

LOAN AGREEMENT  
(Ordinary Operations)  
(North-South Railway Project)

between

TURKMENISTAN

and

ASIAN DEVELOPMENT BANK

DATED 20 JULY 2011

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 20 July 2011 between TURKMENISTAN (“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; and

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

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 (“Loan Regulations”), 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:

(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 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 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, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

(a) “Consulting Guidelines” means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time);

(b) “Consulting Services” means the services to be financed out of the proceeds of the Loan as described in paragraph 2(c) of Schedule 1 to this Loan Agreement, but excluding any services provided in relation to Goods and Works;

(c) “EMP” means environmental management plan for the Project dated 9 September 2010;

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

(e) “IEE” means the initial environment examination for the Project dated 9 September 2010 and agreed between the Borrower and ADB;

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

(g) “MRT” means the Ministry of Railway Transport of the Borrower or any successor thereto acceptable to ADB;

(h) “PAM” means the project administration manual for the Project dated 21 April 2011 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(i) “Procurement Guidelines” means ADB’s Procurement Guidelines (2010, as amended from time to time);

(j) “Procurement Plan” means the procurement plan for the Project dated 21 April 2011 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;

(k) “Project Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means MRT or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(l) “Project Railway” means a 311-kilometer railway section and related facilities and infrastructure on the Borrower’s North-South Railway between the towns of Bereket and Buzkhun; and

(m) "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. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of one hundred twenty five million Dollars (\$125,000,000), 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 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 0.30% 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 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 January and 15 July 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 proceeds of the Loan shall be allocated and withdrawn 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, the Borrower shall procure or cause to be procured items of expenditure in accordance with the applicable provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where any such item has 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 items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The Loan Closing Date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 31 March 2013 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 applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project Railway, 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 make available, promptly as needed and on terms and conditions acceptable to ADB, the funds, facilities, services, land and other resources, as 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 Railway.

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 ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project Railway are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.05. (a) The Borrower shall (i) maintain, or cause to be maintained, 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), 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 Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to Section 4.05(a) hereinabove, 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 the Borrower unless the Borrower shall otherwise agree.

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

Section 4.07. The Borrower shall ensure that the Project Railway are operated, maintained and repaired in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

**ARTICLE V****Effectiveness**

Section 5.01. A date 45 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

**ARTICLE VI****Miscellaneous**

Section 6.01. The Minister of Railway Transport 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 Railway Transport of Turkmenistan  
7, Saparmurat Turkmenbashi Avenue  
Ashgabat 744007, Turkmenistan

## Facsimile Numbers:

+993 12 510 632  
+993 12 392 874  
+993 12 270 468

with a copy to:

Central Bank of Turkmenistan  
36, Bitarap Turkmenistan Street  
Ashgabat 744000, Turkmenistan

## Facsimile Number:

+993 12 355 086  
+993 12 510 812.

For ADB

Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila  
Philippines

Facsimile Numbers:

(632) 636-2444  
(632) 636-2424.

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 as of the day and year first above written and to be delivered at the principal office of ADB.

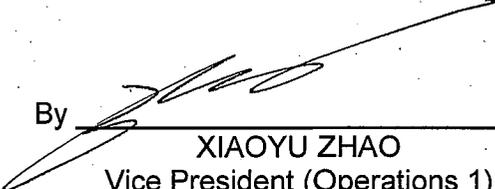
TURKMENISTAN

By

  
ROZMYRAT SEYITKUEYEV  
Minister  
Ministry of Railway Transport

ASIAN DEVELOPMENT BANK

By

  
XIAOYU ZHAO  
Vice President (Operations 1)

**SCHEDULE 1****Description of the Project**

1. The objective of the Project is to provide efficient, safe, and reliable railway transport network in Turkmenistan.
2. The Project shall comprise the following:
  - a. Design, supply and installation of the signaling, power, and telecommunications systems on the Project Railway;
  - b. Supply and installation of safety equipment and supply of track maintenance equipment; and
  - c. Consulting Services for Project management and improvement of the institutional capacity of MRT.
3. The Project is expected to be completed by 30 September 2012.

**SCHEDULE 2****Amortization Schedule****(North-South Railway 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>Date Payment Due</u>	<u>Installment Share</u> (Expressed as a % of Total)
15 July 2016	2.50
15 January 2017	2.50
15 July 2017	2.50
15 January 2018	2.50
15 July 2018	2.50
15 January 2019	2.50
15 July 2019	2.50
15 January 2020	2.50
15 July 2020	2.50
15 January 2021	2.50
15 July 2021	2.50
15 January 2022	2.50
15 July 2022	2.50
15 January 2023	2.50
15 July 2023	2.50
15 January 2024	2.50
15 July 2024	2.50
15 January 2025	2.50
15 July 2025	2.50
15 January 2026	2.50
15 July 2026	2.50
15 January 2027	2.50
15 July 2027	2.50
15 January 2028	2.50
15 July 2028	2.50
15 January 2029	2.50

<u>Date Payment Due</u>	<u>Installment Share (Expressed as a % of Total)</u>
15 July 2029	2.50
15 January 2030	2.50
15 July 2030	2.50
15 January 2031	2.50
15 July 2031	2.50
15 January 2032	2.50
15 July 2032	2.50
15 January 2033	2.50
15 July 2033	2.50
15 January 2034	2.50
15 July 2034	2.50
15 January 2035	2.50
15 July 2035	2.50
15 January 2036	2.50
<b>Total</b>	<b>100.00</b>

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 items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category ("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, each item of expenditure shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

Interest and Commitment Charge

3. The amount allocated to Category 3 is for financing interest and commitment charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charge.

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 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, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Retroactive Financing

6. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with the procurement of Goods and Consulting Services, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS</b>			
<b>(North-South Railway Project)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (\$) Category</b>	<b>Percentage and Basis for Withdrawal from the Loan Account</b>
1	Equipment	118,013,300	100 percent of total expenditure claimed*
2	Consulting Services	2,701,900	100 percent of total expenditure claimed*
3	Interest and Commitment Charge	4,284,800	100 percent of amounts due
	<b>TOTAL</b>	<b>125,000,000</b>	

\* Exclusive of taxes and duties imposed within the territory of the Borrower

## SCHEDULE 4

### Procurement of Goods, Works and Consulting Services

#### General

1. The procurement of Goods, Works and Consulting Services 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.

#### Procurement of Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the method of procurement set forth below:
  - (a) International Competitive Bidding.
4. The method of procurement is subject to, among other things, the detailed arrangements and threshold value set forth in the Procurement Plan. The Borrower may only modify the method of procurement or threshold value with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

#### Consulting Services

5. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

#### 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.

ADB's Review of Procurement Decisions

8. Contracts procured under international competitive bidding procedures 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.

9. Before granting an extension of the stipulated time for completion of a contract for Goods or Works, or before agreeing to any modification or waiver of the terms and conditions of such contract, including issuing any change order or orders under such contract, the Borrower shall seek ADB's no objection to the proposed extension, modification, or change order. If ADB determines that the proposal would be inconsistent with the provisions of this Loan Agreement and/or the Procurement Plan, it shall promptly inform the Borrower and state the reasons for its determination. A copy of all amendments to the contract shall be furnished to ADB for its record.

## SCHEDULE 5

### Execution of Project and Operation of Project Facilities; Financial Matters

#### Implementation Arrangements

1. The Borrower and the Ministry of Railway Transport (MRT) shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by MRT and ADB in accordance with their respective procedures. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

#### Environment

2. The Borrower shall also ensure that the design, construction, and operation of the Project are in accordance with the environmental safeguards and requirements set forth in the ADB's *Safeguards Policy Statement (2009)* and the Borrower's environmental laws and regulations. The Borrower shall ensure that potential adverse environmental impacts arising from the Project are minimized by implementing all the mitigation measures presented in IEE and EMP.

3. The Borrower shall further ensure that (i) during construction, the contractor has primary responsibility for implementing the EMP and mitigation measures, and MRT has access to sufficient resources to ensure that all environmental management provisions are included in the relevant contract; (ii) MRT monitors and records the implementation of the EMP; (iii) MRT, with the assistance of the project management consultants, prepares semiannual environmental monitoring reports, satisfactory to ADB, and submits such to ADB, within 3 months of the end of each half of the calendar year, from the start of project implementation and until the Project completion.

#### Land Acquisition and Resettlement

4. No land acquisition and resettlement activities are expected for the Project, and the Borrower shall ensure that the Project is implemented within the boundaries of its existing rights-of-way for the Project Railway or on otherwise state-owned land duly allocated for such purpose. If, however, the Project requires land acquisition and resettlement, then the Borrower shall ensure prompt preparation of a resettlement plan ("RP") acceptable to ADB pursuant to applicable laws and regulations of the Borrower and ADB's *Safeguards Policy Statement (2009)* and implements such RP promptly and efficiently in accordance with its terms prior to commencement of any construction or similar Works on the affected area.

#### Labor Standards; Health and Safety

5. The Borrower shall ensure that contractors engaged under the Project (i) comply with all applicable labor laws; (ii) use their best efforts to employ women and local people, including disadvantaged people, living in the vicinity of the Project; (iii) provide equal pay to men and women for work of equal type; (iv) provide and adequately equip first-aid, health and sanitation, and personal hygiene facilities for male and female workers at the Project site; (v) maximize female training and employment; (vi) conduct an information and education campaign

on sexually transmitted diseases and HIV/AIDS for construction workers as part of the health and safety program at campsites and adjacent communities during Project implementation; and (vii) abstain from child labor. Relevant Works contracts financed under the Project must include specific clauses on these undertakings.

#### Governance and Anticorruption

6. The Borrower shall establish and maintain a sound financial management system, including the establishment of separate Project bank account and the maintenance of minimum balances to ensure smooth cash flow and the timely settlement of anticipated and contingent Project construction liabilities. The financial management system shall comprise: (a) financial planning, budgeting and budgetary control; (b) accounting consistent with International Financial Reporting Standards; (c) internal controls; (d) data processing; and (e) financial reporting.

7. The Borrower shall comply with ADB's *Anticorruption Policy* (1998, as amended to date) for the purposes of the Project. The Borrower, consistent with its commitment to good governance, accountability and transparency, agrees (a) that ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project and (b) to cooperate fully with any such investigation and to extend all necessary assistance. The Borrower shall ensure that all contracts financed by ADB under the Project include provisions specifying the right of ADB to audit and examine the records and accounts of any and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

#### Operational Covenants

8. The Borrower shall ensure that (i) the Project Railway and related facilities are constructed and installed in accordance with design specifications and construction norms; and (ii) construction supervision, quality control and contract management are performed in accordance with best international practices.

9. The Borrower shall ensure that the proposed railways between the towns of Buzkhun and Pogradichnaya (approximately 155 km) and between the towns of Bereket and Etrek (approximately 257 km) are completed and operational, in conformity with sound applicable technical, environmental, and development practices, prior to the Project completion.

10. The Borrower shall ensure that: (a) any additional counterpart funding necessary for successful Project completion is promptly provided; (b) in each fiscal year starting from 2012, adequate funds are allocated and/or generated for operation and maintenance (O&M) of the Project Railway and related facilities in accordance with best international engineering and O&M practices; and (c) MRT operates and maintains the Project Railway based on O&M plans to be developed in accordance with the equipment suppliers' recommended O&M practices and guidelines.

11. The Borrower shall ensure that railway transport tariffs are revised, as per existing practice, to maintain financial sustainability of the Project Railway.

12. The Borrower shall ensure that ADB's consent is obtained at least 6 months prior to the implementation of any of the following: (i) any change in ownership of the Project Railway;

(ii) any sale, transfer, or assignment of interest or control in the Project Railway; or (iii) any modification of the functions and authority of MRT over operation and maintenance of the Project Railway. The Borrower shall ensure that any such changes are carried out in a legal and transparent manner.

13. The Borrower shall ensure that relevant government agencies provide strict border controls and railway patrols to prevent trafficking of humans, wildlife, endangered species, and illegal substances.