

## POWER SUPPLY AGREEMENT

This Power Supply Agreement (the "Agreement") is made and executed on \_\_\_\_\_ at \_\_\_\_\_ as by and between:

**[Name of Electric Cooperative]**, a non-stock, non-profit electric cooperative organized under the laws of the Philippines, with principal office at **[Address of the Electric Cooperative]**, represented herein by its Board President **[Name of Board of President]** and General Manager **[Name of General Manager]** who are duly authorized to enter into this Agreement, and hereinafter referred to as the "Buyer";

and

**[Name of the Seller]**, a domestic corporation duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at **[Company Address of the Seller]** represented herein by its **[Designation of Representative]**, **[Name of Representative]**, who is duly authorized to enter into this Agreement, and hereinafter referred to as the "Seller".

Each of the Buyer and Seller are hereafter individually referred to as the "Party" and together, as the Parties.

### WITNESSETH

**WHEREAS**, the Region VIII Electric Cooperatives aggregated their demands in power supply and conducted a Joint Competitive Selection Process known as the Region 8 Joint Competitive Power Supply Procurement (R8 JCPSP);

**WHEREAS**, that this process ensures the transparent and fair power supply procurement process for the whole region, will promote competition, and also to be able to meet the demand of the captive market in a least cost manner;

**WHEREAS**, the Seller is the winning bidder in the competitive selection process conducted on **[Date of the CSP]** through the CSP for the **[Baseload]** power supply of the following Region VIII electric cooperatives:

1. **Don Orestes Romualdez Electric Cooperative, Inc. (DORELCO)**
2. **Leyte III Electric Cooperative, Inc. (LEYECO III)**
3. **Leyte IV Electric Cooperative, Inc. (LEYECO IV)**
4. **Leyte V Electric Cooperative, Inc. (LEYECO V)**
5. **Biliran Electric Cooperative, Inc. (BILECO)**
6. **Southern Leyte Electric Cooperative, Inc. (SOLECO)**
7. **Samar I Electric Cooperative, Inc. (SAMELCO I)**
8. **Samar II Electric Cooperative, Inc. (SAMELCO II)**
9. **Eastern Samar Electric Cooperative, Inc. (ESAMELCO)**
10. **Northern Samar Electric Cooperative, Inc. (NORSAMELCO)**

**WHEREAS**, the Buyer is one of the aforementioned Region VIII electric cooperatives;

**WHEREAS**, the Seller owns and operates, or plans to design, finance, construct, own, operate, and maintain, whichever is applicable a **[registered gross capacity of the Facility]** MW **[Description of the Facility]** located at **[Location of the Facility]**;

**WHEREAS**, Seller desires to sell to Buyer, and Buyer desires to purchase from the Seller, the energy and/or capacity pursuant to the terms and conditions set forth herein, consistent with the Terms of Reference of the relevant Competitive Selection Process (TOR-CSP) conducted by Buyer or the rules governing exemptions from the CSP, as the case may be.

**NOW, THEREFORE**, under the above premises and for and in consideration of the mutual covenants and agreements herein set forth, the Parties, for themselves and their respective successors and assigns, have mutually agreed as follows:

## **1. DEFINITION OF TERMS AND RULES OF INTERPRETATION**

- 1.1. In this Agreement, capitalized terms shall have the meaning prescribed in Schedule 1 hereof. Capitalized terms not therein defined shall have the meanings as provided for in the TOR-CSP or by the applicable laws.
- 1.2. The following rules of interpretation shall govern this Agreement:

- 1.2.1 Expressions defined in Schedule 1 shall bear the respective meanings set out therein;
- 1.2.2 The headings and paragraph numbering are for convenience of parties and to avoid any insertion, but will not prevail in construing this Agreement;
- 1.2.3 Terms not herein defined shall have the meanings as provided for in pertinent ERC rules and regulations and Department of Energy (DOE) circulars;
- 1.2.4 References to Sections and Schedules are, unless the context otherwise requires, references to Sections of, and Schedules to, this Agreement;
- 1.2.5 References to any agreement, enactment, ordinance or regulation includes any amendment thereof or any replacement in whole or in part;
- 1.2.6 All references herein to time are in relation to Philippine time;
- 1.2.7 Words importing any gender include the other gender;
- 1.2.8 The words "include," "includes," and "including" are not limiting;
- 1.2.9 The words "hereof," "herein," and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and
- 1.2.10 Any ambiguity in the contract is to be construed in favor of the objectives of the Republic Act No. 9136 or its implementing rules, regulations or circulars issued by the Department of Energy (DOE) or Energy Regulatory Commission (ERC), as the case may be.

## **2. SALE AND PURCHASE OF ENERGY/CAPACITY**

Subject to and in accordance with the terms of this Agreement, Seller shall make available and sell to Buyer, and Buyer shall purchase from the Seller for the consideration described in Section 5, the energy and capacity from and after the Delivery Date until the expiry of the Term.

## **3. TERM**

### **3.1 Contract Term**

This Agreement shall take effect immediately from Effective Date, and from such date, shall remain in force and effect for until December 25, 2033, unless sooner terminated in accordance with this Agreement and upon approval by the ERC.

### **3.2 Effectivity Date**

The Parties' rights and obligations under this Agreement shall commence on Effective Date, which shall be the date upon which all of the following conditions are satisfied:

- a.) Corporate Approvals. The receipt of the Seller of a certificate executed by the corporate or partnership, as applicable, or a resolution duly and validly issued by the board of directors of Buyer, attesting to the fact that the board of directors of Buyer has adopted resolutions (i) authorizing Buyer to execute and to enter into and deliver this Agreement and perform all its obligation hereunder, and (ii) designating the person authorized to execute this Agreement on behalf of the Buyer; and
- b.) Government Authorizations. All governmental authorizations (except ERC) which are required to have been obtained in connection with the execution, delivery, and commencement of performance of this Agreement, shall have been obtained and be in full force and effect.

Within [number of days] Days after the satisfaction of the conditions referred to in this Section, each Party shall send a written notice to the other Party confirming satisfaction of such conditions and indicating the Effective Date.

### 3.3 Delivery Date

The Seller shall commence delivery of Contract Capacity to Buyer on \_\_\_\_\_ or date of issuance by the ERC of a Provisional Authority or Interim Relief, or Final Authority, as applicable.

## **4. SUPPLY OF ENERGY**

### 4.1 Seller's and Buyer's Obligations

Beginning on the Delivery Date until the termination or expiration of this Agreement, Seller shall supply and deliver Contract Capacity as detailed in Schedule 2 to Buyer at the Delivery Point, and the Buyer shall purchase and pay Seller the Capacity and Energy Fees as provided for in Schedule 2 resulting from the CSP and subject to the approval of the ERC.

### 4.2 WESM Operations

Buyer shall furnish Seller with its hourly nomination of demand on a daily, weekly, and monthly basis in accordance with the procedure set out as follows:

4.2.1 For administrative and planning purposes only, Buyer shall furnish Seller with non-binding year-ahead, month-ahead, and week-ahead nominations of Contract Capacity in accordance with the WESM Rules and the Operating Procedures.

4.2.2 Such nominations shall reflect the Buyer's good faith estimate of its projected capacity requirements for such period. Buyer shall furnish Seller with the year-ahead nominations, the

month-ahead nominations, and the week-ahead nominations.

#### 4.3 Capacity Utilization Factor

Buyer shall purchase the Contracted Capacity and pay for the Contracted Capacity from sixty-five (65%) to one hundred percent (100%) Capacity Utilization Factor (CUF), computed per Billing Period, in accordance with Schedule 3.

#### 4.4 Reduction of Contract Capacity

From time to time upon and after the implementation of Retail Competition and Open Access (RCOA), Green Energy Option Program (GEOP), Renewable Portfolio Standards (RPS), Metering programs, and other similar government programs, Buyer shall deliver to Seller written notice **within 30 calendar days prior to the target effectivity** specifying the reduction in Contract Capacity resulting from the implementation of RCOA, GEOP, RPS, Net Metering programs, and other similar government programs, indicating when such reductions shall take place. Any such reduction shall be limited to an amount that will allow the Buyer to comply with its obligation to supply the electricity in the least cost manner to its captive market except for such reduction of the amount of Contract Capacity to be specified by Buyer (including the resulting reduction in payments payable under this Agreement), all other terms and conditions of this Agreement shall remain in full force and effect, subject to the approval by the ERC. **The protocol to implement the reduction of the Contract Capacity shall be in accordance with Schedule 6.**

#### 4.5 Availability of Contract Capacity

Seller shall guarantee availability of the Contract Capacity during the term of this Agreement, except when caused by a Force Majeure event allowed under Section 6 in this Agreement. For clarity, this means that notwithstanding the outage of the plants to be utilized by Seller in order to supply the Contract Capacity, Seller shall still be

responsible in ensuring that the Contract Capacity is delivered to Buyer.

#### 4.6 Scheduled Outages

4.6.1 The Seller is allowed Scheduled Outages not to exceed \_\_\_\_\_ Equivalent Hours within the Contract Year during which times reduced or no deliveries will be available to the Buyer.

4.6.2 All Scheduled Outages must be scheduled and declared twelve (12) months in advance.

4.6.3 There shall be no borrowing of Scheduled and Unscheduled outage allowances.

4.6.4 There shall be no carry-over of any unutilized outage allowances from a calendar year on the succeeding years of the cooperation period.

4.6.5 Buyer may, upon (\_\_\_\_) Days prior written notice, require the Seller to reschedule a Scheduled Outage; provided, however, that Buyer shall not request that such Scheduled Outage be rescheduled in a manner or time outside the Minimum Functional Specifications as enumerated in Section 4.6.1 to 4.6.4 hereof.

4.6.6 Buyer shall use its reasonable endeavors to coordinate its maintenance program for the Interconnection Facilities with the approved Scheduled Outages so as to minimize any disruption to the operation of the Facility.

#### 4.7 Unscheduled Outages

The Seller is allowed unscheduled outages not to exceed (\_\_\_\_) equivalent hours for each Contract Year during which times reduced or no deliveries will be available to the Buyer, subject to ERC and regulations on Reliability Performance Indices.

## 4.8 Replacement Power

- 4.8.1 Within the Allowed Outage. The Seller and the Buyer shall cooperate to arrange for replacement power from, including, but not limited to, any other facilities of the Seller, third parties and the WESM. The Seller, at its own cost and in consultation with the Buyer, shall negotiate on behalf of the Buyer for the supply and delivery of capacity and energy from third parties for a price as close as possible to the contract price. The Buyer, however, has the right to accept or reject the replacement power offered by the Seller.
- 4.8.2 Beyond the Allowed Outage. The procurement of any Replacement Power beyond the Allowed Outage, including delay in the Commencement of Delivery (COD) shall be the responsibility of the Seller. The rates to be billed for the procurement of Replacement Power shall be the generation rate equivalent to the provisional or final approved generation rate, or the actual rate of the replacement power, whichever is lower.

## 4.9 Transmission and Interconnection

- 4.9.1 If applicable, Seller (shall enter/has entered/is in the process of entering) into a Connection Agreement and Transmission Service Agreement with the NGCP to connect the facility to the Grid.
- 4.9.2 At all times from and after the Effective Date, all interconnection, transmission and other agreements necessary for Seller to perform its obligations hereunder (including the Connection Agreement and Transmission Service Agreement) shall be in full force and effect.
- 4.9.3 If the Buyer is not able to take the Contracted Capacity from the Delivery Point, for causes attributable to a system rotational brownout or load dropping imposed by the System Operator, and/or any failure by the Transmission



Utility to transmit the Contracted Capacity including those due to any localized transmission line outages (other than as a result of a system-wide or grid-wide blackout or service interruption), the Buyer may, after the occurrence of any of such events, revise its Nomination for the succeeding Trading Interval/s on the same trading day (“Real-Time Nomination”) and the Seller shall accept the Buyer’s Real-Time Nomination, provided, that the Buyer:

- (a) Submits the Real-Time Nomination to the Seller not later than (\_\_\_\_) hours before the applicable Trading Interval (“RTN Deadline”); and
- (b) States the reason for submitting a Real-Time Nomination, which shall be specified by the Buyer in writing as one of the above-mentioned causes.

4.9.4 The Buyer shall not be liable for any reasons of failure by the Transmission Utility to transmit the Contracted Capacity as stated in Section 4.9.3 hereof.

In the event that the Buyer did not meet the 65% minimum Contracted Capacity due to the rotational brownout of the System Operator or any failure on the part of the Transmission Utility as mentioned in Section 4.9.3 of this Agreement, the Buyer shall only be obliged to pay the actual capacity delivered within the relevant Billing Period. Moreover, all other fees shall also be calculated based on the actual capacity delivered within the relevant Billing Period.

## **5. COMPENSATION, PAYMENT AND BILLING**

5.1 On or before the 5<sup>th</sup> day of the following month from the close of every Billing Period, the Seller shall deliver to the Buyer a billing statement showing the Electricity Fee due for such Billing Period.

5.2 A billing statement shall be regarded as delivered to and received by the Buyer upon sending of an electronic copy thereof to the Buyer via registered email address at the date and time indicated in which transmission was made. However, the Seller shall also provide the original copy of the bill to the Buyer on a monthly basis.

5.3 Without necessity of demand, the Buyer shall pay the Seller the Electricity Fee as stated in such a billing statement, not later than the twenty-fifth (25th) of the calendar month following the close of a Billing Period ("Due Date"). If the last day of the Payment Period falls on a non-working day, payment shall be due on the next working day. Should the Seller deliver the bill beyond the allowable period, the due date shall also be extended equivalent to the number of days of the delay. Moreover, the Seller shall issue the corresponding Official Receipt upon the receipt of the payment. The Buyer shall pay the Amount Due to an account designated by the Seller either by electronic fund transfer or by other mutually agreed alternative method.

5.4 The failure by the Seller to deliver to Buyer a billing statement within the period stated in the preceding section shall not preclude Seller from thereafter issuing a billing statement to Buyer for that Billing Period. The Seller may, at any time from the issuance of a billing statement (and notwithstanding that Buyer may have disputed, protested or questioned a billing statement), amend, revise, or modify any and all of its billing statement(s), in whole or in part, for any and all amounts that may otherwise be due and payable to the Seller.

5.5 The Seller shall include all necessary attachments (e.g. invoices), documentations, and any other relevant information in every billing statement that will enable the Buyer to determine that the billing computation is compliant with the PSA.

5.6 Taxes

All present and future national, local or other lawful taxes, duties, levies, or other impositions applicable to the Seller,

the Facility and the Seller's other assets shall be paid by the Seller in a timely manner. All present and future national, local or other lawful taxes, duties, levies, or other impositions applicable to Buyer arising from or in connection with its rights and obligations under this Agreement shall be paid by Buyer in a timely manner.

#### 5.7 Prompt Payment Discount

The Seller shall extend ( ) percent ( % ) discount based on the non-fuel fee (sum of Capital Recovery Fee, Fixed O&M and variable O&M Fee, if applicable) to the Buyer as prompt payment discount if payment is made within ten (10) Days from receipt of Seller's billing provided that the Buyer has no outstanding payables to the Seller.

#### 5.8 Liquidated Damages

Liquidated damages in case of default shall be the cost of actual replacement power and any other costs incurred to secure power and shall be paid within twenty (20) Calendar Days after written demand for payment.

#### 5.9 Interest for Late Payment

If any amount payable by the Buyer is not paid on Due Date:

- a.) The amount unpaid shall bear a daily interest, at a rate of twelve percent (12%) per annum, computed on a 360-day basis;
- b.) If any invoice from the Seller is overdue for more than six (6) months, the Buyer shall pay an additional penalty of one percent (1%) per month for every additional month of delay beyond (6) months; and
- c.) Seller has the right to immediately suspend the delivery of electricity and declare Basic Energy Charges for electricity supplied but not invoiced immediately due and payable, whereupon Buyer shall pay such Basic Energy Charges immediately

upon delivery by Seller of the corresponding invoice to Buyer.

## **6. FORCE MAJEURE**

### 6.1 Meaning of Force Majeure

In this Agreement, "Force Majeure" refers to any of the following that is beyond the reasonable control of the Party/Parties claiming force majeure which, through the exercise of due foresight and good industry practice, the Party/Parties could not have avoided, did not contribute to or participate in, and which, even by exercise of due diligence, the Party/Parties is unable to overcome, thus preventing the party from carrying out its obligations or from enjoying its rights under this Agreement due to the impossibility of delivering the goods and services, or the imminent harm that such events, in the absence of safeguards and protocols, may bring upon its employees, agents or the general public in the performance of its obligations under this Agreement.

#### 6.1.1 Acts of God

Acts of God, should only be considered as force majeure sufficient to terminate the contract if—

- (a) The event or calamity is of the degree or intensity that continued operation of the parties would lead to death or injury of the parties' employees or agents;
- (b) The event or calamity is of the degree or intensity that the continued operation of the parties would be of great hazard to the security and safety of the public.

#### 6.1.2 Epidemic

An epidemic officially declared by the national or local government, should only be considered as force majeure and a ground for termination of contract, if the epidemic causes:

- (a) Impossibility to deliver the contracted goods or services; or
- (b) When there is no remedy or protocol placed/issued by the government or the regulatory agencies to assist the parties in fulfilling their obligations.

### 6.1.3 Other Events or Force Majeure (Force Majeure-Acts of Man)

Force Majeure events occurring in or directly affecting the Philippines include:

- (a) any act of war (whether declared or undeclared, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
- (b) nationwide strikes, works to rule or go-slows that extend beyond the Facility or are widespread or nationwide, or that are of a political nature;
- (c) radioactive contamination or ionizing radiation originating from a source outside or inside the Philippines.
- (d) Transmission failure and System Operator Curtailment, or acts of any third party that may materially affect the capability of Buyer to draw power from the NGCP grid, or the inability of the Seller to deliver due to the same event, which is unforeseen and could not reasonably be expected or is beyond the control of the affected party, except line congestions on the existing facilities of the Buyer or the Seller to the Grid.

## 6.2 Notification and Obligation to Remedy

In the event of the occurrence of a Force Majeure that prevents a Party from performing its obligations hereunder, such Party shall: (a) notify within five (5) Days the other Party in writing of such Force Majeure; (b) not be entitled to suspend performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure; (c) use all reasonable efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable; (d) perform acts to avoid further loss or wastage; (e) keep such other Party apprised of such efforts on a continuous basis; and (f) provide written notice of the resumption of performance hereunder. Notwithstanding the occurrence of a Force Majeure, the Parties shall perform their obligations under this Agreement to the extent the performance of such obligations is not impeded by the Force Majeure.

## 6.3 Consequences of Force Majeure

Neither Party shall be responsible or liable for, or deemed in breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Agreement which it cannot perform due solely to one or more Force Majeure or its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) shall be extended on a day-by-day basis for so long as one or more Force Majeure continues to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Agreement; provided, however, that no relief shall be granted to the Party claiming Force Majeure pursuant to this Section to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure not occurred; and provided further, that the Party's may file the proper motion for termination, when the Force Majeure delays a Party's performance for a period greater than (a) (\_\_\_) consecutive months prior to the Effective Date or (b) (\_\_\_) consecutive months after the Effective Date.

There will be no payment of any capacity fee or any capacity that the EC cannot accept, in case of outage during any force majeure.

## **7. DEFAULTS AND TERMINATION**

### 7.1 Valid Grounds for Termination

- a.) Events of Default
- b.) Expiration of cooperation period.
- c.) Mutual agreement by both parties
- d.) Changes in the circumstances as agreed under the PSA.
- e.) If an event of force majeure as defined herein will exceed sixty (60) consecutive days and the affected party cannot fully perform its obligations under the PSA, either party may terminate the PSA by providing written notice within the 60-day period of the force majeure.

An ERC approved final rate lower than that of the PSA rate shall not be a valid ground for the termination of the contract. Buyer shall not be liable for the difference between the PSA rate and the ERC approved final rate.

### 7.2 Events of Default

Each of the events described below shall constitute an Event of Default, provided that such events result to, in the case of the Seller, an actual failure to deliver to the Buyer of the required Contract Capacity **where such failure exceeds Allowed Outage and an actual failure to provide Replacement**; or, in the case of the Buyer, an actual failure to accept from, or pay to, the Seller the (Monthly Payments). An "Event of Default" shall mean, with respect to the relevant Party (such Party being, with respect to the Event of Default, a "Defaulting Party" and the other Party being the "Non-Defaulting Party"):

- 7.2.1 A Party fails to make any payment required pursuant to this Agreement when due and payable and such payment is not made within [number of days] Days after the due date;

7.2.2 A Party breaches any of its material representations, warranties, covenants or obligations under this Agreement; and

7.2.3 A Party becomes bankrupt or there occurs a default, event of default or other similar condition or event with respect to the Buyer under one or more agreements or instruments to which it is a party.

Within a [number of days] from knowledge of the occurrence of an Event of Default and for Events of Default capable of being remedied or cured, the Non-Defaulting Party shall issue a written notice to the Defaulting Party specifying in detail the relevant Event of Default (the "Notice of Default"). The Defaulting Party shall have the opportunity to cure the default within the following periods from receipt of the Notice of Default (each a "Cure Period"):

- (a) [number of days) Days, for Events of Default under Section 7.2.1,
- (b) [number of days] [Days, for Events or Default under Section 7.2.2, and
- (c) [number of days] Days, for Events or Default under Section 7.2.3.

### 7.3 Notice of Default and Termination or Upon Event of Default

In case an Event of Default is not cured within the applicable Cure Period or if the Event of Default is not capable of being remedied, the Non-Defaulting Party may terminate this Agreement in accordance with Section 7.5, subject to the approval of the ERC, and may pursue any remedy available to it under this Agreement or at law.

### 7.4 Suspension upon Event of Default

In case an Event of Default is awaiting to be cured during the Cure Period under Section 7.3, the Non-Defaulting Party may suspend this Agreement, subject to the



approval of the ERC, until such time the Event of Default is cured, or the applicable Cure Period lapsed.

## 7.5 Termination upon Event of Default

The following procedure shall apply in terminating this Agreement:

7.5.1 The Non-Defaulting Party shall issue a notice (a "Termination Notice") to the other Party, specifying in detail the Event of Default giving rise to such Termination Notice, and the date on which the Party giving such Termination Notice proposes to terminate this Agreement, subject to the approval of the ERC.

7.5.2 During the period of [number of days] Days (or such longer period set out in the Termination Notice or as the Parties may agree) following the giving of such Termination Notice, the Parties shall negotiate as to what steps shall be taken with a view to mitigating or remedying consequences of the relevant event having regard to all the circumstances.

7.5.3 If the Party receiving the Termination Notice intends to raise a Dispute regarding the right to give effect to the Termination Notice (the "Termination Notice Dispute"), such Party shall follow the procedure prescribed in Section 8; and

7.5.4 In circumstances where the Party in receipt of the Termination Notice has referred a Termination Notice Dispute for resolution in accordance with Section 7.5.3 above, if:

(i) any time after the expiry of the period referred to in Section 7.5.1 the event giving rise to the Termination Notice has not been remedied; and

(ii) the Termination Notice Dispute has been determined in favor of The Party who has

issued the Termination Notice, the Agreement may be terminated only upon prior notification to and approval by ERC pursuant to its rules, regulations, and applicable guidelines, by giving a written notice of termination pursuant to the order of the ERC.

## 7.6 Termination as a Result of Events Other than Event of Default

7.6.1 Non-fulfillment of Conditions Precedent to Effectivity. If any condition to the Effective Date has not been fulfilled on or before [\_\_\_\_\_], then either party has the option to terminate this Agreement by giving written notice of such termination to the other Party, provided that the fulfilment of such condition is not within the control of the Party seeking to give such notice, subject to the prior notification to and approval of ERC, pursuant to its rules and regulations. Upon the giving of notice of termination, this Agreement shall terminate on the date specified for termination in such notice, which date shall not be earlier than [number of days] Days from the date of such notice, subject to the approval of the ERC.

7.6.2 Termination in Certain Events of Force Majeure. If an event of Force Majeure occurs under the circumstances and having the consequences described in Section 6, then this Agreement may be terminated, subject to prior notification to and approval by the ERC, by notice of either Party delivered to the other Party within [\_\_\_] Days after the end of such [\_\_\_]-day period. If any Force Majeure is expected by the Claiming Party to exceed [\_\_\_] Days then the Claiming Party may give notice to the other Party at any time of the Claiming Party's desire to terminate this Agreement. The Non-Claiming Party shall notify the Claiming Party, within [\_\_\_] Days of the receipt of such notice, of either: (l) its acceptance of the notice, in which case this Agreement shall

terminate effective on the date or such responsive notice, subject to the prior notification and approval of the ERC, pursuant to its rules and regulations; or (2) its disagreement with the Claiming Party's expectation of the duration of such Force Majeure event, in which case the dispute shall be resolved pursuant to Section 8.

## **8. DISPUTE RESOLUTION**

If any dispute or disagreement shall arise between the Parties in connection with or arising out of this Agreement, either Party shall request in writing that its respective chief executive officers, as applicable, meet within fifteen (15) calendar days from receipt of notice and attempt to resolve the dispute by themselves. The parties shall exert every effort to first resolve the Dispute amicably by mutual consultation.

Should the parties fail to reach an amicable settlement after mutual consultation, any Dispute arising from this Agreement shall then be settled through arbitration. Any arbitration referred by the parties shall be conducted in Region VIII or Metro Manila, in accordance with the pertinent provisions of R.A. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004".

In the event such officers are unable to resolve such Dispute through the above arbitration clause, the ERC has the jurisdiction to hear and decide the Dispute between parties arising from this Agreement, in the exercise of its powers and functions under the EPIRA.

## **9. ASSIGNMENT OF RIGHTS**

The Seller may only assign or transfer its rights or obligations to its Affiliates or its consortium's special purpose vehicle under, pursuant to, or associated with (a) this Agreement, (b) the Facility, (c) the movable property and intellectual property of the Seller, or (d) the revenues or any of the rights or assets of the Seller, in each of subsections without the prior written consent of the Buyer, provided, however, that any such assignee or Seller shall have the ability to perform all of Seller's obligations and duties under this Agreement. Such transfer of rights and

obligations under this provision shall require prior notification and approval of the ERC. Nonetheless, both the assignor and assignee are solidarily liable under this Agreement.

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party. Replacement of Power by a third party shall not be construed as an assignment within the purview of this agreement.

## 10. NOTICES

### 10.1 Address for Notices

Any notice, communication, request or correspondence (each a "notice") required or permitted under the terms and conditions of this Agreement shall be in writing, in English or Filipino language (it being understood that any such communication or paper in a language other than the same shall be of no force or effect), and shall be (a) delivered personally, (b) transmitted by electronic mail and either (i) recipient acknowledges receipt to sender or (ii) sender delivers to the recipient a transmission confirmation, (c) pre-paid post or overnight courier; to the following addresses:

If to Buyer:

Address: \_\_\_\_\_

Email Add: \_\_\_\_\_

Attention: \_\_\_\_\_

If to Seller:

Address: \_\_\_\_\_

Email Add: \_\_\_\_\_

Attention: \_\_\_\_\_

Or such other address and/or telephone number as either Party may previously have notified to the Other Party in accordance with this Section.

“Recipient” shall mean the president, managing partner, general manager, corporate secretary, treasurer, or in house counsel, or signatory to this Agreement of the Part, or in their absence or unavailability, on their secretaries.

## 10.2 Effectiveness of Service

Notices shall be effective: (a) in the case of personal delivery, when received by the recipient; or in the case of transmission by electronic mail, if receipt of the transmission occurs before [time] recipient's time and recipient receives a transmission confirmation or otherwise acknowledges transmission, upon receipt of transmission, or if receipt of the electronic mail occurs after [\_\_\_] recipient's time and recipient receives a transmission confirmation or otherwise acknowledges transmission, the next Business Day.

## 11. MISCELLANEOUS PROVISIONS

### 11.1 Security Deposit

11.1.1 Pre-condition for Security Deposit. There shall be no security deposit requirement on the part of the Buyer upon commencement of delivery. However, the Seller shall have the right to require the Buyer to post the Security Deposit when the Buyer fails to make any payment in full under this Agreement when due and payable.

11.1.2 Amount. The Security Deposit shall be equivalent to one hundred percent (100%) of the highest Monthly Power Bill for the preceding three (3) months.

11.1.3 Form. The Security Deposit shall be in the form of cash or irrevocable standby letter of credit issued by banks or security companies acceptable to the Seller which shall be posted within two (2) months from the Buyer's receipt of a written notice thereof from the Seller.

11.1.4 Suspension of Security Deposit. The Seller agrees to suspend the requirement for Security Deposit if the Buyer consistently paid its Monthly Power Bill after six (6) consecutive months following the posting of Security Deposit as stated in Section 11.1.1.

11.1.5 Replenishment. If at any time (and from time to time), the Security Deposit is drawn partially or fully by the Seller, the Buyer shall replenish or replace the Security Deposit not later than thirty (30) calendar days from notice by the Seller.

## 11.2 Variations in Writing

All additions, amendments or variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of both Parties, and with prior approval of the ERC.

## 11.3 Entire Agreement

This agreement and all schedules thereto together represent the entire understanding between the Parties in relation to the subject matter thereof and supersede any or all previous agreements or arrangements between the Parties in respect of the Facility (whether verbal or written).

## 11.4 Severability

In the event that any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or of the same provisions in any other jurisdiction shall not in any way be affected or impaired thereby.

## 11.5 Waivers

11.5.1 No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement shall (a) operate or be construed as a waiver of any other or further default whether of a like or different character, and (b) be effective unless in writing duly executed by an authorized representative of such Party.

11.5.2 The failure by either Party to insist on any occasion upon the performance of the terms, conditions or provisions of this Agreement or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of such breach or acceptance of any variation.

11.5.3 The Parties shall not, through mutual agreement, or consent or acquiescence of the other, waive any rights or obligations under this contract that may prejudice the rights of consumers.

#### 11.6 Successors and Assigns

This agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and permitted assigns subject to the provision in Section 9.

#### 11.7 No Liability for Review

No review or approval by Buyer of any agreement, document, instrument, drawing, specifications or design proposed by the Seller shall relieve the Seller from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specifications or design or from failure to comply with the applicable laws of the Republic of the Philippines with respect thereto, nor shall Buyer be liable to Seller or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design.

#### 11.8 Consequential Damages

Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for indirect, consequential, punitive or exemplary damages resulting from the performance of obligations or the exercise of rights under or pursuant to this Agreement.

#### 11.9 Affirmation

The Seller and Buyer declare and affirm that neither Party has paid nor has it undertaken to pay and that it shall in the future not pay any bribe, pay-offs, kickbacks or unlawful commission and that it has not in any other way or manner paid any sums, whether in Local Currency or Foreign Currency and whether in the Philippines or abroad, or in any other manner given or offered to give any gifts and presents in the Philippines or abroad to any person or Seller to procure this Agreement, and the Seller and Buyer undertake not to engage in any of the said or similar acts during the term of and relative to this Agreement.

#### 11.10 Governing Law

This Agreement and the rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to applicable laws, rules and regulations of the Philippines.

#### 11.11 Relationship of the Parties

This Agreement shall not make either of the Parties partners or joint ventures one with the other, nor make either the agent of the other. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise bind, the other Party.

#### 11.12 Survival

Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including the rights and obligations, warranties, remedies, promises of indemnity and confidentiality set forth in previous sections.



### 11.13 Language

The language for the purpose of administering this Agreement, including any expert proceeding or arbitration hereunder, shall be English or Filipino.

### 11.14 Good Faith

In carrying out its obligations and duties under this Agreement, each Party shall have an obligation of good faith.

### 11.15 Risk Mitigation and Value-Added Services

A risk mitigation agreement shall be agreed upon by the Seller and the Buyer to mitigate the risks on account of:

- a. Price Volatility in the WESM
- b. Plant Outages of the Seller
- c. Higher price for low-capacity utilization
- d. Defaults of either party
- e. Other agreements to be finalized under the PSA
- f. Prompt Payment discount and any other applicable discounts

### **11.16 Confidentiality**

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, lenders, investors (including potential investors), counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding.

Provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

**11.17 Supplementary Clause**

The contents of the Instruction to Bidders, Terms of Reference, Bid Bulletin, and Bid Documents are deemed incorporated by reference into this Agreement.

The Parties agree that the terms and conditions set forth in such documents shall be binding upon them to the extent that they are not inconsistent with the terms of this Agreement.

In the event of any conflict or inconsistency between the provisions of this Agreement and the incorporated documents, the provision of Terms of Reference shall prevail.

**IN WITNESS WHEREOF**, the Parties have entered into this Agreement the date first above written.

[NAME OF BUYER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESSED BY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

[NAME OF SELLER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESSED BY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

ANNEX A

**SECRETARY'S CERTIFICATE**

I, \_\_\_\_\_, Filipino, of legal age and with office address at \_\_\_\_\_, after having duly sworn in accordance with law, hereby depose and state that:

1. I am the Corporate Secretary of \_\_\_\_\_, a \_\_\_\_\_ duly organized and existing under and by virtue of the laws of the Philippines with principal office address at \_\_\_\_\_.
2. At the special meeting of the Board of Directors held on \_\_\_\_\_, during which meeting a quorum was present and acting throughout, the following resolution was unanimously passed and approved:

**RESOLVED**, that the Board of Directors of \_\_\_\_\_ authorize, as it hereby authorizes \_\_\_\_\_ to sign the Agreement with \_\_\_\_\_, on behalf of the [Corporation].

3. This board resolution has not been revoked, amended or modified, and remains valid and binding on the [Corporation] as of the date hereof.
4. The foregoing statements are in accordance with the records of the [Corporation].

**IN WITNESS WHEREOF**, I have hereunto set my hand this \_\_\_\_\_ at \_\_\_\_\_, Philippines.

\_\_\_\_\_  
Corporate Secretary

**SUBSCRIBED AND SWORN** to before me, this \_\_\_\_\_ in \_\_\_\_\_. Affiant, who is personally known to me, exhibited to me his/her identification \_\_\_\_\_ issued in \_\_\_\_\_ on \_\_\_\_\_.

# **SCHEDULE 1**

## **DEFINITIONS**

Whenever the following terms appear in this Agreement or the Schedules hereto, whether in the singular or in the plural, present, future, or past tense, they shall have the meanings stated below unless the content otherwise requires:

**"Affiliate"** - means any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. As used herein, "control" shall mean the power to direct or cause the direction of the management policies or a person by contract, agency or otherwise.

**"Agreement"** - This Power Supply Agreement, including all Schedules thereto, as amended or supplemented from time to time.

**"Allowed Outage"** - The allowed number of hours for every contract year that a Unit and/or Component of a power plant is not available to perform its intended function due to some event directly associated with that Unit and/or Component based on the Rules and Regulations of ERC.

**"Billing Period"** - the period of one (1) month commencing at 0001M of the twenty-sixth (26th) day of each calendar month to 2400H of the twenty-fifth (25th) day of the calendar month.

**"Business Day"** - A Day on which business by and between banks may be carried on in [Location] in the Philippines.

**"Buyer Grid System"** - Interconnection Facilities and any other transmission or distribution facilities on Buyer's side of the Interconnection Point(s) through which the Contract Capacity/Contract Energy or the Facility will be distributed by Buyer to users of electricity.

**"Contract Capacity"** - The capacity, expressed in kW allocated to the Buyer during the Billing Period,

**"Contract Energy"** - The energy, expressed in kWh allocated to the Buyer during the Billing Period.

**"Contract Term"** - shall have the meaning ascribed to it in Section 3.1.

**"Day"** - The 24-hour period beginning and ending at 12:00 midnight in [Philippine Time]. For clarity, "Day" means calendar day, or any day including Saturday, Sunday, and any day which is a legal holiday in the Philippines.

**"Delivery Date"** - shall have meaning ascribed to it in Section 3.3

**"Delivery Point"** - The Trading Node or NGCP/Metering Service providers' metering point/s of the Seller

**"Dispute"** - shall have the meaning ascribed thereto in Section 8.

**"Effective Date"** - means the date following (the completion of the conditions referred to in Section 3.2.

**"EPIRA"** - The Republic Act NO. 9136 of the Electric Power Industry Reform Act of 2001.

**"ERC"** - The Energy Regulatory Commission of the Philippines, the independent and quasi-judicial regulatory agency created under Section 38 of the EPIRA

**"Facility"** - [Provide brief description of generating facility, including fuel source, capacity, and location, if applicable]

**"Force Majeure"** - An event or occurrence specified in Section 6.

**"Foreign Currency"** or - The lawful currency of \_\_\_\_\_.

**"Fuel"** - [Describe type of fuel used by the Facility, if applicable],

**"Grid"** - The high voltage backbone system of interconnected transmission lines, substations, and related facilities for the purpose of conveyance of bulk power.

**“Interconnection Facilities”** - All the facilities on the high side of the step-up transformer described in Schedule 4 to be constructed by or for Buyer to enable it to receive and deliver capacity and energy in accordance with this Agreement plus the Metering System.

**“Interconnection Point”** - The physical point(s) where the Facility and the Buyer Grid System are connected as specified Schedule 4.

**“kW”** - Kilowatts.

**“kWh”** - Kilowatt-hours.

**“Law”** - Any law, act, ordinance, code, decree, order, rule, policy, resolution or regulation of any governmental authority or agency (national, provincial, municipal, local) that is at any time applicable to the parties, contract, project, site or any part therefore.

**“Liquidated Damages”** - The meaning ascribed thereto in Section 5.8,

**“Local Currency”** - The lawful currency of the Philippines,

**“Metering System”** - All meters and metering devices owned by Buyer and used to measure the delivery and receipt of Energy/Capacity.

**“Minimum Functional Specifications”** - The minimum functional specifications (including the technical limits of the Facility) for the construction and operation of the Facility as set forth in Schedule 4 hereof.

**“Month”** - A calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last day of the preceding month and ending at 12:00 midnight on the last day of that month.

**“MW”** - Megawatts.

**“NGCP”** - National Grid Corporation of the Philippines, the corporation awarded the concession to operate the transmission

facilities of the National Transmission Corporation pursuant to the EPIRA and Republic Act No. 951 1.

**“Notice of Default”** - The meaning ascribed thereto in Section 7.3.

**“Parties”** - Both Buyer and the Seller.

**“Party”** - Either Buyer or the Seller.

**“Outage Allowance”** - refers to the allowable outage per plant type as determined by the ERC.

**“Replacement Power”** - The energy from an alternative source responsible to be delivered by the Seller to Buyer at a price **not exceeding** than the price set in the Agreement.

**“RCOA”** - The Retail Competition and Open Access.

**“Scheduled Outage”** - A planned partial or complete interruption of the Facility’s generating capability that (a) is not an Unscheduled Outage; (b) has been scheduled and allowed by Buyer in accordance with Section 4.6; and (c) is for inspection, testing, preventive maintenance, corrective maintenance or improvement.

**“Unscheduled Outage”** - An interruption or reduction of a Unit’s or the Facility’s generating capability that is not a Scheduled Outage.

**“Week”** - Each period of seven (7) consecutive Days beginning at 12:00 midnight Philippine Standard Time falling between a Saturday and a Sunday.

**“WESM”** - Wholesale Electricity Spot Market.

**“Year”** - Each twelve (12) Month period commencing on 12:00 midnight on December **26** and ending on 12:00 midnight the following December **25** during the term of this Agreement.

## SCHEDULE 2

### CONTRACT CAPACITY AND/OR CONTRACT ENERGY

<b>Billing Month</b>	<b>Hours</b>	<b>Contract Capacity (kW)</b>	<b>Contract Energy (kWh)</b>	<b>Minimum Contract Energy (kWh), if any</b>
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

The Buyer shall be allowed to nominate at least 50% of the Contract Capacity per interval divided by twelve (12) on all 5-minute Trading Intervals, but at the end of the relevant billing period, the Buyer shall be obligated to pay for the Product at 65% monthly minimum CUF or actual energy purchased, whichever is higher. The Buyer will be billed based on Monthly CUF if, at the end of the billing period and after reconciliation, the nomination falls below the Monthly CUF for reasons other than FM.



## SCHEDULE 3

### BID FORM

<b>CAPACITY FEE</b>	<b>LOCAL (PHP/kWh)</b>	
	<b>C.U.F.</b>	<b>Capital Recovery</b>
100%		
99%		
98%		
97%		
96%		
95%		
94%		
93%		
92%		
91%		
90%		
89%		
88%		
87%		
86%		
85%		
84%		
83%		
82%		
81%		
80%		
79%		
78%		
77%		
76%		
75%		
74%		
73%		
72%		
71%		
70%		
69%		
68%		
67%		
66%		
65%		

## SCHEDULE 4

### MINIMUM FUNCTIONAL SPECIFICATIONS

#### Technical Limits of the Facility

<b>Particulars</b>	<b>[Name of Plant/Facility]</b>	<b>[Name of Plant/Facility]</b>
Location		
Type of Technology		
Mode of Operation (baseload, intermediate, peaking, etc.)		
Commissioning Date		
Date of Completion		
Economic Life, years		
Installed Capacity, MW		
Dependable Capacity, MW		
Auxiliary Load, MW		
Scheduled Outage, days		
Unscheduled Outage, days		
Voltage Limits (kV)		

Delivery Point/s

<b>Location</b>	<b>Delivery Voltage</b>

Interconnection Facilities

Illustration of the Site Location

Illustration of the Site Layout Area

Detailed Single Line Diagram

## SCHEDULE 5

### MONTHLY PAYMENT, INDEXATION AND ADJUSTMENT

The Buyer shall pay the Seller for the Energy/Capacity at the following Fees and as adjusted on a monthly basis pursuant to the following formula:

$$\mathbf{TGC} = \mathbf{CRF} + \mathbf{FOM} + \mathbf{VOM}_{\text{Adj}} + \mathbf{FF}_{\text{Adj}}$$

*Where:*

**TGC** = Total Generation Charge in the PhP for the Billing Period

**CRF** = Capital Recovery Fee as defined in the Bid Documents at \_\_\_\_\_

**FOM** = Fixed Operation and Maintenance Fee as defined in the Bid Documents at \_\_\_\_\_

**VOM** = Variable Operation and Maintenance Fee as defined in the Bid Documents at \_\_\_\_\_

**FF<sub>Adj</sub>** = Current Fuel Fee (if applicable) for the Billing Period calculated as follows:

$$\mathbf{FF}_{\text{Adj}} = \mathbf{FF}_{\text{base}} * (\mathbf{FO}_{\text{current}} / \mathbf{FO}_{\text{base}})$$

*Where:*

**FF<sub>base</sub>** = Based Fuel as defined in the Bid Documents set at \_\_\_\_\_

**FO<sub>current</sub>** = Current cost of fuel at \_\_\_\_\_/(unit)

**FO<sub>base</sub>** = Base cost of fuel set at \_\_\_\_\_/(unit)

## **SCHEDULE 6**

### **REDUCTION OF CONTRACT CAPACITY** **PROTOCOL**

In response to regulatory changes like the Retail Competition and Open Access (RCOA), Green Energy Option Program (GEOP), Renewable Portfolio Standards (RPS), Net Metering programs, and similar government initiatives, the Buyer is required to notify the Seller in writing not later than 30 days from the target switch or effectivity date. These notifications detail any upcoming reductions in Contract Capacity resulting from these programs, including precise timing. It is crucial that any adjustments to Contract Capacity are carefully managed to ensure the Buyer fulfills its core obligation of supplying electricity to its captive market at the most economically advantageous rates possible.

While navigating these transitions, the Buyer retains the authority to specify additional reductions in Contract Capacity, along with corresponding adjustments to payments outlined in the PSA. Pending approval from the Energy Regulatory Commission (ERC), all other terms and conditions of the PSA will remain unchanged, providing stability amidst the evolving energy landscape.

The process of reducing contracted capacity shall be carried out by decreasing the allocation from the Seller with the highest average actual generation rate over the last three (3) months. It's important to note that these reductions may effect gradually as the need arises, with each reduction occurring in increments of 1MW, provided that the remaining contracted capacity of the Seller does not fall below 3MW.

This strategic approach reflects the Buyer's proactive stance, ensuring flexibility and compliance with regulatory mandates and demonstrating a commitment to fostering a cheaper generation rate impact, for the benefit of all stakeholders.