GOVERNMENT AGREEMENT
BETWEEN
THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM
AND
THE GOVERNMENT OF DENMARK
ON
DEVELOPMENT COOPERATION
REGARDING
BUSINESS SECTOR PROGRAMME PHASING-OUT SUPPORT 2011-2013

WHERAS the Government of the Socialist Republic of Vietnam (hereinafter referred to as 'GoV') has requested the support of the Government of Denmark (hereafter referred to as "GoDK") to contribute towards the funding of the Business Sector Programme Phasing-out Support 2011-2013 (hereinafter referred to as the 'Programme');

WHEREAS GoDK has agreed to support the implementation of the Programme as defined in the Programme Support Document with up to an amount of DKK 123 million on a grant basis (hereafter referred to as "the Grant"), as a financial and technical assistance to the Central Institute of Economic Management (CIEM) and the Ministry of Labour, Invalids and Social Affairs (MoLISA) (hereafter referred to as the Implementing Agencies), who will implement the Programme;

WHEREAS the general provision of this agreement is set forth in the agreement between Denmark and the Socialist Republic of Vietnam named General Terms and Procedures of Development Cooperation dated 25th August 1993;

WHEREAS the GoV and GoDK have agreed that the Ministry of Foreign Affairs of Denmark will sign separate subsidiary administrative agreements with each of the implementing partners under this agreement. The administrative agreements will define common procedures for consultation and decision-making, disbursement mechanisms,

financial management, monitoring, reporting and audit, review, evaluation, and exchange of information and cooperation between the individual implementing partner and the Danish Ministry of Foreign Affairs;

WHEREAS commitment to international law and conflict prevention, respect for human rights, democratic principles, including free and fair elections, the rule of law, independence of the judiciary, free, transparent and democratic processes, accountability and the fight against corruption, sound macro-economic policies and the commitment to poverty reduction govern the policies of GoV and GoDK, and which are prerequisites for this agreement, and hence constitutes essential elements of this agreement;

WHEREAS the GoV and GoDK shall abide by the local laws and by applicable international instruments, including the UN Convention on the Rights of the Child and International Labour organization Convention;

WHEREAS GoV and GoDK is committed to the principles of harmonisation and to strive for the highest degree of alignment with the budgetary and accountability system of the implementing partners and the legislation of the GoV so as to enhance effective implementation, to reduce the administrative burden, to minimise transaction costs and increase transparency and accountability of the support provided;

NOW THEREFORE GoV and GoDK have decided as follows:

Article 1

Definitions

For the purpose of this Agreement, unless otherwise stated, the terms listed below mean the following:

a) "Parties" in the case of the Government of Denmark/GoDK refers to the Ministry of Foreign Affairs, Embassy of Denmark in Vietnam, and in the case of the Government of the Socialist Republic of Vietnam/GoV refers to the Ministry of Planning and Investment or for both parties any other authority empowered to perform the functions exercised by said authorities.'

b) The Central Institute of Economic Management (CIEM) is the programme focal point and will ensure overall coordination of activities and compile programme-level reports.

c) "Joint decision making arrangement" refers to the overall management of the programme, which is the meetings and exchange of letters between the parties as described in Article 3.

d) "The Documentation" refers to the Programme Support Document which, by signature, has been approved by the Ministry of Planning and Investment and the Embassy of Denmark on 24/12/2010 and is attached as Annex 1 to this Agreement, hence constituting an integral part hereof. The Documentation will be reviewed in connection with joint programme reviews. Changes to the Documentation are subject to the approval by the joint decision making arrangement. Development objectives described in the Documentation and the total amount of the Danish contribution cannot be changed.

e) "Programme period" means the 3-year period of programme implementation, i.e. 1 January 2011 to 31 December 2013.

f) "National Programme" refers to the National Programme on Occupational Safety and Health-Period 2011-2015.

Article 2

Objectives of the programme

a) The development objective of the Programme is "strengthening the competitiveness of Vietnamese growth and export-oriented enterprises and creating decent jobs", as stated in the Documentation.

b) The immediate objectives of the Programme are:

Component 1) "Increased competitiveness of non-public Vietnamese businesses in export-oriented sectors in target provinces through better access to relevant business services and exposure to innovative business models".

Component 2) "Improved working conditions, contributing to the sustainable development of the nation, through reducing pollution of the work environment, preventing occupational accidents and diseases and taking care of workers' health".

Component 3) "Research and analytical capacity for guiding economic policy-making in Vietnam further improved".

as stated in the Documentation.

GoDK will base the actual financial support on progress attained compared to planned progress described in the Documentation. For component 1 and 3, progress will be measured against commonly agreed indicators and monitoring systems described in the Documentation. GoDK will finalize the draft Programme Monitoring Framework (Annex 2, Programme Document) in close collaboration with the Central Institute of Economic Management within the first 9 months of 2011. For component 2, progress will be measured through the implementing partners' monitoring framework which has been being developed with GoDK's technical assistance.

The immediate objectives can only be adjusted to changes in the Programme context by decision of the joint decision making arrangement described, followed by mutual written agreement between the parties. Such written agreement shall become addendum to this agreement.

Article 3

Management and Execution

Since the programme budget does not include unallocated funds, and no re-allocation of resources among components is envisaged during the three-year phasing-out period, there will be no overall programme steering committee. Each component of the BSPS phasing-out support will be managed and coordinated on its own.

The Central Institute of Economic Management (CIEM) is the focal point of the entire programme. In addition, it is also the coordinating agency of Component 1 and 3. Further details are presented in tables below.

Component 1

Coordinating agency	Central Institute for Economic Management
Implementing agency	Global Competitiveness Facility
Joint decision making arrangement	Component Steering Committee (CSC) Meeting/Exchange of letters. CSC is comprised of one representative from CIEM and one from the Embassy of Denmark.
Modality	Project

Component 2

Coordinating and implementing agency	Ministry of Labour, War Invalids and Social Affairs
Joint decision making arrangement	The overall oversight of the Component 2 rests with the National Steering Committee of the National Programme chaired by the Minister of Labour, War Invalids and Social Affairs. GoDK will be participating as an observer in the National Steering Committee.
Modality	Sector Budget Support

Component 3

Coordinating agency	Central Institute of Economic Management
Implementing agency	Central Institute of Economic Management Institute of Labour Studies and Social Affairs General Statistics Office
Joint decision making arrangement	Component Steering Committee Meeting/Exchange of letters. CSC is comprised of one representative from CIEM and one from the Embassy of Denmark.
Modality	Project

Article 4

Obligations of Government of Vietnam

Under this Agreement, the Government of the Socialist Republic of Vietnam shall:

a) Promptly inform GoDK of any condition which interfere or threaten to interfere with the successful implementation of the Programme incl. conditions which may interfere with the successful implementation of the National Programme (Component 2).

b) Within a reasonable time advice on all reports, recommendations and other matters properly referred for advice by GoDK, in order not to delay or disrupt the execution of the services or the works of the Programme.

c) Ensure that all relevant provisions in the General Terms and Procedures of Development Cooperation dated 25th August 1993 regarding the GoDK execution of activities are honoured.

d) Investigate matters, if misuse of funds, fraud or corruption within the programme is discovered. The appropriate authorities i.e. the Government Inspectorate and the Inspectorates of MoLISA and the Ministry of Planning and Investment of Vietnam are expected to participate in this endeavour. Where programme funds have been lost in such a manner as described above, the Parties will cooperate in order to have the implementing agency repay such funds to the project, in order to ensure that planned activities will not be disrupted.

e) Agree that a prerequisite for GoDK's support to the National Programme is that the GoV will make contribution to the National Programme 2011-2015 higher than contribution in the National Programme 2006-2010, and should at least match the contribution of GoDK.

f) Allocate sufficient funds from the government budget and the voluntary provincial government-owned contribution to the National Programme. GoV budgets comprise both capital and recurrent expenditures. The other funding sources for the National Programme are international support and contributions in-kind by the enterprises. There will be a balanced focus between supporting physical implementation and capacity building and between support directed at the provincial and national levels.

g) Ensure that the account for the National Programme is kept in accordance with Vietnam's accounting system, the State Budget Law (2002) and the relevant Vietnamese government regulations and guidelines.

h) Maintain a financial management system according to the current state budget management system to properly reflect the fund allocation, transactions, resources, expenditures and assets of the National Programme and ensure that the implementing agencies are able to produce timely, relevant and reliable financial information for planning, implementing and monitoring the progress of the National Programme against its objectives.

i) Provide the adequate financial and human resources at national and provincial levels i.e. skilled staff and salary in the Government implementing agencies throughout the programme period.

j) Provide adequate financial capital and general operational costs. Ensure funds for the payment of all other expenses required for the establishment and operation of the National Programme, which are not mentioned as items to be provided by the GoDK.

k) Affirm that the resources provided by GoDK for the National Programme will only be used to cover expenditures included in the state budget as approved by the

National Assembly of Vietnam and only for the National Programme, and not any other National Programmes or other government programmes.

l) Ensure the tax exemption of expatriate personnel and their family members under Component 1 follows the Regulation on expatriate personnel for ODA programmes and projects in Vietnam which is Decision No. 119/2009/QD-Ttg dated 1/10/2009 of the Prime Minister of Vietnam and other documents on amendment, addition, or replacement of this Decision.

m) Facilitate the issue of multiple entry and exit visas, work permits and residence permits for the advisors and their families regardless of nationality as well as provide assistance in the clearance through customs of their personal belongings that they are allowed to import according to the Regulation mentioned under item (l) above.

n) Equipment, materials, supplies and spare parts to be purchased for the programme by the GoDK, if any, will be exempted from any duties, VAT, taxes, and public fees and charges other than user's fee and charges, etc. in accordance with Vietnamese regulations. The refunded VAT and other charges from these equipment and materials will be transferred to the programme funds for the following fiscal year.

o) Ensure timely settlement of any other related formalities that might keep the programme behind schedule.

p) Maintain all programme accounting materials within 5 years after the programme's end for possible use of the National Audit Office of Denmark.

Article 5

Obligations of GoDK

a) GoDK will provide the following financial means for the implementation of the programme:

Name of Component	Implementing Agency	Budget (DKK)
Component 1	Global Competiveness Facility	**63,000,000**
	- Project implementation	52,500,000
	- Component management including audit	8,400,000
	- Contingencies	2,100,000
Component 2 (including audit)	Ministry of Labour, Invalids and Social Affairs	**50,000,000**
Component 3	Central Institute of Economic Management Institute of Labour Studies and Social Affairs General Statistics Office	**9,000,000**
	- Project implementation	2,971,000
	- Research cooperation partner contracted by GoDK	5,067,000
	- Management cost	528,000
	- Contingency	434,000
Programme management (Mid-term review, technical missions, progress and completion reporting as agreed, etc.)		**1,000,000**
Unallocated		-
Total		**123,000,000**

All commitments of GoDK are made in Danish Kroner (DKK).

b) GoDK will strive to ensure the predictability of the Grant by informing the GoV not later than the end of the third quarter of the calendar year, prior to the finalisation of next year's national budget about the support anticipated for the coming year under this Agreement.

c) Interest accrued from the remittances shall be returned by the implementing agency to GoDK on an annual basis with the exception of Component 2.

d) The Danish support for the Programme will be passed on to the implementing agencies as grant without any repayment conditions to the GoV.

e) GoDK will recruit and contract an international technical adviser for Component 1. The Adviser's salary, travel expenses and personal costs will be paid by the GoDK from the component management budget line.

f) GoDK will cooperate and communicate fully and in a timely manner with the GoV on all matters relevant to the implementation of the Programme as defined in the Programme Document and this Agreement.

g) GoDK will inform any changes regarding the years of commitments or the schedule of disbursements for discussion between the two Parties before such adjustments are made.

h) GoDK will not bear any responsibility and/or liability to any third party with regard to implementation of the Programme

Article 6

Obligations of both parties

Both parties will:

a) Strengthen aid effectiveness by endeavour to co-ordinate efforts under this agreement with other development partners, be they states, international organisations or non-governmental organisations.

b) Use best endeavours to optimise the use of programme resources in line with the programme's objectives.

Article 7

Information, monitoring and evaluation

a) The Parties shall collaborate fully to ensure that the purposes of this Agreement be accomplished. To this end, the Parties shall exchange views with regard to matters relating to the Programme and provide each other with all available data, documentation and information; shall provide appropriate mutual assistance required in the discharging of the Parties' duties; and provide all necessary support to facilitate the due implementation of the programme.

b) On a regular basis (at least every year), the GoDK will review the performance of the Programme in the previous period including financial management review. GoDK reserves the right to vary the scale of its support based on the quantitative and qualitative progress in the implementation of the programme which is assessed through bi-annual and annual progress reports and the programme monitoring framework (Annex 2, Programme Document). The progress in implementation of the National Programme will be measured based

on the performance assessment framework (Annex 7, Programme Document) which will be finalized within the first 6 months of 2011.

c) One mid-term review after approximately one-and-a-half years will be jointly conducted by GoDK and its partners. The review will focus on achievements and necessary further steps to guarantee a successful completion of the BSPS in 2013 and to ensure sustainability of component activities beyond 2013 as described in the programme document.

d) One joint review mission of component 2 will be conducted by GoV (MoLISA) and GoDK at the end of 2012 to check the physical and financial progress of the implementation of the National Programme, both overall and at the level of specific outputs and locations, in order to provide recommendations for improvements in programme implementation. The review will be undertaken jointly with relevant Ministries and may include other donors if relevant.

e) Annual independent audits will be carried out for Component 1 and 3. Support under Component 2 is subject to audit by the State Audit of Vietnam (SAV). MOLISA will work with SAV to get an agreement that financial audits are carried out every year. If SAV does not have capacity to conduct financial audits on an annual basis as expected, the Embassy will hire an independent auditor in close collaboration with SAV using the National Programme's funds. As a minimum, SAV has to initiate a mid-term audit by July 2012. The programme is also open for possibility for having SAV undertake performance audit if such an agreement can be reached with SAV.

f) GoDK shall have the right to carry out any technical or financial mission that is considered necessary to monitor the implementation of the programme. To facilitate the work of the person or persons instructed to carry out such monitoring missions, the GoV shall provide these persons with all relevant assistance, information, and documentation.

g) Representatives of the Auditor General of Denmark shall have the right to:

(i) Carry out any audit or inspection considering necessary as regards the use of the Danish funds in question, on the basis of all relevant documentation.

(ii) Inspect accounts and records of suppliers and contractors relating to the performance of the contract, and to perform a complete audit.

In relation to Component 2, however, provided that the Auditor General of Denmark is satisfied with annual audit reports to be made by either SAV or an independent external auditor, the audit or inspection as mentioned in points (i) and (ii) shall not be required.

h) Evaluation of the Programme, preferably undertaken jointly by GoDK and the GoV may be carried out at the request of either Party.

i) After the termination of the Programme, GoDK reserves the right to carry out evaluation in accordance with this article.

Article 8

Transfer of ownership

a) The implementing partners responsible for the implementation of programme components shall maintain updated inventories of all equipment financed by earmarked support from GoDK, e.g. vehicles, computers, furniture and tools.

b) Equipment, material, supplies and facilities purchased by Denmark, which are used during the implementation of the programme, e.g. vehicles, computers, furniture and tools, remain the property of Denmark, until such time as the Parties may agree otherwise.

Transfer of ownership of the above-mentioned assets to the implementing partners may take place during the programme period. Before programme termination, the Parties will assess and agree on final transfer of such assets, which can be justified on the basis of a final request from the implementing partners. Any remaining assets will be disposed of by Denmark.

c) The above does not apply to Component 2.

Article 9

Corruption

No offer, payment, consideration or benefit of any kind, which could be regarded as an illegal or corrupt practice, shall be made, promised, sought or accepted - neither directly nor indirectly - as an inducement or reward in relation to activities funded under this agreement, incl. tendering, award, or execution of contracts. Any such practise will be grounds for the immediate cancellation of this agreement or parts of it, and for such additional action, civil and/or criminal, as may be appropriate. At the discretion of the GoDK, a further consequence of any such practise can be the definite exclusion from any projects funded by the GoDK.

Article 10

Child labour

The authority, organisation and/or consultant shall abide by the local laws and by applicable international instruments, including the UN Convention on the Rights of the Child and International Labour Organisation conventions.

The authority, organisation and/or consultant shall ensure that no one under 14 years of age or the age of the end of compulsory schooling in that area, whichever

is lower, is engaged by the authority, organisation and/or consultant or anyone working or acting under the authority of the authority, organisation and/or consultant.

Article 11

Suspension

In case of non-compliance with the provisions of this Agreement and /or violation of the essential elements mentioned in this Agreement, GoDK reserves the right to suspend with immediate effect further disbursements to the implementing partners under this Agreement. Non-compliance includes inter alia:

- The Programme or a component develop unfavourably in relation to the development objective and immediate objectives mentioned in Article 2,
- Substantial deviations from agreed plans or budget occur,
- Financial management of the activities has not been satisfactory
- Resources to be allocated by the GoV are not provided as agreed,

If serious irregularity in the Programme or suspicion thereof has been ascertained, either party may suspend programme implementation, wholly or in part, until the suspending party decides to resume the implementation.

Article 12

Settlement of disputes

If any dispute arises between the Parties as to the interpretation, application or implementation of this agreement, they will consult each other in order to reach an amicable solution.

Article 13

Entry into force, duration and termination

This Agreement shall enter into force on 21/12/2010

The cooperation between the Parties under this Agreement will have the duration of 3 years. The duration of the cooperation may be extended by mutual agreement of the Parties and within the agreed budget.

Notwithstanding the previous clause each Party may terminate the Agreement upon 6 months written notice.

In witness hereof the Parties hereto have caused this Agreement to be signed in 02 originals in the English language in Hanoi, Vietnam on this day of 21/12/2010.

For the Government of Vietnam

Cao Viet Sinh
Vice Minister
Ministry of Planning and Investment

For the Government of Denmark

John Nielsen
Ambassador of Denmark