



Republic of the Philippines  
**DEPARTMENT OF ENERGY**

DEPARTMENT ORDER NO. DO 2013 - 08 - 0011<sub>p</sub>

**ADOPTING POLICIES IN RELATION TO THE PROCESSING OF RENEWABLE ENERGY SERVICE CONTRACTS AND MANDATING THE ADOPTION OF THE REVISED TEMPLATES FOR RENEWABLE ENERGY SERVICE CONTRACTS**

**WHEREAS**, Article XII, Section 2 of the 1987 Philippine Constitution provides that all forces of potential energy and other natural resources within the Philippine territory belong to the State and their exploration, development and utilization shall be under the full control of the State;

**WHEREAS**, Republic Act No. (RA) 7638, otherwise known as the "Department of Energy Act of 1992," as amended mandates the Department of Energy (DOE) to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation, among others;

**WHEREAS**, RA 9513, otherwise known as the "Renewable Energy Act of 2008", provides that it is the policy of the State to encourage and accelerate the exploration, development and increase the utilization of renewable energy (RE) resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems;

**WHEREAS**, the DOE is continuously adopting new mechanisms and strategies to effectively carry out its plans and programs as mandated under the RA 9513 and its implementing rules and regulations;

**WHEREAS**, the RE Review Committee (REC) was created under Department Circular No. DC2009-07-0011 to provide recommendations to the DOE Secretary for the award of RE Service Contracts;

**WHEREAS**, after careful review of the existing application processes and RE Service Contract templates, the REC has recommended the adoption of a new set of templates for all RE Service Contracts, as well as the enhanced process flow for RE Service Contract Applications.

**NOW THEREFORE**, for and in consideration of the foregoing premises, the DOE hereby orders the following:

**Section 1. Enhanced Process Flow of RE Applications.** For the enhanced monitoring of RE applications, all RE applications shall be first coursed through the Office of the Secretary for data-tracking purposes.

**Section 2. Adoption of the Revised RE Service Contract Templates.** The revised templates are hereby adopted:

- |  |   |           |
|--|---|-----------|
| 2.1 Hydropower Service Contract (HSC)    | - | Annex "A" |
| 2.2 Ocean Power Service Contract (OSC)   | - | Annex "B" |
| 2.3 Geothermal Service Contract (GSC)    | - | Annex "C" |
| 2.3 Solar Energy Service Contract (SESC) | - | Annex "D" |
| 2.4 Wind Energy Service Contract (ESC)   | - | Annex "E" |
| 2.5 Biomass RESC (Existing Facility)     | - | Annex "F" |
| 2.6 Biomass RESC (Non-Existing Facility) | - | Annex "G" |

**Section 3. Applicability of the Revised Templates to Pending Applications.** The revised templates shall be applicable to all pending applications for RE service contracts: *Provided*, That all RE service contracts already issued at the time of the effectivity of this Department Order shall remain valid.

**Section 4. Advisory to RE Applicants.** Acting as Chairman of REC, the Assistant Secretary in charge of the Renewable Energy Management Board (REMB) is hereby directed to inform all concerned RE Developers of the revised templates and the requirements thereof.

**Section 5. DOE Witness to the RE Contracts.** The witness of the Secretary in the RE service contracts may be any of the following:

- a. Assistant Secretary in-charge of the REMB;
- b. Director of the REMB;
- c. Director of Legal Services; or
- d. Any official of the DOE available at the time of the signing of the RE service contracts.

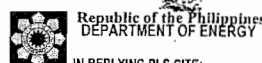
**Section 6. Repealing Clause.** All circulars and all other issuances which are inconsistent with any of the provisions of this Department Order are hereby amended or repealed accordingly

**Section 7. Separability Clause.** If for any reason, any provision of this Department Order is declared unconstitutional or invalid, such parts which are not affected shall remain in full force and effect.

**Section 8. Effectivity.** This Department Order shall take effect immediately.

Issued at the Energy Center, Bonifacio Global City, Taguig City.

  
CARLOS JERICHO L. PETILLA  
Secretary



IN REPLYING PLS CITE:  
SOE-JLP-13004234



JUL 26 2013

**MILESTONE APPROACH MATRIX  
(PRE-DEVELOPMENT)**

RESC Type	Milestone Activity	Milestone Period (From Effective Date)	Milestone Cost (At 100%)	Remarks
Geothermal	<ol style="list-style-type: none"> <li>1. Completion of Reconnaissance Geological/Geochemical Surveys</li> <li>2. Mandatory Activities *               <ol style="list-style-type: none"> <li>2.1 LGU Endorsements</li> <li>2.2 Licenses/Permits Acquisition</li> </ol> </li> </ol>	12 Months	Php 6,500,000.00	Pre-Development at 5 years
Ocean	<ol style="list-style-type: none"> <li>1. Pre-Feasibility Study/Prelim. Resource Assessment</li> <li>2. Detailed Site Survey</li> <li>3. Field Based Investigation (NCIP) **</li> <li>4. Mandatory Activities *               <ol style="list-style-type: none"> <li>4.1 LGU Endorsements</li> <li>4.2 Licenses/Permits (BFAR, MARINA, PPA, PN, PCG)</li> </ol> </li> </ol>	12 months	Php 1,500,000.00	Pre-Development at 3 years
Hydropower	<ol style="list-style-type: none"> <li>1. Pre-Feasibility Study/Reconnaissance Study</li> <li>2. Detailed Topography Survey</li> <li>3. Completion of Hydrological Study</li> <li>4. Field Based Investigation (NCIP) **</li> <li>5. Mandatory Activities *               <ol style="list-style-type: none"> <li>5.1 LGU Endorsements</li> <li>5.2 Licenses/Permits (BFAR, MARINA, PPA, PN, PCG)</li> </ol> </li> </ol>	12 months	Php 1,500,000.00	Pre-Development at 2 years
Wind	<ol style="list-style-type: none"> <li>1. Procurement of meteorological mast</li> <li>2. Installment of meteorological mast</li> <li>3. Land/rights acquisition **</li> <li>4. Mandatory Activities *               <ol style="list-style-type: none"> <li>4.1 Public consultations</li> <li>4.2 LGU Endorsements</li> </ol> </li> </ol>	12 months	Php 2,000,000.00	Pre-Development at 2 years

Solar	<ol style="list-style-type: none"> <li>1. Initial modeling and annual energy yield estimates</li> <li>2. Land/rights acquisition **</li> <li>3. Mandatory Activities * <ol style="list-style-type: none"> <li>3.1 Public consultations</li> <li>3.2 LGU Endorsements</li> </ol> </li> </ol>	6 months	Php 500,000.00	Pre-Development at 2 years
-------	---	----------	----------------	----------------------------

*Notes:*

*\* Mandatory Activities are those activities that are indispensable during the Pre-Development Stage & common to all RE Applicants regardless of type of technology*

*\*\* Non-mandatory Activities are those activities that may or may not be applicable during the Pre-Development Stage, depending on the type of technology and the area where it is situated*

**MILESTONE APPROACH MATRIX  
(DEVELOPMENT)**

RESC Type	Milestone Activity	Milestone Period (From Effective Date)	Milestone Cost (At 100%)	Remarks
Geothermal	<ol style="list-style-type: none"> <li>1. Site preparation and civil/structural works</li> <li>2. Drilling of production and reinjection wells</li> <li>3. Flow Test and Bore Output Measurement</li> <li>4. Construction of Fluid Collection and Disposal System</li> <li>5. Power Plant and Cooling Tower site preparation and construction</li> <li>6. Construction of switching station to connect to the Transmission Lines of NGCP</li> <li>7. Commissioning/Commercial Operations</li> </ol>	Year 6 to 8	Php200,000,000.00 / MW	
Ocean	Procurement of Electromechanical Equipment (EME) or Proof of Contract with the supplier of EME	Year 5 to 6	Php 30,000,000.00 / MW	
Hydropower	Procurement of Electromechanical Equipment (EME) or Proof of Contract with the supplier of EME	Year 5 to 6	Php 30,000,000.00 / MW	
Wind	Electro-Mechanical Equipment (At 80% Completion)	Year 5 to 6	Php 95,000,000.00 / MW	
Solar	Electro-Mechanical Completion (At 80% Completion)	Year 4	Php 95,000,000.00 / MW	
Biomass	<ol style="list-style-type: none"> <li>1. Site acquisition and pre-development activities (groundwater test, soil and geotechnical analyses)</li> <li>2. Licensing, Permits, and Clearances</li> <li>3. Signed Feedstock Supply Agreements (FSAs)</li> </ol>	Milestone: 6 months  Development: 3 years	Milestone: Php 7,000,000.00 / MW  Development: P100,000,000.00 / MW	

*-Notes:*

*\*Biomass (Non - Existing Facility) – the Pre-Development stage is subsumed and made part of the Development Stage already*

*\*Biomass (Existing Facility) – automatically goes to Development Stage*

HSC No. \_\_\_\_\_  
\_\_\_\_\_ MW \_\_\_\_\_ HEP  
Location

REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF ENERGY

**HYDROPOWER SERVICE CONTRACT**  
(HSC No. \_\_\_\_\_)

This **HYDROPOWER SERVICE CONTRACT** (this "**RE Contract**"), made and entered into this \_\_\_\_\_ in Bonifacio Global City, Taguig City by and between:

The **REPUBLIC OF THE PHILIPPINES**, hereinafter referred to as "**GOVERNMENT**", through the "**Department of Energy**", hereinafter referred to as the "**DEPARTMENT**", a government agency established pursuant to Republic Act No. 7638, as amended, with principal office address at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its Secretary, **HON.**  
\_\_\_\_\_;

-and-

\_\_\_\_\_, hereinafter referred to as the "**RE DEVELOPER**", a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at \_\_\_\_\_  
\_\_\_\_\_,  
represented herein by its \_\_\_\_\_;

Each of the **DEPARTMENT** and the **RE DEVELOPER** is referred to as a "**Party**", and collectively as the "**Parties**". In the implementation of this **RE Contract**, the **GOVERNMENT** shall act through and be represented by the **DEPARTMENT**.

**WITNESSETH:**

**WHEREAS**, all forces of potential energy in public and/or private lands, within the Philippine territory, belong to the State and their exploration, development and utilization are governed by Section 2, Article XII of the 1987 Constitution;

**WHEREAS**, under Republic Act No. 7638, as amended, otherwise known as the Department of Energy Act of 1992, the **DEPARTMENT** shall establish and administer programs for the exploration, development and utilization of energy resources, including Hydropower Resources;

**WHEREAS**, under Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008 (the "Act"), the exclusive right to explore and develop a particular renewable energy area under the said Act shall be through a Renewable Energy Service Contract;

**WHEREAS**, pursuant to the Act, the **RE DEVELOPER** has agreed to enter into this RE Contract with the **DEPARTMENT** covering the Contract Area for the Project with the corresponding rights and obligations stipulated herein;

**WHEREAS**, the **RE DEVELOPER** has been evaluated and recommended by the duly constituted RE Contract Review Committee per Resolution No. \_\_\_\_\_, series of 20\_\_\_\_\_, and duly confirmed by the Secretary to be legally, technically, and financially qualified to enter into this RE Contract;

**NOW, THEREFORE**, for and in consideration of the terms and conditions set forth herein, the Parties hereby stipulate and agree as follows:

## **SECTION I SCOPE**

- 1.1 This RE Contract is entered into pursuant to the Act, with the services, technology and financing to be furnished by the RE DEVELOPER for its conduct of Hydropower Operations, in an economically viable manner and in accordance with this RE Contract.
- 1.2 This RE Contract shall cover the Contract Area only as provided under Section IV (Contract Area) hereof.
- 1.3 The RE DEVELOPER is hereby appointed and constituted by the DEPARTMENT as the Party having the exclusive right to explore, develop, and utilize the Hydropower Resources within the Contract Area as defined herein. The DEPARTMENT shall have the right to require performance of any or all obligations of the RE DEVELOPER under this RE Contract.
- 1.4 The RE DEVELOPER may pursue any Additional Investment or New Investment within the Contract Area and shall be solely responsible for providing the necessary services, technology, equipment and financing therefor. In case of New Investment, the Parties shall enter into a new Renewable Energy (RE) Service Contract at the option of the RE DEVELOPER, subject to approval of the DEPARTMENT.
- 1.5 The RE DEVELOPER shall assume all the technical and financial risks under this RE Contract without any guarantee from the GOVERNMENT and shall not be entitled to reimbursement for any expense incurred in connection with this RE Contract.

## **SECTION II DEFINITION OF TERMS**

- 2.1 The words and terms under this RE Contract, unless otherwise specified in the Act and its IRR or in relevant laws and regulations, shall have the meaning in accordance with the following definitions:



- a) **“Abandonment and Termination Plan”** refers to the plan prepared by the RE DEVELOPER submitted within three (3) months from Effective Date in the case of Pre-Development Stage and at least five (5) years from confirmation of the Declaration of Commerciality and approved by the Department of Environment and Natural Resources (DENR) and the DEPARTMENT for the decommissioning, abandonment and surface restoration or rehabilitation of the Contract Area, and such abandonment work plan may be amended, supplemented or modified by the Parties from time to time;
- b) **“Accounting Procedures”** refers to the set of procedures, guidelines, and arrangement between the Parties, and any amendments thereto, to govern the applicable treatment of expenses, costs, and income, set forth in Annex “B”, which forms an integral part of this RE Contract;
- c) **“Additional Investment”** refers to investments relating to improvements, modernization, rehabilitation, or expansion duly registered with the DEPARTMENT, subject to the conditions to be determined by the DEPARTMENT, such as, but not limited to, the following:
- i. Identification of and investment in sequential phases/stages of production, or undertaking scheduled modernization or rehabilitation of the Hydropower Systems; and
  - ii. Improvements to the Hydropower Systems such as reduced production/operational costs, increased production, improved operational efficiency, and better reliability of the Project;
- d) **“Affiliate”** refers to any person or group of persons, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the RE DEVELOPER. As used herein, “control” shall mean the power to direct or cause the direction of the management’s policies of a person by contract, agency or otherwise;
- e) **“Calendar Year”** refers to the period beginning January 1 to December 31 of each year;
- f) **“Certificate of Confirmation of Commerciality”** refers to the certification issued by the DEPARTMENT confirming the declaration made by the RE DEVELOPER that the Project is commercially feasible;
- g) **“Certificate of Registration”** refers to that certification issued to the RE DEVELOPER upon the Effective Date of this RE Contract and upon approval of Additional Investment, to serve as the basis for its entitlement to the incentives provided under the Act;
- h) **“Commercial Operation”** refers to the stage when the RE DEVELOPER has completed its commissioning and test operations

and is ready to sell or apply its produced Hydropower, as duly confirmed by the DEPARTMENT;

- i) **“Commercial Quantities”** refer to quantities of electricity to be generated from the Hydropower Resources, providing, or capable of providing, revenue from sales of electricity that exceed or would exceed the RE DEVELOPER's Cost of Goods Sold by a margin sufficient to cause a reasonably prudent person employing standard industry practices as to hydropower resources and using commercially available technology to develop the Hydropower Systems;
- j) **“Contract Area”** refers to the area located along the \_\_\_\_\_ River in the Province of \_\_\_\_\_ and more particularly described in Annex “A” specifying the point of water diversion and the proposed location of the Generation Facility, exclusively reserved by the DEPARTMENT for the RE DEVELOPER, over which the RE DEVELOPER has exclusive right to explore, develop, and utilize the Hydropower Resource in accordance with this RE Contract subject to Section IV of this RE Contract, exclusive of the Watershed Area;
- k) **“Contract Year”** refers to a period of twelve (12) consecutive calendar months counted from the Effective Date of this RE Contract and thereafter, from the anniversary of such Effective Date: *Provided, however,* That the last Contract Year shall end on the date of Expiration or Termination of this RE Contract;
- l) **“Corporate Income Tax”** refers to the tax imposed upon net taxable income under the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337 and the Act. After availing of the Income Tax Holiday (ITH) under the Act, the RE DEVELOPER shall be subject to a Corporate Income Tax rate of ten percent (10%);
- m) **“Cost of Goods Sold”** refers to all business expenses directly incurred in the exploration, development, and utilization of the Hydropower Resources in order to produce and sell electricity and transmit the same to its intended location and use, which expenses are particularly described in Annex “B” hereof;
- n) **“Declaration of Commerciality”** refers to a written declaration by the RE DEVELOPER stating that the electricity to be generated from the Hydropower Resources is in Commercial Quantities;
- o) **“Development Stage”** refers to the development, production, or utilization of RE resources, including the construction and installation of relevant facilities up to the operation phase thereof;
- p) **“Effective Date”** refers to the date of the execution of this RE Contract;

- q) “**Expatriate Employee**” refers to a foreign national engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Hydropower Operations, who shall exercise his technical profession, as allowed under existing laws;
- r) “**Expiration**” refers to either the lapse of the term of this RE Contract as provided in Section III (Term) or the surrender or waiver of the RE DEVELOPER of the Contract Area including the abandonment thereof to the DEPARTMENT: *Provided*, That in case of a partial surrender or waiver, this RE Contract shall subsist with respect to the remaining portion;
- s) “**Filipino Employee**” refers to any citizen of the Republic of the Philippines employed and/or engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Hydropower Operations under this RE Contract;
- t) “**Fiscal Year**” refers to a period of twelve (12) consecutive months;
- u) “**Force Majeure**” refers to extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable;
- v) “**Generation Facility**” refers to a facility for the production of electricity;
- w) “**Government Share**” refers to the amount due the national government and LGUs from the exploration, development and utilization of the Hydropower Resources computed in accordance with the Act and its Implementing Rules and Regulations (IRR), and described in Section X (Government Share);
- x) “**Gross Income**” refers to income derived from the RE DEVELOPER’s Hydropower Operations equivalent to the gross sales of Hydropower less sales returns, discounts and allowance, and Cost of Goods Sold, which is more particularly described in the Accounting Procedures attached as Annex “B”;
- y) “**Host LGU**” refers to the LGU where the Hydropower Resources and/or Generation Facility is located;
- z) “**Hydropower**” refers to the energy that can be derived from Hydropower Resources that is converted into useful electrical or mechanical energy;
- aa) “**Hydropower Operations**” shall include Hydropower exploration, development, production, and utilization, including the construction, installation, operation and maintenance of Hydropower Systems to convert Hydropower to electrical power and the transmission of such electrical power and/or other non-electrical uses;

- bb) **“Hydropower Resources”** refer to the water resources found within the Contract Area to be technically feasible for the development of Hydropower projects, which include rivers, lakes, waterfalls, irrigation canals, springs, ponds, and other water bodies;
- cc) **“Hydropower Systems”** refer to the machines or other related equipment that convert Hydropower into useful electrical or mechanical energy; includes, but is not limited to, Hydro Turbine Generators (HTGs), electrical connection and transmission grids, overhead and underground electrical transmission and communications lines, electric transformers and conditioning equipment, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with HTG installations, climatological and measurement equipment, control facilities, maintenance yards, access facilities, intake, spillways, dams, and related facilities and equipment deemed by the RE DEVELOPER to be necessary or convenient for the production and delivery of electricity from Hydropower;
- dd) **“Local Government Unit/LGU”** refers to the territorial and political subdivisions of the State which organization and function are fully described under the Local Government Code of 1991;
- ee) **“Milestones”** refer to the specific activity or set of activities within the Contract Year indicated in the Work Program that will be a basis for evaluation and monitoring by the DEPARTMENT;
- ff) **“New Investment”** refers to investments relating to discovery, exploration, development and/or utilization of new RE resources or the development of new Generation Facilities within the Contract Area distinct from the originally registered operations having separate books of accounts;
- gg) **“Pre-Development Stage”** refers to the preliminary assessment and feasibility study up to the financial closing of the Project and specifically covers the term provided in Section 3.1 of this RE Contract;
- hh) **“Production Area”** refers to that portion of the Contract Area designated by the RE DEVELOPER where Hydropower Resources are utilized to produce electricity in Commercial Quantities;
- ii) **“Project”** refers to the RE DEVELOPER’s Hydropower Systems within the Contract Area, which may be implemented in one or more phases;
- jj) **“RE Contract”** refers to this Hydropower Energy Service Contract, as may be amended or extended by the Parties and shall have the same meaning as provided under the Act;

- kk) **"Subcontractor"** refers to any person or entity contracted by the RE DEVELOPER to provide goods or services for the purpose of this RE Contract, subject to the provisions of existing laws;
- ll) **"Termination"** refers to the right of the Parties to cancel this RE Contract pursuant to Section XIII (Suspension and Termination) hereof;
- mm) **"Watershed Area"** refers to an area drained by a river and its tributaries and enclosed by a boundary or divide that separates it from adjacent watershed and from which the river, where the proposed weir and Generation Facility of the Project are located, gets its water;
- nn) **"Work Plan"** refers to the plan and activities prepared and to be submitted by the RE DEVELOPER during the Development Stage with the corresponding budgetary estimate; and
- oo) **"Work Program"** refers to all types of plans and programs and related activities formulated for the performance of the work obligations by the RE DEVELOPER during the Pre-Development Stage, along with the corresponding budgetary estimate, submitted to the DEPARTMENT under this RE Contract as Annex "C".

### SECTION III TERM

- 3.1 **Pre-Development Stage.** The Pre-Development Stage of this RE Contract shall be a non-extendible period of two (2) years from the Effective Date: *Provided*, That the failure to accomplish the first annual Milestone indicated in the Work Program shall result in the expiration of the contract term. However, the submission by the RE Developer of a Declaration of Commerciality at any time during the Pre-Development Stage and the confirmation thereof by the DEPARTMENT shall supersede the foregoing requirement on annual milestones.
- 3.2 **Development Stage.** Upon submission of the Declaration of Commerciality by the RE Developer, as confirmed by the DEPARTMENT through the issuance of a Certificate of Confirmation of Commerciality, this RE CONTRACT shall remain in force for the balance of a period of twenty five (25) years from Effective Date: *Provided*, That at the option of the RE DEVELOPER, by written notice to the DEPARTMENT not later than one (1) year prior to the expiration of the initial twenty-five (25)-year period and so long as the RE DEVELOPER is not in default of any material obligations under this RE Contract, the DEPARTMENT may approve the extension of this RE Contract for another twenty-five (25) years, subject to the terms and conditions to be mutually agreed upon by the Parties.

#### **SECTION IV CONTRACT AREA**

- 4.1 The Contract Area refers to the area as described in Annex "A" hereof reserved by the DEPARTMENT for the RE DEVELOPER over which the RE DEVELOPER has exclusive right to explore, develop and utilize the Hydropower Resources in accordance with this RE Contract, but does not include the Watershed Area.
- 4.2 The RE DEVELOPER shall, upon submission of written notice to the DEPARTMENT, have the right to surrender or waive the entire Contract Area or any portion thereof, within thirty (30) days prior to the intended date of surrender, without liability or cost, and be relieved from any work and expenditure commitments thereon without prejudice to any other outstanding liability or costs. In case the RE DEVELOPER completely ceases its operations, the provisions under its Abandonment and Termination Plan shall apply consistent with its Environmental Compliance Certificate (ECC).
- 4.3 Any portion of the Contract Area where feasibility study was not conducted and wherein the RE DEVELOPER has no intention to conduct any development activities as indicated under the proposed Work Plan shall be deemed relinquished on the date of Declaration of Commerciality.
- 4.4 During Development Stage, the RE DEVELOPER shall delineate its Production Area by identifying the final location of the diversion point and the Generating Facility.

#### **SECTION V WORK PROGRAM, WORK PLAN AND ESTIMATED EXPENDITURES**

- 5.1 The RE DEVELOPER shall carry out its existing work according to good industry practices.
- 5.2 During the Pre-Development Stage, the RE DEVELOPER shall conduct preliminary Hydropower Resources data gathering activities and, if warranted by the results of such Hydropower Resources data gathering, conduct a full Hydropower Resources assessment.
- 5.3 Attached to this RE Contract is a Work Program and its corresponding budget, details of which are particularly described in Annex "C" hereof.
- 5.4 During the implementation of the Work Program, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT of any revisions thereto at least one (1) month prior to the end of each Contract Year: *Provided, however,* That revision shall not be allowed within the first Contract Year: *Provided further,* That the RE Developer shall be allowed to subsequently revise its Work Program only if it has substantially complied

with all its material financial and technical obligations under the Work Program for the immediate preceding Contract Year.

- 5.5 The RE DEVELOPER shall submit to the DEPARTMENT a Work Plan for the first five (5) years from its Declaration of Commerciality and its corresponding budget thereof.
- 5.6 Not later than two (2) months prior to the end of the first five (5) years from the RE DEVELOPER's Declaration of Commerciality, the RE DEVELOPER shall submit a Work Plan for the next five (5) years and shall do so every five (5) years thereafter. The Work Plan or any revisions thereof shall need the approval from the DEPARTMENT.
- 5.7 During the implementation of the Work Plan, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT any revisions thereto, at least one (1) month prior to the end of each Contract Year.
- 5.8 In the event of failure to comply with its commitments under the Work Program, the RE DEVELOPER shall pay the DEPARTMENT the amount it should have spent for the execution of the same. Should the RE DEVELOPER fail to pay the assessed financial deficiency within the period prescribed by the DEPARTMENT, the DEPARTMENT shall enforce the collection thereof, and/or call the performance guarantee posted by the RE DEVELOPER, at the option of the DEPARTMENT. This is without prejudice to the right of the DEPARTMENT to terminate the RE Contract.

## **SECTION VI RIGHTS AND OBLIGATIONS**

- 6.1 The RE DEVELOPER shall have the following rights:
  - a) To be granted fiscal and non-fiscal incentives and privileges under the Act and its IRR, and all other existing laws that are not otherwise modified or repealed by the Act;
  - b) To receive assistance from the DEPARTMENT:
    - i. In securing access to lands and other areas where Hydro Resources shall be harnessed; and
    - ii. In indorsing the Project to the National Government, LGUs, Board of Investments (BOI) and other entities for the acquisition of permits, licenses and clearances and availment of applicable fiscal and non-fiscal incentives;
  - c) Have at all times the right of ingress to and egress from the Contract Area to and from facilities wherever located;
  - d) Acquire rights-of-way and similar rights on, over, under, across and through the Contract Area or properties adjacent to the Contract Area,

which constitute or is reasonably expected to constitute the Contract Area as the RE DEVELOPER may reasonably deem necessary.

The DEPARTMENT shall, upon request by the RE DEVELOPER as may be reasonable given the attendant circumstances, assist the RE DEVELOPER in securing such rights. For such purpose, the DEPARTMENT shall and does hereby appoint the RE DEVELOPER as its attorney-in-fact and does hereby give and grant to the RE DEVELOPER full authority to act for and on its behalf in the negotiation and conclusion of agreements and payments for such rights. All obligations, payments and expenses arising from or incidental to the acquisition of such rights shall be for the account of the RE DEVELOPER so as to enable the RE DEVELOPER to have ingress into and egress from the Contract Area and to perform all Hydropower Operations in accordance with this RE Contract and in consideration of which, entitlement to such rights shall be held in trust in favor of the RE DEVELOPER.

The DEPARTMENT undertakes to provide further assistance to the RE DEVELOPER, including the exercise of the power of eminent domain if necessary, to secure such necessary or proper rights at such cost for the account of the RE DEVELOPER, if the RE DEVELOPER is unable to secure such rights at commercially reasonable costs through negotiations or if the same is the most expedient course of action to support the timely execution of Hydropower Operations;

- e) Allow, in accordance with the existing laws, entry into the Philippines and employment by the RE DEVELOPER of Expatriate Employees who shall exercise their technical professions solely for the Hydropower Operations: *Provided*, That Filipino Employees shall be given preference to positions for which they have adequate training and experience required by the RE DEVELOPER: *Provided further*, That if the employment or connection of such Expatriate Employee with the RE DEVELOPER ceases, applicable laws and regulations shall apply to him and his immediate family;
- f) Have a free and unimpeded use of Hydropower Resources within the Contract Area in view of the Hydropower Operations, Additional Investments and New Investments in regard of which, the DEPARTMENT shall ensure that rights, privileges and other authorizations it may grant to third parties will not defeat or impair such use;
- g) Be informed by the DEPARTMENT, if at any time the latter becomes aware of any intended exploration, extraction, or use of energy resources other than Hydropower Resources on the Contract Area and adjacent areas thereof, within thirty (30) days of the date it becomes so aware of such intended exploration, extraction, or other use; and



- h) Be granted an exclusive easement to use, convert, maintain and capture the free and unobstructed flow of Hydropower Resources within the Contract Area.

6.2 The RE DEVELOPER shall have the following obligations:

- a) Secure any necessary permits and clearances from all relevant government entities for the Project;
- b) Perform exploration, assessment, field verification, harnessing, piloting and other activities in accordance with the Work Program and provide technology and financing in connection with the Pre-Development Stage;
- c) Perform the required Hydropower Operations and provide services, technology, and financing in connection therewith;
- d) Maintain complete and accurate accounting, financial and technical records of its Hydropower Operations, subject to Sections IX (Technical Data and Reports Submission) and XI (Confidentiality), and in accordance with the Accounting Procedures as provided under Annex "B" hereof;
- e) Allow officials and representatives authorized by the DEPARTMENT access to the Contract Area, and to the accounts, books and records directly relating to the Hydropower Operations during reasonable hours and without causing disruption, subject to fifteen (15) calendar days prior written notice to the RE DEVELOPER;
- f) Give priority in employment to qualified personnel in the Host LGU subject to Section XV (Employment, Training and Development Programs);
- g) Within sixty (60) days after the Effective Date of this RE Contract, and at the start of every Contract Year thereafter, post a performance bond or other guarantee of sufficient amount but not less than the annual budgetary estimate for the corresponding Contract Year in favor of the DEPARTMENT from a list of DEPARTMENT-accredited insurance or surety companies, conditioned upon the faithful performance by the RE DEVELOPER of any or all of the commitments and obligations under the Work Program and Work Plan insofar as the period prior to Commercial Operation;
- h) After availing of the Income Tax Holiday (ITH), be subject to Corporate Income Tax: *Provided*, That New or Additional Investment shall be eligible for ITH;
- i) Be subject to the provisions of law of general application relating to labor, health, safety, environment and indigenous peoples rights;

- j) Develop, operate, and maintain the Contract Area in accordance with accepted industry practices to enable maximum economic production of the Hydropower Resources;
  - k) Be responsible for procurement of installation, equipment and supplies, and for entering into subcontracts related to the Hydropower Operations;
  - l) Give preference to Philippine companies/agencies entering into subcontracts on goods or services that are required in the Hydropower Operations but are not carried out by the RE DEVELOPER: *Provided*, That the goods or services are competitive as to cost, quality and availability;
  - m) Be responsible in the proper handling of data, samples, information, reports, and other documents;
  - n) Maintain all meters and measuring equipment in good order and allow access to these as well as to the exploration sites to inspectors authorized by the DEPARTMENT;
  - o) Pay the Government Share in accordance with the computation in the Act's IRR and taxes as may be applicable;
  - p) Organize Information, Education and Communication (IEC) Campaign on benefits to the Host LGUs pursuant to Section 18 of the DEPARTMENT's Department Circular No. DC2009-07-0011; and
  - q) Comply with all rules, regulations, and guidelines issued by the DEPARTMENT that are applicable hereto.
- 6.3 Upon the Effective Date of this RE Contract or upon the approval of the RE DEVELOPER's Additional Investment, the DEPARTMENT shall issue a Certificate of Registration to the RE DEVELOPER, to enable it to avail of the fiscal and non-fiscal incentives and privileges as stated under the Act and its IRR. The registration shall be valid and effective for the entire term and effectivity of this RE Contract.

## **SECTION VII REPRESENTATIONS AND WARRANTIES**

Acknowledging that the GOVERNMENT, through the DEPARTMENT, has entered into this RE Contract in reliance upon the representations and warranties in this Section, the RE DEVELOPER represents and warrants as follows:

- 7.1 It is a corporation or entity duly formed, established, validly existing and in good standing under the laws of the Philippines with full power to own its property; to carry on its business as it is now being conducted; and to execute, deliver and perform its obligations under this RE Contract, and the entering into and performance of this RE Contract by the RE DEVELOPER

does not conflict with the articles of incorporation, by-laws and other constitutive documents of the RE DEVELOPER and has been duly authorized by all necessary corporate and legal action on the part of the RE DEVELOPER;

- 7.2 The individual signing this RE Contract on behalf of the RE DEVELOPER is duly authorized to sign as of the Effective Date;
- 7.3 There is no litigation, arbitration, or administrative proceeding pending or, to the best knowledge of the RE DEVELOPER, threatened against the RE DEVELOPER or its properties the adverse determination of which would adversely affect the ability of the RE DEVELOPER to perform or comply with any of its material obligations under this RE Contract;
- 7.4 The RE DEVELOPER:
- a) Has not been declared in default in respect to any of its material financial commitments or obligations based on their reports duly validated by the DEPARTMENT;
  - b) Is not otherwise in default of any kind in respect of any financial commitment or obligation or in respect of any agreement, undertaking or instrument as a party thereof by which it or any of its assets or properties may be bound; and
  - c) Is not aware of a fact that by the service of notice and/or lapse of time would constitute a default in any or both of sub-paragraphs (a) and (b) above;
- 7.5 No written material information given by the RE DEVELOPER to the DEPARTMENT under this RE Contract contains any misstatement of fact as of the Effective Date or omits to state a fact that is materially adverse to the interests of the DEPARTMENT; and
- 7.6 The ownership of the RE DEVELOPER's capital stock complies with applicable laws and regulations.

### **SECTION VIII ASSETS AND EQUIPMENT**

- 8.1 The RE DEVELOPER shall acquire and maintain for the Project and for its Hydropower Operations and such assets as are reasonably estimated to be required in carrying out the exploration, assessment, harnessing, piloting and other studies for the Hydropower Resources in the Contract Area; and the development, utilization, and commercialization of Hydropower Resources therein, including the construction, installation, operation and maintenance of the Hydropower Systems.
- 8.2 All materials, equipment, plants and other installations that are erected or placed on the Contract Area by the RE DEVELOPER and are owned by the

RE DEVELOPER shall remain the property of the RE DEVELOPER up to one (1) year from the Expiration or Termination of this RE Contract: *Provided*, That upon the written request of the RE DEVELOPER, the DEPARTMENT shall approve an additional non-extendible period of one (1) year within which to remove such assets in the Contract Area. Thereafter, the ownership of any remaining materials, equipment, plants, and other installations shall be vested in the Government.

- 8.3 The RE DEVELOPER shall be responsible for the removal and the disposal of all materials, equipment, and facilities from the Contract Area in accordance with the ECC and the provisions of the Abandonment and Termination Plan as provided under Section II hereof.
- 8.4 The ownership of all data, records, accounts, samples and other technical data produced or generated in the course of the Hydropower Operations that are confidential, proprietary in nature, or otherwise not generally available to the public shall remain with the DEPARTMENT and RE DEVELOPER and shall be kept confidential in accordance with Section XI (Confidentiality) hereof.

#### **SECTION IX TECHNICAL DATA AND REPORTS SUBMISSION**

- 9.1 All technical data and reports, except for proprietary techniques used in developing such technical data and reports, must be submitted by the RE DEVELOPER in accordance with the format approved by the DEPARTMENT.
- 9.2 The technical data and reports to be submitted to the DEPARTMENT shall include, but not limited to, the following:
- a) Annual Progress Report – shall be submitted not later than two (2) months prior to the end of each Contract Year and shall contain the summary of all the activities, i.e. exploration, drilling or infrastructure development, with relevant comments and recommendation on any technical findings;
  - b) Procurement Plan – shall be designed according to the approved work obligations containing an itemized list of equipment, materials and supplies to be procured with corresponding estimated costs. It shall be submitted not later than one (1) month from the approval of the Work Program or Work Plan or revision thereof, as the case may be;
  - c) Quarter Progress Report – shall be submitted not later than one (1) month from the end of each Contract Quarter and shall contain the work and financial accomplishment under Work Program or Work Plan;
  - d) Monthly Generation Report; and

- e) Other technical data and reports relevant to the Hydropower Resources, when necessary as determined by the DEPARTMENT.

## SECTION X GOVERNMENT SHARE

- 10.1 The Government Share shall be equal to one percent (1%) of the Gross Income from the sale of electricity generated from Hydropower Operations in accordance with the Accounting Procedures as prescribed under Annex "B" hereof.
- 10.2 The RE DEVELOPER shall within sixty (60) days following the end of each quarter of a Calendar or Fiscal Year remit to the DEPARTMENT the Government Share: *Provided*, That any unremitted amount shall carry an interest of ten percent (10%) per annum reckoned from the day immediately following the end of each quarter of a Calendar or Fiscal Year, as may be applicable.

## SECTION XI CONFIDENTIALITY

- 11.1 All documents, information, data and reports produced or generated during the Hydropower Operations under this RE Contract shall be kept strictly confidential over the term of this RE Contract or any extension thereof: *Provided*, That proprietary information shall be kept strictly confidential at all times subject to lawful acquisitions of such information under existing laws and regulations.
- 11.2 Without the written consent of the other Party, no Party shall use or disclose the confidential information to any third party and/or to any Affiliate not directly connected with the implementation of this RE Contract except the third parties and Affiliates in Section 11.5, and no Party shall otherwise transfer, present, sell or publish it in any way within the confidentiality periods.
- 11.3 The DEPARTMENT may use such confidential information belonging to the RE DEVELOPER for the DEPARTMENT's resource mapping, data gathering, policy making and for government planning purposes.
- 11.4 Upon the Expiration or Termination of this RE Contract, the DEPARTMENT may provide third parties with the data and reports submitted by the RE DEVELOPER pursuant to this Section: *Provided*, That the same are not proprietary in nature.
- 11.5 Contrary stipulations notwithstanding, the RE DEVELOPER may furnish the information to the following third parties, subsidiaries and Affiliates, such as, but not limited to:
- a) Banks or other credit institutions from which finance is sought by the RE DEVELOPER;

- b) Third parties, subsidiaries and Affiliates that provide services for the Hydropower Operations, including Subcontractors and other service contractors;
  - c) Prospective assignee/s to whom rights and obligations under this RE Contract are intended to be assigned;
  - d) Prospective investor/s or entities with whom the RE DEVELOPER intends to enter into joint venture or other similar agreements for the Project;
  - e) Governments and stock/commodity exchanges in accordance with the laws, regulations, or rules of the relevant country or stock/commodity exchange; and
  - f) Government authorities, entities and judicial courts if required by law, regulation, directive, or order, to disclose.
- 11.6 The information shall be revealed to those persons allowed under this RE Contract only if and to the extent necessary and desirable for the purpose intended. Each Party shall ensure that each such person to whom information is disclosed is informed of the confidential nature of the information and the purpose for which it may be used and that each such person is bound by this Section.
- 11.7 The RE DEVELOPER and its Affiliates or the DEPARTMENT, its officers, employees, consultants and other duly authorized representatives shall not make any public statement or announcement of any information produced, generated or acquired in the course of the Hydropower Operations, without prior written consent of the other Party.

## **SECTION XII PERFORMANCE BOND**

- 12.1 The initial amount of the bond or other guarantee as specified in Sub-section 6.2(g) shall not be less than the annual financial commitment/budgetary estimate for the first Contract Year based on the Work Program.
- 12.2 The amount of performance bond or other guarantee may be adjusted, subject to the following conditions:
- a) In the event of surrender by the RE DEVELOPER of a portion of the Contract Area covered by this RE Contract, the performance bond or other guarantee shall be reduced proportionately in accordance with the Work Program and Work Plan as applicable;
  - b) In the event that the RE DEVELOPER has fully expended its budgetary estimate under the Work Program or Work Plan as applicable but has not fully performed its work obligations, the amount

of bond or other guarantee shall be equal to the succeeding Contract Year's budgetary estimate under the revised Work Program or Work Plan as applicable; and

- c) Such other conditions or circumstances as would reasonably warrant the modification of the amount of the performance bond or other guarantee.
- 12.3 If the RE DEVELOPER, through its own fault, fails to observe or perform its work obligations under the Work Program or Work Plan as applicable, the DEPARTMENT, upon prior written notice, may proceed against the performance bond or other guarantee: *Provided*, That should the work obligations under the Work Program and Work Plan be fulfilled, and through the efficiency of the RE DEVELOPER, the corresponding actual expenditures thereon are lower than the estimated expenditures stated in the Work Program, the same shall be considered as full compliance of the work obligations.
- 12.4 The DEPARTMENT shall release the performance bond or other guarantee not later than thirty (30) days from the date of confirmation by the DEPARTMENT on the start of the Commercial Operations.

### SECTION XIII SUSPENSION AND TERMINATION

- 13.1 In case of the Pre-Development Stage, the DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:
- a) Non-compliance with the Work Program and the material terms and conditions of this RE Contract;
  - b) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
  - c) Non-observance of environmental regulations imposed by the DENR during the conduct of feasibility study;
  - d) Tampering or plagiarizing of technical design and feasibility study reports;
  - e) Non-payment of the financial obligations agreed upon under this RE Contract; and
  - f) Non-posting of performance bond or other guarantee within the period/s provided under Section XII (Performance Bond).
- 13.2 In case of the Development Stage, the DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:

- a) Non-compliance with the material terms and conditions of this RE Contract;
- b) Violation of the Renewable Portfolio Standards Rules, as defined in the Act and its IRR, and relevant Department Circulars;
- c) Non-compliance with the approved Work Plan and any other material obligations herein;
- d) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
- e) Non-observance of environmental regulations imposed by the DENR during construction and operation;
- f) Tampering with or plagiarizing of technical design, feasibility study generation and operation reports;
- g) Non-remittance of Government Share as determined by the Compliance Division - Financial Services of the DEPARTMENT;
- h) Non-payment of the financial obligations agreed upon under this RE Contract;
- i) Non-posting of performance bond or other guarantee within the period/s provided under Section XII (Performance Bond);
- j) Failure to comply with material reportorial obligations under this RE Contract; and
- k) Any representation or warranty made by the RE DEVELOPER under Section VII (Representations and Warranties) which shall prove to have been incorrect in any material respect when made.

13.3 The RE DEVELOPER shall have sixty (60) days from written notice from the DEPARTMENT of any of the foregoing to cure the default. Failure of the RE DEVELOPER to cure the default at the end of the sixty (60)-day period shall result in the automatic Termination of this RE Contract: *Provided, however,* That in case the ground for the Termination is non-compliance with the approved Work Program for reasons not attributable to Force Majeure, the Termination shall not be subject to curing period and shall be effective immediately as indicated in the notice duly issued by the Department: *Provided further,* That non-compliance of the approved Work Program during the Pre-Development Stage shall be determined on the basis of the following:

- i. Failure of the RE DEVELOPER to comply with its first annual Milestone under the approved Work Program; and



- ii. Failure of the RE DEVELOPER to disburse the cost equivalent of at least eighty per cent (80%) of the total financial cost of its first annual Milestone which is set by the DEPARTMENT at One Million Five Hundred Thousand Pesos (Php1,500,000).

**Provided finally,** That during the Development Stage, non-compliance with the Milestone for the succeeding years under the approved Work Plan and failure to disburse the cost equivalent of Thirty Million Pesos (Php30,000,000) per megawatt shall result in the Termination of this RE Contract or give rise to the right of the DEPARTMENT for recourse on the Performance Bond.

- 13.4 Notwithstanding the foregoing, this RE Contract shall be terminated without prejudice to the RE DEVELOPER's obligation under its Abandonment and Termination Plan as approved by the DEPARTMENT.

#### **SECTION XIV DISPUTES AND ARBITRATION**

- 14.1 Any dispute, controversy or claim arising out of or relating to this RE Contract, except Section 13.1.a hereof on Milestone activities, shall be settled amicably within a period of sixty (60) days after receipt by one Party of a notice from the other Party of the existence of the dispute.
- 14.2 If the dispute cannot be settled amicably within the sixty (60)-day period, the Parties shall, with respect to disputes arising out of or in connection with Sections IV (Contract Area), V (Work Program, Work Plan and Estimated Expenditures), and X (Government Share), refer the dispute to an independent expert for resolution in the manner provided below: *Provided,* That any Party, in its sole discretion, may require that the dispute be referred to arbitration under Section 14.4 hereof.
- 14.3 The following shall govern the rules of referral to independent expert:
  - a) After the sixty (60) day period in Section 14.1 has passed, any Party may give notice to the other Party of its intention to refer the dispute to an expert in accordance with the provisions of this RE Contract;
  - b) The respondent shall, within twenty-one (21) days from receipt of the notice of intention to refer, serve the applicant a notice of intention to defend;
  - c) If within fourteen (14) days after the applicant's receipt of the respondent's notice of intention to defend, the Parties have agreed on an expert and on the terms under which the dispute shall be referred to the independent expert mentioned in Section 14.2 hereof. In the event that within such fourteen (14)-day period, the Parties are unable to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request the International Chamber of Commerce (ICC) International Centre for Expertise to appoint an expert, and the matters to be determined by

such expert shall be those set out in the notice of intention to refer and the notice of intention to defend;

- d) Unless the Parties agree otherwise, any expert proceedings under this Section shall be required to follow the ICC Rules for Expertise in force as of Effective Date;
- e) The language of the expert proceedings and the expert's determinations shall be in English;
- f) The Parties hereby agree to be bound by, to perform this RE Contract in accordance with, and to implement, as the case may be, the determination of the expert. Failure by one Party to act shall constitute a breach of this RE Contract and shall be submitted to arbitration in accordance with Section 14.4 as the sole means of enforcing the determination; and
- g) Each Party shall bear the costs and expenses of all lawyers, advisors, witnesses and employees retained by it in connection with the expert proceedings: *Provided however*, That in circumstances where the expert determines that a matter referred to him was not subject to a *bona fide* dispute, the costs and expenses incurred by the prevailing Party and the expert in connection with such matter shall be paid by the non-prevailing Party.

14.4 If the dispute cannot be settled within sixty (60) days by mutual discussions as contemplated in Section 14.1, and referral to an expert is neither prescribed nor elected by the Parties with respect to any technical dispute, upon written demand of either Party, the dispute shall finally be settled by an arbitral tribunal (the "Tribunal") governed by and conducted in accordance with the ICC Rules of Arbitration (the "Rules") in force as of Effective Date (or such Rules as may be in force at the time such arbitration is commenced), as follows:

- a) The RE DEVELOPER will nominate one (1) arbitrator and the DEPARTMENT will nominate one (1) arbitrator within thirty (30) days from the date of a request by either Party to initiate arbitration. The two Party-nominated arbitrators will then jointly nominate a third arbitrator within thirty (30) days of the date of the appointment of the second arbitrator, to act as Chairman of the Tribunal. Arbitrators not nominated within the time limits set forth in the preceding sentence shall be appointed by the ICC Court of International Arbitration;
- b) Unless otherwise agreed by the Parties, the venue of the arbitration shall be in Metro Manila, Philippines;
- c) The language of the arbitration and award shall be in English;
- d) The Tribunal shall not be authorized to impose, and either Party shall not be authorized to seek from any judicial authority, any requirement that the other post security for the costs of either Party; and

- e) The decision of the Tribunal shall be final and binding upon the Parties. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
- 14.5 The right to arbitrate disputes under this RE Contract shall survive the Expiration or Termination of this RE Contract.

**SECTION XV  
EMPLOYMENT, TRAINING AND DEVELOPMENT PROGRAMS**

- 15.1. The RE DEVELOPER agrees to give preference in employment to qualified Filipino Employees who are residents of Host LGUs and will undertake the development and training of Filipino Employees for labor and staff positions, including administrative, technical, and executive management positions.
- 15.2. During the Pre-Development Stage, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_). Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_).
- 15.3. During the Pre-Development Stage, the RE DEVELOPER shall provide assistance for training programs, conferences, seminars and other similar activities for the DEPARTMENT's personnel in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_) per Contract Year. Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide assistance for training programs, conference seminars and other similar activities for the DEPARTMENT's personnel in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_) per Contract Year. This assistance shall be accumulated for the succeeding Contract Years if not availed of in a given Contract Year. The RE DEVELOPER shall pay the unutilized amount of the training commitment prior to the Expiration or Termination of this RE Contract.
- 15.4. The RE DEVELOPER shall undertake corporate social responsibility projects in Host LGUs focused on education and training of qualified and deserving beneficiaries, as determined by the RE DEVELOPER.
- 15.5. Upon execution of this RE Contract, the RE DEVELOPER shall pay the DEPARTMENT a signing fee in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_).

**SECTION XVI  
MISCELLANEOUS PROVISIONS**

16.1 NOTICES

Any notice required or given by either Party to the other Party shall be in writing and shall be effective when a copy thereof is handed to or served upon the Party's duly designated representative or the person in charge of the office or place of business, or when sent by registered mail, notice shall be effective upon actual receipt by the addressee, but if it fails to claim its mail from the post office within five (5) days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time. All such notices shall be addressed:

To the DEPARTMENT:

The Secretary  
Department of Energy  
Energy Center, Rizal Drive, Bonifacio Global City  
Taguig City, Metro Manila, Philippines

To the RE DEVELOPER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any Party may substitute or change such address with prior written notice thereof to the other Party.

16.2 GOVERNING LAW

The laws of the Republic of the Philippines shall apply to this RE Contract.

16.3 ASSIGNMENT

- a) This RE Contract cannot be assigned without the prior written approval of the Parties.
- b) The RE DEVELOPER may assign or transfer part or all of its rights and/or obligations under this RE Contract to its Affiliate upon compliance with the following provisions:
  - i. The RE DEVELOPER shall submit to the DEPARTMENT copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned; and,
  - ii. The RE DEVELOPER shall guarantee in writing to the DEPARTMENT its performance of the assigned obligations.
- c) Pursuant to the foregoing Sub-section, this RE Contract shall not be assigned to any third party unless such third party is qualified in accordance with the Act and its IRR.

- d) The RE DEVELOPER may authorize its subsidiaries, branches or regional corporations to implement this RE Contract, but the RE DEVELOPER shall remain responsible for the performance of this RE Contract.
- e) During the Pre-Development Stage, this RE Contract shall not be assigned except where the assignee is a subsidiary, branch or regional corporation of the RE DEVELOPER created for the special purpose of handling the project covered by the RE Contract.
- f) No assignment shall be granted if the RE Developer is in default of its Work Program or any of its obligations under this RE Contract and other RE agreements with the DEPARTMENT.

#### 16.4 SUSPENSION OF OBLIGATIONS

- a) Any failure or delay on the part of either Party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure.
- b) If the Hydropower Operations are curtailed or prevented by such causes, then the time for enjoying the rights and carrying out the obligations thereby affected, and all rights and obligations hereunder shall be extended for a period equal to the period of delay, curtailment or prevention: *Provided, however,* That if operations are delayed, curtailed or prevented by Force Majeure for a continuous period of twelve (12) months, this RE Contract may thereafter be terminated, at the option of the RE DEVELOPER, at anytime that the Force Majeure condition still exists, subject to the confirmation of the DEPARTMENT.
- c) The Party whose ability to perform its obligations is so affected shall notify the other Party thereof in writing stating the cause and such affected Party shall do all reasonably within its power to remove such cause.

#### 16.5 AMENDMENTS

The RE Contract shall not be amended or modified in any respect except by the mutual consent in writing of the Parties.

#### 16.6 BOOKS OF ACCOUNTS AND AUDITS

- a) The RE DEVELOPER shall be responsible for keeping complete books and accounts, in Philippine currency denominations, reflecting all transactions in connection with this RE Contract in accordance with the Annex "B" hereof.
- b) The DEPARTMENT shall have the right to inspect the RE DEVELOPER's books and accounts directly relating to this RE

Contract for any Calendar or Fiscal Year within twenty-four (24) months following the end of each Calendar or Fiscal Year. Any such audit shall be completed within twelve (12) months after its commencement. Any exceptions must be made to the RE DEVELOPER in writing within ninety (90) days following the completion of such audit. If the DEPARTMENT fails to give such written exception within such time, then the RE DEVELOPER's books of accounts and statements for such Calendar or Fiscal Year shall be established as correct and final for all purpose.

- c) The DEPARTMENT, upon at least fifteen (15) days' advance written notice to the RE DEVELOPER, is entitled to access, during reasonable hours without affecting Hydropower Operations, all books of accounts and records and may inspect such sites and facilities as necessary.
- d) If the DEPARTMENT notifies the RE DEVELOPER of an exception to the RE DEVELOPER's books of accounts within the period specified in Sub-section 16.6 (b), the RE DEVELOPER shall within ninety (90) days from receipt of written exception from the DEPARTMENT, question its validity, otherwise, the same shall become final and binding on the RE DEVELOPER. If the Parties are not able to agree on the exceptions or adjustments after ninety (90) days from the date of receipt of the RE DEVELOPER's response to the DEPARTMENT's exception report, the Parties shall resolve the dispute in accordance with Section XIV (Disputes and Arbitration).

#### 16.7 HEALTH, SAFETY, AND ENVIRONMENT PROTECTION

- a. In the performance of this RE Contract, the RE DEVELOPER shall: (1) be subject to the laws, rules and regulations on environmental protection, indigenous people rights, health and safety promulgated by the GOVERNMENT; (2) endeavor to make its best efforts to prevent pollution and damage to the atmosphere, oceans, rivers, lakes, harbors and land; and (3) ensure the safety and health of its operating personnel.
- b. When the GOVERNMENT assigns any person to inspect for environmental protection, health and safety compliance of the RE DEVELOPER, the RE DEVELOPER shall provide such reasonable facilities and assistance as are applicable to ensure appropriate inspection by the GOVERNMENT. The RE DEVELOPER shall be given reasonable notice of such inspections.

#### 16.8. SEPARABILITY CLAUSE

Should any provision of this RE Contract or the application thereof to any situation or circumstance be declared null and void and/or invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof which shall remain valid and enforceable to the fullest extent. In the event of such partial invalidity or unenforceability, the Parties shall seek in good faith to agree on replacing the invalid or

HSC No. \_\_\_\_\_  
\_\_\_\_\_ MW \_\_\_\_\_ HEP  
Location

unenforceable provisions with a provision that in effect will most nearly and fairly approximate the effect of the invalid or unenforceable provision through the issuance of appropriate supplemental contract/s or agreement/s.

**IN WITNESS WHEREOF**, the Parties have caused this RE Contract to be executed by their respective representatives at the place and on the date above written.

**DEPARTMENT OF ENERGY**

By:

**RE DEVELOPER**

By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
**NAME**  
Designation

\_\_\_\_\_  
(Name and Position)  
Witness

\_\_\_\_\_  
(Name and Position)  
Witness

HSC No. \_\_\_\_\_  
\_\_\_\_\_ MW \_\_\_\_\_ HEP  
Location

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES }  
\_\_\_\_\_ } S. S.

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This RE Contract consisting of twenty seven (27) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Party and his instrumental witness and sealed with my notarial seal,

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2013.



HSC No. \_\_\_\_\_  
\_\_\_\_\_ MW \_\_\_\_\_ HEP  
Location

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES }  
\_\_\_\_\_ } S. S.

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the corporation herein represented.

This RE Contract consisting of twenty seven (27) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Party and his instrumental witness and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2013.

OSC No. \_\_\_\_\_  
\_\_\_\_\_ MW \_\_\_\_\_ OP  
Location

**REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF ENERGY**

**OCEAN POWER SERVICE CONTRACT  
(OSC No. \_\_\_\_\_)**

This **OCEAN POWER SERVICE CONTRACT** (this "**RE Contract**"), made and entered into this \_\_\_\_\_ in Fort Bonifacio, Taguig City by and between:

The **REPUBLIC OF THE PHILIPPINES**, hereinafter referred to as "**GOVERNMENT**", through the "**Department of Energy**", hereinafter referred to as the "**DEPARTMENT**", a government agency established pursuant to Republic Act No. 7638, as amended, with principal office address at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its Secretary, **HON.** \_\_\_\_\_;

-and-

\_\_\_\_\_, hereinafter referred to as the "**RE DEVELOPER**", a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at, \_\_\_\_\_

represented herein by its, \_\_\_\_\_;

Each of the **DEPARTMENT** and the **RE DEVELOPER** is referred to as a "**Party**", and collectively as the "**Parties**". In the implementation of this **RE Contract**, the **GOVERNMENT** shall act through and be represented by the **DEPARTMENT**.

**WITNESSETH:**

**WHEREAS**, all forces of potential energy in public and/or private lands, within the Philippine territory, belong to the State and their exploration, development and utilization are governed by Section 2, Article XII of the 1987 Constitution;

**WHEREAS**, under Republic Act No. 7638, as amended, otherwise known as the Department of Energy Act of 1992, the **DEPARTMENT** shall establish and administer programs for the exploration, development and utilization of energy resources, including Ocean Power Resources;

**WHEREAS**, under Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008 (the "Act"), the exclusive right to explore and develop a particular renewable energy area under the said Act shall be through a Renewable Energy Service Contract;

OSC No. \_\_\_\_\_  
\_\_\_\_\_ MW \_\_\_\_\_ OP  
Location

**WHEREAS**, pursuant to the Act, the **RE DEVELOPER** has agreed to enter into this RE Contract with the **DEPARTMENT** covering the Contract Area for the Project with the corresponding rights and obligations stipulated hereof;

**WHEREAS**, the **RE DEVELOPER** has been evaluated and recommended by the duly constituted RE Contract Review Committee per Resolution No. \_\_\_\_\_, series of 20\_\_\_\_ and duly confirmed by the Secretary to be legally, technically, and financially qualified to enter into this RE Contract;

**NOW, THEREFORE**, for and in consideration of the terms and conditions set forth herein, the Parties hereby stipulate and agree as follows:

## **SECTION I SCOPE**

- 1.1 This RE Contract is entered into pursuant to the Act, with the services, technology and financing to be furnished by the RE DEVELOPER for its conduct of Ocean Power Operations, in an economically viable manner and in accordance with this RE Contract.
- 1.2 This RE Contract cover the Contract Area only as provided under Section IV (Contract Area) hereof.
- 1.3 The RE DEVELOPER is hereby appointed and constituted by the DEPARTMENT as the Party having the exclusive right to explore, develop, and utilize the Ocean Power Resources within the Contract Area defined hereof. The DEPARTMENT shall have the right to require performance of any or all obligations of the RE DEVELOPER under this RE Contract.
- 1.4 The RE DEVELOPER may pursue any Additional Investment or New Investment within the Contract Area and shall be solely responsible for providing the necessary services, technology, equipment and financing therefor. In case of New Investment, the Parties shall enter into a new Renewable Energy (RE) Service Contract at the option of the RE DEVELOPER, subject to approval of the DEPARTMENT.
- 1.5 The RE DEVELOPER shall assume all the technical and financial risks under this RE Contract without any guarantee from the GOVERNMENT and shall not be entitled to reimbursement for any expense incurred in connection with this RE Contract.

## **SECTION II DEFINITION OF TERMS**

- 2.1 The words and terms under this RE Contract, unless otherwise specified in the Act and its IRR, shall have the meaning in accordance with the following definitions:

- a) **“Abandonment and Termination Plan”** refers to the plan prepared by the RE DEVELOPER submitted within three (3) months from Effective Date in the case of Pre-Development Stage and at least five (5) years from confirmation of the Declaration of Commerciality and approved by the Department of Environment and Natural Resources (DENR) and the DEPARTMENT for the decommissioning, abandonment and surface restoration or rehabilitation of the Contract Area, and such abandonment work plan may be amended, supplemented or modified by the Parties from time to time;
- b) **“Accounting Procedures”** refers to the set of procedures, guidelines, and arrangement between the Parties, and any amendments thereto, to govern the applicable treatment of expenses, costs, and income, set forth in Annex “B”, which forms an integral part of this RE Contract;
- c) **“Additional Investment”** refers to investments relating to improvements, modernization, rehabilitation, or expansion duly registered with the DEPARTMENT, subject to the conditions to be determined by the DEPARTMENT, such as but not limited to the following:
- i. Identification of and investment in sequential phases/stages of production, or undertaking scheduled modernization and/or rehabilitation of the Ocean Power Systems; and
  - ii. Improvements to the Ocean Power Systems such as reduced production/operational costs, increased production, improved operational efficiency, and better reliability of the Project;
- d) **“Affiliate”** refers to any person or group of persons, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the RE DEVELOPER. As used herein, “control” shall mean the power to direct, or cause the direction of, the management policies of a person by contract, agency, or otherwise;
- e) **“Calendar Year”** refers to the period beginning January 1 to December 31 of each year;
- f) **“Certificate of Confirmation of Commerciality”** refers to the certification issued by the DOE confirming the declaration made by the RE DEVELOPER that the Project is commercially feasible;
- g) **“Certificate of Registration”** refers to that certification issued to the RE DEVELOPER upon the Effective Date of this RE Contract and upon approval of Additional Investment, to serve as the basis for its entitlement to the incentives provided under the Act;
- h) **“Commercial Operation”** refers to the stage when the RE DEVELOPER has completed its commissioning and test operations and is ready to sell or apply its produced Ocean Power, as duly confirmed by the DEPARTMENT;

- i) **“Commercial Quantities”** refers to quantities of electricity to be generated from the Ocean Power Resources, providing, or capable of providing, revenue from sales of electricity that exceed or would exceed the RE DEVELOPER’s Cost of Goods Sold by a margin sufficient to cause a reasonably prudent person employing standard industry practices as to Ocean Power resources and using commercially available technology to develop the Ocean Power Systems;
- j) **“Contract Area”** **“Contract Area”** refers to the total area of \_\_\_\_\_ hectares in the Province of \_\_\_\_\_ which is the subject of this RE Contract. The Contract Area is outlined and more particularly described in a map with its technical description attached herein as Annex “A” and made an integral part of this RE Contract;
- k) **“Contract Year”** refers to a period of twelve (12) consecutive calendar months counted from the Effective Date of this RE Contract and thereafter, from the anniversary of such Effective Date: *Provided, however,* That the last Contract Year shall end on the date of Expiration or Termination of this RE Contract;
- l) **“Corporate Income Tax”** refers to the tax imposed upon net taxable income under the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9937 and the Act. After availing of the Income Tax Holiday (ITH) under the Act, the RE DEVELOPER shall be subject to a Corporate Income Tax rate of ten percent (10%);
- m) **“Cost of Goods Sold”** refers to all business expenses directly incurred in the exploration, development, and utilization of the Ocean Power Resources in order to produce and sell electricity and transmit the same to its intended location and use, which expenses are particularly described in Annex “B” hereof;
- n) **“Declaration of Commerciality”** refers to a written declaration by the RE DEVELOPER stating that the electricity to be generated from the Ocean Power Resources is in Commercial Quantities;
- o) **“Development Stage”** refers to the development, production, or utilization of RE resources, including the construction and installation of relevant facilities up to the operation phase thereof;
- p) **“Effective Date”** refers to the date of the execution of this RE Contract;
- q) **“Expatriate Employee”** refers to a foreign national engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Ocean Power Operations, who shall exercise his technical profession, as allowed under existing laws;

- r) **“Expiration”** refers to either the lapse of the term of this RE Contract provided in Section III (Term) hereof or the surrender and/or waiver of the RE DEVELOPER of the Contract Area including the abandonment thereof: *Provided* that in case of a partial surrender and/or waiver, this RE Contract shall subsist with respect to the remaining portion;
- s) **“Filipino Employee”** refers to any citizen of the Republic of the Philippines employed and/or engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Ocean Power Operations under this RE Contract;
- t) **“Fiscal Year”** refers to a period of twelve (12) consecutive months;
- u) **“Force Majeure”** refers to extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable;
- v) **“Generation Facility”** refers to a facility for the production of electricity;
- w) **“Government Share”** refers to the amount due the national government and LGUs from the exploration, development and utilization of the Ocean Power Resources computed in accordance with the Act and its Implementing Rules and Regulations (IRR), and described in Section X (Government Share) hereof;
- x) **“Gross Income”** refers to income derived from the RE DEVELOPER’s Ocean Power Operations equivalent to the gross sales of Ocean Power less sales returns, discounts and allowance, and Cost of Goods Sold, which is more particularly described in the Accounting Procedures attached as Annex “B”;
- y) **“Host LGU”** refers to the LGU where the Ocean Power Resources and/or Generation Facility is located;
- z) **“Local Government Units/LGU”** refers to the territorial and political subdivisions of the State which organization and function are fully described under the Local Government Code of 1991;
- aa) **“Milestones”** refer to the specific activity or set of activities within the Contract Year indicated in the Work Program that will be a basis for evaluation and monitoring by the DEPARTMENT;
- bb) **“New Investment”** refers to investments relating to discovery, exploration, development and/or utilization of new RE resources or the development of new Generation Facilities within the Contract Area distinct from the originally registered operations having separate books of accounts;
- cc) **“Ocean Power”** refers to the energy that can be derived from Ocean Power Resources that is converted into useful electrical or mechanical energy;

- dd) **“Ocean Power Operations”** shall include Ocean Power exploration, development, production, and utilization, including the construction, installation, operation and maintenance of Ocean Power Systems to convert Ocean Power to electrical power and the transmission of such electrical power and/or other non-electrical uses;
- ee) **“Ocean Power Resources”** refers to the water resources found within the Contract Area to be technically feasible for the development of Ocean Power projects;
- ff) **“Ocean Power Systems”** refers to the machines or other related equipment that convert Ocean Power into useful electrical or mechanical energy; includes, but is not limited to, Water Turbine Generators (WTGs), electrical collection and transmission grids, overhead and underground electrical transmission and communications lines, electric transformers and conditioning equipment, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with WTG installations, meteorological towers and water current measurement equipment, control buildings, maintenance yards, access facilities, and related facilities and equipment deemed by the RE DEVELOPER to be necessary or convenient for the production and delivery of electricity from Ocean Power;
- gg) **“Pre-Development Stage”** refers to the preliminary assessment and feasibility study up to the financial closing of the Project and specifically covers the term provided in Section 3.1 of this RE Contract;
- hh) **“Production Area”** refers to that portion of the Contract Area designated by the RE DEVELOPER where Ocean Power Resources are utilized to produce electricity in Commercial Quantities;
- ii) **“Project”** refers to the RE DEVELOPER’s Ocean Power Systems within the Contract Area, which may be implemented in one or more phases;
- jj) **“RE Contract”** refers to this Ocean Power Service Contract, as may be amended or extended by the Parties and shall have the same meaning as provided under the Act;
- kk) **“Sub-contractor”** refers to any person or entity contracted by the RE DEVELOPER to provide goods or services for the purpose of this RE Contract, subject to the provisions of existing laws;
- ll) **“Termination”** refers to the right of the Parties to cancel this RE Contract pursuant to Section XIII (Suspension and Termination) hereof;

- mm) **“Work Plan”** refers to the plan and activities prepared by the RE DEVELOPER during the development stage with the corresponding budgetary estimate; and
- nn) **“Work Program”** refers to all types of plans and programs and related activities on a milestone basis formulated for the performance of the work obligations by the RE DEVELOPER during the Pre-Development Stage, along with the corresponding budgetary estimate, submitted to the DEPARTMENT under this RE Contract as Annex “C”.

### SECTION III

#### TERM

- 3.1 **Pre-Development Stage.** The Pre-Development Stage of this RE Contract shall be a non-extendible period of three (3) years from the Effective Date: *Provided*, That the failure to accomplish the first annual Milestone indicated in the Work Program shall result in the expiration of the RE Contract. However, the submission by the RE Developer of a Declaration of Commerciality at any time during the Pre-Development Stage and the confirmation thereof by the DEPARTMENT shall supersede the foregoing requirement on annual milestones.
- 3.2 **Development Stage.** Upon submission of the Declaration of Commerciality, as confirmed by the DEPARTMENT through the issuance of a Certificate of Confirmation of Commerciality, this RE CONTRACT shall remain in force for the balance of a period of twenty-five (25) years from the Effective Date: *Provided*, That at the option of the RE DEVELOPER, by written notice to the DEPARTMENT not later than one (1) year prior to the expiration of the initial twenty-five (25)-year period and so long as the RE DEVELOPER is not in default of any material obligations under this RE Contract, the DEPARTMENT may approve the extension of this RE Contract for another twenty-five (25) years, subject to the terms and conditions to be mutually agreed upon by the Parties.

### SECTION IV CONTRACT AREA

- 4.1 The Contract Area refers to the area as described in Annex “A” hereof reserved by the DEPARTMENT for the RE DEVELOPER over which the RE DEVELOPER has exclusive right to explore, develop and utilize the Ocean Power Resources in accordance with this RE Contract.
- 4.2 The RE DEVELOPER shall, upon submission of written notice to the DEPARTMENT, have the right to surrender or waive the entire Contract Area or any portion thereof, within thirty (30) days prior to the intended date of surrender, without liability or cost, and be relieved from any work and expenditure commitments thereon without prejudice to any other outstanding liability or costs. In case the RE DEVELOPER completely ceases its



operations, the provisions under its Abandonment and Termination Plan shall apply consistent with its Environmental Compliance Certificate (ECC);

- 4.3 Any portion of the Contract Area where feasibility study was not conducted and wherein the RE DEVELOPER has no intention to conduct any development activities as indicated under the proposed Work Plan shall be deemed relinquished on the date of Declaration of Commerciality.
- 4.4 During Development Stage, the RE DEVELOPER shall delineate its Production Area which may no longer be subject to the Blocking System

### **SECTION V WORK PROGRAM, WORK PLAN, AND ESTIMATED EXPENDITURES**

- 5.1 The RE DEVELOPER shall carry out its existing work according to good industry practices.
- 5.2 During the Pre-Development Stage, the RE DEVELOPER shall conduct preliminary Ocean Power Resources data gathering activities and, if warranted by the results of such Ocean Power Resources data gathering, conduct a full Ocean Power Resources assessment.
- 5.3 Attached to this RE Contract is a Work Program for the first two (2) years from the Effective Date and its corresponding budget, details of which are particularly described in Annex "C" hereof.
- 5.4 During the implementation of the Work Program, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT of any revisions thereto at least one (1) month prior to the end of each Contract Year: *Provided, however*, That revision shall not be allowed within the first Contract Year: *Provided further*, That the RE Developer shall be allowed to subsequently revise its Work Program only if it has substantially complied with all its material financial and technical obligations under the Work Program for the immediate preceding Contract Year.
- 5.5 The RE DEVELOPER shall submit to the DEPARTMENT a Work Plan for the first five (5) years from its Declaration of Commerciality and its corresponding budget thereof.
- 5.6 Not later than two (2) months prior to the end of the first five (5) years from the RE DEVELOPER's Declaration of Commerciality, the RE DEVELOPER shall submit a Work Plan for the next five (5) years and shall do so every five (5) years thereafter. The Work Plan or any revisions thereof shall need the approval from the DEPARTMENT.
- 5.7 During the implementation of the Work Plan, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT any revisions thereto, at least one (1) month prior to the end of each Contract Year.

- 5.8 In the event of failure to comply with its commitments under the Work Program, the RE DEVELOPER shall pay the DEPARTMENT the amount it should have spent for the execution of the same. Should the RE DEVELOPER fail to pay the assessed financial deficiency within the period prescribed by the DEPARTMENT, the DEPARTMENT shall enforce the collection thereof, and/or call the performance guarantee posted by the RE DEVELOPER, at the option of the DEPARTMENT. This is without prejudice to the right of the DEPARTMENT to terminate the RE Contract.

## **SECTION VI RIGHTS AND OBLIGATIONS**

- 6.1 The RE DEVELOPER shall have the following rights:
- a) To be granted fiscal and non-fiscal incentives and privileges under the Act, the IRR, and all other existing laws that are not otherwise modified or repealed by the Act;
  - b) To receive assistance from the DEPARTMENT:
    - i. In securing access to lands and/or offshore areas where Ocean Power Resources shall be harnessed; and
    - ii. In indorsing the Project to the National Government, LGUs, Board of Investments (BOI) and other entities for the acquisition of permits, licenses and clearances and availment of applicable fiscal and non fiscal incentives;
  - c) Have at all times the right of ingress to and egress from the Contract Area to and from facilities wherever located;
  - d) Acquire rights-of-way and similar rights on, over, under, across and through the Contract Area or properties adjacent to the Contract Area, which constitute or is reasonably expected to constitute the Contract Area as the RE DEVELOPER may reasonably deem necessary.

The DEPARTMENT shall, upon request by the RE DEVELOPER as may be reasonable given the attendant circumstances, assist the RE DEVELOPER in securing such rights. For such purpose, the DEPARTMENT shall and does hereby appoint the RE DEVELOPER as its attorney-in-fact and does hereby give and grant to the RE DEVELOPER full authority to act for and on its behalf in the negotiation and conclusion of agreements and payments for such rights. All obligations, payments and expenses arising from or incidental to the acquisition of such rights shall be for the account of the RE DEVELOPER so as to enable the RE DEVELOPER to have ingress into and egress from the Contract Area and to perform all Ocean Power Operations in accordance with this RE Contract and in

consideration of which, entitlement to such rights shall be held in trust in favor of the RE DEVELOPER.

The DEPARTMENT undertakes to provide further assistance to the RE DEVELOPER, including the exercise of the power of eminent domain if necessary, to secure such necessary or proper rights at such cost for the account of the RE DEVELOPER, if the RE DEVELOPER is unable to secure such rights at commercially reasonable costs through negotiations or if the same is the most expedient course of action to support the timely execution of Ocean Power Operations;

- e) Allow, in accordance with existing laws, entry into the Philippines and employment by the RE DEVELOPER of Expatriate Employees who shall exercise their technical professions solely for the Ocean Power Operations: *Provided That*, Filipino Employees shall be given preference to positions for which they have adequate training and experience required by the RE DEVELOPER; and *Provided further*, that if the employment or connection of such Expatriate Employee with the RE DEVELOPER ceases, applicable laws and regulations shall apply to him and his immediate family;
- f) Have free and unimpeded use of Ocean Power Resources within the Contract Area in view of the Ocean Power Operations, Additional Investments and New Investments; in regard of which, the DEPARTMENT shall ensure that rights, privileges and other authorizations it may grant to third parties will not defeat or impair such use;
- g) Be informed by the DEPARTMENT, if at any time the latter becomes aware of any intended exploration, extraction, or use of energy resources other than Ocean Power Resources on the Contract Area and adjacent areas thereof, within thirty (30) days from the date it becomes so aware of such intended exploration, extraction, or other use; and
- h) Be granted an exclusive easement to use, convert, maintain and capture the free and unobstructed flow of Ocean Power Resources within the Contract Area.

6.2 The RE DEVELOPER shall have the following obligations:

- a) Secure any necessary permits and clearances from all relevant government entities for the Project;
- b) Perform exploration, assessment, field verification, harnessing, piloting and other activities in accordance with the Work Program and provide technology and financing in connection with the Pre-Development Stage;
- c) Perform the required Ocean Power Operations and provide services, technology, and financing in connection therewith;

- d) Maintain complete and accurate accounting, financial and technical records of its Ocean Power Operations, subject to Sections IX (Technical Data and Reports Submission) and XI (Confidentiality), and in accordance with the Accounting Procedures;
- e) Allow officials and representatives authorized by the DEPARTMENT access to the Contract Area and to accounts, books and records directly relating to the Ocean Power Operations during reasonable hours and without causing disruption, subject to fifteen (15) calendar days prior written notice to the RE DEVELOPER;
- f) Give priority in employment to qualified personnel in the Host LGU subject to Section XV (Employment, Training and Development Programs);
- g) Within sixty (60) days after the Effective Date of this RE Contract and at the start of every Contract Year thereafter, post a performance bond or other guarantee of sufficient amount but not less than the minimum expenditures commitment for the corresponding Contract Year in favor of the DEPARTMENT from a list of DEPARTMENT-accredited insurance or surety companies, conditioned upon the faithful performance by the RE DEVELOPER of any or all of the commitments and obligations under the Work Program and Work Plan insofar as the period prior to Commercial Stage;
- h) After availing of the Income Tax Holiday (ITH), be subject to Corporate Income Tax: *Provided*, That New or Additional Investment shall be eligible for ITH;
- i) Be subject to the provisions of law of general application relating to labor, health, safety, environment, and indigenous peoples rights;
- j) Develop, operate, and maintain the Contract Area in accordance with accepted industry practices to enable maximum economic production of the Ocean Power Resources;
- k) Be responsible for procurement of installation, equipment and supplies, and for entering into subcontracts related to the Ocean Power Operations;
- l) Give preference to Philippine companies/agencies entering into subcontracts on goods or services that are required in the Ocean Power Operations but are not carried out by the RE DEVELOPER: *Provided*, That the goods or services are competitive as to cost, quality and availability;
- m) Be responsible in the proper handling of data, samples, information, reports, and other documents;

- n) Maintain all meters and measuring equipment in good order and allow access to these as well as to the exploration sites to inspectors authorized by the DEPARTMENT;
  - o) Pay the Government Share in accordance with the computation in the Act's IRR and taxes as may be applicable;
  - p) Organize Information, Education and Communication (IEC) Campaign on benefits to the Host LGUs pursuant to Section 18 of the DEPARTMENT's Department Circular No. DC2009-07-0011; and
  - q) Comply with all rules, regulations, and guidelines issued by the DEPARTMENT that are applicable hereto.
- 6.3 Upon the Effective Date of this RE Contract or upon the approval of the RE DEVELOPER's Additional Investment, the DEPARTMENT shall issue a Certificate of Registration to the RE DEVELOPER, to enable it to avail of the fiscal and non-fiscal incentives and privileges as stated under the Act and its IRR. The registration shall be valid and effective for the entire term and effectivity of this RE Contract.

## **SECTION VII REPRESENTATIONS AND WARRANTIES**

Acknowledging that the GOVERNMENT, through the DEPARTMENT, has entered into this RE Contract in reliance upon the representations and warranties in this Section, the RE DEVELOPER represents and warrants as follows:

- 7.1 It is a corporation or entity duly formed, established, validly existing and in good standing under the laws of the Philippines with full power to own its property; to carry on its business as it is now being conducted; and to execute, deliver and perform its obligations under this RE Contract, and the entering into and performance of this RE Contract by the RE DEVELOPER does not conflict with the articles of incorporation, by-laws and other constitutive documents of the RE DEVELOPER and has been duly authorized by all necessary corporate and legal action on the part of the RE DEVELOPER;
- 7.2 The individual signing this RE Contract on behalf of the RE DEVELOPER is duly authorized to sign as of the Effective Date;
- 7.3 There is no litigation, arbitration, or administrative proceeding pending or, to the best knowledge of the RE DEVELOPER, threatened against the RE DEVELOPER or its properties the adverse determination of which would adversely affect the ability of the RE DEVELOPER to perform or comply with any of its material obligations under this RE Contract;

- 7.4 The RE DEVELOPER:
- a) Has not been declared in default in respect of any of its material financial commitments or obligations based on their reports duly validated by the DEPARTMENT;
  - b) Is not otherwise in default of any kind in respect of any financial commitment or obligation or in respect of any agreement, undertaking or instrument to which it is a party by which it or any of its assets or properties may be bound; and
  - c) Is not aware of a fact that by the service of notice and/or lapse of time would constitute a default in sub-paragraphs (a) to (b) above;
- 7.5 No written material information given by the RE DEVELOPER to the DEPARTMENT under this RE Contract contains any misstatement of fact as of the Effective Date or omits to state a fact that is materially adverse to the interests of the DEPARTMENT; and
- 7.6 The ownership of the RE DEVELOPER's capital stock complies with applicable laws and regulations.

## **SECTION VIII ASSETS AND EQUIPMENT**

- 8.1 The RE DEVELOPER shall acquire and maintain for the Project and for its Ocean Power Operations such assets as are reasonably estimated to be required in carrying out the exploration, assessment, harnessing, piloting and other studies for the Ocean Power Resources in the Contract Area; and the development, utilization, and commercialization of Ocean Power Resources therein, including the construction, installation, operation and maintenance of the Ocean Power Systems.
- 8.2 All materials, equipment, plants and other installations that are erected or placed on the Contract Area by the RE DEVELOPER and are owned by the RE DEVELOPER shall remain the property of the RE DEVELOPER up to one (1) year from the Expiration or Termination of this RE Contract: *Provided*, That upon the written request of the RE DEVELOPER, the DEPARTMENT shall approve an additional non-extendible period of one (1) year within which to remove such assets in the Contract Area. Thereafter, the ownership of any remaining materials, equipment, plants, and other installations shall be vested in the Government.
- 8.3 The RE DEVELOPER shall be responsible for the removal and the disposal of all materials, equipment, and facilities from the Contract Area in accordance with the ECC and the provisions of the Abandonment and Termination Plan as provided under Section II hereof.
- 8.4 The ownership of all data, records, accounts, samples and other technical data produced or generated in the course of the Ocean Power Operations

that are confidential, propriety, or otherwise not generally available to the public shall remain with the DEPARTMENT and RE DEVELOPER and shall be kept confidential in accordance with Section XI (Confidentiality) hereof.

## **SECTION IX TECHNICAL DATA AND REPORTS SUBMISSION**

- 9.1 All technical data and reports, except for proprietary techniques used in developing such technical data and reports, must be submitted by the RE DEVELOPER in accordance with the format approved by the DEPARTMENT.
- 9.2 The technical data and reports to be submitted by the RE DEVELOPER shall include, but not limited to, the following:
- a) Annual Progress Report – shall be submitted not later than two (2) months prior to the end of each Contract Year and shall contain the summary of all the activities, i.e. exploration, drilling or infrastructure development, with relevant comments and recommendation on any technical findings;
  - b) Procurement Plan – shall be designed according to the approved work obligations containing an itemized list of equipment, materials and supplies to be procured with corresponding estimated costs. It shall be submitted not later that one (1) month from the approval of the Work Program or Work Plan or revision thereof, as the case may be;
  - c) Quarter Progress Report – shall be submitted not later that one (1) month from the end of each Contract Quarter and shall contain the work and financial accomplishment under Work Program or Work Plan;
  - d) Monthly Generation Report; and
  - e) Other technical data and reports relevant to the Ocean Power Resources, when necessary as determined by the DEPARTMENT.

## **SECTION X GOVERNMENT SHARE**

- 10.1 The Government Share shall be equal to one percent (1%) of the Gross Income from the sale of electricity generated from Ocean Power Operations in accordance with the Accounting Procedures as prescribed under Annex "B" hereof.
- 10.2 The RE DEVELOPER shall within sixty (60) days following the end of each quarter of a Calendar or Fiscal Year remit to the DEPARTMENT the Government Share: *Provided*, That any unremitted amount shall carry an interest of ten percent (10%) per annum reckoned from the day immediately

following the end of each quarter of a Calendar or Fiscal Year, as may be applicable.

## SECTION XI CONFIDENTIALITY

- 11.1 All documents, information, data and reports produced or generated during the Ocean Power Operations under this RE Contract shall be kept strictly confidential over the term of this RE Contract or any extension thereof: *Provided*, That proprietary information shall be kept strictly confidential at all times subject to lawful acquisitions of such information under existing laws and regulations.
- 11.2 Without the written consent of the other Party, no Party shall use or disclose the confidential information to any third party and/or to any Affiliate not directly connected with the implementation of this RE Contract except the third parties and Affiliates in Section 11.5, and no Party shall otherwise transfer, present, sell or publish it in any way within the confidentiality periods.
- 11.3 The DEPARTMENT may use such confidential information belonging to the RE DEVELOPER for the DEPARTMENT's resource mapping, data gathering, policy making and for government planning purposes.
- 11.4 Upon the Expiration or Termination of this RE Contract, the DEPARTMENT may provide third parties with the data and reports submitted by the RE DEVELOPER pursuant to this Section: *Provided*, That the same are not proprietary in nature.
- 11.5 Contrary stipulations notwithstanding, the RE DEVELOPER may furnish the information to the following third parties, subsidiaries and Affiliates, such as, but not limited to:
- a) Banks or other credit institutions from which finance is sought by the RE DEVELOPER;
  - b) Third parties, subsidiaries and Affiliates that provide services for the Ocean Power Operations, including Subcontractors and other service contractors;
  - c) Prospective assignee/s to whom rights and obligations under this RE Contract are intended to be assigned;
  - d) Prospective investor/s or entities with whom the RE DEVELOPER intends to enter into joint venture or other similar agreements for the Project;
  - e) Governments and stock/commodity exchanges in accordance with the laws, regulations, or rules of the relevant country or stock/commodity exchange; and



f) Government authorities, entities and judicial courts if required by law, regulation, directive, or order to disclose.

11.6 The information shall be revealed to those persons allowed under this RE Contract only if and to the extent necessary and desirable for the purpose intended. Each Party shall ensure that such person to whom information is disclosed is informed of the confidential nature of the information and the purpose for which it may be used and that each such person is bound by this Section.

11.7 The RE DEVELOPER and its Affiliates or the DEPARTMENT, its officers, employees, consultants and other duly authorized representatives shall not make any public statement or announcement of any information produced, generated, or acquired in the course of the Ocean Power Operations, without prior written consent of the other Party.

## SECTION XII PERFORMANCE BOND

12.1 The initial amount of the bond or other guarantee as specified in Sub-section 6.2(g) shall not be less than the annual financial commitment/budgetary estimate for the first Contract Year based on the Work Program.

12.2 The amount of performance bond or other guarantee may be adjusted, subject to the following conditions:

a) In the event of surrender by the RE DEVELOPER of a portion of the Contract Area covered by this RE Contract, the performance bond or other guarantee shall be reduced proportionately in accordance with the Work Program and Work Plan as applicable;

b) In the event that the RE DEVELOPER has fully expended its budgetary estimate under the Work Program or Work Plan but has not fully performed its work obligations, the amount of bond or other guarantee shall be equal to the succeeding Contract Year's budgetary estimate under the revised Work Program or Work Plan as applicable; and

c) Such other conditions or circumstances as would reasonably warrant the modification of the amount of the performance bond or other guarantee.

12.3 If the RE DEVELOPER, through its own fault, fails to observe or perform its work obligations under the Work Program or Work Plan as applicable, the DEPARTMENT, upon prior written notice, may proceed against the performance bond or other guarantee: *Provided* That, should the work obligations under the Work Program and Work Plan be fulfilled, and through the efficiency of the RE DEVELOPER, the corresponding actual expenditures

thereon are lower than the estimated expenditures stated in the Work Program, the same shall be considered as full compliance of the work obligations.

- 12.4 The DEPARTMENT shall release the performance bond or other guarantee not later than thirty (30) days from the date of confirmation by the DEPARTMENT of the start of the Commercial Operations.

### **SECTION XIII SUSPENSION AND TERMINATION**

- 13.1 In case of the Pre-Development Stage, the DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:

- a) Non-compliance with the Work Program and the material terms and conditions of this RE Contract;
- b) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
- c) Non-observance of environmental regulations imposed by the DENR during the conduct of feasibility study;
- d) Tampering or plagiarizing of technical design and feasibility study reports;
- e) Non-payment of the financial obligations agreed upon under this RE Contract; and
- f) Non-posting of performance bond or other guarantee within the period/s provided under Section XII (Performance Bond).

- 13.2 In case of the Development, the DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:

- a) Non-compliance with the material terms and conditions of this RE Contract;
- b) Violation of the Renewable Portfolio Standards Rules, as defined in the Act and relevant Department Circulars;
- c) Non-compliance with the approved Work Plan and any other material obligations herein;
- d) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
- e) Non-observance of environmental regulations imposed by the DENR

during construction and operation;

- f) Tampering with or plagiarizing of technical design, feasibility study generation and operation reports;
- g) Non-remittance of Government Share as determined by the Compliance Division - Financial Services of the DEPARTMENT;
- h) Non-payment of the financial obligations agreed upon under this RE Contract;
- i) Non-posting of performance bond or other guarantee within the period/s provided under Section XII (Performance Bond).
- j) Failure to comply with material reportorial obligations under this RE Contract; and
- k) Any representation or warranty made by the RE DEVELOPER under Section VII (Representations and Warranties) which shall prove to have been incorrect in any material respect when made.

13.3 The RE DEVELOPER shall have sixty (60) days from written notice from the DEPARTMENT of any of the foregoing to cure the default. Failure of the RE DEVELOPER to cure the default at the end of the sixty (60)-day period shall result in the automatic Termination of this RE Contract: *Provided, however*, That in case the ground for the Termination is non-compliance with the approved Work Program for reasons not attributable to Force Majeure, the Termination shall not be subject to curing period and shall be effective immediately as indicated in the notice duly issued by the Department: *Provided further*, That non-compliance of the approved Work Program during the Pre-Development Stage shall be determined on the basis of the following:

- i. Failure of the RE DEVELOPER to comply with its first annual Milestone under the approved Work Program; and
- ii. Failure of the RE DEVELOPER to disburse the cost equivalent of at least eighty per cent (80%) of the total financial cost of its first annual Milestone which is set by the DEPARTMENT at One Million Five Hundred Thousand Pesos (Php1,500,000).

***Provided finally***, That during the Development Stage, non-compliance with the Milestone for the succeeding years under the approved Work Plan and failure to disburse the cost equivalent of Thirty Million Pesos (Php30,000,000) per megawatt shall result in the Termination of this RE Contract or give rise to the right of the DEPARTMENT for recourse on the Performance Bond.

- 13.4 Notwithstanding the foregoing, this RE Contract shall be terminated without prejudice to the RE Developer's obligation under its Abandonment and Termination Plan as approved by the DEPARTMENT.

#### **SECTION XIV DISPUTES AND ARBITRATION**

- 14.1 Any dispute, controversy, or claim arising out of or relating to this RE Contract except Section 13.1.a hereof on Milestone activities, shall be settled amicably within a period of sixty (60) days after receipt by one Party of a notice from the other Party of the existence of the dispute.
- 14.2 If the dispute cannot be settled amicably within the sixty (60)-day period, the Parties shall, with respect to disputes arising out of or in connection with Sections IV (Contract Area), V (Work Program, Work Plan and Estimated Expenditures), and X (Government Share) refer the dispute to an independent expert for resolution in the manner provided below; *Provided*, That any Party, in its sole discretion, may require that the dispute be referred to arbitration under Section 14.4 hereof.
- 14.3 The following shall govern the rules of referral:
- a) After the sixty (60)-day period in Section 14.1 has passed, any Party may give notice to the other Party of its intention to refer the dispute to an expert in accordance with the provisions of this RE Contract;
  - b) The respondent shall, within twenty-one (21) days after receipt of the notice of intention to refer, serve on the applicant a notice of its intention to defend;
  - c) If within fourteen (14) days after the applicant's receipt of the respondent's notice of intention to defend, the Parties have agreed on an expert and on the terms under which the dispute shall be referred, the dispute shall be so referred. In the event that within such fourteen (14)-day period, the Parties are unable to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request the International Chamber of Commerce (ICC) International Centre for Expertise to appoint an expert, and the matters to be determined by such expert shall be those set out in the notice of intention to refer and the notice of intention to defend;
  - d) Unless the Parties agree otherwise, any expert proceedings under this Section shall be required to follow the ICC Rules for Expertise in force as of Effective Date;
  - e) The language of the expert proceedings and the expert's determinations shall be in English;

- f) The Parties hereby agree to be bound by, to perform this RE Contract in accordance with, and to implement, as the case may be, the determination of the expert. Failure by one Party to so act shall constitute a breach of this RE Contract and shall be submitted to arbitration in accordance with Section 14.4 as the sole means of enforcing the determination; and
- g) Each Party shall bear the costs and expenses of all lawyers, advisors, witnesses and employees retained by it in connection with the expert proceedings: Provided, *however*, That in circumstances where the expert determines that a matter referred to him was not subject to a bona fide dispute, the costs and expenses incurred by the prevailing Party and the expert in connection with such matter shall be paid by the non-prevailing Party.

14.4 If the dispute cannot be settled within sixty (60) days by mutual discussions as contemplated in Section 14.1, and referral to an expert is neither prescribed nor elected by the Parties with respect to any technical dispute, the dispute shall finally be settled by an arbitral tribunal (the "Tribunal") governed by and conducted in accordance with the ICC Rules of Arbitration (the "Rules") in force as of Effective Date (or such Rules as may be in force at the time such arbitration is commenced), as follows:

- a) The RE DEVELOPER will nominate one (1) arbitrator and the DEPARTMENT will nominate one (1) arbitrator within thirty (30) days from the date of a request by either Party to initiate arbitration. The two Party-nominated arbitrators will then jointly nominate a third arbitrator within thirty (30) days of the date of the appointment of the second arbitrator, to act as Chairman of the Tribunal. Arbitrators not nominated within the time limits set forth in the preceding sentence shall be appointed by the ICC Court of International Arbitration;
- b) Unless otherwise agreed by the Parties, the venue of the arbitration shall be in Metro Manila, Philippines;
- c) The language of the arbitration and award shall be in English;
- d) The Tribunal shall not be authorized to impose, and either Party shall not be authorized to seek from any judicial authority, any requirement that the other post security for the costs of either Party;
- e) The decision of the Tribunal shall be final and binding upon the Parties. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

14.5 The right to arbitrate disputes under this RE Contract shall survive the Expiration or Termination of this RE Contract.

**SECTION XV  
EMPLOYMENT, TRAINING AND DEVELOPMENT PROGRAMS**

- 15.1 The RE DEVELOPER agrees to give preference in employment to qualified Filipino Employees who are residents of Host LGUs and will undertake the development and training of Filipino Employees for labor and staff positions, including administrative, technical, and executive management positions.
- 15.2 During the Pre-Development Stage, the RE DEVELOPER shall, upon request of the DEPARTMENT shall provide development assistance in kind in the amount of \_\_\_\_\_ PESOS (PhP \_\_\_\_\_). Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER, upon request of the DEPARTMENT shall provide development assistance in kind in the amount of \_\_\_\_\_ PESOS (PhP \_\_\_\_\_).
- 15.3 During the Pre-Development Stage, the RE DEVELOPER shall provide assistance for training programs, conferences, seminars and other similar activities for the DEPARTMENT's personnel in the amount of \_\_\_\_\_ PESOS (PhP \_\_\_\_\_) per Contract Year. Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide assistance for training programs, conference seminars and other similar activities for the DEPARTMENT's personnel in the amount of \_\_\_\_\_ PESOS (PhP \_\_\_\_\_) per Contract Year. This assistance shall be accumulated for the succeeding Contract Years if not availed of in a given Contract Year. The RE DEVELOPER shall pay the unutilized amount of the training commitment prior to the Expiration or Termination of this RE Contract.
- 15.4 The RE DEVELOPER shall undertake corporate social responsibility projects in Host LGUs with focus on education and training of qualified and deserving beneficiaries, as determined by the RE DEVELOPER.
- 15.5 Upon execution of this RE Contract, the RE DEVELOPER shall pay the DEPARTMENT a signing fee in the amount of \_\_\_\_\_ PESOS (PhP \_\_\_\_\_).

**SECTION XVI  
MISCELLANEOUS PROVISIONS**

16.1 NOTICES

Any notice required or given by either Party to the other Party shall be in writing and shall be effective when a copy thereof is handed to or served upon the Party's duly designated representative or the person in charge of the office or place of business, or when sent by registered mail, notice shall be effective upon actual receipt by the addressee, but if he fails to claim his mail from the post office within five (5) days from the date of the first notice of

OSC No. \_\_\_\_\_  
\_\_\_\_\_ MW \_\_\_\_\_ OP  
Location

the postmaster, service shall take effect at the expiration of such time. All such notices shall be addressed:

To the DEPARTMENT:

The Secretary  
Department of Energy  
Energy Center, Rizal Drive, Bonifacio Global City  
Taguig City, Metro Manila, Philippines

To the RE DEVELOPER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any Party may substitute or change such address with prior written notice thereof to the other Party.

## 16.2 GOVERNING LAW

The laws of the Republic of the Philippines shall apply to this RE Contract.

## 16.3 ASSIGNMENT

- a) This RE Contract cannot be assigned without the prior written approval of the Parties.
- b) The RE DEVELOPER may assign or transfer part or all of its rights and/or obligations under this RE Contract to its Affiliate upon compliance with the following provisions:
  - i. The RE DEVELOPER shall submit to the DEPARTMENT copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned; and,
  - ii. The RE DEVELOPER shall guarantee in writing to the DEPARTMENT its performance of the assigned obligations.
- c) Pursuant to the foregoing Sub-section, this RE Contract shall not be assigned to any third party unless such third party is qualified in accordance with the Act and its IRR.
- d) The RE DEVELOPER may authorize its subsidiaries, branches or regional corporations to implement this RE Contract, but the RE DEVELOPER shall remain responsible for the performance of this RE Contract.

- e) During the Pre-Development Stage, this RE Contract shall not be assigned except where the assignee is a subsidiary, branch or regional corporation of the RE DEVELOPER created for the special purpose of handling the project covered by the RE Contract.
- f) No assignment shall be granted if the RE Developer is in default of its Work Program or any of its obligations under this RE Contract and other RE agreements with the DEPARTMENT.

#### 16.4 SUSPENSION OF OBLIGATIONS

- a) Any failure or delay on the part of either Party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure.
- b) If the Ocean Power Operations are curtailed or prevented by such causes, then the time for enjoying the rights and carrying out the obligations thereby affected, and all rights and obligations hereunder shall be extended for a period equal to the period of delay, curtailment or prevention: *Provided, however,* That if operations are delayed, curtailed or prevented by Force Majeure for a continuous period of twelve (12) months, this RE Contract may thereafter be terminated, at the option of the RE DEVELOPER, at anytime that the Force Majeure condition still exists, subject to confirmation of the DEPARTMENT.
- c) The Party whose ability to perform its obligations is so affected shall notify the other Party thereof in writing stating the cause and such affected Party shall do all reasonably within its power to remove such cause.

#### 16.5 AMENDMENTS

The RE Contract shall not be amended or modified in any respect except by the mutual consent in writing of the Parties in accordance with existing rules and regulations.

#### 16.6 BOOKS OF ACCOUNTS AND AUDITS

- a) The RE DEVELOPER shall be responsible for keeping complete books and accounts, in Philippine currency denominations, reflecting all transactions in connection with this RE Contract in accordance with the Accounting Procedures.
- b) The DEPARTMENT shall have the right to inspect the RE DEVELOPER's books and accounts directly relating to this RE Contract for any Calendar or Fiscal Year within twenty-four (24) months following the end of each Calendar or Fiscal Year. Any such audit shall be completed within twelve (12) months after its commencement. Any exceptions must be made to the RE DEVELOPER in writing within ninety (90) days following the



completion of such audit. If the DEPARTMENT fails to give such written exception within such time, then the RE DEVELOPER's books of accounts and statements for such Calendar or Fiscal Year shall be established as correct and final for all purpose.

- c) The DEPARTMENT, upon at least fifteen (15) days' advance written notice to the RE DEVELOPER, is entitled to access, during reasonable hours without affecting Ocean Power Operations, all books of accounts and records and may inspect such sites and facilities as necessary.
- d) If the DEPARTMENT notifies the RE DEVELOPER of an exception to the RE DEVELOPER's books of accounts within the period specified in Sub-section 16.6 (b), the RE DEVELOPER shall within ninety (90) days from receipt of written exception from the DEPARTMENT, question its validity, otherwise, the same shall become final and binding on the RE DEVELOPER. If the Parties are not able to agree on the exceptions or adjustments after ninety (90) days from the date of receipt of the RE DEVELOPER's response to the DEPARTMENT's exception report, the Parties shall resolve the dispute in accordance with Section XIV (Disputes and Arbitration).

#### 16.7 HEALTH, SAFETY, AND ENVIRONMENT PROTECTION

- a. In the performance of this RE Contract, the RE DEVELOPER shall: (1) be subject to the laws, rules and regulations on environmental protection, indigenous people rights, health and safety promulgated by the GOVERNMENT; (2) endeavor to make its best efforts to prevent pollution and damage to the atmosphere, oceans, rivers, lakes, harbors and land; and (3) secure the safety and health of its operating personnel.
- b. When the GOVERNMENT assigns any person to inspect for environmental protection, health and safety compliance of the RE DEVELOPER, the RE DEVELOPER shall provide such reasonable facilities and assistance as are applicable to ensure appropriate inspection by the GOVERNMENT. The RE DEVELOPER shall be given reasonable notice of such inspections.

#### 16.8 SEPARABILITY CLAUSE

Should any provision of this RE Contract or the application thereof to any situation or circumstance be declared null and void and/or invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof which shall remain valid and enforceable to the fullest extent. In the event of such partial invalidity or unenforceability, the Parties shall seek in good faith to agree on replacing the invalid or unenforceable provisions with a provision that in effect will most nearly and fairly approximate the effect of the invalid or unenforceable provision.

OSC No. \_\_\_\_\_  
\_\_\_\_\_ MW \_\_\_\_\_ OP  
Location

**IN WITNESS WHEREOF**, the Parties have caused this RE Contract to be executed by their respective representatives at Metro Manila on the date above written.

**DEPARTMENT OF ENERGY**  
By:

**RE DEVELOPER**  
By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
**NAME**  
Designation

\_\_\_\_\_  
*(Name and Position)*  
Witness

\_\_\_\_\_  
*(Name and Position)*  
Witness

OSC No. \_\_\_\_\_  
\_\_\_\_\_ MW \_\_\_\_\_ OP  
Location

### ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES }  
\_\_\_\_\_ } S. S.

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance

known to be the same persons described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This instrument consisting of twenty five (25) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Parties and their instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2013.

OSC No. \_\_\_\_\_  
\_\_\_\_\_ MW \_\_\_\_\_ OP  
Location

### ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES }  
\_\_\_\_\_ } S. S.

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance

known to be the same persons described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the corporation herein represented.

This instrument consisting of twenty seven (27) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Parties and their instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2013.

**REPUBLIC OF THE PHILIPPINES**  
**DEPARTMENT OF ENERGY**

**GEOHERMAL SERVICE CONTRACT**  
(GSC No. 20\_\_\_\_-xx-0xx)

This **GEOHERMAL SERVICE CONTRACT** (this "**RE Contract**"), made and entered into this \_\_\_\_\_ in Bonifacio Global City, Taguig City by and between:

The **REPUBLIC OF THE PHILIPPINES**, hereinafter referred to as "**GOVERNMENT**", through the "**Department of Energy**", hereinafter referred to as the "**DEPARTMENT**", a government agency established pursuant to Republic Act No. 7638, as amended, with principal office address at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its Secretary, **HON.**

\_\_\_\_\_;

-and-

\_\_\_\_\_, hereinafter referred to as the "**RE DEVELOPER**", a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at

\_\_\_\_\_

represented herein by its \_\_\_\_\_;

Each of the **DEPARTMENT** and the **RE DEVELOPER** is referred to as a "**Party**", and collectively as the "**Parties**". In the implementation of this **RE Contract**, the **GOVERNMENT** shall act through and be represented by the **DEPARTMENT**.

**WITNESSETH:**

**WHEREAS**, all forces of potential energy in public and/or private lands, within the Philippine territory, belong to the State and their exploration, development and utilization are governed by Section 2, Article XII of the 1987 Constitution;

**WHEREAS**, under Republic Act No. 7638, as amended, otherwise known as the Department of Energy Act of 1992, the **DEPARTMENT** shall establish and administer programs for the exploration, development and utilization of energy resources, including Geothermal Resources;

**WHEREAS**, under Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008 (the "Act"), the exclusive right to explore and develop a particular renewable energy area under the said Act shall be through a Renewable Energy Service Contract;

**WHEREAS**, pursuant to the Act, the **RE DEVELOPER** has agreed to enter into this RE Contract with the **DEPARTMENT** covering the Contract Area for the Project with the corresponding rights and obligations stipulated herein;

**WHEREAS**, the **RE DEVELOPER** has been evaluated and recommended by the duly constituted RE Contract Review Committee per Resolution No. \_\_\_\_\_, series of 20\_\_\_\_, and duly confirmed by the Secretary to be legally, technically, and financially qualified to enter into this RE Contract;

**NOW, THEREFORE**, for and in consideration of the terms and conditions set forth herein, the Parties hereby stipulate and agree as follows:

## **SECTION I SCOPE**

- 1.1 This RE Contract is entered into pursuant to the Act, with the services, technology and financing to be furnished by the RE DEVELOPER for its conduct of Geothermal Operations, in an economically viable manner and in accordance with this RE Contract.
- 1.2 This RE Contract shall cover the Contract Area only as provided under Section IV (Contract Area) hereof.
- 1.3 The RE DEVELOPER is hereby appointed and constituted by the DEPARTMENT as the Party having the exclusive right to explore, develop, and utilize the Geothermal Resources within the Contract Area defined herein. The DEPARTMENT shall have the right to require performance of any or all obligations of the RE DEVELOPER under this RE Contract.
- 1.4 The RE DEVELOPER may pursue any Additional Investment or New Investment within the Contract Area and shall be solely responsible for providing the necessary services, technology, equipment and financing therefor. In case of New Investment, the Parties shall enter into a new Renewable Energy (RE) Service Contract at the option of the RE DEVELOPER, subject to approval of the DEPARTMENT.
- 1.5 The RE DEVELOPER shall assume all the technical and financial risks under this RE Contract without any guarantee from the GOVERNMENT and shall not be entitled to reimbursement for any expense incurred in connection with this RE Contract.

## **SECTION II DEFINITION OF TERMS**

- 2.1 The words and terms under this RE Contract, unless otherwise specified in the Act and its IRR or in relevant laws and regulations, shall have the meaning in accordance with the following definitions:
  - a) **“Abandonment and Termination Plan”** refers to the plan prepared by the RE DEVELOPER submitted within three (3) months from Effective Date in the case of Pre-Development Stage and at least five (5) years from confirmation of the Declaration of Commerciality and approved by the Department of Environment and Natural Resources (DENR) and the DEPARTMENT for the decommissioning, abandonment and surface restoration or rehabilitation of the Contract Area, and such abandonment work plan may be amended, supplemented or modified by the Parties from time to time;

- b) **“Accounting Procedures”** refers to the set of procedures, guidelines, and arrangement between the Parties, and any amendments thereto, to govern the applicable treatment of expenses, costs, and income, set forth in Annex “B”, which forms an integral part of this RE Contract;
- c) **“Additional Investment”** refers to investments relating to improvements, modernization, rehabilitation, or expansion duly registered with the DEPARTMENT, subject to the conditions to be determined by the DEPARTMENT, such as, but not limited to, the following:
  - i. Identification of and investment in sequential phases/stages of production, or undertaking scheduled modernization or rehabilitation of the Geothermal Systems; and
  - ii. Improvements to the Geothermal Systems such as reduced production/operational costs, increased production, improved operational efficiency, and better reliability of the Project;
- d) **“Affiliate”** refers to any person or group of persons, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the RE DEVELOPER. As used herein, “control” shall mean the power to direct or cause the direction of the management’s policies of a person by contract, agency or otherwise;
- e) **“Calendar Year”** refers to the period beginning January 1 to December 31 of each year;
- f) **“Certificate of Confirmation of Commerciality”** refers to the certification issued by the DEPARTMENT confirming the declaration made by the RE DEVELOPER that the Project is commercially feasible;
- g) **“Certificate of Registration”** refers to that certification issued to the RE DEVELOPER upon the Effective Date of this RE Contract and upon approval of Additional Investment, to serve as the basis for its entitlement to the incentives provided under the Act;
- h) **“Commercial Operation”** refers to the stage when the RE DEVELOPER has completed its commissioning and test operations and is ready to sell or apply its produced Geothermal Energy, as duly confirmed by the DEPARTMENT;
- i) **“Commercial Quantities”** refers to quantities of electricity to be generated from the Geothermal Resources, providing, or capable of providing, revenue from sales of electricity that exceed or would exceed the RE DEVELOPER’s Cost of Goods Sold by a margin sufficient to cause a reasonably prudent person employing standard industry practices as to Geothermal Resources and using commercially available technology to develop the Geothermal Systems;

- j) **“Contract Area”** refers to the total area of \_\_\_\_\_ hectares in the Province of \_\_\_\_\_ which is the subject of this RE Contract. The Contract Area is outlined and more particularly described in a map with its technical description attached herein as Annex “A” and made an integral part of this RE Contract;
- k) **“Contract Year”** refers to a period of twelve (12) consecutive calendar months counted from the Effective Date of this RE Contract and thereafter, from the anniversary of such Effective Date: *Provided, however,* That the last Contract Year shall end on the date of Expiration or Termination of this RE Contract;
- l) **“Corporate Income Tax”** refers to the tax imposed upon net taxable income under the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337 and the Act. After availing of the Income Tax Holiday (ITH) under the Act, the RE DEVELOPER shall be subject to a Corporate Income Tax rate of ten percent (10%);
- m) **“Cost of Goods Sold”** refers to all business expenses directly incurred in the exploration, development and utilization of the Geothermal Resources in order to produce and sell electricity and transmit the same to its intended location and use, which expenses are particularly described in Annex “B” hereof;
- n) **“Declaration of Commerciality”** refers to a written declaration by the RE DEVELOPER stating that the electricity to be generated from the Geothermal Resources is in Commercial Quantities;
- o) **“Development Stage”** refers to the development, production, or utilization of RE resources, including the construction and installation of relevant facilities up to the operation thereof;
- p) **“Effective Date”** refers to the date of the execution of this RE Contract;
- q) **“Expatriate Employee”** refers to a foreign national engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Geothermal Operations, who shall exercise his technical profession, as allowed under existing laws;
- r) **“Expiration”** refers to either the lapse of the term of this RE Contract as provided in Section III (Term) hereof or the surrender or waiver of the RE DEVELOPER of the Contract Area including the abandonment thereof to the DEPARTMENT: *Provided,* That in case of a partial surrender or waiver, this RE Contract shall subsist with respect to the remaining portion;
- s) **“Filipino Employee”** refers to any citizen of the Republic of the Philippines employed and/or engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Geothermal Operations under this RE Contract;
- t) **“Fiscal Year”** refers to a period of twelve (12) consecutive months;



- u) **“Force Majeure”** refers to extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable;
- v) **“Generation Facility”** refers to a facility for the production of electricity and/or thermal energy such as, but not limited to, steam, hot or cold water;
- w) **“Geothermal Energy”** shall be the energy produced through: (1) natural recharge, where the water is replenished by rainfall and the heat is continuously produced inside the earth; and/or (2) enhanced recharge, where hot water used in the geothermal process is re-injected into the ground to produce more steam as well as to provide additional recharge to the convection system;
- x) **“Geothermal Operations”** shall include Geothermal Energy exploration, development, production, and utilization, including the construction, installation, operation and maintenance of Geothermal Systems to convert Geothermal Energy to electrical power and the transmission of such electrical power and/or other non-electrical uses;
- y) **“Geothermal Resources”** refer to resources in the form of: (i) all products of geothermal processes, embracing indigenous steam, hot water and hot brines; (ii) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (iii) heat or associated energy found in geothermal formations; and (iv) any by-product derived from them, that is converted into useful electrical or mechanical energy and governed by the terms of this RE Contract;
- z) **“Geothermal Systems”** refer to the machines or other related equipment that convert Geothermal Resources into useful electrical or mechanical energy; includes, but is not limited to, electrical connection and transmission grids, overhead and underground electrical transmission and communications lines, electric transformers and conditioning equipment, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with metering equipment, control buildings, maintenance yards, access facilities and related facilities and equipment deemed by RE DEVELOPER to be necessary or convenient for the production of electricity from Geothermal Resources and its delivery;
- aa) **“Government Share”** refers to the amount due the national government and LGUs from the exploration, development and utilization of the Geothermal Resources computed in accordance with the Act and its Implementing Rules and Regulations (IRR), and described in Section X (Government Share) hereof;
- bb) **“Gross Income”** refers to income derived from the RE DEVELOPER's Geothermal Operations equivalent to the gross sales of Geothermal Energy less sales returns, discounts and allowance, and Cost of Goods Sold, which is more particularly described in the Accounting Procedures attached as Annex “B” hereof;

- cc) **“Host LGU”** refers to the LGU where the Geothermal Resources and/or Generation Facility is located;
- dd) **“Local Government Units/LGU”** refers to the territorial and political subdivisions of the State which organization and function are fully described under the Local Government Code of 1991;
- ee) **“Milestones”** refer to the specific activity or set of activities within the Contract Year indicated in the Work Program that will be a basis for evaluation and monitoring by the DEPARTMENT;
- ff) **“New Investment”** refers to investments relating to discovery, exploration, development and/or utilization of new RE resources or the development of new Generation Facilities within the Contract Area distinct from the originally registered operations having separate books of accounts;
- gg) **“Pre-Development Stage”** refers to the preliminary assessment and feasibility study up to the financial closing of the Project and specifically covers the term provided in Section 3.1 of this RE Contract;
- hh) **“Production Area”** refers to that portion of the Contract Area designated by the RE DEVELOPER where Geothermal Resources are utilized to produce electricity in Commercial Quantities;
- ii) **“Project”** refers to the RE DEVELOPER’s Geothermal Systems within the Contract Area, which may be implemented in one or more phases;
- jj) **“RE Contract”** refers to this Geothermal Service Contract, as may be amended or extended by the Parties and shall have the same meaning as provided under the Act;
- kk) **“Subcontractor”** refers to any person or entity contracted by the RE DEVELOPER to provide goods or services for the purpose of this RE Contract, subject to the provisions of existing laws;
- ll) **“Termination”** refers to the right of the Parties to cancel this RE Contract pursuant to Section XIII (Suspension and Termination) hereof;
- mm) **“Work Plan”** refers to the plan and activities prepared by the RE DEVELOPER during the Development Stage with the corresponding budgetary estimate; and
- nn) **“Work Program”** refers to all types of plans and programs and related activities on a milestone basis formulated for the performance of the work obligations by the RE DEVELOPER during the Pre-Development Stage, along with the corresponding budgetary estimate, submitted to the DEPARTMENT under this RE Contract as Annex “C”.

### SECTION III TERM

- 3.1 **Pre-Development Stage.** The Pre-Development Stage of this RE Contract shall be a non-extendible period of five (5) years from the Effective Date: *Provided*, That the failure to accomplish the first annual Milestone indicated in the Work Program shall result in the expiration of the contract term. However, the submission by the RE DEVELOPER of a Declaration of Commerciality at any time during the Pre-Development Stage and the confirmation thereof by the DEPARTMENT shall supersede the foregoing requirement on annual milestones.
- 3.2 **Development Stage.** Upon submission of the Declaration of Commerciality by the RE DEVELOPER, as confirmed by the DEPARTMENT through the issuance of a Certificate of Confirmation of Commerciality, this RE CONTRACT shall remain in force for the balance of a period of twenty-five (25) years from Effective Date: *Provided*, That at the option of the RE DEVELOPER, by written notice to the DEPARTMENT not later than one (1) year prior to the expiration of the initial twenty-five (25)-year period and so long as the RE DEVELOPER is not in default of any material obligations under this RE Contract, the DEPARTMENT may approve the extension of this RE Contract for another twenty-five (25) years, subject to the terms and conditions to be mutually agreed upon by the Parties.

### SECTION IV CONTRACT AREA

- 4.1 The Contract Area refers to the area as described in Annex "A" hereof reserved by the DEPARTMENT for the RE DEVELOPER over which the RE DEVELOPER has exclusive right to explore, develop and utilize the Geothermal Resources in accordance with this RE Contract
- 4.2 The RE DEVELOPER shall, upon submission of written notice to the DEPARTMENT, have the right to surrender or waive the entire Contract Area or any portion thereof, within thirty (30) days prior to the intended date of surrender, without liability or cost, and be relieved from any work and expenditure commitments thereon without prejudice to any other outstanding liability or costs. In case the RE DEVELOPER completely ceases its operations, the provisions under its Abandonment and Termination Plan shall apply consistent with its Environmental Compliance Certificate (ECC).
- 4.3 Any portion of the Contract Area where feasibility study was not conducted and where the RE DEVELOPER has no intention to conduct any development activities as indicated under the proposed Work Plan shall be deemed relinquished on the date of Declaration of Commerciality.
- 4.4 During Development Stage, the RE DEVELOPER shall delineate its Production Area which may no longer be subject to the Blocking System.

### SECTION V

**WORK PROGRAM, WORK PLAN  
AND ESTIMATED EXPENDITURES**

- 5.1 The RE DEVELOPER shall carry out its existing work according to good industry practices.
- 5.2 During the Pre-Development Stage, the RE DEVELOPER shall conduct preliminary Geothermal Resources data gathering activities and, if warranted by the results of such Geothermal Resources data gathering, conduct a full Geothermal Resources assessment.
- 5.3 Attached to this RE Contract is a Work Program and its corresponding budget, details of which are particularly described in Annex "C" hereof.
- 5.4 During the implementation of the Work Program, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT any revisions thereto at least one (1) month prior to the end of each Contract Year: *Provided, however,* That revision shall not be allowed within the first Contract Year: *Provided, further,* That the RE DEVELOPER shall be allowed to subsequently revise its Work Program only if it has substantially complied with all its material financial and technical obligations under the Work Program for the immediate preceding Contract Year.
- 5.5 The RE DEVELOPER shall submit to the DEPARTMENT a Work Plan for the first five (5) years from its Declaration of Commerciality and its corresponding budget thereof.
- 5.6 Not later than two (2) months prior to the end of the first five (5) years from the RE DEVELOPER's Declaration of Commerciality, the RE DEVELOPER shall submit a Work Plan for the next five (5) years and shall do so every five (5) years thereafter. The Work Plan or any revisions thereof shall need the approval from the DEPARTMENT.
- 5.7 During the implementation of the Work Plan, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT any revisions thereto, at least one (1) month prior to the end of each Contract Year.
- 5.8 In the event of failure to comply with its commitments under the Work Program, the RE DEVELOPER shall pay the DEPARTMENT the amount it should have spent for the execution of the same. Should the RE DEVELOPER fail to pay the assessed financial deficiency within the period prescribed by the DEPARTMENT, the DEPARTMENT shall enforce the collection thereof, and/or call the performance guarantee posted by the RE DEVELOPER, at the option of the DEPARTMENT. This is without prejudice to the right of the DEPARTMENT to terminate the RE Contract.

**SECTION VI  
RIGHTS AND OBLIGATIONS**

- 6.1 The RE DEVELOPER shall have the following rights:
  - a) To be granted fiscal and non-fiscal incentives and privileges under the Act and its IRR, and all other existing laws that are not otherwise modified or repealed by the Act;

- b) To receive assistance from the DEPARTMENT:
  - i. In securing access to lands and/or offshore areas where Geothermal Resources shall be harnessed; and
  - ii. In indorsing the Project to the National Government, LGUs, Board of Investments (BOI) and other entities for the acquisition of permits, licenses and clearances and availment of applicable fiscal and non-fiscal incentives;
- c) Have at all times the right of ingress to and egress from the Contract Area to and from facilities wherever located;
- d) Acquire rights-of-way and similar rights on, over, under, across and through the Contract Area or properties adjacent to the Contract Area, which constitute or is reasonably expected to constitute the Contract Area as the RE DEVELOPER may reasonably deem necessary.

The DEPARTMENT shall, upon request by the RE DEVELOPER as may be reasonable given the attendant circumstances, assist the RE DEVELOPER in securing such rights. For such purpose, the DEPARTMENT shall and does hereby appoint the RE DEVELOPER as its attorney-in-fact and does hereby give and grant to the RE DEVELOPER full authority to act for and on its behalf in the negotiation and conclusion of agreements and payments for such rights. All obligations, payments and expenses arising from or incidental to the acquisition of such rights shall be for the account of the RE DEVELOPER so as to enable the RE DEVELOPER to have ingress into and egress from the Contract Area and to perform all Geothermal Operations in accordance with this RE Contract and in consideration of which, entitlement to such rights shall be held in trust in favor of the RE DEVELOPER.

The DEPARTMENT undertakes to provide further assistance to the RE DEVELOPER, including the exercise of the power of eminent domain if necessary, to secure such necessary or proper rights at such cost for the account of the RE DEVELOPER, if the RE DEVELOPER is unable to secure such rights at commercially reasonable costs through negotiations or if the same is the most expedient course of action to support the timely execution of Geothermal Operations;

- e) Allow, in accordance with the existing laws, entry into the Philippines and employment by the RE DEVELOPER of Expatriate Employees who shall exercise their technical professions solely for the Geothermal Operations: *Provided*, That, Filipino Employees shall be given preference to positions for which they have adequate training and experience required by the RE DEVELOPER: and *Provided, further*, That if the employment or connection of such Expatriate Employee with the RE DEVELOPER ceases, applicable laws and regulations shall apply to him and his immediate family;
- f) Have a free and unimpeded use of Geothermal Resources within the Contract Area in view of the Geothermal Operations, Additional

Investments and New Investments in regard of which, the DEPARTMENT shall ensure that rights, privileges and other authorizations it may grant to third parties will not defeat or impair such use;

- g) Be informed by the DEPARTMENT, if at any time the latter becomes aware of any intended exploration, extraction or use of energy resources other than Geothermal Resources on the Contract Area and adjacent areas thereof, within thirty (30) days from the date it becomes aware of such intended exploration, extraction or other use; and
- h) Be granted an exclusive easement to use, convert, maintain and capture the free and unobstructed flow of Geothermal Resources within the Contract Area.

6.2 The RE DEVELOPER shall have the following obligations:

- a) Secure any necessary permits and clearances from all relevant government entities for the Project;
- b) Perform exploration, assessment, field verification, harnessing, piloting and other activities in accordance with the Work Program and provide technology and financing in connection with the Pre-Development Stage;
- c) Perform the required Geothermal Operations and provide services, technology and financing in connection therewith;
- d) Maintain complete and accurate accounting, financial and technical records of its Geothermal Operations, subject to Section IX (Technical Data and Reports Submission) and XI (Confidentiality), and in accordance with the Accounting Procedures as provided under Annex "B" hereof;
- e) Allow officials and representatives authorized by the DEPARTMENT access to the Contract Area, and to the accounts, books and records directly relating to the Geothermal Operations during reasonable hours and without causing disruption, subject to fifteen (15) calendar days prior written notice to the RE DEVELOPER;
- f) Give priority in employment to qualified personnel in the Host LGU subject to Section XV (Employment, Training and Development Programs);
- g) Within sixty (60) days after the Effective Date of this RE Contract and at the start of every Contract Year thereafter, post a performance bond or other guarantee of sufficient amount but not less than the annual budgetary estimate for the corresponding Contract Year in favor of the DEPARTMENT from a list of DEPARTMENT-accredited insurance or surety companies, conditioned upon the faithful performance by the RE DEVELOPER of any or all of the commitments and obligations under the Work Program and Work Plan insofar as the period prior to Commercial Operation;

- h) After availing of the Income Tax Holiday (ITH), be subject to Corporate Income Tax: *Provided*, That New or Additional Investment shall be eligible for ITH;
- i) Be subject to the provisions of law of general application relating to labor, health, safety, environment and indigenous peoples rights;
- j) Develop, operate and maintain the Contract Area in accordance with accepted industry practices to enable maximum economic production of the Geothermal Resources;
- k) Be responsible for procurement of installation, equipment and supplies, and for entering into subcontracts related to the Geothermal Operations;
- l) Give preference to Philippine companies/agencies entering into subcontracts on goods or services that are required in the Geothermal Operations but are not carried out by the RE DEVELOPER: *Provided*, That the goods or services are competitive as to cost, quality and availability;
- m) Be responsible in the proper handling of data, samples, information, reports and other documents;
- n) Maintain all meters and measuring equipment in good order and allow access to these as well as to the exploration sites to inspectors authorized by the DEPARTMENT;
- o) Pay the Government Share in accordance with the computation in the Act's IRR and taxes as may be applicable;
- p) Organize Information, Education and Communication (IEC) Campaign on benefits to the Host LGUs pursuant to Section 18 of the DEPARTMENT's Department Circular No. DC2009-07-0011; and
- q) Comply with all rules, regulations and guidelines issued by the DEPARTMENT that are applicable hereto.

6.3 Upon the Effective Date of this RE Contract or upon the approval of the RE DEVELOPER's Additional Investment, the DEPARTMENT shall issue a Certificate of Registration to the RE DEVELOPER, to enable it to avail of the fiscal and non-fiscal incentives and privileges as stated under the Act and its IRR. The registration shall be valid and effective for the entire term and effectivity of this RE Contract.

## **SECTION VII REPRESENTATIONS AND WARRANTIES**

Acknowledging that the GOVERNMENT, through the DEPARTMENT, has entered into this RE Contract in reliance upon the representations and warranties in this Section, the RE DEVELOPER represents and warrants as follows:

7.1 It is a corporation or entity duly formed, established, validly existing and in good standing under the laws of the Philippines with full power to own its

property; to carry on its business as it is now being conducted; and to execute, deliver and perform its obligations under this RE Contract, and the entering into and performance of this RE Contract by the RE DEVELOPER does not conflict with the articles of incorporation, by-laws and other constitutive documents of the RE DEVELOPER and has been duly authorized by all necessary corporate and legal action on the part of the RE DEVELOPER;

- 7.2 The individual signing this RE Contract on behalf of the RE DEVELOPER is duly authorized to sign as of the Effective Date;
- 7.3 There is no litigation, arbitration or administrative proceeding pending or, to the best knowledge of the RE DEVELOPER, threatened against the RE DEVELOPER or its properties the adverse determination of which would adversely affect the ability of the RE DEVELOPER to perform or comply with any of its material obligations under this RE Contract;
- 7.4 The RE DEVELOPER:
- a) Has not been declared in default in respect to any of its material financial commitments or obligations based on their reports duly validated by the DEPARTMENT;
  - b) Is not otherwise in default of any kind in respect of any financial commitment or obligation or in respect of any agreement, undertaking or instrument as a party thereof by which it or any of its assets or properties may be bound; and
  - c) Is not aware of a fact that by the service of notice and/or lapse of time would constitute a default in any or both of sub-paragraphs (a) and (b) above;
- 7.5 No written material information given by the RE DEVELOPER to the DEPARTMENT under this RE Contract contains any misstatement of fact as of the Effective Date or omits to state a fact that is materially adverse to the interests of the DEPARTMENT; and
- 7.6 The ownership of the RE DEVELOPER's capital stock complies with applicable laws and regulations.

## **SECTION VIII ASSETS AND EQUIPMENT**

- 8.1 The RE DEVELOPER shall acquire and maintain for the Project and for its Geothermal Operations and, such assets as are reasonably estimated to be required in carrying out the exploration, assessment, harnessing, piloting and other studies for the Geothermal Resources in the Contract Area; and the development, utilization and commercialization of Geothermal Resources therein, including the construction, installation, operation and maintenance of the Geothermal Systems.



- 8.2 All materials, equipment, plants and other installations that are erected or placed on the Contract Area by the RE DEVELOPER and are owned by the RE DEVELOPER shall remain the property of the RE DEVELOPER up to one (1) year from the Expiration or Termination of this RE Contract: *Provided*, That upon the written request of the RE DEVELOPER, the DEPARTMENT shall approve an additional non-extendible period of one (1) year within which to remove such assets in the Contract Area. Thereafter, the ownership of any remaining materials, equipment, plants, and other installations shall be vested in the Government.
- 8.3 The RE DEVELOPER shall be responsible for the removal and the disposal of all materials, equipment and facilities from the Contract Area in accordance with the ECC and the provisions of the Abandonment and Termination Plan as provided under Section II hereof.
- 8.4 The ownership of all data, records, accounts, samples and other technical data produced or generated in the course of the Geothermal Operations that are confidential, proprietary in nature or otherwise not generally available to the public shall remain with the DEPARTMENT and RE DEVELOPER and shall be kept confidential in accordance with Section XI (Confidentiality) hereof.

### **SECTION IX TECHNICAL DATA AND REPORTS SUBMISSION**

- 9.1 All technical data and reports, except for proprietary techniques used in developing such technical data and reports, must be submitted by the RE DEVELOPER in accordance with the format approved by the DEPARTMENT.
- 9.2 The technical data and reports to be submitted to the DEPARTMENT shall include, but not limited to, the following:
- a) Annual Progress Report – shall be submitted not later than two (2) months prior to the end of each Contract Year and shall contain the summary of all the activities, i.e. exploration, drilling or infrastructure development, with relevant comments and recommendation on any technical findings;
  - b) Procurement Plan – shall be designed according to the approved work obligations containing an itemized list of equipment, materials and supplies to be procured with corresponding estimated costs. It shall be submitted not later than one (1) month from the approval of the Work Program or Work Plan or revision thereof, as the case may be;
  - c) Quarter Progress Report – shall be submitted not later than one (1) month from the end of each Contract Quarter and shall contain the work and financial accomplishment under Work Program or Work Plan;
  - d) Monthly Generation Report; and
  - e) Other technical data and reports relevant to the Geothermal Resources, when necessary as determined by the DEPARTMENT.

**SECTION X  
GOVERNMENT SHARE**

- 10.1 The Government Share shall be equal to one and a half percent (1.5%) of the Gross Income from the sale of electricity generated from Geothermal Operations in accordance with the Accounting Procedures as prescribed under Annex "B" hereof.
- 10.2 The RE DEVELOPER shall within sixty (60) days following the end of each quarter of a Calendar or Fiscal Year remit to the DEPARTMENT the Government Share: *Provided*, That any unremitted amount shall carry an interest of ten percent (10%) per annum reckoned from the day immediately following the end of each quarter of a Calendar or Fiscal Year, as may be applicable.

**SECTION XI  
CONFIDENTIALITY**

- 11.1 All documents, information, data and reports produced or generated during the Geothermal Operations under this RE Contract shall be kept strictly confidential over the term of this RE Contract or any extension thereof: *Provided*, That proprietary information shall be kept strictly confidential at all times subject to lawful acquisitions of such information under existing laws and regulations.
- 11.2 Without the written consent of the other Party, no Party shall use or disclose the confidential information to any third party and/or to any Affiliate not directly connected with the implementation of this RE Contract except the third parties and Affiliates in Section 11.5, and no Party shall otherwise transfer, present, sell or publish it in any way within the confidentiality periods.
- 11.3 The DEPARTMENT may use such confidential information belonging to the RE DEVELOPER for the DEPARTMENT's resource mapping, data gathering, policy making and for government planning purposes.
- 11.4 Upon the Expiration or Termination of this RE Contract, the DEPARTMENT may provide third parties with the data and reports submitted by the RE DEVELOPER pursuant to this Section: *Provided*, That the same are not proprietary in nature.
- 11.5 Contrary stipulations notwithstanding, the RE DEVELOPER may furnish the information to the following third parties, subsidiaries and Affiliates, such as, but not limited to:
- a) Banks or other credit institutions from which finance is sought by the RE DEVELOPER;
  - b) Third parties, subsidiaries and Affiliates that provide services for the Geothermal Operations, including Subcontractors and other service contractors;

- c) Prospective assignee/s to whom rights and obligations under this RE Contract are intended to be assigned;
- d) Prospective investor/s or entities with whom the RE DEVELOPER intends to enter into joint venture or other similar agreements for the Project;
- e) Governments and stock/commodity exchanges in accordance with the laws, regulations, or rules of the relevant country or stock/commodity exchange; and
- f) Government authorities, entities and judicial courts if required by law, regulation, directive, or order, to disclose.

11.6 The information shall be revealed to those persons allowed under this RE Contract only if and to the extent necessary and desirable for the purpose intended. Each Party shall ensure that such person to whom information is disclosed is informed of the confidential nature of the information and the purpose for which it may be used and that each such person is bound by this Section.

11.7 The RE DEVELOPER and its Affiliates or the DEPARTMENT, its officers, employees, consultants and other duly authorized representatives shall not make any public statement or announcement of any information produced, generated or acquired in the course of the Geothermal Operations, without prior written consent of the other Party.

## **SECTION XII PERFORMANCE BOND**

12.1 The initial amount of the bond or other guarantee as specified in Sub-section 6.2(g) shall not be less than the annual financial commitment/budgetary estimate for the first Contract Year based on the Work Program.

12.2 The amount of performance bond or other guarantee may be adjusted, subject to the following conditions:

- a) In the event of surrender by the RE DEVELOPER of a portion of the Contract Area covered by this RE Contract, the performance bond or other guarantee shall be reduced proportionately in accordance with the Work Program and Work Plan as applicable;
- b) In the event that the RE DEVELOPER has fully expended its budgetary estimate under the Work Program or Work Plan as applicable but has not fully performed its work obligations, the amount of bond or other guarantee shall be equal to the succeeding Contract Year's budgetary estimate under the revised Work Program or Work Plan as applicable; and
- c) Such other conditions or circumstances as would reasonably warrant the modification of the amount of the performance bond or other guarantee.

- 12.3 If the RE DEVELOPER, through its own fault, fails to observe or perform its work obligations under the Work Program or Work Plan as applicable, the DEPARTMENT, upon prior written notice, may proceed against the performance bond or other guarantee: *Provided*, That, should the work obligations under the Work Program and Work Plan be fulfilled, and through the efficiency of the RE DEVELOPER, the corresponding actual expenditures thereon are lower than the estimated expenditures stated in the Work Program, the same shall be considered as full compliance of the work obligations.
- 12.4 The DEPARTMENT shall release the performance bond or other guarantee not later than thirty (30) days from the date of confirmation by the DEPARTMENT on the start of the Commercial Operations.

### SECTION XIII SUSPENSION AND TERMINATION

- 13.1 In case of the Pre-Development Stage, the DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:
- a) Non-compliance with the Work Program and the material terms and conditions of this RE Contract;
  - b) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
  - c) Non-observance of environmental regulations imposed by the DENR during the conduct of feasibility study;
  - d) Tampering or plagiarizing of technical design and feasibility study reports;
  - e) Non-payment of the financial obligations agreed upon under this RE Contract; and,
  - f) Non-posting of performance bond or other guarantee within the period/s provided under Section XII (Performance Bond).
- 13.2 In case of the Development Stage, the DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:
- a) Non-compliance with the material terms and conditions of this RE Contract;
  - b) Violation of the Renewable Portfolio Standards Rules, as defined in the Act and its IRR, and relevant Department Circulars;
  - c) Non-compliance with the approved Work Plan and any other material obligations herein;
  - d) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;

- e) Non-observance of environmental regulations imposed by the DENR during construction and operation;
- f) Tampering with or plagiarizing of technical design, feasibility study generation and operation reports;
- g) Non-remittance of Government Share as determined by the Compliance Division-Financial Services of the DEPARTMENT;
- h) Non-payment of the financial obligations agreed upon under this RE Contract;
- i) Non-posting of performance bond or other guarantee within the period/s provided under Section XII (Performance Bond);
- j) Failure to comply with material reportorial obligations under this RE Contract; and
- k) Any representation or warranty made by the RE DEVELOPER under Section VII (Representations and Warranties) which shall prove to have been incorrect in any material respect when made.

13.3 The RE DEVELOPER shall have sixty (60) days from written notice from the DEPARTMENT of any of the foregoing to cure the default. Failure of the RE DEVELOPER to cure the default at the end of the sixty (60)-day period shall result in the automatic Termination of this RE Contract: *Provided, however,* That in case the ground for the Termination is non-compliance with the approved Work Program for reasons not attributable to Force Majeure, the Termination shall not be subject to curing period and shall be effective immediately as indicated in the notice duly issued by the Department: *Provided further,* That non-compliance of the approved Work Program during the Pre-Development Stage shall be determined on the basis of the following:

- i. Failure of the RE DEVELOPER to comply with its first annual Milestone under the approved Work Program; and
- ii. Failure of the RE DEVELOPER to disburse the cost equivalent of at least eighty per cent (80%) of the total financial cost of its first annual Milestone which is set by the DEPARTMENT at Six Million Five Hundred Thousand Pesos (Php 6,500,000).

***Provided finally,*** That during the Development Stage, non-compliance with the Milestone for the succeeding years under the approved Work Plan and failure to disburse the cost equivalent of Two Hundred Million Pesos (Php 200,000,000) per megawatt shall result in the Termination of this RE Contract or give rise to the right of the DEPARTMENT for recourse on the Performance Bond.

13.4 Notwithstanding the foregoing, this RE Contract shall be terminated without prejudice to the RE DEVELOPER's obligation under its Abandonment and Termination Plan as approved by the DEPARTMENT.

#### SECTION XIV DISPUTES AND ARBITRATION

- 14.1 Any dispute, controversy or claim arising out of or relating to this RE Contract, except Section 13.1.a hereof on Milestone activities, shall be settled amicably within a period of sixty (60) days after receipt by one Party of a notice from the other Party of the existence of the dispute.
- 14.2 If the dispute cannot be settled amicably within the sixty (60) day period, the Parties shall, with respect to disputes arising out of or in connection with Sections IV (Contract Area), V (Work Program, Work Plan and Estimated Expenditures) and X (Government Share) hereof, refer the dispute to an independent expert for resolution in the manner provided below: *Provided*, That any Party, in its sole discretion, may require the dispute be referred to arbitration under Section 14.4 hereof.
- 14.3 The following shall govern the rules of referral to independent expert:
- a) After the sixty (60) day period in Section 14.1 has passed, any Party may give notice to the other Party of its intention to refer the dispute to an expert in accordance with the provisions of this RE Contract;
  - b) The respondent shall, within twenty-one (21) days from receipt of the notice of intention to refer, serve the applicant a notice of its intention to defend;
  - c) If within fourteen (14) days after the applicant's receipt of the respondent's notice of intention to defend, the Parties have agreed on an expert and on the terms under which the dispute shall be referred to the independent expert mentioned in Section 14.2 hereof. In the event that within such fourteen (14)-day period, the Parties are unable to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request the International Chamber of Commerce (ICC) International Centre for Expertise to appoint an expert, and the matters to be determined by such expert shall be those set out in the notice of intention to refer and the notice of intention to defend;
  - d) Unless the Parties agree otherwise, any expert proceedings under this Section shall be required to follow the ICC Rules for Expertise in force as of Effective Date;
  - e) The language of the expert proceedings and the expert's determinations shall be in English;
  - f) The Parties hereby agree to be bound by, to perform this RE Contract in accordance with, and to implement, as the case may be, the determination of the expert. Failure by one Party to act shall constitute a breach of this RE Contract and shall be submitted to arbitration in accordance with Section 14.4 as the sole means of enforcing the determination; and
  - g) Each Party shall bear the costs and expenses of all lawyers, advisors, witnesses and employees retained by it in connection with the expert proceedings: *Provided, however*, That in circumstances where the expert determines that a matter referred to him was not subject to a *bona fide* dispute, the costs and expenses incurred by the prevailing

Party and the expert in connection with such matter shall be paid by the non-prevailing Party.

- 14.4 If the dispute cannot be settled within sixty (60) days by mutual discussions as contemplated in Section 14.1, and referral to an expert is neither prescribed nor elected by the Parties with respect to any technical dispute, upon written demand of either Party, the dispute shall finally be settled by an arbitral tribunal (the "Tribunal") governed by and conducted in accordance with the ICC Rules of Arbitration (the "Rules") in force as of Effective Date (or such Rules as may be in force at the time such arbitration is commenced), as follows:
- a) The RE DEVELOPER will nominate one (1) arbitrator and the DEPARTMENT will nominate one (1) arbitrator within thirty (30) days from the date of a request by either Party to initiate arbitration. The two Party-nominated arbitrators will then jointly nominate a third arbitrator within thirty (30) days from the date of the appointment of the second arbitrator, to act as Chairman of the Tribunal. Arbitrators not nominated within the time limits set forth in the preceding sentence shall be appointed by the ICC Court of International Arbitration;
  - b) Unless otherwise agreed by the Parties, the venue of the arbitration shall be in Metro Manila, Philippines;
  - c) The language of the arbitration and award shall be in English;
  - d) The Tribunal shall not be authorized to impose, and either Party shall not be authorized to seek from any judicial authority, any requirement that the Party posts security for the costs of the other Party; and
  - e) The decision of the Tribunal shall be final and binding upon the Parties. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
- 14.5 The right to arbitrate disputes under this RE Contract shall survive the Expiration or Termination of this RE Contract.

**SECTION XV**  
**EMPLOYMENT, TRAINING AND DEVELOPMENT PROGRAMS**

- 15.1 The RE DEVELOPER agrees to give preference in employment to qualified Filipino Employees who are residents of Host LGUs and will undertake the development and training of Filipino Employees for labor and staff positions, including administrative, technical and executive management positions.

- 15.2 During the Pre-Development Stage, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_). Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_).
- 15.3 During the Pre-Development Stage, the RE DEVELOPER shall provide assistance for training programs, conferences, seminars and other similar activities for the DEPARTMENT's personnel in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_) per Contract Year. Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide assistance for training programs, conference seminars and other similar activities for the DEPARTMENT's personnel in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_) per Contract Year. This assistance shall be accumulated for the succeeding Contract Years if not availed of in a given Contract Year. The RE DEVELOPER shall pay the unutilized amount of the training commitment prior to the Expiration or Termination of this RE Contract.
- 15.4 The RE DEVELOPER shall undertake corporate social responsibility projects in Host LGUs focused on education and training of qualified and deserving beneficiaries, as determined by the RE DEVELOPER.
- 15.5 Upon execution of this RE Contract, the RE DEVELOPER shall pay the DEPARTMENT a signing fee in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_).

**SECTION XVI**  
**MISCELLANEOUS PROVISIONS**

16.1 NOTICES

Any notice required or given by either Party to the other Party shall be in writing and shall be effective when a copy thereof is handed to or served upon the Party's duly designated representative or the person in charge of the office or place of business, or when sent by registered mail, notice shall be effective upon actual receipt by the addressee, but if he fails to claim his mail from the post office within five (5) days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time. All such notices shall be addressed:

To the DEPARTMENT:

The Secretary  
Department of Energy  
Energy Center, Rizal Drive, Bonifacio Global City  
Taguig City, Metro Manila, Philippines

To the RE DEVELOPER:

\_\_\_\_\_



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any Party may substitute or change such address with prior written notice thereof to the other Party.

## 16.2 GOVERNING LAW

The laws of the Republic of the Philippines shall apply to this RE Contract.

## 16.3 ASSIGNMENT

- a) This RE Contract cannot be assigned without the prior written approval of the Parties.
- b) The RE DEVELOPER may assign or transfer part or all of its rights and/or obligations under this RE Contract to its Affiliate upon compliance with the following provisions:
  - i. The RE DEVELOPER shall submit to the DEPARTMENT copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned; and,
  - ii. The RE DEVELOPER shall guarantee in writing to the DEPARTMENT its performance of the assigned obligations.
- c) Pursuant to the foregoing Sub-section, this RE Contract shall not be assigned to any third party, unless such third party is qualified in accordance with the Act and its IRR.
- d) The RE DEVELOPER may authorize its subsidiaries, branches or regional corporations to implement this RE Contract, but the RE DEVELOPER shall remain responsible for the performance of this RE Contract.
- e) During the Pre-Development Stage, this RE Contract shall not be assigned except where the assignee is a subsidiary, branch or regional corporation of the RE DEVELOPER created for the special purpose of handling the project covered by the RE Contract.
- f) No assignment shall be granted if the RE DEVELOPER is in default of its Work Program or any of its obligations under the RE Contract and other RE agreements with the DEPARTMENT.

## 16.4 SUSPENSION OF OBLIGATIONS

- a) Any failure or delay on the part of either Party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure.
- b) If the Geothermal Operations are curtailed or prevented by such causes, then the time for enjoying the rights and carrying out the obligations thereby affected, and all rights and obligations hereunder shall be extended for a period equal to the period of delay, curtailment

or prevention: *Provided, however,* That if operations are delayed, curtailed or prevented by Force Majeure for a continuous period of twelve (12) months, this RE Contract may thereafter be terminated, at the option of the RE DEVELOPER, at anytime that the Force Majeure condition still exists, subject to the confirmation of the DEPARTMENT.

- c) The Party whose ability to perform its obligations is so affected shall notify the other Party thereof in writing stating the cause and such affected Party shall do all reasonably within its power to remove such cause.

#### 16.5 AMENDMENTS

The RE Contract shall not be amended or modified in any respect except by the mutual consent in writing of the Parties.

#### 16.6 BOOKS OF ACCOUNTS AND AUDITS

- a) The RE DEVELOPER shall be responsible for keeping complete books and accounts, in Philippine currency denominations, reflecting all transactions in connection with this RE Contract in accordance with the Annex "B" hereof.
- b) The DEPARTMENT shall have the right to inspect the RE DEVELOPER's books and accounts directly relating to this RE Contract for any Calendar or Fiscal Year within twenty-four (24) months following the end of each Calendar or Fiscal Year. Any such audit shall be completed within twelve (12) months after its commencement. Any exceptions must be made to the RE DEVELOPER in writing within ninety (90) days following the completion of such audit. If the DEPARTMENT fails to give such written exception within such time, then the RE DEVELOPER's books of accounts and statements for such Calendar or Fiscal Year shall be established as correct and final for all purpose.
- c) The DEPARTMENT, upon at least fifteen (15) days advance written notice to the RE DEVELOPER, is entitled to access, during reasonable hours without affecting Geothermal Operations, all books of accounts and records and may inspect such sites and facilities as necessary.
- d) If the DEPARTMENT notifies the RE DEVELOPER of an exception to the RE DEVELOPER's books of accounts within the period specified in Sub-section 16.6 (b), the RE DEVELOPER shall within ninety (90) days from receipt of written exception from the DEPARTMENT, question its validity, otherwise, the same shall become final and binding on the RE DEVELOPER. If the Parties are not able to agree on the exceptions or adjustments after ninety (90) days from the date of receipt of the RE DEVELOPER's response to the DEPARTMENT's exception report, the Parties shall resolve the dispute in accordance with Section XIV (Disputes and Arbitration).

#### 16.7 HEALTH, SAFETY, AND ENVIRONMENT PROTECTION

- a) In the performance of this RE Contract, the RE DEVELOPER shall: (1) be subject to the laws, rules and regulations on environmental protection, indigenous people rights, health and safety promulgated by the GOVERNMENT; (2) endeavor to make its best efforts to prevent pollution and damage to the atmosphere, oceans, rivers, lakes, harbors and land; and (3) ensure the safety and health of its operating personnel.
  
- b) When the GOVERNMENT assigns any person to inspect for environmental protection, health and safety compliance of the RE DEVELOPER, the RE DEVELOPER shall provide such reasonable facilities and assistance as are applicable to ensure appropriate inspection by the GOVERNMENT. The RE DEVELOPER shall be given reasonable notice such inspections.

**16.8 SEPARABILITY CLAUSE**

Should any provision of this RE Contract or the application thereof to any situation or circumstance be declared null and void and/or invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof which shall remain valid and enforceable to the fullest extent. In the event of such partial invalidity or unenforceability, the Parties shall seek in good faith to agree on replacing the invalid or unenforceable provisions with a provision that in effect will most nearly and fairly approximate the effect of the invalid or unenforceable provision through the issuance of appropriate supplemental contract/s or agreement/s.

**IN WITNESS WHEREOF**, the Parties have caused this RE Contract to be executed by their respective representatives at the place and on the date above written.

**DEPARTMENT OF ENERGY**  
By:

**RE DEVELOPER**  
By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
**Name**  
Designation

Witnesses:

\_\_\_\_\_  
*(Name and Position)*  
Witness

\_\_\_\_\_  
*(Name and Position)*  
Witness

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES }  
\_\_\_\_\_ } S. S.

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This RE Contract consisting of twenty five (25) pages, including the page on which this acknowledgment is written, is signed on each and every page thereof by the Parties and their instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 20\_\_\_\_\_.

**ACKNOWLEDGMENT**

**REPUBLIC OF THE PHILIPPINES** }  
\_\_\_\_\_ } S. S.

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the corporation herein represented.

This RE Contract consisting of twenty five (25) pages, including the page on which this acknowledgment is written, is signed on each and every page thereof by the Parties and their instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 20\_\_\_\_\_.

**REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF ENERGY**

**SOLAR ENERGY SERVICE CONTRACT  
(SESC No. \_\_\_\_\_)**

This **SOLAR ENERGY SERVICE CONTRACT** (this "**RE Contract**"), made and entered into this \_\_\_\_\_ in Bonifacio Global City, Taguig City by and between:

The **REPUBLIC OF THE PHILIPPINES**, hereinafter referred to as "**GOVERNMENT**", through the "**Department of Energy**", hereinafter referred to as the "**DEPARTMENT**", a government agency established pursuant to Republic Act No. 7638, as amended, with principal office address at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its Secretary, **HON.**

\_\_\_\_\_;

-and-

\_\_\_\_\_ hereinafter referred to as the "**RE DEVELOPER**", a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at \_\_\_\_\_, represented herein by its

\_\_\_\_\_;

Each of the **DEPARTMENT** and the **RE DEVELOPER** is referred to as a "**Party**", and collectively as the "**Parties**". In the implementation of this **RE Contract**, the **GOVERNMENT** shall act through and be represented by the **DEPARTMENT**.

**WITNESSETH:**

**WHEREAS**, all forces of potential energy in public and/or private lands, within the Philippine territory, belong to the State and their exploration, development and utilization are governed by Section 2, Article XII of the 1987 Constitution;

**WHEREAS**, under Republic Act No. 7638, as amended, otherwise known as the Department of Energy Act of 1992, the **DEPARTMENT** shall establish and administer programs for the exploration, development and utilization of energy resources, including Solar Energy Resources;

**WHEREAS**, under Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008 (the "Act"), the exclusive right to explore and develop a particular renewable energy area under the said Act shall be through a Renewable Energy Service Contract;

**WHEREAS**, pursuant to the Act, the **RE DEVELOPER** has agreed to enter into this RE Contract with the **DEPARTMENT** covering the Contract Area for the Project with the corresponding rights and obligations stipulated herein;

**WHEREAS**, the **RE DEVELOPER** has been evaluated and recommended by the duly constituted RE Contract Review Committee per Resolution No. \_\_\_\_\_, series of 20\_\_\_\_\_, and duly confirmed by the Secretary to be legally, technically, and financially qualified to enter into this RE Contract;

**NOW, THEREFORE**, for and in consideration of the terms and conditions set forth herein, the Parties hereby stipulate and agree as follows:

## **SECTION I SCOPE**

- 1.1 This RE Contract is entered into pursuant to the Act, with the services, technology and financing to be furnished by the RE DEVELOPER for its conduct of Solar Energy Operations, in an economically viable manner and in accordance with this RE Contract.
- 1.2 This RE Contract shall cover the Contract Area only as provided under Section IV (Contract Area) hereof.
- 1.3 The RE DEVELOPER is hereby appointed and constituted by the DEPARTMENT as the Party having the exclusive right to explore, develop, and utilize the Solar Energy Resources within the Contract Area defined herein. The DEPARTMENT shall have the right to require performance of any or all obligations of the RE DEVELOPER under this RE Contract.
- 1.4 The RE DEVELOPER may pursue any Additional Investment or New Investment within the Contract Area and shall be solely responsible for providing the necessary services, technology, equipment and financing therefor. In case of New Investment, the Parties shall enter into a new Renewable Energy (RE) Service Contract at the option of the RE DEVELOPER, subject to approval of the DEPARTMENT.
- 1.5 The RE DEVELOPER shall assume all the technical and financial risks under this RE Contract without any guarantee from the GOVERNMENT and shall not be entitled to reimbursement for any expense incurred in connection with this RE Contract.

## **SECTION II DEFINITION OF TERMS**

- 2.1 The words and terms under this RE Contract, unless otherwise specified in the Act and its IRR or in relevant laws and regulations, shall have the meaning in accordance with the following definitions:
  - a) **"Abandonment and Termination Plan"** refers to the plan prepared by the RE DEVELOPER submitted within three (3) months from Effective Date in the case of Pre-Development Stage and at least five (5) years from confirmation of the Declaration of Commerciality and approved by the Department of Environment and Natural Resources (DENR) and the DEPARTMENT for the decommissioning,

abandonment and surface restoration or rehabilitation of the Contract Area, and such abandonment work plan may be amended, supplemented or modified by the Parties from time to time;

- b) **“Accounting Procedures”** refers to the set of procedures, guidelines, and arrangement between the Parties, and any amendments thereto, to govern the applicable treatment of expenses, costs, and income, set forth in Annex “B” hereof, which forms an integral part of this RE Contract;
- c) **“Additional Investment”** refers to investments relating to improvements, modernization, rehabilitation, or expansion duly registered with the DEPARTMENT, subject to the conditions to be determined by the DEPARTMENT, such as, but not limited to, the following:
  - i. Identification of and investment in sequential phases/stages of production, or undertaking scheduled modernization or rehabilitation of the Solar Energy Systems; and
  - ii. Improvements to the Solar Energy Systems such as reduced production/operational costs, increased production, improved operational efficiency, and better reliability of the Project;
- d) **“Affiliate”** refers to any person or group of persons, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the RE DEVELOPER. As used herein, “control” shall mean the power to direct or cause the direction of the management’s policies of a person by contract, agency or otherwise;
- e) **“Calendar Year”** refers to the period beginning January 1 to December 31 of each year;
- f) **“Certificate of Confirmation of Commerciality”** refers to the certification issued by the DEPARTMENT confirming the declaration made by the RE DEVELOPER that the Project is commercially feasible;
- g) **“Certificate of Registration”** refers to that certification issued to the RE DEVELOPER upon the Effective Date of this RE Contract and upon approval of Additional Investment, to serve as the basis for its entitlement to the incentives provided under the Act;
- h) **“Commercial Operation”** refers to the stage when the RE DEVELOPER has completed its commissioning and test operations and is ready to sell or apply its produced Solar Energy, as duly confirmed by the DEPARTMENT;
- i) **“Commercial Quantities”** refers to quantities of electricity to be generated from the Solar Energy Resources, providing, or capable of providing, revenue from sales of electricity that exceed or would exceed the RE DEVELOPER’s Cost of Goods Sold by a margin sufficient to cause a reasonably prudent person employing standard industry practices as to Solar Energy Resources and



using commercially available technology to develop the Solar Energy Systems;

- j) **“Contract Area”** refers to the total area of \_\_\_\_\_ hectares (\_\_\_\_\_ has) in the Province of \_\_\_\_\_ which is the subject of this RE Contract. The Contract Area is outlined and more particularly described in a map with its technical description attached herein as Annex “A” and made an integral part of this RE Contract.
- k) **“Contract Year”** refers to a period of twelve (12) consecutive calendar months counted from the Effective Date of this RE Contract and thereafter, from the anniversary of such Effective Date: *Provided, however,* That the last Contract Year shall end on the date of Expiration or Termination of this RE Contract;
- l) **“Corporate Income Tax”** refers to the tax imposed upon net taxable income under the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337 and the Act. After availing of the Income Tax Holiday (ITH) under the Act, the RE DEVELOPER shall be subject to a Corporate Income Tax rate of ten percent (10%);
- m) **“Cost of Goods Sold”** refers to all business expenses directly incurred in the exploration, development and utilization of the Solar Energy Resources in order to produce and sell electricity and transmit the same to its intended location and use, which expenses are particularly described in Annex “B” hereof;
- n) **“Declaration of Commerciality”** refers to a written declaration by the RE DEVELOPER stating that the electricity to be generated from the Solar Energy Resources is in Commercial Quantities;
- o) **“Development Stage”** refers to the development, production, or utilization of RE resources, including the construction and installation of relevant facilities up to the operation thereof;
- p) **“Effective Date”** refers to the date of the execution of this RE Contract;
- q) **“Expatriate Employee”** refers to a foreign national engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Solar Energy Operations, who shall exercise his technical profession, as allowed under existing laws;
- r) **“Expiration”** refers to either the lapse of the term of this RE Contract provided in Section III (Term) hereof or the surrender or waiver of the RE DEVELOPER of the Contract Area including the abandonment thereof to the DEPARTMENT; *Provided,* That in case of a partial surrender or waiver, this RE Contract shall subsist with respect to the remaining portion;
- s) **“Filipino Employee”** refers to any citizen of the Republic of the Philippines employed and/or engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Solar Energy Operations under this RE Contract;

- t) **"Fiscal Year"** refers to a period of twelve (12) consecutive months;
- u) **"Force Majeure"** refers to extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable;
- v) **"Generation Facility"** refers to a facility for the production of electricity and/or thermal energy, such as, but not limited to, steam, hot or cold water;
- w) **"Government Share"** refers to the amount due the national government and LGUs from the exploration, development and utilization of the Solar Energy Resources computed in accordance with the Act and its Implementing Rules and Regulations (IRR), and described in Section X (Government Share) hereof;
- x) **"Gross Income"** refers to income derived from the RE DEVELOPER's Solar Energy Operations equivalent to the gross sales of Solar Energy less sales returns, discounts and allowance, and Cost of Goods Sold, which is more particularly described in the Accounting Procedures attached as Annex "B";
- y) **"Host LGU"** refers to the LGU where the Solar Energy Resources and/or Generation Facility is located;
- z) **"Local Government Units/LGU"** refers to the territorial and political subdivisions of the State which organization and function are fully described under the Local Government Code of 1991;
- aa) **"Milestones"** refers to the specific activity or set of activities within the Contract Year indicated in the Work Program that will be a basis for evaluation and monitoring by the DEPARTMENT;
- bb) **"New Investment"** refers to investments relating to discovery, exploration, development and/or utilization of new RE resources or the development of new Generation Facilities within the Contract Area distinct from the originally registered operations having separate books of accounts;
- cc) **"Pre-Development Stage"** refers to the preliminary assessment and feasibility study up to the financial closing of the Project and specifically covers the term provided in Section 3.1 of this RE Contract;
- dd) **"Production Area"** refers to that portion of the Contract Area designated by the RE DEVELOPER where Solar Energy Resources are utilized to produce electricity in Commercial Quantities;
- ee) **"Project"** refers to the RE DEVELOPER's Solar Energy Systems within the Contract Area, which may be implemented in one or more phases;
- ff) **"RE Contract"** refers to this Solar Energy Service Contract, as may be amended or extended by the Parties and shall have the same meaning as provided under the Act;

- gg) **“Solar Energy”** refers to the energy that can be derived from solar radiation that can be converted into useful thermal or electrical energy;
- hh) **“Solar Energy Operations”** shall include Solar Energy exploration, development, production, and utilization, including the construction, installation, operation and maintenance of Solar Energy Systems to convert Solar Energy to electrical power and the transmission of such electrical power and/or other non-electrical uses;
- ii) **“Solar Energy Resources”** refers to the solar resources found within the Contract Area to be technically feasible for the development of Solar Energy projects;
- jj) **“Solar Energy Systems”** refers to the energy systems that convert solar energy into thermal or electrical energy;
- kk) **“Subcontractor”** refers to any person or entity contracted by the RE DEVELOPER to provide goods or services for the purpose of this RE Contract, subject to the provisions of existing laws;
- ll) **“Termination”** refers to the right of the Parties to cancel this RE Contract pursuant to Section XIII (Suspension and Termination) hereof;
- mm) **“Work Plan”** refers to the plan and activities prepared by the RE DEVELOPER during the Development Stage with the corresponding budgetary estimate; and
- nn) **“Work Program”** refers to all types of plans and programs and related activities on a milestone basis formulated for the performance of the work obligations by the RE DEVELOPER during the Pre-Development Stage, along with the corresponding budgetary estimate, submitted to the DEPARTMENT under this RE Contract as Annex “C”.

### SECTION III TERM

- 3.1 **Pre-Development Stage.** The Pre-Development Stage of this RE Contract shall be a non-extendible period of two (2) years from the Effective Date: *Provided*, That the failure to accomplish the first six (6) months Milestones indicated in the Work Program shall result in the expiration of the contract term. However, the submission by the RE DEVELOPER of a Declaration of Commerciality at any time during the Pre-Development Stage and the confirmation thereof by the DEPARTMENT shall supersede the foregoing requirement on the first six (6) months Milestones.
- 3.2 **Development Stage.** Upon submission of the Declaration of Commerciality by the RE DEVELOPER, as confirmed by the DEPARTMENT through the issuance of a Certificate of Confirmation of Commerciality, this RE CONTRACT shall remain in force for the balance of a period of twenty-five (25) years from Effective Date: *Provided*, That at the option of the RE DEVELOPER, by written notice to the DEPARTMENT not later than one (1)

year prior to the expiration of the initial twenty-five (25)-year period, and so long as the RE DEVELOPER is not in default of any material obligations under this RE Contract at the end of such twenty-five (25)-year period, the DEPARTMENT may approve the extension of this RE Contract for another twenty-five (25) years, subject to the terms and conditions to be mutually agreed upon by the Parties.

#### **SECTION IV CONTRACT AREA**

- 4.1 The Contract Area refers to the areas as described in Annex "A" hereof reserved by the DEPARTMENT for the RE DEVELOPER over which the RE DEVELOPER has exclusive right to explore, develop and utilize the Solar Energy Resources in accordance with this RE Contract.
- 4.2 The RE DEVELOPER shall, upon submission of written notice to the DEPARTMENT, have the right to surrender or waive the entire Contract Area or any portion thereof, within thirty (30) days prior to the intended date of surrender, without liability or cost, and be relieved from any work and expenditure commitments thereon without prejudice to any other outstanding liability or costs. In case the RE DEVELOPER completely ceases its operations, the provisions under its Abandonment and Termination Plan shall apply consistent with its Environmental Compliance Certificate (ECC).
- 4.3 Any portion of the Contract Area where feasibility study was not conducted and where the RE DEVELOPER has no intention to conduct any development activities as indicated under the proposed Work Plan shall be deemed relinquished on the date of Declaration of Commerciality.
- 4.4 During Development Stage, the RE DEVELOPER shall delineate its Production Area which may no longer be subject to the Blocking System.

#### **SECTION V WORK PROGRAM, WORK PLAN, AND ESTIMATED EXPENDITURES**

- 5.1 The RE DEVELOPER shall carry out its existing work according to good industry practices.
- 5.2 During the Pre-Development Stage, the RE DEVELOPER shall conduct preliminary Solar Energy Resources data gathering activities and, if warranted by the results of such Solar Energy Resources data gathering, conduct a full Solar Energy Resources assessment.
- 5.3 Attached to this RE Contract is a Work Program for the first two (2) years from the Effective Date and its corresponding budget, details of which are particularly described in Annex "C" hereof.
- 5.4 During the implementation of the Work Program, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT any revisions thereto at least one (1) month prior to the end of each Contract Year:

*Provided*, however, That revision shall not be allowed within the first six (6) months of the first Contract Year: *Provided*, further, That the RE DEVELOPER shall be allowed to subsequently revise its Work Program only if it has substantially complied with all its material financial and technical obligations under the Work Program for the immediate preceding the first six (6) months of the first Contract Year.

- 5.5 The RE DEVELOPER shall submit to the DEPARTMENT a Work Plan for the first five (5) years from its Declaration of Commerciality and its corresponding budget thereof.
- 5.6 Not later than two (2) months prior to the end of the first five (5) years from the RE DEVELOPER's Declaration of Commerciality, the RE DEVELOPER shall submit a Work Plan for the next five (5) years and shall do so every five (5) years thereafter. The Work Plan or any revisions thereof shall need the approval from the DEPARTMENT.
- 5.7 During the implementation of the Work Plan, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT any revisions thereto, at least one (1) month prior to the end of each Contract Year;
- 5.8 In the event of failure to comply with its commitments under the Work Program, the RE DEVELOPER shall pay the DEPARTMENT the amount it should have spent for the execution of the same. Should the RE DEVELOPER fail to pay the assessed financial deficiency within the period prescribed by the DEPARTMENT, the DEPARTMENT shall enforce the collection thereof, and/or call the performance guarantee posted by the RE DEVELOPER, at the option of the DEPARTMENT. This is without prejudice to the right of the DEPARTMENT to terminate the RE Contract.

## **SECTION VI RIGHTS AND OBLIGATIONS**

- 6.1 The RE DEVELOPER shall have the following rights:
  - a) To be granted fiscal and non-fiscal incentives and privileges under the Act, the IRR and all other existing laws that are not otherwise modified or repealed by the Act;
  - b) To receive assistance from the DEPARTMENT:
    - i. In securing access to lands and/or other areas where Solar Energy Resources shall be harnessed; and
    - ii. In indorsing the Project to the National Government, LGUs, Board of Investments (BOI) and other entities for the acquisition of permits, licenses and clearances and availment of applicable fiscal and non-fiscal incentives;
  - c) Have at all times the right of ingress to and egress from the Contract Area to and from facilities wherever located;

- d) Acquire rights-of-way and similar rights on, over, under, across and through the Contract Area or properties adjacent to the Contract Area, which constitute or is reasonably expected to constitute the Contract Area as the RE DEVELOPER may reasonably deem necessary.

The DEPARTMENT shall, upon request by the RE DEVELOPER as may be reasonable given the attendant circumstances, assist the RE DEVELOPER in securing such rights. For such purpose, the DEPARTMENT shall and does hereby appoint the RE DEVELOPER as its attorney-in-fact and does hereby give and grant to the RE DEVELOPER full authority to act for and on its behalf in the negotiation and conclusion of agreements and payments for such rights. All obligations, payments and expenses arising from or incidental to the acquisition of such rights shall be for the account of the RE DEVELOPER so as to enable the RE DEVELOPER to have ingress into and egress from the Contract Area and to perform all Solar Energy Operations in accordance with this RE Contract and in consideration of which, entitlement to such rights shall be held in trust in favor of the RE DEVELOPER.

The DEPARTMENT undertakes to provide further assistance to the RE DEVELOPER, including the exercise of the power of eminent domain if necessary, to secure such necessary or proper rights at such cost for the account of the RE DEVELOPER, if the RE DEVELOPER is unable to secure such rights at commercially reasonable costs through negotiations or if the same is the most expedient course of action to support the timely execution of Solar Energy Operations;

- e) Allow, in accordance with the existing laws, entry into the Philippines and employment by the RE DEVELOPER of Expatriate Employees who shall exercise their technical professions solely for the Solar Energy Operations: *Provided* That, Filipino Employees shall be given preference to positions for which they have adequate training and experience required by the RE DEVELOPER; and *Provided further*, That if the employment or connection of such Expatriate Employee with the RE DEVELOPER ceases, applicable laws and regulations shall apply to him and his immediate family;
- f) Have a free and unimpeded use of Solar Energy Resources within the Contract Area in view of the Solar Energy Operations, Additional Investments and New Investments in regard of which, the DEPARTMENT shall ensure that rights, privileges and other authorizations it may grant to third parties will not defeat or impair such use;
- g) Be informed by the DEPARTMENT, if at any time the latter becomes aware of any intended exploration, extraction or use of energy resources other than Solar Energy Resources on the Contract Area and adjacent areas thereof, within thirty (30) days from the date it becomes aware of such intended exploration, extraction or other use; and

- h) Be granted an exclusive easement to use, convert, maintain and capture the free and unobstructed flow of Solar Energy Resources within the Contract Area.

6.2 The RE DEVELOPER shall have the following obligations:

- a) Secure any necessary permits and clearances from all relevant government entities for the Project;
- b) Perform exploration, assessment, field verification, harnessing, piloting and other activities in accordance with the Work Program and provide technology and financing in connection with the Pre-Development Stage;
- c) Perform the required Solar Energy Operations and provide services, technology, and financing in connection therewith;
- d) Maintain complete and accurate accounting, financial and technical records of its Solar Energy Operations, subject to Sections IX (Technical Data and Reports Submission) and XI (Confidentiality), and in accordance with the Accounting Procedures as provided under Annex "B" hereof;
- e) Allow officials and representatives authorized by the DEPARTMENT access to the Contract Area and to the accounts, books and records directly relating to the Solar Energy Operations during reasonable hours and without causing disruption, subject to fifteen (15) calendar days prior written notice to the RE DEVELOPER;
- f) Give priority in employment to qualified personnel in the Host LGU subject to Section XV (Employment, Training and Development Programs) hereof;
- g) Within sixty (60) days after the Effective Date of this RE Contract and at the start of every Contract Year thereafter, post a performance bond or other guarantee of sufficient amount but not less than the annual budgetary estimate for the corresponding Contract Year in favor of the DEPARTMENT from a list of DEPARTMENT-accredited insurance or surety companies, conditioned upon the faithful performance by the RE DEVELOPER of any or all of the commitments and obligations under the Work Program and Work Plan insofar as the period prior to Commercial Operation;
- h) After availing of the ITH, be subject to Corporate Income Tax: *Provided*, That New or Additional Investment shall be eligible for ITH;
- i) Be subject to the provisions of law of general application relating to labor, health, safety, environment and indigenous peoples rights;
- j) Develop, operate and maintain the Contract Area in accordance with accepted industry practices to enable maximum economic production of the Solar Energy Resources;

- k) Be responsible for procurement of installation, equipment and supplies, and for entering into subcontracts related to the Solar Energy Operations;
  - l) Give preference to Philippine companies/agencies entering into subcontracts on goods or services that are required in the Solar Energy Operations but are not carried out by the RE DEVELOPER; *Provided*, That the goods or services are competitive as to cost, quality and availability;
  - m) Be responsible in the proper handling of data, samples, information, reports and other documents;
  - n) Maintain all meters and measuring equipment in good order and allow access to these as well as to the exploration sites to inspectors authorized by the DEPARTMENT;
  - o) Pay the Government Share in accordance with the computation in the Act's IRR and taxes as may be applicable;
  - p) Organize Information, Education and Communication (IEC) Campaign on benefits to the Host LGUs pursuant to Section 18 of the DEPARTMENT's Department Circular No. DC2009-07-0011; and
  - q) Comply with all rules, regulations, and guidelines issued by the DEPARTMENT that are applicable hereto.
- 6.3 Upon the Effective Date of this RE Contract or upon the approval of the RE DEVELOPER's Additional Investment, the DEPARTMENT shall issue a Certificate of Registration to the RE DEVELOPER, to enable it to avail of the fiscal and non-fiscal incentives and privileges as stated under the Act and its IRR. The registration shall be valid and effective for the entire term and effectivity of this RE Contract.

## **SECTION VII REPRESENTATIONS AND WARRANTIES**

Acknowledging that the GOVERNMENT, through the DEPARTMENT, has entered into this RE Contract in reliance upon the representations and warranties in this Section, the RE DEVELOPER represents and warrants as follows:

- 7.1 It is a corporation or entity duly formed, established, validly existing and in good standing under the laws of the Philippines with full power to own its property; to carry on its business as it is now being conducted; and to execute, deliver and perform its obligations under this RE Contract, and the entering into and performance of this RE Contract by the RE DEVELOPER does not conflict with the articles of incorporation, by-laws and other constitutive documents of the RE DEVELOPER and has been duly authorized by all necessary corporate and legal action on the part of the RE DEVELOPER;
- 7.2 The individual signing this RE Contract on behalf of the RE DEVELOPER is duly authorized to sign as of the Effective Date;



- 7.3 There is no litigation, arbitration or administrative proceeding pending or, to the best knowledge of the RE DEVELOPER, threatened against the RE DEVELOPER or its properties the adverse determination of which would adversely affect the ability of the RE DEVELOPER to perform or comply with any of its material obligations under this RE Contract;
- 7.4 The RE DEVELOPER:
- a) Has not been declared in default in respect of any of its material financial commitments or obligations based on their reports duly validated by the DEPARTMENT;
  - b) Is not otherwise in default of any kind in respect of any financial commitment or obligation or in respect of any agreement, undertaking or instrument as a party thereof by which it or any of its assets or properties may be bound; and
  - c) Is not aware of a fact that by the service of notice and/or lapse of time would constitute a default in any or both of sub-paragraphs (a) and (b) above;
- 7.5 No written material information given by the RE DEVELOPER to the DEPARTMENT under this RE Contract contains any misstatement of fact as of the Effective Date or omits to state a fact that is materially adverse to the interests of the DEPARTMENT; and
- 7.6 The ownership of the RE DEVELOPER's capital stock complies with applicable laws and regulations.

## SECTION VIII ASSETS AND EQUIPMENT

- 8.1 The RE DEVELOPER shall acquire and maintain for the Project and for its Solar Energy Operations and, such assets as are reasonably estimated to be required in carrying out the exploration, assessment, harnessing, piloting and other studies for the Solar Energy Resources in the Contract Area; and the development, utilization and commercialization of Solar Energy Resources therein, including the construction, installation, operation and maintenance of the Solar Energy Systems.
- 8.2 All materials, equipment, plants and other installations that are erected or placed on the Contract Area by the RE DEVELOPER and are owned by the RE DEVELOPER shall remain the property of the RE DEVELOPER up to one (1) year from the Expiration or Termination of this RE Contract: *Provided*, That upon the written request of the RE DEVELOPER, the DEPARTMENT shall approve an additional non-extendible period of one (1) year within which to remove such assets in the Contract Area. Thereafter, the ownership of any remaining materials, equipment, plants, and other installations shall be vested in the Government.
- 8.3 The RE DEVELOPER shall be responsible for the removal and the disposal of all materials, equipment and facilities from the Contract Area in

accordance with the ECC and the provisions of the Abandonment and Termination Plan as provided under Section II hereof;

- 8.4 The ownership of all data, records, accounts, samples and other technical data produced or generated in the course of the Solar Energy Operations that are confidential, proprietary in nature or otherwise not generally available to the public shall remain with the DEPARTMENT and RE DEVELOPER and shall be kept confidential in accordance with Section XI (Confidentiality) hereof.

## **SECTION IX TECHNICAL DATA AND REPORTS SUBMISSION**

- 9.1 All technical data and reports, except for proprietary techniques used in developing such technical data and reports, must be submitted by the RE DEVELOPER in accordance with the format approved by the DEPARTMENT.
- 9.2 The technical data and reports to be submitted to the DEPARTMENT shall include, but not limited to, the following:
- a) Annual Progress Report - shall be submitted not later than two (2) months prior to the end of each Contract Year and shall contain the summary of all the activities, i.e., exploration, drilling or infrastructure development, with relevant comments and recommendation on any technical findings;
  - b) Procurement Plan - shall be designed according to the approved work obligations containing an itemized list of equipment, materials and supplies to be procured with corresponding estimated costs. It shall be submitted not later than one (1) month from the approval of the Work Program or Work Plan or revision thereof, as the case may be;
  - c) Quarter Progress Report - shall be submitted not later than one (1) month from the end of each Contract Quarter and shall contain the work and financial accomplishment under Work Program or Work Plan;
  - d) Monthly Generation Report; and
  - e) Other technical data and reports relevant to the Solar Energy Resources, when necessary as determined by the DEPARTMENT.

## **SECTION X GOVERNMENT SHARE**

- 10.1 The Government Share shall be equal to one percent (1%) of the Gross Income from the sale of electricity generated from Solar Energy Operations in accordance with the Accounting Procedures as prescribed under Annex "B" hereof.
- 10.2 The RE DEVELOPER shall within sixty (60) days following the end of each quarter of a Calendar or Fiscal Year remit to the DEPARTMENT the

Government Share: *Provided*, That any unremitted amount shall carry an interest of ten percent (10%) per annum reckoned from the day immediately following the end of each quarter of a Calendar or Fiscal Year, as may be applicable.

## SECTION XI CONFIDENTIALITY

- 11.1 All documents, information, data and reports produced or generated during the Solar Energy Operations under this RE Contract shall be kept strictly confidential over the term of this RE Contract or any extension thereof: *Provided*, That proprietary information shall be kept strictly confidential at all times subject to lawful acquisitions of such information under existing laws and regulations.
- 11.2 Without the written consent of the other Party, no Party shall use or disclose the confidential information to any third party and/or to any Affiliate not directly connected with the implementation of this RE Contract except the third parties and Affiliates in Section 11.5, and no Party shall otherwise transfer, present, sell or publish it in any way within the confidentiality periods.
- 11.3 The DEPARTMENT may use such confidential information belonging to the RE DEVELOPER for the DEPARTMENT's resource mapping, data gathering, policy making and for government planning purposes.
- 11.4 Upon the Expiration or Termination of this RE Contract, the DEPARTMENT may provide third parties with the data and reports submitted by the RE DEVELOPER pursuant to this Section: *Provided*, That the same are not proprietary in nature.
- 11.5 Contrary stipulations notwithstanding, the RE DEVELOPER may furnish the information to the following third parties, subsidiaries and Affiliates, such as, but not limited to:
- a) Banks or other credit institutions from which finance is sought by the RE DEVELOPER;
  - b) Third parties, subsidiaries and Affiliates that provide services for the Solar Energy Operations, including Subcontractors and other service contractors;
  - c) Prospective assignee/s to whom rights and obligations under this RE Contract are intended to be assigned;
  - d) Prospective investor/s or entities with whom the RE DEVELOPER intends to enter into joint venture or other similar agreements for the Project;
  - e) Governments and stock/commodity exchanges in accordance with the laws, regulations, or rules of the relevant country or stock/commodity exchange; and

- f) Government authorities, entities and judicial courts if required by law, regulation, directive, or order, to disclose.
- 11.6 The information shall be revealed to those persons allowed under this RE Contract only if and to the extent necessary and desirable for the purpose intended. Each Party shall ensure that such person to whom information is disclosed is informed of the confidential nature of the information and the purpose for which it may be used and that each such person is bound by this Section.
- 11.7 The RE DEVELOPER and its Affiliates or the DEPARTMENT, its officers, employees, consultants and other duly authorized representatives shall not make any public statement or announcement of any information produced, generated or acquired in the course of the Solar Energy Operations, without prior written consent of the other Party.

## SECTION XII PERFORMANCE BOND

- 12.1 The initial amount of the bond or other guarantee as specified in Sub-section 6.2(g) shall not be less than the annual financial commitment/budgetary estimate for the first Contract Year based on the Work Program.
- 12.2 The amount of performance bond or other guarantee may be adjusted, subject to the following conditions:
- a) In the event of surrender by the RE DEVELOPER of a portion of the Contract Area covered by this RE Contract, the performance bond or other guarantee shall be reduced proportionately in accordance with the Work Program and Work Plan as applicable;
  - b) In the event that the RE DEVELOPER has fully expended its budgetary estimate under the Work Program or Work Plan as applicable but has not fully performed its work obligations, the amount of bond or other guarantee shall be equal to the succeeding Contract Year's budgetary estimate under the revised Work Program or Work Plan as applicable; and
  - c) Such other conditions or circumstances as would reasonably warrant the modification of the amount of the performance bond or other guarantee.
- 12.3 If the RE DEVELOPER, through its own fault, fails to observe or perform its work obligations under the Work Program or Work Plan as applicable, the DEPARTMENT, upon prior written notice, may proceed against the performance bond or other guarantee. *Provided That*, should the work obligations under the Work Program and Work Plan be fulfilled, and through the efficiency of the RE DEVELOPER, the corresponding actual expenditures thereon are lower than the estimated expenditures stated in the Work Program, the same shall be considered as full compliance of the work obligations.

- 12.4 The DEPARTMENT shall release the performance bond or other guarantee not later than thirty (30) days from the date of confirmation by the DEPARTMENT of the start of the Commercial Operations.

### **SECTION XIII SUSPENSION AND TERMINATION**

- 13.1 In case of the Pre-Development Stage, the DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:
- a) Non-compliance with the Work Program and the material terms and conditions of this RE Contract;
  - b) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
  - c) Non-observance of environmental regulations imposed by the DENR during the conduct of feasibility study;
  - d) Tampering or plagiarizing of technical design and feasibility study reports;
  - e) Non-payment of the financial obligations agreed upon under this RE Contract; and,
  - f) Non-posting of performance bond or other guarantee within the period/s provided under Section XII (Performance Bond) hereof.
- 13.2 In case of the Development Stage, the DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:
- a) Non-compliance with the material terms and conditions of this RE Contract;
  - b) Violation of the Renewable Portfolio Standards Rules, as defined in the Act and its IRR, and relevant Department Circulars;
  - c) Non-compliance with the approved Work Plan and any other material obligations herein;
  - d) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
  - e) Non-observance of environmental regulations imposed by the DENR during construction and operation;
  - f) Tampering with or plagiarizing of technical design, feasibility study generation and operation reports;
  - g) Non-remittance of Government Share as determined by the Compliance Division - Financial Services of the DEPARTMENT;

- h) Non-payment of the financial obligations agreed upon under this RE Contract;
  - i) Non-posting of performance bond or other guarantee within the period/s provided under Section XII (Performance Bond) hereof.
  - j) Failure to comply with material reportorial obligations under this RE Contract; and,
  - k) Any representation or warranty made by the RE DEVELOPER under Section VII (Representations and Warranties) hereof, which shall prove to have been incorrect in any material respect when made.
- 13.3 The RE DEVELOPER shall have sixty (60) days from written notice from the DEPARTMENT of any of the foregoing to cure the default. Failure of the RE DEVELOPER to cure the default at the end of the sixty (60)-day period shall result in the automatic Termination of this RE Contract: *Provided, however,* That in case the ground for the Termination is non-compliance with the approved Work Program for reasons not attributable to Force Majeure, the Termination shall not be subject to curing period and shall be effective immediately as indicated in the notice duly issued by the Department: *Provided further,* That non-compliance with the approved Work Program during the Pre-Development Stage shall be determined on the basis of the following:
- i. Failure of the RE DEVELOPER to comply with its first six (6) months Milestone under the approved Work Program; and
  - ii. Failure of the RE DEVELOPER to disburse the cost equivalent of at least eighty per cent (80%) of the total financial cost for this Milestone which is set by the DEPARTMENT at Five Hundred Thousand Pesos (Php500,000).

*Provided finally,* That during the Development Stage, non-compliance with the Milestone for the succeeding years under the approved Work Plan and failure to disburse the cost equivalent of Ninety Five Million Pesos (Php95,000,000) per megawatt shall result in the Termination of this RE Contract or give rise to the right of the DEPARTMENT for recourse on the Performance Bond.

- 13.4 Notwithstanding the foregoing, this RE Contract shall be terminated without prejudice to the RE DEVELOPER's obligation under its Abandonment and Termination Plan as approved by the DEPARTMENT.

#### **SECTION XIV DISPUTES AND ARBITRATION**

- 14.1 Any dispute, controversy or claim arising out of or relating to this RE Contract, except Section 13.1(a) hereof, shall be settled amicably within a period of sixty (60) days after receipt by one Party of a notice from the other Party of the existence of the dispute.
- 14.2 If the dispute cannot be settled amicably within the sixty (60)-day period, the Parties shall, with respect to disputes arising out of or in connection with

X (Government Share) hereof, refer the dispute to an independent expert for resolution in the manner provided below; Provided that any Party, in its sole discretion, may require the dispute be referred to arbitration under Section 14.4 hereof.

14.3 The following shall govern the rules of referral:

- a) After the sixty (60)-day period in Section 14.1 has passed, any Party may give notice to the other Party of its intention to refer the dispute to an expert in accordance with the provisions of this RE Contract;
- b) The respondent shall, within twenty-one (21) days after receipt of the notice of intention to refer, serve the applicant a notice of its intention to defend;
- c) If within fourteen (14) days after the applicant's receipt of the respondent's notice of intention to defend, the Parties have agreed on an expert and on the terms under which the dispute shall be referred to the independent expert mentioned in Section 14.2 hereof. In the event that within such fourteen (14)-day period, the Parties are unable to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request the International Chamber of Commerce (ICC) International Centre for Expertise to appoint an expert, and the matters to be determined by such expert shall be those set out in the notice of intention to refer and the notice of intention to defend;
- d) Unless the Parties agree otherwise, any expert proceedings under this Section shall be required to follow the ICC Rules for Expertise in force as of Effective Date;
- e) The language of the expert proceedings and the expert's determinations shall be in English;
- f) The Parties hereby agree to be bound by, to perform this RE Contract in accordance with, and to implement, as the case may be, the determination of the expert. Failure by one Party to act shall constitute a breach of this RE Contract and shall be submitted to arbitration in accordance with Section 14.4 as the sole means of enforcing the determination; and
- g) Each Party shall bear the costs and expenses of all lawyers, advisors, witnesses and employees retained by it in connection with the expert proceedings: *Provided, however*, That in circumstances where the expert determines that a matter referred to him was not subject to a *bona fide* dispute, the costs and expenses incurred by the prevailing Party and the expert in connection with such matter shall be paid by the non-prevailing Party.

14.4 If the dispute cannot be settled within sixty (60) days by mutual discussions as contemplated in Section 14.1 hereof, and referral to an expert is neither prescribed nor elected by the Parties with respect to any technical dispute upon written demand of either Party, the dispute shall finally be settled by an arbitral tribunal (the "Tribunal") governed by and conducted in accordance with the ICC Rules of Arbitration (the "Rules") in force as of Effective Date (or

such Rules as may be in force at the time such arbitration is commenced), as follows:

- a) The RE DEVELOPER will nominate one (1) arbitrator and the DEPARTMENT will nominate one (1) arbitrator within thirty (30) days from the date of a request by either Party to initiate arbitration. The two Party-nominated arbitrators will then jointly nominate a third arbitrator within thirty (30) days from the date of the appointment of the second arbitrator, to act as Chairman of the Tribunal. Arbitrators not nominated within the time limits set forth in the preceding sentence shall be appointed by the ICC Court of International Arbitration;
- b) Unless otherwise agreed by the Parties, the venue of the arbitration shall be in Metro Manila, Philippines;
- c) The language of the arbitration and award shall be in English;
- d) The Tribunal shall not be authorized to impose, and either Party shall not be authorized to seek from any judicial authority, any requirement that the Party posts security for the costs of either Party; and
- e) The decision of the Tribunal shall be final and binding upon the Parties. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

14.5 The right to arbitrate disputes under this RE Contract shall survive the Expiration or Termination of this RE Contract.

## **SECTION XV EMPLOYMENT, TRAINING AND DEVELOPMENT PROGRAMS**

- 15.1 The RE DEVELOPER agrees to give preference in employment to qualified Filipino Employees who are residents of the Host LGUs and will undertake the development and training of Filipino Employees for labor and staff positions, including administrative, technical and executive management positions.
- 15.2 During the Pre-Development Stage, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of \_\_\_\_\_ PESOS (PhP \_\_\_\_\_). Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of \_\_\_\_\_ PESOS(PhP \_\_\_\_\_).
- 15.3 During the Pre-Development Stage, the RE DEVELOPER shall provide assistance for training programs, conferences, seminars and other similar activities for the DEPARTMENT's personnel in the amount of \_\_\_\_\_ PESOS(PhP \_\_\_\_\_) per Contract Year. Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER, upon request of the DEPARTMENT, shall provide assistance for training programs, conferences, seminars and other similar activities for the DEPARTMENT's personnel in



the amount of \_\_\_\_\_ PESOS(PhP \_\_\_\_\_) per Contract Year. This assistance shall be accumulated for the succeeding Contract Years if not availed of in a given Contract Year. The RE DEVELOPER shall pay the unutilized amount of the training commitment prior to the Expiration or Termination of this RE Contract.

- 15.4 The RE DEVELOPER shall undertake corporate social responsibility projects in Host LGUs focused on education and training of qualified and deserving beneficiaries, as determined by the RE DEVELOPER.
- 15.5 Upon execution of this RE Contract, the RE DEVELOPER shall pay the DEPARTMENT a signing fee in the amount of \_\_\_\_\_ PESOS(PhP \_\_\_\_\_).

**SECTION XVI  
OTHER PROVISIONS**

16.1 NOTICES

Any notice required or given by either Party to the other Party shall be in writing and shall be effective when a copy thereof is handed to or served upon the Party's duly designated representative or the person in charge of the office or place of business, or when sent by registered mail, notice shall be effective upon actual receipt by the addressee, but if he fails to claim his mail from the post office within five (5) days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time. All such notices shall be addressed:

To the DEPARTMENT:

The Secretary  
Department of Energy  
Energy Center, Rizal Drive, Bonifacio Global City  
Taguig City, Metro Manila, Philippines

To the RE DEVELOPER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any Party may substitute or change such address with prior written notice thereof to the other Party.

16.2 GOVERNING LAW

The laws of the Republic of the Philippines shall apply to this RE Contract.

16.3 ASSIGNMENT

- a) This RE Contract cannot be assigned without the prior written approval of the Parties.
- b) The RE DEVELOPER may assign or transfer part or all of its rights and/or obligations under this RE Contract to its Affiliate upon compliance with the following provisions:
  - i. The RE DEVELOPER shall submit to the DEPARTMENT copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned; and,
  - ii. The RE DEVELOPER shall guarantee in writing to the DEPARTMENT its performance of the assigned obligations.
- c) Pursuant to the foregoing Sub-section, this RE Contract shall not be assigned to any third party, unless such third party is qualified in accordance with the Act and its IRR.
- d) The RE DEVELOPER may authorize its subsidiaries, branches or regional corporations to implement this RE Contract, but the RE DEVELOPER shall remain responsible for the performance of this RE Contract.
- e) During the Pre-Development Stage, this RE Contract shall not be assigned except where the assignee is a subsidiary, branch or regional corporation of the RE DEVELOPER created for the special purpose of handling the project covered by the RE Contract.
- f) No assignment shall be granted if the RE Developer is in default of its Work Program or any of its obligations under the RE Contract and other RE agreement with the DEPARTMENT.

#### 16.4 SUSPENSION OF OBLIGATIONS

- a) Any failure or delay on the part of either Party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure.
- b) If the Solar Energy Operations are curtailed or prevented by such causes, then the time for enjoying the rights and carrying out the obligations thereby affected, and all rights and obligations hereunder shall be extended for a period equal to the period of delay, curtailment or prevention: *Provided, however,* That if operations are delayed, curtailed or prevented by Force Majeure for a continuous period of twelve (12) months, this RE Contract may thereafter be terminated, at the option of the RE DEVELOPER, at any time that the Force Majeure condition still exists, subject to the confirmation of the DEPARTMENT.
- c) The Party whose ability to perform its obligations is so affected shall notify the other Party thereof in writing stating the cause and such affected Party shall do all reasonably within its power to remove such cause.

#### 16.5 AMENDMENTS

The RE Contract shall not be amended or modified in any respect except by the mutual consent in writing of the Parties.

#### 16.6 BOOKS OF ACCOUNTS AND AUDITS

- a) The RE DEVELOPER shall be responsible for keeping complete books and accounts, in Philippine currency denominations, reflecting all transactions in connection with this RE Contract in accordance with the Annex "B" hereof.
- b) The DEPARTMENT shall have the right to inspect the RE DEVELOPER's books and accounts directly relating to this RE Contract for any Calendar or Fiscal Year within twenty-four (24) months following the end of each Calendar or Fiscal Year. Any such audit shall be completed within twelve (12) months after its commencement. Any exceptions must be made to the RE DEVELOPER in writing within ninety (90) days following the completion of such audit. If the DEPARTMENT fails to give such written exception within such time, then the RE DEVELOPER's books of accounts and statements for such Calendar or Fiscal Year shall be established as correct and final for all purpose.
- c) The DEPARTMENT, upon at least fifteen (15) days advance written notice to the RE DEVELOPER, is entitled to access, during reasonable hours without affecting Solar Energy Operations, all books of accounts and records and may inspect such sites and facilities as necessary.
- d) If the DEPARTMENT notifies the RE DEVELOPER of an exception to the RE DEVELOPER's books of accounts within the period specified in Sub-section 16.6 (b), the RE DEVELOPER shall within ninety (90) days from receipt of written exception from the DEPARTMENT, question its validity, otherwise, the same shall become final and binding on the RE DEVELOPER. If the Parties are not able to agree on the exceptions or adjustments after ninety (90) days from the date of receipt of the RE DEVELOPER's response to the DEPARTMENT's exception report, the Parties shall resolve the dispute in accordance with Section XIV (Disputes and Arbitration) hereof.

#### 16.7 HEALTH, SAFETY, AND ENVIRONMENT PROTECTION

- a) In the performance of this RE Contract, the RE DEVELOPER shall: (1) be subject to the laws, rules and regulations on environmental protection, indigenous people rights, health and safety promulgated by the GOVERNMENT; (2) endeavor to make its best efforts to prevent pollution and damage to the atmosphere, oceans, rivers, lakes, harbors and land; and (3) secure the safety and health of its operating personnel.
- b) When the GOVERNMENT assigns any person to inspect for environmental protection, health and safety compliance of the RE DEVELOPER, the RE DEVELOPER shall provide such reasonable facilities and assistance as are applicable to ensure appropriate inspection by the GOVERNMENT. The RE DEVELOPER shall be given reasonable notice such inspections.

#### 16.8 SEPARABILITY CLAUSE

Should any provision of this RE Contract or the application thereof to any situation or circumstance be declared null and void and/or invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof which shall remain valid and enforceable to the fullest extent. In the event of such partial invalidity or unenforceability, the Parties shall seek in good faith to agree on replacing the invalid or unenforceable provisions with a provision that in effect will most nearly and fairly approximate the effect of the invalid or unenforceable provision through the issuance of appropriate supplemental contract/s or agreement/s.

**IN WITNESS WHEREOF**, the Parties have caused this RE Contract to be executed by their respective representatives at the place and on the date above written.

**DEPARTMENT OF ENERGY**

By:

**RE DEVELOPER**

By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
**NAME**  
Designation

*Witnesses:*

\_\_\_\_\_  
**NAME**  
Designation

\_\_\_\_\_  
**NAME**  
Designation

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES }  
 \_\_\_\_\_ } S. S.

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This RE Contract consisting of twenty-five (25) pages, including the page on which this acknowledgment is written, is signed on each and every page thereof by the Party and his instrumental witness and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_;

Page No. \_\_\_\_\_;

Book No. \_\_\_\_\_;

Series of 2013

**ACKNOWLEDGMENT**

**REPUBLIC OF THE PHILIPPINES** }  
\_\_\_\_\_ } S. S.

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that her signature on the instrument was voluntarily affixed by her for the purposes stated therein, and who declared to me that she executed the instrument as her free and voluntary act and deed as well as the free and voluntary act and deed of the corporation herein represented.

This RE Contract consisting of twenty-five (25) pages, including the page on which this acknowledgment is written, is signed on each and every page thereof by the Party and her instrumental witness and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2013

**REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF ENERGY**

**WIND ENERGY SERVICE CONTRACT  
(WESC No. \_\_\_\_\_)**

This **WIND ENERGY SERVICE CONTRACT** (this "**RE Contract**"), made and entered into this \_\_\_\_\_ in Bonifacio Global City, Taguig City by and between:

The **REPUBLIC OF THE PHILIPPINES**, hereinafter referred to as "**GOVERNMENT**", through the "**Department of Energy**", hereinafter referred to as the "**DEPARTMENT**", a government agency established pursuant to Republic Act No. 7638, as amended, with principal office address at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its Secretary, **HON.**  
\_\_\_\_\_;

-and-

\_\_\_\_\_, hereinafter referred to as the "**RE DEVELOPER**", a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at \_\_\_\_\_, represented herein by its  
\_\_\_\_\_;

Each of the **DEPARTMENT** and the **RE DEVELOPER** is referred to as a "**Party**", and collectively as the "**Parties**". In the implementation of this **RE Contract**, the **GOVERNMENT** shall act through and be represented by the **DEPARTMENT**.

**WITNESSETH:**

**WHEREAS**, all forces of potential energy in public and/or private lands, within the Philippine territory, belong to the State and their exploration, development and utilization are governed by Section 2, Article XII of the 1987 Constitution;

**WHEREAS**, under Republic Act No. 7638, as amended, otherwise known as the Department of Energy Act of 1992, the **DEPARTMENT** shall establish and administer programs for the exploration, development and utilization of energy resources, including Wind Energy Resources;

**WHEREAS**, under Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008 (the "Act"), the exclusive right to explore and develop a particular renewable energy area under the said Act shall be through a Renewable Energy Service Contract;

**WHEREAS**, pursuant to the Act, the **RE DEVELOPER** has agreed to enter into this RE Contract with the **DEPARTMENT** covering the Contract Area for the Project with the corresponding rights and obligations stipulated herein;

**WHEREAS**, the **RE DEVELOPER** has been evaluated and recommended by the duly constituted RE Contract Review Committee per Resolution No. \_\_\_\_\_, series of 20\_\_\_\_, and duly confirmed by the Secretary to be legally, technically, and financially qualified to enter into this RE Contract;

**NOW, THEREFORE**, for and in consideration of the terms and conditions set forth herein, the Parties hereby stipulate and agree as follows:

## **SECTION I SCOPE**

- 1.1. This RE Contract is entered into pursuant to the Act, with the services, technology and financing to be furnished by the RE DEVELOPER for its conduct of Wind Energy Operations, in an economically viable manner and in accordance with this RE Contract.
- 1.2. This RE Contract shall cover the Contract Area only as provided under Section IV (Contract Area) hereof.
- 1.3. The RE DEVELOPER is hereby appointed and constituted by the DEPARTMENT as the Party having the exclusive right to explore, develop, and utilize the Wind Energy Resources within the Contract Area as defined herein. The DEPARTMENT shall have the right to require performance of any or all obligations of the RE DEVELOPER under this RE Contract.
- 1.4. The RE DEVELOPER may pursue any Additional Investment or New Investment within the Contract Area and shall be solely responsible for providing the necessary services, technology, equipment and financing therefor. In case of New Investment, the Parties shall enter into a new Renewable Energy (RE) Service Contract at the option of the RE DEVELOPER, subject to approval of the DEPARTMENT.
- 1.5. The RE DEVELOPER shall assume all the technical and financial risks under this RE Contract without any guarantee from the GOVERNMENT and shall not be entitled to reimbursement for any expense incurred in connection with this RE Contract.

## **SECTION II DEFINITION OF TERMS**

- 2.1 The words and terms under this RE Contract, unless otherwise specified in the Act and its IRR or in relevant laws and regulations, shall have the meaning in accordance with the following definitions:
  - a) **“Abandonment and Termination Plan”** refers to the plan prepared by the RE DEVELOPER submitted within three (3) months from Effective Date in the case of Pre-Development Stage and at least five (5) years from confirmation of the Declaration of Commerciality and approved by the Department of Environment and Natural Resources (DENR) and the DEPARTMENT for the decommissioning, abandonment and surface restoration or rehabilitation of the Contract Area, and such



abandonment work plan may be amended, supplemented or modified by the Parties from time to time;

- b) **“Accounting Procedures”** refers to the set of procedures, guidelines, and arrangement between the Parties, and any amendments thereto, to govern the applicable treatment of expenses, costs, and income, set forth in Annex “B” hereof, which forms an integral part of this RE Contract;
- c) **“Additional Investment”** refers to investments relating to improvements, modernization, rehabilitation, or expansion duly registered with the DEPARTMENT, subject to the conditions to be determined by the DEPARTMENT, such as, but not limited to, the following:
  - i. Identification of and investment in sequential phases/stages of production, or undertaking scheduled modernization or rehabilitation of the Wind Energy Systems; and
  - ii. Improvements to the Wind Energy Systems such as reduced production/operational costs, increased production, improved operational efficiency, and better reliability of the Project;
- d) **“Affiliate”** refers to any person or group or persons, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the RE DEVELOPER. As used herein, “control” shall mean the power to direct or cause the direction of the management’s policies of a person by contract, agency, or otherwise;
- e) **“Calendar Year”** refers to the period beginning January 1 to December 31 of each year;
- f) **“Certificate of Confirmation of Commerciality”** refers to the certification issued by the DEPARTMENT confirming the declaration made by the RE DEVELOPER that the Project is commercially feasible;
- g) **“Certificate of Registration”** refers to that certification issued to the RE DEVELOPER upon the Effective Date of this RE Contract or upon approval of Additional Investment, to serve as the basis for its entitlement to the incentives provided under the Act;
- h) **“Commercial Operation”** refers to the stage when the RE DEVELOPER has completed its commissioning and test operations and is ready to sell or apply its produced Wind Energy, as duly confirmed by the DEPARTMENT;
- i) **“Commercial Quantities”** refer to quantities of electricity to be generated from the Wind Energy Resources, providing, or capable of providing, revenue from sales of electricity that exceed or would exceed the RE DEVELOPER’s Cost of Goods Sold by a margin sufficient to cause a reasonably prudent person employing standard industry practices as to Wind Energy Resources and

using commercially available technology to develop the Wind Energy Systems;

“**Contract Area**” refers to the total area of \_\_\_\_\_ hectares (\_\_\_\_\_ has) in the Province of \_\_\_\_\_ which is the subject of this RE Contract. The Contract Area is outlined and more particularly described in a map with its technical description attached herein as Annex “A” and made an integral part of this RE Contract.

- j) “**Contract Year**” refers to a period of twelve (12) consecutive calendar months counted from the Effective Date of this RE Contract and thereafter, from the anniversary of such Effective Date: *Provided, however,* That the last Contract Year shall end on the date of Expiration or Termination of this RE Contract;
- k) “**Corporate Income Tax**” refers to the tax imposed upon net taxable income under the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337 and the Act. After availing of the Income Tax Holiday (ITH) under the Act, the RE DEVELOPER shall be subject to a Corporate Income Tax rate of ten percent (10%);
- l) “**Cost of Goods Sold**” refers to all business expenses directly incurred in the exploration, development and utilization of the Wind Energy Resources in order to produce and sell electricity and transmit the same to its intended location and use, which expenses are particularly described in Annex “B” hereof;
- m) “**Declaration of Commerciality**” refers to a written declaration by the RE DEVELOPER stating that the electricity to be generated from the Wind Energy Resources is in Commercial Quantities;
- n) “**Development Stage**” refers to the development, production, or utilization of RE resources, including the construction and installation of relevant facilities up to the operation phase thereof;
- o) “**Effective Date**” refers to the date of the execution of this RE Contract;
- p) “**Expatriate Employee**” refers to a foreign national engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Wind Energy Operations, who shall exercise his technical profession, as allowed under existing laws;
- q) “**Expiration**” refers to either the lapse of the term of this RE Contract as provided in Section III (Term) hereof or the surrender or waiver of the RE DEVELOPER of the Contract Area including the abandonment thereof to the DEPARTMENT; *Provided,* That in case of a partial surrender or waiver, this RE Contract shall subsist with respect to the remaining portion;
- r) “**Filipino Employee**” refers to any citizen of the Republic of the Philippines employed and/or engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Wind Energy Operations under this RE Contract;

- s) "**Fiscal Year**" refers to a period of twelve (12) consecutive months;
- t) "**Force Majeure**" refers to extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable;
- u) "**Generation Facility**" refers to a facility for the production of electricity;
- v) "**Government Share**" refers to the amount due the national government and LGUs from the exploration, development and utilization of the Wind Energy Resources computed in accordance with the Act and its Implementing Rules and Regulations (IRR), and described in Section X (Government Share) hereof;
- w) "**Gross Income**" refers to income derived from the RE DEVELOPER's Wind Energy Operations equivalent to the gross sales of Wind Energy less sales returns, discounts and allowance, and Cost of Goods Sold, which is more particularly described in the Accounting Procedures attached as Annex "B";
- x) "**Host LGU**" refers to the LGU where the Wind Energy Resources and/or Generation Facility is located;
- y) "**Local Government Unit/LGU**" refers to the territorial and political subdivisions of the State which organization and function are fully described under the Local Government Code of 1991;
- z) "**Milestones**" refers to the specific activity or set of activities within the Contract Year indicated in the Work Program that will be a basis for evaluation and monitoring by the DEPARTMENT;
- aa) "**New Investment**" refers to investments relating to discovery, exploration, development and/or utilization of new RE resources or the development of new Generation Facilities within the Contract Area distinct from the originally registered operations having separate books of accounts;
- bb) "**Pre-Development Stage**" refers to the preliminary assessment and feasibility study up to the financial closing of the Project and specifically covers the term provided in Section 3.1 of this RE Contract;
- cc) "**Production Area**" refers to that portion of the Contract Area designated by the RE DEVELOPER where Wind Energy Resources are utilized to produce electricity in Commercial Quantities;
- dd) "**Project**" refers to the RE DEVELOPER's Wind Energy Systems within the Contract Area, which may be implemented in one or more phases;
- ee) "**RE Contract**" refers to this Wind Energy Service Contract, as may be amended or extended by the Parties and shall have the same meaning as provided under the Act;

- ff) **"Subcontractor"** refers to any person or entity contracted by the RE DEVELOPER to provide goods or services for the purpose of this RE Contract, subject to the provisions of existing laws;
- gg) **"Termination"** refers to the right of the Parties to cancel this RE Contract pursuant to Section XIII (Suspension and Termination) hereof;
- hh) **"Wind Energy"** refers to the energy that can be derived from wind that can be converted into useful electrical or mechanical energy;
- ii) **"Wind Energy Operations"** shall include Wind Energy exploration, development, production, and utilization, including the construction, installation, operation and maintenance of Wind Energy Systems to convert Wind Energy to electrical power and the transmission of such electrical power and/or other non-electrical uses;
- jj) **"Wind Energy Resources"** refers to the wind resources found within the Contract Area to be technically feasible for the development of Wind Energy projects;
- kk) **"Wind Energy Systems"** refers to the energy systems that convert wind energy into electrical or mechanical energy;
- ll) **"Work Plan"** refers to the plan and activities prepared and to be submitted by the RE DEVELOPER during the Development Stage with the corresponding budgetary estimate; and
- mm) **"Work Program"** refers to all types of plans and programs and related activities on a milestone basis formulated for the performance of the work obligations by the RE DEVELOPER during the Pre-Development Stage, along with the corresponding budgetary estimate, submitted to the DEPARTMENT under this RE Contract as Annex "C."

### SECTION III TERM

- 3.1 **Pre-Development Stage.** The Pre-Development Stage of this RE Contract shall be a non-extendible period of three (3) years from the Effective Date: *Provided*, That the failure to accomplish the first annual Milestones indicated in the Work Program shall result in the expiration of the RE Contract. However, the submission by the RE DEVELOPER of a Declaration of Commerciality at any time during the Pre-Development Stage and the confirmation thereof by the DEPARTMENT shall supersede the foregoing requirement on annual Milestones.
- 3.2 **Development Stage.** Upon submission of the Declaration of Commerciality by the RE DEVELOPER, as confirmed by the DEPARTMENT through the issuance of a Certificate of Confirmation of Commerciality, this RE CONTRACT shall remain in force for the balance of a period of twenty-five (25) years from Effective Date: *Provided*, That at the option of the RE DEVELOPER, by written notice to the DEPARTMENT not later than one (1)

year prior to the expiration of the initial twenty-five (25)-year period, and so long as the RE DEVELOPER is not in default of any material obligations under this RE Contract, the DEPARTMENT may approve the extension of this RE Contract for another twenty-five (25) years, subject to the terms and conditions to be mutually agreed upon by the Parties.

#### **SECTION IV CONTRACT AREA**

- 4.1 The Contract Area refers to the areas as described in Annex "A" hereof reserved by the DEPARTMENT for the RE DEVELOPER over which the RE DEVELOPER has exclusive right to explore, develop and utilize the Wind Energy Resources in accordance with this RE Contract.
- 4.2 The RE DEVELOPER shall, upon submission of written notice to the DEPARTMENT, have the right to surrender or waive the entire Contract Area or any portion thereof, within thirty (30) days prior to the intended date of surrender, without liability or cost, and be relieved from any work and expenditure commitments thereon without prejudice to any other outstanding liability or costs. In case the RE DEVELOPER completely ceases its operations, the provisions under its Abandonment and Termination Plan shall apply consistent with its Environmental Compliance Certificate (ECC).
- 4.3 Any portion of the Contract Area where feasibility study was not conducted and where the RE DEVELOPER has no intention to conduct any development activities as indicated under the proposed Work Plan shall be deemed relinquished on the date of Declaration of Commerciality.
- 4.4 During Development Stage, the RE DEVELOPER shall delineate its Production Area which may no longer be subject to the Blocking System.

#### **SECTION V WORK PROGRAM, WORK PLAN AND ESTIMATED EXPENDITURES**

- 5.1 The RE DEVELOPER shall carry out its existing work according to good industry practices.
- 5.2 During the Pre-Development Stage, the RE DEVELOPER shall conduct preliminary Wind Energy Resources data gathering activities and, if warranted by the results of such Wind Energy Resources data gathering, conduct a full Wind Energy Resources assessment.
- 5.3 Attached to this RE Contract is a Work Program for the first two (2) years from the Effective Date and its corresponding budget, details of which are particularly described in Annex "C" hereof.
- 5.4 During the implementation of the Work Program, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT any revisions thereto at least one (1) month prior to the end of each Contract Year: *Provided, however,* That revision shall not be allowed within the first Contract

Year: *Provided further*, That the RE Developer shall be allowed to subsequently revise its Work Program only if it has substantially complied with all its material financial and technical activities under the Work Program for the immediate preceding Contract Year.

- 5.5 The RE DEVELOPER shall submit to the DEPARTMENT a Work Plan for the first five (5) years from its Declaration of Commerciality and its corresponding budget thereof.
- 5.6 Not later than two (2) months prior to the end of the first five (5) years from the RE DEVELOPER's Declaration of Commerciality, the RE DEVELOPER shall submit a Work Plan for the next five (5) years and shall do so every five (5) years thereafter. The Work Plan or any revisions thereof shall need the approval from the DEPARTMENT.
- 5.7 During the implementation of the Work Plan, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT any revisions thereto, at least two (2) months prior to the end of each Contract Year;
- 5.8 In the event of failure to comply with its commitments under the Work Program, the RE DEVELOPER shall pay the DEPARTMENT the amount it should have spent for the execution of the same. Should the RE DEVELOPER fail to pay the assessed financial deficiency within the period prescribed by the DEPARTMENT, the DEPARTMENT shall enforce the collection thereof against the performance guarantee posted by the RE DEVELOPER.

## **SECTION VI RIGHTS AND OBLIGATIONS**

- 6.1 The RE DEVELOPER shall have the following rights:
  - a) To be granted fiscal and non-fiscal incentives and privileges under the Act and its IRR and all other existing laws that are not otherwise modified or repealed by the Act;
  - b) To receive assistance from the DEPARTMENT:
    - i. In securing access to lands and/or offshore areas where Wind Energy Resources shall be harnessed; and
    - ii. In indorsing the Project to the National Government, LGUs, Board of Investments (BOI) and other entities, for the acquisition of permits, licenses and clearances and availment of applicable fiscal and non-fiscal incentives;
  - c) Have at all times the right of ingress to and egress from the Contract Area to and from facilities wherever located;
  - d) Acquire rights-of-way and similar rights on, over, under, across and through the Contract Area or properties adjacent to the Contract Area, which constitute or is reasonably expected to constitute the Contract Area as the RE DEVELOPER may reasonably deem necessary.

The DEPARTMENT shall, upon request by the RE DEVELOPER as may be reasonable given the attendant circumstances, assist the RE DEVELOPER in securing such rights. For such purpose, the DEPARTMENT shall and does hereby appoint the RE DEVELOPER as its attorney-in-fact and does hereby give and grant to the RE DEVELOPER full authority to act for and on its behalf in the negotiation and conclusion of agreements and payments for such rights. All obligations, payments and expenses arising from or incidental to the acquisition of such rights shall be for the account of the RE DEVELOPER so as to enable the RE DEVELOPER to have ingress into and egress from the Contract Area and to perform all Wind Energy Operations in accordance with this RE Contract and in consideration of which, entitlement to such rights shall be held in trust in favor of the RE DEVELOPER.

The DEPARTMENT undertakes to provide further assistance to the RE DEVELOPER, including the exercise of the power of eminent domain if necessary, to secure such necessary or proper rights at such cost for the account of the RE DEVELOPER, if the RE DEVELOPER is unable to secure such rights at commercially reasonable costs through negotiations or if the same is the most expedient course of action to support the timely execution of Wind Energy Operations;

- e) Allow, in accordance with the existing laws, entry into the Philippines and employment by the RE DEVELOPER of Expatriate Employees who shall exercise their technical professions solely for the Wind Energy Operations: *Provided That*, Filipino Employees shall be given preference to positions for which they have adequate training and experience required by the RE DEVELOPER: *Provided further*, That if the employment or connection of such Expatriate Employee with the RE DEVELOPER ceases, applicable laws and regulations shall apply to him and his immediate family;
- f) Have a free and unimpeded use of Wind Energy Resources within the Contract Area in view of the Wind Energy Operations, Additional Investments and New Investments; in regard of which, the DEPARTMENT shall ensure that rights, privileges and other authorizations it may grant to third parties will not defeat or impair such use;
- g) Be informed by the DEPARTMENT, if at any time the latter becomes aware of any intended exploration, extraction or use of energy resources other than Wind Energy Resources on the Contract Area and adjacent areas thereof, within thirty (30) days from the date it becomes aware of such intended exploration, extraction or other use; and
- h) Be granted an exclusive easement to use, convert, maintain and capture the free and unobstructed flow of Wind Energy Resources within the Contract Area.

6.2 The RE DEVELOPER shall have the following obligations:

- a) Secure any necessary permits and clearances from all relevant government entities for the Project;
- b) Perform exploration, assessment, field verification, harnessing, piloting and other activities in accordance with the Work Program and provide technology and financing in connection with the Pre-Development Stage;
- c) Perform the required Wind Energy Operations and provide services, technology, and financing in connection therewith;
- d) Maintain complete and accurate accounting, financial and technical records of its Wind Energy Operations, subject to Sections IX (Technical Data and Reports Submission) and XI (Confidentiality) hereof, and in accordance with the Accounting Procedures as provided under ANNEX "B" hereof;
- e) Allow officials and representatives authorized by the DEPARTMENT access to the Contract Area and to the accounts, books and records directly relating to the Wind Energy Operations during reasonable hours and without causing disruption, subject to fifteen (15) calendar days prior written notice to the RE DEVELOPER;
- f) Give priority in employment to qualified personnel in the Host LGU subject to Section XV (Employment, Training and Development Programs) hereof;
- g) Within sixty (60) days after the Effective Date of this RE Contract and at the start of every Contract Year thereafter, post a performance bond or other guarantee of sufficient amount but not less than the annual budgetary estimate for the corresponding Contract Year in favor of the DEPARTMENT from a list of DEPARTMENT-accredited insurance or surety companies, conditioned upon the faithful performance by the RE DEVELOPER of any or all of the commitments and obligations under the Work Program and Work Plan in so far as the period prior to Commercial Operation;
- h) After availing of the Income Tax Holiday (ITH), be subject to Corporate Income Tax: *Provided*, That New or Additional Investment shall be eligible for ITH;
- i) Be subject to the provisions of law of general application relating to labor, health, safety, environment and indigenous peoples rights;
- j) Develop, operate and maintain the Contract Area in accordance with accepted industry practices to enable maximum economic production of the Wind Energy Resources;
- k) Be responsible for procurement of installation, equipment and supplies, and for entering into subcontracts related to the Wind Energy Operations;
- l) Give preference to Philippine companies/agencies entering into subcontracts on goods or services that are required in the Wind Energy Operations but are not carried out by the RE DEVELOPER:



*Provided*, That the goods or services are competitive as to cost, quality and availability;

- m) Be responsible in the proper handling of data, samples, information, reports and other documents;
  - n) Maintain all meters and measuring equipment in good order and allow access to these as well as to the exploration sites to inspectors authorized by the DEPARTMENT;
  - o) Pay the Government Share in accordance with the computation in the Act's IRR and taxes as may be applicable;
  - p) Organize Information, Education and Communication (IEC) Campaign on benefits to the Host LGUs pursuant to Section 18 of the DEPARTMENT's Department Circular No. DC2009-07-0011; and
  - q) Comply with all rules, regulations, and guidelines issued by the DEPARTMENT that are applicable hereto.
- 6.3 Upon the Effective Date of this RE Contract or upon the approval of the RE DEVELOPER's Additional Investment, the DEPARTMENT shall issue a Certificate of Registration to the RE DEVELOPER, to enable it to avail of the fiscal and non-fiscal incentives and privileges as stated under the Act and its IRR. The registration shall be valid and effective for the entire term and effectivity of this RE Contract.

## **SECTION VII REPRESENTATIONS AND WARRANTIES**

Acknowledging that the GOVERNMENT, through the DEPARTMENT, has entered into this RE Contract in reliance upon the representations and warranties in this Section, the RE DEVELOPER represents and warrants as follows:

- 7.1 It is a corporation or entity duly formed, established, validly existing and in good standing under the laws of the Philippines with full power to own its property; to carry on its business as it is now being conducted; and to execute, deliver and perform its obligations under this RE Contract, and the entering into and performance of this RE Contract by the RE DEVELOPER does not conflict with the articles of incorporation, by-laws and other constitutive documents of the RE DEVELOPER and has been duly authorized by all necessary corporate and legal action on the part of the RE DEVELOPER;
- 7.2 The individual signing this RE Contract on behalf of the RE DEVELOPER is duly authorized to sign as of the Effective Date;
- 7.3 There is no litigation, arbitration or administrative proceeding pending or, to the best knowledge of the RE DEVELOPER, threatened against the RE DEVELOPER or its properties the adverse determination of which would adversely affect the ability of the RE DEVELOPER to perform or comply with any of its material obligations under this RE Contract;
- 7.4 The RE DEVELOPER:

- a) Has not been declared in default in respect to any of its material financial commitments or obligations based on their reports duly validated by the DEPARTMENT;
  - b) Is not otherwise in default of any kind in respect of any financial commitment or obligation or in respect of any agreement, undertaking or instrument as a party thereof by which it or any of its assets or properties may be bound; and
  - c) Is not aware of a fact that by the service of notice and/or lapse of time would constitute a default in any or both of sub-paragraphs (a) and (b) above;
- 7.5 No written material information given by the RE DEVELOPER to the DEPARTMENT under this RE Contract contains any misstatement of fact as of the Effective Date or omits to state a fact that is materially adverse to the interests of the DEPARTMENT; and
- 7.6 The ownership of the RE DEVELOPER's capital stock complies with applicable laws and regulations.

#### **SECTION VIII ASSETS AND EQUIPMENT**

- 8.1 The RE DEVELOPER shall acquire and maintain for the Project and for its Wind Energy Operations and such assets as are reasonably estimated to be required in carrying out the exploration, assessment, harnessing, piloting and other studies for the Wind Energy Resources in the Contract Area; and the development, utilization and commercialization of Wind Energy Resources therein, including the construction, installation, operation and maintenance of the Wind Energy Systems.
- 8.2 All materials, equipment, plants and other installations that are erected or placed on the Contract Area by the RE DEVELOPER and are owned by the RE DEVELOPER shall remain the property of the RE DEVELOPER up to one (1) year from the Expiration or Termination of this RE Contract: *Provided*, That upon the written request of the RE DEVELOPER, the DEPARTMENT shall approve an additional non-extendible period of one (1) year within which to remove such assets in the Contract Area. Thereafter, the ownership of any remaining materials, equipment, plants, and other installations shall be vested in the Government.
- 8.3 The RE DEVELOPER shall be responsible for the removal and the disposal of all materials, equipment and facilities from the Contract Area in accordance with the ECC and the provisions of the Abandonment and Termination Plan as provided under Section II hereof.
- 8.4 The ownership of all data, records, accounts, samples and other technical data produced or generated in the course of the Wind Energy Operations that are confidential, proprietary in nature, or otherwise not generally available to the public shall remain with the DEPARTMENT and RE

DEVELOPER and shall be kept confidential in accordance with Section XI (Confidentiality) hereof.

## SECTION IX TECHNICAL DATA AND REPORTS SUBMISSION

- 9.1 All technical data and reports, except for proprietary techniques used in developing such technical data and reports, must be submitted by the RE DEVELOPER in accordance with the format approved by the DEPARTMENT.
- 9.2 The technical data and reports to be submitted to the DEPARTMENT shall include, but not limited to, the following:
- a) Annual Progress Report – shall be submitted not later than two (2) months prior to the end of each Contract Year and shall contain the summary of all the activities, i.e. exploration, drilling or infrastructure development, with relevant comments and recommendation on any technical findings;
  - b) Procurement Plan – shall be designed according to the approved work obligations containing an itemized list of equipment, materials and supplies to be procured with corresponding estimated costs. It shall be submitted not later than one (1) month from the approval of the Work Program or Work Plan or revision thereof, as the case may be;
  - c) Quarter Progress Report – shall be submitted not later than one (1) month from the end of each Contract Quarter and shall contain the work and financial accomplishment under Work Program or Work Plan;
  - d) Monthly Generation Report; and
  - e) Other technical data and reports relevant to the Hydro Power Resources, when necessary as determined by the DEPARTMENT;

## SECTION X GOVERNMENT SHARE

- 10.1 The Government Share shall be equal to one percent (1%) of the Gross Income from the sale of electricity generated from Wind Energy Operations in accordance with the Accounting Procedures as prescribed under Annex "B" hereof.
- 10.2 The RE DEVELOPER shall within sixty (60) days following the end of each quarter of a Calendar or Fiscal Year remit to the DEPARTMENT the Government Share: *Provided*, That any unremitted amount shall carry an

interest of ten percent (10%) per annum reckoned from the day immediately following the end of each quarter of a Calendar or Fiscal Year, as may be applicable.

## SECTION XI CONFIDENTIALITY

- 11.1 All documents, information, data and reports produced or generated during the Wind Energy Operations under this RE Contract shall be kept strictly confidential over the term of this RE Contract or any extension thereof: *Provided*, That proprietary information shall be kept strictly confidential at all times subject to lawful acquisitions of such information under existing laws and regulations.
- 11.2 Without the written consent of the other Party, no Party shall use or disclose the confidential information to any third party and/or to any Affiliate not directly connected with the implementation of this RE Contract except the third parties and Affiliates in Section 11.5 hereof, and no Party shall otherwise transfer, present, sell or publish it in any way within the confidentiality periods.
- 11.3 The DEPARTMENT may use such confidential information belonging to the RE DEVELOPER for the DEPARTMENT's resource mapping, data gathering, policy making and for government planning purposes.
- 11.4 Upon the Expiration or Termination of this RE Contract, the DEPARTMENT may provide third parties with the data and reports submitted by the RE DEVELOPER pursuant to this Section: *Provided*, That the same are not proprietary in nature.
- 11.5 Contrary stipulations notwithstanding, the RE DEVELOPER may furnish the information to the following third parties, subsidiaries and Affiliates, such as, but not limited to:
- a) Banks or other credit institutions from which finance is sought by the RE DEVELOPER;
  - b) Third parties, subsidiaries and Affiliates that provide services for the Wind Energy Operations, including Subcontractors and other service contractors;
  - c) Prospective assignee/s to whom rights and obligations under this RE Contract are intended to be assigned;
  - d) Prospective investor/s or entities with whom the RE DEVELOPER intends to enter into joint venture or other similar agreements for the Project;
  - e) Governments and stock/commodity exchanges in accordance with the laws, regulations, or rules of the relevant country or stock/commodity exchange; and

- f) Government authorities, entities and judicial courts if required by law, regulation, directive, or order to disclose.
- 11.6 The information shall be revealed to those persons allowed under this RE Contract only if and to the extent necessary and desirable for the purpose intended. Each Party shall ensure that such person to whom information is disclosed is informed of the confidential nature of the information and the purpose for which it may be used and that each such person is bound by this Section.
- 11.7 The RE DEVELOPER and its Affiliates or the DEPARTMENT, its officers, employees, consultants and other duly authorized representatives shall not make any public statement or announcement of any information produced, generated or acquired in the course of the Wind Energy Operations, without prior written consent of the other Party.

## SECTION XII PERFORMANCE BOND

- 12.1 The initial amount of the bond or other guarantee as specified in Sub-section 6.2(g) shall not be less than the annual financial commitment/budgetary estimate for the first Contract Year based on the Work Program.
- 12.2 The amount of performance bond or other guarantee may be adjusted, subject to the following conditions:
- a) In the event of surrender by the RE DEVELOPER to the DEPARTMENT of a portion of the Contract Area covered by this RE Contract, the performance bond or other guarantee shall be reduced proportionately in accordance with the Work Program and Work Plan as applicable;
  - b) In the event that the RE DEVELOPER has fully expended its budgetary estimate under the Work Program or Work Plan as applicable but has not fully performed its work obligations, the amount of bond or other guarantee shall be equal to the succeeding Contract Year's budgetary estimate under the revised Work Program or Work Plan as applicable; and
  - c) Such other conditions or circumstances as would reasonably warrant the modification of the amount of the performance bond or other guarantee.
- 12.3 If the RE DEVELOPER, through its own fault, fails to observe or perform its work obligations under the Work Program, the DEPARTMENT, upon prior written notice, may proceed against the performance bond or other guarantee, *Provided That*, should the work obligations under the Work Program be fulfilled, and through the efficiency of the RE DEVELOPER, the corresponding actual expenditures thereon are lower than the estimated expenditures stated in the Work Program, the same shall be considered as full compliance of the work obligations.
- 12.4 The DEPARTMENT shall release the performance bond or other guarantee not later than thirty (30) days from the date of confirmation by the DEPARTMENT on the start of the Commercial Operations.

### SECTION XIII SUSPENSION AND TERMINATION

- 13.1 In case of the Pre-Development Stage, the DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:
- a) Non-compliance with the Work Program and the material terms and conditions of this RE Contract;
  - b) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
  - c) Non-observance of environmental regulations imposed by the DENR during the conduct of feasibility study;
  - d) Tampering or plagiarizing of technical design and feasibility study reports;
  - e) Non-payment of the financial obligations agreed upon under this RE Contract; and,
  - f) Non-posting of performance bond or other guarantee within the period/s provided under Section XII (Performance Bond) hereof.
- 13.2 In case of the Development Stage, the DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:
- a) Non-compliance with the material terms and conditions of this RE Contract;
  - b) Violation of the Renewable Portfolio Standards Rules, as defined in the Act and its IRR and relevant Department Circulars;
  - c) Non-compliance with the approved Work Plan and any other material obligations herein;
  - d) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
  - e) Non-observance of environmental regulations imposed by the DENR during construction and operation;
  - f) Tampering with or plagiarizing of technical design, feasibility study generation and operation reports;
  - g) Non-remittance of Government Share as determined by the Compliance Division - Financial Services of the DEPARTMENT;
  - h) Non-payment of the financial obligations agreed upon under this RE Contract;
  - i) Non-posting of performance bond or other guarantee within the period/s provided under Section XII (Performance Bond) hereof.

- j) Failure to comply with material reportorial obligations under this RE Contract; and,
  - k) Any representation or warranty made by the RE DEVELOPER under Section VII (Representations and Warranties) hereof which shall prove to have been incorrect in any material respect when made.
- 13.3 The RE DEVELOPER shall have sixty (60) days from written notice from the DEPARTMENT of any of the foregoing to cure the default. Failure of the RE DEVELOPER to cure the default at the end of the sixty (60)-day period shall result in the automatic Termination of this RE Contract: *Provided, however,* That in case the ground for the Termination is non-compliance with the approved Work Program for reasons not attributable to Force Majeure, the Termination shall not be subject to curing period and shall be effective immediately as indicated in the notice duly issued by the Department: *Provided further,* That non-compliance of the approved Work Program during the Pre-Development Stage shall be determined on the basis of the following:
- i. Failure of the RE DEVELOPER to comply with its first annual Milestone under the approved Work Program; and
  - ii. Failure of the RE DEVELOPER to disburse the cost equivalent of at least eighty per cent (80%) of the total financial cost of its first annual Milestone which is set by the DEPARTMENT at Two Million Pesos (Php 2,000,000).

***Provided finally,*** That during the Development Stage, non-compliance with the Milestone for the succeeding years under the approved Work Plan and failure to disburse the cost equivalent of Ninety Five Million Pesos (Php95,000,000) per megawatt shall result in the Termination of this RE Contract or give rise to the right of the DEPARTMENT for recourse on the Performance Bond.

- 13.4 Notwithstanding the foregoing, this RE Contract shall be terminated without prejudice to the RE DEVELOPER's obligation under its Abandonment and Termination Plan as approved by the DEPARTMENT.

#### **SECTION XIV DISPUTES AND ARBITRATION**

- 14.1 Any dispute, controversy or claim arising out of or relating to this RE Contract, except Section 13.1.a hereof shall be settled amicably within a period of sixty (60) days after receipt by one Party of a notice from the other Party of the existence of the dispute.
- 14.2 If the dispute cannot be settled amicably within the sixty (60)-day period, the Parties shall, with respect to disputes arising out of or in connection with Sections IV (Contract Area), V (Work Plan and Estimated Expenditures) and X (Government Share) hereof, refer the dispute to an independent expert for resolution in the manner provided below; *Provided That* any Party, in its sole discretion, may require the dispute be referred to arbitration under Section 14.4 hereof;
- 14.3 The following shall govern the rules of referral:

- a) After the sixty (60) day period in Section 14.1 hereof has passed, any Party may give notice to the other Party of its intention to refer the dispute to an expert in accordance with the provisions of this RE Contract;
- b) The respondent shall, within twenty-one (21) days after receipt of the notice of intention to refer, serve the applicant a notice of its intention to defend;
- c) If within fourteen (14) days after the applicant's receipt of the respondent's notice of intention to defend, the Parties have agreed on an expert and on the terms under which the dispute shall be referred to the independent expert mentioned in Section 14.2 hereof. In the event that within such fourteen (14)-day period, the Parties are unable to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request the International Chamber of Commerce (ICC) International Centre for Expertise to appoint an expert, and the matters to be determined by such expert shall be those set out in the notice of intention to refer and the notice of intention to defend;
- c) Unless the Parties agree otherwise, any expert proceedings under this Section shall be required to follow the ICC Rules for Expertise in force as of Effective Date;
- d) The language of the expert proceedings and the expert's determinations shall be in English;
- e) The Parties hereby agree to be bound by, to perform this RE Contract in accordance with, and to implement, as the case may be, the determination of the expert. Failure by one Party to so act shall constitute a breach of this RE Contract and shall be submitted to arbitration in accordance with Section 14.4 as the sole means of enforcing the determination;
- f) Each Party shall bear the costs and expenses of all lawyers, advisors, witnesses and employees retained by it in connection with the expert proceedings: *Provided, however*, That in circumstances where the expert determines that a matter referred to him was not subject to a bona fide dispute, the costs and expenses incurred by the prevailing Party and the expert in connection with such matter shall be paid by the non-prevailing Party.

14.4 If the dispute cannot be settled within sixty (60) days by mutual discussions as contemplated in Section 14.1 hereof, and referral to an expert is neither prescribed nor elected by the Parties with respect to any technical dispute, the dispute shall finally be settled by an arbitral tribunal (the "Tribunal") governed by and conducted in accordance with the ICC Rules of Arbitration (the "Rules") in force as of Effective Date (or such Rules as may be in force at the time such arbitration is commenced), as follows:

- a) The RE DEVELOPER will nominate one (1) arbitrator and the DEPARTMENT will nominate one (1) arbitrator within thirty (30) days from the date of a request by either Party to initiate arbitration. The two Party-nominated arbitrators will then jointly nominate a third arbitrator within thirty (30) days from the date of the appointment of the second arbitrator,



to act as Chairman of the Tribunal. Arbitrators not nominated within the time limits set forth in the preceding sentence shall be appointed by the ICC Court of International Arbitration;

- b) Unless otherwise agreed by the Parties, the venue of the arbitration shall be in Metro Manila, Philippines;
- c) The language of the arbitration and award shall be in English;
- d) The Tribunal shall not be authorized to impose, and either Party shall not be authorized to seek from any judicial authority, any requirement that the Party posts security for the costs of either Party;
- e) The decision of the Tribunal shall be final and binding upon the Parties. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

14.5 The right to arbitrate disputes under this RE Contract shall survive the Expiration or Termination of this RE Contract.

#### **SECTION XV EMPLOYMENT, TRAINING AND DEVELOPMENT PROGRAMS**

- 15.1 The RE DEVELOPER agrees to give preference in employment to qualified Filipino Employees who are residents of the Host LGUs and will undertake the development and training of Filipino Employees for labor and staff positions, including administrative, technical and executive management positions.
- 15.2 During the Pre-Development Stage, the RE DEVELOPER shall, upon request of the DEPARTMENT provide development assistance in kind in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_). Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_).
- 15.3 During the Pre-Development Stage, the RE DEVELOPER shall provide assistance for training programs, conference seminars and other similar activities for the DEPARTMENT's personnel in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_) per Contract Year. During the Development Stage, the RE DEVELOPER, upon request of the DEPARTMENT, shall provide assistance for training programs, conference seminars and other similar activities for the DEPARTMENT's personnel in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_) per Contract Year. This assistance shall be accumulated for the succeeding Contract Years if not availed of in a given Contract Year. The RE DEVELOPER shall pay the unutilized amount of the training commitment prior to the Expiry or Termination of this RE Contract.

- 15.4 The RE DEVELOPER shall undertake corporate social responsibility projects in Host LGUs with focus in education and training of qualified and deserving beneficiaries, as determined by the RE DEVELOPER.
- 15.5 Upon execution of this RE Contract, the RE DEVELOPER shall pay the DEPARTMENT a signing fee in the amount of \_\_\_\_\_ PESOS (PhP \_\_\_\_\_).

**SECTION XVI  
OTHER PROVISIONS**

16.1 NOTICES

Any notice required or given by either Party to the other Party shall be in writing and shall be effective when a copy thereof is handed to or served upon the Party's duly designated representative or the person in charge of the office or place of business, or when sent by registered mail, notice shall be effective upon actual receipt by the addressee, but if he fails to claim his mail from the post office within five (5) days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time. All such notices shall be addressed:

To the DEPARTMENT:

The Secretary  
Department of Energy  
Energy Center, Rizal Drive  
Bonifacio Global City  
Taguig City, Metro Manila

To the RE DEVELOPER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any Party may substitute or change such address with prior written notice thereof to the other Party.

16.2 GOVERNING LAW

The laws of the Republic of the Philippines shall apply to this RE Contract.

16.3 ASSIGNMENT

- a) This RE Contract cannot be assigned without the prior written approval of the Parties.
- b) The RE DEVELOPER may assign or transfer part or all of its rights and/or obligations under this RE Contract to its Affiliate upon compliance with the following provisions:

- i. The RE DEVELOPER shall submit to the DEPARTMENT copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned; and,
  - ii. The RE DEVELOPER shall guarantee in writing to the DEPARTMENT its performance of the assigned obligations.
- c) Pursuant to this Sub-section, this RE Contract shall not be assigned to any third party, unless such third party is qualified in accordance with the Act and its IRR.
  - d) The RE DEVELOPER may authorize its subsidiaries, branches or regional corporations to implement this RE Contract, but the RE DEVELOPER shall remain responsible for the performance of this RE Contract.
  - e) During the Pre-Development Stage, this RE Contract shall not be assigned except where the assignee is a subsidiary, branch or regional corporation of the RE DEVELOPER created for the special purpose of handling the project covered by the RE Contract.
  - f) No assignment shall be granted if the RE Developer is in default of its Work Program or any of its obligations under the RE Contract and other RE agreement with the DEPARTMENT.

#### 16.4 SUSPENSION OF OBLIGATIONS

- a) Any failure or delay on the part of either Party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure.
- b) If the Wind Energy Operations are curtailed or prevented by such causes, then the time for enjoying the rights and carrying out the obligations thereby affected, and all rights and obligations hereunder shall be extended for a period equal to the period of delay, curtailment or prevention: *Provided, however,* That if operations are delayed, curtailed or prevented by Force Majeure for a continuous period of twelve (12) months, this RE Contract may thereafter be terminated, at the option of the RE DEVELOPER, at anytime that the Force Majeure condition still exists, subject to the confirmation of the DEPARTMENT.
- c) The Party whose ability to perform its obligations is so affected shall notify the other Party thereof in writing stating the cause and such affected Party shall do all reasonably within its power to remove such cause.

#### 16.5 AMENDMENTS

The RE Contract shall not be amended or modified in any respect except by the mutual consent in writing of the Parties.

#### 16.6 BOOKS OF ACCOUNTS AND AUDITS

- a) The RE DEVELOPER shall be responsible for keeping complete books and accounts, in Philippine currency denominations, reflecting all transactions in connection with this RE Contract in accordance with the Annex "B" hereof.
- b) The DEPARTMENT shall have the right to inspect the RE DEVELOPER's books and accounts directly relating to this RE Contract for any Calendar or Fiscal Year within twenty-four (24) months following the end of each Calendar or Fiscal Year. Any such audit shall be completed within twelve (12) months after its commencement. Any exceptions must be made to the RE DEVELOPER in writing within ninety (90) days following the completion of such audit. If the DEPARTMENT fails to give such written exception within such time, then the RE DEVELOPER's books of accounts and statements for such Calendar or Fiscal Year shall be established as correct and final for all purpose.
- c) The DEPARTMENT, upon at least fifteen (15) days advance written notice to the RE DEVELOPER, is entitled to access, during reasonable hours without affecting Wind Energy Operations; all books of accounts and records and may inspect such sites and facilities as necessary.
- d) If the DEPARTMENT notifies the RE DEVELOPER of an exception to the RE DEVELOPER's books of accounts within the period specified in Sub-section 16.6 (b), the RE DEVELOPER shall within ninety (90) days from receipt of written exception from the DEPARTMENT, question its validity, otherwise, the same shall become final and binding on the RE DEVELOPER. If the Parties are not able to agree on the exceptions or adjustments after ninety (90) days from the date of receipt of the RE DEVELOPER's response to the DEPARTMENT's exception report, the Parties shall resolve the dispute in accordance with Section XIV (Disputes and Arbitration) hereof.

## 16.7 HEALTH, SAFETY, AND ENVIRONMENT PROTECTION

- a. In the performance of this RE Contract, the RE DEVELOPER shall: (1) be subject to the laws, rules and regulations on environmental protection, indigenous people rights, health and safety promulgated by the GOVERNMENT; (2) endeavor to make its best efforts to prevent pollution and damage to the atmosphere, oceans, rivers, lakes, harbors and land; and (3) secure the safety and health of its operating personnel.
- b. When the GOVERNMENT assigns any person to inspect for environmental protection, health and safety compliance of the RE DEVELOPER, the RE DEVELOPER shall provide such reasonable facilities and assistance as are applicable to ensure appropriate inspection by the GOVERNMENT. The RE DEVELOPER shall be given reasonable notice such inspections.

## 16.8 SEPARABILITY CLAUSE

Should any provision of this RE Contract or the application thereof to any situation or circumstance be declared null and void and/or invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof which shall remain valid and enforceable to the fullest extent. In the event of such partial invalidity or unenforceability, the

Parties shall seek in good faith to agree on replacing the invalid or unenforceable provisions with a provision that in effect will most nearly and fairly approximate the effect of the invalid or unenforceable provision through the issuance of appropriate supplemental contract/s or agreement/s.

**IN WITNESS WHEREOF**, the Parties have caused this RE Contract to be executed by their respective representatives at the place and on the date above written.

**DEPARTMENT OF ENERGY**

By:

**RE DEVELOPER**

By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
**NAME**  
Designation

Witnesses:

\_\_\_\_\_

\_\_\_\_\_

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES }  
\_\_\_\_\_ } S. S.

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This RE Contract consisting of twenty-five (25) pages, including the page on which this acknowledgment is written, is signed on each and every page thereof by the Party and his instrumental witness and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of \_\_\_\_\_.

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES }  
\_\_\_\_\_ } S. S.

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the corporation herein represented.

This RE Contract consisting of twenty-five (25) pages, including the page on which this acknowledgment is written, is signed on each and every page thereof by the Party and his instrumental witness and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on

\_\_\_\_\_ at

**REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF ENERGY**

**BIOMASS RENEWABLE ENERGY OPERATING CONTRACT  
(BREOC No. \_\_\_\_\_)**

This **BIOMASS RE OPERATING CONTRACT** (this "**RE Contract**"), made and entered into this \_\_\_\_\_ in Bonifacio Global City, Taguig City by and between:

The **REPUBLIC OF THE PHILIPPINES**, hereinafter referred to as the "**GOVERNMENT**", through the "**Department of Energy**", hereinafter referred to as the "**DEPARTMENT**", a government agency established pursuant to Republic Act No. 7638, as amended, with principal office address at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its Secretary, **HON.** \_\_\_\_\_;

-and-

\_\_\_\_\_, hereinafter referred to as the "**RE DEVELOPER**," a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at \_\_\_\_\_ represented herein by its \_\_\_\_\_;

Each of the **DEPARTMENT** and the **RE DEVELOPER** is referred to as a "Party", and collectively as the "**Parties**". In the implementation of this **RE Contract**, the **GOVERNMENT** shall act through and be represented by the **DEPARTMENT**.

**WITNESSETH:**

**WHEREAS**, all forces of potential energy in public and/or private lands, within the Philippine territory, belong to the State and their exploration, development and utilization are governed by Section 2, Article XII of the 1987 Constitution;

**WHEREAS**, under Republic Act No. 7638, as amended otherwise known as the Department of Energy Act of 1992, the **DEPARTMENT** shall establish and administer programs for the exploration, development and utilization of energy resources, including Biomass Resources;

**WHEREAS**, Republic Act No. 9513, otherwise known as "An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and For Other Purposes" (the "Act"), declares as a policy of the State to accelerate the exploration and development of renewable energy (RE) resources including, among others, biomass, to achieve energy self-reliance through the adoption of sustainable energy development strategies;



TEMPLATE BREOC (Non-Existing Facility)

**WHEREAS**, Section 5 of the Act declares that the **DEPARTMENT** shall be the lead agency mandated to implement its provisions;

**WHEREAS**, Section 19, Rule 6, paragraph C of the Rules and Regulations Implementing Republic Act No. 9513 (the "IRR") provides that the biomass sector shall be covered by an RE Operating Contract wherein the biomass developer commits to develop, construct, install, commission and operate an RE generating facility subject to the terms and conditions specified therein;

**WHEREAS**, the **RE DEVELOPER** intends to engage in the development and utilization of biomass within the Project Site and agrees to be subject to the laws and decrees of the **GOVERNMENT** and other rules and regulations of the **DEPARTMENT** in the implementation of this RE Contract;

**WHEREAS**, the **RE DEVELOPER** has been evaluated and recommended by the duly constituted RE Contract Review Committee per Resolution No. \_\_\_\_\_, series of 20\_\_\_\_, and duly confirmed by the Secretary to be legally, technically, and financially qualified to enter into this **RE Contract**;

**NOW, THEREFORE**, for and in consideration of the terms and conditions set forth herein, the Parties hereby stipulate and agree as follows:

**SECTION I**  
**SCOPE**

- 1.1 This RE Contract is entered into pursuant to the Act, with the services, technology and financing to be furnished by the RE DEVELOPER for the operation of a Biomass Energy System, in an economically viable manner and in accordance with this RE Contract.
- 1.2 The provisions of this RE Contract shall govern the development, construction, installation, commissioning and operation of a Biomass Energy System located in \_\_\_\_\_ (Address/Location of Plant) that will generate electrical power from (Type of Technology) System using (Type of Feedstock).
- 1.3 The Biomass Energy System shall have the capacity to generate \_\_\_\_\_ MW of electrical power. Out of the total capacity, \_\_\_\_\_ MW shall be for own-use by the Biomass Energy System, while the excess capacity of \_\_\_\_\_ MW shall be sold to any end-user.
- 1.4 The RE DEVELOPER may pursue any Additional Investment or New Investment within the Project Site and shall be solely responsible for providing the necessary services, technology, equipment and financing therefor. In case of New Investment, the Parties shall enter into a new Renewable Energy (RE) Operating Contract at the option of the RE DEVELOPER, subject to approval of the DEPARTMENT.
- 1.5 The RE DEVELOPER shall assume all the technical and financial risks under this RE Contract without any guarantee from the GOVERNMENT and shall not be entitled to reimbursement for any expense incurred in connection with this RE Contract.

## SECTION II DEFINITION OF TERMS

- 2.1 The words and terms under this RE Contract, unless otherwise specified in the Act and its IRR or in relevant laws and regulations, shall have the meaning in accordance with the following definitions:
- a) **“Abandonment and Termination Plan”** refers to the plan prepared by the RE DEVELOPER submitted within three (3) months from Effective Date of this RE Contract and approved by the Department of Environment and Natural Resources (DENR) and the DEPARTMENT for the decommissioning, abandonment and surface restoration or rehabilitation of the site of power plant and/or biomass facilities, and such abandonment work plan may be amended, supplemented or modified by the Parties from time to time;
  - b) **“Additional Investment”** refers to investments relating to improvements, modernization, rehabilitation, or expansion duly registered with the DEPARTMENT, subject to the conditions to be determined by the DEPARTMENT, such as, but not limited to the following:
    - i. Identification of and investment in sequential phases/stages of production, or undertaking scheduled modernization and/or rehabilitation of the Biomass Energy System; and
    - ii. Improvements to the Biomass Energy System such as reduced production/operational costs, increased production, improved operational efficiency, and better reliability of the Project;
  - c) **“Affiliate”** refers to any person or group of persons, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the RE DEVELOPER. As used herein, “control” shall mean the power to direct or cause the direction of the management’s policies of a person by contract, agency or otherwise;
  - d) **“Biomass Energy Operations”** shall include Biomass Resource development, production and utilization, including the construction, installation, operation and maintenance of Biomass Energy Systems;
  - e) **“Biomass Energy Systems”** refers to energy systems which use biomass resources to produce heat, steam, mechanical power or electricity through either thermochemical, biochemical or physio-chemical processes, or through such other technologies which shall comply with prescribed environmental standards pursuant to the Act;
  - f) **“Biomass Resource”** shall have the same meaning as ascribed to in the Act;
  - g) **“Certificate of Confirmation of Commerciality”** refers to the certification issued by the DEPARTMENT confirming the declaration made by the RE DEVELOPER that the Project is commercially feasible;

TEMPLATE BREOC (Non-Existing Facility)

- h) **“Certificate of Registration”** refers to that certification issued to the RE DEVELOPER upon the Effective Date of this RE Contract and upon approval of Additional Investment, to serve as the basis for its entitlement to the incentives provided under the Act;
- i) **“Commercial Operation”** refers to the stage when the RE DEVELOPER has completed its commissioning and test operations and is ready to sell or apply its produced biomass power, as duly confirmed by the DEPARTMENT;
- j) **“Commercial Quantities”** refers to quantities of electricity to be generated from the Geothermal Resources, providing, or capable of providing, revenue from sales of electricity by a margin sufficient to cause a reasonably prudent person employing standard industry practices as to Biomass Resources and using commercially available technology to develop the Biomass Energy Systems;
- k) **“Contract Year”** refers to a period of twelve (12) consecutive calendar months counted from the Effective Date of this RE Contract and thereafter, from the anniversary of such Effective Date: *Provided, however,* That the last Contract Year shall end on the date of Expiration or Termination of this RE Contract;
- l) **“Corporate Income Tax”** refers to the tax imposed upon net taxable income under the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337 and the Act. After availing of the Income Tax Holiday (ITH) under the Act, the RE DEVELOPER shall be subject to a Corporate Income Tax rate of ten percent (10%);
- m) **“Declaration of Commerciality”** refers to a written declaration by the RE DEVELOPER stating that the electricity to be generated from the Biomass Energy System is in Commercial Quantities;
- n) **“Effective Date”** refers to the date of the execution of this RE Contract;
- o) **“Expatriate Employee”** refers to a foreign national engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Biomass Energy Operations, who shall exercise his technical profession, as allowed under existing laws;
- p) **“Expiration”** refers to the lapse of the term of this RE Contract provided in Section III (Term) hereof;
- q) **“Filipino Employee”** refers to any citizen of the Republic of the Philippines employed and/or engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Biomass Power Operations under this RE Contract;
- r) **“Fiscal Year”** refers to a period of twelve (12) consecutive months;

TEMPLATE BREOC (Non-Existing Facility)

- s) **"Force Majeure"** refers to the extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable;
- t) **"Generation Facility"** refers to a facility for the production of electricity and/or thermal energy such as, but not limited to steam and hot water;
- u) **"Host LGU"** refers to the LGU where the Generation Facility is located;
- v) **"Local Government Unit/LGU,"** refers to the territorial and political subdivisions of the State which organization and function are fully described under the Local Government Code of 1991;
- w) **"Milestones"** refer to the specific activity or set of activities within the Contract Year indicated in the Work Program that will be a basis for evaluation and monitoring by the DEPARTMENT;
- x) **"New Investment"** refers to investments relating to discovery, exploration, development and/or utilization of new RE resources or the development of new Generation Facilities within the Project Site distinct from the originally registered operations having separate books of accounts;
- y) **"Project"** refers to the RE DEVELOPER's Biomass Energy Systems, within the Project Site, which may be implemented in one or more phases;
- z) **"Project Site"** refers to the area where the Biomass Energy Systems is located as described in Annex "A";
- aa) **"RE Contract"** refers to this Biomass RE Operating Contract, as may be amended or extended by the Parties and shall have the same meaning as provided under the Act;
- bb) **"Subcontractor"** refers to any person or entity contracted by the RE DEVELOPER to provide goods or services for the purpose of this RE Contract, subject to the provisions of existing laws;
- cc) **"Termination"** refers to the right of the Parties to cancel this RE Contract pursuant to Section X (Suspension and Termination) hereof;
- dd) **"Work Plan"** refers to the plan and activities prepared by the RE DEVELOPER during the commercial operation phase with the corresponding budgetary estimate; and
- ee) **"Work Program"** refers to all types of plans and programs and related activities on a milestone basis formulated for the performance of the work obligations by the RE DEVELOPER, along with the corresponding budgetary estimate, submitted to the DEPARTMENT under this RE Contract, substantially complying with the form attached hereto as Annex "B".

### SECTION III TERM

- 3.1 From the Effective Date, the term of this RE Contract shall be twenty-five (25) years; *Provided*, That the failure to accomplish the Milestone indicated in the Work Program, specifically the first six month Milestone shall result in the expiration of the RE Contract. *Provided further*, That at the option of the RE DEVELOPER, by written notice to the DEPARTMENT not later than one (1) year prior to the expiration of the initial twenty-five (25)-year period, and so long as the RE DEVELOPER is not in default of any material obligations under this RE Contract, the DEPARTMENT may approve the extension of this RE Contract for another twenty-five (25) years, subject to the terms and conditions to be mutually agreed upon by the Parties.
- 3.2 Within that period, the RE DEVELOPER shall develop, construct, install, commission and operate the Biomass Energy System in the Project Site in accordance with the provisions on the Work Program.

### SECTION IV WORK PROGRAM, WORK PLAN AND ESTIMATED EXPENDITURES

- 4.1 The RE DEVELOPER shall carry out the Work Program for three (3) years and its corresponding budget, details of which are particularly described in Annex "B".
- 4.2 During the implementation of the Work Program, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT any revisions thereto at least one (1) month prior to the end of each Contract Year; *Provided, however*, That revision shall not be allowed within the first Contract Year; *Provided, further*, That the RE DEVELOPER shall be allowed to subsequently revise its Work Program only if it has substantially complied with all its material financial and technical activities under the Work Program for the immediate preceding Contract Year.
- 4.3 Not later than two (2) months prior to the end of the first three (3) years of the RE Contract, the RE DEVELOPER shall submit a Work Plan for the next five (5) years and shall do so every next five (5) years thereafter. The Work Plan shall be deemed approved upon expiration of sixty (60) days after receipt thereof in the absence of any written objection from the DEPARTMENT.
- 4.4 In the event of failure to comply with its commitments under the Work Program, the RE DEVELOPER shall pay the DEPARTMENT the amount it should have spent for the execution of the same. Should the RE DEVELOPER fail to pay the assessed financial deficiency within the period prescribed by the DEPARTMENT, the DEPARTMENT shall enforce the collection thereof, and/or call the performance guarantee posted by the RE DEVELOPER, at the option of the DEPARTMENT. This is without prejudice to the right of the DEPARTMENT to terminate the RE Contract.

### SECTION V

## RIGHTS AND OBLIGATIONS

5.1 RE DEVELOPER shall have the following rights:

- a) To be granted fiscal and non-fiscal incentives and privileges under the Act, the IRR and all other existing laws that are not otherwise modified or repealed by the Act;
- b. To receive assistance from the DEPARTMENT in indorsing the Projects to the National Government, LGUs, Board of Investments (BOI) and other entities, for the acquisition of permits, licenses and clearances and availment of applicable fiscal and non-fiscal incentives;
- c. Have at all times the right of ingress to and egress from the Project Site to and from facilities wherever located;
- d. Acquire rights-of-way and similar rights on, over, under, across and through the Project Site or properties adjacent to the Project Site, which constitute or is reasonably expected to constitute the Project Site as the RE DEVELOPER may reasonably deem necessary.

The DEPARTMENT shall, upon request by the RE DEVELOPER as may be reasonable given the attendant circumstances, assist the RE DEVELOPER in securing such rights. For such purpose, the DEPARTMENT shall and does hereby appoint the RE DEVELOPER as its attorney-in-fact and does hereby give and grant to the RE DEVELOPER full authority to act for and on its behalf in the negotiation and conclusion of agreements and payments for such rights. All obligations, payments and expenses arising from or incidental to the acquisition of such rights shall be for the account of the RE DEVELOPER so as to enable the RE DEVELOPER to have ingress into and egress from the Project Site and to perform all Biomass Energy Operations in accordance with this RE Contract and in consideration of which, entitlement to such rights shall be held in trust in favor of the RE DEVELOPER.

The DEPARTMENT undertakes to provide further assistance to the RE DEVELOPER, including the exercise of the power of eminent domain if necessary, to secure such necessary or proper rights at such cost for the account of the RE DEVELOPER, if the RE DEVELOPER is unable to secure such rights at commercially reasonable costs through negotiations or if the same is the most expedient course of action to support the timely execution of Biomass Energy Systems.

- e. Allow, in accordance with existing laws, entry into the Philippines and employment by the RE DEVELOPER of Expatriate Employees who shall exercise their technical professions solely for the Biomass Energy Systems: *Provided That*, Filipino Employees shall be given preference to positions for which they have adequate training and experience required by the RE DEVELOPER; and *Provided further*, That if the employment or connection of such Expatriate Employee with the RE DEVELOPER ceases, applicable laws and regulations shall apply to him and his immediate family;

TEMPLATE BREOC (Non-Existing Facility)

5.2 The RE DEVELOPER shall have the following obligations:

- a) Secure any necessary permits and clearances from all relevant government entities for the Project;
- b) Comply with all its work and financial commitments in carrying out its obligations under this RE Contract and provide all necessary services, technology and financing in connection therewith. The RE DEVELOPER may revise the Work Program as prescribed in Section 4.3;
- c) Pay the taxes due to the GOVERNMENT, as may be applicable;
- d) Maintain complete and accurate accounting, financial and technical records of its Biomass Energy Systems, subject to Sections VII (Technical Data and Reports Submission) and VIII (Confidentiality);
- e) Submit technical and financial reports in accordance with the format prescribed by the DEPARTMENT within the period prescribed as described in Section VII (Technical Data and Reports Submission);
- f) Allow officials and representatives authorized by the DEPARTMENT access to the Contract Area, and to the accounts, books and records directly relating to the Biomass Energy Operations during reasonable hours and without causing disruption, subject to fifteen (15) calendar days prior written notice to the RE DEVELOPER;
- g) Give priority in employment to qualified personnel in the Host LGUs and give preference to Filipinos in all types of employment for which they are qualified;
- h) Within sixty (60) days after the Effective Date of this RE Contract and at the start of every Contract Year, post a performance bond or other guarantee of sufficient amount but not less than the annual budgetary estimate for the corresponding Contract Year in favor of the DEPARTMENT from a list of DEPARTMENT-accredited insurance or surety companies, conditioned upon the faithful performance by the RE DEVELOPER of any or all of the commitments and obligations under the Work Program until the period prior to Commercial Operation;
- i) After availing of the Income Tax Holiday (ITH), be subject to Corporate Income Tax: *Provided*, That New or Additional Investment shall be eligible for ITH;
- j) Be subject to the provisions of law of general application relating to labor, health, safety, environment and indigenous peoples rights;

TEMPLATE BREOC (Non-Existing Facility)

- k) Be responsible for procurement of installation, equipment and supplies, and for entering into subcontracts related to the Biomass Energy Systems;
  - l) Give preference to Philippine companies/agencies entering into subcontracts on goods or services that are required in the Biomass Energy Systems but are not carried out by the RE DEVELOPER: *Provided*, That the goods and services are competitive as to cost, quality and availability, and the services are available in the Philippines;
  - m) Be responsible in the proper handling of data, samples, information, reports, and other documents;
  - n) Maintain all meters and measuring equipment in good order and allow access to these to inspectors authorized by the DEPARTMENT;
  - o) Organize the Information, Education and Communication (IEC) Campaign on benefits to the Host LGUs pursuant to Section 18 of the DEPARTMENT's Department Circular No. DC2009-07-0011; and
  - p) Comply with all rules, regulations and guidelines issued by the DEPARTMENT that are applicable hereto.
- 5.3 Upon the Effective Date of this RE Contract or upon the approval of the RE DEVELOPER's Additional Investment, the DEPARTMENT shall issue a Certificate of Registration to the RE DEVELOPER, to enable it to avail of the fiscal and non-fiscal incentives and privileges as stated under the Act and its IRR. The registration shall be valid and effective for the entire term and effectivity of this RE Contract.

**SECTION VI  
REPRESENTATION AND WARRANTIES**

Acknowledging that the GOVERNMENT, through the DEPARTMENT, has entered into this RE Contract in reliance upon the representations and warranties in this Section, the RE DEVELOPER represents and warrants as follows:

- 6.1 It is a corporation or entity duly formed, established, validly existing and in good standing under the laws of the Philippines with full power to own its property; to carry on its business as it is now being conducted; and to execute, deliver and perform its obligations under this RE Contract, and the entering into and performance of this RE Contract by the RE DEVELOPER does not conflict with the articles of incorporation, by-laws, and other constitutive documents of the RE DEVELOPER and has been duly authorized by all necessary corporate and legal action on the part of the RE DEVELOPER;
- 6.2 The individual signing this RE Contract on behalf of the RE DEVELOPER is duly authorized to sign as of the Effective Date;
- 6.3 There is no litigation, arbitration or administrative proceeding is pending or, to the best knowledge of the RE DEVELOPER, threatened against the RE



TEMPLATE BREOC (Non-Existing Facility)

DEVELOPER or its properties the adverse determination of which would adversely affect the ability of the RE DEVELOPER to perform or comply with any of its obligations under this RE Contract;

6.4 The RE DEVELOPER:

- a) Has not been declared in default in respect of any of its financial commitments or obligations based on their reports duly validated by the DEPARTMENT;
- b) Is not otherwise in default of any kind in respect of any financial commitment or obligation or in respect of any agreement, undertaking or instrument as a party thereof by which it, or any of its assets or properties, may be bound; and
- c) Is not aware of a fact that by the service of notice and/or lapse of time would constitute a default in any or both of sub-paragraphs (a) and (b) above;

6.5 No written material information given by the RE DEVELOPER to the DEPARTMENT under this RE Contract contains any misstatement of fact as of the Effective Date or omits to state a fact that is materially adverse to the interests of the DEPARTMENT; and

6.6 The ownership of the RE DEVELOPER's capital stock complies with applicable laws and regulations.

**SECTION VII  
TECHNICAL DATA AND REPORTS SUBMISSION**

7.1 All technical data and reports in accordance with the Work Program, except for proprietary techniques used in developing such technical data and reports, must be submitted by the RE DEVELOPER to the DEPARTMENT in accordance with the format approved by the DEPARTMENT.

7.2 The technical data and reports to be submitted by the RE DEVELOPER shall include, but not be limited to, the following:

- a) Monthly Report – shall be submitted within fifteen (15) days from the end of each calendar month and shall contain, among others, source and volume of feedstock purchased and used, price of feedstock and total electricity generated, used and exported to the grid;
- b) Procurement Plan - shall be designed according to the approved Work Program, containing an itemized list of equipment, materials, and supplies to be procured with corresponding estimated costs. It shall be submitted not later than one (1) month from the approval of the Work Program or revision thereof, as the case maybe and
- c) Quarterly Progress Report – shall be submitted not later than one (1) month from the end of each Contract Quarter and shall contain the work and financial accomplishment under the Work Program; and

TEMPLATE BREOC (Non-Existing Facility)

- d) Other technical data and reports relevant to the Biomass Energy Operations, when necessary as determined by the DEPARTMENT.

**SECTION VIII  
CONFIDENTIALITY**

- 8.1 All documents, information, data and reports produced or generated during the Biomass Energy Operations under this RE Contract shall be kept strictly confidential over the term of this RE Contract or any extension thereof. *Provided*, That proprietary information shall be kept strictly confidential at all times subject to lawful acquisitions of such information under existing laws and regulations.
- 8.2 Without the written consent of the other Party, no Party shall use or disclose the confidential information to any third party and/or to any Affiliate not directly connected with the implementation of this RE Contract except the third parties and Affiliates in Section 8.5, and no Party shall otherwise transfer, present, sell or publish it in any way within the confidentiality periods.
- 8.3 The DEPARTMENT may use such confidential information belonging to the RE DEVELOPER for the DEPARTMENT's resource mapping, data gathering, policy making and for government planning purposes.
- 8.4 Upon the Expiration or Termination of this RE Contract, the DEPARTMENT may provide third parties with the data and reports submitted by the RE DEVELOPER pursuant to this Section: *Provided*, That the same are not proprietary in nature.
- 8.5 Contrary stipulations notwithstanding, the RE DEVELOPER may furnish the information to the following third parties, subsidiaries, and Affiliates, such as, but not limited to:
- a) Banks or other credit institutions from which finance is sought by the RE DEVELOPER;
  - b) Third parties, subsidiaries and Affiliates that provide services for the Biomass Energy Operations, including Subcontractors and other service contractors;
  - c) Prospective assignee/s to whom rights and obligations under this RE Contract are intended to be assigned;
  - d) Prospective investor/s or entities with whom the RE DEVELOPER intends to enter into joint venture or other similar agreements for the Project;
  - e) Governments and stock/commodity exchanges in accordance with the laws, regulations, or rules of the relevant country or stock/commodity exchange; and

TEMPLATE BREOC (Non-Existing Facility)

- f) Government authorities, entities and judicial courts if required by law, regulation, directive, or order to disclose.
- 8.6 The information shall be revealed to those persons allowed under this RE Contract only if and to the extent necessary and desirable for the purpose intended. Each Party shall ensure that each such person to whom information is disclosed is informed of the confidential nature of the information and the purpose for which it may be used and that each such person is bound by this Section.
- 8.7 The RE DEVELOPER and its Affiliates or the DEPARTMENT, its officers, employees, consultants and other duly authorized representatives shall not make any public statement or announcement of any information produced, generated or acquired in the course of the Biomass Energy Operations, without prior written consent of the other Party.

**SECTION IX  
PERFORMANCE BOND**

- 9.1 The initial amount of the bond or other guarantee as specified in sub-section 5.2(h) shall not be less than the annual financial commitment/budgetary estimate for the first Contract Year based on the Work Program. The performance bond shall be required until written notice by the RE DEVELOPER to the DEPARTMENT that construction of the Biomass Energy System has been completed.
- 9.2 The amount of performance bond or other guarantee may be adjusted, subject to the following conditions:
  - a. In the event that the RE DEVELOPER has fully expended its budgetary estimate under the Work Program as applicable but has not fully performed its work obligations, the amount of bond or other guarantee shall be equal to the succeeding Contract Year's budgetary estimate under the revised Work Program as applicable; and
  - b. Such other conditions or circumstances as would reasonably warrant the modification of the amount of the performance bond or other guarantee.
- 9.3 If the RE DEVELOPER, through its own fault, fails to observe or perform its work obligations under the Work Program, the DEPARTMENT, upon prior written notice, may proceed against the bond or other guarantee; *Provided* That, should the work obligations under the Work Program be fulfilled, and through the efficiency of the RE DEVELOPER, the corresponding actual expenditures thereon are lower than the estimated expenditures stated in the Work Program, the same shall be considered as full compliance of the work obligations.
- 9.4 The DEPARTMENT shall release the performance bond or other guarantee not later than thirty (30) days from the date of confirmation by the DEPARTMENT on the start of the Commercial Operations.

## SECTION X SUSPENSION AND TERMINATION

- 10.1 Subject to Section 10.3 and 10.4 below, this RE Contract shall be automatically terminated without prejudice on the part of the DEPARTMENT to proceed against any outstanding liability of the RE DEVELOPER on its obligations upon Expiration of this RE Contract and any extension thereof.
- 10.2 The DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:
- a) Non-compliance with the material terms and conditions of this RE Contract;
  - b) Violation of the Renewable Portfolio Standards Rules, as defined in the Act and its IRR, and relevant Department Circulars;
  - c) Non-compliance with the approved Work Program and any other material obligations herein;
  - d) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
  - e) Non-observance of environmental regulations imposed by the DENR during construction and operation;
  - f) Tampering with or plagiarizing of technical design, feasibility study, generation and operation reports;
  - g) Non-payment of the financial obligations agreed upon under this RE Contract;
  - h) Non-posting of performance bond or other guarantee within the period/s provided under Section IX (Performance Bond)
  - i) Failure to comply with material reportorial obligations under this RE Contract; and
  - j) Any representation or warranty made by the RE DEVELOPER under Section VI (Representations and Warranties) which shall prove to have been incorrect in any material respect when made.
- 10.3 The RE DEVELOPER shall have sixty (60) days from written notice from the DEPARTMENT of any of the foregoing to cure the default. Failure of the RE DEVELOPER to cure the default at the end of the sixty (60)-day period shall result in the automatic Termination of this RE Contract: *Provided, however,* That in case the ground for the Termination is non-compliance with the approved Work Program for reasons not attributable to Force Majeure, the Termination shall not be subject to curing period and shall be effective immediately as indicated in the notice duly issued by the Department: *Provided further,* That non-compliance of the approved Work Program during the Pre-Development Stage shall be determined on the basis of the following:

TEMPLATE BREOC (Non-Existing Facility)

- i. Failure of the RE DEVELOPER to comply with its first Milestone under the approved Work Program; and
- ii. Failure of the RE DEVELOPER to disburse the cost equivalent of at least eighty per cent (80%) of the total financial cost of its first Milestone which is set by the DEPARTMENT at Seven Million Pesos (Php7,000,000) per megawatt.

*Provided finally*, That during the Development Stage, non-compliance with the Milestone under the approved Work Plan and failure to disburse the cost equivalent of One Hundred Million Pesos (Php 100,000,000) per megawatt shall result in the Termination of this RE Contract or give rise to the right of the DEPARTMENT for recourse on the Performance Bond.

- 10.4 Notwithstanding to the foregoing, the RE Contract shall be terminated without prejudice to the RE Developer's obligation under its Abandonment and Termination Plan as approved by the DEPARTMENT.

### **SECTION XI DISPUTES AND ARBITRATION**

- 11.1 Any dispute, controversy or claim arising out of or relating to this RE Contract, except Section 10.2 (a) hereof on Milestone activities shall be settled amicably within a period of sixty (60) days after receipt by one Party of a notice from the other Party of the existence of the dispute.
- 11.2 If the dispute cannot be settled amicably within the sixty (60)-day period, the Parties shall, with respect to disputes arising out of or in connection with Section IV (Work Program and Estimated Expenditures) hereof, refer the dispute to an independent expert for resolution in the manner provided below; *Provided*, That any Party, in its sole discretion, may require the dispute be referred to arbitration under Section 11.3 hereof.
- 11.3 The following shall govern the rules of referral to an independent expert:
- a) After the sixty (60)-day period in Section 11.1 has passed, any Party may give notice to the other Party of its intention to refer the dispute to an expert in accordance with the provisions of this RE Contract;
  - b) The respondent shall, within twenty-one (21) days after receipt of the notice of intention to refer, serve on the applicant a notice of its intention to defend;
  - c) If within fourteen (14) days after the applicant's receipt of the respondent's notice of intention to defend, the Parties have agreed on an expert and on the terms under which the dispute shall be referred, the dispute shall be so referred. In the event that within such fourteen (14)-day period, the Parties are unable to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request the International Chamber of Commerce (ICC) International Centre for Expertise to appoint an expert, and the matters to be determined by such expert shall be those set out in the notice of intention to refer and the notice of intention to defend;

TEMPLATE BREOC (Non-Existing Facility)

- d) Unless the Parties agree otherwise, any expert proceedings under this Section shall be required to follow the ICC Rules for Expertise in force as of Effective Date;
  - e) The language of the expert proceedings and the expert's determinations shall be in English;
  - f) The Parties hereby agree to be bound by, to perform this RE Contract in accordance with, and to implement, as the case may be, the determination of the expert. Failure by one Party to so act shall constitute a breach of this RE Contract and shall be submitted to arbitration in accordance with Section 11.3 as the sole means of enforcing the determination; and
  - g) Each Party shall bear the costs and expenses of all lawyers, advisors, witnesses and employees retained by it in connection with the expert proceedings; Provided, *however*, that in circumstances where the *expert* determines that a matter referred to him was not subject to a bona fide dispute, the costs and expenses incurred by the prevailing Party and the expert in connection with such matter shall be paid by the non-prevailing Party.
- 11.4 If the dispute cannot be settled within sixty (60) days by mutual discussions as contemplated in Section 11.1, and referral to an expert is neither prescribed nor elected by the Parties with respect to any technical dispute, upon written demand of either Party, the dispute shall finally be settled by an arbitral tribunal (the "Tribunal") governed by and conducted in accordance with the ICC Rules of Arbitration (the "Rules") in force as of Effective Date (or such Rules as may be in force at the time such arbitration is commenced), as follows:
- a) The RE DEVELOPER will nominate one (1) arbitrator and the DEPARTMENT will nominate one (1) arbitrator within thirty (30) days from the date of a request by either Party to initiate arbitration. The two Party-nominated arbitrators will then jointly nominate a third arbitrator within thirty (30) days from the date of the appointment of the second arbitrator, to act as Chairman of the Tribunal. Arbitrators not nominated within the time limits set forth in the preceding sentence shall be appointed by the ICC Court of International Arbitration;
  - b) Unless otherwise agreed by the Parties, the venue of the arbitration shall be in Metro Manila, Philippines;
  - c) The language of the arbitration and award shall be in English;
  - d) The Tribunal shall not be authorized to impose, and either Party shall not be authorized to seek from any judicial authority, any requirement that the Party posts security for the costs of the other Party; and
  - e) The decision of the Tribunal shall be final and binding upon the Parties. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for

TEMPLATE BREOC (Non-Existing Facility)

a judicial acceptance of the award and an order of enforcement, as the case may be.

- 11.5 The right to arbitrate disputes under this RE Contract shall survive the Expiration or Termination of this RE Contract.

**SECTION XII  
EMPLOYMENT, TRAINING AND DEVELOPMENT PROGRAMS**

- 12.1 The RE DEVELOPER agrees to give preference in employment to qualified Filipino Employees who are residents of the Host LGUs and will undertake the development and training of Filipino Employees for labor and staff positions, including administrative, technical, and executive management positions.
- 12.2 The RE DEVELOPER shall provide annual assistance for training programs, conference, seminars and other similar activities for the DEPARTMENT's personnel in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_) per Contract Year and shall be accumulated for the succeeding Contract Years if not availed of in a given Contract Year. The RE DEVELOPER shall pay the unutilized amount of the training commitment prior to the Expiration or Termination of this RE Contract.
- 12.3 The RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_).
- 12.4 The RE DEVELOPER shall undertake corporate social responsibility projects in Host LGU with focus in education and training of qualified and deserving beneficiaries, as determined by the RE DEVELOPER.
- 12.5 Upon execution of this RE Contract, the RE DEVELOPER shall pay the DEPARTMENT a signing fee in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_).

**SECTION XIII  
MISCELLANEOUS PROVISIONS**

13.1 NOTICES

Any notice required or given by either Party to the other Party shall be in writing and shall be effective when a copy thereof is handed to or served upon the Party's duly designated representative or the person in charge of the office or place of business, or when sent by registered mail, notice shall be effective upon actual receipt by the addressee, but if he fails to claim his mail from the post office within five (5) days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time. All such notices shall be addressed:

TEMPLATE BREOC (Non-Existing Facility)

To the DEPARTMENT:

The Secretary  
Department of Energy  
Energy Center, Rizal Drive, Bonifacio Global City  
Taguig City, Metro Manila, Philippines

To the RE DEVELOPER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any Party may substitute or change such address with prior written notice thereof to the other Party.

13.2 GOVERNING LAW

The laws of the Republic of the Philippines shall apply to this RE Contract.

13.3 ASSIGNMENT

- a) This RE Contract cannot be assigned without the prior written approval of the Parties.
- b) The RE DEVELOPER may assign or transfer part or all of its rights and/or obligations under this RE Contract to its Affiliate upon compliance with the following provisions:
  - i. The RE DEVELOPER shall submit to the DEPARTMENT copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned; and,
  - ii. The RE DEVELOPER shall guarantee in writing to the DEPARTMENT its performance of the assigned obligations.
- c) Pursuant to the foregoing Sub-section, this RE Contract shall not be assigned to any third party, unless such third party is qualified in accordance with the Act and its IRR.
- d) The RE DEVELOPER may authorize its subsidiaries, branches or regional corporations to implement this RE Contract, but the RE DEVELOPER shall remain responsible for the performance of this RE Contract.
- e) No assignment shall be granted if the RE DEVELOPER is in default of its Work Program or any of its obligations under the RE Contract and other RE agreements with the DEPARTMENT.



TEMPLATE BREOC (Non-Existing Facility)

13.4 SUSPENSION OF OBLIGATIONS

- a) Any failure or delay on the part of either Party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure.
- b) If the Biomass Energy Operations are curtailed or prevented by such causes, then the time for enjoying the rights and carrying out the obligations thereby affected, and all rights and obligations hereunder shall be extended for a period equal to the period of delay, curtailment or prevention: *Provided, however,* That if operations are delayed, curtailed or prevented by Force Majeure for a continuous period of twelve (12) months, this RE Contract may thereafter be terminated, at the option of the RE DEVELOPER, at anytime that the Force Majeure condition still exists, subject to confirmation of the DEPARTMENT.
- c) The Party whose ability to perform its obligations is so affected shall notify the other Party thereof in writing stating the cause and such affected Party shall do all reasonably within its power to remove such cause.

13.5 AMENDMENTS

The RE Contract shall not be amended or modified in any respect except by the mutual consent in writing of the Parties.

13.6 HEALTH, SAFETY, AND ENVIRONMENT PROTECTION

- a) In the performance of this RE Contract, the RE DEVELOPER shall: (1) be subject to the laws, rules and regulations on environmental protection, indigenous people rights, health and safety promulgated by the GOVERNMENT; (2) endeavor to make its best efforts to prevent pollution and damage to the atmosphere, oceans, rivers, lakes, harbors and land; and (3) ensure the safety and health of its operating personnel.
- b) When the GOVERNMENT assigns any person to inspect for environmental protection, health and safety compliance of the RE DEVELOPER, the RE DEVELOPER shall provide such reasonable facilities and assistance as are applicable to ensure appropriate inspection by the GOVERNMENT. The RE DEVELOPER shall be given reasonable notice such inspections.

13.7 SEPARABILITY CLAUSE

Should any provision of this RE Contract or the application thereof to any situation or circumstance be declared null and void and/or invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof which shall remain valid and enforceable to the fullest extent. In the event of such partial invalidity or unenforceability, the Parties shall seek in good faith to agree on replacing the invalid or unenforceable provisions with a provision that in effect will most nearly and

TEMPLATE BREOC (Non-Existing Facility)

fairly approximate the effect of the invalid or unenforceable provision through the issuance of appropriate supplemental contract/s or agreement/s.

**IN WITNESS WHEREOF**, the Parties have caused this RE Contract to be executed by their respective representatives at the place and on the date above written.

**DEPARTMENT OF ENERGY**

**RE DEVELOPER**

By:

By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
**Name**  
Designation

\_\_\_\_\_  
(Name and Position)  
Witness

\_\_\_\_\_  
(Name and Position)  
Witness

TEMPLATE BREOC (Non-Existing Facility)

**ACKNOWLEDGMENT**

**REPUBLIC OF THE PHILIPPINES**     )  
\_\_\_\_\_                                     ) **S.S.**

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

<b>Name</b>	<b>Competent Evidence of Identity</b>	<b>Date and Place of Issuance</b>

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This RE Contract consisting of twenty one (21) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Parties and his instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_;

Page No. \_\_\_\_\_;

Book No. \_\_\_\_\_;

Series of 20 \_\_\_\_\_.

**ACKNOWLEDGMENT**

**REPUBLIC OF THE PHILIPPINES**     )  
\_\_\_\_\_                                     ) S.S.

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

Name	Competent Evidence of Identity	Date and Place of issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the corporation herein represented.

This RE Contract consisting of twenty one (21) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Parties and his instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_;

Page No. \_\_\_\_\_;

Book No. \_\_\_\_\_;

Series of 20 \_\_\_\_\_.

TEMPLATE BREOC (Non-Existing Facility)

**ANNEX "A"**  
**PROJECT SITE**

TEMPLATE BREOC (Non-Existing Facility)

**ANNEX "B"**  
**WORK PROGRAM AND BUDGET**

<b>Timeframe</b>	<b>Work to be Performed</b>	<b>Estimated Cost</b>
Contract Year 1		
Contract Year 2		
Contract Year 3		
<b>Total</b>		<b>P</b>

TEMPLATE BREOC (Existing Facility)

**REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF ENERGY**

**BIOMASS RENEWABLE ENERGY OPERATING CONTRACT  
(BREOC No. \_\_\_\_\_)**

This **BIOMASS RE OPERATING CONTRACT** (this "**RE Contract**"), made and entered into this \_\_\_\_\_ in Bonifacio Global City, Taguig City by and between:

The **REPUBLIC OF THE PHILIPPINES**, hereinafter referred to as the "**GOVERNMENT**", through the "**Department of Energy**", hereinafter referred to as the "**DEPARTMENT**", a government agency established pursuant to Republic Act No. 7638, as amended, with principal office address at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its Secretary, **HON.** \_\_\_\_\_;

-and-

\_\_\_\_\_, hereinafter referred to as the "**RE DEVELOPER**," a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at \_\_\_\_\_ represented herein by its \_\_\_\_\_;

Each of the **DEPARTMENT** and the **RE DEVELOPER** is referred to as a "Party", and collectively as the "**Parties**". In the implementation of this **RE Contract**, the **GOVERNMENT** shall act through and be represented by the **DEPARTMENT**.

**WITNESSETH:**

**WHEREAS**, all forces of potential energy in public and/or private lands, within the Philippine territory, belong to the State and their exploration, development and utilization are governed by Section 2, Article XII of the 1987 Constitution;

**WHEREAS**, under Republic Act No. 7638, as amended otherwise known as the Department of Energy Act of 1992, the **DEPARTMENT** shall establish and administer programs for the exploration, development and utilization of energy resources, including Biomass Resources;

**WHEREAS**, Republic Act No. 9513, otherwise known as "An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and For Other Purposes" (the "Act"), declares as a policy of the State to accelerate the exploration and development of renewable energy (RE) resources including, among others, biomass, to achieve energy self-reliance through the adoption of sustainable energy development strategies;

TEMPLATE BREOC (Existing Facility)

**WHEREAS**, Section 5 of the Act declares that the **DEPARTMENT** shall be the lead agency mandated to implement its provisions;

**WHEREAS**, Section 19, Rule 6, paragraph C of the Rules and Regulations Implementing Republic Act No. 9513 (the "IRR") provides that the biomass sector shall be covered by an RE Operating Contract wherein the biomass developer commits to develop, construct, install, commission and operate an RE generating facility subject to the terms and conditions specified therein;

**WHEREAS**, the **RE DEVELOPER** intends to engage in the development and utilization of biomass within the Project Site and agrees to be subject to the laws and decrees of the **GOVERNMENT** and other rules and regulations of the **DEPARTMENT** in the implementation of this RE Contract;

**WHEREAS**, the **RE DEVELOPER** has been evaluated and recommended by the duly constituted RE Contract Review Committee per Resolution No. \_\_\_\_, series of 20\_\_\_\_, and duly confirmed by the Secretary to be legally, technically, and financially qualified to enter into this **RE Contract**;

**NOW, THEREFORE**, for and in consideration of the terms and conditions set forth herein, the Parties hereby stipulate and agree as follows:

## SECTION I SCOPE

- 1.1 This RE Contract is entered into pursuant to the Act, with the services, technology and financing to be furnished by the RE Developer for the operation of a Biomass Energy System, in an economically viable manner and in accordance with this RE Contract.
- 1.2 The provisions of this RE Contract shall govern the development, construction, installation, commissioning and operation of a Biomass Energy System located in \_\_\_\_\_ (Address/Location of Plant) that will generate electrical power from (Type of Technology) System using (Type of Feedstock).
- 1.3 The Biomass Energy System shall have the capacity to generate \_\_\_\_\_ MW of electrical power. Out of the total capacity, \_\_\_\_\_ MW shall be for own-use by the Biomass Energy System, while the excess capacity of \_\_\_\_\_ MW shall be sold to any end-user.
- 1.4 The RE DEVELOPER may pursue any Additional Investment or New Investment within the Project Site and shall be solely responsible for providing the necessary services, technology, equipment and financing therefor. In case of New Investment, the Parties shall enter into a new Renewable Energy (RE) Operating Contract at the option of the RE DEVELOPER, subject to approval of the DEPARTMENT.
- 1.5 The RE DEVELOPER shall assume all the technical and financial risks under this RE Contract without any guarantee from the GOVERNMENT and shall not be entitled to reimbursement for any expense incurred in connection with this RE Contract.



## SECTION II DEFINITION OF TERMS

- 2.1 The words and terms under this RE Contract, unless otherwise specified in the Act and its IRR or in relevant laws and regulations, shall have the meaning in accordance with the following definitions:
- a) **“Abandonment and Termination Plan”** refers to the plan prepared by the RE DEVELOPER submitted within three (3) months from Effective Date of this RE Contract and approved by the Department of Environment and Natural Resources (DENR) and the DEPARTMENT for the decommissioning, abandonment and surface restoration or rehabilitation of the site of power plant and/or biomass facilities, and such abandonment work plan may be amended, supplemented or modified by the Parties from time to time;
  - b) **“Additional Investment”** refers to investments relating to improvements, modernization, rehabilitation, or expansion duly registered with the DEPARTMENT, subject to the conditions to be determined by the DEPARTMENT, such as, but not limited to the following:
    - i. Identification of and investment in sequential phases/stages of production, or undertaking scheduled modernization and/or rehabilitation of the Biomass Energy System; and
    - ii. Improvements to the Biomass Energy System such as reduced production/operational costs, increased production, improved operational efficiency, and better reliability of the Project;
  - c) **“Affiliate”** refers to any person or group of persons, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the RE DEVELOPER. As used herein, “control” shall mean the power to direct or cause the direction of the management's policies of a person by contract, agency or otherwise;
  - d) **“Biomass Energy Operations”** shall include Biomass Resource development, production and utilization, including the construction, installation, operation and maintenance of Biomass Energy Systems;
  - e) **“Biomass Energy Systems”** refers to energy systems which use biomass resources to produce heat, steam, mechanical power or electricity through either thermochemical, biochemical or physio-chemical processes, or through such other technologies which shall comply with prescribed environmental standards pursuant to the Act;
  - f) **“Biomass Resource”** shall have the same meaning as ascribed to in the Act;

TEMPLATE BREOC (Existing Facility)

- g) **“Certificate of Confirmation of Commerciality”** refers to the certification issued by the DEPARTMENT confirming the declaration made by the RE DEVELOPER that the Project is commercially feasible;
- h) **“Certificate of Registration”** refers to that certification issued to the RE DEVELOPER upon the Effective Date of this RE Contract and upon approval of Additional Investment, to serve as the basis for its entitlement to the incentives provided under the Act;
- i) **“Commercial Operation”** refers to the stage when the RE DEVELOPER has completed its commissioning and test operations and is ready to sell or apply its produced biomass power, as duly confirmed by the DEPARTMENT;
- j) **“Commercial Quantities”** refers to quantities of electricity to be generated from the Geothermal Resources, providing, or capable of providing, revenue from sales of electricity by a margin sufficient to cause a reasonably prudent person employing standard industry practices as to Biomass Resources and using commercially available technology to develop the Biomass Energy Systems;
- k) **“Contract Year”** refers to a period of twelve (12) consecutive calendar months counted from the Effective Date of this RE Contract and thereafter, from the anniversary of such Effective Date: *Provided, however,* That the last Contract Year shall end on the date of Expiration or Termination of this RE Contract;
- l) **“Corporate Income Tax”** refers to the tax imposed upon net taxable income under the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337 and the Act. After availing of the Income Tax Holiday (ITH) under the Act, the RE DEVELOPER shall be subject to a Corporate Income Tax rate of ten percent (10%);
- m) **“Declaration of Commerciality”** refers to a written declaration by the RE DEVELOPER stating that the electricity to be generated from the Biomass Energy System is in Commercial Quantities;
- n) **“Effective Date”** refers to the date of the execution of this RE Contract;
- o) **“Expatriate Employee”** refers to a foreign national engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Biomass Energy Operations, who shall exercise his technical profession, as allowed under existing laws;
- p) **“Expiration”** refers to the lapse of the term of this RE Contract provided in Section III (Term) hereof;
- q) **“Filipino Employee”** refers to any citizen of the Republic of the Philippines employed and/or engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Biomass Power Operations under this RE Contract;

TEMPLATE BREOC (Existing Facility)

- r) **"Fiscal Year"** refers to a period of twelve (12) consecutive months;
- s) **"Force Majeure"** refers to the extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable;
- t) **"Generation Facility"** refers to a facility for the production of electricity and/or thermal energy such as, but not limited to steam and hot water;
- u) **"Host LGU"** refers to the LGU where the Generation Facility is located;
- v) **"Local Government Unit/LGU,"** refers to the territorial and political subdivisions of the State which organization and function are fully described under the Local Government Code of 1991;
- w) **"New Investment"** refers to investments relating to discovery, exploration, development and/or utilization of new RE resources or the development of new Generation Facilities within the Project Site distinct from the originally registered operations having separate books of accounts;
- x) **"Project"** refers to the RE DEVELOPER's Biomass Energy Systems, within the Project Site, which may be implemented in one or more phases;
- y) **"Project Site"** refers to the area where the Biomass Energy Systems is located as described in Annex "A";
- z) **"RE Contract"** refers to this Biomass RE Operating Contract, as may be amended or extended by the Parties and shall have the same meaning as provided under the Act;
- aa) **"Subcontractor"** refers to any person or entity contracted by the RE DEVELOPER to provide goods or services for the purpose of this RE Contract, subject to the provisions of existing laws;
- bb) **"Termination"** refers to the right of the Parties to cancel this RE Contract pursuant to Section X (Suspension and Termination) hereof; and
- cc) **"Work Plan"** refers to the plan and activities prepared by the RE DEVELOPER during the commercial operation phase with the corresponding budgetary estimate;

**SECTION III**  
**TERM**

- 3.1 From the Effective Date, the term of this RE Contract shall be twenty-five (25) years; *Provided*, That the failure to accomplish the Work Plan, shall result in the expiration of the RE Contract. *Provided further*, That at the

TEMPLATE BREOC (Existing Facility)

option of the RE DEVELOPER, by written notice to the DEPARTMENT not later than one (1) year prior to the expiration of the initial twenty-five (25)-year period, and so long as the RE DEVELOPER is not in default of any material obligations under this RE Contract, the DEPARTMENT may approve the extension of this RE Contract for another twenty-five (25) years, subject to the terms and conditions to be mutually agreed upon by the Parties.

- 3.2 Within that period, the RE DEVELOPER shall develop, construct, install, commission and operate the Biomass Energy System in the Project Site in accordance with the provisions on the Work Plan.

**SECTION IV  
WORK PLAN  
AND ESTIMATED EXPENDITURES**

- 4.1 The RE DEVELOPER shall carry out the Work Plan for three (3) years and its corresponding budget, details of which are particularly described in Annex "B".
- 4.2 The RE DEVELOPER shall submit a Work Plan for the next five (5) years and shall do so every next five (5) years thereafter. The Work Plan shall be deemed approved upon expiration of sixty (60) days after receipt thereof in the absence of any written objection from the DEPARTMENT.

**SECTION V  
RIGHTS AND OBLIGATIONS**

- 5.1 RE DEVELOPER shall have the following rights:
- a) To be granted fiscal and non-fiscal incentives and privileges under the Act, the IRR and all other existing laws that are not otherwise modified or repealed by the Act;
  - b. To receive assistance from the DEPARTMENT in indorsing the Projects to the National Government, LGUs, Board of Investments (BOI) and other entities, for the acquisition of permits, licenses and clearances and availment of applicable fiscal and non-fiscal incentives;
  - c. Have at all times the right of ingress to and egress from the Project Site to and from facilities wherever located;
  - d. Acquire rights-of-way and similar rights on, over, under, across and through the Project Site or properties adjacent to the Project Site, which constitute or is reasonably expected to constitute the Project Site as the RE DEVELOPER may reasonably deem necessary.

The DEPARTMENT shall, upon request by the RE DEVELOPER as may be reasonable given the attendant circumstances, assist the RE DEVELOPER in securing such rights. For such purpose, the DEPARTMENT shall and does hereby appoint the RE DEVELOPER as its attorney-in-fact and does hereby give and grant to the RE

TEMPLATE BREOC (Existing Facility)

DEVELOPER full authority to act for and on its behalf in the negotiation and conclusion of agreements and payments for such rights. All obligations, payments and expenses arising from or incidental to the acquisition of such rights shall be for the account of the RE DEVELOPER so as to enable the RE DEVELOPER to have ingress into and egress from the Project Site and to perform all Biomass Energy Operations in accordance with this RE Contract and in consideration of which, entitlement to such rights shall be held in trust in favor of the RE DEVELOPER.

The DEPARTMENT undertakes to provide further assistance to the RE DEVELOPER, including the exercise of the power of eminent domain if necessary, to secure such necessary or proper rights at such cost for the account of the RE DEVELOPER, if the RE DEVELOPER is unable to secure such rights at commercially reasonable costs through negotiations or if the same is the most expedient course of action to support the timely execution of Biomass Energy Systems.

- e. Allow, in accordance with existing laws, entry into the Philippines and employment by the RE DEVELOPER of Expatriate Employees who shall exercise their technical professions solely for the Biomass Energy Systems: *Provided That*, Filipino Employees shall be given preference to positions for which they have adequate training and experience required by the RE DEVELOPER; and *Provided further*, That if the employment or connection of such Expatriate Employee with the RE DEVELOPER ceases, applicable laws and regulations shall apply to him and his immediate family;

5.2 The RE DEVELOPER shall have the following obligations:

- a) Secure any necessary permits and clearances from all relevant government entities for the Project;
- b) Comply with all its work and financial commitments in carrying out its obligations under this RE Contract and provide all necessary services, technology and financing in connection therewith. The RE DEVELOPER may revise the Work Plan as prescribed in Section 4.3;
- c) Pay the taxes due to the GOVERNMENT, as may be applicable;
- d) Maintain complete and accurate accounting, financial and technical records of its Biomass Energy Systems, subject to Sections VII (Technical Data and Reports Submission) and VIII (Confidentiality);
- e) Submit technical and financial reports in accordance with the format prescribed by the DEPARTMENT within the period prescribed as described in Section VII (Technical Data and Reports Submission);
- f) Allow officials and representatives authorized by the DEPARTMENT access to the Contract Area, and to the accounts, books and records directly relating to the Biomass Energy Operations during reasonable

TEMPLATE BREOC (Existing Facility)

- hours and without causing disruption, subject to fifteen (15) calendar days prior written notice to the RE DEVELOPER;
- g) Give priority in employment to qualified personnel in the Host LGUs and give preference to Filipinos in all types of employment for which they are qualified;
  - h) After availing of the Income Tax Holiday (ITH), be subject to Corporate Income Tax: *Provided*, That New or Additional Investment shall be eligible for ITH;
  - i) Be subject to the provisions of law of general application relating to labor, health, safety, environment and indigenous peoples rights;
  - j) Be responsible for procurement of installation, equipment and supplies, and for entering into subcontracts related to the Biomass Energy Systems;
  - k) Give preference to Philippine companies/agencies entering into subcontracts on goods or services that are required in the Biomass Energy Systems but are not carried out by the RE DEVELOPER: *Provided*, That the goods and services are competitive as to cost, quality and availability, and the services are available in the Philippines;
  - l) Be responsible in the proper handling of data, samples, information, reports, and other documents;
  - m) Maintain all meters and measuring equipment in good order and allow access to these to inspectors authorized by the DEPARTMENT;
  - n) Organize the Information, Education and Communication (IEC) Campaign on benefits to the Host LGUs pursuant to Section 18 of the DEPARTMENT's Department Circular No. DC2009-07-0011; and
  - o) Comply with all rules, regulations and guidelines issued by the DEPARTMENT that are applicable hereto.
- 5.3 Upon the Effective Date of this RE Contract or upon the approval of the RE DEVELOPER's Additional Investment, the DEPARTMENT shall issue a Certificate of Registration to the RE DEVELOPER, to enable it to avail of the fiscal and non-fiscal incentives and privileges as stated under the Act and its IRR. The registration shall be valid and effective for the entire term and effectivity of this RE Contract.

## SECTION VI REPRESENTATION AND WARRANTIES

Acknowledging that the GOVERNMENT, through the DEPARTMENT, has entered into this RE Contract in reliance upon the representations and warranties in this Section, the RE DEVELOPER represents and warrants as follows:

- 6.1 It is a corporation or entity duly formed, established, validly existing and in

TEMPLATE BREOC (Existing Facility)

good standing under the laws of the Philippines with full power to own its property; to carry on its business as it is now being conducted; and to execute, deliver and perform its obligations under this RE Contract, and the entering into and performance of this RE Contract by the RE DEVELOPER does not conflict with the articles of incorporation, by-laws, and other constitutive documents of the RE DEVELOPER and has been duly authorized by all necessary corporate and legal action on the part of the RE DEVELOPER;

- 6.2 The individual signing this RE Contract on behalf of the RE DEVELOPER is duly authorized to sign as of the Effective Date;
- 6.3 There is no litigation, arbitration or administrative proceeding is pending or, to the best knowledge of the RE DEVELOPER, threatened against the RE DEVELOPER or its properties the adverse determination of which would adversely affect the ability of the RE DEVELOPER to perform or comply with any of its obligations under this RE Contract;
- 6.4 The RE DEVELOPER:
- a) Has not been declared in default in respect of any of its financial commitments or obligations based on their reports duly validated by the DEPARTMENT;
  - b) Is not otherwise in default of any kind in respect of any financial commitment or obligation or in respect of any agreement, undertaking or instrument as a party thereof by which it, or any of its assets or properties, may be bound; and
  - c) Is not aware of a fact that by the service of notice and/or lapse of time would constitute a default in any or both of sub-paragraphs (a) and (b) above.
- 6.5 No written material information given by the RE DEVELOPER to the DEPARTMENT under this RE Contract contains any misstatement of fact as of the Effective Date or omits to state a fact that is materially adverse to the interests of the DEPARTMENT; and
- 6.6 The ownership of the RE DEVELOPER's capital stock complies with applicable laws and regulations.

**SECTION VII  
TECHNICAL DATA AND REPORTS SUBMISSION**

- 7.1 All technical data and reports in accordance with the Work Plan, except for proprietary techniques used in developing such technical data and reports, must be submitted by the RE DEVELOPER to the DEPARTMENT in accordance with the format approved by the DEPARTMENT. The technical data and reports to be submitted by the RE DEVELOPER shall include, but not be limited to, the following:
- a) Monthly Report – shall be submitted within fifteen (15) days from the end of each calendar month and shall contain, among others, source

TEMPLATE BREOC (Existing Facility)

and volume of feedstock purchased and used, price of feedstock and total electricity generated, used and exported to the grid;

- b) Procurement Plan - shall be designed according to the approved Work Plan, containing an itemized list of equipment, materials, and supplies to be procured with corresponding estimated costs. It shall be submitted not later than one (1) month from the approval of the Work Plan or revision thereof, as the case maybe; and
- c) Other technical data and reports relevant to the Biomass Energy Operations, when necessary as determined by the DEPARTMENT.

### SECTION VIII CONFIDENTIALITY

- 8.1 All documents, information, data and reports produced or generated during the Biomass Energy Operations under this RE Contract shall be kept strictly confidential over the term of this RE Contract or any extension thereof: *Provided*, That proprietary information shall be kept strictly confidential at all times subject to lawful acquisitions of such information under existing laws and regulations.
- 8.2 Without the written consent of the other Party, no Party shall use or disclose the confidential information to any third party and/or to any Affiliate not directly connected with the implementation of this RE Contract except the third parties and Affiliates in Section 8.5, and no Party shall otherwise transfer, present, sell or publish it in any way within the confidentiality periods.
- 8.3 The DEPARTMENT may use such confidential information belonging to the RE DEVELOPER for the DEPARTMENT's resource mapping, data gathering, policy making and for government planning purposes.
- 8.4 Upon the Expiration or Termination of this RE Contract, the DEPARTMENT may provide third parties with the data and reports submitted by the RE DEVELOPER pursuant to this Section: *Provided*, That the same are not proprietary in nature.
- 8.5 Contrary stipulations notwithstanding, the RE DEVELOPER may furnish the information to the following third parties, subsidiaries, and Affiliates, such as, but not limited to:
  - a) Banks or other credit institutions from which finance is sought by the RE DEVELOPER;
  - b) Third parties, subsidiaries and Affiliates that provide services for the Biomass Energy Operations, including Subcontractors and other service contractors;
  - c) Prospective assignee/s to whom rights and obligations under this RE Contract are intended to be assigned;



TEMPLATE BREOC (Existing Facility)

- d) Prospective investor/s or entities with whom the RE DEVELOPER intends to enter into joint venture or other similar agreements for the Project;
  - e) Governments and stock/commodity exchanges in accordance with the laws, regulations, or rules of the relevant country or stock/commodity exchange; and
  - f) Government authorities, entities and judicial courts if required by law, regulation, directive, or order to disclose.
- 8.6 The information shall be revealed to those persons allowed under this RE Contract only if and to the extent necessary and desirable for the purpose intended. Each Party shall ensure that each such person to whom information is disclosed is informed of the confidential nature of the information and the purpose for which it may be used and that each such person is bound by this Section.
- 8.7 The RE DEVELOPER and its Affiliates or the DEPARTMENT, its officers, employees, consultants and other duly authorized representatives shall not make any public statement or announcement of any information produced, generated or acquired in the course of the Biomass Energy Operations, without prior written consent of the other Party.

**SECTION IX  
SUSPENSION AND TERMINATION**

- 9.1 Subject to Section 9.3 and 9.4 below, this RE Contract shall be automatically terminated without prejudice on the part of the DEPARTMENT to proceed against any outstanding liability of the RE DEVELOPER on its obligations upon Expiration of this RE Contract and any extension thereof.
- 9.2 The DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:
- a) Non-compliance with the material terms and conditions of this RE Contract;
  - b) Violation of the Renewable Portfolio Standards Rules, as defined in the Act and its IRR, and relevant Department Circulars;
  - c) Non-compliance with the approved Work Plan and any other material obligations herein;
  - d) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
  - e) Non-observance of environmental regulations imposed by the DENR during construction and operation;
  - f) Tampering with or plagiarizing of technical design, feasibility study,

TEMPLATE BREOC (Existing Facility)

- generation and operation reports;
- g) Non-payment of the financial obligations agreed upon under this RE Contract;
  - h) Failure to comply with material reportorial obligations under this RE Contract; and
  - i) Any representation or warranty made by the RE DEVELOPER under Section VI (Representations and Warranties) which shall prove to have been incorrect in any material respect when made.
- 9.3 The RE DEVELOPER shall have sixty (60) days from written notice from the DEPARTMENT of any of the foregoing to cure the default. Failure of the RE DEVELOPER to cure the default at the end of the sixty (60)-day period shall result in the automatic Termination of this RE Contract: *Provided, however,* That in case the ground for the Termination is non-compliance with the approved Work Program for reasons not attributable to Force Majeure, the Termination shall not be subject to curing period and shall be effective immediately as indicated in the notice duly issued by the Department: *Provided further,* That non-compliance of the approved Work Program shall be determined on the basis of the following:
- i. Failure of the RE DEVELOPER to comply with its Milestone under the approved Work Program during the first six (6) months; and
  - ii. Failure of the RE DEVELOPER to disburse the cost equivalent of at least eighty per cent (80%) of the total financial cost of its first Milestone which is set by the DEPARTMENT at Seven Million Pesos (Php7,000,000).

*Provided finally,* That during the Development Stage, non-compliance with the Milestone under the approved Work Plan and failure to disburse the cost equivalent of One Hundred Million Pesos (Php 100,000,000) per megawatt shall result in the Termination of this RE Contract or give rise to the right of the DEPARTMENT for recourse on the Performance Bond.

- 9.3 Notwithstanding to the foregoing, the RE Contract shall be terminated without prejudice to the RE Developer's obligation under its Abandonment and Termination Plan as approved by the DEPARTMENT.

## **SECTION X DISPUTES AND ARBITRATION**

- 10.1 Any dispute, controversy or claim arising out of or relating to this RE Contract, except Section 10.2 (a) hereof shall be settled amicably within a period of sixty (60) days after receipt by one Party of a notice from the other Party of the existence of the dispute.
- 10.2 If the dispute cannot be settled amicably within the sixty (60)-day period, the Parties shall, with respect to disputes arising out of or in connection with Section IV (Work Plan and Estimated Expenditures) hereof, refer the dispute

TEMPLATE BREOC (Existing Facility)

to an independent expert for resolution in the manner provided below; *Provided*, That any Party, in its sole discretion, may require the dispute be referred to arbitration under Section 10.3 hereof.

10.3 The following shall govern the rules of referral to an independent expert:

- a) After the sixty (60)-day period in Section 10.1 has passed, any Party may give notice to the other Party of its intention to refer the dispute to an expert in accordance with the provisions of this RE Contract;
- b) The respondent shall, within twenty-one (21) days after receipt of the notice of intention to refer, serve on the applicant a notice of its intention to defend;
- c) If within fourteen (14) days after the applicant's receipt of the respondent's notice of intention to defend, the Parties have agreed on an expert and on the terms under which the dispute shall be referred, the dispute shall be so referred. In the event that within such fourteen (14)-day period, the Parties are unable to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request the International Chamber of Commerce (ICC) International Centre for Expertise to appoint an expert, and the matters to be determined by such expert shall be those set out in the notice of intention to refer and the notice of intention to defend;
- d) Unless the Parties agree otherwise, any expert proceedings under this Section shall be required to follow the ICC Rules for Expertise in force as of Effective Date;
- e) The language of the expert proceedings and the expert's determinations shall be in English;
- f) The Parties hereby agree to be bound by, to perform this RE Contract in accordance with, and to implement, as the case may be, the determination of the expert. Failure by one Party to so act shall constitute a breach of this RE Contract and shall be submitted to arbitration in accordance with Section 10.3 as the sole means of enforcing the determination; and
- g) Each Party shall bear the costs and expenses of all lawyers, advisors, witnesses and employees retained by it in connection with the expert proceedings; *Provided, however*, that in circumstances where the *expert* determines that a matter referred to him was not subject to a bona fide dispute, the costs and expenses incurred by the prevailing Party and the expert in connection with such matter shall be paid by the non-prevailing Party.

10.4 If the dispute cannot be settled within sixty (60) days by mutual discussions as contemplated in Section 10.1, and referral to an expert is neither prescribed nor elected by the Parties with respect to any technical dispute, upon written demand of either Party, the dispute shall finally be settled by an arbitral tribunal (the "Tribunal") governed by and conducted in accordance

TEMPLATE BREOC (Existing Facility)

with the ICC Rules of Arbitration (the "Rules") in force as of Effective Date (or such Rules as may be in force at the time such arbitration is commenced), as follows:

- a) The RE DEVELOPER will nominate one (1) arbitrator and the DEPARTMENT will nominate one (1) arbitrator within thirty (30) days from the date of a request by either Party to initiate arbitration. The two Party-nominated arbitrators will then jointly nominate a third arbitrator within thirty (30) days from the date of the appointment of the second arbitrator, to act as Chairman of the Tribunal. Arbitrators not nominated within the time limits set forth in the preceding sentence shall be appointed by the ICC Court of International Arbitration;
- b) Unless otherwise agreed by the Parties, the venue of the arbitration shall be in Metro Manila, Philippines;
- c) The language of the arbitration and award shall be in English;
- d) The Tribunal shall not be authorized to impose, and either Party shall not be authorized to seek from any judicial authority, any requirement that the Party posts security for the costs of the other Party; and
- e) The decision of the Tribunal shall be final and binding upon the Parties. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

10.5 The right to arbitrate disputes under this RE Contract shall survive the Expiration or Termination of this RE Contract.

**SECTION XI  
EMPLOYMENT, TRAINING AND DEVELOPMENT PROGRAMS**

- 11.1 The RE DEVELOPER agrees to give preference in employment to qualified Filipino Employees who are residents of the Host LGUs and will undertake the development and training of Filipino Employees for labor and staff positions, including administrative, technical, and executive management positions.
- 11.2 The RE DEVELOPER shall provide annual assistance for training programs, conference, seminars and other similar activities for the DEPARTMENT's personnel in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_) per Contract Year and shall be accumulated for the succeeding Contract Years if not availed of in a given Contract Year. The RE DEVELOPER shall pay the unutilized amount of the training commitment prior to the Expiration or Termination of this RE Contract.
- 11.3 The RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_).

TEMPLATE BREOC (Existing Facility)

- 11.4 The RE DEVELOPER shall undertake corporate social responsibility projects in Host LGU with focus in education and training of qualified and deserving beneficiaries, as determined by the RE DEVELOPER.
- 11.5 Upon execution of this RE Contract, the RE DEVELOPER shall pay the DEPARTMENT a signing fee in the amount of \_\_\_\_\_ PESOS (Php \_\_\_\_\_).

## SECTION XII MISCELLANEOUS PROVISIONS

### 12.1 NOTICES

Any notice required or given by either Party to the other Party shall be in writing and shall be effective when a copy thereof is handed to or served upon the Party's duly designated representative or the person in charge of the office or place of business, or when sent by registered mail, notice shall be effective upon actual receipt by the addressee, but if he fails to claim his mail from the post office within five (5) days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time. All such notices shall be addressed:

To the DEPARTMENT:

The Secretary  
Department of Energy  
Energy Center, Rizal Drive, Bonifacio Global City  
Taguig City, Metro Manila, Philippines

To the RE DEVELOPER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any Party may substitute or change such address with prior written notice thereof to the other Party.

### 12.2 GOVERNING LAW

The laws of the Republic of the Philippines shall apply to this RE Contract.

### 12.3 ASSIGNMENT

- a) This RE Contract cannot be assigned without the prior written approval of the Parties.
- b) The RE DEVELOPER may assign or transfer part or all of its rights and/or obligations under this RE Contract to its Affiliate upon compliance with the following provisions:

TEMPLATE BREOC (Existing Facility)

- i. The RE DEVELOPER shall submit to the DEPARTMENT copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned; and,
  - ii. The RE DEVELOPER shall guarantee in writing to the DEPARTMENT its performance of the assigned obligations.
- c) Pursuant to the foregoing Sub-section, this RE Contract shall not be assigned to any third party, unless such third party is qualified in accordance with the Act and its IRR.
- d) The RE DEVELOPER may authorize its subsidiaries, branches or regional corporations to implement this RE Contract, but the RE DEVELOPER shall remain responsible for the performance of this RE Contract.
- e) No assignment shall be granted if the RE DEVELOPER is in default of its Work Plan or any of its obligations under the RE Contract and other RE agreements with the DEPARTMENT.

#### 12.4 SUSPENSION OF OBLIGATIONS

- a) Any failure or delay on the part of either Party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure.
- b) If the Biomass Energy Operations are curtailed or prevented by such causes, then the time for enjoying the rights and carrying out the obligations thereby affected, and all rights and obligations hereunder shall be extended for a period equal to the period of delay, curtailment or prevention: *Provided, however,* That if operations are delayed, curtailed or prevented by Force Majeure for a continuous period of twelve (12) months, this RE Contract may thereafter be terminated, at the option of the RE DEVELOPER, at anytime that the Force Majeure condition still exists, subject to confirmation of the DEPARTMENT.
- c) The Party whose ability to perform its obligations is so affected shall notify the other Party thereof in writing stating the cause and such affected Party shall do all reasonably within its power to remove such cause.

#### 12.5 AMENDMENTS

The RE Contract shall not be amended or modified in any respect except by the mutual consent in writing of the Parties.

#### 12.6 HEALTH, SAFETY, AND ENVIRONMENT PROTECTION

- a) In the performance of this RE Contract, the RE DEVELOPER shall: (1) be subject to the laws, rules and regulations on environmental protection, indigenous people rights, health and safety promulgated by the GOVERNMENT; (2) endeavor to make its best efforts to prevent

TEMPLATE BREOC (Existing Facility)

pollution and damage to the atmosphere, oceans, rivers, lakes, harbors and land; and (3) ensure the safety and health of its operating personnel.

- b) When the GOVERNMENT assigns any person to inspect for environmental protection, health and safety compliance of the RE DEVELOPER, the RE DEVELOPER shall provide such reasonable facilities and assistance as are applicable to ensure appropriate inspection by the GOVERNMENT. The RE DEVELOPER shall be given reasonable notice such inspections.

13.7 SEPARABILITY CLAUSE

Should any provision of this RE Contract or the application thereof to any situation or circumstance be declared null and void and/or invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof which shall remain valid and enforceable to the fullest extent. In the event of such partial invalidity or unenforceability, the Parties shall seek in good faith to agree on replacing the invalid or unenforceable provisions with a provision that in effect will most nearly and fairly approximate the effect of the invalid or unenforceable provision through the issuance of appropriate supplemental contract/s or agreement/s.

**IN WITNESS WHEREOF**, the Parties have caused this RE Contract to be executed by their respective representatives at the place and on the date above written.

**DEPARTMENT OF ENERGY**

**RE DEVELOPER**

By:

By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
**Name**  
Designation

\_\_\_\_\_  
(Name and Position)  
Witness

\_\_\_\_\_  
(Name and Position)  
Witness

TEMPLATE BREOC (Existing Facility)

**ACKNOWLEDGMENT**

**REPUBLIC OF THE PHILIPPINES**     )  
\_\_\_\_\_                                     ) S.S.

I, \_\_\_\_\_, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this \_\_\_\_\_, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This RE Contract consisting of twenty two (22) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Parties and his instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 20\_\_\_\_\_.





TEMPLATE BREOC (Existing Facility)

**ANNEX "A"**  
**PROJECT SITE**

TEMPLATE BREOC (Existing Facility)

**ANNEX "B"**  
**WORK PLAN AND BUDGET**

<b>Timeframe</b>	<b>Work to be Performed</b>	<b>Estimated Cost</b>
Contract Year 1		
Contract Year 2		
Contract Year 3		
<b>Total</b>		<b>P</b>