other service providers as they relate to the Project. The Borrower shall also cause MOR and the Project Company to initiate liaison meetings with the Prosecutor's Office, on a needs basis, where warnings about or information on corrupt practices can be discussed.

Environment

15. The Borrower shall cause MOR, the Project Company, GPG, SPG, and CMG to ensure that (a) the Project is designed, constructed, operated, and maintained in accordance with environmental laws and regulations of the Borrower and the ADB *Environment Policy* (2002); (b) the environmental management plan and the mitigation measures included therein, as specified in the EIA, are properly implemented; (c) the environment management plan is updated, at engineering design stage, and incorporated into bidding documents and civil contracts; (d) any environmental permits, licenses, and clearances are obtained in a timely manner; (e) any adverse impact on the environment that may arise from project implementation activities is promptly mitigated or minimized in accordance with the environmental management plan; and (f) semi-annual reports are submitted to ADB on the implementation of the environmental management plan, including any safety breaches, violation of environmental standards, and corrective measures taken.

Land Acquisition and Resettlement

16. The Borrower shall cause MOR, the Project Company, GPG, SPG, and CMG to ensure that (a) the RP is updated, if necessary, and approved by ADB, before the start of land acquisition and is carried out promptly and efficiently in accordance with all applicable Borrower laws and regulations and ADB's *Involuntary Resettlement Policy* (1995); (b) all affected people are given adequate opportunity to participate in resettlement planning and

implementation; (c) those affected are compensated and assisted prior to displacement from their houses, land, and assets, such that they shall be at least as well off as they would have been in the absence of the Project; (d) adequate and appropriate support is provided for enterprise relocation; (e) affected people receive priority for employment in project construction; (f) special measures are implemented for ethnic minorities and vulnerable groups; (g) civil works contracts include requirements to comply with the resettlement plan; (h) implementation of the resettlement plan is monitored internally by the Project Company and the respective local governments, and externally by an independent institute; and (i) related reports are submitted to ADB and MOR as stipulated in the resettlement plan. The Borrower shall cause MOR, the Project Company, CMG, GPG, and SPG to ensure that (a) funds needed for land acquisition and resettlement, including those for cost overruns, are allocated and disbursed in a timely manner; and (b) ADB is promptly advised of any substantial changes in resettlement impacts.

Poverty Reduction

17. The Borrower shall ensure that MOR and the Project Company cause the contractors involved in project implementation to maximize employment of local poor persons, including those from ethnic minorities, who meet the job and efficiency requirements for construction of the Project railway. Such workers shall be provided with adequate on-the-job training. MOR and the Project Company shall (a) implement the Project in accordance with the social development action plan; and (b) monitor the Project's impact on poverty with the assistance of consultants engaged under the Project.

Gender and Development

18. The Borrower shall cause MOR and the Project Company to implement the Project in accordance with the social development action plan and take all necessary actions to encourage women living in the Project area to participate in project planning and implementation. Works contractors shall comply with all applicable laws on gender equality. The Borrower shall ensure that MOR and the Project Company monitor the effects of the Project on women through collection and compilation of gender-disaggregated data, where relevant, including in the resettlement plan, social development action plan, and project performance management system.

Health Risks

19. The Borrower shall cause MOR and the Project Company to ensure that (a) contractors involved in project implementation disseminate information on the risks of socially transmitted infections, including HIV/AIDS, to the workers they employ under the Project and to local communities, through public awareness campaigns; and (b) adequate health and treatment facilities are available in the Project area. The Borrower shall cause MOR, the Project Company, CMG, GPG, and SPG to ensure that similar information is disseminated, in consultation with the relevant health bureaus, to railway operating staff.

Change in Ownership

20. In the event that MOR or the Project Company plans to (a) make any change in the ownership of the Project facilities, or the Project Company, or (b) sell, transfer, or assign MOR's or the Project Company's direct or indirect interest in the Project railway, or

(c) lease or contract out, or otherwise modify the Project Company's responsibilities for construction, operation, and maintenance of the Project railway, the Borrower shall, at least six (6) months prior to implementation of any such transaction, consult ADB and obtain ADB's consent thereto. The Borrower shall ensure that any such transaction is implemented in a legal and transparent manner.

Project Performance Monitoring and Evaluation

21. The Borrower shall cause MOR and the Project Company to monitor and evaluate the Project impact through a project performance monitoring system, acceptable to ADB. The Borrower shall cause MOR and the Project Company to establish baseline and target values for the indicators. Except as ADB may otherwise agree, the indicators, to be reviewed at the start of the Project, shall include (a) economic development and socio-economic indicators; (b) transport costs and time for passenger and freight services; (c) transport services and transport charges; (d) accident rates; (e) financial sustainability; (f) county and/or village incomes; (g) access to social services; and (h) jobs created in construction and maintenance. The Borrower shall cause MOR to measure the indicators at each of the following: (i) inception of the Project, (ii) Project completion, and (iii) three (3) years after Project completion.

Project Reports

22. Without limiting the generality of Section 7.04 of the Loan Regulations, the Borrower shall cause the Project Company to submit quarterly progress reports in a format acceptable to ADB concerning the implementation of the Project. The Borrower shall cause MOR to submit a Project completion report not later than three (3) months after Project completion.

Project Review

23. MOR, the Project Company and ADB shall jointly carry out reviews, including a midterm review of the Project approximately in 2012, covering institutional, administrative, organizational, technical, environmental, economic, financial, and other relevant aspects that may have an impact on the performance of the Project and its continuing viability. The reviews shall also examine progress in sector reforms, policy development, and compliance with the covenants of this Loan Agreement.