

**REPUBLIC OF THE PHILIPPINES**

**DEPARTMENT OF ENERGY**

**MINISTRY OF ENVIRONMENT,  
NATURAL RESOURCES AND ENERGY**

**COAL OPERATING CONTRACT NO. \_\_\_\_**

This COAL OPERATING CONTRACT (the "CONTRACT") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and among:

The **GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES**, hereinafter referred to as "GOVERNMENT" acting jointly through the **DEPARTMENT OF ENERGY** ("DEPARTMENT") with principal office at Energy Center, Rizal Drive corner 34th Street, Bonifacio Global City, Taguig City, in this act represented by Secretary **RAPHAEL P.M. LOTILLA** and the **MINISTRY OF ENVIRONMENT, NATURAL RESOURCES AND ENERGY** ("MINISTRY"), with principal office at Bangsamoro Government Center, Cotabato City, in this act represented by Minister **AKMAD A. BRAHIM**.

-and-

\_\_\_\_\_, a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines hereinafter referred to as "OPERATOR", with principal address at \_\_\_\_\_, in this act represented by \_\_\_\_\_ its \_\_\_\_\_.

The GOVERNMENT and the OPERATOR are hereinafter referred to individually as "Party" and collectively as "Parties."

W I T N E S S E T H; That:

**WHEREAS**, Section 2, Article XII of the 1987 Constitution states that *"all lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources are owned by the State"* and that *"the exploration, development, and utilization of natural resources shall be under the full control and supervision of the State"*;

**WHEREAS**, Presidential Decree (“PD”) No. 972, as amended, otherwise known as “*The Coal Development Act of 1976*” and Republic Act (“RA”) No. 7638, as amended, otherwise known as the “*Department of Energy Act of 1992*” declare it the policy of the State “*to immediately accelerate the exploration, development, exploitation, production, and utilization of the country’s coal resources*”;

**WHEREAS**, RA No. 11054, also known as the “*Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao*,” established the political entity known as the “*Bangsamoro Autonomous Region*”, wherein governmental powers is exercised by the Bangsamoro Government including those on natural resources and technical cooperation; and,

**WHEREAS**, in pursuance of the above-stated policy, the GOVERNMENT and the OPERATOR agree to enter into a Coal Operating Contract (“Contract”) whereby the OPERATOR shall furnish the necessary services, technology, and financing for the exploration, development and exploitation of coal resources within the contract area, under the full control, management and supervision of the GOVERNMENT.

**NOW, THEREFORE**, in view of the foregoing premises, the GOVERNMENT and OPERATOR hereby stipulate and agree as follows:

## **SECTION I**

### **SCOPE**

- 1.1 The OPERATOR shall be responsible to the GOVERNMENT for the execution of Coal Operations in accordance with the provisions of this CONTRACT and is hereby appointed and constituted as the exclusive Party to conduct the Coal Operations over the specific areas herein defined on behalf of the GOVERNMENT.
- 1.2 The OPERATOR shall assume all exploration risks such that if no **Coal Reserves in Commercial Quantity** is discovered and produced, it will not be entitled to reimbursement of expenses incurred in connection with this CONTRACT.
- 1.3 During the term of this CONTRACT, the total production achieved in the conduct of the Coal Operations shall be accounted for between the Parties in accordance with SECTION VI hereof.

## SECTION II DEFINITIONS

In this CONTRACT, the following words and terms shall have the following definitions:

- 2.1 **Act** – refers to Presidential Decree No. 972, as amended.
- 2.2 **Accounting Procedure** – refers to the set of procedures, guidelines and arrangements between the Parties to govern the recording and proper entry of expenses, costs and income, attached as Annex “\_\_\_” to this CONTRACT.
- 2.3 **Affiliate** - means (a) a company in which the OPERATOR holds directly or indirectly at least fifty percent (50%) of its outstanding shares entitled to vote or (b) a company which holds directly or indirectly at least fifty percent (50%) of the OPERATOR’s outstanding shares entitled to vote or (c) a company in which at least fifty percent (50%) of its shares outstanding and entitled to vote are owned by a company which owns directly or indirectly at least fifty percent (50%) of the shares outstanding and entitled to vote of the OPERATOR.
- 2.4 **Calendar Quarter** – means a period of three (3) consecutive Gregorian months under the Gregorian calendar beginning on the first (1st) day of January, the first (1st) day of April, the first (1st) day of July, or the first (1st) day of October.
- 2.5 **Calendar Year** - means a period of twelve (12) consecutive months beginning on January 1 and ending on the following December 31 of the same year.
- 2.6 **Certificate of Non-Coverage (CNC)** - refers to the certification issued by the MINISTRY in accordance with PD No. 1586 and DENR Administrative Order (DAO) 03-30, stating that the exploration activity of the OPERATOR is not covered by the Philippine Environmental Impact Statement System (PEISS).
- 2.7 **Certificate of Non-Overlap (CNO) or Certification Precondition (CP)** – refers to the Certificate issued by the Ministry of Indigenous Peoples’ Affairs (MIPA), signed by competent authority, attesting to the compliance with the Free and Prior Informed Consent (FPIC) process by the OPERATOR.
- 2.8 **Coal** – refers to a sedimentary rock composed predominantly of solid organic materials with a greater or lesser proportion of mineral matter. It is derived from the accumulation

of plant remains in sedimentary basins, and is altered to solid rock by heat and pressure applied during the basin's development. Its quality varies according to the content of ash, impurities, and volatile matter which decreases as coal rank gets higher. It has a natural dark brown to black, graphite-like appearance and is primarily used as a fuel. Types of coal according to increasing rank (in terms of hardness, purity and heating value) are peat, lignite, subbituminous, bituminous and anthracite.

2.9 **Coal Operations** shall include:

- a. The examination, investigation and/or exploration of the contract area supposed to contain coal by detailed surface geologic mapping, geophysical survey, core drilling, trenching, test pitting, shafting and other appropriate means for the purpose of probing the presence of coal deposits and extent thereof;
- b. The determination of appropriate mining methodology, either surface or underground, to reach the coal deposits;
- c. The extraction, beneficiation and transportation up to the delivery point; and,
- d. The progressive mine rehabilitation and final decommissioning activities.

2.10 **Coal Reserves in Commercial Quantity** - means coal in such quantities which will allow economic development and production of coal in the contract area as determined jointly by the GOVERNMENT and the OPERATOR after taking into account factors such as measured reserves, quality of coal, mining method, location and accessibility to market.

2.11 **Contract** - means this Coal Operating Contract.

2.12 **Contractor** – means a third party individual or entity which provides services to the OPERATOR to perform some of its activities and/or obligations under this CONTRACT.

2.13 **Contract Area** – means the subject area of this CONTRACT and defined in conformity with the Coal Blocking System (CBS) established in the Act. The contract area is outlined and more particularly described in Annex “ \_\_\_ ” attached hereto.

2.14 **Contract Year** - means a period of twelve (12) consecutive months counted from the effectivity of this CONTRACT and, thereafter, from each anniversary of such effectivity.

- 2.15 **Delivery Point** - means the point at which coal reaches the delivery facility as agreed upon by the OPERATOR and the buyer in the sales contract and/or purchase order.
- 2.16 **Development and Production Area** – refers to the specific geographical area over which the OPERATOR is given the exclusive right to develop and from which to produce coal in accordance with this CONTRACT.
- 2.17 **Development and Production Period** – means the stage of this CONTRACT during which the OPERATOR conducts activities necessary to reach and extract the coal deposits either by surface or underground mining methods, such as, but not limited to, contour stripping, open-pit mining, shaft sinking and tunneling, as well as the beneficiation and transportation of the coal up to the delivery point.
- 2.18 **Environmental Compliance Certificate (ECC)** – refers to the certification issued by the MINISTRY in accordance with PD No. 1586 stating that the activity of the OPERATOR is covered by the PEISS and has complied with all the requirements and standards therein.
- 2.19 **Exploration Area** – refers to a portion of the contract area which has not been relinquished before the expiration of the exploration period and which is not included in a development area or a production area.
- 2.20 **Exploration Period** – means the stage of this CONTRACT during which the OPERATOR conducts examination, investigation and/or exploration of the contract area supposed to contain coal by detailed surface geologic mapping, geophysical survey, core drilling, trenching, test pitting, shafting and other appropriate means for the purpose of probing the presence of coal deposits and extent thereof.
- 2.21 **Foreign Currency** – means currency other than Philippine currency which is freely convertible into gold or currencies eligible to form part of the country's international reserves, acceptable to both the GOVERNMENT and the OPERATOR.
- 2.22 **Gross Income** - means the gross proceeds from the sale of coal produced under this CONTRACT and sold during the taxable year at posted or market price, as the case may be, all as determined pursuant to SECTION VI, and such other income which are incidental to and arising from any one or more of the coal operations of the OPERATOR.

- 2.23 **Market Price** - means the price which would be realized for coal produced under this CONTRACT if sold in a transaction between independent persons dealing at arm's length in a free market.
- 2.24 **Operating Expenses** - means the total expenditures incurred by the OPERATOR in all coal operations performed pursuant to this CONTRACT as determined in accordance with the Accounting Procedures. These expenses shall include, but are not necessarily limited to, the cost of detailed surface geologic mapping, geophysical survey, core drilling, trenching, test pitting, shafting and other appropriate means for the probing of the presence and extent of coal deposits and cost of development and production either by surface or underground mining methods, such as, but not limited to, contour stripping, open-pit mining, shaft sinking and tunneling, room and pillar, and shortwall or longwall mining methods as well as the beneficiation and transportation of the coal up to the delivery point, progressive mine rehabilitation and final decommissioning activities. Operating expenses shall also include the expenses related to secure permitting requirements from other government agencies such as CP/CNO, ECC and costs of its implementation thereof e.g. Memorandum of Agreement, Social Development Program, etc.
- 2.25 **Philippine Corporation** - means a corporation organized under Philippine laws at least sixty percent (60%) of the capital of which is owned and held by citizens of the Philippines.
- 2.26 **Philippine Income Tax** – refers to taxes imposed under the National Internal Revenue Code of the Philippines, as amended, upon taxable corporate income.
- 2.27 **Posted Price** - means the Freight on Board (FOB) price established by the GOVERNMENT and the OPERATOR for each grade, specific gravity and quality of coal offered for sale to buyers for export at the particular point of export, which price shall be based upon geographic location and the fair market export values for coal of comparable grade, specific gravity, quality, and quantity.
- 2.28 **Work Program and Budget** – means all types of plans and activities formulated for the performance of the Coal Operations, including plans and programs for exploration, development and production, progressive mine rehabilitation and final decommissioning activities, and the corresponding budget for such activities.

**SECTION III**  
**TERMS**

- 3.1 The Exploration Period under this CONTRACT shall be two (2) years from effectivity, after which this CONTRACT shall automatically terminate, unless:
- a. Coal Reserves in Commercial Quantity is delineated by both Parties using the GOVERNMENT's standard classification of coal reserves; and,
  - b. The Exploration Period is extended with the approval by the GOVERNMENT for a maximum period of two (2) years, provided that the OPERATOR:
    - (i) Has not been in default in its Work Program and Financial commitments and other obligations under this CONTRACT; and,
    - (ii) Has provided a Work Program and Budget for the extension period that is approved by the GOVERNMENT.

This CONTRACT shall automatically terminate at the end of such extension period unless Coal Reserves in Commercial Quantity are measured. Provided, that the Parties shall agree within 12 months from the end of the exploration period or any extension thereof, on the existence of Coal Reserves in Commercial Quantity.

- 3.2 If the OPERATOR opts to enter to the Development and Production Period, it shall submit a Coal Mining Project Feasibility Study and a coal development and production Work Program and Budget based on the agreed Coal Reserves in Commercial Quantity for the approval of the GOVERNMENT, and the OPERATOR shall secure an ECC and all applicable permits from the MINISTRY within the said 12-month period. Following the approval of coal development and production Work Program and Budget, this Contract shall remain in force for development and production during the balance of the Exploration Period or any extension thereof, and for an additional period ranging from ten (10) to twenty (20) years, thereafter renewable for a series of three (3)-year periods not exceeding twelve (12) years under such terms and conditions as may be agreed upon by the Parties.
- 3.3 During the Development and Production Period, the OPERATOR shall retain only the Coal Blocks where it has a coal development and production as per Work Program and

Budget approved by the GOVERNMENT. All other Coal Blocks covered by this CONTRACT must be relinquished except for other Coal Blocks which the OPERATOR opts to retain provided, a supplemental exploration Work Program and Budget for all the retained Coal Blocks is approved by the GOVERNMENT. If the OPERATOR fails to submit a supplemental exploration Work Program and Budget, or if it fails without justifiable cause to implement the approved supplemental exploration Work Program and Budget for these retained Coal Blocks, these shall automatically be deemed relinquished.

**SECTION IV  
WORK PROGRAM AND EXPENDITURES**

4.1 During the Exploration Period, the OPERATOR shall be obliged to spend not less than <Total Financial Commitment> for the direct implementation of the following Work Program:

**Work Commitments**

Activities	Year I	Year II	Total
Geological Mapping (has) Semi Detailed Detailed			
Geodetic Survey (has) Boundary Topographic			
Subsurface Exploration (dhe-m) Test Pitting Trenching Exploratory Adits Exploratory Shafts Diamond Drilling <b>Total</b>			
Financial Commitment (Php)			

4.2 If Coal Reserves in Commercial Quantity had been determined jointly by the Parties, and approval of the Coal Mining Project Feasibility Study and Development and Production Work Program and Budget pursuant to Section 4.1 hereof, the OPERATOR shall undertake coal development and production in the Contract Area within the period agreed

by both Parties, and shall be obliged to spend in the development and production of the Contract Area the minimum amount committed by the OPERATOR for the purpose.

Provided, that if during any Contract Year, the OPERATOR shall spend more than the amount of money required to be spent, the excess may be credited against the amount of money required to be spent by the OPERATOR during the succeeding Contract Years except that excess expenditures for exploration cannot be credited against financial commitments for development and production; Provided further, that should the OPERATOR fail to comply with the work obligations provided for in this CONTRACT, it shall pay to the GOVERNMENT the amount it should have spent but did not in direct prosecution of its work obligations. For purposes of this Section, in addition to the remedies which the GOVERNMENT may apply under Section 12.1, failure on the part of the OPERATOR to meet the commitment as provided for herein shall be deemed a failure to spend the amount committed and the OPERATOR shall then pay the GOVERNMENT the amount which is left unspent during each Contract Year.

The approved coal development and production Work Program and Budget shall be executed by the OPERATOR. At least six (6) months prior to the expiration of the approved Development and Production Period, the OPERATOR shall request for extension and submit a coal development and production Work Program and Budget for approval by the GOVERNMENT.

If during any Contract Year, the OPERATOR fails to produce the minimum amount of coal that is prescribed to be produced in the Work Program and Budget, then the OPERATOR shall pay to the GOVERNMENT a penalty which is determined and computed in the following manner:

- a. In any Contract Year, the deficiency in coal production is the difference in the sum of coal produced and the sum of coal required to be produced in the approved Work Program and Budget;
- b. The GOVERNMENT shall determine the average selling price per metric ton of all coal produced and sold by the OPERATOR in the Contract Area during any Contract Year;
- c. The amount of coal determined in Section 4.2(a) above shall be multiplied with the average selling price determined in paragraph Section 4.2(b) herein. Thereafter, the

GOVERNMENT, shall proceed to apply SECTION VI of the Contract on recovery of Operating Expenses and accounting for proceeds of production; and,

- d. The share of the GOVERNMENT prescribed in Section 6.5 of this CONTRACT shall be the amount of the penalty to be paid to the GOVERNMENT.

In connection with the above penalty, the GOVERNMENT may call on the performance bond posted by the OPERATOR in accordance with Section 5.1(m) to satisfy any penalty not paid to the GOVERNMENT.

The payment of the foregoing penalty is without prejudice to the actions and remedies which the GOVERNMENT may institute and avail of as provided in Section 12.1 of this CONTRACT.

- 4.3 The OPERATOR shall undertake coal development and production within the Contract Area during the term of the Contract in accordance with the approved Work Program and Budget by the GOVERNMENT.

## **SECTION V RIGHTS AND OBLIGATIONS OF THE PARTIES**

- 5.1 The OPERATOR shall have the following obligations under this CONTRACT:
  - a. Perform all Coal Operations and provide all necessary services, technology and financing in connection therewith.
  - b. Employ on a full-time basis a licensed Geologist or Mining Engineer, as appropriate, to oversee the Coal Operations.
  - c. Conduct a boundary survey of the Coal Blocks covered by this Contract within one (1) year from the effectivity of this Contract and submit the survey results to the GOVERNMENT for approval within 30 calendar days from its completion.
  - d. Operate the Contract Area on behalf of the GOVERNMENT, subject to the provisions of all applicable laws relating to labor, health, safety, indigenous people's rights and ecology/environment, avoiding hazards to life, health and property, avoiding pollution of air, land and water. A Safety Engineer duly accredited by the GOVERNMENT shall oversee the safety aspect of the Coal Operations on a full-time basis.

- e. Before the start of coal development and production operations, acquire gas detectors and other safety devices and provide each mine worker with personal protective equipment such as, but not limited to, self-rescuer, skull guard, safety goggles, safety shoes, cap lamp and respirator/dust mask in accordance with applicable provisions under the existing coal mine safety and health rules and regulations and other applicable issuances.
- f. Maintain detailed technical records and furnish the GOVERNMENT promptly with all information, data and reports as required under existing guidelines for coal operations in the Philippines.
- g. Maintain complete and accurate accounting records of all income, costs and expenses for the Coal Operations in accordance with the provisions of the Accounting Procedure hereto and to maintain the accounting records in good order.
- h. Conform to regulations regarding, among others, safety demarcation of the Contract Area, as well as the recognition of and non-interference with prior rights of other energy contractors, and mineral and energy resources operations.
- i. Remit to the GOVERNMENT the government share from its reported sale of coal within sixty (60) calendar days following the end of each Calendar Quarter. Failure to remit the same on time without justifiable cause may result in the cancellation of the CONTRACT and would render the OPERATOR liable under existing laws, issuances, rules, and regulations.
- j. Maintain all necessary equipment in good order and allow access to these as well as to the exploration, development and production sites and all other sites of Coal Operations to the inspectors authorized by the GOVERNMENT.
- k. Allow representatives authorized by the GOVERNMENT, at all reasonable times, full access to books of accounts and records of Coal Operations hereunder for tax and other fiscal purposes. For this purpose, actual cost of expenses incurred during the inspection or examination of such books of accounts and financial records of the OPERATOR are reimbursable to the OPERATOR as Operating Expenses as defined in this Contract and its Accounting Procedure.

- l. Give priority in employment to qualified personnel in the municipality/ies or province/s where the exploration, development and production are located.
- m. To post a performance bond, within thirty (30) calendar days after the effectivity of this CONTRACT or upon the implementation of the succeeding Contract Year, equivalent to the minimum work program commitment in favor of the GOVERNMENT, conditioned upon the faithful performance by the OPERATOR of any or all the obligations under this CONTRACT. The amount of the guarantee for each Contract Year shall be adjusted in accordance with the obligations as approved in the Work Program and Budget for the respective Contract Year. Otherwise, the GOVERNMENT shall impose penalties and/or initiate cancellation proceedings as provided under existing rules and regulations and issuances of the GOVERNMENT.
- n. Properly abandon and rehabilitate all sites affected by the Coal Operations, at the OPERATOR's expense, immediately after the termination of any Coal Operations. It is the OPERATOR's responsibility to decommission and dispose of all facilities erected and to restore all sites affected by the Coal Operation.
- o. Regularly submit, within the duration of the CONTRACT, a tax clearance from the Bureau of Internal Revenue (BIR) as well as copy of its income and business tax returns duly stamped and received by the BIR and duly validated with the tax payments made thereon.
- p. Provide to the GOVERNMENT access to the coal assessment/ pricing system used by the OPERATOR for purposes of validating the Posted Price.
- q. Comply with the existing rules and regulations on coal trading and utilization.

5.2 The OPERATOR shall have the following rights under this CONTRACT:

- a. Exemption from all taxes, except Philippine Income Tax under the provisions of the National Internal Revenue Code and the Act, as amended;
- b. Exemption from payment of tariff duties, compensating tax and value-added tax on importations of machinery and equipment, spare parts and materials required for, and to be used exclusively by the OPERATOR, in the Coal Operations on the following conditions:

- i. said machinery, equipment, spare parts and materials of comparable price and quality are not manufactured in the Philippines;
- ii. said machinery, equipment, spare parts and materials are actually directly needed and will be used exclusively by the OPERATOR in its operations or in operation for it by a third party Contractor;
- iii. said machinery, equipment, spare parts and materials are covered by shipping documents in the name of the OPERATOR to whom the shipment will be directly delivered by customs authorities; and,
- iv. the prior approval of the GOVERNMENT was obtained by the OPERATOR before the importation of such machinery, equipment, spare parts and materials which approval shall not be unreasonably withheld;

Provided, however, that the OPERATOR or its third party Contractor may not sell, transfer, or dispose of the machinery, equipment, spare parts and materials without the prior approval of the GOVERNMENT and payment of taxes and duties thereon: Provided, further, that should the OPERATOR or its third party Contractor sell, transfer, or dispose of these machinery, equipment, spare parts or materials without the prior approval of the GOVERNMENT, it shall pay twice the amount of the taxes and duties thereon: Provided, finally, that the GOVERNMENT shall allow and approved the sale, transfer or disposition of the said items without tax if made:

- i. to another operator under a Coal Operating Contract;
  - ii. for reasons of technical obsolescence; or
  - iii. for purposes of replacement to improve and/or expand the operation under this CONTRACT.
- c. Entry, upon endorsement of the GOVERNMENT to the appropriate governmental agency for the issuance of the necessary visa, which endorsement shall not be unreasonably withheld, of technical and specialized alien personnel (including the immediate members of their families) who may exercise their professions solely for the Coal Operations of the OPERATOR; Provided, that if the employment or connection of any such alien with the OPERATOR ceases, the applicable laws and regulations on immigration shall apply to him and his immediate family.

- d. Have at all times the right of ingress and egress to the Contract Area and related facilities wherever located.
- e. Relinquish this CONTRACT, upon settlement of all other obligations under this CONTRACT. Any unfulfilled financial obligations shall survive the relinquishment of this CONTRACT.

## **SECTION VI**

### **RECOVERY OF OPERATING EXPENSES AND ACCOUNTING FOR PROCEEDS OF PRODUCTION**

- 6.1 In each Calendar Year, the OPERATOR can recover from the Gross Income under this CONTRACT an amount equal to all Operating Expenses; Provided, that the amount so recovered shall not exceed ninety percent (90%) of the total Gross Income in any Calendar Year; Provided, further, that if in any Calendar Year the Operating Expenses exceeds ninety percent (90%) of the Gross Income, or if there is no Gross Income, then the unrecovered Operating Expenses shall be recovered from the Gross Income in succeeding Calendar Years.
- 6.2 The OPERATOR shall be entitled to a fee, the net proceeds of which shall not exceed forty percent (40%) of the Gross Proceeds after deducting all Operating Expenses.
- 6.3 In addition to the fee provided in paragraph 6.2, the OPERATOR shall be granted a special allowance the amount of which shall not exceed thirty percent (30%) of the Gross Proceeds after deducting all Operating Expenses.
- 6.4 For purposes of determining gross proceeds from the sale of coal, it shall be valued as follows:
  - a. All coal sold for consumption in the Philippines shall be valued at Market Price for such coal.
  - b. All coal exported shall be valued at the Posted Price.
  - c. Reasonable commissions or brokerage fees incurred in connection with sales to third parties, if any, shall be deducted from gross proceeds but shall not exceed the customary and prevailing rates.

- d. Delivery expenses to end-users shall be deducted from the gross proceeds provided that the selling price of coal is inclusive of freight cost pursuant to the sales contract and/or purchase agreement. Provided, further, that the freight cost to be allowed shall be limited to actual delivery expenses paid to the trucking/shipping companies or freight cost included in the sales invoice whichever is lower.
- 6.5 The balance of the Gross Proceeds after deducting all Operating Expenses, OPERATOR's fee and special allowance shall be paid as government share.

## **SECTION VII ASSETS AND EQUIPMENT**

- 7.1 The OPERATOR shall acquire for the Coal Operations only such assets as are reasonably estimated to be required in carrying out the Coal Operations and approved in the Work Program and Budget.
- 7.2 The GOVERNMENT shall have the ownership of any cost recovered assets and materials, equipment and facilities.
- 7.3 The OPERATOR may also utilize in the Coal Operations, equipment owned and made available by OPERATOR, and charges to the Coal Operations account for use of such equipment shall be considered as provided for in the Accounting Procedure.
- 7.4 All materials, equipment, plants and other installations erected or placed on the exploration and/or production area of a movable nature by the operator shall become properties of the GOVERNMENT if not removed therefrom within one (1) year after the termination of this CONTRACT.

## **SECTION VIII PAYMENTS**

- 8.1 All payments which this CONTRACT obligates the OPERATOR to make to the GOVERNMENT shall be in Philippine currency realized as a result of the domestic and export sale of coal. All such payments shall be converted to the prevailing exchange rate as defined in the Accounting Procedure.

8.2 All payments to be made by the OPERATOR pursuant to this CONTRACT, including government share, may be made in cash, manager's cheque, direct or over-the-counter bank deposit, or via wire/bank transfer payable separately to the DEPARTMENT and the MINISTRY through the following bank details:

For the DEPARTMENT

Account Name : DOE Trust Fund  
Account Number : 0052-1155-58  
Bank Address : Land Bank of the Philippines, Buendia Branch  
Swift Code : TLBPPHMM  
Beneficiary : Department of Energy, Energy Center, BGC,  
Taguig City

For the MINISTRY

Account Name : MINISTRY  
Account Number : \_\_\_\_\_  
Bank Address : Land Bank of the Philippines, Cotabato City  
Swift Code : \_\_\_\_\_  
Beneficiary : Ministry of Environment, Natural Resources, and Energy

## SECTION IX

### EMPLOYMENT, SCHOLARSHIP, AND ASSISTANCE TO HOST COMMUNITIES

- 9.1 The OPERATOR shall employ qualified Filipino personnel in the Coal Operations and, after the date of commencement of development and production, to undertake upon approval of the GOVERNMENT, the education and training of Filipino personnel for labor and staff positions, including administrative, technical and executive management positions.
- 9.2 The OPERATOR shall provide scholarships to qualified individuals residing within the vicinity of the Contract Area, preferably in state colleges and universities, in the minimum amount of One Hundred Fifty Thousand Pesos (Php150,000.00) per year, cumulative during the Development and Production Period.
- 9.3 Subject to the prior approval of the GOVERNMENT as part of the Work Program and Budget, the OPERATOR shall undertake Social Development Programs during the Production Period of this CONTRACT, whether by itself or through partner institutions or third parties, in the host communities or vicinity of the Contract Area or areas utilized

by the OPERATOR to support Coal Operations. The costs of Social Development Programs shall be included in the annual Work Program and Budget and shall be cost-recovered as Operating Expenses in accordance with the Accounting Procedure. This notwithstanding, the GOVERNMENT may nominate Social Development Programs for implementation by the OPERATOR.

**SECTION X**  
**SIGNATURE BONUS, DEVELOPMENT ASSISTANCE, AND TRAINING**  
**COMMITMENTS**

- 10.1 The OPERATOR shall pay, upon signing this CONTRACT, a signature bonus in the amount of **Two Hundred Fifty Thousand Pesos (Php250,000.00)**.
- 10.2 The OPERATOR shall provide a one (1) time developmental assistance in the amount of **<insert amount which shall in no case be less than Php250,000.00>** payable within sixty (60) calendar days from the effectivity of the CONTRACT.
- 10.3 The OPERATOR shall pay, every end of the Contract Year, training commitments for programs, scholarships, conferences, seminars and other related programs and activities for the GOVERNMENT's personnel, with a total minimum training commitment of **<insert amount which shall in no case be less than Php75,000.00>** per year, cumulative during the Exploration Period, and **<insert amount which shall in no case be less than Php200, 000.00>** per year, cumulative during the Development and Production Period. The cost and expenses incurred hereto by the OPERATOR shall form part of recoverable Operating Expenses.

**SECTION XI**  
**BOOKS OF ACCOUNTS AND AUDIT**

- 11.1 The OPERATOR shall be responsible for keeping complete books of accounts, reflecting all transactions in connection with Coal Operations in accordance with the Accounting Procedure.
- 11.2 The GOVERNMENT shall have the right to inspect the Contractor's books of accounts directly relating to the CONTRACT for any Contract Year.
- 11.3 The period to conduct audit, the prescriptive period of audit, and the review and appeal process of audit and/or assessments shall be in accordance with the Guidelines on the

Conduct of Audit and Reportorial and Remittance Obligations of Energy Contractors and/or Energy Resource Developers issued by the GOVERNMENT.

- 11.4 The GOVERNMENT, upon at least fifteen (15) calendar days advance written notice to the OPERATOR, is entitled to examine, during reasonable hours without affecting coal operations, all books of accounts and records and may inspect such sites and facilities as necessary.

## **SECTION XII TERMINATION**

### 12.1 Grounds for Termination

The GOVERNMENT may, after due notice, terminate this CONTRACT for failure of the OPERATOR to:

- a. fulfill its work obligations in any Contract Year without justifiable cause;
- b. secure the Certificate of Non-Coverage (CNC) and Certification Precondition (CP) or Certificate of Non-Overlap (CNO) within one (1) year from effectivity of this CONTRACT;
- c. conduct a boundary survey of the Coal Blocks covered by this CONTRACT within one (1) year from effectivity of this CONTRACT;
- d. remit the government share within sixty (60) days following the end of each Calendar Quarter;
- e. post the performance bond required under Section 5.1(m) of this Contract;
- f. meet safety standards as stipulated in the existing coal mine safety and health rules and regulations, and existing guidelines for Coal Operations in the Philippines;
- g. protect the Contract Area to prevent illegal coal mining and coal trading activities;
- h. gross negligence in complying with the reportorial requirements of this CONTRACT. The non-submission of reports after one (1) year following the due date shall be considered gross negligence;

- i. comply with the provisions of PD 972, as amended and all other existing applicable implementing circulars, rules and regulations and such others as may be issued by the GOVERNMENT; or
- j. failure to comply with all other obligations under this CONTRACT.

12.2 The termination of the CONTRACT by the GOVERNMENT is without prejudice to its right to cancel/forfeit the performance bond under Section 6.1(m) of this CONTRACT to satisfy any and all obligations due to the GOVERNMENT.

### **SECTION XIII FORCE MAJEURE**

#### 13.1 Force Majeure

- (a) Force Majeure shall include Acts of God, storms, typhoons, earthquakes, unavoidable accidents, acts of war or conditions attributable to or arising out of war (declared or undeclared), laws, rules, regulations, and orders by any government or governmental agency, strikes, lockouts, or other labor or political disturbances, insurrections, riots, and other civil disturbances, hostile acts of hostile forces constituting direct and serious threat to life and property, and all other matters or events of a like or comparable nature beyond the control of the Party concerned; Provided, that the GOVERNMENT may not invoke as Force Majeure the issuance of such orders, laws, rules, and regulations.
- (b) Any failure or delay on the part of either Party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure. If operations are delayed, curtailed, or prevented by such causes, then the time for enjoying the rights and carrying out of the obligations thereby affected, and all rights and obligations hereunder shall be extended for a period equal to the period of delay, curtailment or prevention.
- (c) The Party whose ability to perform its obligations is impaired due to Force Majeure shall notify the other Party in writing of such fact within a period of ten (10) calendar days from the existence of the Force Majeure with reasonable detail as to the cause and nature thereof and both Parties shall do what is reasonably within their power to remove such cause.

**SECTION XIV  
EFFECTIVITY**

14.1 The terms and conditions of this CONTRACT shall be effective upon due execution hereof by the Parties.

**SECTION XV  
MISCELLANEOUS PROVISIONS**

15.1 Any notice/s required or given by either Party to the other Party shall be in writing and shall be effective when a copy thereof is served upon the Party's duly designated representative or the person in charge of the office or place of business; or when sent by electronic mail, notice shall be effective upon successful transmittal to the designated email address/es of the Party; or when sent by registered mail, notice shall be effective upon actual receipt by the addressee; Provided, that if the addressee fails to claim its mail from the post office within five (5) calendar days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time.

15.2 Any data, information, report, or notice required to be submitted to the GOVERNMENT shall be made through the MENRE.

15.3 All such notices shall be addressed, as follows:

for the GOVERNMENT –

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

Designated email address/es:

1. Name, designation, email address
2. Name, designation, email address
3. Email address

for the OPERATOR –

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

Designated email address/es:

1. Name, designation, email address
2. Name, designation, email address
3. Email address

Any Party may substitute or change its address (business and electronic mail) upon written notice thereof to the other Parties, otherwise, such a change shall not be binding.

- 15.4 The laws of the Republic of the Philippines shall govern this CONTRACT.
- 15.5 All circulars, rules and regulations issued or to be issued by the GOVERNMENT whether in the exercise of its regulatory powers or contractual rights shall form part of this CONTRACT.
- 15.6 The rights and obligations under this CONTRACT shall not be transferred or assigned without the prior approval of the GOVERNMENT: Provided, that such transfer or assignment may be made only to a qualified person possessing the resources and capability to continue the mining operation of this CONTRACT and that the OPERATOR has complied with all the obligations of this CONTRACT.

The GOVERNMENT approval shall be required if at least a majority of the shares or other ownership interest in relation to the OPERATOR are directly or indirectly transferred to another party, or if a transaction results, directly or indirectly, in a change in control of the OPERATOR.

- 15.7 The OPERATOR warrants that it or any of its officials or representatives has not given or promised to give any money or gift to any employee/official of the GOVERNMENT to influence the decision regarding the awarding of this CONTRACT, nor the OPERATOR has or its officials or representatives have exerted or utilized any unlawful influence on

any employee/official of the GOVERNMENT to solicit or secure this CONTRACT through an agreement to pay a commission, percentage, brokerage or contingent fee.

The OPERATOR hereby agrees that the breach of these warranties shall be sufficient ground for the GOVERNMENT at its discretion to terminate this CONTRACT without prejudice to the OPERATOR's or any other person's civil or criminal liability under any applicable laws.

15.8 Disputes pertaining to this CONTRACT shall be settled amicably between the Parties before resort to any judicial action may be had. In the event either Party to this CONTRACT shall take judicial action, the Parties agree that the venue thereof shall be with the proper courts in Cotabato City to the exclusion of all other courts.

15.9 If, for any reason, any stipulation of this CONTRACT is declared invalid, other stipulations that are not affected by such declaration shall continue to be in full force and effect.

15.10 This CONTRACT constitutes the entire agreement between the Parties and supersedes all prior negotiations and agreements, whether oral or written.

IN **WITNESS WHEREOF**, the Parties hereto have signed this CONTRACT as of the day and year first above written.

**DEPARTMENT OF ENERGY**

By:

\_\_\_\_\_  
Secretary

**MINISTRY OF ENVIRONMENT,  
NATURAL RESOURCES AND  
ENERGY**

By:

\_\_\_\_\_  
Minister

**OPERATOR**

By:

\_\_\_\_\_  
Representative

**REPUBLIC OF THE PHILIPPINES**

**DEPARTMENT OF ENERGY**

**MINISTRY OF ENVIRONMENT,  
NATURAL RESOURCES AND  
ENERGY**

**ACCOUNTING PROCEDURE**

Attached to and made an integral part of the Coal Operating Contract between the GOVERNMENT and the OPERATOR dated \_\_\_\_\_, 2023.

**ARTICLE I : GENERAL PROVISIONS**

**1. Definitions**

The Accounting Procedure herein provided for is to be followed and observed in the performance of all obligations under the Contract. Unless otherwise specified, the terms used herein shall have the same meaning as those defined in the Contract.

Policies, systems, and procedures, as identified and provided under this Accounting Procedures do not preclude the GOVERNMENT from adapting best industry practices and generally accepted accounting and auditing principles, practices, and procedures.

**2. Purpose**

Generally, the purpose of this Accounting Procedure is to set out principles and procedures of accounting which will enable the GOVERNMENT to monitor effectively the OPERATOR's costs, expenditures, production and

income as well as Government's entitlement to Net Proceeds pursuant to the terms of the Contract. More specifically, the purpose of this Accounting Procedure is to:

- classify costs and expenditures and to define which costs and expenditure shall be allowable for cost recovery purposes;
- specify the manner in which the OPERATOR's accounts shall be prepared and approved; and
- address numerous other related accounting matters.

For purposes of Article III, the OPERATOR herein shall refer to the party designated in accordance with the operating agreement to conduct the Coal Operation in the Contract Area.

### **3. Conflicts**

If there should be any conflict between the provisions of this Accounting Procedure and the Contract, the provisions of the Contract shall prevail.

### **4. Working Language and Units of Account**

The OPERATOR shall maintain all books of accounts, records, and financial reports for the Coal Operation in the English language. The amounts shall be recorded in Philippine Pesos in accordance with generally accepted accounting principles and practices in the coal industry.

### **5. Currency Translation**

For conversion purposes for transactions between United States Dollars and Philippine Pesos or any other currency, the applicable exchange rate shall be the exchange rate as quoted by the Philippine Dealing System at the close of business on the last banking day of the same month of disbursement or receipt, or if there were no such quotations on that day, then such rates on the most recent day in such preceding month during which were such

quotations or on such other basis as may be agreed upon by the Parties. Provided, however, that in the event of a significant change in the rate of exchange after the end of the preceding month, then all transactions after such re-evaluations until the end of that month shall be translated at the rates in effect on the day of the transactions.

It is agreed, however, that any adjustment resulting from the exchange of currency required for the use of this Coal Operation or from the translation mentioned above, shall be charged or credited to the Operating Expenses. The matter of translation rates will be reconsidered if it is determined that the above methods result in inequities.

## **6. Accounting Records and Reports**

All accounting records related to the Coal Operation shall be established and maintained by the OPERATOR within the Philippines.

In implementing Section VI of the Contract, the OPERATOR shall render to the GOVERNMENT financial reports of all charges and credits to the Coal Operation summarized by appropriate classifications indicative of the nature thereof.

Notwithstanding the generality of the foregoing, pursuant to the BED Circular No. 81-11-10, the OPERATOR shall make regular financial reports relating to the Coal Operation as follows:

### **A. Coal Operations Return**

- CD-Coal Form 5 – Coal Operations Return

### **B. Coal Production/Sales/Inventory Report**

- CD-Coal Form 4 – Monthly Coal Inventory/ Production/ Sale Report

### **C. Coal Purchased from Small Scale Coal Mining Permittee**

- CD-Coal Form 10 – Coal – Purchase from Permittee

D. Expenditures Report

- CD-Coal Form 6 – Coal Exploration Development/  
Production Summary Investment and  
Recoverable Cost
- CD-Coal Form 7 – Depreciable/ Amortizable Assets
- CD-Coal Form 8 – Exploration and Development  
Expenditure Summary
- CD-Coal Form 9 – Production and Marketing  
Expenditure Summary

The pro forma financial reports are attached in Annex “\_\_” hereof.

The Government may require submission of other financial reports which may be deemed necessary.

**7. Adjustments**

Subject to the provisions of Section 12.2 of the Contract, all financial reports rendered to the GOVERNMENT by the OPERATOR during any Calendar Year shall conclusively be presumed to be true and correct and reasonable unless within the period provided in Section 12.3, the GOVERNMENT takes written exception thereto and makes claim on the OPERATOR for adjustment. Failure on the part of the GOVERNMENT to make a written claim on the OPERATOR for adjustment within such period shall establish the correctness and reasonableness thereof and preclude the filing of exceptions thereto or making claims for adjustment thereon.

**8. Arm’s Length Transactions**

Unless otherwise specifically provided for in the Contract, all transactions giving rise to revenues or expenditures which will be credited or charged to the accounts prepared, maintained or submitted hereunder shall be conducted at arm’s length or under comparable conditions and circumstances as a transaction with an independent party, as provided under Bureau of Internal Revenue (BIR) Revenue Regulation (RR) No. 02-2013.

## **9. Audit and Inspection**

Without prejudice to the statutory rights and upon at least fifteen (15) working days advance written notice to the OPERATOR, the GOVERNMENT shall have the right to inspect and audit, during normal business hours, all records and documents supporting costs, expenditures, receipts and income, such as the OPERATOR's books of accounts, records, invoices, cash vouchers, debit notes, price lists or similar documentation with respect to the Petroleum Operations conducted in each Calendar Year, within thirty-six (36) months following the end of each Calendar Year.

In connection with such audit, the GOVERNMENT shall also have the right to visit and inspect, at reasonable times, all sites, plants, facilities, warehouses and offices of the OPERATOR directly or indirectly serving the Petroleum Operations, and to physically examine other properties, facilities and stocks used in Petroleum Operations, wherever located and to question personnel associated with those operations.

The GOVERNMENT shall undertake the conduct of the audit through its own representatives and the costs of such audit shall be borne by the OPERATOR as a general and administrative cost. Provided, the GOVERNMENT shall request the OPERATOR for reasonable assistance and logistical support such as, but not limited to, suitable office space, equipment, stationery, and local area transportation.

Within sixty (60) calendar days following the completion of such audit, the GOVERNMENT shall issue an initial audit report, including audit exceptions on the reported revenues and expenditures, if any.

## **10. Review and Appeals Process of Audit and/or Assessments**

Within forty-five (45) calendar days upon receipt of the initial audit report, the OPERATOR may file a Letter of Reconsideration (LR) along with supporting documents, records and/or data contesting the exceptions and/or assessment. The LR shall be addressed to the DOE Director of the Financial

Services (FS) and Director of MENRE-EMDS and shall be submitted to the MENRE.

Unless the OPERATOR timely files an LR, the exceptions and/or assessment in the initial audit report shall be deemed final, due, and demandable.

When the OPERATOR timely contests the validity of the audit exceptions and/or assessments, the DOE Director of the Financial Services (FS) and Director of MENRE-EMDS shall jointly resolve the contested assessment and/or exceptions within forty-five (45) calendar days from receipt of the LR and pertinent documents, records and/or data. Such decision of the DOE Director of the Financial Services (FS) and Director of MENRE-EMDS shall become final and executory if not appealed within ten (10) calendar days from receipt thereof by the OPERATOR to the Office of the Supervising Undersecretary of FS and MENRE Director General for Energy.

The concerned Supervising Undersecretary of FS and MENRE Director General for Energy shall resolve jointly within forty-five (45) calendar days the issues raised by the OPERATOR in its appeal. Such decision shall become final and executory if not appealed within seven (7) calendar days upon receipt thereof. The OPERATOR shall then be given a period of seven (7) calendar days from the finality of the exceptions and/or assessment to pay the amount due.

However, the auditee may further appeal to the Office of the Secretary and MENRE Minister the decision of the Supervising Undersecretary and MENRE Director General for Energy within seven (7) calendar days. The Secretary and MENRE Minister shall issue their joint decision within thirty (30) calendar days, which shall become final and executory. The OPERATOR shall then be given a period of seven (7) calendar days from the finality of the exceptions and/or assessment to pay the amount due.

In all cases, the OPERATOR shall be given a grace period of seven (7) calendar days from the finality of the exceptions and/or assessment to pay the amount due. Failure to pay within the seven (7) calendar days grace

period will result in the imposition of ten percent (10%) interest per annum from the date of finality of the assessment until full payment of the amount due.

#### **11. Revision of the Accounting Procedure**

By mutual agreement between the GOVERNMENT and the OPERATOR, this Accounting Procedure may be revised from time to time, in writing, signed by the Parties, stating the date upon which the amendments shall become effective.

### **ARTICLE II : CLASSIFICATION, DEFINITION AND ALLOCATION OF COSTS AND EXPENDITURES**

#### **1. Segregation of Costs**

The costs shall be segregated in accordance with the purposes for which such expenditures are made. All costs and expenditures allowable under Article III, relating to Coal Operations, shall be classified, defined and allocated as set out below in this Article. Expenditure records shall be maintained in such a way as to enable proper allocation to each Contract.

The report to be submitted by the OPERATOR to the GOVERNMENT in this regard shall be in the form required by the GOVERNMENT.

#### **2. Depreciable/Amortizable Assets**

Capital expenditures defined under the Contract. This includes the acquisition cost of machinery and equipment, construction cost of infrastructures, expenditures incurred for construction in progress, and incidental costs related to such purchase or construction of machinery and equipment with estimated useful life longer than the immediate years of Coal Operations.

### **3. Exploration Costs**

Exploration costs generally comprise the cost incurred in prospecting, sampling or testing for the presence of Coal and subdivided into:

A. Survey costs and expenses related to the preliminary evaluation of the Contract Area and includes the following activities:

- 1) Geological Mapping
- 2) Geochemical / Geophysical survey
- 3) Geodetic engineering and topographic survey
- 4) Other related activities

B. Exploration drilling representing costs incurred in sampling the Contract Area for the presence of Coal deposits after the survey works and the determination of the estimated reserves therein. The related activities are as follows:

- 1) Diamond drilling
- 2) Test Pitting
- 3) Site clearing
- 4) Other related activities

### **4. Development Costs**

Development costs comprise the expenditures incurred in developing the Contract Area which is usually characterized by the following activities:

- A. Development drilling
- B. Tunneling
- C. Pre-stripping
- D. Other related activities

## 5. **Marketing Expenses**

Marketing expenses comprise the expenditures directly associated with the marketing of Coal produced in the Contract Area which shall be limited and sub-classified as:

- A. Delivery expense – hauling and/or freight costs incurred in transporting Coal delivered to the consumer.
- B. Reasonable commission or brokerage fees paid to third parties in connection with Coal sold.

Unless otherwise provided for in the Contract, marketing expenses shall form part of the Operating Expenses and subject to the percentage limitation of the cost recovery.

## 6. **Production Costs**

Production costs refer to the expenditures incurred which are absolutely essential to the Coal Operation during the production phase.

## 7. **General and Administrative Costs**

- A. Expenses incurred during the year in operating one or more administrative levels in exploration, development and production activities are to be included herein.
- B. Overhead/indirect expenses shall include expenses incurred in the following:
  - 1) Principal Office – an office established in the Philippines which may serve all activities
  - 2) District Office(s) – an office which may be established to serve the Coal Operation in the vicinity of the Coal Operation.

**ARTICLE III : REVENUES, COSTS, EXPENDITURES AND INCIDENTAL  
INCOME OF THE OPERATOR**

**1. Revenue Definition**

- A. Gross proceeds from the domestic sale of Coal
- B. Gross proceeds from the sale of Coal which are to be exported from the Philippines
- C. Other income as enumerated in Article III.5 of this Accounting Procedure.

**2. Recoverable and Allowable Costs Under the Contract**

The costs incurred by the OPERATOR on Coal Operations pursuant to the Contract as classified under the headings referred to in Article II shall be allowable for purposes of the Contract except to the extent provided in Article III.4 or anywhere in this Accounting Procedure, subject to audit as provided for herein.

**A. Surface Rights**

All direct costs attributed to the acquisition, renewal or relinquishment of surface rights acquired and maintained in force for the Coal Operations hereunder when paid by the OPERATOR in accordance with the provisions of the Contract. All direct costs attributable to the entry, use or acquisition of private lands, timber and water when paid by the OPERATOR in accordance with the Contract and the governing law(s) thereof including bid monies, rentals and other rentals made by the OPERATOR to the private landowner, timber or concessionaires and/or government agencies for the entry, use and/or acquisition of the said surface, water and timber rights.

**B. Labor and Associated Labor Cost**

- 1) Salaries and wages of the OPERATOR's employees directly engaged in the conduct of Coal Operations of the Coal Contract Area. Salaries and wages shall include everything constituting gross pay to employees as reflected on the OPERATOR's payroll. To the extent not included in the salaries and wages, the Operating Expenses shall also be charged with overtime pay, rest day pay, holiday pay, vacation pay, and vacation travel pay, sickness and disability benefits, bonuses and customary allowances.
- 2) The costs of expenditures or contributions made pursuant to obligations imposed by the governmental authority which are applicable to the OPERATOR's labor costs or salaries and wages.
- 3) Personal income and fringe benefit taxes where and when they are paid by the OPERATOR to the Government of the Philippines for the employee, in accordance with the OPERATOR's standard personnel policies.
- 4) The OPERATOR's cost of established plans for employee's group life insurance, health insurance, pension retirement, thrift and other benefits of like nature.

**C. Materials and Equipment**

- 1.) General

So far as it is reasonable, practicable and consistent with efficient and economical operation, only such materials shall be purchased or furnished by the OPERATOR for use in the Coal Operations as may be required for use in the reasonably foreseeable future and the accumulation of surplus stocks shall be avoided. Materials and equipment

held in inventory shall only be charged to Operating Expenses when such materials and equipment are removed from inventory and used in Coal Operations.

## 2.) Warranty

In the case of defective materials or equipment, any adjustment received by the OPERATOR from the suppliers or manufacturers or their agents in respect of any warranty on materials or equipment shall be credited to the accounts under the Contract.

## 3.) Value of materials charged to the account under the Contract

- (a) Except as otherwise provided in subparagraph (b) below, materials purchased by the OPERATOR for use in the Coal Operations shall be valued to include invoice price less trade and cash discounts, if any, purchase and procurement fees plus freight and forwarding charges between point of supply and point of shipment, freight to port of destination, insurance, taxes, custom duties, consular fees, other items chargeable against imported material and, where applicable, handling and transportation costs from point of importation to warehouse or operating site, and these costs shall not exceed those currently prevailing in normal arm's length transactions in the open market.
- (b) Materials purchased from or sold to Affiliates or transferred to or from activities of the OPERATOR other than Coal Operations under the Contract:
  - 1. New materials (hereinafter referred to as condition A) shall be valued at the price prevailing in normal arm's length transactions in the open market;

2. The cost of inventories shall comprise all costs of purchase, cost of conversion and other costs incurred in bringing the inventories to their present locations and condition. The cost of purchase of inventories comprises the purchase price, import duties and other taxes, and transport, handling and other costs directly attributable to the acquisition of finished goods, material and services. Trade discounts, rebates and other similar items are deducted in determining the cost of purchase.

**D. Transportation Costs**

- 1) Reasonable transportation and travel expenses of employees of the OPERATOR including those made for travel and relocation of the employees and their families (limited to spouse and dependent children) to or from their place of origin.
- 2) Reasonable costs of transportation of equipment, materials and supplies for the conduct of Coal Operations under the Contract, including directly related costs such as unloading charges, dock fees and inland and ocean freight charges.

**E. Services**

- 1) Service Providers

The actual costs of contract services, services of professional consultants, utilities and other services necessary for the conduct of Coal Operations under the Contract performed by Third Parties.

- 2) In the event the OPERATOR, from time to time, utilizes skilled personnel not regularly residing in the Philippines for performance of services either in the Philippines or elsewhere for the benefit of the Coal Operation, whose time in full or in part is

not otherwise charged hereunder, a proportion of the direct and indirect salary and travel expenses of such personnel (including reasonable living expenses while in the Philippines) together with any tax on such salaries or otherwise imposed upon the employees' service in the Philippines which are comparable to the Philippine Government and for which the OPERATOR assumed responsibility, and any accident or sickness compensation and/or hospitalization cost incurred shall be charged to Operating Expenses.

- 3) Data processing and computer services acquired for the benefit of the Coal Operations may be contracted through third parties or by arrangement for time rental of computer services from the OPERATOR's affiliates even though such computer facilities are physically located outside the country. The contract for computer services must be competitively priced.

- 4) Use of Exclusively Owned Facilities

Equipment owned by the second party/parties, or any affiliate or either of them, and not previously charged to the Operating Expenses, either directly or indirectly, may be utilized in the Coal Operations. For the use of any such wholly-owned equipment, the Operating Expenses shall be charged a rental rate commensurate with the cost of ownership and operation, but not to exceed commercial rates for the use of like equipment.

A fair rate shall be charged for laboratory services performed by the second party/parties or their affiliates for the benefit of the Coal Operations, such as but not limited to Coal, gas, water, core and any other analyses and test provided such charges shall not exceed those currently prevailing if performed by outside technical service companies.

**F. Damages and Losses**

All costs or expenses necessary to replace or repair damages or losses not recovered from insurance incurred by fire, flood, storm, theft, accident or any other cause not controllable by the OPERATOR through the exercise of reasonable diligence. The OPERATOR shall furnish the GOVERNMENT with written notice of damages or losses incurred as soon as practicable after reports of the same have been received by the OPERATOR.

**G. Communication**

The costs of acquiring, leasing, installing, operating, repairing and maintaining communication systems including radio and satellite communication facilities between the Contract Area and the OPERATOR's nearest base facility.

**H. Environmental Studies and Protection**

The costs incurred in conducting the environmental impact studies for the Contract Area, and in taking environmental protection measures pursuant to the terms of the Contract or in compliance with environmental laws, rules and regulations.

**I. Duties, Fees and Other Charges**

Any duties, levies, fees and charges imposed by any governmental or taxing authority in connection with the OPERATOR's activities under the Contract and paid directly by the OPERATOR except those charges and assessments for which the OPERATOR is solely liable under the terms of the Contract.

**J. Insurance and Claims**

- 1) Premium paid for insurance required to be carried for the Coal Operations conducted under the Contract, together with all the

expenditures incurred and paid in settlement of any and all losses, claims, damages, judgments, and other expenses, including legal services not recovered from the insurer.

- 2) All actual expenditures relative to the Coal Operations incurred and paid by the OPERATOR in settlement of any and all losses, claims, damages, judgments and any other expenses not covered by insurance, including legal services shall be charged to the Operating Expenses.

**K. Legal Expenses**

All reasonable costs and expenses resulting from the handling, investigating, asserting, defending or settling of any claim or legal action necessary or expedient for the procuring, perfecting, retention and protection of the Contract Area and in defending or prosecuting lawsuits involving the Contract Area or any Subcontractor claim arising out of Coal Operations under the Contract, or sums paid in respect of legal services necessary for the protection of the joint interest of the GOVERNMENT and the OPERATOR. Such expenditures shall include attorney's fees, court costs, costs of investigation and procurement of evidence and amounts paid in settlement or satisfaction of any such litigation and claims provided such costs are not covered elsewhere in the Accounting Procedure.

**L. Training Costs**

All costs and expenses of training the OPERATOR's personnel for the direct benefit of the Coal Operations and the costs of training of the GOVERNMENT's personnel shall be charged as Operating Expenses.

**M. Administrative Overhead within the Philippines**

- 1) Principal office as used herein means the costs and expenses incurred by the OPERATOR for an office and staff established

anywhere in the Philippines which may serve all activities of the Coal Operations under the Contract. Allocation of such costs and expenses between the OPERATOR's other activities and Coal Operation activities hereunder shall be made on actual expenditures or other equitable basis. Examples of such services which are chargeable to the Coal Operation include, but are not necessarily limited to the following:

- a) Administrative and Managerial
  - b) Accounting and Internal Control
  - c) Legal and Tax
  - d) Human Resource and Medical
  - e) Communications
  - f) Purchasing
  - g) Treasury and Financial Services
  - h) Insurance
  - i) Safety and Security
  - j) Budgeting and Planning
- 2) District office(s) as used herein means the cost and expenses incurred by the OPERATOR for an office(s) which may be established to serve in the vicinity of the Coal Operations. Allocation of such costs and expenses between the OPERATOR's other activities and Coal Operation activities hereunder shall be made on actual expenditures or other equitable basis. Examples of such district office(s) services

which are chargeable to Coal Operations include, but not necessarily limited to the following:

- a) Field or district superintendent and staff
- b) Geological and geophysical staff
- c) Engineering and production staff
- d) Communication
- e) Camp and commissary facilities
- f) Clerical staff

#### **N. Interest**

Any interest, charges, fees or other consideration paid or suffered in respect of financing the Coal Operations including, but not limited to, financial advisor fees, investment banker fees, registration and stamp fees and all closing costs, as approved by the Government, shall be considered Operating Expenses except interest on loans or indebtedness incurred to finance the Exploration Period. The GOVERNMENT's approval of such interest, charges, fees or other considerations shall not be withheld if reflective of prevailing conditions in the international capital market.

#### **3. Other Expenditures**

Any costs paid and incurred in connection with the disposal of assets provided under Section 8.2 of this Contract, may be deducted against the proceeds of disposal. These include marketing and publication fees, reasonable commissions, brokerage fees, logistics, and other usual and necessary expenses for such undertaking. Provided, however, that it shall not exceed the ordinary and prevailing rate.

**4. Costs not recoverable and not allowed under the Contract**

The following costs and expenditures shall not be recoverable nor allowed for cost recovery and production sharing purposes under the Contract:

- A. Processing/application fees, bonuses, rentals and other payments made to the GOVERNMENT such as but not limited to the payments for signature bonus, discovery bonus, production bonus and tax exemption certificates;
- B. Costs attributed to posting the performance guaranty deposits required under this Contract;
- C. Costs and charges incurred before the effectivity of the Contract including costs in respect of preparation, signature or ratification of this Contract;
- D. Royalties/fees paid to original claimholder/leasehold/assignor and assignee;
- E. Expenditures in respect of any financial transaction to negotiate, float or otherwise obtain or secure funds which are not used for Coal Operation;
- F. Costs of marketing or transportation of Coal beyond Delivery Point;
- G. Expenditures incurred in obtaining, furnishing and maintaining the guarantees required under the Contract and any other amounts spent on indemnities with regard to non-fulfillment of contractual obligations;
- H. Fines and penalties imposed by courts of law of the Republic of the Philippines;
- I. Donations and contributions beyond the limitations set under the National Internal Revenue code, as amended;

- J. Costs incurred in the creation of any partnership or joint venture arrangement;
- K. Membership and club dues not related to professional organizations;
- L. Costs incurred as a result of failure to insure where insurance is required pursuant to the Contract, or where the OPERATOR has elected to self-insure, or has under-insured;
- M. Costs and expenditures incurred as a result of willful misconduct or negligence of the OPERATOR;
- N. Provisions, Revaluation of Assets, and other accrued expenses where no actual incurrence or payment of expenses was made.
- O. Costs and expenditures related to Corporate Social Responsibility (CSR) are non-recoverable, except for Social Development Program (SDP) which are part of the OPERATOR's regulatory compliance as approved and indicated in the Work Program and Budget; and,
- P. Any costs and expenditures which by reference to generally accepted accounting principles and practices in the Coal industry can be shown to be excessive.

## **5. Incidental Income and Credits**

All incidental income and proceeds received from Coal Operations under the Contract, including but not limited to the items listed below, shall be credited to the accounts under the Contract and shall be treated as follows:

### **A. As part of Gross Income**

- 1) Revenue received from service providers for the use of property or assets, the cost of which has been charged to the accounts under the Contract;

- 2) Proceeds from sale of Coal by-products;
- 3) Such other income which is incidental to and/or arising from any Coal Operations or other aspects of the Contract.

**B. As offset against Operating Expenses**

- 1) Proceeds of any insurance or claim or judicial awards in connection with Coal Operations under the Contract or any assets charged to the accounts under the Contract where such operations or assets have been insured and the premiums charged to the accounts under the Contract;
- 2) Any adjustment received by the OPERATOR from the suppliers/manufacturers or their agents in connection with defective materials, the costs of which was previously charged by the OPERATOR to the accounts under the Contract;
- 3) Refunds or other credits received by the OPERATOR which apply to any charge which has been made to the accounts under the Contract;
- 4) Net dividends received from utilities and dividends received from investments;
- 5) Costs originally charged to the accounts under the Contract for materials subsequently exported from the Republic of the Philippines without being used in Coal Operations under the Contract;
- 6) Legal costs charged to the accounts and subsequently recovered by the OPERATOR; and
- 7) Proceeds from the sale of validated assets acquired during the exploration phase

**C. As revenue for the GOVERNMENT during the Development and Production (DP) Phase**

- 1.) Proceeds from the sale of fully cost-recovered assets shall be one hundred (100%) percent revenue for the GOVERNMENT
- 2.) Proceeds from the sale of partially recovered assets shall be shared by the GOVERNMENT and the OPERATOR based on the ratio of the recovered and unrecovered cost

**ARTICLE IV : RECOVERY OF EXPENDITURES**

**1. Tangible Investments**

The initial costs of physical assets classified as depreciable in accordance with the generally accepted accounting principles and practices in the coal industry purchased and/or fabricated by the OPERATOR, and used by the OPERATOR in its Coal Operations shall include such costs as export broker's fees, purchasing agent's fees, transportation charges, loading and unloading fees, license fees associated with the procurement of materials and equipment, duties and customs fees, in-transit losses not recovered through insurance and installation costs necessary to put the asset ready for use. The total cost of the assets shall be allocated to the Operating Expenses in accordance with the provision of P.D. 972.

**2. Leasehold Improvements**

Improvements and betterments on leasehold which can be capitalized in accordance with generally accepted international Coal industry accounting principles and practices shall be allocated to Operating Expenses in accordance with depreciation principles established in Article IV.1 above. Such improvements shall include but not be limited to office improvements, additional equipment and other improvements.

### 3. Intangible Investments

Notwithstanding any other provision of this Accounting Procedure, all intangible investments shall be recoverable in full in the Calendar Year in which these are incurred.

## **ARTICLE V : REVENUE SHARING**

In implementing Section VII of this Contract, the following shall be observed in determining the revenue to be shared between the GOVERNMENT and the OPERATOR:

### 1. Net Proceeds from Coal Operations

The Net Proceeds shall be computed by deducting the following from the Gross Proceeds:

- (a) Delivery expenses and reasonable commission or brokerage fees in connection with sales to third parties pursuant to Sections 7.4 (c) and 7.4 (d) of the COC
- (b) Actual recoverable operating expenses or ninety percent (90%) of the total gross proceeds in any calendar year whichever is lower

### 2. Share of OPERATOR

The OPERATOR shall be entitled to the following fees which shall not exceed the following percentages (%) of the net proceeds:

- (a) OPERATOR's fee – forty percent (40%)
- (b) Special Allowance – thirty percent (30%)

### 3. The OPERATOR shall be liable for Philippine Income Tax for each taxable year. It shall be computed in accordance with the provisions of the National Internal Revenue Code and the Act, both as amended.

#### 4. Government Share

The GOVERNMENT shall be entitled to thirty percent (30%) of the Net Proceeds from Coal Operations, subject to the following provisions:

- (a) One and 1/2 percent (1.5%) of the proceeds of the Government share collected, excluding tax, shall be allocated to the Renewable Energy Trust Fund (RETF) pursuant to Section 28 of Republic Act 9513<sup>1</sup> or the Renewable Energy Act of 2008.
- (b) The remaining amount after deducting the REFT from the Government Share from Coal Operations shall be shared as follows:
  - (i) Forty percent (40%) of the Government Share shall be allocated to the Local Government Unit (LGU).
  - (ii) Sixty percent (60%) of the Government Share shall be shared equally between DOE and MENRE.

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<sup>1</sup> <https://www.officialgazette.gov.ph/2008/12/16/republic-act-no-9513/>