

Public Disclosure Authorized

CONFORMED COPY

NUMBER B-004-0 VN

Indemnity Agreement

(Phu My 2 Phase 2 Power Project)

between

SOCIALIST REPUBLIC OF VIETNAM

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated October 30, 2002

CONFORMED COPY

NUMBER B-004-0 VN

INDEMNITY AGREEMENT

AGREEMENT, dated October 30, 2002, between THE SOCIALIST REPUBLIC OF VIETNAM (Vietnam) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) Pursuant to a Loan Agreement (the IDA Guaranteed Facility Agreement) dated on or about the date hereof, between Mekong Energy Company Ltd. (the Company), Australia and New Zealand Banking Group Limited, acting through its London Branch as agent (the Agent) and the financial institutions named therein as lenders (the IDA Guaranteed Lenders), the IDA Guaranteed Lenders have agreed to make available to the Company a loan of up to seventy-five million United States dollars (US\$75,000,000) (the Loan Amount) to support a portion of the financing of the Phu My 2 Phase 2 Power Project (the Project) as defined in the BOT Contract dated September 18, 2001, as amended by the First Amendment Agreement to the BOT Contract (the BOT Contract) between MOI on behalf of the Government of Vietnam, the Company and the Sponsors;

(B) The Government of Vietnam has undertaken certain obligations (including payment obligations) to the Company with respect to the Project pursuant to the BOT Contract and the guarantee dated September 18, 2001, together with the clarifications thereto made pursuant to the MPI Clarification Letter (the Government Guarantee) issued by MPI on behalf of the Government of Vietnam in favor of the Company and the Sponsors, which guarantees the foreign currency regime for the Project in respect of foreign exchange convertibility and availability and foreign exchange remittance outside Vietnam for the Project as set out in the Government Guarantee, and the responsibilities and obligations (including financial commitments) of the Electricity of Vietnam (the EVN), the Vietnam Oil and Gas Corporation (the PetroVietnam), the Urban Development & Construction Company of Ba Ria – Vung Tau Province (the UDEC), and the Water Supply Company of Ba Ria-Vung Tau Province (the Water Supply Company) (together, the Relevant Project Counterparties) under the Power Purchase Agreement dated September 18, 2001 (the PPA), the Agreement for the Sale of Natural Gas dated September 18, 2001 (the GSA), the Land Lease Agreement dated September 18, 2001 (the LLA), and the Water Supply Agreement dated June 17, 2002 (the Water Supply Agreement), respectively (together, the Relevant Project Agreements);

(C) At the request and with the agreement of Vietnam, the Association has agreed to guarantee (the IDA Guarantee) the payment of interest and the repayment of the principal of the Loan Amount on the terms and conditions set forth in the IDA Guarantee Agreement, but only on condition that Vietnam agree to reimburse to the Association all amounts paid by

the Association in relation to or arising from the IDA Guarantee and to undertake such other obligations to the Association as are set forth in this Agreement; and

(D) In consideration of the Association providing the IDA Guarantee pursuant to the IDA Guarantee Agreement, Vietnam has undertaken the obligations to the Association set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Incorporation of General Conditions and Modifications

Section 1.01. (a) The following provisions of the “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through October 6, 1999) (hereinafter the General Conditions), with the modifications set forth in paragraph (b) of this Section constitute an integral part of this Agreement:

- (i) Article I;
 - (ii) Section 2.01(1), (2), (3) and (4) as modified below, (7), (8), (9), (10) and (12) all as modified below and (14), 2.02 and 2.03;
 - (iii) Section 3.04 (c) and 3.05;
 - (iv) Sections 4.05 and 4.06;
 - (v) Section 8.01;
 - (vi) Sections 9.01 and 9.02 both as modified below;
 - (vii) Section 9.08;
 - (viii) Sections 10.01, 10.02 both as modified below and Section 10.03;
 - (ix) Article XI; and
 - (x) Section 12.02.
- (b) The General Conditions shall be modified as follows:

- (i) the term “Borrower,” wherever used in the General Conditions, means Vietnam;
- (ii) the term “Credit,” wherever used in the General Conditions, means the amounts payable by Vietnam under this Agreement, save as used in Section 9.01 where it shall mean the Project;
- (iii) the term “Development Credit Agreement,” wherever used in the General Conditions, means this Agreement;
- (iv) the term “Effective Date,” wherever used in the General Conditions, means the date stated in Article V of this Agreement;
- (v) the term “Project,” wherever used in the General Conditions, means the Phu My 2 Phase 2 Power Project as defined in the Preamble to this Agreement;
- (vi) In Section 10.02 the phrase “the IDA Guarantee Agreement, the IDA Guaranteed Facility Agreement, the Transaction Documents or any other related document” is added immediately after the phrase “the Development Credit Agreement.”

Section 1.02. Unless the context otherwise requires,

(a) the several terms defined in the General Conditions and the Preamble to this Agreement have the respective meanings therein set forth;

(b) the following terms shall have their respective meanings set forth in the BOT Contract and the Relevant Project Agreements: “BOT Company Event of Default,” “Buyer Event of Default,” “Change in Laws of Vietnam,” “Event of Default,” “EVN Event of Default,” “Financing Documents,” “Force Majeure,” “Force Majeure-Natural,” “Foreign Political Events,” “Government Body,” “Government Events,” “Laws of Vietnam,” “MOI,” “MOI Event of Default,” “MPI,” “Project Agreements,” “Seller Event of Default,” and “Vietnam Political Events”;

(c) the following additional terms shall have the following meanings:

- (i) “Agent” means the IDA Guaranteed Facility Agent under the IDA Guaranteed Facility Agreement as agent for the IDA Guaranteed Lenders;

- (ii) "Demand Notice" means a demand presented to the Association by the Agent in accordance with Clause 6.3 of the IDA Guarantee Agreement and substantially in the form of Schedule 1 thereto;
- (iii) "Environmental Management Plan" shall mean the environmental management plan, setting out the actions, measures, monitoring arrangements and other activities to be undertaken by Vietnam or the Company to mitigate adverse environmental and social impacts of the implementation of the Project, as set out in the Environmental Impact Assessment prepared for and submitted by the Sponsors on behalf of the Company and dated August 2002, as approved by Vietnam and the Association, as such plan may be amended from time to time with the prior agreement of the Association;
- (iv) "IDA Guarantee Agreement" shall mean the agreement dated on or about the date hereof between the Association and the Agent;
- (v) "IDA Project Agreement" shall mean the agreement dated on or about the date hereof between the Association and the Company;
- (vi) "Sponsors" shall mean EDF International, Sumitomo Corporation and Tokyo Electric Power Company International B.V.;
- (vii) "Transaction Documents" shall mean all or any of the Financing Documents and the Project Agreements.

ARTICLE II

Indemnity by Vietnam to the Association

Section 2.01. In consideration of the Association providing the IDA Guarantee on the terms and conditions set out in the IDA Guarantee Agreement, Vietnam hereby irrevocably and unconditionally agrees:

(a) to reimburse the Association immediately upon written demand or as the Association may otherwise direct in writing for any amount paid by the Association under the IDA Guarantee Agreement in United States Dollars together with interest thereon at the rate per annum determined by the Association, (which rate shall not exceed the Bank's

prevailing lending rate in Dollars) from the date such payment is made by the Association until such amount is paid in full;

(b) to indemnify the Association on demand in respect of all actions, proceedings, liabilities, claims, losses, damages, costs and expenses brought against, suffered or incurred by the Association, which are reasonable, in relation to or arising out of the IDA Guarantee Agreement (except (i) as otherwise provided in Section 10.03(i) of the General Conditions and (ii) for any such amounts in respect of which and to the extent that the Association has been compensated pursuant to the terms of any agreement or through any other means);

(c) that (i) the Association is authorized to comply with any Demand Notices served on the Association pursuant to the IDA Guarantee Agreement and make any payments which may be due or claimed from the Association under the IDA Guarantee (the Association shall promptly notify Vietnam of any such demand, but failure to give such notice shall in no way affect the Association's obligation to make payment under the IDA Guarantee or Vietnam's obligation to reimburse or indemnify the Association pursuant to this Agreement) (ii) it shall not be incumbent on the Association to inquire whether or not any statements in any such Demand Notice are in fact correct; and

(d) that any such Demand Notice shall, as between Vietnam and the Association, be conclusive evidence that the demand is properly made and payment is properly due. Following the notification to Vietnam of the receipt by the Association of any Demand Notice, Vietnam may investigate the validity of the statements in such Demand Notice and take such actions as Vietnam may see fit against the Company, the Agent and the Lenders in respect thereof, all without prejudice to the Association's obligations under the IDA Guarantee Agreement to make a payment in respect of such Demand Notice and to Vietnam's obligations under this Agreement in relation to such payment by the Association. The obligations of Vietnam hereunder shall apply notwithstanding that Vietnam or any Government Body disputes the validity of any such Demand Notice or the accuracy or correctness of any documentation, fact or figures relied upon or stated therein.

Section 2.02. (a) The obligations of Vietnam under this Agreement shall not be discharged except by performance and then only to the extent of such performance. Such obligations shall not be subject to any prior notice to, demand upon or action against the Company, the Agent, the IDA Guaranteed Lenders or any other person or any prior notice to, demand upon, Vietnam with regard to any failure by the Company to pay any amount in respect of which a Demand Notice is served on the Association pursuant to the IDA Guarantee Agreement. Such obligations shall not be impaired by any of the following: (i) any extension of time, forbearance, concession or other indulgence given to the Association, the Company, the Agent, the IDA Guaranteed Lenders or any other person; (ii) any variation of the IDA Guarantee Agreement, the IDA Guaranteed Facility Agreement, any Transaction

Documents or any other related agreement; (iii) any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against Vietnam, the Company or other person or in respect of any security for the Loan Amount (or any part thereof or interest thereon); or (iv) any other circumstances which would or might (but for this provision) constitute a release, discharge, defense or waiver for Vietnam.

(b) The Association may at any time, without thereby discharging, impairing or otherwise affecting any rights, powers and remedies hereby created or conferred upon it by this Agreement, the IDA Guaranteed Facility Agreement, the IDA Guarantee Agreement, the Transaction Documents or any other related agreement or by law: (i) offer or agree to or enter into any agreement for the extension or variation of the IDA Guarantee Agreement (except one which would materially increase the obligations of Vietnam under this Agreement), the IDA Guaranteed Facility Agreement, any Transaction Document or any other related agreement; and (ii) offer or give or agree to give any time or other indulgence to any other person or entity from whom it may seek reimbursement (at law or otherwise) in respect of sums paid out or liabilities incurred by the Association under the IDA Guarantee Agreement.

(c) Any rights conferred on the Association by this Agreement shall be in addition to, and not in substitution for or derogation of, any other right which the Association may at any time have to seek, from Vietnam, the Company or any other person or entity, reimbursement of or indemnification against payments made or liabilities arising from or in connection with the IDA Guarantee Agreement.

(d) The Association shall not be obliged before or after taking steps to enforce any rights conferred on it by this Agreement or exercising any of the rights, powers and remedies conferred upon the Association by this Agreement, the IDA Guarantee Agreement, the IDA Guaranteed Facility Agreement, any Transaction Document or any other related agreement or by law: (i) to take action or obtain judgment or award in any court or tribunal of competent jurisdiction against any other person (including persons from whom it may seek reimbursement in respect of sums paid out or liabilities incurred pursuant to the IDA Guarantee Agreement); or (ii) to enforce or seek to enforce any other rights it may have against Vietnam or its rights against or security given by any other person including, but not limited to, security provided by the IDA Guaranteed Lenders to the Association.

Section 2.03. Any payment required to be made by Vietnam pursuant to the terms of this Agreement shall be applied first, to pay all interest and other charges due to the Association and second, after such interest and other charges are paid, to pay all other amounts then due to the Association under this Agreement.

ARTICLE III

Project-Related Covenants

Section 3.01. Without limitation or restriction upon any of its other obligations under this Agreement, Vietnam hereby unconditionally undertakes to the Association punctually to perform all of its obligations under the BOT Contract and the Government Guarantee and to cause each of the Relevant Project Counterparties punctually to perform all of its obligations under the Relevant Project Agreements.

Section 3.02. Vietnam shall notify the Association prior to agreeing to any amendment, waiver, termination or other change to the BOT Contract, the Government Guarantee or the Relevant Project Agreements and shall obtain the written consent of the Association prior to agreeing to any amendment, waiver, termination or other change to such agreements and undertakings which would or could in the opinion of the Association materially affect the rights or obligations of the Association under the IDA Guarantee Agreement or the Financing Documents.

Section 3.03. Vietnam shall not take any action which would prevent or interfere with the performance by the Relevant Project Counterparties of any of their obligations under the Relevant Project Agreements and shall cause the Relevant Project Counterparties to notify the Association prior to agreeing to any amendment, waiver, termination or other change and to obtain the written consent of the Association prior to agreeing to any amendment, waiver, termination or other change to the Relevant Project Agreements which would or could in the opinion of the Association materially affect the rights or obligations of the Association (pursuant to the IDA Guarantee Agreement or the Financing Documents) including, without limitation, any assignment, transfer, novation, abrogation, granting of security over or other disposition of any rights or obligations under such agreements.

Section 3.04. Vietnam shall promptly notify the Association of any MOI Event of Default, BOT Company Event of Default, EVN Event of Default, Buyer Event of Default, Seller Event of Default, Force Majeure, Force Majeure-Natural, Vietnam Political Events, Foreign Political Events, Government Events or other Event of Default, any notice of any such event, any Notice of Intention to Terminate or Notice of Termination or any event or circumstance which would or could adversely affect Vietnam's ability to perform its obligations or exercise its rights under the BOT Contract or the Government Guarantee, or the ability of any of the Relevant Project Counterparties to perform its obligations or exercise its rights under the Relevant Project Agreements.

Section 3.05. Vietnam shall take all actions within its power to remedy and cure each MOI Event of Default, each EVN Event of Default, each Seller Event of Default and

each Force Majeure-Natural, Vietnam Political Event, Foreign Political Event, Government Event or other Event of Default or Force Majeure.

Section 3.06. Vietnam shall not create or permit to exist or occur, and shall ensure that no Government Body shall create or permit to exist or occur, any circumstances or Change in Laws of Vietnam which would render obligations under the BOT Contract, the Relevant Project Agreements or the Government Guarantee illegal, invalid, unenforceable, ineffective or void in whole or part. If such circumstances or Change in Laws of Vietnam exists or occurs, Vietnam shall take all actions within its power to remedy and cure, or to procure that the appropriate Government Body remedy and cure the adverse effect on the Project of such circumstances or Change in Laws of Vietnam.

Section 3.07. Vietnam shall:

(a) carry out promptly or cause to be carried out promptly any action required to be performed by it or by any Government Body under the Environmental Management Plan;

(b) take all action which shall be necessary on its part or on the part of any Government Body to enable the Company (i) to obtain any Required Approvals or environmental authorization for the Project required under the Environmental Management Plan and (ii) to perform all its obligations under the IDA Project Agreement and the Relevant Project Agreements;

(c) not take any action or to cause or permit any Government Body to take any action which would prevent or interfere with the performance by the Company of such obligations.

Section 3.08. Vietnam affirms to the Association that no corrupt or fraudulent practices have been engaged in by any representative of Vietnam or any Government Body with respect to the Project and declares its commitment to enforce the laws of Vietnam against fraud and corruption during and with respect to the performance of any contract or activity to be financed out of the Loan Amount.

Section 3.09. Without prejudice to Sections 9.01 and 9.02 of the General Conditions, Vietnam shall provide the Association promptly upon request all information necessary, in the reasonable opinion of the Association, for the Association's review of Vietnam's performance of its covenants pursuant to Sections 3.07 and 3.08 above and for a review of the relevant monitoring mechanisms and indicators.

ARTICLE IV

Remedies of the Association

Section 4.01. In the event that: (i) Vietnam fails to make any payment to or to indemnify the Association as required pursuant to Section 2.01 of this Agreement; (ii) Vietnam defaults in the performance of any of its obligations hereunder, and such failure or default continues and remains uncured in the opinion of the Association for sixty (60) days or more after notice thereof shall have been given to Vietnam by the Association; or (iii) any representation made by Vietnam in or pursuant to this Agreement, or any statement furnished in connection with this Agreement and intended to be relied on by the Association in providing the IDA Guarantee, shall in the opinion of the Association have been incorrect in any material respect, the Association shall be entitled, in addition to any other rights and remedies it may have, to suspend or cancel in whole or in part Vietnam's right to make withdrawals under any Development Credit Agreement between the Association and Vietnam or any loan or guarantee between the International Bank for Reconstruction and Development and Vietnam, or to declare the outstanding principal and interest of any such Development Credit Agreement due and payable immediately.

ARTICLE V

Effective Date

Section 5.01. This Agreement shall come into force and effect upon signature.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. The Governor or any Deputy Governor of the State Bank of Vietnam is hereby designated as representative of Vietnam for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For Vietnam:

State Bank of Vietnam
49 Ly Thai To
Hanoi
Socialist Republic of Vietnam

Cable address:

Telex:

VIETBANK
Hanoi

412248
NHTWVT

Facsimile: 844-8250612

Telephone: 844-9343366

Attention: Director of Foreign Department

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Telex:

INDEVAS
Washington, D.C.

248423 (MCI)
64145 (MCI)

Facsimile: (202) 477-0169

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Hanoi, Socialist Republic of Vietnam, as of the day and year first above written.

SOCIALIST REPUBLIC OF VIETNAM

By */s/ Le Duc Thuy*
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By */s/ Nisha Agrawal*
Authorized Representative