INDEMNITY AGREEMENT

(Nam Theun 2 Hydroelectric Power Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

LAO PEOPLE’S DEMOCRATIC REPUBLIC

Dated April 26, 2005
INDEMNITY AGREEMENT

AGREEMENT, dated April 26, 2005, between LAO PEOPLE’S DEMOCRATIC REPUBLIC (Lao PDR) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS, pursuant to a loan agreement dated on or about the date hereof (the IDA Guaranteed Facility Agreement) between Nam Theun 2 Power Company Limited (the Company), the financial institutions named therein as lenders (the IDA Guaranteed Lenders) and Fortis Bank S.A./N.V. as agent (the Agent) for the IDA Guaranteed Lenders, the IDA Guaranteed Lenders have agreed to make available to the Company a loan of up to fifty million United States Dollars (US$50,000,000) (the Loan Amount) to support a portion of the financing of the Nam Theun 2 Hydroelectric Power Project (the Project or the Power Project) as defined in the Concession Agreement dated October 3, 2002, as amended by the Nam Theun 2 Concession Agreement First Amendment Agreement dated April 3, 2003, the Nam Theun 2 Concession Agreement Second Amendment Agreement dated July 3, 2003, the Nam Theun 2 Concession Agreement Third Amendment Agreement dated November 7, 2003, the Nam Theun 2 Concession Agreement Fourth Amendment Agreement dated August 3, 2004, and the Nam Theun 2 Concession Agreement Fifth Amendment Agreement dated on or about the date of this Agreement (together, and as it may be restated in a consolidated form, the Concession Agreement) between the Government of Lao PDR (the Government) and the Company.

WHEREAS, the Government has undertaken certain obligations (including payment obligations) to the Company with respect to the Project pursuant to the Concession Agreement, and to the IDA Guaranteed Lenders pursuant to a direct agreement dated on or about the date hereof between Lao PDR, the Company and the Agent on behalf of the IDA Guaranteed Lenders (the Direct Agreement, and collectively with the Concession Agreement, the Relevant GOL Agreements).

WHEREAS, the Association has entered into a development grant agreement (the Development Grant Agreement) with Lao PDR dated on or about the date hereof under which the Association has agreed to grant to Lao PDR, on the terms and conditions therein set forth, thirteen million one hundred thousand Special Drawing Rights (SDR13,100,000) to finance certain eligible expenditures for the Project.

WHEREAS, the Association has received from the Government a letter dated March 4, 2005 (the Government’s Letter of Implementation Policy or GLIP) setting forth a program of objectives, policies and actions designed to: (a) strengthen its public financial management capacity; (b) ensure the effective and transparent allocation and application of public
revenues arising from the Power Project to key poverty reduction and environmental protection programs; and (c) ensure that the Power Project and the Nam Theun 2 Social and Environmental Project are being carried out in a manner consistent with appropriate social and environmental standards and practices.

WHEREAS, at the request and with the agreement of Lao PDR, and taking into account the GLIP and the Government’s commitments in connection with the Nam Theun 2 Social and Environmental Project (NTSEP), the Association has agreed to guarantee to the IDA Guaranteed Lenders the payment of interest and the repayment of the principal of the Loan Amount (the IDA Guarantee) on the terms and conditions set forth in the Guarantee Agreement dated on or about the date hereof between the Association and the Agent (the IDA Guarantee Agreement), but only on condition that Lao PDR agree to reimburse to the Association all amounts paid by the Association under the IDA Guarantee Agreement and to undertake such other obligations to the Association as are set forth in this Agreement; and

WHEREAS, in consideration of the Association providing the IDA Guarantee pursuant to the IDA Guarantee Agreement, Lao PDR 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 May 1, 2004) (hereinafter the General Conditions), with the modifications set forth in paragraph (b) of this Section 1.01 constitute an integral part of this Agreement:

(i) Article I;

(ii) Sections 2.01(1), (2), (3) and (4) both as modified below, (7), (8) as modified below, (9), (10) and (12) both as modified below, and (14);

(iii) Sections 2.02 and 2.03;

(iv) Sections 3.04(c) and 3.05;

(v) Sections 4.05 and 4.06;

(vi) Section 8.01;

(vii) Sections 9.01, 9.02 and 9.08;

(viii) Sections 10.01, 10.02 as modified below and 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 Lao PDR;

(ii) the term “development credit” or “Credit,” wherever used in the General Conditions, means the amounts payable by Lao PDR under this Agreement, save as used in Section 9.01 of the General Conditions 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 specified in Article V of this Agreement;

(v) the term “Project,” wherever used in the General Conditions, means the Project as defined in the Preamble to this Agreement; and

(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 in the Preamble to this Agreement have the respective meanings therein set forth;


(c) the following terms shall have their respective meanings set forth in the Development Grant Agreement: “Annual Implementation Plan” or “AIP”, “Additional Plan”, “Environmental Assessment and Management Plan” or “EAMP”, “Lao Holding State Enterprise” or “LHSE”, “Social Development Plan” or “SDP”, “Nakai Nam Theun National Protected Area”, “Nam Theun 2 Watershed Area”, “NTSEP”, and “Project Implementation Plan” or “PIP”; and
(d) the following additional terms shall have the following meanings:

(i) “Bank” means the International Bank for Reconstruction and Development;

(ii) “Corrupt Practices” means:

(x) the offering, promising or giving of any undue pecuniary or other advantage, whether directly or through intermediaries to any official of Lao PDR or any Government Entity, for that official or for a third party to influence the official to act or refrain from acting in relation to the performance of official duties, with the purpose of obtaining or retaining business or any other improper advantage; or

(y) the acquisition, possession, use, conversion, transfer or concealment of the true nature of property of any description, and legal documents or instruments evidencing title to, or interest in, such property knowing that such property is an economic advantage from criminal offenses, for the purpose of (i) concealing or disguising the illicit origin of the property, or (ii) assisting any person who is involved in the commission of a criminal offense as a result of which such property is generated or sustained, to evade the legal consequences of such actions;

(iii) “Demand Notice” means a demand presented to the Association by the Agent in accordance with Clause 6 of the IDA Guarantee Agreement and substantially in the form of Schedule I thereto;

(iv) “Fraudulent Practice” means a misrepresentation of facts in order to influence a process or the execution of a contract to the detriment of Lao PDR, a Government Entity or the Company, as the case may be;

(v) “Government Entity” shall have the meaning given to the term “Government Authority” in the Concession Agreement and shall, for the purposes of this Agreement, include any instrumentality, body, or entity which has assumed or may assume rights, obligations or responsibilities under the Concession Agreement or in respect of the Power Project or the Nam Theun 2 Social and Environmental Project on behalf of the Government;

(vi) “IDA Project Agreements” means the two agreements dated on or about the date hereof between the Association and the Company
relating to the obligations of the Company in connection with the Power Project and in respect of the financing provided under the Development Grant Agreement, respectively; and

(vii) “United States Dollars” or “US$” or “US Dollars” means the lawful currency of the United States of America.

ARTICLE II

Indemnity by Lao PDR 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, Lao PDR 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 for Fixed-Spread Loans in US Dollars) from the date such payment is made by the Association until such amount is reimbursed 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 and documented, in relation to or arising out of the IDA Guarantee Agreement (except as otherwise provided in Section 10.03(i) of the General Conditions);

(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 Lao PDR 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 Lao PDR’s obligation to reimburse or indemnify the Association pursuant to this Agreement); and (ii) it shall not be incumbent on the Association to confirm whether or not any statements in such Demand Notice are in fact correct; and

(d) that any such Demand Notice shall, as between Lao PDR and the Association, be conclusive evidence that the demand is properly made and payment is properly due. Following the notification to Lao PDR of the receipt by the Association of any Demand Notice, Lao PDR may investigate the validity of the statements in such Demand Notice and take such actions as Lao PDR may see fit against the Company, the Agent and the IDA Guaranteed 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 Lao PDR’s obligations under this Agreement in relation to such payment by the Association. The obligations of Lao PDR hereunder shall apply notwithstanding that Lao PDR or any Government Entity 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 Lao PDR under this Agreement are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of Lao PDR’s obligations under the Relevant GOL Agreements or any other Government Entity’s obligations under other Transaction Documents, and 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, or demand upon, Lao PDR 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 Document or any other related agreement (other than, without Lao PDR’s prior consent, any such variation which would materially increase the obligations of Lao PDR under this Agreement); (iii) any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against Lao PDR, 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 Lao PDR.

(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 IDA Project Agreements, 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, the IDA Guaranteed Facility Agreement, any Transaction Documents or any other related agreement (other than, without Lao PDR’s prior consent, any such extension or variation which would materially increase the obligations of Lao PDR under this 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 Lao PDR, 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 Project 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 Lao PDR 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 Lao PDR 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, Lao PDR hereby unconditionally undertakes to the Association punctually to perform all of its obligations under the Relevant GOL Agreements and to cause EDL and each Government Entity to perform all of its obligations under the Transaction Documents applicable to each of them respectively.

Section 3.02. Lao PDR shall notify the Association prior to agreeing to any amendment, waiver, termination or other change to the Relevant GOL 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, the IDA Project Agreements or the Transaction Documents.

Section 3.03. Lao PDR shall promptly notify the Association of any breach of a Material Obligation by any party under the Concession Agreement (including of Schedule 4), or the occurrence of a Company Termination Event, a GOL Termination Event, Force Majeure (including any Lao Sovereign Event and Non-Sovereign Event), a delay in achieving the GOL Project Completion Date (due to the GOL, the Company or otherwise) beyond any period specified in Clause 16 of the Concession Agreement, the obligation to pay a Company Change in Law Compensation Amount (and the method selected for payment thereof), a Dispute or initiation of any Disputative Proceeding.
Section 3.04. Lao PDR shall promptly notify the Association of its receipt or giving by any party of any notice of intent to terminate or of a termination notice pursuant to any of the Relevant GOL Agreements, and the occurrence of any other event or circumstance which would or could adversely affect Lao PDR’s or any Government Entity’s ability to perform its obligations or exercise its rights under the Relevant GOL Agreements or any other Transaction Document.

Section 3.05. Lao PDR shall take all actions within its power to remedy and cure any GOL Termination Event or a breach of a Material Obligation by Lao PDR or any Government Entity, or any event or circumstance which would or could result in such breach, a GOL Termination Event, a Change in Lao PDR Law for which the Government fails to pay a Company Change in Law Compensation Amount when due, or a Lao-Sovereign Event for which there is a Lao Sovereign Event Compensation Requirement (or equivalent extension payment obligation).

Section 3.06. Lao PDR shall not create or permit to exist or occur, and shall ensure that no Government Entity shall create or permit to exist or occur, any circumstances or Change in Lao PDR Law which would render obligations under the Project Documents illegal, invalid, unenforceable, ineffective or void in whole or part, and will not initiate or permit any Government Entity to initiate a Disputative Proceeding in violation of the Concession Agreement. If such circumstances or Change in Lao PDR Law exists or occurs, or a Disputative Proceeding is initiated, Lao PDR shall take all actions within its power to remedy and cure, or to procure that the appropriate Government Entity remedy and cure, the adverse effect on the Project of such circumstances, Change in Lao PDR Law or Disputative Proceeding.

Section 3.07. Lao PDR shall:

(a) carry out promptly or cause to be carried out promptly any environmental or social action required to be performed by it or by any Government Entity under the Concession Agreement (including Schedule 4 thereof) and (to the extent required thereunder) under the Development Grant Agreement;

(b) as provided in part 3 of Schedule 4 of the Concession Agreement, carry out and implement the NTSEP in a manner satisfactory to the Association and designed to ensure that the Nakai Nam Theun National Protected Area is conserved, protected and maintained in accordance with sound environmental and social standards and practices satisfactory to the Association; and to this end, take all necessary action to maintain the Watershed Management and Protection Authority (WMPA) with sufficient responsibility and authority, under the direction of qualified managers, staffed with competent personnel in sufficient numbers, and provided with adequate resources, to enable said Authority to manage the Nakai Nam Theun National Protected Area for the purposes of
conserving, protecting and maintaining said Protected Area and of promoting biodiversity therein and the sustainable use thereof;

(c) take all action which shall be necessary on its part or on the part of any Government Entity to enable the Company (i) to obtain any required approval or environmental authorization for the Project required under the Concession Agreement (including Schedule 4 thereof), or under the Project Implementation Plan, any Annual Implementation Plan or Additional Plan, and (ii) to perform all of its obligations under the IDA Project Agreements and the Transaction Documents;

(d) not take any action or cause or permit any Government Entity to take any action which would prevent or interfere with the performance by the Company of such obligations;

(e) deliver, or cause the Lao Holding State Enterprise to deliver, a copy of its annual audited financial statements within six (6) months of their certification; and

(f) carry out promptly and cause to be carried out all its obligations under the Development Grant Agreement, and not take or permit to be taken any action which would prevent or interfere with the Company’s performance of its obligations under the IDA Project Agreements, provided that such Company obligations are not inconsistent with the Company’s obligations under the Concession Agreement.

Section 3.08. Lao PDR affirms to the Association that no Corrupt Practices or Fraudulent Practices have been engaged in by any official or representative of Lao PDR or any Government Entity with respect to the Project and declares its commitment to enforce the laws of Lao PDR against Fraudulent Practices and Corrupt Practices during and with respect to the performance of any contract or activity related to the Project.

Section 3.09. Without prejudice to Sections 9.01 and 9.02 of the General Conditions, Lao PDR shall provide the Association promptly upon request all information necessary, in the reasonable opinion of the Association, for the Association’s review of Lao PDR’s performance of its covenants pursuant to Sections 3.06 and 3.07 above and for a review of the relevant monitoring mechanisms and indicators.

Section 3.10. So long as there has been no Demand Notice issued under the IDA Guarantee Agreement, the Association shall pay to Lao PDR, promptly upon receipt by the Association, any amount of the guarantee fees provided under Clause 5 of the IDA Guarantee Agreement that are in excess of 0.75% per annum (75 basis points) of the aggregate principal amount of the IDA Guaranteed Facility (as that term is defined in the IDA Guarantee Agreement). The determination and calculation of any such payment to
Lao PDR shall be made by the Association and shall be binding and conclusive on Lao PDR in the absence of manifest error.
ARTICLE IV

Remedies of the Association

Section 4.01. In the event that: (i) Lao PDR fails to make any payment to or to indemnify the Association as required pursuant to Section 2.01 of this Agreement; (ii) Lao PDR 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 Lao PDR by the Association; or (iii) any representation made by Lao PDR 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, then 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 Lao PDR’s right to make withdrawals under any development credit agreement between the Association and Lao PDR or under any loan or guarantee agreement between the Bank and Lao PDR, or to declare the outstanding principal and interest of any such credit or loan due and payable immediately.

ARTICLE V

Effective Date

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

ARTICLE VI

Miscellaneous Provisions

Section 6.01. The Minister of Finance is hereby designated as the representative of Lao PDR 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 Lao PDR:

Ministry of Finance
P.O Box No. 46, Thatluang Road
Vientiane
Lao PDR
Facsimile:  856-21-412142 or 856-21-412405
Telex:  4369 MOF LS
For the Association:

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

Facsimile: +1 (202) 477-0169

Cable address: INDEVAS
Telex: 248423 (MCI)
Washington, D.C 64145 (MCI)

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Vientiane, Lao People's Democratic Republic, as of the day and year first above written.

LAO PEOPLE’S DEMOCRATIC REPUBLIC

By /s/ Somdy Douangdy
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Ian Porter
Authorized Representative