
LOAN NUMBER 2481-PRC

LOAN AGREEMENT
(Ordinary Operations)
(Chongqing-Lichuan Railway Development Project)

between

PEOPLE'S REPUBLIC OF CHINA

and

ASIAN DEVELOPMENT BANK

DATED 26 AUGUST 2009

LAL:PRC 39153

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 26 August 2009 between the 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; and

(B) 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. (a) 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.

(b) 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:

(a) 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.

(b) 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:

(a) 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.

(b) 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) "CMG" means Chongqing Municipal Government;
- (b) "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;
- (c) "Environmental Impact Assessment" or "EIA" means the environmental impact assessment prepared by MOR and approved by the State Environmental Protection Administration of the Borrower on 24 March 2008 in respect of the Project Railway;
- (d) "FCTIC" means the Foreign Capital and Technical Import Center of MOR;
- (e) "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;
- (f) "HPG" means Hubei Provincial Government;
- (g) "MOR" means the Ministry of Railways of the Borrower;
- (h) "Procurement Guidelines" means ADB's Procurement Guidelines dated February 2007, as amended from time to time;
- (i) "Procurement Plan" means the procurement plan for the Project dated 9 October 2008 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;
- (j) "Project Company" means a limited liability company incorporated by MOR and CMG, and as described in paragraph 2 of Schedule 5 to this Loan Agreement;
- (k) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means MOR, or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (l) "Project Implementing Agency" means the Project Company, or any successor thereto acceptable to ADB, which is responsible for construction, operation and maintenance of the Project Railway;

(m) “Project Railway” means the railway to be constructed under the Project from Chongqing to Lichuan, in Chongqing municipality and Hubei province, respectively, of the Borrower;

(n) “Resettlement Plan” or “RP” means the resettlement plan prepared jointly by MOR, CMG, and HPG, and agreed between the Borrower and ADB; and

(o) “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 one hundred fifty million Dollars (\$150,000,000), 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 June and 15 December 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. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2015 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 six (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 imprest account and 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 the financial statements for the Project of MOR and the Project Company 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, 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 

LIU JIANCHAO
Authorized Representative

ASIAN DEVELOPMENT BANK

By 

HARUHIKO KURODA
President

SCHEDULE 1

Description of the Project

Objective

1. The objective of the Project is to develop an efficient, safe, affordable, and environmentally sustainable railway transport system that forms a part of the east-west corridor traversing Chongqing municipality and Hubei province.

Scope of the Project

2. The Project consists of the following:
- (i) Construction of 259 km double track electrified standard gauge class I railway from Chongqing to Lichuan;
 - (ii) Construction of 8 new railway stations complete with facilities;
 - (iii) Carrying out of safety initiatives, including provision of modern technology and equipment for enhancing safety;
 - (iv) Introduction of signaling, communication and management information system;
 - (v) Provision of training on the use and maintenance of modern equipment;
 - (vi) Provision of consulting services for construction, supervision, monitoring, evaluation, marketing and business development; and
 - (vii) Strengthening of the institutional capacity of MOR and the Project Company.
3. The Project is expected to be completed by 31 December 2014.

SCHEDULE 2

Amortization Schedule

Chongqing-Lichuan 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>Period</u>	<u>Date Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
1	15 Dec 2014	0.827816
2	15 Jun 2015	0.869207
3	15 Dec 2015	0.912667
4	15 Jun 2016	0.958301
5	15 Dec 2016	1.006216
6	15 Jun 2017	1.056526
7	15 Dec 2017	1.109353
8	15 Jun 2018	1.164820
9	15 Dec 2018	1.223061
10	15 Jun 2019	1.284214
11	15 Dec 2019	1.348425
12	15 Jun 2020	1.415846
13	15 Dec 2020	1.486639
14	15 Jun 2021	1.560971
15	15 Dec 2021	1.639019
16	15 Jun 2022	1.720970
17	15 Dec 2022	1.807019
18	15 Jun 2023	1.897369
19	15 Dec 2023	1.992238
20	15 Jun 2024	2.091850
21	15 Dec 2024	2.196442
22	15 Jun 2025	2.306264
23	15 Dec 2025	2.421578
24	15 Jun 2026	2.542657
25	15 Dec 2026	2.669789
26	15 Jun 2027	2.803279
27	15 Dec 2027	2.943443
28	15 Jun 2028	3.090615

<u>Period</u>	<u>Date Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
29	15 Dec 2028	3.245146
30	15 Jun 2029	3.407403
31	15 Dec 2029	3.577773
32	15 Jun 2030	3.756662
33	15 Dec 2030	3.944495
34	15 Jun 2031	4.141720
35	15 Dec 2031	4.348806
36	15 Jun 2032	4.566246
37	15 Dec 2032	4.794558
38	15 Jun 2033	5.034286
39	15 Dec 2033	5.286000
40	15 Jun 2034	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

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" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

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 the

Dollar. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure for the first six months of Project implementation, or (ii) the equivalent of ten (10) percent of the Loan amount.

(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			
Chongqing-Lichuan 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	142,840,000	100 percent of total expenditure*
2	Consulting Services (including Capacity Development)	200,000	100 percent of total expenditure*
3	Unallocated	6,960,000	
	Total	150,000,000	

*Exclusive of local taxes

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's *Law of Tendering and Bidding of the People's Republic of China* promulgated by Order No. 21 of the President of the People's Republic of China on August 30, 1999, shall be applied together with the following clarifications required for compliance with the Procurement Guidelines:

- (i) All invitations to prequalify or to bid shall be advertised in the national press, or official gazette, or a free and open access website in the Borrower's country. Such advertisement shall be made in sufficient time for prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses. In any event, a minimum preparation period of thirty (30) days shall be given. The preparation period shall count (a) from the date of advertisement, or (b) when the documents are available for issue, whichever date is later. The advertisement and the prequalification and bidding documents shall specify the deadline for such submission.

Schedule 4

- (ii) Qualification requirements of bidders and the method of evaluating the qualification of each bidder shall be specified in detail in the bidding documents, and in the prequalification documents if the bidding is preceded by a prequalification process.
- (iii) If bidding is preceded by a prequalification process, all bidders that meet the qualification criteria set out in the prequalification document shall be allowed to bid and there shall be no limit on the number of prequalified bidders.
- (iv) All bidders shall be required to provide a performance security in an amount sufficient to protect the Borrower/Project Executing Agency in case of breach of contract by the contractor, and the bidding documents shall specify the required form and amount of such performance.
- (v) Bidders shall be allowed to submit bids by mail or by hand.
- (vi) All bids shall be opened in public; all bidders shall be afforded an opportunity to be present (either in person or through their representatives) at the time of bid opening, but bidders shall not be required to be present at the bid opening.
- (vii) All bid evaluation criteria shall be disclosed in the bidding documents and quantified in monetary terms or expressed in the form of pass/fail requirements.
- (viii) No bid may be rejected solely on the basis that the bid price falls outside any standard contract estimate, or margin or bracket of average bids established by the Borrower/Project Executing Agency.
- (ix) Each contract shall be awarded to the lowest evaluated responsive bidder, that is, the bidder who meets the appropriate standards of capability and resources and whose bid has been determined (a) to be substantially responsive to the bidding documents and (b) to offer the lowest evaluated cost. The winning bidder shall not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.
- (x) Each contract financed with the proceeds of the Loan shall be provided that the suppliers and contractors shall permit ADB, at its request, to inspect their accounts and records relating to the performance of the contract and to have said accounts and records audited by auditors appointed by ADB.
- (xi) Government owned enterprises in the Borrower's country may be permitted to bid if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not a dependent agency of the Borrower/Project Executing Agency.

- (xii) Re-bidding shall not be allowed solely because the number of bids is less than three (3).

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, as the Project Executing Agency, shall be responsible for overall implementation of the Project. FCTIC shall coordinate the Project management activities, undertake the procurement of the Goods, Works and consulting services, apply for withdrawals and monitor utilization of Loan proceeds, and report to ADB.
2. The Borrower, through MOR, shall cause the Project Company to be responsible for day-to-day implementation of the Project, which shall (i) assist in the construction of the Project Railway; (ii) manage and operate the Project Railway after its completion; and (iii) develop and implement transparent business development mechanisms, and accounting and reporting systems. The Borrower, through MOR, shall cause the Project Company to employ suitably qualified professional staff experienced in railway engineering, financial and administrative matters, and implementing projects financed by international financial institutions.

Construction Quality

3. 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 in a periodic and satisfactory manner.

Railway Line Connectivity

4. The Borrower shall cause MOR and the Project Company to ensure that (i) capacity enhancement operations for the connecting railway lines are completed prior to commencement of the commercial operations of the Project Railway; and (ii) necessary measures are promptly taken to mitigate any capacity constraint on such connecting railway lines as may be identified during the operation of the Project Railway.

Container Traffic

5. The Borrower shall cause MOR to construct extra large container terminals at Chongqing and Wuhan prior to commencement of commercial operations of the Project Railway.

Supply of Rolling Stock

6. The Borrower shall cause MOR and the Project Company to provide sufficient rolling stock at all times for effective operation of the Project Railway.

Safety

7. The Borrower shall cause MOR and the Project Company to (i) ensure safety on the Project Railway in accordance with relevant laws and regulations of the Borrower; and (ii) formulate and implement, in cooperation with the local prefecture, city, and county governments, 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

8. Prior to commencement of commercial operations of the Project Railway, the Borrower, through MOR, shall cause local prefecture, city and county governments to (i) construct station access roads; and (ii) comply with ADB's safeguard policies in construction of such roads.

Tariffs

9. (a) 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 costs, working (operation and maintenance) costs of the Project Railway, depreciation, debt service, taxes, and a reasonable profit.

(b) Six (6) months prior to the trial operation of the Project Railway, the Borrower shall ensure that the Project Company, in consultation with MOR, carries out a tariff study, and advises ADB of the tariffs applied during such trial operation.

Financial Ratios

10. (a) Except as ADB may otherwise agree, the Borrower, through MOR, shall cause the Project Company to maintain, for each of its fiscal years commencing after the second fiscal year of commencement of the commercial operations of the Project Railway, (i) an operating ratio of not more than 75 percent, (ii) a debt-service coverage ratio of at least 1.2, and (iii) 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;

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- (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:
 - (a) revenues from all sources other than those related to operations; and
 - (b) 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.

Reform Measures

11. The Borrower shall undertake necessary measures to continue the implementation of its Railway Development Plan (2004) including separation of the core railway operations from non-core transportation business operations, rationalization of staff, and cause the Project Company to outsource select activities.

Anticorruption Measures

12. Consistent with its commitment to good governance, accountability and transparency, 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 ensure, and cause MOR and the Project Company to ensure, that all contracts financed by ADB in connection with the Project shall include provisions specifying the right of ADB to audit and examine the records and accounts of MOR, the Project Company, and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

13. The Borrower shall ensure, and cause MOR to ensure, that (i) a supervisory body is established for prevention of undue interference in business practices, and adequate resources are made available for its effective operation; (ii) a leading group of officials from the supervision division of MOR is located in offices involved in the bidding, construction, and other operational activities under the Project; and (iii) periodic inspections on the contractor's activities related to fund withdrawals and settlements are carried out. The Borrower shall also cause MOR and the Project Company to initiate liaison meetings with the prosecutor's office, on a need basis, where any warnings about, or information on, alleged corrupt, fraudulent, collusive, or coercive practices relating to the Project can be discussed.

Environmental Measures

14. The Borrower shall cause MOR, CMG, HPG, and the Project Company to ensure that (i) the Project is designed, constructed, operated, and maintained in accordance with the environmental laws and regulations of the Borrower and ADB's *Environment Policy* (2002); (ii) the environmental management plan and the mitigation measures included therein, as specified in the EIA, are properly implemented; (iii) the environmental management plan is updated at engineering design stage and incorporated into bidding documents and civil contracts; (iv) all environmental permits, licenses and clearances are obtained in a timely manner; (v) any adverse impact on the environment that may arise from the Project implementation activities is promptly mitigated or minimized in accordance with the environmental management plan; and (vi) implementation of the environmental management plan, including any safety breaches, violation of environmental standards, and corrective measures taken in respect thereof are reported semi-annually to ADB.

Land Acquisition and Resettlement

15. The Borrower shall ensure, and cause MOR, CMG, HPG, and the Project Company to ensure, that (i) prior to commencement of the land acquisition, the RP is updated, if necessary, and disclosed to the affected people, submitted to ADB for approval and disclosure on ADB's website; (ii) the RP is implemented promptly and efficiently in accordance with its terms, and all applicable laws and regulations of the Borrower, and ADB's *Involuntary Resettlement Policy* (1995); (iii) all affected people are given adequate opportunity to participate in resettlement planning and implementation; (iv) those affected are compensated and assisted prior to displacement from their houses, land and assets such that they will be at least as well off as they would have been in the absence of the Project; (v) adequate and appropriate support is provided for enterprise relocation; (vi) affected people receive priority for employment in Project construction; (vii) special measures are implemented for ethnic minorities and vulnerable groups; (viii) civil works contracts under the Project include requirements to comply with the RP; (ix) implementation of the RP is monitored internally by the Project Company and the respective local governments, and externally by an independent institute; (x) reports are submitted to ADB and MOR as stipulated in the RP; and (xi) affected people have an opportunity to express grievance at

appropriate levels, and that local officials are instructed to resolve disputes and implement measures promptly.

16. The Borrower shall ensure, and cause MOR, CMG, HPG, and the Project Company to ensure, that funds needed for land acquisition and resettlement, including those for cost overruns, are allocated and disbursed in a timely manner.

Gender and Development

17. The Borrower shall cause MOR and the Project Company to (i) implement the Project in accordance with the social development action plan agreed by the Borrower and ADB, and take all necessary actions to encourage women living in the Project area to participate in planning and implementation; (ii) ensure that civil works contractors comply with all applicable laws relating to gender equality; and (iii) monitor the effects of the Project on women through collection and compilation of gender-disaggregated data, where relevant, including in the RP, the social development action plan, and the Project performance monitoring system.

Health Risk

18. The Borrower shall cause MOR and the Project Company to ensure that (i) contractors involved in Project implementation disseminate information on the risks of socially transmitted infection, including HIV/AIDS, to the workers they employ under the Project and to local communities through public awareness campaigns; and (ii) adequate health and treatment facilities are made available in the Project area. The Borrower shall cause MOR, CMG, HPG, and the Project Company to ensure that similar information is disseminated, in consultation with the relevant health bureaus, to railway operators.

Change in Ownership

19. In the event that MOR or the Project Company plans to (i) make any change in the ownership of the Project facilities or the Project Company; or (ii) sell, transfer, or assign MOR's or the Project Company's direct or indirect interest in the Project Railway; or (iii) 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 such transaction, consult with ADB and obtain ADB's consent. The Borrower shall ensure that such transaction is implemented in a legal and transparent manner.

Project Performance Monitoring and Evaluation

20. 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 Project Company to establish baseline and target values for a set of indicators (disaggregated by gender and ethnic group) for evaluating Project performance, as agreed between the Borrower and ADB, and measure the Project indicators at the inception of Project, on its completion, and three (3) years thereafter.

Project Reports

21. Without limiting the generality of Section 7.04 of the Loan Regulations, the Borrower shall cause MOR and the Project Company to submit progress reports in a format acceptable to ADB concerning the use of Loan proceeds, and implementation of the Project. The reports shall include: (i) quarterly progress reports, and (ii) a Project completion report to be submitted no later than three (3) months after Project completion.

Project Review

22. ADB, MOR, and the Project Company shall jointly carry out reviews, including a midterm review, of the Project covering institutional, administrative, organizational, technical, environmental, social, poverty reduction, resettlement, economic, financial and other relevant aspects that may have an impact on the performance of the Project. The reviews shall also examine progress in sector reforms, policy development, and compliance with the terms of this Loan Agreement.