LOAN NUMBER 2751-VIE (SF)

# LOAN AGREEMENT
(Special Operations)

(University of Science and Technology of Ha Noi Development
[New Model University] Project)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 10 NOVEMBER 2011

**LOAN AGREEMENT**
**(Special Operations)**

LOAN AGREEMENT dated 10 November 2011 between SOCIALIST REPUBLIC OF VIET NAM ("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;

(B) by an agreement of even date herewith between the Borrower and ADB ("Ordinary Operations Loan Agreement"), ADB has agreed to lend to the Borrower from ADB's ordinary capital resources the amount of one hundred seventy million dollars ($170,000,000) for the purposes of the Project; and

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

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 1 January 2006 ("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. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

(a) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time);

(b) "Consulting Services" means the services to be financed out of the proceeds of the Loan as referred to in paragraph 3 of Schedule 1 to this Loan Agreement;

(c) "Gender Action Plan" means the gender action plan as set out in one of the linked documents to the RRP;

(d) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(e) "HHTP" means Hoa Lac High Tech Park;

(f) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2007, as amended from time to time);

(g) "MOET" means the Ministry of Education and Training of the Borrower or any successor thereto;

(h) "PAM" means the project administration manual for the Project dated 23 March 2011 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(i) "Part" means any part of the Project as described in Schedule 1 to this Loan Agreement;

(j) "PMU-USTH" means the Project Management Unit to be established by the Project Executing Agency for the purpose of managing the implementation of the Project and as further described in the PAM;

(k) "Procurement Guidelines" means ADB's Procurement Guidelines (2010, as amended from time to time);

(l) "Procurement Plan" means the procurement plan for the Project dated 23 March 2011 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(m) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means MOET or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(n) "Project facilities" means the facilities to be provided under the Project;

(o) "RRP" means the Report and Recommendation of the President of ADB to the Board of Directors of ADB for the Project;

(p) "UIU" means the University Implementation Unit to be established by USTH and as further described in the PAM;

(q) "USTH" means the University of Science and Technology of Ha Noi or any successor thereto; and

(r) "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 twelve million six hundred nine thousand Special Drawing Rights (SDR 12,609,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 2.02% per annum during the grace period and for each interest period 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 the first Principal 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 April and 15 October 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 amount 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 the 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 proceeds of the Loan shall be allocated and withdrawn 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, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan 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 Works 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 30 June 2018 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. (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 and 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 subparagraph (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 and Works, and any relevant records and documents.

## ARTICLE V

## Suspension; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations: the Borrower shall have failed to perform any of its obligations under the Ordinary Operations Loan Agreement.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: the event specified in Section 5.01 of this Loan Agreement shall have occurred.

## ARTICLE VI

## Effectiveness

Section 6.01. 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 Ordinary Operations Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Borrower and all conditions to its effectiveness (other than a condition requiring effectiveness of this Loan Agreement) shall have been fulfilled.

Section 6.02. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

## ARTICLE VII

## Miscellaneous

Section 7.01. The Governor of the State Bank of Vietnam of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

State Bank of Vietnam
47 – 49 Ly Thai To
Ha Noi, Viet Nam

Facsimile Numbers:

(84-4) 38250-612
(84-4) 38258-385.

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2228.

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 as of the day and year first above written and to be delivered at the principal office of ADB.

SOCIALIST REPUBLIC OF VIET NAM

By _____
NGUYEN VAN BINH
Authorized Representative

ASIAN DEVELOPMENT BANK

By _____
TOMOYUKI KIMURA
Country Director
Viet Nam Resident Mission

## SCHEDULE 1

## Description of the Project

1. The expected impact of the Project is improved performance of the higher education system in Viet Nam. The expected outcome of the Project is a high quality new model university that generates teaching and research in industry-relevant science and technology.

2. The Project shall comprise the following Parts:

Part A: Development of Policy and Governance System

This Part shall implement effective management and governance systems for USTH through: (a) establishing rigorous management and governance systems, including providing capacity building programs for USTH senior managers and governors; (b) developing and implementing university management and administrative systems; and (c) establishing an office of student services.

Part B: Capacity Building for Teaching and Research Development

This Part shall develop and implement systems to promote high quality and relevance in academic programs at USTH through: (a) establishing, within USTH, centers for teaching and learning excellence, quality assurance and academic program management systems, research support, industry engagement and laboratory management; and (b) establishing specialized laboratory equipment for science teaching and research.

Part C: Construction and Outfitting of Physical Facilities

This Part shall provide support for the design, construction and outfitting of the physical facilities of USTH at the greenfields site in HHTP. This shall include site preparation, classrooms, lecture theaters, research laboratories, dormitories, student leisure and sports facilities, administration buildings and associated infrastructure (including parking facilities), and provision of furniture, fittings and equipment.

Part D: Project Management and Implementation

This Part shall provide support for Project management and implementation.

3. The Project shall include the provision of consulting services. The Project is expected to be completed by 31 December 2017.

## SCHEDULE 2

## Amortization Schedule

**(University of Science and Technology of Ha Noi Development [New Model University] Project)**

| Date Payment Due | Payment of Principal (expressed in Special Drawing Rights)* |
|---|---|
| 15 October 2019 | 262,688.00 |
| 15 April 2020 | 262,688.00 |
| 15 October 2020 | 262,688.00 |
| 15 April 2021 | 262,688.00 |
| 15 October 2021 | 262,688.00 |
| 15 April 2022 | 262,688.00 |
| 15 October 2022 | 262,688.00 |
| 15 April 2023 | 262,688.00 |
| 15 October 2023 | 262,688.00 |
| 15 April 2024 | 262,688.00 |
| 15 October 2024 | 262,688.00 |
| 15 April 2025 | 262,688.00 |
| 15 October 2025 | 262,688.00 |
| 15 April 2026 | 262,688.00 |
| 15 October 2026 | 262,688.00 |
| 15 April 2027 | 262,688.00 |
| 15 October 2027 | 262,688.00 |
| 15 April 2028 | 262,688.00 |
| 15 October 2028 | 262,688.00 |
| 15 April 2029 | 262,688.00 |
| 15 October 2029 | 262,688.00 |
| 15 April 2030 | 262,688.00 |
| 15 October 2030 | 262,688.00 |
| 15 April 2031 | 262,688.00 |
| 15 October 2031 | 262,688.00 |
| 15 April 2032 | 262,688.00 |
| 15 October 2032 | 262,688.00 |
| 15 April 2033 | 262,688.00 |
| 15 October 2033 | 262,688.00 |
| 15 April 2034 | 262,688.00 |
| 15 October 2034 | 262,688.00 |
| 15 April 2035 | 262,688.00 |
| 15 October 2035 | 262,688.00 |
| 15 April 2036 | 262,688.00 |
| 15 October 2036 | 262,688.00 |
| 15 April 2037 | 262,688.00 |
| 15 October 2037 | 262,688.00 |
| 15 April 2038 | 262,688.00 |
| 15 October 2038 | 262,688.00 |

Schedule 2

| | |
|---|---|
| 15 April 2039 | 262,688.00 |
| 15 October 2039 | 262,688.00 |
| 15 April 2040 | 262,688.00 |
| 15 October 2040 | 262,688.00 |
| 15 April 2041 | 262,688.00 |
| 15 October 2041 | 262,688.00 |
| 15 April 2042 | 262,688.00 |
| 15 October 2042 | 262,688.00 |
| 15 April 2043 | 262,664.00 |
| Total | 12,609,000.00 |

* 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 relevant provisions of the Special Operations Loan Regulations.

*The arrangements for payment 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 items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Categories of the Table.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, each item of expenditure 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 7 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 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, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Schedule 3

Imprest Accounts and Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, two imprest accounts, each at a commercial bank acceptable to the ADB, to be managed by, respectively, the PMU-USTH and UIU. The imprest accounts shall be established, managed, replenished and liquidated in accordance with the Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. The imprest accounts shall only be used for the purposes of the Project. The currency of each imprest account shall be Dollars. The ceiling for the imprest accounts, in aggregate, shall not exceed the lower of: (i) the estimated expenditure to be financed from the imprest account for the first 6 months of Project implementation; or (ii) the equivalent of 10% of the Loan amount.

(b) The statement of expenditures procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the statement of expenditures procedure shall not exceed the equivalent of $50,000.

Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with eligible expenditures, subject to a maximum amount equivalent to 5% of the Loan amount.

Conditions of Withdrawal

8. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account until the Borrower shall have established, to the satisfaction of ADB: (a) the PMU-USTH; and (b) the UIU.

Attachment to Schedule 3

**TABLE**

| ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (University of Science and Technology of Ha Noi Development [New Model University] Project) | | | |
|---|---|---|---|
| **CATEGORY** | | | **ADB FINANCING** |
| **Number** | **Item** | **Amount Allocated (SDR)** **Category** | **Withdrawal from the Loan Account** |
| 1 | Capacity Building | 5,076,000 | 100% of total expenditure* |
| 2 | Systems Development and Training | 1,188,000 | 100% of total expenditure* |
| 3 | Scholarships | 631,000 | 100% of total expenditure* |
| 4 | Design and Construction Management** | 3,452,000 | 39.1% of total expenditure* |
| 5 | Project Management | 1,503,000 | 89.9% of total expenditure |
| 6 | Vehicles | 63,000 | 100% of total expenditure* |
| 7 | Interest Charges | 633,000 | 100% of amount due |
| 8 | Unallocated | 63,000 | |
| | **Total** | **12,609,000** | |

* Exclusive of taxes and duties imposed within the territory of the Borrower

** The remaining 60.9% of the expenditures for this category item shall be financed under the loan in the Ordinary Operations Loan Agreement.

## SCHEDULE 4

## Procurement of Goods, Works and Consulting Services

General

1. The procurement of Goods, Works and Consulting Services 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 of 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:

(a) International Competitive Bidding;
(b) National Competitive Bidding; and
(c) Shopping.

4. 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.

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.

National Competitive Bidding

6. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Borrower and ADB.

Conditions for Award of Contract

7. The Borrower shall not award any Works contracts until (a) the Borrower has updated the resettlement plan in accordance with ADB's Safeguards Policy Statement (2009); and (b) ADB has approved the updated resettlement plan.

Schedule 4

Selection of Consulting Services

8. 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.

9. The Borrower shall recruit the individual consultants for Project management in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

10. (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.

11. 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

12. Contracts procured under international competitive bidding procedures and 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; Financial Matters

Implementation Arrangements

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

Environment

2. The Borrower through the Project Executing Agency shall ensure that the design and construction of physical facilities under the Project comply with: (a) all applicable environmental laws and regulations of the Borrower; and (b) the ADB's Safeguard Policy Statement (2009). In case of discrepancies between the relevant laws and regulations of the Borrower and ADB's Safeguard Policy Statement, then ADB's Safeguard Policy Statement shall prevail. The Borrower through the Project Executing Agency shall further ensure that: (a) the contractors (i) maintain noise and dust within locally acceptable levels during the construction of the campus, and (ii) manage fill, excavated material, and solid waste in a way that does not create a permanent impact; and (b) water supply in the dormitories shall meet national drinking water quality standards.

Land Acquisition and Involuntary Resettlement

3. The Borrower through the Project Executing Agency shall ensure that all land acquisition and resettlement activities under the Project shall be conducted in accordance with: (a) the resettlement plan; (b) the relevant laws and regulations of the Borrower; and (c) ADB's Safeguard Policy Statement (2009). In case of discrepancies between the relevant laws and regulations of the Borrower with ADB's Safeguard Policy Statement, then the ADB's Safeguard Policy Statement shall prevail.

4. The Borrower through the Project Executing Agency shall: (a) disclose the updated resettlement plan to the affected people and implement the approved resettlement plan to the satisfaction of ADB, including provision of adequate counterpart funding to cover the actual costs; and (b) ensure that all people affected by the Project are compensated, resettled, and rehabilitated in accordance with the requirements of the approved resettlement plan prior to any physical or economic displacement taking place.

5. Prior to the commencement of any resettlement activities, the Borrower through the Project Executing Agency shall sign a contract with a qualified institution acceptable to ADB to conduct independent external monitoring and periodic reporting of resettlement.

Schedule 5

Commencement of Works

6. The Borrower through the Project Executing Agency shall not commence Works activities until: (a) the updated resettlement plan has been fully implemented, which shall be verified by a report prepared by the independent monitoring agency; and (b) the implementation report prepared by the independent monitoring agency has been approved by ADB.

Gender Action Plan

7. The Borrower through the Project Executing Agency shall ensure that the Gender Action Plan is fully implemented and that all Project activities are designed and implemented in accordance with ADB's Policy on Gender and Development (1998) including, but not limited to: (a) development and implementation of equity strategies to increase female student enrollment in the university; (b) an allocation of 40% of dormitory accommodation for female students; (c) a quota of 20% females in senior management, academic staff and university council positions; (d) a quota of 30% female participation in capacity building programs for senior managers, technical and administrative staff; (e) gender balance in industry placement programs in USTH to increase female employment and participation in further studies in science and technology; (f) gender inclusive design of physical facilities; (g) the inclusion of relevant provisions in the Works contracts to ensure that the recruitment of local labor shall be conducted on the basis of equal opportunities and equal pay for women and men and that 40% of unskilled laborers are female; and (h) the disaggregation of all monitoring and evaluation data by sex and ethnicity.

Counterpart Funds

8. The Borrower shall ensure that: (a) adequate counterpart funds required during Project implementation period are provided on a timely basis; (b) annual budgetary appropriation requests are submitted in a timely manner; and (c) appropriated funds are disbursed promptly when needed for Project implementation purposes.

USTH Governance Framework

9. Within 3 months of the Effective Date, the Borrower shall have issued a regulation, to the satisfaction of ADB, which provides the legal framework for USTH to operate with substantial level of autonomy, including to be governed by its own university council, rector and academic board. The Borrower and the ADB shall conduct a joint review by 31 December 2012 to assess the effectiveness of the regulation. Within 3 months after the conclusion of the review, the Borrower shall amend, as necessary, the regulation to reflect the result and recommendation of the review.

USTH Structure

10. Within 3 months of the Effective Date, the Borrower through the Project Executing Agency shall have established and appointed the members of the university council of USTH. The university council shall have the authorities to: (a) approve a strategic direction; (b) establish an internal organization and administration; (c) manage student intakes; (d) approve a university budget; and (e) select and appoint the members of the

council for the second and subsequent terms. The Borrower shall appoint up to 2 representatives as university council members.

11. Within 3 months of the Effective Date, the Borrower through the Project Executing Agency shall ensure that USTH shall have established and appointed a science and academic council with the responsibilities to: (a) establish and maintain academic standards; (b) approve all academic programs; and (c) award all academic qualifications.

12. Within 9 months of the Effective Date, the Borrower through the Project Executing Agency and USTH shall have approved a written commitment on the objectives and goals to be achieved by USTH over a period of at least 3 years. The Borrower shall ensure that such commitment shall serve as a basis for MOET to oversee USTH's performance and to allocate budget for the university. The Borrower, through the Project Executing Agency, and USTH shall review the relevance and efficacy of the written commitment on an annual basis.

13. The Borrower through the Project Executing Agency shall ensure that the appointment of the second and subsequent Rectors of USTH shall be based upon: (a) a transparent, merit-based, international selection process; and (b) the recommendation of the university council.

Scholarships

14. The Borrower through the Project Executing Agency shall ensure that USTH, through its office of student services, shall establish selection criteria for the scholarships, to the satisfaction of ADB, that ensure students who are female, from ethnic minorities or poor and meet USTH's academic requirements are adequately represented as recipients.

Operational Mechanism

15. By 31 December 2012, the Borrower shall issue a legal instrument, in a manner consistent with the prevailing law of the Borrower, that provides the operational mechanism for USTH to: (a) be autonomous and accountable in all aspects of academic, administrative and financial management; and (b) have adequate public and private funding to allow USTH to operate at international standard .

Master Plan

16. Within 3 months of the Effective Date, the Borrower through the Project Executing Agency shall have provided an amended 1:2000 scale master plan that reflects the new agreed zones for academic, administration and residential areas of the USTH campus, in accordance with the revised planning law, and to be approved by the management board of HHTP.

17. Within 16 months of the Effective Date, the Borrower through the Project Executing Agency shall have provided a decision that shall ensure USTH with: (a) legal rights over the land allocated for their campus; and (b) the right to commence construction of the campus in accordance with the agreed construction timeline.

Schedule 5

Governance and Anticorruption

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

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

20. The Borrower shall ensure that the Project Executing Agency publicly discloses on its website information related to (a) the intended and actual utilization of Loan proceeds; and (b) award of procurement contracts, such as (i) the list of participating bidders for each contract, (ii) name of the winning bidder, (iii) basic details on bidding procedures adopted, (iv) amount of the contract awarded, and (v) list of Goods and/or services purchased.