

ECONOMIC
CO-OPERATION



Treaty Series No. 45 (1975)

Second Nam Ngum Development Fund Agreement, 1974

Manila, 26 June–31 July 1974

[The Agreement entered into force on 5 July 1974]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
April 1975*

LONDON
HER MAJESTY'S STATIONERY OFFICE
22p net

Cmnd. 5955

SECOND NAM NGUM DEVELOPMENT FUND AGREEMENT, 1974

Agreement dated 26 June 1974 between the Governments of Australia, Canada, the Federal Republic of Germany, India, Japan, Laos, the Kingdom of the Netherlands, New Zealand, Thailand, the United Kingdom of Great Britain and Northern Ireland, and the United States of America and the Asian Development Bank.

Whereas

(A) Under the Nam Ngum Development Fund Agreement, 1966,⁽¹⁾ the Nam Ngum Development Fund was established to finance the first phase of construction of the Nam Ngum hydropower facilities and construction of such first phase was completed in 1971;

(B) The Committee for Coordination of Investigations of the Lower Mekong Basin (Khmer Republic, Laos, Thailand and the Republic of Viet-Nam) operating under the aegis of the United Nations Economic Commission for Asia and the Far East has recommended early commencement of the second phase of construction of the Nam Ngum hydropower facilities as an integral component of the comprehensive development of the Lower Mekong Basin;

(C) As Administrator of the Nam Ngum Development Fund, the International Bank for Reconstruction and Development, in consultation with the Asian Development Bank (the Bank), has made an Evaluation Study of the second phase of construction of the Nam Ngum hydropower facilities and has found such second phase to be economically viable and technically feasible;

(D) The Governments of Laos and Thailand have agreed to make arrangements for further inter-connection of the high voltage transmission facilities of the two countries and for further sales by Electricité du Laos (EDL) to Electricity Generating Authority of Thailand of electrical energy to be produced by the Nam Ngum hydropower facilities;

(E) The Governments of Australia, India, Japan, the Kingdom of the Netherlands, New Zealand, the United Kingdom and the United States have agreed on arrangements for the joint financing of the Project, as described in the Schedule, on the terms and conditions set forth in this Agreement and, together with the Government of Laos, have invited the Bank and the Bank has agreed to act as Administrator of the funds so provided;

(F) The Government of Canada has agreed to finance goods and services required for the Project under its bilateral aid to Laos;

(G) The Government of the Federal Republic of Germany has agreed to finance the construction of transmission, substation and certain distribution facilities included in the Project under its bilateral aid to Laos; and

⁽¹⁾ See United Nations Treaty Series Vol. 575, page 50. The United Kingdom was not a party to the Agreement.

(H) The Project will be executed by EDL, a statutory corporation of Laos, in accordance with the terms of a Project Agreement of even date herewith between Laos, EDL and the Bank and for this purpose Laos will make the proceeds of the funds provided for the Project available to EDL upon the terms and conditions herein provided;

Now therefore the Parties hereto hereby agree as follows:

ARTICLE I

Title; Definitions

Section 1.01. This Agreement may be cited as the "Second Nam Ngum Development Fund Agreement, 1974".

Section 1.02. Except where the context otherwise requires, the following terms have the following meanings wherever used in this Agreement:

- (a) "Administrator" means the Bank acting in the capacity of Administrator of the Fund;
- (b) "Bank" means the Asian Development Bank;
- (c) "Bilateral Lenders" means the Government of Canada and the Government of the Federal Republic of Germany, representing itself and KFW;
- (d) "bilateral loans" means the loan by KFW to EDL referred to in Section 3.04 and the loan by the Government of Canada to Laos referred to in Section 3.05;
- (e) "Contributing Parties" means the Governments of Australia, India, Japan, the Kingdom of the Netherlands, New Zealand, the United Kingdom and the United States;
- (f) "currency" means such coin or currency as at the relevant time is legal tender for the payment of public and private debts in the territories of the government referred to;
- (g) "dollars" and "\$" mean dollars in currency of the United States;
- (h) "EDL" means Electricité du Laos, a corporation established under the provisions of the Ordonnance Royale No. 38 dated 26 January 1959 of the Kingdom of Laos;
- (i) "EGAT" means Electricity Generating Authority of Thailand, a corporation established under the provisions of the Electricity Generating Authority of Thailand Act (B.E. 2511), as amended from time to time, of the Kingdom of Thailand;
- (j) "Energy Supply Agreement" means the agreement dated 22 June 1971 between EDL and EGAT relating to the sale of energy by EDL to EGAT from the Nam Ngum hydropower facilities;
- (k) "Financing Agreement" means the agreement between Laos and EDL referred to in Section 4.01;
- (l) "foreign currency" means any currency other than kip;

- (m) "Fund" means the Second Nam Ngum Development Fund established by this Agreement;
- (n) "goods" means equipment, supplies and services required for the Project or for the carrying out of the Administrator's duties hereunder; wherever reference is made to the cost of any goods, such cost shall be deemed to include the cost of importing such goods into the territories of the Kingdom of Laos;
- (o) "KFW" means Kreditanstalt fuer Wiederaufbau, a corporation established under the laws of the Federal Republic of Germany;
- (p) "kip" means the currency of the Kingdom of Laos;
- (q) "Laos" means the Kingdom of Laos represented by the Government of Laos;
- (r) "OECF" means The Overseas Economic Cooperation Fund, a corporation established under the laws of Japan;
- (s) "OECF Loan" means the loan by OECF to Laos referred to in Section 3.03;
- (t) "Parties" means the Governments named in the Preamble to this Agreement as parties and the Bank, and any other Government, institution or entity which shall become a party to this Agreement pursuant to Article XII;
- (u) "Project" means the second phase of construction of the Nam Ngum hydropower facilities described in the Schedule, as such description may be amended from time to time by agreement between the Parties;
- (v) "Project Agreement" means the agreement between Laos, EDL and the Bank referred to in Recital (H) of the Preamble to this Agreement; and
- (w) "Thailand" means the Kingdom of Thailand represented by the Royal Government of Thailand.

Section 1.03. Unless otherwise specified, references in this Agreement to Articles, Sections or the Schedule are, respectively, to Articles, Sections and the Schedule of this Agreement.

ARTICLE II

Establishment of Second Nam Ngum Development Fund

Section 2.01. There is hereby established the Second Nam Ngum Development Fund, constituted by the contributions which shall from time to time be made to the Fund, whether as grant or loan, in accordance with the provisions of this Agreement, together with any additions thereto and any other assets and receipts of the Fund, to be held in trust and administered by the Bank and used only for the purposes, and in accordance with the provisions, of this Agreement and the Project Agreement.

Section 2.02. The Bank is hereby designated as Administrator of the Fund. The Bank agrees to act in that capacity in accordance with the provisions of this Agreement and the Project Agreement.

Section 2.03. The Fund and its assets and accounts shall be kept separate and apart from all assets and accounts of the Bank and shall be separately designated in such appropriate manner as the Bank shall determine.

ARTICLE III

Contributions to the Fund; Bilateral Loans

Section 3.01. Each of the Parties specified in this Section 3.01 hereby undertakes, subject to such parliamentary or congressional action as may be necessary (if any), to make a contribution to the Fund in the amount and on the terms and conditions specified below:

- (a) The Government of Australia shall contribute a grant of the equivalent in Australian dollars of five hundred thousand dollars (\$500,000), which may be disbursed for any expenditures, whether in foreign currency or kip, on the Project.
- (b) The Government of India shall contribute a grant of one million Indian rupees (Ind. Rs. 1,000,000), provided that, except as the Government of India shall otherwise agree, such contribution shall not exceed actual disbursements from the Fund for the foreign currency cost of goods required for the Project and procured in, or supplied from, the territories of India.
- (c) The Government of the Kingdom of the Netherlands shall contribute a grant of one hundred and forty-four thousand five hundred and forty-five dollars (\$144,545), which may be disbursed for any expenditures, whether in foreign currency or kip, on the Project.
- (d) The Government of New Zealand shall contribute a grant of five hundred thousand New Zealand dollars (NZ\$500,000), provided that, except as the Government of New Zealand shall otherwise agree, such contribution shall not exceed actual disbursements from the Fund for a reasonable part of total kip expenditures for the Project and for the foreign currency cost of goods required for the Project and procured in, or supplied from, the territories of New Zealand.
- (e) The Government of the United Kingdom shall contribute a grant of thirty-two thousand pounds (£32,000) and a loan of forty-eight thousand pounds (£48,000), a total of eighty thousand pounds (£80,000). The loan shall be interest-free and shall mature over twenty-five (25) years, including a grace period of seven (7) years.⁽²⁾ Except as the Government of the United Kingdom shall otherwise agree, such contribution shall not exceed actual disbursements from the Fund for the foreign currency cost of goods required for the part of the Project described in paragraph (g) of the Schedule and procured in, or supplied from, the territories of the United Kingdom.
- (f) The Government of the United States shall contribute a loan of five million dollars (\$5,000,000), provided that, except as the Government of the United States shall otherwise agree, such contribution shall not exceed actual disbursements from the Fund for a reasonable

⁽²⁾ See Treaty Series No. 5 (1975), Cmnd. 5956.

part of total kip expenditures for the Project and for the foreign currency cost of goods required for the Project and procured in, or supplied from, the territories of the United States. Such loan shall bear interest at the rate of two per cent (2%) per annum during the grace period and at the rate of three per cent (3%) per annum thereafter and shall mature over forty (40) years, including a grace period of ten (10) years.

Section 3.02. Each contribution to the Fund referred to in Section 3.01, whether in the form of grant or loan, shall be a grant or loan to Laos (but payable to the Fund) and shall be made directly by the Contributing Party, or any agency or instrumentality thereof, on terms and conditions, not inconsistent with this Agreement and the Project Agreement, to be agreed between Laos and the Contributing Party or its agency or instrumentality concerned.

Section 3.03. The Government of Japan hereby confirms that OECF has agreed to make a loan to Laos for the Project not exceeding three billion one hundred and eighty million yen (Y3,180,000,000) nor exceeding fifty per cent (50%) of the total Project cost. Such loan will be a contribution to the Fund; may be disbursed for any expenditures, whether in foreign currency or kip, on the Project; will bear interest at the rate of two per cent (2%) per annum and will mature over thirty (30) years, including a grace period of ten (10) years. Such loan will be on terms and conditions, not inconsistent with this Agreement and the Project Agreement, as agreed between Laos and OECF. The Administrator will coordinate with OECF in relation to the Project under arrangements to be agreed between them.

Section 3.04. The Government of the Federal Republic of Germany hereby undertakes that, on the basis of a bilateral agreement to be concluded with Laos, KFW shall make a loan to EDL not exceeding eleven million five hundred thousand Deutsche Mark (DM11,500,000) to finance the parts of the Project described in paragraphs (e) and (f) of the Schedule, and the part of the consulting services referred to in paragraph (i) of the Schedule relating thereto. Such loan shall bear interest at the rate of three-fourths of one per cent ($\frac{3}{4}$ of 1%) per annum and shall mature over fifty (50) years, including a grace period of ten (10) years. Such loan shall be on terms and conditions, not inconsistent with this Agreement and the Project Agreement, to be agreed between KFW and EDL, and shall not comprise part of the Fund. The Administrator and KFW will coordinate their respective actions in relation to the Project under arrangements to be agreed between them.

Section 3.05. The Government of Canada hereby undertakes that, on the basis of a bilateral agreement to be concluded with Laos, the Government of Canada shall make a loan to Laos not exceeding two million five hundred thousand Canadian dollars (Can.\$2,500,000) to finance goods required for the Project and procured in, or supplied from, the territories of Canada. Such loan shall be interest-free and shall mature over fifty (50) years, including a grace period of ten (10) years. Such loan shall be

on terms and conditions, not inconsistent with this Agreement and the Project Agreement, to be agreed between the Government of Canada and Laos, and shall not comprise part of the Fund. Except as the Government of Canada may otherwise agree, such loan shall not be available to finance any commitment incurred after 31 December 1975. The Administrator and the Government of Canada will coordinate their respective actions in relation to the Project under arrangements to be agreed between them.

Section 3.06. (a) Upon the entry into force of this Agreement, the Administrator shall promptly notify each of the Contributing Parties of the amount required to be paid as part of its contribution to the Fund to cover estimated disbursements of the Fund prior to 30 June 1974. The Administrator shall, before the beginning of the semi-annual period commencing 1 July 1974 and before the beginning of each semi-annual period commencing 1 January or 1 July thereafter (at a time to be agreed between the Administrator and each of the Contributing Parties), notify each of the Contributing Parties of the amount required to be contributed by it to cover estimated disbursements during each such semi-annual period. Payment will be made of the amounts specified or provided for in such notifications at the time or times specified therein.

(b) The Administrator may include in its estimate of amounts required to be paid in any period pursuant to Section 3.06 (a) such sums as it shall consider necessary or desirable to establish and maintain a reasonable reserve against an excess of actual expenditures over the estimates of such expenditures.

(c) The Contributing Parties and Laos agree to accept the Administrator's decisions under Section 3.06 (a) and (b) as to the estimated requirements of the Fund, including reserve.

Section 3.07. Notwithstanding the provisions of Section 3.06 (a):

(a) the contribution of the Government of Australia shall be paid in six (6) equal semi-annual instalments commencing with the instalment payable in respect of the semi-annual period commencing 1 July 1974;

(b) the contribution of the Government of the Kingdom of the Netherlands shall be paid in one instalment at such time as the Government of the Kingdom of the Netherlands and the Administrator shall agree; and

(c) the contribution of the Government of New Zealand shall be paid in four (4) semi-annual instalments commencing with the instalment payable in respect of the semi-annual period commencing 1 July 1974.

Section 3.08. Contributions will be paid in the respective currencies of the Contributors or in the equivalents thereof in such other currencies, freely usable or convertible, as may be agreed upon between the respective Contributing Parties and the Administrator.

ARTICLE IV

Use of the Fund; Disbursements from the Fund

Section 4.01. (a) Laos shall make the proceeds of the Fund available to EDL under a Financing Agreement upon terms and conditions satisfactory to the Administrator.

(b) Laos shall cause EDL to apply the proceeds of the Fund exclusively to the financing of expenditures on such parts of the Project as shall not be financed under bilateral loans, in accordance with the provisions of this Agreement and the Project Agreement.

(c) Except as may be agreed between Laos and any Contributing Party, no part of the contribution of that Contributing Party to the Fund or income from deposit or investment of such contribution shall be applied to the financing of interest or any other charges on such contribution or on any other contribution to the Fund.

Section 4.02. Subject to the provisions of this Agreement, the allocation of the proceeds of the Fund among the expenditures on the Project and the specific goods to be financed from the Fund shall be determined by agreement between Laos and the Administrator, subject to modification by further agreement between them.

Section 4.03. Except as the Administrator may otherwise determine, no disbursements shall be made from the Fund on account of (i) any expenditure prior to the date of this Agreement; (ii) any payment for taxes imposed under the laws of Laos or laws in effect in its territories on goods or services, or on the importation, manufacture, procurement or supply thereof; (iii) any expenditure in any ineligible source territory or for goods produced in, or services supplied from, any such territory. For the purposes of this Section 4.03, "ineligible source territory" means any territory other than (i) territories of any of the Contributing Parties and (ii) territories which have been specified by the Bank from time to time to Laos as eligible sources for procurement of goods and services under loans by the Bank in its Special Operations..

Section 4.04. Except as the Administrator may otherwise determine, Laos shall cause all goods financed out of the proceeds of the Fund to be used exclusively in the carrying out of the Project.

Section 4.05. Disbursements from the Fund shall be made by the Administrator upon written application by Laos in such form, and containing such statements and agreements, as the Administrator shall request.

Section 4.06. Laos shall furnish to the Administrator such documents and other evidence in support of each such application as the Administrator shall request, whether before or after the Administrator shall have permitted any disbursement requested in its application.

Section 4.07. Each application and the accompanying documents shall be sufficient in form and substance to satisfy the Administrator that the amount requested is to be used only for the purposes specified in this Agreement, that the goods on account of which disbursement is requested are suitable for the Project, and that the cost of such goods is reasonable.

Section 4.08. The Administrator may make payments or arrangements for payment directly to the suppliers of goods or others without any application by Laos therefor whenever, after consultation with Laos, it determines that such procedure is necessary or desirable for the efficient carrying out of the Project.

Section 4.09. Disbursements from the Fund shall be in such currencies as the Administrator shall elect.

Section 4.10. Laos shall make and maintain arrangements for the sale, at the most advantageous legal rate, of kip required for the carrying out of the Project.

ARTICLE V

The Administrator

Section 5.01. The Administrator shall, on behalf of the Contributing Parties and in accordance with this Agreement and the Project Agreement, supervise the execution of the Project (including the procurement of the goods and coordination of implementation of the parts of the Project financed out of the Fund and the parts of the Project financed out of the bilateral loans), administer the Fund and coordinate the performance by the Parties of their respective obligations under this Agreement and the Project Agreement.

Section 5.02. The Administrator shall, within thirty (30) days after 30 June 1974 and after each 30 June and 31 December thereafter, send to each of the Contributing Parties, the Bilateral Lenders and Laos, a report containing appropriate information with respect to the receipts and disbursements of, and balances in, the Fund, the progress of the Project, and other matters relating to the Fund, the Project, this Agreement and the Project Agreement.

Section 5.03. The Administrator may, but shall not be obliged to, deposit and invest the Fund, or any part of it, pending disbursement, in such manner as it shall deem appropriate. Except as any Contributing Party shall otherwise specify to the Administrator in respect of income derived from deposit and investment of the contribution of such Party, the income from deposit and investment of the Fund, after deduction of expenses relating to such deposit and investment, shall be held and administered by the Administrator, on behalf of Laos, as part of the assets of the Fund.

Section 5.04. Whenever it shall be necessary for the purposes of this Agreement to value one currency in terms of another currency, such value shall be as reasonably determined by the Administrator in accordance with the Bank's usual procedures.

Section 5.05. The Administrator shall not be liable for any losses, resulting from fluctuations in exchange rates, sustained by the Fund on sales and purchases of different currencies.

Section 5.06. The Bank, in acting as Administrator, shall exercise the same care in the management and administration of the Fund, and in the discharge of its other functions under this Agreement and the Project Agreement, as it exercises in respect of the management and administration of its own affairs.

Section 5.07. (a) The Administrator shall receive no compensation for services rendered by it under this Agreement but shall be reimbursed out of the Fund for all expenses incurred by it in performing such services, including an appropriate portion of its overhead administrative expenses.

(b) The Administrator shall compute such expenses and reimburse itself therefor out of the Fund semi-annually, provided that the first computation and payment shall be in respect of the period ending 30 June 1974. Notwithstanding any other provision of this Agreement, such expenses shall be charged semi-annually, first, to income of the Fund, and then, to all contributions to the Fund in proportion to such contributions.

Section 5.08. Whenever the Administrator determines that special circumstances so require, it may make, or require or approve the making of, such agreement or arrangement with consultants, contractors and other entities as it shall consider desirable for carrying out the Project in the manner it deems to be the most efficient, expeditious and economical.

ARTICLE VI

Undertakings of the Contributing Parties and the Bilateral Lenders

Section 6.01. Each of the Contributing Parties and the Bilateral Lenders shall cooperate fully with each other and with Laos and the Administrator to ensure that the Project will be efficiently and economically implemented and that the purposes of this Agreement will be accomplished. To these ends, each of the Contributing Parties and the Bilateral Lenders shall:

- (a) furnish or cause to be furnished to the Administrator all such information as the Administrator shall reasonably request concerning (i) the contributions to the Fund and the expenditure of the proceeds thereof; (ii) the bilateral loans and the expenditure of the proceeds thereof; (iii) the goods; and (iv) the Project;
- (b) from time to time at the request of the Administrator exchange views with the Administrator through their respective representatives with regard to matters relating to the execution of the Project and the purposes of this Agreement; and
- (c) promptly inform the Administrator of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of this Agreement.

Section 6.02. (a) The Contributing Parties and the Bilateral Lenders shall not take or permit any action which would interfere with the efficient and economic implementation of the Project, and the performance by Laos, the Administrator and EDL of their respective obligations, and the exercise

of their respective rights, powers and privileges, under this Agreement, the Project Agreement and the Financing Agreement.

(b) Nothing in Section 6.02 (a) shall prevent any Contributing Party or Bilateral Lender from suspending disbursement of its contribution to the Project in the event of any default in payment of principal of, or interest or other charges on, such contribution.

ARTICLE VII

Undertakings of Laos

Section 7.01. (a) Laos shall cause EDL to carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering and public utility practices, all in accordance with the Project Agreement.

(b) Subject to the provisions of Section 4.03, Laos shall cause EDL to procure all goods required for the Project under arrangements and procedures satisfactory to the Administrator.

Section 7.02. (a) Laos shall make available to EDL, promptly as needed, any funds, facilities, services and other resources which are required, in addition to the proceeds of the Fund, for the carrying out of the Project and the operation and maintenance of the Project facilities.

(b) Without prejudice to the generality of the foregoing, Laos shall make available to EDL the proceeds of the loan by the Government of Canada under Section 3.05.

Section 7.03. Laos shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and the operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 7.04. Laos and the Administrator shall cooperate fully to ensure that the Project will be efficiently and economically implemented and that the purposes of this Agreement will be accomplished. To that end:

(a) Laos shall furnish or cause to be furnished to the Administrator all such information as the Administrator shall reasonably request concerning (i) the Fund and the expenditure of the proceeds thereof; (ii) the goods; (iii) the Project; (iv) the bilateral loans; (v) the administration, operations and financial condition of EDL and any other agencies of Laos responsible for carrying out the Project or any part thereof; (vi) financial and economic conditions in the territories of Laos and the international balance of payments position of Laos; and (vii) other matters relating to the Project or the purposes of the Fund.

(b) Laos shall promptly inform the Administrator of any condition which interferes or threatens to interfere with the execution of the Project, or the accomplishment of the purposes of this Agreement, or the performance by Laos of its obligations under this Agreement

or the Financing Agreement, or the performance by EDL of its obligations under the Project Agreement or the Financing Agreement.

- (c) Laos and the Administrator shall from time to time, at the request of either party, exchange views through their representatives with regard to matters relating to the execution of the Project, the purposes of this Agreement, and in particular with regard to (i) the performance by Laos of its obligations under this Agreement and the Financing Agreement and (ii) the performance by EDL of its obligations under the Project Agreement and the Financing Agreement.

Section 7.05. (a) Laos shall enable the Administrator's representatives to inspect the Project, the goods financed out of the proceeds of the Fund and the bilateral loans and any relevant records and documents.

(b) Laos shall afford all reasonable opportunity for representatives of the Administrator to visit any part of the territories of the Kingdom of Laos for purposes related to the Project.

Section 7.06. The Administrator may enter into such agreements or arrangements with Laos, EDL or any other agency or agencies of Laos responsible for the carrying out of the Project, as the Administrator shall deem desirable for implementing this Agreement. Laos hereby agrees to perform its obligations and cause EDL and any other such agency or agencies to perform their respective obligations under any such agreement or arrangement.

Section 7.07. Laos shall take all action which shall be necessary on its part to enable EDL to perform its obligations under the Project Agreement, including the establishment and maintenance of tariffs as stipulated in Section 3.04 thereof, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 7.08. (a) Laos shall exercise its rights under the Financing Agreement in such a manner as to protect the interests of Laos and the Contributing Parties and to accomplish the purposes of this Agreement.

(b) Except with the prior approval of the Administrator in consultation with the Contributing Parties and the Government of Canada, no rights or obligations under the Financing Agreement shall be assigned, amended, abrogated or waived.

Section 7.09. Except as the Administrator shall otherwise agree, Laos shall make and maintain arrangements, satisfactory to the Administrator: (i) to ensure that the importation, acquisition, sale, consumption and ownership of goods and the provision of services for the purposes of carrying out the Project shall be exempt from all taxes and duties; and (ii) to exempt from income and similar taxes payments to non-Laotian contractors, suppliers, consultants and other entities supplying services for the purposes of the Project, and to their non-Laotian employees.

Section 7.10. Laos, in consultation with EDL, shall, prior to 30 June 1974, submit to the Administrator its proposals as to the detailed arrangements for ownership, operation and maintenance of the facilities constructed

under the first phase of construction of the Nam Ngum hydropower facilities and to be constructed under the Project and the disposition of any income arising from the operation of such facilities, and shall, not later than 30 September 1974, implement arrangements satisfactory to the Administrator on such matters.

Section 7.11. (a) Laos hereby designates EDL its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 4.02, 4.05, 4.06, 4.07 and 4.08.

(b) Any action taken or agreement entered into by EDL pursuant to the authority conferred under Section 7.11 (a) shall be fully binding on Laos and shall have the same force and effect as if taken by Laos.

(c) The authority conferred on EDL under Section 7.11(a) may be revoked or modified by agreement between Laos and the Administrator.

ARTICLE VIII

Undertakings of Thailand

Section 8.01. Thailand shall, at its own expense, construct (a) a double-circuit 115 kV transmission line from Nakhon Ratchasima through Khon Kaen and Udon Thani to connect with the transmission line crossing the Mekong River near Nong Khai to be constructed by Laos under the Project, and (b) necessary additional substation facilities at Nakhon Ratchasima, Khon Kaen and Udon Thani. Thailand shall complete construction of such line and substation facilities in time to receive power generated by the additional generating units to be constructed under the Project upon the commencement of regular operation of such units.

Section 8.02. (a) Thailand and the Administrator shall cooperate fully to assure that the purposes of this Agreement will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the Project.

(b) Thailand and the Administrator shall from time to time exchange views through their representatives with regard to matters relating to the purposes of this Agreement.

(c) Thailand shall promptly inform the Administrator of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of this Agreement.

Section 8.03. The Administrator may enter into such agreements or arrangements with Thailand, EGAT or any other agency or authority designated by Thailand, as the Administrator shall deem desirable for implementing this Agreement. Thailand hereby agrees to perform its obligations and to cause EGAT or any other such agency or authority to perform its obligations under any such agreement or arrangement.

Section 8.04. Thailand agrees to cooperate with Laos and with the Administrator in carrying out the Project, and in particular will facilitate the transport and movement through its territories of persons and goods in connection with the carrying out of the Project.

ARTICLE IX

Joint Undertakings of Laos and Thailand

Section 9.01. (a) Laos agrees to cause EDL, and Thailand agrees to cause EGAT, prior to the expiry of the Energy Supply Agreement, to enter into an agreement under which the Energy Supply Agreement shall be extended for a period of not less than fifteen (15) years from the date of its expiry. Under such agreement, EDL and EGAT shall determine the price of energy supplied during the period of such extension taking into consideration, inter alia, the cost to EGAT of obtaining power from alternative sources.

(b) Laos and Thailand each agrees that, except with the prior approval of the Administrator, the Energy Supply Agreement shall not be amended prior to the termination of this Agreement.

Section 9.02. Laos and Thailand agree that that part of the additional double-circuit transmission line to be constructed under the Project which will cross the Mekong River near Nong Khai shall be owned, after construction, jointly by EDL and EGAT, and shall be operated and maintained under arrangements to be agreed between them and notified to the Administrator prior to 31 December 1974.

Section 9.03. Laos agrees to cause EDL, and Thailand agrees to cause EGAT, to cooperate in establishing efficient working arrangements for sale and transmission of power generated by facilities constructed under the Project and for maintenance by EDL and EGAT of their respective inter-connected transmission facilities.

Section 9.04. (a) Laos and Thailand shall cooperate fully to assure that the purposes of this Agreement will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the Project.

(b) Laos and Thailand shall from time to time exchange views through their representatives with regard to matters relating to the purposes of this Agreement.

(c) Laos and Thailand shall each promptly inform the other of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of this Agreement.

ARTICLE X

Suspension and Termination

Section 10.01. If any of the events specified below shall have occurred and, in the opinion of the Administrator, shall be likely to continue, the Administrator shall promptly notify all other Parties of such event and may by notice to such Parties suspend disbursements from the Fund in whole or in part:

(a) the Administrator shall have determined that the finance available may be insufficient to meet the estimated cost of the Project;

- (b) an event shall have occurred which will or may adversely affect the ability of EDL to carry out the Project or to operate and maintain the Project facilities;
- (c) a default shall have occurred in the performance by Laos of any of its obligations under this Agreement or the Financing Agreement;
- (d) a default shall have occurred in the performance by EDL of any of its obligations under the Project Agreement or the Financing Agreement;
- (e) any other situation shall have arisen which will make it impossible or improbable that the Project can be successfully completed or that the purposes of this Agreement can be substantially accomplished.

Section 10.02. (a) If, pursuant to Section 10.01, the Administrator shall suspend disbursements from the Fund in whole or in part, the Contributing Parties, Laos and the Administrator shall forthwith consult concerning the measures to be taken to correct the event or events giving rise to such suspension.

(b) If, after such consultation, a special majority of the Contributing Parties shall decide (i) that any such suspension shall be removed, the Administrator shall act in accordance with such decision; or (ii) that such event is not likely to be corrected and that the purposes of this Agreement are not likely to be substantially accomplished, this Agreement shall terminate.

(c) Pending any decision under Section 10.02 (b), the suspension shall continue.

Section 10.03. (a) Notwithstanding the provisions of Section 10.02 (b) (i), if the Administrator, after consultation with the Contributing Parties and Laos, shall decide that the event or events giving rise to any suspension is or are not likely to be corrected or that the Administrator is not likely to be able to carry out its duties under this Agreement in an effective manner and shall so notify the Parties, the obligations of the Administrator under this Agreement shall cease, subject to Section 10.03 (b).

(b) Promptly after the termination of its obligations pursuant to Section 10.03 (a), the Administrator shall transfer all assets then remaining in the Fund to such person or entity as Laos and a special majority of the Contributing Parties shall designate to the Administrator for the purpose of this Section 10.03. Failing such designation within six months after date of the Administrator's notice under Section 10.03 (a), the Administrator shall dispose of such assets in the manner specified in Section 10.06.

Section 10.04. In Sections 10.02 and 10.03, "a special majority of the Contributing Parties" means a majority of the Contributing Parties whose contributions constitute more than two-thirds of the aggregate contributions to the Fund.

Section 10.05. Subject to Section 10.06, this Agreement, unless sooner terminated pursuant to Section 10.02 or 10.03, shall terminate upon completion of the Project or upon disbursement from the Fund of all amounts required to meet the cost of the goods, whichever is later.

Section 10.06. If at the termination of this Agreement any amounts shall remain in the Fund, the Administrator, in consultation with the Contributing Parties and other Governments and entities (if any) referred to in Section 12.02, shall determine the manner of disposition of such amounts, including the recipients, amounts, times, methods and currencies of payment thereof.

ARTICLE XI

Settlement of Disputes

Section 11.01. (a) Subject to Section 11.01 (b), any dispute between any of the Parties hereto concerning the interpretation or the application of this Agreement, or of any supplementary or collateral agreement (except any agreement referred to in Sections 3.02, 3.03, 3.04 and 3.05), which cannot be resolved within a reasonable time by agreement of such Parties, shall be decided, at the request of any one of them, by the Administrator.

(b) If the Administrator shall decline or fail to make any such decision or if the dispute shall be between the Administrator and any other Party, any party to the dispute may submit it for decision to an arbitrator selected by the parties to the dispute or, failing such selection within a reasonable time, appointed by the Secretary-General of the United Nations.

(c) The decision of the Administrator or the arbitrator, as the case may be, shall be final and shall be implemented by all Parties in accordance with their respective constitutional procedures.

ARTICLE XII

Additional Parties and Contributions

Section 12.01. Any Government or entity not a Contributing Party may, with the prior approval of the Contributing Parties, Laos and the Administrator and in accordance with such arrangements as they shall agree, become a Contributing Party upon deposit with the Administrator of an instrument stating that it undertakes to make a contribution to the Fund upon the terms and conditions set forth in the instrument and that it accepts and agrees to be bound by the provisions of this Agreement.

Section 12.02. The Administrator may, with the prior approval of Laos, receive on behalf of the Fund from any Government or entity, whether or not a Party, amounts not provided for herein to be held and used as part of the Fund subject to the provisions hereof, in accordance with such arrangements, not inconsistent herewith, as the Administrator may approve.

ARTICLE XIII

Notices and Requests

Section 13.01. Any notice or request required or permitted to be given or made under 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 radiogram to the Party to which it is required or permitted to be given or made at such Party's address specified in Section 13.02 or at such other address as such Party shall have designated by notice to the Party giving such notice or making such request.

Section 13.02. The following addresses are specified for the purposes of Section 13.01:

For the Government of Australia:

Secretary
Commonwealth Treasury
Canberra
Australia

Telegraphic Address:

DEPARTMENT OF TREASURY
CANBERRA
AUSTRALIA

For the Government of Canada:

Canadian International Development Agency
Ottawa, Canada

Telex Address:

CIDA 2208/053 4140
OTTAWA
CANADA

For the Government of the Federal Republic of Germany:

Bundesministerium fuer
Wirtschaftliche Zusammenarbeit
Bonn, Germany

Telex Address:

886-9452
BONN
GERMANY

For the Government of India:

Secretary to the Government of India
Ministry of Finance
Department of Economic Affairs
New Delhi, India

Telegraphic Address:

ECOFAIRS
NEW DELHI
INDIA

For the Government of Japan :

Embassy of Japan
3rd Floor, Sikatuna Building
6762 Ayala Avenue, Makati, Rizal
Philippines
(Commercial Centre P.O. Box 891
Makati, Rizal, Philippines)

For the Government of Laos :

Ministère des Finances
Vientiane, Laos

Telegraphic Address :

MINFINANCE
VIENTIANE
LAOS

For the Government of the Kingdom of the Netherlands :

Ministerie van Financiën
Directie Buitenlandse Financiële.
Betrekkingen
The Hague, Netherlands

Telegraphic Address :

MINISTER OF FINANCE
THE HAGUE
NETHERLANDS

For the Government of New Zealand :

Secretary of Foreign Affairs
Wellington
New Zealand
cc: The Secretary to the Treasury
Wellington

Telegraphic Address :

MINISTRY OF FOREIGN AFFAIRS
WELLINGTON
NEW ZEALAND

For the Government of Thailand :

Ministry of Finance
Na Phralan Road
Bangkok, Thailand

Telegraphic Address :

MINANCE
BANGKOK
THAILAND

For the Government of the United Kingdom :

The Foreign and Commonwealth Office
(Overseas Development Administration)
London, United Kingdom

Telex Address :

263 907
MINISTRANT
LONDON
UNITED KINGDOM

For the Government of the United States :

Bureau for Supporting Assistance
Agency for International Development
Department of State
Washington, D.C. 20523
United States of America

Telegraphic Address :

AID
WASHINGTON DC
USA

For the Bank :

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

Telegraphic Address :

ASIANBANK
MANILA
PHILIPPINES

Telex Addresses :

ASIANBANK 7425071
7222094 ADBPH
3587 ADBPN

ARTICLE XIV

Signature and Entry into Force

Section 14.01. This Agreement shall remain open for signature and acceptance on behalf of all the Parties named in the Preamble to this Agreement until 30 June 1974, or such later date as may be fixed by the Bank by notice to the other Parties.⁽³⁾

Section 14.02. This Agreement shall enter into force on the date when the Secretary of the Bank shall certify that Laos, Thailand, the Bank and such of the Contributing Parties and Bilateral Lenders whose contributions

⁽³⁾ The date was extended to 31 July 1974.

total an amount of not less than the equivalent of twenty-four million seven hundred thousand dollars (\$24,700,000) have either signed this Agreement without reservation as to acceptance or, having signed it subject to acceptance, notified the Bank as prospective Administrator of acceptance.⁽⁴⁾ The Bank shall promptly after such date notify each of the Parties of the entry into force of this Agreement.

Section 14.03. All contributions paid to, and all actions of, or approved by, the Bank as prospective Administrator, on or after the date of this Agreement and before the date when this Agreement shall enter into force pursuant to Section 14.02 shall be deemed to have been made or done pursuant to this Agreement, and credits and charges to the Fund and to the Parties shall be upon that basis.

Done at Manila, Philippines, this 26th day of June 1974, in the English language, in a single copy to be deposited in the archives of the Asian Development Bank, which shall communicate certified copies thereof to each of the Governments signatory to this Agreement.

(4) The Agreement entered into force on 5 July 1974.

SIGNATURES

| | |
|-------------------------------------|--------------|
| Australia | 5 July 1974 |
| Canada | } |
| Germany, Federal Republic of | |
| India | |
| Japan | |
| Laos | |
| Netherlands* | 26 June 1974 |
| New Zealand | } |
| Thailand | |
| United Kingdom | |
| United States of America | |
| The Asian Development Bank | |
| | 22 July 1974 |
| | 26 June 1974 |

* Subject to acceptance.

SCHEDULE

Description of the Project

The Project to be financed is the second phase of construction of the Nam Ngum hydropower facilities in Laos. The Project includes:

- (a) installation in the spillway structure of four radial gates to increase the storage capacity of the reservoir by approximately 3,100 million cubic meters;
- (b) construction of civil works for the extension of the existing power house to accommodate three additional generating units each of 40 MW capacity;
- (c) installation of turbines, generators and ancillary equipment for two additional generating units each of 40 MW capacity;
- (d) installation of intake gates and additional stoplogs, removal of temporary steel bulkheads and completion of penstocks for the two additional generating units;
- (e) construction of an additional double-circuit 115 kV transmission line from Nam Ngum through Vientiane to connect near Nong Khai with additional transmission facilities to be constructed in Thailand;
- (f) installation of additional substation facilities at Vientiane and erection of a substation, including distribution facilities at Thanaleng;
- (g) installation of facilities for electrification of villages in the vicinity of the Nam Ngum reservoir;
- (h) construction of site offices, housing and construction camps;
- (i) provision of the services of consulting engineers; and
- (j) provision of advisory services to EDL in the execution of the Project.