

QUALIFIED THIRD PARTY SERVICE CONTRACT

This QTP SERVICE CONTRACT (the “Contract”) is entered into this \_\_\_\_day of \_\_\_\_ 200\_\_ by and between:

[ DU or NPC ] .....duly organized and existing under and by virtue of \_\_\_\_\_, with its principal office at \_\_\_\_\_Philippines, represented herein by \_\_\_\_\_, who is authorized to represent it in this Contract, hereinafter referred to as \_\_\_\_\_;

and

[ QTP ], a company organized and existing under the laws of \_\_\_\_\_, with its principal offices at \_\_\_\_\_, represented herein by its \_\_\_\_\_, \_\_\_\_\_, who is authorized to represent it in this Contract, hereinafter referred to as the “Qualified Third Party” or “QTP”,

The [ DU or NPC ] are hereinafter collectively referred to as “Parties” and individually as “Party”

WITNESSETH: THAT

**WHEREAS**, pursuant to Section 59 (Alternative Electric Service for Isolated Villages) of the Electric Power Industry Reform Act (“EPIRA”) and Rule 14 (Provision of Electricity by Qualified Third Parties) of its Implementing Rules and Regulations (“EPIRA-IRR”), which recognizes the provision of electric service by qualified third parties in remote and unviable areas that a franchised utility is unable to service, the Department of Energy (“DOE”) issued DOE Circular No. DC2019-11-0015 “**Revised Guidelines on Qualified Third Party (QTP)**”;

**WHEREAS**, the QTP of [ QTP SERVICE AREA ], shall provide electricity service requirements to said area. The QTP Service Area is more specifically described in **Schedule** \_\_\_\_\_ hereof;

**WHEREAS**, the Parties agreed to enter into this Contract to define their respective rights and obligations in respect to performance and standards of the QTP implementation.

NOW, THEREFORE in view of the foregoing premises and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties hereby agree as follows:

1 Definitions and Interpretation

**1.1 Definitions.** Wherever used in this Contract, schedules or annexes, unless the context otherwise requires, the following words and acronyms shall have the following meanings:

Applicable Law	Refers to laws, statutes, orders, issuances, rule, ruling, regulation, code, decision, opinion or interpretation of a Government Authority pertinent to or affecting a Party or all Parties existing at the date of execution of this Contract.
Commercial Operations Period	Refers to the [x] year period of commercial operations with reference to Section 4 of this Contract. <b>[Note: The Commercial Operations Period should not exceed 25 years in accordance with the ERC Guidelines.</b>

***However, the actual length would vary between QTP Types. As a general rule, the period should be sufficient to recover the investment at a reasonable tariff.]***

Certificate of Compliance or "COC"	Refers to a certificate given to an Entity by the Energy Regulatory Commission to engage in the operation of a power plant facility used to generate electricity pursuant to Section 6 of R.A. 9136 and Section 4 Rule 5 of its IRR
Cure Period	Refers to the 90-day period given to the Defaulting Party in Section 8.2.1 of this Contract, within which to cure or remedy an Event of Default.
Department of Energy or "DOE"	Refers to the government agency created pursuant to Republic Act No. 7638.
DOE Revised Guidelines on QTP	Refers to the DOE Department Circular No. DC2019-11-0015.
Distribution System	Refers to the system of wires and associated facilities to be established by the QTP for the servicing of the Load Requirements of the QTP Service Area pursuant to the requirements under <b>Schedule 2</b> .
Distribution Utility or "DU"	Refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and the EPIRA as defined in Section 4(q) of the EPIRA and Rule 4(cc) of the EPIRA-IRR.
Electric Cooperative" or "EC"	Refers to a distribution utility organized pursuant to Presidential Decree No. 269, as amended, as defined in Section 4(r) of the EPIRA and Rule 4(ee) of the EPIRA-IRR.
"EPIRA"	Refers to Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001".
Energy Regulatory Commission or "ERC"	Refers to the agency created under Section 38 of the EPIRA.
ERC Guidelines	Refers to the guidelines for the regulation of qualified third parties performing missionary electrification in areas declared unviable by the department of energy.
Event of Default	Refers to the events and circumstances identified in Section 8.1 hereof.
Force Majeure or Event of Force Majeure	Refers to any circumstance not within the reasonable control of the Party affected, but only if and to the extent that such circumstance, despite the exercise of reasonable diligence, cannot be or caused to be prevented, avoided or

removed by such Party and is not attributable to the negligence or willful misconduct or the failure of such Party to perform any of its obligations.

“Full Cost Recovery Rate” or “FCRR”	Refers to the rate, expressed in Peso per kilowatt-hours, that allows recovery of the full efficient costs of generating, distributing and supplying electricity, sufficient to enable the QTP to operate viably.
Generation Facilities	Shall refer to any power generating facilities installed or contracted by the QTP to service the QTP Service Area.
Good Industry Practice	Refers to the practices and methods not specified in specific standards but are generally accepted by the power industry to be sound and which ensure the safe and reliable planning, operation, and maintenance of a power system.
Government Authority	Refers to any agency, office, authority, commission, department, or political subdivision of the Republic of the Philippines, whether national, regional, provincial, municipal or otherwise.
Government Consents	Refer to permits, licenses, agreements, orders, certificates, registrations, filings, authorizations, consents, and other approvals or clearances by, with or from a Government Authority.
Guaranteed Dependable Capacity	Refers to the total generating capacity of the power station/s, expressed in Kilowatt, that the QTP is required to make available for the QTP Service Area, the specifications of which are provided in <b>Schedule 3</b> .
Load Requirement	Refers to the retail demand for electricity for the QTP Service Area which the QTP shall provide in accordance with the <b>Schedule 2</b> hereof.
QTP Service Area	Refers to the geographic area corresponding which is waived by the Distribution Utility in favor of the QTP and for which the QTP will be responsible for providing the Electricity Service as authorized by the ERC. The QTP Service Area is more specifically defined in <b>Schedule 1</b> .
Retail Rate	Refers to the total price paid by end users consisting of the charges for generation, transmission, and related Ancillary Services, distribution, supply and other related charges for electric services as defined in Rule 4(uuu) of the EPIRA.
Sound Value	Refers to the value of the Distribution System and/or the Generation Facilities (as the case may be) and related assets and equipment owned by the QTP.
Target Commercial Operations Date	Refers to the business day immediately following the day which should not be later than six (6)

months from Effective Date, unless otherwise changed or modified in accordance with the QSC on which QTP commences supply of electricity in the QTP Service Area.

Term	Refers to the period from execution of this Contract to the later of the occurrences referred to in Section 3.2 of this Contract.
Termination Date	Refers to the date this Contract expires, terminates or ceases to have effect under Section 8.4 of this Contract.
Termination Fee	Refers to the fee payable under Section 8.5 of this Contract.
Termination Notice	Refers to the written notice issued under Section 8.4 of this Contract.

**2 Scope of Contract**

The Contract shall cover the performance of the generation and distribution service through the supply and delivery of the Load Requirement of the QTP Service Area within the agreed period and in accordance with the terms set forth in this Contract and pertinent rules and regulations.

**3 Effective Date and Term**

- 3.1 Effective Date.** The Effective Date of this Contract shall be the date of approval by the ERC of this Contract, provided that a provisional authority granted by the ERC shall be deemed as sufficient ERC approval, pending the final approval of the ERC. For the avoidance of doubt, the provisional authority shall be subjected to the final resolution by the ERC.
- 3.2 Term.** This Contract shall have a term (the “Term”) commencing on the date this Contract is executed and delivered by the Parties hereto and expiring on the date on which the earlier of the following events occur or otherwise waived:
- 3.2.1** The last day of the Commercial Operations Period, as extended or earlier terminated in accordance with this Contract; or
- 3.2.2** Termination of this Contract pursuant to Section 8.3 herein.

**4 Commercial Operations Period.**

- 4.1 Commencement of Commercial Operations Period.** The Parties agree to work together to commence the Commercial Operations Period not later than **6 months** from Effective Date (“Target Commercial Operations Date”). *[Note: The date of the Target Commercial Operations Date would depend on the technical specification required for the Distribution System.]*
- 4.2 Conditions to Commencement of Commercial Operations Period.**
- On or before the Target Commercial Operations Date or such other date as may be agreed in writing between the Parties, the following condition must be met:

- 4.2.1 Authority to Operate and Government Consents.** All necessary Government Consents and Authority to Operate from the ERC for the QTP operations in the QTP Service Area as provided in **Schedule 5** shall be secured;
- 4.2.2 Performance Security.** Posting of the Performance Securities required under **Schedule 6**; and
- 4.2.3 Joint Certification.** Execution of a joint certification under oath that the Distribution System complies with the operating parameters in **Schedule 2** and that the Guaranteed Dependable Capacity shall be available in accordance with **Schedule 3**.
- 4.3 Failure to Achieve Target Commercial Operations Date.** In the event that the conditions in Section 4.2 of this Contract are not satisfied within 6 months from the Effective Date, the following provisions shall apply:
- 4.3.1 Automatic Extension.** If delay shall be due to an Event of Force Majeure not exceeding 90 days, then the Target Commercial Operations Date shall be adjusted, without need of further agreement or consent, by a period equal to the period of delay, subject to compliance of the procedure set out in Section 6 by the Party invoking Force Majeure.
- 4.3.2 QTP Delay.** If delay shall be due to the fault of QTP, not exceeding 90 days, then [DU/NPC] or DOE shall, by notice to QTP, impose a penalty of 1/10<sup>th</sup> of 1% of the Performance Security for every day of delay, provided that the total amount of penalties shall not exceed the amount of the Performance Security. ***[Note: If no performance security is required, a different penalty rate has to be provided.]***
- 4.3.3** Notwithstanding the occurrence of the Deemed Commercial Operations Date, if results of tests at a later date show that the Distribution System is incapable of meeting the Load Requirements and/or the Guaranteed Dependable Capacity is not available, then the QTP shall have remedy such non-compliance within the Cure Period provided in Section 8.2.1 of this Contract.
- 4.3.4 Extended Delay.** In the event of any delay of more than 90 days past the Target Commercial Operations Date, the Parties shall meet and consult each other regarding the terms by which this Contract may continue. If the Parties fail to reach an agreement within 30 days from commencement of consultations, the respective Party may exercise its right to terminate this Contract pursuant to the provisions of Section 8.3 of this Contract.
- 4.4 Early Commercial Operations.** Nothing in this Contract shall preclude the Parties from commencing with the Commercial Operation Period at a date earlier than the Target Commercial Operations Date, provided that all the conditions in Section 4.2 of this Contract have been satisfied.

## **5 Obligations of the Parties**

- 5.1** The QTP shall supply the Load Requirement of [QTP Service Area] as set forth in **Schedule 2**. QTP shall have the obligation to apply to the ERC for the approval of the Authority to Operate and as indicated in **Schedule 5**. The QTP shall be obliged to perform the following for the duration of the Term [ :
- 5.1.1** The control and possession, operation and maintenance of the Distribution System, including obtaining all necessary

Government Consents, including environmental approvals, required in connection with the Distribution System, in accordance with Good Industry Practice, the technical parameters set forth in **Schedule 2** and in compliance with Applicable Law;

- 5.1.2 Making available for dispatch the Guaranteed Dependable Capacity either through its own Generation Facilities or through third parties in accordance with the standards set forth in **Schedule 3** of this Contract. Provided that even if the QTP sources its generation requirements through third parties, the QTP shall nonetheless remain primarily liable for the availability of the Guaranteed Dependable Capacity. This obligation shall also include making available and arranging for fuel requirements. QTP shall retain ownership over any Generation Facilities;
- 5.1.3 Acquisition of the land and rights of way by purchase, lease or any other arrangement for the Distribution System and/or Generation Facilities entitling QTP to possession and occupation thereof until the termination of Commercial Operations Period;
- 5.1.4 Provide and maintain the Construction and Operations Securities in accordance with **Schedule 6**. *[Note: May be deleted if no security is required of QTP].*
- 5.1.5 Turn-over the Generation and Distribution System to the [DU/NPC] at the end of the Term.
- 5.1.6 Posting of performance securities required under **Schedule 6**;
- 5.1.7 Execute a joint certification under oath that the Distribution System complies with the operating parameters in **Schedule 2** and that the Guaranteed Dependable Capacity shall be available in accordance with **Schedule 3** ; and
- 5.1.8 Submit reportorial requirements to DOE, ERC and NEA on a regular basis in accordance with Section 11 of the DOE Revised Guidelines for QTP.

**5.2** The [DU/NPC] shall:

- 5.2.1 Execute a joint certification under oath that the Distribution System complies with the operating parameters in **Schedule 2** and that the Guaranteed Dependable Capacity shall be available in accordance with **Schedule 3**.
- 5.2.2 Conduct performance testing, at least once a year, to check compliance with the provision of this Contract;

## **6 Force Majeure**

**6.1 Events of Force Majeure.** Events of Force Majeure shall be:

- 6.1.1 Acts of God or other natural calamities, *i.e.*, earthquakes, floods, tidal waves, volcanic eruptions, meteorological disasters, or accidents, explosions or fires caused by any of the above and/or by a third party beyond the control of the Parties, including strikes or lockouts or other industrial action by workers or employees of a Party, and which are unforeseeable or which, though foreseen, are inevitable; or
- 6.1.2 The following political or governmental occurrences:

- 6.1.2.1 Acts of war, whether declared or not, embargoes;
- 6.1.2.2 Acts of terrorists, public disorders, insurrection, rebellion, sabotage, riots or violent demonstrations; and
- 6.1.2.3 Any action or failure to act by any Government Authority, including without limitation, expropriation, compulsory acquisition, the denial of or delay in the granting of any Government Consent which the Parties have agreed to waive for an agreed to time period past the Effective Date, the failure of any such Government Consent once granted to remain in full force and effect or to be renewed on substantially similar terms, and any delay in the importation of equipment or supplies into the Philippines resulting from any action or failure to act by Governmental Authority of the Republic of the Philippines, provided that in any of these cases, the affected Party complied with the timely and full submission of requirements published by the Government Authority.

**6.2 Temporary Force Majeure.** Both Parties shall be excused from performing their respective obligations under this Agreement upon the occurrence of an Event of Force Majeure for a period not exceeding 90 days ("Temporary Force Majeure Period"). In case of an Event of Force Majeure under Section 9.1 of this Contract, the Commercial Operations Period shall be extended, without need of further agreement or consent, by such number of days necessary to allow QTP to supply the kWh-shortfall in the Load Requirements during the Temporary Force Majeure Period.

**6.3 Consultation Period.** The Parties shall consult with each other upon the occurrence of the Event of Force Majeure, such consultation period not exceeding 30 days after the end of the Temporary Force Majeure Period.

**6.5 Extended Force Majeure.** Events of Force Majeure subsisting beyond the 30-day consultation period referenced in Section 6.3 above shall be considered Extended Force Majeure and give the Parties the right to terminate the Agreement pursuant to Section 8 of this Contract.

**6.6 Procedure to Claim Force Majeure.** A Party invoking Force Majeure shall follow the procedure below:

**6.6.1 Notice.** No later than three (3) days after the occurrence of the Event of Force Majeure, the Party invoking Force Majeure shall notify the other Party in writing of (i) the occurrence and nature, (ii) the date of commencement, and (iii) the expected duration of the Event of Force Majeure.

**6.6.2 Limitation.** The suspension of performance of obligation resulting from the Event of Force Majeure shall be limited to the scope and duration as may be reasonably required or affected by such event.

**6.6.3 Not excused.** Either Party's failure to perform its obligations arising before the occurrence of the Event of Force Majeure shall not be excused by the later occurrence of the event.

**6.6.4 Duty to mitigate.** The Party invoking Force Majeure shall make all reasonable efforts to prevent and mitigate the effects of such Event of Force Majeure, and shall use commercially reasonable

efforts to resume the regular performance of its obligations in accordance with the terms of this Contract.

## **7 Indemnification**

**7.1 Cross Indemnity.** Each Party (the “Indemnifying Party”) shall indemnify, defend and hold harmless the other (the “Indemnified Party”), its officers, directors, employees, contractors, and agents from and against all damages, losses and reasonable expenses, including without limitation reasonable legal fees, suffered or paid by the Indemnified Party as a result of any and all claims for personal injury, death or property damage (except economic loss) to third parties due to an event occurring during the Term of this Contract and arising directly out of or resulting from any act or omission of the Indemnifying Party or its agents or employees, except to the extent that it was caused by any act or omission of the Indemnified Party or the failure by it to take reasonable steps in mitigation thereof. In the event such injury or damage results from the joint or concurrent negligent or intentional act or omission of the Parties, each shall be liable under this Section in proportion to its relative degree of fault.

**7.2 Notice of claim.** The Indemnified Party shall deliver a notice of claim to the Indemnifying Party within 10 working days after the commencement or actual knowledge of the action that gave rise to such claim. In the event that such notice is not given within the period of claim, the Indemnifying Party’s obligation shall be limited to the amounts that would have been payable had such notice been delivered within the said period.

**7.3 Consequential Losses.** In no case shall any Party be entitled to its indirect or consequential losses or damages, whether or not such losses or damages are subject to the indemnities.

**7.4 Survival.** The provisions of this Section shall survive termination of this Contract with respect to an event occurring before the termination.

## **8 Default and Termination**

**8.1 Events of Default.** As regards the Party specified below (the “Defaulting Party”), the following events constitute an Event of Default and entitle the other Party (the “Non-Defaulting Party”) to the exercise of the remedies provided in this Section:

**8.1.1 [DU/NPC] Default.** The following shall constitute an [DU/NPC] default:

**8.1.1.1** Breach and failure by [DU/NPC] to comply with its obligations under this Contract;

**8.1.1.2** Reorganization, dissolution, merger, non-renewal of charter or privatization of [DU/NPC].

**8.1.2 QTP Default.** The following shall constitute a QTP default:

**8.1.2.1** Breach by QTP of its obligations under this Contract;

**8.1.2.2** Failure by QTP to service the entire Load Requirements or a portion thereof; and

**8.1.2.3** Filing of any action or petition for insolvency, rehabilitation or dissolution of QTP.

**8.2 Effects of Event of Default.** At anytime after the occurrence of an Event of Default, the following provisions shall apply:



**8.2.1 Cure Period.** The Defaulting Party shall have a period of 90 days from the occurrence of the Event of Default within which to cure or remedy its default. The Cure Period shall not apply to a breach under Section 8.1.2 above.

**8.2.2 Obligations Not Suspended.** During the Cure Period, the Parties shall continue to comply with their respective obligations pursuant to the terms of this Contract notwithstanding the obligation that is subject to the default.

**8.2.3 Failure to Deliver or Underdelivery.** Should the QTP fail to deliver the Load Requirements or a portion thereof, [DU/NPC] shall be entitled to immediately draw against the Performance Security in an amount equal to the value of the Load Requirement which the QTP was unable to service. The amount of such shortfall shall be the FCRR multiplied by the average Load demand for the prior month multiplied by the period of no delivery or underdelivery. Provided that the liability of the QTP shall not exceed the amount of the Performance Security. ***[Note: If no Performance Security is required, another penalty may have to be provided. Otherwise, the only recourse is for [ DU/NPC ] to take over operations.]***

**8.2.4 [DU/NPC] Take-over of Operations.** The following provisions shall apply in the case of failure to deliver or underdelivery of the Load Requirement:

**8.2.4.1** Should the QTP fail to deliver at least 50% of the Load Requirements for two continuous weeks, then [DU/NPC] shall have the right to take over the operations of the QTP, subject to approval of the ERC;

**8.2.4.2** Should the QTP fail to deliver an aggregate amount of 25% of the Load Requirement for a period of ninety (90) days, then [DU/NPC] shall have the right to take over the operations of the QTP, subject to approval of the ERC.

**8.2.4.3** The situations under Section 8.2.4.1 and 8.2.4.2 above shall be deemed Events of Termination and the remedies provided therein shall be without prejudice to other remedies which [DU/NPC] may have under this Contract.

**8.3 Events of Termination.** This Contract may be terminated by the respective Party upon the occurrence of the relevant event and subject to the applicable procedure provided in Section 8.4 below hereof:

**8.3.1 Failure to Cure an Event of Default.** Except as provided under, \_\_\_\_\_, the Non-Defaulting Party shall have the right to terminate this Contract in the event the Defaulting Party fails to cure or remedy the Event of Default within the Cure Period or within such extended period as may be agreed to between the Parties.

**8.3.2 Failure to Deliver.** In the event of the QTP fails to deliver the entire Load Requirement subject to the provisions of \_\_\_\_\_.

**8.3.3 Extended Force Majeure.** Any Party may terminate this Contract if the QSC Event of Force Majeure extends beyond the Consultation Period allowed under Section 6.5 of this Contract.

**8.3.4 Termination of the QSC.** [DU/NPC] may terminate this Contract in the event that the QSC is terminated for any reason or is otherwise revoked or invalidated by a Government Authority. This shall be considered an Event of Force Majeure.

**8.4 Termination.** Upon the occurrence of an Event of Termination, the relevant Party specified in Section 8.3 above shall exercise its right to terminate this Contract by giving written notice of its intent to terminate this Contract (the "Termination Notice") and specifying the basis of termination. Such termination shall be effective on the date such notice is received by the other Parties (the "Termination Date").

**8.5 Termination upon QTP Default.** Upon QTP's default at any time after the Effective Date, [DU/NPC] shall be entitled to a Termination Fee equivalent to the amount outstanding in the Performance Security posted by the QTP.

**8.5.1 Payment of Other Sums Due and Payable.** Notwithstanding payment of the Termination Fee, both Parties shall be liable for any amounts due and payable prior to the receipt of the Termination Notice.

**8.5.2 DU's Rights and Obligations Upon Termination.** Upon termination of this Contract due to QTP's default all of QTP's rights, title and interests in the Distribution System, including the assets comprising thereof, shall transfer to [DU/NPC] and thereupon this Contract and all of the Parties' obligations shall be deemed terminated, except as otherwise specifically provided. In addition, [DU/NPC] shall have the right to acquire any Generation Facilities subject to the payment of the Sound Value. The Sound Value shall be the value of the Generation Facilities as determined by an independent appraiser appointed jointly by the Parties. In case of disagreement in the appointment, the DOE shall appoint the appraiser.

## **8.6 Termination Due to Extended Force Majeure**

**8.6.1 Termination Prior to Commercial Operations.** After Effective Date but prior to Commercial Operations Date, either party may terminate this Contract due to Extended Force Majeure. Should QTP terminate, it shall be entitled to a return of the Performance Security and to remove any project related assets it may have constructed or installed. Should [DU/NPC] terminate the Contract, [DU/NPC] shall reimburse the QTP for all project-related costs. The value of the project related costs shall be certified by an independent auditor jointly appointed by the Parties, or, if the Parties fail to agree, the auditor shall be appointed by DOE.

**8.6.2 Termination During Commercial Operations.** Either Party shall have the right to terminate the Contract due to Extended Force Majeure during the Commercial Operations Period. Should QTP terminate, it shall be entitled to a return of the Performance Security and to remove any project related assets it may have constructed or installed. Should DU terminate the Contract, [DU/NPC] shall purchase the Distribution System and Generation Facilities (if any) at the Sound Value less any amount received or receivable from insurance proceeds. The Sound Value shall be the value of the Generation Facilities and/or the Distribution System as determined by an independent appraiser appointed jointly by the Parties. In case of disagreement in the appointment, the DOE shall appoint the appraiser.

## 9 Insurance

Upon Commercial Operations Date, the Parties shall obtain and maintain, or cause to obtain and maintain insurance policies required by Applicable Law or by the ERC and such other insurance covers under commercially reasonable terms usual to similar projects. In case of an insurable event affecting or causing damage to the Distribution System, all proceeds of insurance policies received by QTP shall be used to reinstate the Distribution System. ***[Note: May be deleted for small projects where QTP has limited resources.]***

## 10 Disputes

**10.1 Procedure.** All disputes between the Parties arising from this Contract shall be addressed in the manner noted below.

**10.1.1 Dispute Notice.** The Party claiming or raising a dispute arising from this Contract shall notify the other Party in writing of its claim and providing sufficient details thereof.

**10.1.2 Committee Resolution.** Not later than five (5) days from the Dispute Notification Date, the respective chief executive officers (or designated representative) of the Parties, convening as an Executive Committee, shall meet and discuss to resolve the dispute. Failure to resolve the dispute within 10 calendar days from commencement of discussions entitles the Party who raised the dispute to refer the matter in writing to arbitration in accordance with Section 10.3 below.

**10.2 Finality of Decision.** Except in case of fraud, bad faith or manifest error, the decision of the Executive Committee in Section 10.1.2 above shall be final and binding on the Parties.

**10.3 Arbitration.** In case of failure to settle the dispute within the period set forth in Section 10.1.2 above, or at any time in case of fraud, bad faith or manifest error in the settlement of the dispute, the Party that raised the dispute may refer the matter for arbitration under UNCITRAL Rules. Each Party shall nominate one arbitrator to the panel; the two nominated arbitrators shall jointly appoint the third arbitrator, which third arbitrator shall serve as chairman. In case of failure by the two nominated arbitrators to jointly appoint the third arbitrator, the third arbitrator shall be selected by the UNCITRAL/representative panel. The proceedings shall be conducted in English and the decision of the arbitration panel shall be final and binding on the Parties. The arbitration shall take place in Metro Manila. Judgment on the award may be entered by any court of competent jurisdiction.

## 11 Assignment

This Contract shall be binding upon the Parties hereto, their successors and assignees. Each Party may assign its respective rights and obligations under this Contract subject to prior written notice and consent of the other Party. This notwithstanding, QTP may assign all or any of its rights or obligations hereunder to lenders or such other persons for purposes of arranging or rearranging financing for the power facilities, subject only to prior written notice to [DU/NPC]. The assignment or transfer by QTP to lenders or such other persons that may have arranged or rearranged financing for the power facilities shall not relieve QTP of its obligations under this Contract.

## 12 Confidentiality

Each Party agrees that it, its employees, officers, directors, and agents will hold in confidence all information, documentation, data or know-how

disclosed to it by the other Party and designated in writing as “confidential” (“Confidential Information”), and will not disclose to any third party or use Confidential Information or any part thereof without the other Party’s prior written approval; provided, that Confidential Information may be disclosed to: (i) a Government Authority required pursuant to a judicial order, notice or mandated by Applicable Law; and (ii) financial institutions, bona fide potential investors, consultants, contractors and legal advisors whose duties reasonably require such disclosure, provided that, except for a bona fide disclosure to independent legal advisors, such other party shall first have agreed not to disclose the relevant Confidential Information to any other person for any purposes whatsoever.

These restrictions shall not apply, or shall cease to apply, to any part of the Confidential Information that is in the public domain other than by reason of a breach of this Section, or was in the rightful possession of the recipient Party or an employee, officer, director or agent of the recipient Party at or prior to the time of the disclosure, or was obtained by the recipient Party in good faith from a third party duly entitled to disclose it.

### **13 Miscellaneous**

**13.1 Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the Republic of the Philippines.

**13.2 Non-Waiver.** None of the provisions of this Contract shall be considered waived by either Party except when such waiver is given in writing. The failure of either Party to insist, in any one or more instances, upon strict performance of any of the provisions of this Contract or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

**13.3 No Partnership.** Nothing contained in this Contract shall be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party, or to create any principal/agent relationship between the Parties, or to create any duty, standard of care or liability to any person or entity not a Party hereto. Each Party shall be liable individually and severally for its own obligations under this Contract.

**13.4 Entire agreement.** This Contract, its schedules, and annexes supersede any previous agreement, arrangements or representation between the Parties, whether oral or written, in respect of the subject matter hereof and shall constitute the entire agreement between the Parties in relation thereto.

**13.5 Notices.** Unless otherwise stated, each communication to be made hereunder shall be made in writing and, unless otherwise stated, may be made by letter, delivered in person, by hand, air mail, telex, facsimile or established courier service to the address noted below or such other address as such Party notifies in writing to the other Party from time to time and which notice shall be effective upon receipt.

To: [DU/NPC]

Address:

Attention:

The PRESIDENT

Telephone No. [ • ]

Fax No. [ • ]

To: **QTP** [address]

Attention:  
The PRESIDENT

Telephone No. [ • ]  
Fax No. [ • ]

**13.6 Separability.** If any provision of this Contract shall be determined to be invalid, such provision shall be deemed separate and distinct, and the remainder of this Contract shall remain in full force and effect, provided that the remaining provisions are sufficient to render to each Party the benefits contemplated hereby.

**13.7 Substitute Provision.** In the event any provision or part of this Contract is declared invalid in accordance with Section 14.6 above, the Parties shall meet in good faith to agree, to the fullest extent allowed by Applicable Law, on a substitute provision that most closely approximates the intention and commercial bargain contained in the invalid provision and amend this Contract accordingly.

**13.8 Amendments.** This Contract may only be amended or modified by a written instrument signed by each of the Parties.

IN WITNESS WHEREOF, each of the Parties has caused this Contract to be executed in more than one copy each of which shall be deemed to be an original as of the date of this Agreement.

[ DU or NPC ]

[ QTP ]

By:

By:

[ NAME ]  
President

[ NAME ]  
President

Signed in the presence of:

\_\_\_\_\_

\_\_\_\_\_

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES        )  
CITY OF                                        ) S.S.

BEFORE ME, a Notary Public, for and in \_\_\_\_\_, on this [ • ] day of [ • ] 200\_\_ personally appeared the following with their respective Community Tax Certificates, to wit:

<u>Name</u>	CTC No.	Date/Place of Issue

All known to me and to me known to be the same persons who executed the foregoing instrument and who acknowledged to me that the same is their free and voluntary act and deed and also the free and voluntary act and deed of the corporations they represent.

This instrument refers to a Service Contract [ • ] and consists of [ • ] pages, including this page whereon this Acknowledgement is written, was signed by the Parties and their instrumental witnesses and sealed by my notarial seal.

Notary Public

Doc. No. \_\_\_\_\_  
Page No. \_\_\_\_\_  
Book No. \_\_\_\_\_  
Series of 200\_\_.

**Schedule 1**

**Description and Location Map of Service Area**



## **Schedule 2**

### **Distribution System and Load Requirements**

**This Schedule will provide the following:**

- **Minimum Load Requirements on an Annual Basis.** This should be increasing based on projected demand. Ideally, this should be at par with the Distribution Development Plan of the waiving EC so that at the end of the term and the Distribution System is turned over, the QTP Area is aligned with the rest of the Franchise Area. The Load, however, will also vary between QTP Service Areas. For example, there are areas which do not require 24/7 service. For such areas, the Load Requirements and the Term should be designed accordingly.
- **Distribution System Design and Technical Configuration based on Load Requirements.**
- **Allowable Line Losses**
- **Number of Connections on an Annual Basis.** Like Load Requirement this should increase over time based on growth in the area.
- **Line configuration, substations, transformers and other requirements of the Distribution System.**
- **Maintenance and Upgrade of facilities schedule over the Term.**

**Schedule 3**  
**Guaranteed Dependable Capacity and Generation Facilities**

**This Schedule shall provide the following:**

- **-The available Guaranteed Dependable Capacity (including ancillary and back-up reserve) on an annual basis. As with the Load requirement, this would also increase based on projected growth.**
- **The technical specifications of the Generation Facilities, including substations, tapping points and plant location.**
- **As with the Load Requirement, the Generation Facilities would depend on the requirements of a particular QTP Area.**

**Schedule 4**  
**FCRR**  
**COMPUTATIONS**

**This schedule would provide the formula for the Full Cost Recovery Rate based on the bid of the QTP.**

## **Schedule 5**

### **GOVERNMENT CONSENTS**

#### **Consents for Effective Date**

- 1. NEA verification of the QTP Service Area;**
- 2. DOE declaration of the QTP Service Area;**
- 3. DU or NPC issuance of Notice of Award; and**
- 4. ERC approval of the winning QTP and issuance of necessary permits.**

#### **B. Consents for Commercial Operations Period**

- 1. Authority to Operate issued by ERC**
- 2. CoC for Generation Facilities**
- 3. Local Government Permits**
- 4. ECC for Distribution System and the Generation Facilities**

**Schedule 6**  
**Form and Amount of Performance Security**

**This Schedule will provide aside from the Form and Amount, the following standard provisions:**

- **The Performance Security shall be renewed at least 30 days prior to the expiration of the current Performance Security (i.e. Surety Bond or Letter of Credit). Failure to renew shall entitle [ • ] to draw against the entire security and to declare QTP in default.**
- **Within thirty (30) days from receipt by the SUPPLIER of a written notice from the OFFTAKER that the OFFTAKER has drawn against the Construction or Operations Security as provided in this Agreement, the SUPPLIER shall replenish the Construction or Operations Security to the full amount.**
- **Failure of the SUPPLIER to replenish the Construction or Operations Security as stated above, shall entitle the OFFTAKER to draw against the Construction or Operations Security an amount equivalent to ten percent (10%) of the remaining amount of the Construction or Operations Security as a penalty.**
- **Failure of the SUPPLIER to replenish the Construction or Operations Security within sixty (60) days from receipt of the written notice shall entitle the OFFTAKER to draw a second penalty against the Construction or Operations Security in an amount equivalent to (10%) of the remaining amount of the Construction or Operations Security.**
- **Failure of the SUPPLIER to replenish the Construction or Operations Security within ninety (90) days from receipt of the written notice shall be considered an Event of Termination**