

POWER PURCHASE AGREEMENT

BETWEEN

VIETNAM ELECTRICITY (EVN)

AND

[●]

[●] POWER PROJECT

**[●]-MW Coal-Fired Thermal Power Facility
Located at [●], Vietnam**

TABLE OF CONTENTS

| | |
|--|-----------|
| ARTICLE 1 DEFINITIONS AND INTERPRETATIONS | 8 |
| 1.1 Definitions | 8 |
| 1.2 Interpretation | 24 |
| <hr/> | |
| ARTICLE 2 SCOPE OF THE AGREEMENT | 26 |
| <hr/> | |
| ARTICLE 3 SALE AND PURCHASE OF CAPACITY AND ENERGY | 27 |
| 3.1 Energy and Capacity | 27 |
| 3.2 No Sales to Third Parties | 27 |
| 3.3 Title, Risk and Loss | 27 |
| 3.4 Minimum Take | 27 |
| <hr/> | |
| ARTICLE 4 TERM, DEFAULTS AND REMEDIES | 29 |
| 4.1 Term of Agreement | 29 |
| 4.2 BOT Company Events of Default - Termination by EVN | 29 |
| 4.3 EVN Events of Default - Termination by the BOT Company | 31 |
| 4.4 Notice of Intention to Terminate | 32 |
| 4.5 Notice of Termination | 33 |
| 4.6 Rights of Lenders | 33 |
| 4.7 Consequences of Termination in General | 34 |
| 4.8 Other Remedies | 34 |
| 4.9 Special Termination | 34 |
| 4.10 Retention of Operations Bond | 34 |
| <hr/> | |
| ARTICLE 5 COVENANTS, REPRESENTATIONS AND WARRANTIES | 35 |
| 5.1 BOT Company Covenants | 35 |
| 5.2 EVN Covenants | 36 |
| 5.3 BOT Company Representations and Warranties | 37 |
| 5.4 EVN Representations and Warranties | 38 |
| <hr/> | |
| ARTICLE 6 PRE-OPERATIONAL PERIOD | 39 |
| 6.1 Government Authorisations | 39 |
| 6.2 Documents to be Submitted by the BOT Company | 39 |
| 6.3 BOT Company's Purchase of Power | 40 |
| 6.4 Operating Procedures | 40 |
| 6.5 Appointment of Independent Engineer | 41 |
| 6.6 Establishment and Maintenance of Coal Stockpile | 41 |
| 6.7 Coal Supply and Transportation Agreements | 42 |
| <hr/> | |
| ARTICLE 7 TESTING AND CAPACITY RATINGS | 44 |
| 7.1 Testing of the Facility Prior to the Commercial Operation Date | 44 |
| 7.2 Deemed Commissioning | 45 |
| 7.3 Testing of Dependable Capacity of the Facility after the Commercial Operation Date | 49 |
| 7.4 Notice of and Compliance with Testing Procedures | 51 |
| 7.5 Attendance at Tests | 51 |
| 7.6 Copies of Test Results | 51 |

| | |
|--|-----------|
| ARTICLE 8 LIQUIDATED DAMAGES PAYABLE BY THE BOT COMPANY | 52 |
| 8.1 Liquidated Damages Calculation | 52 |
| 8.2 Waiver of Defenses | 52 |
| 8.3 Security Deposit | 53 |
| 8.4 Payments of Liquidated Damages | 53 |
| ARTICLE 9 CONTROL AND OPERATION OF THE FACILITY | 55 |
| 9.1 Operation and Maintenance | 55 |
| 9.2 Dispatch | 55 |
| 9.3 Scheduling of Capacities and Energy | 55 |
| 9.4 Scheduled Maintenance | 56 |
| 9.5 Emergencies | 57 |
| 9.6 Cessation of Operation of the Facility | 58 |
| 9.7 Maintenance of Operating Records | 58 |
| 9.8 Annual Report | 59 |
| ARTICLE 10 JOINT COORDINATING COMMITTEE | 60 |
| 10.1 Membership | 60 |
| 10.2 Duties | 60 |
| 10.3 Decision Making | 61 |
| 10.4 Agreement to Prevail | 61 |
| ARTICLE 11 ELECTRICAL INTERCONNECTION FACILITIES | 62 |
| 11.1 Electrical Interconnection Facilities | 62 |
| 11.2 Construction of Electrical Interconnection Facilities | 62 |
| 11.3 Interconnection Point | 62 |
| 11.4 Interconnection Equipment on the BOT Company's Side of Delivery Point | 63 |
| 11.5 Protective Devices | 63 |
| 11.6 Changes Affecting Protective Devices | 63 |
| 11.7 Testing | 63 |
| 11.8 Initial Inspection of Electrical Interconnection Facilities | 63 |
| ARTICLE 12 METERING | 65 |
| 12.1 Metering Systems | 65 |
| 12.2 Technical Design | 65 |
| 12.3 Testing and Inspection | 66 |
| 12.4 Adjustment for Inaccurate Meters | 67 |
| ARTICLE 13 BILLING AND PAYMENT | 69 |
| 13.1 Meter Readings | 69 |
| 13.2 Period of Startup Testing | 69 |
| 13.3 Invoices | 69 |
| 13.4 Estimates | 70 |
| 13.5 Disputed Amounts | 71 |
| 13.6 Billing Errors | 71 |
| 13.7 Inaccurate Meters | 71 |
| 13.8 Late Payments | 71 |
| 13.9 Value Added Tax | 72 |

| | |
|--|-----------|
| ARTICLE 14 LIABILITY AND INDEMNIFICATION | 73 |
| 14.1 Limitation of Liability | 73 |
| 14.2 Indemnification | 73 |
| 14.3 Assertion of Claims | 73 |
| 14.4 Defense of Claims | 74 |
| ARTICLE 15 FORCE MAJEURE EVENTS | 75 |
| 15.1 Non-Governmental Force Majeure Event | 75 |
| 15.2 15.2. Exclusions from Non-Governmental Force Majeure Event | 76 |
| 15.3 Government Event | 76 |
| 15.4 Consequences of Force Majeure Event | 80 |
| 15.5 Payment During Force Majeure Event | 80 |
| 15.6 Notification Obligations | 82 |
| 15.7 Duty to Mitigate | 83 |
| 15.8 Consequences of Change in Law | 83 |
| ARTICLE 16 CHOICE OF LAW AND RESOLUTION OF DISPUTES | 84 |
| 16.1 Governing Law | 84 |
| 16.2 Consultation | 84 |
| 16.3 Expert | 84 |
| 16.4 Arbitration | 85 |
| 16.5 Commercial Acts; Sovereign Immunity | 86 |
| 16.6 Co-ordination of Disputes | 86 |
| ARTICLE 17 NO LIABILITY FOR REVIEW | 88 |
| ARTICLE 18 NOTICES | 89 |
| ARTICLE 19 MISCELLANEOUS PROVISIONS | 90 |
| 19.1 Amendment | 90 |
| 19.2 Headings | 90 |
| 19.3 Third Parties | 90 |
| 19.4 No Implied Waiver | 90 |
| 19.5 Relationship of the Parties | 91 |
| 19.6 Taxes and Claims | 91 |
| 19.7 Rights of Inspection | 91 |
| 19.8 Periodic Reports | 91 |
| 19.9 Survival | 91 |
| 19.10 Language | 92 |
| 19.11 Entirety | 92 |
| 19.12 Assignment and Support of Financing | 92 |
| 19.13 Successors and Assigns | 92 |
| 19.14 Confidentiality | 92 |
| 19.15 Counterparts | 92 |
| 19.16 Conditions Precedent | 93 |
| SCHEDULE 1: FUNCTIONAL SPECIFICATIONS | 95 |
| SCHEDULE 2: TECHNICAL LIMITS AND CONTRACTED CHARACTERISTICS | 96 |
| SCHEDULE 3: INTERCONNECTION PROTECTION AND TELECOMMUNICATIONS SYSTEMS | 97 |

| | |
|--|------------|
| SCHEDULE 4: TESTING AND COMMISSIONING | 98 |
| SCHEDULE 5: DETERMINATION OF TARIFF | 99 |
| SCHEDULE 6: METERING | 100 |
| SCHEDULE 7: FORM OF OPERATIONS SECURITY DEPOSIT | 101 |
| SCHEDULE 8: DISPATCH PROCEDURES | 105 |
| SCHEDULE 9: COAL SUPPLY AND TRANSPORTATION ARRANGEMENTS | 106 |
| SCHEDULE 10: EVN ACKNOWLEDGMENT AND CONSENT | 115 |
| SCHEDULE 11: INFRASTRUCTURE LIST AND TIMING | 118 |
| SCHEDULE 12: SITE PREPARATION | 119 |
| SCHEDULE 13: ENVIRONMENTAL REQUIREMENTS | 120 |

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT is entered into on [●].

BETWEEN:

- (1) [●], a company organised and incorporated under the laws of Vietnam, (the “**BOT Company**”);

Address: [●]
Telephone: [●]
Fax: [●]
Representative: [●]
Title: [●]
Nationality: [●]
Bank Account Number [●] at [●] Bank

and

- (2) **VIETNAM ELECTRICITY**, a public, decentralised institution of the Government of Vietnam (“**EVN**”);

Address: 18 Tran Nguyen Han Street, Hanoi, Vietnam
Telephone: (84-4) 8248635
Fax: (84-4) 8249461
Representative: [●]
Title: [●]
Nationality: [●]
Bank Account Number [●] at [●] Bank

RECITALS

Based on:

the Investment Law of Vietnam No. 59/2005/QH11 passed by the National Assembly of Vietnam on 29 November 2005;

Electricity Law No. 28/2004/QH11 passed by the National Assembly of Vietnam on December 3, 2004 (“**Law 28**”);

Decision 176/2004/QD-Ttg dated 5 October 2004 of the Prime Minister approving the Strategy to Develop the Power Sector in Vietnam for the Period from 2004-2010, with Directions Towards 2020 (“**Decision 176**”);

Decision 110/2007/QD-Ttg dated July 18, 2007 of the Prime Minister approving the Strategy to Develop the Power Sector in Vietnam for the Period from 2006-2015, with Directions Towards 2025 (“**Decision 110**”);

Decree 105/2005/ND-CP dated August 17, 2005 stipulating Details and Guidelines to Implement a Number of Provisions of the Electricity Law (“**Decree 105**”);

Decision 26/2006/QD-TTg dated January 26, 2006 approving the Roadmap and Conditions for Formation and Development of Different Levels of the Electricity Market in Vietnam (“**Decision 26**”) (Law 28, Decision 176, Decision 110, Decree 105, Decision 26, collectively, the “**Electricity Law**”);

WHEREAS, the Ministry of Industry and Trade (“**MOIT**”) issued a Request for Proposal (“**RFP**”) for the development, design, financing, construction, operation, and maintenance of a coal-fired electric generation plant of [●] MW (net) to be constructed at [●] in [●] Province, Vietnam, based on technical, economic, and financial analysis;

WHEREAS, EVN is a public utility engaged in the generation, transmission, distribution, and sale of electric capacity and energy in the Socialist Republic of Vietnam (“**Vietnam**”), as provided in Decision No. 163/QD/2007/TTg dated October 22, 2007 by the Prime Minister;

WHEREAS, the Sponsors were selected to develop the Facility based on the competitive tendering process;

WHEREAS, the Sponsors and the MOIT, acting for and on behalf of the Government of Vietnam, have entered into a BOT Contract, dated [●], which provides for the establishment of the BOT Company and the terms and conditions on which the Facility shall be implemented;

WHEREAS, subsequent to execution of the BOT Contract, the Sponsors obtained an Investment Certificate and established the BOT Company on [●];

WHEREAS, the BOT Company, established in accordance with the Investment Certificate No [●] dated [●], proposes to design, develop, construct, finance, own, test, commission, operate and maintain the Facility for the purpose of producing electrical energy and providing Dependable Capacity which will be sold to EVN; and

WHEREAS, EVN is agreeable to purchasing such electric capacity and energy output from the BOT Company in accordance with the terms and conditions set forth in this Agreement, the BOT Contract and the Laws of Vietnam.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

The following capitalised terms shall have the meaning set forth below unless a different meaning is expressly attributed to them in this Agreement. All units of measurement used in this Agreement shall conform with the International System of Units (SI)². Any capitalised terms not otherwise defined in this Agreement have the meaning given thereto in the BOT Contract.

Abandonment

Means the voluntary cessation of construction or operation, as the case may be, of the Facility or the withdrawal of all, or substantially all, personnel by the BOT Company from the Site for reasons other than (i) the acts or omissions of the MOIT, EVN or any other Vietnam Project Counterparty, or (ii) a Scheduled Outage or Maintenance Outage, or (iii) any period of repair or reinstatement (provided that such repair or reinstatement is being diligently pursued), or (iv) a Force Majeure Event, provided that the BOT Company shall not be deemed to have Abandoned the Facility so long as it is using all reasonable efforts to regain control of the Facility or recommence such construction or operation.

Acceptance Commercial Operation Date

Has the meaning set forth in the BOT Contract.

Additional Charges

Means any additional charge agreed from time to time between the Parties to be paid as part of the Tariff set out in Schedule 5 other than any Supplemental Charge.

Agreement

Means this power purchase agreement, including its schedules, as amended, supplemented or modified in accordance with the terms and conditions herein.

Article

Means an article of this Agreement unless the context requires otherwise.

Average Capacity Payment per MWh

Means an amount equal to 1000 times (a) the sum of the Capacity Charges for each month of the applicable Operating Year expressed in Dong, divided by (b) the sum of the products (for each month of the applicable Operating Year) of (i) the Dependable Capacity expressed in kW for each month of the applicable Operating Year, and (ii) the total number of hours for each corresponding month of the applicable Operating Year.

² The translation in English of “*Le Système International d’unités (SI)*” published by the International Bureau of Weights and Measures in 1973 and as subsequently amended.

Average Dependable Capacity

Means the Dependable Capacity in effect for the Operating Year provided that, should more than one Dependable Capacity be in effect during an Operating Year, “Average Dependable Capacity” shall mean the average of such Dependable Capacities (weighted in accordance with the number of hours in the Operating Year that each such Dependable Capacity was in effect).

Bank

Has the meaning set forth in the BOT Contract.

Bid Date

Has the meaning set forth in the BOT Contract.

Bid Exchange Rate (X₀)

Means the exchange rate of USD to Dong, as provided by the MOIT by addendum thirty (30) Days prior to the Bid Date, being USD1 to Dong [●]. *[To be provided 30 days prior to the bid date.]*

BOT Company

Has the meaning set forth in the caption.

BOT Company Event of Default

Has the meaning set forth in Article 4.2.

BOT Agreements

Has the meaning set forth in Article 16.6(a).

BOT Contract

Means that certain Build-Operate-Transfer Contract dated as of [●], between the MOIT, the Sponsors and the BOT Company for the implementation of the Facility.

Business Day

Means:

- (a) with respect to any payment or the calculation of an interest rate, any Day of the year on which banks are open for general business (including partial Days) in Vietnam, London and New York; and
- (b) with respect to any other matter, any Day of the year on which banks are open for general business (including partial Days) in Vietnam.

Capacity Charge

Has the meaning set forth in Schedule 5.

Capacity Damages Charge

Means the amount, expressed in Dong per MWh, equal to the product of (a) the Average Capacity Payment per MWh prevailing during the relevant Operating Year; and (b) 1.30.

Certificate of Readiness

Has the meaning set forth in Article 11.8(c).

Change in Law

Has the meaning set forth in the BOT Contract.

Check Metering System

Has the meaning set forth in Article 12.1(b).

Coal

Has the meaning set forth in the BOT Contract.

Coal Supplier

Means the coal supply company and any successor thereto, appointed by the BOT Company with the prior approval of the MOIT and EVN in accordance with the provisions of this Agreement.

Coal Supply Agreement

Means an agreement entered into between the BOT Company and the Coal Supplier for the supply and (if applicable) transportation of Coal to the Facility.

Coal Transportation Agreement

Means an agreement (if any) entered into between the BOT Company and the Coal Transporter for the transport of Coal to the Facility.

Coal Transporter

Means the coal transport company, and any successor thereto, appointed by the BOT Company with the prior approval of the MOIT and EVN in accordance with the provisions of this Agreement.

Commercial Operation Date

Means:

- (a) in relation to the First Unit, the earlier of:
 - (i) the Day following the Day upon which the First Unit is successfully tested in accordance with Schedule 4 and the Initial Dependable Capacity of the First Unit is above the Threshold Capacity of the First Unit as confirmed by the Independent Engineer in accordance with Article 7.1; and

- (ii) the Deemed Commercial Operation Date of the First Unit; and
- (b) in relation to the Facility, the earlier of:
 - (i) the Day following the Day upon which the Facility is successfully tested in accordance with Schedule 4 and the Initial Dependable Capacity of the Facility is above the Threshold Capacity of the Facility as confirmed by the Independent Engineer in accordance with Article 7.1;
 - (ii) the Deemed Commercial Operation Date of the Facility; and
 - (iii) the Acceptance Commercial Operation Date of the Facility.

Commission

Means, in relation to the First Unit, the act of testing the First Unit to demonstrate that it has been successfully completed in accordance with Schedule 4 and that the First Unit meets the pertinent characteristics stated in Schedules 1 and 2 and in relation to the Facility, the act of testing the Facility to demonstrate that it has been successfully completed in accordance with Schedule 4 and that the Facility meets the pertinent characteristics stated in Schedules 1 and 2.

Construction Contract

Means one or more contracts with any Contractor for the design, procurement, fabrication, erection and construction of the Facility.

Consultation Period

Has the meaning given in Article 4.4.

Contracted Capacity

Means in relation to the First Unit, the net electric power generating capacity of the First Unit, when operating on Coal and set according to Site Reference Conditions, of [●] MW (net) and in relation to the Facility, the net electric power generating capacity of the Facility, when operating on Coal and adjusted to Site Reference Conditions, of [●] MW (net).

Contracted Heat Rate

Means the heat rate values as set out in Schedule 5 for each Operating Year during the Term in the Tariff formula for the Facility or a Unit, as appropriate, for the Term to represent the heat input into the Facility or a Unit or Facility, as the case may be, expressed in kJ/kWh, required to generate one (1) kWh of Net Energy Output at the high voltage side of the generator step-up transformer at conditions specified in Schedule 2.

Contracted Operating Characteristics

Means the Facility characteristics set forth in Schedule 2.

Contractor

Means any party (other than the BOT Company) to a Construction Contract or any other type of contractor to the BOT Company set out in Schedule 6 of the BOT Contract (and the respective subcontractors of all of the foregoing).

Control Center

Means the National Load Dispatch Center (NLDC) located in Hanoi or such other control center designated by EVN from time to time (but not more than one center at a time) which shall issue Dispatch Instructions to the BOT Company.

Day

Means a twenty-four (24) hour period that ends at 00:00 midnight Vietnam Standard Time.

Declared Capacity

Means the estimated net capacity of the First Unit (and after the Commercial Operation Date of the Facility, of the Facility) measured in kW after being corrected to Site Reference Conditions announced by the BOT Company pursuant to Schedule 8, Section 3.

Deemed Commercial Operation Date

Has the meaning set forth in Article 7.2(d).

Deemed Commissioning Event

Has the meaning set forth in Article 7.2(a).

Default

Has the meaning set forth in Article 4.4.

Default Rate

Means:

- (a) with respect to an amount overdue in Dong, the basic lending interest rate prevailing in Vietnam as announced by the Bank from time to time plus two per cent. (2%); and
- (b) with respect to an amount overdue in Dollars or any other currency (other than Dong), LIBOR plus two per cent. (2%).

Delivery Point

Means the location where the Net Energy Output from the Facility is transferred from the BOT Company to EVN (or such other entity as is nominated by EVN) and shall be at the high voltage side of the Unit generator step-up transformer as described in Article 11.3.

Dependable Capacity

Means, at any given time, the amount of capacity of the First Unit (and after the Commercial Operation Date of the Facility, of the Facility), measured in kW, at the Delivery Point of the Facility as determined by the most recent Dependable Capacity Test. For the avoidance of doubt, if a Dependable Capacity Test determines that the Dependable Capacity exceeds the

Contracted Capacity, payments on account of Dependable Capacity shall be calculated based on the Contracted Capacity.

Dependable Capacity Test

Has the meaning set forth in Schedule 4.

Dispatch Instruction

Means an instruction issued directly by the Control Center to the BOT Company in accordance with (a) the dispatch principles and guidelines established for the Grid System; (b) the Operating Procedures; and (c) Prudent Utility Practices.

Dispute

Means any dispute or disagreement of any kind whatsoever between EVN and the BOT Company in connection with or arising out of this Agreement.

Dollars or USD

Means the lawful currency of the United States of America.

Dong or VND

Means the lawful currency of Vietnam.

Effective Date

Means the date on which this Agreement will become effective in accordance with Article 19.16.

Electrical Interconnection Facilities

Means the 500kV switchyard to be constructed by the BOT Company and transferred to EVN in accordance with Article 11.1(a) as more fully described in Article 11 and Schedule 3. The Delivery Point and Interconnection Point are located within the Electrical Interconnection Facilities.

Emergency

Means a condition or situation that in the reasonable opinion of EVN poses an imminent threat of materially adversely affecting the ability of EVN to maintain safe, adequate and continuous electrical service to its customers, having due regard to the then current standard of electrical energy provided to its customers; or endangering the safety of people, plant or equipment.

Energy Charge

Has the meaning set forth in Schedule 5, Section 3.

Environmental Requirements

Has the meaning set forth in Schedule 13.

Equivalent Forced Outages Energy

Means the summation of the products in each period of (a) the reduction in capacity (measured against the then applicable Dependable Capacity of the First Unit (and after the Commercial Operation Date of the Facility, of the Facility)) during the period a Forced Outage was in effect, expressed in MW, multiplied by (b) the time in hours that such Forced Outage was in effect during a given Operating Year.

EVN

Has the meaning set forth in the caption.

EVN Acknowledgment and Consent

Means the agreement to be entered into between EVN and the Lenders regarding rights of the Lenders with respect to the Project substantially in the form set forth in Schedule 10.

EVN Event of Default

Has the meaning set forth in Article 4.3.

EVN Event

Has the meaning set forth in Article 15.3(b).

EVN Invoice Receipt

Has the meaning set forth in Article 13.3(b)(iii).

EVN Notice in Advance

Has the meaning set forth in Article 13.3(a).

Expert

Means an expert appointed pursuant to Article 16.3(a).

Extended Non-Governmental Force Majeure Event

Has the meaning set forth in the BOT Contract.

Facility

Means the coal-fired thermal electric plant constructed at [●], in [●] Province, Vietnam, and designated as “[●]” consisting of two Units and, including without limitation, all associated buildings, structures, roads, auxiliary equipment, circulating water supply and discharge systems, water treatment supply and storage systems, fuels (Coal and Startup Fuel) receiving and all required Site support facilities, including without limitation, the administration buildings, warehouses, workshops, Startup Fuel delivery, storage, distribution and treatment facility, together with all Site infrastructure, including, without limitation, roads, portable water systems, sanitary sewer systems, parking areas, lighting and security fencing (in accordance with the scope of the Facility defined in Schedule 1) which the BOT Company deems necessary to implement the Facility, and all improvements to such Site infrastructure including, without limitation, road improvements, bridges and culverts and any other work (including, without limitation, relocation of utilities in accordance with the scope of the

Facility defined in Schedule 1) which the BOT Company deems necessary to implement the Facility.

Financial Close

Has the meaning set forth in the BOT Contract.

Financing Documents

Has the meaning set forth in the BOT Contract.

First Dispute

Has the meaning set forth in Article 16.6(a).

First Unit

Means the first of the two Units having achieved Commission.

Force Majeure Event

Means any Non-Governmental Force Majeure Event, any Government Event or any EVN Event.

Forced Outage

Means an interruption of or a reduction in the generating capability (including as a result of the lack of Coal, water and other fuel and consumables, or of labour or other services required for operation) of the First Unit (and after the Commercial Operation Date of the Facility, of the Facility) that is not the result of:

- (a) an Unforced Outage; or
- (b) a Scheduled Outage or a Maintenance Outage.

Foreign Index

Means the index used for adjusting USD components of the Tariff. This index is the US Bureau of Labor Statistics, Table 2. Seasonally Adjusted: Employment Cost Index for wages and salaries by ownership, occupational group, and industry – “Utilities”. The date used will be the then most recent publication date preceding the date on which such index is to be applied or, if such index is not then available, the most recent preceding index available.

Fuel Charge

Has the meaning set forth in Schedule 5, Section 3, and when applicable shall include the Minimum Take Liability pursuant to Article 3.4.

Government

Means the Government of the Socialist Republic of Vietnam.

Government Authorisation

Has the meaning set forth in the BOT Contract.

Government Body

Has the meaning set forth in the BOT Contract.

Government Event

Has the meaning set forth in Article 15.3(a).

Government Guarantee

Has the meaning set forth in the BOT Contract.

Grid System

Means the electricity transmission and distribution facilities beyond the Delivery Point.

Independent Engineer

Means the engineering firm appointed pursuant to Article 6.5.

Invoice

Has the meaning set forth in Article 13.3(b).

Initial Dependable Capacity

Means the capacity that the First Unit (and after the Commercial Operation Date of the Facility, the Facility) is demonstrated to be capable of delivering at the Delivery Point as determined by the relevant initial Dependable Capacity Test. For the avoidance of doubt, if an initial Dependable Capacity Test determines that the Initial Dependable Capacity exceeds the Contracted Capacity, payments on account of Initial Dependable Capacity shall be calculated based on the Contracted Capacity.

Interconnection Point

Means the physical point(s) where the Facility connects to the Electrical Interconnection Facilities as described in Article 11.3.

Investment Certificate

Has the meaning set forth in the BOT Contract.

Joint Coordinating Committee

Has the meaning set forth in Article 10.1.

Joint Tribunal

Has the meaning set forth in Article 16.6(a).

kW

Means kilowatts.

kWh

Means kilowatt-hours.

Land Lease Agreement

Has the meaning set forth in the BOT Contract.

Late Payment Rate

Has the meaning set forth in Article 13.8(b).

Laws of Vietnam

Has the meaning set forth in the BOT Contract.

Lender

Has the meaning set forth in the BOT Contract.

LIBOR

Means the one-month British Bankers' Association Interest Settlement Rate for Dollars displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, EVN may specify another page or service displaying the appropriate rate after consultation with the BOT Company.

Liquidated Damages Due Date

Has the meaning set forth in Article 8.4.

Liquidated Damages Notice

Has the meaning set forth in Article 8.4.

Local Index

Means the consumer price index for Vietnam as published by the General Department of Statistics of Vietnam. The date used will be the then-most recent publication date preceding the date on which such index is to be applied or, if such index is not then available, the most recent preceding index available.

Maintenance Outage

Means an interruption or reduction of the generating capability of the First Unit (and after the Commercial Operation Date of the Facility, of the Facility) that:

- (a) is not a Scheduled Outage;
- (b) has been scheduled and allowed by EVN in accordance with Article 9.4(g);

- (c) is for the purpose of performing work on specific components of a Unit, which work should not, in the reasonable opinion of the BOT Company, be postponed until the next Scheduled Outage; and
- (d) is not made necessary by or undertaken to remedy a Force Majeure Event.

Maintenance Outages Energy

Means the summation of the products of (a) the reduction in capacity (measured against the then applicable Dependable Capacity of the First Unit (and after the Commercial Operation Date of the Facility, of the Facility)) during the period a Maintenance Outage was in effect, expressed in MW, multiplied by (b) the time in hours that such Maintenance Outage was in effect during a given Operating Year.

Major Overhaul

Means the significant repair and reconditioning of each Unit, boiler, or turbine, that is conducted approximately every three (3) to six (6) years of operation.

Metering Systems

Means, collectively, the Primary Metering System, the Check Metering System, the Back-Up Metering System, the Auxiliary Power Metering System and the Auxiliary Power Back-Up Metering System, each of which shall operate independently from the other.

Minimum Take Liability

Has the meaning set forth in Schedule 9.

Minimum Take Requirement

Has the meaning set forth in Schedule 9.

MOIT

Has the meaning set forth in the Recitals.

MOIT Acknowledgment and Consent

Has the meaning set forth in the BOT Contract.

MOIT Deemed Commissioning Event

Has the meaning set forth in the BOT Contract.

MONRE

Has the meaning set forth in the BOT Contract.

MPI

Has the meaning set forth in the BOT Contract.

MW

Means megawatts.

MWh

Means megawatt-hours.

Net Energy Output

Means the net energy output delivered by a Unit or the Facility, as the context requires, during a given period of time measured in kWh at the Delivery Point.

Non-Governmental Force Majeure Event

Has the meaning set forth in Article 15.1.

Notice of Intention to Terminate

Has the meaning set forth in Article 4.4.

Notice of Termination

Has the meaning set forth in Article 4.5.

Operating Procedures

Means the operating procedures established pursuant to Article 6.4.

Operating Year

Means any twelve (12) month period commencing on 1 January of each year, except in the case of the first Operating Year, which shall be the period from the Commercial Operation Date of the First Unit until 31 December of the same calendar year.

Operations Security Deposit

Has the meaning set forth in Article 8.3(a).

Operational Term

Has the meaning set forth in the BOT Contract. Original Required Commercial Operation Date Means the date which is:

- (a) with respect to the First Unit, [●] months after Financial Close; and
- (b) with respect to the Facility, [●] months after Financial Close,

or such later date as may be mutually agreed in writing by the BOT Company and the MOIT.

Party

Means either one of the BOT Company or EVN, and “Parties” shall mean both of them.

Payment Date

Has the meaning set forth in Article 13.3(a).

Payment Exchange Rate

Has the meaning set forth in Article 13.3(b)(ii).

Period of Startup Testing

Means with respect to the First Unit, the period from initial synchronisation to the Commercial Operation Date of the First Unit during which testing occurs and net power is produced and with respect to the Facility, the period from initial synchronisation of the Second Unit to the Commercial Operation Date of the Facility during which testing occurs and net power is produced.

Planned Consumption

Has the meaning set forth in Schedule 9.

Power Purchase Agreement

Means this Agreement.

Preferred International Bank

Has the meaning set forth in the BOT Contract.

Primary Metering System

Means the measurement system to be installed, owned, operated and maintained by the BOT Company to measure and calculate in accordance with Article 12 all the parameters needed to invoice EVN.

Project

Has the meaning set forth in the BOT Contract.

Project Agreement

Has the meaning set forth in the BOT Contract.

Prudent Utility Practices

Means those practices, methods, techniques and standards, as may be changed from time to time, that are generally accepted internationally for use in electric utility industries (taking into account conditions in Vietnam and any applicable Laws of Vietnam), and commonly used in prudent electric engineering and operation to design, engineer, construct, test, operate and maintain equipment lawfully, safely and economically as applicable to power stations of the size, service and type of the Facility.

Quoted Rate

Has the meaning set forth in Article 13.3(b)(ii).

Related Project Dispute

Has the meaning set forth in Article 16.6(a).

Refinancing

Has the meaning set forth in Article 4.6(b).

Requesting Party

Has the meaning set forth in Article 7.3(c).

Required Commercial Operation Date

Means the date which is:

- (a) with respect to the First Unit, [●] months after Financial Close; and
- (b) with respect to the Facility, [●] months after Financial Close,

or such later date as may be mutually agreed in writing by the BOT Company and the MOIT. The Required Commercial Operation Date for the First Unit and the Facility shall be extended on a Day for Day basis for any Force Majeure Event or any default of any Vietnam Project Counterparty under any Vietnam Project Document that prevents the BOT Company from performing its obligations in accordance with the timetable stated in Schedule 2 of the BOT Contract, provided that the BOT Company provides evidence, reasonably satisfactory to EVN, as to the duration of any delay caused by a Force Majeure Event or any default of any Vietnam Project Counterparty that prevented the BOT Company from performing its obligations.

RFP

Has the meaning set forth in the BOT Contract.

Scheduled Outage

Means a planned interruption of the generating capability of a Unit that:

- (a) has been scheduled and allowed by EVN in accordance with Article 9.4(a) through (f) hereof;
- (b) is for inspection, testing, Major Overhauls, preventive and corrective maintenance, repairs, replacement or improvement of the Unit; and
- (c) is not made necessary by or undertaken to remedy a Force Majeure Event.

Scheduled Outages Energy

Means the summation of the products of (a) the reduction in capacity (measured against the then applicable Dependable Capacity of the First Unit (and after the Commercial Operation Date of the Facility, of the Facility)) during the period a Scheduled Outage was in effect, expressed in MW, multiplied by (b) the time in hours that such Scheduled Outage was in effect during a given Operating Year.

Second Unit

Means the second of the two Units to be Commissioned.

Security Agent

Has the meaning set forth in the BOT Contract.

SIAC

Has the meaning set forth in Article 16.2.

SIAC Rules

Has the meaning set forth in Article 16.2.

Site

Has the meaning set forth in the BOT Contract.

Site Reference Conditions

Means the physical and meteorological conditions set out in Schedule 2 to which the Facility shall be designed for operation at the Contracted Capacity.

Sponsor or Sponsors

Has the meaning set forth in the BOT Contract.

Start

Means the process of starting up the Facility until its synchronisation with the Grid System when it has been shut down.

Startup Fuel

Means distillate fuel oil, heavy fuel oil, propane, or any other fuel required for Facility startup.

Supplemental Charge

Means any charge agreed from time to time between the Parties to be paid as part of the Tariff set out in Schedule 5.

Tariff

Means the price of capacity and energy charged by the BOT Company to EVN, including Supplemental Charges or Additional Charges provided for in this Agreement and, where applicable, calculated in accordance with the formulae in Schedule 5 and the terms of this Agreement.

Technical Limits

Means the limits and constraints described in Schedule 2 relating to the operation and maintenance of the Facility.

Term

Has the meaning set forth in Article 4.1(a).

Threshold Capacity

Means in relation to the First Unit, the electric power generating capacity of the First Unit adjusted to Site Reference Conditions, available to EVN commencing on the Commercial Operation Date of the First Unit as determined on Commissioning in accordance with Schedule 4, that is at least [●] per cent. of the Contracted Capacity of the First Unit and in relation to the Facility, the electric power generating capacity of the Facility adjusted to Site Reference Conditions, available to EVN commencing on the Commercial Operation Date of the Facility as determined on Commissioning with Schedule 4, that is at least [●] per cent. of the Contracted Capacity of the Facility.

Transfer Date

Has the meaning set forth in the BOT Contract.

Unforced Outage

Means an interruption of or a reduction in the generating capability of the First Unit (and after the Commercial Operation Date of the Facility, of the Facility) that is:

- (a) requested by EVN in accordance with this Agreement, including any Dispatch Instruction or a request during an Emergency (except an Emergency the dominant or sole cause of which is (i) the failure of the BOT Company to follow Prudent Utility Practices or to comply with the Laws of Vietnam or (ii) the fault of the BOT Company);
- (b) the result of a condition caused by any Vietnam Project Counterparty or by the Grid System, except to the extent the dominant or sole cause results from the failure of the BOT Company to follow Prudent Utility Practices or to comply with the Laws of Vietnam or the terms of any other Project Agreement; or
- (c) the result of a Force Majeure Event.

Unit

Means either of the Facility's two electrical generating units of [●] MW (net) capacity formed by the coal fired steam generator(s) connected to the steam turbine-generator and corresponding coal feed, draft, flue gas treatment, condensate, feedwater, and other auxiliary systems and equipment associated with such generation unit.

Vietcombank

Means the Bank for Foreign Trade of Vietnam.

Vietnam

Means the Socialist Republic of Vietnam.

Vietnam Project Document

Has the meaning set forth in the BOT Contract.

Vietnam Project Counterparty

Has the meaning set forth in the BOT Contract.

1.2 Interpretation

In this Agreement (including its Schedules), unless otherwise stated:

- (a) Any references to:
 - (i) any agreement (including this Agreement) shall be construed, at any particular time, as including a reference to the relevant agreement as it may have been amended, novated, assigned, modified or supplemented;
 - (ii) the caption, Recitals or a particular Article or Schedule, shall be a reference to the caption, Recitals or relevant Article or Schedule in or to this Agreement;
 - (iii) a particular paragraph or sub-paragraph, if contained in an Article or Schedule, shall be a reference to the relevant paragraph or sub-paragraph of that Article or Schedule; and
 - (iv) a month shall be construed as a reference to a calendar month.
- (b) The term “reasonably” when used herein in the context of the performance of an obligation shall mean that the Party responsible for the performance thereof shall take into account all relevant issues including the available written opinions and written representations of the Party to whom the obligation is owed and shall otherwise act in good faith in accordance with Prudent Utility Practices.
- (c) Words in the singular may be interpreted as referring to the plural where the context so requires and vice versa.
- (d) A requirement that a payment be made on a Day which is not a Business Day shall be construed as a requirement that the payment be made on the following Business Day.
- (e) The word “including”, “include” or “includes” are to be construed as being at all times followed by the words “without limitation”, unless the context otherwise requires.
- (f) For the purpose of any calculation under this Agreement, references to any period or periods of an hour or hours shall be rounded up to the nearest 1/10th of an hour.
- (g) The Schedules contained herein form an integral part of this Agreement.
- (h) Where reference is made in this Agreement to a period or periods of time the period(s) in question shall be deemed to end at midnight on the last Day of such period unless otherwise stated.
- (i) The word “material” shall mean (except where stated otherwise), in reference to an obligation, act, omission, amount, provision, circumstance or thing, that such reference is of significance to one or both of the Parties hereto such that a reasonable person would consider it as important in the context of its agreement to enter into this Agreement provided, however, that such obligation, act, omission, amount, provision,

circumstance or thing shall be material to a Party in the event that a Party has stated in writing prior to execution of this Agreement that such item is material to that Party.

- (j) The words “adverse” and “adversely” shall mean the negative impact on or impairment of any right or obligation (whether monetary or otherwise) of a Party.

ARTICLE 2

SCOPE OF THE AGREEMENT

The purpose of this Agreement is the supply by the BOT Company to EVN of electric power and capacity, under the terms and conditions provided herein. For this purpose, the BOT Company will operate and maintain the Facility, all at its own expense and responsibility in accordance with this Agreement and each of the Schedules that are part of this Agreement, within the Technical Limits, in accordance with Prudent Utility Practices and subject to the Laws of Vietnam.

ARTICLE 3

SALE AND PURCHASE OF CAPACITY AND ENERGY

3.1 Energy and Capacity

- (a) Subject to and in accordance with the terms and conditions of this Agreement, the BOT Company agrees to maintain and make available and deliver exclusively to EVN, and EVN agrees to accept and purchase from the BOT Company, for the consideration described in Article 13 and Schedule 5, the Dependable Capacity and Net Energy Output from and after the Commercial Operation Date of the First Unit. For the avoidance of doubt, no payments on account of Dependable Capacity and Net Energy Output shall be payable in respect of a Unit prior to the Commercial Operation Date of that Unit.
- (b) In addition to Dependable Capacity and Net Energy Output, the BOT Company agrees to provide to EVN the following ancillary services at no additional cost:
 - (i) reactive supply and voltage control services;
 - (ii) regulation and frequency control services;
 - (iii) load following; and
 - (iv) operating reserve and spinning reserve.

3.2 No Sales to Third Parties

The Parties agree that the BOT Company shall not without the prior written consent of EVN, sell or deliver electric energy produced by the Facility to any entity other than EVN.

3.3 Title, Risk and Loss

Title to and the risk of loss of any Net Energy Output generated from the Facility and transmitted to EVN shall pass at the Delivery Point. For the avoidance of doubt, any loss of Net Energy Output at any point before the Delivery Point shall be the loss and responsibility of the BOT Company, and any loss of Net Energy Output at any point beyond the Delivery Point shall be the loss and responsibility of EVN.

3.4 Minimum Take

- (a) EVN agrees to pay to the BOT Company any Minimum Take Liability in accordance with, and subject to, Schedule 9 and this Article 3.4 where such Minimum Take Liability is reasonably incurred by the BOT Company:
 - (i) following a Deemed Commercial Operation Date in respect of Coal that the BOT Company is unable to accept as a result of a Deemed Commissioning Event;
 - (ii) when the BOT Company is unable to deliver energy in accordance with this Agreement or EVN is unable to receive energy in accordance with this Agreement, and such inability is due to an EVN Event or a Government Event; or

- (iii) following a Non-Governmental Force Majeure Event solely affecting the performance by EVN of its obligations under this Agreement;
 - (iv) following a Non-Governmental Force Majeure Event affecting the performance of a Vietnam Project Counterparty under any Vietnam Project Document; or
 - (v) following the failure by EVN to dispatch at a level sufficient for the BOT Company to discharge the Minimum Take Requirement.
- (b) Notwithstanding Article 3.4(a) above, the Parties agree that EVN shall not be required to pay the BOT Company any Minimum Take Liability (i) prior to the Commercial Operation Date of the First Unit or (ii) with respect to that portion of the Minimum Take Requirement allocable to the Second Unit, prior to the Commercial Operation Date of the Facility.

ARTICLE 4

TERM, DEFAULTS AND REMEDIES

4.1 Term of Agreement

- (a) This Agreement shall become effective upon execution and delivery by the Parties hereto and shall terminate twenty-five (25) years after the Commercial Operation Date of the Facility unless extended or terminated earlier pursuant to the provisions of this Agreement (“**Term**”). The termination of this Agreement shall be without prejudice to all rights and obligations of the Parties accrued under this Agreement prior to such termination. The Term shall be extended in accordance with Article 15.5(b), for each Day or part Day of Non-Governmental Force Majeure Event which occurs and for which the BOT Company does not receive Capacity Charge payments at least equal to the Facility’s then current Dependable Capacity, provided that the BOT Company provides evidence, reasonably satisfactory to EVN, as to the duration of the period caused by a Non-Governmental Force Majeure Event for which the BOT Company did not receive Capacity Charge payments at least equal to the Facility’s then current Dependable Capacity. For the avoidance of doubt, the Term shall not be extended pursuant to Article 15 if the BOT Company continues to receive Capacity Charge payments or amounts payable pursuant to its business interruption insurance policies at least equal to the Facility’s then current Dependable Capacity under this Agreement or the BOT Contract.
- (b) If the Operational Term of the BOT Contract is extended for any period (whether pursuant to Article 22 of the BOT Contract or otherwise), the Term shall be automatically extended for that period in the manner and in accordance with the terms set out in the BOT Contract, provided that, for the avoidance of doubt, the BOT Company shall not be entitled to an extension of the Term to the extent that it continues to receive Capacity Charge payments at least equal to the Facility’s then current Dependable Capacity.

4.2 BOT Company Events of Default - Termination by EVN

Each of the following events shall be deemed a “**BOT Company Event of Default**”, provided that no such event shall be a BOT Company Event of Default if it results from (i) an EVN Event of Default, (ii) a Force Majeure Event, or (iii) an Unforced Outage:

- (a) the failure of the BOT Company to post, maintain or replenish the Operations Security Deposit in accordance with Article 8.3;
- (b) the Abandonment of the Facility for a period of more than ten (10) consecutive Days without the prior written consent of EVN and the MOIT;
- (c) the failure of the BOT Company to achieve Financial Close within fifteen (15) months after the date on which all Project Agreements become effective, as extended by the number of Days agreed to in writing by (i) the BOT Company and (ii) EVN and the MOIT;
- (d) the failure of the BOT Company to issue a notice to proceed under the Construction Contract within ninety (90) Days after Financial Close;

- (e) the failure of the BOT Company to achieve the Commercial Operation Date of:
 - (i) the First Unit within twelve (12) months after the Required Commercial Operation Date of the First Unit; or
 - (ii) the Facility within twelve (12) months after the Required Commercial Operation Date of the Facility;
- (f) the failure of the BOT Company after the Commercial Operation Date of the Facility to maintain Dependable Capacity at or above ninety-two and a half per cent. (92.5%) of the Initial Dependable Capacity for three (3) consecutive years;
- (g) any material failure by the BOT Company to operate and maintain the First Unit or the Facility, as the case may be, in accordance with Prudent Utility Practices;
- (h) the occurrence of any of the following events (except for the purpose of amalgamation or restructuring):
 - (i) the passing of a resolution by the Sponsors for the winding up of the BOT Company;
 - (ii) the voluntary filing by the BOT Company of a petition of bankruptcy, moratorium or other similar relief;
 - (iii) the appointment of a liquidator in a proceeding for the winding-up of the BOT Company after notice to the BOT Company and due hearing, which appointment has not been set aside or stayed within ninety (90) Days of such appointment; or
 - (iv) the making by a court with jurisdiction over the BOT Company of an order winding up the BOT Company which has taken effect and is not stayed or reversed by a court of competent authority within ninety (90) Days, unless EVN determines that such proceeding or case does not have (and is likely not to have) a material adverse effect on the BOT Company's ability to perform its obligations under this Agreement for the remainder of the Term,

provided that the exception for amalgamation or reconstruction shall only apply if such amalgamation or reconstruction does not materially and adversely affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement such that the safety of persons and property, the Facility or EVN's service to its customers is materially adversely affected and provided further that all requirements of the Laws of Vietnam have been complied with;

- (i) any statement, representation or warranty by the BOT Company in this Agreement proving to have been incorrect, in any material respect, when made and such incorrect statement, representation or warranty having a material and adverse effect on either the BOT Company's or EVN's ability to perform their respective obligations under this Agreement;
- (j) any material breach by the BOT Company of this Agreement that is not remedied within ninety (90) Days after notice from EVN stating that a material breach of this Agreement has occurred and is continuing, provided that if the failure cannot be

remedied within such period of ninety (90) Days with the exercise of reasonable diligence, then the remedy period shall be extended for such reasonable additional period of time (not to exceed one hundred and eighty (180) Days) other than if there is a need to replace or repair major equipment which is not reasonably available within such one hundred and eighty (180) Day period) necessary for the BOT Company to remedy the default, but that extension shall only apply so long as the BOT Company is exercising and continues to exercise reasonable diligence to remedy such failure;

- (k) any default or defaults by the BOT Company in the making of any material payment or payments to be made by it hereunder (save for amounts which are disputed in good faith) after thirty (30) Days of receipt of written notice from EVN that payment is late (and for the purpose of this paragraph, after late payment notification as specified in this paragraph, any amount of underpayment exceeding ten thousand Dollars (USD 10,000.00) of invoices due, including liquidated damages due and payable by the BOT Company in accordance with this Agreement shall be considered material);
- (l) the BOT Company makes an assignment of this Agreement or transfer (by whatever means) of any of its rights hereunder or of its interest in the Facility for the benefit of its creditors other than pursuant to the Financing Documents;
- (m) without the prior written consent of the MOIT or EVN, the BOT Company amends any material provision relating to the financial terms, force majeure, termination, change in law, minimum take or any other material matter referred to in Schedule 9 or a Coal Supply Agreement or Coal Transportation Agreement (if any), or a Coal Supply Agreement or Coal Transportation Agreement (if any) is otherwise terminated and not replaced within six (6) months or such longer period as the Parties may agree in writing, with an agreement for the supply and/or transportation of Coal (as appropriate) that meets the requirements of Schedule 9;
- (n) the failure of the BOT Company to enter into a new Coal Supply Agreement or Coal Transportation Agreement, as the case may be, that meets the requirements of Schedule 9 within six (6) months or such longer period as the Parties may agree in writing, of any interruption in the supply or transportation of Coal to the Facility;
- (o) any transfer of any direct interest in the BOT Company occurs without the prior written consent of EVN and the MOIT provided that no consent shall be required if such transfer complies with the requirements of Article 11.1 of the BOT Contract;
- (p) the BOT Company or, prior to the Commercial Operation Date of the Facility, any Sponsor enters insolvency proceedings and is adjudicated bankrupt under any insolvency law as debtor and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of ninety (90) Days; or
- (q) the BOT Company sells or delivers electric energy produced by the Facility to an entity other than EVN, without the prior written consent of EVN.

4.3 EVN Events of Default - Termination by the BOT Company

Each of the following events shall be deemed an “EVN Event of Default”, provided that no such event shall be an EVN Event of Default if it results from (i) a BOT Company Event of Default, or, other than in respect of an event stated in paragraph (b) below, (ii) a Non-

Governmental Force Majeure Event directly affecting the BOT Company or, other than in respect of an event stated in paragraph (b) below, (iii) a Government Event

- (a) save as permitted pursuant to Article 26 of the BOT Contract, the dissolution, merger, consolidation, reorganisation, or liquidation of EVN, except for a merger, consolidation, or reorganisation of EVN wherein all of EVN's obligations under this Agreement are assigned pursuant to law, or contractually assumed, through a novation, by one or more entities, each of which has the legal, financial and technical capacity and appropriate commercial function to perform such obligations;
- (b) any default or defaults by EVN in the making of any payment or payments to the BOT Company required to be made by it hereunder (save for amounts which are disputed in good faith) of a material amount after thirty (30) Days of receipt of written notice from the BOT Company that payment is late (and for the purpose of this paragraph, after late payment notification as specified in this paragraph, any amount of underpayment exceeding one million and five hundred thousand Dollars (USD1,500,000) of invoices due and payable by EVN in accordance with this Agreement shall be considered material);
- (c) any material breach by EVN of this Agreement that is not remedied within ninety (90) Days after notice from the BOT Company stating that a material breach of this Agreement has occurred and is continuing, provided that if the failure cannot be remedied within such period of ninety (90) Days with the exercise of reasonable diligence, then the remedy period shall be extended for such additional reasonable period of time (not to exceed one hundred and eighty (180) Days), or such longer period as may be required to replace or repair major equipment which is not reasonably available within such one hundred and eighty (180) Day period) necessary for EVN to remedy the default, but that extension shall only apply for so long as EVN is exercising and continues to exercise reasonable diligence to remedy that failure;
- (d) any statement, representation or warranty by EVN in this Agreement proving to have been incorrect in any material respect, when made and such incorrect statement, representation or warranty having a material and adverse effect on either EVN's or the BOT Company's ability to perform their respective obligations under this Agreement and EVN fails to offer and provide to the BOT Company compensation (whether through an adjustment to the Tariff or otherwise) sufficient to indemnify the BOT Company for the consequences of such inaccuracy;
- (e) EVN makes an assignment of this Agreement or transfer (by whatever means) of any of its rights hereunder or of its interest in the Facility for the benefit of its creditors and its ability to perform its obligations hereunder is materially affected thereby;
- (f) EVN enters insolvency proceedings and is adjudicated bankrupt under any insolvency law; or
- (g) the occurrence of an EVN Event for a period of ninety (90) Days.

4.4 Notice of Intention to Terminate

If a BOT Company Event of Default or an EVN Event of Default (each a “**Default**”) occurs and is continuing the following provisions of this Article 4.4 shall apply. In the case of a BOT Company Event of Default, EVN may, and in the case of an EVN Event of Default, the BOT

Company may, terminate this Agreement by giving ninety (90) Days notice of the Default and its intention to terminate to the defaulting Party (a “**Notice of Intention to Terminate**”). Any Notice of Intention to Terminate shall specify, in reasonable detail, the BOT Company Event of Default or EVN Event of Default, as the case may be, giving rise to such Notice of Intention to Terminate. The Party issuing a Notice of Intention to Terminate to the other Party shall, at the same time, deliver a copy to the Security Agent.

Following the delivery of a Notice of Intention to Terminate, the Parties shall consult for ninety (90) Days or such longer period as the Parties may agree in writing (the “**Consultation Period**”), as to what steps shall be taken with a view to preventing termination of this Agreement. If during the Consultation Period the Parties agree on such steps to be taken and/or the Default is cured by the defaulting Party or another party stepping in to cure the Default on behalf of the defaulting Party, then the Notice of Intention to Terminate shall immediately and automatically cease to have any effect.

4.5 Notice of Termination

Subject to Article 4.6, upon expiration of the Consultation Period and unless:

- (a) the Parties shall have agreed otherwise; or
- (b) the Default giving rise to the Notice of Intention to Terminate has been remedied,

the Party having given the Notice of Intention to Terminate may terminate this Agreement by delivering a notice to this effect to the other Party, the Security Agent and the MOIT (a “**Notice of Termination**”), whereupon this Agreement shall immediately terminate.

4.6 Rights of Lenders

- (a) From and after Financial Close and for so long as the Financing Documents remain in effect, EVN shall not upon a BOT Company Event of Default, terminate this Agreement without first providing a copy of any notices required to be given to the BOT Company pursuant to Article 4.4 to the Security Agent and otherwise in accordance with the EVN Acknowledgment and Consent. In the event of any ambiguity, conflict or inconsistency between this Agreement and either the MOIT Acknowledgment and Consent or the EVN Acknowledgment and Consent, the terms of the EVN Acknowledgment and Consent shall prevail.
- (b) From and after Financing Close, the BOT Company shall not agree to nor make any amendments, variations, modifications, supplements to or replacements of, or consent to any changes to the Financing Documents which would have the effect of altering the principal amount, tenor, amortisation profile, or interest rate (including default rate) applicable to the debt, or the commitment of any Lender, (a “**Refinancing**”), unless:
 - (i) the BOT Company provides full details of the proposed Refinancing to EVN;
 - (ii) the funding terms of the proposed Refinancing are more favourable to the BOT Company than those reflected in the Financing Documents;
 - (iii) the BOT Company provides to EVN a proposed adjustment to the Tariff wherein any savings from the proposed Refinancing are shared equally with EVN; and

- (iv) EVN provides its prior written consent to the proposed adjustment to the Tariff provided by the BOT Company pursuant to paragraph (iii) above.

4.7 Consequences of Termination in General

- (a) Subject to paragraph (b) and Article 4.8 below, upon termination of this Agreement, the Parties shall not accrue further obligations hereunder provided that termination shall not affect those provisions relating to dispute resolution, indemnification or any other provisions of this Agreement which are to survive termination of this Agreement.
- (b) The sole and exclusive remedies available upon termination of this Agreement are set out in Article 21 of the BOT Contract.

4.8 Other Remedies

The exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude such Party from exercising other remedies that are provided herein or in the BOT Contract or available at law, including remedies for the collection of amounts that are due and payable by a Party under this Agreement prior to such termination. Remedies are cumulative, and the exercise of, or failure to exercise, one or more of them by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by such Party.

4.9 Special Termination

In the event that the BOT Contract is terminated (regardless of whether such termination is due to a BOT Company Event of Default, a MOIT Event of Default or an Extended Non-Governmental Force Majeure Event thereunder), this Agreement shall automatically terminate and the sole and exclusive remedies available shall be those set out in Articles 4.7 and 4.8 above and Article 21 of the BOT Contract. No remedies shall be available and no damages shall be due to or from either Party under this Agreement except in respect of liabilities accruing prior to termination.

4.10 Retention of Operations Bond

In the event that a BOT Company Event of Default is not cured within the allowed period or such longer period as agreed to by the Parties, EVN shall be entitled to retain up to the full amount of the Operations Security Deposit to cover damages actually incurred by EVN, including liquidated damages, related to such uncured BOT Company Event of Default and to draw funds for undisputed amounts due from and unpaid by the BOT Company from the Operations Security Deposit pursuant to Article 8.4. In the event of a Dispute between the Parties respecting either (a) the occurrence or cure of the BOT Company Event of Default or (b) the amount of damages associated therewith, EVN may only draw funds from the Operations Security Deposit if they are placed directly into an escrow account[, to be controlled by an escrow agent appointed by EVN and with instructions to release such amounts to the BOT Company if the related Dispute is resolved in favour of the BOT Company and otherwise to EVN upon the resolution of the related Dispute. Pending resolution of a Dispute, interest shall accrue on any amount placed in escrow at the Default Rate. Such accrued interests shall be due and payable by the losing Party immediately upon resolution of the Dispute.

ARTICLE 5

COVENANTS, REPRESENTATIONS AND WARRANTIES

5.1 BOT Company Covenants

The BOT Company hereby covenants to and agrees with EVN to:

- (a) work with and cooperate in good faith with EVN with respect to all of EVN's obligations and rights hereunder;
- (b) operate and maintain the Facility in accordance with:
 - (i) the plans and specifications prepared in accordance with this Agreement and the BOT Contract;
 - (ii) the Technical Limits and Contracted Operating Characteristics set forth in Schedule 2;
 - (iii) all Laws of Vietnam;
 - (iv) sound engineering practices and Prudent Utility Practices;
 - (v) the Environmental Requirements set out in Schedule 13; and
 - (vi) the Operating Procedures and the Dispatch Instructions;
- (c) provide, at its own risk and expense, the necessary facilities and services for the safety, comfort and protection of its personnel;
- (d) be responsible at its own risk and, subject to Change in Law, expense for ensuring that the operation of the Facility complies with all environmental and safety standards, regulations and safeguards required by the Laws of Vietnam;
- (e) design, construct, install, commission and transfer to EVN the Electrical Interconnection Facilities in accordance with Schedule 3;
- (f) accomplish, at its own risk and expense, physical modifications to the Facility which are required in order for the operation of the Facility to meet performance, emissions or other environmental standards, or any other obligations of the BOT Company under this Agreement and ensure that the cost of such modifications shall not be borne by EVN;
- (g) obtain and maintain all Government Authorisations and do or cause to be done all other acts and things which may from time to time be necessary pursuant to the Laws of Vietnam for the continued performance of its obligations hereunder;
- (h) comply with the requirements of all applicable Laws of Vietnam;
- (i) keep EVN informed of, and consult with EVN on the documentation with respect to, the negotiations between the BOT Company and potential coal suppliers and coal transporters in a timely manner. The final drafts of the Coal Supply Agreement(s) and the Coal Transportation Agreement(s) (if any) shall be subject to EVN's and the

MOIT's written approvals (not to be unreasonably withheld) in accordance with Article 6.7 and Schedule 9;

- (j) maintain a storage capacity sufficient to meet all of the BOT Company's Coal needs as required by Article 6.6;
- (k) commencing on the Commercial Operation Date of the First Unit and until the termination of this Agreement, enforce its material rights under the Coal Supply Agreement (and, if applicable, the Coal Transportation Agreement) consistent with Prudent Utility Practices;
- (l) nominate a representative to maintain communications with EVN's designated representative and to facilitate coordination and cooperation between EVN and the BOT Company during the Term;
- (m) enter into the Construction Contract for a design life of the Facility equal to thirty-five (35) years; and
- (n) complete the First Unit and achieve the Commercial Operation Date of the First Unit by the Required Commercial Operation Date of the First Unit and complete the Facility and achieve the Commercial Operation Date of the Facility by the Required Commercial Operation Date of the Facility.

5.2 EVN Covenants

EVN hereby covenants to and agrees with the BOT Company to perform the following in accordance with the Laws of Vietnam:

- (a) cooperate with all appropriate third parties and take such steps as are within its control to facilitate all infrastructure and utilities (including, road access, water, electricity, fuel delivery, cooling water pipeline, water drainage and sewage services, telephone and facsimile) necessary for construction and operation of the Facility to be provided as contemplated hereby;
- (b) cooperate, upon request from the BOT Company, with the BOT Company to obtain electrical energy and other utilities for construction, Commissioning and start up of the Facility;
- (c) cooperate in good faith and use reasonable efforts to assist the BOT Company in connection with the BOT Company's negotiation and execution of the Financing Documents, including issuing at the appropriate time the EVN Acknowledgment and Consent;
- (d) work with and cooperate in good faith with the BOT Company with respect to the BOT Company's obligations and rights hereunder;
- (e) use reasonable efforts to work with and cooperate in good faith with the BOT Company on the terms of any Coal Supply Agreement and Coal Transportation Agreement (if any), provided that EVN shall be entitled to be reimbursed for any reasonable and audited out of pocket expenses incurred (including reasonably incurred legal fees) that are not in the ordinary course of EVN's business;

- (f) design, develop, construct, own, operate and maintain the infrastructure facilities required under and in accordance with the relevant dates set out in Schedule 11, including the transmission line necessary for the evacuation of the energy generated by the Facility in accordance with Prudent Utility Practices, and the Laws of Vietnam;
- (g) complete the preparation of the Site required under and in accordance with the schedule set out in Schedule 12 prior to Financial Close;
- (h) upon the transfer by the BOT Company of the Electrical Interconnection Facilities in accordance with Article 11.1(a), own, operate and maintain the Electrical Interconnection Facilities necessary for the evacuation of energy generated by the Facility in accordance with the Prudent Utility Practices, and the Laws of Vietnam;
- (i) dispatch the Facility in accordance with the Laws of Vietnam to the extent required to achieve the Commissioning of the Facility and to allow the BOT Company to perform the Dependable Capacity Tests and scheduled maintenances; and
- (j) use reasonable efforts to work with and cooperate in good faith with the BOT Company in the BOT Company's obtaining of Government Authorisations.

5.3 BOT Company Representations and Warranties

The BOT Company hereby represents and warrants as of the date hereof that:

- (a) the BOT Company is a company formed pursuant to the Laws of Vietnam and the BOT Contract, validly existing and in good standing under the Laws of Vietnam, and the BOT Company has all requisite corporate power and authority to conduct its business, to own its properties and to execute, deliver, and perform its obligations under this Agreement;
- (b) the execution, delivery and performance by the BOT Company of this Agreement have been duly authorised by all necessary corporate action, and do not and will not:
 - (i) violate any provisions of the BOT Company's or any of the Sponsors' corporate charter or bylaws or other organic documents, any material indenture, contract or agreement to which they are a party or by which they or their properties may be bound, or any material law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to the BOT Company or the Sponsors, as applicable; or
 - (ii) result in a breach or constitute a default (or would, with the passing of time, result in a breach or constitute a default), under the BOT Company's or any of the Sponsors' corporate charter or bylaws or other organic documents or other material indentures, contracts, or agreements, and the BOT Company and the Sponsors are not in default under their corporate charter or bylaws or other organic documents or other material indentures, contracts, or agreements to which they are a party or by which they or their property may be bound;
- (c) no Government Authorisation or approval by any other Government Body which has not been obtained is necessary for the due execution, delivery and performance by the BOT Company of this Agreement;

- (d) this Agreement constitutes a legal, valid and binding obligation of the BOT Company; and
- (e) to the best of the BOT Company's knowledge, there is no pending or threatened action or proceeding against the BOT Company before any court, Government Body or arbitrator that could reasonably be expected to affect the financial condition or operation of the BOT Company or the ability of the BOT Company to perform its obligations hereunder, or which could reasonably be expected to affect the legality, validity or enforceability of this Agreement (as in effect on the date hereof).

5.4 EVN Representations and Warranties

EVN hereby represents and warrants as of the date hereof that:

- (a) EVN is a state-owned enterprise and EVN has all requisite corporate power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement;
- (b) the execution, delivery and performance by EVN of this Agreement have been duly authorised by all necessary corporate or Government action, and do not and will not:
 - (i) violate any provisions of EVN's corporate charter or bylaws, other organic documents, any material indenture, contract or agreement to which it is a party or by which it or its properties may be bound, or any material law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to EVN; or
 - (ii) result in a breach or constitute a default under EVN's corporate charter or bylaws, or other organic documents or other material indentures, contracts or agreements, and EVN is not in default under its corporate charter or bylaws or other organic documents or other material indentures contracts, or agreements;
- (c) no Government Authorisation or approval by any other Government Body is necessary for the due execution and delivery by EVN of this Agreement and the performance of the obligations of EVN or otherwise in connection therewith;
- (d) this Agreement constitutes a legal, valid and binding obligation of EVN; and
- (e) to the best of EVN's knowledge, there is no pending or threatened action or proceeding against EVN before any court, Government Body or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operation of EVN or the ability of EVN to perform its obligations hereunder, or which could reasonably be expected to affect the legality, validity or enforceability of this Agreement (as in effect on the date hereof).

ARTICLE 6

PRE-OPERATIONAL PERIOD

6.1 Government Authorisations

The BOT Company, at its sole cost and expense, shall obtain and maintain in effect at all times during the Term all Government Authorisations to enable it to perform its obligations under this Agreement. EVN, at its sole cost and expense, shall obtain and maintain in effect at all times during the Term all Government Authorisations to enable it to perform its obligations under this Agreement.

6.2 Documents to be Submitted by the BOT Company

Subject to Article 19.14, the BOT Company shall provide the following documents to EVN and the MOIT:

- (a) at least ninety (90) Days prior to Financial Close, a copy of the final Coal Supply Agreement and (if transportation of Coal to the Facility is not covered in the Coal Supply Agreement) the Coal Transportation Agreement;
- (b) as soon as available but not later than the Required Commercial Operation Date of the First Unit, a copy of the License for Operations in the Electricity Sector;
- (c) as soon as available but not later than one hundred and eighty (180) Days before the Required Commercial Operation Date of the First Unit, copies of all Government Authorisations that have been issued to the BOT Company for the operation and maintenance of the Facility;
- (d) beginning with the date of signing this Agreement and continuing up to the Commercial Operation Date of the Facility, the BOT Company shall submit a copy of the progress reports required by Article 2.8 of the BOT Contract to EVN prior to the fifteenth (15th) Day of each month;
- (e) not less than one hundred and twenty (12) Days before the Required Commercial Operation Date of the First Unit, a copy of the BOT Company's plan for the operation and maintenance of the Facility and, if applicable, a copy of any operations and maintenance contract entered into by the BOT Company;
- (f) not later than thirty (30) Days after the Commercial Operation Date of each of the First Unit and the Facility, copies of all test results certified by the Independent Engineer for tests performed on the First Unit or the Facility, as the context requires;
- (g) the BOT Company shall develop and as soon as available, but no later than ten (10) Days prior to Financial Close, furnish a quality assurance program reasonably acceptable to EVN and, pursuant to Article 2.6(h) of the BOT Contract, the MOIT covering material aspects of the design, engineering, procurement, equipment, construction and testing of the Facility;
- (h) not later than one hundred and eighty (180) Days prior to the Required Commercial Operation Date of the First Unit, the BOT Company shall develop and furnish to EVN a quality assurance program reasonably acceptable to EVN covering all aspects of the operation and maintenance of the Facility;

- (i) not later than ninety (90) Days prior to the date of the transfer of the Electrical Interconnection Facilities to EVN in accordance with Article 11.1(a), all relevant specifications relating to the Electrical Interconnection Facilities to allow EVN to operate and maintain the same after the transfer of the Electrical Interconnection Facilities to EVN;
- (j) at least one hundred and fifty (150) Days before the scheduled commencement of the testing of the First Unit and the Facility, detailed programs and protocols to be used during the corresponding testing; provided that, subject to Article 7.2, EVN shall have the opportunity to comment on the proposed program and protocols within sixty (60) Days of receipt from the BOT Company of said documentation, and the BOT Company and EVN will reach an agreement on the procedures and protocols to be used for testing not later than seventy (70) Days prior to the scheduled commencement of the respective testing and Commissioning, and any Dispute relating hereto shall be referred to the Independent Engineer for resolution; and
- (k) at least sixty (60) Days before the scheduled commencement of testing and Commissioning of the First Unit and the Facility, a notice to EVN specifying the intended Start date and tentative test schedule for the First Unit or the Facility, as the context requires.

6.3 BOT Company's Purchase of Power

At the BOT Company's request, EVN shall cause the supply of electrical energy and capacity required by the BOT Company for construction, testing, startup testing, operation and maintenance at EVN's customary tariff rates and terms applied to its industrial customers in the same grid consuming the same amount of electricity for the same period from time to time (as evidenced by the most recent rates published by the Government or Electricity Regulatory Authority of Vietnam, as the case may be).

6.4 Operating Procedures

- (a) Not later than one hundred and eighty (180) Days before the expected Commercial Operation Date of the First Unit, the BOT Company shall provide EVN with a draft Operating Procedures document dealing with all operation interfaces between EVN and the BOT Company including, the method of Day-to-Day communication, key personnel lists, clearances and switching practices, outage scheduling, capacity and energy reporting, operating log and reactive power support, which shall be consistent with this Agreement, the designs of the Facility and the Grid System, Contracted Operating Characteristics and Prudent Utility Practices.
- (b) Within ninety (90) Days after EVN's receipt of the draft Operating Procedures, EVN shall notify the BOT Company of any requested deletions, amendments or additions. The BOT Company shall make any deletions, amendments or additions that EVN reasonably requests unless they would be inconsistent with this Agreement, the designs of the Facility and the Grid System, Prudent Utility Practices or the Laws of Vietnam and provide a revised draft to EVN not later than thirty-five (35) Days before the expected Commercial Operation Date of the First Unit.
- (c) Disagreement between the BOT Company and EVN over the contents of the Operating Procedures shall be referred for resolution to the Joint Coordinating

Committee within seven (7) Days from the date the BOT Company submits the draft Operating Procedures under paragraph (b) above.

- (i) If the Joint Coordinating Committee has not been formed on or before the date of such referral, the Dispute shall be referred to the Expert.
 - (ii) If not resolved by the Joint Coordinating Committee within thirty (30) Days of such referral, the Dispute will be referred for resolution to the Expert who shall be directed to render his decision by no later than thirty (30) Days prior to the expected Commercial Operation Date of the First Unit.
 - (iii) If the Expert has not rendered his decision by the time stipulated in Article 6.4(c)(ii) above, the Operating Procedures, as modified by EVN pursuant to Article 6.4(b) shall be used for operating the First Unit pending the decision of the Expert, and such delay by the Expert in rendering its decision shall not postpone the Commercial Operation Date of the First Unit. Upon the decision being rendered by the Expert, the Operating Procedures shall be modified accordingly.
 - (iv) The decision rendered by the Expert pursuant to this Article 6.4(c) shall be final and binding upon both Parties.
- (d) EVN may, from time to time, require the Operating Procedures to be revised to conform to the Laws of Vietnam binding on EVN to the extent that those revisions are not inconsistent with the terms of this Agreement, the designs of the Facility or the Grid System and Prudent Utility Practices.

6.5 Appointment of Independent Engineer

- (a) Not later than sixty (60) Days after Financial Close, subject to the Lenders' approval, the BOT Company shall deliver to EVN the name of the Independent Engineer, being the engineer utilised under the Financing Documents as such.
- (b) In the event that the Lenders or EVN do not agree that the engineer appointed by them under the Financing Documents may act as the Independent Engineer under this Agreement, then the Parties shall agree on an engineering firm to act as the Independent Engineer under this Agreement as soon as possible after notice of such a decision by the Lenders, and each of the BOT Company and EVN shall bear fifty per cent. (50%) of any such costs.

6.6 Establishment and Maintenance of Coal Stockpile

- (a) The BOT Company shall maintain at its expense on the Site at all times the Coal sufficient to meet all of the BOT Company's Coal needs for a period of at least thirty (30) Days at eight-five per cent. (85%) of Contracted Capacity for the First Unit up until the Commercial Operation Date of the Facility, and thereafter of the Contracted Capacity for the Facility and Startup Fuel to meet the Startup Fuel needs of the First Unit up until the Commercial Operation Date of the Facility and thereafter of the Facility, for at least three (3) cold Starts of each Unit. In determining whether the quantity of such Coal is sufficient, the BOT Company shall take into account, among other things, the maximum Coal consumption rate of each Unit and the time required to accomplish necessary replenishment of Coal to prevent the Coal from falling below the minimum stockpile amount.

- (b) The BOT Company shall provide EVN monthly reports of any information reasonably requested by EVN regarding the Coal.
- (c) The BOT Company shall promptly notify EVN of any anticipated or actual interruption of the supply or transportation of Coal. The BOT Company shall not be entitled to claim a Force Majeure Event under Article 15 of this Agreement for any interruption of the supply of Coal to the Facility until such interruption due to a Force Majeure Event has continued for a period of thirty (30) Days from the date such Force Majeure Event first interrupts delivery of a scheduled shipment of Coal to the Facility. The obligation of the BOT Company to maintain the stockpile required under paragraph (a) above shall be suspended if (i) there is an interruption in the supply of Coal to the Facility due to a Force Majeure Event or breach by the Coal Supplier or Coal Transporter of the Coal Supply Agreement and/or Coal Transportation Agreement and (ii) the Coal in the stockpile needs to be utilised to continue operation of the Facility.
- (d) Upon EVN being notified by the BOT Company of an anticipated or actual interruption of the supply or transportation of Coal, EVN shall have the option, but not the obligation, to supply and/or transport the Coal to the BOT Company provided that the BOT Company shall pay to EVN the cost of the supply and/or transportation of the Coal to the Facility. In addition to the cost of the supply and transportation of the Coal if the anticipated or actual interruption of the supply or transportation of Coal is caused by:
 - (i) the BOT Company, the Coal Supplier or the Coal Transporter, the BOT Company shall pay to EVN the administrative and management expenses reasonably incurred by EVN in connection with the supply and/or transportation of Coal required by the BOT Company; and
 - (ii) a Non-Governmental Force Majeure Event, the BOT Company shall pay to EVN fifty per cent. (50%) of the administrative and management expenses reasonably incurred by EVN in connection with the supply and/or transportation of Coal required by the BOT Company,

and in the case of either (i) or (ii) above, such administrative and management expenses shall not form part of the Fuel Charge component of the Energy Charge.

- (e) If there is an interruption in the supply of Coal to the Facility due to a Non-Governmental Force Majeure Event or breach of the Coal Supply Agreement and/or Coal Transportation Agreement and EVN does not offer to supply and/or transport Coal to the BOT Company pursuant to Article 6.6(d) above, the BOT Company may source Coal from the spot market without obtaining the prior approval of EVN, provided that, with respect to such Coal sourced from the spot market, for the purposes of the Energy Charge calculated in accordance with Schedule 5, “FPn” shall not exceed the amount that the BOT Company would have been paid if the Coal had been delivered pursuant to the Coal Supply Agreement and/or Coal Transportation Agreement.

6.7 Coal Supply and Transportation Agreements

- (a) The BOT Company shall not enter into a Coal Supply Agreement or Coal Transportation Agreement unless the MOIT and EVN have (i) reviewed and approved

the terms and conditions thereof in accordance with this Article 6.7 and Schedule 9 or (ii) been deemed to have so reviewed and approved the terms and conditions thereof in accordance with paragraph (f) below.

- (b) The BOT Company shall procure and negotiate one or more Coal Supply Agreements and, to the extent that transportation of Coal is not included in the Coal Supply Agreements, one or more Coal Transportation Agreements (and any replacements thereof) which satisfy the requirements set out in this Article 6.7 and Schedule 9.
- (c) The BOT Company shall submit any draft Coal Supply Agreement or Coal Transportation Agreement to the MOIT and EVN for approval. The MOIT and EVN shall be afforded forty-five (45) Days to review any draft Coal Supply Agreement or Coal Transportation Agreement submitted by the BOT Company and shall be entitled to request any related documentation or information from the BOT Company to determine whether or not such Coal Supply Agreement or Coal Transportation Agreement satisfies the requirements under this Article 6.7 and Schedule 9.
- (d) Within forty-five (45) Days of receiving a draft Coal Supply Agreement or Coal Transportation Agreement and any additional information requested under paragraph (c) above, the MOIT and EVN shall notify the BOT Company in writing of whether or not it approves the draft Coal Supply Agreement or Coal Transportation Agreement.
- (e) If the MOIT or EVN determines, acting reasonably, that a draft Coal Supply Agreement or Coal Transportation Agreement does not satisfy the requirements set out in this Article 6.7 and Schedule 9, the MOIT and EVN shall notify the BOT Company in writing of the reasons for such determination and propose such changes that the MOIT and EVN reasonably deem necessary for the draft Coal Supply Agreement or Coal Transportation Agreement to satisfy such requirements.
- (f) The MOIT and EVN shall be deemed to have completed their review and approved the draft Coal Supply Agreement or Coal Transportation Agreement submitted by the BOT Company if a notice under a paragraph (e) above has not been provided to the BOT Company within forty-five (45) Days after the date of receipt of any such draft Coal Supply Agreement or Coal Transportation Agreement and any additional information requested under paragraph (c) above.

ARTICLE 7

TESTING AND CAPACITY RATINGS

7.1 Testing of the Facility Prior to the Commercial Operation Date

- (a) The BOT Company shall carry out, at its own cost and expense, the Commission of the First Unit and the Facility (including the Electrical Interconnection Facilities), testing the Initial Dependable Capacities of the First Unit and the Facility in accordance with this Agreement. The BOT Company shall be paid the Tariff commencing on the relevant Commercial Operation Date. For the avoidance of doubt, no payments on account of Dependable Capacity and Net Energy Output shall be payable in respect of a Unit prior to the Commercial Operation Date of that Unit and the BOT Company shall not be entitled to any payment or reimbursement in respect of any generation by a Unit prior to the Commercial Operation Date of that Unit.
- (b) The BOT Company will provide EVN on an on-going basis with relevant information regarding its program for the testing of the First Unit up until the Commercial Operation Date of the Facility, and thereafter for the testing of the Facility. Not less than thirty (30) Days prior to the commencement of the Commission tests for the First Unit or the Facility, as the context requires, the BOT Company will deliver to EVN in writing the final program for testing of the First Unit or the Facility, as the context requires, including the expected duration of the BOT Company's start-up testing program and a tentative schedule for conducting all tests required by Schedule 4. The BOT Company shall advise EVN in writing of its final schedule for the testing program not less than seven (7) Days prior to the commencement of the tests required by Schedule 4. If the schedule for any test required by Schedule 4 is adjusted after the BOT Company has provided EVN with the final testing program schedule, the BOT Company shall advise EVN not less than forty-eight (48) hours prior to the commencement of any such test. On each Day beginning with the Day on which testing of the First Unit or the Facility, as the context requires, commences, the BOT Company shall provide EVN with a schedule of the tests to be conducted on the following Day or Days (if such test will continue for more than one (1) Day) to the extent such schedule has not been previously provided or, if previously provided, there has been a change in the schedule. All testing of the First Unit or the Facility, as the context requires, shall satisfy the requirements provided in Schedule 4. The Independent Engineer shall confirm that all the tests required by Schedule 4 have been successfully achieved and issue a certificate certifying that the BOT Company has fulfilled all obligations required by Schedule 4. The Parties agree that they shall be bound by such Independent Engineer certificate.
- (c) If EVN or the MOIT is unable, acting reasonably, to accommodate the schedule for such test or tests as provided by the BOT Company in the final schedule for the program of tests pursuant to the foregoing paragraph, EVN or the MOIT, as the case may be, will give the BOT Company notice within forty-eight (48) hours of its receipt of the final schedule for testing or within twenty-four (24) hours following any adjustment to such final schedule for testing, of its requirements regarding deferral of any test or tests and the Parties will mutually agree on a date for any deferral test or program of tests.
- (d) The BOT Company shall be entitled to attempt as many repeat tests as are necessary to satisfy the Dependable Capacity Test for achieving the relevant Commercial Operation Date. No change to the Required Commercial Operation Date will be

allowed should the additional testing extend the relevant Commercial Operation Date. The BOT Company shall give EVN not less than three (3) Days notice of each additional test it desires to attempt.

- (e) If the results of a Dependable Capacity Test demonstrate that the Initial Dependable Capacity of the First Unit or the Facility, as the case may be, is equal to or greater than the Threshold Capacity of the First Unit or the Facility, respectively, but less than the Contracted Capacity and the BOT Company is not satisfied with the results of such test, the BOT Company may (i) notify to the MOIT and EVN the date at which the relevant Commercial Operation Date has occurred and (ii) request two (2) additional tests to increase the Initial Dependable Capacity of the First Unit or the Facility, as the context requires, with at least three (3) Days' notice provided to EVN prior to a subsequent test, and allow a representative of EVN to witness and verify such test. When the BOT Company is satisfied with a Dependable Capacity Test, the BOT Company shall notify EVN and shall reset the Initial Dependable Capacity of the First Unit or the Facility, as the context requires, at the level successfully demonstrated during such test, but not in excess of the Contracted Capacity. Such additional tests must be completed no later than ninety (90) Days from the relevant Commercial Operation Date.

7.2 Deemed Commissioning

- (a) If the BOT Company is unable to conduct or complete testing of the First Unit or the Facility in order to Commission the First Unit or the Facility in accordance with the schedule of tests provided by the BOT Company pursuant to Article 7.1 due to:
 - (i) an MOIT Deemed Commissioning Event;
 - (ii) an EVN Event;
 - (iii) the unavailability of, or delay in the full completion of commissioning of (for reasons not within the control of the BOT Company), the transmission line necessary for the commissioning of the Electrical Interconnection Facilities, testing of the First Unit or the Facility and evacuation of the energy generated by the First Unit or the Facility caused by factors within the control of EVN; or
 - (iv) the lack of readiness of the Grid System for synchronisation with the First Unit or the Facility, as the case may be, caused by factors within the control of EVN,

(each a “**Deemed Commissioning Event**”) and the result is a delay in the date the First Unit or the Facility, as the context requires, would otherwise have been Commissioned, and provided that the Original Required Commercial Operation Date of the First Unit or the Facility, as the case may be, has occurred, the BOT Company may declare that the First Unit or the Facility, as the context requires, is otherwise ready for Commissioning, by delivering a written notice to EVN, the MOIT and the Independent Engineer containing the requirements set out in Article 7.2(b) below (a “**Deemed Commissioning Notice**”).

- (b) The Deemed Commissioning Notice shall:

- (i) specify in reasonable detail the relevant Deemed Commissioning Event and the basis for the declaration of the Deemed Commercial Operation Date;
 - (ii) state the date on which testing of the First Unit or the Facility, as the context requires, would have been completed had there been no Deemed Commissioning Event and attach a copy of appropriate supporting information, including the BOT Company's program for testing supporting such date; and
 - (iii) certify that, if the relevant Deemed Commissioning Event had not existed the BOT Company would have been able to Commission the First Unit or Facility, as the context requires, to achieve the relevant Commercial Operation Date and produce and deliver the Contracted Capacity on a date no later than the date stated in (ii) above.
- (c) Upon receipt of the Deemed Commissioning Notice:
- (i) EVN and the MOIT shall have twenty (20) Days to review the documentation provided by the BOT Company and to request additional supporting documentation from the BOT Company. During such period, EVN and the MOIT shall also be entitled to visit and inspect the Site at all reasonable times. Within ten (10) Days after the end of such twenty (20) Day period, EVN and the MOIT shall provide any written information it deems relevant for the Independent Engineer's consideration; and
 - (ii) the Independent Engineer shall have forty-five (45) Days to review the documentation provided by the BOT Company, to request additional supporting documentation from the BOT Company, to visit and inspect the Site at reasonable times and upon reasonable notice to the BOT Company, and to review any written information provided by EVN and the MOIT. The Deemed Commercial Operation Date shall only occur if the Independent Engineer determines that the First Unit or the Facility, as the context requires, (i) was ready for testing, and (ii) could reasonably be expected to have been capable of producing the Threshold Capacity on the Deemed Commercial Operation Date if the Deemed Commissioning Event had not occurred. No later than the expiry of such forty-five (45) Day period, the Independent Engineer shall issue a written report to the Parties setting out its opinion regarding:
 - (A) whether or not the Deemed Commercial Operation Date occurred on the date set forth in the Deemed Commissioning Notice;
 - (B) if the Deemed Commercial Operation Date occurred on a date other than the date stated in the Deemed Commissioning Notice, what date the Deemed Commercial Operation Date occurred; and
 - (C) if the Deemed Commercial Operation Date has not occurred as set out in the Deemed Commissioning Notice, the specific reasons for such failure.
- (d) The First Unit or the Facility, as the context requires, shall be deemed Commissioned (the "**Deemed Commercial Operation Date**") as of one (1) Day after the date upon

which the First Unit or the Facility, as the context requires, is ready for testing and testing would have been completed if no Deemed Commissioning Event had occurred. For the avoidance of doubt, upon the Deemed Commercial Operation Date of the First Unit or the Facility, as the case may be, the First Unit or the Facility, as the context requires, shall be deemed to be providing the Contracted Capacity and the BOT Company shall be entitled to payment of the Capacity Charge, calculated using the Contracted Capacity as the Initial Dependable Capacity of the First Unit or the Facility, as the context requires, as of such Deemed Commercial Operation Date.

- (e) In the event that:
- (i) the Independent Engineer becomes aware of any reason which the Independent Engineer deems sufficient to determine that the Deemed Commercial Operation Date has not occurred, the Independent Engineer will provide prompt notice of such event to the Parties;
 - (ii) either Party disagrees with the Independent Engineer's determination pursuant to this Article, that Party may seek resolution of the matter pursuant to Article 16;
 - (iii)
 - (A) the Independent Engineer has not issued his report within the time provided for in paragraph (c)(ii) above; or
 - (B) EVN or the MOIT disputes the Independent Engineer's report confirming the occurrence of the Deemed Commercial Operation Date,
- payments by EVN or the MOIT, as the case may be, shall commence as if the Deemed Commercial Operation Date had occurred (but subject to paragraph (g) below) pending final resolution of the matter; and
- (iv) the BOT Company disputes the Independent Engineer's report determining that the Deemed Commercial Operation Date has not occurred as stated in the Deemed Commissioning Notice, no payments for the Deemed Commercial Operation Date shall be made pending final resolution of the matter.
- (f) If the Independent Engineer certifies that the Deemed Commercial Operation Date resulted from the occurrence of a Deemed Commissioning Event set out in:
- (i) sub-paragraph (a)(i) above (which for the avoidance of doubt does not include Non-Governmental Force Majeure Events), the BOT Company shall be entitled to Capacity Charge payments from the MOIT in accordance with Article 12.2 of the BOT Contract; or
 - (ii) sub-paragraphs (a)(ii) to (a)(vi) above (which for avoidance of doubt do not include Non-Governmental Force Majeure Events), EVN shall commence making Capacity Charge payments to the BOT Company calculated using the Contracted Capacity as the Initial Dependable Capacity of the First Unit or the Facility, as the context requires, as of the Deemed Commercial Operation Date plus reasonable compensation for documented demobilisation and

remobilisation costs for any of the following items, only to the extent, such items were associated with the delay:

- (A) demobilisation and repatriation of professional staff of the BOT Company;
- (B) return or continued rental of the BOT Company's construction equipment and temporary facilities;
- (C) continuing fixed costs, including Coal stock pile inventory carrying charges;
- (D) continuing variable costs, including Site security, equipment and Facility preservation, environmental monitoring, electricity, water, telephone and communication utilities;
- (E) cost to develop new schedules for the Commissioning of the First Unit or Facility, as the case may be, to account for the delay;
- (F) training of BOT Company's new labor; and
- (G) any increased escalation in the cost of the BOT Company's labor and materials.

So long as the MOIT or EVN, as the case may be, makes all payments required after the Deemed Commercial Operation Date, the BOT Company shall be entitled to no other claim for damages nor any extensions to the Term provided in this Agreement or the BOT Contract as a result of such delay.

- (g) From the date of delivery of the Deemed Commissioning Notice, the BOT Company shall not be required to perform any tests on or operate the First Unit or the Facility, as the context requires, until the date on which the impediments caused by the Deemed Commissioning Event which resulted in the Deemed Commercial Operation Date necessary to allow the commencement (or continuation) of the testing and Commissioning of the First Unit or the Facility, as the context requires, have been removed.
- (h) After such impediments described in paragraph (f) above are removed, the BOT Company shall be entitled to such time as is reasonably necessary, in the opinion of the Independent Engineer, before it is obligated to perform the testing pursuant to Article 7.1 and Schedule 4 including testing the Initial Dependable Capacity of the First Unit or the Facility, as the context requires. If the Initial Dependable Capacity of the First Unit or the Facility, as the context requires, is determined to be:
 - (i) greater than or equal to the Threshold Capacity of the First Unit or the Facility, as relevant, but less than the Contracted Capacity of the First Unit or the Facility, as relevant, (other than due to an EVN Event of Default, an MOIT Event of Default or a Force Majeure Event), the BOT Company shall refund the MOIT in accordance with Schedule 10 of the BOT Contract and refund to EVN, as the case may be, with respect to the First Unit or the Facility, as the context requires, an amount equal to one (1) minus the quotient of the Initial Dependable Capacity of the First Unit or the Facility divided by the

Contracted Capacity of the First Unit or the Facility; multiplied by the total Capacity Charge payments received by the BOT Company between the relevant Deemed Commercial Operation Date and the date that the Initial Dependable Capacity of the First Unit or the Facility is determined to be greater than or equal to the Threshold Capacity of the First Unit or the Facility, but less than the Contracted Capacity of the First Unit or the Facility plus interest at the applicable Default Rate from the date such payments were paid by EVN until (and including) the date of repayment to EVN. Notwithstanding the foregoing, the BOT Company shall be required to pay liquidated damages in accordance with Article 2.10(b) of the BOT Contract on and from the date that the Initial Dependable Capacity of the First Unit or the Facility, as the context requires, is determined to be greater than or equal to the Threshold Capacity of the First Unit or the Facility, as relevant, but less than the Contracted Capacity of the First Unit or the Facility; or

- (ii) less than the Threshold Capacity of the First Unit or the Facility, as relevant, (other than due to an EVN Event of Default, an MOIT Event of Default or a Force Majeure Event), (i) EVN shall have the option but not the obligation to buy electrical energy from the BOT Company and pay the BOT Company the Energy Charge only until the Dependable Capacity of the First Unit or the Facility, as the context requires, is equal to or greater than the Threshold Capacity of the First Unit or the Facility, as relevant, or the MOIT rejects the Facility pursuant to Article 2.10(c) of the BOT Contract, and (ii) the BOT Company shall refund the MOIT in accordance with Schedule 10 of the BOT Contract and refund to EVN, as the case may be (regardless whether the MOIT rejects the First Unit or the Facility, as the case may be), with respect to the First Unit or the Facility, as the context requires, all Capacity Charge payments received by the BOT Company since the relevant Deemed Commercial Operation Date including interest at the applicable Default Rate until such amounts are refunded to EVN. Notwithstanding the foregoing, the BOT Company shall be required to pay liquidated damages in accordance with Article 2.10(b) of the BOT Contract on and from the date that the Initial Dependable Capacity of the First Unit or the Facility, as the context requires, is determined to be less than the Threshold Capacity of the First Unit or the Facility, as relevant; provided that if the MOIT rejects the Facility in accordance with Article 2.10(c) of the BOT Contract, no additional liquidated damages shall be payable from the date of such rejection and the Parties rights and obligations arising out of such rejection shall be governed by Article 21 of the BOT Contract.

7.3 Testing of Dependable Capacity of the Facility after the Commercial Operation Date

- (a) After the Commercial Operation Date of the First Unit and until the Commercial Operation Date of the Facility, the Dependable Capacity of the First Unit shall be tested annually at the cost and expense of the BOT Company, at times mutually agreed upon by the BOT Company, EVN and the MOIT; and after the Commercial Operation Date of the Facility, the Dependable Capacity of the Facility shall be tested annually at the cost and expense of the BOT Company at times mutually agreed upon by the BOT Company, EVN and the MOIT, provided that such tests shall to the extent possible be conducted within one month of a Major Overhaul or other significant repair of the First Unit or the Facility, as the context requires. The results of such annual tests shall be recorded and confirmed in writing by (i) the BOT Company and

(ii) EVN and the MOIT. The BOT Company may within twenty-four (24) hours of completion of an annual test of the First Unit or the Facility, as the context requires, reject the test and may conduct a retest, at the cost and expense of the BOT Company, provided, however, that the BOT Company cannot conduct more than two (2) retests of the First Unit or the Facility, as the context requires. The BOT Company shall give EVN and the MOIT at least twenty-four (24) hours' prior notice of the retest of the First Unit, or the Facility, as the context requires, and such retest shall be conducted within six (6) Days of the completion of the rejected test.

(b) No test or retest shall be carried out in a period of Forced Outage, an Unforced Outage, a Scheduled Outage, a Maintenance Outage or during a Force Majeure Event which has an impact on the capacity or operating characteristics of the Unit subject to the test or retest and if such an event occurs after a test but before a scheduled retest, the time for the retest shall be extended by the period of that Forced Outage, Unforced Outage, Scheduled Outage, Maintenance Outage or that Force Majeure Event plus twenty-four (24) hours. Notwithstanding the above, for purposes of Article 15.5(b), in the event that a Non-Governmental Force Majeure Event affects the BOT Company's ability to deliver energy in accordance with this Agreement, the Dependable Capacity of the First Unit or Facility, as the context requires, shall be tested in accordance with this Article 7.3 in order to determine the portion of the Facility not affected thereby. The test period shall be for eight (8) continuous hours. The test shall be run using the metering system described in Article 12 and plant instrumentation for measurements, unless otherwise decided by the Joint Coordinating Committee. The Dependable Capacity of:

- (i) the First Unit shall be the Net Energy Output of the First Unit; and
- (ii) the Facility shall be the Net Energy Output of the Facility, and during each of those eight (8) hours, measured as specified in the test procedures and adjusted to the Site Reference Conditions summed and then divided by eight (8), but may not exceed the Contracted Capacity of the First Unit or the Facility, as the context requires. If, as the result of a test, the tested capacity established for the First Unit or the Facility, as the context requires, is shown to be above the Dependable Capacity in effect for the First Unit or the Facility, as the context requires, prior to such test, the BOT Company shall set the Dependable Capacity of the First Unit or the Facility at the new tested capacity up to the Contracted Capacity of the First Unit or the Facility, as the context requires and payments for the Dependable Capacity of the First Unit or the Facility, as the context requires, shall be increased accordingly, effective the Day such test is completed. If, as a result of the test, the tested capacity established for the First Unit or the Facility, as the context requires, is shown to be below the Dependable Capacity of the First Unit or the Facility, respectively, in effect prior to such test, the Dependable Capacity of the First Unit or the Facility, as the context requires, will be adjusted to the newly tested value, and payments for the Dependable Capacity of the First Unit or the Facility, respectively, shall be adjusted to the tested level, effective the Day such test is completed. The Capacity Charge of the First Unit or the Facility, as the context requires, shall be calculated on the basis of the Dependable Capacity of the First Unit or the Facility, respectively, set by the last test. For the avoidance of doubt, the BOT Company shall under all circumstances be required to set the Dependable Capacity of the First Unit or the Facility, as the

context requires, at the most recently conducted Dependable Capacity Test but in any case not higher than Contracted Capacity.

- (c) Between annual tests, EVN or the BOT Company (the “**Requesting Party**”) may for the First Unit or the Facility, as the context requires, request one test of the Dependable Capacity if the Requesting Party reasonably believes that the currently set Dependable Capacity of the First Unit or the Facility, as the context requires, does not accurately reflect the capacity available to EVN. The Requesting Party shall be entitled to one retest of any such test provided that it rejects the test within twenty-four (24) hours of completing the test. The test and, as appropriate, the retest shall be conducted in accordance with the foregoing paragraph (b), within six (6) Days of its request or, as the case may be, the rejection, and the BOT Company shall give EVN not less than twenty-four (24) hours notice of its intention to perform the test. If the test results demonstrate a change in the Dependable Capacity of the First Unit or the Facility, as the context requires, since the previous test, the Dependable Capacity of the First Unit or the Facility, respectively, shall be reset in accordance with the parameters set forth in the foregoing paragraph (b).

7.4 Notice of and Compliance with Testing Procedures

The BOT Company shall carry out testing of the Dependable Capacity of the First Unit or the Facility, as the context requires, in accordance with Article 7.3 and Schedule 4. EVN shall use its reasonable efforts to comply with all reasonable requests by the BOT Company for assistance carrying out such testing. EVN shall be given prior written notice of the testing procedure in accordance with Article 7.3 and shall be entitled to be present and observe any such testing.

7.5 Attendance at Tests

If EVN or the MOIT has been provided prior written notice of any test and requests the test be re-scheduled, the test shall be re-scheduled to the extent reasonably possible by the BOT Company and notice shall be provided of such re-scheduled date to EVN and the MOIT. In the event that EVN or the MOIT does not attend (a) any test of which it has been provided notice and it does not request it to be rescheduled at least twenty-four (24) hours prior to the start of such test or (b) any re-scheduled test of which it has been given notice, the BOT Company may complete said test without EVN’s or the MOIT’s presence, as the case may be, and the BOT Company’s report of the results of said test shall be valid and complete notwithstanding the lack of EVN’s and/or the MOIT’s presence.

7.6 Copies of Test Results

The BOT Company shall provide EVN with copies of the test results of all tests performed pursuant to Schedule 4 and after every Major Overhaul. EVN shall not use or disclose such results other than in connection with the administration and enforcement of this Agreement and the BOT Contract.

ARTICLE 8

LIQUIDATED DAMAGES PAYABLE BY THE BOT COMPANY

8.1 Liquidated Damages Calculation

- (a) In the event that the sum of (a) the Equivalent Forced Outages Energy plus (b) the Maintenance Outages Energy plus (c) Scheduled Outages Energy, shall exceed X MWh in an Operating Year (where X equals the Average Dependable Capacity for the Operating Year multiplied by seven hundred fifty (750) hours and in the case of an Operating Year in which a Major Overhaul is conducted, one thousand three hundred (1300) hours), the BOT Company shall owe EVN, as liquidated damages, the Capacity Damages Charge multiplied by $((a + b + c) - X)$ as a refund of Capacity Charges for that Operating Year.
- (b) If, following the Commercial Operation Date of the Facility:
- (i) the output of the Facility achieved during any hour at the Delivery Point, expressed in kW, is less than ninety seven per cent. (97%) of the output required at the Delivery Point under a Dispatch Instruction issued in accordance with and consistent with the terms of Article 9.2, then the BOT Company shall pay EVN liquidated damages in respect of the difference between (A) the Declared Capacity in kW corrected from the Site Reference Conditions and Normal Grid Reference Conditions as set out in Schedule 2 to the actual conditions and (B) the actually achieved output of the Facility at the Delivery Point expressed in kW. The liquidated damages shall be an amount equal to five per cent. (5%) of the Capacity Charge for the relevant Operating Year applicable to such number of kW for such hour and converted into Dong by using the Quoted Rate, provided always that the foregoing liquidated damages shall not apply to any shortfall in output that is caused by a Force Majeure Event; or
 - (ii) the output of the Facility achieved during any hour at the Delivery Point, expressed in kW, is in excess of one hundred and three per cent. (103%) of the output required at the Delivery Point under a Dispatch Instruction issued in accordance with and consistent with the terms of Article 9.2, then the BOT Company shall pay EVN liquidated damages in respect of such excess energy delivered during that hour at the rate of five per cent. (5%) of the Energy Charge applicable to such hour, provided always that the foregoing liquidated damages shall not apply either during start-up, ramp-up and ramp-down of the Facility, during the period when the Grid System is operating outside the Grid Operating Limits, or during an Emergency, or to any excess output that is caused by a Force Majeure Event.

8.2 Waiver of Defenses

The Parties agree that EVN may be substantially damaged in the event that the Facility cannot minimise the number of Forced Outages, and that amounts owing as a result of such damage may be difficult or impossible to determine. Therefore, to the limited extent set out in this Agreement, the Parties have agreed on sums that the Parties agree are reasonable as liquidated damages, and it is further understood and agreed by the Parties that the payment of liquidated damages is in lieu of actual damages for such occurrences. The BOT Company and EVN

hereby waive any claim or defense as to the invalidity of any liquidated damages in this Agreement, whether on the grounds that such damages are void as penalties or otherwise.

8.3 Security Deposit

- (a) No later than the earlier of (a) three (3) months after the date on which the Commercial Operation Date of the Facility has occurred, all work (other than warranty related work) has been completed under the Construction Contracts, all punch list items under the Construction Contracts have been completed and the BOT Company has taken over the Facility from the Contractors and (b) six (6) months after the Commercial Operation Date of the Facility, the BOT Company shall provide to EVN a security deposit (the “**Operations Security Deposit**”) of [●] Dollars to ensure the proper operation and maintenance of the Facility. The BOT Company shall maintain the Operations Security Deposit at the designated level at all times until the date falling three (3) months after the end of the Operational Term; provided that the BOT Company may have five (5) Business Days from the date that EVN notifies the BOT Company that it has drawn funds from the Operations Security Deposit to replenish the Operations Security Deposit so as to return it to the original level, in the event that EVN retains or draws funds from the Operations Security Deposit, including the case where EVN has drawn funds from the Operations Security Deposit to put them in escrow pursuant to the provisions of Article 8.4.
- (b) The Operations Security Deposit shall consist of one of the following: (i) a cash payment to be deposited into an account nominated by EVN in Vietnam, (ii) an unconditional and irrevocable first demand guarantee issued by a Preferred International Bank in the form of Schedule 7 or otherwise acceptable to EVN and the MOIT; (iii) an unconditional and irrevocable direct pay letter of credit issued by a Preferred International Bank in a form acceptable to EVN and the MOIT, or (iv) any combination of the above acceptable to EVN and the MOIT. The Operations Security Deposit must be renewed or reissued at least ten (10) Business Days prior to its stated expiry date, failing which EVN may draw on the Operations Security Deposit and retain such funds until a replacement Operations Security Deposit is issued or the moneys are applied in accordance with paragraph (c) below.
- (c) The Operations Security Deposit may be applied to (a) the payment of liquidated damages and accrued interest thereon in accordance with Article 8.4 and (b) the payment of other damages and interest that the BOT Company shall be required to pay to EVN.
- (d) If the Operations Security Deposit is insufficient to satisfy such amounts, then the BOT Company shall pay to EVN on demand the unsatisfied amounts. Upon termination of this Agreement, EVN shall be entitled to retain or collect, as the case may be, from the Operations Security Deposit any damages or monies then due to EVN by the BOT Company, and the remainder of the Operations Security Deposit, if any, shall be paid or returned to the BOT Company.

8.4 Payments of Liquidated Damages

Within fourteen (14) Days after the end of each Operating Year, EVN shall compute and advise the BOT Company by written notice (a “**Liquidated Damages Notice**”) of the amount of liquidated damages due to EVN pursuant to this Agreement for the preceding Operating Year. The BOT Company shall have fifteen (15) Days from receipt of the Liquidated

Damages Notice to review such notice and to provide EVN with written notice as to any amount of the liquidated damages it Disputes. The BOT Company shall pay to EVN the undisputed amount of liquidated damages shown on the Liquidated Damages Notice within fifteen (15) Days of the date of the Liquidated Damages Notice (the “**Liquidated Damages Due Date**”), and interest shall accrue on any unpaid amount from the Liquidated Damages Due Date at the Default Rate. Unless the entire undisputed amount of liquidated damages is paid to EVN by the BOT Company, the undisputed amount of such liquidated damages plus accrued interest due to EVN may be immediately deducted by EVN from the Operations Security Deposit. Disputed amounts shall be handled in accordance with the procedure for a disputed invoice pursuant to Article 13.5 and, if not resolved, then pursuant to the Dispute resolution procedures of Article 16. In the event disputed amounts are not placed in escrow pursuant to the procedure set forth in Article 13.5, EVN shall be entitled to draw the disputed amounts from the Operations Security Deposit for the purpose of placing such amounts in escrow pending resolution of such Dispute.

ARTICLE 9

CONTROL AND OPERATION OF THE FACILITY

The Parties shall comply with the operating procedure established pursuant to this Article 9 and the plan for the operation and maintenance of the Facility presented by the BOT Company pursuant to Article 6.2(e).

9.1 Operation and Maintenance

The Facility shall be operated and maintained by the BOT Company in accordance with Article 5.1(b). The Joint Coordinating Committee will be responsible for monitoring and coordinating the compliance with such obligation and settling Disputes that may arise from the operation of the Facility as provided for in Article 10.

9.2 Dispatch

- (a) Save for during an Emergency, the Control Center will issue Dispatch Instructions to establish the capacity and the Net Energy Output that is expected to be fed into the Grid System during forthcoming periods of time. The BOT Company shall be responsible for determining the operating modes (including the determination of how to load each generator) that will result in the most efficient and reliable operation.
- (b) The Control Center shall not issue any Dispatch Instruction which it has reason to believe would require any part of the Facility to operate beyond its Technical Limits. The BOT Company shall notify EVN and the Control Center whenever a Dispatch Instruction results in a part of or the whole Facility being operated beyond the Technical Limits. The BOT Company shall not be required to comply with any Dispatch Instruction to the extent that compliance would cause any part of the Facility to be operated beyond its Technical Limits. The Operating Procedures shall establish the circumstances under which the BOT Company will trip a generator, prior to such generator being tripped by a protective device.
- (c) Prior to the Commercial Operation Date of the Facility, the BOT Company shall develop a protocol by which the Joint Operating Committee shall determine in any situation how to balance between operating the Facility at a load of [●] percent (or less than [●] percent of Dependable Capacity and the cost involved in a shut down and startup of the Facility. EVN shall review and approve such protocol and use it in the issuance of any Dispatch Instruction, provided that if EVN determines at any time that such protocol is not applicable EVN may require that only one Unit be operated and in such event, the BOT Company shall be entitled to receive Supplemental Charges for any such additional starts required due to EVN's instruction to operate only one Unit. For the avoidance of doubt, any Start that is required due to EVN's instruction to operate only one Unit will, for the purposes of Section 4.2 of Schedule 5, be deemed to be due to reasons attributable to EVN.

9.3 Scheduling of Capacities and Energy

EVN and the BOT Company shall cooperate in establishing the scheduling for the Facility's capacity and Net Energy Output in accordance with the procedures provided for in Schedule 8.

9.4 Scheduled Maintenance

- (a) The BOT Company shall submit its desired schedule of Scheduled Outage periods (including the duration of each such period) to EVN six (6) months before the Required Commercial Operation Date of the First Unit and thereafter six (6) months before the end of each Operating Year, the BOT Company shall submit its desired Scheduled Outage periods for the following Operating Year. The BOT Company shall schedule Scheduled Outage periods only during June 1 to November 30 or such other months as EVN may specify, provided that EVN does so at least one (1) year in advance of the alternative months and that the period available for Scheduled Outages is of equal duration to the period specified herein. The BOT Company shall reasonably endeavour to make each such Scheduled Outage period of relatively short duration consistent with the Technical Limits, Prudent Utility Practices, Operating Procedures and the recommendations of the Contractor and the manufacturers of the various components of the Facility. Within thirty (30) Days of receipt of such schedule, EVN shall notify the BOT Company in writing as to the acceptability of such schedule.
- (b) If EVN does not accept any one or more of the requested Scheduled Outage(s) periods, EVN shall advise the BOT Company within thirty (30) Days of the receipt of the BOT Company's notification in accordance with paragraph (a) above of the acceptable period when EVN determines any such unacceptable Scheduled Outage can be rescheduled. The rescheduled time shall be as close as reasonably practicable to the requested time, shall comply with the Operating Procedures and Technical Limits, shall be consistent with Prudent Utility Practices and the recommendations of the Contractor and the manufacturers of the various components of the Facility, and shall be of equal duration as the requested period. If EVN fails within the allowed period to object to any Scheduled Outage for which it receives notice pursuant to paragraph (a) above or fails within such period to advise the BOT Company of a substitute time, the BOT Company may schedule the Scheduled Outage(s) as initially requested.
- (c) The BOT Company shall schedule Scheduled Outages only at times determined as aforesaid; provided, however, that EVN may not require the BOT Company to reschedule Scheduled Outages in a manner or time which is outside the Operating Procedures or Technical Limits or is inconsistent with Prudent Utility Practices or the recommendations of the Contractors under the Construction Contracts and the manufacturers of the various components of the Facility.
- (d) Notwithstanding the fixing of a time for a Scheduled Outage pursuant to paragraphs (a) and (b) above, EVN may, upon at least ninety (90) Days prior written notice and upon agreeing to pay the documented increased cost, if any, to the BOT Company resulting therefrom, require the BOT Company to reschedule a Scheduled Outage; provided, however, that (i) EVN shall not require such Scheduled Outage to be rescheduled for a period of shorter or longer duration or in a manner or time that is outside the Operating Procedures, Technical Limits, or inconsistent with Prudent Utility Practices or the recommendations of the Contractors and the manufacturers of the various components of the Facility, (ii) EVN shall not require that a single Scheduled Outage period be split into two or more periods without compensating the BOT Company for any additional costs imposed thereby, and (iii) EVN shall not require that a Scheduled Outage be brought forward any earlier than sixty (60) Days from the date of such notice without the consent of the BOT Company.

- (e) Notwithstanding the fixing of a time for a Scheduled Outage pursuant to paragraphs (a) and (b) above, the BOT Company may request a rescheduling of any Scheduled Outage upon ninety (90) Days prior written notice to EVN. EVN shall respond to such request within ten (10) Business Days and shall not unreasonably withhold its permission for such rescheduling.
- (f) All scheduling and rescheduling pursuant to paragraphs (a), (b), (c), (d) and (e) above shall be done without adverse distinction by EVN between the Facility and all other plants providing electric capacity and/or energy to the Grid System.
- (g) When the need arises for a Maintenance Outage, the BOT Company shall advise EVN of such need, and of the commencement and estimated duration of such work, and EVN shall allow the BOT Company to schedule such Maintenance Outage within a period of time that is reasonable under the circumstances, but in any event not to exceed the time required by the Operating Procedures, Technical Limits and Prudent Utility Practices. The BOT Company shall use all reasonable efforts to conduct such Maintenance Outage during off-peak hours, from 23:00 to 17:00 of the following Day. The BOT Company may advise EVN orally of the above matters, and EVN shall respond orally within twenty-four (24) hours of such notice. EVN shall confirm its communication in writing within one (1) Day of such oral notice.
- (h) For those years in which the BOT Company plans to conduct a Major Overhaul, the BOT Company shall submit its Major Overhaul schedule (including the duration of such period) to EVN one (1) year in advance by written notice. Major Overhauls shall be conducted one Unit at a time. The BOT Company may not schedule a Major Overhaul during the month of December to May inclusive. Within thirty (30) Days of receipt of this schedule, EVN shall notify the BOT Company in writing as to the acceptability of such schedule. If EVN does not accept this schedule, EVN shall advise the BOT Company within thirty (30) Days of the time when EVN determines the Major Overhaul can be rescheduled. The rescheduled time shall be as close as reasonably practicable to the requested time, shall comply with the Operating Procedures and Technical Limits, shall be consistent with Prudent Utility Practices and the recommendations of the Contractor and the manufacturers of the major components of the Facility, and shall be of equal duration as the requested period. If EVN fails within the allowed period to object to any Major Overhaul for which it receives notice pursuant to this paragraph (h) or fails within such period to advise the BOT Company of a substitute time, the BOT Company may schedule the Major Overhaul as initially requested.

9.5 Emergencies

- (a) The BOT Company shall cooperate with EVN in establishing agreed Emergency plans for the Facility at least ninety (90) Days before the Required Commercial Operation Date of the First Unit, including recovery from a local or widespread electrical blackout.
- (b) The BOT Company shall, during an Emergency, on EVN's request, as quickly as possible, consistent with Prudent Utility Practices, supply such power as the Facility is able to generate; provided however that the BOT Company shall not be obligated to operate the Facility beyond the Technical Limits or beyond the limits which the BOT Company reasonably believes that as a result of such operation there is a likelihood that the Facility may experience a trip. If a Scheduled Outage or

Maintenance Outage occurs or would occur coincident with an Emergency, the BOT Company, upon approval of EVN and at EVN's sole cost and expense, shall make all reasonable efforts to reschedule the Scheduled Outage or Maintenance Outage or, if the Scheduled Outage or Maintenance Outage has begun, expedite the completion of the work to restore power supply as soon as possible.

- (c) EVN, during an Emergency, may require the BOT Company to disconnect or reduce delivery of Net Energy Output: (i) if, in EVN's sole opinion, an Emergency exists; (ii) for so long as a disconnection or reduction in delivery of Net Energy Output is necessary to enable EVN to construct, install, maintain, repair, replace, remove, investigate, inspect or test any part of the Electrical Interconnection Facilities or Grid System.

9.6 Cessation of Operation of the Facility

- (a) If after the relevant Commercial Operation Date, without the prior written consent of EVN, the BOT Company shall have ceased to operate the First Unit or the Facility, as the context requires, for a period of forty-eight (48) consecutive hours other than because of an Unforced Outage, a Forced Outage, a Maintenance Outage or a Scheduled Outage, then if the Lenders have not exercised their rights pursuant to the EVN Acknowledgment and Consent read in conjunction with the MOIT Acknowledgment and Consent, EVN shall have the right, but not the obligation, to operate the First Unit or the Facility, as the context requires, until the BOT Company demonstrates to the satisfaction of EVN that it can and will resume normal operation of the First Unit or the Facility, as the context requires, or until the Lenders exercise such rights.
- (b) During any period when EVN shall operate the First Unit or the Facility, as the context requires, EVN shall be entitled to:
 - (i) be reimbursed for all costs associated with the operation of the First Unit or the Facility, as the context requires, including but not limited to costs for fuel, maintenance, any required Major Overhauls, repairs, insurance, salaries and other working capital costs; and
 - (ii) reasonable remuneration for EVN's services as an operator charged at then international rates or remuneration for comparable services.

Any revenue generated by the Facility during EVN's operation, after deducting the amounts set out in (i) and (ii) above, shall be applied towards the BOT Company's debt service obligations under the Financing Documents.

9.7 Maintenance of Operating Records

- (a) Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement. Among, but not limited to, other records and data required hereby or elsewhere in this Agreement, the BOT Company shall maintain an accurate and up-to-date operating log at the Facility with records of:
 - (i) Net Energy Output production for each demand period and Delivery Point, bus voltage at all times (for this purpose the BOT Company shall design a

computerised system that will maintain a data base of all pertinent parameters, as determined by the Joint Coordinating Committee);

- (ii) changes in operating status, Scheduled Outages, Maintenance Outages and Forced Outages; and
 - (iii) any unusual conditions found during inspections.
- (b) All such records shall be maintained for a minimum of sixty (60) months after the creation of such record or data; provided, however, that the Parties shall not dispose of or destroy any such records after such sixty (60) month period without thirty (30) Days' prior written notice to the other Party. Either Party shall have the right, upon reasonable prior notice to the other Party, and at reasonable times, to examine the records and data of the other Party specified in this Agreement and relating to the operation and dispatch of the Facility within the Grid System at any time during normal office hours during the period such records and data are required hereunder to be maintained.

9.8 Annual Report

The BOT Company shall deliver to EVN an annual report for each Operating Year, within three (3) months following the expiration of each Operating Year. Such annual report must include the operation and maintenance report for the prior year and the anticipated operation and maintenance plan and Emergency plan for the upcoming year.

ARTICLE 10

JOINT COORDINATING COMMITTEE

10.1 Membership

Within ninety (90) Days from the Effective Date of this Agreement, the Parties shall establish a committee (the “**Joint Coordinating Committee**”) of six (6) members, with the BOT Company and EVN each appointing three (3) members. Each Party shall also appoint two (2) substitutes for each of its members. The substitutes must be appointed at least thirty (30) Days prior to being able to substitute for one of the members. Substitutes may attend the Joint Coordinating Committee meetings but cannot participate in them unless they are replacing a regular member. The Joint Coordinating Committee shall meet at least once every three (3) months and more often (but subject to at least twenty-one (21) Days notice) upon written request of each Party.

The chairmanship of the Joint Coordinating Committee shall rotate each year between the Parties, and the first chairman shall be appointed by EVN. The Joint Coordinating Committee shall develop procedures for holding meetings, keeping minutes of meetings, maintaining records and appointing and operating sub-committees as may be required.

Each Party shall bear the costs and expenses of its representatives’ attendance and participation in the Joint Coordinating Committee.

10.2 Duties

Without limiting the generality of the foregoing, the power and duties of the Joint Coordinating Committee shall include:

- (a) discussion of the steps to be taken upon shutdown or reduction in capacity of the Facility for a Force Majeure Event or any other reason concerning the Facility;
- (b) coordination and discussion of any modification, if required, of Operating Procedures, including Day-to-Day communications, dispatching procedures, and Emergency plans and procedures;
- (c) coordination of Scheduled Outages, scheduled maintenance programs and scheduling and, without prejudice to Article 7, acceptance of performance tests and periodic tests;
- (d) coordination of annual, monthly, weekly, and daily forecasts or requirements from the Facility;
- (e) developing, monitoring and auditing the procedures to record capacity, reliability, energy and any other parameters that may influence the billing or liquidated damages arising from operation;
- (f) developing protocols for invoicing and for measuring capacity and generated energy consistent with but not specified in this Agreement;
- (g) review and discussion of safety matters affecting the Facility, the Parties, and their Contractors;
- (h) consultation on Emergency plans developed by the Parties for recovery from a local or widespread electrical blackout;

- (i) review of metering and protective schemes and devices;
- (j) review of the BOT Company's record keeping relating to drawings, specifications, manuals, spare parts inventories, and operating records;
- (k) (k) resolution of commercial matters in Dispute subject to the rights of each Party to elect for any such Dispute to be resolved in accordance with Article 16;
- (l) any other mutually agreed matter affecting the operation of the Facility and the Grid System;
- (m) review maintenance records, including results of periodic tests; and
- (n) any other mutually agreed matter affecting the operation of the Facility.

10.3 Decision Making

Each member of the Joint Coordinating Committee shall have a single vote. Decisions of the Joint Coordinating Committee shall be made by agreement from at least two-thirds (2/3rd) of the members. If agreement cannot be achieved, the Dispute settlement procedure outlined in Article 16 shall be followed. Notwithstanding the foregoing, any decision or procedures established by the Joint Coordinating Committee shall not relieve either Party of its responsibilities hereunder, under the Laws of Vietnam or pursuant to Prudent Utility Practice.

10.4 Agreement to Prevail

In the event of any conflict between the general powers of the Joint Coordinating Committee set out in this Article 10 (or any decision of the Joint Coordinating Committee made pursuant thereto) and any other provision of this Agreement, this Agreement shall prevail (and the powers and duties of the Joint Coordinating Committee shall be limited accordingly).

ARTICLE 11 ELECTRICAL INTERCONNECTION FACILITIES

11.1 Electrical Interconnection Facilities

- (a) The BOT Company shall be responsible for the design, construction, installation and commissioning in accordance with Prudent Utility Practices of the Electrical Interconnection Facilities. Immediately prior to the Commercial Operation Date of the First Unit, the BOT Company shall transfer, at no cost to EVN, all rights, title and interest in and to the Electrical Interconnection Facilities to EVN together with all manufacturers warranties, guarantees and rights in respect of the same. Thereafter, EVN shall be responsible for the operation and maintenance of the Electrical Interconnection Facilities (as specified in Schedule 3) in accordance with Prudent Utility Practices and shall bear all costs associated therewith.
- (b) EVN shall be responsible for the design, construction, installation and commissioning in accordance with Prudent Utility Practices of the transmission line no later than fourteen (14) months prior to the Commercial Operation Date of the First Unit and its connection to the Electrical Interconnection Facilities in accordance with Schedule 11. EVN shall also be responsible for the operation and maintenance of the transmission line and shall bear all costs associated therewith.

11.2 Construction of Electrical Interconnection Facilities

- (a) The BOT Company shall include a summary of its progress in constructing the Electrical Interconnection Facilities in its monthly progress reports submitted to EVN in accordance with Article 6.2(d), as appropriate. Failure by the BOT Company to complete the Electrical Interconnection Facilities shall not be considered a breach of this Agreement if and for as long as such failure can be attributed to any of the following:
 - (i) the failure by EVN to provide the BOT Company, on a timely basis, with any technical data not included in Schedule 3 available to EVN relating to the Facility necessary for the BOT Company to undertake the design, construction, installation and commissioning of the Electrical Interconnection Facilities; provided, however, that the BOT Company shall have requested such technical data in a timely manner; or
 - (ii) any delay, breach or failure to perform by EVN in accordance with this Agreement that materially affects the BOT Company's ability to perform its obligations in accordance with this Article 11.
- (b) EVN shall provide to the BOT Company details of its progress in constructing the transmission line on a monthly basis.

11.3 Interconnection Point

Overhead transmission lines from the high side of each of the two (2) [●]kV generator step-up transformers shall connect to disconnect switches provided by the BOT Company in the Electrical Interconnection Facilities for this purpose (the “**Interconnection Point**”). The Interconnection Point shall be the Delivery Point. The BOT Company will at its own cost, design, build, operate and maintain the overhead lines and connected equipment, the Primary

Metering System and a Check Metering System from the [●]kV side of the BOT Company's generator step-up transformers to the Interconnection Point.

11.4 Interconnection Equipment on the BOT Company's Side of Delivery Point

The BOT Company shall be responsible for designing, constructing, installing and maintaining all metering, auxiliary and interconnecting equipment on the BOT Company's transformer side of the Delivery Point and the BOT Company shall have ownership rights in all such metering, auxiliary and interconnection equipment.

11.5 Protective Devices

- (a) Each Party shall maintain protective devices to protect its own equipment.
- (b) Protective devices shall be approved (such approval not to be unreasonably withheld or delayed) by EVN (which devices shall conform to EVN's system requirements). EVN may require the BOT Company to modify or expand its protective devices, at the BOT Company's expense, to meet EVN's system requirements.
- (c) Subject to giving the BOT Company reasonable notice, EVN may require the BOT Company to further modify or expand the BOT Company's and/or EVN's protective devices. EVN shall reimburse the BOT Company for the reasonable costs of such modification or expansion, subject to EVN's prior written approval of such costs.

11.6 Changes Affecting Protective Devices

Each Party shall notify the other Party in advance of any changes to either the Facility or the Grid System that may affect the proper coordination of protective devices between the two (2) systems.

11.7 Testing

The Parties shall cooperate in testing the Electrical Interconnection Facilities prior to the scheduled energisation date of the Electrical Interconnection Facilities and Delivery Point. All such testing shall be carried out on a timely basis.

11.8 Initial Inspection of Electrical Interconnection Facilities

- (a) As soon as the BOT Company is in all respects ready or expects on a specified future date to be ready for the Electrical Interconnection Facilities and Delivery Point to be energised, it shall issue to EVN a statement notifying EVN of its readiness. Within three (3) Business Days of receipt of such statement, EVN shall contact the BOT Company and an initial inspection date shall be agreed upon, which, in any event, shall be within a further four (4) Business Days thereafter.
- (b) At a date agreed upon, the Independent Engineer shall carry out an initial inspection and have certified that the scope specified in Schedule 3 have been successfully completed in respect of the Electrical Interconnection Facilities and Delivery Point, and that energising of the Delivery Point will not jeopardise the safe and secure operation of the Grid System.
- (c) When the Independent Engineer has certified in writing pursuant to paragraph (b) above, that the Electrical Interconnection Facilities and Delivery Point is in all ways

ready for energising of the Electrical Interconnection Facilities and Delivery Point, EVN shall within seven (7) Days of the Independent Engineer's inspection issue to the BOT Company a certificate indicating that the Electrical Interconnection Facilities and Delivery Point may be energised (the "**Certificate of Readiness**").

- (d) In the case that the Independent Engineer has reported that the Electrical Interconnection Facilities are not sufficiently ready to be energised, the BOT Company shall make such changes to the Electrical Interconnection Facilities as are required having regard to Prudent Utility Practices and shall inform the Independent Engineer and EVN when a further inspection can take place. The BOT Company and EVN shall agree on a date for this inspection and the processes of this Article 11.8 shall be repeated in respect of that, and any subsequent inspection. In the event of a Dispute regarding the Independent Engineer's report as to the readiness of the Electrical Interconnection Facilities, the matter shall be resolved pursuant to Article 16.
- (e) Following the issuance of the Certificate of Readiness, the Electrical Interconnection Facilities and Delivery Point shall be energised when the BOT Company is ready to perform its first tests provided that the BOT Company shall keep EVN informed of the date upon which it intends to carry out the same and shall confirm its intention in respect of this at least one (1) Day before testing.

ARTICLE 12 METERING

Metering standards and testing are specified in Schedule 6 and require compliance with the requirements specified in Decision No. 02/2007/QD-BCN dated 9 January 2007 of the Minister of Industry.

12.1 Metering Systems

- (a) Metering devices used to measure Net Energy Output made available to EVN by the BOT Company pursuant to this Agreement, and to monitor and coordinate operation of the First Unit and the Facility, shall be purchased, owned, installed, operated and maintained, by and be at the expense of the BOT Company on the Facility side of the Delivery Point according to the specifications in Schedule 6 (the “**Primary Metering System**”). All metering will be done jointly by both Parties, for which each Party shall designate a representative.
- (b) The BOT Company shall also install, own, operate and maintain, at its own expense, backup metering devices on the Facility side of the Delivery Point according to the specifications in Schedule 6 (the “**Check Metering System**”), in addition to (and identical to) those installed and maintained by the BOT Company on the Facility side of the Delivery Point. Installation and maintenance of the Check Metering System by the BOT Company shall be in a manner acceptable to EVN.
- (c) The BOT Company shall also install, own, operate and maintain, at its own expense, additional back-up metering devices on the Facility side of the Delivery Point according to the specifications in Schedule 6 (the “**Back-Up-Metering System**”), in addition to (and identical to) those installed and maintained by the BOT Company on the Facility side of the Delivery Point. Installation and maintenance of the Back-Up Metering System by the BOT Company shall be in a manner acceptable to EVN.
- (d) The BOT Company shall install, own, operate and maintain, at its own expense, metering devices on the Facility side of the [●]kV/[●]kV station auxiliary transformer, if installed, (the “**Auxiliary Power Metering System**”) and an auxiliary power back-up system (the “**Auxiliary Power Back-Up Metering System**”). Installation and maintenance of the Auxiliary Power Metering System and Auxiliary Power Back-Up Metering System by the BOT Company shall be in a manner acceptable to EVN.
- (e) All metering devices used to provide data for the computation of payments due under this Agreement shall be sealed by an independent reliable third party approved by EVN and the seal shall be jointly broken by the designated representatives of both Parties when such metering devices are to be inspected and tested or adjusted in accordance with Article 12.3 below.

12.2 Technical Design

- (a) The technical design of the Metering Systems which shall be consistent with the technical specification set out in Schedule 6 and Prudent Utility Practices, shall be agreed by EVN and the BOT Company during the engineering design of the Facility. The exact number, type and location of such metering devices shall be as specified by EVN according to the single line diagram presented by the BOT Company for EVN’s approval.

- (b) The technical design of the Metering Systems shall form the basis of installation, fixing, supplementing, commissioning and operation and maintenance of the Metering Systems. EVN may from time to time request amendments, subsequently to the technical design of the Metering Systems, but provided that such amendments are in accordance with Prudent Utility Practices. To the extent such amendments are required in order to comply with the Laws of Vietnam, but subject always to the rights of the BOT Company or the MOIT under the Change in Law provisions of the BOT Contract, the BOT Company shall incorporate such amendments to the technical design of the Metering Systems in accordance with the terms of this Agreement. To the extent the BOT Company considers such amendments are not required in order to comply with the Laws of Vietnam, EVN and the BOT Company shall discuss those amendments in good faith, provided that the BOT Company shall not be obliged to incorporate such amendments to the technical design of the Metering Systems unless such amendments are consistent with the Laws of Vietnam.

12.3 Testing and Inspection

- (a) Testing, calibration and inspection of all metering devices will be completed by an independent, reliable third party approved by EVN at the BOT Company's expense (provided that the costs associated remain reasonable in accordance with international practice and are properly documented) upon installation, and at least annually thereafter. The BOT Company shall provide EVN with reasonable advance notice of, and allow a representative of EVN to witness and verify such testing, calibrations and inspections. Upon written request by EVN, and in the presence of EVN, the BOT Company shall perform additional inspections, tests, or calibrations of the metering devices within twenty (20) Days following the date of such written request. The actual expense of any such requested additional tests, calibration or inspection shall be borne by the BOT Company, provided that if the tests, calibration or inspection indicate that the Primary Metering System, Check Metering System, Back-Up System, Auxiliary Power Metering System or Auxiliary Power Back-Up Metering System as the case may be, is within the relevant maximum limits of inaccuracy as stated in Table 2 of Schedule 6, EVN shall pay to the BOT Company the actual expense of such tests, calibration or inspection. In the event that the tests indicate that the Primary Metering System is inaccurate by more than the maximum limit of inaccuracy as stated in Table 2 of Schedule 6, any payments made by EVN to the BOT Company that were calculated on the basis of the inaccurate metering devices shall be retroactively adjusted by a payment or credit on the next invoice. If a metering device is found to be defective or inaccurate (whether or not within the relevant maximum limit of inaccuracy), the BOT Company shall at its expense adjust, repair, replace, and/or recalibrate the metering device as near as practicable to a condition of zero error.
- (b) As soon as possible, upon installation of the meters for recording imported energy but not later than thirty (30) Days prior to the expected date of receipt of energy by the BOT Company, the BOT Company shall inspect, test and calibrate such meters at the BOT Company's expense. The Auxiliary Power Metering System shall be inspected at least annually thereafter by the BOT Company at its cost and the current and the voltage transformer shall be inspected once every five (5) years.
- (c) Subject to Article 12.3(b) above, as soon as possible after installation but not later than thirty (30) Days prior to the expected date of synchronisation of the Unit(s), the BOT Company shall inspect, test and calibrate the Primary Metering System, the Check Metering System, the Back-Up Metering System and metering equipment at

the generator terminals (other than the meters for recording imported energy) at the BOT Company's expense. The Primary Metering System, the Check Metering System and Back-Up Metering System shall be inspected at least annually thereafter by the BOT Company at its cost and the current and the voltage transformer shall be inspected once every five (5) years.

- (d) The BOT Company shall provide EVN with fifteen (15) Days notice in advance of the proposed date of inspection and testing of the Primary Metering System, the Check Metering System and the Back-Up Metering System. Such proposed date of inspection and testing shall be at least ten (10) Days prior to the date when such inspection and testing are required to be undertaken in accordance with Article 12.3(e) below. The BOT Company shall allow a representative of EVN to witness and verify such inspection or test. If the BOT Company does not receive a request from EVN to reschedule the inspection or test, within five (5) Days of receipt by EVN of such notice, the proposed date for inspection or testing shall be deemed to have been accepted by EVN. EVN may request a delay to the proposed date for inspection or testing, which in any event shall not exceed five(5) Days. The inspection or testing shall be carried out in the presence of the BOT Company's designated representative and EVN's designated representative. Both Parties shall comply with the Laws of Vietnam that apply to such inspection and testing.
- (e) The BOT Company must test its computerised Primary Metering System, Check Metering System and Back-Up Metering System: (i) every time that there is an indication of a malfunction in either system; or (ii) every twelve (12) months (or more frequently upon EVN's request), whichever comes first. Either Party shall have the right to request the other Party to provide relevant data to enable the Requesting Party to decide if any additional inspection is required. At any time, if there are reasonable grounds to believe that an inspection is required, either Party shall have the right to request an additional or unscheduled inspection. Within thirty (30) Days of such request, the BOT Company shall be obliged to inspect the Primary Metering System, Check Metering System and Back-Up Metering System. If the inaccuracy of the Primary Metering System and/or Check Metering System and/or Back-Up Metering System is within the relevant maximum limit of inaccuracy as stated in Table 2 of Schedule 6 the cost of such additional inspection shall be borne by the Requesting Party. If the Primary Metering System and/or Check Metering System and/or Back-Up Metering System is found to be defective or inaccurate (by more than the relevant maximum limit of inaccuracy as stated in Table 2 of Schedule 6), the BOT Company shall bear the cost of inspection and shall at its own expense, adjust, repair, replace, and/or recalibrate the metering device as near as practicable to a condition of zero error. The recalibration, repair or replacement shall be done in the shortest possible time and shall be inspected and certified by an independent reliable third party approved by EVN.

12.4 Adjustment for Inaccurate Meters

- (a) If the Primary Metering System fails to record, or if the measurement made by the Primary Metering System is found upon testing to be inaccurate by more than the maximum limit of inaccuracy stated in Table 2 of Schedule 6, an adjustment shall be made, correcting all measurements by the inaccurate or defective metering device for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner and order of priority:

- (i) The Parties shall use the BOT Company's Check Metering System to determine the amount of such inaccuracy; provided, however, that such Check Metering System is tested and maintained in the same manner as the Primary Metering System.
 - (ii) In the event that the Check Metering System is also found to be inaccurate by more than the maximum limit of inaccuracy applied to the Primary Metering System in Table 2 of Schedule 6, the Parties shall use the records obtained from the Back-Up Metering System.
 - (iii) In the event that the Back-Up-Metering System is also found to be inaccurate by more than the maximum limit of inaccuracy applied to the Back-Up Metering System in Table 2 of Schedule 6, the Parties shall use the records obtained from the metering equipment at the generator terminal after deducting the auxiliary power and the power loss before the Primary Metering System, provided the meters at the generator terminal meet the following requirements. The accuracy of the meters at the generator terminal shall be plus or minus zero point five per cent. (+/- 0.5%) and the technical design of such meters shall be agreed by the Parties. The auxiliary power and the power loss shall be determined on the basis of the previous estimates for the preceding three (3) months, when the Primary Metering System was registering accurately.
- (b) If the duration of the inaccuracy cannot be determined, retroactive billing adjustments for errors found as a result of any test shall be made for a period equal to one-half (1/2) of the time elapsed since the previous test, but not to exceed six (6) months.

ARTICLE 13 BILLING AND PAYMENT

13.1 Meter Readings

The readings of the Metering Equipment shall be recorded by the measuring system on the last Day of the month at 00.00 (midnight) for both Units. Representatives of both Parties shall jointly record such readings and sign the minutes on the first Day of the succeeding month and the BOT Company shall render by the tenth (10th) Day of the succeeding month an itemised statement to EVN showing:

- (a) Net Energy Output delivered to EVN during each hour of the previous month;
- (b) the Energy Charge for such Net Energy Output calculated in accordance with Schedule 5;
- (c) the Supplemental Charges and Additional Charges, if any; any adjustments to such measurements pursuant to Article 12 hereof;
- (d) the Capacity Charge calculated in accordance with Schedule 5;
- (e) any adjustments relating to inaccurate meter readings; and
- (f) the total amount in Dong that are due from EVN to the BOT Company with respect to such deliveries of Net Energy Output and Dependable Capacity pursuant to this Agreement.

13.2 Period of Startup Testing

EVN shall not pay the Energy Charge for Net Energy Output produced during the Period of Startup Testing.

13.3 Invoices

- (a) EVN Notice in Advance:

As soon as reasonably possible in each month commencing with the first month after the month in which the Commercial Operation Date of the First Unit occurs, but not later than the fifth (5th) Day of each such month, the BOT Company shall render or cause to be rendered to EVN a notice in advance (“**EVN Notice in Advance**”). Each Notice in Advance shall set forth the Capacity Charge, Energy Charge, Supplemental Charges and Additional Charges, if any, and any other adjustment provided for in this Agreement in accordance with Schedule 5. Each EVN Notice in Advance shall be stated in Dong, using the last available Quoted Rate, and shall state the equivalent amount in Dollars using the same rate. Each EVN Notice in Advance shall specify the date on which the payments shown therein are due (“**Payment Date**”). For each EVN Notice in Advance the Payment Date shall be the ninth (9th) Day of the following month.

- (b) Invoices:

- (i) In respect of each EVN Notice in Advance rendered in accordance with paragraph (a) above, the BOT Company shall deliver to EVN a final invoice (“**Invoice**”). Each such Invoice:
 - (A) shall be rendered five (5) Business Days before the Payment Date; and
 - (B) shall state the same Dollar amount as stated in the EVN Notice in Advance.
- (ii) The exchange rate used to determine the Dong equivalent shall be the applicable exchange rate for the purchase of Dollars with Dong, as informed by Vietcombank at the written request of the BOT Company, as of 12:00 noon on the Day one (1) Business Day prior to the Payment Date (the “**Quoted Rate**”) or, failing the provision of such information by the Vietcombank, the most recent such exchange rate published by the Vietcombank at such time (“**Payment Exchange Rate**”). In the event that the Payment Exchange Rate is not the Quoted Rate, upon provision of such Quoted Rate by the Vietcombank the Dong payment shall be recalculated using the Quoted Rate. If the Quoted Rate would have resulted in a lower amount payable by EVN, any such difference shall be included on the next invoice as a deduction to the Additional Charge and if the Quoted Rate would have resulted in a higher amount payable by EVN, any such difference shall be deducted on the next invoice.
- (iii) Upon delivery of each Invoice to EVN, EVN shall issue a receipt (“**EVN Invoice Receipt**”) to the BOT Company acknowledging that the related Invoice has been received by EVN. If EVN fails to issue an EVN Invoice Receipt on the Day when an Invoice has been delivered to EVN, then an EVN Invoice Receipt shall be deemed issued on the date of delivery of the relevant Invoice. EVN shall pay all such Invoices rendered under this Agreement on the Payment Date in immediately available funds to the account designated by the BOT Company in a written notice. EVN shall pay to the BOT Company an amount in Dong equivalent to the Dollars amount set forth in the relevant Invoice, using the Quoted Rate. The BOT Company shall initially designate the account to which payment is to be made no later than thirty (30) Days prior to the due date of the first Invoice and shall be entitled to designate a different account for payment from time to time by providing written notice thereof at least fifteen (15) Days prior to the due date of the initial payment to be made into such account. If EVN Disputes any amount set forth in such Invoice, EVN shall provide written notice specifying the amount disputed and the reason therefore, within five (5) Days of the issuance or deemed issuance of the EVN Invoice Receipt. EVN shall pay all undisputed amounts by the due date and disputed amounts shall be governed by Article 13.5. Any adjustments using the Foreign Index or the Local Index shall be made on the date of the Invoice.

13.4 Estimates

In order that Invoices may be rendered promptly after the end of each month, it may be necessary, from time to time, to estimate certain factors involved in calculating the monthly billing (provided that Invoices based on estimates shall be stated as such). Adjustments for errors in such estimates shall be included in the Invoice for the month following the time

when information becomes available to make such corrections or adjustments in the Invoice for the preceding month or months.

13.5 Disputed Amounts

In the event of any Dispute as to the Capacity Charge, the Energy Charge, the Additional Charges or the Supplemental Charges, EVN shall notify the BOT Company of the amount in Dispute as set forth above. In such event, the amounts not disputed (and, even if disputed the Capacity Charge) shall be paid as described in this Article 13 and an amount equal to the disputed amounts shall be deposited in an escrow account, to be controlled by an escrow agent jointly appointed by the BOT Company and EVN, on the date such amounts, if undisputed, would otherwise be due with a commercial bank selected by EVN and reasonably acceptable to the BOT Company. If the BOT Company and EVN cannot settle the Dispute within thirty (30) Days or such longer period as may be agreed to by the Parties, the Dispute will be settled in accordance with the Dispute resolution procedures set forth in Article 16. The resolution of the disputed amount shall include interest at the relevant Default Rate and to the extent that the disputed amount deposited in the escrow account is not sufficient to pay the amount of interest owing, the Party that has the payment obligation will be liable to pay the relevant amount of interest owing at the Default Rate.

13.6 Billing Errors

Any claim regarding an error in Invoices previously paid shall be made within fifteen (15) Days from the date of discovery of such error, but in any event within six (6) months from the date of the relevant EVN Invoice Receipt, after which time an Invoice and the calculations therein shall be binding upon the Parties.

13.7 Inaccurate Meters

In the event adjustments to an Invoice are required as a result of corrected measurements made with respect to inaccurate meters, the Parties shall use the corrected measurements described in Article 12.4 of this Agreement to recompute the amounts due from or to EVN for the Net Energy Output and the Dependable Capacity sold under this Agreement during the period of inaccuracy. If the total amount, as recomputed, due from a Party for the period of one inaccuracy varies from the total amount due as previously computed, and payment of the previously computed amount has been made, then, following agreement by the Parties on the amount due as a result of recomputation, the BOT Company shall promptly issue an adjusted Invoice. The owing Party shall pay such amount within thirty (30) Days of the issuance of the adjusted Invoice plus interest at the prime lending rate prevailing in Vietnam as announced by the Bank from time to time (for Dong obligations) or the LIBOR (for all other obligations) for each Day from the original due date until the date on which payment is made.

13.8 Late Payments

- (a) Late payments of any undisputed amount or any disputed amount which has been resolved to have been payable shall bear interest at the Default Rate (being, in the case of any amount due under any Invoice delivered pursuant to Article 13.3(b), the default rate specified in paragraph (b) of the definition of Default Rate on the Dollar amount specified in that Invoice) from the relevant due date and such interest amount due shall be included on the next following Invoice after it is determined such amount is due.

- (b) With regard to any late payment of any Invoice delivered pursuant to Article 13.3(b), the next Invoice shall be adjusted through an Additional Charge which is calculated by multiplying (i) the applicable exchange rate published by Vietcombank on the date the conversion is actually effected in respect of such late payment received by the BOT Company (“**Late Payment Rate**”) times (ii) the difference between (A) the Dollar value of the Dong actually received by the BOT Company utilising the Late Payment Rate and (B) the Dollar amount stated on the relevant Invoice, provided that if the Additional Charge is a negative amount no adjustment shall be made.

13.9 Value Added Tax

Since the supply by the BOT Company to EVN of electric power and capacity is not exempt from Value Added Tax, EVN shall bear all Value Added Taxes in relation to such supply and such Value Added Tax shall be paid by EVN at the same time as the Invoice for such supply is due in accordance with the Laws of Vietnam. To the extent that such Value Added Tax is not paid by EVN and if the Sponsors and/or the BOT Company are required to pay any such Value Added Tax, then EVN will reimburse the Sponsors and/or the BOT Company for the full amount paid together with interest at the relevant Default Rate. All amounts in this Agreement are expressed to be exclusive of any Value Added Tax.

ARTICLE 14

LIABILITY AND INDEMNIFICATION

14.1 Limitation of Liability

Except as required by Article 14.2, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or under any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or any activity contemplated by this Agreement.

14.2 Indemnification

- (a) EVN shall bear responsibility for loss of or damage to property, death or injury to any person (or any claim against the BOT Company in respect thereof) and all expenses relating thereto (including without limitation reasonable legal fees) suffered by the BOT Company in connection with the Facility resulting from any wilful misconduct or negligent act or omission of EVN, without recourse to the BOT Company. EVN will hold the BOT Company fully indemnified in respect thereof. The indemnity shall not extend to any loss, damage, death or injury (or any claim in respect thereof) or any expenses relating thereto to the extent that it was caused by any act or omission of the BOT Company or the failure of the BOT Company to take reasonable steps in mitigation thereof. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Article 14.2(a) shall apply to any loss, damage, cost or expense in respect of which, and to the extent that, the BOT Company are compensated pursuant to the terms of any policy of insurance, agreement or through any other means.
- (b) The BOT Company shall bear responsibility for loss of or damage to property, death or injury to any person (or any claim against EVN in respect thereof) and all expenses relating thereto (including without limitation reasonable legal fees) suffered by EVN in connection with the Facility resulting from any wilful misconduct or negligent act or omission of the BOT Company, without recourse to EVN. The BOT Company will hold EVN fully indemnified in respect thereof. The indemnity shall not extend to any loss, damage, death or injury (or any claim in respect thereof) or any expenses relating thereto to the extent that it was caused by any act or omission of EVN or the failure of EVN to take reasonable steps in mitigation thereof. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Article 14.2(b) shall apply to any loss, damage, cost or expense in respect of which, and to the extent that, EVN are compensated pursuant to the terms of any policy of insurance, agreement or through any other means.
- (c) In the event such injury or damage results from the joint or concurrent negligent or intentional acts of the Parties, each shall be liable under this indemnification in proportion to its relative degree of fault.

14.3 Assertion of Claims

Neither Party shall be entitled to assert any claim for indemnification until such time as all claims of such Party for indemnification under this Agreement exceed an amount equal to [●]

Dollars, in the aggregate, at which time all claims of such Party for indemnification under this Agreement may be asserted; provided, however, that when such claims have been asserted the same rule shall apply in respect of future claims. Notwithstanding the preceding sentence, either Party may assert a claim for indemnification regardless of amount upon the expiry or earlier termination of this Agreement or if such claim would otherwise be barred by the applicable statute of limitations. Any claim for indemnification must contain supporting documentation certified by an international auditor approved by the Parties (such approval not to be unreasonably withheld), evidencing the amount of the claim.

14.4 Defense of Claims

The indemnified Party shall be obliged to provide prompt notice of any claim action, suit or proceeding to the indemnifying Party in order to, and take all reasonable actions necessary to, preserve the indemnifying Party's rights, claims and defenses to any claim, action, suit or proceeding. After having delivered prompt notice of any claim, action, suit or proceeding to the indemnifying Party and having acted reasonably to preserve any rights, claims or defenses of the indemnifying Party, the indemnified Party shall have the right, but not the obligation, to further contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder; provided, however, that if the indemnifying Party acknowledges in writing its obligations to indemnify the indemnified Party in respect of loss to the full extent provided by Article 14.2, the indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense and through counsel of its choice if it gives prompt notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying Party of such defense. Neither the indemnified Party nor the indemnifying Party shall settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the indemnified Party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred.

ARTICLE 15 FORCE MAJEURE EVENTS

15.1 Non-Governmental Force Majeure Event

For the purposes of this Agreement, and subject to Article 15.2, “**Non-Governmental Force Majeure Event**” means any event, condition or circumstance or combination of events, conditions or circumstances referred to in (a) to (i) below that wholly or partly prevents or unavoidably delays a Party in the performance of its obligations under this Agreement, but only if and to the extent that such events and circumstances (i) actually prevent or delay the affected Party’s performance of its obligations arising under this Agreement, (ii) are not within the reasonable control of the affected Party, (iii) are without the fault or negligence of the affected Party, and (iv) could not have been avoided by the affected Party using reasonable care (such care to include compliance with Prudent Utility Practices). A Non-Governmental Force Majeure Event includes the following events and circumstances to the extent they, or their consequences, satisfy the above requirements:

- (a) epidemic, plague or quarantine;
- (b) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo (including any consequential unavailability or shortage of fuel or materials), revolution, riot, insurrection, civil commotion, or act of terrorism, or politically motivated sabotage or kidnapping in each case outside of Vietnam or inside of Vietnam and not involving the Government;
- (c) explosion, accident, chemical contamination or fire;
- (d) earthquake, tsunami, lightning, typhoons, floods or other unusually severe weather conditions or any other act of nature;
- (e) accidents of navigation, air crash, shipwreck, train wreck or other failures or delays of transportation;
- (f) radioactive contamination, ionizing radiation, any unexploded ordnance or other pre-existing contamination originating from a source in Vietnam which is not caused by a Government Event or an EVN Event;
- (g) any Non-Governmental Force Majeure Event described in the foregoing clauses affecting the performance of any person that is a party to any Project Agreement; provided that the BOT Company shall not be entitled to declare a Non-Governmental Force Majeure Event for interruptions in the supply or transportation of Coal of less than thirty (30) consecutive Days;
- (h) strikes and/or other work stoppages or labour disputes, except those due to breach of Laws of Vietnam by the BOT Company (not including those involving only the BOT Company, its Contractors, the Coal Supplier and/or the Coal Transporter);
- (i) any failure or delay in the supply of water to the foregoing; and BOT Company;
- (j) the unavailability (for reasons not within the control of the BOT Company) of sufficient water in [●]for use by the Project (which, for the avoidance of doubt, does

not include the inability of the water to be transported to the Facility so long as sufficient water is available in [●]); and

- (k) any event or circumstance of a nature analogous to any of the foregoing.

15.2 15.2. Exclusions from Non-Governmental Force Majeure Event

Non-Governmental Force Majeure Event shall expressly not include the following conditions, except to the extent resulting from a Non-Governmental Force Majeure Event:

- (a) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials, or spare parts for the Facility or the Electrical Interconnection Facilities;
- (b) a delay in the performance of any party to a Construction Contract;
- (c) non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- (d) non-performance caused by the non-performing Party's (i) negligent or intentional acts, errors or omissions, (ii) failure to comply with the Laws of Vietnam or (iii) breach of, or default under, the BOT Contract or this Agreement, as the case may be; or
- (e) mechanical or electrical breakdown or failure of machinery or plant owned or operated by the BOT Company or EVN.

15.3 Government Event

- (a) **“Government Event”** means any of the following events which (i) actually prevent or delay the affected Party's performance of its obligations arising under this Agreement, (ii) are not within the reasonable control of the affected Party, (iii) are without the fault or negligence of the affected Party, (iv) could not have been avoided by the affected Party using reasonable care (such care to include compliance with Prudent Utility Practices) and (v) materially and adversely affect the BOT Company in an amount which exceeds [●] Dollars for any event or in the aggregate for a series of similar events:
 - (i) acts of war (whether declared or undeclared), invasion, actions of terrorists, blockade, embargo (including any consequential unavailability or shortage of fuel or materials) riot, insurrection, civil commotion, sabotage or acts of public enemies, which acts occur within Vietnam and involve the Government;
 - (ii) strikes and/or other work stoppages or labour disputes of a political nature (excluding such events which are Site specific and attributable to the BOT Company, its Contractors, the Coal Supplier and/or the Coal Transporter);
 - (iii) the failure to obtain or renew (or any material delay in respect of the issuance or renewal of), as applicable:
 - (A) any Government Authorisation (on terms and conditions at least as favourable as those contained in the original Government Authorisation);

- (B) exemptions required for the importation and supply of Coal and Startup Fuel in accordance with Article 12.1(h) of the BOT Contract;
- (C) an amendment to the Investment Certificate upon extension of the Operational Term (as defined in the BOT Contract) in accordance with the terms and conditions of the BOT Contract;
- (D) registration of the Assignment in accordance with Article 11.2(c) of the BOT Contract;
- (E) approval by the MONRE in accordance with Section 6.2 of the BOT Contract;
- (F) MPI approval for an adjustment to the initial amount of the Investment Capital in accordance with Article 7.4 of the BOT Contract;
- (G) utilities required for the construction, Commissioning and start up of the Facility in accordance with Article 12.1(k) of the BOT Contract;

except, in each case, where caused by fundamental breach of a relevant Project Agreement or the Laws of Vietnam by the BOT Company and provided that the BOT Company has fully complied with all applicable application requirements and deadlines;

- (iv) the revocation of any Government Authorisation where the BOT Company has fully complied with all applicable application requirements or deadlines for the maintenance or renewal of such Government Authorisation;
- (v) the Government failing to perform any of its obligations under the Government Guarantee or the Government Guarantee ceasing to remain in full force and effect;
- (vi) any Government Body (other than EVN):
 - (A) on or prior to the agreed Transfer Date, nationalises or takes control of all or any part of the Facility from the BOT Company through no fault of the BOT Company;
 - (B) repudiates, frustrates or terminates any Project Agreement, or any of the obligations of the Government or of any party to a Project Agreement (subject to applicable cure periods and remedies set out in the relevant Project Agreement) through no fault of the BOT Company; or
 - (C) prevents the BOT Company's (or any of its Contractor's, the Coal Supplier's or the Coal Transporter's) access to or interferes with:
 - (aa) the BOT Company's possession of the Site; or
 - (ab) the BOT Company's (or any of its Contractor's, the Coal Supplier's or the Coal Transporter's) use of the Site (including the port facilities);

- (vii) any Change in Law which adversely affects the BOT Company or Sponsors or any of its or their rights or obligations under this Agreement, any other Project Agreement or any Government Authorisation (other than where the BOT Company has agreed in writing to be compensated in accordance with Article 22.11 of the BOT Contract);
- (viii) the failure of the Vietnamese customs or other authorities to clear and release equipment, materials, or supplies (including Coal and other fuel) required for the construction or maintenance or operation of the Facility, including the Electrical Interconnection Facilities from and after the tenth (10th) Business Day after the BOT Company has complied with the requirements of the applicable Laws of Vietnam relating to the release of such equipment, materials or supplies through no fault of the BOT Company;
- (ix) any radioactive contamination or ionizing radiation originating from a source in Vietnam or resulting from another Government Event;
- (x) any failure due to delay related to discovery on the Site of any historical, or archaeological find, which delay is not caused solely by the BOT Company;
- (xi) the expropriation or compulsory acquisition of the Investment Capital or shares in the BOT Company or other assets or rights of the BOT Company;
- (xii) any interruption in the supply of fuel (including Coal) to the BOT Company resulting from:
 - (A) the withdrawal or material modification of any Governmental Authorisation which prevents fuel (including Coal) from being supplied to the Facility; or
 - (B) (aa) the rejection of any replacement Coal Supply Agreement or Coal Transportation Agreement (if applicable) that meets the requirements of this Agreement (including Schedule 9), following compliance by the BOT Company with the approval procedure set out in Article 6.7 or (bb) the non-availability of any replacement Coal Supply Agreement or Coal Transportation Agreement that meets the requirements of this Agreement (including Schedule 9), following compliance by the BOT Company with the approval procedure set out in Article 6.7, but only to the extent that such non-availability was caused by a Government Body (other than EVN) or another Government Event,

except where caused by a fundamental breach of the Coal Supplier, the Coal Transporter or the BOT Company and provided that, in each case, the BOT Company shall not be entitled to declare a Government Event for interruptions in the supply or transportation of Coal of less than thirty (30) consecutive Days;
- (xiii) any Government Event described in the foregoing paragraphs materially and adversely affecting the performance of any party to any Project Agreement between the BOT Company and such party; and
- (xiv) any event or circumstance of a nature analogous to any of the foregoing.

- (b) “**EVN Event**” means any of the following events which (i) actually prevent or delay the affected Party’s performance of its obligations arising under this Agreement, (ii) are not within the reasonable control of the affected Party, (iii) are without the fault or negligence of the affected Party, (iv) could not have been avoided by the affected Party using reasonable care (such care to include compliance with Prudent Utility Practices) and (v) materially and adversely affect the BOT Company in an amount which exceeds [●] Dollars for any event or in the aggregate for a series of similar events:
- (i) EVN:
 - (A) repudiates, frustrates or terminates this Agreement (subject to applicable cure periods and remedies set out in this Agreement) through no fault of the BOT Company; or
 - (B) prevents the BOT Company’s (or any of its Contractor’s, the Coal Supplier’s or the Coal Transporter’s) access to or interferes with:
 - (aa) the BOT Company’s possession of the Site; or
 - (ab) the BOT Company’s (or any of its Contractor’s, the Coal Supplier’s or the Coal Transporter’s) use of the Site (including the port facilities);
 - (ii) any radioactive contamination or ionizing radiation resulting from another EVN Event which prevents the BOT Company from performing its obligations or exercising its rights under any Project Document;
 - (iii) any interruption in the supply of fuel (including Coal) to the BOT Company resulting from:
 - (A) the withdrawal or material modification by EVN of any Governmental Authorisation which prevents fuel (including Coal) from being supplied to the Facility; or
 - (B) the rejection by EVN of any replacement Coal Supply Agreement or Coal Transportation Agreement (if applicable) that meets the requirements of this Agreement (including Schedule 9), following compliance by the BOT Company with the approval procedure set out in Article 6.7, except where caused by a fundamental breach of the Coal Supplier, the Coal Transporter or the BOT Company and provided that, in each case, the BOT Company shall not be entitled to declare an EVN Event for interruptions in the supply or transportation of Coal of less than [●] consecutive Days;
- (c) A Non-Governmental Force Majeure Event shall not include a Government Event, EVN Event or Change in Law and under no circumstances shall EVN be relieved of any of its obligations under this Agreement due to an EVN Event or a Government Event. The BOT Company shall however, in addition to any other rights it has under this Agreement, be relieved of any responsibility (including payment obligations) for its failure to perform its obligations under this Agreement to the extent such failure is due to a Government Event, EVN Event or Change in Law.

15.4 Consequences of Force Majeure Event

Except as otherwise set forth below in Article 15.5, neither Party shall be responsible or liable for or deemed in breach hereof because of any failure or delay in complying with its obligations under or pursuant to this Agreement due to one or more Force Majeure Events or its or their effects or by any combination thereof, and the period allowed for the performance by Parties of such obligation(s) shall be extended on a Day for Day basis for each Day or part Day of delay directly attributable to such Force Majeure Event, provided that the Party claiming the extension provides evidence, reasonably satisfactory to the other Party, as to the duration of the delay caused by the Force Majeure Event and provided further that no relief shall be granted to the Party claiming Force Majeure Event pursuant to this Article 15 to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure Event not occurred. The Party not claiming Force Majeure Event shall not be liable to the Party claiming Force

Majeure Event for any loss or expense suffered by the Party claiming Force Majeure Event as a result of a Force Majeure Event. The previous sentence shall not relieve any Party from liability under Article 14 or for breach of this Agreement.

15.5 Payment During Force Majeure Event

- (a) Subject to paragraphs (b), (c) and (d) below, the obligations of the BOT Company, EVN and the MOIT to make any payment which becomes due in accordance with the terms of this Agreement and the BOT Contract, including the obligations to make Capacity Charge payments and other payments each month to the BOT Company, shall not be suspended or excused during a Force Majeure Event affecting a Party.
- (b) During a Non-Governmental Force Majeure Event affecting the BOT Company's ability to deliver energy in accordance with this Agreement or affecting EVN's ability to receive energy in accordance with this Agreement, the BOT Company shall only be entitled to receive (and EVN shall only be obliged to pay) the Capacity Charge payments during such Non-Governmental Force Majeure Event pro-rated to reflect the portion of the Facility not affected thereby (as determined by a new Dependable Capacity Test). The BOT Company shall also be entitled to receive Energy Charges and Supplemental Charges for Net Energy Output actually delivered pursuant to Dispatch Instruction during such Non-Governmental Force Majeure Event. In addition, the Term shall be extended due to any Non-Governmental Force Majeure Event which occurs after the Commercial Operation Date of the First Unit for which the BOT Company does not receive Capacity Charge payments or amounts payable pursuant to its business interruption insurance policies at least equal to the First Unit's or Facility's then current Dependable Capacity, on a Day for Day basis, provided that the BOT Company provides evidence, reasonably satisfactory to EVN, as to the duration of the period caused by a Non-Governmental Force Majeure Event for which the BOT Company did not receive Capacity Charge payments at least equal to the Facility's then current Dependable Capacity, and provided further that, during any part of such period of Non-Governmental Force Majeure Event during which the BOT Company receives Capacity Charge payments that are less than the Facility's then Dependable Capacity, the extension to the Term shall be calculated as follows:
 - (i) in respect of any Day for which the BOT Company receives Capacity Charge payments or amounts payable pursuant to its business interruption insurance policies in aggregate equal to or less than twenty-five per cent. (25%) of the

Capacity Charge payments that would have been payable had the Facility been capable (but for the Non-Governmental Force Majeure Event) of operating at its then current Dependable Capacity, the BOT Company shall be entitled to an extension of the Term of one (1) Day;

- (ii) in respect of any Day for which the BOT Company receives Capacity Charge payments or amounts payable pursuant to its business interruption insurance policies in aggregate greater than twenty-five per cent. (25%) but equal to or less than fifty per cent. (50%) of the Capacity Charge payments that would have been payable had the Facility been capable (but for the Non-Governmental Force Majeure Event) of operating at its then current Dependable Capacity, the BOT Company shall be entitled to an extension of the Term of three-quarters (3/4) of one (1) Day;
- (iii) in respect of any Day for which the BOT Company receives Capacity Charge payments or amounts payable pursuant to its business interruption insurance policies in aggregate greater than fifty per cent. (50%) but equal to or less than seventy-five per cent. (75%) of the Capacity Charge payments that would have been payable had the Facility been capable (but for the Non-Governmental Force Majeure Event) of operating at its then current Dependable Capacity, the BOT Company shall be entitled to an extension of the Term of one-half (1/2) of one (1) Day; and
- (iv) in respect of any Day for which the BOT Company receives Capacity Charge payments or amounts payable pursuant to its business interruption insurance policies in aggregate greater than seventy-five per cent. (75%) but less than one hundred per cent. (100%) of the Capacity Charge payments that would have been payable had the Facility been capable (but for the Non-Governmental Force Majeure Event) of operating at its then current Dependable Capacity, the BOT Company shall be entitled to an extension of the Term of one-quarter (1/4) of one (1) Day.

If on the expiry of any Non-Governmental Force Majeure Event, the aggregate of all extensions to the Term calculated under paragraphs (i) to (iv) above equals any fraction of a Day, the extension shall be rounded up to the next whole Day and the Term extended accordingly.

- (c) During any period that the BOT Company is unable to deliver energy in accordance with this Agreement or EVN is unable to receive energy in accordance with this Agreement and such inability, as applicable, is due to a Government Event, the MOIT shall pay the Capacity Charge payments and other payments due under this Agreement each month to the BOT Company in accordance with Article 22.8 of the BOT Contract.
- (d) During any period that the BOT Company is unable to deliver energy in accordance with this Agreement or EVN is unable to receive energy in accordance with this Agreement and such inability, as applicable, is due to an EVN Event, EVN shall continue to pay the Capacity Charge payments and other payments due under this Agreement each month to the BOT Company after subtracting any amounts payable to the BOT Company pursuant to its business interruption insurance policies as follows:

- (i) if there is a Deemed Commercial Operation Date caused by an EVN Event established for the First Unit or the Facility pursuant to Article 7.2, the BOT Company shall be entitled to Capacity Charge payments in accordance with Article 7.2; and
- (ii) if the EVN Event occurs:
 - (A) after the Commercial Operation Date of the First Unit or the Facility, as the context requires, EVN shall pay Capacity Charge payments to the BOT Company on the basis of the average Capacity Charges paid to the BOT Company in respect of the First Unit or the Facility, as the context requires, over the period of six (6) months preceding such EVN Event, excluding any period where Capacity Charges were not paid (in part or in full) as a result of a Non-Governmental Force Majeure Event;
 - (B) less than six (6) months after the Commercial Operation Date of the First Unit or the Facility, as the context requires, EVN shall pay Capacity Charge payments to the BOT Company in an amount equal to the average of Capacity Charges paid to the BOT Company with respect to the First Unit or the Facility, as the context requires over the period from the relevant Commercial Operation Date to such EVN Event, excluding any period where Capacity Charges were not paid (in part or in full) as a result of a Non-Governmental Force Majeure Event; or
 - (C) before the end of the first month after the relevant Commercial Operation Date, EVN shall pay Capacity Charge payments to the BOT Company in an amount calculated using the Initial Dependable Capacity of the First Unit or the Facility, as the context requires.

15.6 Notification Obligations

- (a) The Party affected by a Force Majeure Event shall give notice to the other Party of any Force Majeure Event as soon as reasonably practicable and in any event within forty-eight (48) hours of the occurrence of the Force Majeure Event. In the case of a Government Event a copy of the notice shall be provided to the relevant Government Body. Notwithstanding the above, if the event constituting a Force Majeure Event results in a breakdown of communications rendering it not reasonably practicable to give notice within the applicable time limit specified herein, then the Party affected by the Force Majeure Event shall give such notice as soon as reasonably practicable after the reinstatement of communications, but not later than one (1) Business Day after such reinstatement. Any notice shall include full particulars of the event constituting the Force Majeure Event, of its effects on the Party claiming relief and the remedial measures proposed. The Party affected by a Force Majeure Event shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request.
- (b) The Party affected by a Force Majeure Event shall give to the other Party reasonable facilities for obtaining further information about the circumstances of the Force Majeure Event, as appropriate, facilities for inspection of the Site.

- (c) The Party affected by a Force Majeure Event shall give notice to the other Party of (i) the cessation of the relevant event constituting a Force Majeure Event, and (ii) the cessation of the effects of such event constituting a Force Majeure Event on the enjoyment by such Party of its rights or the performance by it of its obligations under this Agreement, as soon as practicable after becoming aware of each of (i) and (ii) above.

15.7 Duty to Mitigate

The Party affected by the Force Majeure Event shall use its reasonable efforts to mitigate the effects of any event constituting the Force Majeure Event as soon as practicable; provided, however, that no Party shall be required under this provision to settle any strike or other labour dispute in a manner that it considers to be unfavorable to it.

15.8 Consequences of Change in Law

The right of the BOT Company to any compensation due to a Change in Law shall be determined pursuant to Articles 22.10 and 22.11 of the BOT Contract.

ARTICLE 16

CHOICE OF LAW AND RESOLUTION OF DISPUTES

16.1 Governing Law

The BOT Company shall carry out its operations in accordance with this Agreement, the BOT Contract, the Investment Certificate and the Laws of Vietnam. This Agreement is governed by Vietnamese law; in the event Vietnamese law has no applicable provision, then the relevant provisions of English law shall be applied.

16.2 Consultation

In the event that a Dispute arises out of or in connection with the validity, interpretation breach of performance or implementation of this Agreement, the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations. If the Dispute is not resolved in this manner within thirty (30) Days after the commencement of discussions by notice from one Party to the other, or such longer period as the Parties agree to in writing at that time, then either Party may submit the Dispute for final resolution by arbitration, to be held in Singapore, under the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC”) for the time being in force (“SIAC Rules”), which rules are deemed to be incorporated by reference in this Article, with instructions that the arbitration be conducted in the manner set out below, provided that, if the Parties agree in writing, a matter may be submitted to an Expert for resolution on such terms as the Parties may agree to in writing, subject to Article 16.3.

16.3 Expert

If the Parties elect to resolve a Dispute pursuant to this Article:

- (a) If such Dispute involves in whole or part (i) a technical engineering, construction or operation issue, then the Parties will in good faith attempt to appoint a suitably experienced and qualified independent engineering firm reasonably satisfactory to both of them, or (ii) an economic or financial issue, then the Parties will in good faith attempt to appoint an independent financial advisor or investment bank reasonably satisfactory to both of them, or (iii) an insurance issue, the Parties will in good faith attempt to appoint an independent insurance adviser reasonably satisfactory to both of them, in any case to act as an expert (“Expert”) in relation to such Dispute and to render a final and binding determination in respect thereof (save in the event of any manifest error). The Parties expressly waive, to the fullest extent permitted by the Laws of Vietnam, any and all rights that they may now have or may have in the future to contest the decision of the Expert before any court or other adjudicatory or administrative body. The Parties shall share the costs of the Expert in equal proportions unless the Expert shall direct otherwise.
- (b) If the Parties have agreed to use an Expert, but are unable to agree to a single Expert then the Parties shall appoint the Expert either by:
 - (i) applying to SIAC to appoint an independent Expert to resolve the Dispute in accordance with the agreement of the Parties and Article 16.3(c); or

- (ii) having each Party appoint an Expert which together will appoint a third Expert and, the three Experts shall jointly resolve the Dispute by a majority decision in accordance with the agreement of the Parties and Article 16.3(c).
- (c) Any appointment of any Expert shall be on the basis that each Party shall have twenty-eight (28) Days to prepare a written submission to the Expert (or such longer or shorter period as the Parties may agree) and the opportunity to review and reply to the submission of the other Party (such reply to be prepared within twenty-one Days after the date of receipt of the other Party's submission).

16.4 Arbitration

Arbitration shall be conducted as follows:

- (a) English Proceedings. All proceedings in any such arbitration shall be conducted in English, and a daily tape recording of such proceedings shall be made available to the Parties and their respective lawyers.
- (b) Three Arbitrators. There shall be three (3) arbitrators, all of whom shall be fluent in English and at least one of whom shall be fluent in Vietnamese. EVN shall appoint one arbitrator and the BOT Company shall appoint one arbitrator, each within fifteen (15) Days of receipt by the respondent Party of the notice of arbitration from the claimant Party. The third arbitrator shall be appointed within fifteen (15) Days of the appointment of the second arbitrator by the arbitrators appointed by EVN and the BOT Company and shall serve as chairman of the panel. Failing the appointment by the respondent Party of its arbitrator or of the third arbitrator by the two appointed arbitrators, either Party may apply to SIAC for appointment of any missing arbitrator.
- (c) Process. Within twenty (20) Days of the respondent Party's receipt of the claimant Party's notice of arbitration, the respondent shall serve the claimant with its statement of defence and any counterclaims. Within thirty (30) Days of claimant's receipt of the respondent's statement of defence and counterclaims, the claimant shall serve its statement of defence to any counterclaims asserted by the respondent. The arbitration panel shall then issue an order within ten (10) Days of receipt of the claimant's statement of defence to any counterclaims or, if none, within ten (10) Days of when it would have been filed. Such order shall schedule the remainder of the proceedings such that all evidence is received, all hearings concluded and all written materials submitted within one hundred and twenty (120) Days of the date of claimant's initial filing commencing the arbitration. Any award shall be rendered within thirty (30) Days of the close of evidence, hearings and submissions pursuant to the arbitrator's scheduling order. At the request of either Party, all time periods specified in the SIAC Rules shall be accelerated by the arbitrators to the extent necessary to comply with relevant time limitations relating to the development, construction, commissioning, ownership, operation and maintenance of the Facility.
- (d) Award Binding. The arbitration award shall be final and binding on the Parties, and the Parties agree to be bound thereby and to act accordingly.
- (e) Costs. The costs of arbitration shall be borne by the losing Party, unless otherwise determined by the arbitration award.

- (f) Obligation to Continue. When any Dispute occurs and when any Dispute is under arbitration, except for the matters under Dispute the Parties shall continue to exercise their remaining respective rights, and fulfill, their remaining respective obligations under this Agreement.
- (g) Enforcement. Judgment upon any award of the arbitration may be entered in any court having jurisdiction or application may be made to any such court for judicial acceptance of the award and an order of enforcement, as the case may be.

16.5 Commercial Acts; Sovereign Immunity

- (a) The Parties agree that the transactions which are the subject of this Agreement are international commercial transactions.
- (b) To the extent that EVN may be or may hereafter become entitled, in any jurisdiction, to claim for itself or its property, assets or revenues immunity (whether by reason of sovereignty or otherwise) in respect of its obligations under this Agreement from service of process, suit, jurisdiction or any court, judgement, order, award, attachment (before or after judgement or award), set-off, execution of a judgement or other legal process, and to the extent that in any such jurisdiction there may be attributed to EVN or Vietnam or any of its property, assets or revenues such an immunity (whether or not claimed), EVN hereby expressly agrees not to claim and hereby expressly waives such immunity to the fullest extent permitted by the laws of such jurisdiction; however, nothing herein constitutes a waiver by Vietnam with respect to assets protected by diplomatic and consular privileges and generally accepted international law.

16.6 Co-ordination of Disputes

- (a) Subject to Article 16.6(c), if any Dispute arising out of or in connection with this Agreement or any dispute between the BOT Company and the MOIT arising out of or in connection with (i) the BOT Contract, or (ii) the Government Guarantee, or (iii) the MOIT Acknowledgment and Consent (the BOT Contract, Government Guarantee and the MOIT Acknowledgment and Consent together, the “**BOT Agreements**”) (in any case, the “**First Dispute**”):
 - (i) raises issues which are substantially the same as, or connected with, or touch upon, or concern issues raised in any other dispute or difference arising out of or in connection with this Agreement and/or the relevant BOT Agreement (a “**Related Project Dispute**”); or
 - (ii) arises out of, or touches upon, or concerns substantially the same facts as are the subject of a Related Project Dispute,
 - (iii) then notwithstanding that arbitrators may have been agreed or appointed under this Agreement, or under the relevant BOT Agreement in relation either to the First Dispute or the Related Project Dispute, the BOT Company may, by written notice to the Party or Parties and any arbitrators who have already been agreed or appointed hereunder or thereunder, require either (A) that the First Dispute be referred to and finally settled by the arbitral tribunal appointed or to be appointed in respect of any such Related Project Dispute or (B) that the Related Project Dispute be referred to and finally settled by the arbitral

tribunal appointed to or to be appointed in respect of the First Dispute (in either case, referred herein as the “**Joint Tribunal**”).

The Joint Tribunal shall become the arbitral tribunal in respect of First Dispute and Related Project Dispute and the Parties shall revoke the authority of any arbitral tribunal already appointed in respect of the First Dispute or Related Project Dispute (as appropriate). The Parties shall be bound by any directions or orders made by the Joint Tribunal as to their joinder in any arbitration proceedings in respect of any First Dispute and/or Related Project Dispute and shall also be bound by any procedural directions and any subsequent award made by the Joint Tribunal.

- (b) Article 16.6(a) shall not apply in respect of any First Dispute after a hearing on the merits has commenced in any arbitration under this Agreement or the relevant BOT Agreement.
- (c) In the event of the revocation of the authority of arbitrators who have already been agreed or appointed under this Article 16 or any BOT Agreement by reason of the notice given by the BOT Company under Article 16.6(a), the cost of the cancelled arbitration (including the arbitrators’ fees) shall be dealt with by the Joint Tribunal as costs in that arbitration. Pending such determination, the fees of the arbitrators whose authority has been revoked shall be paid equally by the BOT Company and the other party to the cancelled arbitration.
- (d) It is not intended that the mechanism in this Article 16.6 shall operate so as to deprive any party of anything which would be a valid claim or defence. Accordingly, all claims and defences which were originally made in the cancelled arbitration shall be deemed for all purposes to have been brought when made and not be affected in any way by the revocation of the authority of the arbitrators or the cancellation of the arbitration pursuant to Articles 16.6(a) and (c) so that the position of either Party shall not thereby be prejudiced with respect to any rule of law, statute, regulation or contractual provision which imposes a time limit on the commencement of proceedings or the right to any remedy.
- (e) The Joint Tribunal in determining any dispute or difference shall consider all evidence which it may think pertinent to that dispute which is filed or called by a party to the arbitration proceedings.

ARTICLE 17

NO LIABILITY FOR REVIEW

The BOT Company agrees that it knows and has carefully reviewed all matters concerning the nature of this Agreement and the places where it will be performed, the transportation conditions to the work sites, management and storage of materials, the availability of labour, water, electricity, communications, access roads, camp sites, weather and health conditions and uncertainties, characteristics of machinery and equipment required for the performance of the work, applicable regulation, and, in general, all other items on which it may be reasonably possible to have information and which in any way may affect the performance of this Agreement, all of which has been taken into account by the BOT Company in the preparation of its offer. The BOT Company waives the right to claim any additional compensation, extension of the Term of concessions of any nature, as a result of incorrect or insufficient information or erroneous interpretation of said information or by the omission of studies to be made in accordance with provisions of this Article. Supply under this Agreement of some of said information will not release the BOT Company of its responsibility herein. EVN does not assume any liability for any information given by any of its officers or agents prior to the execution of this Agreement, unless such information is expressly confirmed in this Agreement as EVN's responsibility. Any other type of representations, for which EVN does not assume any responsibility, shall be considered only as information supplied in good faith to the BOT Company.

ARTICLE 18

NOTICES

Notices or other communications required to be given by either Party pursuant to this Agreement shall be written in English and Vietnamese shall be sufficiently given if delivered by courier or hand delivered against written receipt, or if transmitted and clearly received by facsimile transmission addressed as set out below, or if sent to such Party by courier or hand delivery, to such other address as such Party may designate for itself by notice given in accordance with this Article. Any such notice shall be effective only upon actual receipt thereof. Each notice given by facsimile shall be confirmed in writing, delivered or sent as aforesaid, but the failure to so confirm shall not vitiate the original notice.

As of the execution of this Agreement, the Parties may be contacted at the address below until otherwise notified:

If to the BOT Company:

[●]
Attention: [●]
Facsimile No.: [●]
Telephone No.: [●]

If to EVN:

[●]
Attention: [●]
Facsimile No.: [●]
Telephone No.: [●]

ARTICLE 19

MISCELLANEOUS PROVISIONS

19.1 Amendment

Amendments to this Agreement must be made by a written agreement with true, complete and accurate official versions thereof in both English and Vietnamese signed by each of the Parties.

19.2 Headings

The headings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement nor shall such headings be used in any manner to aid in the construction of this Agreement.

19.3 Third Parties

This Agreement is intended solely for the benefit of the Parties hereto. A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. Nothing in this Agreement shall be construed to create any duty or any liability to or any right of suit or action whatsoever, to any person not a party to this Agreement except to the extent contemplated by Article 4.6 and the security permitted by Article 19.12.

19.4 No Implied Waiver

- (a) The failure or delay of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any provision hereof, shall neither be construed to be a waiver of such provisions nor affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. A waiver, to be enforceable, must be in writing and executed by the Party against whom it is to be enforced.
- (b) The Parties agree that on termination of this Agreement and the other Vietnam Project Documents in accordance with Articles 4 and 15 of this Agreement by the BOT Company and similar provisions of the other Vietnam Project Documents, and, in the case of a BOT Company Event of Default, the MOIT and the Vietnam Project Counterparties may be substantially damaged in amounts that may be difficult or impossible to determine in the event of such termination. Therefore, to the limited extent set out in this Agreement, the Parties have agreed on compensation amounts that the Parties agree are reasonable as liquidated damages and represent a fair pre-estimate of loss (taking into account the transfer of the Facility upon payment of such compensation amounts and EVN being entitled to use the Facility after such transfer). It is further understood and agreed that the payment of liquidated damages is in lieu of actual damages for such termination. Each Party hereby waives any defense as to the validity of any liquidated damages in this Agreement on the grounds that such damages are void as penalties (and the payment obligations of EVN pursuant to this Agreement shall continue unless the amount payable on termination has been discharged in full).

19.5 Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture, partnership or agency between the Parties or to impose any partnership obligation or liability upon either Party. Nothing in this Agreement shall be construed as creating any relationship between the Parties other than that of independent sale and purchase of capacity and electricity generated at the Facility. Except as otherwise set forth herein, the Parties do not intend to create any rights, or grant any remedies to, any third party beneficiary of this Agreement. Therefore, the BOT Company shall be solely responsible for the payment of salaries, wages and mandatory and fringe benefits of its employees, which will not have any labour relationship with EVN.

19.6 Taxes and Claims

Except as provided in any Vietnam Project Document, the BOT Company shall be responsible for payment of all taxes, contributions, rates, charges and fees payable to any Government Body or state owned enterprise (whether payable in Vietnam or otherwise) arising in connection with the ownership, operation and maintenance of the Facility.

19.7 Rights of Inspection

The BOT Company shall promptly furnish to EVN such information as EVN may from time to time reasonably request and permit representatives of EVN on reasonable notice to visit the Facility.

19.8 Periodic Reports

- (a) Each Party shall, as soon as available but in any event within [●] Days after the end of each financial year, furnish to the other Party: (i) two (2) copies of its complete financial statements for such financial year (which are in agreement with its books of accounts and prepared in accordance with internationally accepted accounting principles and consistently applied), together with an audited report thereon; (ii) a copy of any management letter or other communication sent by the auditors to the Party or to its management in relation to the Party's financial, accounting and other systems, management and accounts; and (iii) a report by the auditors certifying that, based on its financial statements, the Party was in compliance with its financial obligations as of the end of the relevant financial year or, as the case may be, detailing any non-compliance.
- (b) Each Party shall, as soon as available but in any event within [●] Days after the end of each six (6) month period of each financial year, furnish to the other Party: (i) two (2) copies of the Party's complete financial statements for such [●] month period, all in accordance with accounting principles which are generally accepted in Vietnam and consistently applied, and if requested by the other Party, certified by an officer of the Party; and (ii) a report on any factors that have materially and adversely affected the Party's business and operations or its financial condition.

19.9 Survival

Cancellation, expiration, termination of this Agreement or arbitration of Disputes shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including, without limitation, warranties, remedies, promises of indemnity and confidentiality.

19.10 Language

This Agreement is written in Vietnamese and English in six original copies in each language. One copy of each language text shall be retained by each Party. The two language texts shall have equal validity, but if there is any discrepancy between the two texts, the English text shall prevail. All documents, notices, waivers and all other communication written or otherwise between the Parties in connection with this Agreement shall be in English and Vietnamese provided that, in the event of a conflict between any two versions, the English version shall prevail.

19.11 Entirety

This Agreement and the Schedules attached hereto are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement. All prior written or oral understandings, offers or other communications of every kind pertaining to the sale or purchase of capacity and energy hereunder to EVN by the BOT Company or to the BOT Company by EVN are hereby abrogated and withdrawn.

19.12 Assignment and Support of Financing

This Agreement may not be assigned by either Party other than by mutual agreement between the Parties in writing. Notwithstanding the foregoing, for the purpose of financing the Facility, EVN agrees that the BOT Company may assign to the Lenders its rights and interest or create security over its rights and interest under or pursuant to (a) this Agreement and (b) the revenues or any of the rights or assets of the BOT Company. Without prejudice to EVN's rights here, the holder of any security created under this Article 19.12 shall not be prevented or impeded by EVN from enforcing such security in accordance with its terms the MOIT Acknowledgment and Consent, including exercising any right of step in or substitution. EVN agrees that it will execute the EVN Acknowledgment and Consent and discuss in good faith any additional documentation reasonably requested by the Lenders.

19.13 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective legal and permitted successors and assigns.

19.14 Confidentiality

Each of the Parties shall hold in confidence the agreements relating to the Facility and all documents and other information, whether technical or commercial, which is of a confidential nature supplied to it by or on behalf of the other Party relating to the design, construction, insurance, operation, maintenance, management and financing of the Facility and shall not publish, disclose or use the same for its own purposes other than as may be required to perform its obligations under this Agreement or as may be required by law.

19.15 Counterparts

This Agreement is executed in English and Vietnamese in counterparts and all so executed counterparts of each language shall constitute one agreement binding on both Parties hereto. In the event of a conflict between the English and Vietnamese versions, the English version shall prevail.

19.16 Conditions Precedent

This Agreement shall only be effective upon execution by both Parties and upon:

- (a) delivery by EVN of its written approval of the Coal Supply Agreement (and, if applicable, the Coal Transportation Agreement) as provided for in Article 5.1(i);
- (b) the payment in full by the Sponsors of the Success Fee and the Project Development Fee, each as defined in the RFP; and
- (c) the conditions precedent in paragraphs (a) through (d) of Article 25.13 of the BOT Contract have been satisfied.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

VIETNAM ELECTRICITY

Name:
Title:

BOT Company

Name:
Title:

**SCHEDULE 1:
FUNCTIONAL SPECIFICATIONS**

[Schedule not available]

**SCHEDULE 2:
TECHNICAL LIMITS AND CONTRACTED CHARACTERISTICS**

[Schedule not available]

**SCHEDULE 3:
INTERCONNECTION PROTECTION AND TELECOMMUNICATIONS SYSTEMS**

[Schedule not available]

**SCHEDULE 4:
TESTING AND COMMISSIONING**

[Schedule not available]

**SCHEDULE 5:
DETERMINATION OF TARIFF**

[Schedule not available]

**SCHEDULE 6:
METERING**

[Schedule not available]

**SCHEDULE 7:
FORM OF OPERATIONS SECURITY DEPOSIT**

**First Demand Guarantee for the Operations Security
Deposit**

Date: []
Guarantee no. []
Issued at: []

Dear Sir,

At the request and on behalf of our customer [*insert name of the BOT Company*] (the “**BOT Company**”), a corporation governed by the law of Vietnam, and to satisfy the stipulations of Article 8.3 of the Power Purchase Agreement executed on [*insert date*] between Vietnam Electricity (“**EVN**”) and the BOT Company (the “**Power Purchase Agreement**”), we hereby grant a first demand guarantee (the “**Guarantee**”) in favour of EVN.

Customer: BOT Company

Issuing Bank: []

Beneficiary: Vietnam Electricity

Guaranteed Amount: The equivalent in Dong at the date of issuance of this Guarantee of [●] Dollars.

Expiry Date: The date falling twelve months after the Issue Date (as defined in paragraph 7 of this Guarantee), subject always to any extension we may give pursuant to paragraph 8 of this Guarantee.

Funds available from: []

1. Subject to the other provisions of this Guarantee, we hereby give an irrevocable undertaking to pay in your favor, within five (5) Business Days of your first demand accompanied by presentation of a payment certificate (hereinafter the “**Payment Certificate**”), any sum demanded (hereinafter the “**Sum Demanded**”) up to the limit of the Guaranteed Amount specified above. Multiple demands may be made under this Guarantee, provided that the total of the Sums Demanded does not exceed the Guaranteed Amount.
2. The demand and Payment Certificate specified under this Guarantee shall be presented at the following address, and shall specifically mention the Guarantee number specified above. The Payment Certificate shall be drawn up in the form annexed hereto, and shall certify that the BOT Company has defaulted on the performance of its obligations under the Power Purchase Agreement and either: (i) payment of the liquidated damages specified in Article 8.1 of the Power Purchase Agreement are due and unpaid or (ii) actual damages have been suffered by EVN as a result of an uncured BOT Company Event of Default under the Power Purchase Agreement.
3. The Payment Certificate which you shall present to us must be signed by []. The Payment Certificate shall bear the date of the day on which it is presented, which presentment shall only take place during a business day. For the purposes this Guarantee, a “**business day**” shall mean any day on which financial institutions in Vietnam are not

closed for business. Any demand and Payment Certificate must be received by us in person before the Expiry Date specified above.

4. Should a demand for payment presented by you fail to comply strictly, in any manner whatsoever, with the conditions and procedures specified in this Guarantee, notice will be given to you promptly that the demand has been refused for non-compliance, and the documents will be returned to you or remain in our possession, at your convenience. In such a case, you will be entitled to correct the problem with the defective demand for payment, provided that this correction is carried out before the Expiry Date specified above.
5. By paying over to you the Sums Demanded pursuant to this Guarantee, we discharge ourselves of any responsibility concerning the truth of the representations contained in the Payment Certificate annexed to your demand for payment.
6. This Guarantee defines the full extent of our obligations, which cannot be modified or limited under any circumstances by reference to any other document or agreement other than the annexes specified herein.
7. This Guarantee shall enter into force on [*insert date which is three (3) months after the Commercial Operation Date*] (the “**Issue Date**”).
8. This Guarantee shall remain in force until the anniversary of the Issue Date. The Expiry Date can be extended by confirmation in writing on our part. On the Expiry Date this Guarantee shall automatically be cancelled and we shall be released from our obligations, except with respect to any demand for payment received by us before the Expiry Date in accordance with the conditions specified above. This Guarantee shall be returned to us forthwith following the Expiry Date.
9. This Guarantee is governed by Vietnamese law; in the event Vietnamese law has no applicable provision, then the relevant provisions of English law shall be applied. This Guarantee shall be subject to Uniform Rules and Practices for First Demand Guarantees of the International Chamber of Commerce. All costs incurred in connection with the issuance of the present letter of guarantee shall be borne by the BOT Company.
10. Any disputes arising in connection with this Guarantee or relating thereto shall be finally settled in accordance with the rules of arbitration of the International Chamber of Commerce by one or more arbitrators applying said rules. The place of arbitration shall be Singapore, and the proceeding conducted in English.

Per: []
Position: []

Annexes: Form of Payment Certificate

Annex

This Annex forms an integral part of the Guarantee No. [] dated [][] for the Operations Security Deposit of [BOT Company]

Payment Certificate

Attention: [name of representative of paying bank]

RE: PAYMENT CERTIFICATE

Dear Sirs,

I, the undersigned, refer to your first demand guarantee no. [] issued by [Issuing Bank], and hereby certify that:

1. I am duly authorized for the purposes of the present demand, in my capacity as [Chief Executive of EVN], to represent EVN, in favour of which Party the first demand guarantee has been issued;
2. Penalties are payable by the BOT Company as the result of the following act(s) of default [select one of the justifications below]:

Liquidated damages for Forced Outages and Maintenance Outages

- (i) For the Operating Year [specify the Operating Year in question], the sum of the Equivalent Forced Outages Energy, the Maintenance Outages Energy and the Scheduled Outages Energy has exceeded the specified limits and liquidated damages are payable by the BOT Company pursuant to Article 8.1 of the Power Purchase Agreement executed on [] between Vietnam Electricity (EVN) and the BOT Company on (the “**Power Purchase Agreement**”);
- (ii) The BOT Company has received notice of the amount of liquidated damages calculated in accordance with Article 8.1 of the Power Purchase Agreement and the BOT Company has failed to pay all or parts of said liquidated damages within the time limits provided for in Article 8.4 of the Power Purchase Agreement.
- (iii) The amount of liquidated damages owed for the Operating Year in question has been calculated in strict compliance with the provisions of Article 8.1 of the Power Purchase Agreement, with liquidated damages amounting to [insert amount]. The calculation of such liquidated damages is as follows:

[insert calculation]

- (iv) The undisputed amount of the liquidated damages is [] and has not been paid.
- (v) [The disputed amount of the liquidated damages is [] and has not been placed into escrow pursuant to the terms of the Power Purchase Agreement]*.

Consequently, I hereby request that you pay over an amount of [insert amount equal to the sum of the amounts in (iv) and, if applicable, (v) above].]

Damages resulting from a BOT Company Event of Default

- (i) A BOT Company Event of Default has occurred pursuant to Article 4.2 of the Power Purchase Agreement.
- (ii) Such BOT Company Event of Default has not been cured within the allowed cure period or such longer period as agreed on by the Parties.
- (iii) The amount of actual damage suffered by EVN as a result of such BOT Company Event of Default and to which EVN is entitled to in accordance with the terms of the Power Purchase Agreement, as supported by invoices, payment receipts and other document attached hereto is [].
- (iv) The undisputed amount of the actual damages is [] and has not been paid.
- (v) [The disputed amount of the liquidated damages is [] and has not been placed in escrow pursuant to the terms of the Power Purchase Agreement]*.

Consequently I hereby request that you pay over an amount of [insert an amount equal to the sum of (iv) and, if applicable (v) above].]

Unless otherwise defined, capitalised terms used in this certificate shall have the meaning referred to in the Power Purchase Agreement.

In witness thereof, the present certificate has been drawn up and delivered by the [of EVN] for all lawful purposes.

Executed in Hanoi on [_____].

* Delete if inapplicable
Attachments: specified invoices receipts

**SCHEDULE 8:
DISPATCH PROCEDURES**

[Schedule not available]

**SCHEDULE 9:
COAL SUPPLY AND TRANSPORTATION ARRANGEMENTS**

The following capitalised terms shall have the meaning set forth below. Any capitalised term not otherwise used in this Schedule 9 shall have the meaning given thereto in the Power Purchase Agreement.

| | |
|--|--|
| <i>Applicable Index</i> | As defined in Section 1.1 of this Schedule 9. |
| <i>Coal Traders</i> | As defined in this Schedule 9. |
| <i>Minimum Take Liability</i> | The cost incurred by the BOT Company, if any, due to the BOT Company's failure to satisfy an applicable Minimum Take Requirement |
| <i>Minimum Take Requirement</i> | The minimum take-or-pay quantity of Coal for each Operating Year required to be taken or transported by the BOT Company or paid for even if not taken or transported, as the case may be, pursuant to a Coal Supply Agreement provided that the aggregate minimum take-or-pay quantity under all Coal Supply Agreements in each Operating Year shall in no case be greater than the amount of Coal required in each Operating Year to provide seventy-five percent (75%) of the Planned Consumption for each Operating Year. For the avoidance of doubt, EVN shall not be required to pay the BOT Company for any Coal purchased in excess of the Minimum Take Requirement |
| <i>Proven Reserves</i> | Has the meaning defined in the Joint Ore Reserve Committee (JORC) Guidelines 2004 and the Coal Guidelines of the Coalfields Geological Committee of Australia. |
| <i>Planned Consumption</i> | The amount of Coal, in metric tonnes expected to be used for each Operating Year in accordance with the following formula: Planned Consumption = [insert] |

- 1.0 Coal and Transportation Price** (the “**Coal and Transportation Price**”): The Coal and Transportation Price for each Coal Supply Agreement and Coal Transportation Agreement shall be commercially competitive, taking into account (i) international Coal market prices and contract terms in the Asia-Pacific region, (ii) the Applicable Index(es), (iii) Coal quality/specifications, (iv) the term of the Coal Supply Agreement, (v) transportation and

delivery costs, and (vi) any Minimum Take Requirement. The Coal and Transportation Price at the Bid Date shall be specified (the “**Starting Price**”).

- 1.1 The calculation of the Coal and Transportation Price shall be based on objective parameters which are: (i) not subject to control or manipulation by the Coal Supplier and/or Coal Transporter, (ii) transparent and accessible to the MOIT and EVN, and (iii) objectively verifiable throughout the Term of the Power Purchase Agreement. The Coal and Transportation Price including all relevant terms in the Coal Supply Agreement and Coal Transportation Agreement approved by the MOIT and EVN shall remain in effect for the term of such Coal Supply Agreement and Coal Transportation Agreement, unless otherwise renegotiated pursuant to Section 2.0 below. Each Coal Supply Agreement and Coal Transportation Agreement must be subject to price adjustments linked to published indices each, as relevant, an “**Applicable Index**”.
- 1.2 Bidders will quote the Starting Price for Coal and the Starting Price for the transportation of such Coal on a CIF basis per INCOTERMS 2000, as provided in Annex E: Tariff Proposal Form of the RFP. Future prices will be determined on a monthly basis by reference to the Applicable Index and the Starting Price. Required indices for determining price adjustments for the Coal Supply Agreement and Coal Transportation Agreement shall each be linked to the Applicable Index below:
- (a) for Coal purchases under long-term contracts, the globalCOAL NEWC Index average for the previous twelve (12) months. For the avoidance of doubt, the starting average 12-month globalCOAL NEWC Index shall be [•]³; and
 - (b) for transportation of any Coal, the applicable sub-index of the Baltic Dry Index for the class of ship being used (namely, the Baltic Exchange Capesize Index, the Baltic Exchange Panamax Index, the Baltic Exchange Supermax Index and the Baltic Exchange Handysize Index) average for the previous twelve (12) months. For the avoidance of doubt, the starting average 12-month Baltic Exchange Capesize Index shall be [•], the starting average 12-month Baltic Exchange Panamax Index shall be [•], the starting average 12-month Baltic Exchange Supermax Index shall be [•], and the starting average 12-month Baltic Exchange Handysize Index shall be [•].

The Applicable Index shall be subject to periodic review every five (5) years to take into account any changes in the prevailing index for Coal.

- 1.3 Such prices should be consistent with those provided in Annex E: Tariff Proposal Form of the RFP, under the Fuel Charge section. Should there be any discrepancy in the figures provided as part of the Bidder’s Coal Supply and Transportation Arrangements (as stipulated in this Schedule 9) and those provided in Annex E: Tariff Proposal Form (Fuel Charge section) of the RFP those provided under Annex E: Tariff Proposal Form of the RFP will prevail and will be used for the calculation of the Levelized Tariff Price and in Schedule 5: (*Determination of Tariff*) of the Power Purchase Agreement. The MOIT reserves the right to adjust the figures in Annex E to ensure consistency with data that is submitted as part of the Bidder’s Coal Supply and Transportation Arrangements.

2.0 Coal Supplier and Security of Supply:

The BOT Company shall enter into one or more long term Coal Supply Agreement(s) and Coal Transportation Agreement(s) for the purchase and delivery of imported Coal to the

³ To be provided one month prior to the Bid Date

Facility, each with a Coal Supplier and Coal Transporter which shall (together under each related Coal Supply Agreement and Coal Transportation Agreement) have full responsibility for sourcing, supply, shipment and delivery of the contracted Coal to the plant unloading facilities. Any such Coal Supplier or Coal Transporter shall satisfy at least one of the following criteria:

- (1) be listed on a publicly traded stock exchange; or
- (2) have a consolidated net worth greater than:
 - (A) US\$250,000,000 (two hundred and fifty million Dollars), in the case of a Coal Supplier; or
 - (B) US\$50,000,000 (fifty million Dollars) in the case of a Coal Transporter; or
- (3) have a long term credit rating of at least BBB from Moody's,

and, in addition, the BOT Company must provide evidence to the satisfaction of EVN and the MOIT that the most recently available audited financial statements of such Coal Supplier or Coal Transporter report a net profit for that entity.

The Coal Supplier and Coal Transporter must not be subject to any current proceedings to bankrupt, liquidate, wind-up or dissolve such Coal Supplier or Coal Transporter (other than purely frivolous proceedings which are dismissed within ninety (90) Days of commencement of such proceedings).

The BOT Company shall not be permitted to renegotiate the terms of any Coal Supply Agreement or Coal Transportation Agreement unless:

- (a) the renegotiation results in the cost of the Coal or transport of the Coal, as the case may be, being more favourable to the BOT Company than the cost reflected under the terms of the existing Coal Supply Agreement or Coal Transportation Agreement;
- (b) the BOT Company provides to EVN a proposed adjustment to the Tariff wherein the Fuel Charge shall be reduced by fifty percent (50%) of any savings resulting from the renegotiation; and
- (c) EVN provides its prior written consent to the proposed adjustment to the Tariff provided by the BOT Company pursuant to paragraph (b) above.

The BOT Company shall also identify one or two back-up Coal Suppliers, suitable for at least a short period of supply (six (6) months or greater supply of Coal for the Facility) in the event that the BOT Company's primary Coal supply is not available.

The Coal Supplier may also act as Coal Transporter, but in such case, separate Starting Prices for Coal and Coal transport must still be specified as required under Section 1.2 above.

The aggregate rights of the BOT Company under such agreements shall include provisions to ensure the following:

- (i) firm obligations to supply and transport at least one hundred percent (100%) of annual contracted amounts of Coal sufficient to operate the Facility at its Planned Consumption over the term of the initial agreements which shall be for a period of at least ten (10) years for each agreement (and all Coal to be supplied and transported under such firm obligations must be at the same price and conditions which are applicable to the Coal purchased pursuant to any Minimum Take Requirement);
- (ii) under any Coal Transportation Agreement, the right of the BOT Company to transport Coal using alternative means in the event of the Transporter's inability to transport Coal (which shall not, in accordance with Article 6.6(d) of the Power Purchase Agreement) be at the expense of). For the avoidance of doubt, the term of each Coal Transportation Agreement shall match the term of the associated Coal Supply Agreement;
- (iii) under any Coal Supply Agreement, no restriction on the right of the BOT Company to procure Coal from other suppliers for any reason, subject to any agreed Minimum Take Requirement (stated as a take-or-pay obligation). For the avoidance of doubt, the sum of Coal volumes across all Coal Supply Agreements for each Operating Year shall be at least equal to the Planned Consumption;
- (iv) with respect to Coal to be supplied by Coal Suppliers that are not Coal Traders, committed adequate sources available to the Coal Supplier from which the Coal will be supplied in accordance with the requirements set out in Section 2.4 below; and
- (v) commitment from each of the BOT Company, Coal Supplier and Coal Transporter to negotiate in good faith the terms of the Coal Supply Agreement and Coal Transportation Agreement, as the case may be, based on the term sheet attached to either the letter of intent or memoranda of agreement submitted on the Bid Date, and to endeavor to reach agreement no later than ninety (90) Days prior to targeted Financial Close as required under Article 6.2(a) of the Power Purchase Agreement.

2.1 Remedies for interruption to supply or transport of Coal

Each Coal Supply Agreement and Coal Transportation Agreement shall include clear and comprehensive remedies for (i) breach of the agreement and (ii) force majeure affecting the supply or transport of Coal to the Facility. Such remedies shall be designed to ensure that in the event of an interruption in the supply or transport of Coal from the Coal Supplier or Coal Transporter due to a force majeure event or breach by the Coal Supplier or Coal Transporter of the Coal Supply Agreement and/or Coal Transportation Agreement, the BOT Company may promptly make alternative arrangements for the supply or transport of Coal to the Facility so that the operation of the Facility will not be affected and the following provisions shall apply.

Any increase in the cost of the supply or transportation of Coal resulting from other alternative supply arrangements or any other costs relating thereto shall not be borne by or passed through to EVN other than in accordance with Article 6.6 of the Power Purchase Agreement. The terms and conditions of each Coal Supply Agreement and/or Coal Transportation Agreement shall be consistent with the BOT Company's inability to claim interruption of coal supply as a Force Majeure Event under the Power Purchase Agreement

until the interruption of Coal supply due to a Force Majeure Event has continued for thirty (30) consecutive Days.

In the event that there is an interruption in the supply or transport of Coal to the Facility due to a force majeure event or breach by the Coal Supplier or Coal Transporter of the Coal Supply Agreement and/or Coal Transportation Agreement, the BOT Company shall immediately notify the MOIT and EVN of the interruption and the steps it is taking to mitigate such interruption (including, where the interruption is reasonably likely to be for a prolonged period or for an indeterminable amount of time, promptly commencing a search for a new long term source of Coal). The BOT Company shall cover any resulting supply or transportation shortfalls by utilising upwards tolerances in its other Coal Supply Agreements (including its back-up Coal Suppliers) and/or by making spot market purchases (in accordance with the terms of this Section 2.1), until such time as the interruption in the supply or transport of Coal ends or a substitute Coal Supply Agreement or Coal Transportation Agreement that complies with the provisions set forth herein, (including receiving formal notice of consent from the MOIT and EVN), has been agreed.

ForceMajeure

Where the supply or transport of Coal to the Facility is affected by an event of force majeure that (i) actually prevents or delays the affected party's performance of its obligations arising under the Coal Supply Agreement or Coal Transportation Agreement, (ii) is not within the reasonable control of the affected party, (iii) is without the fault or negligence of the affected party, and (iv) could not have been avoided by the affected party using reasonable care, the BOT Company's obligation to maintain the Coal stockpile required under Article 6.6 of the Power Purchase Agreement shall be suspended if the required Coal stockpile needs to be utilised to continue operation of the Facility.

EVN will assume the cost of spot market purchases and related transportation charges after the occurrence of a force majeure event affecting the Coal Supplier or Coal Transporter and terminating on the date which is the earlier of (i) the date on which such force majeure event is cured and (ii) the date which is six (6) months after such force majeure event-and provided that there is insufficient Coal in the Coal stockpile to meet the anticipated requirements of the Facility. If the force majeure event prolongs beyond 6 months and the BOT Company fails to enter into new Coal Supply Agreement or Coal Transporter Agreement, as case may be, that meets the requirements of this Schedule 9 within six (6) months or such longer period as the Parties may agree in writing, this shall constitute of BOT Company Event of Default in accordance with Article 4.2(n) of the PPA.

Breach of CoalSupplyAgreementor CoalTransportationAgreement

Where the supply or transport of Coal to the Facility is affected by either a breach by the Coal Supplier or Coal Transporter of the Coal Supply Agreement and/or Coal Transportation Agreement, the BOT Company's obligation to maintain the Coal stockpile required under Article 6.6 of the Power Purchase Agreement shall be suspended if the Coal stockpile needs to be utilised to continue operation of the Facility. In respect of Coal purchased by the BOT Company from the spot market following a breach by the Coal Supplier or Coal Transporter of the Coal Supply Agreement and/or Coal Transportation Agreement, EVN will only pay Coal at the lower of (i) the price stipulated in the relevant Coal Supply Agreement(s) and/or Coal Transportation Agreement(s), and the Fuel Charge shall be calculated by reference to the price set under the relevant Coal Supply Agreement(s) and/or Coal Transportation Agreement(s) and (ii) the actual spot price of Coal.

Failure by the BOT Company to enter into a new Coal Supply Agreement and/or Coal Transportation Agreement within six (6) months of the breach by the Coal Supplier or Coal Transporter of the Coal Supply Agreement and/or Coal Transportation Agreement will be a BOT Company Event of Default as defined in the Power Purchase Agreement.

EVN shall be excused from its Minimum Take Liability, on a Day for Day basis, if the supply or transport of Coal to the Facility is affected by either (A) a force majeure event affecting the supply or transport of Coal to the Facility or affecting the Facility's ability to consume the Coal under the PPA or (B) a breach by the Coal Supplier or Coal Transporter of the Coal Supply Agreement and/or Coal Transportation Agreement.

2.2. Compatibility

None of the terms and conditions of a Coal Supply Agreement or Coal Transportation Agreement shall conflict with the terms of the Project Agreements or have any adverse impact on the MOIT or EVN's rights or obligations under any of the Project Agreements.

2.3 Compliance with Law

The terms and conditions of the Coal Supply Agreement and Coal Transportation Agreement, and the performance of all obligations by the parties thereto, shall comply with the laws of any jurisdiction having jurisdiction over such agreements or the performance of obligations thereunder.

2.4 Reserves and Infrastructure

The criteria set forth in this Section 2.4 shall apply to Coal Suppliers unless Section 2.5 below applies.

- (a) Under each Coal Supply Agreement, the BOT Company shall procure that the relevant Coal Supplier shall have obtained appropriate contractual rights to mine and export Coal through a coal cooperation agreement or similar agreement which will include the transportation, equipment and infrastructure necessary to provide the Facility with the supply requirements under the Coal Supply Agreement and that any Coal Transporter has sufficient equipment and infrastructure to transport Coal in accordance with its transport obligations.
- (b) Each mine from which a Coal Supplier will obtain the Coal to be supplied under a Coal Supply Agreement must comply with the following:
 - (A) if the BOT Company enters into only one (1) Coal Supply Agreement, then the Coal Supplier must be capable of producing at least four million (4,000,000) tonnes of Coal per annum;
 - (B) if the BOT Company enters into two (2), three (3), four (4) or five (5) Coal Supply Agreements, then each Coal Supplier must be capable of producing at least [●] million tonnes of Coal per annum; and
 - (C) if the BOT Company enters into more than five (5) Coal Supply Agreements, then each Coal Supplier must be capable of producing at least [●] tonnes of Coal per annum.

- (c) Each such mine must have the higher of (i) aggregate Proven Reserves sufficient for all their contractual commitments (including commitments to the Project) and (ii) the capacity to produce the relevant number of tones required under paragraph (b) above until the expiry of the Coal Supply Agreement, plus thirty percent (30%). This requirement shall be confirmed by an independent geologist's report. Evidence will also need to be provided, and independently certified, by an expert as to the quality and technical characteristics of the Coal.

2.5 Criteria for Coal Traders

Coal Suppliers that have not obtained appropriate contractual rights to mine and export Coal through a coal cooperation agreement or similar agreement ("Coal Traders") shall have, and the BOT Company must provide evidence of:

- (A) an annual physical coal through put delivery volume for each of the last ten (10) years in excess of [●] million tonnes;
- (B) an annual physical coal through put delivery volume for each of the last three (3) years in excess of [●] million tonnes; and
- (C) satisfactory performance supplying at least three (3) million tonnes per year on at least two (2) thermal power projects for the last five (5) years (evidence shall include details as to the relevant points of contact at each such thermal power project).

2.6 Coal Quality and Rejection

Any Coal purchased by the BOT Company shall comply with all technical and environmental requirements of the Facility.

If during the term of the Coal Supply Agreement, physical modifications to the Facility are required in order for the operation of the Facility to meet performance, emissions or other environmental standards, the cost of such modifications shall not be borne by EVN to the extent that such modifications are necessitated by a change in the quality of Coal supplied to the Facility (to the extent that the change in quality of Coal is not itself caused by a Change in Law). For the avoidance of doubt, any change in the quality parameters of the Coal will be subject to the mutual agreement of the BOT Company and the Coal Supplier. Coal that fails to meet required specifications and standards shall be rejected. Coal rejected by the BOT Company for failing to meet quality or other specifications shall be included in the calculation of any "Minimum Take Requirement" unless replaced by the Coal Supplier in the same Operating Year.

3.0 Minimum Take

- 3.1 In cases where the BOT Company has a Minimum Take Requirement and provided that the terms have been approved by the MOIT and EVN in accordance with this Schedule 9, EVN agrees to pay to the BOT Company in accordance with Article 3.4 of the Power Purchase Agreement.
- 3.2 The Minimum Take Requirement shall be accounted for on an annual basis for each Operating Year Shipments of Coal are intended to be reasonably consistent and with the capacity of the Facility to accept Coal in terms of unloading rate and stockpile capacity.

- 3.3 Where the BOT Company has more than one Coal Supply Agreement, each Coal Supply Agreement shall receive a proportional weighting relative to the total Minimum Take Requirement and any Coal mixing requirements of all Coal Supply Agreements, where necessary for calculating the Minimum Take Liability and its allocation amongst the parties.
- 3.4 Any requirement that the BOT Company purchase a minimum quantity of Coal shall not require purchases of Coal in excess of the quantity of Coal, in the aggregate under all Coal Supply Agreements, required to operate the First Unit or the Facility, as the case may be, at greater than seventy-five percent (75%) of the Planned Consumption. Any Minimum Take Requirement shall be commercially reasonable, taking into account:
- (a) the minimum quantity required to be purchased and the period over which Coal purchases may be made to meet such minimum quantity;
 - (b) obligations on the part of the BOT Company and Coal Supplier or Coal Transporter, as the case may be, to mitigate liability for shortfalls in minimum Coal purchase requirements;
 - (c) provisions allowing EVN to mitigate potential liability for any shortfall in the minimum Coal purchase requirements by directing delivery of Coal to ports or locations other than the Facility in Vietnam (including on-selling Coal to third parties);
 - (d) obligations on the Coal Supplier if requested by the BOT Company following a request from EVN to deliver Coal paid for but not taken pursuant to the Minimum Take Requirement upon notice delivered within three (3) months of the end of the year in which the Minimum Take Requirement was not met (such Coal to be delivered within one (1) year of the end of the year in which the Minimum Take Requirement was not met) using the price for such Coal calculated in accordance with the Coal Supply Agreement as of the date of the payment of such Coal (and for the avoidance of doubt, such delivery of Coal shall not count towards the calculation of the minimum Coal purchases in that year of delivery); and
 - (e) the price of the Coal.
- 3.5 EVN shall not be required to pay the BOT Company any Minimum Take Liability that arises due to any of the events stated in Article 3.4(b) of the Power Purchase Agreement.

4.0 Review and approval of coal Supply Arrangements

- 4.1 The BOT Company shall not enter into a Coal Supply Agreement or Coal Transportation Agreement other than in accordance with this Schedule 9 and the Power Purchase Agreement.
- 4.2 The MOIT or EVN's review, approval, objection or rejection of the draft Coal Supply Agreement and Coal Transportation Agreement shall not:
- (a) excuse, lessen, diminish or affect in any way the performance by the BOT Company of its obligations under this Schedule 9 or the Project Agreements;
 - (b) increase, expand or affect in any way the obligations of MOIT or EVN under this Schedule 9 or the Project Agreements;

- (c) affect the application or interpretation of the provisions of this Schedule 9 or the Project Agreements; or
- (d) result in the MOIT and/or EVN incurring any liability whatsoever for the performance or consequences of the performance of the Coal Supply Agreement or Coal Transportation Agreement.

4.3 The BOT Company shall provide the MOIT and EVN with copies of the fully executed Coal Supply Agreement (and, if applicable, the Coal Transportation Agreement) no later than ninety (90) Days before targeted Financial Close in accordance with Article 6.2(a) of the Power Purchase Agreement.

5.0 Spot Purchases

In addition to spot purchases made in accordance with Section 2.1 above in the event of an interruption in the supply or transport of Coal to the Facility, Coal shall be sourced from the spot market, by the BOT Company if it is cheaper at the time than the cost under an existing Coal Supply Agreement or Coal Transportation Agreement (after any applicable Minimum Take Requirement has been met) or when required due to a breach by a Coal Supplier or Coal Transporter or a force majeure event affecting the supply and transport of Coal, but, subject to Article 6.6(e) of the Power Purchase Agreement, only upon obtaining prior approval from EVN. The BOT Company may procure Coal from the spot market meeting the required Project specifications, from any supplier, via any Coal Transporter in accordance with the following:

- (a) EVN shall pay the cost of Coal purchased and the cost of its transportation to the Facility in accordance with paragraph (b) below.
- (b) The Facility shall be deemed to commence consumption of any Coal purchased on the spot market on the date in the Operating Year in which such Coal has arrived on the Site, in the proportion by which the quantity of such spot market Coal relates to other Coal on the Site procured under any other Coal Supply Agreement, but in the case of an interruption due to a force majeure event, no earlier than thirty (30) after the commencement of such force majeure event. On such date, the Energy Payments that become due shall be adjusted in each monthly calculation to reflect the BOT Company's cost per kWh of actual Coal consumed in proportion to the sources of Coal on the Site and the BOT Company's Coal mixtures during the applicable month, and adjusted to reflect the even sharing between EVN and the BOT Company of savings or additional costs of the spot purchases in relation to the prices in the relevant Coal Supply Agreement(s) and/or Coal Transportation Agreement(s).
- (c) Any Coal purchased on the spot market shall comply with the technical and environmental requirements of the Facility.

Spot market purchases resulting from a force majeure event affecting the supply or transport of coal to the Facility shall be determined in accordance with Section 2.1.

**SCHEDULE 10:
EVN ACKNOWLEDGMENT AND CONSENT**

**NOTICE OF ASSIGNMENT AND REQUEST FOR
ACKNOWLEDGMENT AND CONSENT
IN RESPECT OF THE [●] POWER PROJECT**

Hanoi, _____ [●]

To: Vietnam Electricity

Dear Sirs:

Pursuant to this Notice of Assignment and Request for Acknowledgment and Consent (“**Notice**”), we hereby notify you of the following:

1. We refer to the Power Purchase Agreement (the “**Power Purchase Agreement**”) dated [] entered into between Vietnam Electricity (“**EVN**”) and [] (the “**BOT Company**”).
2. We hereby notify you that the BOT Company has assigned to (the “**Onshore Security Agent**”) ⁴ on behalf of the Lenders all of its rights, title and interests, in, to and under the Power Purchase Agreement, including all claims, and all moneys which at any time may be or become paid or payable to the BOT Company, under or in respect of the Power Purchase Agreement and the proceeds of any claims, awards or judgments. The BOT Company has simultaneously assigned to the Onshore Security Agent on behalf of the Lenders all of its rights, title and interests in, to and under the BOT Contract, the Power Purchase Agreement and the other Vietnam Project Documents.
3. We confirm that, subject to the terms of paragraph 4 below and paragraph (d) of the EVN Acknowledgment and Consent below, notwithstanding the terms of such assignment, you may continue to treat the BOT Company as entitled to exercise and enforce all of its rights, discretions and remedies under or in respect of the Power Purchase Agreement unless and until you receive notice to the contrary from the Onshore Security Agent.
4. We hereby irrevocably authorise and instruct you to pay any amount which may become due and payable to the BOT Company under the Power Purchase Agreement (including without limitation sums arising from any judgement or arbitration award) to the account(s) designated by the BOT Company unless and until you receive notice from the Onshore Security Agent to the contrary, in which event you should make all future payments as directed by the Onshore Security Agent.
5. We confirm that final and unconditional payment of an amount in accordance with paragraph 4 above will satisfy your obligation to pay the corresponding amount to the BOT Company under the Power Purchase Agreement (as the case may be).
6. A copy of an MOIT Acknowledgment and Consent (“**MOIT Consent**”) is attached to this Notice. Pursuant to the MOIT Consent, the Government, through the MOIT, has agreed to specific procedures relating to termination of the Vietnam Project Documents, procedures for the cure of defaults of the BOT Company and step-in of the Lenders (or their assignee)

⁴ At the option of the BOT Company, EVN will enter into this Acknowledgment and Consent with the Onshore Security Agent or the Offshore Security Agent

to the rights of the BOT Company under the Vietnam Project Documents (including the Power Purchase Agreement), and enforcement of the Lenders security interests respecting the Project, including international arbitration with respect to the enforcement of any rights under the MOIT Consent.

7. The BOT Company shall continue to perform its obligations (including payment obligations) under the Power Purchase Agreement until such time as the Onshore Security Agent, or its duly appointed nominee or assignee, agrees to assume the rights and obligations (including payment obligations) of the BOT Company under the Power Purchase Agreement and the BOT Contract.

Terms defined in the MOIT Consent have the same meaning in this Notice. Unless otherwise defined in this Notice or in the MOIT Consent, capitalised terms and expressions used in this Notice shall have the meaning referred to in the Power Purchase Agreement.

All references to this Notice are to this Notice and the Acknowledgment and Consent set out below.

This Notice (and its terms) may only be revoked by notice in writing from the Onshore Security Agent.

References in this Notice to the Power Purchase Agreement shall be construed as references to such Power Purchase Agreement as amended or varied.

This Notice is governed by Vietnamese law; in the event Vietnamese law has no applicable provision, then the relevant provisions of English law shall be applied.

Please acknowledge receipt of this notice by signing and returning one copy of this Notice (including the Acknowledgment and Consent set out below) to the BOT Company and one copy to the Onshore Security Agent.

Yours faithfully
For and on behalf of
[Name of the BOT Company]

For and on behalf of
[Name of Onshore Security Agent]

Acknowledgment and Consent of Vietnam Electricity

To: [Name of the BOT Company] [address]

[Name of Onshore Security Agent] for and on behalf of the Lenders (including any successors or assignees) [address]

Acknowledgment

We hereby acknowledge receipt of the Notice, of which this Acknowledgment and Consent is a part, and of the MOIT Consent, which is attached to the Notice, and:

1. acknowledge, consent to, and undertake to comply with, the terms of the Notice;
2. confirm that we have not received notice of the interest of any third Party in the Power Purchase Agreement referred to in the Notice;
3. agree to make all payments due from us under the Power Purchase Agreement to the Onshore Security Agent as directed in the Notice and without set-off or counterclaim or deduction of any kind for any reason;
4. agree that the Onshore Security Agent, the Lenders and we shall be bound by Article 4 of the Power Purchase Agreement as if such provisions were set out in full herein;
5. agree to comply with the provisions of the MOIT Consent as they relate to the rights of the Lenders to enforce specific procedures relating to termination of the Vietnam Project Documents, procedures for the cure of defaults of the BOT Company and step-in of the Lenders (or their assignee) to the rights of the BOT Company under the Vietnam Project Documents (including the Power Purchase Agreement), and enforcement of the Lenders security interests respecting the Project, including international arbitration with respect to the enforcement of any rights under the Notice and the MOIT Consent; and
6. agree to accept the performance of the Onshore Security Agent, or its duly appointed nominee or assignee, in place of the BOT Company so long as the Onshore Security Agent, or its duly appointed nominee or assignee, performs the obligations (including all payment obligations) of the BOT Company under the Power Purchase Agreement.

This Acknowledgment is governed by Vietnamese law; in the event Vietnamese law has no applicable provision, then the relevant provisions of English law shall be applied.

For and on behalf of
Vietnam Electricity
[]
[Date]

**SCHEDULE 11:
INFRASTRUCTURE LIST AND TIMING**

[Schedule not available]

**SCHEDULE 12:
SITE PREPARATION**

[Schedule not available]

**SCHEDULE 13:
ENVIRONMENTAL REQUIREMENTS**

[Schedule not available]