

---

LOAN NUMBER 2384-VIE(SF)

LOAN AGREEMENT  
(Special Operations)

(Lower Secondary Education for the Most Disadvantaged Regions Project)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 10 JANUARY 2008

---

LAS:VIE 36008

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 10 January 2008 between the SOCIALIST REPUBLIC OF VIET NAM (hereinafter called the "Borrower") and ASIAN DEVELOPMENT BANK (hereinafter called "ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement; and

(B) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 01 January 2006 (the "Loan Regulations") are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

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

(a) "Affected People" means those who stand to lose, as a consequence of the Project, all or part of their physical and nonphysical assets, including homes, homesteads, productive lands, commercial properties, tenancy, income-earning opportunities, social and cultural activities and relationships, and other losses that may be identified during resettlement planning;

(b) "BOET" means a District Bureau of Education and Training of the Borrower, or any successor thereto;

(c) "Consulting Guidelines" means ADB's "Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers" dated February 2007, as amended from time to time;

(d) "DCC" means a District Coordinating Committee to be established as prescribed in paragraph 3 of Schedule 5 to the Loan Agreement;

- (e) "DPC" means a District People's Committee of the Borrower, or any successor thereto;
- (f) "DOET" means a provincial Department of Education and Training of the Borrower, or any successor thereto;
- (g) "Dong" or the sign "D" means dong in the currency of the Borrower;
- (h) "Goods" means equipment and materials to be financed out of the proceeds of the Loan; and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;
- (i) "ICT" means information and communication technology;
- (j) "MOET" means the Ministry of Education and Training of the Borrower, or any successor thereto;
- (k) "NPIU" means the National Project Implementation Unit established in MOET, as described in paragraph 2 of Schedule 5 to this Loan Agreement;
- (l) "PPC" means a Provincial People's Committee of the Borrower, or any successor thereto;
- (m) "PPIU" means a Provincial Project Implementation Unit, as described in paragraph 3 of Schedule 5 to this Loan Agreement;
- (n) "Procurement Guidelines" means ADB's "Procurement Guidelines" dated February 2007, as amended from time to time;
- (o) "Procurement Plan" means the procurement plan for the Project dated 1 October 2007 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;
- (p) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means MOET which has overall responsibility for the implementation of the Project;
- (q) "Project Facilities" means the facilities to be constructed and/or rehabilitated, and equipment to be provided under the Project;
- (r) "Project Provinces" mean the provinces of Ca Mau, Cao Bang, Dac Lac, Dac Nong, Dien Bien, Gia Lai, Ha Giang, Kien Giang, Kon Tum, Lai Chau, Lao Cai, Ninh Thuan, Son La, Tra Vinh, Yen Bai, Bac Kan and Soc Trang of the Borrower;
- (s) "Resettlement Framework" means the Resettlement Framework prepared for the Project and endorsed by the Borrower on 1 October 2007; and
- (t) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related

services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

## **ARTICLE II**

### **The Loan**

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to thirty one million eight hundred sixty thousand Special Drawing Rights (SDR31,860,000).

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

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

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 June and 1 December in each year.

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

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

## **ARTICLE III**

### **Use of Proceeds of the Loan**

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The Goods, Works, and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works, and consulting services and other items of expenditure shall be in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, all Goods, Works, and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement.

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

(a) Goods which are produced in and supplied from and consulting services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and

(b) Goods, Works, and consulting services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2014 or such other date as may from time to time be agreed between the Borrower and ADB.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. In the carrying out of the Project and operation of the Project Facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

Section 4.03. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

## **ARTICLE V**

### **Effectiveness**

Section 5.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: the Borrower shall have set up the NPIU and appointed a full-time project manager, a deputy project manager and key technical staff, including an appropriate number of experts in finance, procurement, civil works, staff development, social and community development, and ICT and/or education management information systems whose experience and qualifications are acceptable to ADB.

Section 5.02. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

## **ARTICLE VI**

### **Miscellaneous**

Section 6.01. The Governor of the State Bank of Viet Nam is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

#### For the Borrower

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

Facsimile Number:

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

#### For ADB

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

Cable Address:

ASIANBANK  
MANILA

Telex Numbers:

29066 ADB PH (RCA)  
42205 ADB PM (ITT)  
63587 ADB PN (ETPI)

Facsimile Numbers:

(632) 636-2444  
(632) 636-2331.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

SOCIALIST REPUBLIC OF VIET NAM

By   
\_\_\_\_\_  
NGUYEN VAN GIAU  
Governor  
State Bank of Viet Nam

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
AYUMI KONISHI  
Country Director  
Viet Nam Resident Mission

## SCHEDULE 1

### Description of the Project

#### Impact and Outcome

1. The impact of the Project is expected to be universal secondary education that leads to greater social and economic inclusion of the disadvantaged groups. The Project outcome will be improved participation rates in the lower secondary education, particularly amongst ethnic minorities and girls, in about 103 of the most disadvantaged districts of the Project Provinces.

#### Scope of the Project

2. The scope of the Project comprises:

##### Part 1: Improved Access to Lower Secondary Education

- (i) constructing about 819 new classrooms and 960 semi-boarding facilities, including clean water and sanitation facilities, and provision of furniture; and
- (ii) constructing about 48 continuing education center classrooms and sanitation facilities, and provision of equipment and furniture for such classrooms.

##### Part 2: Enhanced Quality and Relevance of Lower Secondary Education

- (i) strengthening in-service teacher training;
- (ii) improving pre-service teacher training;
- (iii) promoting continuing professional development of teachers;
- (iv) developing supplementary instructional materials;
- (v) constructing teacher housing;
- (vi) constructing laboratories and libraries;
- (vii) promoting effective use of ICT applications for girls' and ethnic minority education; and
- (viii) providing scholarships for training teachers for the benefit of minority students.

##### Part 3: Pilot Innovations to Improve Access and Equity for Minorities and Girls to Lower Secondary Education

- (i) implementing a pilot scholarship program for minority groups;
- (ii) raising public awareness to promote secondary education;
- (iii) piloting semi-boarding school feeding program; and
- (iv) conducting research studies on pilot innovations under this Part 3.

Part 4: Improved Planning and Management Capacity for Lower Secondary Education in the Most Disadvantaged Regions

- (i) developing capacity for education planning and management;
- (ii) improving school-based ethnic minority education management information system; and
- (iii) supporting Project implementation and administration, including conducting the tracer study.

3. The Project also includes provision of consulting services. The Project is expected to be completed by 30 June 2014.

**SCHEDULE 2****Amortization Schedule****VIE: Lower Secondary Education for the Most Disadvantaged Regions Project**

<b>Date Payment Due</b>		<b>Payment of Principal (expressed in SDR)*</b>
1 June	2016	663,750
1 December	2016	663,750
1 June	2017	663,750
1 December	2017	663,750
1 June	2018	663,750
1 December	2018	663,750
1 June	2019	663,750
1 December	2019	663,750
1 June	2020	663,750
1 December	2020	663,750
1 June	2021	663,750
1 December	2021	663,750
1 June	2022	663,750
1 December	2022	663,750
1 June	2023	663,750
1 December	2023	663,750
1 June	2024	663,750
1 December	2024	663,750
1 June	2025	663,750
1 December	2025	663,750
1 June	2026	663,750
1 December	2026	663,750
1 June	2027	663,750
1 December	2027	663,750
1 June	2028	663,750
1 December	2028	663,750
1 June	2029	663,750
1 December	2029	663,750
1 June	2030	663,750
1 December	2030	663,750
1 June	2031	663,750
1 December	2031	663,750
1 June	2032	663,750
1 December	2032	663,750
1 June	2033	663,750
1 December	2033	663,750
1 June	2034	663,750
1 December	2034	663,750

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

<b>Date Payment Due</b>		<b>Payment of Principal (expressed in SDR)*</b>
1 June	2035	663,750
1 December	2035	663,750
1 June	2036	663,750
1 December	2036	663,750
1 June	2037	663,750
1 December	2037	663,750
1 June	2038	663,750
1 December	2038	663,750
1 June	2039	663,750
1 December	2039	663,750
<b>Total</b>		<b>31,860,000</b>

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

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

1. The table attached to this Schedule sets forth the Categories of Goods, Works, services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

Interest Charge

3. The amount allocated to Category 10 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the Loan proceeds shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Account; Statement of Expenditures

6. (a) Except as ADB may otherwise agree, immediately after the Effective Date, the Borrower shall establish an imprest account at a commercial bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest account shall be Dollars. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure for the first six months of Project implementation, or (ii) the equivalent of 2,000,000 dollars.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest accounts, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$100,000.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Lower Secondary Education for the Most Disadvantaged Regions Project)</b>				
<b>CATEGORY</b>				<b>FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated SDR</b>		<b>Percentage and Basis for Withdrawal from the Loan Account</b>
		<b>Category</b>	<b>Subcategory</b>	
1	Works	15,996,000		80 percent of total expenditure
2	Furniture, Vehicles and Equipment	3,450,000		84 percent of total expenditure
3	Support for Pro-Poor Education Opportunities	1,470,000		88 percent of total expenditure
4	Staff Development	3,321,000		
4A	In-Country Training		3,160,000	100 percent of total expenditure*
4B	Overseas Training		161,000	100 percent of total expenditure*
5	Instructional Materials	791,000		100 percent of total expenditure*
6	Research and Monitoring	311,000		100 percent of total expenditure*
7	Consulting Services	1,519,000		100 percent of total expenditure*
8	Project Management	900,000		100 percent of total expenditure*
9	Unallocated	3,050,000		100 percent of amount due
10	Interest Charge	1,052,000		100 percent of amount due
	<b>Total</b>	<b>31,860,000</b>		

\*Exclusive of local taxes and duties.

## SCHEDULE 4

### Procurement of Goods and Works, and Consulting Services

#### General

1. All Goods and Works, and consulting services, to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

#### Procurement for Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding
National Competitive Bidding
Shopping

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

#### National Competitive Bidding

4. The laws to be followed for national competitive bidding shall be those set forth in the Bidding Law No. 61/2005/QH11 of 29 November 2006 and the Construction Law No. 16/2003/QH11 of 26 November 2003 and with the processes described in Decree No. 111/2006/ND-CP of 29 September 2006, with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of the Procurement Guidelines.

- i. Registration

- (a) Bidding shall not be restricted to pre-registered firms and such registration shall not be a condition for participation in the bidding process.
- (b) Where registration is required prior to award of contract, bidders: (i) shall be allowed a reasonable time to complete the registration process; and (ii) shall not be denied registration for reasons unrelated to their capability and resources to successfully perform the contract, which shall be verified through postqualification.

ii. Eligibility

- (a) National sanction lists may only be applied with the approval of ADB.
- (b) Bidders shall not be required, as a condition of participation in the bidding, to provide suppliers' credit.
- (c) A firm declared ineligible by ADB cannot participate in bidding for an ADB-financed contract during the period of time determined by ADB.

iii. Prequalification and Postqualification

- (a) Postqualification shall be used unless prequalification is explicitly provided for in the [Loan/Grant/Financing] Agreement/Procurement Plan. Irrespective of whether postqualification or prequalification is used, eligible bidders (both national and foreign) shall be allowed to participate.
- (b) When prequalification is required, the evaluation methodology shall be based on pass/fail criteria relating to the firm's experience, technical and financial capacities.

Qualification criteria shall be clearly specified in the bidding documents, and only the criteria so specified, shall be used to determine whether a bidder is qualified. The evaluation of the bidder's qualifications should be conducted separately from the technical and commercial evaluation of the bid.

- (c) When postqualification is applied, the assessment of bidders' qualifications shall be carried out only after the preliminary and detailed evaluation of the bids has been completed by the Executing Agency or Implementing Agency and, in doing so, the qualification of the bidder who has submitted the lowest evaluated substantially responsive bid shall be assessed first. In carrying out the postqualification assessment, the Executing Agency or Implementing Agency shall exercise reasonable judgment in requesting, in writing, from a bidder only missing factual or historical supporting information related to the bidder's qualifications and shall provide a reasonable time period (a minimum of 7 days) to the bidder to provide response.
- (d) If there is prequalification, all prequalified bidders shall be invited to bid.

iv. Preferences

- (a) No preference of any kind shall be given to domestic bidders or for domestically manufactured goods.
- (b) Regulations issued by a sectoral ministry, provincial regulations and local regulations which restrict national competitive bidding procedures to a class of contractors or a class of suppliers shall not be applicable.

- (c) Foreign bidders shall be eligible to participate in bidding under the same conditions as local bidders, and local bidders shall be given no preference (either in bidding process or in bid evaluation) over foreign bidders, nor shall bidders located in the same province or city as the Executing Agency or Implementing Agency be given any such preference over bidders located outside that city or province.

v. Advertising

- (a) Invitations to bid (or prequalify, where prequalification is used) shall be advertised in at least one widely circulated national daily newspaper or freely accessible, nationally-known website allowing a minimum of twenty-eight (28) days for the preparation and submission of bids and allowing potential bidders to purchase bidding documents up to at least twenty-four (24) hours prior to the deadline for the submission of bids. Bidding of contracts estimated at \$500,000 or more for goods or \$1,000,000 or more for works shall be advertised concurrently with the general procurement notices on ADB's website.
- (b) Bidding documents shall be made available by mail, electronically, or in person, to all who are willing to pay the required fee, if any.
- (c) The fee for the bidding documents should be reasonable and consist only of the cost of printing (or photocopying) the documents and their delivery to the bidder.
- (d) Bidders domiciled outside the area/district/province of the unit responsible for procurement shall be allowed to participate regardless of the estimated value of the contract.

vi. Standard bidding documents

- (a) The Borrower's standard bidding documents, acceptable to ADB, shall be used. The bidding documents shall provide clear instructions on how bids should be submitted, how prices should be offered, and the place and time for submission and opening of bids.
- (b) Bidders shall be allowed to submit bids by hand or by mail/courier.

vii. Bid Security

Where required, bid security shall be in the form of a bank guarantee from a reputable bank.

viii. Bid Opening

- (a) Bids shall be opened in public, immediately after the deadline for submission of bids. Bidders or their representative shall be allowed to be present. The name of the bidder and total amount of each bid, including discounts, shall be read aloud and recorded. This record shall be signed

by bidders' representatives, and the Executing Agency's representatives who are present at the bid opening. Immediately after completion of the bid opening proceedings, a copy of the bid opening record shall be promptly provided to all bidders who submitted bids.

- (b) Bids received after the deadline for bid submission shall be returned to the bidders unopened.

ix. Bid Evaluation

- (a) The process of bid evaluation shall be confidential until the publication of contract award.
- (b) Evaluation criteria shall be clearly specified in the bidding documents, and evaluation criteria other than price shall be quantified in monetary terms. Evaluation of bids shall be made in strict adherence to the criteria declared in the bidding documents. Only evaluation criteria so specified, shall be taken into account in bid evaluation. Merit points shall not be used in bid evaluation.
- (c) Bidders shall not be eliminated from detailed evaluation on the basis of minor, non-substantial deviations.
- (d) A bid containing material deviations from, or reservations to, the terms, conditions or specifications of the bidding documents shall be rejected as not substantially responsive. A bidder shall not be permitted to withdraw material deviations or reservations once bids have been opened.
- (e) The contract shall be awarded to the technically responsive bidder that offers the lowest evaluated price and meets the qualifying criteria.
- (f) Except with the prior approval of ADB, no negotiations shall take place with any bidder prior to the award, even when all bids exceed the cost estimates.
- (g) A bidder shall not be required, as a condition for award of contract, to undertake obligations not specified in the bidding documents, or otherwise to modify the bid as originally submitted.
- (h) If the bidder that submitted the lowest evaluated bid does not accept the arithmetical corrections made by the evaluating committee during the evaluation stage, its bid shall be disqualified and its bid security shall be forfeited.

x. Rejection of All Bids and Rebidding

- (a) No bid shall be rejected on the basis of a comparison with the estimate or budget ceiling set by the Executing Agency or Implementing Agency without the ADB's prior concurrence.

- (b) Bids shall not be rejected and new bids solicited without the ADB's prior concurrence.

xi. Participation by Government-owned enterprises

Government-owned enterprises shall be eligible to participate as bidders only if they can establish that they are legally and financially autonomous, operate under commercial law and are not a dependent agency of the Executing Agency or Implementing Agency. Furthermore, they will be subject to the same bid and performance security requirements as other bidders.

xii. Non-eligibility of military or security units

Military or security units, or enterprises which belong to the Ministry of Defense or the Ministry of Public Security shall not be permitted to bid.

xiii. Participation by Foreign contractors and suppliers, Joint Ventures and Associations

- (a) Foreign suppliers and contractors from eligible countries shall, if they are interested, be allowed to participate without being required to associate or form joint ventures with local suppliers or contractors, or to subcontract part of their contract to a local bidder.
- (b) A bidder declared the lowest evaluated responsive bidder shall not be required to form a joint venture or to sub-contract part of the supply of goods as a condition of award of the contract.
- (c) License for foreign contractors operation in Viet Nam would be provided in a timely manner and will not be arbitrarily withheld.

xiv. Publication of the Award of Contract, Debriefing

- (a) For contracts subject to prior review, within 2 weeks of receiving ADB's "No-objection" to the recommendation of contract award, the Borrower shall publish in the Government Public Procurement Bulletin when established, or well-known and freely-accessible website the results of the bid evaluation, identifying the bid and lot numbers, and providing information on: (i) name of each bidder who submitted a bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated prices of each bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.
- (b) For contracts subject to post review, the Borrower shall publish the bid evaluation results no later than the date of contract award.
- (c) In the publication of the bid evaluation results, the Borrower shall specify that any bidder who wishes to ascertain the grounds on which its bid was

not selected, should request an explanation from the Borrower. The Borrower shall promptly provide an explanation of why such bid was not selected, either in writing and/or in a debriefing meeting, at the option of the Borrower. The requesting bidder shall bear all the costs of attending such a debriefing. In this discussion, only the bidder's bid can be discussed and not the bids of competitors.

xv. Handling of Complaints

The bidding documents shall contain provisions acceptable to ADB describing the handling of complaints in accordance with Article 47 of Decree No. 111/2006/ND-CP, read with Articles 72 and 73 of Bidding Law No. 61/2005/QH11. A request for debriefing by a bidder made in accordance with paragraph 2.65 of the Procurement Guidelines shall not be regarded as a complaint and shall not therefore require the deposit of funds as described in Article 6 Decree No. 111/2006/ND-CP.

xvi. ADB Member Country Restrictions

Bidders must be nationals of member countries of ADB, and offered goods and works, must be produced in and supplied from member countries of ADB.

Domestic Preference

5. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55 (b) and 2.56 of the Procurement Guidelines for domestic Works.

Selection of Consulting Services

6. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

7. The Borrower shall apply the following method for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

Consultants' Qualification Selection
Quality-Based Selection
Individual Selection
Least Cost Selection

Industrial or Intellectual Property Rights

8. (a) The Borrower shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or

incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

9. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

#### ADB's Review of Procurement Decisions

10. All contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

**SCHEDULE 5****Execution of Project and Operation of  
Project Facilities; Other Matters****A. PROJECT IMPLEMENTATION**Executing Agency

1. As the Project Executing Agency, MOET shall have overall responsibility for management of the Project and shall provide guidance.

National Project Implementation Unit

2. The NPIU shall oversee day-to-day Project implementation and be responsible for (i) all procurement under the Project, in close cooperation with the relevant PPIUs and BOETs; (ii) providing overall Project coordination; (iii) liaising with the respective DOET, PPC and PPIU in each Project Province; (iv) providing advice and assistance to the PPIUs; (v) monitoring progress and budgets, and preparing progress reports covering the whole Project by consolidating the reports from each Project Province; and (vi) preparing the Project completion report.

Implementation at the Provincial and District Levels

3. (a) The Borrower shall, within six months of the Effective Date, cause PPC of each Project Province to establish a PPIU in the respective DOET and submit the list of all of the members of such PPIUs to ADB. The PPIUs shall obtain approval for all civil works activities under the Project from the relevant PPCs and DPCs. The PPIUs shall be responsible for implementation, coordination, monitoring and reporting of the Project activities at the provincial level under NPIU instruction and guidance.

(b) The DOETs shall be the investment owners, as prescribed by the relevant regulations of the Borrower. The DOETs shall be responsible for overall management of the PPIUs.

(c) The Borrower shall, within nine months of the Effective Date, cause DPCs to establish the DCCs who shall collaborate with communities and local leaders for participatory planning and awareness raising in the Project districts, and shall be responsible for implementation and supervision of Project activities at schools and coordination with the DOETs, including (i) receiving and delivering in-service training materials for schools; (ii) organizing in-service training programs in the Project districts, under the direction of the PPIUs; (iii) supporting and supervising implementation of school-based in-service training activities, school year planning, school development planning and school charters; (iv) ensuring the land is cleared of all obstructions and free from encumbrances in the case of resettlement, if any; and (v) reporting on a quarterly basis to the DPCs and the PPIUs with respect to progress of the respective district in Project implementation. The DCCs shall comprise representatives from BOET, schools, communes and the parent-teacher associations.

## B. OTHER MATTERS

### Environment

4. The Borrower shall ensure, and cause MOET to ensure, that the design, construction, and operation of the Project facilities upgraded or constructed under the Project are implemented in accordance with ADB's Environment Policy (2002) and related requirements, and the relevant regulations of the Borrower. In case of discrepancies between the Borrower's laws, regulations and procedures and ADB's Environment Policy, ADB's Policy shall prevail.

### Resettlement

5. (a) The Borrower shall ensure that (i) new school and sanitation facilities are constructed on vacant land which will not invoke involuntary resettlement as defined by ADB's Policy on Involuntary Resettlement (1995) and that during detailed design, every effort is made to avoid relocating households or interfering in the income-earning activities of those at or near the site; (ii) if any land is to be acquired for construction of facilities or if there is any impact on persons occupying or using land at the construction site that would necessitate compensation, a resettlement plan, acceptable to ADB, is prepared in accordance with the Resettlement Framework, applicable laws and regulations of the Borrower and requirements of ADB's Involuntary Resettlement Policy, and in full consultation with and disclosure to the Affected People; (c) a resettlement plan is prepared on the basis of detailed technical design, in full consultation with and disclosure to the Affected People prior to submitting to ADB for review and approval; and (d) land acquisition and resettlement activities are implemented in accordance with the terms of the approved resettlement plans, applicable laws and regulations of the Borrower and requirements of ADB's Policy on Involuntary Resettlement. In case of discrepancies between the Borrower's laws, regulations and procedures and ADB's Involuntary Resettlement Policy, ADB's Policy shall prevail.

(b) The Borrower shall also ensure, and cause MOET and the PPIUs to ensure, that (i) special measures and complementary mitigation and enhancement activities are incorporated in the resettlement plans to protect socially and economically vulnerable groups that may be at high risk of impoverishment, such as those without legal title to land or other assets, ethnic minorities, households headed by women, children, the disabled or elderly, and the poorest people; and (ii) appropriate assistance is provided to help such groups improve their socio-economic status such as land-for-land, replacement housing of minimum standard and increased security of tenure.

(c) The Borrower shall ensure, and cause MOET and the PPIUs to ensure, that civil works contractors are not issued a notice of possession for a site until (i) compensation payments and relocation to new sites have been satisfactorily completed for such site, (ii) agreed rehabilitation assistance is in place, and (iii) the site is free of all encumbrances.

6. The Borrower shall ensure that a qualified expert or institution acceptable to ADB is contracted to conduct independent external monitoring and evaluation of the resettlement process and impacts.

7. The Borrower shall ensure that (i) adequate budgetary support is fully committed and made available to cover the costs of land acquisition, resettlement and rehabilitation within the agreed implementation period; and (ii) counterpart funds are provided in a timely manner for

resettlement to meet any unforeseen obligations in excess of the resettlement budget estimates in order to satisfy resettlement requirements and objectives.

#### Affected People

8. The Borrower shall ensure, and cause MOET and the PPIUs to ensure, that implementation of the resettlement plans are carried out with the full participation of the Affected People. The comments and suggestions of the Affected People and communities shall be taken into account during the design and implementation phases of the resettlement activities. To ensure that all grievances of the Affected People on any aspect of land acquisition, compensation, relocation, and determination and payment of entitlements are resolved in a timely and satisfactory manner, and that all avenues for airing grievances are available to the Affected People, the Borrower shall set up a mechanism under the Project to deal with any such grievances during Project implementation.

#### Community Participation

9. The Borrower shall ensure, and cause MOET and PPIUs to ensure, that the DOETs actively promote and undertake full community participation in the selection and preparation of the school construction sites prior to and during the construction of the schools and related facilities.

#### Labor Issues

10. The Borrower shall ensure, and cause MOET and the PPIUs to ensure, that bidding documents include provisions to ensure (i) contractors' preferential hiring of local labor; (iii) equal opportunities are guaranteed for female workers to work with the principle of equal pay for work of equal value; and (iv) necessary measures are taken to prevent employment of child labor, in compliance with the relevant rules and regulations of the Borrower.

#### Gender and Ethnic Minority Action Plan

11. (a) The Borrower shall ensure, and cause MOET and the PPIUs to ensure, that the Project activities do not adversely affect the ethnic minorities, female-headed households, disabled, elderly or other similarly vulnerable groups, and that the Project is carried out in accordance with the Gender and Ethnic Minority Action Plan (GEMAP) prepared for the Project and agreed between the Borrower and ADB.

(b) The Borrower shall also ensure that (i) sufficient resources have been allocated for effective and timely implementation of the GEMAP; (ii) women, in particular those who belong to female-headed households and ethnic minority groups, participate at a rate satisfactory to ADB in the (1) consultations on resettlement planning, (2) preparation of detailed measurement of losses, (3) capacity building programs on resettlement, and (4) relocation, compensation and livelihood improvement activities to be undertaken under the Project; (iii) any land rights granted to Affected People are issued in the names of both husband and wife; (iv) within one year of the Effective Date, quotas are established for female students and teachers, at the rate of minimum 50 percent for each group, for the semi-boarding facilities and teacher housing, respectively, to be provided under the Project and for participation in the scholarship program for teacher training for minority students; and (v) within one year of the Effective Date,

gender-disaggregated baseline data and monitoring and evaluation indicators are established and submitted to ADB for approval.

#### Education Management Information System

12. The Borrower shall establish, by the end of the second year of the Project implementation period, a student-based education management information system that will enable the tracking of lower secondary school graduates in both higher education and the labor market, and generate feedback for improving the management and implementation of lower secondary education.

#### Scholarship and Training Opportunities

13. (a) The Borrower shall ensure that within one year of the Effective Date, MOET will establish and submit to ADB for approval (i) the criteria for selection of candidate teachers for in-country and overseas training programs or study tours, and (ii) the criteria for selection of candidate students for scholarships.

(b) The Borrower shall also ensure that (i) at least 50 percent of the teachers selected for in-country and overseas training programs or study tours are female teachers; (ii) at least 50 percent of the students selected for scholarships are female students; and (iii) such training programs and scholarships are provided under the Project strictly in accordance with the selection criteria so agreed between the Borrower and ADB.

#### School Construction and Replacement

14. The Borrower shall ensure that, within six months of the Effective Date, MOET will (i) submit to ADB a list of the names and locations of the designated lower secondary schools and continuing education centers to be supported under the Project; (ii) identify the schools and related facilities to be constructed or rehabilitated in the first year of the Project implementation period; (iii) submit to ADB a complete list of the civil works sites in the Project Provinces and details of land ownership that confirm the avoidance of land acquisition and involuntary resettlement impacts; and (iv) ensure that all Project facilities are constructed in a manner that accommodate the privacy and security concerns of the female students, including provision of separate sanitation facilities for female and male students, and secure rooms that maintain privacy.

#### Counterpart Funds

15. (a) The Borrower shall ensure that (i) counterpart funds required during the Project implementation period are provided on time; (ii) annual budgetary appropriation requests are submitted in a timely manner; and (iii) appropriated funds are disbursed promptly when needed for Project implementation purposes.

(b) The Borrower shall also ensure that the PPCs of the Projects Provinces submit to ADB, within six months of the Effective Date, an official commitment that adequate funds and staff resources will be allocated for operation and routine and periodic maintenance of the Project facilities through provincial budgets in order to maintain the rehabilitated and constructed facilities and the equipment provided under the Project in sound functional order.

Anti Corruption Measures

16. The Borrower shall comply with, and shall cause the Project Executing Agency and the PPIUs to comply with ADB's Anticorruption Policy (1998, as amended to date) and the Policy relating to Enhancing ADB's Role in Combating Money Laundering and the Financing of Terrorism (2003). The Borrower (i) acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; (ii) agrees to cooperate fully with, and to cause the Project Executing Agency and the PPIUs to cooperate fully with any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation; and (iii) agrees to refrain, and cause the Project Executing Agency and the PPIUs to refrain, from engaging in money laundering activities or financing of terrorism and shall allow, and cause the Project Executing Agency and the PPIUs to allow, ADB to investigate any violation or potential violation of these undertakings.

17. Without limiting the generality of the preceding paragraph, the Borrower shall (i) ensure that the Project Executing Agency and the PPIUs conduct periodic inspections on the contractors' activities related to fund withdrawals and settlements and (ii) ensure and cause the Project Executing Agency and the PPIUs to ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of all contractors, suppliers, consultants and other service providers as they relate to the Project.

18. In addition to these requirements, to deter corruption and increase transparency, the Borrower shall maintain the website to disclose information about public procurements, including those related to the Project. For each contract, the website shall include information on, among others, 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/services, including consulting services, procured. In addition to the web-based disclosure, stakeholders, which include civil society and non-governmental organizations, shall be provided detailed information on procurement on public notice boards in their respective areas.