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LOAN NUMBER 2429-VIE

PROJECT AGREEMENT  
(Song Bung 4 Hydropower Project)

between

ASIAN DEVELOPMENT BANK

and

VIET NAM ELECTRICITY

DATED 6 OCTOBER 2008

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PAL:VIE 36352

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 6 October 2008 between ASIAN DEVELOPMENT BANK (hereinafter called ADB) and VIET NAM ELECTRICITY (hereinafter called EVN).

### **WHEREAS**

(A) by a Loan Agreement of even date herewith between Socialist Republic of Viet Nam (hereinafter called the Borrower) and ADB, ADB has agreed to make to the Borrower a loan of one hundred ninety six million dollars (\$196,000,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that the proceeds of the Loan be made available to EVN and that EVN agree to undertake certain obligations towards ADB as hereinafter set forth; and

(B) EVN, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

## **ARTICLE II**

### **Particular Covenants**

Section 2.01. (a) EVN shall 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, EVN shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to EVN and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. EVN shall make available, promptly as needed, the funds, facilities, services, equipment and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, EVN shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) 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 the Loan Agreement. ADB may refuse to finance a contract where Goods, Works or consulting 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 2.04. EVN shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. EVN shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) EVN shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, EVN undertakes to insure, or cause to be insured, the Goods to be imported for the Project and to be financed out of the proceeds of the Loan against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. EVN shall maintain, or cause to be maintained, records and accounts adequate to identify the Goods, Works and consulting services and other items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and EVN shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) EVN shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or the Subsidiary Loan Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and EVN shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, EVN and the Loan.

Section 2.08. (a) EVN shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the Goods, Works and consulting services and other items of

expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of EVN; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, EVN shall furnish to ADB quarterly reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter.

(c) Promptly after physical completion of the Project, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, EVN shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by EVN of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. EVN shall (i) maintain separate accounts for the Project; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than 6 months after the close of the fiscal year to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the covenants of the Loan Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language. EVN shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

Section 2.10. EVN shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan and any relevant records and documents.

Section 2.11. (a) EVN shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

(b) EVN shall at all times conduct its business in accordance with sound administrative, financial, environmental and hydropower practices, and under the supervision of competent and experienced management and personnel.

(c) EVN shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, engineering, environmental, hydropower and maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, EVN shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, EVN shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all Goods, Works and consulting services financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, EVN shall duly perform all its obligations under the Subsidiary Loan Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Loan Agreement.

Section 2.15. EVN shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its Charter and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon.

### **ARTICLE III**

#### **Effective Date; Termination**

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement shall come into force and effect. ADB shall promptly notify EVN of such date.

Section 3.02. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

### **ARTICLE IV**

#### **Miscellaneous**

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex, facsimile or radiogram to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Cable Address:

ASIANBANK  
MANILA

Facsimile Numbers:

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

For EVN

Viet Nam Electricity  
18 Tran Nguyen Han  
Hanoi, Viet Nam

Facsimile Number:

(84-4) 220 1386.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement [or under Section 7.01 of the Loan Agreement] by or on behalf of EVN may be taken or executed by its President or by such other person or persons as he shall so designate in writing notified to ADB.

(b) EVN shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, together with the authenticated specimen signature of each such person.

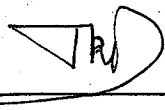
Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project 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.

ASIAN DEVELOPMENT BANK

By   
AYUMI KONISHI  
Country Director  
Viet Nam Resident Mission

VIET NAM ELECTRICITY

  
By \_\_\_\_\_  
DINH QUANG TRI  
Vice President

## SCHEDULE

### Execution of Project; Financial Matters

#### Financial Matters

1. (a) EVN shall maintain (i) a self finance ratio of 25 per cent or above; (ii) debt service cover ratio of 1.5 or above; and (iii) a long term debt: equity ratio of 70:30 or less. EVN shall formulate and propose the tariff increases in a manner to 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.

#### Resettlement and Ethnic Minority Development Plan

2. (a) EVN shall ensure that the REMDP prepared for the Project is implemented in a timely and effective manner 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) EVN shall, on a best effort basis, provide power supply to the non-electrified villages in the Dai Son commune under any other relevant project.

(d) EVN shall 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.

(e) EVN shall take part in the district-level resettlement committees established pursuant to the REMDP include representatives from the district-level VWU offices and ensure that grievance redress mechanisms are established on completion of the detailed technical design

### Gender and Other Social Issues

3. (a) EVN shall 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) EVN shall 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) EVN shall (i) develop monitoring indicators disaggregated by gender and ethnic groups for purposes of monitoring and related reporting, and (ii) conduct gender sensitization training on gender and resettlement for its relevant staff and the members of district, commune and village-level resettlement committees.

#### Environmental Management Plan

4. EVN shall 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; (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

5. (a) EVN shall ensure that independent monitors, acceptable to ADB, shall be 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) EVN shall also 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 (iii) any shortcomings identified in such reports, to be issued annually, are promptly addressed 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

6. (a) EVN shall 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). EVN (i) acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; and (ii) agrees 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 from engaging in money laundering activities or financing of terrorism and shall allow ADB to investigate any violation or potential violation of these undertakings.

(b) Without limiting the generality of the preceding paragraph, EVN shall (i) conduct periodic inspections on the contractors' activities related to fund withdrawals and settlements; and (ii) 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, EVN, in consultation with 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.