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LOAN NUMBER 4000-UZB

PROJECT AGREEMENT

(CAREC Corridor 2 (Pap–Namangan–Andijan) Railway  
Electrification Project – Additional Financing)

between

ASIAN DEVELOPMENT BANK

and

O'ZBEKISTON TEMIR YO'LLARI JOINT-STOCK COMPANY

DATED 06 August 2021

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UZB 48025

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 06 August 2021 between ASIAN DEVELOPMENT BANK ("ADB") and O'ZBEKISTON TEMIR YO'LLARI JOINT-STOCK COMPANY ("UTY").

### **WHEREAS**

(A) by a Loan Agreement of even date herewith between Republic of Uzbekistan ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan of one hundred and twenty-one million Dollars (\$121,000,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the loan be made available to UTY and that UTY agrees to undertake certain obligations towards ADB set forth herein; and

(B) UTY, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

## **ARTICLE II**

### **Particular Covenants**

Section 2.01. (a) UTY shall carry out the Project 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 facilities, UTY shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to UTY, and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. UTY shall make available, promptly as needed, 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.

Section 2.03. (a) In the carrying out of the Project, UTY shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, UTY shall procure all items of expenditures to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the 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 2.04. UTY shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. UTY 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 2.05. (a) UTY shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, UTY undertakes to insure, or cause to be insured, the Goods to be imported for the Project against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. UTY shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and UTY shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) UTY shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or the Subsidiary Loan Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and UTY shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, UTY and the Loan.

Section 2.08. (a) UTY shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of UTY; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, UTY shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, UTY shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by UTY of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) UTY shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Loan proceeds, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the close of the fiscal year to which they relate, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) In addition to annual audited financial statements referred to in subsection (a) hereinabove, UTY shall (i) provide its annual financial statements prepared in accordance with financing reporting standards acceptable to ADB; (ii) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iii) as part of each such audit, have the auditors prepare the auditors' opinion(s) on the financial statements and compliance with the financial covenants of the Loan Agreement; and (iv) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements and auditors' opinion(s), all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(d) UTY shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and UTY and its financial affairs where they relate to the Project with the auditors appointed by UTY pursuant to subsections (a)(iii) and (c)(ii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of UTY, unless UTY shall otherwise agree.

Section 2.10. UTY shall enable ADB's representatives to inspect the Project, the Goods, Works and Services and any relevant records and documents.

Section 2.11. (a) UTY shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its operations.

(b) UTY shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) UTY shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, UTY shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, UTY shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, UTY shall duly perform all its obligations under the Subsidiary Loan Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Loan Agreement.

Section 2.15. UTY shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its foundational documents, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. UTY shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

### **ARTICLE III**

#### **Effective Date; Termination**

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect. ADB shall promptly notify UTY of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

## ARTICLE IV

### Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

#### For ADB

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

#### Facsimile Numbers:

(632) 8636-2444  
(632) 8636-2424.

#### For UTY

Shevchenko Street, 7  
Tashkent, 100060  
Republic of Uzbekistan

#### Facsimile Number:

(998-71) 233-6924.

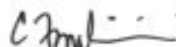
Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 7.01 of the Loan Agreement by or on behalf of UTY may be taken or executed by the Chairman of its Board or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) UTY shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project 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.

ASIAN DEVELOPMENT BANK

By   
CYNTHIA MALVICINI  
Country Director  
Uzbekistan Resident Mission

O'ZBEKISTON TEMIR YO'LLARI JOINT-STOCK COMPANY

  
By  
KHUSNUTDIN KHASILOV  
Acting Chairman



## SCHEDULE

### Execution of Project; Financial Matters

#### Implementation Arrangements

1. UTY 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 the Borrower and ADB. In the event of any discrepancy between the PAM and this Project Agreement, the provisions of this Project Agreement shall prevail.

#### Procurement

2. UTY shall ensure that:

- (a) the procurement of Goods, Works and Services is carried out in accordance with the Procurement Policy and the Procurement Regulations;
- (b) Goods, Works and Services shall be procured based on the detailed arrangements set forth in the Procurement Plan, including the procurement and selection methods, the type of bidding documents, and ADB's review requirements. The Borrower may modify the detailed arrangements set forth in the Procurement Plan only with the prior agreement of ADB, and such modifications must be set out in updates to the Procurement Plan; and
- (c) (i) all Goods and Works procured and Services obtained (including 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; and (ii) all contracts for the procurement of Goods, Works and Services contain appropriate representations, warranties and, if appropriate, indemnities from the contractor, supplier, consultant or service provider with respect to the matters referred to in this subparagraph.

3. UTY shall ensure that no Works contract is awarded which involves environmental impacts until:

- (a) the relevant environment authority of the Borrower has granted the final approval of the IEE; and
- (b) UTY has incorporated the relevant provisions from the EMP into the Works contract.

#### Environment

4. UTY shall ensure, that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the



Environmental Safeguards; and (c) all measures and requirements set forth in the IEE (including, without limitation, the corrective action plans for the Associated Facilities and Existing Facilities) and the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

#### Land Acquisition and Involuntary Resettlement

5. UTY shall ensure that all land and all rights-of-way required for the Project are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the Social Due Diligence Report, including the corrective actions set out in such report; and (d) any corrective or preventative actions set forth in a Safeguards Monitoring Report.

6. UTY shall ensure that all land acquisition and resettlement activities in relation to the Associated Facilities and Existing Facilities, including all payments of required compensation and entitlements, and satisfaction of all requirements and actions set out in the Social Due Diligence Report, are completed before any construction or civil works commences under any Works contract.

#### Indigenous Peoples

7. UTY shall ensure that the Project does not have any indigenous peoples impact within the meaning of the Safeguard Policy Statement. In the event that the Project does have any such impact, UTY shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the Safeguards Policy Statement.

#### Human and Financial Resources to Implement Safeguards Requirements

8. UTY shall make available the necessary monetary and human resources to fully implement the EMP; the Social Due Diligence Report, including the corrective actions set out in such report.

#### Safeguards – Related Provisions in Bidding Documents and Works Contracts

9. UTY shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE, the EMP and the Social Due Diligence Report (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project or the Associated Facilities or Existing Facilities that were not considered in the IEE, the EMP, and the Social Due Diligence Report;

- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) upon the completion of construction, reinstate pathways and other local infrastructure to at least their pre-project condition, and recultivate agricultural land.

#### Safeguards Monitoring and Reporting

10. UTY shall do the following:
- (a) submit semiannual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
  - (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project, the Associated Facilities or the Existing Facilities that were not considered in the IEE, the EMP and the Social Due Diligence Report, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
  - (c) report any actual or potential breach of compliance with the measures and requirements set forth in the IEE; EMP; the Social Due Diligence Report, including the corrective actions set out in such report, promptly after becoming aware of the breach.

#### Prohibited List of Investments

11. UTY shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

#### Labor Standards, Health and Safety

12. UTY shall ensure that the core labor standards and the Borrower's applicable laws and regulations are complied with during Project implementation. UTY shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Borrower's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

13. UTY shall provide ADB with regular reports on compliance with the requirements set forth in paragraph 12 above.

Gender and Development

14. UTY shall ensure that the principles of gender equality aimed at increasing Project benefits and impact on women in the Project area are followed during implementation of the Project. These include (a) appointment of a gender focal point in the executing agency for the implementation of gender-related activities; (b) gathering the baseline sex-disaggregated data as part of surveys and assessments; (c) providing gender awareness training for UTY; (d) integration of the gender-related content into capacity building activities and communication strategies, wherever appropriate; (e) proactively encouraging and promoting women's employment in UTY; and (f) conducting the information campaigns on HIV/AIDS. UTY shall ensure that sufficient funds are available to implement these activities.

Financial Covenant

15. (a) UTY shall develop a long-term development strategy to improve its operational efficiency, including in the areas of locomotive and rolling stock utilization, operational practices, timely adjustment of tariffs and optimization of operating expenses. Through implementation of the actions identified in the foregoing long-term development strategy, except as ADB shall otherwise agree, UTY shall cause UTY to: (i) maintain an operating income ratio of not less than 0.1 in each of its financial years beginning with the financial year of UTY ending 31 December 2021; and (ii) disclose through its annual financial statement the composition of its operating revenue, broken down into revenue from domestic traffic (paid in local currency) and international traffic (paid in hard currency).

(b) For purposes of subparagraph (a) above,

- (i) the term "operating income ratio" means operating income divided by operating revenues;
- (ii) the term "operating income" means the difference between operating revenue and operating expenses;
- (iii) the term "operating expenses" means all expenses related to operations, including administration, maintenance, and depreciation but excluding interest and other charges on debt;
- (iv) the term "operating revenue" means revenues from all sources related to operations; and
- (v) the terms "operations" or "operating" refer to UTY's core business of providing railway transport services including other services auxiliary to railway transport.

Operational Covenants

16. UTY shall ensure that (a) the Project facilities are installed in accordance with design specifications and construction norms; and (b) construction supervision, quality control and contract management are performed in accordance with applicable standards and best international practices.

17. UTY shall apply for domestic freight and passenger tariff adjustment in a timely manner seeking to enable UTY to maintain financial sustainability covering market risks, including adequate debt-service coverage, and inflation, foreign exchange and interest risks.

18. The Borrower shall cause UTY to (a) ensure that all contracts include contractor's obligation to comply with railway safety measures, (b) conduct safety awareness on the railway electrification for local residents along the rail line, (c) install adequate safety equipment, and (iv) regularly monitor and report the accident rate and traffic volume.

19. UTY shall (a) set up procedures for operation and maintenance of electrification, signaling and telecommunication equipment procured under the Project and (b) ensure that the structure and conditions of track and other Project facilities are satisfactorily maintained to ensure safe railway operation.

20. UTY shall ensure that ADB's consent is obtained at least 6 months prior to the implementation of any of the following: (a) any change in ownership of any asset, facility or structure financed under the Project; (b) any sale, transfer, or assignment of interest or control in any asset, facility or structure financed under the Project; or (c) any lease or other contract or modification of the functions and authority of UTY over operation and maintenance of any such asset, facility or structure financed under the Project. UTY shall ensure that any such changes will be carried out in a legal and transparent manner.

21. The Borrower shall pass an official decree by 30 June 2021, confirming: (a) the removal of activities from UTY which are not part of UTY's core business of providing railway transport services including other services auxiliary to railway transport, and (b) prohibiting the addition of any activities to the responsibilities of UTY which are not part of UTY's core business of providing railway transport services including other services auxiliary to railway transport.

#### Governance and Anticorruption

22. UTY shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

23. UTY shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

#### Project Website

24. UTY shall maintain and update its website with the information on the Project, including among other things, details on the adopted bidding procedures, amounts of the contract awards and the list of Works, Goods and Services procured and their intended and actual utilization.