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LOAN NUMBER 3629-PRC

PROJECT AGREEMENT

Air Quality Improvement in the Greater Beijing-Tianjin-Hebei Region --  
Regional Emission Reduction and Pollution Control Facility Project

between

ASIAN DEVELOPMENT BANK

and

CHINA ENERGY CONSERVATION AND ENVIRONMENT PROTECTION GROUP

DATED 18 October 2018

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PRC 51181

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 18 October 2018 between ASIAN DEVELOPMENT BANK ("ADB") and CHINA ENERGY CONSERVATION AND ENVIRONMENT PROTECTION GROUP ("CECEP").

### **WHEREAS**

(A) by a Loan Agreement of even date herewith between People's Republic of China ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan of Euro four hundred twenty-eight million (€428,000,000) 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 CECEP and that CECEP agrees to undertake certain obligations towards ADB as set forth herein; and

(B) CECEP, 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**

### **Investments in and by Funds; Direct investments by CECEP**

Section 2.01. (a) Except as ADB may otherwise agree, the Relent Proceeds shall be used only for investing into the Facility and, through the Facility, making Entrusted Loans and Equity Investments to Funds and Qualified Enterprises, in each case in an amount up to the maximum specified for such use from time to time in the PAM and subject to such other restrictions as are applicable to such use of proceeds as are specified herein, in the Loan Agreement and in the PAM.

(b) CECEP shall ensure that the proceeds of investments of Relent Proceeds into the Facility and Funds shall be applied exclusively to making investments in

Qualified Enterprises, and that the proceeds of debt and equity investments into Qualified Enterprises, whether by Funds or by the Facility, shall be applied exclusively to the cost of Goods, Works and other items of expenditure required to carry out the specified Subproject for which such amounts are provided.

(c) CECEP shall ensure that all Goods, Works and services are procured in accordance with the provisions of Schedule 3 to the Loan Agreement and with the Procurement Manual in the PAM.

Section 2.02. Not later than when it invests or makes any commitment to invest Relent Proceeds in the Facility or in any Fund or Qualified Enterprise or when it permits the Facility or any Fund to make any investment in a Qualified Enterprise, CECEP shall or shall cause the Facility or the relevant Fund to enter into the Project Implementing Contracts applicable to such arrangement, in form and substance acceptable to ADB and that reflect relevant requirements of the Loan Agreement, this Project Agreement, the PAM and the ESMS.

Section 2.03. (a) CECEP shall ensure that no refinancing is provided for financing provided before the Effective Date of the Loan Agreement and no financing is provided for expenditures incurred prior to the Effective Date of the Loan Agreement unless and until ADB has given its written non-objection to the proposed investment and Subproject. CECEP shall furnish to ADB an appraisal report, in such form and detail as ADB may request, describing the Subproject, the Qualified Enterprise, the terms and conditions of the proposed use of Loan proceeds and drafts of the proposed Project Implementing Contracts for the transaction.

(b) Prior to providing or committing to provide any Relent Proceeds for (i) investment in the Facility, (ii) any investment by the Facility in a Fund, (iii) the first Entrusted Loan made by the Facility and by the first Fund to make an Entrusted Loan; (iv) each Equity Investment, (v) the first Entrusted Loan made by the Facility to an ESCO and by the first Fund to make an Entrusted Loan to an ESCO and (vi) each investment, other than through the "regional" Fund, in a company in which CECEP has an interest; CECEP shall submit for ADB's prior review and approval documentation related to such proposed transaction including an appraisal report, in such form and detail as ADB may request, describing the proposed investment, the Facility, Fund or Qualified Enterprise, the terms and conditions of the proposed investment and drafts of the Project Implementing Contracts relevant to the transaction.

(c) In the case of investments in Funds, CECEP will, first, submit a proposed term sheet to ADB for its non-objection and, subsequently, provide for ADB's review negotiated draft documents to implement the Fund prior to permitting the Facility to sign such documents. CECEP will ensure that all terms and conditions of all Project Implementing Contracts submitted to ADB for review or approval fully comply with applicable laws and regulations and with prudent practices in the funds industry. CECEP will ensure that there are no agreements or arrangements with Fund investors that contain terms inconsistent with the terms and conditions in documents accepted by ADB. CECEP will further ensure that where any investor in a Fund has the benefit of a guarantee (however styled) of any part of its return, whether of principal or profit, that fact is communicated in writing to ADB before it approves Fund documents and to other investors before they make commitments to the Fund.

(d) CECEP shall not provide or permit the Facility or any Fund to provide or apply any Relent Proceeds to any entity or for any project that does not meet all of the applicable entity, financial and technical criteria for Qualified Enterprises and Subprojects set out in the PAM; provided, however, where CECEP considers a noncompliant project to have strong potential to demonstrate large-scale implementation of a new technology and reduce air emissions in the BTH region, CECEP may submit for ADB's prior review and approval all such documents and information as ADB may require concerning the entity, the proposed project and the proposed use of proceeds and ADB may approve or disapprove an investment in such project and entity in its sole discretion.

(e) Whenever the Facility or a Fund proposes to make an investment in a Qualified Enterprise where the proposed investment amount exceeds the Free Limit, CECEP shall submit to ADB an application for approval of the investment and Subproject. Such application shall be in a form satisfactory to ADB and shall contain a description and appraisal of the Subproject and Qualified Enterprise, the terms and conditions of the proposed investment, drafts of the Project Implementing Contracts relevant to the transaction and such other information as ADB shall reasonably request. An investment shall be deemed to exceed the Free Limit if the amount of such investment when added to the amount of all other investments previously made or authorized by the Facility and Funds for the same Subproject or the same Qualified Enterprise exceeds the Free Limit.

Section 2.04. (a) CECEP shall ensure that each Entrusted Loan to Qualified Subborrowers shall (i) carry interest and fees at market-based rates and levels adequate to cover all of the Facility's or the relevant Fund's costs and risks associated therewith and to provide the Facility or the Fund, as applicable, an adequate profit margin; (ii) be made for a tenor or period that reflects the needs of the related Subproject; and (iii) be in an amount that, together with the amount of any Equity Investments or Put-protected Equity provided for the same Subproject, is not greater than 70% of the total cost of the Subproject.

(b) CECEP shall ensure that each Equity Investment without a Put shall (i) be made under an Equity Investment Agreement, (ii) unless ADB otherwise agrees, be in an amount not greater than RMB500 million, of which Relent Proceeds may comprise not more than RMB 125 million; (iii) have a market standard return target for an investment of that type and not lower than any minimum target set out in the PAM; (iv) be in an amount that, together with the amount of any Entrusted Loans and Put-protected Equity provided for the same Subproject, is not greater than 70% of the total cost of the Subproject; (v) provide that the Facility or Fund may suspend or cancel any commitments and exercise other remedies if the Qualified Investee fails to perform its Project-related obligations; and (vi) have an identified viable exit strategy that will enable the Facility or the Fund to recover its investment within a reasonable timeframe and not later than the later of the final liquidation date of the Facility or the investing Fund or the final repayment date of the Loan. The aggregate of all Equity Investments without a Put by the Facility directly into Qualified Investees and by Funds into Qualified Investees shall not exceed at any time the limits on Equity Investments without a Put set out from time to time in the PAM.

(c) CECEP shall ensure that each Put-protected Equity investment shall (i) be made under an Equity Investment Agreement; (ii) have a market standard return target for an investment of that type; (iii) be in an amount that, together with the amount of any Entrusted Loans and Equity Investments without a Put provided for the same Subproject, is

not greater than 70% of the total cost of the Subproject; and (iv) be made subject to a Put that is exercisable not later than the earlier of the final liquidation date of the investing Fund or the final repayment date of the Loan and is exercisable earlier if the investee breaches Project requirements. The aggregate of all Put-protected Equity investments by the Facility directly into Qualified Investees and by Funds into Qualified Investees shall not exceed at any time the limits on Put-protected Equity investments set out from time to time in the PAM.

(d) CECEP shall ensure that all of the Facility's and Funds' investments of Relent Proceeds shall be made on terms whereby CECEP, through the Facility or the Fund, as applicable, shall obtain, by written agreements in form acceptable to ADB, rights adequate to protect the interests of the Borrower, CECEP and ADB.

Section 2.05. CECEP shall ensure that the Facility and each other recipient of Relent Proceeds, prior to receiving any financial assistance from the Project, enters into a Limited Partnership Agreement for a Fund, an Entrusted Loan Agreement and/or an Equity Investment Agreement (together with a Put where the investment is Put-protected Equity) and, where the recipient of Relent Proceeds is an ESCO, an Energy Performance Contract, and, in an Entrusted Loan where the Entrusted Loan Agreement does not reflect all Project requirements, a Subproject Agreement, in each case acceptable to ADB and reflecting the applicable requirements of the Loan Agreement, this Project Agreement, the PAM and the ESMS in addition to any other provisions a prudent investor would require and that describes clearly and in reasonable detail the Subproject for which the proceeds are to be used. Where a Subproject Agreement is required, the related Entrusted Loan Agreement shall provide that a breach of the Subproject Agreement constitutes a default under the Entrusted Loan Agreement entitling the lender to exercise its remedies in connection with the loan. The agreements for each investment of Relent Proceeds by the Facility or a Fund into a Qualified Enterprise shall include provisions to the effect that:

- (a) The Qualified Enterprise shall carry out and operate the Subproject with due diligence and efficiency and in accordance with sound applicable technical, financial, business and development practices, including maintenance of adequate accounts and records;
- (b) ADB, CECEP and the Management Company shall each have the right to inspect all Goods and Works related to the investment, the Qualified Enterprise, the Subproject and any relevant records and documents;
- (c) The Qualified Enterprise shall take out and maintain with responsible insurers insurance against such risks and in such amounts as shall be consistent with sound business practice;
- (d) ADB, CECEP and the Management Company shall each be entitled to obtain all such information as each shall reasonably request relating to the Entrusted Loan or Equity Investment, the Goods, Works and other items of Subproject expenditure, the Subproject, the Qualified Enterprise and related matters;
- (e) The Qualified Enterprise shall design, build, implement, monitor and report on its Subproject in compliance with all relevant requirements of the Safeguards Policy Statement and the ESMS;

- (f) The Subproject for which the investment is made shall not: (i) involve Indigenous People's Impacts or Involuntary Resettlement Impacts; (ii) be categorized as "Category A" for environmental impacts; or (iii) involve prohibited activities listed on ADB's Prohibited Investment List, all within the meanings of such terms set out in the Safeguards Policy Statement
- (g) The Facility, the investing Fund, or the Management Company or the Entrusted Bank on the Facility's or the relevant Fund's behalf, shall be entitled to suspend or terminate further access by the Qualified Enterprise to the Entrusted Loan or Equity Investment and/or may accelerate repayment of the Entrusted Loan or may exercise any Put option upon failure by the Qualified Enterprise to perform its obligations regarding use of investment proceeds and Subproject implementation under its agreements with the Facility or the Fund;
- (h) The Qualified Enterprise shall commit to establish and maintain sound financial management systems;
- (i) The Qualified Enterprise shall maintain records and accounts adequate to record the progress of the Subproject (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, the operations and financial condition of the Qualified Investee;
- (j) The Qualified Enterprise shall ensure that Goods, Works and related services shall be used exclusively in carrying out the Subproject for which they were provided;
- (k) The Qualified Enterprise shall use the proceeds of the Entrusted Loan or Equity Investment only for procurement in member countries of ADB, of Goods which are produced in and supplied from, and Works and services which are supplied from, such countries except where Entrusted Loans or Equity Investments are made by a Fund using both funding from the Facility and funding from commercial cofinanciers that have signed cofinancing MOUs with ADB, as advised by ADB in connection with the establishment of each Fund;
- (l) The Qualified Enterprise shall use undertake all procurement of Goods, Works and services in accordance with the Procurement Manual annexed to the PAM; and
- (m) Where the investment is in an ESCO, (i) the ESCO shall enter into an Energy Performance Contract satisfactory to CECEP and the Management Company with each counterparty to which the ESCO will provide Goods, Works or services supported by investment proceeds, (ii) the activities of the ESCO in connection with each of its Energy Performance Contract counterparties and at each site where it provides Goods, Works and/or services will be considered a separate "Subproject" which must meet all of the requirements of this agreement, the PAM and the ESMS for Subprojects to receive investments, (iii) the

ESCO's Energy Performance Contract counterparties must be Qualified Enterprises, and (iv) each time the ESCO desires to receive funds under the Entrusted Loan Agreement or Equity Investment Agreement it shall first provide to CECEP and the Management Company all information and documents they require to demonstrate that the above requirements have been achieved.

Section 2.06 CECEP shall enter into a Limited Partnership Agreement for the Facility before it receives any financial assistance from ADB and before it agrees to provide or to permit the Facility or any Fund to provide any financial assistance using Relent Proceeds to any other person. CECEP shall cause the Facility to enter into a Limited Partnership Agreement for each Fund, acceptable to ADB, before it provides any financial assistance to a Fund. In addition to reflecting the applicable requirements of the Loan Agreement, this Project Agreement, the PAM and the ESMS and any other provisions a prudent investor would require, the Limited Partnership Agreements shall reflect the following matters and others that ADB determines to be reasonable and prudent under the circumstances:

- (a) the size of CECEP's commitment to the Facility or of the Facility's commitment to the Fund and the terms on which the Facility will invest in the Fund for an investment period and repayment period that reflect the needs and reasonable return periods of the target investments by the Fund and that are acceptable to ADB in each instance;
- (b) the Facility's or Fund's governance structure, including arrangements acceptable to ADB for review and approval of all investments by an investment committee; and specifying, among other things, processes and approval authorities;
- (c) where there are investors other than the Facility in a Fund, either (i) that no investments may be made by such Fund in companies in which CECEP has an interest without ADB's approval of each such investment (CECEP having satisfied ADB that the conflicts were appropriately disclosed to, and are acceptable to, non-affiliated investors in each instance) or (ii) in the case of the "regional" Fund, including mechanisms for review and acceptance or waiver of conflicts of interest, that are acceptable to ADB and agreed by all Fund investors;
- (d) that the Management Company shall be the Facility's or Fund's general partner and manager, with sufficient authorities and mandates from all Fund investors to implement all of the requirements of the Loan Agreement, this Project Agreement, the PAM and the ESMS with respect to the Facility, the Funds and their investments in Qualified Enterprises;
- (e) diversification requirements that reflect the Project's performance indicators set out in the PAM, and per-investment and sector limits that are prudent relative to Facility or Fund size and that reflect any restrictions herein and in the PAM;

- (f) that the Facility may not call for funds from CECEP and the Fund may not call for funds from the Facility until the Facility or the Fund, as applicable, has entered into an Entrusted Loan Agreement or Equity Investment Agreement agreeing to make an investment in a Qualified Enterprise for a Subproject (and, where required hereunder, a Subproject Agreement or a Put);
- (g) that, unless ADB otherwise agrees, within the Facility's or Fund's investment period, the Facility or Fund will re-invest all repaid or otherwise returned investment principal not longer than six months after its receipt by the Facility or Fund or will return such amounts to the Facility or, in the case of the Facility, to CECEP at not later than the end of such six-month period;
- (h) that the Facility or Fund shall adopt and implement an ESMS and will not make any investment unless and until it has provided to the Management Company documentation and information about the proposed transaction, including sufficient information for CECEP and the Management Company to ensure compliance with the Safeguards Policy Statement and the ESMS, satisfactory to the Management Company and received the Management Company's written non-objection;
- (i) that the Facility or Fund shall enforce the terms of the Entrusted Loan Agreements, Subproject Agreements and Equity Investment Agreement it enters into with Qualified Investors in implementing its investments and divestments so as to protect the interests of CECEP and ADB; and
- (j) that the Facility or Fund shall not make any investment for any Subproject (i) that has Indigenous People's Impacts or Involuntary Resettlement Impacts; (ii) that is "Category A" for environmental impacts; or (iii) that involves "prohibited activities" listed on ADB's Prohibited Investment List, all within the meanings of such terms set out in the Safeguards Policy Statement.

Section 2.07 CECEP shall and shall cause the Management Company, the Facility and each Fund promptly and effectively to exercise its respective rights in relation to the Facility, each Fund, each Subproject, each Qualified Enterprise and the Project Implementing Contracts, in accordance with the standards of a prudent investor and in such manner as to protect the interests of the Borrower, CECEP and ADB.

Section 2.08. CECEP shall not make or permit any changes to any Project Implementing Contract that would result in any such contract failing to comply with the provisions of this Project Agreement, the Loan Agreement, the PAM or the ESMS.

Section 2.09. CECEP shall cause the Facility and the Funds, collectively, to invest in Subprojects that will ensure that the Project fulfills the requirements of "output 2" as described in the PAM.



### ARTICLE III

#### Particular Covenants

Section 3.01. (a) CECEP shall, and CECEP shall cause the Management Company, the Facility, the Funds and the Qualified Enterprises to, carry out the Project with due diligence and efficiency and in conformity with sound applicable technical, financial, business and development practices.

(b) In carrying out the Project and in the conduct of its business, CECEP shall perform all the obligations relevant to it that are set forth in the Loan Agreement and all obligations set forth in the Schedule to this Project Agreement.

Section 3.02. CECEP shall at all times, while the Loan Currency is not Renminbi, make adequate provision to protect itself against any loss resulting from changes in the rate of exchange between the Loan Currency and Renminbi.

Section 3.03. CECEP shall not provide or permit the Facility or any Fund to provide an Entrusted Loan or Equity Investment to any Qualified Enterprise unless the Qualified Enterprise (i) has at its disposal, or has made appropriate arrangements to obtain promptly as and when required, all local currency funds, including adequate working capital, and other resources as are required, in addition to the Facility's or the Fund's investment to complete and implement the Subproject in respect of which the investment is to be made; and (ii) is required to cover the cost of all cost overruns.

Section 3.04. CECEP shall, and shall cause the Facility and each Fund to, maintain records and accounts adequate to record the progress of the Project and of each Subproject (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, the operations and financial condition of CECEP, the Management Company, the Facility and the Fund.

Section 3.05. (a) ADB and CECEP shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) CECEP 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 the Project Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and CECEP shall from time to time, at the request of any of them, exchange views through their representatives with regard to any matters relating to the Project, CECEP, the Management Company and the Loan.

Section 3.06. (a) CECEP 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, including (i) all Recycled Funds; (ii) the Project; (iii) the Facility, the Funds, the Qualified Enterprises, the Subprojects, the Entrusted Loans and the Equity Investments; and (iv) the administration, operations and financial condition of CECEP, the Management Company, the Facility and the Funds.

(b) Without limiting the generality of the foregoing, CECEP shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of CECEP, the Facility, the Funds and the Management Company as they relate to the Project. 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) Not later than 3 months after the end of the grace period for the Loan or such other date as ADB shall specify, CECEP shall, or shall cause the Management Company to, prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the utilization of the Loan, the execution of the Subprojects, their costs, the performance by CECEP of its obligations under the Project Agreement and the accomplishment of the purposes of the Loan.

Section 3.07. (a) CECEP shall or shall cause the Management Company to: (i) maintain separate accounts and records for the Project, and require the Facility and each Fund to maintain and provide to CECEP separate accounts and records for the Project funds received by the Facility or such Fund; (ii) prepare an annual consolidated statement of utilization of funds for the Project (including funds invested in the Facility and the Funds) in accordance with accounting principles acceptable to ADB; (iii) have such statement 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 statements and the use of the Loan proceeds, and a management letter as described in the PAM; 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 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 statements of utilization of funds for the Project and the opinion of the auditors on the 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 the annual audited statements of utilization of funds referred to in subsection (a) hereinabove CECEP shall and shall cause the Management Company, the Facility and each Fund to (i) provide to ADB their annual financial statements prepared in accordance with national accrual-based financial reporting standards acceptable to ADB; (ii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iii) as part of each such audit, have the auditors prepare the auditors' opinion(s) on the financial statements, and, in the case of CECEP, compliance with any financial covenants it is required to maintain as specified in the Loan Agreement or this Project Agreement, and a management letter; and (iv) furnish to ADB not later than 6 months after the end of the fiscal year to which they relate, 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) CECEP shall, and shall cause the Management Company, the Facility and each Fund to, enable ADB, upon ADB's request, to discuss the statements of utilization of funds for the Project and shall enable ADB, upon ADB's request, to discuss the financial statements of CECEP, the Management Company, the Facility, the Funds and their respective financial affairs where they relate to the Project with the auditors appointed by CECEP, the Management Company, the Facility and such Funds 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 CECEP, the Management Company, the Facility or the relevant Fund unless they shall otherwise agree.

Section 3.08 CECEP shall engage a consultant or agency acceptable to ADB to undertake, within 6 months after the physical completion of each Subproject, measurement and verification of the energy savings and reduction in Specified Air Pollutants achieved by such Subproject and shall provide to ADB the results of such measurement and verification and, from time to time at ADB's request, shall provide ADB the consolidated results of all physically-completed Subprojects.

Section 3.09. CECEP shall, and shall cause the Management Company, the Facility and the Funds to, enable ADB's representatives to inspect any Qualified Enterprise, any Subproject, the Goods and Works and any other items of expenditure paid for in whole or in part by Project funds, and any relevant records and documents and shall ensure that all recipients of Entrusted Loans and Equity Investments enter into Project Implementing Contracts that reserve such rights.

Section 3.10. (a) CECEP shall, and shall cause the Management Company, the Facility, each Fund and each Entrusted Bank to, promptly as required, take all action within its respective 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 carrying out the Project or in conducting its business.

(b) CECEP shall, and shall cause the Management Company, the Facility, each Fund and each Qualified Enterprise to, at all times conduct its business in accordance with sound applicable technical, financial, and business practices, and under the supervision of competent and experienced management and personnel.

(c) Except as ADB may otherwise agree, CECEP shall not, and shall cause the Management Company, the Facility, the Funds and the Qualified Enterprises not to, sell, lease or otherwise dispose of any of their respective 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, or as contemplated in, this Project Agreement or applicable Project Implementing Contracts.

Section 3.11. CECEP shall and shall cause the Management Company, the Facility and each Fund to maintain sound financial management systems in accordance with ADB's Financial Management and Analysis of Projects, and, except as ADB may otherwise agree, CECEP shall maintain a ratio of total liabilities to total assets, calculated

as provided in the PAM, of not more than 70% and such other financial requirements as are set out in the Loan Agreement, the Project Agreement and the PAM.

Section 3.12. CECEP shall duly perform all of its obligations under the Onlending Agreement and, unless ADB otherwise agrees, 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 Onlending Agreement.

Section 3.13. It shall be a breach of this Project Agreement if at any time CECEP's circumstances change such that it cannot fully perform its respective obligations under this Project Agreement. If there is a change in the law or regulations of the Borrower such that the requirements of the Project Agreement and PAM become impossible for CECEP to fulfil, ADB shall discuss with CECEP and the Borrower how to adjust certain detailed requirements in this Project Agreement or the PAM to accommodate the change while continuing to achieve the Project's goals.

## **ARTICLE IV**

### **Effective Date; Termination**

Section 4.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect.

Section 4.02. 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 or an earlier date that ADB may agree.

Section 4.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

## **ARTICLE V**

### **Miscellaneous**

Section 5.01. 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) 636-2444  
(632) 636-2302

For CECEP

China Energy Conservation and Environment Protection Group  
Finance Management Department  
Jieneng Mansion  
No. 42 Xizhimen North Street, Haidian District  
Beijing 100042  
People's Republic of China

Facsimile Number:

(86) 10 6224-8813.

Section 5.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement (i) by or on behalf of CECEP may be taken or executed by its legal representative specified from time to time in its business license or by such other person or persons as the person identified here shall designate in writing notified to ADB.

(b) CECEP shall each 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 5.03. 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

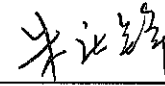


BENEDICT BINGHAM

Authorized Representative

CHINA ENERGY CONSERVATION AND  
ENVIRONMENT PROTECTION GROUP

By



ZHU QINGFENG

Authorized Representative

## **SCHEDULE**

### **Execution of Project**

#### General Implementation Arrangements

1. CECEP 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 CECEP and ADB. In the event of any discrepancy between the PAM and this Project Agreement, the provisions of this Project Agreement shall prevail.
2. CECEP shall ensure that the Management Company is appointed to act as the general partner and manager for the Facility and the Funds under contractual arrangements acceptable to ADB. CECEP shall all times own and maintain the controlling interest, and actual control, in the Management Company that it holds at the time ADB approves the Management Company.
3. CECEP shall cause the Management Company to establish and maintain a Project Management Office, as described in the PAM for the duration of this Project Agreement and shall ensure that it is staffed with sufficient staff having appropriate skills and qualifications to carry out all of the functions specified from time to time in the PAM. CECEP shall, and CECEP shall ensure that any other investors in the Management Company shall, invest funds as needed into the Management Company to cover CECEP's costs of operating the Project Management Office and performing its other functions as described herein and in the PAM.
4. CECEP shall enter into a Management Agreement with the Management Company if ADB considers one necessary after reviewing the Limited Partnership Agreement for the Facility.

#### Environmental and Social Management System and Environmental Safeguards

5. (a) CECEP shall adopt, not later than the signing date of the Loan Agreement, an ESMS, and shall cause the Management Company to implement it in reviewing, approving and monitoring each Subproject. CECEP shall ensure that the Facility and each Fund adopts and implements the ESMS and that the Management Company, as the Facility's and each Fund's general partner and fund manager, implements the ESMS in connection with each investment in Subprojects.  
  
(b) CECEP shall not provide or permit to be provided any Entrusted Loan or Equity Investment or any other investment to any entity or for any Subproject, including any retroactive financing permitted under the Loan Agreement, unless and until (i) the investment is approved by the Facility and/or by the Fund in compliance with its governance structure; and (ii) the Subproject for which the investment is made has been assessed to be in compliance with all requirements in the ESMS. Until such time as ADB otherwise agrees, the environmental consultant identified in the PAM must concur in writing with CECEP's or the Management Company's assessments of all Subprojects. After ADB agrees that CECEP's or CECEP Huayu's internal safeguards experts have become competent to conduct ESMS assessments without external assistance such assessments may be performed by CECEP or the Management Company independently.

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(c) CECEP shall provide or cause to be provided to ADB all such reports and information as are required to be provided to ADB under the ESMS or otherwise under the Safeguards Policy Statement at the times stated in the ESMS.

(d) CECEP shall not provide or permit the Facility or a Fund to provide any Entrusted Loan or Equity Investment for any Subproject (i) that has Indigenous People's Impacts or Involuntary Resettlement Impacts; (ii) that is "Category A" for environmental impacts; or (iii) that involves "prohibited activities" listed on ADB's Prohibited Investment List at appendix 5 of the Safeguards Policy Statement, all within the meanings of such terms set out in the Safeguards Policy Statement.

Grievance Redress Mechanism

6. CECEP shall ensure that safeguards grievance redress mechanisms are established as provided in the ESMS and within the timeframes specified in the PAM and the ESMS.

Labor Standards; Health and Safety

7. CECEP shall ensure, and shall cause the Facility and each Fund to ensure, that contractors and service providers engaged in the Project and in Subprojects (a) give equal pay for equal work regardless of gender, ethnicity or social group; (b) give priority to women in the employment and training opportunities generated under the Project; (c) maximize the employment of local people who meet the job and efficiency requirements for Subproject construction, operation and maintenance; (d) provide workers with adequate on-the-job and safety training; (e) disseminate information on sexually transmitted diseases (including HIV/AIDS) and human trafficking to sub-contractors/employees and local communities surrounding the subproject construction sites; (f) implement HIV/AIDS awareness and prevention training for sub-contractors/employees; (g) implement human trafficking awareness activities; (h) provide necessary measures to ensure the safety and health of its sub-contractors/employees; and (i) observe local customs concerning acceptable behavior towards the local population.

8. CECEP shall ensure, and shall cause the Facility and each Fund to ensure, that the core labor standards and the Borrower's applicable laws and regulations are complied with during Subproject implementation and that specific provisions are included in 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; and (e) do not restrict workers from developing any legally permissible means of expressing their grievances and protecting their rights regarding working conditions and terms of employment.

Loan Proceeds Recycling

9. ADB requires that ADB funding be put to the intended use during the term of the Loan Agreement. Accordingly, CECEP shall (a) except as ADB otherwise agrees, enforce the Facility's and each Fund's obligation to return unused funds to CECEP or the Facility, and



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(b) ensure that the Facility reinvests all Recycled Funds into new Funds and/or Qualified Enterprises for Subprojects as quickly as feasible after amounts are repaid or returned to it. CECEP shall ensure that the Facility exerts its best endeavors to recycle an aggregate amount equal to the Loan one time (for two uses of the Loan proceeds) during the term of the Loan Agreement. Where Recycled Funds are not being used as investments in Qualifying Enterprises for any consecutive six-month period ADB may require CECEP to repay such unutilized onlent Loan amounts and CECEP shall ensure it has corresponding rights to require the Facility to return any such amounts to CECEP.

Financial Statements of Other Participants

10. CECEP shall require the Account Bank to provide to CECEP, and CECEP shall provide to ADB, copies of the Account Bank's audited annual financial statements immediately on their publication by such entity and in any event not later than 6 months after the end of the fiscal year to which they relate.

Combating Money Laundering and Financing of Terrorism

11. CECEP shall, and CECEP shall and shall ensure that the Management Company, the Facility and each Fund, Qualified Enterprise and Entrusted Bank shall:

- (a) comply with applicable laws and regulations of the Borrower on combating money laundering and financing of terrorism and ensure that Relent Proceeds and Recycled Funds are not used, directly or indirectly, in money laundering or financing of terrorism;
- (b) formulate and implement internal control procedures, including in the case of the Facility and each Fund customer due diligence procedures, to prevent violation of subparagraph (a) hereinabove; and
- (c) promptly inform the Ministry of Finance of the Borrower and ADB if there is any violation or potential violation of subparagraph (a) hereinabove. In the event that ADB informs CECEP of its concern that there has been such an alleged violation, CECEP shall, and CECEP shall cause the Management Company, the Facility and each Fund and Entrusted Bank to: (i) cooperate in good faith with ADB and its representatives so that ADB can determine whether such a violation has occurred; (ii) respond promptly and in reasonable detail to any query from ADB; and (iii) furnish documentary support for such response upon ADB's request.

Anticorruption

12. (a) CECEP shall, and CECEP shall ensure that the Management Company, the Facility and each Fund, Qualified Enterprise and Entrusted Bank shall (i) 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 (ii) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

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(b) CECEP shall ensure that the Project Implementing Contracts and all other contracts that CECEP, the Facility, the Funds, the Management Company, the Entrusted Banks, and each Qualified Enterprise enters into in relation to the Project include provisions specifying the right of ADB to audit and examine the records and accounts of financial organizations, contractors, suppliers, consultants, and other service providers as they relate to the Project.