

AGREEMENT

between

THE GOVERNMENT OF THE KINGDOM OF NORWAY

and

**THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF
VIETNAM**

regarding assistance to the project

**"ESTABLISHMENT OF VIETNAM FISHERIES LAW AND
REGULATIONS, PHASE II – BRING THE LAW TO LIFE"**

WHEREAS the Government of the Kingdom of Norway ("Norway") and the Government of the Socialist Republic of Vietnam ("Vietnam") have entered into an agreement on General Terms and Procedures for Development Co-operation between Norway and Vietnam dated 9th October 1996 ("the Main Agreement"), and with reference to the provisions therein relating to Specific Agreements,

WHEREAS Norway has supported the project "Establishment of Vietnam Fisheries Law and Regulations", Phase I, through an Agreement dated 27th September 1999,

WHEREAS Vietnam in letter dated 1st November 2004 has requested Norway for assistance to Phase II of the project "Establishment of Vietnam Fisheries Law and Regulations, phase II – Bring the Law into Life", and

WHEREAS Norway has decided to comply with the request;

NOW THEREFORE Norway and Vietnam have reached the following understanding, which shall constitute a Specific Agreement as mentioned above:

Article I Scope and Objectives

1. This Agreement sets forth the terms and procedures for Norway's assistance to the Project as outlined in Annex I to this Agreement (“the Project”).

The Project is further outlined in the Project Document " Establishment of Vietnam Fisheries Law and Regulations, phase II – Bring the Law into Life”, dated July 2004.

The Goal of the Project is:

- To contribute to the sustainable development of Vietnam’s fisheries sector.

The Objective of the Project is:

- Improved legal framework and strengthened institutional capacity for better management and development of the fisheries sector of Vietnam.

Article II Co-operation - Representation - Administration

1. Norway and Vietnam shall co-operate fully to ensure that the Goal and Objectives of the Project are successfully accomplished. To that effect each Party shall furnish the other Party with all such information as may reasonably be required pertaining to the Project.
2. In matters pertaining to the implementation of this Agreement the Norwegian Ministry for Foreign Affairs (“MFA”) and the Vietnamese Ministry of Fisheries (“MOFI”) shall be competent to represent Norway and Vietnam respectively.

MOFI shall have the overall responsibility for the implementation of the Project.

All communication to Norway in regard to this Agreement shall be directed to the Royal Norwegian Embassy in Hanoi.

3. MOFI shall enter into a contract ("the Contract") with the Centre for Development Co-operation in Fisheries (CDCF) – a co-ordination unit of the Institute of Marine Research (IMR), Norway and the Norwegian Directorate of Fisheries (DOF), for institutional co-operation and technical assistance to implement the Project.

The Contract, as well as any amendments thereof, shall be approved by Norway before entering into force.

4. CDCF shall recruit a Part-time Technical Adviser ("PTA") to be approved by MOFI. The PTA will advise the NPD in matters regarding preparation of the inception report, annual project planning, budgeting, project implementation and monitoring. The PTA will advise MOFI in subject matters within his/her field of competence and will in addition be the co-ordinator of all technical inputs to the Project from CDCF and other collaborating partners, including the Food and Agriculture Organisation for the United Nations ("FAO"). The PTA will be assisted by CDCF-staff for administrative tasks.
5. MOFI will establish a Project Management Board (PMB) consisting of the NPD, PTA and leaders of relevant departments and directorates of MOFI participating in different sub-components of the project. The PMB will have the responsibility for planning, implementation, management, monitoring and evaluation of the Project.

The daily follow up of the Project will be done by a Project Management Office, headed by the NPD and assisted by a full-time Vice - National Project Director (Vice - NPD), a Project Secretary, two Interpreters, a Project Accountant ("PA") as well as a number of supporting staff assigned to work full time for the project. The PA will be responsible for accounts, control and payment of invoices, control and preparation of budgets. The Project Management Office shall assist and facilitate the work of the PMB.

The Terms of Reference for the main Project staff and PTA will be discussed and agreed upon during the Inception Period and annexed to their respective contracts.

6. Representatives of Norway and Vietnam shall have Annual Meetings in the first quarter each year in order to:
 - review the progress and results so far, of the Project, and approve the certified statement of accounts for the Project;
 - discuss possible revisions of plans and budgets for the Project;
 - approve work-plans and budgets for the current budget year, and
 - discuss issues of special concerns for the implementation of the Project.

The documentation specified in Article VII, Clauses 1, 2 and 3, below, shall form the basis for the consultations.

The Annual Meeting shall be called and chaired by Vietnam through MOFI. The Parties may in addition include others to be represented as advisors to their delegations.

Central elements of the discussions and all decisions from the consultations shall be recorded in Agreed Minutes. The Agreed Minutes shall be drafted by Vietnam and shall be sent to Norway for comments no later than 7 days after the Annual Meeting.

The planning period of the Project will follow the calendar year.

The first Annual Meeting should be combined with the Inception Meeting.

7. An Inception Meeting shall be called within a period from 3 to 6 months after the signing of the Agreement. The purpose of this meeting will be to discuss and agree upon:
 - Institutional and organisational set-up to involve the functional departments of MOFI in the project activities.
 - Prioritised list of legal documents to be drafted.
 - Identification of existing and new knowledge needed, and design of pilot activities to support the legal drafting and implementation of the Law, including the approach to gain/assemble the knowledge needed and the pilots to be undertaken.
 - Approach to capacity building and technical assistance.
 - Mechanism for law dissemination and feedback from stakeholders.
 - Approach to stakeholders' participation in the development and implementation of the legal framework as well as in fisheries management.
 - Mechanism of co-operation and annual coordination with the Danish funded program - FSPS and other projects of MOFI in areas relevant to the Fishery Law.
 - Revised budget within the total allocated budget frame for the whole period.
 - Terms of Reference for the NPD, Vice - NDP and the part-time technical adviser (PTA), and other staff of the project.
 - Cost norms and standards to be applied in the implementation of Phase II based on EU cost norms.
 - Detailed indicators to measure the results and success of the project.

MOFI shall present to the Inception Meeting a draft Inception Report as outlined above (Art. II paragraph 7).

Article III

Contributions of Norway

1. Norway shall, subject to Parliamentary appropriations, and on the terms and procedures set out or referred to herein, make available to Vietnam a financial grant not exceeding NOK 24,000,000 (Norwegian Kroner twentyfourmilliononly) ("the Grant"), to be used exclusively to finance the Project in the planned period 2004 - 2009.
2. Any accrued interest on the Grant may be used for the benefit of the Project, as agreed by the Parties in writing.

3. Any funds not fully utilised for one activity may upon previous written agreement between the Parties be utilised for the benefit of other activities within the Project.
4. Any unspent disbursed funds and any unspent accrued interest shall be returned to Norway upon the completion of the Project.

Article IV

Contributions and Obligations of Vietnam

Vietnam shall make all reasonable efforts to facilitate the successful implementation of the Project, and shall hereunder:

1. have the overall responsibility for the planning, administration and implementation of the Project, including all categories of works, repair and maintenance of buildings, equipment, spare parts, goods and materials made available under this Agreement;
2. ensure that the Grant is reflected in the plans, budgets and accounts of MOFI, and that accounts for the Project are kept in accordance with generally accepted accounting practices. The accounts shall include accrued interest, if any;
3. provide sufficient office place and facilities, experimental sites, qualified local personnel and all financial and other resources that may reasonably be required over and above the Grant and the contribution of Vietnam as stated in Annex I to this Agreement, for the successful implementation of the Project;
4. undertake all such obligations as set out in Article V and VI of the Main Agreement with regard to expatriate personnel and/or contractors financed by the Grant;
5. in accordance with Article VIII, Clause 2, b) of the Main Agreement defray any customs duties, sales taxes and other taxes, fees and levies on all equipment, materials and supplies financed by the Grant and imported into Vietnam for the benefit of the Project;
6. in accordance with Article VIII, Clause 2, a) of the Main Agreement grant all necessary permits, import licences and foreign exchange permissions that may be required in connection with the implementation of the Project;
7. promptly inform Norway of any condition which interferes or threatens to interfere with the successful implementation of the Project;
8. permit representatives of Norway to visit any part of Vietnam for purposes related to this Agreement and examine any relevant records, goods and documents in accordance with the Vietnamese laws;

9. practise full transparency by informing, whenever relevant, the intended beneficiaries of the respective activities about the plans and appropriations/ allocations made to the activity;
10. furnish CDCF and the PTA with all such data and information relevant to the Project and provide promptly such facilities, services and arrangements as agreed upon in the Contract;
11. facilitate that the key staff whose competence has been upgraded during the Project will remain at MOFI after Project termination.

Article V Procurement

1. Vietnam undertakes to effect all procurements of goods and services for the Project and is responsible for the contracts to be signed. Vietnam shall observe the highest ethics during the procurement and execution of the contracts.

Except for the Contract referred to in Article II, Clause 3 above, copies of contracts shall be submitted to Norway for information.

2. All procurements shall be performed in accordance with Vietnam's procurement regulations and with generally accepted principles and good procurement practices. Invitations to tender or to make offer as well as procurement contracts shall, respectively, include a clause stating that the tender/offer will be rejected and the contract cancelled, in case any illegal or corrupt practices have been connected with the award or the execution of the contract.

No offer, gift, payment or benefit of any kind, which would or could be construed as an illegal or corrupt practice, shall be accepted, either directly or indirectly, as an inducement or reward for the award or execution of procurement contracts. Any such practice will be grounds for cancellation of this Agreement and the contracts concerned.

All contracts to be submitted to Norway shall be accompanied by a written statement from Vietnam stating that the above procurement regulations have been adhered to.

In accordance with the procurement regulations of Vietnam, Norwegian suppliers or Norwegian consultants shall be given the same opportunities to compete for deliveries and/or participate in the bidding as other suppliers.

3. Vietnam shall upon request furnish Norway with all relevant information on its procurement practices and actions taken, and provide access to all related records and documents. Norway may require access to information even during that stage in the procurement procedure when it is restricted to the officers performing the procurement. Restrictions on such information shall be respected

until the information can be made public without any risk of detriment to the result of the procurement.

4. Vietnam shall ensure in its national legislation, adequate and effective means to punish and prevent illegal or corrupt practises.

Article VI Disbursements

1. Vietnam shall submit written requests for disbursement from the Grant. The first request shall be based upon a work-plan with budget for the remaining part of the budget year of 2004 after signing of the Agreement and Norway's approval of the signed Contract.
2. The subsequent requests shall be submitted on a 6-monthly basis and be based on and relate to approved annual work-plans and budgets. They shall be accompanied by certified statements of accounts showing income and expenditure for the foregoing period and a cash flow budget for the coming period. Any amount, including interest, which is already disbursed but not fully utilised, shall be taken into account when requests are made. The certification of the statements of account shall be done by the NPD and the PA or their designates.
3. Transfer of the funds will be undertaken upon Norway's approval of the requests to a separate convertible Project bank account to be opened in Norway and/or Vietnam. These funds shall be available for the Project immediately. The NPD, and the PA or their designates shall have access to the Project account through double signature. Vietnam shall immediately, in writing, acknowledge receipt of the funds.
4. All disbursements to suppliers of goods and services shall be made by Vietnam.

Article VII Reports

1. Based on the inception meeting, Vietnam shall submit a final inception report describing the agreed results of the discussion on the issues raised in Article II, Clause 7.
2. Vietnam shall no later than three weeks prior to the Annual Meeting submit to Norway an Annual Report on the implementation of the Project. A format for the Annual Report is given in Annex II hereto.

The Annual Progress Report shall include:

- progress report, giving information on actual outputs compared to planned outputs as explained in the work-plans and time schedules, use of inputs, problems encountered or foreseen and other information related to the implementation;
 - report on current year's implementation and a presentation of possible needs for revision;
 - Certified statement of accounts related to the agreed budget specifying income from all sources and all expenditures.
3. As a preparation for the Annual Meeting mentioned in Article II, Clause 7 above, Vietnam shall minimum 3 weeks prior to the Meeting submit to Norway:
- a proposed agenda;
 - work-plans with planned outputs and time schedules for the current budget year that have been worked out in collaboration with the PTA and co-ordinated with activities under FSPS;
 - a budget for the current budget year of the Project, showing all income and expenditures;

These documents together with the Annual Report shall provide the basis for the discussions and decisions in the consultations at the Annual Meeting.

4. An audit of the Project accounts shall be carried out not later than three months after each financial year. Norway shall enter into a contract with an independent internationally acknowledged auditor firm to be agreed upon between Norway and Vietnam.

The audit opinion shall as a minimum certify:

- the principles adhered to during the audit;
- the total flow of funds, from receipt by MOFI to final use on the various activities;
- an assessment of the correctness and completeness of the figures in the accounts and that the accounts reflect the actual situation in the Project;
- any essential findings from the audit.

The audit shall be carried out in accordance with the above requirements and internationally recognised audit principles and practises, which shall be stated in the opinion.

Along with the above prescribed audit opinions copies of any other reports from the auditor regarding or significant to the implementation or follow-up of the Project shall be submitted to Norway.

The cost of the audit shall be covered from the Grant and paid directly by Norway to the auditor.

5. Vietnam shall submit to Norway a final report within three months after the completion of the Project. The report shall give a summary of outputs and activities undertaken, achievements compared to Goal and Objective and an assessment of the efficiency of the Project.
6. Norway shall respond within 6 weeks upon receipt of the reports mentioned above.

Article VIII Reservations

1. Norway reserves the right to withhold disbursements at any time in case:
 - the Project develops unfavourably in relation to the Goal and Objective;
 - substantial deviations from agreed plans and budgets occur;
 - resources to be allocated by Vietnam are not provided as agreed;
 - the documentation specified in Article VII, above, is not delivered as agreed;
 - the financial management of the Project is not satisfactory;
 - the Contract referred to in Article II, Clause 3, above, is breached or terminated before all obligations therein are fulfilled.
2. Norway reserves the right to claim repayment in full or in part of funds from the Grant if the funds or part of the funds are found not to be used in accordance with the terms and conditions of this Agreement or not satisfactorily accounted for.
3. Before withholding any disbursements or claiming repayment the Parties shall consult with a view to reaching a solution in the matter.
4. Norway will cancel this Agreement or portion of this Agreement and have the right to demand cancellation of any contract financed under this Agreement, with immediate effect if it determines, with respect to any contract to be financed under this Agreement that corrupt or fraudulent practices were engaged in by representatives of Vietnam or a beneficiary of the aid funds during procurement or during the execution of the contract without Vietnam haven taken timely and appropriate action satisfactory to Norway to remedy the situation.
5. Norway and Vietnam agree to co-operate on preventing corruption within and through the Project. Norway and Vietnam undertake to take rapid legal measures in their respective countries to stop, investigate and prosecute in accordance with national law any person suspected of corruption or other intentional misuse of resources.

Article IX Information - Evaluation - Reviews

The Parties will agree upon measures for information, evaluation and reviews for the Project.

The following shall be carried out:

- A mid-term review will be held after two years of the Project implementation, possibly in co-ordination with reviews of other important development co-operation projects of MOFI like the FSPS.
- An end-review will be held within three months after the completion of the project, to assess the extent to which the Project reached its Objectives, as well as providing documentation of experience gained.

The reviews shall be carried out as joint reviews by a team of consultants appointed by MOFI and NORAD, and if relevant, other donors. The parties shall agree upon the Terms of Reference for the reviews. The cost for the reviews shall be covered by the Grant

Article X Distribution of the present Agreement

The Parties shall distribute copies of the present Agreement to the respective ministries, authorities and other institutions involved in the Project or otherwise in need of information on its content.

Article XI Disputes - Entry into Force – Termination

1. If any dispute arises relating to the implementation or interpretation of the present Agreement, there shall be consultations between the competent authorities designated in Article II, Clause 2 above, with a view to reaching an agreement. In case of failure to reach an agreement the dispute shall be referred to the Norwegian Ministry of Foreign Affairs and the Vietnamese Ministry of Foreign Affairs.
2. This Agreement shall enter into force on the date of its signature and shall remain in force until both Parties have fulfilled all obligations arising from it. Whether these obligations shall be regarded as fulfilled shall be determined in consultations between the Parties.
3. Notwithstanding the previous Clause, both Parties may terminate the present Agreement by giving three months' written notice to the other Party.

In witness hereof the undersigned, acting on behalf of their respective Governments, have signed the present Agreement in two equal originals in the English language.

Done in Hanoi thisday of November 2004

Svein Ludvigsen,
Minister of Fisheries and Coastal Affairs
For the Government of
the Kingdom of Norway

Ta Quang Ngoc
Minister of Fisheries
For the Government of the
Socialist Republic of Vietnam

ANNEX I

Agreed Project Summary

1. Description of the Project

- 1.1 Project Name:** Establishment of Vietnam Fisheries Law and Regulations, phase II – Bring the Law into Life
- 1.2 Implementing institution:** The Ministry of Fisheries of Vietnam/Legal Department
- 1.3 Norwegian partner institution:** Centre for Development Co-operation in Fisheries (CDCF) representing Institute of Marine Research/ Directorate of Fisheries.
- 1.4 Goal:** To contribute to the sustainable development of Vietnam's fisheries sector.
- 1.5 Objective:** Improved legal framework and strengthened institutional capacity for better management and development of the fisheries sector of Vietnam.
- 1.6 Outputs:**
- Output 1: Subordinate legislation has been developed, formulated, submitted for promulgation and implemented as appropriate. During the implementation of the law, articles of the fisheries law have been reviewed and if a revision is required, it will be done then proposed for adoption by the National Assembly.
 - Output 2: The level of public participation in developing fisheries legislation, awareness of and compliance with fisheries legislation, has been raised, and approaches to this end has been developed.
 - Output 3: The capacity to formulate and implement the law and subordinate legislation among institutions/organisations and civil servants of fisheries sector at central and local levels has been enhanced.
 - Output 4: Experiences have been collected through pilot studies as a basis for formulation of sub-laws and models for implementation of Fisheries Law developed.
 - Output 5: Project managed and co-ordinated effectively, including co-ordination with other donor and/or Vietnam government funded programmes.

2. Inputs:

2.1 Norway's contribution (NOK) (tentatively):

<i>No.</i>	<i>Items</i>	<i>Estimated contribution (NOK)</i>	<i>USD Equivalent</i>
1	Human resources (advisers)	9,765,000	1,395,000
2	Travels (in-country and abroad)	4,396,000	628,000
3	Equipment	938,000	134,000
4	Operation costs	1,127,000	161,000
5	Law advocacy and legal capacity strengthening	5,236,000	748,000
6	Institutional co-operation, audit and review	672,000	96,000
7	Audit	126,000	18,000
8	Project summary review	350,000	50,000
	Sub-total I	22,610,000	3,230,000
9	Contingency 5%	1,127,000	161,000
	Sub-total II	23,737,000	3,391,000
	Reserve for exchange rate variances	260,000	
	TOTAL	24,000,000	

Based on estimated exchange rate between USD / NOK: 1 USD = 7 NOK

2.2 Vietnam's contributions (USD):

<i>No.</i>	<i>Items</i>	<i>Estimated contribution (USD)</i>
1	Human resources	110,000
2	Administrative activities	175,000
3	Repair and maintenance of assets	15,000
	Total	300,000

3. Important External Factors:

- Good co-operation amongst departments, and programs or projects funded by different donors.
- No major institutional changes within MoFi.
- Fisheries legislation drafting and adoption are among priorities and programmes of Government and concerned Ministries.
- Trained staff is to work within the areas trained.
- Effective collaboration with FSPS.
- Personnel resources available for pilot study both at central and local level.
- Stakeholders willing to co-operate.

ANNEX II

ANNUAL PROGRESS REPORT FORMAT

1. PROJECT TITLE:
2. IMPLEMENTING INSTITUTION:
3. PROJECT DESIGN (Goal, Objective, Outputs):
 - As stated in Agreed Project Summary
4. PROGRESS OF IMPLEMENTATION:
 - Expenditure in relation to budget. A comparison between budget and actual costs as presented in the Statement of Accounts (specifying inputs from all sources including Norway's contribution).
 - Actual outputs compared to planned outputs. Planned outputs are described in the Annual Work Plan. Deviations from plans must be explained.
 - Problems or risks; identification of specific challenges to the Project (e.g. sustainability and issues related to external factors).
5. ASSESSMENTS:
 - Efficiency of Project activities. The extent to which inputs are converted into planned outputs.
 - The need for adjustments to activity plans and/or planned inputs.
 - Relevance of the Project compared to defined needs and concerns (as expressed in the Objective).