
LOAN NUMBER 2302-VIE(SF)

LOAN AGREEMENT
(Special Operations)

(Greater Mekong Subregion Kunming-Haiphong Transport Corridor:
Yen Vien – Lao Cai Railway Upgrading Project)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 16 JANUARY 2007

LAS:VIE 39175

LOAN AGREEMENT (Special Operations)

LOAN AGREEMENT dated 16 January 2007 between SOCIALIST REPUBLIC OF VIET NAM (“the Borrower”) and ASIAN DEVELOPMENT BANK (“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 Borrower has also applied to Agence Française de Développement (hereinafter called AFD) to partially finance Parts A(i), (iii) and (iv) and Parts B, C and D of the Project as described in Schedule 1 to this Loan Agreement (hereinafter called the AFD Loan);

(C) the Borrower has also applied to the Treasury and Economic Policy General Directorate (hereinafter called DGTPE) of the Ministry of Finance, France, to finance Part A(ii) of the Project as described in Schedule 1 to this Loan Agreement (hereinafter called the DGTPE Loan);

(D) the Project will be carried out by Vietnam Railways (hereinafter called VNR), and for this purpose the Borrower will make available to VNR the proceeds of the Loan provided for herein for the purposes set out in this Loan Agreement and the Project Agreement of even date herewith between ADB and VNR (hereinafter called the Project Agreement); and

(E) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (the “Loan Regulations”), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. The definitions set forth in the Loan Regulations are applicable to this Loan Agreement unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "Consulting Guidelines" means ADB's "Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers" dated April 2006, as amended from time to time;

(b) "fiscal year" means the fiscal year of the Borrower which is 1 January through 31 December;

(c) "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;

(d) "Governing Laws" means Decision of the Prime Minister on Establishment of Vietnam Railway, No. 34/2003/QD-TTg, dated 4 March 2003, Decision of the Prime Minister Approving the Charter on Organization and Operation of Vietnam Railway Corporation, No. 216/2003/QD-TTg, dated 27 October 2003, and Viet Nam Railway Law, Law, No. 35/2005/QH11, effective 1 January 2006;

(e) "IEE" means Initial Environmental Examination;

(f) "km" means kilometers;

(g) "MOT" means the Borrower's Ministry of Transport and any successor thereto;

(h) "Procurement Guidelines" means ADB's "Procurement Guidelines" dated April 2006, as amended from time to time;

(i) "Procurement Plan" means the procurement plan for the Project dated November 14, 2006 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;

(j) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means VNR which is responsible for the carrying out of the Project;

(k) "Project facilities" means the railway tracks, bridges, and railway terminals to be upgraded, rehabilitated or constructed, and the equipment purchased pursuant to this Loan Agreement;

(l) "RP" means resettlement plan;

(m) "RPMU" means Railway Project Management Unit and any successor thereto; and

(n) "Works" means construction or civil works to be financed out of the proceeds of the Loan, 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. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to forty million three hundred ninety-five thousand Special Drawing Rights (SDR 40,395,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of one percent (1%) per annum during the grace period, and one and one-half percent (1.5%) per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the payment date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 June and 15 December in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be United States Dollars.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall make the proceeds of the Loan available to VNR for the purposes set out in this Loan Agreement and the Project Agreement and shall cause VNR to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The Goods, Works, and consulting services and other items of expenditure 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 and other items of expenditure 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.

Section 3.04. Withdrawals from the Loan Account in respect of Goods, Works, and consulting services shall be made only on account of expenditures relating to

- (a) Goods which are produced in and supplied from and consulting services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and
- (b) Goods, Works, and consulting services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2012 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. 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 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 4.03. The Borrower shall take all action which shall be necessary on its part to enable VNR to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.04. (a) The Borrower shall exercise its rights under the Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Loan Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

ARTICLE V

Suspension; Cancellation; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations:

(a) The Governing Laws or any provisions thereof shall have been repealed, suspended or amended in any manner which, after consultation with the Borrower, in the reasonable opinion of ADB will or may adversely affect the carrying out of the Project or the operation of the Project facilities,.

(b) The AFD Loan shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date.

(c) The DGTPE Loan shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date.

(d) Any loan extended from another source, pursuant to Section 6.01(d) of this Loan Agreement, shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date.

Section 5.02. The following are specified as additional events for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: any of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the Borrower shall have approved the feasibility study for the Project;

(b) the AFD Loan Agreement, for an amount of thirty-two million Euros (€32,000,000 [approximately \$40,000,000]), shall have been duly executed and delivered, and all conditions precedent to its effectiveness (other than a condition requiring effectiveness of this Loan Agreement) shall have been fulfilled or arrangements satisfactory to ADB shall have been made for the fulfillment thereof within a period of time satisfactory to ADB;

(c) the DGTPE Loan Agreement, for an amount of approximately thirty million Euros (€30,000,000 [approximately \$37,500,000]), shall have been duly executed and delivered, and all conditions precedent to its effectiveness (other than a condition requiring

effectiveness of this Loan Agreement) shall have been fulfilled or arrangements satisfactory to ADB shall have been made for the fulfillment thereof within a period of time satisfactory to ADB; and

(d) in the event the AFD Loan or the DGTPE Loan do not eventuate, the Borrower shall have made alternative arrangements, acceptable to ADB, to finance the portions of the Project intended to be financed by the AFD Loan or the DGTPE Loan, and such arrangements shall be for an amount approximately equal to that which had been intended by either the AFD Loan or the DGTPE Loan, whichever is applicable.

Section 6.02. 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 9.04 of the Loan Regulations.

ARTICLE VII

Delegation of Authority

Section 7.01. The Borrower hereby designates VNR its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02 and 3.05 of this Loan Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Loan Regulations.

Section 7.02. Any action taken or any agreement entered into by VNR pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 7.03. The authority conferred on VNR under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

ARTICLE VIII

Miscellaneous

Section 8.01. The Governor of the State Bank of Viet Nam of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

State Bank of Viet Nam
47 - 49 Ly Thai To
Hanoi, Viet Nam

Facsimile Numbers:

(84-4) 8250-612
(84-4) 8258-385

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2336

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.

SOCIALIST REPUBLIC OF VIET NAM

By 

LE DUC THUY
Authorized Representative

ASIAN DEVELOPMENT BANK

By 

AYUMI KONISHI
Country Director
Viet Nam Resident Mission

SCHEDULE 1

Description of the Project

1. The objectives of the Project are to: (i) facilitate trade and enable economic growth between northwestern Viet Nam and Yunnan Province in the People's Republic of China, (ii) facilitate access to and from Haiphong Port in Viet Nam to Yunnan Province, especially for container traffic, (iii) reduce transport costs, (iv) improve rail traffic safety, and (v) secure sufficient railway capacity to handle future traffic demands to the year 2020.

2. The Project will have the following components:

Part A: Track Component

- (i) Improvement of alignment at specific locations on approximately 285 km of existing track alignment from Yen Vien to Lao Cai;
- (ii) Replacement of worn out rails and switches on the main line;
- (iii) Replacement of old sleepers and fastenings; and
- (iv) Ballasting of track and improvement of embankments, including stabilization.

Part B: Bridge Component

- (i) Construction of about six (6) new bridges; and
- (ii) Rehabilitation of approximately 73 other war damaged and corroded bridges.

Part C: Terminals Component

- (i) Construction of new intermediate station at Mai Tung, including passing loops;
- (ii) Rehabilitation of existing stations, station buildings, access roads, platforms, cargo yards, warehouses and providing new, or extending existing, passing loops where required; and
- (iii) Construction of new warehouses, platforms, cargo yards or access roads at existing stations.

Part D: Safety Component

This component consists of improving rail traffic safety through a package of measures, including:

- (i) Provision of one overpass at existing at-grade crossing; and
- (ii) Upgrading of existing at-grade rail-road crossings by providing improved track crossing structures and safety fencing where required.

3. The Project will utilize consulting services.
4. The Project is expected to be completed by 30 June 2012.

SCHEDULE 2**Amortization Schedule**

**(Greater Mekong Subregion Kunming-Haiphong Transport Corridor:
Yen Vien—Lao Cai Railway Upgrading Project)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15-June-2015	841,563.00
15-Dec-2015	841,563.00
15-June-2016	841,563.00
15-Dec-2016	841,563.00
15-June-2017	841,563.00
15-Dec-2017	841,563.00
15-June-2018	841,563.00
15-Dec-2018	841,563.00
15-June-2019	841,563.00
15-Dec-2019	841,563.00
15-June-2020	841,563.00
15-Dec-2020	841,563.00
15-June-2021	841,563.00
15-Dec-2021	841,563.00
15-June-2022	841,563.00
15-Dec-2022	841,563.00
15-June-2023	841,563.00
15-Dec-2023	841,563.00
15-June-2024	841,563.00
15-Dec-2024	841,563.00
15-June-2025	841,563.00
15-Dec-2025	841,563.00
15-June-2026	841,563.00
15-Dec-2026	841,563.00
15-June-2027	841,563.00
15-Dec-2027	841,563.00
15-June-2028	841,563.00
15-Dec-2028	841,563.00
15-June-2029	841,563.00
15-Dec-2029	841,563.00
15-June-2030	841,563.00
15-Dec-2030	841,563.00

<u>Date Payment Due</u>	<u>Payment of Principal (expressed in Special Drawing Rights)*</u>
15-June-2031	841,563.00
15-Dec-2031	841,563.00
15-June-2032	841,563.00
15-Dec-2032	841,563.00
15-June-2033	841,563.00
15-Dec-2033	841,563.00
15-June-2034	841,563.00
15-Dec-2034	841,563.00
15-June-2035	841,563.00
15-Dec-2035	841,563.00
15-June-2036	841,563.00
15-Dec-2036	841,563.00
15-June-2037	841,563.00
15-Dec-2037	841,563.00
15-June-2038	841,563.00
15-Dec-2038	841,539.00
TOTAL	<u><u>40,395,000.00</u></u>

* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

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

1. The table attached to this Schedule sets forth the Categories of Goods, Works, services and other items 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.

Interest Charge

3. The amount allocated to Category 5 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. 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

5. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the Loan proceeds shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2001 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Account: Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish, immediately after the Effective Date, an imprest account at a commercial 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 United States Dollars. The advance to be deposited into the imprest account shall be \$2 million.

(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 apply to contracts not exceeding \$100,000.

Condition of Withdrawals from Loan Account

7. Notwithstanding any other provision of this Loan Agreement, the Borrower shall not make any withdrawals from the Loan Account for any construction activities under a Works contract for a particular section of alignment until completion of all approved resettlement activities, including income restoration, in that particular section of alignment.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Greater Mekong Subregion Kunming-Haiphong Transport Corridor: Yen Vien—Lao Cai Railway Upgrading Project)			
CATEGORY			ADB FINANCING
Number	Item	Amount Allocated SDR	Percentage and Basis for Withdrawal from the Loan Account
1	Works	14,441,000	60 percent of total expenditure
2	Equipment – Track Renewal*	16,394,000	60 percent of total expenditure
3	Environmental Protection	579,000	60 percent of total expenditure
4	Consulting Services	3,242,000	60 percent of total expenditure
5	Interest Charge	1,118,000	100 percent of amount due
6	Unallocated	4,621,000	
	Total	40,395,000	

* This line item refers to (i) installation of ballast, sleepers, rails, switches and associated works; and (ii) procurement of P43 switches for passing loops and corresponds to item “A.2.b Track Renewal” of “Table A6.2: Detailed Cost Estimates by Financier”, Appendix 6 to the Report and Recommendation of the President.

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
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 and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

C. Selection of Consulting Services

5. 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

6. (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.

7. 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

8. All contracts procured under international competitive bidding procedures and shopping, 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

Project Implementation and Coordination

1. VNR shall be the Executing Agency for the Project and its responsibilities shall include procurement, withdrawal of Loan proceeds and reporting to ADB and co-financiers. The RPMU, a unit within VNR, shall be responsible for day to day Project implementation and its staff shall include sufficient qualified technical, financial and support personnel.

Financial Performance

2. The Borrower shall ensure that VNR utilizes technical assistance to be made available under the Project to optimize the Project's economic benefits and financial returns, including modernizing VNR's financial management system into a structure suitable for a modern, commercial market-based railway operations as envisaged under the Borrower's Railway Law No. 35/2005/QH11, effective 1 January 2006.

3. The Borrower shall ensure that VNR prepares its financial statements of operations showing VNR's actual position. The financial statements shall comprise an income and expenditure statement, and balance sheet.

Operations

4. The Borrower shall ensure that VNR deploys sufficient rolling stock and sufficient numbers of high horsepower locomotives, at all times, for effective operation of the Project railway line.

5. The Borrower shall ensure that the extensions to existing passing loops and new passing loops at stations included in the Project are implemented in coordination with ongoing signaling works in order to ensure efficient and economic implementation of the Project.

6. The Borrower shall ensure that VNR takes all necessary measures, including adjustment of train composition, schedules, and operational speeds, when necessary, to allow both operations and periodic possession of the line to facilitate implementation of Works on and adjacent to the track in accordance with an agreed implementation schedule.

Resettlement

7. The Borrower shall ensure that VNR: (i) engages resettlement and gender specialist consultants to assist in updating, implementing and monitoring the Resettlement Plan (RP) and an independent monitor before commencement of any land acquisition activities; (ii) does not commence any land acquisition and relocation activities nor commence any Works until the updated RP has been prepared following detailed design and the updated RP has been reviewed and approved by ADB; and (iii) carries out all resettlement activities in accordance with the updated RP agreed upon between the Borrower and ADB. The RP shall be prepared in compliance with ADB's *Policy on Involuntary Resettlement* and the

Borrower's laws, regulations, and procedures. In case of discrepancies between the Borrower's laws, regulations, and procedures and ADB's Policy requirements, ADB's Policy requirements shall prevail.

8. The Borrower shall ensure that the Project-affected persons (APs), including those from the host community, are compensated at replacement cost and assisted prior to displacement from their houses, land, and assets, such as they will be at least as well off as they would have been in the absence of the Project, and the poorest APs and vulnerable groups, including ethnic minority APs, are assisted to help improve their socioeconomic status. No APs will be displaced from affected land until the applicable province allocates suitable alternative land for such APs within the same or a neighboring commune or pays compensation at replacement cost sufficient to purchase suitable alternative land within the same or neighboring commune.

9. The Borrower shall ensure timely provision of counterpart funds for resettlement to meet any unforeseen obligations in excess of the resettlement budget estimates in order to satisfy resettlement requirements and objectives.

10. VNR shall ensure that Works contractors are not issued a notice to commence Works for a particular section of alignment until (a) compensation payment and relocation to new sites has been satisfactorily completed for that particular section of alignment, (b) agreed rehabilitation assistance is in place, and (c) the particular section of alignment is free of all encumbrances.

Indigenous Peoples and Ethnic Minorities

11. The Borrower shall ensure that, to the extent any ethnic minorities are likely to be significantly affected by the Project, the measures set forth in the Ethnic Minorities Specific Actions, as agreed between the Borrower and ADB and as specified in the approved RP, are carried out in accordance with such Actions, applicable laws and regulations of the Borrower and ADB's *Policy on Indigenous Peoples*.

Social Issues

12. VNR shall ensure that all Works contracts under the Project incorporate provisions and budget to the effect that contractors: (i) comply with all applicable labor laws and related international treaty obligations, and do not employ child labor; (ii) provide safe working conditions for male and female workers; (iii) implement the provisions set forth in the Project-specific Gender Strategy as summarized in para. 13 below; and (iv) carry out HIV/AIDS and Human Trafficking education and awareness campaigns in the campsites and corridors of influence and which campaigns: (A) will include women leaders and youth from Project affected households, the Women's Union and the Youth Union, and (B) are held in coordination with the Borrower's programs and other existing initiatives.

Gender

13. District-level resettlement committees established pursuant to the RP shall include representatives from the district-level Women's Union. Commune-level resettlement committees established pursuant to the RP shall include representatives from the commune-

level Women's Union as well as female representatives from affected households, including women-headed households and women from ethnic minority households. VNR shall ensure there are capacity building training programs to provide training to district-level and commune-level resettlement committee members, as well as female representatives from affected households, including women-headed households and women from ethnic minority households, in order to provide, among other things, detailed information on resettlement activities, such as proposed relocation sites, entitlements, compensation and livelihood strategies for income improvement for affected persons, and grievance procedures.

14. The Borrower shall ensure that VNR (i) prepares a format for monitoring reports with monitoring indicators broken down by gender and ethnic group for purposes of monitoring and reports, and (ii) conducts gender sensitization training on gender and resettlement for its relevant staff, the district-level and commune-level resettlement committees, and the Women's Union.

15. In any instance where land is acquired for affected persons, the Borrower and VNR shall ensure joint registration of land or land use rights in the names of both the husband and wife.

Environment

16. The Borrower shall ensure that its laws and regulations governing environmental impact assessments, as well as ADB's *Environment Policy* (2002), are followed. If there is any discrepancy between the Borrower's laws and regulations, and ADB's *Environment Policy*, then the ADB Policy requirements shall apply.

17. The Borrower shall ensure that the contract documents for Works under the Project include specific measures in accordance with ADB's *Environment Policy* to mitigate negative environmental impacts caused by the construction and to give due consideration to prevention of damage to the natural environment in the design, construction, operation and maintenance of the Project.

18. The Borrower shall ensure that VNR implements the Environmental Management Plan (EMP) for the Project, based on the IEE, ensuring that there are adequate budget and staff resources. The Borrower shall ensure that the Project complies with best environmental practices and meets the mitigation and monitoring requirements in a timely manner as described in the IEE and prevents damage to the natural environment as a result of the design, construction, operation and maintenance of Project facilities. The Borrower and VNR shall cause (i) the contractors engaged under the Works contracts to comply strictly with all environmental impact mitigation and monitoring requirements set out in the contract documents, and (ii) the consultants engaged for construction supervision to monitor closely the compliance by the contractors with the environmental impact mitigation and monitoring requirements.

19. The Borrower shall ensure that VNR submits a semi-annual monitoring report on the conduct of the IEE and EMP to ADB for review, and which report shall include updates on the development and implementation of mitigation measures.

Governance

20. To ensure transparency and good governance, VNR shall publicly disclose on its website information on how Loan proceeds are being used, presenting procurement contract awards, including for each such contract (a) the list of participating bidders, (b) name of the winning bidder, (c) basic details on bidding procedures adopted, (d) amount of the contract awarded, (d) list of Goods and/or services purchased, and (e) intended and actual utilization of Loan proceeds under each contract. The website shall be updated within two (2) weeks after each award of contract.

Auditing and Accounting

21. Without prejudice to the generality of Section 2.09 of the Project Agreement, the Borrower shall ensure that a separate accounting system for Project expenditures is maintained in accordance with sound accounting principles. All Project accounts, including financial statements, statements of expenditures and account records, shall be audited annually as part of the regular audit of accounts and financial statements by an independent auditing firm. The consolidated audit reports (in English) shall be submitted to ADB in accordance with the requirements and within the deadlines stated in Section 2.09(a) of the Project Agreement. The audit opinion shall include (i) a detailed description of the source of funds and expenditures made; (ii) an assessment of the adequacy of accounting and internal controls systems with respect to Project expenditures and other financial transactions, and to ensure safe custody of Project-financed assets; (iii) a determination as to whether the Borrower and VNR have maintained adequate documentation for all financial transactions, specifically including the statement of expenditures and imprest account procedures; and (iv) confirmation of compliance with this Loan Agreement's financial covenants.

Project Performance Monitoring and Evaluation

22. VNR shall implement a systematic Project performance monitoring and analysis system for use throughout the Project period. VNR shall establish Project indicators (baseline data) including, among others: (i) economic development and socioeconomic indicators; (ii) transport costs and time for passenger and freight services; (iii) transport services and transport charges; (iv) accident rates; (v) financial sustainability of the railway sector, (vi) affected persons incomes, (vii) access to social services, and (viii) jobs created in construction and maintenance. The baseline data shall be collected within six (6) months of the Effective Date; a second survey shall be conducted upon Project completion, and a third survey three years after Project completion to establish Project impact. The design of the baseline and impact surveys shall include data collected from (i) secondary data from government sources, (ii) household socioeconomic sample surveys, and (iii) participatory rapid appraisals. Where relevant, indicators will be disaggregated by gender.

23. The RPMU shall: (i) collect and consolidate all Project progress reports, site reports, technical and financial reports and submit them to ADB; (ii) prepare quarterly progress reports, a midterm Project evaluation report and an overall Project completion report; and (iii) other reports as may be reasonably requested by ADB. Quarterly reports shall include updated implementation, financial and procurement-related information, as well as reports

submitted by the independent monitor for resettlement activities. Quarterly reports shall be submitted to ADB within 30 days of the end of each quarter.