

**REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF ENERGY**

**SUPPLEMENTAL OFFSHORE WIND ENERGY SERVICE CONTRACT
Of OsWESC No -----**

This **SUPPLEMENT TO [WIND /OFFSHORE WIND] ENERGY SERVICE CONTRACT NO. _____** (this “**RE Contract**”), made and entered into this **[DATE OF EXECUTION]** in Bonifacio Global City, Taguig City by and between:

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

-and-

[COMPANY NAME], hereinafter referred to as the “**RE DEVELOPER**”, a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at **[Company Address]** represented herein by its **[Designation, Name]**;

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

WITNESSETH:

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

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

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

WHEREAS, pursuant to the Act, the **RE DEVELOPER** has been determined by the **DEPARTMENT** to be legally, technically, and financially qualified to enter into an RE Contract ;

WHEREAS, the **RE DEVELOPER** was awarded a **[Wind Energy Service Contract (WESC) / Offshore Wind Energy Service Contract ([WESC / OsWESC]) No. _____** dated **[Date of WESC Award]**, covering the Contract Area identified thereunder for the development of the Offshore Wind Energy Project (“OSW Project”);

WHEREAS, the **RE DEVELOPER** offered the [entire capacity / _____ MW] of the OSW Project covered by the [WESC / OsWESC] at the Fifth Auction Round of the Green Energy Auction Program (“GEA-5”), with a committed Commercial Operation Date (COD) on [Insert COD Date] (the “committed COD”);

WHEREAS, under the Terms of Reference (TOR) of GEA-5, a Supplement to WESC or OsWESC, as applicable, entered into by and between the **RE DEVELOPER** and the **DEPARTMENT** is one of the post-auction requirements for the issuance of a Certificate of Award (COA);

WHEREAS, **RE DEVELOPER** was declared a Winning Bidder in GEA-5 through Notice of Award dated _____;

WHEREAS, the **RE DEVELOPER** complied with and/or submitted the post-auction requirements under the GEA-5 TOR on [_____], including the pre-signed Supplement to [WESC / OsWESC] in the form and substance prescribed in Annex [] of the GEA-5 TOR;

WHEREAS, under Section _____ of the GEA-5 TOR, the **Parties** shall enter into a Supplemental WESC or OsWESC, as applicable, to ensure the continued implementation of the OSW Project;

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

SECTION I EFFECTIVITY

- 1.1 This **Supplemental Contract** shall become effective on the date of its execution by both Parties.

SECTION II RENEWAL OF THE [WESC / OsWESC]

- 2.1 Section _____ of OsWESC No. _____ is hereby modified such that OSWESC No. _____ shall expire on the committed COD of the OSW Project under GEA-5, or on _____;
- 2.2 Not later than one (1) year prior to the expiration of [WESC / OsWESC] No. _____, as supplemented, and so long as the **RE DEVELOPER** is not in default of any material obligations thereunder, the **Parties** shall extend the said RE Contract for another twenty-five (25) years, the term of which shall commence on _____ [date immediately following committed COD]: *Provided*, That the Commercial Operations Date of the OSW Project is duly confirmed by a Certificate of Compliance or Provisional Authority to Operate from the Energy Regulatory Commission, and notice of commercial operations in the Wholesale Electricity Spot Market: *Provided, further*, That the extension/renewal of [WESC / OsWESC] No. _____ shall be subject to terms and conditions to be mutually agreed upon by the Parties.

SECTION III TERMS AND CONDITIONS

- 3.1 During the term of [WESC / OsWESC] No. _____, as supplemented, the terms and conditions of the RE Contract shall continue to apply, except as modified in this Supplemental Contract and subject to applicable laws, rules and regulations, and other issuances.
- 3.2 Upon renewal/extension of [WESC / OsWESC] No. _____, the new [WESC / OsWESC] shall govern the rights and obligations of the **Parties** and other terms and conditions for the prosecution of the OSW Project. Such new [WESC / OsWESC] shall be executed in accordance with templates provided under prevailing rules and guidelines of the **DEPARTMENT**: *Provided*, That the new [WESC / OsWESC] shall contain, adopt and carry over the Step-In Rights of Lender/s under Section 3.3 of this Supplemental Contract.

SECTION IV STEP-IN RIGHTS OF LENDER/S

- 4.1 To ensure the successful implementation of the [WESC / OsWESC], banks, financial institutions, and/or other persons or entities that finance the procurement of OSW components and/or the construction and installation of the OSW Project under financing or other similar agreements with the **RE DEVELOPER** ("Lender/s") may designate, or agree among themselves on the designation of, an entity to be the Assignee of the [WESC / OsWESC].
- 4.1.1 Lender/s shall give the **Parties** written notice of acceptance of the stipulation in its favor within sixty (60) calendar days from receipt of the notice mentioned in Section 4.2.2 below. Such acceptance shall be sufficient if unqualified and submitted together with a duly authenticated copy of the financing or other similar agreement with the **RE DEVELOPER** and Board Resolution of the Lender/s authorizing the signatory of the notice to accept the stipulation for and on behalf of the Lender/s.
- 4.1.2 The **RE DEVELOPER** shall give written notice of the stipulation in favor of Lender/s within thirty (30) calendar days from receipt of the Supplemental Contract or new [WESC / OsWESC], as applicable, duly signed by the **Parties**.
- 4.2 The entity to be designated by the Lender/s as Assignee of the [WESC / OsWESC] must be technically, legally, and financially qualified under applicable laws, rules and regulations, and capable of fulfilling the material obligations under the [WESC / OsWESC], this **Supplemental Contract**, the GEA-5 TOR, and other applicable issuances.
- 4.3 Subject to validation by the **DEPARTMENT**, as applicable, upon the occurrence/existence of any of the following events/causes, the Lender/s may file with the **DEPARTMENT** a request to assign the [WESC / OsWESC] to the Assignee designated in such request:
- 4.3.1 Imminent termination of the [WESC / OsWESC] by the **DEPARTMENT** for breach of its terms and conditions caused solely by the **RE DEVELOPER**;
- 4.3.2 Relinquishment of the RE Contract by the **RE DEVELOPER**;

- 4.3.3 Event of Default under the relevant financing or other similar agreement, duly established by the Lender/s, the happening of which was caused solely by the **RE DEVELOPER**;
 - 4.3.4 Failure to achieve the committed COD of the OSW Project due to the fault or negligence of the **RE DEVELOPER**, regardless of concurrence of the fault or negligence of other persons or entities;
 - 4.3.5 Other causes similar to the foregoing.
- 4.4 Notwithstanding any rules and guidelines to the contrary, the **DEPARTMENT** shall approve the request for assignment if the following conditions are present:
- 4.4.1 The Lender/s submitted a written acceptance of the stipulation in its favor within the period prescribed in Section 4.2.1 above;
 - 4.4.2 The Lender/s delivered proceeds of the financing or other similar agreement to the **RE DEVELOPER** representing not less than thirty percent (30%) of the Total Cost of the OSW Project, duly evidenced by relevant commercial documents;
 - 4.4.3 There is imminent risk on the part of the Lender/s that monies delivered to the **RE DEVELOPER** to finance the OSW Project will be lost and/or unrecoverable due to the existence of any of the causes/events mentioned in Section 4.2 of this Supplemental Contract;
 - 4.4.4 The Assignee satisfies the requirements set forth in Section 4.2 of this Supplemental Contract; and
 - 4.4.5 There are no other remedies to the Lender/s except through the assignment of the [WESC / OsWESC].
- 4.5 The assignment of the [WESC / OsWESC] shall be processed in accordance with prevailing rules and guidelines of the **DEPARTMENT** insofar as applicable, subject to such additional requirements as may be required by the **DEPARTMENT** to validate the compliance of the Lender/s with the conditions set forth in this Section IV. Upon approval of the assignment, the Assignee shall prosecute the OSW Project in accordance with the terms and conditions of the [WESC / OsWESC].
- 4.6 Upon Financial Closing, the **RE DEVELOPER** hereby unilaterally waives, without limitation, the following:
- 4.6.1 The right to designate the Assignee of the [WESC / OsWESC];
 - 4.6.2 Any objection on the designation by Lender/s of an Assignee, including objections on the technical, legal or financial qualification of such Assignee;
 - 4.6.3 Any other rights under the [WESC / OsWESC] that are inconsistent with Section IV of this Supplemental Contract.

SECTION V REPRESENTATIONS AND WARRANTIES

5.1 The **RE DEVELOPER** represents and warrants as follows:

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

SECTION VI MISCELLANEOUS PROVISIONS

6.1 NOTICES

Any notice required or given by either Party to the other Party shall be (i) in writing and delivered personally or sent by registered or certified mail, commercial courier service to the address designated in writing, (ii) by facsimile to the number most recently provided to such party or such other address or fax number designated in writing by such party and (iii) by electronic mail, to the electronic mail address designated in writing by such party or such other electronic mail address as may be later designated in writing by such party.

Any notice or other communication so transmitted shall be deemed to have been given: (a) on the day of delivery if delivered personally; (b) one (1) business day after delivery to a commercial courier service; (c) five (5) days after mailing if sent by registered mail, return receipt requested, postage prepaid; or (d) when sent by electronic mail or facsimile, using the email address and facsimile number herein below provided if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day. All such notices shall be addressed:

To the **DEPARTMENT**:

The Secretary
Department of Energy
Energy Center, Rizal Drive, Bonifacio Global City
Taguig City, Metro Manila
Email: remb.resc@doe.gov.ph / remb9513@doe.gov.ph
Telephone: (02) 8479-2900

To the **RE DEVELOPER**:

Designation
Company Name
Office Address
Email Address
Telephone/Fax Numbers

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

6.2 GOVERNING LAW

This Supplemental Contract shall be governed by laws of the Republic of the Philippines to the exclusion of laws of other jurisdictions.

6.3 AMENDMENTS

This **Supplemental Contract** shall not be amended or modified in any respect except by the mutual consent in writing of the Parties.

6.4 SEPARABILITY CLAUSE

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

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

(Signature Page follows)

DEPARTMENT OF ENERGY

By:

COMPANY NAME

By:

NAME
Secretary

PRINCIPAL SIGNATORY
Designation

WITNESSES

NAME
Director IV, REMB

NAME OF WITNESS
Designation

ACKNOWLEDGMENT

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

Before me, a Notary Public duly authorized in the City of Manila, this _____, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance
DOE SECRETARY		

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

This **Supplemental Contract** consisting of seven (7) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Parties and his instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on _____ at _____.

NOTARY PUBLIC

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of _____.

ACKNOWLEDGMENT

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

Before me, a Notary Public duly authorized in the City of Taguig, this _____, personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance
FULL NAME	ID / ID No.	DATE/Place of Issuance

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

This **Supplemental Contract** consisting of seven (7) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Parties and his instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on _____ at _____.

NOTARY PUBLIC

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of _____.