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LOAN NUMBER 3109-PRC

PROJECT AGREEMENT

(Railway Energy Efficiency and Safety Enhancement Investment Program – Tranche 5)

between

ASIAN DEVELOPMENT BANK

and

CHINA RAILWAY CORPORATION

DATED 30 MAY 2014

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PRC 43332

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 30 May 2014 between ASIAN DEVELOPMENT BANK (“ADB”) and CHINA RAILWAY CORPORATION (“CRC”).

### **WHEREAS**

(A) by a framework financing agreement dated 10 November 2009 between the People’s Republic of China (“Borrower”) and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for purpose of financing projects under the Railway Energy Efficiency and Safety Enhancement Investment Program;

(B) by a periodic financing request dated 24 October 2013, the Borrower has applied to ADB for a loan (“Tranche 5”) for the purposes of the Project described in Schedule 1 to this Loan Agreement; and

(C) by a Loan Agreement of even date herewith between the Borrower and ADB, ADB has agreed to make to the Borrower a loan of one hundred seventy million Dollars \$170,000,000 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 CRC and that CRC agrees to undertake certain obligations towards ADB set forth herein;

(D) CRC, 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. (a) 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;

(b) In addition to the terms referred to in subsection (a) hereinabove, the following term, wherever used in this Project Agreement, unless the context otherwise requires, has the following meaning: the expression “CRC shall” shall include the meaning that CRC shall cause its subsidiaries to perform the tasks and undertake the applicable responsibilities if and to the extent any Project-related activities have been delegated to or are performed by any CRC subsidiaries.

## ARTICLE II

### Particular Covenants

Section 2.01. (a) CRC shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and railway construction, maintenance and operations practices.

(b) In the carrying out of the Project and operation of the Project facilities, CRC shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to CRC or its subsidiaries, and all obligations set forth in this Project Agreement including its Schedule.

Section 2.02. CRC shall make available, promptly as needed, the funds, facilities, services 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, CRC 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, CRC shall procure all items of expenditure 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 acceptable to ADB.

Section 2.04. CRC shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. CRC 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) CRC shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, CRC shall 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. CRC 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 CRC shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) CRC 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 accomplishment of the purposes of the Loan.

(c) ADB and CRC 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, CRC and the Loan.

Section 2.08. (a) CRC 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 CRC; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, CRC and any of its subsidiaries involved in Project-related activities 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, CRC 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 CRC of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) CRC shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements for the Project 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; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement as well as on the use of the procedures for imprest fund and statement of expenditures) and a Management Letter and (v) furnish to ADB, no later than 6 months after end of each related 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 on its website the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt.

(c) CRC shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and its and its subsidiaries' financial affairs where they relate to the Project with the auditors appointed by CRC pursuant to subsections (a)(iii) and (c) 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 CRC, unless CRC shall otherwise agree.

Section 2.10. CRC shall enable ADB's representatives to inspect the Project and the Goods and any records and documents relating to the Project.

Section 2.11. (a) CRC shall and shall cause all relevant subsidiaries 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 the conduct of its operations.

(b) CRC shall and shall cause all relevant subsidiaries to at all times conduct its respective operations in accordance with sound administrative, financial, engineering, environmental and railway construction, maintenance and operations, practices and under the supervision of competent and experienced management and personnel.

(c) CRC shall and shall cause all relevant subsidiaries to 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 administrative, financial, engineering, environmental and railway construction, maintenance and operations practices.

Section 2.12. Except as ADB may otherwise agree, CRC shall not and shall cause all relevant subsidiaries not to sell, lease or otherwise dispose of any of its respective assets which shall be necessary 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 or related to the Project.

Section 2.13. Except as ADB may otherwise agree, CRC 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. CRC shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents, or those of its subsidiaries which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. CRC shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon or permitting any such subsidiary to take any action on its constitutional documents.

### **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 CRC of such date.

Section 3.02. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

Section 3.03. 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.

### **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) 636-2444  
(632) 636-2642

For CRC

China Railway Corporation  
Fuxing Road No. 10  
Haidian District  
Beijing 100844  
People's Republic of China

Facsimile Number:

(86) 10 5184-1845.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project by or on behalf of CRC may be taken or executed by its Legal Representative as shown from time to time on its business license or by other person or persons so authorized in accordance with law and CRC's constitutional documents and notified in writing to ADB together with copied of the applicable authorizing resolutions, duly authenticated.

(b) CRC 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   
AYUMI KONISHI  
Director General  
East Asia Department

CHINA RAILWAY CORPORATION

By   
LIU JUNFU  
Authorized Representative



## SCHEDULE

### Execution of Project

#### Implementation Arrangements

1. CRC shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the FFA and the FAM. Any subsequent change to the FAM shall become effective only after the approval of such change by CRC and ADB. In the event of any discrepancy between the FAM and this Project Agreement, the provision of this Project Agreement shall prevail.

#### Reform Measures

2. CRC shall implement the Railway Development Plan.

#### Equipment Quality

3. CRC shall ensure that the Goods are procured and used in accordance with the Government's national technical standards, and that supervision, quality control, and contract management are carried out in a periodic and satisfactory manner.

#### Capacity Expansion

4. CRC shall ensure that all capacity expansion activities in southwestern region in the territory of the Borrower are completed with due consideration for their environmental and social safeguards in a timely manner.

#### Sustainability

5. CRC shall ensure that (a) adequate counterpart funding, staffing, and institutional support is provided for implementation of the Project and maintenance of the Goods; (b) necessary measures are taken promptly to resolve any issues identified during operation of the Goods; and (c) appropriate budgetary allocations are made for the continued operation and maintenance of the Goods.

#### Governance and Anticorruption

6. CRC shall comply with ADB's Anticorruption Policy (1998, as amended to date). CRC acknowledges 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 CRC undertakes to cooperate with any such investigation and to extend all necessary assistance for the satisfactory completion of such investigation.

7. CRC shall ensure that 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 CRC, its subsidiaries involved in the Project, the project management office and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

## Schedule

8. CRC shall, by means of a publicly accessible website, disclose information about various project matters, including general project information, procurement information, project progress, and contact details, in the English and Chinese languages. The website will also provide a link to ADB's Integrity Unit (<http://www.adb.org/site/integrity/main>) for reporting to ADB any grievances or allegations of corrupt practices arising out of the Project and Project activities. With regard to procurement, the website will include, at minimum, information on the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted, amount of contract awarded and the list of Goods procured.

### Supply of Rolling Stock

9. CRC shall provide sufficient rolling stock and other equipment, at all times, for effective operation of the Goods.

### Safety

10. CRC shall ensure the safety in installation and operation of the Goods in accordance with relevant laws and regulations of the Borrower.

### Monitoring and Evaluation

11. CRC shall monitor and evaluate impact through the performance monitoring system agreed to by CRC and ADB to ensure that Goods and materials are managed efficiently, benefits are maximized, and impacts are monitored. CRC shall collect the necessary information and data on Project performance, as agreed to by CRC and ADB, before Project implementation, and at completion of the Project.

### Safeguard Policy

12. CRC shall ensure that the Project does not have any environmental, indigenous peoples or involuntary resettlement impacts, all within the meaning of ADB's Safeguard Policy Statement (2009). In the event that the Project does have any such impact, CRC shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with ADB's Safeguard Policy Statement (2009).

### Change in Ownership

13. In the event either of the following is anticipated: (a) any change in ownership or control of any of the Project facilities; or (b) any sale, transfer or assignment of shares or other ownership interests or other change of control in CRC or in any CRC subsidiaries involved in the Project, in each case including, without limitation, by way of any corporate restructuring of CRC, CRC shall consult with ADB commencing from the later to occur of (i) at least 6 months prior to the implementation of such change and (ii) the date that CRC first becomes aware of a proposed change; and CRC shall carry out all such changes in a lawful and transparent manner.