**Republic of the Philippines**

**DEPARTMENT OF ENERGY**

Energy Center, Rizal Drive corner 34th Street

Bonifacio Global City, Taguig City

Metro Manilla

**TERMS OF REFERENCE**

**PERFORMANCE BONDS**

The Performance Bond shall guarantee the RE Developer’s faithful performance of its obligations under the RE Contract.

1. The RE Developer shall post a Performance Bond in any of the forms enumerated below:
   1. Cash or Manager’s Checks issued by a local or international commercial bank with branches in the Philippines;
   2. Irrevocable Letter of Credit issued by a local or international commercial bank with branches in the Philippines; or
   3. Surety Bonds should be issued by a surety or insurance company duly accredited by the IC. The RE Developer shall submit the insurance company’s Certificate of Authority issued by the IC along with the Surety Bond.
2. The Performance Bond shall be valid for one (1) year and must be renewed annually and submitted to the REMB at least sixty (60) calendar days prior to its expiry, until the pre-construction phase of the RE Project
3. Within 60 days following the Effective Date of the RE Contract, and at the start of each subsequent Contract Year, the RE DEVELOPER shall post a Performance Bond. The amount should be no less than the annual budgetary estimate for the corresponding Contract Year. This bond must be sourced from a list of DEPARTMENT-accredited insurance or surety companies and is conditioned upon the RE DEVELOPER's faithful performance of the commitments and obligations delineated in the Work Program and Work Plan, until the completion of the pre-construction phase.
4. The amount of performance bond or other guarantee may be adjusted, subject to the following conditions:
   1. 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
   2. In the event 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
   3. Such other conditions or circumstances would reasonably warrant the modification of the amount of the performance bond or other guarantee.
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.
6. Failure of the RE DEVELOPER to post the Performance Bond for the First Contract Year will render both the COR and the RE Contract void ab initio. Subsequent failures to post for any following Contract Year will result in the termination of the RE Contract, as this constitutes a violation of the RE Developer's obligations as stated in Section \_ of the RE Contract.
7. 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.