

QTP SERVICE CONTRACT

This **QTP SERVICE CONTRACT** (the "Contract") is entered into this [•] day of [•] 200__ between:

1. The [DU or NPC.]duly organized and existing under and by virtue of _____, with its principal office at _____ Philippines, represented herein by _____, who is authorized to represent it in this Contract, hereinafter referred to as _____.
2. [•], a company organized and existing under the laws of [•], with its principal offices at [•], represented herein by its [•], [•], who is authorized to represent it in this Contract, hereinafter referred to as the "QUALIFIED THIRD PARTY or QTP",

(each a "Party" and together the "Parties").

Witnesseth:

- A. Pursuant further to Section 59 (Alternative Electric Service for Isolated Villages) of the EPIRA and its Implementing Rules and Regulations, which recognizes the provision of electric service by qualified third parties in remote and unviable areas that a franchised utility is unable to service, the Department of Energy ("DOE") issued DOE Circular No. DC2019-11-0015 "**Revised Guidelines on Qualified Third Party (QTP).**"
- B. The QTP to [QTP SERVICE AREA], shall provide electricity service requirements to said area The QTP Service Area is more specifically described in **Schedule** _____ hereof
- C. The Parties desire then to enter into this Contract to define their respective rights and obligations in respect to performance and standards of the QTP implementation. QTP.

NOW, THEREFORE in view of the foregoing premises and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties hereby agree as follows:

1 Definitions and Interpretation

- 1.1 Definitions.** Wherever used in this Contract, schedules or annexes, unless the context otherwise requires, the following words and acronyms shall have the following meanings:

Applicable Law	Refers to laws, statutes, orders, issuances, rule, ruling, regulation, code, decision, opinion or interpretation of a Government Authority pertinent to or affecting a Party or all Parties existing at the date of execution of this Contract.
Commercial Operations Period	Refers to the [No. of Years] year period of commercial operations referred to in Section ___ of the QSC. [Note: The Commercial Operations Period should not exceed

	<i>25 years in accordance with the ERC Guidelines. However, the actual length would vary between QTP Types. As a general rule, the period should be sufficient to recover the investment at a reasonable tariff.]</i>
Certificate of Compliance or “COC”	Refers to a certificate given to an Entity by the Energy Regulatory Commission to engage in the operation of a power plant facility used to generate electricity pursuant to Section 6 of R.A. 9136 and Section 4 Rule 5 of its IRR
Cure Period	Refers to the 90-day period given to the Defaulting Party in Section [] within which to cure or remedy an Event of Default.
Department of Energy or “DOE”	Refers to the government agency created pursuant to Republic Act No. 7638;
DOE Revised Guidelines on QTP	Refers to _____.
Distribution System	Refers to the system of wires and associated facilities to be established by the QTP for the servicing of the Load Requirements of the QTP Service Area pursuant to the requirements under Schedule _____.
Distribution Utility or “DU”	Refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and the EPIRA as defined in Section 4(q) of the EPIRA and Rule 4(cc) of the EPIRA-IRR.
Electric Cooperative” or “EC”	Refers to a distribution utility organized pursuant to Presidential Decree No. 269, as amended, as defined in Section 4(r) of the EPIRA and Rule 4(ee) of the EPIRA-IRR.
“EPIRA”	Refers to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”.
ERC or Energy Regulatory Commission	Means the agency created under Section 38 of Republic Act No. 9136.
ERC Guidelines	Refers to the guidelines for the regulation of qualified third parties performing missionary electrification in areas declared unviable by the department of energy.
Event of Default	Refers to the events and circumstances identified in Section [] hereof.
Force Majeure or Event of Force Majeure	Means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that such circumstance, despite the exercise of reasonable diligence, cannot be or caused to be prevented, avoided or removed by such Party and is not attributable to the negligence or willful misconduct or the failure of such Party to perform any of its obligations.
“Full Cost Recovery Rate” or “FCRR”	Refers to the rate, expressed in Peso per kilowatt-hour, that allows recovery of the full efficient costs of generating, distributing and supplying electricity, sufficient to enable the QTP to operate viably.

Generation Facilities	Shall refer to any power generating facilities installed or contracted by the QTP to service the GDC of the QTP Service Area
Good Industry Practice	Shall have the meaning given in the Philippine Distribution Code and Philippine Small Grid Guidelines
Government Authority	Refers to any agency, office, authority, commission, department, or political subdivision of the Republic of the Philippines, whether national, regional, provincial, municipal or otherwise.
Government Consents	Refer to permits, licenses, agreements, orders, certificates, registrations, filings, authorizations, consents, and other approvals or clearances by, with or from a Government Authority.
Guaranteed Dependable Capacity	Means the total generating capacity of the power station/s, expressed in Kilowatt, that the QTP is required to make available for the QTP Service Area, the specifications of which are provided in Schedule _____ .
Load Requirement	Refers to the retail demand for electricity for the QTP Service Area which the QTP shall provide in accordance with the Schedule _____ hereof.
QTP Service Area	Refers to the geographic area corresponding which is waived by the Distribution Utility in favor of the QTP and for which the QTP will be responsible for providing the Electricity Service as authorized by the ERC. The QTP Service Area is more specifically defined in Schedule _____ .
Retail Rate	Refers to the total price paid by end users consisting of the charges for generation, transmission, and related Ancilliary Services, distribution, supply and other related charges for electric services as defined in Rule 4(uuu) of the EPIRA.
Sound Value	shall be the value of the Distribution System and/or the Generation Facilities (as the case may be) and related assets and equipment owned by the QTP.
Target Commercial Operations Date	Means the business day immediately following the day which should not be later than six (6) months from Effective Date, unless otherwise changed or modified in accordance with the QSC on which QTP commences supply of electricity in the QTP Service Area.
Term	Means the period from execution of this Contract to the later of the occurrences referred to in Section 3.1 of this Contract.
Termination Date	Refers to the date this Contract expires, terminates or ceases to have effect under Section 8.4 of this Contract.
Termination Fee	Refers to the fee payable under Section 8.5 of this Contract.
Termination Notice	Means the written notice issued under Section 8.4 of this Contract.

1.2 Interpretation. In this Contract, schedules or annexes, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Contract;
- (b) the singular includes the plural and vice versa;
- (c) reference to a natural person includes any corporation or legal entity;
- (d) reference to a party in any document includes that party's successors and permitted assigns;
- (e) reference to an Article, Section, schedule or annex is to an article, section of, or annex to this Contract, and any such Annex or Schedule referred to should be incorporated by this reference and is an integral part of this Contract;
- (f) unless otherwise provided herein, reference to a document includes an amendment or supplement to, or replacement or novation of, that document but disregarding any amendment, supplement, replacement or novation made in breach of this Contract;
- (g) "including" shall not be construed as being by way of limitation and "otherwise" shall not be construed as limited by words with which it is associated;
- (h) any reference to a governmental ministry, department, authority or agency shall be construed as including a reference to any governmental ministry, department, authority or agency which succeeds to the functions thereof;
- (i) the word "reasonable" appearing before "approval", "consent", "satisfaction" or any similar word shall mean that the approval, consent, expression of satisfaction or other decision to be made as to the particular matter or thing concerned shall not unreasonably be withheld or delayed. Conversely, if the word "reasonable" does not so appear, the approval, consent, expression of satisfaction or other decision to be made may be given or made solely at the unfettered discretion of the Party concerned; and
- (j) the expression "to the best of its knowledge" shall mean to the best of the knowledge and belief of the Party concerned, having made all due and reasonable enquiry.

2 Scope of Contract

By this Contract, QTP shall supply the Load Requirement of [QTP Service Area] as set forth in **Schedule** _____. QTP shall have the right to petition to the ERC for the approval of the retail rate as indicated in **Schedule** _____. The QTP shall be obliged to perform the following for the duration of the Term [:

- (a) The control and possession, operation and maintenance of the Distribution System, including obtaining all necessary Government Consents, including environmental approvals, required in connection with the Distribution System, in accordance with Good Industry Practice, the technical parameters set forth in **Schedule** _____ and in compliance with Applicable Law;
- (b) Making available for dispatch the Guaranteed Dependable Capacity either through its own Generation Facilities or through third parties in accordance with the standards set forth in **Schedule** _____ of this Contract. Provided that even if the QTP sources its generation requirements through third parties, the QTP shall nonetheless remain primarily liable for the availability of the Guaranteed Dependable Capacity. This obligation shall also include making available and arranging for fuel requirements. QTP shall retain ownership over any Generation Facilities;

- (c) Acquisition of the land and rights of way by purchase, lease or any other arrangement for the Distribution System and/or Generation Facilities entitling QTP to possession and occupation thereof until the termination of Commercial Operations Period;
- (d) Provide and maintain the Construction and Operations Securities in accordance with **Schedule _____. 6 [Note: May be deleted if no security is required of QTP].**
- (e) Turn-over the Generation and Distribution System to the franchised DU at the end of the Term.

3 Term and Effective Date

3.1 Term. This Contract shall have a term (the "Term") commencing on the date this Contract is executed and delivered by the Parties hereto and expiring on the date on which the earlier of the following events occur or otherwise waived:

- (a) The last day of the Commercial Operations Period, as extended or earlier terminated in accordance with this Contract; or
- (b) Termination of this Contract pursuant to Section [] herein.

3.2 Conditions Precedent. Effective Date shall be the first business day immediately following the day on which all of the following shall have occurred or otherwise waived:

- (a) Corporate Approvals. Each Party has furnished the other with copies of the resolutions adopted by its respective board of directors authorizing the execution, delivery, and performance by it of this Contract, certified by its corporate secretary.
- (b) Government Consents. Each Party has obtained the Government Consents, as applicable and further indicated in **Schedule _____**, and furnished the other Party with certified true copies of such consent, permit, approval or license.
- (c) Legal Opinions. Each Party has furnished the other with a legal opinion of its general counsel certifying to the Party's corporate standing as well as the due execution, validity and binding effect of this Contract on such Party.
- (d) Other requirements. ***[If there are requirements specific to a particular QTP Area, for example use of fuel or energy type, related development etc., then these can be provided on a case to case basis]***

3.3 Failure to Achieve Effective Date. In the event that Effective Date does not occur within **[four (4)]** months from the date first written above, this Contract shall be deemed terminated and will not enter into force and effect, provided that the Parties may agree in writing to a waiver of any or all of the conditions in Section 3.2 (a), (b) and/or (c) above or to an extension of the period to achieve Effective Date. In case of termination pursuant to this Section, the provisions of Section 13 shall survive for two (2) years following the Termination Date. ***[Note: The effective date is preliminary. This can be adjusted as required.]***

4 Obligations of the Parties

4.1 Commencement of Commercial Operations Period. The Parties agree to work together to commence the Commercial Operations Period not later than **[] months** from Effective Date ("Target Commercial Operations Date"). Failure to meet the

Target Commercial Operations Date shall be governed by the provisions of Section 4.4. **[Note: The date of the Target Commercial Operations Date would depend on the technical specification required for the Distribution System.]**

4.2 Conditions to Commencement of Commercial Operations Period. On or before the Target Commercial Operations Date or such other date as may be agreed in writing between the Parties:

- (a) Authority to Operate and Government Consents. QTP shall have obtained all necessary Government Consents for the QTP operations in the Service Area as provided in **Schedule ____** and shall have secured an Authority to Operate from the ERC.
- (b) Performance Security. QTP shall have posted the Performance Securities required under **Schedule ____**.
- (c) Joint Certification. The Parties shall have executed a joint certification under oath that the Distribution System complies with the operating parameters in **Schedule ____** and that the Guaranteed Dependable Capacity shall be available in accordance with **Schedule ____**.
- (d) Deemed Commercial Operations. In case of failure to achieve the Target Commercial Operations Date under the QSC because of delay caused by QTP in accordance with the terms Section ____ of the QSC, the provisions of Section 5 of this Contract shall apply, subject to any payment adjustments required by the results of tests in accordance with Section ____ of the QSC.

4.3 Obligations During the Commercial Operations Period

4.3.1 QTP. QTP shall perform the following obligations from commencement of the Commercial Operations Period until termination of this Contract.

- (a) Performance of QSC Obligations. Perform in good faith all its obligations in as required in Section 2, including, but not limited, to delivering the Load Requirement for the Service Area and making the Guaranteed Dependable Capacity available.
- (b) Performance Reports. Prepare and submit to DOE and ERC on a monthly basis a sworn report that it has been operating and providing electricity services in the Waived Area in accordance with the requirements of the QTP.
- (c) Other reports. Prepare and submit to the ERC and DOE quarterly reports on its compliance with the financial, technical and operational performance as indicated in this Contract.

4.4 Failure to Achieve Target Commercial Operations Date. In the event that the conditions in Section 4.3 are not satisfied within **[No. of Months]** months from the Effective Date, the following provisions shall apply:

- 4.4.1 Automatic Extension.** If delay shall be due to an Event of Force Majeure not exceeding 90 days, then the Target Commercial Operations Date shall be adjusted, without need of further agreement or consent, by a period equal to the period of delay, subject to compliance of the procedure set out in Section 6 by the Party invoking Force Majeure.
- 4.4.2 QTP Delay.** If delay shall be due to the fault of QTP, not exceeding 90 days, then DU or DOE shall, by notice to QTP, impose a penalty of 1/10th of 1% of the Performance Security for every day of delay, provided that the total amount of penalties shall not exceed the amount of the Performance

Security. *[Note: If no performance security is required, a different penalty rate has to be provided.]*

4.4.3 Notwithstanding the occurrence of the Deemed Commercial Operations Date, if results of tests at a later date show that the Distribution System is incapable of meeting the Load Requirements and/or the Guaranteed Dependable Capacity is not available, then the QTP shall have remedy such non-compliance within the Cure Period provided in Section [].

4.4.4 Extended Delay. In the event of any delay of more than 90 days past the Target Commercial Operations Date, the Parties shall meet and consult each other regarding the terms by which this Contract may continue. If the Parties fail to reach an agreement within 30 days from commencement of consultations, the respective Party may exercise its right to terminate this Contract pursuant to the provisions of Section [].

4.5 Early Commercial Operations. Nothing in this Contract shall preclude the Parties from commencing with the Commercial Operation Period at a date earlier than the Target Commercial Operations Date, provided that all the conditions in Section 4.3 have been satisfied.

4.6 Distribution System and Guaranteed Dependable Capacity. QTP shall, at its own cost and at all times during the Commercial Operations Period, be responsible for the operation and maintenance of the Distribution System in accordance with the operating parameters in Schedule 2 and to make available the Guaranteed Dependable Capacity in accordance with Schedule 3.

5 Force Majeure

6.1 Events of Force Majeure. Events of Force Majeure shall be:

- (a) Acts of God or other natural calamities, *i.e.*, earthquakes, floods, tidal waves, volcanic eruptions, meteorological disasters, or accidents, explosions or fires caused by any of the above and/or by a third party beyond the control of the Parties, including strikes or lockouts or other industrial action by workers or employees of a Party, and which are unforeseeable or which, though foreseen, are inevitable; or
- (b) The following political or governmental occurrences:
 - (1) acts of war, whether declared or not, embargoes;
 - (2) acts of terrorists, public disorders, insurrection, rebellion, sabotage, riots or violent demonstrations; and
 - (3) any action or failure to act by any Government Authority, including without limitation, expropriation, compulsory acquisition, the denial of or delay in the granting of any Government Consent which the Parties have agreed to waive for an agreed to time period past the Effective Date, the failure of any such Government Consent once granted to remain in full force and effect or to be renewed on substantially similar terms, and any delay in the importation of equipment or supplies into the Philippines resulting from any action or failure to act by Governmental Authority of the Republic of the Philippines, provided that in any of these cases, the affected Party complied with the timely and full submission of requirements published by the Government Authority.

6.2 Temporary Force Majeure. Both Parties shall be excused from performing their respective obligations under this Agreement upon the occurrence of an Event of Force Majeure for a period not exceeding 90 days (“Temporary Force Majeure Period”). In case of an Event of Force Majeure under Section 9.1, the Commercial Operations Period shall be extended, without need of further agreement or consent, by such number of days necessary to allow QTP to supply the kWh-shortfall in the Load Requirements during the Temporary Force Majeure Period.

6.3 Consultation Period. The Parties shall consult with each other upon the occurrence of the Event of Force Majeure, such consultation period not exceeding 30 days after the end of the Temporary Force Majeure Period.

6.5 Extended Force Majeure. Events of Force Majeure subsisting beyond the 30-day consultation period referenced in Section 6.3 above shall be considered Extended Force Majeure and give the Parties the right to terminate the Agreement pursuant to Section 8 below.

6.6 Procedure to Claim Force Majeure. A Party invoking Force Majeure shall follow the procedure below:

6.6.1 Notice. No later than three (3) days after the occurrence of the Event of Force Majeure, the Party invoking Force Majeure shall notify the other Party in writing of (i) the occurrence and nature, (ii) the date of commencement, and (iii) the expected duration of the Event of Force Majeure.

6.6.2 Limitation. The suspension of performance of obligation resulting from the Event of Force Majeure shall be limited to the scope and duration as may be reasonably required or affected by such event.

6.6.3 Not excused. Either Party’s failure to perform its obligations arising before the occurrence of the Event of Force Majeure shall not be excused by the later occurrence of the event.

6.6.4 Duty to mitigate. The Party invoking Force Majeure shall make all reasonable efforts to prevent and mitigate the effects of such Event of Force Majeure, and shall use commercially reasonable efforts to resume the regular performance of its obligations in accordance with the terms of this Contract.

6 Indemnification

6.1 Cross Indemnity. Each Party (the “Indemnifying Party”) shall indemnify, defend and hold harmless the other (the “Indemnified Party”), its officers, directors, employees, contractors, and agents from and against all damages, losses and reasonable expenses, including without limitation reasonable legal fees, suffered or paid by the Indemnified Party as a result of any and all claims for personal injury, death or property damage (except economic loss) to third parties due to an event occurring during the Term of this Contract and arising directly out of or resulting from any act or omission of the Indemnifying Party or its agents or employees, except to the extent that it was caused by any act or omission of the Indemnified Party or the failure by it to take reasonable steps in mitigation thereof. In the event such injury or damage results from the joint or concurrent negligent or intentional act or omission of the Parties, each shall be liable under this Section in proportion to its relative degree of fault.

6.2 Notice of claim. The Indemnified Party shall deliver a notice of claim to the Indemnifying Party within 10 working days after the commencement or actual knowledge of the action that gave rise to such claim. In the event that such notice is not given within the period of claim, the Indemnifying Party’s obligation shall be limited to the amounts that would have been payable had such notice been delivered within the said period.

6.3 Consequential Losses. In no case shall any Party be entitled to its indirect or consequential losses or damages, whether or not such losses or damages are subject to the indemnities.

6.4 Survival. The provisions of this Section shall survive termination of this Contract with respect to an event occurring before the termination.

7 Default and Termination

7.1 Events of Default. As regards the Party specified below (the “Defaulting Party”), the following events constitute an Event of Default and entitle the other Party (the “Non-Defaulting Party”) to the exercise of the remedies provided in this Section:

7.1.1 DU Default. The following shall constitute an DU default:

- (a) Breach and failure by DU to comply with its obligations pursuant to Sections 4 and 5 of this Contract;
- (b) Reorganization, dissolution, merger, non-renewal of charter or privatization of DU.

7.1.2 QTP Default. The following shall constitute a QTP default:

- (a) Breach by QTP of its obligations under this Contract;
- (b) Failure by QTP to service the entire Load Requirements or a portion thereof; and
- (c) Filing of any action or petition for insolvency, rehabilitation or dissolution of QTP.

7.2 Effects of Event of Default. At anytime after the occurrence of an Event of Default, the following provisions shall apply:

7.2.1 Cure Period. The Defaulting Party shall have a period of 60 days from the occurrence of the Event of Default within which to cure or remedy its default. The Cure Period shall not apply to a breach under 8.1.2 (b) above.

7.2.2 Obligations Not Suspended. During the Cure Period, the Parties shall continue to comply with their respective obligations pursuant to the terms of this Contract notwithstanding the obligation that is subject to the default.

7.2.3 Failure to Deliver or Underdelivery. Should the QTP fail to deliver the Load Requirements or a portion thereof, DU shall be entitled to immediately draw against the Performance Security in an amount equal to the value of the Load Requirement which the QTP was unable to service. The amount of such shortfall shall be the FCRR multiplied by the average Load demand for the prior month multiplied by the period of no delivery or underdelivery. Provided that the liability of the QTP shall not exceed the amount of the Performance Security. ***[Note: If no Performance Security is required, another penalty may have to be provided. Otherwise, the only recourse is for [•] to take over operations.]***

7.2.4 DU Take-over of Operations. The following provisions shall apply in the case of failure to deliver or underdelivery of the Load Requirement:

- i. Should the QTP fail to deliver at least 50% of the Load Requirements for two continuous weeks, then DU shall have the

right to take over the operations of the QTP, subject to approval of the ERC;

- ii. Should the QTP fail to deliver an aggregate amount of 25% of the Load Requirement for a period of ninety (90) days, then DU shall have the right to take over the operations of the QTP, subject to approval of the ERC.
- iii. The situations under 8.2.4 (i) and (ii) shall be deemed Events of Termination and the remedies provided therein shall be without prejudice to other remedies which DU may have under this Contract.

7.3 Events of Termination. This Contract may be terminated by the respective Party upon the occurrence of the relevant event and subject to the applicable procedure provided in Section 8.4 hereof:

7.3.1 Failure to Cure an Event of Default. Except as provided under, _____, the Non-Defaulting Party shall have the right to terminate this Contract in the event the Defaulting Party fails to cure or remedy the Event of Default within the Cure Period or within such extended period as may be agreed to between the Parties.

7.3.2 Failure to Deliver. In the event of the QTP fails to deliver the entire Load Requirement subject to the provisions of _____.

7.3.3 Extended Force Majeure. Any Party may terminate this Contract if the QSC Event of Force Majeure extends beyond the Consultation Period allowed under _____ above.

7.3.4 Termination of the QSC. DU may terminate this Contract in the event that the QSC is terminated for any reason or is otherwise revoked or invalidated by a Government Authority. This shall be considered an Event of Force Majeure.

7.4 Termination. Upon the occurrence of an Event of Termination, the relevant Party specified in Section 8.3 above shall exercise its right to terminate this Contract by giving written notice of its intent to terminate this Contract (the "Termination Notice") and specifying the basis of termination. Such termination shall be effective on the date such notice is received by the other Parties (the "Termination Date").

8.6 Termination upon QTP Default. Upon QTP's default at any time after the Effective Date, DU shall be entitled to a Termination Fee equivalent to the amount outstanding in the Performance Security posted by the QTP.

8.6.1 Payment of Other Sums Due and Payable. Notwithstanding payment of the Termination Fee, both Parties shall be liable for any amounts due and payable prior to the receipt of the Termination Notice.

8.6.2 DU's Rights and Obligations Upon Termination.

- (a) Upon termination of this Contract due to QTP's default all of QTP's rights, title and interests in the Distribution System, including the assets comprising thereof, shall transfer to DU and thereupon this Contract and all of the Parties' obligations shall be deemed terminated, except as otherwise specifically provided. In addition, DU shall have the right to acquire any Generation Facilities subject to the payment of the Sound Value. The Sound Value shall be the value of the Generation Facilities as determined by an independent appraiser appointed jointly by the Parties. In case of disagreement in the appointment, the DOE shall appoint the appraiser.

8.7 Termination Due to Extended Force Majeure

- 8.7.1** Termination Prior to Commercial Operations. After Effective Date but prior to Commercial Operations Date, either party may terminate this Contract due to Extended Force Majeure. Should QTP terminate, it shall be entitled to a return of the Performance Security and to remove any project related assets it may have constructed or installed. Should DU terminate the Contract, DU shall reimburse the QTP for all project-related costs. The value of the project related costs shall be certified by an independent auditor jointly appointed by the Parties, or, if the Parties fail to agree, the auditor shall be appointed by DoE.
- 8.7.2** Termination During Commercial Operations. Either Party shall have the right to terminate the Contract due to Extended Force Majeure during the Commercial Operations Period. Should QTP terminate, it shall be entitled to a return of the Performance Security and to remove any project related assets it may have constructed or installed. Should DU terminate the Contract, DU shall purchase the Distribution System and Generation Facilities (if any) at the Sound Value less any amount received or receivable from insurance proceeds. The Sound Value shall be the value of the Generation Facilities and/or the Distribution System as determined by an independent appraiser appointed jointly by the Parties. In case of disagreement in the appointment, the DOE shall appoint the appraiser.

9 Insurance

Upon Commercial Operations Date, the Parties shall obtain and maintain, or cause to obtain and maintain insurance policies required by Applicable Law or by the ERC and such other insurance covers under commercially reasonable terms usual to similar projects. In case of an insurable event affecting or causing damage to the Distribution System, all proceeds of insurance policies received by QTP shall be used to reinstate the Distribution System. ***[Note: May be deleted for small projects where QTP has limited resources.]***

10 Covenants

- 10.7 Cooperation and Good Faith.** The Parties agree to extend full cooperation to each other and act in good faith in the performance by it of its respective obligations under this Contract.
- 10.8 Financing the Project.** The Parties acknowledge and agree that this Contract is subject to review by QTP's prospective lenders, if any, in relation to financing, arranging/rearranging financing for the building and operation of Distribution System. As may be necessary to obtain financing, DU shall provide assistance to QTP and execute such documents and consents requested by such lenders pursuant to this Contract.
- 10.9 Compliance with Applicable Law.** The Parties, in the performance of their obligations, shall comply with Applicable Law. The Parties acknowledge and confirm that at the time this Contract is executed, the regulatory framework governing the calculation of FCRR and Retail Rate is provided in the DOE QTP Circular and ERC Guidelines on _____. In case of a change in the regulatory framework or in the interpretation or implementation thereof, the Parties shall comply with such changes subject to the mechanism for adjustment of Total Fees in Section ____ of the QSC.

11 Representations and Warranties

The Parties hereby represent and warrant, which representations and warranties shall subsist for the Term of this Contract:

- 11.1 Corporate Existence.** DU and QTP are duly organized, validly existing, in good standing and qualified to do business under [the Applicable Law], and each holds the corporate power and authority to enter into, perform and carry out all the respective obligations and covenants under and pursuant to this Contract.
- 11.2 Consents.** The execution, delivery and performance by each Party of this Contract has been duly approved and authorized by all necessary corporate action, and does not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party or of any other person or entity, except approvals or consents which have been obtained or as set forth or expressly excepted herein.
- 11.3 Full Force and Binding Contract.** This Contract is in full force and effect, has been duly executed and delivered on behalf of each Party by the appropriate officers, and constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms upon the approval and/or ratification of this Contract by the respective Board of Directors.
- 11.4 No Litigation.** There is no litigation, action, suit, proceeding or investigation pending or threatened, to the best of each Party's knowledge, against it before any court, administrative agency, arbitration tribunal, government authority, body or agency which, if adversely determined, individually or in the aggregate, substantially and materially: (i) could adversely affect the performance by such Party of its obligations hereunder; (ii) could have a material adverse effect on its condition (financial, technical or otherwise), business or operations; or (iii) question the validity, binding effect or enforceability of this Contract any action taken or to be taken pursuant hereto or any of the transactions contemplated herein.
- 11.5 No Violation or Breach.** The execution, delivery and performance by each Party of its obligations under this Contract and the consummation of the transactions contemplated herein will not result in any violation of any term of the DU's franchise or by-laws, or QTP's articles of incorporation or by-laws, or of any contract or agreement to which it is party or by which it or its property is bound, or, of any Applicable Law applicable to it, except any such violations which, individually or in the aggregate, would not adversely affect the performance by such Party of its obligations under this Contract.
- 11.6 Warranty against Corruption.** Each Party represents and warrants to the other that it and its representatives, affiliates or subsidiaries have complied with all laws dealing with corrupt or illegal payments, gifts, or gratuities. Each Party agrees not to (and to cause its representatives, affiliates or subsidiaries not to) in connection with the activities contemplated by this Contract pay, promise to pay, seek, accept, or authorize the payment of any money or anything of value, directly or indirectly, to any person or entity (whether a governmental official or private individual) for the purpose of illegally or corruptly influencing any governmental employee or official, any political party or official thereof or any candidate for political office. Furthermore, each Party agrees that in connection with this Contract and the activities contemplated hereby it and its representatives, affiliates or subsidiaries will not take any action, or fail to take any action, which act or failure to act would subject the other Party or any of its representatives, affiliates or subsidiaries to liability under the laws of its country of domicile dealing with corrupt payments. Each Party agrees to indemnify the other Party from and against any loss, liability or damage (including reasonable attorney's fees) arising from or relating to such Party's breach of its representations, warranties, and obligations under this Section. Each Party represents and warrants to the other Party that prior to the date hereof it and its representatives, affiliates or subsidiaries

have not taken any action in continuation of the foregoing in connection with the subject matter hereof.

12 Disputes

12.1 Procedure. All disputes between the Parties arising from this Contract shall be addressed in the manner noted below.

12.1.1 Dispute Notice. The Party claiming or raising a dispute arising from this Contract shall notify the other Party in writing of its claim and providing sufficient details thereof.

12.1.2 Committee Resolution. Not later than five (5) days from the Dispute Notification Date, the respective chief executive officers (or designated representative) of the Parties, convening as an Executive Committee, shall meet and discuss to resolve the dispute. Failure to resolve the dispute within 10 calendar days from commencement of discussions entitles the Party who raised the dispute to refer the matter in writing to arbitration in accordance with Section _____ below.

12.2 Finality of Decision. Except in case of fraud, bad faith or manifest error, the decision of the _____ shall be final and binding on the Parties.

12.3 Arbitration. In case of failure to settle the dispute within the period set forth in Section _____, or at any time in case of fraud, bad faith or manifest error in the settlement of the dispute, the Party that raised the dispute may refer the matter for arbitration under UNCITRAL Rules. Each Party shall nominate one arbitrator to the panel; the two nominated arbitrators shall jointly appoint the third arbitrator, which third arbitrator shall serve as chairman. In case of failure by the two nominated arbitrators to jointly appoint the third arbitrator, the third arbitrator shall be selected by the UNCITRAL/representative panel. The proceedings shall be conducted in English and the decision of the arbitration panel shall be final and binding on the Parties. The arbitration shall take place in Metro Manila. Judgment on the award may be entered by any court of competent jurisdiction.

13 Assignment

This Contract shall be binding upon the Parties hereto, their successors and assignees. Each Party may assign its respective rights and obligations under this Contract subject to prior written notice and consent of the other Party. This notwithstanding, QTP may assign all or any of its rights or obligations hereunder to lenders or such other persons for purposes of arranging or rearranging financing for the power facilities, subject only to prior written notice to DU. The assignment or transfer by QTP to lenders or such other persons that may have arranged or rearranged financing for the power facilities shall not relieve QTP of its obligations under this Contract.

14 Confidentiality

Each Party agrees that it, its employees, officers, directors, and agents will hold in confidence all information, documentation, data or know-how disclosed to it by the other Party and designated in writing as "confidential" ("Confidential Information"), and will not disclose to any third party or use Confidential Information or any part thereof without the other Party's prior written approval; provided, that Confidential Information may be disclosed to: (i) a Government Authority required pursuant to a judicial order, notice or mandated by Applicable Law; and (ii) financial institutions, bona fide potential investors, consultants, contractors and legal advisors whose duties reasonably require such disclosure, provided that, except for a bona fide disclosure to independent legal advisors,

shall remain in full force and effect, provided that the remaining provisions are sufficient to render to each Party the benefits contemplated hereby.

15.7 Substitute Provision. In the event any provision or part of this Contract is declared invalid in accordance with Section 14.6 above, the Parties shall meet in good faith to agree, to the fullest extent allowed by Applicable Law, on a substitute provision that most closely approximates the intention and commercial bargain contained in the invalid provision and amend this Contract accordingly.

15.8 Amendments. This Contract may only be amended or modified by a written instrument signed by each of the Parties.

IN WITNESS WHEREOF, each of the Parties has caused this Contract to be executed in more than one copy each of which shall be deemed to be an original as of the date of this Agreement.

[DU or NPC]

[QTP]

By:

By:

**[NAME]
President**

**[NAME]
President**

Signed in the presence of:

ACKNOWLEDGEMENT

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

BEFORE ME, a Notary Public, for and in _____, on this [•] day of [•] 200__ personally appeared the following with their respective Community Tax Certificates, to wit:

<u>Name</u>	CTC No.	Date/Place of Issue

All known to me and to me known to be the same persons who executed the foregoing instrument and who acknowledged to me that the same is their free and voluntary act and deed and also the free and voluntary act and deed of the corporations they represent.

DRAFT

This instrument refers to a Service Contract [•] and consists of [•] pages, including this page whereon this Acknowledgement is written, was signed by the Parties and their instrumental witnesses and sealed by my notarial seal.

Notary Public

Doc. No. _____
Page No. _____
Book No. _____
Series of 200____.

Schedule 1

Description and Location Map of Service Area

Schedule 2

Distribution System and Load Requirements

This Schedule will provide the following:

- **Minimum Load Requirements on an Annual Basis.** This should be increasing based on projected demand. Ideally, this should be at par with the Distribution Development Plan of the waiving EC so that at the end of the term and the Distribution System is turned over, the QTP Area is aligned with the rest of the Franchise Area. The Load, however, will also vary between QTP Service Areas. For example, there are areas which do not require 24/7 service. For such areas, the Load Requirements and the Term should be designed accordingly.
- **Distribution System Design and Technical Configuration based on Load Requirements.**
- **Allowable Line Losses**
- **Number of Connections on an Annual Basis.** Like Load Requirement this should increase over time based on growth in the area.
- **Line configuration, substations, transformers and other requirements of the Distribution System.**
- **Maintenance and Upgrade of facilities schedule over the Term.**

**Schedule 3
Guaranteed Dependable Capacity and Generation Facilities**

This Schedule shall provide the following:

- **-The available Guaranteed Dependable Capacity (including ancillary and back-up reserve) on an annual basis. As with the Load requirement, this would also increase based on projected growth.**
- **The technical specifications of the Generation Facilities, including substations, tapping points and plant location.**
- **As with the Load Requirement, the Generation Facilities would depend on the requirements of a particular QTP Area.**

**Schedule 4
FCRR
COMPUTATIONS**

This schedule would provide the formula for the Full Cost Recovery Rate based on the bid of the QTP.

Schedule 5

GOVERNMENT CONSENTS

A. Consents for Effective Date

- 1. NEA verification of the QTP Service Area;**
- 2. DOE declaration of the QTP Service Area;**
- 3. DU or NPC issuance of Notice of Award; and**
- 4. ERC approval of the winning QTP and issuance of necessary permits.**

B. Consents for Commercial Operations Period

- 1. Authority to Operate issued by ERC**
- 2. CoC for Generation Facilities**
- 3. Local Government Permits**
- 4. ECC for Distribution System and the Generation Facilities**

**Schedule 6
Form and Amount of Performance Security**

This Schedule will provide aside from the Form and Amount, the following standard provisions:

- **The Performance Security shall be renewed at least 30 days prior to the expiration of the current Performance Security (i.e. Surety Bond or Letter of Credit). Failure to renew shall entitle [•] to draw against the entire security and to declare QTP in default.**
- **Within thirty (30) days from receipt by the SUPPLIER of a written notice from the OFFTAKER that the OFFTAKER has drawn against the Construction or Operations Security as provided in this Agreement, the SUPPLIER shall replenish the Construction or Operations Security to the full amount.**
- **Failure of the SUPPLIER to replenish the Construction or Operations Security as stated above, shall entitle the OFFTAKER to draw against the Construction or Operations Security an amount equivalent to ten percent (10%) of the remaining amount of the Construction or Operations Security as a penalty.**
- **Failure of the SUPPLIER to replenish the Construction or Operations Security within sixty (60) days from receipt of the written notice shall entitle the OFFTAKER to draw a second penalty against the Construction or Operations Security in an amount equivalent to (10%) of the remaining amount of the Construction or Operations Security.**
- **Failure of the SUPPLIER to replenish the Construction or Operations Security within ninety (90) days from receipt of the written notice shall be considered an Event of Termination**