

**REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF ENERGY**

**OFFSHORE WIND ENERGY SERVICE CONTRACT
(OsWESC No. _____ - ____ - ____)**

This **OFFSHORE WIND ENERGY 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 and other natural resources in public and/or private lands, within the Philippine territory, belong to the State and their exploration, development and utilization are governed by Section 2, Article XII of the 1987 Constitution;

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

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

[WHEREAS, after the approval of the **RE DEVELOPER**’s RE Application, a Certificate of Authority (COA) No. _____ dated _____ was issued in its favor, by virtue of which permits or certifications and/or tenurial rights, and reconnaissance activities needed for the Project may be procured/conducted; *(To be discarded if RE Developer applied for an RE Contract but did not avail of the COA)*]

[WHEREAS, the RE DEVELOPER applied for conversion of its [WESC] No. _____, which was awarded on _____; *(To be discarded if RE Developer did not apply for conversion)*]

[WHEREAS, after approval of the RE DEVELOPER's application for conversion, a Certificate of Authority (COA) No. _____ dated _____ was issued in its favor, by virtue of which permits or certifications and/or tenurial rights, and reconnaissance activities needed for the Project may be procured/conducted; *(To be discarded if RE Developer applied for conversion but did not avail of the COA)*]

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

WHEREAS, 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;

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 Wind Energy 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 Wind Energy 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 or Additional Investment that satisfies the conditions set forth in Sections 63.1 or 63.2, Chapter VII of Department Circular No. DC _____ entitled "*Revised Omnibus Guidelines Governing the Award and Administration of Renewable Energy Contracts and the Registration of Renewable Energy Developers*" ("*Revised Omnibus RE Guidelines*"), 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 Unless otherwise specified in the Act and its implementing rules and regulations (“IRR”) or in relevant laws and regulations, the words and terms under this RE Contract, shall have the meaning in accordance with the following definitions:
- a) **“Abandonment and Termination Plan”** refers to the plan to be prepared by the **RE DEVELOPER** and submitted as a requirement for the issuance of a Certificate of Confirmation of Commerciality (“COCOC”) 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. Such abandonment work plan may be amended, supplemented or modified by the **RE DEVELOPER**, the **DEPARTMENT**, and the DENR from time to time;
 - b) **“Accounting Procedures”** refers to the set of procedures, guidelines, 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 and which shall, at all times, be subject to the Philippine Financial Reporting Standards, and other applicable accounting rules, as may be amended;
 - c) **“Additional Investment”** refers to investment for improvements, modernization, rehabilitation, or expansion duly registered with the **DEPARTMENT**, which may or may not result in increased capacity, and which may or may not be entitled to fiscal incentives pursuant to the conditions set forth in the Act, its IRR and applicable issuances;
 - d) **“Affiliate”** refers to any person or group or persons that, 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 policies of a person by contract, agency, or otherwise;
 - e) **“Certificate of Confirmation of Commerciality”** or **“COCOC”** refers to the certificate duly signed by the Secretary confirming the Declaration of Commerciality (“DOC”) by the **RE DEVELOPER** and shall serve as notice to proceed with the construction of the Project or the installation of the Wind Energy Systems. The date of issuance of the COCOC shall be considered as the commencement date of the Development Stage of the Project;
 - f) **“Certificate of Registration”** or **“COR”** refers to the certification issued by the **DEPARTMENT** to the **RE DEVELOPER** upon the issuance of COCOC or upon the Effective Date of this RE Contract, at the option of the latter, to serve as the basis for its entitlement to the applicable incentives provided under the Act. A new COR shall also be issued upon approval of New Investment or increase of the Project’s installed capacity by thirty percent (30%) as a result of Additional Investment;
 - g) **“Commercial Operation”** refers to the phase commencing at the COD of the Project;

- h) “**Commercial Operation Date**” or “**COD**” refers to the date of the start of Commercial Operations as indicated in the Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC) or other similar document issued by the appropriate government agency;
- i) “**Commercial Quantities**” shall mean quantities of electricity to be generated using commercially available technology to develop the Wind Energy Systems through proof of moderate to high wind speed, wind direction, wind density from the Wind Energy Resources which have a reasonable chance of being sufficient and technically compliant to operate and support the Commercial Operation of the Project;
- j) “**Contract Area**” refers to the total area where the **RE DEVELOPER** is given the exclusive right to explore and develop the Wind Energy 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;
- k) “**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;
- l) “**Corporate Income Tax**” refers to the tax imposed upon net taxable income under the National Internal Revenue Code (NIRC) of 1997, as amended by RA Nos. 9337, 10963 and 11534 and the Act. Upon the lapse of the period of the Income Tax Holiday (“ITH”) under the Act, the **RE DEVELOPER** shall be subject to a Corporate Income Tax rate of ten percent (10%) of taxable income;
- m) “**Cost of Goods Sold**” refers to all direct expenses incurred to produce electricity, excluding sales and general administration expenses, which are particularly described in Annex “B” hereof;
- n) “**Declaration of Commerciality**” or “**DOC**” refers to a written declaration by the **RE DEVELOPER** to the **DEPARTMENT**, stating that the electricity to be generated from the Wind Energy Resources is of Commercial Quantities;
- o) “**Development Stage**” refers to the development, production, or utilization of RE resources, including the construction and installation of relevant facilities up to the operation phase thereof and specifically covers the term provided in Section 3.2 of this RE Contract;
- p) “**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;
- q) “**Expatriate Expert**” refers to a foreign national engaged by the **RE DEVELOPER** and/or its Subcontractor/s involved in the Wind Energy Operations, who shall exercise his technical profession, as allowed under existing laws;
- r) “**Expiration**” refers to the lapse of the term of this RE Contract as provided in Section III (Term) hereof;
- s) “**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 Wind Energy Operations under this RE Contract, and such engagement is characterized as establishing an

employer-employee relationship between such citizen and **RE DEVELOPER**;

- t) **“Financial Closing”** refers to such milestone to transition from the Pre-Development to Development Stage of the Project when the **RE DEVELOPER** has secured a written commitment from the financier/s to provide its full funding requirements through equity and/or commercial borrowings, or other financing schemes;
- u) **“Force Majeure”** refers to extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable;
- v) **“Generation Facility”** refers to a facility for the production of electricity;
- w) **“Government Share”** refers to the amount due the national government and local government units (“LGUs”) equal to one percent (1%) of the Gross Income of **RE DEVELOPERS** resulting from the sale of RE produced and such other income incidental to and arising from the RE generation, transmission, and sale of electric power computed in accordance with the Act and its IRR, and described in Section XI (Government Share) hereof;
- x) **“Gross Income”** refers, for purposes of determining the Government Share, to the proceeds resulting from the sale of RE produced and such other income incidental to and arising from RE generation, transmission, and sale of electric power equivalent to gross sales less sales returns, discounts and allowances, and Cost of Goods Sold, excluding other allowable deductions from such gross income authorized by the National Internal Revenue Code of 1997, as amended, which is more particularly described in the Accounting Procedures attached as Annex “B” hereof;
- y) **“Host LGU”** refers to the LGU where the Wind Energy Resources and/or Generation Facility is located;
- z) **“Local Government Unit/LGU”** refers to the territorial and political subdivisions of the State which organization and function are fully described under RA No. 7160, otherwise known as the Local Government Code of 1991;
- aa) **“New Investment”** refers to the discovery, exploration, development and/or utilization of wind energy resources within the Contract Area using new wind energy technology distinct from the originally registered operations, which may qualify as new projects, subject to setting up of new separate books of accounts;
- bb) **“Pre-Development Stage”** refers to the preliminary assessment and feasibility study up to the financial closing of the Project and approval of DOC and specifically covers the term provided in Section 3.1 of this RE Contract;
- cc) **“Production Area”** refers to that portion of the Contract Area designated by the **RE DEVELOPER** where Wind Energy Resources are utilized to produce electricity in Commercial Quantities;
- dd) **“Project”** refers to the **RE DEVELOPER**’s Wind Energy Systems within the Contract Area, which may be implemented in one or more phases;

- ee) **“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;
- ff) **“Termination”** refers to the right of the Parties to cancel this RE Contract pursuant to Section XIV (Suspension and Termination) hereof;
- gg) **“Wind Energy”** refers to the energy that can be derived from wind that can be converted into useful electrical or mechanical energy;
- hh) **“Wind Energy Operations”** shall include Wind Energy exploration, development, production, and utilization, including the construction, installation, operation and maintenance of Wind Energy Systems to convert Wind Energy to electrical power and the transmission of such electrical power and/or other non-electrical uses;
- ii) **“Wind Energy Resources”** refers to the wind resources found within the Contract Area to be technically feasible for the development of Wind Energy projects;
- jj) **“Wind Energy Systems”** refers to the energy systems that convert wind energy into electrical or mechanical energy; and
- kk) **“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, duly approved by the **DEPARTMENT** and shall thereafter updated on a regular basis, attached as Annex “C” hereof.

SECTION III TERM

- 3.1 **Pre-Development Stage.** The Pre-Development Stage of this RE Contract shall be given a period of five (5) years, extendible for another two (2) years for justifiable reasons 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 DOC by the **RE DEVELOPER**, as confirmed by the **DEPARTMENT** through the issuance of a COCOC, 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 earlier than two (2) years but not later than one (1) year prior to the expiration of the 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 Wind Energy Resource can generate power in Commercial Quantities, the **RE DEVELOPER** shall submit the DOC, along with supporting documents acceptable with the **DEPARTMENT**, e.g., Detailed Feasibility Study, Preliminary Engineering Design and acquired/secured permits/endorsements, within the Pre-Development stage.
- 4.2 **Certificate of Confirmation of Commerciality.** The **DEPARTMENT** shall act on the **RE DEVELOPER's** DOC within thirty-one (31) calendar days from receipt thereof: *Provided*, That the submission is made within the Pre-Development Stage in accordance with Section 4.1. Within the 31-day period, the **DEPARTMENT** shall either: a) issue the COCOC or b) deny the DOC.
- 4.3 Should the **DEPARTMENT** find that the DOC is without sufficient basis, the **RE DEVELOPER** shall have the remainder of the Pre-Development Stage to correct any deficiencies and/or satisfy the requirements for issuance of the COCOC: *Provided*, however, That if the term of the Pre-Development Stage has lapsed, the **RE DEVELOPER** shall be given a one-time opportunity to rectify its submission within thirty (30) calendar days from receipt of the result of evaluation. Otherwise, the request for issuance of COCOC shall be denied.
- 4.4 The failure of the **RE DEVELOPER** to correct any deficiencies or otherwise satisfy the requirements for issuance of the COCOC within the applicable periods above shall be a cause for the termination of this RE Contract.

SECTION V CONTRACT AREA

- 5.1 The Contract Area refers to the areas as detailed and outlined in the map with its technical description and described in Annex "A" hereof, over which the **RE DEVELOPER** has exclusive right to explore, develop and utilize the Wind Energy 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 which shall be the final Contract Area during the Development Stage of the Project and shall form part of its DOC.
- 5.4 Any areas outside the proposed Production Area shall be deemed surrendered or waived on the date of approval of DOC.

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 Comprehensive Feasibility Study, Preliminary Engineering Design, and secure Financial Closing and the permits/endorsements from the concerned national government agencies.
- 6.3 Attached to this RE Contract is a Work Program which was submitted by the **RE DEVELOPER** during its application, and subsequently approved by the **DEPARTMENT**, the details of which are particularly described in Annex "C" hereof.
- 6.4 The **RE DEVELOPER** shall submit to the **DEPARTMENT** a Work Program with corresponding budgetary requirement for the first five (5) years from its DOC.
- 6.5 Not later than three (3) months prior to the end of the period covered by 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.
- 6.6 The Work Program or any revisions thereof shall require the approval of the **DEPARTMENT**, which may be approved if the **RE DEVELOPER** has substantially complied with all its material financial and technical activities under the Work Program for the immediately preceding Contract Year.
- 6.7 The failure of the **RE DEVELOPER** to comply with its commitments under the Work Program shall be sufficient ground for the **DEPARTMENT** to terminate the RE Contract, without prejudice to its availment of all other available remedies to protect its rights and interest.

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 offshore areas, lands and other areas where Wind Energy Resources shall be harnessed solely to conduct pre-development activities; and
 - ii. In endorsing the Project to the other national government agencies, LGUs, Board of Investments and other entities for the acquisition of permits, licenses and clearances and availment of applicable fiscal and non-fiscal incentives;

- c) To the extent necessary to exercise the exclusive rights granted under Section 1.3, have at all times the right of ingress to and egress from the Contract Area and the Wind Energy Systems, wherever located;
- d) Acquire rights-of-way and similar rights on, over, under, across and through the Contract Area and such portion of other properties as may be needed for the conduct of Wind Energy Operations in accordance with this RE Contract and the supply electricity to the grid, as the **RE DEVELOPER** may reasonably deem necessary.

For this 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: *Provided*, that the **DEPARTMENT** shall assist the **RE DEVELOPER** in securing such rights upon the latter's request and after determination that such assistance is reasonably necessary.

All obligations, payments and expenses arising from, or incidental to, the acquisition of the abovementioned rights shall be for the account of the **RE DEVELOPER** 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 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 and the same is the most expedient course of action to support the timely execution of Wind Energy Operations;

- e) In accordance with existing laws, engage the services of Expatriate Experts who shall exercise their technical professions solely for the Wind Energy Operations: *Provided*, That, Filipino Employees who have adequate training and experience to render the services required by the **RE DEVELOPER** shall be given preference: 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) Subject to existing laws, have free and unimpeded use of Wind Energy Resources within the Contract Area in view of the Wind Energy Operations, or any 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 Wind Energy 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, the **RE DEVELOPER** shall submit to the **DEPARTMENT** its DOC upon determination of Wind Energy Resource is of Commercial Quantities;

- 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 Wind Energy Operations and provide services, technology, and financing in connection therewith;
- e) Maintain complete and accurate accounting, financial and technical records of its Wind Energy Operations, subject to Sections X (Data and Reports) and XII (Confidentiality) hereof, 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 the Wind Energy Systems, and to the accounts, books and records directly relating to the Wind 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 residents within the Host LGU, subject to Section XVI (Employment, Training and Development Programs);
- h) Post a performance bond or any other guarantee as provided under Section XIII hereof;
- i) Be subject to the provisions of laws of general application;
- j) Develop and maintain the Contract Area and utilize the Wind Energy Resources in accordance with accepted industry practices to enable maximum economic production;
- k) Be responsible for procurement and installation of equipment and supplies, and for entering into subcontracts related to the Wind Energy Operations;
- l) Comply with the provisions of Department Circular No. DC2012-11-0009 entitled "Renewable Energy Safety, Health and Environment Rules and Regulations", as may be amended, and in so doing, (1) exert its best efforts to prevent pollution and damage to the atmosphere, oceans, rivers, lakes, harbors and land; and (2) ensure the safety and health of its operating personnel;
- m) Give preference to Philippine companies/agencies in subcontracts for goods or services that are required in the Wind 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;
- n) Be responsible for 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 Act, its IRR and issuances of the **DEPARTMENT**, and the national and local taxes, as may be applicable;
- q) Organize Information, Education and Communication Campaigns within the Host LGUs on the benefits of the Project; and
- r) Comply with all rules, regulations, and guidelines issued by the **DEPARTMENT** and other government agencies that are applicable hereto.

7.3 The **RE DEVELOPER** shall be issued a COR to enable it to avail of the fiscal and non-fiscal incentives and privileges as stated under the Act and its IRR:

- a) Upon the issuance of the COCOC or upon the Effective Date of this RE Contract, at the option of the **RE DEVELOPER**;
- b) Upon the approval of the **RE DEVELOPER**'s New Investment; and
- c) Upon the execution of a new RE Contract following the increase, or proof that the Project's capacity will be increased, by the **RE DEVELOPER**'s Additional Investment, subject to the conditions under the Revised Omnibus RE Guidelines;

The registration under (a) shall be valid and effective for the entire term and effectivity of this RE Contract while the registration under (b) and (c) shall be valid for the entire term and effectivity of the RE Contract covering such New Investment or Additional Investment.

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/or licensed to do business, and in good standing under the laws of the Philippines with full power to own its property; to carry on its business as it is now being conducted; and to execute, deliver and perform its obligations under this 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 The individual signing this RE Contract on behalf of the RE DEVELOPER is duly authorized to sign as of the Effective Date;
- 8.3 There is no litigation, arbitration or administrative proceeding pending or, to the best knowledge of the **RE DEVELOPER**, threatened against the **RE DEVELOPER** or its properties the adverse determination of which would adversely affect the ability of the **RE DEVELOPER** to perform or comply with any of its material obligations under this RE Contract;

8.4 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;

8.5 No written material information given by the **RE DEVELOPER** to the **DEPARTMENT** under this RE Contract contains any misstatement of fact as of the Effective Date or omits to state a fact that is materially adverse to the interests of the **DEPARTMENT**; and

8.6 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 Wind Energy Operations such assets as are reasonably estimated to be required in carrying out the exploration, assessment, harnessing, piloting and other studies for the Wind Energy Resources in the Contract Area; and for the development, utilization and commercialization of Wind Energy Resources therein, including the construction, installation, operation and maintenance of the Wind Energy 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 found within the Contract Area 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 Wind 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 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 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 after the end of each Contract Year and shall contain the summary of accomplishments under the approved Work Program with supporting documents, direct or indirect jobs generated, summary of fiscal incentives availed in Philippine Peso, Wind Resource Assessment Report, and any issues and concerns encountered during the implementation of the Work Program, 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) calendar days from the end of each calendar month and shall include wind data 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 the date of submission to the Securities and Exchange Commission ("SEC");
 - e) Audited Financial Statement - shall be submitted annually within thirty (30) calendar days from the date of submission to the SEC;
 - 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; and
 - g) To hasten the development of wind energy resources and reduce risk and costs from the private sector, the **RE DEVELOPERS** shall submit wind data set to the DOE, through the Energy Data Center of the Philippines ("EDCP").
 - i. Wind Data Set. The wind data set shall have an average time interval of ten (10) minutes and shall include, but are not limited to, wind speed measured at three (3) different heights, wind direction measured at two (2) different heights, pressure, and temperature. If encrypted, the **RE DEVELOPER** shall provide the data encryption PIN.
 - ii. Submission of Wind Data Set. The **RE DEVELOPER**, with RE Contract issued after the effectivity of this Circular or RE Contract converted into new template under this Circular, shall submit to REMB the electronic copy of wind data set described in Section 10.2(g)(i) from the following Projects:
 - Project under Pre-Development Stage, the **RE DEVELOPER** shall submit the wind data set gathered during this Stage as part of the DOC requirement.

- Operational Project Annual wind data set shall be submitted by operational Projects.
 - Upon Expiration, or Termination or Relinquishment of RE Contract, the **RE DEVELOPER** shall submit to the **DEPARTMENT** all the gathered wind data.
- iii. Management of Data. The EDCP shall manage the wind data set following the existing guidelines of the EDCP.
- iv. Data Access. The wind data set can be accessed by other **RE DEVELOPERS** or by the **DEPARTMENT** under the following conditions:
- Adherence to EDCP's established guidelines governing data access and acquisition;
 - The Project associated with the wind data has achieved Commercial Operation;
 - In the event that the RE Contract associated with the wind data has been terminated or relinquished;
 - In accordance with Section 77.5 of the Revised Omnibus RE Guidelines; and
 - The DOE may access and use the data sets without the need for payment of fees for its resource mapping, data gathering, policy making and for government planning purposes.
- v. Fee for Data Access. Fee for the access/acquisition of one (1) year wind data set for one (1) site shall be determined by the **DEPARTMENT** based on actual costs expended by the **RE DEVELOPER**, and updated from time to time. To partially or fully recover the cost borne by the concerned **RE DEVELOPER** in the course of wind measurement campaign, half of the proceeds shall be paid to the concerned **RE DEVELOPER** while the other half shall be paid to the **DEPARTMENT**.

SECTION XI GOVERNMENT SHARE

- 11.1 The Government Share shall be equal to one percent (1%) of the Gross Income from the sale of RE produced and such other income incidental to and arising from the RE generation, transmission, and sale of electricity generated from the Wind Energy Operations computed in accordance with the Act and its IRR and particularly described in the Accounting Procedures set forth in Annex "B" hereof.
- 11.2 The **RE DEVELOPER** shall, within sixty (60) calendar days following the end of each quarter of a Contract 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 date immediately following the end of each quarter of a Contract Year, as may be applicable.

SECTION XII CONFIDENTIALITY

12.1 Confidential Information shall include, but shall not be limited to, the following:

- a) All documents, information, data and reports produced or generated during the Wind Energy Operations under this RE Contract;
- b) Those which contain technical information, specifications or data, designs, or tariff or pricing information, information about investors and the like, and other information relating to equipment, design;
- c) Those which contain any financial information, modeling or projections or results relating to the **RE DEVELOPER** or to its affiliates; and
- d) Those which relate to the business affairs, operations or structure of the **RE DEVELOPER** or its affiliates:

Provided, That any information which is or becomes public through no fault of the **DEPARTMENT**; is in the public domain without breach by the **DEPARTMENT** of this RE Contract; is received by the **DEPARTMENT** from a third person who is under no obligation of confidentiality to the **RE DEVELOPER**; or is required to be disclosed pursuant to law, regulation, order of a court or tribunal, upon an opportunity to contest by the **RE DEVELOPER**, shall not be deemed confidential information.

12.2 Any confidential information pertaining to the **RE DEVELOPER** which could not be disclosed by the **DEPARTMENT** to third parties without causing prejudice and/or damage to the intellectual and/or industrial property rights of the **RE DEVELOPER** shall be deemed proprietary information.

12.3 Confidential information 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 Section 10.2 (g) hereof and other existing laws and regulations.

12.4 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 Sections 10.2 (g) and 12.5, and no Party shall otherwise transfer, present, sell or publish it in any way within the confidentiality periods, subject to Section 10.2 (g).

12.5 The **DEPARTMENT** may use such confidential information co-owned with the **RE DEVELOPER** for the **DEPARTMENT**'s resource mapping, data gathering, policy making and for government planning purposes.

12.6 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 and Section 10.2 (g): *Provided*, That the same are not proprietary in nature.

12.7 Contrary stipulations notwithstanding, the **RE DEVELOPER** may furnish the information to third parties 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 and Affiliates that provide services for the Wind 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 Philippine laws, regulations, or rules; and
 - f) Government authorities, entities and judicial courts if required by law, regulation, directive, or order to disclose.
- 12.8 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.
- 12.9 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 Wind Energy 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 sixty (60) calendar days, respectively, from its receipt of notice: *Provided*, That after the first Contract Year, the **RE DEVELOPER** shall post the performance bond within thirty (30) calendar days before the end of the applicable Contract Year.
- 13.2 Failure of the **RE DEVELOPER** to comply with Section 13.1 hereof shall render the COR, if any, and RE Contract void *ab initio*.
- 13.3 The 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 applicable Contract Year based on the Work Program.
- 13.4 The amount of performance bond or other guarantee may be adjusted during a Contract Year, subject to the following conditions:
- a) **Delay in Accomplishment of Work Obligations.** If the **RE DEVELOPER** has fully expended its financial commitment in a given Contract Year to undertake the activities under the Work Program but some of the work obligations remain unaccomplished for justifiable reasons, the **DEPARTMENT** shall have no recourse against the performance bond or other guarantee, and the **RE DEVELOPER** shall not be required to post

another bond or other guarantee for the remaining work obligations: *Provided*, That the budgetary estimate for the activities needed to accomplish such remaining work obligations shall form part of the financial commitment/budgetary estimate for the immediately succeeding Contract Year, and shall be accounted for in computing the amount of the performance bond or other guarantee for the immediately succeeding Contract Year under a revised Work Program: *Provided, finally*, That if the delay is not justifiable, the **DEPARTMENT** shall call the performance bond or other guarantee;

- b) **Accomplishment of Work Obligations Ahead of Timeline.** If the work obligations in a Contract Year are accomplished prior to the end of such Contract Year, the **DEPARTMENT** shall release the bond or other guarantee for that Contract Year upon the request of the **RE DEVELOPER** and after due validation of such accomplishment. Thereafter, the **RE DEVELOPER** may immediately undertake any activities that are scheduled for the succeeding Contract Year without need for (i) prior revision of the Work Program, and (ii) posting of another bond or other guarantee: *Provided, however*, That thirty (30) calendar days before the end of the Contract Year, the **RE DEVELOPER** shall submit a revised Work Program for the remaining work obligations, with financial commitment per Contract Year; 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 A valid and subsisting performance bond is required to be maintained annually until the **RE DEVELOPER** submits a duly executed Engineering, Procurement and Construction (“EPC”) contract and for ninety (90) calendar days from the last day of validity of the performance bond, for the **DEPARTMENT**’s evaluation and validation and posting of performance bond, if necessary: *Provided*, That if the EPC contract is submitted prior to the submission of DOC, the performance bond or other guarantee shall be maintained until the issuance of the COCOC, without prejudice to the ninety (90)-day period for evaluation and validation and posting of performance bond, if necessary.
- 13.7 The obligation to post the performance bond or other guarantee shall cease upon the lapse of the ninety (90)-day period: *Provided*, That the **DEPARTMENT** shall audit the performance of the **RE DEVELOPER** after two (2) years from the submission of the EPC contract or issuance of the COCOC, whichever comes later: *Provided, further*, That if the **RE DEVELOPER** incurs unreasonable delay in undertaking the construction activities per approved Work Program for an aggregate period of one (1) year within such period, the **DEPARTMENT** shall cancel the RE Contract unless the **RE DEVELOPER** posts a performance bond equivalent to thirty percent (30%) of the cost of the financial commitment for the applicable Contract Year: *Provided, finally*, That the budgetary estimate for the activities that were not completed shall form part of the financial commitment for such Contract Year and shall be accounted for in computing the amount of the performance bond or other guarantee for such Contract Year.

(Note: The amount for signing fee/bonus shall be based on the total Contract Area at the rate of Php100.00/has.)

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) hereof.
- 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 Renewable Energy Resources Compliance Division - Financial Services of the **DEPARTMENT**;
 - f) Non-payment of the financial obligations agreed upon under this RE Contract; and
 - g) Non-posting of performance bond or other guarantee within the period/s provided under Section XIII (Performance Bond) hereof.
- 14.3 In case the default of the **RE DEVELOPER** is attributable to Force Majeure, the obligation of the **RE DEVELOPER** may be suspended for a period of six (6) months 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 along with proof that;
 - i. The Force Majeure exists;
 - ii. The event/s occurred independent of the will of the **RE DEVELOPER**;
 - iii. The event/s rendered it impossible for the **RE DEVELOPER** to fulfill its obligations in a normal manner; and
 - iv. The **RE DEVELOPER** is free of participation in, or aggravation of, the injury to **DEPARTMENT**.
- b) After due validation which shall be made within twenty (20) calendar days from receipt of such notice, the **DEPARTMENT** shall issue an approval of suspension of contractual obligation/s affected by Force Majeure: *Provided*, That if the suspension of the obligations will extend the Pre-Development Stage, the REMB Director shall endorse the approval to the DOE Secretary.
- c) Within ten (10) calendar days from receipt of the notice of approval, the **RE DEVELOPER** shall submit a new Work Program to be acted upon by the Supervising Assistant Secretary and thereafter endorsed to the Undersecretary for approval.
- d) 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.
- e) 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.
- f) Any failure or delay on the part of the **RE DEVELOPER** or the **DEPARTMENT** in the performance of its obligations or duties under the RE Contract shall be excused to the extent attributable to Force Majeure.
- g) If the Wind 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 six (6) months, the **RE DEVELOPER** may, at its option: (a) terminate the RE Contract, or (b) request for the suspension of the RE Contract, subject to confirmation of the **DEPARTMENT**;
- h) The Party whose ability to perform its obligations under the RE Contract is so affected shall, within ten (10) calendar days from actual or constructive notice of the Force Majeure, 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 In case the Wind Energy Operations are delayed, curtailed or prevented by Force Majeure for a continuous period of six (6) months, the efficacy of the RE Contract may be suspended for a maximum period of three (3) years or until Force Majeure event ceases to exist, whichever comes earlier. The period of such suspension shall not be counted against the constitutional term limits.

The **RE DEVELOPER** and the **DEPARTMENT** shall comply with the following conditions:

- a) Upon strict compliance with the conditions under Section 14.3 above, the **RE DEVELOPER** may file a request for suspension of this RE Contract within fifteen (15) calendar days following the last day of the said six (6)-month period.
 - b) For a period of ninety (90) calendar days from receipt of endorsement, the **DEPARTMENT** shall exert efforts to enable the **RE DEVELOPER** to resume Wind Energy Operations.
 - c) If, despite such efforts, the Force Majeure persists and the Wind Energy Operations cannot resume, the **DEPARTMENT** shall approve the request for suspension of the RE Contract. Notice of suspension shall be given to the **RE DEVELOPER** within fifteen (15) calendar days following the last day of the ninety (90)-day period.
 - d) Within ten (10) calendar days from receipt of notice of suspension, the **RE DEVELOPER** shall submit a sworn undertaking to notify the **DEPARTMENT** and submit proof that the Force Majeure has ceased. Failure to give notice within ten (10) calendar days from cessation shall be deemed a relinquishment of the RE Contract.
 - e) If the **RE DEVELOPER** intends to resume operations, it shall submit a request to resume Wind Energy Operations together with the notice abovementioned. After due evaluation and if warranted, the request shall be endorsed to the Secretary for approval.
 - f) The **RE DEVELOPER** may only avail of the above suspension of RE Contract once during its term.
- 14.5 The **DEPARTMENT** shall have the power to compel the **RE DEVELOPER** to perform wind energy operations when the following conditions exist:
- a. The **RE DEVELOPER** fails, refuses or neglects to perform the Wind Energy Operations without any justifiable cause; and
 - b. Such failure, refusal or neglect:
 - i. Results in or contributes to a shortage in the supply of electricity, based on the report of the Electric Power Industry Management Bureau of the **DEPARTMENT**; and
 - ii. Poses an imminent threat to the country's national security and/or economy, as determined by the Secretary.

If the **RE DEVELOPER** does not comply with the **DEPARTMENT**'s directive within three (3) calendar days from receipt, such noncompliance shall be deemed sufficient authority for the **DEPARTMENT** to conduct wind energy operations directly or through another government entity; *Provided*, That the

DEPARTMENT's authority herein set forth shall only subsist for such period as may be needed to avert or arrest the threat, or upon the **RE DEVELOPER's** resumption of Wind Energy Operations, whichever comes earlier.

- 14.6 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 Sections 11.1, 11.2, 14.1 (a), 14.2 (a) and 17.6 hereof, shall be settled amicably within a period of sixty (60) calendar 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) and VI (Work Program) 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) calendar days from receipt of the notice of intention to refer, serve the applicant a notice of intention to defend;
 - c) If within fourteen (14) calendar 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 of such expert's reference, 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) calendar 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) calendar 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) calendar 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 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.

- 16.2 After confirmation of the DOC, the **RE DEVELOPER** shall, upon request of the **DEPARTMENT**, provide development assistance in kind in the amount of Three Hundred Pesos (Php300.00) per hectare covering the Production Area or Fifty Thousand Pesos (Php50,000.00), whichever is higher.

The **RE DEVELOPER**'s obligation to give development assistance shall be a legally enforceable claim of the **DEPARTMENT** upon issuance of COCOC: *Provided*, That the **RE DEVELOPER** shall be obliged to deliver such assistance only when so requested by the **DEPARTMENT**: *Provided, further*, That the request for development assistance can be made at any time after issuance of COCOC: *Provided, finally*, That the obligation to deliver the development assistance shall survive the Suspension, Termination and/or Expiration of this RE Contract.

- 16.3 After confirmation of the DOC, the **RE DEVELOPER** shall provide assistance for training programs, conference, seminars and other similar activities for the **DEPARTMENT**'s personnel in the amount of _____ Pesos (Php _____) every Contract Year.

The **RE DEVELOPER**'s obligation to give assistance referred to in this subsection shall be a legally enforceable claim of the **DEPARTMENT** upon the effectivity of the RE Contract: *Provided*, That the obligation to deliver such amount shall commence upon Commercial Operations: *Provided, further*, That the amount of training assistance accrued prior to Commercial Operations shall be delivered within the first five (5) Contract Years after the issuance of COCOC: *Provided, finally*, That the obligation to deliver the training assistance shall survive the Suspension, Termination and/or Expiration of this RE Contract..

- 16.4 The **RE DEVELOPER** shall establish and maintain a separate account in its books wherein the assistance for training programs, conferences, seminars and other similar activities shall be recorded and accrued.

- 16.5 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 total Contract Area at the rate of Php300.00/has. For training program and Php 600.00/has for development assistance or both Php50,000.00 whichever is higher except that 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
Energy Center, Rizal Drive, Bonifacio Global City
Taguig City, Metro Manila
Email: remb.resc@doe.gov.ph / remb9513@doe.gov.ph
Telephone: (02) 8479-2900

To the **RE DEVELOPER**:

Designation
Company Name
Office Address
Email Address
Telephone/Fax Numbers

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

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** in accordance with the procedure set forth in the Revised Omnibus RE Guidelines. 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 its rights and/or obligations under this RE Contract to its Affiliate or any third party, and in accordance with the following:
 - i. The **RE DEVELOPER** shall submit to the **DEPARTMENT** copies of the written document which unequivocally shows the agreement of the parties thereto to the assignment of the RE Contract; and
 - ii. The assignee shall be substituted for the **RE DEVELOPER** in the performance bond posted in accordance with Section 13.1 of this RE Contract.
- c) The **RE DEVELOPER** may authorize its subsidiaries, branches or regional corporations to implement this RE Contract, but the **RE DEVELOPER** shall remain responsible for the performance of this RE Contract.

- d) No assignment shall be granted if the **RE DEVELOPER** is in default of its Work Program or any of its material obligations under the RE Contract and other RE agreements with the **DEPARTMENT**.

17.4 CHANGE IN CONTROL

Any sale or acquisition of shares or other share capital that results in a change in control over the **RE DEVELOPER** shall be subject to the prior written approval of the **DEPARTMENT**. Such approval shall be given if the **RE DEVELOPER** remains legally, technically and financially qualified and capable of discharging the obligations under this RE Contract. For this purpose, the **RE DEVELOPER** shall submit to the **DEPARTMENT** copies of the instrument of conveyance and other documents showing that the sale or acquisition will not affect its legal, technical and financial qualification. The sale or acquisition shall be evaluated and approved in accordance with the procedure for approval of assignments set forth in the Revised Omnibus RE Guidelines.

Control is presumed to exist when, as a result of the sale or acquisition, the buyer/s or transferee/s shall own more than one half (1/2) of the voting power of the **RE DEVELOPER**.

17.5 AMENDMENTS

The RE Contract shall not be amended or modified in any respect except by the mutual consent in writing of the Parties, except in cases provided under Section 68.1.5 of the Revised Omnibus RE Guidelines.

17.6 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, including those relating to financial and other obligations under Sections XI, XIII and XIV and 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 Contract Year.
- c) The period to conduct audit, the prescriptive period of audit, and the review and appeal process of audit and/or assessments shall be in accordance with the Guidelines on the Conduct of Audit and Reportorial and Remittance Obligations of Energy Contractors and/or Energy Resource Developers of the **DEPARTMENT**.
- d) The **DEPARTMENT**, upon at least fifteen (15) calendar days advance written notice to the **RE DEVELOPER**, is entitled to access, during reasonable hours without affecting Wind Energy Operations, all books of accounts and records and may inspect such sites and facilities as necessary.

17.7 SEPARABILITY CLAUSE

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

replacing the invalid or unenforceable provisions with a provision that in effect will most nearly and fairly approximate the effect of the invalid or unenforceable provision through the issuance of appropriate supplemental contract/s or agreement/s.

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

DEPARTMENT OF ENERGY

COMPANY NAME

By:

By:

NAME
Secretary

PRINCIPAL SIGNATORY
Designation

WITNESSES

NAME
Director IV, REMB

NAME OF WITNESS
Designation

ACKNOWLEDGMENT

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

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

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

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

This RE Contract consisting of twenty-eight (28) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Parties and his instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on _____ at _____.

NOTARY PUBLIC

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

ACKNOWLEDGMENT

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

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

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

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

This RE Contract consisting of twenty-eight (28) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Parties and his instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on _____ at _____.

NOTARY PUBLIC

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

ANNEX "A"
CONTRACT AREA

ANNEX "B"
ACCOUNTING PROCEDURE

ANNEX "C"
WORK PROGRAM