

REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF ENERGY

SOLAR ENERGY OPERATING CONTRACT  
(SEOC No. 20\_\_-\_\_-\_\_)

This **SOLAR 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 "**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 Solar Energy Resources;

**WHEREAS**, under Republic Act 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 shall be through a Renewable Energy Service/Operating Contract ("RE Contract");

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

**WHEREAS**, pursuant to the Act, the **RE DEVELOPER** has agreed to enter into this RE Contract with the **DEPARTMENT** covering the Contract Area for the Project with the corresponding rights and obligations stipulated herein;

**WHEREAS**, the **RE DEVELOPER** intends to engage in the development and utilization of solar energy resource within the Contract Area 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, with the services, technology and financing to be furnished by the **RE DEVELOPER** for its conduct of Solar Energy Operations, 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 Solar Energy System located in Municipality, Province that will generate electrical power from Solar Energy System.
- 1.3 This RE Contract shall cover the Contract Area only as provided under Section IV (Contract Area) hereof.
- 1.4 The **RE DEVELOPER** is hereby appointed and constituted by the **DEPARTMENT** as the Party having the exclusive right to develop and utilize the Solar Energy Resources within the Contract Area defined herein.
- 1.5 The **RE DEVELOPER** may pursue any Additional Investment or New Investment within the Contract Area 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 RE Contract at the option of the **RE DEVELOPER**, subject to approval of the **DEPARTMENT**.
- 1.6 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) **"Abandonment and Termination Plan"** refers to the plan prepared by the **RE DEVELOPER** submitted within five (5) years from Effective Date and approved by the Department of Environment and Natural Resources (DENR) and the **DEPARTMENT** for the decommissioning, abandonment and surface restoration or rehabilitation of the Contract Area, and such

abandonment work plan may be amended, supplemented or modified by the Parties from time to time;

- b) **"Accounting Procedures"** refers to the set of procedures, guidelines, and arrangement between the Parties, and any amendments thereto, to govern the applicable treatment of expenses, costs, and income, set forth in Annex "B" hereof, which forms an integral part of this RE Contract;
- c) **"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 Solar Energy Systems; and
  - ii. Improvements to the Solar Energy Systems such as reduced production/operational costs, increased production, improved operational efficiency, and better reliability of the Project;
- d) **"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;
- e) **"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;
- f) **"Commercial Operation"** refers 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;
- g) **"Contract Area"** refers to an area where the RE DEVELOPER is given the exclusive right to explore and develop RE resources and which is more particularly described in a map with its technical description attached herein as Annex "A" and made an integral part of this RE Contract;
- 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 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) **"Cost of Goods Sold"** refers to all business expenses directly incurred in the exploration, development and utilization of the Solar Energy Resources in order to produce and sell electricity and transmit the same to

its intended location and use, which expenses are particularly described in Annex "B" hereof;

- k) **"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;
- l) **"Expatriate Expert"** refers to a foreign national engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Solar Energy Operations, who shall exercise his technical profession, as allowed under existing laws;
- m) **"Expiration"** refers to either the lapse of the term of this RE Contract as provided in Section III (Term) hereof or the surrender, abandonment or waiver of the RE DEVELOPER of the entire Contract Area including the abandonment thereof to the DEPARTMENT;
- n) **"Filipino Employee"** refers to any citizen of the Republic of the Philippines engaged by the RE DEVELOPER and/or its Subcontractor/s for its Solar Energy Operations under this RE Contract, and such engagement is characterized as establishing an employer-employee relationship between such citizen and RE DEVELOPER;
- o) **"Force Majeure"** refers to extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable;
- p) **"Generation Facility"** refers to a facility for the production of electricity and/or thermal energy, such as, but not limited to, steam, hot or cold water;
- q) **"Government Share"** refers to the amount due the national government and LGUs from the exploration, development and utilization of the Solar Energy Resources computed in accordance with the Act and its Implementing Rules and Regulations (IRR), and described in Section XI (Government Share) hereof;
- r) **"Gross Income"** refers to income derived from the RE DEVELOPER's Solar Energy Operations equivalent to the gross sales of Solar Energy less sales returns, discounts and allowance, and Cost of Goods Sold, which is more particularly described in the Accounting Procedures attached as Annex "B";
- s) **"Host LGU"** refers to the LGU where the Solar Energy Resources and/or Generation Facility is located;
- t) **"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;
- u) **"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 Contract Area distinct from the originally registered operations having separate books of accounts;

- v) **"Production Area"** refers to that portion of the Contract Area designated by the RE DEVELOPER where Solar Energy Resources are utilized to produce electricity;
- w) **"Project"** refers to the RE DEVELOPER's Solar Energy Systems within the Contract Area, which may be implemented in one or more phases;
- x) **"RE Contract"** refers to this Solar Energy Operating Contract, as may be amended or extended by the Parties and shall have the same meaning as provided under the Act;
- y) **"Solar Energy"** refers to the energy that can be derived from solar radiation that can be converted into useful thermal or electrical energy;
- z) **"Solar Energy Operations"** shall include Solar Energy exploration, development, production, and utilization, including the construction, installation, operation and maintenance of Solar Energy Systems to convert Solar Energy to electrical power and the transmission of such electrical power and/or other non-electrical uses;
- aa) **"Solar Energy Resources"** refers to the solar resources found within the Contract Area to be technically feasible for the development of Solar Energy projects;
- bb) **"Solar Energy Systems"** refers to the energy systems that convert solar energy into thermal or electrical energy;
- cc) **"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;
- dd) **"Termination"** refers to the right of the Parties to cancel this RE Contract pursuant to Section XIII (Suspension and Termination) hereof; and
- ee) **"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 "C" 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 CONTRACT AREA

- 4.1 The Contract Area refers to the areas as described in Annex "A" hereof, which the RE DEVELOPER has exclusive right to explore, develop and utilize the Solar Energy Resources in accordance with this RE Contract.
- 4.2 The RE DEVELOPER may, upon submission of written notice to the DEPARTMENT, surrender or waive the entire Contract Area or any portion thereof without prejudice to any other outstanding liability or costs. In case the RE DEVELOPER completely ceases its operations, the provisions under its Abandonment and Termination Plan shall apply consistent with its Environmental Compliance Certificate (ECC).

#### SECTION V WORK PROGRAM

- 5.1 The RE DEVELOPER shall carry out its existing work according to good industry practices.
- 5.2 Attached to this RE Contract is a Work Program, details of which are particularly described in Annex "C" hereof.
- 5.3 Not later than two (2) months prior to the end of the first five (5) years Work Program, 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.
- 5.4 During the implementation of the Work Program, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT, a request for any revisions to the Work Program upon determination of such revision. The DEPARTMENT shall act on the request for revision and thereafter, the RE DEVELOPER may proceed to implement the activity without violating the provisions on the Work Program: *Provided*, 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.
- 5.5 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 VI RIGHTS AND OBLIGATIONS

6.1 The 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 Project 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 Contract Area to and from facilities wherever located;
- d) Acquire rights-of-way and similar rights on, over, under, across and through the Contract Area or properties adjacent to the Contract Area, which constitute or is reasonably expected to constitute the Contract Area 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 Contract Area and to perform all Solar 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.

The DEPARTMENT undertakes to provide further assistance to the RE DEVELOPER, including the exercise of the power of eminent domain if necessary, to secure such necessary or proper rights at such cost for the account of the RE DEVELOPER, if the RE DEVELOPER is unable to secure such rights at commercially reasonable costs through negotiations or if the same is the most expedient course of action to support the timely execution of Solar Energy Operations;

- e) Allow, in accordance with the existing laws, to engage the services Expatriate Experts who shall exercise their technical professions solely for the Solar Energy Operations: *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;

- f) Have a free and unimpeded use of Solar Resources within the Contract Area in view of the Solar Operations, Additional Investments and New Investments in regard of which, the DEPARTMENT shall ensure that rights, privileges and other authorizations it may grant to third parties will not defeat or impair such use; and
- g) Be informed by the DEPARTMENT, if at any time the latter becomes aware of any intended exploration, extraction or use of energy resources other than Solar Resources on the Contract Area, within thirty (30) days from the date it becomes aware of such intended exploration, extraction or other use.

6.2 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 Solar Energy System in the Project Site.
- b) Secure and be subject to any 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) Perform the required Solar Energy Operations and provide services, technology, and financing in connection therewith;
- e) Maintain complete and accurate accounting, financial and technical records of its Solar Energy Operations, subject to Sections IX (Data and Reports) and XI (Confidentiality), and in accordance with the Accounting Procedures as provided under Annex "B" hereof;
- f) Allow officials and representatives authorized by the DEPARTMENT access to the Contract Area, and to the accounts, books and records directly relating to the Solar Energy Operations during reasonable hours and without causing disruption. The RE DEVELOPER shall provide such reasonable facilities and assistance as may be practicable to ensure the success of the inspection;
- g) Give priority in employment to qualified personnel in the Host LGU subject to Section XV (Employment, Training and Development Programs) hereof;
- h) 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;

- i) After availing of the ITH, be subject to Corporate Income Tax: *Provided*, That New or Additional Investment shall be eligible for ITH;
  - j) Be subject to the provisions of law of general application;
  - k) Develop, operate and maintain the Contract Area in accordance with accepted industry practices to enable maximum economic production of the Solar Energy Resources;
  - l) Be responsible for procurement of installation, equipment and supplies, and for entering into subcontracts related to the Solar Energy Operations;
  - m) 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;
  - n) Give preference to Philippine companies/agencies entering into subcontracts on goods or services that are required in the Solar Energy Operations but are not carried out by the RE DEVELOPER; *Provided*, That the goods or services are competitive as to cost, quality and availability;
  - o) Be responsible in the proper handling of data, samples, information, reports and other documents;
  - p) Maintain all meters and measuring equipment in good order and allow access to inspectors authorized by the DEPARTMENT;
  - q) Pay the Government Share in accordance with the computation in the Act's IRR and taxes as may be applicable;
  - r) Organize Information, Education and Communication (IEC) Campaign on benefits to the Host LGUs; and
  - s) Comply with all rules, regulations, and guidelines issued by the DEPARTMENT and other government agencies that are applicable hereto.
- 6.3 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 VII REPRESENTATIONS 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:

- 7.1 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;
- 7.2 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 RE Contract;
- 7.3 The RE DEVELOPER:
  - a) Has not been declared in default in respect of any of its material 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;
- 7.4 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
- 7.5 The ownership of the RE DEVELOPER's capital stock complies with applicable laws and regulations.

## SECTION VIII ASSETS AND EQUIPMENT

- 8.1 The RE DEVELOPER shall acquire and maintain for the Project and for its Solar Energy Operations and, such assets as are reasonably estimated to be required in carrying out the exploration, assessment, harnessing, piloting and other studies for the Solar Energy Resources in the Contract Area; and the development, utilization and commercialization of Solar Energy Systems therein, including the construction, installation, operation and maintenance of the Solar Energy Systems.
- 8.2 All materials, equipment, plants and other installations that are erected or placed on the Contract Area by the RE DEVELOPER and are owned by the RE

DEVELOPER shall remain the property of the RE DEVELOPER up to one (1) year from the Expiration or Termination of this RE Contract: *Provided*, That upon the written request of the RE DEVELOPER, the DEPARTMENT shall approve an additional non-extendible period of one (1) year within which to remove such assets in the Contract Area. Thereafter, the ownership of any remaining materials, equipment, plants, and other installations shall be vested in the Government.

- 8.3 The RE DEVELOPER shall be responsible for the removal and the disposal of all materials, equipment and facilities from the Contract Area in accordance with the ECC and the provisions of the Abandonment and Termination Plan as provided under Section II hereof;
- 8.4 The ownership of all data, records, accounts, samples and other technical data produced or generated in the course of the Solar Energy Operations that are confidential, proprietary in nature or otherwise not generally available to the public shall remain with the DEPARTMENT and RE DEVELOPER and shall be kept confidential in accordance with Section XI (Confidentiality) hereof.

## SECTION IX DATA AND REPORTS

- 9.1 All data and reports, except for proprietary techniques used in developing such data and reports, must be submitted by the RE DEVELOPER in accordance with the format approved by the DEPARTMENT.
- 9.2 The data and reports to be submitted to the DEPARTMENT shall include, but not limited to, the following:
  - a) Annual Progress Report - shall be submitted not later than two (2) months prior to 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 total electricity generated, used and exported to the grid; and
  - 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 one hundred twenty (120) calendar days after the end of the fiscal year, as indicated in the Financial Statements; 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 X GOVERNMENT SHARE

- 10.1 The Government Share shall be equal to one percent (1%) of the Gross Income from the sale of electricity generated from Solar Energy Operations in accordance with the Accounting Procedures as prescribed under Annex "B" hereof.
- 10.2 The RE DEVELOPER shall within sixty (60) days following the end of each quarter of a Calendar or Fiscal Year remit to the DEPARTMENT the Government Share: *Provided*, That any unremitted amount shall carry an interest of ten percent (10%) per annum reckoned from the day immediately following the end of each quarter of a Calendar or Fiscal Year, as may be applicable.

## SECTION XI CONFIDENTIALITY

- 11.1 All documents, information, data and reports produced or generated during the Solar 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.
- 11.2 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 11.5, and no Party shall otherwise transfer, present, sell or publish it in any way within the confidentiality periods.
- 11.3 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.
- 11.4 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.
- 11.5 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 Solar 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.
- 11.6 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 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.
- 11.7 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 Solar Energy Operations, without prior written consent of the other Party.

## SECTION XII

### PERFORMANCE BOND AND SIGNING FEE

- 12.1 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.
- 12.2 Failure of the RE DEVELOPER to comply with Section 12.1 hereof shall render the COR and RE Contract to be void *ab initio*.
- 12.3 The initial amount of the bond or other guarantee as specified in Sub-section 6.2(f) shall not be less than the annual financial commitment/budgetary estimate for the first Contract Year based on the Work Program.
- 12.4 The amount of performance bond or other guarantee may be adjusted, subject to the following conditions:
- a) In the event of surrender by the RE DEVELOPER of a portion of the Contract Area covered by this RE Contract, the performance bond or other guarantee shall be reduced proportionately in accordance with the Work Program;
  - b) 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
  - c) Such other conditions or circumstances as would reasonably warrant the modification of the amount of the performance bond or other guarantee.

- 12.5 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 performance 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.
- 12.6 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 of the start of the construction of the Generation Facility.
- (Note: The amount for signature fee/bonus shall be based on the proposed installed capacity of the Project at the rate of Php5.00/kW).

### SECTION XIII SUSPENSION AND TERMINATION

- 13.1 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 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 and feasibility study 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 XII (Performance Bond) hereof;
- 13.2 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 Solar 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.
- 13.3 Notwithstanding the foregoing, this RE Contract shall be terminated without prejudice to the RE DEVELOPER's obligation which survive the termination of this RE Contract.

#### SECTION XIV DISPUTES AND ARBITRATION

- 14.1 Any dispute, controversy or claim arising out of or relating to this RE Contract, except Section 13.1(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.
- 14.2 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 Sections IV (Contract Area), V (Work Program and Estimated Expenditures) and X (Government Share) 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 14.4 hereof.
- 14.3 The following shall govern the rules of referral:
- a) After the sixty (60)-day period in Section 14.1 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 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 to the independent expert mentioned in Section 14.2 hereof. 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 act shall constitute a breach of this RE Contract and shall be submitted to arbitration in accordance with Section 14.4 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 him 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.
- 14.4 If the dispute cannot be settled within sixty (60) days by mutual discussions as contemplated in Section 14.1 hereof, 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 either 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.
- 14.5 The right to arbitrate disputes under this RE Contract shall survive the Expiration or Termination of this RE Contract.

## SECTION XV EMPLOYMENT, TRAINING AND DEVELOPMENT PROGRAMS

- 15.1 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.
- 15.2 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.
- 15.3 The RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of \_\_\_\_\_ Pesos (Php \_\_\_\_\_).
- 15.4 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 shall be computed based on the proposed installed capacity of the Solar Project at the rate of Php5.00/kW. Projects with installed capacity of 5MW and below shall be exempt from these financial obligations.)

## SECTION XVI MISCELLANEOUS PROVISIONS

### 16.1 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.

## 16.2 GOVERNING LAW

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

## 16.3 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) During the Pre-Development Stage, this RE Contract shall not be assigned except where the assignee is a subsidiary, branch or regional corporation of the RE DEVELOPER created for the special purpose of handling the project covered by the RE Contract.
- e) No assignment shall be granted if the RE Developer is in default of its Work Program or any of its material obligations under the RE Contract and other RE agreement with the DEPARTMENT.
- f) 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.

#### 16.4 AMENDMENTS

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

#### 16.5 BOOKS OF ACCOUNTS AND AUDITS

- a) The RE DEVELOPER shall be responsible for keeping complete books and accounts, in Philippine currency denominations, reflecting all transactions in connection with this RE Contract in accordance with the Annex "B" hereof.
- b) The DEPARTMENT shall have the right to inspect the RE DEVELOPER's books and accounts directly relating to this RE Contract for any Calendar or Fiscal Year thirty-six (36) months following the end of each Calendar or Fiscal Year. Any such audit shall be completed within twenty-four (24) months after its commencement. Any exceptions must be made to the RE DEVELOPER in writing within ninety (90) calendar days following the completion of such audit. If the DEPARTMENT fails to give such written exception within such time, then the RE DEVELOPER's books of accounts and statements for such Calendar or Fiscal Year shall be established as correct and final for all purpose.
- c) The DEPARTMENT, upon at least fifteen (15) days advance written notice to the RE DEVELOPER, is entitled to access, during reasonable hours without affecting Solar Energy Operations, all books of accounts and records and may inspect such sites and facilities as necessary.
- d) If the DEPARTMENT notifies the RE DEVELOPER of an exception to the RE DEVELOPER's books of accounts within the period specified in Sub-section 16.6 (b), the RE DEVELOPER shall within ninety (90) days from receipt of written exception from the DEPARTMENT, question its validity, otherwise, the same shall become final and binding on the RE DEVELOPER. If the Parties are not able to agree on the exceptions or adjustments after ninety (90) days from the date of receipt of the RE DEVELOPER's response to the DEPARTMENT's exception report, the Parties shall resolve the dispute in accordance with Section XIV (Disputes and Arbitration) hereof.

#### 16.6 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

\_\_\_\_\_  
**PRIMARY SIGNATORY**

Designation

**WITNESSES**

\_\_\_\_\_  
**NAME**

REMB Director

\_\_\_\_\_  
**NAME**

Designation

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
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 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 twenty-two (22) pages, including the page on which this acknowledgment is written, is signed on each and every page thereof by the Party and his instrumental witness 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 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 corporation herein represented.

This RE Contract consisting of twenty-two (22) pages, including the page on which this acknowledgment is written, is signed on each and every page thereof by the Party and her instrumental witness and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on \_\_\_\_\_ at \_\_\_\_\_.

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Page No. \_\_\_\_\_;  
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Series of \_\_\_\_\_.

ANNEX "A"  
CONTRACT AREA

ANNEX "B"  
ACCOUNTING PROCEDURE

ANNEX "C"  
WORK PROGRAM