

SUBPROJECT FINANCING AGREEMENT
(REF. PPSSF/abc/de_2011)

between

MINISTRY OF PLANNING AND INVESTMENT AND

[XXX SUBPROJECT FINANCING BENEFICIARY]

Dated:

SUBPROJECT FINANCING AGREEMENT BETWEEN MINISTRY OF PLANNING AND INVESTMENT OF THE SOCIALIST REPUBLIC OF VIETNAM AND [XXX SUBPROJECT FINANCING BENEFICIARY] ON THE PARTIAL USE OF THE ASIAN DEVELOPMENT BANK (ADB) LOAN No 2982-VIE(SF)

This agreement dated [date] (hereinafter called ‘the Subproject Financing Agreement’ between the Ministry of Planning and Investment of the Socialist Republic of Vietnam (hereinafter called ‘MPI’) represented by [name and title] and [XXX] Subproject Financing Beneficiary] (hereinafter called ‘[XXX]’) represented by [name and title] (the “Parties”).

WHEREAS:

(A) Pursuant to the Loan Agreement dated 7 March 2013 for Loan No 2982-VIE(SF) (hereinafter called ‘the Loan Agreement’), attached as Annex 1, entered into between the Socialist Republic of Vietnam (hereinafter called Vietnam) and the Asian Development Bank (hereinafter called ‘the Bank’), the Bank has agreed to lend to the Socialist Republic of Vietnam an amount of twenty four million six hundred twenty six thousand Special Drawing Rights (SDR 24,626,000) (hereinafter called ‘the Loan’) to finance the Project Preparation and Startup Support Facility (PPSSF) Project as described in Schedule 1 to the Loan Agreement (hereinafter called ‘the Project’).

(B) Pursuant to Article 2(a) of Schedule 1 to the Loan Agreement, Vietnam has agreed to make available a portion of the Loan (hereinafter called ‘Grant Amount’) for implementation of [YYY] Subproject (the “Subproject”) under the Project.

(C) Pursuant to Article 3 of the Loan Agreement, the project will be carried out by MPI on behalf of Vietnam.

(D) [XXX] will implement the Subproject in accordance to approved subproject application documents, the Loan Agreement, this subproject Financing Agreement, the Project Administration Manual, and ADB Anti-Corruption Policy.

(E) MPI and [XXX] have agreed to enter into this Subproject Financing Agreement under terms and conditions as hereinafter set forth.

NOW THEREFORE the parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Unless the context shall otherwise require, the capitalized terms used in this Subproject Financing Agreement, but not herein defined, shall have the meanings ascribed to them in the Loan Agreement or the Special Operations Loan Regulations of ADB (“Loan Regulations”), with the modifications set forth in Section II of the Appendix to the Loan Agreement.

ARTICLE II

PROJECT EXECUTION

Section 2.01 [XXX] declares its commitment to the objectives of the Subproject as set forth in the PPSSF Application attached as Annex 2. To this end [XXX] shall carry out the Subproject, in accordance with the provisions set forth in Schedule 5 to the Loan Agreement, the Subproject Financing Agreement, ADB Anticorruption Policy (1998, as

amended to date) and the PPSSF Project Administration Manual.

Section 2.02 The overall responsibility of day to day Project management, implementation, monitoring and evaluation, including administrative and financial management, procurement and disbursement shall vest with [XXX]. MPI retains rights adequate to protect its interests and those of the Bank, including the right to:

- (a) suspend or terminate the right of [XXX] to use proceeds of the Grant, or obtain a refund of all or any part of the amount of the Grant then withdrawn, upon [XXX]'s failure to perform any of its obligations under the Subproject Financing Agreement;
- (b) cause [XXX], inter alia, to: (i) carry out its Subproject with due diligence and efficiency and in accordance with sound technical, economic, financial, managerial, environmental and social standards and practices satisfactory to the Bank and MPI, including the Safeguards Policy Statement, and ADB Anticorruption Policy; (ii) provide, promptly as needed, the resources required for purposes of the Subproject, including counterpart funding; (iii) establish and maintain a Subproject Project Management Unit (hereinafter called 'SPMU') throughout the period of Subproject implementation with an institutional framework, functions and resources satisfactory to the Bank and MPI including competent personnel in adequate numbers; and shall maintain a distinct legal identity from the PMU established for the Investment Project. Subproject bank accounts and Investment Project accounts shall be managed and operated separately by the SPMU and PMU respectively; (iv) provide adequate training to all SPMU staff, including the Financial Management and Procurement Specialists; (v) ensure that the Grant amount is not used to finance operating costs under the Subproject and promptly provide funds for such purpose out of its own resources; (vi) enable MPI (and/or their representatives) and the Bank to inspect the Subproject, its operations and any relevant records and documents; and (vii) prepare and furnish to MPI and the Bank all such information as MPI or the Bank shall reasonably request relating to the foregoing;
- (c) MPI shall exercise its rights under the Subproject Financing Agreement in such manner as to protect the interests of MPI and the Bank and to accomplish the purposes of the Subproject;
- (d) MPI and [XXX] shall not amend, revise or waive, nor allow to be amended, revised or waived, the provisions of this Agreement or any part thereof, without the prior written agreement of the Bank; and
- (e) In case of any inconsistency between the provisions of the Loan Agreement and those of the Subproject Financing Agreement, provisions of the Loan Agreement shall prevail.

ARTICLE III

FINANCING

Section 3.01

- (a) MPI agrees to make available to [XXX] a grant amount which is not to exceed United States Dollars [number] USD to finance Subproject preparation activities, at the time of Subproject approval. This grant shall be disbursed in compliance with the Loan Agreement, the Project

Administration Manual, and ADB Anticorruption Policy.

- (b) [XXX] takes responsibility to prepare the payment request for Subproject implementation and send the request to MPI. The request will be reviewed and approved in accordance with the Project Administration Manual. After payment is disbursed from the Designated Bank Account managed by MPI, MPI shall inform [XXX] to receive the payment.

ARTICLE IV

PROCUREMENT

Section 4.01

- (a) [XXX] shall : (i) procure the goods and services to be financed out of the Grant Amount in accordance with the provisions of Schedule 4 to the Loan Agreement; (ii) follow the Procurement Plan included in the PPSSF Application attached as Annex 2; (iii) ensure that the “Consulting Guidelines” (Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time); “Procurement Guidelines” (ADB’s Procurement Guidelines (2010, as amended from time to time)) shall be followed for the Asian Development Bank funded parts of the Subprojects; (iv) ensure that all goods and Consultants’ services required for the subproject and to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions set forth in Section III of Schedule 2 to the Loan Agreement, and (v) ensure that Vietnamese Procurement Procedures shall be followed for the Counterpart funded activities.

ARTICLE V

ANTI-CORRUPTION

Section 5.01 [XXX] shall ensure that the subproject is carried out in accordance with provisions of ADB’s Anticorruption Policy; and that [XXX] will carry out the Subproject in accordance with the applicable provisions of the Project Administration Manual, applying measures to reinforce Subproject governance, enhance transparency of Subproject activities, increase Public accountability and reduce opportunities for corruption, fraud or collusion.

ARTICLE VI

SAFEGUARDS

Section 6.01

- (a) [XXX] shall carry out the Subproject in accordance with provisions of the Safeguards Policy Statement; and without limitation upon its other reporting obligations under Article VII of the Subproject Financing Agreement, shall take all measures necessary on its part to regularly collect, compile and submit to MPI, as part of the Subproject report, information concerning status of compliance with the Safeguards Policy Statement, giving details of: (i) measures taken in furtherance of such Policy Statement; (ii) conditions, if any, which interfere or threaten to interfere with the smooth implementation of such Policy Statement; and (iii) remedial measures taken or required to be taken to address such conditions.

- (b) [XXX] shall ensure that no works or land acquisition is carried out under the Subproject.

ARTICLE VII

FINANCIAL MANAGEMENT

Section 7.01 [XXX] shall:

- (a) maintain a financial management system and prepare financial statements in accordance with consistently applied accounting standards acceptable to MPI and the Bank, both in a manner adequate to reflect the operations, resources and expenditures related to the Subproject; and
- (b) cooperate fully and allow access to the office, personnel and files by the Independent auditors appointed by MPI and the Bank to enable the appointed auditor to carry out the required auditor's services as described in the PPSSF Project Administration Manual.

ARTICLE VIII

PROJECT MONITORING, REPORTING, EVALUATION AND MANUALS

Section 8.01 – Subproject Report [XXX] shall monitor and evaluate the progress of the Subproject and prepare Subproject reports to be submitted to and approved by MPI. Each Subproject report shall cover the period of one (1) calendar quarter, and shall be furnished to MPI and the Bank not later than twenty one (21) days after the end of the period covered by each report.

Section 8.02 – Financial Management and Financial Reports Without limitation on Section 8.01 [XXX] shall prepare and furnish to MPI not later than twenty one (21) days after the end of each quarter interim unaudited financial reports for the Subproject covering the quarter in form and substance satisfactory to MPI.

Section 8.03 – Project Administration Manual [XXX] shall carry out the Subproject in accordance with provisions of the Project Administration Manual, specifying implementation, organizational, financial management and disbursement arrangements, administrative, monitoring, and evaluation, environmental and social monitoring and mitigation, and procurement arrangements for the purposes of Subproject implementation.

ARTICLE IX

OTHER UNDERTAKINGS

Section 9.01 [XXX] shall fully co-operate with MPI to assure that the objectives of this Subproject Financing Agreement shall be accomplished and shall cause and make best efforts to enable Vietnam to fulfill its obligations under the Loan Agreement and shall diligently perform its obligations under this Subproject Financing Agreement and the Loan Agreement.

Section 9.02 [XXX] shall furnish to MPI copies of applications, bank statements, explanation or documents mentioned above, promptly upon process of receipts.

Section 9.03 [XXX] shall furnish to MPI and the Bank for approval, the semi annual work plan and budget for the Subproject, of such scope and detail as MPI, shall have reasonably requested. And thereafter no later than one calendar month prior to the end of each half year work period, except for the first semi-annual work plan and budget, which

shall be provided one month after signing of the Subproject Financing Agreement. Thereafter [XXX] shall ensure that the Subproject is carried out in accordance with such plan and budget.

ARTICLE X

REMEDIES

Section 10.01 If [XXX] shall fail to perform any of its obligations under this Subproject Financing Agreement, MPI shall be entitled at its option to invoke any remedies against [XXX] which will be available to it by Law.

Section 10.02 Nothing contained herein shall prejudice or otherwise affect the rights and remedies of MPI that may be otherwise available to it by Law.

Section 10.03 If the rights of Vietnam under the Loan Agreement to make withdrawals from the Loan Account shall have been suspended or terminated, regardless of the reasons thereof, then the Subproject Financing Agreement shall likewise and simultaneously be suspended for the same period, or terminated, as the case may be.

ARTICLE XI

MISCELLANEOUS

Section 11.01 This Subproject Financing Agreement shall enter into force on the signing date, and ends its validity when the Parties have fully completed the rights and obligations stipulated in the Subproject Financing Agreement.

Section 11.02 The Subproject Financing Agreement shall be binding upon all successors of [XXX], in whatever form constituted.

Section 11.03 Amendments or additions to the terms and conditions of the Subproject Financing Agreement, if any, shall require the Bank's prior concurrence and shall be made in writing and signed by the Parties and shall be treated as an integral part of this Subproject Financing Agreement.

Section 11.04 The Subproject Financing Agreement has been executed in [number] original copies in the Vietnamese language.

Section 11.05 Any dispute arising out of or in connection with the implementation of this Subproject Financing Agreement, which cannot be settled amicably by the Parties, shall be resolved in accordance with Vietnamese Law.

Section 11.06 If any provisions of this Agreement are determined to be invalid, illegal, or unenforceable in and contrary to, or in conflict with, any existing or future law or regulation of a country or agency having valid jurisdiction, such determination shall not impair the operation or affect the remaining portions, sections, parts, terms or provisions of this Agreement, and the latter will continue to be given full force and effect and bind the parties to the Subproject Financing Agreement. The invalid section, part, term or provision shall be deemed not to be part of the Subproject Agreement

Section 11.07 Any notice, request or agreement between the Parties contemplated by this Subproject Financing Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered to the Parties' addresses hereinafter specified, or at such other address as such Party shall have designated by notice to the Party giving such notice or making such request. The addresses so specified are:

For Ministry of Planning and Investment:
No. 6B, Hoang Dieu, Ba Dinh, Hanoi , Vietnam
Fax: [insert]

For [XXX] Implementing Agency:
Address: [insert]
Fax: [insert]

IN WITNESS WHEREOF the Parties hereto, acting through their duly authorised representatives, have caused this Subproject Financing Agreement to be signed in their respective names and delivered at Hanoi as of the date and year above written.

MINISTRY OF PLANNING AND
INVESTMENT

Authorized Representative

[SUBPROJECT FINANCING BENEFICIARY
(INSERT NAME – MINISTRY, CITY, SOE
ETC)]

Authorized Representative

ANNEX 1 - FINANCING LOAN AGREEMENT DATED 07 MARCH 2013 FOR CREDIT LOAN
NO 2982-VIE(SF)

ANNEX 2 – APPROVED PPSSF SUBPROJECT APPLICATION DATED [date]