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LOAN NUMBER 2223-VIE (SF)

LOAN AGREEMENT  
(Special Operations)  
(Central Region Water Resources Project)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 18 DECEMBER 2006

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LAS:VIE 30292

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 18 December 2006 between SOCIALIST REPUBLIC OF VIET NAM (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

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

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

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 May 2004 (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) "CPMU" means the Central Project Management Unit to be established as described in paragraph 1 of Schedule 6 to this Loan Agreement;

(b) "CPO" means the Central Project Office of MARD, and any successor thereto;

(c) "DARD" means the Department of Agriculture and Rural Development in the Project Province, and any successor thereto;

(d) "EMDF" means the Ethnic Minority Development Framework prepared by the Borrower for the Project and agreed with ADB;

(e) "EMDP" means the Ethnic Minority Development Plan prepared or to be prepared by the Borrower for each Subproject and agreed or to be agreed with ADB;

(f) "EMP" means the Environmental Management Plan prepared as part of IEE;

(g) "GAP" means the Gender Action Plan prepared for the Project in accordance with *ADB's Policy on Gender and Development (1998)*;

(h) "HIV/AIDS" means human immunodeficiency virus/acquired immunodeficiency syndrome;

(i) "IEE" means the Initial Environmental Examination prepared by the Borrower for each Subproject and agreed by ADB;

(j) "IMC" means an irrigation management company in the Project Province;

(k) "MARD" means the Borrower's Ministry of Agriculture and Rural Development, and any successor thereto;

(l) "MOF" means the Borrower's Ministry of Finance, and any successor thereto;

(m) "MONRE" means the Borrower's Ministry of Natural Resources and Environment, and any successor thereto;

(n) "NGO" means non government organization;

(o) "PPMU" means a Provincial Project Management Unit to be established in the Project Province, as described in paragraph 3 of Schedule 6 to this Loan Agreement;

(p) "PPC" means the Provincial People's Committee in the Project Province, and any successor thereto;

(q) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means MARD which is responsible for the carrying out of the Project;

(r) "Project facilities" means the facilities constructed, rehabilitated, procured, financed, and provided under the Project;

(s) "Project Province" means each of the provinces of Binh Dinh, Quang Binh, Quang Ngai, Quang Tri, Thanh Hoa and Thua Thien Hue within the territory of the Borrower, and any successor thereto;

(t) "PPMS" means the Project Performance Management System;

(u) "PSC" means the Project Steering Committee to be established as described in paragraph 2 of Schedule 6 to this Loan Agreement;

(v) "Resettlement Plan" means the Resettlement Plan prepared by the Borrower for each Subproject and agreed by ADB;

(w) "SBV" means the Borrower's State Bank of Vietnam, and any successor thereto;

(x) "SIEE" means the Summary Initial Environmental Examination prepared by the Borrower for the Project;

(y) "Subproject" means each of the subprojects under Part B of the Project, as described in Schedule 1 to this Loan Agreement;

(z) "WUA" means a water user association, an umbrella organization of WUGs; and

(aa) "WUG" means a water user group.

## **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 fifty-two million one hundred twenty-eight thousand Special Drawing Rights (SDR 52,128,000).

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 15 June and 15 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.

## **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 and 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 and 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 and services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 and Schedule 5 to this Loan Agreement.

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

- (a) goods which are produced in and supplied from and 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 and 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 30 June 2012 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 6 to this Loan Agreement.

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

(b) The Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project

from time to time with the auditors appointed by the Borrower pursuant to Section 4.02(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Borrower unless the Borrower shall otherwise agree.

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

## **ARTICLE V**

### **Effectiveness**

Section 5.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the PSC, CPMU, and PPMUs in all Project Provinces shall have been established and made operational in a manner satisfactory to ADB; and

(b) the Project implementation guidelines specifying the roles and responsibilities of the CPMU, PPMUs, PPCs, IMCs, WUAs/WUGs and other government agencies concerned, as well as the arrangements for the flow of funds under the Project shall have been issued by MARD and formally approved by each PPC.

Section 5.03. 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 SBV 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 Numbers:

(84-4) 8250-612  
(84-4) 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 

LE DUC THUY

Authorized Representative

ASIAN DEVELOPMENT BANK

By 

AYUMI KONISHI

Country Director

Viet Nam Resident Mission

## SCHEDULE 1

### Description of the Project

1. The goal of the Project is poverty reduction in the Project Provinces. The Project objective is to increase agriculture production in selected irrigation sub-projects by (a) improving irrigation management through reform of service providers and concomitant capacity building of client water users, (b) rehabilitating and completing irrigation and drainage infrastructure, and strengthening natural disaster mitigation measures, and (c) ensuring sustainable environmental management and protection.

2. The Project consists of the following components:

#### Part A: Improvement of Irrigation Management Systems

- (i) Establishing financially viable service providers through (a) assisting DARDs in preparing business plans of the irrigation management companies (IMCs) for their future operations as autonomous and financially viable entities, and restructuring of IMCs; and (b) training staff in PPCs, DARDs, other provincial agencies, and IMCs in understanding and supporting the institutional reform for improved irrigation management, skills development for irrigation scheme operation and maintenance (O&M), social impact assessments, and managing irrigation to achieve greater poverty reduction, gender equality, and community participation;
- (ii) Strengthening water user participation through (a) assisting MARD in carrying out participatory assessment of the needs and capabilities of existing WUGs and developing a set of principles and guidelines for WUGs/WUAs operation and management; (b) setting up new WUGs and WUAs; and (c) training of farmers and local communities in participatory planning and decision making, WUGs/WUAs legal empowerment and legal literacy;
- (iii) Supporting on-farm infrastructure development through a participatory process;
- (iv) Assisting in operationalizing the project performance management system (PPMS); and
- (v) Supporting social assistance programs, including implementation of the GAP and the HIV/AIDS awareness program.

#### Part B: Irrigation Infrastructure Improvement

- (i) Subproject 1 (Thach Thanh Scheme, Thanh Hoa Province)
  - (a) rehabilitating three existing and constructing 10 new pumping stations lifting water from the Buoi River;



Schedule 1

- (b) rehabilitating eight small storage reservoirs and constructing a new reservoir;
  - (c) constructing approximately 90 kilometers (km) of earth canals to replace deteriorated concrete flumes; and
  - (d) rehabilitating Bai Muong weir.
- (ii) Subproject 2 (Thuong My Trung Scheme, Quang Binh Province)
  - (a) constructing approximately 82 km of embankment;
  - (b) rehabilitating 66 existing and constructing 23 new sluice gates;
  - (c) rehabilitating 25 existing and constructing 15 new pumping stations; and
  - (d) rehabilitating and constructing related bridges and aqueducts.
- (iii) Subproject 3 (Thach Han Scheme, Quang Tri Province)
  - (a) upgrading the Thach Han headworks and canal system, including lining approximately 13 km of main canal and approximately 45 km of primary and lower level canals; and
  - (b) constructing Ben Da weir.
- (iv) Subproject 4 (Tay Nam Huong Tra Scheme, Thua Thien Hue Province)
  - (a) enlarging the Khe Ngang reservoir;
  - (b) constructing approximately 8.6 km of new main canal;
  - (c) raising the spillway of the Tho Son reservoir;
  - (d) upgrading the community canals; and
  - (e) constructing a pumping station and associated culverts and sluices at Nam Thanh.
- (v) Subproject 5 (Tra Cau Scheme, Quang Ngai Province)
  - (a) constructing the Chop Vung reservoir;
  - (b) heightening the dam and spillway of the Dien Truong reservoir and rehabilitating and extending the canal system, including construction of an access road to the dam; and

Schedule 1

- (c) completing primary and lower level canals in the Nui Ngang system.
- (vi) Subproject 6 (La Tinh Scheme, Binh Dinh Province)
  - (a) reconstructing the Cay Ke weir;
  - (b) lining approximately 80 km of irrigation canal and rehabilitating canal structures;
  - (c) rehabilitating approximately 21.5 km of flood protection embankments between Phu Ly bridge and Cay Ke weir and between La Tinh and Can River; and
  - (d) rehabilitating three flood diversion/retention spillways.

3. The Project also includes provision of consulting services. The Project is expected to be completed by 31 December 2011.

**SCHEDULE 2****Amortization Schedule****(Central Region Water Resources Project)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 June 2014	1,086,000.00
15 December 2014	1,086,000.00
15 June 2015	1,086,000.00
15 December 2015	1,086,000.00
15 June 2016	1,086,000.00
15 December 2016	1,086,000.00
15 June 2017	1,086,000.00
15 December 2017	1,086,000.00
15 June 2018	1,086,000.00
15 December 2018	1,086,000.00
15 June 2019	1,086,000.00
15 December 2019	1,086,000.00
15 June 2020	1,086,000.00
15 December 2020	1,086,000.00
15 June 2021	1,086,000.00
15 December 2021	1,086,000.00
15 June 2022	1,086,000.00
15 December 2022	1,086,000.00
15 June 2023	1,086,000.00
15 December 2023	1,086,000.00
15 June 2024	1,086,000.00
15 December 2024	1,086,000.00
15 June 2025	1,086,000.00
15 December 2025	1,086,000.00
15 June 2026	1,086,000.00
15 December 2026	1,086,000.00
15 June 2027	1,086,000.00
15 December 2027	1,086,000.00
15 June 2028	1,086,000.00
15 December 2028	1,086,000.00
15 June 2029	1,086,000.00
15 December 2029	1,086,000.00

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\* 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 Sections 3.04 and 4.03 of the Loan Regulations.

Schedule 2

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 June 2030	1,086,000.00
15 December 2030	1,086,000.00
15 June 2031	1,086,000.00
15 December 2031	1,086,000.00
15 June 2032	1,086,000.00
15 December 2032	1,086,000.00
15 June 2033	1,086,000.00
15 December 2033	1,086,000.00
15 June 2034	1,086,000.00
15 December 2034	1,086,000.00
15 June 2035	1,086,000.00
15 December 2035	1,086,000.00
15 June 2036	1,086,000.00
15 December 2036	1,086,000.00
15 June 2037	1,086,000.00
15 December 2037	1,086,000.00
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TOTAL	SDR 52,128,000.00
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\* 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 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, 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 and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

##### Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories and Subcategories 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 9 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.

##### Imprest Account; Statement of Expenditures

5. (a) Except as ADB may otherwise agree, the Borrower shall cause (i) CPO to establish within one month of the Effective Date, an imprest account at a commercial bank acceptable to ADB, and (ii) each DARD to establish, within one month of the Effective Date, a second generation imprest account (SGIA) at a commercial bank, acceptable to ADB. The imprest account and each SGIA shall be established, managed, replenished and

liquidated in accordance with ADB's "Loan Disbursement Handbook" dated January 2001, as amended from time to time, and detailed arrangements agreed upon between the Borrower and ADB.

(b) The initial amount to be deposited into the imprest account shall not exceed the lesser of the equivalent of 10 percent of the Loan amount or the estimated expenditure for the first six months of Project implementation. The initial amount to be deposited into each SGIA shall not exceed the lesser of the equivalent of \$500,000 or the estimated expenditures for the first six months of Subproject implementation.

(c) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account and SGIAs, in accordance with ADB's "Loan Disbursement Handbook" dated January 2001, as amended from time to time, 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.

#### Condition of Withdrawals from SGIA

6. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from a SGIA for disbursement to any WUG and/or WUA until such a WUG and or WUA shall have been registered as a legal entity by the respective provincial authority.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS</b>				
<b>(Central Region Water Resources Project)</b>				
<b>CATEGORY</b>				<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated</b>		<b>Percentage and Basis for Withdrawal from the Loan Account</b>
		<b>Category</b>	<b>SDR Subcategory</b>	
1	Civil Works	40,528,000		85 percent of total expenditure
2	Equipment and Materials	1,224,000		
2A	Vehicles		278,000	90 percent of total expenditure
2B	Other Equipment and Materials		946,000	90 percent of total expenditure
3	Consulting Services	2,574,000		100 percent of total expenditure*
4	Survey and Studies	913,000		91 percent of total expenditure
5	Environmental Management	428,000		91 percent of total expenditure
6	Workshops and Training	966,000		91 percent of total expenditure
7	Project Management	1,541,000		65 percent of total expenditure
8	O&M Cost	111,000		3 percent of the total expenditure
9	Interest Charge	1,324,000		100 percent of amount due
10	Unallocated	2,519,000		
	Total	52,128,000		

\* Exclusive of local taxes

## **SCHEDULE 4**

### **Procurement**

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraphs of this Schedule shall apply in the procurement of goods and services to be financed out of the proceeds of the Loan. In this Schedule and the Attachment hereto, the term "goods" includes equipment and materials; the term "services" does not include consulting services.

2. Procurement of goods and services shall be subject to the provisions of the "Guidelines for Procurement under Asian Development Bank Loans" dated November 2004 (hereinafter called the Guidelines for Procurement), as amended from time to time, which have been furnished to the Borrower.

3. (a) Procurement of goods and services shall be made without any restriction against, or preference for, any particular supplier or contractor or any particular class of suppliers or contractors, except as otherwise provided in paragraph 6 below.

(b) The Borrower's state-owned enterprises shall only be eligible to bid for contracts if they are legally and financially autonomous, independently managed and operating on the basis of commercial practices, and if they are not in any way associated with the military forces.

4. (a) Each civil works contract estimated to cost the equivalent of more than \$2,000,000 and each supply contract for equipment or materials estimated to cost the equivalent of more than \$1,000,000 shall be awarded on the basis of international competitive bidding as described in Chapter II of the Guidelines for Procurement. Bidders for civil works contracts shall be prequalified before bidding.

(b) For contracts to be awarded on the basis of international competitive bidding, there shall be submitted to ADB, as soon as possible, and in any event not later than 90 days before the issuance of either the first prequalification invitation or the first invitation to bid for the Project, a General Procurement Notice (which ADB will arrange to publish separately) in such form and detail and containing such information as ADB shall reasonably request.

(c) For contracts to be awarded on the basis of international competitive bidding, procurement actions shall be subject to review by ADB in accordance with the procedures set forth in Chapter IV of the Guidelines for Procurement. Each draft prequalification invitation and each draft invitation to bid, to be submitted to ADB for approval under such procedures, shall reach ADB at least 21 days before it is issued and shall contain such information as ADB shall reasonably request to enable ADB to arrange for the separate publication of such invitation.

5. (a) Each supply contract for equipment or materials estimated to cost the equivalent of \$1,000,000 or less (except as provided in paragraph 7 below) shall be awarded on the basis of international shopping as described in Chapter III of the Guidelines for Procurement.



(b) Each draft invitation to bid and related bid document shall be submitted to ADB for approval before they are issued.

(c) Notwithstanding paragraph 3.03(b) of the Guidelines for Procurement, any award of contract shall be subject to prior ADB approval.

6. In comparing bids under international competitive bidding, a margin of preference may be provided, at the option of the Borrower and in accordance with the provisions of the Attachment to this Schedule, for

(a) goods manufactured in the territory of the Borrower, provided that the bidder offering such goods shall have established to the satisfaction of the Borrower and ADB that the domestic value added equals at least 20 percent of the ex-factory bid price of such goods; and

(b) civil works to be carried out by eligible domestic contractors, as defined by ADB.

7. Each civil works contract estimated to cost the equivalent of \$2,000,000 or less, and each supply contract for equipment and materials estimated to cost the equivalent of less than \$500,000 (other than minor items as described in paragraph 8 below) shall be awarded on the basis of local competitive bidding among contractors in accordance with the standard procurement procedures of the Borrower and acceptable to ADB. For the first contract to be awarded on the basis of local competitive bidding, the first draft English language version of the bidding documents, as well as selection and engagement of contractors shall be subject to the approval of ADB. As soon as the bids received have been evaluated, the proposal for award of contract shall be submitted to ADB for approval. For this purpose, ADB shall be furnished with three copies of (i) an account of the public opening of bids; (ii) a summary and evaluation of the bids; (iii) the proposal for award; and (iv) a draft contract or a draft letter of acceptance. Promptly after each contract is awarded, ADB shall be furnished with three copies of the contract as executed. For the subsequent contracts, bid evaluation and award of contracts shall be subject to post review by ADB.

8. Certain items of equipment which are available from a limited number of qualified suppliers, and estimated to cost, in the aggregate, the equivalent of less than \$100,000, may be procured on the basis of quotations obtained from such suppliers. Prior to such procurement, a list of individual items to be procured, an estimate of their costs, an indication of potential sources of supply and any related documents shall be submitted to ADB for approval. After award, three copies of each contract for such items shall be furnished to ADB

9. (a) The Borrower shall ensure that all ADB-financed goods and services 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 ADB-financed contracts for the procurement of goods and services 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.

Conditions for Award of Civil Works Contracts

10. Notwithstanding any other provisions of this Loan Agreement, and unless the Borrower and ADB otherwise agree, no civil work contract for the respective Subproject shall be awarded, until:

(a) the business plan for the respective IMC, satisfactory to ADB, has been approved by a respective PPC;

(b) all activities required for land acquisition, compensation, and resettlement processes have been satisfactorily completed in accordance with the respective Resettlement Plan; and

(c) the relevant provincial agency shall have certified that the construction site had been cleared of any unexploded ordnance.

Preference for Domestically Manufactured Goods

1. In the procurement of goods through international competitive bidding, goods manufactured in the territory of the Borrower may be granted a margin of preference in accordance with the following provisions, provided that the bidder shall have established to the satisfaction of the Borrower and ADB that the domestic value added equals at least 20 percent of the ex-factory bid price of such goods. The 20 percent domestic value added applies to the total ex-factory bid price of the goods and not only to one item in a list.

- (a) For application of domestic preference, all responsive bids shall first be classified into the following three categories:

Category I -- bids offering goods manufactured in the territory of the Borrower which meet the minimum domestic value added requirement;

Category II -- bids offering other goods manufactured in the territory of the Borrower; and

Category III -- bids offering imported goods.

- (b) The lowest evaluated bid of each category shall then be determined by comparing all evaluated bids in each category among themselves, without taking into account customs duties and other import taxes levied in connection with the importation, and sales and similar taxes levied in connection with the sale or delivery, pursuant to the bids, of the goods.
- (c) Such lowest evaluated bids shall next be compared with each other and if, as a result of this comparison, a bid from Category I or Category II is found to be the lowest, it shall be selected for the award of contract.
- (d) If, however, as a result of the comparison under subparagraph (c) above, the lowest bid is found to be from Category III, it shall be further compared with the lowest evaluated bid from Category I. For the purpose of this further comparison only, an upward adjustment shall be made to the lowest evaluated bid price of Category III by adding either
- (i) the amount of customs duties and other import taxes which a nonexempt importer would have to pay for the importation of the goods offered in such Category III bid; or
- (ii) 15 percent of the CIF bid price of such goods if the customs duties and import taxes referred to above exceed 15 percent of the CIF bid price.

If, after such further comparison, the Category I bid is determined to be the lowest, it shall be selected for the award of contract; if not, the lowest evaluated bid from Category III shall be selected for the award.

2. (a) Bidders applying for the preference shall provide evidence necessary to establish the eligibility of a bid for the preference, including the minimum domestic value added.

(b) The bidding documents shall clearly indicate the preference to be granted, the information required to establish the eligibility of a bid for the preference claimed, and the procedures to be followed in the comparison of bids, all as set forth above.

#### Preference for Domestic Contractors

3. In the selection of civil-works contractors, single-responsibility turnkey (including design-build) contractors or supply-and-installation contractors where the CIF cost of goods to be used for or in the permanent works under such contracts is less than 60 percent of the total cost of such works, eligible domestic contractors, as defined below, through international competitive bidding may be granted a margin of preference in accordance with the following provisions.

(a) For application of domestic preference, all responsive bids shall first be classified into the following two categories:

Category I -- bids offered by domestic contractors and joint ventures eligible for the preference in accordance with the applicable criteria as set forth in paragraph 4 below; and

Category II -- bids offered by other contractors.

(b) The lowest evaluated bid of each category shall then be determined by comparing all evaluated bids in each category among themselves.

(c) Such lowest evaluated bids shall next be compared with each other and if, as a result of this comparison, a bid from Category I is found to be the lowest, it shall be selected for the award of contract.

(d) If, however, as a result of the comparison under subparagraph (c) above, the lowest bid is found to be from Category II, it shall be further compared with the lowest evaluated bid from Category I. For the purpose of this further comparison only, an upward adjustment shall be made to the lowest evaluated bid price of Category II by adding an amount equal to seven-and-one-half percent of the bid price. If, after such comparison, the Category I bid is determined to be the lowest, it shall be selected for the award of contract; if not, the lowest evaluated bid from Category II shall be selected.

4. (a) To be eligible for the preference set forth in paragraph 3 above, domestic contractors must meet the following criteria:

- (i) firms are registered in the territory of the Borrower;
- (ii) firms have majority ownership by nationals of the Borrower; and
- (iii) firms will not subcontract more than 50 percent of the total value of their work to foreign contractors.

(b) A joint venture between a domestic contractor and its foreign partner shall be eligible for the preference only if it meets the following criteria:

- (i) the domestic partner(s) is individually eligible for the preference according to the criteria stated above;
- (ii) the domestic partner(s) would not qualify for the contract works on technical or financial grounds without the foreign participation; and
- (iii) the domestic partner(s) will, under the arrangements proposed, carry out at least 50 percent of the contract works measured in terms of value.

(c) Contractors applying for the preference shall be required to provide, as part of the data for qualification, necessary information, including details of ownership, for determining whether, according to the applicable criteria, a particular firm or group of firms qualifies for the preference.

5. The bidding documents shall clearly indicate the preference to be granted, the information required to establish the eligibility of firms for the preference claimed, and the procedures to be followed in the comparison of bids, all as set forth above. Bidders applying for the preference shall provide such additional information in support of such eligibility as may be requested by the Borrower and ADB.

## SCHEDULE 5

### Consultants

1. The services of consultants shall be utilized in the carrying out of the Project, particularly with regard to:

- (a) institutional development;
- (b) water resources and irrigation planning;
- (c) business strategic planning;
- (d) geographic information system;
- (e) participatory irrigation management;
- (f) financial and economic management;
- (g) financial management training ;
- (h) legal framework and regulations;
- (i) environment;
- (j) agronomy;
- (k) data processing;
- (l) information databases;
- (m) gender and social development
- (n) irrigation engineering and construction supervision;
- (o) performance monitoring; and
- (p) setting up and training WUGs and WUAs in legal empowerment and legal literacy.

The terms of reference of the consultants shall be as determined by agreement between ADB and MARD.

2. The selection, engagement and services of the consultants shall be subject to the provisions of this Schedule and the provisions of the "Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers" dated January 2005 (hereinafter called the Guidelines on the Use of Consultants), as amended from time to time, which have been furnished to the Borrower and MARD.

3. The consultants whose areas of expertise are indicated in paragraphs 1(a) to (m) above shall be selected and engaged as a firm by the Borrower using the quality-and-cost-based selection (QCBS) method in accordance with the following procedures.

(a) Invitation for technical and financial proposals. The invitation to submit technical and financial proposals (hereinafter called the Request for Proposals or RFP) and all related documents shall be approved by ADB before they are issued. For this purpose, three copies of the draft RFP, the names of consultants to be short-listed, the proposed criteria for evaluation of both proposals, a draft consultancy contract, and other related documents shall be submitted to ADB. A period of at least 45 days shall be allowed for submission of both proposals. A copy of the final RFP as issued, together with all related documents, shall be furnished to ADB for information promptly after issuance. The validity period for the technical and financial proposals as provided in the RFP shall usually not exceed three months from the date specified for submission of the technical and financial proposals. The approval of ADB shall be obtained for any request to extend such validity period. Except as ADB may otherwise agree, the validity period, including any extensions,

shall not exceed a maximum total period of six months. If the contract is not signed within the validity period in accordance with the Guidelines on the Use of Consultants, the selection shall be invalid and the selection and engagement process as provided in this paragraph shall be followed again.

(b) Evaluation and scoring of technical proposals. Immediately after the technical proposals have been evaluated and scored, approval of ADB shall be obtained to the evaluation and scoring of the technical proposals. For this purpose, ADB shall be furnished with three copies of the technical proposals.

(c) Public opening of financial proposals. The financial proposals of the firms whose technical proposals meet the minimum qualifying technical score shall be opened publicly after adequate notice is given to such firms or their representatives to attend the opening of the financial proposals.

(d) Evaluation and scoring of financial proposals and ranking of technical and financial proposals. After the financial proposals have been evaluated and scored, the ranking of the technical and financial proposals shall be made. Before negotiations are started with the first-ranked consultants, approval of ADB shall be obtained to the evaluation and scoring of the financial proposals and the ranking of the technical and financial proposals. For this purpose, ADB shall be provided with three copies of (i) the evaluation and scoring of the financial proposals and (ii) the ranking of the technical and financial proposals.

(e) Execution of contract. After the conclusion of negotiations but before the signing of the contract, ADB shall be furnished with the contract as negotiated for approval. Promptly after the contract is signed, ADB shall be furnished with three copies of the signed contract. If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

4. Domestic consultants and/or other service providers, including local institutions and NGOs whose areas of expertise are indicated in paragraphs 1(m) to (p) above shall be selected and engaged in accordance with procedures acceptable to ADB. Such selection and engagement of the domestic consultants shall be subject to the approval of ADB with regard to their competence and experience for carrying out the assignment. After the conclusion of negotiations but before the signing of the contract, the contract as negotiated, shall be furnished to ADB for approval. Promptly after each contract is signed, ADB shall be furnished with three copies of the contract as executed. If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

5. 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 rights or claim of any third party.

## SCHEDULE 6

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

#### I. PROJECT IMPLEMENTATION

##### Central Level Project Implementation

1. MARD shall be the Project Executing Agency responsible for the overall Project implementation. Director of CPO shall be the Project Director. The Borrower shall ensure that CPO establishes the CPMU headed by a full-time Project Manager and adequately staffed with technical and administrative personnel, with qualifications acceptable to ADB. The CPMU supported by project management consultants shall (a) provide overall Project management and coordination; (b) liaise with PPCs and DARDs for improvement of irrigation management systems; (c) guide and coordinate activities of DARDs in improvement of irrigation infrastructure; (d) implement the PPMS; (e) procure consulting services (other than domestic consulting services to be used only for particular Subprojects); (f) assist the PPMUs in carrying out the procurement of goods and pursuant to Schedule 4 to this Loan Agreement; (g) prepare forecast of contract awards and disbursements, (h) arrange the Project accounts audits; and (i) consolidate the PPMU's reports, and prepare progress and project completion reports, as appropriate.

2. PSC shall be established by MARD to provide policy and strategy guidance and to communicate Project outcomes with other ministries and agencies. PSC shall be headed by Vice-Minister of MARD and shall comprise representatives, at director level, of the Borrower's Ministry of Planning and Investment, MOF, MONRE, the Office of Government, and SBV.

##### Provincial Level Project Implementation

3. PPCs through DARDs shall be the implementing agencies responsible for the day-to-day Project implementation at the provincial level. Each DARD shall establish a PPMU headed by a full-time subproject manager and adequately staffed with technical and administrative personnel, with qualifications acceptable to ADB. Each PPMU shall be responsible for (i) carrying out the procurement of goods and services through international competitive bidding and local competitive bidding pursuant to Schedule 4 to this Loan Agreement; and (ii) with consultants' support, implementing the PPMS, Resettlement Plan, EMP, social support program and EMDP, as appropriate.

#### II. OTHER MATTERS

##### Counterpart Funding

4. The Borrower shall ensure that counterpart funds are provided in a timely manner during each year of the Project implementation and, to such end, it shall make submissions of annual budgetary appropriation requests and shall disburse funds to the Project Province in a timely manner.



Regulatory Framework

5. The Borrower shall adopt, within twelve months of the Effective Date, necessary regulatory framework with revised institutional arrangements for management of irrigation systems at provincial and commune levels to enable achievement of the Project objectives more effectively. In particular, the Borrower shall take necessary measures to restructure IMCs, WUGs and WUAs and transfer the ownership for irrigation assets to IMCs, and WUGs/WUAs, as appropriate. The restructuring of IMCs shall include the authority to set, collect and allocate water fees.

Business Plans

6. The Borrower shall ensure through MARD and PPCs that each IMC develops its own business plan for achieving financial sustainability through organizational changes. Each IMC shall define its key functions, services, equipment and skills requirements, budgets, information flows, accounting procedures, performance monitoring, water pricing strategy, and financing plan. Business plans shall set out annual targets and milestones the achievement of which shall trigger release of Project funds to IMCs and beginning of civil works. Each business plan shall need to be approved by a respective PPC, and be satisfactory to ADB.

WUGs/WUAs

7. The Borrower shall ensure through MARD and PPCs that each WUG under the Project is set up as a legal entity on the basis of hydraulic boundaries, replacing in most cases the current user groups linked to cooperatives and based on administrative boundaries. WUAs shall be set up in large irrigation schemes to ensure official representations of WUGs. At least 40 percent of participants of WUGs/WUAs shall be women.

Water Fees

8. The Borrower shall ensure through MARD and PPCs that, by end of the second year of the Project implementation, water fees are determined and established in accordance with IMCs' business plans to achieve and maintain the financial autonomy of IMCs and WUGs/WUAs (i.e., full recovery of O&M costs), subject to compliance with the Borrower's applicable laws and regulations.

Resettlement

9. (a) The Borrower shall ensure that all land acquisition and resettlement activities under the Project are implemented in accordance with the applicable laws and regulations of the Borrower, *ADB's Policy on Involuntary Resettlement (1995)*, and the Resettlement Plan. In particular, the Borrower shall ensure (i) the timely provision and disbursement of counterpart funds to cover the actual replacement costs; (ii) compensation to affected persons at full replacement cost without deduction of depreciation or salvageable materials prior to their relocation and possession of land and assets; (iii) establishment of

effective mechanisms for resolving grievances. In case of any discrepancies between the Borrower's laws, regulations and procedures and *ADB's Policy on Involuntary Resettlement*, the ADB's Policy shall apply.

(b) Prior to the start of land acquisition and resettlement activities with respect to any Subproject, the Borrower through MARD and PPCs shall have (i) updated the respective Resettlement Plan in full consultation with affected persons based on the detailed design for the Subproject concerned, (ii) disclosed to affected persons and submitted to ADB for approval the updated Resettlement Plan, and (iii) engaged an independent monitoring agency, acceptable to ADB, to conduct independent external monitoring and evaluation of the resettlement process and impacts. Reports of the independent monitoring agency shall be submitted to ADB.

### Environment

10. The Borrower shall ensure that (a) the Project facilities are designed, constructed, operated and maintained in compliance with applicable environmental laws and regulations of the Borrower, *ADB's Environment Policy (2002)*, IEE and SIEE; (b) each EMP is updated, based on the detailed design for the Subproject concerned, and submitted to ADB for approval prior to final approval of the Subproject's detailed design; (c) all mitigation measures detailed in each EMP are implemented and monitored to satisfactory standards; and (d) implementation of EMPs is reported to ADB.

### Social Issues

11. (a) The Borrower shall ensure that the GAP is fully implemented throughout the Project implementation period. This shall include, among other things, training of the CPMU and PPMU staff, approximately 1,600 female farmers, and approximately 100 commune and Vietnam Women's Union officials at the local level to ensure gender mainstreaming through a participatory process. The implementation of the GAP shall be closely monitored and the progress shall be reported in semiannual reports to ADB.

(b) The Borrower shall ensure that the EMDPs are implemented in accordance with applicable laws and regulations of the Borrower, *ADB's Policy on Indigenous Peoples (1998)*, and the EMDF. The Borrower shall update the EMDP for Subproject 5 (Tra Cau in Quang Ngai province) based on the detailed design for the Subproject. The Borrower shall prepare EMDPs for other Subprojects, where required in accordance with the EMDF, based on the detailed design for the Subprojects concerned. This shall include, among other things, (i) ensuring participation of and consultation with the affected ethnic minority people in preparing and updating the respective EMDP; (ii) disclosure of such EMDP to affected ethnic minority people prior to its submission to ADB for approval; and (iii) timely provision of necessary counterpart funds to cover the actual cost of implementation of the EMDP. The implementation of EMDP shall be closely monitored by an independent monitoring agency, acceptable to ADB, and the progress shall be reported in semiannual reports to ADB.

(c) The Borrower shall also ensure that the Project facilities are designed, constructed, operated, and maintained in strict conformity with all applicable laws and regulations of the Borrower, including those with respect to social development, health, labor, child protection and occupational safety regulations and standards.

#### Project Performance Monitoring System

12. The Borrower shall ensure that PPMS, based on management information software linked to a geographic information system, is adopted for monitoring and evaluating implementation performance and development impacts at various stages of the Project cycle. The participatory baseline survey and follow-up surveys for each Subproject shall be led by NGOs. Initial conditions determined through baseline survey in each Subproject shall be updated at six-monthly intervals. Socio-economic data shall be disaggregated by gender and ethnicity, as appropriate.

#### Accounting, Auditing, and Reporting

13. (a) Without prejudice to the generality of Section 4.02 of this Loan Agreement, the Borrower shall ensure that (i) CPO, assisted by the CPMU, prepares separate accounts for the Project as a whole, monitors and consolidated accounts of each PPMU; (ii) within 12 months after the Effective Date, the CPMU establishes a simple computerized management information system suited to the financial management, and reporting needs of the Project; and (iii) the CPMU prepares and submits to ADB annual audit report, progress and project completion reports in a timely manner.

(b) For the purpose of complying with the provisions of this Loan Agreement with respect to annual submission of audited accounts and financial statements, proceeds of the Loan may be used to finance expenditures of independent auditors and translation of auditors' reports into English, provided that: (i) such auditors have qualifications, expertise and terms of reference, acceptable to ADB, and (ii) the recruitment process is acceptable to ADB.

#### Anticorruption Measures

14. During Project implementation, MARD shall ensure that *ADB's Anticorruption Policy* is followed, it being understood that ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project. MARD shall ensure that (a) periodic inspections on the contractor's activities related to fund withdrawals and settlements are carried out, (b) relevant provisions of ADB's Anticorruption Policy are included in all bidding documents for the Project, and (c) 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 MARD and all contractors, suppliers, consultants and other service providers as they relate to the Project.