

# **BOT CONTRACT**

**BETWEEN**

**ON THE VIETNAMESE SIDE**

**THE MINISTRY OF INDUSTRY AND TRADE OF  
THE SOCIALIST REPUBLIC OF VIETNAM (MOIT)**  
the “Authorised State Body” appointed by the Government of the Socialist Republic  
of Vietnam

**AND**

**ON THE FOREIGN SIDE**

**[●]**

**[●]**

**[●] BOT POWER PROJECT**

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

## TABLE OF CONTENTS

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<b>ARTICLE 1 DEFINITIONS AND INTERPRETATION .....</b>	<b>8</b>
1.1 Definitions.....	8
1.2 Schedules .....	21
1.3 Appendices.....	22
1.4 Interpretation.....	22

---

<b>ARTICLE 2 AGREEMENT TO IMPLEMENT THE FACILITY .....</b>	<b>24</b>
2.1 Purpose.....	24
2.2 BOT Company to Sign.....	24
2.3 Proposal Security and Performance Security Deposit .....	24
2.4 Facility .....	25
2.5 Timing.....	25
2.6 Provision of Documents by the BOT Company .....	25
2.7 MOIT Observation Visits.....	27
2.8 BOT Company Progress Reports.....	27
2.9 Commissioning .....	27
2.10 Liquidated Damages .....	27

---

<b>ARTICLE 3 NAME, ADDRESS AND BRANCH OFFICES.....</b>	<b>30</b>
3.1 Name.....	30
3.2 Address .....	30

---

<b>ARTICLE 4 LIABILITIES AND OBLIGATIONS .....</b>	<b>31</b>
--	-----------

---

<b>ARTICLE 5 TERM OF THE BOT COMPANY AND BOT CONTRACT; TRANSFER.....</b>	<b>32</b>
5.1 Term of the BOT Company .....	32
5.2 Transfer Upon Expiration of the Operational Term.....	32
5.3 Term of this BOT Contract.....	33

---

<b>ARTICLE 6 ENVIRONMENT PROTECTION .....</b>	<b>34</b>
---	-----------

---

<b>ARTICLE 7 INVESTMENT CAPITAL .....</b>	<b>35</b>
7.1 Definition .....	35
7.2 Initial Amount of the Investment Capital.....	35
7.3 Debt to Equity Ratio .....	35
7.4 Adjustment of the Investment Capital .....	35

---

<b>ARTICLE 8 CHARTER CAPITAL.....</b>	<b>37</b>
---------------------------------------	-----------

---

<b>ARTICLE 9 LOANS AND CREDITS.....</b>	<b>38</b>
---	-----------

---

<b>ARTICLE 10 PRECONDITIONS TO CAPITAL CONTRIBUTION.....</b>	<b>40</b>
10.1 Contribution of Capital .....	40
10.2 Preconditions.....	40
10.3 Best Efforts .....	42
10.4 Initial Capital Contribution .....	42

---

<b>ARTICLE 11 ASSIGNMENT OF THE CHARTER CAPITAL .....</b>	<b>43</b>
<b>ARTICLE 12 MOIT’S RESPONSIBILITIES.....</b>	<b>44</b>
<b>ARTICLE 13 THE SPONSORS’ RESPONSIBILITIES .....</b>	<b>46</b>
<b>ARTICLE 14 CONTRACTORS.....</b>	<b>47</b>
<b>ARTICLE 15 LONG TERM SALES CONTRACT AND OTHER CONTRACTS.....</b>	<b>48</b>
15.1 Power Purchase Agreement .....	48
15.2 Other Contracts .....	48
<b>ARTICLE 16 CURRENCY .....</b>	<b>49</b>
16.1 Currency of Payments.....	49
16.2 Right to Remit.....	49
16.3 Right to Convert.....	49
<b>ARTICLE 17 TAXES AND IMPORT DUTIES.....</b>	<b>50</b>
17.1 Payment in Accordance with Laws.....	50
17.2 Taxation Regime.....	50
<b>ARTICLE 18 INSURANCE .....</b>	<b>52</b>
18.1 During the Construction Period .....	52
18.2 During the Commercial Operation Period .....	53
18.3 Insurance Required Throughout the Operational Term .....	54
18.4 Policy Endorsements.....	54
18.5 Certificates of Insurance .....	55
18.6 Preference for Vietnam Insurers .....	55
<b>ARTICLE 19 REPRESENTATIONS AND WARRANTIES OF THE MOIT .....</b>	<b>56</b>
<b>ARTICLE 20 REPRESENTATIONS AND WARRANTIES OF EACH SPONSOR AND THE BOT COMPANY; COVENANTS OF THE BOT COMPANY.....</b>	<b>57</b>
20.1 Representations and Warranties.....	57
20.2 Covenants.....	57
<b>ARTICLE 21 DEFAULT AND TERMINATION.....</b>	<b>59</b>
21.1 Termination of BOT Contract.....	59
21.2 BOT Company Events of Default.....	59
21.3 MOIT Events of Default .....	59
21.4 Remedies for Default .....	60
21.5 Lenders’ Step-In Right.....	61
21.6 Termination Payment - MOIT Event of Default.....	62
21.7 Termination Payment - BOT Company Event of Default.....	65
21.8 Termination for Extended Non-Governmental Force Majeure.....	66
21.9 Appointment of Independent Expert.....	69
21.10 Special Termination .....	70
<b>ARTICLE 22 FORCE MAJEURE AND CHANGE IN LAW .....</b>	<b>71</b>
22.1 Non-Governmental Force Majeure Event.....	71
22.2 Non-Governmental Force Majeure Event Defined .....	71
22.3 Exclusions from Non-Governmental Force Majeure Event.....	72
22.4 Extended Non-Governmental Force Majeure Event.....	72

22.5	Notification and Obligation to Remedy .....	72
22.6	Limitation on Non-Governmental Force Majeure Events.....	73
22.7	Government Event .....	73
22.8	Payment during Government Event.....	76
22.9	Rights in Relation to Extended Non-Governmental Force Majeure Event.....	77
22.10	Favourable Change in Law .....	77
22.11	Unfavourable Change in Law .....	78
22.12	Consequences of a Government Event .....	78
<b>ARTICLE 23 DISPUTE RESOLUTION.....</b>		<b>80</b>
23.1	Consultation .....	80
23.2	Arbitration.....	80
23.3	Co-ordination of Disputes.....	81
23.4	Expert.....	82
<b>ARTICLE 24 LIQUIDATION OF THE BOT COMPANY.....</b>		<b>83</b>
24.1	Circumstances for Liquidation.....	83
24.2	Use of the BOT Company's Name or Trademark .....	83
<b>ARTICLE 25 GENERAL .....</b>		<b>84</b>
25.1	Language.....	84
25.2	Governing Law .....	84
25.3	Notices .....	84
25.4	Only Agreement.....	84
25.5	Waiver.....	84
25.6	Commercial Acts; Sovereign Immunity.....	85
25.7	Confidentiality .....	86
25.8	No Authority to Bind .....	86
25.9	Limitation of Liability.....	86
25.10	Indemnification .....	87
25.11	Assertion of Claims.....	87
25.12	Defense of Claims.....	87
25.13	Effectiveness .....	88
25.14	Amendment.....	88
25.15	Survival.....	88
25.16	Successors and Assigns.....	88
25.17	Relationship of the Parties .....	88
25.18	Payments by the MOIT .....	89
25.19	Third Parties.....	89
<b>ARTICLE 26 ELECTRICITY MARKET REFORMS.....</b>		<b>90</b>
26.1	Assignment by EVN .....	90
26.2	Conditions Precedent .....	90
26.3	Electricity Market Reform Implementation.....	91
Schedule 1 <b>SITE PLAN</b>		<b>95</b>
Schedule 2 <b>TIMING</b>		<b>96</b>
Schedule 3 <b>DOCUMENTS REQUIRED BY ARTICLE 2.6(A)</b>		<b>97</b>
Schedule 4 <b>END of TERM TESTS</b>		<b>98</b>
Schedule 5 <b>TRANSFER TABLE OF CONTENTS</b>		<b>99</b>
Schedule 6 <b>PERMITTED CONTRACTING PARTIES</b>		<b>100</b>

Schedule 7	<b>GOVERNMENT AUTHORISATIONS AND AGREEMENTS REQUIRED</b>	<b>101</b>
Schedule 8	<b>FORM OF PERFORMANCE SECURITY DEPOSIT</b>	<b>103</b>
Schedule 9	<b>DEEMED COMMISSIONING CAPACITY PAYMENTS</b>	<b>107</b>
<b>Annexure A</b>	<b>BOT Company Charter</b>	<b>109</b>
<b>Annexure B</b>	<b>Land Lease Agreement</b>	<b>110</b>
<b>Annexure C</b>	<b>Power Purchase Agreement</b>	<b>111</b>
<b>Annexure D</b>	<b>Investment Certificate</b>	<b>112</b>
<b>Annexure E</b>	<b>Government Guarantee</b>	<b>113</b>
<b>Annexure F</b>	<b>Ministry of Justice Legal Opinion</b>	<b>114</b>
<b>Annexure G</b>	<b>Decision</b>	<b>115</b>
<b>Annexure H</b>	<b>Moit Acknowledgment and Consent</b>	<b>116</b>

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## BOT CONTRACT

### PARTIES

The parties (the “**Parties**”) consisting of:

- (1) **ON THE VIETNAMESE SIDE: THE MINISTRY OF INDUSTRY AND TRADE** (the “**MOIT**”), a Government Body which is appointed by the Government pursuant to Decree 108 (as defined below) as Authorised State Body to enter into and implement this BOT Contract.

Address: [●]  
Telephone: [●]  
Facsimile: [●]  
Represented by: [●]  
Position: [●]  
and

- (2) **ON THE FOREIGN SIDE:**

[●], a company incorporated under the laws of [●], whose principal place of business is at [●], Telephone [●], Facsimile [●], (“[●]”);

[●], a company incorporated under the laws of [●], whose principal place of business is at [●], Telephone [●], Facsimile [●], (“[●]”);

Each a “**Sponsor**” and collectively referred to as the “**Sponsors**”; and

The BOT Company (as defined below) to be established pursuant to this BOT Contract (as defined below) and the Investment Certificate (as defined below). The BOT Company will sign this BOT Contract immediately after it is established by issuance of the Investment Certificate,

based on:

the 1992 Constitution of the Socialist Republic of Vietnam (“**Vietnam**”);

the Law on Investment in Vietnam dated December 29, 2005 (the “**Law on Investment**”), including Articles 16(2) and 66 of the Law on Investment, pursuant to which provision of the Government Guarantee (as defined below) shall confirm that the Project (as defined below) is an important project as required thereby;

Decree No. 108/2006/ND-CP dated September 9, 2006 of the Government providing details and guiding implementation of some provisions of the Law on Investment;

Decree No. 108/2009/ND-CP dated November 27, 2009 promulgating Regulations on Investment on the Basis of Build-Operate-Transfer (BOT), Build-Transfer-Operate (BTO) and Build-Transfer (BT) Contracts applicable to foreign investment in Vietnam (“**Decree 108**”);

Official Letter [\_\_\_\_\_] dated [\_\_\_\_\_] appointing MOIT to be the Authorised State Body (as defined below) for the Project (as defined below);

the Law on Enterprises dated December 29, 2005; and

other legislation of the Vietnam as amended and published to the date of signing this Build-Operate-Transfer Contract (this “**BOT Contract**”).

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**WHEREAS**, the MOIT issued a Request for Proposal (“**RFP**”) for the development, design, financing, construction, operation, and maintenance of a coal-fired electric generation plant with a capacity of [●] MW (net) to be constructed at [●], Vietnam, (the “**Facility**”, as more fully defined below) based on technical, economic, and financial analysis; and

**WHEREAS**, the Sponsors were selected as the entity to develop the Facility based on the competitive tendering process.

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

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**Article 1**  
**Definitions and Interpretation**

**1.1 Definitions**

Capitalised terms used in this BOT Contract have the following meanings or if no meaning is stated in this Article 1.1 for a capitalised term then it has the meaning given to such term in the Power Purchase Agreement (as defined below).

**Acceptance Commercial Operation Date**

Has the meaning set forth in Article 2.10(c).

**Affiliate**

Means with respect to any Sponsor, any person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Sponsor. For purposes of this definition, “control” means the power to direct or cause the direction of the management policies of a body corporate by contract, agency or otherwise.

**Article**

Means an article of this BOT Contract unless the context requires otherwise.

**Asset Register**

Means the BOT Company’s register of assets which are owned by the BOT Company and which together comprise the Facility (including, for the avoidance of doubt, all supplies and inventories and excluding, for the avoidance of doubt, all cash, accounts receivable and other forms of current assets). The Asset Register shall be maintained by the BOT Company and available for viewing by the MOIT upon reasonable request.

**Assignment**

Has the meaning set forth in Article 11.1.

**Authorised State Body**

Has the meaning set forth in Decree 108.

**Bank**

Means the State Bank of Vietnam.

**Bid Date**

Means [●].

**BOT Agreements**

Has the meaning set forth in Article 23.3(a).

**BOT Company**

Means the company to be established by the Sponsors pursuant to this BOT Contract and which will come into existence when the Investment Certificate is issued.



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**BOT Company Event of Default**

Has the meaning set forth in Article 21.2.

**BOT Company Event of Default Termination Payment**

Has the meaning set forth in Article 21.7(b).

**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.

**Buy Out Option**

Has the meaning set forth in Article 21.7(a).

**Capacity Charge**

Has the meaning set forth in the Power Purchase Agreement.

**Certificate of Right to Use the Site**

Means a certificate of Right to Use the Site for the Operational Term issued by the People's Committee of [●] Province in the name of the BOT Company.

**Change in Law**

Means any change in or repeal of any existing Laws of Vietnam or enactment or making of any new Laws of Vietnam (whether favourable or unfavourable to the BOT Company and/or a Sponsor) occurring after the Bid Date that either:

- (a) results in any change in respect of taxes, tax preferences, duties or the right to remit or convert currencies applicable to the financing, construction, operation, maintenance or transfer of the Facility; or
- (b) adopts, changes or repeals requirements for the financing, construction, operation or maintenance of the Facility or results in any change in the rights or obligations of the BOT Company directly or indirectly through a change in the rights or obligations of its Contractors, the Coal Supplier and, if applicable, the Coal Transporter in respect of the Project and affecting the BOT Company,

but which in either case shall exclude circumstances where alternate provisions under Laws of Vietnam existing on the Bid Date become applicable to the BOT Company solely because of the action or inaction of the BOT Company.

**Charter**

Means the charter of the BOT Company in the form of Appendix A.

**Charter Capital**

Has the meaning set forth in Article 8.1.

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**Circular 244**

Has the meaning set forth in Article 17.2(c)(i).

**Coal**

Means solid fossil carbonaceous fuel meeting the Facility's technical and environmental requirements as more specifically defined in the Coal Supply Agreement(s).

**Coal Supplier**

Has the meaning set forth in the Power Purchase Agreement.

**Coal Supply Agreement**

Has the meaning set forth in the Power Purchase Agreement.

**Coal Transportation Agreement**

Has the meaning set forth in the Power Purchase Agreement.

**Commercial Operation Date**

Has the meaning set forth in the Power Purchase Agreement.

**Commercial Operation Period**

Means, with respect to the First Unit, the period beginning on the Commercial Operation Date of the First Unit and ending on the last Day of the Operational Term and with respect to the Facility, the period beginning on the Commercial Operation Date of the Facility and ending on the last Day of the Operational Term.

**Commission**

Has the meaning set forth in the Power Purchase Agreement.

**Committed Shareholder**

Means [●], a company incorporated under the laws of [●], with its registered office located at [●]

*[Only applicable if BOT Company is established by a consortium].*

**Competitive Market**

Has the meaning set forth in Article 26.3.

**Construction Contract**

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

**Construction Period**

Means, with respect to the First Unit, the period beginning on the Construction Start Date and ending on the date falling one Day prior to the Commercial Operation Date of the First Unit and

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with respect to the Facility, the period beginning on the Construction Start Date and ending on the date falling one Day prior to the Commercial Operation Date of the Facility.

**Construction Start Date**

The date on which significant physical construction work commences on the Site following issuance of a full notice to proceed to the EPC Contractor. For purposes of this definition, significant physical construction work shall not include basic civil works such as (a) any soil or geophysical investigation or testing, (b) grubbing, leveling or excavation of the site, (c) the driving of test piles, or (d) mobilisation of the Contractors on site in preparation for full notice to proceed or completion of items (a), (b) or (c) in this definition.

**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 this Agreement (and the respective subcontractors of all of the foregoing).

**Contracted Capacity**

Has the meaning set forth in the Power Purchase Agreement.

**Contracted Heat Rate**

Has the meaning set forth in the Power Purchase Agreement.

**Confidential or Proprietary Information**

Has the meaning set forth in Article 25.7(a).

**Day**

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

**Debt to Equity Ratio**

Has the meaning set forth in Article 7.3.

**Decision**

Means the Decision of the Prime Minister of Vietnam reported in Official Letter [ ] dated [ ] officially appointing the MOIT as the Authorised State Body to execute this BOT Contract, a copy of which is set out in Appendix G.

**Deemed Commercial Operation Date**

Has the meaning set forth in the Power Purchase Agreement.

**Default**

Has the meaning set forth in Article 21.4(a).

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### **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%).

### **Dollars or USD**

Means the lawful currency of the United States of America.

### **Dong or VND**

Means the lawful currency of Vietnam.

### **EIA**

Has the meaning set forth in Article 6.1.

### **Electrical Interconnection Facilities**

Has the meaning set forth in the Power Purchase Agreement.

### **Electricity Law**

Means the Electricity Law No. 28/2004/QH11 passed by the National Assembly of Vietnam on December 3, 2004, Decree 105/2005/ND-CP dated August 17, 2005 of the Government stipulating Details and Guidelines to Implement a Number of Provisions of the Electricity Law, Decision 26/2006/QD-TTg dated January 26, 2006 of the Government approving the Roadmap and Conditions for Formation and Development of Different Levels of the Electricity Market in Vietnam and other relevant legislation on electricity in Vietnam.

### **Electricity License**

Means the electricity license to be issued by the MOIT to the BOT Company in accordance with the Electricity Law, Decision 15/2008/QD-BCT, with respect to its required-two-phase approval process described therein (as issued, revised or replaced), and this BOT Contract.

### **End of Term Tests**

Has the meaning set forth in Article 5.2(a).

### **EPC Contract**

Means [●] (this contract will be a “Construction Contract”).

### **EPC Contractor**

Means [●] (this contractor will be a “Contractor”).

### **Escrow Account**

Means any offshore accounts required by the Financing Documents (including, if required, a debt payment and debt service reserve account, a major overhaul reserve account, maintenance reserve account and a general disbursement account) in the name of the BOT Company or an

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overseas nominee of the Lenders which is controlled by the Lenders or the Security Agent on terms required under the Financing Documents and for which the BOT Company is required to seek the approval of the Bank to open and utilise.

#### **EVN**

Means Vietnam Electricity, a public utility engaged in the generation, transmission, distribution and sale of electric capacity and energy in Vietnam established according to the Decision of 163/2007/QĐ-TTg dated October 22, 2007 by the Prime Minister of Vietnam, or any successor thereto.

#### **EVN Event**

Has the meaning set forth in the Power Purchase Agreement.

#### **Expert**

Has the meaning set forth in Article 23.4.

#### **Extended Non-Governmental Force Majeure Event**

Has the meaning set forth in Article 22.4.

#### **Extended Non-Governmental Force Majeure Termination Date**

Has the meaning set forth in Article 21.8(a).

#### **Extended Non-Governmental Force Majeure Termination Notice Date**

Has the meaning set forth in Article 21.8(a).

#### **Facility**

Has the meaning set forth in the Power Purchase Agreement.

#### **Financial Close**

Means the date on which (a) all conditions of all Lenders to the first disbursement of loans by Lenders and (b) all the preconditions in Article 10.2 of all Sponsors to the contribution of Charter Capital by the Sponsors have been met or waived.

#### **Financing Documents**

Means the loan agreements, notes, indentures, security agreements, letters of credit or guarantees (excluding the Government Guarantee), contracts for political risk coverage, Hedging Agreements and other documents relating to the original debt financing of the acquisition, ownership, construction, operation or maintenance of the Facility, including any Refinancing thereof in accordance with Article 9.4, and excluding, for the avoidance of doubt, any Subordinated Shareholder Loans.

#### **Financing Party**

Means a finance party to the Financing Documents, together with their respective successors and assignees.

#### **First Dispute**

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Has the meaning set forth in Article 23.3(a).

**First Unit**

Has the meaning set forth in the Power Purchase Agreement.

**Force Majeure Event**

Means any Non-Governmental Force Majeure Event or any Government Event (including, for the avoidance of doubt, an EVN Event).

**Force Majeure Sale Option**

Has the meaning set forth in Article 21.8(a).

**Full Term**

Has the meaning set forth in Article 5.3(b).

**Government**

Means the Government of the Socialist Republic of Vietnam.

**Government Authorisation**

Means all permits, licenses, authorisations, decrees, waivers, approvals, privileges and consents required from or issued by any Government Body under the Laws of Vietnam (including the Investment Certificate, the Electricity License, the Decision for the Land Lease Agreement and those other approvals, licenses and permits listed in Schedule 7) and necessary to allow the Parties to meet their obligations and enjoy fully all of their respective rights as provided for in this BOT Contract and all other Project Agreements.

**Government Body**

Means the President of Vietnam, the Prime Minister of Vietnam, the National Assembly MONRE, MPI, the MOIT, the Government, including any ministry or Government agency of equivalent rank, authorised department, agency and authority of the Government, or any equivalent local or provincial body or authority (including, for the avoidance of doubt, the People's Committee of [●] Province), the Bank and any other government organ, including the courts, procuracy offices and any subdivision or successor bodies of the foregoing which partially or fully take over the functions of any of the foregoing.

**Government Event**

Has the meaning set forth in Article 22.7(a).

**Government Guarantee**

Means the guarantee to be given by the MOIT in favour of the BOT Company and the Sponsors as set out in Appendix E.

**Hedging Agreement**

Means any agreement entered into by the BOT Company from time to time in respect of hedging obligations incurred by it for the sole purpose of protecting itself from fluctuations in interest rates or currency exchange rates solely in connection with the Financing Documents and not for

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speculative purposes; provided that only agreements in respect of hedging obligations incurred in connection with the debt financing that fall within the Debt to Equity Ratio shall be treated as Hedging Agreements.

**Independent Expert**

Has the meaning set forth in Article 21.9(a).

**Independent Engineer**

Has the meaning set forth in the Power Purchase Agreement.

**Initial Dependable Capacity**

Has the meaning set forth in the Power Purchase Agreement.

**Investment Capital**

Has the meaning set forth in Article 7.1.

**Investment Certificate**

Means the investment certificate to be issued by the MPI and pursuant to which the BOT Company is established, as set out in Appendix D.

**Investor Termination Notice Date**

Has the meaning set forth in Article 21.6(a).

**Investor Sale Option**

Has the meaning set forth in Article 21.6(a).

**Joint Tribunal**

Has the meaning set forth in Article 23.3(a).

**Laws of Vietnam**

Means any or all of the following which are published and publicly available: (a) constitutions, laws, resolutions issued by the National Assembly, (b) ordinances, resolutions issued by the Standing Committee of the National Assembly, (c) orders and decisions issued by the State President, (d) decrees issued by the Government, (e) decisions issued by the Prime Minister of Vietnam, (f) resolutions issued by the Judicial Council of the Supreme People's Court; (g) circulars issued by the Chief Justice of the Supreme People's Court, (h) circular issued by the Director of the Supreme People's Procuracy, (i) circulars issued by Ministers, Head of Ministerial-legal Agencies, (j) decisions issued by the General State Auditor, (k) joint resolutions issued by the Standing Committee of the National Assembly or the Government and central bodies of socio-politic organisations, (l) joint circulars issued jointly by the Chief Justice of the Supreme People's Court and the Director of the Supreme People's Procuracy or jointly by the Ministers or heads of Ministerial-level agencies and the Chief Justice of the Supreme People's Procuracy, or among the Ministers and heads of ministerial-level agencies, and (m) legal normative documents issued by the People's councils and People's Councils and People's Committees.

**Land Lease Agreement**

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Means a lease between the People's Committee of [●] Province and the BOT Company for the lease of the Site in the form of Appendix B.

**Lead Member**

Means [●], a company incorporated under the laws of [●], with its registered office located at [●]

*[Only applicable if BOT Company is established by a consortium].*

**Lead Sponsor**

Has the meaning set forth in Article 11.1.

**Lender**

Means any entity other than the Sponsors and their Affiliates which lends money or provides credit to, guarantees any obligations of, or is a counterparty to a Hedging Agreement with the BOT Company, including multi-lateral agencies and export credit agencies, and any party acting on behalf of the foregoing, that are parties to the Financing Documents (including their successors, transferees and assigns).

**LD Limitation of Liability**

Means [●].

**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, the MOIT may specify another page or service displaying the appropriate rate after consultation with the BOT Company.

**Minimum Performance Standards**

Means that the Facility's Dependable Capacity is at least ninety-five per cent. (95%) of the Initial Dependable Capacity and the heat rate is no more than one hundred and five per cent. (105%) of the Contracted Heat Rate of the current Operating Year, and such Minimum Performance Standards shall be subject to the BOT Company's rights with respect to Change in Law, and shall be achieved in compliance with the performance, safety, emissions and other environmental standards applicable to the Facility at the time of testing, in accordance with the terms of this BOT Contract and the Power Purchase Agreement. For the avoidance of doubt, in order for the Facility to be meeting Minimum Performance Standards, all utilities and equipment (including spare utilities and equipment) of the Facility shall be operable under normal conditions, subject to normal wear and tear.

**Moody's**

Means Moody's Investor Services, Inc.

**MONRE**

Has the meaning set forth in Article 6.1.

**MOIT Acknowledgment and Consent**



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Means the document to be issued by the MOIT regarding the rights of the Lenders with respect to the Project as agreed to in this BOT Contract, as set out in Appendix H.

**MOIT Deemed Commissioning Event**

Means any of:

- (a) Government Event (other than an EVN Event);
- (b) the unavailability of, or delay in the full completion of commissioning of 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 a Government Body (other than EVN) or a Vietnam Project Counterparty (other than EVN); or
- (c) 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 a Government Body (other than EVN),
- (d) that causes the Commission of the First Unit or the Facility to be delayed beyond the date on which the First Unit or the Facility, as the context requires, would otherwise have been Commissioned; provided that a MOIT Deemed Commissioning Event shall not occur (i) if any of the events listed in clauses (a) through (c) above result from the actions or omissions of EVN or (ii) prior to the Original Required Commercial Operation Date of the First Unit or the Facility, as the case may be.

**MOIT Event of Default**

Has the meaning set forth in Article 21.3.

**MOIT Side Termination Notice Date**

Has the meaning set forth in Article 21.7(a).

**MOJ Legal Opinion**

Means the legal opinion to be given by the Minister of Justice as set out in Appendix F.

**MPI**

Means the Ministry of Planning and Investment.

**National Assembly**

Means the National Assembly of Vietnam.

**Non-Governmental Force Majeure Event**

Has the meaning set forth in Article 22.2.

**Notice of Intention to Terminate**

Has the meaning set forth in Article 21.4(a).

**Notice of Termination**

Has the meaning set forth in Article 21.4(a).

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**O&M Contract**

Means a contract, if any, to be entered into by the BOT Company and the O&M Contractor for the operation and maintenance of the Facility.

**O&M Contractor**

Means any power generation facility operation and maintenance company(ies), and any successor(s) thereto, appointed or to be appointed by the BOT Company in accordance with Article 14.2 (this contractor will also be a “Contractor”).

**Operational Term**

Has the meaning set forth in Article 5.3(a).

**Original Required Commercial Operation Date**

Has the meaning set forth in the Power Purchase Agreement.

**Party or Parties**

Means the MOIT, the Sponsors, the BOT Company or any of them.

**People’s Committee of [●] Province**

Means the People’s Committee of [●] Province, which is the Vietnamese party to the Land Lease Agreement.

**Performance Security Deposit**

Has the meaning set forth in Article 2.3(b).

**Power Purchase Agreement**

Means a contract in the form of Appendix C to be entered into by the BOT Company and EVN for sale by the BOT Company of electricity to EVN.

**Preferred International Bank**

Means an international bank with a minimum long-term debt rating of A- by Standard & Poor’s or A3 by Moody’s.

**Project**

Means the acquisition, design, development, engineering, procurement, construction, manufacture, erection, Commissioning, testing, ownership, operation, maintenance, financing and transfer of the Facility.

**Project Agreement**

Means any of:

- (a) a Vietnam Project Document;
- (b) a Construction Contract;
- (c) the Coal Supply Agreement(s);

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- (d) the Coal Transportation Agreement(s) (if applicable);
  - (e) the O&M Contract (if any); and
  - (f) any other agreement relating to the Facility and made between the BOT Company and any other person, approved by the MOIT and deemed a Project Agreement by the MOIT and BOT Company in writing.

### **Project Securities**

Means (a) a contract or contracts wherein the BOT Company is mortgagor or pledgor or the grantor of any other form of security interest and one or more Lenders or the Security Agent is mortgagee or pledgee or beneficiary of a security interest and whereby one or more of the land use rights, buildings, Facility, plant, equipment, lease or other assets or rights of the BOT Company, is the subject of a mortgage, pledge or charge and is provided as security to Lenders for repayment of loans made to the BOT Company, in conformity with the Laws of Vietnam and (b) all other types of security capable of being created under or in accordance with the Laws of Vietnam and provided as security to Lenders for repayment of loans made to the BOT Company; provided that, Project Securities shall exclude an assignment of the Land Lease Agreement and the creation of other security interests in land for the benefit of a foreign entity as mortgagee or pledge and, for the avoidance of doubt, Project Securities shall include a mortgage or pledge of the Charter Capital.

### **Proposal Security**

Means:

- (a) an unconditional and irrevocable bank guarantee and/or
- (b) an unconditional and irrevocable letter of credit in the aggregate amount of [●].

### **Prudent Utility Practices**

Means those practices, methods, techniques and standards, as 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.

### **Purchase and Sale Date**

The date of completion of the transfer of the assets listed in the Asset Register and the payment of the Vietnam Side Termination Payment, the BOT Company Event of Default Termination Payment or the Termination Payment for Non-Governmental Force Majeure, as applicable.

### **Refinancing**

Has the meaning set forth in the Power Purchase Agreement.

### **Related Project Dispute**

Has the meaning set forth in Article 23.3(a).

### **Required Commercial Operation Date**

Has the meaning set forth in the Power Purchase Agreement.

### **Required Financial Close Date**

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Has the meaning set forth in Article 2.3(a).

**Security Agent**

Means the entity (or entities) appointed as security agent under any Financing Document and acting as agent of the Lenders in relation to, inter alia, perfection of security, enforcing the security arrangements and the distribution of proceeds of such enforcement and of the proceeds of any insurance in respect of which the security agent is named as loss payee or which has been assigned to the security agent.

**Security Agreement**

Means any agreement referred to in Article 9.3(a).

**Shared Facilities and Services Agreement.**

Has the meaning set forth in the Power Purchase Agreement.

**Shareholder Agreement**

Means any agreement entered into by the shareholder(s) or members of the BOT Company in connection with the contribution of Charter Capital.

**Site**

Means the parcel of land at [●] Province, Vietnam, leased to the BOT Company by the People's Committee of [●] Province pursuant to the Land Lease Agreement, on which the Facility is located and as identified in Schedule 1.

**Site Reference Conditions**

Means the conditions (including for barometric pressure, ambient air temperature, relative humidity and cooling water temperature) specified in Table 6.1 "Site Reference Conditions" set out in Schedule 1 of the Power Purchase Agreement.

**Standard & Poor's**

Means Standard & Poor's, a division of The McGraw-Hill Companies, Inc.

**Startup Fuel**

Has the meaning set forth in the Power Purchase Agreement.

**Subordinated Shareholder Loans**

Means loans or advances provided by a Sponsor or an Affiliate of any Sponsor to the BOT Company, so long as such loans or advances are unsecured and subordinated to the Financing Documents pursuant to subordination agreements or other subordination arrangements.

**Successor Entity**

Has the meaning set forth in Article 26.1.

**Termination Date**

Has the meaning set forth in Article 21.4(a).

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**Termination Payment for Non-Governmental Force Majeure**

Has the meaning set forth in Article 21.8(b).

**Threshold Capacity**

Has the meaning set forth in the Power Purchase Agreement.

**Transfer Date**

Has the meaning set forth in Schedule 5.

**Unforced Outage**

Has the meaning set forth in the Power Purchase Agreement.

**Unit**

Has the meaning set forth in the Power Purchase Agreement.

**Vietnam**

Means the Socialist Republic of Vietnam.

**Vietnam Project Counterparty**

Means any party (other than the BOT Company or the Sponsors) who is a party to a Vietnam Project Document.

**Vietnam Project Document**

Means any of:

- (a) this BOT Contract;
- (b) the Power Purchase Agreement;
- (c) the Land Lease Agreement;
- (d) the Government Guarantee;
- (e) the Decision;
- (f) the MOJ Legal Opinion;
- (g) the Investment Certificate;
- (h) any acknowledgment and consent to assignment in respect of any of the foregoing with or in favour of the Security Agent; and
- (i) any other agreement relating to the Facility and made between the BOT Company and a Government Body and approved in writing by the MOIT.

**Vietnam Side Termination Payment**

Has the meaning set forth in Article 21.6(b).

**1.2 Schedules**

The schedules to this BOT Contract (each a “**Schedule**”) form part of this BOT Contract and shall have the same force and effect as if expressly set out in the body of this BOT Contract and

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any reference to this BOT Contract as from time to time supplemented, varied or amended shall include the said Schedules. In the event that there is a contradiction between the terms of a Schedule and the articles of this BOT Contract, the articles of this BOT Contract shall prevail for all legal and contractual purposes.

### **1.3 Appendices**

The appendices to this BOT Contract (each an “**Appendix**”) are documents which will be signed by the parties named therein after the Investment Certificate is issued and their content may not be changed without the prior written consent of both the MOIT and the Sponsors.

### **1.4 Interpretation**

In this BOT Contract (including its Schedules and Appendices), unless otherwise stated:

- (a) Any references to:
  - (i) any agreement (including this BOT Contract) 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 or a particular Article, Schedule or Appendix, shall be a reference to the caption or relevant Article, Schedule or Appendix in or to this BOT Contract;
  - (iii) a particular paragraph or sub-paragraph, if contained in an Article, Schedule or Appendix shall be a reference to the relevant paragraph or sub-paragraph of that Article, Schedule or Appendix; 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 and 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 next following Business Day.
- (e) The words “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) The Schedules contained herein form an integral part of this BOT Contract.
- (g) Where reference is made in this BOT Contract 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(s) unless otherwise stated.
- (h) 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 more of the Parties hereto such that a reasonable person

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would consider it as important in the context of its agreement to enter into this BOT Contract; 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 BOT Contract that such item is material to that Party.

- (i) 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.

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**Article 2**  
**Agreement to Implement the Facility**

**2.1 Purpose**

The purposes of this BOT Contract are:

- (a) to provide for the establishment of the BOT Company as a single purpose company established to implement the Facility on a build, operate, transfer basis in accordance with the Charter and the terms of this BOT Contract including the terms of all the Appendices; and
- (b) to state the rights and obligations of the Parties.

**2.2 BOT Company to Sign**

Immediately after the Investment Certificate is issued in terms acceptable to the Parties, the BOT Company will by its duly authorised representative sign this BOT Contract and from that date the BOT Company will become bound as a party to this BOT Contract and will be entitled to the rights, and obliged to carry out all obligations, of the BOT Company stated in this BOT Contract.

**2.3 Proposal Security and Performance Security Deposit**

- (a) The Sponsors have provided the MOIT with the Proposal Security on the Bid Date, for the purpose of securing the BOT Company's obligation to achieve Financial Close. The BOT Company shall maintain the Proposal Security at all times until the earlier of (i) the delivery by the BOT Company to the MOIT of the Performance Security Deposit and (ii) the termination of this BOT Contract due to the breach or default of this BOT Contract by the BOT Company prior to the delivery by the BOT Company to the MOIT of the Performance Security Deposit. The MOIT shall be entitled to appropriate the full amount of the Proposal Security if (i) any of the Project Agreements are terminated at any time prior to the submission by the BOT Company to the MOIT of the Performance Security Deposit and such termination relates to the breach or default by the BOT Company or (ii) if the preconditions to capital contribution set forth in Article 10.2 are not satisfied or waived by notice in writing to the MOIT on or before the date required under Article 10.3. In the event that the Performance Security Deposit has not been provided pursuant to Article 2.3(b) below and the Proposal Security has an expiry date that shall occur prior to the date by which Financial Close must occur pursuant to Article 4.2(c) of the Power Purchase Agreement (the "**Required Financial Close Date**"), the BOT Company shall procure that a bank or financial institution approved by the MOIT shall, prior to the date falling thirty (30) Days before the expiry of the Proposal Security, issue a replacement Proposal Security, in a form acceptable to the MOIT, to take effect at least ten (10) Business Days prior to the expiry of the Proposal Security and with an expiry date no earlier than the Required Financial Close Date. The MOIT shall return the Proposal Security to the BOT Company no more than three (3) Business Days after the date on which the Performance Security Deposit is delivered to the MOIT in accordance with Article 2.3(b) below. Except as a result of the failure to perform or breach by any Vietnam Project Counterparty of any Vietnam Project Document or a Force Majeure Event, breach of this Article 2.3(a) shall entitle the MOIT to appropriate the full amount of the Proposal Security.
- (b) On or before Financial Close, the BOT Company shall provide to the MOIT a security deposit (the "**Performance Security Deposit**") in an amount in Dollars equal to the greater of (i) [●] Dollars and (ii) [●] per cent. of the initial Investment Capital provided in Article 7.2, as security for its obligations hereunder including the obligations of the



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BOT Company to pay damages. The Performance Security Deposit shall be returned upon 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 punchlist items under the Construction Contracts have been completed and the BOT Company has taken over the Facility from the relevant Contractors and (b) six(6) months after the Commercial Operation Date of the Facility; provided that, in either case, the Performance Security Deposit shall only be returned upon the delivery of the Operations Security Deposit to EVN in accordance with the timeframe described in Article 2.3(a) above and the Power Purchase Agreement. The Performance Security Deposit shall consist of one of the following: (i) a cash payment to be deposited into an account nominated by the MOIT in Vietnam; (ii) an unconditional and irrevocable first demand guarantee issued by a Preferred International Bank substantially in the form of Schedule 8 or otherwise acceptable to the MOIT; (iii) an unconditional and irrevocable direct pay letter of credit issued by a Preferred International Bank in a form acceptable to the MOIT; or (iv) any combination of the above acceptable to the MOIT.

## **2.4 Facility**

### **2.5 The BOT Company will arrange for and cause to be completed in accordance with all requirements of this BOT Contract and the Power Purchase Agreement, (a) the design, construction, Commissioning, (b) prior to the expiration of the Operational Term, the operation and maintenance of the Facility and (c) upon expiration of the Operational Term, the transfer of the ownership of the Facility to an entity nominated by the MOIT or other Government Body. Timing**

The Facility is intended to be implemented in accordance with the timetable stated in Schedule 2. The MOIT, on behalf of the Government, shall use reasonable efforts to procure that all Government Authorisations required from any Government Body for the implementation of this BOT Contract and the Facility are obtained in sufficient time to enable the BOT Company to meet the timetable stated in Schedule 2. The Sponsors and the BOT Company shall use reasonable efforts such that all contracts become effective to meet the timetable stated in Schedule 2. If the Required Commercial Operation Date is extended in accordance with this BOT Contract and the Power Purchase Agreement, the BOT Company and the MOIT, in consultation with the Independent Engineer, shall revise Schedule 2 to extend those milestones affected by the circumstances leading to the Required Commercial Operation Date extension.

## **2.6 Provision of Documents by the BOT Company**

The BOT Company shall submit the following documents to the MOIT within the time indicated. The documents submitted shall be for the information of the MOIT only and require no approval from the MOIT, except for approval of technical designs, delivered as part of the documents provided pursuant to clause (a) below, and the approval of the Coal Supply Agreement(s) and (if applicable) the Coal Transportation Agreement(s) pursuant to the Power Purchase Agreement. In the event that the MOIT does not object to the technical designs that are submitted to the MOIT for approval as part of the documents delivered pursuant to clause (a), such technical designs shall be deemed approved thirty (30) Days after their submission to the MOIT. In the event that the MOIT does object to the technical designs on the basis that such technical designs are not in compliance with the RFP, the BOT Contract and the Power Purchase Agreement and the Parties cannot agree on the changes necessary to such technical designs, the dispute shall be resolved in accordance with Article 23.

- (a) Within the times provided in Schedule 3 prior to the Construction Start Date, a copy of the contractual documents (including the Construction Contracts) covering the technical designs, engineering, procurement and construction, including all schedules

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thereto, and basic plans and specifications for the construction of the Facility, in each case as set out in Schedule 3 but excluding any (i) information which the BOT Company is not permitted to disclose pursuant to any reasonable confidentiality undertaking with a Contractor and/or (ii) internal or sub-contractor pricing information that the BOT Company and Contractor reasonably deem to be confidential, except, in each case, as required by the Laws of Vietnam.

- (b) On or before the date on which such Government Authorisation is required and not later than thirty (30) days before Financial Close, copies of all Government Authorisations that have been issued to the BOT Company for the design, financing, construction, operation and maintenance of the Facility.
- (c) As soon as available, but not later than thirty (30) Days before the scheduled commencement of the testing of the First Unit and the Facility, a copy of the detailed programs and protocols agreed with EVN pursuant to Article 6.2(j) of the Power Purchase Agreement.
- (d) At least sixty (60) Days before the scheduled commencement of testing and Commissioning of the First Unit and the Facility, a copy of the notice delivered pursuant to Article 6.2(k) of the Power Purchase Agreement.
- (e) As soon as available, but not later than the Construction Start Date, a copy of all insurance policies and certificates of insurance required for construction as indicated in Article 18.
- (f) As soon as available, but not later than the Required Commercial Operation Date of the First Unit, copies of all insurance policies and certificates of insurance obtained pursuant to Article 18 other than those provided under the preceding clause.
- (g) As soon as available, plans and specifications for the civil, architectural mechanical and electrical works and as-built drawings for the Facility but excluding any (i) information which the BOT Company is not permitted to disclose pursuant to any reasonable confidentiality undertaking with a Contractor or (ii) internal or sub-contractor pricing information that the BOT Company and Contractor reasonably deem to be confidential, except, in each case, as required by the Laws of Vietnam.
- (h) The BOT Company shall develop and as soon as available, but not later than ten (10) Days prior to Financial Close, furnish a quality assurance program reasonably acceptable to the MOIT and, pursuant to Article 6.2(g) of the Power Purchase Agreement, EVN covering material aspects of design, engineering, procurement, equipment, construction and testing of the Facility and such other related documents as the MOIT may reasonably request.
- (i) Within the times provided in Schedule 3 prior to the Construction Start Date, a copy of the O&M Contract (if any) but excluding any (i) information which the BOT Company is not permitted to disclose pursuant to any reasonable confidentiality undertaking with the O&M Contractor or (ii) internal or sub-contractor pricing information that the BOT Company and O&M Contractor reasonably deem to be confidential, except, in each case, as required by the Laws of Vietnam.
- (j) Within the times provided in Schedule 3 prior to the Construction Start Date, a copy of the Coal Supply Agreement(s) and (if applicable) the Coal Transportation Agreement(s).
- (k) Within the times provided in Schedule 3 prior to the Construction Start Date, a copy of the Financing Documents and any Shareholder Agreements.

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## 2.7 MOIT Observation Visits

The BOT Company shall provide appropriate space for the MOIT to maintain a presence at the Site in order to observe the progress of the construction of the Facility and shall allow the MOIT to regularly visit the Site after the Commercial Operation Date of the First Unit. The MOIT shall have the right to have its agents or employees at the Site with two(2) Business Days prior notice, provided that the agents or employees of the MOIT use their best efforts not to interfere with or delay the construction or operation of the Facility. In case of emergency due to explosions, fire, death or serious injury and the like within the Site, the MOIT and any relevant Government Body shall have the right to visit the Site without giving notice. All persons visiting the Facility on behalf of the MOIT or any Government Body shall comply with the reasonable instructions and directions of the BOT Company or its Contractors or their respective officers and shall comply with all safety rules respecting the Site and the Facility which are applicable to the BOT Company and Contractor personnel. The MOIT shall bear responsibility for any claim, demand, proceedings, loss or damage to persons or property caused by the negligence or wilful misconduct of such persons or the negligence or wilful misconduct of the MOIT during such visits.

## 2.8 BOT Company Progress Reports

Beginning with the date of execution of this BOT Contract by the BOT Company and continuing up to the Commercial Operation Date of the Facility, the BOT Company shall submit progress reports to the MOIT prior to the fifteenth (15<sup>th</sup>) Day of each month. Such reports shall cover progress in the development, permitting, financing, construction, and operation of the Facility for the preceding month.

## 2.9 Commissioning

The BOT Company shall deliver to the MOIT a copy of any notice or document delivered to EVN pursuant to Article 6 and Article 7 of the Power Purchase Agreement. The MOIT shall be entitled to attend and observe any testing or Commissioning which EVN attends.

## 2.10 Liquidated Damages

- (a) If the Commercial Operation Date of the First Unit or the Facility, as the context requires, has not occurred by the relevant Required Commercial Operation Date and such date has not been extended by the Parties, the BOT Company shall pay the MOIT as liquidated damages for delays in Commissioning of the First Unit or the Facility, as the context requires, a sum equal to [●] Dollars per MW of the Contracted Capacity per Day or part Day of such delay.
- (b) In the event that upon completion of the Initial Dependable Capacity tests used to establish the Initial Dependable Capacity of the First Unit or the Facility, as the context requires, reveal that the Initial Dependable Capacity of the First Unit or the Facility, as the context requires, is less than the relevant Contracted Capacity, and the First Unit or the Facility, as the context requires, runs despite the deficiency the BOT Company shall pay to the MOIT as liquidated damages:
  - (i) in the case of the First Unit, an amount equal to [●] Dollars per MW per Day of the shortfall of the Initial Dependable Capacity or the most recently tested Dependable Capacity, as applicable, below one hundred per cent. (100%) of the relevant Contracted Capacity; provided that liquidated damages shall cease to accrue under this clause (i) once liquidated damages begin to accrue under clause (ii) below; and

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- (ii) in the case of the Facility, an amount equal to [●] Dollars per MW per Day of the shortfall of the Initial Dependable Capacity or the most recently tested Dependable Capacity, as applicable, below one hundred per cent. (100%) of the relevant Contracted Capacity,

in each case up to the amount of the Performance Security Deposit and the BOT Company shall have a period of up to ninety (90) Days to undertake any necessary actions to increase the Initial Dependable Capacity to the Contracted Capacity of the First Unit or the Facility, as the context requires, at its own cost. For the avoidance of doubt, the liquidated damages described in (i) and (ii) shall cease to accrue on the earlier of (A) the expiration of such period or earlier termination of such period at the BOT Company's discretion and (B) the date the Initial Dependable Capacity equals or exceeds the Contracted Capacity. If upon the expiration of such period, the Initial Dependable Capacity is set at a level that is below the Contracted Capacity of the First Unit or the Facility, as the context requires, the BOT Company shall pay to the MOIT as additional liquidated damages:

- (iii) in the case of the First Unit, an amount equal to [●] Dollars per kW of the shortfall; and
- (iv) in the case of the Facility, an amount equal to [●] Dollars per kW of the shortfall, *minus* any amounts paid to the MOIT pursuant to Article 2.10(b)(iii) above,

in each case up to an aggregate amount equal to the LD Limitation of Liability. In the event that the Initial Dependable Capacity of the Facility is set level at or above the Contracted Capacity of the Facility, but the BOT Company has paid liquidated damages to the MOIT pursuant to clause (iii) above with respect to the First Unit, then the BOT Company shall be refunded the sum of such liquidated damages less [●] Dollars per MW per Day of the shortfall of the Initial Dependable Capacity of the First Unit below the Contracted Capacity of the First Unit from the date of such payment until the date the Initial Dependable Capacity of the Facility is set at the Contracted Capacity of the Facility.

- (c) In the event that upon completion of the Initial Dependable Capacity tests used to establish the Initial Dependable Capacity of the Facility (and upon expiration of the ninety (90) Day period described in paragraph (b) to the extent used by the BOT Company, at its option) reveal that the Initial Dependable Capacity of the Facility is less than the Threshold Capacity, the MOIT shall either accept or reject the Facility at its sole discretion following consultation with, and agreement by, EVN within sixty (60) Days. If the MOIT accepts or, within sixty (60) days, fails to accept or reject the Facility and the Facility runs despite the deficiency, (i) the BOT Company shall pay to the MOIT liquidated damages calculated in accordance with Article 2.10(a), if applicable, and Article 2.10(b) and (ii) the Commercial Operation Period for the Facility shall begin (the “**Acceptance Commercial Operation Date**”). If the MOIT rejects the Facility, then a BOT Company Event of Default will have occurred pursuant to Article 21.2(a) and the remedies shall be governed by Article 21.
- (d) In no event shall the total liquidated damages assessed under the above paragraphs of this Article exceed the LD Limitation of Liability.
- (e) To obtain payment of the liquidated damages under this Article 2.10, the MOIT shall first make a demand in writing for payment to the BOT Company and, if the BOT Company fails to pay such amount within ten (10) Business Days of such demand, the MOIT shall be entitled to draw upon the Performance Security Deposit until it has been fully drawn down, and, for the avoidance of doubt, the BOT Company shall remain

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liable for liquidated damages in excess of the Performance Security Deposit up to the LD Limitation of Liability.

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**Article 3**  
**Name, Address and Branch Offices**

**3.1 Name**

The BOT Company shall be named:

“[●]” in Vietnamese; and

“[●]” in English.

**3.2 Address**

The head-office of the BOT Company and the Facility shall be located at [●] Province. As appropriate and as determined by the BOT Company, the BOT Company shall be entitled to establish representative offices in Hanoi and/or Ho Chi Minh City. The temporary head-office of the BOT Company shall be located at [●], Vietnam. Opening of the head-office and registration of its operations shall be in accordance with the Laws of Vietnam.

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**Article 4**  
**Liabilities and Obligations**

The BOT Company shall be a company with limited liability enjoying the status of a juridical person under the Laws of Vietnam. The Sponsors shall be liable to the BOT Company only up to the amount of their subscribed contributions in the Charter Capital of the BOT Company and shall have no other liability to the BOT Company, the MOIT or to any third party, except in the event that the loss or liability was due to the fraud or wilful misconduct of the Sponsors.

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**Article 5**  
**Term of the BOT Company and BOT Contract; Transfer**

**5.1 Term of the BOT Company**

The term of the BOT Company shall be for the Full Term, and the Investment Certificate shall be valid for such period.

**5.2 Transfer Upon Expiration of the Operational Term**

- (a) Unless this BOT Contract is terminated early, during the last year of the Operational Term, the BOT Company shall perform the tests described in Schedule 4 (“**End of Term Tests**”) and the final transfer overhaul described in Schedule 5. In the event that the End of Term Test results demonstrate that the Facility requires repair and/or replacement of equipment and parts, the BOT Company shall carry out such corrective action as is required to meet the requirements of Schedule 5.
- (b) Subject to the provisions of this BOT Contract, upon expiration of the Operational Term, the BOT Company shall transfer the ownership of the Facility to an entity nominated by the MOIT or other Government Body at no charge, free and clear of any liens and encumbrances, and the MOIT shall procure that such transferee shall accept such transfer of the Facility. If the Facility does not satisfy the requirements of Schedule 5, including the performance requirements set forth in Section 4.12 of Schedule 5, the BOT Company shall immediately take such actions as will cause the Facility to comply with the requirements of Schedule 5. If the BOT Company fails to cause the Facility to comply with the requirements of Schedule 5 within thirty (30) Days of the expiration of the Operational Term, the MOIT may take such measures as may reasonably be required for the Facility to comply with the requirements of Schedule 5 at the sole expense of the BOT Company.
- (c) Such transfer shall include, for the major items of the plant incorporated into the Facility, related intellectual property rights held by the BOT Company (which may be satisfied through the provision of a license granted for a period of not less than twenty (20) years from the date of the transfer, the terms and scope of which shall be reasonably satisfactory to the transferee), copies of all manufacturers’ specifications, manufacturers’ operation manuals, equipment history and operation diary, and signed and sealed copies of all as-built drawings for the Facility, including the civil and architectural works and the BOT Company shall ensure that all relevant contracts (including licenses agreements) allow for the transfers contemplated by this Article 5.2 and Schedule 5.
- (d) Such transfer shall comply with the requirements of Schedule 5, and shall be subject to Article 17.2(g).
- (e) At least one (1) year(s) prior to expiration of the Operational Term, the BOT Company shall deliver to the MOIT a security deposit in an amount equal to [●] per cent. of the cost of the End of Term Tests and the final transfer overhaul described in Schedule 5, as estimated pursuant to Article 5.2(f).
- (f) The BOT Company shall provide its good faith estimate of the cost of the End of Term Tests and the final transfer overhaul described in Schedule 5 to the MOIT based on the plan described in Article 5.2(g) at least two (2) years prior to the expiration of the Operational Term. The MOIT may, by notice to the BOT Company prior to the expiration of the Operational Term, dispute any part of the estimate provided by the BOT Company. Any such dispute shall be referred to an Independent Expert appointed



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in accordance with Article 23.4 for determination. The Independent Expert's determination of the amount shall be binding on both parties. If the Operational Term expires prior to the date on which the Independent Expert provides its ruling on the dispute, or if the MOIT does not dispute the estimate provided by the BOT Company, the amount of the security deposit required pursuant to Article 5.2(e) shall be [●] per cent. of the amount estimated in good faith by the BOT Company, provided that the amount of such security deposit shall be immediately adjusted if the Independent Expert subsequently determines that the estimated cost of the End of Term Tests and the final transfer overhaul described in Schedule 5 either exceed or are less than (as the case may be) the amount estimated by the BOT Company. The security deposit shall be issued in one of the forms set out in Article 2.3(b) as security for performance of the BOT Company's obligations under this Article 5.2. The deposit shall be valid for one (1) year(s) from the date of transfer of the Facility.

- (g) Three (3) years prior to the expiration of the Operational Term, the BOT Company shall deliver to the MOIT a plan consistent with Prudent Utility Practices and reasonably acceptable to the MOIT setting out the anticipated costs and activities associated with the final transfer overhaul of the Facility as referred to in Section 4 of Schedule 5 and transfer of the Facility. In the event that the MOIT, acting reasonably, does not agree on the costs and activities anticipated by the BOT Company in such transfer plan and the Parties cannot agree on the costs and activities, the dispute shall be resolved in accordance with Article 23, provided always that the BOT Company's obligations under the transfer plan shall be limited to the scope set out in Schedule 5. The plan shall also describe the reserves to be maintained by the BOT Company to cover these anticipated costs and activities. The BOT Company shall maintain adequate reserves to complete the transfer obligations required by Schedule 5.

### 5.3 Term of this BOT Contract

- (a) Operational Term. The operational term of this BOT Contract (the "**Operational Term**") shall be for the period from the date of execution of this BOT Contract until the date falling twenty-five (25) years after the Commercial Operation Date of the Facility, unless otherwise extended pursuant to an agreement between the Parties or earlier terminated pursuant to the provisions of this BOT Contract. If the Term of the Power Purchase Agreement is extended for any period, the Operational Term shall be automatically extended for that period in the manner and in accordance with the terms set out in the Power Purchase Agreement.
- (b) Full Term. The full term of this BOT Contract (the "**Full Term**") shall be the Operational Term plus any additional time not exceeding two (2) years required for the fulfilment of outstanding obligations under this BOT Contract and, to the extent required, for the wind-up of the BOT Company.

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**Article 6**  
**Environment Protection**

- 6.1 The BOT Company shall prepare and deliver to the Ministry of Natural Resources and the Environment (the “**MONRE**”) for its approval an environmental impact assessment (the “EIA”) with respect to the Facility and its implementation. Such EIA will be prepared in accordance with the Laws of Vietnam and delivered to the MONRE no later than ninety (90) days prior to Financial Close. The EIA, as a minimum, shall:
- (a) address issues pertaining to quality and quantity of air emissions, discharge water quality and quantity, and any impact on the marine life or other land based wildlife due to construction and operation of the Facility along with the mitigation of such impact that the BOT Company will undertake;
  - (b) identify the existing natural conditions that may be affected by the construction of the Facility;
  - (c) define the permissible environmental conditions and parameters applicable to the Facility, including applicable Laws of Vietnam relating to environmental requirements and standards;
  - (d) identify the areas (if any) where the initial proposed design for the Facility would not meet the required criteria;
  - (e) analyse the suitability of any design modifications (if needed) proposed by the BOT Company or any Sponsor;
  - (f) identify the Government Authorisations required to comply with the environmental requirements prior to, during and after construction and Commissioning of the Facility;
  - (g) require that prior to commercial operations, the necessary tests are carried out to insure that the Facility is in compliance with the permissible environmental standards; and
  - (h) specify and design the monitoring programs that shall ensure that the Facility will comply, in the future, with the applicable Laws of Vietnam relating to environmental requirements and standards.
- 6.2 The MONRE approval shall not be unreasonably withheld or delayed. Within fifteen (15) Days of receipt of the approval by the MONRE, the BOT Company will initiate the design and procurement of the equipment and installations required to mitigate any adverse impact to the environment identified by the EIA and which are required to comply with the Laws of Vietnam. Provided that there have been no changes to the applicable Laws of Vietnam relating to environmental requirements and standards in effect as of the Bid Date, the BOT Company shall assume all costs related to the implementation of the mitigating measures required by the EIA.

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## Article 7 Investment Capital

### 7.1 Definition

The investment capital of the BOT Company (the “**Investment Capital**”) consists of the Charter Capital to be contributed by the Sponsors, plus credits and loans (including any Subordinated Shareholder Loans) borrowed by the BOT Company for financing the total Project cost (including reasonable contingencies, and initial working capital requirements).

Investment Capital shall not include amounts paid to the Sponsors or their Affiliates as “management”, “development” or similar fees, nor to the extent the Sponsors or their Affiliates supply equipment or provide construction services to the BOT Company or the Facility, any mark-ups of the cost of such equipment or construction services in excess of those that are ordinary and customary when provided to non-Affiliates.

### 7.2 Initial Amount of the Investment Capital

The initial Investment Capital of the BOT Company is USD[●].

### 7.3 Debt to Equity Ratio

The BOT Company shall at all times ensure that the debt to equity ratio is no more than [●] (the “**Debt to Equity Ratio**”), where (i) “equity” shall include Charter Capital and Subordinated Shareholder Loans outstanding at the time of such calculation and (ii) “debt” shall include indebtedness outstanding under the Financing Documents at the time of such calculation, excluding Subordinated Shareholder Loans; provided that, other than for the purpose of calculating the Debt to Equity Ratio, Subordinated Shareholder Loans shall be treated as debt under this BOT Contract in accordance with the Laws of Vietnam.

### 7.4 Adjustment of the Investment Capital

- (a) The Parties acknowledge that the Investment Capital provided in Article 7.2 above reflects the initial amount of capital requirements to complete the Facility (including an amount for reasonable contingencies and initial working capital requirements).
- (b) The Parties agree that the BOT Company shall be entitled to adjust the Investment Capital after the Commercial Operation Date of the Facility in such a way that:
  - (i) the Investment Capital matches the actual cost of the Facility; and
  - (ii) the BOT Company remains in compliance with the Debt to Equity Ratio.

The MOIT shall ensure that MPI permits any such adjustment up to a maximum amount of [●] per cent. of the initial amount of Investment Capital and that such permission shall not be unreasonably withheld or delayed. For the avoidance of doubt, such maximum Investment Capital includes a USD[●] facility to fund potential costs which may be incurred in the event of cost increases or any construction delays for which the BOT Company is liable.

- (c) Subject to compliance with the requirements set forth in paragraph (b) above, the following amounts may be capitalised into Investment Capital on the date such amounts are paid by the BOT Company:
  - (i) costs, loss or damages in connection with Articles 22.11 and 22.12; and

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- (ii) costs paid in connection with any measures a Government Body requires the BOT Company to take regarding the protection of archaeological, geological or historical objects.
  - (d) Any adjustment to the amount of Investment Capital permitted under this Article 7.4 shall not result in an adjustment to the Tariff as provided in the Power Purchase Agreement.
  - (e) Within six (6) months after the Commercial Operation Date of the Facility, the BOT Company shall provide the MOIT with an audited report, prepared by an international independent auditing firm, evidencing the final amount of Investment Capital for approval by the MOIT. In the event that the MOIT does not object to the report submitted to the MOIT by the BOT Company, then such report shall be deemed approved thirty (30) Days after the date MOIT's receipt of such report. In the event that the MOIT does not agree with the report submitted by the BOT Company and notifies the BOT Company accordingly within the thirty (30) Day time period, Article 23 shall apply.

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## Article 8 Charter Capital

- 8.1 The initial charter capital of the BOT Company, as defined in the Investment Certificate and the Charter (the “**Charter Capital**”), is USD[●] and shall be contributed in accordance with Article 8 and the Investment Certificate. To the extent not paid with loans received at Financial Close, the following payments by Sponsors may be capitalised into Charter Capital upon the later of the date they are paid or the creation of the BOT Company: (a) development costs incurred prior to Financial Close (but after notification to the Sponsors that the Sponsors have been selected to develop the Facility based on applicable regulations) and (b) fuel costs incurred during testing and Commissioning of the Project. The amount of the Charter Capital shall not be less than (and may be, but shall not be required to be, greater than) (i) the higher of [●] per cent. of the initial amount of Investment Capital and the minimum equity required by the Laws of Vietnam and (ii), together with Subordinated Shareholder Loans, [●] per cent. of Investment Capital. The MOIT agrees to assist with all approvals required in connection with Subordinated Shareholder Loans under the Laws of Vietnam.
- 8.2 Charter Capital will, subject to Article 10, be contributed in stages as determined by the Charter of the BOT Company and as required to implement the timetable referred to in Article 2.5. The BOT Company shall be entitled by MPI to modify timing and amounts in conformity with the Charter of the BOT Company, to match the actual circumstances and requirements of the BOT Company provided that (a) variations from the timing and amounts set forth in the Charter of the BOT Company are notified to the MOIT and MPI, (b) such variations do not delay the schedule of the Project and (c) they do not affect the BOT Company obligation to contribute the minimum amount set forth in Article 8.1.
- 8.3 Consistent with Article 7.3, the Parties acknowledge that the Charter Capital described in Article 8.1 above reflects the minimum amount of equity capital required to complete the Facility. The Parties agree that the BOT Company shall be entitled to adjust the Charter Capital at the same time as the Investment Capital as set forth in Article 7.4 after the Commercial Operation Date of the Facility and adjustment shall be done in the same manner as in Article 7.4.

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## Article 9 Loans and Credits

- 9.1 The Sponsors and the BOT Company will arrange all loans or other credits for the BOT Company for an amount equivalent to the difference between the sum of Charter Capital and Subordinated Shareholder Loans and the Investment Capital. The Sponsors and the BOT Company shall use best efforts to cause such loans or credits to be arranged promptly and by no later than fifteen (15) months after the date on which all Project Agreements become effective, unless the Parties agree in writing to extend such period. The MOIT shall, and shall use its best efforts to assist the BOT Company to procure that other Government Bodies shall, use all reasonable efforts to assist the Sponsors and the BOT Company to achieve Financial Close within fifteen (15) months after issuance of the Investment Certificate.
- 9.2 Without prejudice to Article 10.2 and the assignment to the Lenders of the contractual rights referred to in Article 9.3(a), such loans and credits will be arranged on the basis that no Government or other Government Body guarantee of such loans will be sought or required to be issued in favour of Lenders.
- 9.4 (a) The Sponsors and the BOT Company will be permitted to provide the following as security to the Lenders, in form and substance agreed to with the Lenders:
- (i) the Project Securities;
  - (ii) an assignment of all of the contractual rights of the BOT Company under all Project Agreements (including the BOT Company's rights to receive income and any amount payable under all Project Agreements but excluding any assignment of the Land Lease Agreement that would result in a foreign entity as the assignee), the Government Guarantee and any other agreement relating to the Facility and made between the BOT Company and a third party;
  - (iii) the opening, as a special case and upon receipt of a license from the Bank (not to be unreasonably withheld or delayed), of one or more Escrow Accounts in an overseas bank and the depositing of revenue therein pursuant to the terms of the Financing Documents;
  - (iv) a charge over all of the BOT Company's bank accounts; and/or
  - (v) an assignment of the benefit of insurance policies where the BOT Company is insured.
- (b) The MOIT agrees to assist with all approvals required under the Laws of Vietnam for the Financing Documents and for the securities referred to in this Article (including, without limitation, all acknowledgments and consents required by the Lenders from any Vietnam Project Counterparty (in form and substance usual for this type of project) and all registrations and filings required under the Laws of Vietnam for the perfection of any Project Security).
- (c) The MOIT by signing this BOT Contract shall be deemed to have agreed on the security in Article 9.3(a) and confirms that such security, does not cause harm to the objective, schedule or operation of the Project and satisfies all requirements of Decree 108.
- (d) The MOIT agrees that it will execute the MOIT Acknowledgment and Consent in a reasonably timely manner and that it will, within a reasonable time execute any additional documentation requested by the Lenders, that, in the reasonable opinion of

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the MOIT, are standard and usual for this type of project and are in accordance with the Laws of Vietnam.

- (e) The MOIT agrees to assist the BOT Company to procure approval from the Bank and any other relevant Government Body for any other security requested by the Lenders which (i) is agreed by the MOIT, (ii) complies with the Laws of Vietnam and (iii) does not cause harm to the objective, schedule or operation of the Project as set out in this BOT Contract and that it will provide reasonable assistance to the BOT Company until such security is executed and registered by the relevant Government Bodies.
- (f) The BOT Company will be permitted to provide security to Contractors and vendors including the retention of title to equipment, supplies, materials and machinery until full and complete payment is made to such Contractor or vendor provided (i) such security does not conflict with the Laws of Vietnam and (ii) does not cause harm to the objective, schedule or operation of the Project as set out in this BOT Contract.
- (g) The BOT Company will be permitted to register or perfect any security provided subject to compliance with the Laws of Vietnam.
- (h) The BOT Company may enter in Hedging Agreements with onshore and offshore banks.

9.4 The MOIT agrees that the BOT Company may enter into a Refinancing to the extent that (a) such Refinancing does not result in an increase to the BOT Company's Tariff payable under the Power Purchase Agreement, (b) such Refinancing does not result in a breach of the Debt to Equity Ratio, (c) any savings resulting from such Refinancing are shared evenly with EVN in accordance with Article 4.6(b)(iii) of the Power Purchase Agreement and (d) such Refinancing is otherwise in accordance with Article 4.6 of the Power Purchase Agreement.

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**Article 10**  
**Preconditions to Capital Contribution**

**10.1 Contribution of Capital**

The Sponsors may contribute capital to the BOT Company and commence to implement this BOT Contract if they so choose prior to all the preconditions in Article 10.2 being satisfied but except as provided in Article 10.4, shall have no obligation to do so until all such preconditions have been satisfied or waived by notice in writing to the MOIT.

**10.2 Preconditions**

The preconditions referred to in Article 10.1 are:

(a) Investment Certificate

The Investment Certificate has been issued by the MPI and received by the Sponsors on terms which the Sponsors notify in writing to the MOIT are acceptable to the Sponsors, such acceptance not to be unreasonably withheld. Such notice of acceptance or refusal of the Investment Certificate shall be delivered on behalf of the Sponsors by [●] acting as the Lead Sponsor within thirty (30) Days from the date of receipt of the Investment Certificate by the Sponsors. For the avoidance of doubt, the Investment Certificate shall not be deemed acceptable to the Sponsors, unless it records: (A) the terms of the Project consistent with the terms of this BOT Contract and all Project Agreements as customarily required by the Laws of Vietnam and (B) the tax incentives stipulated in Article 17 of this BOT Contract. The form of the Investment Certificate is as set forth in Exhibit 6 of Annex D to the RFP.

(b) Land Lease Agreement

The Land Lease Agreement is approved by all relevant Government Bodies and signed on terms that the Site be provided to the BOT Company free of all rent for the Full Term, upon which a Certificate of Right to Use the Site is issued to the BOT Company

(c) Contracts

The following contracts have been entered into by the BOT Company and all other relevant parties, in form and substance satisfactory to the relevant parties to each contract, and approved and/or notarised and/or registered, as required in accordance with the Laws of Vietnam, have become effective and the required official approvals have been obtained:

- (i) Power Purchase Agreement;
- (ii) Shared Facilities and Services Agreement;
- (iii) Coal Supply Agreement(s);
- (iv) Coal Transportation Agreement(s) (if applicable);
- (v) Financing Documents including Security Agreements required thereby;
- (vi) Water Supply and Consumption Agreements;
- (vii) O&M Contract (if any); and



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(viii) Construction Contracts.

(d) Government Support Documents

The following documents have been issued, executed and remain valid and in full force and effect:

- (i) Government Guarantee;
- (ii) Decision;
- (iii) MOJ Legal Opinion; and

(e) Acknowledgments and Consents

All acknowledgments and consents required from each Government Body a party to the Power Purchase Agreement or the BOT Contract have been executed by the relevant Vietnam Project Counterparty in accordance with clauses (b) and (d) of Article 9.3.

(f) Foreign Loans

Upon application to the Bank by the BOT Company for approval, approval having been granted by the Bank in accordance with the Laws of Vietnam for:

- (i) the Financing Documents;
- (ii) all of the Escrow Account(s) and the right to transfer funds to the Escrow Account(s) in accordance with the Financing Documents;
- (iii) Subordinated Shareholder Loans; and
- (iv) other security required under the Financing Documents.

(g) Other Government Body approvals

The granting of approval by the relevant Government Body of all other main approvals required for the implementation of the Facility, including all Government Authorisations required at the time of Financial Close for the implementation of the Project.

(h) Validity

The MOJ Legal Opinion will (subject to customary assumptions and reservations) confirm that the Vietnam Project Documents have been executed and all the terms of the Vietnam Project Documents, and the transactions and agreements referred to therein, are enforceable and valid under the Laws of Vietnam.

(i) Financial Close

Financial Close has occurred or will occur upon the remaining preconditions in this Article 10.2 being satisfied.

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**10.3 Best Efforts**

Each Party shall use its best efforts to cause the above preconditions to be satisfied promptly and by no later than [●] months after issuance of the Investment Certificate, unless the Parties agree in writing to extend such period. In the event that all such preconditions have not been satisfied before the expiry of such period and such failure is due solely to delays attributable to either a Force Majeure Event or MOIT Event of Default, the MOIT shall return the Proposal Security to the Sponsors within thirty (30) Days of the expiry of such [●] month period.

**10.4 Initial Capital Contribution**

Notwithstanding anything else in this Article 10, the Sponsors shall make an initial capital contribution of [●] Dollars to the BOT Company's Charter Capital within thirty (30) Days after satisfaction of the precondition in Article 10.2(a).

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**Article 11**  
**Assignment of the Charter Capital**

- 11.1 The Sponsors (or their Affiliates) may, for the Full Term, sell, assign or otherwise dispose of (an “**Assignment**”) all or any part of the Charter Capital of the BOT Company to a third party other than the Lenders only with the prior consent in writing of the MOIT, EVN and MPI (not to be unreasonably withheld), provided that [the Sponsors or other shareholder with the largest shareholding in the Charter Capital of the BOT Company on the date of execution of this BOT Contract][the Lead Member and other Committed Shareholders (the “**Lead Sponsor[s]**”)]<sup>1</sup> shall maintain (a) control of the BOT Company; and (b) ownership, directly or indirectly, of no less than fifty-one per cent. (51%) of the total Charter Capital, in each case from the date of execution of this BOT Contract until the date falling three (3) years from the Commercial Operation Date of the Facility. [In addition, the Lead Member must maintain ownership, directly or indirectly, of no less than thirty-three per cent. (33%) of the total Charter Capital, from the date of execution of this BOT Contract until the date falling three (3) years from the Commercial Operation Date.]<sup>2</sup> For purposes of this Article 11.1, “control” means the power to direct or cause the direction of the management policies of a body corporate by contract, agency or otherwise.
- 11.2 The procedure for Assignment is as follows:
- (a) The relevant Sponsor shall give written notice to the MOIT stating its wish for it or its Affiliate to make an Assignment, the portion of the Charter Capital it wishes to assign, the price to be paid for such portion of the Charter Capital and the name, address, nationality, official representative and legal status of the proposed assignee. The assignee shall, before the Assignment takes place, provide evidence to the MOIT, to the reasonable satisfaction of the MOIT, of its capacity to assume the obligations of the relevant Sponsor both to the BOT Company and to the MOIT.
  - (b) Within sixty (60) Days from the date of notice to such effect from the Sponsors, the MOIT, EVN and MPI shall deliver their respective responses stating whether or not they agree to such assignment. In making their respective decisions, the MOIT, EVN and MPI shall not unreasonably withhold their consent to the proposed Assignment. If the MOIT, EVN or MPI refuses consent it will inform the relevant Sponsor of its reasons for such refusal. If the MOIT, EVN or MPI fails to respond to the notice of intent to assign within the sixty (60) Day period, the MOIT, EVN and/or MPI, as applicable, shall be deemed to have given written consent to the relevant Sponsor’s (or its Affiliate’s) assignment of all or part of the Charter Capital to the proposed assignee on the terms and conditions set out in the notice, provided that such assignment takes place and is concluded within one hundred and twenty (120) Days after the expiration of the sixty (60) Day consideration period referred to above.
  - (c) After completion of clause (b) above, the relevant Sponsor (or its Affiliate) shall make formal application to MPI for registration of the Assignment in accordance with the Laws of Vietnam and the MOIT shall use its best efforts to assist the relevant Sponsor (or its Affiliate) with securing such registration from MPI.
  - (d) Any assignee of all or any part of the Charter Capital shall assume the corresponding obligations and responsibilities of the relevant Sponsor as stipulated in this BOT Contract and on the terms and conditions of the Assignment.

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<sup>1</sup> Only applicable if the BOT Company is owned by a consortium.

<sup>2</sup> Only applicable if the BOT Company is owned by a consortium.

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**Article 12**  
**MOIT's Responsibilities**

- 12.1 The MOIT shall and hereby agrees to take all reasonable steps (or in the case of (b), (i), (l) and (m), use best efforts) to:
- (a) assist the Sponsors to obtain from the MPI the Investment Certificate, the Electricity License and all necessary Government Body approvals for the establishment and operation of the BOT Company and for any Assignment delivered pursuant to Article 11.2(c);
  - (b) procure that the Land Lease Agreement is entered into by the relevant Government Body and the Certificate of Right to Use the Site is timely obtained by the BOT Company (provided that the BOT Company complies with the requirements of the Laws of Vietnam to obtain such certificate), ensure that the acquisition of the Site is completed and move any occupants of the Site (at no responsibility, cost or expense to the BOT Company or the Sponsors) to ensure that the right to use the Site is obtained by the BOT Company no later than six(6) months after the issuance of the Investment Certificate;
  - (c) assist the BOT Company in obtaining, maintaining and renewing all Government Authorisations, import/export permits and customs clearance for tax free import of plant, machinery, equipment and materials whether by the Sponsors, the BOT Company, the Coal Supplier, the Coal Transporter (if applicable) or the EPC Contractor, the O&M Contractor or their agents for purposes of the Facility;
  - (d) assist the Vietnamese staff of both the BOT Company, the EPC Contractor and the O&M Contractor to obtain passports, work permits, visa and travel permits as required for purposes of the BOT Company, provided that the applications for such passports, work permits, visas and travel permits comply with the Laws of Vietnam;
  - (e) provide assistance in obtaining visas and work permits for foreign personnel to enter, reside in and depart from Vietnam for the purpose of participating in work for or on behalf of the BOT Company, provided that the applications for such visas and work permits, visas and travel permits comply with the Laws of Vietnam;
  - (f) assist in negotiations with the MPI, the Ministry of Finance and any other Government Body in relation to taxation matters connected to the Facility;
  - (g) request the Government to give all appropriate exemptions that will allow the importation and supply of Coal and Startup Fuel to the BOT Company;
  - (h) obtain each of the Government Guarantee, Decision, and MOJ Legal Opinion so as not to cause any delay in the project schedule as set out in Schedule 2;
  - (i) assist in satisfying all other preconditions set out in Article 10.2;
  - (j) assist the BOT Company such that the BOT Company has, at no additional cost, unrestricted access to the Site from not later than Financial Close until the end of the Operational Term or, if necessary, the Full Term; and
  - (k) assist the BOT Company in procuring all ownership rights, rights-of-way, easements and continuing access rights necessary for the construction, operation, maintenance, upgrading, replacement or removal of any part of the Facility that will be located on property not leased to the BOT Company.

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12.2 Upon an MOIT Deemed Commissioning Event and the declaration of the relevant Deemed Commercial Operation Date in accordance with Article 7.2 of the Power Purchase Agreement, the MOIT shall and hereby agrees to pay to the BOT Company Capacity Charge payments in accordance with Schedule 9.

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**Article 13**  
**The Sponsors' Responsibilities**

Subject to Article 4 and the final paragraph of this Article 13, each Sponsor hereby agrees to take all reasonable steps to:

- (a) obtain from the MPI the Investment Certificate;
- (b) subject to the terms and conditions of this BOT Contract and satisfaction of all preconditions referred to in Article 10.2, contribute (directly or through an Affiliate of that Sponsor) its Charter Capital;
- (c) use its best efforts on the basis referred to in Article 9 and Article 10 to assist the BOT Company to negotiate and sign Financing Documents for the difference between Investment Capital and the sum of the Charter Capital and Subordinated Shareholder Loans;
- (d) arrange visas allowing Vietnamese personnel to enter, reside in and depart from relevant foreign countries for the purpose of participating in training and work relating to the BOT Company, and making reasonable travel and lodging arrangements in connection with such visits;
- (e) ensure that the BOT Company signs and becomes bound by this BOT Contract, the Power Purchase Agreement, Coal Supply Agreement(s), Coal Transportation Agreement(s) (if applicable) and the Land Lease Agreement;
- (f) cooperate with all appropriate third parties so as to facilitate the BOT Company's having unrestricted access to the Site and use of the Site for the Full Term without cost to the BOT Company;
- (g) confirm that the BOT Company will obtain financing for the Facility, procure that the BOT Company will facilitate discussions between MOIT and the Lenders as required, and ensure that the Facility is tested, operated and maintained throughout the Operational Term;
- (h) ensure that the BOT Company's financial obligations are fulfilled and payments are made in a timely manner in accordance with the Laws of Vietnam; and
- (i) ensure that the BOT Company fulfils the transfer obligations in Article 5.2.
- (j) comply fully with all applicable Laws of Vietnam including any laws relating to anti-corruption, anti-money laundering, anti-terrorism, anti-boycotting and economic sanctions.

Subject always to Article 4, the obligation of the Sponsors to take reasonable steps in respect of paragraphs (d), (f), (g), (h) and (i) shall be limited to taking all reasonable steps within their power only as shareholders of the BOT Company and, for the avoidance of doubt, the Sponsors shall have no financial or other liability to the MOIT if the BOT Company defaults or fails to perform or carry out any of the acts referred to in such paragraphs, except in the event that the loss or liability was due to the fraud or wilful misconduct of the Sponsors. Upon execution of this BOT Contract by the BOT Company, all of the foregoing responsibilities shall be responsibilities exclusively of the BOT Company, except for those responsibilities in paragraphs (a), (b), (c) and (e), which shall remain responsibilities of the Sponsors.

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## **Article 14 Contractors**

- 14.1 The BOT Company may appoint Contractors in accordance with the Laws of Vietnam. The BOT Company will only engage contractors that have significant experience in the engineering, procurement and construction and, if applicable, in the operation and maintenance of power generating stations. The BOT Company will give priority to Vietnamese contractors and workers and utilise Vietnamese equipment and products to the extent possible within Prudent Utility Practices and as required by the Laws of Vietnam, provided such contractors, workers, equipment and products can provide equal or better quality and competitive pricing.
- 14.2 It is agreed that the Contractors listed in Schedule 6 may be appointed by the BOT Company (or the EPC Contractor or the O&M Contractor, as relevant) without any need for further bidding pursuant to Decree 108, Article 29, such Contractors having been nominated in the proposal by the Sponsors which proposal has been accepted by the Government and the MOIT. At any time the MOIT may grant permission (not to be unreasonably withheld) for the BOT Company to contract with any Contractor in substitution for or in addition to any of the Contractors listed in Schedule 6 without requiring the BOT Company to carry out any bidding procedure. Any Contractor may subcontract or hire any other Contractor to perform any portion of the work relating to the Facility without any approvals from the MOIT. Selection of additional Contractors and any subcontractors must be notified to the MOIT in compliance with Decree 108.
- 14.3 Notwithstanding anything contained herein to the contrary, the BOT Company shall be entitled, upon the prior written consent of the MOIT, to engage its own personnel for the operation and maintenance of the Facility.

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**Article 15**  
**Long Term Sales Contract and Other Contracts**

**15.1 Power Purchase Agreement**

The Parties agree that the BOT Company shall enter into the Power Purchase Agreement with EVN. The Tariff payable under the Power Purchase Agreement will vary automatically only in accordance with provisions of the Power Purchase Agreement. Such variations will not require any further approval.

**15.2 Other Contracts**

The BOT Company shall enter into the contracts referred to in Article 10.2(c).



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## **Article 16 Currency**

### **16.1 Currency of Payments**

All payments to be made under the Power Purchase Agreement shall be made in Dong. Payments of taxes payable in Vietnam, labour compensation and other charges of the BOT Company paid to the Government, Vietnamese companies or nationals shall be paid in Dong; provided that payments permitted to be paid in Dollars under the Laws of Vietnam may be paid in Dollars.

All payments to be made to the Sponsors (or any Affiliate of any Sponsor), to the BOT Company's non-Vietnamese Contractors, to the BOT Company's foreign personnel, to the Coal Supplier, the Coal Transporter (if any) and to the Lenders by the BOT Company (including any payments made in connection with any purchase of any Sponsor's percentage ownership of the Charter Capital of the BOT Company) may be made in Dollars and/or any other freely convertible currency which is tradable on international financial markets.

Where payments received by the BOT Company from the Lenders or the Sponsors (or any Affiliate of a Sponsor) are to be remitted to a Contractor such payments may be made directly by the Lenders or the Sponsors to the relevant Contractor as set out in the Financing Documents, the Shareholder Agreements and documents evidencing Subordinated Shareholder Loans and such payments shall be treated as Investment Capital.

The BOT Company will collect taxes from Contractors, the Coal Supplier or, if applicable, the Coal Transporter and remit the same to the appropriate Government Authority as required by the Laws of Vietnam.

### **16.2 Right to Remit**

The Sponsors and the BOT Company shall have the right to make all remittances permitted or required by the Financing Documents, the Shareholder Agreements and documents evidencing Subordinated Shareholder Loans in accordance with the terms of the Financing Documents, the Shareholder Agreements and the Government Guarantee (including the Foreign Currency Regime provided therein) and otherwise in accordance with the Laws of Vietnam. The Sponsors and the BOT Company's foreign personnel shall have the right to remit outside Vietnam all payments due to be made to them, and all payments made to them by the BOT Company or by the MOIT's nominee, including amounts paid to the Sponsors upon dissolution of the BOT Company, after deduction of withholding taxes and other taxes, if any, in accordance with the Laws of Vietnam at the rate set out in Article 17.2. The BOT Company shall have the right to remit profits quarterly in accordance with the procedural regulations respecting remittance of profits.

### **16.3 Right to Convert**

The BOT Company is assured the right to convert on a monthly basis Dong into Dollars which is tradeable on international finance markets in accordance with the terms of the Financing Documents, the Government Guarantee (including the Foreign Currency Regime provided therein) and otherwise in accordance with the Laws of Vietnam.

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**Article 17**  
**Taxes and Import Duties**

**17.1 Payment in Accordance with Laws**

The BOT Company and the Parties shall pay taxes and import duties in accordance with the Laws of Vietnam, which shall set out all of the tax preferences and incentives applicable to the Facility, the BOT Company and the Sponsors (including any Affiliate of any Sponsor) for the Full Term. In no circumstances shall any tax preferences or incentives applicable and granted to the BOT Company and the Sponsors (including any Affiliate of any Sponsor) need to be returned by the BOT Company, the Sponsors (including any Affiliate of any Sponsor) or the Lenders to any Vietnamese tax authorities.

**17.2 Taxation Regime**

The BOT Company will be responsible for taxes applicable to it in the following taxation regime and all other taxes applicable to it under the Laws of Vietnam, subject to the provisions regarding Change in Law:

(a) Value Added Taxes:

The BOT Company, Contractors, the Coal Supplier and, if applicable, the Coal Transporter will comply with the applicable regulations, notably the Law on Value Added Tax No. 13/2008/QH12 of the National Assembly dated June 3, 2008, Decree No. 123/2008/ND-CP of the Government dated December 8, 2008 providing detailed provisions for implementation of the Law on Value Added Tax and Circular No. 129/2008/TT-BTC of the Ministry of Finance dated December 26, 2008 guiding implementation of a number of articles of Law on Value Added Tax and Decree 123. For the avoidance of doubt, the BOT Company will pay and get a refund on value added tax in accordance with the Law on Value Added Tax No. 13/2008/QH12 of the National Assembly dated June 3, 2008 and the relevant implementing regulations.

(b) Special Sales Tax:

The BOT Company, Contractors, the Coal Supplier and, if applicable, the Coal Transporter will comply with the applicable regulations, notably the Law on Special Sales Tax No. 27/2008/QH12 of the National Assembly dated November 28, 2008, Decree No. 26/2009/ND-CP of the Government dated March 16, 2009 making detailed provisions for implementation of a number of articles of the Law on Special Sales Tax and Circular No. 64/2009/TT-BTC of the Ministry of Finance dated March 27, 2009 guiding implementation of Decree No. 26/2009/ND-CP of the Government dated March 16, 2009 making detailed provisions for implementation of a number of articles of the Law on Special Sales Tax. For the avoidance of doubt, the BOT Company and all related Contractors are obliged to declare and pay tax in accordance with the Law on Special Sales Tax No. 27/2008/QH12 of the National Assembly dated November 28, 2008 and the relevant implementing regulations,

(c) Corporate Income Tax:

Solely to the extent relating to revenues attributable to its ownership and operation of the Facility, subject to the approval of the Prime Minister of Vietnam, the BOT Company shall be totally exempt from this tax for the first four (4) profit making years, will enjoy a fifty per cent. (50%) reduction of the ten per cent. (10%) tax rate for the next nine (9) years and will pay a ten per cent. (10%) tax thereafter for the balance of the Full Term (but such ten per cent. (10%) rate not to be applicable for more than thirty

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(30) years from the start of the Project) pursuant to Decree 108 and Decree No. 124/2008/ND-CP dated December 11, 2008 of the Government providing detailed regulations and guiding implementation of a number of articles of the Law on Corporate Income Tax No. 14/2008/QH12, Articles 15.1, 15.2 and 16.1, and other relevant implementing regulations.

In calculating its profits (which shall be before tax but after interest) for the purposes of determining the amount of the corporate income tax:

- (i) on or about the Commercial Operation Date of the First Unit, the BOT Company may seek approval from the Ministry of Finance to have its accounting year as from the Commercial Operation Date of the First Unit until 31 December of such year, and covering twelve (12) month calendar year periods thereafter pursuant to Circular No. 244/2009/TT-BTC dated December 31, 2009 of the Ministry of Finance Guiding and Amending the Enterprise Accounting System (“**Circular 244**”) and other relevant implementing regulations;
  - (ii) the accounts will be denominated in Dollars subject to approval by the Ministry of Finance pursuant to Circular 244, and other relevant implementing regulations; and
  - (iii) the fixed assets related to the Facility are depreciated over the expected life of the Facility pursuant to Circular 203/2009/TT-BTC dated 20 October 2009 of the Ministry of Finance and other relevant implementing regulations and, other assets are depreciated pursuant to applicable regulations.
- (d) Interest Withholding Tax:
- A ten per cent. (10%) withholding tax shall be applied on all interest payments made offshore to Lenders to the Project pursuant to Circular No. 134 (as amended)/2008/TT-BTC of Ministry of Finance dated December 31, 2008 providing guidelines on performance of tax obligations applicable to foreign organisations and foreign individuals doing business or having income in Vietnam, unless otherwise provided for in international agreements entered into by Vietnam, and interest payments to Lenders lending under partial risk guarantee programs which provide for exemptions from such withholding tax.
- (e) Import duty:
- The BOT Company, Contractors, the Coal Supplier and, if applicable, the Coal Transporter shall be exempt from import duty as provided in the Law on Import and Export Duties, as implemented in Decree 87/2010/ND-CP of the Government dated August 13, 2010 Providing Detailed Regulations for Implementation of the Law on Import and Export Duties and other provisions.
- (f) Other taxes and fees:
- The BOT Company, Contractors, the Coal Supplier and, if applicable, the Coal Transporter shall comply with the Laws of Vietnam. Any transfer or assignment by the Sponsors, the BOT Company or a Lender of all or part of the BOT Company’s assets to the MOIT shall be free of all Vietnamese taxes including any capital transfer or assignment tax.

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## **Article 18 Insurance**

The BOT Company shall procure or cause to be procured from and after Financial Close and throughout the Operational Term of this BOT Contract the policies of insurance set forth below in the minimum coverage amounts and maximum deductible amounts set forth therein and during the periods mentioned therein; provided, however, that such insurances or the terms and/or minimum amounts and maximum deductible amounts thereof may be changed from time to time with the written consent of the MOIT, which consent may not be unreasonably withheld. The MOIT shall not withhold consent where:

- (a) any insurances required to be entered into or maintained by the BOT Company under this BOT Contract are not, in the reasonable opinion of the Lenders acting under the Financing Documents, available to the BOT Company on commercially reasonable terms owing to a lack or absence of capacity in the international insurance or reinsurance market at the time such insurances are required to be obtained;
- (b) the premiums in respect of any such insurances are, in the opinion of the Lenders acting under the Financing Documents, unreasonable with regard to the risks being covered; or
- (c) the change does not materially reduce cover available to the BOT Company.

In such circumstances, the BOT Company should only be required to obtain and maintain those insurances as shall be agreed with the Lenders acting under the Financing Documents. The BOT Company shall obtain any additional coverage required by the Lenders and/or the Laws of Vietnam and/or deemed necessary by the BOT Company.

Insurance for the BOT Company shall be purchased in accordance with the Laws of Vietnam, from appropriate, reputable Vietnamese and/ or international companies, at internationally competitive terms. All reinsurance purchased beyond their capacity must conform within the parameters of A- or above by Standard & Poor's or A3 or above by Moody's or be otherwise acceptable to the MOIT and the Lenders.

### **18.1 During the Construction Period**

The BOT Company shall procure or cause to be procured the following policies of insurance, in the minimum coverage amounts and maximum deductible amounts, during the Construction Period:

- (a) Marine and Air Cargo Insurance: Coverage shall insure all materials, equipment machinery, spares and other items for incorporation into the Facility against all risks of physical loss or damage while in transit by sea or air from country of origin anywhere in the world to the Site, or vice versa, from the time of the insured items leaving warehouse or factory for shipment to the Site. Coverage shall be in an amount equal to the cost and freight of any shipment to the site, with maximum deductible of [●] Dollars.
- (b) Loss of Revenue (following Marine or Aviation incident): Coverage shall insure against loss of revenue following delay in reaching the Required Commercial Operation Date of the First Unit or the Facility as a direct result of physical loss or damage to the materials, equipment, machinery and other items in transit by sea or air to the Site to the extent covered under the Marine Cargo insurance. Coverage shall be in an amount equal to or greater than [●] months' estimated Capacity Charge to be received following

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the Required Commercial Operation Date of the First Unit or the Facility, as the context requires, with maximum deductible of [●] Days.

- (c) Builders' All Risk: Coverage shall insure all works executed and in the course of execution, materials and temporary works, while on the Site, against all risks of physical loss or damage, including, if commercially available, terrorism and/or sabotage, other than war and kindred risks, nuclear risks, cost of replacing or repairing items which are defective in workmanship, material or design; penalties; consequential losses; cash; vehicles; vessels; aircraft. Coverage shall be on a full replacement cost basis.
- (d) Loss of Revenue (following All Risk): Coverage shall insure against loss of revenue following delay in reaching the Required Commercial Operation Date of the First Unit or the Facility as a direct result of physical loss of or damage to the works to the extent that such loss or damage is covered under the Builders' All Risk insurance. Coverage shall be in amount equal to or greater than [●] months' estimated Capacity Charge to be received following the Required Commercial Operation Date of the First Unit or the Facility, as the context requires, with maximum deductible of [●] Days.
- (e) Commercial/General Liability: Coverage shall insure against legal liability to third parties for bodily injury or damage to property arising out of the construction, testing and the Commissioning of the First Unit and the Facility. Coverage shall be [●] Dollars for any one claim.
- (f) Miscellaneous: Other insurance as is customary, desirable or necessary to comply with local or other requirements, such as contractual insuring responsibility, Workers' Compensation and Employers' Liability insurance in relation to all workmen employed in the construction of the Project, and motor vehicle liability insurance for all vehicles owned, hired, leased, used or borrowed for use in Vietnam in connection with the Project.
- (g) Contractors' Insurance During the Construction Period: Without limiting the Contractors' obligations, responsibilities and liabilities under each Construction Contract, the BOT Company shall ensure that each Contractor shall effect and maintain at its own expense for the benefit of and in the joint names of the BOT Company, the Contractor and Sub-contractor and such other persons as the BOT Company may elect, the following insurances (as defined in the Construction Contract): Construction Equipment, Workers' Compensation, Employers' Liability, Motor and Marine Insurance for Contractor's equipment and Insurance to indemnify the Contractor against loss or damage to the Facility, and to the parts of the Facility in course of manufacture off-site, and effects therefrom resulting from defects in the design of the Contractor.

## 18.2 During the Commercial Operation Period

The BOT Company shall procure or cause to be procured the following policies of insurance, in the minimum coverage amounts and maximum deductible amounts, during the Commercial Operation Period:

- (a) All Risks Insurance: Coverage (which may be effected by one or a combination of policies) shall include all building contents, machinery, stock fixtures, fittings and all other personal property forming part of the Facility against "All Risks" of physical loss or damage, including those resulting from fire, lightning, explosion, spontaneous combustion, storm, wind, tempest, flood, hurricane, water damage, riot, strikes, malicious damage, tsunami, earthquake, collapse and/or loss of contents of tanks and, if commercially available, terrorism and/or sabotage. Coverage shall be in an amount equal to the full replacement value of the Facility.

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- (b) Consequential Loss Following All Risks: Coverage shall insure against loss of revenue (including any consequential take or pay coal obligations of the BOT Company incurred in connection therewith) due to loss of capacity and/or loss of output as a direct consequence of loss of or damage to the Facility and caused by a peril insured under All Risks Insurance. Coverage shall be in amount equal to or greater than [●] months' estimated Capacity Charge to be received following the Required Commercial Operation Date of the First Unit or the Facility, as the context requires, with maximum deductible of [●] Days.
- (c) Machinery Breakdown: Coverage shall insure against all machinery, plant, boilers and ancillary equipment forming part of the Facility against sudden and unforeseen physical loss or damage resulting from mechanical and electrical breakdown or derangement, explosion or collapse of boilers and pressure vessels, electrical short circuits, vibration, misalignment, excessive current or voltage, abnormal stresses, centrifugal forces, failure of protective or regulating devices, overheating, entry of foreign bodies, impact, collision and other similar causes. Coverage shall be in an amount equal to the full replacement value of all machinery, plant boilers and ancillary equipment forming part of the Facility.
- (d) Consequential Loss Following Machinery Breakdown: Coverage shall insure against loss of revenue (including any consequential take or pay coal obligations of the BOT Company incurred in connection therewith) due to loss of capacity and/or loss of output as a direct consequence of loss or damage to the Facility caused by a peril insured under Machinery Breakdown insurance. Coverage shall be in an amount equal to or greater than [●] months' estimated Capacity Charge to be received following the Required Commercial Operation Date of the First Unit or the Facility, as the context requires, with maximum deductible of [●] Days.

### **18.3 Insurance Required Throughout the Operational Term**

- (a) Commercial/General Liability: Coverage shall insure against legal liability to third parties for bodily injury or damage to property arising out of the operation of the Facility. Coverage shall be [●] Dollars for any one claim.
- (b) Workers Compensation and Employers Liability: Coverage shall include workers compensation, temporary disability and other similar insurance required by the Laws of Vietnam. In addition, this coverage shall include a voluntary compensation and employers' liability endorsement for employees not subject to the workers compensation laws.
- (c) Miscellaneous. Other insurance policies which are required by local legislation.

### **18.4 Policy Endorsements**

The commercial/general liability insurance shall contain the following endorsement items:

- (a) the MOIT, its directors, officers and employees shall be additional insureds under all policies maintained by the BOT Company;
- (b) the insurance shall be primary with respect to the interest of the MOIT, its directors, officers, and employees and any other insurance maintained by them is excess and not contributory with such policies;
- (c) the insurance shall contain a cross liability clause;

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- (d) the insurers shall waive all rights of subrogation against the MOIT, its officers, directors and employees; and
  - (e) the policy may not be cancelled or materially changed by the insurer without giving forth-five (45) Days prior written notice to the MOIT, except in the case of non-payment, in which case it will be ten (10) Days prior written notice to the MOIT.

Each policy will state that the BOT Company or the Contractor (as the case may be) are responsible for payment of any insurance premiums.

The application of all insurance proceeds will be in accordance with the Financing Documents. After repayment in full of all amounts owing under the Financing Documents, any insurance proceeds received following a partial or total loss shall be used in replacement or reinstatement of the Facility.

### **18.5 Certificates of Insurance**

The BOT Company shall provide the MOIT with certificates of insurance evidencing the policies and endorsements listed above. Failure by the BOT Company to obtain the insurance coverage or certificates of insurance required by this Article shall not relieve the BOT Company of the insurance requirements set forth herein or in any way relieve or limit the BOT Company's obligations and liabilities under any other provision of this BOT Contract. If the BOT Company shall fail to procure or maintain any insurance required pursuant to this Article, then the MOIT shall have the right to procure such insurance in accordance with the requirements of this Article and to charge the full cost thereof to the BOT Company.

### **18.6 Preference for Vietnam Insurers**

To the extent that the above insurance coverages are available through local insurance companies in Vietnam at competitive rates compared with world markets, preference shall be given to using these companies subject to cost-benefit considerations, requirements imposed by the Financing Documents and reputation and experience of insurance companies with non-recourse or limited recourse financed projects. The BOT Company shall advise the MOIT in the event and to the extent insurance is procured from sources outside of Vietnam.

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**Article 19**  
**Representations and Warranties of the MOIT**

The MOIT, as of the date of this BOT Contract, represents and warrants to each Sponsor and the BOT Company as follows:

- (a) the MOIT has been authorised by the Government in accordance with the Decision, which is reproduced in Appendix G, to sign this BOT Contract and all other documents which the MOIT is required to sign in relation to the Project and pursuant to the Financing Documents, on behalf of the Government and to perform the obligations hereunder and thereunder;
- (b) neither the signing of this BOT Contract nor the performance of the transactions contemplated herein will result in a violation of, or constitute a default under, any statute or regulation or any order or decree of any court or governmental authority binding upon the MOIT or its property;
- (c) the MOIT has taken all necessary actions and fulfilled all obligations required by the Government to ensure the due authorisation and authority to carry out the MOIT's obligations with respect to the Project;
- (d) all of the Vietnam Project Documents (both the execution by the relevant Vietnam Project Counterparty and performance thereunder by the relevant Vietnam Project Counterparty and the express terms and conditions thereof) have been duly authorised and approved by all applicable Governmental Bodies in accordance with the Laws of Vietnam;
- (e) the Tariff payable under the Power Purchase Agreement complies with all governmental policies pursuant to Article 30 of the Electricity Law; and
- (f) the Prime Minister of Vietnam has approved the continuation of the corporate income tax incentives under Article[s] 17.2(c) [and 17.2(f)] for the entire life of the Project.



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**Article 20**  
**Representations and Warranties of Each Sponsor and the BOT Company;**  
**Covenants of the BOT Company**

**20.1 Representations and Warranties**

Each Sponsor and the BOT Company, as of the date of this BOT Contract, represents and warrants to the MOIT as follows:

- (a) it is duly organised, validly existing and in good standing under the laws of its place of incorporation and has the corporate power and lawful authority to carry on its business;
- (b) it has the full legal right, power and authority required to enter into this BOT Contract and to perform fully its obligations hereunder;
- (c) it has effectuated all necessary proceedings and obtained all required approvals necessary to authorise and enable it to sign, deliver and perform the terms of this BOT Contract;
- (d) no additional consent, approval, authorisation or order of any foreign governmental agency or body or any court is required for the signing of this BOT Contract, the Sponsor's performance hereunder or for the consummation of the transactions contemplated hereby; and
- (e) neither the signing of this BOT Contract nor the performance of the transactions contemplated herein will result in a violation of, or constitute a default under, any statute or regulation or any order or decree of any court or governmental authority binding upon any Sponsor, the BOT Company or its property, or violate or result in a default under any of the terms and provisions of its articles of association.

**20.2 Covenants**

The BOT Company, as of the date of this BOT Contract, shall:

- (a) obtain all necessary debt and equity financing in an amount (including reasonable contingencies and working capital requirements) sufficient for the construction, completion, operation and maintenance of the Facility in the manner contemplated by this BOT Contract. The BOT Company's Financing Documents must provide, among other things, that any person who acquires the rights of the BOT Company in this BOT Contract or in the Facility, in the BOT Company's beneficial interest thereunder following a default by the BOT Company under the Financing Documents, whether by purchase at foreclosure or otherwise, shall acquire such interest subject to all of the obligations of the BOT Company as set out in Article 21.5 of this BOT Contract;
- (b) execute this BOT Contract, the Power Purchase Agreement and the Land Lease Agreement and will use its reasonable efforts to negotiate and execute the Coal Supply Agreement(s), the Coal Transportation Agreement(s) (if applicable), the O&M Contract (if any), the Construction Contracts and the Financing Documents;
- (c) engage only such advisors, representatives and experts as are experienced in the development, construction and financing of power stations similar to the Facility;

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- (d) design, engineer, finance, construct, complete, own and operate the Facility in accordance with:
    - (i) the plans and specifications prepared in accordance with this BOT Contract,
    - (ii) the Contracted Operating Characteristics set forth in Schedule 2 of the Power Purchase Agreement,
    - (iii) the Laws of Vietnam, and
    - (iv) sound engineering and construction practices and Prudent Utility Practices;
  - (e) design, construct and complete the Facility in a good workman-like manner, only with materials and equipment that are new and of international utility-grade quality, in such a manner as to provide a reasonable likelihood, with proper maintenance and operation, that the useful life of the Facility will be at least thirty-five (35) years from the Commercial Operation Date of the Facility;
  - (f) be responsible at its own risk and expense, subject to Change in Law, for ensuring that the construction of the Facility complies with all environmental and safety regulations mandated by Laws of Vietnam, and to be responsible for the disposal and treatment of waste in connection with the Facility; and
  - (g) be responsible to submit for approval of the relevant Government Bodies applications for all documents listed in Schedule 7, in accordance with the Laws of Vietnam.

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**Article 21**  
**Default and Termination**

**21.1 Termination of BOT Contract**

This BOT Contract may be terminated in accordance with the following provisions of this Article 21.

**21.2 BOT Company Events of Default**

Each of the following events shall be deemed a “**BOT Company Event of Default**”:

- (a) a Sponsor or the BOT Company fails to comply with any material provision of the BOT Contract (except to the extent caused by (i) a breach by any Vietnam Project Counterparty of any Vietnam Project Document, (ii) an MOIT Event of Default, (iii) a Force Majeure Event or (iv) an Unforced Outage) and such failure continues uncured for ninety (90) Days after notice by the MOIT; or, if such failure cannot be cured using reasonable efforts to do so within ninety (90) Days, but such failure is capable of being cured and such Party is diligently attempting to cure such failure (as certified by an independent consultant appointed by the BOT Company and approved by the MOIT which approval shall not be unreasonably withheld and the BOT Company shall pay the costs associated therewith, then such additional period as may be reasonable (not to exceed one hundred and eighty (180) Days); provided that, for purposes of Schedule 2, each milestone provided in Schedule 2 (to the extent the BOT Company does not have separate obligations detailed within this BOT Contract with respect to each such milestone) shall not be deemed material for purposes of this Article 21.2(a);
- (b) a “BOT Company Event of Default” as defined under the Power Purchase Agreement has occurred, and has not been waived by EVN; and
- (c) any statement, representation or warranty by the BOT Company or any Sponsor in this BOT Contract providing to have been incorrect, in any material respect, when made and such incorrect statement, representation or warranty having a material and adverse effect on the BOT Company’s, any Sponsor’s or the MOIT’s ability to perform its obligations under this BOT Contract and the BOT Company or the Sponsors fail to offer to the MOIT compensation (whether through an adjustment to the Tariff payable under the Power Purchase Agreement or otherwise) sufficient to indemnify the MOIT for the consequences of such inaccuracy for a period of ninety (90) Days after notice by the MOIT.

**21.3 MOIT Events of Default**

Each of the following events shall be deemed a “**MOIT Event of Default**”:

- (a) any Vietnam Project Counterparty (other than EVN in respect of the Power Purchase Agreement) fails to comply with any material provision of the Vietnam Project Documents (except to the extent caused by (i) a Non-Governmental Force Majeure Event or (ii) a BOT Company Event of Default) and such failure continues uncured for ninety (90) Days after notice by another Party; or, if such failure cannot be cured using reasonable efforts to do so within ninety (90) Days, but such default is capable of being cured and the relevant Vietnam Project Counterparty is diligently attempting to cure such failure (as certified by an independent consultant appointed by the BOT Company and approved by the MOIT which approval shall not be unreasonably withheld and the MOIT shall pay the costs associated therewith, then such additional period as may be reasonable (not to exceed one hundred and eighty (180) Days);

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- (b) a Government Event (other than the Government Event described in (c) below) has occurred for a period in excess of ninety (90) Days (except for the failure by the Government upon the equitisation of EVN to reissue or affirm the Government Guarantee confirming that the Government's obligations thereunder continue in full force and effect and extend to cover the equitised EVN or its successor entity, which shall result in an MOIT Event of Default within thirty (30) Days of the date of equitisation of EVN or the transfer of all or substantially all of its business to a successor entity);
  - (c) a Government Event described in clause (v) of the definition thereof has occurred;
  - (d) an "EVN Event of Default", as defined under the Power Purchase Agreement, has occurred and has not been waived by the BOT Company;
  - (e) a "Government Event", as defined under the Power Purchase Agreement, has occurred for a period in excess of ninety (90) Days and has not been waived by the BOT Company; and
  - (f) any statement, representation or warranty by the MOIT in this BOT Contract providing to have been incorrect, in any material respect, when made and such incorrect statement, representation or warranty having a material and adverse effect on the BOT Company's, any Sponsor's or the MOIT's ability to perform its obligations under this BOT Contract (or any other Vietnam Project Counterparty's ability to perform its respective obligations under any Vietnam Project Document) and the MOIT fails to offer to the BOT Company compensation (whether through an adjustment to the Tariff payable under the Power Purchase Agreement or otherwise) sufficient to indemnify the BOT Company for the consequences of such inaccuracy for a period of ninety (90) Days after notice by the MOIT.

#### 21.4 Remedies for Default

- (a) If a BOT Company Event of Default or an MOIT Event of Default (each a "**Default**") occurs and is continuing the following shall apply. In the case of a BOT Company Event of Default, the MOIT may, and in the case of an MOIT Event of Default, the BOT Company may, in each case in addition to other rights provided by this BOT Contract, but subject to Article 21.5, terminate this BOT Contract by giving ninety (90) Days notice of the Default (the expiry of such period, the "**Termination Date**") and its intention to terminate this BOT Contract 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 MOIT Event of Default, as the case may be, giving rise to such Notice of Intention to Terminate. If during the ninety (90) Day period of notice in this Article 21.4 (which, for avoidance of doubt, shall only begin to run after expiry of the ninety (90) Day or maximum one hundred and eighty (180) Day notice period referred to in Article 21.2(a) or Article 21.3(a)) the Default is cured by the defaulting Party or another Party stepping in to cure the Default on behalf of the defaulting Party then this BOT Contract shall not be terminated.

The Parties hereby agree that, upon the delivery of a Notice of Intention to Terminate, (a) the BOT Company shall not make any payments to any Sponsor or an Affiliate of any Sponsor, regardless of whether such payment is in the form of a dividend, a payment in connection with any Subordinated Shareholder Loans or otherwise, and such payment restriction shall be effective until the earlier of (i) cure of the Default by the defaulting Party or another Party stepping into cure the Default on behalf of the defaulting Party within such ninety (90) Day period and (ii) the Purchase and Sale Date and (b), for the avoidance of doubt, the BOT Company shall, to the extent there are

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revenues, continue to pay regular and scheduled debt service until the Purchase and Sale Date, subject to the terms and conditions of the Financing Documents.

Subject to Article 21.5, upon expiration of such ninety (90) Day period of notice and unless the Parties shall have agreed otherwise or 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 BOT Contract by delivering a notice to this effect to the other Party and the Security Agent (a “**Notice of Termination**”), whereupon this BOT Contract shall immediately terminate.

- (b) The MOIT, or a nominee designated by the MOIT, shall have the right, but under no circumstances the obligation, to assume partial or complete (as the MOIT may decide) operational responsibility for the Facility (in the capacity of an operator only) in the place and instead of the BOT Company in order to continue operation of the Facility or complete any necessary repairs so as to assure uninterrupted availability of electrical energy from the Facility.

Such step-in rights shall arise upon the occurrence and continuance of a BOT Company Event of Default which could reasonably be expected to materially adversely affect the BOT Company’s ability to operate and maintain the Facility in accordance with this BOT Contract and the Power Purchase Agreement.

The MOIT or its designated nominee, shall not exercise such step-in rights until any applicable cure period specified in Articles 21.2(a) and/or 21.4(a) has expired, provided that the MOIT or its designated nominee, may step-in at any earlier time if the BOT Company is not diligently proceeding to cure the applicable default. For so long as the Financing Documents remain in effect, the MOIT or its designated nominee shall not exercise step-in rights hereunder (i) without first obtaining the consent of the Lenders, or (ii) if operation of the Facility has been assumed by any Financing Party or any approved assignee or designee of the Lenders in accordance with the MOIT Acknowledgment and Consent. Upon the curing of the BOT Company Event of Default which has led to the exercise by the MOIT or its designated nominee of its step-in rights, the operation of the Facility shall be returned to the BOT Company with reasonable promptness.

## **21.5 Lenders’ Step-In Right**

From and after Financial Close and for so long as the Financing Documents remain in effect, the MOIT shall not, upon a BOT Company Event of Default, terminate this BOT Contract without first providing a copy of any notices required to be given by the non-defaulting Party pursuant to Article 21.4 to the Lenders and otherwise in accordance with the MOIT Acknowledgment and Consent. The suspension of the MOIT’s right to terminate this BOT Contract shall be contingent on the Lenders’ curing the outstanding BOT Company Event(s) of Default.

Upon receipt of a copy of a notice from the MOIT to the defaulting Party as a result of a BOT Company Event of Default, the Lenders may, but shall have no obligation to:

- (a) remedy or procure the remedy of such Default; or
- (b) assume, or arrange for a substitute company or companies to assume, all of the interests, rights and obligations of the Sponsors and the BOT Company under this BOT Contract and in the BOT Company in accordance with the MOIT Acknowledgment and Consent.

If the Lenders or their nominees assume the Sponsors’ and the BOT Company’s rights and obligations under this BOT Contract pursuant to this Article, the MOIT hereby agrees not to

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terminate this BOT Contract, provided that the Lenders shall have obtained the MOIT's and EVN's approval of the Lenders' or their nominees' designated operator for the Facility to be given (or deemed given) in accordance with the MOIT Acknowledgment and Consent.

If the Lenders choose not to exercise their options under this Article 21.5 or the MOIT Acknowledgment and Consent within the period provided for in the relevant notice served pursuant to this Article 21.5 or the MOIT Acknowledgment and Consent, and/or fail to cure a BOT Company Event of Default within the period provided for in such notice, the MOIT shall be entitled to terminate this BOT Contract in accordance with terms hereof.

In the event of any ambiguity, conflict or inconsistency between this BOT Contract and the MOIT Acknowledgment and Consent, the terms of the MOIT Acknowledgment and Consent shall prevail.

## 21.6 Termination Payment - MOIT Event of Default

- (a) Commencing on the date the BOT Company gives a Notice of Intention to Terminate under Article 21.4(a) (the "**Investor Termination Notice Date**"), the BOT Company shall have the option (the "**Investor Sale Option**") to require the MOIT to purchase from the BOT Company all the assets listed (as at the Investor Termination Notice Date) in the Asset Register. Exercise of the Investor Sale Option shall be by notice to the MOIT. The Investor Sale Option may be exercised at any time between the Investor Termination Notice Date and the date thirty (30) Days prior to the Termination Date.
- (b) The purchase price (the "**Vietnam Side Termination Payment**") payable by the MOIT as a result of an MOIT Event of Default shall be denominated and paid in Dollars and shall be paid directly to the bank account designated by the BOT Company in the notice of exercise of the Investor Sale Option in order that the BOT Company shall receive the whole amount of the Vietnamese Side Termination Payment without set-off, counterclaim or deduction in accordance with the taxation regime set out in Article 17.2 or the Investment Certificate (together with such additional amounts as required under Article 25.18).
- (c) The Vietnam Side Termination Payment shall be determined by the Independent Expert in accordance with the following formulae:
  - (i) If the termination occurs prior to the Commercial Operation Date of the Facility, the Vietnam Side Termination Payment (TP) shall be calculated as follows:

$$TP = (D - W) + (E + C - L);$$
 provided that neither "D - W" nor "E + C - L" shall be less than zero

Where:

D is the aggregate of all outstanding amounts of all indebtedness and other liabilities of any nature, including all related and substantiated hedging breakage costs and other penalties, accrued interest and other charges, of the BOT Company owing or incurred under or in connection with the Financing Documents, in each case calculated through the Purchase and Sale Date; provided that, should the BOT Company have been in breach of the Debt to Equity Ratio upon the occurrence of the event giving rise to the relevant MOIT Event of Default (or, in connection with Article 21.8, an Extended Non-Governmental Force Majeure Event), D shall only include amounts related to the principal under the Financing Documents within such Debt to Equity Ratio, together with all related penalties, accrued interest and other charges, and the MOIT shall have the option to determine which portion of

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such indebtedness shall be included in such calculation of D; provided further that, should the calculation of D include indebtedness resulting from a Refinancing, such Refinancing shall only be contemplated to the extent there is no increase to the Vietnam Side Termination Payment from what it would have been had such Refinancing not occurred. For the avoidance of doubt, no loan shall be paid twice and D shall exclude Subordinated Shareholder Loans.

E is the Charter Capital of the BOT Company, outstanding amounts of Subordinated Shareholder Loans and any other equity contributions by the Sponsors approved by the MOIT at the Purchase and Sale Date (but in all cases, excluding any equity contributed to repair or replace any part of the Facility in breach of the BOT Company's obligations under this Agreement or the Power Purchase Agreement or caused by actions or inactions inconsistent with Prudent Utility Practices or in breach of applicable Laws of Vietnam), plus an annual return equal to the cost of equity determined by the Independent Expert on the Charter Capital invested by the Sponsors together with any outstanding amounts of Subordinated Shareholder Loans and any other equity contributions by the Sponsors approved by the MOIT from the time such Charter Capital, Subordinated Shareholder Loans and other equity contributions were invested up to the Purchase and Sale Date and net any return on equity realized from dividends, redemptions and other forms of compensation on equity or return on investment received by the Sponsors (including interest and any additional return component of principal repayments of Subordinated Shareholder Loans) prior to the Purchase and Sale Date. For the avoidance of doubt, (i) the reimbursement by the BOT Company to the Sponsors of any pre-development costs and fees shall not be considered a form of compensation on equity or return on investment in the calculation of E but shall be set off against the equity contributions by the Sponsors included within the calculation of E to the extent such amounts were included and (ii) the calculation of E shall not include any amounts contemplated in the calculation of W.

C is any and all reasonable costs, expenses (including reasonable attorneys' fees), claims, demands, losses, winding up or breakage costs, prepayment penalties and charges, liabilities, obligations and actions (including the reasonable costs of, and any award made under, any arbitration decided in its favour) assessed, incurred or sustained by or against the BOT Company resulting from the suspension, breach and/or termination of any Project Agreement in connection with the termination of this BOT Contract following an MOIT Event of Default. For the avoidance of doubt, none of the above costs or expenses shall be paid twice (whether through the calculation of 'D' or otherwise).

W is the amount of the BOT Company's cash (including insurance proceeds received by the BOT Company but excluding those spent by the BOT Company to restore the Facility), accounts receivable and other current assets, as of the Purchase and Sale Date.

L is the sum of the liquidated damages that have accrued prior to the Termination Date in accordance with this BOT Contract and have not been paid to the MOIT.

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- (ii) If the termination occurs after the Commercial Operation Date of the Facility, the Vietnam Side Termination Payment (TP) shall be calculated as follows:

$TP = (D - W) + (E + C - L)$ ; provided that neither “D – W” nor “E + C – L” shall be less than zero

Where:

D is calculated as provided in Article 21.6(c)(i).

E is determined by taking the present value of projected equity cashflows of the Project, which shall include the present value at the time of termination of any projected dividends and redemptions of Charter Capital to be paid to the Sponsors and principal and interest payments for Subordinated Shareholder Loans outstanding at the time of termination for the period commencing on the Purchase and Sale Date and terminating on completion of the Operational Term net any projected equity contributions and infusions (including additional Subordinated Shareholder Loans) to be made by the Sponsors during such period. To derive such present value amounts, the projected equity cashflows shall be discounted using a deemed cost of equity for the business at the time of termination to be determined by the Independent Expert. For the avoidance of doubt, (i) Subordinated Shareholder Loans shall be assumed by the Independent Expert to be repaid by the BOT Company and Charter Capital shall be assumed by the Independent Expert to be redeemed by the Shareholders on the last Day of the Operational Term unless the Financing Documents and Shareholder Agreements submitted to the MOIT prior to the occurrence of the MOIT Event of Default (or, in connection with Article 21.8, an Extended Non-Governmental Force Majeure Event) specify an earlier repayment date (in which case such earlier date shall be used as the basis for this calculation) and (ii) the calculation of E shall not include any amounts contemplated in the calculation of W. In projecting the BOT Company’s cashflows, the Independent Expert (with inputs from any professional consultant, including the Independent Engineer) shall consider, and to the extent applicable, use actual plant performance and operating data at the Purchase and Sale Date, such as (but not limited to) Dependable Capacity, fuel cost and heat rates, capital expenditure program, operating expenses, working capital, the terms of the Financing Documents and the like; provided that, should the actual plant performance and operating data at the Purchase and Sale

Date be negatively effected by the MOIT Event of Default (or, in connection with Article 21.8, an Extended Non-Governmental Force Majeure Event), the Independent Expert shall determine an alternative date prior to the Purchase and Sale Date for such projection or otherwise eliminate the effects of such MOIT Event of Default (or, in connection with Article 21.8, an Extended Non-Governmental Force Majeure Event) upon the actual plant performance and operating data used for such projection.

C is calculated as provided in Article 21.6(c)(i). W is calculated as provided in Article 21.6(c)(i).

L is calculated as provided in Article 21.6(c)(i).

- (d) On receipt of payment of the Vietnam Side Termination Payment, the Sponsors and the BOT Company shall jointly and severally waive any other rights or remedies which



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they have against the MOIT under this BOT Contract or any party under the Government Guarantee.

- (e) The Purchase and Sale Date shall be agreed to by the Parties and shall be a date no later than one hundred and eighty (180) Days after the Termination Date. Unpaid amounts shall accrue interest at LIBOR from the Purchase and Sale Date.

### 21.7 Termination Payment - BOT Company Event of Default

- (a) Commencing on the date the MOIT gives a Notice of Intention to Terminate under Article 21.4(a) (the “**MOIT Side Termination Notice Date**”), the MOIT shall have the right (but shall not be obliged) (“**Buy Out Option**”) to take over all the assets listed (as at the MOIT Side Termination Notice Date) in the Asset Register provided that such takeover shall not apply if any Party is able to arrange a sale of the Facility to an independent local or foreign entity satisfactory to the MOIT, and which sale has been approved by the MOIT. In such case the buying party must agree to be bound by this BOT Contract. Exercise of the Buy Out Option shall be by notice to the BOT Company. The Buy Out Option may be exercised at any time between the MOIT Side Termination Notice Date and the date thirty (30) Days prior to the Termination Date.
- (b) If the MOIT elects to exercise the Buy Out Option the payment (the “**BOT Company Event of Default Termination Payment**”) payable by the MOIT as a result of a BOT Company Event of Default shall be denominated and paid in Dollars and shall be paid directly to the bank account designated by the BOT Company in writing in order that the BOT Company shall receive the whole amount of the BOT Company Event of Default Termination Payment without set-off or deduction in accordance with the taxation regime set out in Article 17.2 or the Investment Certificate (together with such additional amounts as required under Article 25.18).
- (c) The BOT Company Event of Default Termination Payment (TP) shall be determined by the Independent Expert in accordance with the following formulae:

$TP = D - W$ ; provided that “ $D - W$ ” shall not be less than zero

Where:

D is the aggregate of all outstanding principal amounts of all indebtedness of the BOT Company owing or incurred under or in connection with the Financing Documents, excluding Subordinated Shareholder Loans and all penalties, accrued interest and other charges related to such principal amounts, on the Purchase and Sale Date; provided that, should the BOT Company have been in breach of the Debt to Equity Ratio upon the occurrence of the event giving rise to the relevant BOT Company Event of Default, D shall only include amounts related to the principal under the Financing Documents within such Debt to Equity Ratio and the MOIT shall have the option to determine which portion of such indebtedness shall be included in such calculation of D; provided further that, should the BOT Company incur additional indebtedness after the Termination Date but before the Purchase and Sale Date, D shall only include amounts related to the principal of the indebtedness existing as of the Termination Date; provided further that, should the calculation of D include indebtedness resulting from a Refinancing, such Refinancing shall only be contemplated to the extent there is no increase to the Vietnam Side Termination Payment from what it would have been had such Refinancing not occurred. For the avoidance of doubt, no loan shall be paid twice and D shall exclude Subordinated Shareholder Loans.

W is calculated as provided in Article 21.6(c)(i).

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- (d) On the Termination Date the MOIT shall waive any other rights or remedies which it has against any of the Sponsors and the BOT Company and the sole remedy of the MOIT shall be to receive the Facility upon payment of the BOT Company Event of Default Termination Payment. For avoidance of doubt, in the event of termination under this Article 21.7, the MOIT shall remain entitled to any liquidated damages which have accrued prior to the Termination Date and which remain unpaid by the BOT Company under Article 2.10 and secured by the Performance Security Deposit. If the MOIT has no further right to liquidated damages as of the Termination Date, then the MOIT shall return the Performance Security Deposit, net of any amounts drawn, on the Purchase and Sale Date.
- (e) The Purchase and Sale Date shall be agreed to by the Parties and shall be a date no later than one hundred and eighty (180) Days after the Termination Date. Unpaid amounts shall accrue interest at LIBOR from the Purchase and Sale Date.

## 21.8 Termination for Extended Non-Governmental Force Majeure

- (a) Commencing on the date notice is provided pursuant to Article 22.9(b) (the “**Extended Non-Governmental Force Majeure Termination Notice Date**”), the BOT Company shall have the option to require the MOIT to purchase from the BOT Company all of the assets listed (as at the Extended Non-Governmental Force Majeure Termination Notice Date) in the Asset Register (the “**Force Majeure Sale Option**”). Exercise of the Force Majeure Sale Option shall be by notice to the MOIT. The Force Majeure Sale Option may be exercised at any time within sixty (60) Days following such Extended Non-Governmental Force Majeure Termination Notice Date (the “**Extended Non-Governmental Force Majeure Termination Date**”).
- (b) The purchase price (the “**Termination Payment for Non-Governmental Force Majeure**”) payable by the MOIT as a result of termination of this BOT Contract pursuant to Article 22.9(b) shall be denominated and paid in Dollars and shall be paid directly to the bank account designated by the BOT Company in the notice of exercise of the Force Majeure Sale Option in order that the BOT Company shall receive the whole amount of the Termination Payment for Non-Governmental Force Majeure without set-off or deduction in accordance with the taxation regime set out in Article 17.2 or the Investment Certificate (together with such additional amounts as required under Article 25.18).
- (c) The Termination Payment for Non-Governmental Force Majeure shall be determined by the Independent Expert in accordance with the following formulae:
- (i) If the termination occurs prior to the Commercial Operation Date of the Facility, and:
- (A) Where the BOT Company repairs the damage from the Extended Non-Governmental Force Majeure Event prior to the Purchase and Sale Date, the Termination Payment for Non-Governmental Force Majeure (TP) shall be calculated as follows:
- $$TP = (D - W) + (E + C/2 + M/2 - L - H/2); \text{ provided that neither } "D - W" \text{ nor } "E + C/2 + M/2 - L - H/2" \text{ shall be less than zero}$$
- Where:
- D is calculated as provided in Article 21.6(c)(i).
- E is calculated as provided in Article 21.6(c)(i).

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C is any and all reasonable costs, expenses (including reasonable attorneys' fees), claims, demands, losses, winding up or breakage costs, prepayment penalties and charges, liabilities, obligations and actions (including the reasonable costs of, and any award made under, any arbitration decided in its favour) assessed, incurred or sustained by or against the BOT Company resulting from the suspension, breach and/or termination of any Project Agreement less any costs or expenses incurred by the MOIT, in each case in connection with the termination of this BOT Contract following an Extended Non-Governmental Force Majeure. For the avoidance of doubt, none of the above costs or expenses shall be paid twice (whether through the calculation of 'D' or otherwise).

W is calculated as provided in Article 21.6(c)(i).

M is the cost incurred by the BOT Company in overcoming the effects of the Extended Non-Governmental Force Majeure Event with respect to the First Unit or the Facility, as applicable, by the Purchase and Sale Date minus any amount received from any insurer, solely to the extent such insurance amounts were used to undertake any restoration of the First Unit or Facility, as applicable.

L is calculated as provided in Article 21.6(c)(i).

H is any and all substantiated hedging breakage costs and other penalties, interest and other charges accrued upon or incurred in connection with the indebtedness as calculated in 'D' above.

- (B) Where the BOT Company does not repair the damage from the Extended Non-Governmental Force Majeure Event prior to the Purchase and Sale Date, the Termination Payment for Non-Governmental Force Majeure (TP) shall be calculated as follows:

$TP = (D - W) + (E + C/2 - M - L - H/2)$ ; provided that neither "D - W" nor "E + C/2 - M - L - H/2" shall be less than zero.

D is calculated as provided in Article 21.6(c)(i). E is calculated as provided in Article 21.6(c)(i).

C is calculated as provided in Article 21.8(c)(i)(A). W is calculated as provided in Article 21.6(c)(i).

L is calculated as provided in Article 21.6(c)(i).

H is calculated as provided in Article 21.8(c)(i)(A).

M is the cost (as reasonably estimated by the Independent Expert) to be incurred in overcoming the effects of the Extended Non-Governmental Force Majeure Event with respect to the First Unit or the Facility, as applicable.

- (ii) If the termination occurs after the Commercial Operation Date of the Facility, and:
- (A) Where (1) the Facility is able to operate at Minimum Performance Standards on the Extended Non-Governmental Force Majeure

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Termination Date or (2) the BOT Company causes the Facility to operate at Minimum Performance Standards (to the extent that operations falling below Performance Standards was caused by the Non-Governmental Force Majeure Event) prior to the Purchase and Sale Date, the Termination Payment for Non-Governmental Force Majeure (TP) shall be calculated as follows:

$TP = (D - W) + (E + C/2 + M/2 - L - H/2)$ ; provided that neither “D – W” nor “E + C/2 + M/2 – L – H/2” shall be less than zero

Where:

D is calculated as provided in Article 21.6(c)(i).

E is the lower of (i) the number calculated using the formula for E in Article 21.6(c)(ii) and (ii) the Charter Capital of the BOT Company multiplied by a fraction, the numerator of which is the number of years remaining until the date which is the last day of the Operational Term and the denominator of which is the number of years in the Operational Term.

C is calculated as provided in Article 21.8(c)(i). W is calculated as provided in Article 21.6(c)(i). L is calculated as provided in Article 21.6(c)(i).

H is calculated as provided in Article 21.8(c)(i)(A).

M is the cost incurred by the BOT Company in overcoming the effects of the Extended Non-Governmental Force Majeure Event and bringing the Facility to operate at Minimum Performance Standards (to the extent that operations falling below Minimum Performance Standards was caused by the Non-Governmental Force Majeure Event) by the Purchase and Sale Date minus any amount received from any insurer, solely to the extent such insurance amounts were used to undertake any restoration of the Facility.

- (B) Where (1) the Facility does not operate at Minimum Performance Standards on the Extended Non-Governmental Force Majeure Termination Date and (2) the BOT Company does not bring the Facility to operate at Minimum Performance Standards prior to the Termination Date, the Termination Payment for Non-Governmental Force Majeure (TP) shall be calculated as follows:

$TP = (D - W) + (E + C/2 - M - L - H/2)$ ; provided that neither “D – W” nor “E + C/2 – M – L – H/2” shall be less than zero.

Where:

D is calculated as provided in Article 21.6(c)(i).

E is the lower of (i) the number calculated using the formula for E in Article 21.6(c)(ii), and (ii) the Charter Capital of the BOT Company multiplied by a fraction, the numerator of which is the number of years remaining until the date which is the last day of the

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Operational Term and the denominator of which is the number of years in the Operational Term.

C is calculated as provided in Article 21.8(c)(i). W is calculated as provided in Article 21.6(c)(i). L is calculated as provided in Article 21.6(c)(i).

H is calculated as provided in Article 21.8(c)(i)(A).

M is the cost (as reasonably estimated by the Independent Expert) to be incurred in overcoming the effects of the Extended Non-Governmental Force Majeure Event and to bring the Facility to operate at Minimum Performance Standards (to the extent that operations falling below Minimum Performance Standards was caused by the Non-Governmental Force Majeure Event).

The Independent Engineer shall, in accordance with Schedule 4, determine for the purposes of this Article 21.8(c)(ii) whether the Facility operates at Minimum Performance Standards just prior to the Extended Non-Governmental Force Majeure Termination Date or the Termination Date, as applicable. If the Facility does not operate at Minimum Performance Standards at the Extended Non-Governmental Force Majeure Termination Date or the Independent Engineer is unable to conduct such testing as a result of the Extended Non-Governmental Force Majeure Event, the Independent Engineer shall determine the amount of time necessary for the BOT Company to bring the Facility to operate at Minimum Performance Standards. Notwithstanding clause (e) below, should such estimate exceed one hundred and eighty (180) Days, the BOT Company and the MOIT shall, in consultation with the Independent Engineer, agree upon the extended Purchase and Sale Date, alternative performance standards required for the Facility upon the Purchase and Sale Date and/or an adjustment to the termination payment calculation to address such failure to operate at Minimum Performance Standards.

- (d) On the Extended Non-Governmental Force Majeure Termination Date consequent upon termination due to an Extended Non-Governmental Force Majeure Event, each Party shall waive any other rights or remedies which it has against the other Party and the sole remedy of the MOIT shall be to receive the Facility upon payment of the Termination Payment for Non-Governmental Force Majeure.
- (e) The Purchase and Sale Date shall be agreed to by the Parties and shall be a date no later than one hundred and eighty (180) Days after the Extended Non-Governmental Force Majeure Termination Date (except pursuant to Article 21.8(c)(ii)(B)). Unpaid amounts shall accrue interest at LIBOR from the Purchase and Sale Date.

## **21.9 Appointment of Independent Expert**

- (a) The independent expert to be appointed pursuant to Articles 5.2, 21.6, 21.7 or 21.8, shall be an internationally recognised accounting and auditing firm mutually agreed by the Parties after discussions in good faith (the “**Independent Expert**”). The Independent Expert may engage the services of any professional consultant (including the Independent Engineer) it deems necessary. The MOIT and the BOT Company shall instruct the Independent Expert to complete its determination of the amount requested pursuant to Article 5.2, 21.6, 21.7 or 21.8, as applicable, within sixty (60) Days of receipt by it of instructions. If the Parties fail within twenty-one (21) Days of the date of referral of the dispute or exercise of the Investor Sale Option, the Buy Out Option

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or the Force Majeure Sale Option, as the case may be, to agree on the appointment of the Independent Expert, then the Independent Expert shall be appointed in accordance with Article 23.4(b)(i).

- (b) If either Party disagrees with the amount determined by the Independent Expert, the amount shall be determined by arbitration under Article 23.2. The cost of the Independent Expert shall be borne by (i) the MOIT, in the case of an MOIT Event of Default, (ii) the BOT Company, in the case of a BOT Company Event of Default, and (iii) by the MOIT and the BOT Company in equal proportions, in the case of an Extended Non-Governmental Force Majeure Event, unless the Independent Expert shall direct otherwise.

#### **21.10 Special Termination**

In the event that the Power Purchase Agreement is terminated (regardless of whether such termination is due to a BOT Company Event of Default or an EVN Event of Default thereunder), this BOT Contract shall automatically terminate and the sole and exclusive remedies available shall be those set out in this Article 21.

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**Article 22**  
**Force Majeure and Change In Law**

**22.1 Non-Governmental Force Majeure Event**

Subject to the terms of this BOT Contract, no Party shall be responsible for failure to perform its obligations under this BOT Contract (other than for the payment of money due hereunder) to the extent such failure is due to any Non-Governmental Force Majeure Event, 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 Non-Governmental 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 Non-Governmental Force Majeure Event.

**22.2 Non-Governmental Force Majeure Event Defined**

For the purposes of this BOT Contract, and subject to Article 22.3 to Article 22.7 “**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 BOT Contract 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 BOT Contract, (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 [●] consecutive Days;

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- (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 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.

### **22.3 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, this BOT Contract or the Power Purchase 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.

### **22.4 Extended Non-Governmental Force Majeure Event**

For the purposes of this BOT Contract, “**Extended Non-Governmental Force Majeure Event**” shall mean any Non-Governmental Force Majeure Event which continues, and causes any Party to be unable to perform its obligations, for at least one hundred and eighty (180) consecutive Days after notification of a Non-Governmental Force Majeure Event is given pursuant to Article 22.5.

### **22.5 Notification and Obligation to Remedy**

- (a) In the event of the occurrence of a Non-Governmental Force Majeure Event, the affected Party shall: (a) as soon as reasonably practicable and in any event within forty-eight (48) hours of the affected Party having knowledge of such Non-Governmental Force Majeure Event, notify the other Parties in writing thereof, (b) not be entitled to suspend performance under this BOT Contract for any greater scope or longer duration than is required by the Non-Governmental Force Majeure Event, and (c) use all commercially reasonable efforts, such efforts to include compliance with Prudent Utility Practices, to resume full performance as soon as practicable. Notwithstanding the above, if the event constituting a Non-Governmental 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 Non-Governmental Force Majeure Event shall give such notice as soon as reasonably



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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 Non-Governmental Force Majeure Event, of its effects on the Party claiming relief and the remedial measures proposed. The Party affected by a Non-Governmental 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 Non-Governmental Force Majeure Event shall give to the other Party reasonable facilities for obtaining further information about the circumstances of the Non-Governmental Force Majeure Event, as appropriate, facilities for inspection of the Site.
- (c) The Party affected by a Non-Governmental Force Majeure Event shall give notice to the other Party of (i) the cessation of the relevant event constituting a Non-Governmental Force Majeure Event, and (ii) the cessation of the effects of such event constituting a Non-Governmental 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.

## **22.6 Limitation on Non-Governmental Force Majeure Events**

- (a) The availability of Article 22.1 to excuse the performance of a Party's obligations under this BOT Contract due to a Non-Governmental Force Majeure Event shall be subject to any limitations explicitly stated in this BOT Contract.
- (b) No obligations of the Parties that are required to be completely performed prior to the occurrence of a Non-Governmental Force Majeure Event, including the payment of money, shall be suspended or excused as a result of such occurrence.
- (c) Notwithstanding the occurrence of a Non-Governmental Force Majeure Event, no Party's obligations to make any payment which becomes due in accordance with the terms of this BOT Contract shall be suspended or excused during the period of a Non-Governmental Force Majeure Event affecting it.
- (d) No Party shall be relieved of any obligations under this BOT Contract solely because of increased costs or other adverse economic consequences that may be incurred through the performance of such obligations of that Party.

## **22.7 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 BOT Contract, (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 or any Sponsor in an amount which exceeds one million (USD1,000,000) 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;

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- (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);
    - (C) an amendment to the Investment Certificate upon extension of the Operational Term in accordance with the terms and conditions of this BOT Contract;
    - (D) registration of the Assignment in accordance with Article 11.2(c);
    - (E) approval by the MONRE in accordance with Section 6.2;
    - (F) MPI approval for an adjustment to the initial amount of the Investment Capital in accordance with Article 7.4; or
    - (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

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- (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 BOT Contract, 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);
- (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 and 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(s) (if applicable) that meets the requirements of the Power Purchase Agreement (including Schedule 9 thereof), following compliance by the BOT Company with the approval procedure set out therein or (bb) the non-availability of any replacement Coal Supply Agreement or Coal Transportation Agreement(s) that meets the requirements of the Power Purchase Agreement (including Schedule 9 thereof), following compliance by the BOT Company with the approval procedure set out therein, 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;

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- (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) A Non-Governmental Force Majeure Event shall not include a Government Event, EVN Event or Change in Law and under no circumstances shall the MOIT be relieved of any of its obligations under this BOT Contract due to a Government Event or an EVN Event. Each of the Sponsors and the BOT Company shall, however, in addition to any other rights it has under this BOT Contract, be relieved of any responsibility (including payment obligations) for its failure to perform its obligations under this BOT Contract to the extent such failure is due to a Government Event or EVN Event, and the period allowed for the performance by the Sponsors and the BOT Company 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 Government Event or EVN Event; provided that the BOT Company provides evidence, reasonably satisfactory to the MOIT, as to the duration of the delay caused by the Government Event or EVN Event and provided further that no relief shall be granted to the Sponsors and the BOT Company to the extent that such failure or delay would have nevertheless been experienced had such Government Event or EVN Event not occurred.

## **22.8 Payment during Government Event**

If the BOT Company is unable to deliver energy in accordance with the Power Purchase Agreement or EVN is unable to receive energy in accordance with the provisions of the Power Purchase 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 the Power Purchase 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:

- (a) if there is a Deemed Commercial Operation Date caused by a Government Event established for the First Unit or the Facility pursuant to Article 7.2 of the Power Purchase Agreement, the BOT Company shall be entitled to Capacity Charge payments in accordance with Article 12.2; and
- (b) if the Government Event occurs:
  - (i) after the Commercial Operation Date of the First Unit or the Facility, as the context requires, the MOIT shall pay b payments to the BOT Company on the basis of the average Capacity Charges paid to the BOT Company by EVN in respect of the First Unit or the Facility, as the context requires, over the period of six (6) months preceding such Government 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;
  - (ii) less than six (6) months after the Commercial Operation Date of the First Unit or the Facility, as the context requires, the MOIT shall pay Capacity Charge payments to the BOT Company in an amount equal to the average of Capacity Charges paid to the BOT Company by EVN with respect to the First Unit or the Facility, as the context requires over the period from the relevant Commercial Operation Date to such Governmental 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

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- (iii) before the end of the first month after the relevant Commercial Operation Date, the MOIT 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.

## 22.9 Rights in Relation to Extended Non-Governmental Force Majeure Event

Upon the occurrence of an Extended Non-Governmental Force Majeure Event the following shall apply:

- (a) The Parties shall have discussions with a view to reaching agreement on a solution to the problem. If agreement cannot be reached within sixty (60) Days of a Party initiating discussion by notice to the other Parties then clause (b) below shall apply.
- (b) After meeting the requirements of clause (a) above, any Party materially adversely affected by the Extended Non-Governmental Force Majeure may terminate this BOT Contract by notice to the other Parties. Upon effective notification of termination, the MOIT shall, at the option of the BOT Company, have the obligation to buy the Facility and Article 21.8 shall apply.

## 22.10 Favourable Change in Law

If one or more Change in Law has or have a cumulative favourable impact on the economic benefits (cash flow from the Project less amounts paid or due for operating costs, taxes, and debt service) of the BOT Company and/or one or more of the Sponsors by more than one million US Dollars (USD 1,000,000) (or the Dong equivalent) in aggregate (such aggregate being an aggregate for the BOT Company and the Sponsors without double counting) over the Full Term, then the MOIT may:

- (a) By notice (with full particulars as to the positive impact of the relevant Change-in-Law or the financial status of the BOT Company and/or each such Sponsor) require the BOT Company to consult promptly and agree upon one of the following remedies acceptable to the MOIT so that the MOIT shall receive compensation equal to such economic benefits:
  - (i) an adjustment to the Tariff payable under the Power Purchase Agreement;
  - (ii) shorten the Operational Term;
  - (iii) any other option mutually agreed between the relevant Parties; or
  - (iv) any combination of (i), (ii) and/or (iii) above that is mutually agreed between the relevant Parties.
- (b) If the remedy under Article 22.10(a) is not agreed within sixty (60) Days of the notice, referred to in Article 22.10(a), then the MOIT shall upon further notice to the BOT Company (the “**Further Notice**”) have the right to propose the selection of one of the above remedies under Article 22.10(a) so that the MOIT will receive compensation equal to such economic benefits.
- (c) If the remedy under Article 22.10(b) is not agreed in full within thirty (30) Days of the Further Notice, the MOIT may commence arbitration proceedings in accordance with Article 23 to determine the appropriate compensation such that the MOIT will receive compensation equal to such economic benefits.

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- (d) Promptly after any remedy is agreed or determined pursuant to this Article 22.10, the MOIT shall make all necessary amendments to this BOT Contract, procure all necessary amendments by all relevant Vietnam Project Counterparties to the relevant Vietnam Project Documents and procure all Government Authorisations from all relevant Government Bodies as are required.

### **22.11 Unfavourable Change in Law**

If one or more Change in Law has or have a cumulative adverse impact on the economic benefits (cash flow from the Project less amounts paid or due for operating costs, taxes, and debt service) of the BOT Company and/or one or more of the Sponsors by more than one million US Dollars (USD 1,000,000) (or the Dong equivalent) in aggregate over the Full Term, then the BOT Company (acting for itself and any affected Sponsor) shall upon the occurrence of a Change-in-Law or any time thereafter:

- (a) By notice (with full particulars as to the adverse impact of the relevant Change-in-Law or the financial status of the BOT Company and/or each such Sponsor) require the MOIT to consult promptly and agree upon one of the following remedies acceptable to the BOT Company so that the BOT Company may receive compensation to restore and maintain such economic benefits:
- (i) an adjustment to the Tariff payable under the Power Purchase Agreement;
  - (ii) extension of the Operational Term;
  - (iii) any other option mutually agreed between the relevant Parties; or
  - (iv) any combination of (i), (ii) and/or (iii) above that is mutually agreed between the relevant Parties.
- (b) If the remedy under Article 22.11(a) is not agreed within sixty (60) Days of the notice referred to in Article 22.11(a), then the BOT Company (acting for itself and any affected Sponsor) shall upon further notice to the MOIT (the “**Further Notice**”) have the right to propose the selection of one of the above remedies under Article 22.11(a) in order to restore and maintain the respective economic benefits of the BOT Company and/or each such affected Sponsor.
- (c) If the remedy under Article 22.11(b) is not agreed in full within thirty (30) Days of the Further Notice the BOT Company (acting for itself and any affected Sponsor) may commence arbitration proceedings in accordance with Article 23 to determine the appropriate compensation to restore and maintain such economic benefits.
- (d) Promptly after any remedy is agreed or determined pursuant to this Article 22.11, the MOIT shall make all necessary amendments to this BOT Contract, procure all necessary amendments by all relevant Vietnam Project Counterparties to the relevant Vietnam Project Documents and procure all Government Authorisations from all relevant Government Bodies as are required.

### **22.12 Consequences of a Government Event**

- (a) The MOIT shall indemnify the BOT Company and the Sponsors, as applicable, against any increased cost, loss or damage suffered by the BOT Company or the Sponsors and caused by a Government Event.

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- (b) If a Government Event or any breach of, or default under, this BOT Contract or any other Vietnam Project Document by any Vietnam Project Counterparty (not attributable to a Non-Governmental Force Majeure Event) causes increased cost, loss or damage to the BOT Company or the Sponsors (including any additional costs and expenses under the Construction Contracts) and which is not dealt with under Article 15.5 of the Power Purchase Agreement, an Independent Expert shall be appointed and shall determine the amount of the increased cost, loss or damage caused by the Government Event within sixty (60) Days of receipt of instructions from the BOT Company and the MOIT.
  - (c) If the Parties fail within twenty-one (21) Days to agree on the Independent Expert, then the Independent Expert shall be appointed in accordance with Article 23.4(b)(i).
  - (d) Upon determination by the Independent Expert of the amount of the increased cost, loss or damage caused by the Government Event, the MOIT shall have the option to determine whether it pays such increased cost, loss or damage by way of an increase to the Tariff payable under the Power Purchase Agreement and/or payment of compensation to the BOT Company or Sponsors suffering the cost. The MOIT shall procure all necessary amendments to the relevant Vietnam Project Documents and/or pay such amount to the BOT Company or a Sponsor, as applicable, within sixty (60) Days of the Independent Engineer's determination.
  - (e) If either Party disagrees with the amount determined by the Independent Expert, the amount of indemnity shall be determined by arbitration under Article 23.2.

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## Article 23 Dispute Resolution

### 23.1 Consultation

In the event that a dispute arises out of or in connection with this BOT Contract or the validity, interpretation, breach of performance or implementation of this BOT Contract, 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 23.4.

### 23.2 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. The MOIT 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 the MOIT 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.



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- (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 fulfil their remaining respective obligations under this BOT Contract.
  - (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.

### 23.3 Co-ordination of Disputes

- (a) Subject to Article 23.3(c), if any Dispute arising out of or in connection with this BOT Contract or any dispute between the BOT Company and the MOIT or EVN arising out of or in connection with (i) the Power Purchase Agreement, or (ii) the Government Guarantee, or (iii) the MOIT Acknowledgment and Consent (the Power Purchase Agreement, 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 BOT Contract 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,

then notwithstanding that arbitrators may have been agreed or appointed under this BOT Contract, 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 to 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 23.3(a) shall not apply in respect of any First Dispute after a hearing on the merits has commenced in any arbitration under this BOT Contract 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 23 or any BOT Agreement by reason of the notice given by the BOT Company under Article 23.3(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

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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 23.3 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 23.3(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.

#### **23.4 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.
- (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 23.4(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 23.4(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 (21) Days after the date of receipt of the other Party’s submission).
- (d) The costs of the Expert shall be shared in equal proportions between (i) MOIT and (ii) the BOT Company and the Sponsors, unless the Expert shall direct otherwise.

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**Article 24**  
**Liquidation of the BOT Company**

**24.1 Circumstances for Liquidation**

The BOT Company shall be liquidated in accordance with this BOT Contract, the Charter and the procedures set out in the Laws of Vietnam.

**24.2 Use of the BOT Company's Name or Trademark**

Upon expiration or early termination of this BOT Contract and the liquidation of the BOT Company, the MOIT agrees that neither it nor its successors in interest nor any other successors in interest of the BOT Company shall use the name or registered trademark (including any mark deceptively similar thereto) of the BOT Company, any Sponsor or any of their Affiliates.

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**Article 25**  
**General**

**25.1 Language**

This BOT Contract 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 and one copy of each language text shall be submitted to the MPI and one shall be deposited with the BOT Company. The two language texts shall have equal validity, but if there is any discrepancy between the two texts, the English text shall prevail. English shall be the working language of the BOT Company and all documents, notices, waivers and all other communication written or otherwise among the Parties in connection with this BOT Contract shall be in English.

**25.2 Governing Law**

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

**25.3 Notices**

Notices or other communications required to be given by either Party or the BOT Company pursuant to this BOT Contract shall be written in English and Vietnamese and 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 above, if to the BOT Company, at its legal address as in effect from time to time, or if sent to such Party or the BOT Company by courier or hand delivery, to such other address as such Party or the BOT Company 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 BOT Contract, [●] is the Lead Sponsor and Sponsor may be contacted through [●] at the address below until otherwise notified:

Address: [●]

**25.4 Only Agreement**

This BOT Contract constitutes the complete and only agreement between the Parties on the subject matter of this BOT Contract and replaces all previous oral or written agreements, contracts, understandings and communications of the Parties in respect of the subject matter of this BOT Contract.

**25.5 Waiver**

(a) Effect of a Waiver

No waiver by either Party of any default by the other in the performance of any of the provisions of this BOT Contract:

- (i) shall operate or be construed as a waiver of any other or further default whether of a similar or different character; or

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(ii) shall be effective unless in writing duly executed by an authorised representative of the Party against which it is being asserted.

(b) Effect of a Failure to Insist

The failure by either Party to insist on any occasion upon the performance of the terms, conditions, and provisions of this BOT Contract, or time or other indulgence granted by one Party to the other, shall not thereby act as a waiver of the breach, as acceptance of any variation, or as a relinquishment of any such right hereunder, each of the terms, conditions, and provisions of this BOT Contract remaining in full force and effect notwithstanding.

(c) Liquidated Damages

The Parties agree that (i) in the event of delays or reduced capacity in accordance with Article 2.10 and (ii) on termination of this BOT Contract and the other Vietnam Project Documents in accordance with Article 21 of this BOT Contract and similar provisions of the other Vietnam Project Documents, the BOT Company 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 BOT Contract, 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 the transferee entity nominated by the MOIT or other Government Body 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 related events. Each party hereby waives any defence as to the validity of any liquidated damages in this BOT Contract on the grounds that such damages are void as penalties (and the payment obligations of EVN pursuant to the Power Purchase Agreement shall continue unless the amount payable on termination has been discharged in full). It is further understood that with regard to situations or circumstances for which this BOT Contract does not provide for liquidated damages, an aggrieved Party is not precluded from seeking such other remedies or damages as may be available to such Party.

## **25.6 Commercial Acts; Sovereign Immunity**

- (a) The Parties agree that the transactions which are the subject of this BOT Contract and of the contracts in the Appendices are international commercial transactions.
- (b) To the extent that the MOIT 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 BOT Contract 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 the MOIT or Vietnam or any of its property, assets or revenues such an immunity (whether or not claimed), the MOIT on behalf of itself, and Vietnam 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.

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## 25.7 Confidentiality

### (a) Mutual Obligations

From time to time prior to and for the Full Term each Party has disclosed or may disclose Confidential or Proprietary Information to the other Party. In addition, the Parties may, from time to time during the Full Term, obtain Confidential or Proprietary Information of the BOT Company in connection with the operation of the BOT Company. Except as otherwise provided in any agreement between the BOT Company and a Party, or for purposes of submitting any such agreement for the necessary approval of any relevant Government Body or foreign governmental authority, the Party receiving such information shall, for the Full Term and thereafter, or until such information properly comes into the public domain:

- (i) maintain the confidentiality of such information;
- (ii) not disclose it to any person or entity, except to (A) their employees and advisors, (B) other Government Bodies, (C) Lenders or potential Lenders, (D) Affiliates of any Sponsor, (E) any insurers and reinsurers of the Facility or the BOT Company and (F) the advisors of any of the foregoing, and in each case only to the extent such person or entity needs to know such information to perform their responsibilities; and
- (iii) not use such information except for the benefit of the BOT Company.

For purposes of this BOT Contract, “**Confidential or Proprietary Information**” shall include but not be limited to legal (including the Vietnam Project Documents), commercial or technical data and know-how and other information disclosed by the Parties to or by the BOT Company or to one another, which the disclosing Party has identified in writing and indicates to the receiving Party is to be treated confidentially.

### (b) Further Advice

Each Party shall advise its board, management personnel members, senior staff, and other employees receiving such information of the existence of and the importance of complying with the obligations set out in this Article.

### (c) Permitted disclosures and releases

Notwithstanding the above provisions, a Party may disclose Confidential or Proprietary Information, make press releases or responses or make public announcements as required by law or by any stock exchange on which the shares of that Party are listed.

## 25.8 No Authority to Bind

The BOT Company and the Sponsors shall not have authority to bind the MOIT and the MOIT shall not have authority to bind either the BOT Company or the Sponsors in connection with any matters arising pursuant to this BOT Contract.

## 25.9 Limitation of Liability

Except as required by Article 25.10, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or 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 BOT Contract; provided, however, that this provision is not

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intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this BOT Contract or to any activity contemplated by this BOT Contract.

#### **25.10 Indemnification**

- (a) The MOIT shall bear responsibility for loss of or damage to property, death or injury to 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 the MOIT, without recourse to the BOT Company. The MOIT 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 25.10(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 person (or any claim against the MOIT in respect thereof) and all expenses relating thereto (including without limitation reasonable legal fees) suffered by the MOIT in connection with the Facility resulting from any wilful misconduct or negligent act or omission of the BOT Company, without recourse to the MOIT. The BOT Company will hold MOIT 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 MOIT or the failure of the MOIT to take reasonable steps in mitigation thereof. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Article 25.10(b) shall apply to any loss, damage, cost or expense in respect of which, and to the extent that, the MOIT is 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.

#### **25.11 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 BOT Contract exceed an amount equal to one million Dollars (USD1,000,000), in the aggregate, at which time all claims of such Party for indemnification under this BOT Contract 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 BOT Contract 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.

#### **25.12 Defense of Claims**

The indemnified party shall have the right, but not the obligation, to 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

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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 25.10(a), 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.

### **25.13 Effectiveness**

This BOT Contract, which includes all Appendices, shall not become effective unless:

- (a) the Investment Certificate has been issued in the form attached to this BOT Contract and delivered to Sponsors;
- (b) this BOT Contract has been executed by all Parties;
- (c) the Government Guarantee attached to this BOT Contract has been executed and delivered to Sponsors; and
- (d) the Coal Supply Agreement(s) and the Power Purchase Agreement have been executed and are effective.

### **25.14 Amendment**

Amendments to this BOT Contract 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 and submitted to the MPI for approval. Such amendments shall become effective upon the approval of the MPI and shall be subject to Article 25.1 of this BOT Contract.

### **25.15 Survival**

Cancellation, expiration, termination of this BOT Contract 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.

### **25.16 Successors and Assigns**

Save as permitted by Article 9.3 and Article 21.5 this BOT Contract may not be assigned by either Party other than by mutual agreement between the Parties in writing. This BOT Contract shall be binding upon, and inure to the benefit of, the Parties hereto and their respective legal and permitted successors and assigns.

### **25.17 Relationship of the Parties**

This BOT Contract shall not be interpreted or construed to create an association, joint venture, partnership or agency between the Sponsors or the BOT Company and the MOIT or to impose any partnership obligation or liability upon the MOIT with respect to the Sponsors or the BOT



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Company, or the Sponsors with respect to the MOIT. Nothing in this BOT Contract shall be construed as creating any relationship between the Parties other than the rights and obligations set out in this BOT Contract. 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 BOT Contract.

#### **25.18 Payments by the MOIT**

Any compensation amount payable by the MOIT under this BOT Contract in connection with the Facility shall be paid in Dollars, in full, free of any deductions or withholdings and without any set off or counterclaim. In the event that the MOIT is prohibited by law from making payments hereunder free of deductions or withholdings, then the MOIT shall pay such additional amounts to the BOT Company and/or the Sponsors (as the case may be) as may be necessary in order that the actual amount received after deduction or withholding (and after payment of any additional taxes or other charges due as a consequence of the payment of such additional amounts) shall equal the amount that would have been received if such deduction or withholding were not required.

#### **25.19 Third Parties**

This BOT Contract is intended solely for the benefit of the Parties hereto. A person who is not party to this BOT Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this BOT Contract. Nothing in this BOT Contract 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 BOT Contract except to the extent contemplated by Article 21.5.

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**Article 26**  
**Electricity Market Reforms**

**26.1 Assignment by EVN**

The BOT Company agrees and acknowledges that, if requested by the MOIT and subject to satisfaction of the conditions set out in Article 26.2 below, the BOT Company will permit EVN to assign or transfer all of its rights and obligations under the Power Purchase Agreement without the BOT Company's prior consent:

- (a) to an entity that acquires substantially all of EVN's assets in an equitisation or corporatisation of EVN; or
- (b) to a power purchasing entity in the event that (i) such power purchasing entity is required by the Laws of Vietnam to buy substantially all power generated in Vietnam and (ii) EVN itself is no longer entitled under the Laws of Vietnam to buy power generated in Vietnam.

An entity that is an assignee or transferee to EVN's rights and obligations under the Power Purchase Agreement pursuant to paragraphs (a) or (b) above shall hereinafter be referred to as a "Successor Entity".

**26.2 Conditions Precedent**

The MOIT's right to require the BOT Company to permit EVN's assignment or transfer its rights and obligations under the Power Purchase Agreement to a Successor Entity is conditional upon satisfaction of the following:

- (a) the Successor Entity:
  - (i) must agree to assume and become fully liable to perform all of EVN's obligations and liabilities under the Power Purchase Agreement, whether existing before or after the date of the assignment or transfer;
  - (ii) must be entitled to all of EVN's rights and benefits under the Power Purchase Agreement; and
  - (iii) must execute (together with EVN) such agreements and acknowledgements respectively with the BOT Company and the Lenders as the BOT Company and the Lenders shall reasonably request;
- (b) the assignment or transfer to the Successor Entity must not directly or indirectly cause the BOT Company to be in default under any agreement to which it is a party, including any of the Financing Documents or render it more likely that such a default might occur in the future;
- (c) the Successor Entity must demonstrate to the reasonable satisfaction of the BOT Company and the Lenders, such reasonable satisfaction to be confirmed in writing, that it is legally, financially and technically capable of paying and properly performing the obligations of EVN that are being assigned or transferred;
- (d) the Successor Entity must obtain all necessary Government Authorisations for such assignment or transfer and provide the BOT Company with a certified true and complete copy of the assignment agreement or transfer agreement;

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- (e) the BOT Contract must remain in full force and effect as to the Successor Entity and the relevant Government Body must acknowledge the same to the BOT Company in writing in a manner satisfactory to the BOT Company; and
  - (f) the Government Guarantee must remain in full force and effect as to the Successor Entity and the Government must acknowledge the same to the BOT Company and the Lenders in writing in a manner satisfactory to the BOT Company and the Lenders.

### **26.3 Electricity Market Reform Implementation**

The Parties acknowledge that it is the present intention of the Government to reform the electricity industry and establish a competitive generation, wholesale and retail market (the “**Competitive Market**”). At such time as the Competitive Market is established by the Laws of Vietnam, but prior to the commencement of operation thereof, the Parties agree that they will negotiate in good faith such amendments to the Power Purchase Agreement and this BOT Contract as may be required to integrate the Power Purchase Agreement, this BOT Contract and the Facility into the operation of the Competitive Market.

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This BOT Contract is signed by the authorised representatives of the Parties in [●] on [●].

**THE MINISTRY OF INDUSTRY AND TRADE  
FOR AND ON BEHALF OF THE GOVERNMENT**

**[MINISTER] [DEPUTY MINISTER]**

**[SPONSORS]**

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Investment Certificate No. [●] having been issued to the Sponsors in terms satisfactory to the Parties [●],[*Address*], Vietnam, now hereby agrees to be bound, and entitled to the rights conveyed, by the terms of this BOT Contract

For the BOT Company

[●]

seal

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## **Schedules**

- 1 Site Plan
- 2 Timing
- 3 Documents Required by Article 2.6(a)
- 4 End of Term Tests
- 5 Transfer
- 6 Permitted Contracting Parties
- 7 Government Authorisations and Agreements Required
- 8 Form of Performance Security Deposit
- 9 Deemed Commissioning Capacity Payments

## **Appendices**

- A. BOT Company Charter
- B. Land Lease Agreement
- C. Power Purchase Agreement
- D. Investment Certificate
- E. Government Guarantee
- F. Ministry of Justice Legal Opinion
- G. Decision
- H. MOIT Acknowledgment and Consent

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Schedule 1  
**SITE PLAN**

[Schedule not available]

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Schedule 2  
**TIMING**<sup>3</sup>

*[Schedule not available]*

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<sup>3</sup> Note: Upon an extension of the Required Commercial Operation Date in accordance with the BOT Contract and the Power Purchase Agreement, the BOT Company and the MOIT, in consultation with the Independent Engineer, shall agree upon certain revisions to Schedule 2 that extend certain milestones related to and affected by such Required Commercial Operation Date extension.



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Schedule 3  
**DOCUMENTS REQUIRED BY ARTICLE 2.6(A)**

No later than sixty (60) Days prior to the Construction Start Date, the BOT Company shall submit the following documents to the MOIT. The documents submitted shall be for the information of the MOIT only and require no approval from the MOIT, except for approval of technical designs provided pursuant to Article 2.6(a) and the approval of the Coal Supply Agreement(s) and (if applicable) the Coal Transportation Agreement(s) pursuant to the terms of the Power Purchase Agreement.

- Equipment Procurement and Construction Contract

(excluding any information, section, schedule or appendix that (i) the BOT Company is not allowed to disclose pursuant to a reasonable confidentiality undertaking with a Contractor or (ii) internal or subcontractor pricing information that the BOT Company and Contractor reasonably deem to be confidential, except as required by the Laws of Vietnam).

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Schedule 4  
**END OF TERM TESTS**

*[Schedule not available]*

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Schedule 5  
**TRANSFER TABLE OF CONTENTS**

- SECTION 1 - GENERAL CONCEPT
- SECTION 2 - TRANSFER PLAN
- SECTION 3 - PERSONNEL TRAINING PLAN
- SECTION 4 - FINAL TRANSFER OVERHAUL

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Schedule 6  
**PERMITTED CONTRACTING PARTIES**

**1. GENERAL**

This Exhibit identifies potential equipment suppliers and subcontractors that the Contractor may call for bids to provide equipment or construction services to the Project.

**2. OFF-SHORE SUB-CONTRACTOR LIST**

EQUIPMENT / SYSTEM	SUB-CONTRACTOR

**3. ON-SHORE SUB-CONTRACTOR LIST**

EQUIPMENT / SYSTEM	SUB-CONTRACTOR
Civil & Building Work	
Mechanical & Electrical System Installation Work	

**4. CONTRACTOR AND SUB-CONTRACTOR LIST (Operation phase)**

Sponsors and Affiliates thereof.

Any other contractors or sub-contractors related to the operation and maintenance activities of the Facility.

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Schedule 7  
**GOVERNMENT AUTHORISATIONS AND AGREEMENTS REQUIRED**

**1. GENERAL**

This Schedule sets forth the different Government Authorisations and Agreements to be obtained by the BOT Company. Such Government Authorisations and Agreements include those listed, and are split in two categories: Government Authorisations to be obtained and Agreements to be entered into for Facility implementation and operation and Government Authorisations to be obtained and Agreements to be entered into for construction purpose. For the avoidance of doubt, this Schedule 7 is not intended to be a comprehensive list of the Government Authorisations and Agreements necessary or beneficial for the Project.

**2. GOVERNMENT AUTHORISATIONS AND REGISTRATIONS TO BE OBTAINED FOR PROJECT IMPLEMENTATION AND OPERATION**

- a. Decision to Allocate Land,
- b. Cadastral Map of the Site,
- c. Investment Project, including the construction of coal jetty,
- d. Investment Certificate, including any amendments or renewals thereto, including approval or relevant tax incentives consistent with the tax regime set forth in the BOT Contract,
- e. Environmental Impact Assessment,
- f. Decision for the Land Lease, g. Certificate of Right to Use the Site,
- h. Electricity License, including any amendments or renewals thereto,
- i. Certification for operation of equipment that is strictly required for labour safety, j. Approval of the Ministry of Finance to denominate accounts in Dollars,
- k. Approval of Vietnam Project Agreements,
- l. Government's authorisation to the MOIT to sign Government Guarantee and BOT Contract on behalf of the Government,
- m. MOJ Legal Opinion,
- n. Registration of the BOT Company's seal with the provincial police agency,
- o. Government's authorisation in relation to mortgage of the Facility and any other assets to the Lender through the Security Agent,
- p. Registration of the accounting system with the Ministry of Finance of Vietnam (including the registration of accounting books) (if any),
- q. Ministry of Finance approval for the use of foreign currency as the currency unit to be used in accounting by the BOT Company (if any),
- r. Registration with the provincial Tax Department for the method of depreciation (if any), s. Decision of Vietnam Maritime Administration on jetty construction (if any),
- t. Evidence for opening a Specialised Capital Deposit Account with a bank licensed in Vietnam,
- u. Bank approval for offshore bank accounts, including a license from the Bank in connection with the Escrow Accounts (as provided in Article 9.3(a)(iii));
- v. Bank approval for keeping foreign currency received from capital transactions outside Vietnam,
- w. Approvals for Project Securities,

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- x. Registrations of Project Securities with the National Office for Security Transactions and the provincial department on natural resources and environment,
  - y. Bank registrations of the foreign loans contemplated by the Finance Documents,
  - z. Work permits for foreign employees,
    - aa. Certificate on the ownership of construction works, if not covered by the Certificate of Right to Use the Site,
    - bb. Permit for discharge of wastewater into water sources,
    - cc. the MOIT's approval of the Commercial Operation Date,
    - dd. Registrations and verifications of machinery, equipment, materials and substances subject to strict occupational safety and hygiene requirements (if any),
    - ee. Bank approval of offshore interest and currency exchange hedging arrangements,
    - ff. Permits for the importation of Coal and importation of special equipment requiring such permits, and
    - gg. Prime Minister's approval of the continuation of the corporate income tax incentives under Article 17.2(c) for duration of the Operational Term, as provided in the BOT Contract.

**3. GOVERNMENT AUTHORISATIONS AND REGISTRATIONS TO BE OBTAINED FOR CONSTRUCTION**

- a. Approval of the Import Plan,
- b. Certificate of Pollution Control,
- c. Environmental Permits,
- d. Approval of Technical Design,
- e. Fire Protection Permit,
- f. Construction Contractor's permits for construction of Facility and jetty (if any), eg. Construction Permits for Facility and jetty,
- h. Approval of the Environmental Impact Assessment Report, and i. Approval of design on fire protection/fighting safety.

**4. AGREEMENTS TO BE OBTAINED FOR CONSTRUCTION, PROJECT IMPLEMENTATION AND OPERATION**

- a. BOT Contract,
- b. Coal Supply Agreement(s) and, if applicable, Coal Transportation Agreement(s),
- c. Power Purchase Agreement,
- d. Shared Facilities and Services Agreement,
- e. Land Lease Agreement,
- f. Project Securities,
- g. Charter of the BOT Company,
- h. Financing Documents,
- i. Government Guarantee,
- j. MOIT Acknowledgement and Consent,
- k. Construction Contracts (including the EPC Contract), and l. O&M Contract (if any).

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Schedule 8  
**FORM OF PERFORMANCE SECURITY DEPOSIT**

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

Date : \_\_\_\_\_

Guarantee no. Issued at : \_\_\_\_\_

Dear Sir,

At the request and on behalf of our customer [*Insert name of BOT Company*] (the “**BOT Company**”), a corporation governed by the law of Vietnam, and to satisfy the stipulations of Article 2.3(b) of the BOT Contract executed on [ ] by the Ministry of Industry and Trade of the Socialist Republic of Vietnam (the “**MOIT**”), the BOT Company and the Sponsors (as defined therein) (the “**BOT Contract**”), we hereby grant a first demand guarantee in favour of the MOIT. Capitalised terms used but not defined herein shall have the meanings provided in the BOT Contract.

Customer: The BOT Company

Issuing Bank: [ ]

Beneficiary: The MOIT

Guaranteed Amount: [The higher of [●] Dollars and [●] per cent. of Investment Capital.]

Expiry Date: The earlier of:

- (a) [ ]
- (b) the date falling [●] months after final completion (as defined in, or equivalent thereof described in, the Construction Contract(s)) of the Facility (as notified to you by [ ] as Independent Engineer under the Power Purchase Agreement dated [ ] between Vietnam Electricity and the BOT Company).

1. Subject to the other provisions of this Guarantee, we hereby give an irrevocable undertaking to pay in your favour, within [●] business days of your first demand accompanied by presentment 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 the present 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 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 BOT Contract and that

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either (i) damages specified in Article 2.10 of the BOT Contract are due and unpaid or (ii) the BOT Contract has been validly terminated by the MOIT and pursuant to Article 21.7(d) of the BOT Contract, the MOIT is entitled to liquidated damages under Article 2.10 of the BOT Contract.

3. The Payment Certificate which you shall present to us must be signed by the authorised representative of the MOIT. 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 of 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 *[date occurring on or before Financial Close]* and shall remain in force until the Expiry Date.  
  
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 specified above in accordance with the conditions specified above. This Guarantee shall be returned to us forthwith following the Expiry Date specified above.
8. 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 this Guarantee shall be borne by the BOT Company.
9. Any disputes arising in connection with this Guarantee or relating thereto shall be finally settled in accordance with the Arbitration Rules of the Singapore International Arbitration Centre by one or more arbitrators applying said rules. The place of arbitration shall be Singapore, and the proceedings conducted in English.

Per: \_\_\_\_\_

Position: \_\_\_\_\_

Annexes: Form of Payment Certificate



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## Annex

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

### Payment Certificate

Attention : [ ]

#### 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 Authorised for the purposes of the present demand, in my capacity as [ ], to represent the MOIT, in favour of which party the guarantee has been issued;
2. The following has occurred [select one of the justifications below]:

#### **[Liquidated damages for late completion]**

- (i) The Commercial Operation Date of the [First Unit/Facility][*Delete as appropriate*] has not occurred by the Required Commercial Operation Date of the [First Unit/Facility] [*Delete as appropriate*].
- (ii) The BOT Company has been given notice of the applicable liquidated damages calculated in accordance with Article 2.10 of the BOT Contract and such liquidated damages have not been paid.
- (iii) The amount of outstanding liquidated damages owing is equal to [detail calculation].

Consequently, I hereby request that you pay over an amount of [*insert same amount as above*].

#### **[Liquidated damages for non-conformity of the First Unit/Facility with Contracted Capacity of the First Unit/Facility]**

- (i) Upon completion of the Dependable Capacity Test used to establish the Initial Dependable Capacity of the [First Unit/Facility] [*Delete as appropriate*], Initial Dependable Capacity was less than the Contracted Capacity of the [First Unit/Facility] [*Delete as appropriate*] and for a period of up to ninety (90) days after the initial Dependable Capacity Test the Initial Dependable Capacity of the [First Unit/Facility] [*Delete as appropriate*] is still less than the Contracted Capacity.
- (ii) The BOT Company has been given notice of the applicable liquidated damages calculated in accordance with Article 2.10 of the BOT Contract and such liquidated damages have not been paid.
- (iii) The amount of outstanding liquidated damages owing is equal to [detail calculation].

Consequently, I hereby request that you pay over an amount of [*insert same amount as above*].

#### **Termination of BOT Contract for a BOT Company Event of Default**

[The BOT Contract has been validly terminated by the MOIT following a BOT Company Event of Default occurring after Financial Close. Consequently I hereby request that you pay over an amount of [*insert the undrawn amount of the Guarantee*].]

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

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Executed in on [ ],

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[Authorised representative of the Ministry of Industry and Trade of the Socialist Republic of Vietnam]

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Schedule 9  
**DEEMED COMMISSIONING CAPACITY PAYMENTS**

Upon the relevant Deemed Commercial Operation Date resulting from the occurrence of a MOIT Deemed Commissioning Event, the MOIT shall commence making the Capacity Charge payments to the BOT Company required under this BOT Contract and Section 7.2 of the Power Purchase Agreement with respect to the First Unit or the Facility, as the context requires, including 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 stockpile 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 makes all payments required after the Deemed Commercial Operation Date, the BOT Company shall be entitled to no other claim for damages as a result of such delay; provided, however, that the relevant Deemed Commercial Operation Date shall only occur upon issuance of the Independent Engineer's report certifying that the Deemed Commercial Operation Date has occurred in accordance with Article 7.2(c) of the Power Purchase Agreement; provided further, however, that such Capacity Payments shall only be required on or after the Original Required Commercial Operation Date.

If, upon subsequent testing pursuant to Article 7.1 of the Power Purchase Agreement and Schedule 4 of the Power Purchase Agreement following the cessation of the MOIT Deemed Commissioning Event, 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, as relevant, (other than due to an MOIT Event of Default or a Force Majeure Event), the BOT Company shall refund to the MOIT 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 until such amounts are refunded to the MOIT. Notwithstanding the foregoing, the BOT Company shall be required to pay liquidated damages in accordance with Article 2.10(b) 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 but less than the Contracted Capacity of the First Unit or the Facility, as relevant.

If, upon subsequent testing pursuant to Article 7.1 of the Power Purchase Agreement and Schedule 4 of the Power Purchase Agreement following the cessation of the MOIT Deemed Commissioning Event, 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, (other than due to an MOIT Event of Default or a Force Majeure Event), the BOT Company shall refund to the MOIT (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

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Company since the relevant Deemed Commercial Operation Date, plus interest at the applicable Default Rate until such amounts are refunded to the MOIT. Notwithstanding the foregoing, the BOT Company shall be required to pay liquidated damages in accordance with Article 2.10(b) 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), 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.

Once the First Unit or the Facility, as the context requires, is capable of producing capacity in accordance with the Power Purchase Agreement, EVN shall begin making the Capacity Charge payments in accordance therewith.

Revised Draft: \_\_\_\_\_

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## Annexure A BOT Company Charter

*[Annexure not available]*

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## Annexure B Land Lease Agreement

*[Annexure not available]*

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## Annexure C Power Purchase Agreement

*[See separate document]*

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## Annexure D Investment Certificate

*[Annexure not available]*



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## Annexure E Government Guarantee

*[Annexure not available]*

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## Annexure F Ministry of Justice Legal Opinion

*[Annexure not available]*

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## Annexure G Decision

*[Annexure not available]*

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## Annexure H MOIT Acknowledgment and Consent

*[Annexure not available]*