

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF ENERGY

BIOMASS ENERGY OPERATING CONTRACT
(BEOC No. _____-____-____)

This **BIOMASS ENERGY OPERATING CONTRACT** (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 the "**GOVERNMENT**", through the "**Department of Energy**", hereinafter referred to as the "**DEPARTMENT**", a government agency established pursuant to Republic Act No. 7638, as amended, with principal office address at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its Secretary, **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 **RE Contract**, the **GOVERNMENT** shall act through and be represented by the **DEPARTMENT**.

WITNESSETH:

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

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

WHEREAS, Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008 (the "Act"), declares as a policy of the State to accelerate the exploration and development of renewable energy (RE) resources including, among others, biomass, to achieve energy self-reliance through the adoption of sustainable energy development strategies;

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

WHEREAS, Section 19, Rule 6, paragraph C of the Rules and Regulations Implementing the Act (the "IRR") provides that the biomass sector shall be covered by

an RE Operating Contract ("RE Contract") wherein the biomass developer commits to develop, construct, install, commission and operate an RE generating facility subject to the terms and conditions specified therein;

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

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

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

SECTION I SCOPE

- 1.1 This RE Contract is entered into pursuant to the Act, with the services, technology and financing to be furnished by the RE DEVELOPER for the operation of a Biomass Energy System, in an economically viable manner and in accordance with this RE Contract.
- 1.2 The provisions of this RE Contract shall govern the development, construction, installation, commissioning and operation of a Biomass Energy System located in Brgy., Municipality, Province that will generate electrical power from Biomass System using _____ feedstock.
- 1.3 The RE DEVELOPER may pursue any Additional Investment or New Investment within the Project Site and shall be solely responsible for providing the necessary services, technology, equipment and financing therefor. In case of New Investment, the Parties shall enter into a new Renewable Energy (RE) Operating Contract at the option of the RE DEVELOPER, subject to approval of the DEPARTMENT.
- 1.4 The RE DEVELOPER shall assume all the technical and financial risks under this RE Contract without any guarantee from the GOVERNMENT and shall not be entitled to reimbursement for any expense incurred in connection with this RE Contract.

SECTION II DEFINITION OF TERMS

- 2.1 The words and terms under this RE Contract, unless otherwise specified in the Act and its IRR or in relevant laws and regulations, shall have the meaning in accordance with the following definitions:
 - a) **"Additional Investment"** refers to investments relating to improvements, modernization, rehabilitation, or expansion duly registered with the DEPARTMENT, subject to the conditions to be determined by the DEPARTMENT, such as, but not limited to the following:

- i. Identification of and investment in sequential phases/stages of production, or undertaking scheduled modernization and/or rehabilitation of the Biomass Energy System; and
 - ii. Improvements to the Biomass Energy System such as reduced production/operational costs, increased production, improved operational efficiency, and better reliability of the Project;
- b) **"Affiliate"** refers to any person or group of persons, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the RE DEVELOPER. As used herein, "control" shall mean the power to direct or cause the direction of the management's policies of a person by contract, agency or otherwise;
- c) **"Biomass Energy Operations"** shall include Biomass Resource development, production and utilization, including the construction, installation, operation and maintenance of Biomass Energy Systems;
- d) **"Biomass Energy Systems"** refers to energy systems which use biomass resources to produce heat, steam, mechanical power or electricity through either thermochemical, biochemical or physio-chemical processes, or through such other technologies which shall comply with prescribed environmental standards;
- e) **"Biomass Resource"** shall have the same meaning as ascribed to in the Act;
- f) **"Certificate of Registration"** refers to that certification issued to the RE DEVELOPER upon the Effective Date of this RE Contract or upon approval of New Investment, to serve as the basis for its entitlement to the incentives provided under the Act;
- g) **"Commercial Operation"** shall refer to the phase commencing at the operation of the RE Project, following the successful testing and commissioning of the RE Project, and confirming its readiness to inject power into the grid to sell or supply its produced energy, as duly confirmed by the DEPARTMENT and other relevant regulatory bodies;
- h) **"Contract Year"** refers to a period of twelve (12) consecutive calendar months counted from the Effective Date of this RE Contract and thereafter, from the anniversary of such Effective Date;
- i) **"Corporate Income Tax"** refers to the tax imposed upon net taxable income under the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337 and the Act. Upon the lapse of period of the Income Tax Holiday (ITH) under the Act, the RE DEVELOPER shall be subject to a Corporate Income Tax rate of ten percent (10%);
- j) **"Effective Date"** refers to the date of the execution of this RE Contract subject to the payment of the signing fee and the posting of the performance bond covering the first Contract Year as provided hereunder;
- k) **"Expatriate Expert"** refers to a foreign national engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Biomass Energy Operations, who shall exercise his technical profession, as allowed under existing laws;

- l) **"Expiration"** refers to the lapse of the term of this RE Contract provided in Section III (Term) hereof;
- m) **"Filipino Employee"** refers to any citizen of the Republic of the Philippines engaged by the RE DEVELOPER and/or its Subcontractor/s for its Biomass Power Operations under this RE Contract, and such engagement is characterized as establishing an employer-employee relationship between such citizen and RE DEVELOPER;
- n) **"Force Majeure"** refers to the extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable;
- o) **"Generation Facility"** refers to a facility for the production of electricity and/or thermal energy such as, but not limited to steam and hot water;
- p) **"Host LGU"** refers to the LGU where the Biomass Energy Resources and/or Generation Facility is located;
- q) **"Local Government Units/LGU"** refers to the territorial and political subdivisions of the State which organization and function are fully described under the Local Government Code of 1991;
- r) **"New Investment"** refers to investments relating to discovery, exploration, development and/or utilization of new RE resources or the development of new Generation Facilities within the Project Site distinct from the originally registered operations having separate books of accounts;
- s) **"Project"** refers to the RE DEVELOPER's Biomass Energy Systems, within the Project Site, which may be implemented in one or more phases;
- t) **"Project Site"** refers to the area where the Biomass Energy Systems is located as described in Annex "A";
- u) **"RE Contract"** refers to this Biomass Energy Operating Contract, as may be amended or extended by the Parties and shall have the same meaning as provided under the Act;
- v) **"Subcontractor"** refers to any person or entity contracted by the RE DEVELOPER to provide goods or services for the purpose of this RE Contract, subject to the provisions of existing laws;
- w) **"Termination"** refers to the right of the Parties to cancel this RE Contract pursuant to Section X (Suspension and Termination) hereof; and
- x) **"Work Program"** refers to all types of plans and programs and related activities formulated for the performance of the work obligations by the RE DEVELOPER, along with the corresponding budgetary estimate, submitted to the DEPARTMENT under this RE Contract, attached hereto as Annex "B" and shall thereafter be updated on a regular basis.

SECTION III TERM

- 3.1 From the Effective Date, the term of this RE Contract shall be twenty-five (25) years.
- 3.2 At the option of the RE DEVELOPER, the term of this RE Contract may be extended for another twenty-five (25) years, subject to the approval of the DEPARTMENT. The RE DEVELOPER shall request the DEPARTMENT, in writing and not later than one (1) year prior to the expiration of the initial term, for an extension of the term. The extension of the term of this RE Contract shall be governed by such terms and conditions to be mutually agreed upon by the Parties.

SECTION IV WORK PROGRAM

- 4.1 The RE DEVELOPER shall carry out the Work Program, details of which are particularly described in Annex "B".
- 4.2 During the implementation of the Work Program, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT any revisions thereto at least one (1) month prior to the end of each Contract Year; *Provided, however,* That revision shall not be allowed within the first two (2) Contract Years; *Provided, further,* That the RE DEVELOPER shall be allowed to subsequently revise its Work Program only if it has substantially complied with all its material financial and technical activities under the Work Program for the immediate preceding Contract Year and such revision shall be allowed only once per Contract Year.
- 4.3 Not later than two (2) months prior to the end of the first five (5) years of the RE Contract, the RE DEVELOPER shall submit a Work Program for the next five (5) years and shall do so every next five (5) years thereafter. The Work Program or any revisions thereof shall require the approval of the DEPARTMENT.
- 4.4 In the event of failure of the RE DEVELOPER to comply with its commitments under the Work Program, the DEPARTMENT shall call the performance bond posted by the RE DEVELOPER. This is without prejudice to the right of the DEPARTMENT to terminate the RE Contract

SECTION V RIGHTS AND OBLIGATIONS

- 5.1 RE DEVELOPER shall have the following rights:
 - a. To be granted fiscal and non-fiscal incentives and privileges under the Act, the IRR and all other existing laws that are not otherwise modified or repealed by the Act;
 - b. To receive assistance from the DEPARTMENT in endorsing the Projects to the other agencies of the National Government, LGUs, Board of Investments (BOI) and other entities, for the acquisition of permits,

licenses and clearances and availment of applicable fiscal and non-fiscal incentives;

- c. Have at all times the right of ingress to and egress from the Project Site to and from facilities wherever located;
- d. Acquire rights-of-way and similar rights on, over, under, across and through the Project Site or properties adjacent to the Project Site, which constitute or is reasonably expected to constitute the Project Site as the RE DEVELOPER may reasonably deem necessary.

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

- e. Engage the services of Expatriate Experts who shall exercise their technical professions solely for the Biomass Energy Systems: *Provided* That, Filipino Employees shall be given preference to positions for which they have adequate training and experience required by the RE DEVELOPER; and *Provided, further*, That if the employment or connection of such Expatriate Experts with the RE DEVELOPER ceases, applicable laws and regulations shall apply to them and their immediate family;

5.2 The RE DEVELOPER shall have the following obligations:

- a) Within the period of the first five (5)-year Work Program, the RE DEVELOPER shall develop, construct, install, commission and operate the Biomass Energy System in the Project Site.
- b) Secure necessary permits, licenses, endorsements, agreements and clearances from all relevant government and private entities for the Project;
- c) Comply with all its work and financial commitments in carrying out its obligations under this RE Contract and provide all necessary services, technology and financing in connection therewith;
- d) Pay the taxes due to the GOVERNMENT, as may be applicable;
- e) Maintain complete and accurate accounting, financial and technical records of its Biomass Energy Systems, subject to Sections VII (Data and Reports Submission) and VIII (Confidentiality);
- f) Submit technical and financial reports in accordance with the format prescribed by the DEPARTMENT within the period prescribed as described in Section VII (Data and Reports Submission);

- g) Allow officials and representatives authorized by the DEPARTMENT access to the Project Site, and to the accounts, books and records directly relating to the Biomass Energy Operations during reasonable hours and without causing disruption to the RE DEVELOPER'S operation. The RE DEVELOPER shall provide such reasonable facilities and assistance as may be practicable to ensure the success of the inspection;
- h) Give priority in employment to qualified personnel in the Host LGUs and give preference to Filipinos in all types of employment for which they are qualified;
- i) At the start of every Contract Year, post a performance bond or any other guarantee of sufficient amount but not less than the annual budgetary estimate for the corresponding Contract Year in favor of the DEPARTMENT from a list of DEPARTMENT-accredited insurance or surety companies. The posting of performance bond shall be conditioned upon the faithful performance by the RE DEVELOPER of any or all of the commitments and obligations under the Work Program until the commencement of the construction of the Generation Facility.

Upon the commencement of the construction of the Generation Facility, the RE DEVELOPER shall notify the DEPARTMENT of such fact and the latter shall verify the same. Thereafter, the obligation to post the bond shall cease;

- j) Be subject to the provisions of laws of general application;
- k) Be responsible for procurement of installation, equipment and supplies, and for entering into subcontracts related to the Biomass Energy Operations;
- l) Comply with the provisions of Department Circular No. DC2012-11-0009 entitled "*Renewable Energy Safety, Health and Environment Rules and Regulations*", as may be amended, and in so doing, (1) exert its best efforts to prevent pollution and damage to the atmosphere, oceans, rivers, lakes, harbors and land; and (2) ensure the safety and health of its operating personnel;
- m) Give preference to Philippine companies/agencies entering into subcontracts on goods or services that are required in the Biomass Energy Operations but are not carried out by the RE DEVELOPER: *Provided*, That the goods and services are competitive as to cost, quality and availability, and the services are available in the Philippines;
- n) Be responsible in the proper handling of data, samples, information, reports, and other documents;
- o) Maintain all meters and measuring equipment in good order and allow access to these to inspectors authorized by the DEPARTMENT;
- p) Organize the Information, Education and Communication (IEC) Campaign on benefits to the Host LGUs pursuant to Section 18 of the DEPARTMENT's Department Circular No. DC2009-07-0011; and
- q) Comply with all rules, regulations and guidelines issued by the DEPARTMENT and other government agencies that are applicable hereto.

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

SECTION VI REPRESENTATION AND WARRANTIES

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

- 6.1 It is a corporation or entity duly formed, established, validly existing and in good standing under the laws of the Philippines with full power to own its property; to carry on its business as it is now being conducted; and to execute, deliver and perform its obligations under this RE Contract, and the entering into and performance of this RE Contract by the RE DEVELOPER does not conflict with the articles of incorporation, by-laws, and other constitutive documents of the RE DEVELOPER and has been duly authorized by all necessary corporate and legal action on the part of the RE DEVELOPER;
- 6.2 The individual signing this RE Contract on behalf of the RE DEVELOPER is duly authorized to sign as of the Effective Date;
- 6.3 There is no litigation, arbitration or administrative proceeding is pending or, to the best knowledge of the RE DEVELOPER, threatened against the RE DEVELOPER or its properties the adverse determination of which would adversely affect the ability of the RE DEVELOPER to perform or comply with any of its obligations under this RE Contract;
- 6.4 The RE DEVELOPER:
- a) Has not been declared in default in respect of any of its financial commitments or obligations based on their reports duly validated by the DEPARTMENT;
 - b) Is not otherwise in default of any kind in respect of any financial commitment or obligation or in respect of any agreement, undertaking or instrument as a party thereof by which it, or any of its assets or properties, may be bound; and
 - c) Is not aware of a fact that by the service of notice and/or lapse of time would constitute a default in any or both of sub-paragraphs (a) and (b) above;
- 6.5 No written material information given by the RE DEVELOPER to the DEPARTMENT under this RE Contract contains any misstatement of fact as of the Effective Date or omits to state a fact that is materially adverse to the interests of the DEPARTMENT; and
- 6.6 The ownership of the RE DEVELOPER's capital stock complies with applicable laws and regulations.

SECTION VII DATA AND REPORTS

- 7.1 All data and reports, except for proprietary techniques used in developing such technical data and reports, must be submitted by the RE DEVELOPER to the DEPARTMENT in accordance with the format approved by the DEPARTMENT.
- 7.2 The technical data and reports to be submitted by the RE DEVELOPER shall include, but not be limited to, the following:
- a) Annual Progress Report - shall be submitted not later than two (2) months after the end of each Contract Year and shall contain the summary of accomplishments under the approved Work Program, direct or indirect jobs generated, summary of fiscal incentives availed in Philippine Peso and status of construction with relevant comments and recommendation on any technical findings, among others;
 - b) Procurement Plan - shall be submitted not later than one (1) month from the approval of the Work Program and shall be designed according to the approved Work Program, containing an itemized list of equipment, materials, and supplies to be procured with corresponding estimated costs;
 - c) Monthly Generation Report – shall be submitted within fifteen (15) days from the end of each calendar month and shall include source and volume of feedstock purchased and used, price of feedstock and total electricity generated, used and exported to the grid;
 - d) General Information Sheet – shall be submitted annually within thirty (30) calendar days from date of actual annual stockholders' or members' meeting;
 - e) Audited Financial Statement – shall be submitted annually within ninety (90) calendar days from date of actual annual stockholders' or members' meeting; and
 - f) Reports in accordance with the Department Circular No. DC2012-11-0009 entitled "Renewable Energy Safety, Health and Environment Rules and Regulations" as may be amended.

SECTION VIII CONFIDENTIALITY

- 8.1 All documents, information, data and reports produced or generated during the Biomass Energy Operations under this RE Contract shall be kept strictly confidential over the term of this RE Contract or any extension thereof: *Provided*, That proprietary information shall be kept strictly confidential at all times subject to lawful acquisitions of such information under existing laws and regulations.
- 8.2 Without the written consent of the other Party, no Party shall use or disclose the confidential information to any third party and/or to any Affiliate not directly connected with the implementation of this RE Contract except the third parties

and Affiliates in Section 8.5, and no Party shall otherwise transfer, present, sell or publish it in any way within the confidentiality periods.

- 8.3 The DEPARTMENT may use such confidential information belonging to the RE DEVELOPER for the DEPARTMENT's resource mapping, data gathering, policy making and for government planning purposes.
- 8.4 Upon the Expiration or Termination of this RE Contract, the DEPARTMENT may provide third parties with the data and reports submitted by the RE DEVELOPER pursuant to this Section.
- 8.5 Contrary stipulations notwithstanding, the RE DEVELOPER may furnish the information to the following third parties, subsidiaries, and Affiliates, such as, but not limited to:
 - a) Banks or other credit institutions from which finance is sought by the RE DEVELOPER;
 - b) Third parties, subsidiaries and Affiliates that provide services for the Biomass Energy Operations, including Subcontractors and other service contractors;
 - c) Prospective assignee/s to whom rights and obligations under this RE Contract are intended to be assigned;
 - d) Prospective investor/s or entities with whom the RE DEVELOPER intends to enter into joint venture or other similar agreements for the Project;
 - e) Governments and stock/commodity exchanges in accordance with the laws, regulations, or rules of the relevant country or stock/commodity exchange; and
 - f) Government authorities, entities and judicial courts if required by law, regulation, directive, or order to disclose.
- 8.6 The information shall be revealed to those persons allowed under this RE Contract only if and to the extent necessary and desirable for the purpose intended. Each Party shall ensure that each such person to whom information is disclosed is informed of the confidential nature of the information and the purpose for which it may be used and that each such person is bound by this Section.
- 8.7 The RE DEVELOPER and its Affiliates or the DEPARTMENT, its officers, employees, consultants and other duly authorized representatives shall not make any public statement or announcement of any information produced, generated or acquired in the course of the Biomass Energy Operations, without prior written consent of the other Party.

SECTION IX PERFORMANCE BOND AND SIGNING FEE

- 9.1 The RE DEVELOPER shall pay the signing fee in the amount of _____ Pesos (Php _____) and post the performance bond covering the first Contract Year within fifteen (15) and thirty (30) days, respectively, from its receipt of notice.
- 9.2 Failure of the RE DEVELOPER to comply with Section 9.1 hereof shall render the COR and RE Contract to be void *ab initio*.
- 9.3 The initial amount of the bond or other guarantee as specified in Sub-section 5.2(i) shall not be less than the annual financial commitment/budgetary estimate for the first Contract Year based on the Work Program.
- 9.4 The amount of performance bond or other guarantee may be adjusted, subject to the following conditions:
- a. In the event that the RE DEVELOPER has fully expended its budgetary estimate under the Work Program as applicable but has not fully performed its work obligations, the amount of bond or other guarantee shall be equal to the succeeding Contract Year's budgetary estimate under the revised Work Program; and
 - b. Such other conditions or circumstances as would reasonably warrant the modification of the amount of the performance bond or other guarantee.
- 9.5 If the RE DEVELOPER, through its own fault, fails to observe or perform its work obligations under the Work Program, the DEPARTMENT, upon prior written notice, may proceed against the bond or other guarantee; *Provided That*, should the work obligations under the Work Program be fulfilled, and through the efficiency of the RE DEVELOPER, the corresponding actual expenditures thereon are lower than the estimated expenditures stated in the Work Program, the same shall be considered as full compliance of the work obligations.
- 9.6 The DEPARTMENT shall release the performance bond or other guarantee not later than twenty (20) working days from the date of confirmation by the DEPARTMENT on the start of the construction of the Generation Facility.

(Note: The amount for signature fee/bonus shall be Php5.00/kW for a Biomass Project with installed capacity of 1MW and below, and Php50,000.00 if above 1MW)

SECTION X SUSPENSION AND TERMINATION

- 10.1 Subject to Section 10.3 and 10.4 below, this RE Contract shall be automatically terminated without prejudice on the part of the DEPARTMENT to proceed against any outstanding liability of the RE DEVELOPER on its obligations upon Expiration of this RE Contract and any extension thereof.
- 10.2 The DEPARTMENT shall have the power to terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:
- a) Non-compliance with the approved Work Program and the material terms and conditions of this RE Contract;

- b) Violation of the Renewable Portfolio Standards Rules, as defined in the Act and its IRR, and relevant Department Circulars;
- c) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
- d) Tampering, falsifying or plagiarizing of technical design, feasibility study, generation and operation reports;
- e) Non-payment of the financial obligations agreed upon under this RE Contract; and
- f) Non-posting of performance bond or other guarantee within the period/s provided under Section IX (Performance Bond).

10.3 In case the default of the RE DEVELOPER on account of any of the foregoing grounds is attributable to Force Majeure, the obligation of the RE DEVELOPER may be suspended for a period of one (1) year or until the Force Majeure event ceases to exist whichever comes earlier subject to the following conditions:

- a) The RE DEVELOPER shall file a notice of Force Majeure to the DEPARTMENT within fifteen (15) calendar days from its existence;
- b) After due validation which shall be made within twenty (20) working days from receipt of such notice, the DEPARTMENT shall issue an approval of suspension of contractual obligation/s affected by Force Majeure;
- c) The RE DEVELOPER shall continue to post the performance bond, if necessary, observe administrative requirements and comply with reportorial obligations on its work commitments not affected by Force Majeure;
- d) Once the Force Majeure had ceased, the RE DEVELOPER shall notify the DEPARTMENT within five (5) calendar days from cessation together with the revised Work Program covering the remaining contract term;
- e) 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;
- f) If the Biomass Energy Operations are curtailed or prevented by such causes, then the time for enjoying the rights and carrying out the obligations thereby affected, and all rights and obligations hereunder shall be extended for a period equal to the period of delay, curtailment or prevention: *Provided, however,* That the suspension of obligation shall in no way extend the term of the contract. *Provided, further,* That if operations are delayed, curtailed or prevented by Force Majeure for a continuous period of twelve (12) months, this RE Contract may thereafter be terminated, at the option of the RE DEVELOPER, at anytime that the Force Majeure condition still exists, subject to confirmation of the DEPARTMENT; and
- g) The Party whose ability to perform its obligations is so affected shall notify the other Party thereof in writing stating the cause and such affected Party shall do all reasonably within its power to remove such cause.

- 10.4 Notwithstanding the foregoing, the RE Contract shall be terminated without prejudice to the RE DEVELOPER's obligations which survive the termination of this RE Contract.

SECTION XI DISPUTES AND ARBITRATION

- 11.1 Any dispute, controversy or claim arising out of or relating to this RE Contract, except Section 10.2 (a) hereof shall be settled amicably within a period of sixty (60) days after receipt by one Party of a notice from the other Party of the existence of the dispute.
- 11.2 If the dispute cannot be settled amicably within the sixty (60)-day period, the Parties shall, with respect to disputes arising out of or in connection with Section IV (Work Program) hereof, refer the dispute to an independent expert for resolution in the manner provided below; *Provided*, That any Party, in its sole discretion, may require the dispute be referred to arbitration under Section 11.3 hereof.
- 11.3 The following shall govern the rules of referral to an independent expert:
- a) After the sixty (60)-day period in Section 11.1 has passed, any Party may give notice to the other Party of its intention to refer the dispute to an expert in accordance with the provisions of this RE Contract;
 - b) The respondent shall, within twenty-one (21) days after receipt of the notice of intention to refer, serve on the applicant a notice of its intention to defend;
 - c) If within fourteen (14) days after the applicant's receipt of the respondent's notice of intention to defend, the Parties have agreed on an expert and on the terms under which the dispute shall be referred, the dispute shall be so referred. In the event that within such fourteen (14)-day period, the Parties are unable to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request the International Chamber of Commerce (ICC) International Centre for Expertise to appoint an expert, and the matters to be determined by such expert shall be those set out in the notice of intention to refer and the notice of intention to defend;
 - d) Unless the Parties agree otherwise, any expert proceedings under this Section shall be required to follow the ICC Rules for Expertise in force as of Effective Date;
 - e) The language of the expert proceedings and the expert's determinations shall be in English;
 - f) The Parties hereby agree to be bound by, to perform this RE Contract in accordance with, and to implement, as the case may be, the determination of the expert. Failure by one Party to so act shall constitute a breach of this RE Contract and shall be submitted to arbitration in accordance with Section 11.3 as the sole means of enforcing the determination; and
 - g) Each Party shall bear the costs and expenses of all lawyers, advisors, witnesses and employees retained by it in connection with the expert

proceedings; *Provided, however,* that in circumstances where the *expert* determines that a matter referred to them was not subject to a bona fide dispute, the costs and expenses incurred by the prevailing Party and the expert in connection with such matter shall be paid by the non-prevailing Party.

- 11.4 If the dispute cannot be settled within sixty (60) days by mutual discussions as contemplated in Section 11.1, and referral to an expert is neither prescribed nor elected by the Parties with respect to any technical dispute, upon written demand of either Party, the dispute shall finally be settled by an arbitral tribunal (the "Tribunal") governed by and conducted in accordance with the ICC Rules of Arbitration (the "Rules") in force as of Effective Date (or such Rules as may be in force at the time such arbitration is commenced), as follows:
- a) The RE DEVELOPER will nominate one (1) arbitrator and the DEPARTMENT will nominate one (1) arbitrator within thirty (30) days from the date of a request by either Party to initiate arbitration. The two Party-nominated arbitrators will then jointly nominate a third arbitrator within thirty (30) days from the date of the appointment of the second arbitrator, to act as Chairman of the Tribunal. Arbitrators not nominated within the time limits set forth in the preceding sentence shall be appointed by the ICC Court of International Arbitration;
 - b) Unless otherwise agreed by the Parties, the venue of the arbitration shall be in Metro Manila, Philippines;
 - c) The language of the arbitration and award shall be in English;
 - d) The Tribunal shall not be authorized to impose, and either Party shall not be authorized to seek from any judicial authority, any requirement that the Party posts security for the costs of the other Party; and
 - e) The decision of the Tribunal shall be final and binding upon the Parties. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
- 11.5 The right to arbitrate disputes under this RE Contract shall survive the Expiration or Termination of this RE Contract.

SECTION XII EMPLOYMENT, TRAINING AND DEVELOPMENT PROGRAMS

- 12.1 The RE DEVELOPER agrees to give preference in employment to qualified Filipino Employees who are residents of the Host LGUs and will undertake the development and training of Filipino Employees for labor and staff positions, including administrative, technical, and executive management positions. In the course of its operations, the RE DEVELOPER shall maintain as much as possible, an equal percentage men and women employees and accord them equal access to development and training programs. In no case shall an employee be denied employment and access to such development and training programs on the basis of sex and/or gender.

- 12.2 The RE DEVELOPER shall provide annual assistance for training programs, conference, seminars and other similar activities for the DEPARTMENT's personnel in the amount of _____ Pesos (Php_____) per Contract Year and shall be accumulated for the succeeding Contract Years if not availed of in a given Contract Year. The RE DEVELOPER shall pay the unutilized amount of the training commitment prior to the Expiration or Termination of this RE Contract.
- 12.3 The RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of _____ Pesos (Php_____).
- 12.4 The RE DEVELOPER shall undertake corporate social responsibility projects in Host LGU with focus in education and training of qualified and deserving beneficiaries, as determined by the RE DEVELOPER.

(Note: The funds for training program and development assistance under the BEOC shall have the same amount of Php50,000.00 each for Biomass Project with installed capacity above 1MW. Projects from 1MW and below shall be exempt from these financial obligations.)

SECTION XIII MISCELLANEOUS PROVISIONS

13.1 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
Office Address
Email Address
Telephone/Fax Numbers

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.

13.2 GOVERNING LAW

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

13.3 ASSIGNMENT

- a) The RE DEVELOPER may assign this RE Contract to a third party subject to the prior written approval of the DEPARTMENT. This RE Contract shall not be assigned to any third party, unless such third party is qualified in accordance with the Act and its IRR.
- b) The RE DEVELOPER may assign or transfer part or all of its rights and/or obligations under this RE Contract to its Affiliate upon compliance with the following provisions:
 - i. The RE DEVELOPER shall submit to the DEPARTMENT copies of the written document which unequivocally shows the agreement of the parties thereat to the assignment of the RE Contract; and
 - ii. In the case of a partial assignment, the RE Developer shall guarantee in writing to the Department the performance of the assigned obligations.
- c) The RE DEVELOPER may authorize its subsidiaries, branches or regional corporations to implement this RE Contract, but the RE DEVELOPER shall remain responsible for the performance of this RE Contract.
- d) No assignment shall be granted if the RE DEVELOPER is in default of its Work Program or any of its obligations under the RE Contract and other RE agreements with the DEPARTMENT.
- e) An assignment of the RE Contract, whether full or partial, to a non-Affiliate, may be allowed only once during the entire term of the RE Contract. An assignment shall not be allowed to a non-Affiliate during the first two (2) years of the RE Contract from its effectivity.

13.4 AMENDMENTS

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

13.5 SEPARABILITY CLAUSE

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

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

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

DEPARTMENT OF ENERGY

COMPANY NAME

By:

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 his/her signature on the instrument was voluntarily affixed by him/her for the purposes stated therein, and who declared to me that he/she executed the instrument as his/her free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This RE Contract consisting of nineteen (19) 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

EPUBLIC 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
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 his/her signature on the instrument was voluntarily affixed by him/her for the purposes stated therein, and who declared to me that he/she executed the instrument as his/her free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This RE Contract consisting of nineteen (19) 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 _____.

**ANNEX “A”
PROJECT SITE**

**ANNEX “B”
ACCOUNTING PROCEDURE**