

PHYSICAL POWER SUPPLY AGREEMENT (PSA)

[NAME OF BUYER]

- and -

NEGROS ELECTRIC AND POWER CORP.

POWER SUPPLY AGREEMENT

DATED AS OF [DATE OF SIGNING]

THIS POWER SUPPLY AGREEMENT (this “Agreement”) is made at The Row, Lacson Street, Brgy. Bata, Bacolod City, Philippines on [DATE]

BETWEEN:

- (1) **NEGROS ELECTRIC AND POWER CORP.**, an entity duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at **The Row, Lacson Street, Brgy. Bata, Bacolod City** represented herein by its **President and Chief Executive Officer, Roel Z. Castro** (hereinafter referred to as “Buyer”); and
- (2) **[NAME OF SELLER]**, an entity duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at **[Address of the Seller]** represented herein by its **[Designation of Representative]**, **[Name of Representative]** (hereinafter referred to as “Seller”).

Each of the Buyer and the Seller are hereafter individually referred to as “Party” and together, as the “Parties”.

RECITALS:

WHEREAS, Seller owns and operates, or plans to design, finance, construct, own, operate and maintain, whichever is applicable, a [gross capacity of the Facility] megawatts (MW) [Description of the Facility] located at [Location of the Facility] (the “Plant”);

WHEREAS, by virtue of Republic Act No. 12011, entitled *An Act Granting Negros Electric and Power Corp. a Franchise to Establish, Operate, and Maintain, for Commercial Purposes and in the Public Interest, a Distribution System for the Conveyance of Electric Power to the End Users in the Cities of Bacolod, Silay, Talisay, and Bago and the Municipalities of Murcia and Don Salvador Benedicto, All in the Province of Negros Occidental, and Ensuring the Continuous and Uninterrupted Supply of Electricity in the Franchise Area*, BUYER is the duly franchised distribution utility with authority to engage in the distribution of electricity in the franchise area, and is further mandated to provide efficient and reliable supply of power to its franchise area in a least cost manner;

WHEREAS, BUYER conducted a competitive selection process pursuant to the DOE Department Circular No. DC2023-06-0021, Series of 2023 and ERC Resolution No. 16, Series of 2023 for the procurement of up to 20 MW of baseload power supply to meet the long-term power requirements of the consumers in the franchise area of Negros Electric and Power Corp.;

WHEREAS, SELLER’s bid was determined to be the lowest and best offer for the supply of 20 MW contract capacity for the baseload requirement of BUYER and SELLER has accepted to supply the same under the terms and conditions specified herein;

WHEREAS, the Third-Party Bids and Awards Committee of BUYER recommended the awarding of the supply for the 20 MW contract capacity to SELLER and this was

approved and ratified by Buyer's Board of Directors through Board Resolution No. _____ dated _____.

NOW, THEREFORE, under the above premises and for and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties, for themselves and their respective successors and assigns, have mutually agreed as follows:

1. DEFINITION OF TERMS AND RULES OF INTERPRETATION

- 1.1. In this Agreement, capitalized terms shall have the meaning prescribed in Schedule 1 hereof. Capitalized terms not therein defined shall have the meanings as provided for in the TOR-CSP or by the applicable laws.
- 1.2. The following rules of interpretation shall govern this Agreement:
 - 1.2.1 expressions defined in Schedule 1 shall bear the respective meanings set out therein;
 - 1.2.2 the headings and paragraph numbering are for convenience of parties and to avoid any insertion, but will not prevail in construing this Agreement;
 - 1.2.3 terms not herein defined shall have the meanings as provided for in pertinent ERC rules and regulations and Department of Energy (DOE) circulars;
 - 1.2.4 references to Sections and Schedules are, unless the context otherwise requires, references to Sections of, and Schedules to, this Agreement;
 - 1.2.5 references to any agreement, enactment, ordinance or regulation includes any amendment thereof or any replacement in whole or in part;
 - 1.2.6 all references herein to time are in relation to Philippine time;
 - 1.2.7 words importing any gender include the other gender;
 - 1.2.8 the words "include," "includes," and "including" are not limiting;
 - 1.2.9 the words "hereof," "herein," and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and
 - 1.2.10 Any ambiguity in the contract is to be construed in favor of the objectives of the Republic Act No. 9136 or its implementing rules, regulations or circulars issued by the Department of Energy (DOE) or Energy Regulatory Commission (ERC), as the case may be.

2. REGULATORY APPROVALS

The Buyer and the Seller shall file with the ERC the joint application for the approval of the PSA in accordance with ERC Rules in thirty (30) calendar days after confirmation of the Notice of Award. The Winning Bidder shall provide for the legal services of the joint application with full support from the Buyer.

The Seller to shall make the necessary adjustments in accordance with the directive of the ERC. Downward adjustment in the rates shall not be a ground for the termination of the contract and the Buyer should not be made to shoulder the incremental difference.

3. SALE AND PURCHASE OF ENERGY/CAPACITY

Subject to and in accordance with the terms of this Agreement, Seller shall make available and sell to Buyer, and Buyer shall purchase from the Seller for the consideration described in Section 5, the energy and/or capacity from and after the Delivery Date until the expiry of the Term.

4. TERM

4.1 Contract Term

This Agreement shall take effect immediately from Effective Date, and from such date, shall remain in force and effect for **five (5) years** from the Delivery Date or upon issuance of ERC's approval, whichever is later.

4.2 Effective Date

The Parties' rights and obligations under this Agreement shall commence on Effective Date, which shall be the date upon which all of the following conditions are satisfied:

- a. Corporate Approvals. The receipt of the Seller of a certificate executed by the corporate or partnership secretary, as applicable, or a resolution duly and validly issued by the board of directors of Buyer, attesting to the fact that the board of directors of Buyer has adopted resolutions (i) authorizing Buyer to execute and to enter into and deliver this Agreement and perform all its obligation hereunder, and (ii) designating the person authorized to execute this Agreement on behalf of the Buyer; and
- b. Government Authorizations. All governmental authorizations (except ERC) which are required to have been obtained in connection with the execution, delivery and commencement of performance of this Agreement, shall have been obtained and be in full force and effect.

Within [number of days] Days after the satisfaction of the conditions referred to in this Section, each Party shall send a written notice to the other Party confirming satisfaction of such conditions and indicating the

Effective Date.

4.3 Delivery Date

The Seller shall commence delivery of Contract Capacity to Buyer on Delivery Date. The Delivery Date shall be a date, after Effective Date, reckoned from **November 26, 2025** or date of issuance by the ERC of a Provisional Authority or Interim Relief, as applicable, or Final Authority, if neither Provisional Authority or Interim Relief was issued, whichever comes later.

5. **SUPPLY OF ENERGY**

5.1 Seller's and Buyer's Obligations

Beginning on the Delivery Date, until the termination or expiration of this Agreement, Seller shall supply and deliver Twenty Megawatt (20 MW) Baseload Capacity and/or Contract Energy as detailed in Schedule] to Buyer at the Delivery Point, and the Buyer shall purchase and pay Seller the Twenty Megawatt (20 MW) Baseload Capacity and/or Contract Energy] at the rate of [___], resulting from the CSP and subject to the approval of the ERC.

5.2 WESM Operations

Buyer shall furnish Seller with its hourly nomination of demand on a daily, weekly, and monthly basis in accordance with the procedure set out as follows:

- a. For administrative and planning purposes only, Buyer shall furnish Seller with non-binding year-ahead, month-ahead and week-ahead nominations of Contract Capacity in accordance with the WESM Rules and the Operating Procedures.
- b. Such nominations shall reflect Buyer's good faith estimate of its projected capacity requirements for such period. Buyer shall furnish Seller with the year-ahead nominations, the month-ahead nominations, and the week-ahead nominations.

5.3 Reduction of Contract Capacity

From time to time upon and after the implementation of Retail Competition and Open Access (RCOA), Green Energy Option Program (GEOP), Renewable Portfolio Standards (RPS), Net Metering programs, and other similar government programs, Buyer shall deliver to Seller written notice specifying the reduction in Contract Capacity and/or Contract Energy resulting from the implementation of RCOA, GEOP, RPS, Net Metering programs, and other similar government programs, indicating when such reductions shall take place.

The Contract Capacity and Contract Energy shall be reduced proportionately among all power suppliers, equivalent to the reduction in the demand of Negros Power by reason of the implementation of

Retail Competition and Open Access, the Renewable Energy Act of 2008, or other relevant laws and legal requirements.

5.4 Outage Allowance Per Plant

There shall be Zero Outage Allowance. Outages shall be subject to the provisions on Replacement Power.

5.5 Replacement Power

- a. The Seller shall provide replacement power in following cases, except during Force Majeure Events:
 1. During any delay of the Start of Delivery of Supply; and
 2. When its power plant is on scheduled or unscheduled outage to ensure continuity of supply in compliance with the cooperation period.
- b. The replacement power rate shall be the actual price of replacement power or the prevailing Wholesale Electricity Spot Market (WESM) rate, whichever is lower, but shall not exceed the Energy Regulatory Commission (ERC)-approved tariff.
- c. Replacement power shall be the obligation of the Seller. In the event of failure by the Seller to provide the replacement power, the DU shall be allowed to source the replacement power at the expense of the Seller.

5.6 Transmission and Interconnection

- a. If applicable, Seller [shall enter/ has entered/ is in the process of entering] into a Connection Agreement and Transmission Service Agreement with the NGCP to connect the Facility to the Grid.
- b. At all times from and after the Effective Date, all interconnection, transmission and other agreements necessary for Seller to perform its obligations hereunder (including the Connection Agreement and Transmission Service Agreement) shall be in full force and effect.

6. COMPENSATION, PAYMENT AND BILLING

6.1 Payment of Fees

Buyer shall pay to the Seller each Month, on the [_____] Business Day of each Month, an amount equal to the Monthly Payment in accordance with Schedule 4.

Further, Buyer shall bear all costs of such transmission service, from the Delivery Point up to the Receiving Point including the cost of any electric losses incurred in such transmission.

Provided further that, 1) there should be no offsetting of payment between the Buyer and Seller; 2) withholding of disputed amounts, except for the inadvertent mistake in the amount; 3) If an invoice is not disputed within

[] Days after payment, it is deemed to be accepted, final, and binding to the Buyer and Seller.

6.2 Taxes

All present and future national, local or other lawful taxes, duties, levies, or other impositions applicable to the Seller, the Facility and the Seller's other assets shall be paid by the Seller in a timely manner. All present and future national, local or other lawful taxes, duties, levies, or other impositions applicable to Buyer arising from or in connection with its rights and obligations under this Agreement shall be paid by Buyer in a timely manner.

6.3 Prompt Payment Discount

The Seller shall extend [] percent (%) discount based on the non- fuel fee (sum of Capital Recovery Fee, Fixed O&M Fee and Variable O&M Fee, if applicable) to Buyer as prompt payment if 1) payment is made within [] Days from receipt of Seller's billing, and 2) buyer is up to date with all its payment obligations under this Agreement.

6.4 Liquidated Damages

Liquidated damages in case of default shall be in the amount of [] per MW per day that the defaulting Party continues with the default and any fraction thereof, to be paid within [] Days after written demand for payment.

7. **FORCE MAJEURE**

In the event of force majeure, the affected Party shall be excused from the performance of obligations and shall not be considered in default in respect of any obligation under the PSA for so long as failure to perform such obligation shall be due to an Event of Force Majeure.

The Buyer/Off-taker shall adhere to the responsibilities under the Power Supply Agreement (PSA).

The DU shall not be required to make payments for any of the following:

1. Capacity that is unavailable; and
2. Capacity that it cannot accept.

7.1 Meaning of Force Majeure

In this Agreement, "Force Majeure" refers to any of the following that is beyond the reasonable control of the Party/Parties claiming force majeure which, through the exercise of due foresight and good industry practice, the Party/Parties could not have avoided, did not contribute to or participate in, and which, even by exercise of due diligence, the Party/Parties is unable to overcome, thus preventing the party from carrying out its obligations or from enjoying its rights under this Agreement due to the impossibility of delivering the goods and services, or

the imminent harm that such events, in the absence of safeguards and protocols, may bring upon its employees, agents or the general public in the performance of its obligations under this Agreement.

7.1.1 Acts of God

Acts of God, should only be considered as force majeure sufficient to terminate the contract if –

- a. The event or calamity is of the degree or intensity that the continued operation of the parties would lead to death or injury of the parties' employees or agents;
- b. The event or calamity is of the degree or intensity that the continued operation of the parties would be of great hazard to the security and safety of the public.

7.1.2 Epidemic

An epidemic officially declared by the national or local government, should only be considered as force majeure and a ground for termination of contract, if the epidemic causes:

- a. Impossibility to deliver the contracted goods or services; or
- b. When there is no remedy or protocol placed/issued by the government or the regulatory agencies to assist the parties in fulfilling their obligations.

7.1.3 Other Events of Force Majeure (Force Majeure-Acts of Man)

Force Majeure events occurring in or directly affecting the Philippines include:

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
- (b) nationwide strikes, works to rule or go-slows that extend beyond the Facility or are widespread or nationwide, or that are of a political nature;
- (c) radioactive contamination or ionizing radiation originating from a source outside or inside the Philippines.

7.2 Notification and Obligation to Remedy

In the event of the occurrence of a Force Majeure that prevents a Party from performing its obligations hereunder (other than an obligation to pay money), such Party shall: (a) notify within five (5) Days the other Party in writing of such Force Majeure; (b) not be entitled to suspend performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure; (c) use all reasonable efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable; (d) perform acts to avoid further loss or

wastage; (e) keep such other Party apprised of such efforts on a continuous basis; and (f) provide written notice of the resumption of performance hereunder. Notwithstanding the occurrence of a Force Majeure, the Parties shall perform their obligations under this Agreement to the extent the performance of such obligations is not impeded by the Force Majeure.

7.3 Consequences of Force Majeure

Neither Party shall be responsible or liable for, or deemed in breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Agreement which it cannot perform due solely to one or more Force Majeure or its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) shall be extended on a day-by-day basis for so long as one or more Force Majeure continues to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Agreement; provided, however, that no relief shall be granted to the Party claiming Force Majeure pursuant to this Section to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure not occurred; and provided further, that the Parties may file the proper motion for termination, when the Force Majeure delays a Party's performance for a period greater than (a) [_____] consecutive months prior to the Effective Date or (b) [_____] consecutive months after the Effective Date.

8. **DISPATCH BY UTILITY**

The Buyer shall have the right to dispatch the power plant up to its dependable capacity following the dispatch protocol in accordance with the economic merit order.

9. **DEFAULTS AND TERMINATION**

9.1. Events of Default

Each of the events described below shall constitute an Event of Default, provided that such events result to, in the case of the Seller, an actual failure to deliver to the Buyer of the required [Contract Capacity and/or Contract Energy]; or, in the case of the Buyer, an actual failure to accept from, or pay to, the Seller the [Monthly Payments]. An "Event of Default" shall mean, with respect to the relevant Party (such Party being, with respect to the Event of Default, a "Defaulting Party" and the other Party being the "Non-Defaulting Party"):

9.1.1 A Party fails to make any payment required pursuant to this Agreement when due and payable and such payment is not made within [number of days] Days after the due date;

9.1.2 A Party breaches any of its material representations, warranties, covenants or obligations under this Agreement; and

- 9.1.3 A Party becomes bankrupt or there occurs a default, event of default or other similar condition or event with respect to the Buyer under one or more agreements or instruments to which it is a party.

Within a [number of days] from knowledge of the occurrence of an Event of Default and for Events of Default capable of being remedied or cured, the Non-Defaulting Party shall issue a written notice to the Defaulting Party specifying in detail the relevant Event of Default (the “Notice of Default”). The Defaulting Party shall have the opportunity to cure the default within the following periods from receipt of the Notice of Default (each a “Cure Period”):

- (a) [number of days] Days, for Events of Default under Section 9.1.1,
- (b) [number of days] Days, for Events of Default under Section 9.1.2, and
- (c) [number of days] Days, for Events of Default under Section 9.1.3.

9.2 Notice of Default and Termination or Upon Event of Default

In case an Event of Default is not cured within the applicable Cure Period or if the Event of Default is not capable of being remedied the Non-Defaulting Party may terminate this Agreement in accordance with Section 9.4, subject to the approval of the ERC, and may pursue any remedy available to it under this Agreement or at law.

9.3 Suspension upon Event of Default

In case an Event of Default is awaiting to be cured during the Cure Period under Section 9.1, the Non-Defaulting Party may suspend this Agreement, subject to the approval of the ERC, until such time the Event of Default is cured, or the applicable Cure Period lapsed.

9.4 Termination upon Event of Default

The following procedure shall apply in terminating this Agreement:

- 9.4.1 The Non-Defaulting Party shall issue a notice (a “Termination Notice”) to the other Party, specifying in detail the Event of Default giving rise to such Termination Notice, and the date on which the Party giving such Termination Notice proposes to terminate this Agreement, subject to the approval of the ERC.
- 9.4.2 During the period of [number of days] Days (or such longer period set out in the Termination Notice or as the Parties may agree) following the giving of such Termination Notice, the Parties shall negotiate as to what steps shall be taken with a view to mitigating or remedying the consequences of the relevant event having regard to all the circumstances.
- 9.4.3 If the Party receiving the Termination Notice intends to raise a

Dispute regarding the right to give effect to the Termination Notice (the "Termination Notice Dispute"), such Party shall follow the procedure prescribed in Section 9; and

9.4.4 In circumstances where the Party in receipt of the Termination Notice has referred a Termination Notice Dispute for resolution in accordance with Section 9.4.3 above, if:

- (ii) at any time after the expiry of the period referred to in Section 9.4.1, the event giving rise to the Termination Notice has not been remedied; and
- (iii) the Termination Notice Dispute has been determined in favor of the Party who has issued the Termination Notice, the Agreement may be terminated only upon prior notification to and approval by ERC pursuant to its rules, regulations, and applicable guidelines, by giving a written notice of termination pursuant to the order of the ERC.

8.5 Grounds for Termination Other than Event of Default

The Buyer shall have the right to terminate the contract under the following instances:

- 8.5.1 Unexcused or failure of Seller to comply with its material obligations under the contract, including but not limited to the failure of the Seller to comply with its obligation to deliver the guaranteed capacity from its own plant at target delivery date;
- 8.5.2 Seller ceases or discontinues the delivery of electricity for a period of six (6) months from its own plant, except in instances allowed under the Agreement;
- 8.5.3 In the event that a law, court order, or decision by a court of competent jurisdiction makes it unlawful for Seller to supply and deliver electricity to DU or perform any or all of its obligations under the Agreement, or DU to accept delivery of electricity from Seller or perform any or all obligations under the Agreement;
- 8.5.4 In the event that Force Majeure occurs that prevents DU from receiving or Seller from delivering electricity at the delivery points for a period in excess of six (6) consecutive months;
- 8.5.5 If no satisfactory solution is reached by the parties when a Change of Law, Change of Circumstance results to (a) any additional charges, fees, taxes, duties, assessments, or other similar amounts become payable, (b) DU is no longer permitted to pass through to its customers any charges, fees, taxes, assessments, or other similar amounts, or (c) DU is no longer permitted to pass through to its customers any amount that it is permitted to pass through as of the date of the Agreement

10. PENALTIES

The Buyer shall have the right to impose penalties whenever Seller fails to comply with its obligations within the cure period stated in the PSA under the following circumstances:

1. Payment of damages upon contract termination based on valid grounds;
2. Payment of penalties when Seller has prolonged outages of more than six (6) months;
3. Failure to provide replacement power;
4. Delay in Commercial Operation Date (COD);
5. Failure of power delivery; and
6. Other grounds detailed in this Power Supply Agreement.

The following are the consequences of Event of Default:

1. Either Buyer or Seller may initiate termination if the other party is unable to remedy its default within the cure period; and
2. Parties shall arrange Replacement Contracts. Party in default shall pay the price difference of the PSA and the Replacement contract until such time that the Buyer is able to enter into another contract with a power supplier.

The non-defaulting Party may terminate the PSA subject to prior notice which shall not be less than thirty (30) calendar days.

11. DISPUTE RESOLUTION

If any dispute or disagreement ("Dispute") shall arise between the Parties in connection with this Agreement, either Party may request in writing that the respective chief executive officers of Seller and Buyer meet within [number of days] Days and attempt to resolve the Dispute. The Parties shall exert every effort to first resolve the Dispute amicably by mutual consultation.

Should parties fail to reach an amicable settlement after mutual consultation, any Dispute arising from this Agreement shall then be settled through arbitration, at a venue within the Philippines, with the rules of Republic Act No. 876 and Republic Act No. 9285 deemed incorporated by reference in this clause.

In the event such officers are unable to resolve such Dispute through the above arbitration clause, the ERC has the jurisdiction to hear and decide the Dispute between parties arising from this Agreement, in the exercise of its powers and functions under the EPIRA.

12. ASSIGNMENT OF RIGHTS

The Seller may only assign or transfer its rights or obligations to its Affiliates or its consortium's special purpose vehicle under, pursuant to or associated with (a) this Agreement, (b) the Facility, (c) the movable property and intellectual property of the

Seller, or (d) the revenues or any of the rights or assets of the Seller, in each of subsections (a) through (c) without the prior written consent of the Buyer, provided, however, that any such assignee of Seller shall have the ability to perform all of Seller's obligations and duties under this Agreement. Such transfer of rights and obligations under this provision shall require prior notification and approval of the ERC. Nonetheless, both assignor and assignee are solidarily liable under this Agreement.

13. NOTICES

13.1 Address for Notices

Any notice, communication, request or correspondence (each a "notice") required or permitted under the terms and conditions of this Agreement shall be in writing, in the English or Filipino language (it being understood that any such communication or paper in a language other than the same shall be of no force or effect), and shall be (a) delivered personally, or (b) transmitted by electronic mail and either (i) recipient acknowledges receipt to sender or (ii) sender delivers to recipient a transmission confirmation; to the following addresses:

If to the Buyer:

Address: Roel Z. Castro
 President and Chief Executive Officer
 The Row, Lacson Street, Brgy. Bata, Bacolod City
E-mail Add.: rzcastro@morepower.ph
Attention: Bernard Bailey R. del Castillo

If to the Seller:

Address: _____

E-mail Add.: _____

Attention: _____

or such other address and/or telephone number as either Party may previously have notified to the other Party in accordance with this Section.

“Recipient” shall mean the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel, or signatory to this Agreement of the Party, or in their absence or unavailability, on their secretaries.

13.2 Effectiveness of Service

Notices shall be effective: (a) in the case of personal delivery, when received by the recipient; or (b) in the case of transmission by electronic mail, if receipt of the transmission occurs before [time] recipient’s time and recipient receives a transmission confirmation or otherwise acknowledges transmission, upon receipt of transmission, or if receipt of the electronic mail occurs after [time] recipient’s time and recipient receives a transmission confirmation or otherwise acknowledges transmission, the next succeeding Business Day.

14. MISCELLANEOUS PROVISIONS

14.1 Variations in Writing

All additions, amendments or variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of both Parties, and with prior approval of the ERC.

14.2 Entire Agreement

This Agreement and all Schedules thereto together represent the entire understanding between the Parties in relation to the subject matter thereof and supersede any or all previous agreements or arrangements between the Parties in respect of the Facility (whether oral or written).

14.3 Severability

In the event that any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or of the same provisions in any other jurisdiction shall not in any way be affected or impaired thereby.

14.4 Waivers

14.4.1 No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement shall (a) operate or be construed as a waiver of any other or further default whether of a like or different character, and (b) be effective unless in writing duly executed by an authorized representative of such Party.

14.4.2 The failure by either Party to insist on any occasion upon the performance of the terms, conditions or provisions of this

Agreement or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of such breach or acceptance of any variation.

14.4.3 The Parties shall not, through mutual agreement, or consent or acquiescence of the other, waive any rights or obligations under this contract that may prejudice the rights of consumers.

14.5 Successors and Assigns

This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and permitted assigns, subject to the provision in Section 9.

14.6 No Liability for Review

No review or approval by Buyer of any agreement, document, instrument, drawing, specifications or design proposed by the Seller shall relieve the Seller from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specifications or design or from failure to comply with the applicable laws of the Republic of the Philippines with respect thereto, nor shall Buyer be liable to Seller or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design.

14.7 Consequential Damages

Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for indirect, consequential, punitive or exemplary damages resulting from the performance of obligations or the exercise of rights under or pursuant to this Agreement.

14.8 Affirmation

The Seller and Buyer declare and affirm that neither Party has paid nor has it undertaken to pay and that it shall in the future not pay any bribe, pay-offs, kick-backs or unlawful commission and that it has not in any other way or manner paid any sums, whether in Local Currency or Foreign Currency and whether in the Philippines or abroad, or in any other manner given or offered to give any gifts and presents in the Philippines or abroad to any person or Seller to procure this Agreement, and the Seller and Buyer undertake not to engage in any of the said or similar acts during the term of and relative to this Agreement.

14.9 Governing Law

This Agreement and the rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to applicable laws, rules and regulations of the Philippines.

14.10 Relationship of the Parties

This Agreement shall not make either of the Parties partners or joint venturers one with the other, nor make either the agent of the other.

Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise bind, the other Party.

14.11 Survival

Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including the rights and obligations, warranties, remedies, promises of indemnity and confidentiality set forth in previous sections.

14.12 Language

The language for the purpose of administering this Agreement, including any expert proceeding or arbitration hereunder, shall be English or Filipino.

14.13 Good Faith

In carrying out its obligations and duties under this Agreement, each Party shall have an obligation of good faith.

I N W I T N E S S whereof the Parties have entered into this Agreement the date first above written.

[NAME OF BUYER]

By: _____

Name: _____

Title: _____

WITNESSED BY:

By: _____

Name: _____

[NAME OF SELLER]

By: _____

Name: _____

Title: _____

WITNESSED BY:

By: _____

Name: _____

SECRETARY's CERTIFICATE

I, _____, Filipino, of legal age and with office address at _____, after having duly sworn in accordance with law, hereby depose and state that:

1. I am the Corporate Secretary of _____, a _____ duly organized and existing under and by virtue of the laws of the Philippines with principal office address at _____.
2. At the special meeting of the Board of Directors held on _____, during which meeting a quorum was present and acting throughout, the following resolution was unanimously passed and approved:
RESOLVED, that the Board of Directors of _____ authorize, as it hereby authorizes _____ to sign the Agreement with _____, on behalf of the [Corporation].
3. This board resolution has not been revoked, amended or modified, and remains valid and binding on the [Corporation] as of the date hereof.
4. The foregoing statements are in accordance with the records of the [Corporation].

IN WITNESS WHEREOF, I have hereunto set my hand this _____ at _____, Philippines.

Corporate Secretary

SUBSCRIBED AND SWORN to before me this _____ in _____. Affiant, who is personally known to me, exhibited to me his/her identification _____ issued in _____ on _____.

SCHEDULE 1

DEFINITIONS

Whenever the following terms appear in this Agreement or the Schedules hereto, whether in the singular or in the plural, present, future or past tense, they shall have the meanings stated below unless the content otherwise requires:

“Affiliate” - means any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. As used herein, “control” shall mean the power to direct or cause the direction of the management policies of a person by contract, agency or otherwise.

“Agreement” - This Power Supply Agreement, including all Schedules thereto, as amended or supplemented from time to time.

“Allowed Outage” - The allowed number of hours for every contract year that a Unit and/or Component of a power plant is not available to perform its intended function due to some event directly associated with that Unit and/or Component based on the Rules and Regulations of ERC.

“Applicable Requirements” - Any and all applicable laws, regulation, codes, directives, judgments, decrees, orders or interpretations of any court, arbitrator or Governmental Authority, and any valid waivers, exemptions, variances, permits, licenses, authorizations, orders, consents or conditions of or from, in any such case, any Governmental Authority or court or other entity having jurisdiction over the performance of the obligations of each Party to be performed hereunder, including all consents, licenses, registrations, concessions and permits required to be issued pursuant thereto by any governmental authority in connection with any of the transactions contemplated hereby.

“Billing Period” - The period commencing on the first hour of the twenty sixth (26th) day of a calendar month and ending on the last hour of the twenty fifth (25th) day of the next calendar month. In the case of the first Billing Month of the Cooperation Period, “Billing Month” means the period commencing on the first day of the Cooperation Period and ending upon the last hour of the twenty fifth (25th) day of the current calendar month (or the next calendar month if the Cooperation Period commenced on or after the 26th of the current calendar month), and in the case of the last Billing Month of the Cooperation Period, “Billing Month” means the period commencing immediately after the preceding Billing Month and ending upon the reading of the electricity meters at the end of the Cooperation Period. **“Business Day”** - Any day, excluding Saturday, Sunday and any day which shall be in the Province of Negros Occidental or in the City of Bacolod, Philippines or in the City of _____ a legal holiday or a day on which banking institutions are permitted to be closed, provided that in the event that DU ceases to have its principal office in Bacolod City, the same shall be replaced with the city or municipality where the DU has transferred its principal place of business. Moreover, Days are referred to as calendar days unless specifically stated as business days.

“Buyer Grid System” - The Interconnection Facilities and any other transmission

or distribution facilities on Buyer's side of the Interconnection Point(s) through which the Contract Capacity/Contract Energy of the Facility will be distributed by Buyer to users of electricity.

“Contract Capacity” - A capacity of 20MW reserved by the Seller for the Buyer within the Cooperation Period.

“Contract Energy” - The energy, expressed in kWh allocated to the Buyer during the Billing Period.

“Contract Term” - shall have the meaning ascribed to it in Section 4.1.

“Cooperation Period” - Shall take effect for a period of five (5) years starting from Target Delivery Date.

“Day” - The 24-hour period beginning and ending at 12:00 midnight in [Philippine Time]. For clarity, “Day” means calendar day, or any day including Saturday, Sunday, and any day which is a legal holiday in the Philippines.

“Delivery Date” - shall have the meaning ascribed to it in Section 4.3.

“Delivery Point” - The physical point(s) at which Buyer receives power from Seller where billing meters to measure electric energy flowing to the Buyer’s electricity system are installed.

“Dispute” - shall have the meaning ascribed thereto in Section 11.

“Effective Date” - means the date following the completion of the conditions referred to in Section 4.2.

“EPIRA” - The Republic Act No. 9136 of the Electric Power Industry Reform Act of 2001.

“ERC” - The Energy Regulatory Commission of the Philippines, the independent and quasi-judicial regulatory agency created under Section 38 of the EPIRA.

“ERC Approval” - Any form of approval whether Provisional or Final by the ERC on the PSA application.

“Facility” - [Provide brief description of generating facility, including fuel source, capacity and location, if applicable]

“Force Majeure” - An event or occurrence specified in Section 7.

“Foreign Currency” or – The lawful currency of [_____]. **“Fuel”** – [Describe type of fuel used by the Facility, if applicable].

“Grid” - The high voltage backbone system of interconnected transmission lines, substations, and related facilities for the purpose of conveyance of bulk power.

“Interconnection Facilities” - All the facilities on the high side of the step-up transformer described in Schedule 3 to be constructed by or for Buyer to enable it to receive and deliver capacity and energy in accordance with this Agreement plus the Metering System.

“Interconnection Point” - The physical point(s) where the Facility and the Buyer Grid System are connected as specified in Schedule 3.

“kW” - Kilowatts.

“kWh” - Kilowatt-hours.

“Law” - Any law, act, ordinance, code, decree, order, rule, policy, resolution or regulation of any governmental authority or agency (national, provincial, municipal, local) that is at any time applicable to the parties, contract, project, site or any part thereof.

“Liquidated Damages” - The meaning ascribed thereto in Section 6.4.

“Local Currency” - The lawful currency of the Philippines.

“Metering System” - All meters and metering devices owned by Buyer and used to measure the delivery and receipt of Energy/Capacity.

“Minimum Contracted Energy” (“MCE”) - The minimum total monthly energy committed to be delivered by Seller to Buyer and committed to be taken and paid by the Buyer at all Delivery Points, as reflected in Schedule 1.

“Minimum Functional Specifications” - The minimum functional specifications (including the technical limits of the Facility) for the construction and operation of the Facility as set forth in Schedule 3 hereof.

“Month” - A calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last day of the preceding month and ending at 12:00 midnight on the last day of that month.

“MW” - Megawatts.

“NGCP” - National Grid Corporation of the Philippines, the corporation awarded the concession to operate the transmission facilities of the National Transmission Corporation pursuant to the EPIRA and Republic Act No. 9511.

“Notice of Default” - The meaning ascribed thereto in Section 9.1.

“Parties” - Both Buyer and the Seller.

“Party” - Either Buyer or the Seller.

“Outage Allowance” - refers to the allowable outage per plant type as determined by the ERC.

“Replacement Power” - The energy from an alternative source responsible to be delivered by the Seller to Buyer at a price lower than the price set forth in the Agreement.

“RCOA” - The Retail Competition and Open Access.

“Scheduled Outage” - A planned partial or complete interruption of the Facility's generating capability that (a) is not an Unscheduled Outage; (b) has been scheduled and allowed by Buyer in accordance with Section 5.4; and (c) is for inspection, testing, preventive maintenance, corrective maintenance or improvement.

“Termination Notice” - A written notice, revocable only with the consent of both Parties, clearly stating that it is a notice of termination of this Agreement, issued by the relevant Party in accordance with and pursuant to Section 14 or in other provisions of this Agreement providing for such termination notice specifying in reasonable detail

the Buyer Default, Seller Default or other event giving rise to such termination notice

“Unscheduled Outage” - An interruption or reduction of a Unit's or the Facility's generating capability that is not a Scheduled Outage.

“Week” - Each period of seven (7) consecutive Days beginning at 12:00 midnight Philippine Standard Time falling between a Saturday and a Sunday.

“WESM” – Wholesale Electricity Spot Market.

“WESM Rules” - The rules and regulations promulgated by the DOE governing the establishment and operations of the WESM, and the guidelines, manuals and procedures issued by its governing body or the Market Operator.

“Year” - Each twelve (12) Month period commencing on 12:00 midnight on December 31 and ending on 12:00 midnight the following December 31 during the term of this Agreement.

SCHEDULE 2

CONTRACT CAPACITY AND/OR CONTRACT ENERGY

Billing Month	Hours	Contract Capacity (kW)	Contract Energy (kWh)	Monthly Minimum Contract Energy*(kWh), if any	Hourly Minimum Nomination (kWh)
January	24	20,000	14,880,000	14,880,000	10,000
February	24	20,000	13,440,000	13,440,000	10,000
March	24	20,000	14,880,000	14,880,000	10,000
April	24	20,000	14,400,000	14,400,000	10,000
May	24	20,000	14,880,000	14,880,000	10,000
June	24	20,000	14,400,000	14,400,000	10,000
July	24	20,000	14,880,000	14,880,000	10,000
August	24	20,000	14,880,000	14,880,000	10,000
September	24	20,000	14,400,000	14,400,000	10,000
October	24	20,000	14,880,000	14,880,000	10,000
November	24	20,000	14,400,000	14,400,000	10,000
December	24	20,000	14,880,000	14,880,000	10,000

*Note:

Monthly Minimum Contract Energy (MMCE) refers to the total monthly energy equivalent to 100% load factor of the Contract Capacity subject to adjustment due to force majeure and Negros Power system outage at the substation level. The MMCE reckoned monthly will be the basis in charging the fixed component of the electricity fee (Capital Recovery Fee (CRF) and Fixed Operations and Maintenance (O&M)).

SCHEDULE 3

MINIMUM FUNCTIONAL SPECIFICATIONS

Technical Limits of the Facility

Particulars	[Name of Plant/Facility]
Plant Location	The generating capacities shall come from anywhere in the Luzon, Visayas, or Mindanao group of islands in the Philippines connected to the Grid.
Type of Technology	Open Technology
Mode of Operation (baseload, intermediate, peaking, etc.)	Baseload
Commissioning Date	
Date of Completion	
Economic Life, years	
Plant Capacity, MW	20 MW
Dependable Capacity, MW	20 MW
Auxiliary Load, MW	
Scheduled Outage, days	Zero Outage Allowance
Unscheduled Outage, days	Zero Outage Allowance
Line Rental	For the account of the Seller, capped at Po.30/kWh In excess of the cap, for the account of the Buyer
Voltage Limits (kV)	

Delivery Point/s

Location	Delivery Voltage
Negros Power Metering Nodes	

Interconnection Facilities

Illustration of the Site Location

Illustration of the Site Layout Area

Detailed Single Line Diagram

SCHEDULE 4

MONTHLY PAYMENT, INDEXATION AND ADJUSTMENT

The Buyer shall pay the Seller for the Energy/Capacity at the following Fees and as adjusted on a monthly basis pursuant to the following formula:

$$\mathbf{TGC = CRF + FOM + VOM + FF_{Adj}}$$

Where:

TGC = Total Generation Charge in PhP for the Billing Period

CRF = Capital Recovery Fee as defined in the Bid Documents at _____

FOM = Fixed Operation and Maintenance Fee as defined in the Bid Documents at _____

VOM = Variable Operation and Maintenance Fee as defined in the Bid Documents at _____

FF_{Adj} = Current Fuel Fee **(if applicable)** for the Billing Period calculated as follows:

$$\mathbf{FF_{Adj} = FF_{base} * (FO_{current} / FO_{base})}$$

Where:

FF_{base} = Base Fuel Fee as defined in the Bid Documents set at _____

FO_{current} = Current cost of fuel at ____/(unit

FO_{base} = Base cost of fuel set at ____/(unit)

Electricity Fees	Capital Recovery Fee (CRF) in Php/kWh	Shall be fixed for the entire duration of the contract period and shall be computed based on contracted energy
	Fixed O&M in Php/kWh	Shall be fixed for the entire duration of the contract period and shall be computed based on contracted energy
	Variable O&M in Php/kWh	No Take-or-Pay (Based on actual energy delivered)
	Fuel in P/kWh (As may be applicable)	No Take-or-Pay (Based on actual energy delivered) Inclusive of Fuel Handling & Freight Costs