

# MEMORANDUM OF UNDERSTANDING

between

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

and

THE GOVERNMENT OF THE ITALIAN REPUBLIC

*ON THE CONCESSION OF A SOFT LOAN FOR THE*

## PROGRAM

"Improvement of Health Services in selected areas of Central Vietnam and at Hue College of Medicine and Pharmacy"



The Government of the Socialist Republic of Vietnam, represented by the Ministry of Planning and Investment (MPI), and the Government of the Italian Republic, represented by the Ministry of Foreign Affairs – Directorate General for Development Co-operation (MAE-DGCS), hereinafter jointly referred to as the “Parties”, have decided to enter into this Agreement, hereinafter referred to as the “Agreement”, for the implementation of the program denominated “Improvement of Health Services in selected areas of Central Vietnam and at Hue College of Medicine and Pharmacy”, hereinafter referred to as the “Program” and

**REMINDING** the Agreement on Development Co-operation between the Government of the Socialist Republic of Vietnam and the Government of the Italian Republic, signed in Milan on December 12<sup>th</sup>, 2009;

**ACKNOWLEDGING** the request of the Government of Socialist Republic of Vietnam (hereinafter referred to as “GoV”) to the Government of the Italian Republic (hereinafter referred to as “GoI”) to finance the Program, through a soft loan of Euro 12,697,606.00;

**CONSIDERING** that, based on the project proposals submitted by the Provincial People’s Committees (PPCs) of Quang Nam, Quang Tri and Thua Thien Hue, as well as by the Hue College of Medicine and Pharmacy (HCMF), MAE-DGCS carried out appraisal missions in Vietnam, aiming to define the Program document to be submitted to the Steering Committee for Development Cooperation of the GoI;

**FOLLOWING** the approval, on 25<sup>th</sup> of July 2011, by the above mentioned Steering Committee, of the Program (consisting of four component projects) to be financed through a soft loan of Euro 12,697,606.00 for works, supplies and services, and a grant of Euro 364,000.00 directly managed by the GoI;

the Parties have agreed as follows:

## **ARTICLE 1**

### **Purpose of the Agreement**

- 1.1 This Agreement establishes the mutual obligations of the Parties concerning the financing and the implementation of the Program.

## **ARTICLE 2**

### **Parts and Definitions**

- 2.1 This Agreement consists of thirteen articles and two annexes (Annex 1 - Program Implementation Document – PID and Annex 2 - MAE-DGCS “Eligibility Criteria, Ethical Clauses, Contract General Principles”), which form an integral, essential and substantial part of the Agreement.
- 2.2 The following words and acronyms in the text shall be read accordingly:

|                      |   |
|----------------------|---|
| Artigiancassa        | The Italian Bank appointed by the GoI to manage the soft loan credit lines (the Lender)   |
| CPMU                 | Coordinating Program Management Unit  |
| Financial Convention | Loan Agreement signed by Artigiancassa and the MoF in order to define the soft loan terms and conditions and modalities of disbursement and repayment |



|          |   |
|----------|---|
| Gol      | Government of the Italian Republic  |
| GOP      | General Operational Plan  |
| GoV      | Government of the Socialist Republic of Vietnam   |
| HCMP     | Hue College of Medicine and Pharmacy  |
| MAE-DGCS | Directorate General for Development Co-operation of the Italian Ministry of Foreign Affairs   |
| MOET     | Vietnamese Ministry of Education and Training   |
| MoF      | Vietnamese Ministry of Finance (the Borrower)   |
| MoH      | Vietnamese Ministry of Health   |
| MPI      | Vietnamese Ministry of Planning and Investment  |
| PD       | Project Director (in each PMU)  |
| PIC      | Person in Charge (responsible of CPMU)  |
| PID      | Program Implementation Document   |
| PMU(s)   | Project Management Unit(s) (one for each executing agency: the three PPCs of Quang Nam, Quang Tri, Thua Thien Hue and the HCMP on behalf of MOET) |
| PPC(s)   | Provincial People's Committee(s)  |
| UTL      | Local Technical Unit (Cooperation Office of the Italian Embassy in Hanoi)   |

### ARTICLE 3

#### Program Objectives, expected Results and Activities

- 3.1 The general objective of the Program is to support the improvement of health conditions of the population in the Central Region of Vietnam, especially in the Provinces of Thua Thien Hue, Quang Nam and Quang Tri.
- 3.2 The purposes (results) of the Program are:
- the upgrade of some departments of HCMP and of the related hospital;
  - the reinforcement of the Provincial health system in Thua Thien Hue for both preventive and curative health services;
  - the reinforcement of the Provincial health system in Quang Nam for both preventive and curative health services;
  - the reinforcement of the Provincial health system in Quang Tri for both preventive and curative health services.
- 3.3 The activities of the Program are described in the PID (Annex 1) and consist of works, supplies and services within the maximum soft loan of Euro 12,697,606.00.

### ARTICLE 4

#### Institutions and Bodies involved and Governance of the Program

- 4.1 The main Institutions and Bodies of the Parties involved in the implementation of the Program are:
- 4.1.1 For the Vietnamese side:
- MPI as the Vietnamese counterpart for this Agreement, representing the GoV;
  - MoF as the Vietnamese counterpart (the Borrower) for the Financial Convention to be signed with Artigiancassa;

- PPCs of Quang Nam, Quang Tri, Thua Thien Hue and MOET (represented by the HCMP) acting as Executing Agencies of their respective projects, through their PMUs. The four PMUs will be coordinated, assisted, monitored and represented by the Coordinating Program Management Unit (CPMU) that shall act as unique liaison with MAE-DGCS. The CPMU and the PMUs in each Province and at HCMP shall be established, according to the Vietnamese Law, for assisting the three PPCs and the HCMP (representing the MOET) in implementing and monitoring their respective projects and the whole Program activities. Tasks and responsibilities of CPMU and PMUs are detailed in Annex 1.

#### 4.1.2 For the Italian side:

- MAE-DGCS, acting as the Italian Counterpart for this Agreement and as the Italian Financing Agency for the funds to be provided for the Program;
- Artigiancassa, the Italian Bank (the Lender) signatory of the Financial Convention with the MoF;
- The Cooperation Office of the Italian Embassy in Hanoi (UTL), acting as part of the MAE-DGCS Program Assistance and Monitoring system.

- 4.2 A Joint Steering Committee (JSC) shall be constituted as a high-level consultative and decision making body for the Program and composed by:
- representatives of MPI, MoH, MoF, HCMP (representing the MOET), the Chairmen of each PPC and a Representative of the Prime Minister Office for the Vietnamese side;
  - representatives of the Italian Embassy and of MAE-DGCS for the Italian side.

The JSC is chaired by the Representative of the Ministry of Planning and Investment and has the main task and responsibility to supervise the Program's activities smooth progress and provide orientation on its implementation. The meetings of the JSC shall be convened in key moments of Program implementation by the Chairperson or upon request of one of the members: at least one meeting of the JSC shall be held per year. During the JSC meetings corrective measures can be taken and/or proposed for subsequent implementation.

No formal meeting is required for the endorsement of decisions by the JSC: its members may separately and subsequently formalize decisions by the signing of agreed minutes.

In case of proposed measures that will imply modifications to this Agreement and/or to its Annexes, the provisions as per Article 9 shall apply. Any decision that will imply modifications to what is established in the Program document approved by MAE-DGCS shall be submitted to MAE-DGCS approval.

## **ARTICLE 5**

### **Procurement guidelines**

- 5.1 After the entry into force of this Agreement, MoF and Artigiancassa will enter into a Financial Convention relating to the soft loan of Euro 12,697,606.00 for works, supplies and services provided for in the Program approved by the Steering Committee and whose activities are described in the attached PID. The Financial Convention shall provide the legal framework between the Lender and the Borrower and shall include the provisions of the present Agreement specifying the soft loan terms and conditions and the procedures for disbursement and repayment.

- 5.2 Participation in the bidding will be opened on equal terms to all natural and legal persons. As detailed in the attached PID, the total price of Program contracts for each component (works, supplies and services) shall be of Italian origin/nationality as follows:
- at least 25% (twenty five per cent) of equipments and instruments, including hospital furniture, incorporating in-service training in equipment usage and clinical management, maintenance and two-year warranty;
  - no quota is foreseen for civil works;
  - at least 80% (eighty per cent) of consultancy services.
- 5.3 HCMP (on behalf of MOET) and PPCs, through their respective PMUs and assisted by the CPMU, shall launch and manage the bids following the Vietnamese Procurement Law, to be consistent with the rule on objectivity and impartiality, the rule of economic, financial, professional and technical capacity and adapting to the Italian soft loan specific requirements. Procurement shall be compliant with the "Eligibility criteria, ethical clauses, contract general principles" listed in Annex 2.
- Procurement procedures are the following:
- International Competitive Bidding (ICB) for procurement of some Supplies and Consulting Services.
    - Supplies will be procured on the basis of the Quality and Cost Based Selection (QCBS).
    - Consulting services will be procured on the basis of the Quality and Cost Based Selection (QCBS).
  - National Competitive Bidding (NCB) for procurement of Civil Works, some Supplies and some Consulting Services.
    - Works and Supplies will be procured on the basis of the Quality and Cost Based Selection (QCBS).
    - Consulting services will be procured on the basis of the Quality and Cost Based Selection (QCBS).
- 5.4 A procurement plan shall be included in the GOP (described in Annex 1). The procurement plan shall identify and detail all the bidding procedures for the procurement of works, supplies and services for the implementation of the activities of the Program.
- 5.5 The bidding documents and the percentages for Quality and Cost Based Selection relating to each bidding procedure shall be submitted by CPMU (on behalf of PMUs) to MAE-DGCS for "no-objection", before the publication of the tender procurement notice, whenever prescribed according to the procurement table in Annex 2; no artificial division of a unified proposed purchase is admitted. The above mentioned procurement table establishes bid advertising rules in Italy; to this end, having obtained the "no objection" on the final approved version of bidding documents, the invitation for bids must be received by MAE-DGCS at least 30 days prior to the expected date of publication. The tender notice publication in Italy shall not apply when supplies and/or services included in a single bidding procedure are not to be of Italian origin. Bid advertising in Vietnam shall follow Vietnamese Law.
- 5.6 PMUs assisted by CPMU shall, for each tender, evaluate the bids, shall prepare a tender evaluation report, along with the contract, initialled by the selected contractor(s). CPMU will gather and submit the above mentioned documentation to MAE-DGCS in order to obtain the "no-objection" to the procurement process and to the final signature of the contract, whenever prescribed according to the procurement table in Annex 2.

- 5.7 In the case of a tender concerning more than one PMU ("joint tender"), the bidding documents shall specify what relates to each executing agency (the three PPCs and the HCMP, on behalf of MOET) and contracts will be prepared and signed by each executing agency accordingly.

## **ARTICLE 6**

### **Obligations of GoI and Soft Loan's conditionality**

- 6.1 GoI engages itself to:

6.1.1 Provide a maximum ceiling of Euro 12,697,606.00 (twelve million six hundred ninety-seven thousand six hundred six) as a soft loan to be utilised for financing the activities of the Program. Any additional cost due to contracts management or other costs shall be sustained by GoV; no portion of the Soft Loan shall be used to finance any indirect taxes. Taxes levied on income and capital shall be in conformity with regulations in the Agreement between the Government of the Socialist Republic of Vietnam and the Government of the Italian Republic for the avoidance of double taxation and prevention of physical evasion.

6.1.2 Provide, as grant component, 364,000.00 Euro (three hundred sixty-four thousand), of which 256,000.00 Euro, as local fund to support the Program's activities, to be transferred to the Italian Embassy in Hanoi and 108,000.00 Euro as expert fund for technical assistance, monitoring and final evaluation of the Program. The grant funds will be directly managed by MAE-DGCS according to its procedures.

## **ARTICLE 7**

### **Financial conditions and disbursement procedures**

- 7.1 The soft loan will imply a concessional level of 80% (eighty per cent); financing conditions related to this concessional level shall be determined at the moment of signature of the Financial Convention between Artigiancassa and MoF.
- 7.2 The soft loan will be disbursed by Artigiancassa according to the conditions specified in the Financial Convention. Artigiancassa will credit the funds to the contractors, as by the Borrower request, after the control of the administrative documentation (invoices, shipping documents, certificates of acceptance, etc.). Each executing agency shall forward to MoF requests for payment of contracts awarded together with a certification of the correct execution of contracts.
- 7.3 Artigiancassa shall credit the funds in Euro. The maximum value of the exchange rate for local contracts shall be fixed at the moment of signature of each contract: the exchange rate to be applied shall then be fixed at the date of disbursement.

## **ARTICLE 8**

### **Obligations of the GoV**

- 8.1 GoV engages itself in:



- a) fulfilling, and causing all Vietnamese institutions involved in the Program to fulfil, all the obligations generating from this Agreement, by stipulating the necessary agreements with the competent bodies;
- b) being responsible for the use of the soft loan, for the management of contracts and for the supervision of the activities;
- c) ensuring that financial resources are fully and timely provided for the smooth implementation of the Program. The Vietnamese financial contribution to the Program shall cover the following costs:
  - i) any indirect taxes on goods and services procured under the Italian soft loan;
  - ii) expropriations;
  - iii) salaries of the personnel appointed to be part of the CPMU and PMUs, as detailed in Annex 1;
  - iv) vehicles, office furniture, equipments and office running costs for each PMU;
  - v) all other costs related to civil works, supplies and services needed for completing the Program planned activities and not covered by the soft loan.
- d) carrying out all the procurement procedures for the implementation of the Program;
- e) ensuring that all Vietnamese indirect taxes, including VAT, will not be covered by the Italian Soft Loan;
- f) ensuring contributions for any necessary additional activity;
- g) ensuring Program monitoring through CPMU and PMUs. PMUs shall prepare semi-annual and annual (technical and financial) reports on Program activities and shall submit them to CPMU for centralization and integrations. Reports shall include a specific chapter regarding the implementation of the envisaged environmental mitigation measures (e.g. eco-friendly construction, removal of asbestos material, etc.);
- h) designating JSC members and designating the CPMU Person in Charge (PIC), its deputy (Deputy Project Director – DPD) and PMUs PDs among its high-level managers as soon as this Agreement becomes effective;
- i) preparing a Program Completion Report within six months from the end of Program activities and carrying out the joint evaluations officially requested by MAE-DGCS;
- j) retaining records of all Program documentation, including the related correspondence and reports, for 10 (ten) years after the completion of the Program.

## **ARTICLE 9**

### **Monitoring**

- 9.1 PPCs and MOET (represented by HCMP), assisted by their PMUs and CPMU, shall control the implementation of their respective projects and MAE-DGCS may implement its own monitoring activities on the proper implementation of the procedures for the soft loan.
- 9.2 MAE-DGCS reserves the right to control the implementation of the Program and the transparent, effective and efficient use of funds provided by the GoI. MAE-DGCS control activities may be carried out through its own staff missions or through personnel of the Cooperation Office of the Italian Embassy in Hanoi (UTL).
- 9.3 Financial controls are assigned to Artigiancassa.
- 9.4 In order to allow MAE-DGCS controls, PPCs and HCMP shall ensure access to MAE-DGCS personnel to Programs areas and to Program technical documentation.




**ARTICLE 10**  
**Impediments and Force Majeure**

- 10.1 In case of impediments to implement the present Agreement due to case of force majeure such as war, flood, fire, typhoon, earthquake, labour conflicts and strikes, acts of any government, unexpected transportation difficulties and other cases which will be recognised by both Parties upon agreement as force majeure according to practice or in case of peril or unsafe conditions for the expatriate personnel, the following provisions shall apply:
- a) in case that the duration of the impediment to the implementation of the Program is less than six months, the use of the funds shall be suspended until the MAE-DGCS authorises resumption of activities;
  - b) in case the duration of the impediment to the implementation of the Program is greater than six months and less than twenty-four, the Program shall be suspended and the residual funds, reduced by the amount needed to finance the activities specified at the following paragraph 10.2, shall be maintained until the impediment ends and the MAE-DGCS authorises resumption of the Program's activities.
  - c) In case the impediment to the implementation of the Program is greater than twenty-four months, the Parties shall discuss about the continuation of the Program and define an agreed course of actions. In case that the continuation of the Program is not feasible, the Parties shall agree on the destination of the residual funds deducted the amount needed to finance the activities specified in the following paragraph 10.2.
- 10.2 The activities of the Program not affected by the impediments and causes of force majeure shall be continued until completion and the funds shall be allocated.

**ARTICLE 11**  
**Settlement of Disputes and Amendments to the Agreement**

- 11.1 The Parties shall settle any dispute which may arise in the course of Program implementation and/or arising out of the implementation of this Agreement through diplomatic channels.
- 11.2 The Parties, by written mutual consent, may at any time change the content of this Agreement through amendments. The amendments shall enter into force with the same procedures as defined in Article 13.
- 11.3 The PID can be amended upon agreement of the Joint Steering Committee, through meetings or exchange of official letters, provided that amendments will not alter the contents and conditions of the contracts encompassed in the programme implementation.

**ARTICLE 12**  
**Termination of the Agreement**

- 12.1 GoI reserves the right to terminate the Program in case of failure of the Program to reach its objectives, in case of severe faults in the use of funds, in case of impediment or force majeure pursuant to Article 10.
- 12.2 In case of severe fault, GoI shall notify the event in writing to GoV, inviting it to take suitable measures to fix the consequences of the fault within maximum sixty days from the date of the notification. This time limit expired, GoI reserves itself the right to terminate the Agreement. In



this case Article 11.1 shall apply, notifying GoV through a Verbal Note with at least three months of advance

### **ARTICLE 13**

#### **Entry into Force and Duration**

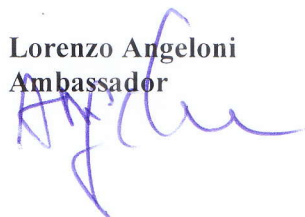
- 13.1 The present Agreement shall come into force on the date of receipt of the last of the two notifications by which the Parties shall inform each other about the completion of their respective domestic procedures necessary for the entry into force of this Agreement.
- 13.2 This Agreement shall have duration of thirty-six months from the date of its entry into force. Upon agreement between the Parties, its duration can be extended until all Program activities have been completed.

In witness thereof, the undersigned, duly authorized by their respective Governments, have signed the present Agreement.

Done on the 10<sup>th</sup> of December 2012 in two originals in the English language, both originals being equally authentic.

**For the Government of  
the Italian Republic**

**Lorenzo Angeloni  
Ambassador**



**For the Government of  
the Socialist Republic of Vietnam**



**Cao Viet Sinh  
Vice Minister**

