

CONFORMED COPY

CREDIT NUMBER 3680 VN

Project Agreement

(System Efficiency Improvement, Equitization and Renewables Project)

among

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

ELECTRICITY OF VIETNAM

POWER COMPANY NO. 1

POWER COMPANY NO. 2

POWER COMPANY NO. 3

and

POWER COMPANY DONG NAI

Dated October 24, 2002

CREDIT NUMBER 3680 VN

PROJECT AGREEMENT

AGREEMENT, dated October 24 2002, among INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and ELECTRICITY OF VIETNAM (EVN), POWER COMPANY NO. 1 (PC1), POWER COMPANY NO. 2 (PC2), POWER COMPANY NO. 3 (PC3) and POWER COMPANY DONG NAI (PC DONG NAI).

WHEREAS (A) by the Development Credit Agreement of even date herewith between Socialist Republic of Vietnam (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to one hundred seventy seven million nine hundred thousand Special Drawing Rights (SDR 177,900,000), on the terms and conditions set forth in the Development Credit Agreement, but only on conditions that PC1, PC2, PC3 and PC Dong Nai (collectively, the Power Companies) and EVN agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by subsidiary loan agreements to be entered into between the Borrower and each of EVN, PC1, PC2, PC3 and PC Dong Nai, part of the proceeds of the Credit provided for under the Development Credit Agreement will be made available to EVN and the Power Companies on the terms and conditions set forth in said Subsidiary Loan Agreements;

(C) by the GEF Trust Fund Grant Agreement of even date herewith between the Borrower and the International Bank for Reconstruction and Development (the Bank), acting as an implementing agency of the GEF Trust Fund, the Global Environment Facilities (GEF) has agreed to provide a grant to the Borrower in an aggregate principal amount equivalent to three million six hundred thousand Special Drawing Rights (SDR3,600,000) to assist in financing Parts B(2)(d), (3)(b) and C(3) of the Project;

(D) by a subsidiary grant agreement to be entered into between the Borrower and EVN, a portion of the proceeds of the grant provided for under the GEF Trust Fund Grant Agreement will be made available to EVN on terms and conditions set forth in said Subsidiary Grant Agreement; and

WHEREAS EVN and the Power Companies, in consideration of the Association's entering into the Development Credit Agreement and the Bank's entering into the GEF Trust Fund Grant Agreement with the Borrower, have agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Development Credit Agreement, the Preamble to this Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth, wherever used herein.

ARTICLE II

Execution of the Project

Section 2.01. (a) EVN, PC1, PC2, PC3 and PC Dong Nai each declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end, EVN shall carry out Parts A , B (2)(d), and C (1) of the Project; PC1 shall carry out Parts B (1)(a)(i), (1)(b)(i), (2)(a) and C(2)(a) of the Project; PC2 shall carry out Parts B (1)(a)(ii), (1)(b)(ii), (2)(b) and C(2)(b) of the Project; PC3 shall carry out Parts B (1)(a)(iii), (1)(b)(iii), (2)(c) and C(2)(c) of the Project; and PC Dong Nai shall carry out Part B (1)(a)(iv) and (1)(b)(iv) of the Project, each with due diligence and efficiency and in conformity with appropriate administrative, economic, financial, engineering, technical and public utility practices and sound environmental and social standards, and EVN, PC1, PC2, PC3 and PC Dong Nai each shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for their Respective Parts of the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Association shall otherwise agree, EVN, PC1, PC2, PC3 and PC Dong Nai each shall carry out its Respective Parts of the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. (a) EVN, PC1, PC2, PC3 and PC Dong Nai each shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of its Respective Parts of the Project.

(b) For the purposes of Section 9.06 of the General Conditions and without limitation thereto, EVN, PC1, PC2, PC3, and PC Dong Nai each shall:

- (i) prepare, on the basis of guidelines acceptable to the Association and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Association and EVN, PC1, PC2, PC3 and PC Dong Nai, a plan for the future operation of its Respective Parts of the Project, and
- (ii) afford the Association a reasonable opportunity to exchange views with EVN, PC1, PC2, PC3 and PC Dong Dai on said plan.

Section 2.04. EVN, PC1, PC2, PC3 and PC Dong Nai each shall duly perform all its obligations under its respective Subsidiary Loan Agreement. Except as the Association shall otherwise agree, none of EVN, PC1, PC2, PC3 and PC Dong Nai shall take or concur in any action which would have the effect of amending, abrogating, assigning or waiving its respective Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) EVN, PC1, PC2, PC3 and PC Dong Nai each shall, at the request of the Association, exchange views with the Association with regard to the progress of its Respective Parts of the Project, the performance of its obligations under this Project Agreement and under its respective Subsidiary Loan Agreement, and other matters relating to the purposes of the Credit and the GEF Trust Fund Grant.

(b) EVN, PC1, PC2, PC3 and PC Dong Nai each shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of its Respective Parts of the Project, the accomplishment of the purposes of the Credit or the GEF Trust Fund Grant, or the performance by EVN, PC1, PC2, PC3 and PC Dong Nai of their obligations under this Project Agreement and under their respective Subsidiary Loan Agreements and EVN's Subsidiary Grant Agreement, as the case may be.

ARTICLE III

Management and Operations of EVN, PC1, PC2, PC3 and PC Dong Nai

Section 3.01. EVN, PC1, PC2, PC3 and PC Dong Nai each shall carry on its operations and conduct its affairs in accordance with appropriate administrative, economic, financial, engineering, technical and public utility practices and sound environmental and social standards, under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. EVN, PC1, PC2, PC3 and PC Dong Nai each shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and public utility practices.

Section 3.03. EVN, PC1, PC2, PC3 and PC Dong Nai each shall take out and maintain with responsible insurers, or make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE IV

Financial Covenants

Section 4.01. (a) EVN, PC1, PC2, PC3 and PC Dong Nai each shall maintain a financial management system, including records and accounts, and prepare financial statements in a format acceptable to the Association, adequate to reflect its operations, financial condition and to register separately the operations, resources and expenditures related to its Respective Parts of the Project.

- (b) EVN, PC1, PC2, PC3 and PC Dong Nai each shall:
- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with auditing standards acceptable to the Association, consistently applied, by independent auditors acceptable to the Association;
 - (ii) furnish to the Association as soon as available, but in any case not later than six (6) months after the end of each such year; (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year as so audited; and (B) an opinion on such statements, report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and
 - (ii) furnish to the Association such other information concerning such records, accounts and financial statements as well as the audit thereof, and concerning said auditors, as the Association may from time to time reasonably request.

Section 4.02. (a) Without limitation upon its progress reporting obligations set out in Section D of Schedule 2 to this Agreement, each of EVN, PC1, PC2, PC3 and PC

Dong Nai shall prepare and furnish to the Association a financial monitoring report, in form and substance satisfactory to the Association, which:

- (i) sets forth sources and uses of funds (including funds from the GEF Trust Fund Grant) for its Respective Parts of the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Credit, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in implementation of its Respective Parts of the Project, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and
- (iii) sets forth the status of procurement under its Respective Parts of the Project, as at the end of the period covered by said report.

(b) The first financial monitoring report shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under its Respective Parts of the Project through the end of such first calendar quarter; thereafter, each financial monitoring report shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

Section 4.03. (a)(i) Except as the Association shall otherwise agree, each of EVN, PC1, PC2, PC3 and PC Dong Nai shall produce, for each of its fiscal years after its fiscal year ending on December 31, 2002, funds from internal sources equivalent to not less than 30% of the annual average of its capital expenditures incurred, or expected to be incurred, for said year, the previous fiscal year and the following fiscal year.

- (iii) Before April 30 in each of its fiscal years, each of EVN, PC1, PC2, PC3 and PC Dong Nai shall, on the basis of forecasts prepared by it and satisfactory to the Association, review whether it would meet the requirements set forth in paragraph (a)(i) of this Section in respect of such year and the next following fiscal year and shall furnish to the Association a copy of such review upon its completion.
- (iii) If any such review shows that any of EVN, PC1, PC2, PC3 or PC Dong Nai would not meet the requirements set forth in paragraph (a)(i) of this Section for its fiscal years covered by such review, EVN, PC1, PC2, PC3 or PC Dong Nai, as the case may be, shall promptly take all necessary measures on its part (including, without limitation, adjustments of the structure or

levels of its tariffs with the approval of the Borrower, if required) in order to meet such requirements.

- (b) For the purposes of this Section:
 - (i) The term "funds from internal sources" means the difference between:
 - (A) the sum of revenues from all sources related to operations, consumer deposits and consumer contributions in aid of construction, net non-operating income and any reduction in working capital other than cash; and
 - (B) the sum of all expenses related to operations, including administration, adequate maintenance and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), debt service requirements, all cash dividends and other cash distributions of surplus, increase in working capital other than cash and other cash outflows other than capital expenditures.
 - (ii) The term "net non-operating income" means the difference between:
 - (A) revenues from all sources other than those related to operations; and
 - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
 - (iii) The term "working capital other than cash" means the difference between current assets excluding cash and current liabilities at the end of each fiscal year.
 - (iv) The term "current assets excluding cash" means all assets other than cash which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories and pre-paid expenses properly chargeable to operating expenses within the next fiscal year.
 - (iv) The term "current liabilities" means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including

accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends.

- (vi) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on debt.
- (vii) The term "capital expenditures" means all expenditures incurred on account of fixed assets, including interest charged to construction, related to operations.
- (viii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Association.

Section 4.04. (a) Except as the Association shall otherwise agree, none of EVN, PC1, PC2, PC3 or PC Dong Nai shall incur any debt unless a reasonable forecast of its revenues and expenditures shows that the estimated net revenues of each of EVN, PC1, PC2, PC3 or PC Dong Nai, as the case may be, for each fiscal year during the term of the debt to be incurred shall be at least 1.5 times its estimated debt service requirements in such year on all its debt including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness maturing by its terms more than one year after the date on which it is originally incurred.
- (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
- (ii) The term "net revenues" means the difference between:
 - (A) the sum of revenues from all sources related to operations and net non-operating income, and

- (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.
- (iv) The term "net non-operating income" means the difference between:
 - (A) revenues from all sources other than those related to operations; and
 - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (v) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments if any) of, and interest and other charges on debt.
- (v) The term "reasonable forecast" means a forecast prepared by EVN, PC1, PC2, PC3 or PC Dong Nai, as the case may be, not earlier than twelve months prior to the incurrence of the debt in question, which the Association accepts as reasonable and as to which the Association has notified EVN, PC1, PC2, PC3 or PC Dong Nai, as the case may be, of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of EVN, PC1, PC2, PC3 or PC Dong Nai, as the case may be.
- (vii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Association.

Section 4.05. Each of EVN, PC1, PC2, PC3 and PC Dong Nai shall prepare and furnish to the Association for its review and comment, by September 30 of each year, commencing September 30, 2003: (i) its proposed budget for its next fiscal year; and (ii) a rolling financial plan containing, inter alia, income statements, sources and uses of funds, and balance sheets for each of the next three years.

Section 4.06. (a) EVN shall: (i) not later than September 30, 2003, based on methodology and calculations acceptable to the Association, complete and incorporate into its accounting and auditing system a current valuation of all its fixed assets in operation; and (ii) thereafter, revalue its fixed assets periodically in accordance with a schedule satisfactory to the Association, based on methodology and procedures satisfactory to the Association.

(b) For purposes of this Section, the term “fixed assets in operation” means all tangible assets, including but without limitation, land, buildings, plan and equipment, held for the production of goods or services, or for administrative purposes.

Section 4.07. Each of EVN, PC1, PC2, PC3 and PC Dong Nai shall carry out a time-bound action plan, satisfactory to the Association, to strengthen its corporate governance and planning, its financial management system including accounting system and procedures and internal control system, and shall provide, promptly as needed, the funds, facilities, services, staff training and other resources required for the implementation of said action plan.

ARTICLE V

Effective Date; Termination; Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 5.02. This Agreement and all obligations of the Association and of EVN, PC1, PC2, PC3 and PC Dong Nai thereunder shall terminate on the date on which the Development Credit Agreement shall terminate in accordance with its terms.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this 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 or facsimile to the party to which it is required or permitted to be given or made at such party's 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. Deliveries made by facsimile shall also be confirmed by mail. The addresses so specified are:

For the Association:

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

Cable address:	Telex:	Facsimile:
INDEVAS Washington, D.C.	248423 (MCI) or 64145 (MCI)	1-202-477-6391

For Electricity of Vietnam:

18 Tran Nguyen Han Street
Hanoi
Socialist Republic of Vietnam

Facsimile:
844-824 9462

For Power Company No. 1:

20 Tran Nguyen Han Street
Hanoi
Socialist Republic of Vietnam

Cable address:	Facsimile:
844-8255074	844-934 3798

For Power Company No. 2:

72 Hai Ba Trung Street
District I, Ho Chi Minh City
Socialist Republic of Vietnam

Facsimile:

848-829 9680

For Power Company No. 3:

393 Trung Nu Vuong Street
Danang
Socialist Republic of Vietnam

Facsimile:

84-511-625 071

For Power Company Dong Nai:

01 Route No.1
Tan Hiep, Bien Hoa, Dong Nai
Socialist Republic of Vietnam

Facsimile:

84 61-890 810

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of: (a) EVN, may be taken or executed by its General Director, or by such other person or persons as such General Director shall designate in writing; (b) PC1, PC2, PC3, or PC Dong Nai may be taken or executed by its respective Director, or by such other person or persons as such Director shall designate in writing; and EVN, PC1, PC2, PC3, or PC Dong Nai, as the case may be, shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

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.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Jeffery Goldstein

Authorized Representative

ELECTRICITY OF VIETNAM

By /s/ Dao Van Hung

Authorized Representative

POWER COMPANY NO. 1

By /s/ Do Van Loc

Authorized Representative

POWER COMPANY NO. 2

By /s/ Nguyen Van Giau

Authorized Representative

POWER COMPANY NO. 3

By /s/ Tran Dinh Thanh

Authorized Representative

POWER COMPANY DONG NAI

By /s/ Khuong Van Qua

Authorized Representative

SCHEDULE 1

Procurement

Section I. Procurement of Goods and Works

Part A: General

Goods and works shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines).

Part B: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. The following provisions shall apply to goods to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

(a) Preference for domestically manufactured goods

The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower.

(b) Notification and Advertising

The invitation to bid for each contract estimated to cost \$10,000,000 equivalent or more shall be advertised in accordance with the procedures applicable to large contracts under paragraph 2.8 of the Guidelines.

Part C: Other Procurement Procedures

1. National Competitive Bidding

(a) (i) Works estimated to cost less than \$2,000,000 equivalent per contract, up to an aggregate amount not to exceed \$12,500,000 equivalent, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines; and (ii) Compact fluorescent lamps and office equipment estimated to cost less than \$100,000 equivalent per contract, up to an aggregate amount not to exceed \$760,000 equivalent, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines;

(b) The procedures to be followed for National Competitive Bidding under this Paragraph 1, Part C, shall be those set forth in Decree No. 88/1999/ND-CP dated September 1, 1999, of the Government of the Socialist Republic of Vietnam, as amended and supplemented by Decree No. 14/2000/ND-CP dated May 5, 2000 (Decree No. 88/1999/ND-CP and Decree No. 14/2000/ND-CP, together “the Regulations”), with the clarifications set forth in the Annex to this Schedule 1 required to comply with the provisions of the Guidelines.

2. International Shopping

Equipment and materials estimated to cost less than \$50,000 equivalent per contract, up to an aggregate amount not to exceed \$3,040,000 equivalent, may be procured under contracts awarded on the basis of international shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

3. Procurement of Small Works

Works estimated to cost less than \$50,000 equivalent per contract, up to an aggregate amount not to exceed \$1,200,000 equivalent, may be procured under lump-sum, fixed-price contracts awarded on the basis of quotations obtained from at least three qualified domestic contractors in response to written invitation. Such invitation should include a detailed description of the works, including basic specifications, required completion date, a basic form of agreement acceptable to the Association, and relevant drawings, where applicable. The award shall be made to the contractor who offers the lowest price quotation for the required work and who has the experience and resources to complete the contract successfully.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

(a) The procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply with respect to: (i) the first contract for goods to be procured by PC Dong Nai under International Competitive Bidding Procedures regardless of its estimated costs and, thereafter, all goods under contracts estimated to cost the equivalent of \$150,000 or more; and each contract for goods to be procured by EVN, PC1, PC2 and

PC3 under International Competitive Bidding Procedures estimated to cost the equivalent of \$200,000 or more, (ii) the first contracts for works to be procured by EVN, PC1, PC2, and PC3 under National Competitive Bidding Procedures regardless of their respective estimated costs and, thereafter, all works to be procured by EVN, PC1, PC2, and PC3 under contracts estimated to cost the equivalent of \$300,000 or more; and (iii) each contract for goods and works to be procured by MOI for Subprojects in each of the Project Provinces regardless of their respective estimated costs.

(b) With respect to each contract for goods to be procured in accordance with the procedures referred to in paragraph C (2) of this Section, the following procedures shall apply:

- (i) prior to the selection of any supplier under shopping procedures, the Borrower shall provide to the Association a report on the comparison and evaluation of quotations received;
- (ii) prior to the execution of any contract procured under shopping procedures, the Borrower shall provide to the Association a copy of the specifications and the draft contract; and
- (iii) the procedures set forth in paragraphs 2(f), 2(g) and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

Consultants' services shall be procured in accordance with the provisions of the Introduction and Section IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Association in January 1997 and revised in September 1997 and January 1999, subject to the modifications thereto set forth in paragraph 2 of this Part A (the Consultant Guidelines).

Part B: Quality- and Cost-based Selection

Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, paragraph 3 of Appendix 1 thereto, Appendix 2 thereto, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.

Part C: Other Procedures for the Selection of Consultants

1. Selection Based on Consultants' Qualifications

Services under Part A(2) and Part C(2) of the Project estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.7 of the Consultant Guidelines.

2. Single Source Selection

Services which are estimated to cost less than \$50,000 equivalent per contract, may, with the Association's prior agreement, be procured in accordance with the provisions of paragraphs 3.8 through paragraph 3.11 of the Consultant Guidelines.

3. Individual Consultants

Services that meet the requirements set forth in paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.1 through 5.3 of the Consultant Guidelines.

Part D: Review by the Association of the Selection of Consultants

1. Selection Planning

Prior to the issuance to consultants of any requests for proposals, the proposed plan for the selection of consultants under the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Consultant Guidelines. Selection of all consultants' services shall be undertaken in accordance with such selection plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

(a) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of \$100,000 or more, the procedures set forth in paragraphs 1, 2 (other than the third subparagraph of paragraph 2(a)) and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of individual consultants estimated to cost the equivalent of \$50,000 or more, the qualifications, experience, terms of reference and terms of employment of the consultants shall be furnished to the Association for its prior review and approval. The contract shall be awarded only after the said approval shall have been given.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Consultant Guidelines shall apply.

Annex to Schedule 1

NATIONAL COMPETITIVE BIDDING

I. Eligibility

1. The definition of “National Competitive Bidding” in Article 3, Section 2 of the Regulations is hereby revised to read “National Competitive Bidding” is a procurement process where it is envisaged that foreign entities would not be interested in participating. However foreign bidders are allowed to participate under National Competitive Bidding procedures without association with domestic firm.

2. Article 10 of the Regulations relate to International Competitive Bidding procedures and, pursuant to Section 3.02 of the Development Credit Agreement, are superseded by the provisions of the “Guidelines for Procurement under IBRD Loans and IDA Credits” published by the Bank on January 1995 and revised in January and August 1996, September 1997 and January 1999. Therefore provisions in the Regulations relating to International Competitive Bidding shall not apply.

3. Paragraph 2 of Article 10, as amended, shall not apply.

4. The provisions of Article 23 of the Regulations are hereby clarified to mean that all pre-qualified bidders will be invited to bid.

II. Bidding Documents

1. The following sub-paragraph shall be added to paragraph 3 of Article 24:

If bidders are invited to bid on the basis of post-qualification, then the bidding documents shall specify the post-qualification criteria, i.e. the minimum level of experience in similar contracts, technical capability and financial resources to effectively carry out the contract as offered in the bid. .

2. The following sub-paragraph shall be added to paragraph 8 of Article 24:

Bidding documents will also specify the relevant factors in addition to price to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid. For goods and equipment, other factors which may be taken into consideration include, among others, costs of inland transport and insurance to the specified site, payment schedule, delivery time, operating costs, efficiency and compatibility of the equipment, availability of service and spare parts, and relating training, safety, and environmental benefits. The factors other than price to be used for determining the lowest evaluated bid will, to the extent practicable, be expressed in monetary terms.

III. **Advertising**

1. The second sentence of the first paragraph of the Article 4 of the Regulations is hereby modified to read that “*Procuring entity shall advertise Invitation for Bids for participation at least 10 days before issuing bidding documents in a newspaper of national circulation. Advertising should indicate that foreign bidders are eligible.*” The first and third sentences of this paragraph remain valid.

IV. **Time for Bid Preparation**

1. The first paragraph of the Article 12 is hereby modified to read that “*time allowed for bid preparation shall be at least 30 days for National Competitive Bidding from the availability of the bidding documents.*”

V. **Bid Opening**

1. The first paragraph of the Article 13 is hereby modified to read that “*Bids shall be opened immediately or promptly after the deadline for submission of bids, as specified in the Invitation for Bids.*”

2. The following sub-paragraph shall be added to the first paragraph of the Article 13:

All bids shall be opened at the same time. Bids received after the time stipulated in the Invitation for Bids as well as those not opened and read out at the bid opening including any discounts, shall not be considered.

VI. **Bid Evaluation**

1. In lieu of the provisions of Articles 13, 29, 30, 31, 40, 41 and 55 of the Regulations, bid evaluation shall be carried out in accordance with the following provisions:

(a) The purpose of bid evaluation is to determine the cost to the Borrower of each bid in a manner that permits a comparison on the basis of their evaluated cost.

(b) If bidders have been invited to bid on the basis of having been pre-qualified, then the bid with the lowest evaluated cost shall be selected for award.

(c) If bidders have been invited to bid on the basis of post-qualification, then the Borrower shall determine whether the bidder whose bid has been determined to offer the lowest evaluated cost has the capability and resources to effectively carry out the contract as offered in the bid. The minimum criteria to be met shall be set forth in the bidding documents, and if the bidder does not meet them, the bid shall be rejected. In such case the Borrower shall make a similar determination for the

next lowest evaluated bidder. Bidders' technical and financial capacity shall be judged separately from the evaluation of bids and shall be conducted exclusively under a pass/fail basis. Experience, technical and financial capacity of the bidder to execute the contract shall not be considered for purposes of comparison of bids.

(d) The Borrower shall ascertain whether the bids: (i) have been properly signed; (ii) are accompanied by the required securities as specified in the bidding documents; (iii) are substantially responsive to the bidding documents; and (iv) are otherwise generally in order. If a bid is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions, and specifications in the bidding documents, it shall not be considered further. The bidder shall not be permitted to correct or withdraw material deviations or reservations once bids have been opened.

(e) In the comparison of bids among bidders, no domestic or regional preferences to bidders shall apply and bids shall be compared on delivered price inclusive of any prevailing duties.

(f) The bid price and any discounts read out at the bid opening shall be adjusted to correct any arithmetical errors.

(g) Under works contracts, Contractors are responsible for all duties, taxes, and other levies, and bidders shall take these factors into account in preparing their bids. The evaluation and comparison of bids shall be on this basis. Bid evaluation for works shall be strictly in monetary terms. If time is a critical factor, the value of early completion to the Borrower may be taken into account according to criteria presented in the bidding documents, only if the conditions of contract provide for commensurate penalties for noncompliance.

(h) Award of the contract shall be to the lowest evaluated responsive bidder. Price negotiation with bidders shall not be undertaken before award except as provided for below.

(i) Bids may not be rejected for the sole purpose of obtaining lower prices. All bids shall not be rejected and new bids invited on the same specifications solely for the purposes of obtaining lower prices, except in cases where the lowest evaluated bid exceeds the cost estimates by a substantial amount. In such cases the Borrower may, as an alternative to re-bidding, negotiate with the lowest evaluated bidder to try to obtain a satisfactory contract, and failing a satisfactory response, with the next lowest evaluated bidder. Rejection of all bids may be permissible when bids are not substantially responsive or there is lack of effective competition.

(j) A bid evaluation report shall be prepared by the Borrower's department or agency requesting the bids setting out a record of all bids submitted, the reasons for disqualification of any bids, the criteria, weighting and evaluation of all

responsive bids, the recommended award, and, if the recommended award is to other than the lowest price bidder, the reasons therefore.

VII. **Award of Contract**

1. Article 31 and Article 42 are hereby modified to read as follow:

Eligible bidder having bid substantially responsive to the bidding documents and determined as lowest evaluated shall be recommended for award provided that the bidder has been determined to be qualified in accordance with pre-qualification or post-qualification criteria.

VIII. **Bid Security**

1. Article 28 3(c) shall not apply.
2. The following sub-paragraph shall be added to paragraph 2 of Article 28:

Bid Security shall be valid 30 days longer than bid validity.

IX. **Procurement of Smaller Contracts**

1. Chapter V is not applicable.

SCHEDULE 2

Implementation Program

A. Project Management and Implementation

1. EVN shall: (a) maintain until completion of the Project a steering committee, for overall coordination and supervision of implementation of EVN's Respective Parts of the Project, under terms of reference satisfactory to the Association, chaired with qualified and experienced officer and with competent staff in sufficient numbers and adequate resources for carrying out its functions; and

(b) maintain the Northern Power Project Management Board for carrying out Parts A(1)(b)(i), (iii), (iv), (v), (vi), (vii) and (ix), the Central Power Project Management Board for carrying out Parts A(1)(a) and (b)(ii)(x), the Southern Power Project Management Board for carrying out Part A(1)(b)(viii), the DSM Board for carrying out Part A(2), and the Information Technology Center for carrying out Part C(1), all under terms of reference satisfactory to the Association, each chaired by a qualified and experienced officer and with competent staff in sufficient numbers and adequate resources for carrying out EVN's Respective Parts of the Project.

2. Each of PC1, PC2, PC3 and PC Dong Nai shall maintain until completion of the Project PC1 PMU, PC2 PMU, PC3 PMU and PC Dong Nai PMU, respectively, all under terms of reference satisfactory to the Association, each chaired by qualified and experienced officer, with competent staff in sufficient numbers and adequate resources for carrying out its Respective Parts of the Project.

3. For purposes of carrying out EVN's and the Power Companies' Respective Parts of the Project, EVN and the Power Companies, shall adopt a Project Implementation Plan, satisfactory to the Association, which shall include the description of: (i) implementation arrangements; (ii) the procurement procedures set forth in Schedule 1 to this Agreement; and standard procurement documentation; (iii) reporting requirements, financial management procedures and audit procedures as set forth in Article 4 of this Agreement, (iv) the project performance indicators set forth in a supplemental letter of even date herewith; (v) the Resettlement Action Plans and Ethnic Minorities Development Plans referred to in Section B of this Schedule 2, and; (vi) the Environmental Impact Assessments referred to in Section C of this Schedule 2. EVN and the Power Companies further undertake not to amend, abrogate or waive the Project Implementation Plan or any provision therein without the prior concurrence of the Association.

4. EVN shall:

(a) engage consultants to develop a methodology for establishing transparent and reasonable distribution margins and bulk supply tariffs for independent distribution operators, including PC1, PC2, PC3, PC Dong Nai and the Commune power systems;

(b) promptly submit to the Borrower and the Association for approval a plan for establishing such transparent and reasonable distribution margins and bulk supply tariffs based on the recommendations of the consultants engaged pursuant to subparagraph (a) above; and

(c) thereafter, for each of its fiscal years beginning on or after January 1, 2004, implement a phased cost-based bulk supply tariff to cover the input, operating and financial costs of the independent distribution operators referred to in subparagraph (a) above.

5. EVN shall, no later than July 1, 2003, adopt an Independent Creditors Model, acceptable to the Association, for assessing the financial ratios and performance of EVN and thereafter implement the said model and integrate it into its corporate planning and financial forecasting systems. For purpose of this paragraph, the term "Independent Creditors Model" means a detailed financial performance model based on international accounting standards that would serve to: (a) monitor EVN's financial projections; (b) establish future financial projections and test sensitivities; and (c) monitor tariff requirements and compliance with financial covenants in this Agreement, the Development Credit Agreement and the GEF Trust Fund Grant Agreement.

6. EVN shall:

(a) no later than December 31, 2002, prepare and furnish to the Association for its review and comments EVN's proposed ten year power development program and associated five-year implementation plan and financing plan for the efficient expansion and development of its power generation and transmission systems (Power Development Program); and

(b) no later than December 31 in each succeeding year, submit to the Association for its review and comments: (i) a report of the progress in the implementation of the Power Development Program during the preceding 12 month period; (ii) its proposed implementation program for the succeeding five years; and (iii) a review of its policy and levels of its electricity tariffs, including proposed adjustments.

7. EVN shall, no later than December 31, 2004, taking into account the results of conversion of commune level and district level distribution companies into joint stock companies carried out under Part C(2) of the Project, adopt a plan for conversion of additional commune level and district level distribution companies into joint stock companies.

8. EVN shall, by December 31, 2002, formulate terms of reference satisfactory to the Association for the Corporate Planning Unit, and provide said Unit with sufficient resources and competent staff in adequate numbers, including engineers, economists, finance and accounting specialists, each with qualifications and experience satisfactory to the Association, to enable said Unit to carry out the corporate planning functions in a more efficient and flexible manner.

B. Resettlement and Ethnic Minorities

Each of EVN (through NPPMB, CPPMB and SPPMB), PC1, PC2, PC3 and PC Dong Nai shall: (a) implement its respective Resettlement Action Plan and Ethnic Minorities Development Plan, as the case may be, in a manner satisfactory to the Association; and (b) at least one year prior to initiating any civil works under Part A (1)(a) of the Project, and at least six months prior to initiating any civil works under all other Parts of the Project, engage, under terms of reference satisfactory to the Association, an independent institution or firm with qualifications and experience acceptable to the Association to monitor said implementation.

C. Environmental Impact Mitigation

EVN, through its Northern Power Project Management Board, Central Power Project Management Board and Southern Power Project Management Board, PC1, PC2, PC3 and PC Dong Nai shall carry out their Respective Parts of the Project in accordance with measures described in its respective Environmental Impact Assessments and, without any limitation thereto, each shall take timely action to ensure that any adverse environmental impact of its Respective Parts of the Project is effectively mitigated in a manner satisfactory to the Association.

D. Monitoring, Reviewing and Reporting

1. Without limitation to Section 9.06 of the General Conditions, each of EVN, PC1, PC2, PC3 and PC Dong Nai shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Association, the carrying out of its Respective Parts of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association quarterly, no later than ten (10) days after the end of each calendar quarter, commencing with the quarter ending December 31, 2002, and annually, on or about December 31 in each year, commencing December 31, 2002, a report integrating the results of the monitoring and evaluation activities performed pursuant to subparagraph (a) above, on the financial and physical progress achieved in the carrying

out of its Respective Parts of the Project during the period preceding the date of said report, and setting out the measures recommended to ensure the efficient carrying out of its Respective Parts of the Project and the achievement of the objectives thereof during the period following such date;

(c) review with the Association, by February 28 in each year, commencing February 28, 2003, or such later date as the Association shall request, the annual report referred to in sub-paragraph (b) above, and, thereafter, take all measures required to ensure the efficient completion of its Respective Parts of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter;

(d) prepare, under terms of reference satisfactory to the Association, and furnish to the Association on or about December 31, 2003, a report integrating the results of the monitoring and evaluation activities performed pursuant to subparagraph (a) above on the progress achieved in the carrying out of its Respective Part of the Project during the period since the Project's inception, and setting out the measures recommended to ensure the efficient carrying out of its Respective Part of the Project and the achievement of the objectives thereof during the period following such date; and

(e) review with the Association, by February 28, 2004, or such later date as the Association shall request, the report referred to in subparagraph (d) above, and, thereafter, take all measures required to ensure the efficient completion of its Respective Part of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter.