LOAN NUMBER 2703 - VIE (SF)

# LOAN AGREEMENT
(Special Operations)

(Second Northern Greater Mekong Subregion Transport Network Improvement Project
- Viet Nam Component)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 23 FEBRUARY 2011

LAS: VIE 41444

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

LOAN AGREEMENT dated 23 FEBRUARY 2011 between SOCIALIST REPUBLIC OF VIET NAM (the "Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) The Borrower and the Lao People's Democratic Republic (collectively, the "Project countries") have agreed, as part of the Greater Mekong Subregion (GMS) regional transport sector strategy, to undertake a subregional investment project to maximize the economic potential of the GMS northeastern corridor within and across their borders (the "GMS Project"). The GMS Project, described in Schedule 1 to this Loan Agreement, includes the portion to be undertaken by the Borrower (the "Project");

(B) the Borrower has applied to ADB for a loan for parts of the Project to be undertaken in Viet Nam; 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 (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. 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) "Affected Persons" or "AP" means any person, household or community whose living environment and/or livelihood activities have been or will be adversely affected by the resettlement activities undertaken or proposed to be undertaken under the Project;

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

(c) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in Part B of Schedule 1 to this Loan Agreement, but excluding any services provided in relation to Goods and Works;

(d) "EARF" means the environmental assessment and review framework agreed between the Borrower and ADB;

(e) "EMP" means the environmental management plan included in the IEE, prepared for detailing the mitigation measures and monitoring activities to avoid or mitigate negative environmental impacts arising from the Project;

(f) "GAP" means the Gender Action Plan for the Project;

(g) "GMS Project Area" means the Borrower's Thanh Hoa Province and the Houaphanh Province in Lao PDR;

(h) "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;

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

(j) "IEE" means initial environmental examination approved by the Borrower on 16 September 2010 and which has been submitted to ADB;

(k) "km" means kilometers;

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

(m) "MOT" means the Borrower's Ministry of Transport and any successor thereto;

(n) "O&M" means operations and maintenance;

(o) "PAM" means the project administration manual for the Project dated 21 October 2010 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 which includes, among other things: (i) implementation arrangements for the operations of the Project; (ii) procurement procedures (including the Procurement Plan); (iii) reporting requirements and financial management procedures, including audit procedures as set forth in Section 4.02 of this Loan Agreement; (iv) the Project performance indicators as set forth in Schedule 5 to this Loan Agreement; and (v) specific Project documents including the RARM;

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

(q) "Procurement Plan" means the procurement plan for the Project dated 21 October 2010 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;

(r) "Project Executing Agency" or "EA" for the purposes of, and within the meaning of, the Loan Regulations means MOT which is responsible for the carrying out of the Project;

(s) "Project facilities" means the roads, and related structures to be upgraded, rehabilitated or constructed and equipment provided under the Project;

(t) "RARM" means risk assessment and risk management plan, which was prepared during the Project processing and included in the Report and Recommendation of the President of ADB for the Project;

(u) "REMF" means the resettlement and ethnic minorities framework dated 14 October 2010;

(v) "Resettlement Plan" or "RP" means the resettlement plan approved by the Borrower and agreed with ADB following completion of the detailed Works design;

(w) "SEMP" means site-specific environmental management action plans;

(x) "SPS" means ADB's Safeguard Policy Statement dated 2009; and

(y) "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 forty-seven million four hundred fifty thousand Special Drawing Rights (SDR47,450,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 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 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 May and 15 November 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 31 December 2016 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 six (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 separate opinions 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

## Effectiveness

Section 5.01. A date ninety (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 VI

## Miscellaneous

Section 6.01. The Governor of the State Bank of Viet Nam of the Borrower 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 Vietnam
47-49 Ly Thai To
Hanoi, Vietnam

Facsimile Numbers:

+84 4 3825-0612
+84 4 3825-8385.

For ADB

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

Facsimile Numbers:

+63 2 636-2444
+63 2 636-2015.

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 GIAU
Authorized Representative

ASIAN DEVELOPMENT BANK

By _____
AYUMI KONISHI
Country Director
Viet Nam Resident Mission

## SCHEDULE 1

## Description of the GMS Project

1. The objectives of the GMS Project are to improve access to social services and markets and thus lead to improved livelihoods and poverty reduction and to enhance the efficiency of the road network and transport in the GMS Project Area by improving links between the Kingdom of Thailand, Lao PDR, and the Borrower.

2. The GMS Project consists of the Viet Nam Component and the Lao PDR Component, which has been agreed separately between ADB and the Lao PDR. The Viet Nam Component will link with the Lao PDR Component at their borders. The Viet Nam Component comprises the following:

**Part A: VIET NAM Component**

(a) Provision of Works for about 200 km on Route 217 including:

(i) improving road alignment and widening the road formation from markers km107.2 to km195.4 (about 88 km),
(ii) constructing new bypasses in Cam Thuy (east and west) (about 3 km),
(iii) pavement repair and resurfacing from km0 to km104.9,
(iv) stabilizing slopes and erosion protection,
(v) repairing and building new road structures including bridges and culverts,
(vi) improving traffic safety measures; and

(b) Provision of an HIV/AIDS awareness and prevention of human trafficking program in the construction camps, towns, and rural areas of the Viet Nam part of the GMS Project Area.

**Part B: Consulting Services**

Provision of consulting services in pre-construction activities in the preparation of detailed design, tender document preparation, bid evaluation, Project implementation, Project management and construction supervision, and for HIV/AIDS awareness and prevention of human trafficking.

3. The Project is expected to be completed by 30 June 2016.

## SCHEDULE 2

### Amortization Schedule

### (Second Northern Greater Mekong Subregion Transport Network Improvement Project - Viet Nam Component)

| Date Payment Due | Payment of Principal (expressed in Special Drawing Rights)* |
|---|---|
| 15 May 2019 | 988,542 |
| 15 November 2019 | 988,542 |
| 15 May 2020 | 988,542 |
| 15 November 2020 | 988,542 |
| 15 May 2021 | 988,542 |
| 15 November 2021 | 988,542 |
| 15 May 2022 | 988,542 |
| 15 November 2022 | 988,542 |
| 15 May 2023 | 988,542 |
| 15 November 2023 | 988,542 |
| 15 May 2024 | 988,542 |
| 15 November 2024 | 988,542 |
| 15 May 2025 | 988,542 |
| 15 November 2025 | 988,542 |
| 15 May 2026 | 988,542 |
| 15 November 2026 | 988,542 |
| 15 May 2027 | 988,542 |
| 15 November 2027 | 988,542 |
| 15 May 2028 | 988,542 |
| 15 November 2028 | 988,542 |
| 15 May 2029 | 988,542 |
| 15 November 2029 | 988,542 |
| 15 May 2030 | 988,542 |
| 15 November 2030 | 988,542 |
| 15 May 2031 | 988,542 |
| 15 November 2031 | 988,542 |
| 15 May 2032 | 988,542 |
| 15 November 2032 | 988,542 |
| 15 May 2033 | 988,542 |
| 15 November 2033 | 988,542 |
| 15 May 2034 | 988,542 |
| 15 November 2034 | 988,542 |
| 15 May 2035 | 988,542 |
| 15 November 2035 | 988,542 |
| 15 May 2036 | 988,542 |
| 15 November 2036 | 988,542 |
| 15 May 2037 | 988,542 |
| 15 November 2037 | 988,542 |
| 15 May 2038 | 988,542 |

| | |
|---|---|
| 15 November 2038 | 988,542 |
| 15 May 2039 | 988,542 |
| 15 November 2039 | 988,542 |
| 15 May 2040 | 988,542 |
| 15 November 2040 | 988,542 |
| 15 May 2041 | 988,542 |
| 15 November 2041 | 988,542 |
| 15 May 2042 | 988,542 |
| 15 November 2042 | 988,526 |
| **Total** | **47,450,000** |

* 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 (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 3 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.

Imprest Account and Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at a commercial bank acceptable to ADB. The imprest account 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 account shall only be used for the purposes of the Project. The currency of the imprest account shall be the Dollar. The ceiling for the imprest account shall not exceed the lower of (i) the estimated expenditure to be financed from the imprest account for the first six (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 $100,000.

Attachment to Schedule 3

**TABLE**

| **ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS**<br><br>**(Second Northern Greater Mekong Subregion Transport Network Improvement Project - Viet Nam Component)** | | | |
|---|---|---|---|
| **CATEGORY** | | | **ADB FINANCING** |
| Number<br><br>– | Item | Total Amount Allocated for ADB Financing (SDR)<br><br>Category | Percentage and Basis for Withdrawal from the Loan Account |
| 1 | Works | 33,025,000 | 90% of total expenditure claimed |
| 2 | Consulting Services | 4,176,000 | 100% of total expenditure claimed* |
| 3 | Interest Charge | 1,202,000 | 100% of amounts due |
| 4 | Unallocated | 9,047,000 | |
| | **Total** | **47,450,000** | |

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

## SCHEDULE 4

## Procurement of Goods, Works and Consulting Services

### A. General

1. All Goods and Works, and Consulting Services, to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.

2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

### B. Procurement for Goods and Works

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

| |
|---|
| International Competitive Bidding |
| National Competitive Bidding |
| Shopping |
| Direct Contracting |

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.

### C. Selection of Consulting Services

7. 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.

8. The Borrower shall apply the following method for selecting and engaging the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan: Consultants' Qualifications Selection for the external audit.

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

## D. 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.

## E. 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.

## F. State-owned enterprises

13. The Borrower's state-owned enterprises shall only be eligible to bid for contracts if they are legally and financially autonomous, independently managed, operating on the basis of commercial practices under the Borrower's Enterprise Law, and are neither a dependent agency of the contracting agency nor are they in any way associated with the military forces or security operations, except as otherwise agreed with ADB.

## G. Conditions for Works

14. The Borrower shall ensure that no Works are allowed to proceed under any Works' contract financed under the Loan until an SEMP for the section of road covered by the proposed Works contract has been approved by ADB.

15. The Borrower shall ensure that notices of possession of specific property sections relating to the Project are not issued to the relevant Works contractors until the Borrower's Chairman of relevant District Peoples' Committee has officially confirmed in writing that: (a) payment has been fully disbursed to the Affected Persons and rehabilitation measures are in place for that specific section as per the RP; (b) already-compensated Affected Persons have cleared the specific sections in a timely manner; and (c) the specific section is free from any encumbrances.

## 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 shall ensure that all Project activities shall comply with the Borrower's environmental laws and regulations, and ADB's Safeguard Policy Statement (2009) (SPS). Should there be any discrepancy between the Borrower's laws and regulations and ADB's policy, ADB's policy shall prevail.

3. The Borrower shall ensure that: (a) the construction and operation of the Project will be carried out in accordance with the EMP; (b) all bidding documents and civil works contracts include the EMP and require contractors to comply with its provisions; (c) all portions of the Project, regardless of the source of funding, will adopt the provisions of the EMP and will comply with the SPS; (d) the EA (i) adequately supervises the Works carried out by contractors to ensure compliance with the monitoring and mitigation measures set forth in the EMP, (ii) ensures that consultants engaged for construction supervision closely monitor the contractors' compliance with the EMP, and (iii) the construction contractors develop a SEMP based on the EMP; and (e) semiannual reports on implementation of the EMP are submitted to ADB on a timely basis.

4. In the event that the Borrower and ADB agree during implementation to include improvement of access roads under the Project, the Borrower shall ensure that; (a) the EA conducts an environmental assessment of the rural access roads proposed to be financed under the Project based on the EARF and SPS; and (b) the rural access roads (i) used for logging and/or mining, or (ii) that pass through ecologically sensitive areas such as national biodiversity conservation areas and similarly protected sites, shall not be selected and financed under the Project.

5. In the event that there are additional components or major changes in the Project such as the location and/or design, that are not within the scope of the IEE and are expected to result in adverse environmental impacts, a new or supplementary environmental assessment report shall be prepared in compliance with the EARF and SPS and submitted to ADB for clearance prior to the implementation of the additional component or changes.

Resettlement

6. The Borrower shall ensure that: (a) the draft RP agreed with ADB shall be finalized following completion of the detailed design and submitted to ADB for review and concurrence; (b) no land acquisition or site clearing shall be done until after the RP has been

agreed with ADB and the RP provisions covering resettlement have been completed to the satisfaction of ADB; and (c) any involuntary resettlement is carried out in accordance with the RP, the SPS, and the Borrower's laws and regulations on involuntary resettlement. In case of any difference between the Borrower's laws and regulations and the SPS, the SPS shall prevail. The Borrower shall engage an independent external consultant before the detailed measurement survey is conducted, to monitor resettlement activities and land acquisition and to report on a semi-annual basis to the Borrower and ADB.

7. If the Borrower and ADB agree during Project implementation to include the improvement of rural roads in the Project which requires additional land acquisition or resettlement, an RP shall be prepared based on the REMF. In case of discrepancies between the Borrower's laws, regulations, and procedures, and the SPS, the SPS shall prevail.

Indigenous Peoples

8. The Borrower shall ensure that: (a) the Project is implemented in accordance with the applicable laws and regulations of the Borrower and the SPS; (b) to the extent that any ethnic minorities are likely to be affected under the Project, the measures set forth in the REMF shall apply. In case of discrepancies between the Borrower's laws, regulations, and procedures, and ADB's requirements, or to the extent there is a discrepancy with the SPS, then the SPS shall prevail.

Labor Standards

9. The Borrower shall ensure that; (a) the Works' contractors comply with all applicable laws related to gender, labor, and workers' safety, including ensuring that women are given pay for work that is equal to that paid to men; and (b) Works contracts (i) include appropriate clauses requiring contractors to allow their workers to attend planned campaigns on HIV/AIDS and human trafficking prevention during construction and to maintain adequate sanitation and working conditions, and (ii) include clauses for termination by the Borrower in case of any breach of the stated provisions by the contractors.

10. The Borrower shall ensure that: (a) the HIV/AIDS and human trafficking program agreed with ADB (the program) is implemented in the construction camps, towns, and rural areas of the Project Area, and shall monitor the operation and effectiveness of the program; and (b) training is provided to strengthen the institutional capacity of the Borrower's Provincial People's Committee and other agencies involved in planning and implementation of the program.

Gender and Development

11. The Borrower shall, and shall ensure that the EA: (a) undertakes the gender development measures outlined in the GAP and the Summary Poverty Reduction and Social Strategy to promote the participation of women in Project activities; (b) monitors that district resettlement committees established according to the RP include representatives from Affected Persons, including, to the extent possible, female representatives from households affected under the Project, including women from severely affected households, households headed by women, and from ethnic communities' households.

12. The Borrower shall, and shall ensure that the EA: (a) conducts gender sensitization training on gender and resettlement for its relevant staff; and (b) ensures that women leaders and youth from affected households of all major ethnic communities in the Viet Nam part of the GMS Project Area are included in the HIV/AIDS and human trafficking awareness program.

Counterpart Support

13. The Borrower shall ensure that: (a) the EA makes timely submission of annual budgetary appropriation requests to the Borrower's Ministry of Planning and Investment and MOF; and (b) MOF ensures prompt and adequate disbursement of appropriated funds during each year of Project implementation.

Governance and Anticorruption

14. The Borrower shall, and shall cause the EA to: (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; (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation; (c) institute, maintain, and comply with internal procedures and controls following international best practice standards for the purpose of preventing corruption, money laundering activities, and/or the financing of terrorism; and (d) ensure that the Project auditors have the right to conduct random or spot audits for contract implementation activities under the Project, with the cost of this auditing to be covered by the Project.

15. The Borrower shall, and shall cause the EA to 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 EA and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

16. Within six (6) months of the Effective Date, the EA shall create or modify a Project website to disclose information about various matters on the Project. The website will include or link to information on Project procurement including the list of participating bidders, name of each winning bidder, basic details on bidding procedures adopted, the value of each contract awarded, and the list and value of goods/services procured and the intended utilization of Loan proceeds under each contract being awarded. The website shall also include general Project information, Project progress, and contact details for the EA's Project Management Unit 1 (PMU1) counterpart staff in Vietnamese and English languages, and shall link to ADB's Integrity Unit website at http://www.adb.org/Integrity/complaint.asp for reporting to ADB any grievances or allegations of corrupt practices arising out of the Project and/or Project activities. The Borrower shall cause the EA to ensure that all Project staff are fully aware of ADB's procedures, including, but not limited to, procedures for implementation, procurement, use of consultants, disbursements, reporting, monitoring, and prevention of fraud and corruption.

Schedule 5

Audit

17. The Borrower shall ensure that all representation letters from the Project auditor are submitted to ADB and any outstanding issues attended to within one (1) month of receipt by the EA, unless otherwise agreed with ADB.

Sustainability

18. The Borrower shall ensure that: (a) the EA is responsible for the O&M of the Project facilities through proper technical supervision and adequate allocation of funds; and (b) the Project roads are maintained to a standard consistent with the standard adopted for the Borrower's national road network and, subject to the successful outcome of the current pilot projects using performance based maintenance contracts, such contracts will be adopted for the Project roads.

19. The Borrower shall ensure that the EA develops a program agreed with ADB, to control the overloading of vehicles along the Borrower's national roads under the Project by the time Works have been completed, including maintaining a database on the incidence of vehicle overloading for a minimum of three (3) years following Project completion, and such information is posted on the Project website in a timely manner.

Road Safety

20. The Borrower shall ensure that: (a) the Project design includes road safety measures; and (b) such measures are implemented during and after Project implementation and related information is posted on the Project website in a timely manner.

Safeguard Issues

21. Within nine (9) months of the Effective Date, the EA shall: (a) prepare a grievance redress mechanism (GRM), acceptable to ADB, to receive and facilitate resolution of concerns, complaints, and grievances about the Project's performance, including possible corruption, and environmental, social, and other concerns from people affected by the Project; (b) establish a task force at the EA's PMU1 to receive and resolve complaints/grievances or act upon reports from stakeholders on misuse of funds and other irregularities, including grievances caused by resettlement and environmental issues, which will: (i) make public the existence of this grievance redress mechanism through a public awareness campaign; (ii) review and address grievances of stakeholders in relation to the Project, any of the service providers, or any person responsible for carrying out any aspect of the Project; and (iii) proactively and constructively respond to such grievances within the established time protocol, including reviewing the effectiveness of the GRM from time to time and implementing necessary enhancements.

Project Performance Monitoring and Evaluation

22. Before the inception of the Works, the EA and ADB shall agree on a set of indicators to evaluate Project performance in relation to its impacts, outcomes, outputs, and conditions. Within nine (9) months of the Effective Date, the EA shall collect the baseline data, including: (a) economic development and socioeconomic indicators, (b) transport costs

and times, (c) transport charges, (d) accident rates, (e) international and total traffic levels, (f) Affected Persons' incomes, (g) access to social services, (h) jobs created in construction and maintenance, (i) incidence of sexually transmitted diseases, and (j) incidence of human trafficking. The EA shall establish baseline and target values for the indicators. The indicators shall be measured and compared with the baseline at Project inception, completion, and three (3) years after Project completion. Indicators shall be disaggregated by gender and ethnicity. The EA shall submit to ADB a report summarizing the key findings of such monitoring at inception, completion, and three (3) years after physical completion of the Project.