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LOAN NUMBER 2429-VIE

LOAN AGREEMENT  
(Ordinary Operations)  
(Song Bung 4 Hydropower Project)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 6 OCTOBER 2008

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LAL: VIE 36352

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 6 October 2008 between SOCIALIST REPUBLIC OF VIET NAM (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Project will be carried out by Viet Nam Electricity (hereinafter called EVN), and for this purpose the Borrower will make available to EVN the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(C) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and EVN;

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said Ordinary Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

(a) Section 3.03 is deleted and the following is substituted therefor:

**Commitment Charge; Credit.** (aa) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(bb) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the amount of the credit against the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a

percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the Loan Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "affected person/household/community" means any person, household or community whose living environment and/or livelihood activities have been or will be adversely affected by the resettlement activities undertaken or proposed to be undertaken by the Project;

(b) "Consulting Guidelines" means ADB's "Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers" (2007, as amended from time to time);

(c) "Dong" or the sign "D" means dong in the currency of the Borrower;

(d) "EIA" means the English-version full-scale Environmental Impact Assessment prepared for the Project and submitted to ADB by the Borrower in December 2006, as may be updated from time to time with the concurrence of ADB;

(e) "EMP" means the English-version Environmental Management Plan prepared for the Project and submitted to ADB by the Borrower as Section VII (and the annexes referenced in Section VII) of the EIA, which shall form the basis for related official discussions, actions and budget preparation;

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

(g) "Goods" means equipment and materials to be financed out of the proceeds of the Loan; including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

(h) "Procurement Guidelines" means ADB's "Procurement Guidelines" (2007, as amended from time to time);

(i) "Procurement Plan" means the procurement plan for the Project dated 21 January 2008 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(j) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means EVN or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(k) "Project Facilities" means the facilities and equipment to be provided under the Project;

(l) "REMDP" means the Resettlement and Ethnic Minorities Development Plan prepared specifically for the Project and endorsed by EVN on 5 October 2006, and the Addendum to the REMDP endorsed by EVN on 22 January 2008, both of which shall be updated in the manner prescribed in paragraph 6 of the Schedule 5 to this Loan Agreement;

(m) "SB4HPPMB" means the Song Bung 4 Hydropower Project Management Board of EVN;

(n) "SEIA" means the Summary Environmental Impact Assessment of the Project;

(o) "Subsidiary Loan Agreement" means the agreement between the Borrower and EVN referred to in Section 3.01 of this Loan Agreement;

(p) "VWU" means Viet Nam Women's Union; and

(q) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

## **ARTICLE II**

### **The Loan**

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of one hundred ninety six million dollars (\$196,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a term of 25 years, including a grace period as defined in paragraph (c) of this Section.

(c) The term "grace period" as used in paragraph (b) of this Section means the period prior to payment of the first principal amount of the Loan on the Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60 per cent as provided by Section 3.02 of the Loan

Regulations, less a credit of 0.40 per cent as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15 per cent per annum. Such charge shall accrue on amounts of the Loan (less amounts withdrawn from time to time), commencing sixty (60) days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 April and 15 October in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

### **ARTICLE III**

#### **Use of Proceeds of the Loan**

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan to EVN under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB. Except as ADB may otherwise agree, the terms for relending the proceeds of the Loan shall include interest at a rate equal to the sum of the rate specified in Section 2.02 above plus related fees, pursuant to the Borrower's relevant regulations. The commitment charge to be incurred pursuant to Section 2.03 above and any other related charges payable by the Borrower under this Loan Agreement shall be paid by EVN.

(b) The Borrower shall cause EVN to apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The Goods, Works and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works and consulting services and other items of expenditure shall be in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where Goods, Works or consulting or services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all Goods, Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2014 or such other date as may from time to time be agreed between the Borrower and ADB.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. (a) The Borrower shall cause EVN to carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental and hydropower practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement and the Schedule to the Project Agreement.

Section 4.02. The Borrower shall make available to EVN, promptly as needed the facilities, services, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 4.03. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.04. The Borrower shall take all action which shall be necessary on its part to enable EVN to perform its obligations under the Project Agreement, including compliance with the financial ratios as outlined in paragraph 4 of Schedule 5 to this Loan Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

## **ARTICLE V**

### **Suspension; Cancellation; Acceleration of Maturity**

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(l) of the Loan Regulations: EVN shall have failed to perform any of its obligations under the Subsidiary Loan Agreement.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a)(iv) of the Loan Regulations: the event specified in Section 5.01 of this Loan Agreement shall have occurred.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations: the Subsidiary Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Borrower and EVN and shall have become fully effective and binding upon the Borrower and EVN in accordance with its terms.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 10.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: that the Subsidiary Loan Agreement has been duly authorized or approved by, and executed and delivered on behalf of, the Borrower and EVN and is legally binding upon the Borrower and EVN in accordance with its terms.

Section 6.03. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

## **ARTICLE VII**

### **Delegation of Authority**

Section 7.01. The Borrower hereby designates EVN its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.03 and 3.05 of this Loan Agreement and under Sections 6.01, 6.02 and 6.03 of the Loan Regulations.

Section 7.02. Any action taken or any agreement entered into by EVN pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 7.03. The authority conferred on EVN under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

## **ARTICLE VIII**

### **Miscellaneous**

Section 8.01. The Governor of the State Bank of Viet Nam is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

#### For the Borrower

State Bank of Viet Nam  
47 – 49 Ly Thai To  
Hanoi, Viet Nam

Facsimile Number:

(84-4) 8250-612.

For ADB

Asian Development Bank  
P.O. Box 789  
0980 Manila, Philippines

Cable Address:

ASIANBANK  
MANILA

Facsimile Numbers:

(632) 636-2444  
(632) 636-2336.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

SOCIALIST REPUBLIC OF VIET NAM

By 

\_\_\_\_\_  
NGUYEN VAN GIAU  
Authorized Representative

ASIAN DEVELOPMENT BANK

By 

\_\_\_\_\_  
AYUMI KONISHI  
Country Director  
Viet Nam Resident Mission

## SCHEDULE 1

### Description of the Project

#### Purpose of the Project

1. The Project aims to contribute towards meeting the Borrower's power demand with a reliable and economical source of power generation using the indigenous resources of the Borrower in an environmentally sustainable and socially inclusive manner.

#### Scope of the Project

2. The scope of the Project comprises:

##### Part A: Construction of Hydroelectric Plant and Related Infrastructure

construction of a 156 MW hydropower plant on the Bung River, including the concrete dam with integral gated spillway, intake structure, headrace tunnel, surge shaft, pressure shaft and pressure tunnel in the underground works; a power house consisting of two 78 MW Francis generating units, tailrace channel and switchyard; and workers' camps.

##### Part B: Resettlement of Affected Communities

- (i) provision of new resettlement sites, including associated infrastructure such as access roads, and improvement of common facilities such as schools and health facilities; and
- (ii) provision of assistance to restore and improve the livelihoods of the affected people in a culturally sensitive manner, including training.

3. The Project also includes provision of consulting services. The Project is expected to be completed by 31 December 2013.

**SCHEDULE 2****Amortization Schedule**

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Sequence</u>	<u>Date Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
1	15 October 2013	0.225941
2	15 April 2014	0.248535
3	15 October 2014	0.273389
4	15 April 2015	0.300727
5	15 October 2015	0.330800
6	15 April 2016	0.363880
7	15 October 2016	0.400268
8	15 April 2017	0.440295
9	15 October 2017	0.484325
10	15 April 2018	0.532757
11	15 October 2018	0.586033
12	15 April 2019	0.644636
13	15 October 2019	0.709100
14	15 April 2020	0.780010
15	15 October 2020	0.858011
16	15 April 2021	0.943812
17	15 October 2021	1.038193
18	15 April 2022	1.142012
19	15 October 2022	1.256213
20	15 April 2023	1.381835
21	15 October 2023	1.520018
22	15 April 2024	1.672020
23	15 October 2024	1.839222
24	15 April 2025	2.023144
25	15 October 2025	2.225459
26	15 April 2026	2.448004
27	15 October 2026	2.692805

<u>Sequence</u>	<u>Date Payment Due</u>		<u>Installment Share</u> (Expressed as a %)
28	15 April	2027	2.962085
29	15 October	2027	3.258294
30	15 April	2028	3.584123
31	15 October	2028	3.942536
32	15 April	2029	4.336789
33	15 October	2029	4.770468
34	15 April	2030	5.247515
35	15 October	2030	5.772266
36	15 April	2031	6.349493
37	15 October	2031	6.984442
38	15 April	2032	7.682886
39	15 October	2032	8.451175
40	15 April	2033	9.296484
TOTAL			<u>100.00</u>

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately

prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

### SCHEDULE 3

#### Allocation and Withdrawal of Loan Proceeds

##### General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

##### Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories and Subcategories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

##### Interest and Commitment Charge

3. The amount allocated to Category 4 is for financing interest and commitment charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charge.

##### Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

##### Disbursement Procedures

5. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the Loan proceeds shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Account; Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at a commercial bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest account shall be dollars. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure for the first six months of Project implementation, or (ii) the equivalent of ten (10) percent of the Loan amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$100,000.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Song Bung 4 Hydropower Project)</b>				
<b>CATEGORY</b>				<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated</b>		<b>Percentage and Basis for Withdrawal from the Loan Account</b>
		<b>Category</b>	<b>\$ Subcategory</b>	
1	Works	108,660,000		
1A	Dam and Spillway		64,690,000	100 percent of total expenditure
1B	Tunnel and Power Station		43,970,000	100 percent of total expenditure
2	Equipment	40,600,000		
2A	Electro-mechanical Equipment		32,950,000	100 percent of total expenditure
2B	Hydro-mechanical Equipment		7,650,000	100 percent of total expenditure
3	Consulting Services	5,250,000		100 percent of total expenditure
4	Interest and Commitment Charge	19,020,000		100 percent of amounts due
5	Unallocated	22,470,000		
	Total	196,000,000		

## SCHEDULE 4

### Procurement of Goods and Works, and Consulting Services

#### A. General

1. All Goods and Works, and consulting services, to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

#### B. Procurement for Goods and Works

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

International Competitive Bidding
National Competitive Bidding
Shopping
Direct Contracting

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

#### Domestic Preference

4. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods.

#### National Competitive Bidding

5. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after written approval of such change by the Borrower and ADB.

#### C. Conditions for Award of Contract

6. The Borrower shall not award any Works contracts financed under the Loan under Categories 1A and 1B as referred to in the Table (Allocation and Withdrawal of Loan Proceeds) attached to the Schedule 3 to this Loan Agreement until (i) EVN shall have applied and obtained the license required under the Water Resource Law (1998) of the

Borrower; and (ii) the updated REMDP shall have been fully implemented in the construction land as described in Volume III, Chapter I of the REMDP.

**D. Selection of Consulting Services**

7. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, and except as set forth in paragraph 8 below, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

8. The Borrower shall apply the following method for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

Fixed-budget Selection
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**E. Industrial or Intellectual Property Rights**

9. (a) The Borrower shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

10. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

**F. ADB's Review of Procurement Decisions**

11. All contracts procured under international competitive bidding procedures and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

## SCHEDULE 5

### Execution of Project and Operation of Project Facilities; Financial and Other Matters

#### A. PROJECT IMPLEMENTATION

##### Project Executing Agency

1. As the Project Executing Agency, EVN shall be responsible for the implementation of the Project through SB4HPPMB.
2. The Project Director of SB4HPPMB, directly reporting to EVN's Vice President for Generation Projects in the Central Region, shall have the overall responsibility for implementing the Project. SB4HPPMB shall coordinate and monitor all Project construction activities, including mobilization of design and supervision consultants, preparation of bid documents, bid evaluation, construction supervision and approval of payments to the contractors. SB4HPPMB shall appoint a full-time Project Manager and other staff, who shall be supported by implementation supervision consultants, for the day-to-day management of the Project. The Environment and Social Division of SB4HPPMB shall be responsible for the environmental and social aspects of the Project. Prior to commencement of the civil works, SB4HPPMB shall set up (i) an Environment Management Unit (EMU) to implement the EMP and undertake environmental monitoring during construction phase of the Project; and (ii) a Resettlement Management and Implementation Unit (RMIU), consisting of SB4HPPMB staff, representatives from Nam Giang District Peoples Committee and the resettlement consultants, to manage the resettlement and livelihood restoration activities of the affected people. The RMIU shall engage local contractors and local communities to implement the REMDP.

#### B. FINANCIAL AND OTHER MATTERS

##### Project Design

3. The Borrower shall ensure that the Project is designed and constructed in accordance with best international practices with respect to hydropower plants, and is in conformity with the environmental laws and regulations of Viet Nam, ADB's Environment Policy (2002) and the recommendations of the EIA and SEIA. The Borrower shall also ensure that the design and construction personnel work in close coordination with the supervision consultants to be recruited under the Project, including making available any designs, specifications and related information and reports to the latter.

##### Financial Issues

4. (a) The Borrower shall ensure, through appropriate tariff adjustments and other means, that EVN maintains (i) a self-financing ratio of 25 per cent or above; (ii) debt service coverage ratio of 1.5 or above; and (iii) a long term debt: equity ratio of 70:30 or less. The Borrower shall also ensure that adequate tariff increases are proposed by EVN and processed by the relevant authorities of the Borrower in a timely and effective manner.

(b) For the purpose of this paragraph, the following definitions shall have the meanings prescribed hereunder:

- (i) self-financing ratio means the ratio that measures the percentage of annual capital investments financed from available cash resources;
- (ii) debt service coverage ratio shall be (a) an indicator of EVN's cash flow margin, enabling it to service debt from internal sources; and (b) a ratio that measures the extent to which forecast cash flows are able to cover forecast debt service requirements; and
- (iii) debt: equity ratio means the ratio that measures the relationship between all borrowed funds and shareholders' invested capital.

#### Financial Management, Auditing and Reporting

5. The Borrower shall ensure that EVN (i) maintains separate accounts for the Project including those relating to the financing provided by EVN; (ii) maintains records of all the payments made from the Project accounts; (iii) provides quarterly progress reports and annual audit reports of the Project accounts, with separate auditor's opinion on the use of imprest account and statement of expenditure procedures under the Project, within 6 months of the end of each fiscal year during the Project implementation period; and (iv) provides consolidated accounts of EVN within 6 months of the end of each fiscal year during the Project implementation period.

#### Resettlement and Ethnic Minority Development Plan

6. (a) The Borrower shall ensure that the REMDP prepared for the Project is implemented in a timely and effective manner by EVN with the assistance of consultants to be engaged by EVN. The consultants shall be mobilized before commencement of any land acquisition and resettlement activities. EVN shall update the REMDP based on the final technical design, in accordance with the related regulations of the Borrower and ADB's Policy on Involuntary Resettlement (1995) and other related requirements. Provisions and principles adopted in the REMDP shall supersede the provisions of the Borrower's regulations wherever there is a conflict or gap.

(b) The updated REMDP shall (i) include components that have resettlement impacts which were not anticipated, fully determined or identified as part of the Project during the feasibility study; (ii) be prepared in full consultation with and disclosed to the affected persons; (iii) be submitted to ADB for review and approval before implementation of the updated plans; and (iv) be fully implemented with respect to the reservoir area before impounding.

(c) The Borrower shall cause the Quang Nam People's Committee to ensure that further consultations are undertaken during Project implementation with the affected persons both in the reservoir area and upstream and downstream communities to ascertain their preferences with regards to proposed mitigation measures and implementation arrangements.

(d) The Borrower shall cause EVN to undertake (i) a survey on the downstream impacts after the commissioning of the Project, and (ii) appropriate mitigation measures for impacts that are not adequately addressed during the Project implementation.

(e) The Borrower shall ensure that appropriate land use rights, land for community-based agro-forestry program, priority access to forest resources in the resettlement areas and priority rights to fishing in the reservoirs of Song Bung 4 and, possibly Song Bung 5, should it materialize, shall be accorded in a timely manner to the affected communities as outlined in the REMDP.

(f) The Borrower shall ensure that EVN, on a best effort basis, provides power supply to the non-electrified villages in the Dai Son commune under any other relevant project.

(g) The Borrower shall cause EVN to ensure adequate financing and other resources, for which EVN is responsible, are provided in a timely manner for effective and timely implementation of the REMDP. EVN shall, every 6 months, submit to ADB its budget estimates for the resettlement activities, which shall have been prepared in consultation with the RMIU. EVN shall also provide adequate contingencies in the budget estimates to meet any unforeseen circumstances or impacts.

(h) The Borrower shall also ensure that the planning and implementation of resettlement activities financed by EVN shall be closely coordinated with the ADB-supported Japan Fund for Poverty Reduction Project for livelihood activities (Livelihood Improvement of Vulnerable Ethnic Minority Communities Affected by the Song Bung 4 Hydropower Project in Quang Nam Province).

(i) The Borrower shall also cause EVN and Quang Nam People's Committee to ensure that (i) district-level resettlement committees established pursuant to the REMDP include representatives from the district-level VWU offices; (ii) district-level resettlement committees include representatives from the commune-level VWU offices as well as female representatives from amongst the affected communities belonging to the Co Tu ethnic group; (iii) grievance redress mechanisms are established on completion of detailed technical design; (iv) training is provided on livelihood activities, including extension services in agriculture and livestock rearing, and community-based forestry development and management; (v) training workshops are conducted on resettlement activities, including relaying of detailed information on proposed relocation sites, relocation logistics, entitlements, compensation, management of compensation money, livelihood strategies for income improvement for affected persons and grievance procedures; and (vi) the training includes district-level, commune-level and village level resettlement committee members, as well as women from ethnic groups of the villages to be inundated by the dam reservoir, women from the villages in the Project Lands and women from the downstream and upstream villages.

#### Gender and Other Social Issues

7. (a) The Borrower shall cause EVN to ensure that (i) the GAP prepared for the Project is fully implemented and monitored in accordance with its terms, related Borrower regulations and ADB's Policy on Gender and Development (1998) in a timely manner, and

adequate resources are allocated for this purpose; and (ii) all contracts under the Project incorporate provisions and budget to the effect that contractors:

- (1) comply with all applicable labor laws and related international treaty obligations, and do not employ child labor;
- (2) employ women, as well as men, from affected poor households for civil works to be undertaken under the Project and provide equal pay to men and women for work of equal value pursuant to the Borrower's Labor Code, as amended in 2002;
- (3) provide safe working conditions for workers, including provision of safe drinking water, sanitation facilities and appropriate child-care facility for women workers in the construction camp;
- (4) implement the health requirements, including contracting experienced NGOs to implement the training and awareness campaigns on HIV/AIDS and Human Trafficking in the campsites and permanent quarters of the workers and in Project communities as recommended in the Project's Social Management Plan and GAP; and
- (5) implement occupational health and safety requirement for the workers including the provision of appropriately staffed and equipped medical facilities as outlined in the Social Management Plan.

(b) The Borrower shall cause EVN to ensure that in the resettlement sites for Co Tu villagers (i) land use rights for farming and user rights for forest products shall be issued in the names of both husband and wife; (ii) women, as well as men, are included in the training on extension services and community based forestry development and management; and (iii) separate workshops are conducted for the Co Tu women for design and implementation arrangements of livelihood activities under the REMDP.

(c) The Borrower shall ensure that (i) EVN develops monitoring indicators disaggregated by gender and ethnic groups for purposes of monitoring and related reporting, and (ii) conducts gender sensitization training on gender and resettlement for its relevant staff and the members of district, commune and village-level resettlement committees.

(d) The Borrower shall continue to monitor the sustainability of the livelihoods of the affected persons after the commissioning of the Project, including the mitigation of adverse impacts on the livelihood of the downstream and upstream communities, and maintain a close dialogue with ADB on the matter.

#### Environmental Management Plan

8. The Borrower shall cause EVN to ensure that (i) the EMP is fully updated upon completion of the final technical design, incorporating recommendations and information from the Strategic Environmental Assessment conducted under ADB-financed Technical Assistance No. 4713 (Capacity Building in the Strategic Environmental Assessment of the Hydropower Sector) as deemed appropriate by the Borrower and ADB,

and further Project specific mitigation measures are duly included in the updated EMP to be implemented during the construction and operation of the Project; (ii) the updated EMP is approved by ADB and received no-objection from the Ministry of Natural Resources and Environment of the Borrower, if the need be; (iii) a further update of the EMP is undertaken with emphasis on the environmental management of the Project during operational phase, including refining of the budget requirements and specification of the related responsibilities, prior to the commissioning of the Project; and (iv) an Environmental Management Unit is established within SB4HPPBM to update and implement the EMP, and the necessary financing and staff resources are made available in a timely manner.

#### Independent monitoring

9. (a) The Borrower shall cause EVN to ensure that independent monitors, acceptable to ADB, are recruited and financed by the Loan to monitor the implementation of the REMDP, EMP and GAP. The independent monitors shall be mobilized on completion of the detailed technical design and provide detailed reports on such implementation to EVN and ADB, concurrently, every six months during Project implementation until the objectives of the REMDP have been achieved.

(b) The Borrower shall also cause EVN to ensure that (i) a panel of experts, consisting of internationally renowned experts engaged by ADB at its own cost to monitor implementation of the REMDP, is provided with such information and access to the Project site as the panel may reasonably request; and (ii) any shortcomings identified in the independent monitors' detailed reports, to be issued annually, are promptly addressed by EVN in a manner satisfactory to ADB until such time that the REMDP has been fully implemented.

(c) The reports produced under sub-paragraphs (a) and (b) hereabove shall be disclosed in accordance with the requirements of ADB's Public Communications Policy (2005).

#### Anticorruption

10. (a) The Borrower shall comply with, and shall cause EVN to comply with ADB's Anticorruption Policy (1998, as amended to date) and the Policy relating to Enhancing ADB's Role in Combating Money Laundering and the Financing of Terrorism (2003). The Borrower (i) acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; (ii) agrees to cooperate fully with, and to cause EVN to cooperate fully with, any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation; and (iii) agrees to refrain, and cause the Project Executing Agency to refrain, from engaging in money laundering activities or financing of terrorism and shall allow, and cause the Project Executing Agency to allow, ADB to investigate any violation or potential violation of these undertakings.

(b) Without limiting the generality of the preceding paragraph, the Borrower shall (i) ensure that EVN conducts periodic inspections on the contractors' activities related to fund withdrawals and settlements; and (ii) ensure and cause EVN to ensure that all contracts financed by ADB in connection with the Project include provisions specifying the

right of ADB to audit and examine the records and accounts of EVN, and all contractors, suppliers, consultants and other service providers as they relate to the Project.

(c) In addition to these requirements, to deter corruption and increase transparency, the Borrower shall create and maintain a website to disclose information about procurements related to the Project. For each contract, the website shall include information on, among others, the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted, amount of contract awarded, and the list of goods/services, including consulting services, procured. In addition to the web-based disclosure, stakeholders, which include civil society and non-governmental organizations, shall be provided detailed information on procurement on public notice boards in their respective provinces.