

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF ENERGY

HYDROPOWER SERVICE CONTRACT
(HSC No. ____-____-____)

This **HYDROPOWER SERVICE 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 Hydropower 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, 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** 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 Hydropower Operations, in an economically viable manner.
- 1.2 This RE Contract shall cover the Contract Area only as provided under Section V (Contract Area) hereof.
- 1.3 The RE DEVELOPER is hereby appointed and constituted by the DEPARTMENT as the Party having the exclusive right to explore, develop, and utilize the Hydropower Resources within the Contract Area as defined herein.
- 1.4 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.
- 1.5 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 not later than three (3) months from Effective Date in the case of Pre-Development Stage and five (5) years from confirmation of the Declaration of Commerciality 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", 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 or rehabilitation of the Hydropower Systems; and
 - ii. Improvements to the Hydropower 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 Confirmation of Commerciality"** or "COCOC" shall refer to the certificate duly signed by the DOE Secretary confirming the Declaration of Commerciality by the RE DEVELOPER and shall serve as notice to proceed for the construction of the RE Project or the installation of the RE Facilities. The date of issuance of the COCOC shall be considered as the commencement date of the Development Stage of the RE Project;
- 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 to the grid to sell or supply its produced energy, as duly confirmed by the DEPARTMENT and other relevant regulatory bodies;
- h) **"Commercial Quantities"** shall mean quantities of electricity to be generated using commercially viable technology to develop the Hydropower Resources providing, or capable of providing, revenue from sales of electricity that exceed or would exceed the RE DEVELOPER's Cost of Goods Sold by a margin sufficient to cause a reasonably prudent person employing standard industry practices as to hydropower resources and using commercially available technology to develop the Hydropower Systems;
- i) **"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;
- j) **"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;

- k) **“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 period of the Income Tax Holliday (ITH) under the Act, the RE DEVELOPER shall be subject to a Corporate Income Tax rate of ten percent (10%);
- l) **“Cost of Goods Sold”** refers to all business expenses directly incurred in the exploration, development, and utilization of the Hydropower 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;
- m) **“Declaration of Commerciality”** refers to a written declaration by the RE DEVELOPER stating that the electricity to be generated from the Hydropower Resources is of Commercial Quantities;
- n) **“Development Stage”** refers to the development, production, or utilization of RE resources, including the construction and installation of relevant facilities up to the operation thereof;
- o) **“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;
- p) **“Expatriate Expert”** refers to a foreign national engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Hydropower Operations, who shall exercise his technical profession, as allowed under existing laws;
- q) **“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 to the DEPARTMENT;
- r) **“Filipino Employee”** refers to any citizen of the Republic of the Philippines employed and/or engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Hydropower Operations under this RE Contract and such engagement is characterized as establishing an employer-employee relationship between such citizen and RE DEVELOPER;
- s) **“Force Majeure”** refers to extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable;
- t) **“Generation Facility”** refers to a facility for the production of electricity;
- u) **“Government Share”** refers to the amount due the national government and LGUs from the exploration, development and utilization of the Hydropower Resources computed in accordance with the Act and its Implementing Rules and Regulations (IRR), and described in Section XI (Government Share) hereof;

- v) **"Gross Income"** refers to income derived from the RE DEVELOPER's Hydropower Operations equivalent to the gross sales of Hydropower less sales returns, discounts and allowance, and Cost of Goods Sold, which is more particularly described in the Accounting Procedures attached as Annex "B" hereof;
- w) **"Host LGU"** refers to the LGU where the Hydropower Resources and/or Generation Facility is located;
- x) **"Hydroelectric Power"** or "Hydropower" shall be the energy produced from generators driven by turbines that convert the potential energy of falling or fast-flowing water into mechanical energy;
- y) **"Hydropower Operations"** shall include Hydropower exploration, development, production, and utilization, including the construction, installation, operation and maintenance of Hydropower Systems to convert Hydropower to electrical power and the transmission of such electrical power and/or other non-electrical uses;
- z) **"Hydropower Resources"** refer to the water resources found within the Contract Area to be technically feasible for the development of Hydropower projects, which include rivers, lakes, waterfalls, irrigation canals, springs, ponds, and other water bodies;
- aa) **"Hydropower Systems"** refer to the machines or other related equipment that convert Hydropower into useful electrical or mechanical energy; includes, but is not limited to, Hydro Turbine Generators (HTGs), electrical connection and transmission grids, overhead and underground electrical transmission and communications lines, electric transformers and conditioning equipment, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with HTG installations, climatological and measurement equipment, control facilities, maintenance yards, access facilities, intake, spillways, dams, and related facilities and equipment deemed by the RE DEVELOPER to be necessary or convenient for the production and delivery of electricity from Hydropower;
- bb) **"Local Government Unit/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;
- cc) **"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;
- dd) **"Pre-Development Stage"** refers to the preliminary assessment and feasibility study up to the financial closing of the Project and specifically covers the term provided in Section 3.1 of this RE Contract;
- ee) **"Production Area"** refers to that portion of the Contract Area designated by the RE DEVELOPER where Hydropower Resources are utilized to produce electricity in Commercial Quantities;

- ff) **"Project"** refers to the RE DEVELOPER's Hydropower Systems within the Contract Area, which may be implemented in one or more phases;
- gg) **"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;
- hh) **"Termination"** refers to the right of the Parties to cancel this RE Contract pursuant to Section XIV (Suspension and Termination) hereof;
- ii) **"Watershed Area"** refers to an area of land drained by a river and its tributaries and enclosed by drainage divide or mountain ridges that separates it from adjacent watershed or drainage basins, where the proposed weir/dam and Generation Facility of the Project are located and gets its water for electricity generation; and
- jj) **"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 as Annex "C" and shall thereafter be updated on a regular basis.

SECTION III TERM

- 3.1 **Pre-Development Stage.** The Pre-Development Stage of this RE Contract shall be for a period of five (5) years from the Effective Date: *Provided*, That the RE DEVELOPER shall submit a Declaration of Commerciality duly confirmed by the DEPARTMENT at any time during the Pre-Development Stage otherwise, the term of this RE Contract shall automatically expire.
- 3.2 **Development Stage.** Upon submission of the Declaration of Commerciality by the RE DEVELOPER, as confirmed by the DEPARTMENT through the issuance of a Certificate of Confirmation of Commerciality, this RE CONTRACT shall remain in force for the balance of a period of twenty-five (25) years from Effective Date: *Provided*, That at the option of the RE DEVELOPER, by written notice to the DEPARTMENT not later than one (1) year prior to the expiration of the initial twenty-five (25)-year period and so long as the RE DEVELOPER is not in default of any material obligations under this RE Contract, the DEPARTMENT may approve the extension of this RE Contract for another twenty-five (25) years, subject to the terms and conditions to be mutually agreed upon by the Parties.

SECTION IV CONTRACT STAGE TRANSITION

- 4.1 **Declaration of Commerciality.** Upon its determination that the Hydropower Resource can generate power in Commercial Quantities, the RE DEVELOPER shall submit the Declaration of Commerciality, along with supporting documents, within the Pre-Development stage.

- 4.2 **Certificate of Confirmation of Commerciality.** The DEPARTMENT shall act on RE DEVELOPER's Declaration of Commerciality within twenty (20) working days from receipt thereof provided the submission is made within the Pre-Development Stage as provided in Section 4.1. Within the 20-working day period, the DEPARTMENT shall either: a) issue the Certificate of Confirmation of Commerciality or b) deny the Declaration of Commerciality.
- 4.3 Should the DEPARTMENT find the Declaration of Commerciality without sufficient basis, the RE DEVELOPER shall be given a one-time chance of thirty (30) calendar days from receipt of the result of evaluation to rectify its submission. Otherwise, the request of issuance of Certificate of Confirmation of Commerciality shall be denied.

SECTION V CONTRACT AREA

- 5.1 The Contract Area refers to the area as described in Annex "A" hereof, which the RE DEVELOPER has exclusive right to explore, develop and utilize the Hydropower Resources in accordance with this RE Contract.
- 5.2 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).
- 5.3 During Pre-Development Stage, the RE DEVELOPER shall delineate its Production Area by identifying the final location of the diversion point and the Generating Facility which shall be the final Contract Area during the Development Stage of the Project and shall form part of its Declaration of Commerciality.
- 5.4 Any areas outside the proposed Production Area shall be deemed surrendered or waived on the date of Declaration of Commerciality.

SECTION VI WORK PROGRAM

- 6.1 The RE DEVELOPER shall carry out its existing work according to good industry practices.
- 6.2 During the Pre-Development Stage, the RE DEVELOPER shall conduct a full Hydropower Resources assessment.
- 6.3 Attached to this RE Contract is a Work Program, details of which are particularly described in Annex "C" hereof.
- 6.4 The RE DEVELOPER shall submit to the DEPARTMENT a Work Program for the first five (5) years from its Declaration of Commerciality and its corresponding budget thereof.

- 6.5 Not later than two (2) months prior to the end of the Work Program, the RE DEVELOPER shall submit a Work Program for the next five (5) years and shall do so every five (5) years thereafter. The Work Program or any revisions thereof shall require the approval of the DEPARTMENT.
- 6.6 During the implementation of the Project, 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.
- 6.7 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 VII RIGHTS AND OBLIGATIONS

- 7.1 The RE DEVELOPER shall have the following rights:
- a) To be granted fiscal and non-fiscal incentives and privileges under the Act and its IRR, and all other existing laws that are not otherwise modified or repealed by the Act;
 - b) To receive assistance from the DEPARTMENT:
 - i. During the Pre-Development Stage, in securing access to lands and other areas where Hydropower Resources shall be harnessed; and
 - ii. 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 Hydropower 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 Hydropower Operations;

- e) Allow, in accordance with the existing laws, to engage the services of Expatriate Experts who shall exercise their technical professions solely for the Hydropower 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 Expert with the RE DEVELOPER ceases, applicable laws and regulations shall apply to him and his immediate family;
- f) Have a free and unimpeded use of Hydropower Resources within the Contract Area in view of the Hydropower 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 Hydropower Resources on the Contract Area, within thirty (30) days from the date it becomes aware of such intended exploration, extraction or other use.

7.2 The RE DEVELOPER shall have the following obligations:

- a) During the Pre-Development Stage, upon determination of Hydropower Resource of Commercial Quantities, the RE DEVELOPER shall submit to the DEPARTMENT its Declaration of Commerciality
- 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) Perform exploration, assessment, field verification, harnessing, piloting and other activities in accordance with the Work Program and provide technology and financing in connection with the Pre-Development Stage;

- d) Perform the required Hydropower Operations and provide services, technology and financing in connection therewith;
- e) Maintain complete and accurate accounting, financial and technical records of its Hydropower Operations, subject to Sections X (Data and Reports) and XII (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 Hydropower 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 XVI (Employment, Training and Development Programs);
- h) At the start of every Contract Year thereafter, 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) Be subject to the provisions of laws of general application;
- j) Develop, operate, and maintain the Contract Area in accordance with accepted industry practices to enable maximum economic production of the Hydropower Resources;
- k) Be responsible for procurement of installation, equipment and supplies, and for entering into subcontracts related to the Hydropower 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 Hydropower Operations but are not carried out by the RE DEVELOPER: *Provided*, That the goods or services are competitive as to cost, quality and availability;

- 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 inspectors authorized by the DEPARTMENT;
- p) Pay the Government Share in accordance with the computation in the Act's IRR and taxes as may be applicable;
- q) Organize Information, Education and Communication (IEC) Campaign on benefits to the Host LGUs; and
- r) Comply with all rules, regulations, and guidelines issued by the DEPARTMENT and other government agencies that are applicable hereto.

7.3 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 VIII 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:

- 8.1 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;
- 8.2 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;
- 8.3 The RE DEVELOPER:
 - a) Has not been declared in default in respect to 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;
- 8.4 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
- 8.5 The ownership of the RE DEVELOPER's capital stock complies with applicable laws and regulations.

SECTION IX ASSETS AND EQUIPMENT

- 9.1 The RE DEVELOPER shall acquire and maintain for the Project and for its Hydropower Operations and, such assets as are reasonably estimated to be required in carrying out the exploration, assessment, harnessing, piloting and other studies for the Hydropower Resources in the Contract Area; and the development, utilization and commercialization of Hydropower Resources therein, including the construction, installation, operation and maintenance of the Hydropower Systems.
- 9.2 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.
- 9.3 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.
- 9.4 The ownership of all data, records, accounts, samples and other technical data produced or generated in the course of the Hydropower 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 XII (Confidentiality) hereof.

SECTION X DATA AND REPORTS

- 10.1 All data and reports, except for proprietary techniques used in developing such technical data and reports, must be submitted by the RE DEVELOPER in accordance with the format approved by the DEPARTMENT.
- 10.2 The technical 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 Report - shall be submitted within fifteen (15) days from the end of each calendar month and shall include reservoir report 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 XI GOVERNMENT SHARE

- 11.1 The Government Share shall be equal to one percent (1%) of the Gross Income from the sale of electricity generated from Hydropower Operations in accordance with the Accounting Procedures as prescribed under Annex "B" hereof.
- 11.2 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 XII CONFIDENTIALITY

- 12.1 All documents, information, data and reports produced or generated during the Hydropower 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.
- 12.2 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 12.5, and no Party shall otherwise transfer, present, sell or publish it in any way within the confidentiality periods.
- 12.3 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.
- 12.4 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: *Provided*, That the same are not proprietary in nature.
- 12.5 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 Hydropower 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.
- 12.6 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.

- 12.7 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 Hydropower Operations, without prior written consent of the other Party.

SECTION XIII PERFORMANCE BOND AND SIGNING FEE

- 13.1 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.
- 13.2 Failure of the RE DEVELOPER to comply with Section 13.1 hereof shall render the COR and RE Contract to be void *ab initio*.
- 13.3 The initial amount of the bond or other guarantee as specified in Sub-section 7.2(h) shall not be less than the annual financial commitment/budgetary estimate for the first Contract Year based on the Work Program.
- 13.4 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 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.
- 13.5 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.
- 13.6 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 of signing fee/bonus shall be based on the proposed installed capacity of the Hydropower Project at the rate of Php 5.00/kW.)

**SECTION XIV
SUSPENSION AND TERMINATION**

- 14.1 In case of the Pre-Development Stage, 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) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;
 - c) Tampering, falsifying or plagiarizing of technical design and feasibility study reports;
 - d) Non-payment of the financial obligations agreed upon under this RE Contract; and
 - e) Non-posting of performance bond or other guarantee within the period/s provided under Section XIII (Performance Bond).
- 14.2 In case of the Development Stage, 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-remittance of Government Share as determined by the Compliance Division - Financial Services of the DEPARTMENT;
 - f) Non-payment of the financial obligations agreed upon under this RE Contract;
 - g) Non-posting of performance bond or other guarantee within the period/s provided under Section XIII (Performance Bond);
- 14.3 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) 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) 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 Hydropower 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;
 - 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.
- 14.4 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 XV DISPUTES AND ARBITRATION

- 15.1 Any dispute, controversy or claim arising out of or relating to this RE Contract, except Section 14.1.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.
- 15.2 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 V (Contract Area), VI (Work Program), and XI (Government Share), refer the dispute to an independent expert for resolution in the manner provided below: *Provided,* That any Party, in its sole discretion, may require that the dispute be

referred to arbitration under Section 15.4 hereof.

15.3 The following shall govern the rules of referral:

- a) After the sixty (60) day period in Section 15.1 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 from receipt of the notice of intention to refer, serve the applicant a notice of 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 15.2 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 15.4 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.

15.4 If the dispute cannot be settled within sixty (60) days by mutual discussions as contemplated in Section 15.1 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.

- 15.5 The right to arbitrate disputes under this RE Contract shall survive the Expiration or Termination of this RE Contract.

SECTION XVI EMPLOYMENT, TRAINING AND DEVELOPMENT PROGRAMS

- 16.1 The RE DEVELOPER agrees to give preference in employment to qualified Filipino Employees who are residents of 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.
- 16.2 During the Pre-Development Stage, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of _____ Pesos (Php _____). Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of _____ Pesos (Php _____).
- 16.3 During the Pre-Development Stage, the RE DEVELOPER shall provide assistance for training programs, conferences, seminars and other similar activities for the DEPARTMENT's personnel in the amount of _____ Pesos (Php _____) per Contract Year. Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide assistance for training programs, conference seminars and other similar activities for the DEPARTMENT's personnel in the amount of _____ Pesos (Php _____) per Contract Year. This assistance 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.

- 16.4 The RE DEVELOPER shall undertake corporate social responsibility projects in Host LGUs focused on 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 Hydropower Project at the rate of Php5.00/kW. Projects with installed capacity of 1MW and below shall be exempt from these financial obligations.)

SECTION XVII MISCELLANEOUS PROVISIONS

17.1 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.

17.2 GOVERNING LAW

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

17.3 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 agreements 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 period covering the Pre-Development Stage and pre-commissioning phase 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.

17.4 AMENDMENTS

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

17.5 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 from 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 Hydropower 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 17.6 (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 XV (Disputes and Arbitration) hereof.

17.6 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

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 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 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 twenty-five (25) pages, including the page on which this acknowledgment is written, is signed on each and every page thereof by the Parties and their instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on _____ at _____.

NOTARY PUBLIC

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

ACKNOWLEDGMENT

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

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

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

known to be the same person described in the foregoing instrument, who acknowledged before me that 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 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-five (25) pages, including the page on which this acknowledgment is written, is signed on each and every page thereof by the Parties and their 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"
CONTRACT AREA

ANNEX "B"
ACCOUNTING PROCEDURE

ANNEX "C"
WORK PROGRAM