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CREDIT NUMBER 4123-VN

# Development Credit Agreement

(Customs Modernization Project)

between

SOCIALIST REPUBLIC OF VIETNAM

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated March 2, 2006

Public Disclosure Authorized



**CREDIT NUMBER 4123-VN**

**DEVELOPMENT CREDIT AGREEMENT**

AGREEMENT, dated March 2, 2006, between SOCIALIST REPUBLIC OF VIETNAM (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

**ARTICLE I**

**General Conditions; Definitions**

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985 (as amended through May 1, 2004), with the modifications set forth below (the General Conditions), constitute an integral part of this Agreement:

(a) Section 5.08 of the General Conditions is amended to read as follows:

*"Section 5.08. Treatment of Taxes*

Except as otherwise provided in the Development Credit Agreement, the proceeds of the Credit may be withdrawn to pay for taxes levied by, or in the territory of, the Borrower on the goods or services to be financed under the Credit, or on their importation, manufacture, procurement or supply. Financing of such taxes is subject to the Association's policy of requiring economy and efficiency in the use of the proceeds of its credits. To that end, if the Association shall at any time determine that the amount of any taxes levied on or in respect of any item to be financed out of the proceeds of the Credit is excessive or otherwise unreasonable, the Association may, by notice to the Borrower, adjust the percentage for withdrawal set forth or referred to in respect of such item in the Development Credit

Agreement as required to be consistent with such policy of the Association.”

(b) Section 6.03 (c) of the General Conditions is amended by replacing the words “corrupt or fraudulent” with the words “corrupt, fraudulent, collusive or coercive”.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meaning:

(a) “Category” means a category of items set forth in the table in paragraph 1 of Schedule 1 to this Agreement.

(b) “Committee on Fighting against Smuggling, Counterfeiting and Commercial Fraud” means the committee established pursuant to Prime Minister’s Decision 127/2001/QD-Ttg dated August 27, 2001, and referred to in paragraph 1 of Schedule 4 to this Agreement, and any successor thereto.

(c) “Customs Modernization Steering Committee” means the committee established under Decision No. 3219/QD-BTC dated October 10, 2004 of the Borrower’s Ministry of Finance, and referred to in paragraph 1 of Schedule 4 to this Agreement, and any successor thereto.

(d) “Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 of this Agreement.

(e) “GDVC” means the Borrower’s General Department of Vietnam Customs, successor to the Tariff and Indirect Tax Department established pursuant to Order 27/SL dated September 10, 1945 of the Borrower’s Ministry of Interior, and any successor thereto.

(f) “ICT” means information and communication technology.

(g) “MOF” means the Borrower’s Ministry of Finance, and any successor thereto.

(h) “MOT” means the Borrower’s Ministry of Trade, and any successor thereto.

(i) “MPI” means the Borrower’s Ministry of Planning and Investment, and any successor thereto.

(j) "PMU" means the Project Management Unit to be established and maintained by the Borrower in accordance with the provisions of paragraph 2 of Schedule 4 to this Agreement.

(k) "Procurement Plan" means the Borrower's procurement plan dated October 3, 2005, covering the initial 18 month period (or longer) of Project implementation, as the same shall be updated from time to time in accordance with the provisions of Section 3.02 to this Agreement, to cover succeeding eighteen (18) month periods (or longer) of Project implementation.

(l) "Special Account" means the account referred to in Section 2.02(b) of this Agreement.

## **ARTICLE II**

### **The Credit**

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, an amount in various currencies equivalent to forty-five million five hundred thousand Special Drawing Rights (SDR45,500,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the Credit.

(b) The Borrower may, for the purposes of the Project, open and maintain in Dollars a special deposit account in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 5 to this Agreement.

Section 2.03. The Closing Date shall be June 30, 2011 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty (60) days after the date of this Agreement (the accrual date) to the respective dates on which

amounts shall be withdrawn by the Borrower from the Credit Account or canceled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on May 1 and November 1 in each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each May 1 and November 1, commencing May 1, 2016 and ending November 1, 2045. Each installment to and including the installment payable on November 1, 2025 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's per capita gross national product (GNP), as determined by the Association, shall have exceeded for three (3) consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the repayment of installments under paragraph (a) above by:

- (A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and
- (B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six (6) months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided,

however, that there shall be a grace period of a minimum of five (5) years on such repayment of principal.

(c) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(d) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

### **ARTICLE III**

#### **Execution of the Project**

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, shall carry out the Project through MOF and its General Department of Vietnam Customs with due diligence and efficiency and in conformity with appropriate administrative, management, financial and customs practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Borrower and the Association shall otherwise agree, the Borrower shall carry out the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

Section 3.02. (a) Except as the Association shall otherwise agree, procurement of the goods, works and services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Borrower shall update the Procurement Plan in accordance with guidelines acceptable to the Association, and furnish such update to the Association not later than twelve (12) months after the date of the preceding Procurement Plan, for the Association's approval.

Section 3.03. For the purposes of Section 9.06 of the General Conditions and without limitation thereto, the Borrower shall:

(a) prepare, on the basis of guidelines acceptable to the Association, and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, a plan designed to ensure the continued achievement of the objectives of the Project; and

(b) afford the Association a reasonable opportunity to exchange views with the Borrower on said plan.

#### **ARTICLE IV**

##### **Financial Covenants**

Section 4.01. (a) The Borrower shall establish and maintain a financial management system, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association adequate to reflect the operations, resources and expenditures related to the Project.

(b) The Borrower shall:

(i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Association), audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;

(ii) furnish to the Association as soon as available, but in any case not later than six (6) months after the end of each such year (or such other period agreed to by the Association), (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Association), as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and

(iii) furnish to the Association such other information concerning such records and accounts, and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditure, the Borrower shall:



- (i) retain, until at least one (1) year after the Association has received the audit report for, or covering, the fiscal year in which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (ii) enable the Association's representatives to examine such records; and
- (iii) ensure that such statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Association), referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Borrower's progress reporting obligations set out in paragraph 14 of Schedule 4 to this Agreement, the Borrower shall prepare and furnish to the Association a financial monitoring report, in form and substance satisfactory to the Association which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Credit, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and
- (iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Association not later than forty-five (45) days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Association not later than forty-five (45) days after each subsequent calendar quarter, and shall cover such calendar quarter.

## **ARTICLE V**

### **Effective Date; Termination**

Section 5.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) the Borrower has established the PMU and appointed thereto a Project director, a Project coordinator, and specialists in, respectively, procurement, financial management, ICT and Customs/business processes, each in a manner acceptable to the Association, in accordance with the provisions of paragraph 2 of Schedule 4 to this Agreement; and

(b) the Borrower has adopted a financial management manual acceptable to the Association, in accordance with the provisions of paragraph 4 of Schedule 4 to this Agreement.

Section 5.02. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

## ARTICLE VI

### Representative of the Borrower; Addresses

Section 6.01. The Governor or any Deputy Governor of the State Bank of Vietnam is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

State Bank of Vietnam  
49 Ly Thai To  
Hanoi  
Socialist Republic of Vietnam

Cable address:	Telex:	Facsimile:
VIETBANK Hanoi	412248 NHTWVT	(84-4) 8 250 612

For the Association:

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:	Telex:	Facsimile:
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INDEVAS                      248423 (MCI) or                      (1-202) 477 6391  
Washington, D.C.              64145 (MCI)

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Hanoi, Socialist Republic of Vietnam, as of the day and year first above written.

SOCIALIST REPUBLIC OF VIETNAM

By        /s/ Le Duc Thuy

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By        /s/ Rakesh Nangia

Authorized Representative

**SCHEDULE 1**

**Withdrawal of the Proceeds of the Credit**

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	<u>Amount of the Credit Allocated (expressed in SDR equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1) Works	1,520,000	95%
(2) Goods	31,840,000	100% of foreign expenditures, 100% of local expenditures (ex-factory cost) and 90% of expenditures for other items procured locally
(3) Consultants' Services	6,120,000	100%
(4) Costs of roll-out of Customs operations systems	2,470,000	100%
(5) Training	2,770,000	100%
(6) Incremental Operating Costs	780,000	100%
<b>TOTAL</b>	<u>45,500,000</u> =====	

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower;

(b) the term "local expenditures" means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower; and

(c) the term “Incremental Operating Costs” means the reasonable costs of incremental expenditures incurred by GDVC in carrying out the Project (which expenditures would not have been incurred absent the Project), including the costs of office consumables, communication costs, office rental, costs of travel and travel allowances for Project staff, but in all cases excluding salaries and salary supplements for civil servants.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of SDR100,000, may be made in respect of Categories (1), (2), (3) and (6) on account of payments made for expenditures before that date but after June 10, 2005.

4. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures under contracts for: (a) works costing less than \$100,000 equivalent per contract; (b) goods costing less than \$50,000 equivalent per contract; (c) services of individual consultants costing less than \$50,000 equivalent per contract; (d) services of consulting firms costing less than \$100,000 equivalent per contract; (e) workshops, training and study tours; and (f) incremental operating costs; all under such terms and conditions as the Association shall specify by notice to the Borrower.

## SCHEDULE 2

### Description of the Project

The objective of the Project is to assist the Borrower to improve the effectiveness, efficiency, accountability and transparency of the Customs administration in order to enhance its capacity for trade facilitation, revenue collection, production of foreign trade statistics, community protection and national security, and to facilitate Vietnam's international economic integration.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

#### Part A: Customs Systems and Procedures

Carry out a program to introduce modern Customs systems and procedures to increase the efficiency and transparency, and lower the costs, of Customs transactions, said program consisting of:

1. Strengthening the legal framework for Customs administration to enable the application of new processes and procedures, and facilitating public access to such legal information;
2. Standardizing, harmonizing and simplifying Customs business processes in line with the Revised Kyoto Convention on the Harmonization and Simplification of Customs Procedures through: (i) a comprehensive review and rationalization of Customs documentary requirements and of import/export/transit procedures; and (ii) application of the appropriate methodology to enable a correct valuation, classification and determination of the origin of goods in line with generally accepted international standards;
3. Strengthening Customs compliance and enforcement through: (i) the development of a comprehensive strategy for managing and improving compliance with Customs regulations and requirements, and implementing a risk management approach which balances the goals of control and facilitation in respect to Customs transactions; and (ii) implementation of a post-clearance audit regime, including development of a national audit plan, preparation of operational manuals and provision of training on post-clearance audit;
4. Enhancing the capacity of GDVC for information collection and evaluation, commercial research and analysis, and client segmentation to support its risk management and post-clearance audit approach; and
5. Promoting the development of a Customs brokerage industry through: (i) the development of a supporting legal framework including licensing systems and

competency requirements; and (ii) the development and implementation of an advance tariff and valuation ruling system and strengthening of appeal mechanisms for traders.

Part B: Organizational Restructuring and Resource Management

1. Conduct a comprehensive assessment of the organizational structure with a view to its rationalization; develop a new organizational model reflecting new priorities and responsibilities of GDVC, and an action plan to implement such organizational model; and initiate the implementation of such plan.
2. Carry out a program to improve resource management and to modernize GDVC's infrastructure, said program consisting of: (i) enhancing the human resource management function within GDVC through the development of a human resource strategic plan, a detailed assessment of staffing requirements, and the development of personnel policies and practices; (ii) enhancing the human resources development capacity of GDVC, including through an analysis of training needs for GDVC, and the development of a training strategy and new training curriculum; (iii) developing the financial resource management capacity of GDVC through the strengthening of its management accounting capability and enhancing the internal audit function; (iv) enhancing the physical resources of GDVC through renovation of facilities and provision of equipment; (v) developing the strategic planning capacity of GDVC to manage the processes for its modernization, including establishing a change management unit; and preparing and implementing client service standards and monitoring and evaluation mechanisms; and (vi) supporting the development and implementation of a national integrity and anti-corruption program in Customs services.

Part C: Information and Communication Technology

Establish and operate a modern management information system to support the Customs processes re-designed under Part A of the Project, including:

1. Installing hardware, software and telecommunications system;
2. Rolling out the system for nation-wide implementation; and
3. Strengthening the management and technical skills of GDVC to develop and implement the new management information system.

Part D: Project Management Support

Strengthen GDVC's capacity for Project implementation, monitoring and evaluation, through the provision of technical assistance, consultants' services and equipment.

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The Project is expected to be completed by December 31, 2010.



### **SCHEDULE 3**

#### **Procurement**

##### Section I. General

A. All goods, works and services (other than consultants' services) shall be procured in accordance with the provisions of Section I of the "Guidelines: Procurement under IBRD Loans and IDA Credits" dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants' services shall be procured in accordance with Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Association of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

##### Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants' Services)

A. International Competitive Bidding. Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines, providing for domestic preference in the evaluation of bids, shall apply to goods manufactured in the territory of the Borrower.

##### B. Other Procurement Procedures

1. National Competitive Bidding. Goods and services other than consultants' services estimated to cost less than \$100,000 but more than \$20,000 equivalent per contract and works estimated to cost less than \$2,000,000 equivalent per contract, may be procured under contracts awarded on the basis of National Competitive Bidding and the additional provisions set forth in the Annex to this Schedule.

2. Shopping. Goods estimated to cost less than \$20,000 equivalent per contract and works estimated to cost less than \$30,000 equivalent per contract, may be procured under contracts awarded on the basis of Shopping.

3. Direct Contracting. The Customs operations software package under Part C of the Project which the Association agrees meet the requirements for Direct Contracting may be procured in accordance with the provisions of said procurement method.

Section III. Particular Methods of Procurement of Consultants' Services

A. Quality- and Cost-based Selection. Except as otherwise provided in Part B of this Section, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. For purposes of paragraph 2.7 of the Consultant Guidelines, the short list of consultants for services estimated to cost less than \$200,000 equivalent per contract may comprise entirely national consultants.

B. Other Procedures

1. Quality-based Selection. Services for assignments which the Association agrees meet the requirements set forth in paragraph 3.2 of the Consultant Guidelines may be procured under contracts awarded on the basis of Quality-based Selection in accordance with the provisions of paragraphs 3.1 through 3.4 of the Consultant Guidelines.

2. Least-cost Selection. Services for assignments which the Association agrees meet the requirements of paragraph 3.6 of the Consultant Guidelines may be procured under contracts awarded on the basis of Least-cost Selection in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

3. Selection Based on Consultants' Qualifications. Services estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1, 3.7 and 3.8 of the Consultant Guidelines.

4. Single Source Selection. Services for tasks in circumstances which meet the requirements of paragraph 3.10 of the Consultant Guidelines for Single Source Selection, may, with the Association's prior agreement, be procured in accordance with the provisions of paragraphs 3.9 through 3.13 of the Consultant Guidelines.

5. Individual Consultants. Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis, subject to prior approval of the Association.

Section IV. Review by the Association of Procurement Decisions

Except as the Association shall otherwise determine by notice to the Borrower, the following contracts shall be subject to Prior Review by the Association: (a) each contract for works estimated to cost the equivalent of \$100,000 or more; (b) each contract for goods estimated to cost the equivalent of \$50,000 or more; (c) each contract procured under Direct Contracting; and (d) each contract for consultants' services provided by a firm estimated to cost the equivalent of \$100,000 or more, each contract for consultants' services provided by individual consultants estimated to cost the equivalent of \$50,000 or more and all contracts for consultants' services procured under Single Source Selection. All other contracts shall be subject to Post Review by the Association.

**Annex to Schedule 3**

**National Competitive Bidding Procedures**

The Borrower represents that the procedures to be followed for National Competitive Bidding shall be those set forth in the Decree 88/1999/ND-CP dated September 1999, as modified by Decree 14/2000/ND-CP dated May 2000 and Decree 66/2003/ND-CP dated June 2003; and, in order to ensure economy, efficiency and transparency and broad consistency with the provisions of Section I of the Guidelines (as required by paragraph 3.3 of the Guidelines), goods and works for which this Schedule 3 allows procurement using National Competitive Bidding shall be procured in accordance with paragraphs 3.3 and 3.4 of the Guidelines and the following paragraphs.

Participation in bidding and preferences

- (i) For clarification purposes, it is understood that the last sentence of the amended Paragraph (c), Section 2, Article 2 of Decree 88/1999/ND-CP which states that “All the procedures for submission, appraisal and approval of bidding results and bidder selection results shall follow the Procurement Regulation” means “Approvals of draft bidding documents, bid evaluation reports and proposals for award shall be obtained in accordance with the relevant rules and procedures of the Procurement Regulation”.
- (ii) Government-owned enterprises in Vietnam shall be eligible to participate in bidding only if they can establish that they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Borrower or the procuring entity. Military or security units, or enterprises which belong to the Ministry of Defense or the Ministry of Public Security shall not be permitted to bid.
- (iii) Foreign bidders shall be eligible to participate in bidding under the same conditions as local bidders, and local bidders shall be given no preference (either in the bidding process or in bid evaluation) over foreign bidders, nor shall bidders located in the same province or city as the procuring entity be given any such preference over bidders located outside that city or province.
- (iv) Bidders shall be allowed to participate in bidding without being listed in the Government Database on Bidder Information or in any other registration system.
- (v) Prospective bidders shall be permitted to request bidding documents either in person or through the mail upon submission of a written application. Bidding documents shall be sold to anyone who is willing to pay the required fee of the bidding documents, and no other conditions shall be imposed on the sale of the bidding documents. The fee for the bidding documents should be reasonable and consist only of the cost of printing (or photocopying) the documents and their delivery to the purchaser. The bidding documents shall be delivered, at the prospective bidders’ preference, either by hand or by mail/courier provided that the bidder is willing to pay the mail/courier delivery charges

which should be specified in the Invitation for Bids. Each bidder shall be allowed to purchase only one set of the bidding documents.

(vi) Foreign bidders shall not be required, in order to participate in bidding or as a condition of award of the contract or during execution of the contract, to enter into a joint venture with a local bidder, or to subcontract part of their contract to a local bidder.

(vii) If there is prequalification, *all* prequalified bidders shall be invited to bid.

(viii) If there is limited bidding because there are only a limited number of bidders who can meet the requirements of the bidding documents, *all* of these bidders shall be invited to bid.

(ix) Bidders shall not be required, as a condition of participation in the bidding, to provide suppliers' credits.

#### Advertising; time for bid preparation

(x) Invitations to bid shall be advertised in at least one widely circulated national newspaper. In addition, the Borrower is encouraged to advertise in the Government Public Procurement Bulletin and on a free and open access website. A minimum of 30 days for the preparation and submission of bids shall be provided, and potential bidders shall be allowed to purchase bidding documents up to 24 hours prior to the deadline for the submission of bids.

#### Standard Bidding Documents

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

#### Qualification criteria and evaluation criteria

(xii) Qualification criteria shall be clearly specified in the bidding documents, *and* all criteria so specified, and *only* criteria so specified, shall be used to determine whether a bidder is qualified. The evaluation of the bidder's qualifications should be conducted separately from the technical and commercial evaluation of the bid. When post qualification is applied, the assessment of bidders' qualifications shall be carried out only after the preliminary and detailed evaluation of bids has been completed by the Purchaser/Employer and, in doing so, the qualifications of the bidder who has submitted the lowest evaluated substantially responsive bid shall be assessed first. In carrying out the post-qualification assessment, the Employer/Purchaser shall exercise reasonable judgment in requesting, in writing, from a bidder only missing factual or historical supporting information related to the bidder's qualifications and shall provide a

reasonable time period (that is, a minimum of 7 days) to the bidder to provide his response.

(xiii) Evaluation criteria shall be clearly specified in the bidding documents, and evaluation criteria other than price shall be quantified in monetary terms. All evaluation criteria so specified, and only evaluation criteria so specified, shall be taken into account in bid evaluation. Merit points shall not be used in bid evaluation.

Bid opening, evaluation and award of contract

(xiv) Bids shall be opened in public, immediately after the stipulated deadline for submission of bids. Bidders or their representatives, shall be allowed to be present. The name of the bidder and total amount of each bid, including discounts, shall be read aloud and recorded. Immediately after completion of the bid opening proceedings, a copy of the bid opening record shall be posted at a prominent location, accessible to the public, outside the office of the concerned procuring entity and shall be retained at the same location until the award of contract has been notified. A copy of the bid opening record shall be promptly provided to all bidders who submitted bids.

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

(xvi) All bids shall not be rejected or new bids solicited without the Association's prior concurrence.

(xvii) No bidder shall be rejected merely on the basis of a comparison with the owner's estimate and budget ceiling without the Association's prior concurrence.

(xviii) A bid containing material deviations from, or reservations to, the terms, conditions or specifications of the bidding documents shall be rejected as not substantially responsive. A bidder shall not be permitted to withdraw material deviations or reservations once bids have been opened. Bidders shall not be eliminated from detailed evaluation on the basis of non-material, minor deviations or reservations.

(xix) Evaluation of bids shall be made in strict adherence to the criteria specified in the bidding documents, and contracts shall be awarded to the qualified bidder offering the lowest evaluated and responsive bid.

(xx) A bidder shall not be required, as a condition for award, to undertake obligations not specified in the bidding documents, or otherwise to modify the bid as originally submitted.

(xxi) There shall be no post-bidding negotiations with the lowest or any other bidder.

(xxii) The Borrower shall declare a firm ineligible, either indefinitely or for a stated period, to be awarded a contract financed by the Association and the Government, if it at

any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, an Association-financed contract.

Suppliers and Contractors

(xxiii) Bidding documents and contracts under national competitive bidding procedures financed by the Association shall include a provision requiring suppliers and contractors to permit the Association to inspect their accounts and records relating to the bid submission and the performance of the supplier and/or contractor, as the case may be, and to have them audited by auditors appointed by the Association, if so required by the Association.

(xxiv) License for foreign contractors operation in Vietnam would be provided in a timely manner and will not be arbitrarily withheld.

Publication of the Award of Contract

(xxv) The Borrower shall publish the following information on contract award in a Government Public Procurement Bulletin or on a free and open access website or on another means of publication acceptable to the Association: (a) name of each bidder who submitted a bid; (b) bid prices as read out at bid opening; (c) name and evaluated price of each bid that was evaluated; (d) name of bidders whose bids were rejected and the reasons for their rejection; and (e) name of the winning bidder, price it offered as well as the duration and summary scope of the contract awarded. This publication shall be updated quarterly.

Complaints by Bidders and Handling of Complaints

(xxvi) The national competitive bidding procedures for contracts financed by the Association shall include provisions, acceptable to the Association, for bidders to protest.

## **SCHEDULE 4**

### **Implementation Program**

#### **Project Management**

1. The Borrower shall maintain throughout the period of Project implementation the Customs Modernization Steering Committee, with such powers, responsibilities and terms of reference as shall be necessary to enable it to: (a) provide a strategic direction to and oversee the modernization of Customs services; (b) ensure coordination with relevant agencies and institutions (including without limitation the General Department of Vietnam Tax, the Ministry of Transport, and the Committee on Fighting against Smuggling, Counterfeiting and Commercial Fraud) and with the business community, including small and medium enterprises, in the Customs modernization process; and (c) provide overall guidance to the PMU in the implementation of the Project and the accomplishment of its objectives.

2. The Borrower shall establish and maintain, throughout the period of Project implementation, a Project Management Unit within MOF, to be responsible for managing the implementation of Project activities, including procurement, financial management and control, monitoring and reporting; said Unit to be under the direction of experienced managers, provided with adequate resources and staffed with competent personnel in sufficient numbers, including a Project director, a Project coordinator, and specialists in procurement, financial management, ICT and in Customs/business processes, each with qualifications and experience and under terms of reference acceptable to the Association.

3. In order to support the PMU, the Borrower, through MOF, shall engage, in accordance with the provisions of Schedule 3 to this Agreement:

(a) by no later than April 15, 2006, a senior advisor with qualifications and international experience in customs administration, and under terms of reference acceptable to the Association, to assist the PMU in managing the implementation of the Project; and

(b) by no later than November 15, 2006, a procurement advisor with qualifications and international experience, in particular experience in ICT procurement, and under terms of reference acceptable to the Association, to assist the PMU in its procurement and contract management responsibilities.

#### **Implementation**

4. The Borrower, through MOF, shall prepare and put into effect a financial management manual satisfactory to the Association, to serve as reference and training manual to project staff at all levels who are responsible for the financial management aspects of the Project or any part thereof; said manual shall set forth, inter alia, the



organizational structure and responsibilities in regard to financial management, financial accounting systems, internal control mechanisms, financial reporting requirements and procedures, auditing arrangements, and samples and forms.

5. By no later than May 31 and November 30 of each year, commencing in 2006, the Borrower, through MOF, shall: (a) provide to the Association for its prompt review and comment, a semi-annual work plan, including budget therefor, covering the next succeeding semester, provided that the first such semi-annual work plan shall be provided by no later than December 31, 2005; and (b) thereafter, implement such work plan as shall have been agreed with the Association, in a manner satisfactory to the Association.

6. MOF shall: (a) unless otherwise agreed by the Association, by no later than September 30, 2006, complete the review of current Customs business procedures and documentation and develop an action plan for the harmonization and simplification of said procedures and documentation in line with the provisions of the Revised Kyoto Convention on the Harmonization and Simplification of Customs Procedures; (b) provide such action plan to the Association for its prompt review and comments; and (c) thereafter implement said plan giving due consideration to the Association's view thereon.

7. To serve as a basis for risk management in Customs operations, MOF shall: (a) unless otherwise agreed by the Association, by no later than September 30, 2006, develop a compliance and risk management implementation plan, including therein a risk register together with a series of risk profiles, and a national post-clearance audit plan; (b) provide said plan to the Association for its prompt review and comments; and (c) thereafter, implement said plan, giving due consideration to the Association's view thereon.

8. In order to carry out its compliance and risk management implementation plan, unless otherwise agreed by the Association, by no later than May 31, 2006, MOF shall establish a risk management unit, under the direction of qualified managers, staffed with competent and experienced personnel in sufficient numbers, and provided with sufficient resources.

9. MOF shall: (a) unless otherwise agreed by the Association, by no later than December 15, 2006, complete a comprehensive assessment of the current organizational structure of GDVC, with a view to rationalize such structure and to reflect new priorities and responsibilities of GDVC; and on the basis of said assessment, develop an organizational re-structuring action plan for GDVC; (b) provide said plan to the Association for its prompt review and comments; and (c) thereafter, implement said plan, giving due consideration to the Association's view thereon.

10. MOF shall: (a) unless otherwise agreed by the Association, by no later than November 1, 2006, develop a human resources strategic plan and complete a detailed staffing requirements assessment under terms of reference acceptable to the Association;

(b) provide said strategic plan and the report of the staffing requirements assessment to the Association for its prompt review and comment; and (c) thereafter, implement said strategic plan, giving due consideration to the Association's view thereon.

11. Unless otherwise agreed by the Association, by no later than December 15, 2006, MOF shall establish a change management unit, staffed with competent managers and personnel in sufficient numbers and provided with adequate resources; said Unit to be responsible for planning, sequencing and implementing activities for the reform and modernization of GDVC.

12. Unless otherwise agreed by the Association, by no later than June 30, 2007, MOF shall prepare a draft comprehensive integrity and anti-corruption program in Customs services, taking into consideration the provisions of the Revised Arusha Declaration on Integrity in Customs by the World Customs Organization, and provide said draft program to the Association for its prompt review and comments.

13. MOF shall: (a) unless otherwise agreed by the Association, by no later than September 30, 2006, prepare a detailed national training plan for Customs officers and staff; (b) provide said plan to the Association for its prompt review and comments; and (c) thereafter, carry out said plan, giving due consideration to the Association's view thereon.

#### **Monitoring and Reporting**

14. The Borrower shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Association, the carrying out of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, (i) on or about January 31 and July 31 of each year, commencing July 31, 2006, a semi-annual report; and (ii) on or about December 31, 2007, a mid-term report; in each case integrating the results of the monitoring and evaluation activities performed pursuant to sub-paragraph (a) of this paragraph 14, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) promptly review with the Association each such report referred to in sub-paragraph (b) of this paragraph 14, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter.

## **SCHEDULE 5**

### **Special Account**

1. For the purposes of this Schedule:
  - (a) the term “eligible Categories” means Categories (1), (2), (3), (4), (5) and (6) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;
  - (b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the Credit allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and
  - (c) the term “Authorized Allocation” means an amount equivalent to \$4,000,000 to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3(a) of this Schedule, provided, however, that unless the Association shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to \$2,000,000 until the aggregate amount of withdrawals from the Credit Account plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of SDR14,000,000.
2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.
3. After the Association has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:
  - (a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for deposit into the Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount or amounts as the Borrower shall have requested.
  - (b)
    - (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.
    - (ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association

shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures. All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01(b)(ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

(c) if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Credit allocated to the eligible Categories, minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Association made pursuant to paragraphs 6(a), (b) and (c) of this Schedule shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.