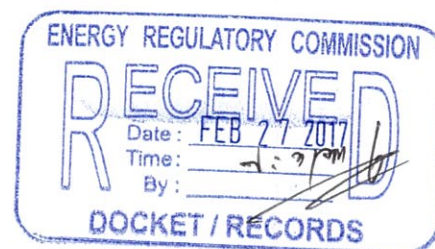


Republic of the Philippines
ENERGY REGULATORY COMMISSION
 San Miguel Avenue, Pasig City

**IN THE MATTER OF THE
 APPLICATION FOR THE
 APPROVAL OF THE POWER
 SUPPLY AGREEMENT (PSA)
 BETWEEN MANILA ELECTRIC
 COMPANY (MERALCO) AND
 SOLAR PHILIPPINES TANAUAN
 CORPORATION (SPTC), WITH
 MOTION FOR CONFIDENTIAL
 TREATMENT OF INFORMATION**



ERC CASE NO. 2017-014 RC

**MANILA ELECTRIC COMPANY
 (MERALCO) AND SOLAR
 PHILIPPINES TANAUAN
 CORPORATION (SPTC),**

Applicants.

X-----X

**JOINT APPLICATION
 with
 MOTION FOR CONFIDENTIAL TREATMENT OF
 INFORMATION**

Applicants **MANILA ELECTRIC COMPANY ("MERALCO")** and **SOLAR PHILIPPINES TANAUAN CORPORATION ("SPTC")**, through their respective undersigned counsel, respectfully state:

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Meralco Center, Ortigas Avenue, Pasig City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

2. MERALCO has a legislative franchise to operate and maintain a distribution system in the cities/municipalities of Metro Manila, Bulacan, Cavite and Rizal and certain

cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga, pursuant to Republic Act No. 9209, and is authorized to charge all its customers for their electric consumption at the rates approved by the Honorable Commission.

3. Applicant SPTC is a corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal office address at 112 Legaspi Street, Makati City, Metro Manila. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

4. SPTC shall construct, own, operate, manage and maintain a solar power plant located in the Municipality of Tanauan, Batangas and its surrounding areas capable of supplying 25 MW (AC, net) and another solar power plant located in the Municipality of Naic, Cavite and its surrounding areas capable of supplying 25 MW (AC, net).

5. Based on the power situation outlook for 2017 and succeeding years, MERALCO foresees a peaking capacity deficit in its portfolio, especially for the summer months, due to the expected high demand as well as possible occurrences of scheduled maintenance shutdowns and forced outage of power plants. Moreover, based on MERALCO's Distribution Development Plan, from 2015 to 2024, MERALCO's aggregate capacity requirement is forecasted to grow by a compounded average growth rate of 3.7%.

6. In order to ensure continuous and reliable electricity for MERALCO's customers, there is a need for MERALCO to source additional peaking capacity through bilateral power supply contracts.

7. Under Section 45(b) of Republic Act No. 9136 (EPIRA), it is provided that "*Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC xxx*".

8. Accordingly, following extensive negotiations and the conduct of a competitive selection process, on 22 December 2016, MERALCO executed a Power Supply Agreement ("**PSA**") with SPTC, for the purchase of 25 MW (AC, net) electric energy generated by each of the two solar power plants of SPTC, or a total of 50 MW (AC, net), on a take and pay basis, with proposed plant sites located in (a) Tanauan, Batangas and its surrounding areas, and (b) Naic, Cavite and its surrounding areas, or an alternative site embedded within Meralco's

franchise area. The conduct of a competitive selection process proceeded as follows:

8.1. On 23 September 2016, MERALCO caused the publication of an Invitation for Price Challenge, which contained the basic terms of reference and conditions of the proposal of SPTC, as well as a summary of the process and timelines of the Price Challenge process, while inviting power generation companies to submit better tariff proposals on or before the timelines set out in the said invitation. At the same time, MERALCO caused the posting thereof on its website.

8.2. On 10 November 2016, MERALCO's Power Supply Agreements Bids and Awards Committee (the "PSA BAC") sent a letter-notice to SPTC informing it that no Qualified Price Challenger submitted any Financial Proposal; thus, the PSA BAC decided to not proceed with the instant Price Challenge and to subject the PSA to another Price Challenge.

8.3. Thereafter, on 11 November 2016, MERALCO caused the publication of a Final Invitation for Price Challenge, inviting anew all interested and qualified parties to participate in the Price Challenge with respect to SPTC's proposed supply of electricity. At the same time, MERALCO caused the posting thereof on its website.

8.4. Having received no qualified submissions by the deadline indicated in the Final Invitation for Price Challenge, on 14 December 2016, MERALCO awarded the PSA to SPTC through a letter-notice.

9. The PSA between MERALCO and SPTC, a copy of which is attached as **ANNEX "A"** and made an integral part hereof, contains the following salient features:

"2.1. *Term of Agreement.* The Agreement shall commence on Effective Date and shall remain in full force and effect until the last day of the twentieth (20th) Contract Year for Site 2, unless otherwise extended in accordance with Section 2.2 below or earlier terminated in accordance with this Agreement (the "Term"); provided, that Section 5.1, Section 11.4, Article 12, Article 13, and Article 14 shall be effective upon Meralco's issuance of a notice of award to Power Supplier as the winning power supplier after the conduct of a competitive selection process; provided further, that the obligations

of Power Supplier and Meralco under this Agreement with respect to sale and purchase of the Product shall be for a duration of 20 years from Commercial Operations Date (Site 1) for Site 1 and 20 years from Commercial Operations Date (Site 2) for Site 2; xxx

xxx xxx xxx

3.2. *Commencement Date.* The "**Commencement Date**" shall occur upon the satisfaction of the conditions below:

- (a) The conditions set out in Section 3.1. have been fulfilled;
- (b) Each Party has delivered to the other Party a certification dated no earlier than two (2) Days prior to the proposed Commencement Date to the effect that its representations and warranties contained herein shall be true and correct in all material respects on and as of the Commencement Date; and
- (c) On or before the Longstop Date, (i) the ERC shall have issued an ERC Final Approval, including the pricing structure as set out herein (or as otherwise acceptable to Power Supplier), and (ii) the Acceptance Date has occurred pursuant to Section 5.4.

Within seven (7) Days after the satisfaction of the conditions referred to in this Section 3.2, Meralco and Power Supplier shall issue a joint certification confirming that the Commencement Date has occurred.

3.3 *Scheduled Commercial Operations Date.* Power Supplier covenants that the Plant shall achieve Commercial Operations Date (Site 1) by the later of February 28, 2017 and four (4) months from Commencement Date (the "Scheduled Commercial Operations Date (Site 1)") and Commercial Operations Date (Site 2) within two (2) months from the Commercial Operations Date (Site 1) (the "Scheduled Commercial Operations Date (Site 2)"); provided, that if Power Supplier foresees that it will be able to achieve Commercial Operations Date for either Site at an earlier date, it may give thirty (30) Days' prior notice thereof to Meralco and Meralco may consent to the adjustment of the Commercial Operations Date for that Site, which consent shall not be unreasonably withheld; provided further, that Meralco shall consent to an early occurrence of the Commercial Operations Date only if the coordinating committee of six (6) members, three (3) appointed by each of Power Supplier and Meralco, has been constituted and the said coordinating committee has established the operating procedures for this Agreement.

xxx xxx xxx

3.5 *Excused Delay.* If Power Supplier has, after the Commencement Date, experienced a delay in designing, constructing, testing or commissioning the Site 1 or Site 2, as applicable, or any part thereof as a result or to the extent of any of the following (each, an "Excused Delay Event"):

- (a) any action or inaction or delay in action of any Governmental Authority; or
- (b) the occurrence of an event of Force Majeure,

then the Scheduled Commercial Operations Date shall be extended, Day for Day, by the same period that any Excused Delay Event subsists; provided that Power Supplier has exerted due diligence in achieving Commercial Operations Date according to the original Scheduled Commercial Operations Date and has no contributory negligence with respect to any Excused Delay Event, and provided further, that any such extension or relief (whether occurring before or after the Commercial Operations Date) shall not exceed one hundred eighty (180) Days (the "Excused Delay Limit"). For clarity, it shall not be considered contributory negligence if the Power Supplier has commenced securing relevant and necessary permits within one (1) month from the signing of this Agreement.

3.5.1 At the sole and exclusive option of Power Supplier, Power Supplier may extend the Excused Delay Limit for an additional period of one hundred eighty (180) Days, or such longer period as may be agreed upon by the Parties, on the condition that Power Supplier provides Replacement Energy to Meralco at the WESM price or Contract Price, whichever is lower, during the period beyond the Excused Delay Limit.

xxx

3.5.2 If Power Supplier fails to provide Replacement Energy as contemplated in Section 3.5.1, Meralco will be deemed to sourced *[sic]* the Replacement Energy, subject to reimbursement by Power Supplier of the difference between (i) the price of Replacement Energy and (ii) the Contract Price. xxx

xxx xxx xxx

5.2. Upon receipt of the ERC Final Approval, Meralco shall provide a copy of such ERC Final Approval to Power Supplier. Power Supplier shall have ten (10) Business Days from the date of receipt from MERALCO of such ERC Final Approval to notify Meralco in writing that (i) it accepts such ERC Final Approval or (ii) it does not accept the ERC Final Approval, stating the grounds for non-acceptance.

5.3. In case of Power Supplier's non-acceptance, Power Supplier shall be free to: (i) file with the ERC a motion for reconsideration or (ii) terminate this Agreement upon sixty (60) days prior written notice to Meralco; provided that, any order on a motion for reconsideration shall be treated as an ERC Final Approval for purposes of the processes under this Article 5; provided further that, if the motion for reconsideration is denied by the ERC, or granted by the ERC but still with any material term or condition that is not acceptable to Power Supplier, Power Supplier may terminate this Agreement upon sixty (60) days prior written notice to Meralco.

xxx xxx xxx

6. OBLIGATIONS, DELIVERIES & CONTRACT PRICE

6.1. *Obligations of the Parties.* Subject to the terms and conditions of this Agreement, the Power Supplier shall sell and deliver, and Meralco shall pay for, the Product up to the Maximum Hourly Generation, at the Contract Price.

6.1.1. *Flexibility of Source.* The Parties agree that Power Supplier shall supply the Product solely from the Plant, provided that should the Plant not be able to generate the Maximum Hourly Generation on an hourly basis from 9:01 A.M. to 5:00 P.M., Monday to Friday, the difference between actual generation and the Maximum Hourly Generation may be sourced, at Power Supplier's sole option, from any of the Other Plants at the Contract Price, in accordance with Section 6.4 and Section 7, and provided that the Power Supplier should give first priority to Meralco for energy sourced from the Other Plants.

xxx

6.1.3. *Sale to Third Parties.* During the Term of this Agreement, and unless otherwise expressly stipulated herein, the Power Supplier commits to sell and deliver to Meralco energy up to the Maximum Hourly Generation in accordance with Section 6.1.1. Subject to existing ERC rules and regulations, Power Supplier shall be free to sell and deliver to the WESM or third parties additional energy produced by the Plant or Other Plants in excess of the Maximum Hourly Generation at a given hour, or energy within Maximum Hourly Generation but which Meralco is unable to purchase or accept.

6.2. *Take and Pay Contract.* Subject to circumstances of Force Majeure under this Agreement and Section 6.1.1, Meralco shall accept all electric energy deliveries from Power Supplier up to the Maximum Hourly Generation and Meralco shall pay the corresponding Contract Price for all electric energy (in kWh or MWh) declared by the Power Supplier at the WESM for Meralco, which quantity shall be based on the readings of Meralco's Billing Meter.

6.3. *Contract Price.* The Contract Price is PhP5.39 per kWh, which shall be subject to two percent (2%) annual escalation, *provided*, that the Franchise and Benefits to Host Communities Charge, if any, shall not form part of and is excluded from the computation of the Contract Price. For clarity, all taxes pertaining to the Power Supplier, including but not limited to the FBHC Charge, shall be shouldered by, and be for the sole account of, the Power Supplier. Any violation of this Section shall be a ground for termination of this Agreement upon prior notice.

xxx

6.6. *Extension of Term due to Failure to Receive Energy Deliveries.* Except as provided in Section 6.7 (Force Majeure), the failure by Meralco to receive energy deliveries for a continuous period of twenty-four (24) hours as a result of unscheduled maintenance, or an extension of a scheduled maintenance, of Meralco's distribution

facilities shall result in the adjustment or extension of the Term of this Agreement equivalent to the aggregate period for which Meralco failed to receive such energy deliveries; provided, that in no event shall such extension of the Term of this Agreement be less than a Day or the aggregate period of such extension exceed one hundred eighty (180) Days; xxx

xxx xxx xxx

8. ASSIGNMENT OR TRANSFER OF PRODUCT

8.1. Subject to existing laws and rules and regulations, Meralco shall be entitled to assign, transfer, designate, delegate or allocate (collectively in this context, "Transfer") its rights and obligations to purchase a portion of the Product that is no longer required by Meralco as a result of Retail Competition and Open Access or a reduction in demand of its captive customers, to any of its business segments or wholly-owned Affiliates, that is engaged in generation, distribution, supply or aggregation of electricity and is a registered member of the WESM, without the prior consent of the Power Supplier.

Meralco shall also be entitled to Transfer its rights and obligations to purchase a portion of the Product that is no longer required by Meralco as a result of Retail Competition and Open Access or a reduction in demand of its captive customers to any other Person, subject to the prior written consent of Power Supplier, which consent shall not be unreasonably withheld, delayed or conditioned, it being understood that withholding consent would not be considered unreasonable if the proposed Transfer would be contrary to existing laws and rules and regulations and/or the reasonable requirements of Finance Parties under the Finance Documents, as evidenced by a written confirmation by the relevant Finance Parties. xxx

Meralco shall endeavor to cooperate with Power Supplier by providing documents and information in relation to the Transfer as may be reasonably required by the Finance Parties.

xxx

8.3. *Reduction in Product.* Meralco shall, from time to time, be entitled to a reduction in Product (the "Reduction in Product") equivalent to the reduction in the demand of its captive customers by reason of the enforcement of Retail Competition and Open Access, Renewable Energy Law and other Applicable Laws. For this purpose, Meralco shall give a written notice to Power Supplier of such reduction at least five (5) Days prior to the first day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change. Upon receipt by Power Supplier of such written notice, Meralco shall cease to have any rights and obligations under this Agreement in respect of such Reduction in Product.

xxx xxx xxx

9.3. *WESM and Line Rental Charges.* All WESM charges attributable to Power Supplier (e.g., WESM Market Fees) are not to be passed on to Meralco. If the Product or a portion thereof is delivered from one of the Other Plants, the line rental charges that will form part of the price that Meralco will charge to its customers shall be the lower of (i) the actual line rental charge for the applicable Other Plant; and (ii) the line rental charge for the applicable Site, provided that line rental charges in excess of ₱0.20 per kWh, reckoned on a monthly basis, shall be for the account of Power Supplier.

XXX XXX XXX

12.7. *Change in Circumstances.* The Parties shall faithfully perform all their obligations in accordance with the provisions of this Agreement as well as the Applicable Laws. In case of any (i) amendment, modification or change in Applicable Laws, (ii) any decision or order by the ERC or any court or government agency which provides for a new or change in the interpretation of Applicable Laws and ERC rules and regulations after the date of this Agreement, or (iii) Change in Circumstances that would prevent either or both Parties from performing or continuing to perform their obligations under this Agreement, or when such change in Applicable Law, or Change in Circumstance or the issuance of such decision or order would cause irreparable damage or would adversely affect the financial viability of either Party, the Parties shall meet and negotiate in good faith within ten (10) days from the effectivity of said amendment, modification, or change or issuance of decision or order, to mutually address and agree on appropriate solutions to the problem. Failure to arrive at a solution in accordance with this Section within sixty (60) Days from the commencement of such negotiations shall be a ground for termination of this Agreement upon prior notice.

For the avoidance of doubt, neither Party shall utilize battery storage in respect of their rights and obligations under this Agreement without prior notice and agreement of the other Party. For this purpose, the use of battery storage shall be deemed a Change in Circumstance.

XXX XXX XXX

14. **TERMINATION**

The Party not in Material Breach may terminate the Agreement, upon sixty (60) Days prior written notice to the other Party, for any Material Breach that remains unremedied after ninety (90) Days (the "**Curing Period**"), subject to Section 11.4 (Liquidated Damages). During such Curing Period, in the event of Material Breach on the part of the Power Supplier, Power Supplier shall deliver Replacement Energy to Meralco at the WESM price or Contract Price, whichever is lower, if the Power Supplier is unable to supply the Product from the Plant; while in the event of Material Breach on the part of Meralco,

Power Supplier may opt to sell the Product to the WESM or third parties subject to existing ERC rules and regulations.

For clarity, the Parties agree that any Material Breach with respect to one Site shall be considered independent of, and shall not affect, the other Site. For this purpose, should the Material Breach be limited to one Site, the Party not in Material Breach may terminate this Agreement (and otherwise enforce any rights arising from such Material Breach) only with respect to the Site affected by Material Breach."

10. Based on the foregoing, given a certain set of assumptions, the annual effective rate under the PSA is PhP5.39 per kWh (at plant gate), as shown in the rate impact analysis below:

SPTC PSA - Rate Impact (YEAR 2017)					
BILLING COMPONENT	UNIT	BASE RATE ^[a]	BILLING DETERMINANT ^[b]		AMOUNT (PHP)
Energy Payment					
Contract Price	(Php/kWh)	5.3900	98,550,000	(kWh)	531,184,500.00
TOTAL PAYMENT	(Php)				531,184,500.00
Effective Rate at Plant Gate	(Php/kWh)				5.3900
WESM Line Rental Rate ^[c]	(Php/kWh)				0.2000
Delivered Rate	(Php/kWh)				5.5900
Effective Cost at WESM Price ^[d]	(Php/kWh)				9.4421
Increase / (Decrease) over WESM Price	(Php/kWh)				(3.8521)
Meralco Captive Energy Demand ^[e]	(kWh)				32,232,597,988
Increase / (Decrease) in Generation Cost	(Php)				(379,623,886.19)
Increase / (Decrease) in Generation Cost	(Php/kWh)				(0.0118)

Assumptions:

- ^(a) Base Rates as set forth in Schedule 1 of the PSA
- ^(b) Energy billing determinant based on 50,000 kW contract capacity and 22.50% solar plant capacity factor
- ^(c) Line Rental rate for SPTC is based on maximum allowable value as stated in the PSA
- ^(d) Cost if equivalent volume of SPTC was sourced from the WESM based on forecast weighted average of Jan - Dec 2017 hourly prices from 7am to 5pm
- ^(e) Meralco Captive Energy Demand based on 2017 fore cast

11. Also, as seen in the rate impact above, given a similar set of assumptions, the simulated delivered price under the PSA would be PhP5.59 per kWh, resulting in a reduction of MERALCO's generation charge by about PhP0.0118 per kWh.

12. It bears emphasis that, as previously mentioned, based on MERALCO's foreseen high demand during the summer months of 2017 and succeeding years, there is an urgent need for the final approval of the PSA considering a significant peaking capacity deficit, as well as possible occurrences of scheduled maintenance shutdowns and forced outage of power plants.

13. Verily, this Honorable Commission's approval of the PSA will send strong signals to renewable or solar energy generation projects in the Philippines, and thus, set the pace for infusion of similar investments by the private sector.

14. In support of this Joint Application, the Judicial Affidavit of **MR. CIPRINILO C. MENESES**, Head of MERALCO's Energy Sourcing Office, is attached hereto as **ANNEX "B."**

15. Likewise, in support of the instant Joint Application and pursuant to Rule 6 (Pre-Filing Requirements) of the Rules of Practice and Procedure of this Commission, the Applicants provide the following documents, which underwent the pre-filing conferences and pre-filing marking of annexes on 13 January 2017 and 9 February 2017 with this Honorable Commission:

Description of Document	Annex
MERALCO's Articles of Incorporation	C
MERALCO'S By-Laws	D
MERALCO's latest General Information Sheet (GIS)	E
MERALCO's Demand Side Management program	F
MERALCO's Distribution Development Plan; with Average Daily Load Curve scenarios; and Supply and Demand Scenario *	G G-1 G-2*
Write-up on Non-Applicability of National Power Corporation (NPC) Certification	G-3
Documents showing MERALCO's conduct of a Competitive Selection Procurements (CSP)	H and series
SPTC's Articles of Incorporation	I
SPTC By-laws	J
Write Ups on Non-Applicability or Pendency of the Following: <ul style="list-style-type: none"> • SPTC Shareholders' Agreement • BOI Certificate of Registration with attached Terms and Conditions • Certificate of Compliance (COC) issued by the Energy Regulatory Commission Commission pursuant to the Guidelines for the issuance of COC for Generation Companies/Facilities • Certification from DOE regarding the Philippine Development Plan or Certificate of Endorsement 	K and series

<ul style="list-style-type: none"> • Certificate of Confirmation of Commerciality by an RE Developer and after due confirmation by the DOE • Details regarding transmission projects or grid connection projects necessary to complement the proposed generation capacity; Identification of the parties that will develop and/or own such facilities; any cost related to such project; and specification of the parties responsible for recovery of any costs related to such projects <ul style="list-style-type: none"> ○ Meralco Grid Interconnection Scheme and Map of Transmission Line Route ○ Distribution Impact Study and Map of Proposed Interconnection Scheme • Copy of Related Agreements (like Transmission Wheeling Contract, IPPA Agreement, EPC Contract, O&M Contract, Wholesale Aggregator Agreement) 	
SPTC's latest General Information Sheet (GIS)	L
SPTC's Corporate Structure	L-1
Project Feasibility Studies *	M-1* and M-2*
Executive Summary of the PSA	N
Source of Funds/ Financial Plans *	O*
Generation Rate and Deviation *	P*
All relevant technical and economic characteristics of the generation capacity; Installed Capacity, Mode of Operation, Dependable Capacity; Auxiliary load; Scheduled and Unscheduled Outages; Basis/Justification of day used	Q
SPTC's Latest and Complete Set of Audited Financial Statements of the Generation Company (Balance Sheet, Income Statement, and Statement of cash flows)	R
Environmental Compliance Certificates (ECCs) issued by the Department of Environment and Natural Resources (DENR)	S-1 and S-2
Solar Energy Service Contract issued by the Department of Energy	T

** Subject of the Motion for Confidential Treatment of Information.*

ALLEGATIONS IN SUPPORT OF MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

16. With respect to the document marked and attached as **ANNEX "G-2"** (Supply and Demand Scenario of MERALCO), MERALCO respectfully moves that it be treated as confidential and not be disclosed to any party for the reason that it contains information which are commercially sensitive in nature and may affect price offers that

MERALCO may receive under a power supply agreement. In addition, such information falls within the bounds of valuable proprietary interest under "trade secrets" which are entitled to protection under the Constitution, statutes, and rules and regulations.

17. With respect to the documents marked as **Annexes "M-1", "M-2", "O", and "P"**, SPTC respectfully moves that they be treated as confidential and not be disclosed to any party since these documents contain numbers, methodology, and calculations which provide valuable information and insight on how SPTC arrives at its power generation rate and would accordingly reflect SPTC's bidding strategy for distribution utilities undertaking competitive process for the selection of their power suppliers, and SPTC's trading in the WESM. They also contain information regarding the debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost, among other information. All these information are considered classified business information by SPTC, which, if released to the public including its competitors, would place the latter at an undue advantage against SPTC. In addition, such information falls within the bounds of valuable proprietary interest under "trade secrets" which are entitled to protection under the Constitution, statutes, rules and regulations.

18. Under Rule 4 of the ERC Rules of Practice and Procedure, the Honorable Commission may, upon request of a party and determination of the existence of conditions, which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such provision, the Applicants respectfully pray for the issuance of a protective order declaring **Annexes "G-2," "M-1," "M-2," "O," and "P"** as confidential information, since the Applicants intend to present them as evidence in the instant Application.

19. Information, which falls within the definition of a trade secret, as defined by jurisprudence is clearly information which merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure. **Annexes "G-2," "M-1," "M-2," "O," and "P"** should therefore be entitled to the protection of confidential information provided under Rule 4 of the ERC Rules of Practice and Procedure.

20. The Applicants hereby submit one (1) copy of each of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential."

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Commission,

(i) **ISSUE** an Order treating **Annexes "G-2," "M-1," "M-2," "O," and "P"** as confidential information pursuant to Rule 4, Section 1 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof; and

(ii) after hearing on the merits, render a Decision **APPROVING** the PSA between Applicants MERALCO and SPTC.

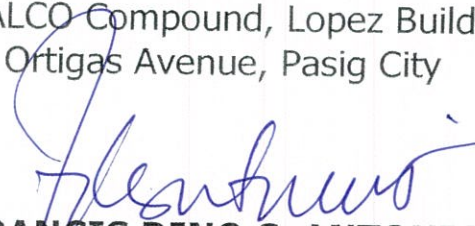
Pasig City, 9 February 2017.

MANILA ELECTRIC COMPANY

Co-Applicant

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By:



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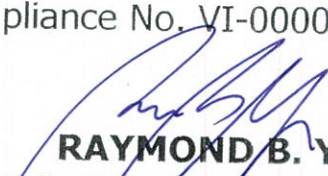
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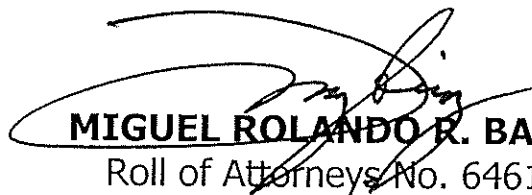
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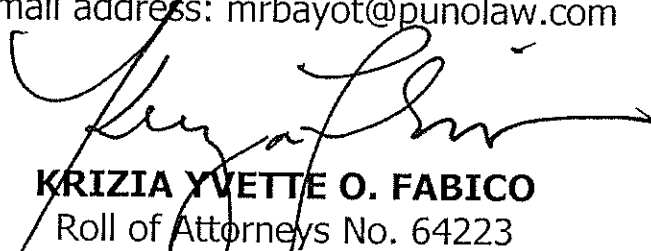
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REPUBLIC OF THE PHILIPPINES)
CITY OF PASIG)s.s.

VERIFICATION
AND CERTIFICATION OF NON-FORUM SHOPPING

I, **JOSE RONALD V. VALLES**, Filipino, of legal age, married, with office address at 7th Floor, Lopez Building, MERALCO Compound, Ortigas Avenue, Barangay Ugong, Pasig City, after being sworn in accordance with law, hereby depose and say that –

1. I am the Vice President and Head, Regulatory Affairs Office, of Applicant Manila Electric Company ("MERALCO"). In such capacity, I have caused the preparation and filing of the foregoing Application;

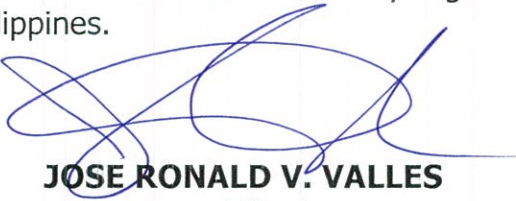
2. Moreover, I have been authorized by the Board of Directors of MERALCO to certify that Applicant has not heretofore filed any similar action, pleading or application involving the same issues before the Supreme Court, the Court of Appeals or any other lower courts or administrative bodies. A copy of the Secretary's Certificate authorizing me to cause the preparation of the instant Application and sign this Verification and Certification is attached hereto as **ANNEX "U"**;

3. I have read and understood the allegations contained therein and the same are true and correct based on my personal knowledge and authentic records made available to me in the ordinary course of business of MERALCO;

4. To the best of my knowledge, no similar action or proceeding is pending before the Supreme Court, the Court of Appeals, the lower courts or administrative bodies;

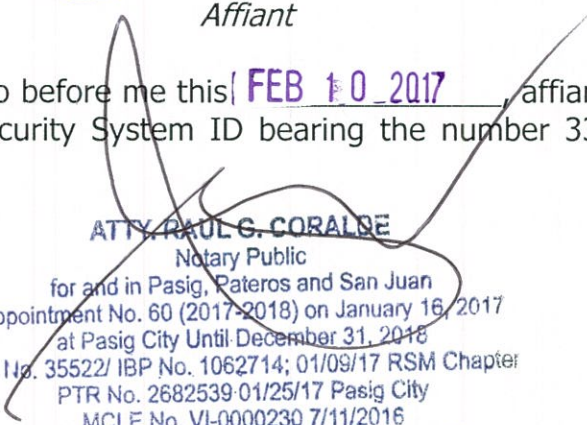
5. If I should hereafter learn that a similar action has been filed before the Supreme Court, the Court of Appeals, the lower courts or administrative bodies, I undertake to report such fact to this Honorable Commission within five (5) days from notice of such fact.

IN WITNESS WHEREOF, I have hereunto affixed my signature this FEB 10 2017 at Pasig City, Philippines.


JOSE RONALD V. VALLES
Affiant

SUBSCRIBED and SWORN to before me this FEB 10 2017, affiant having exhibited to me his Social Security System ID bearing the number 33-10900088.

Doc. No. 102 ;
Page No. 22 ;
Book No. XXXI ;
Series of 2017.


ATTY. PAUL G. CORALDE
Notary Public
for and in Pasig, Pateros and San Juan
Appointment No. 60 (2017-2018) on January 16, 2017
at Pasig City Until December 31, 2018
Rol No. 35522/ IBP No. 1062714; 01/09/17 RSM Chapter
PTR No. 2682539-01/25/17 Pasig City
MCLE No. VI-0000230 7/11/2016
8th Floor Lopez Bldg., Ortigas Avenue, Pasig City



ORTIGAS AVENUE, PASIG CITY
0300 PHILIPPINES

Annex "U"

SECRETARY'S CERTIFICATE

I, WILLIAM S. PAMINTUAN, a duly elected, qualified and incumbent Assistant Corporate Secretary of the Manila Electric Company (MERALCO), a corporation duly organized and existing under and by virtue of the laws of the Philippines, do hereby certify that:

At the regular meeting of the Board of Directors of the Company duly convened and held on September 26, 2016, at which meeting a quorum was present, acted throughout and voted, the following resolutions were approved and said resolutions are in full force and effect on the date hereof:

"RESOLVED, that the Board of Directors of the Manila Electric Company Electric Company (MERALCO) hereby authorizes MERALCO to proceed with the Price Challenge, with respect to the proposal of Solar Philippines Tanauan Corporation (Solar Phils.) as the original proponent, and execute the relevant Power Supply Agreement (PSA) after the conduct of a competitive selection process;

"RESOLVED, FURTHER, that the following officers, namely Messrs. MANUEL V. PANGILINAN, Chairman of the Board, OSCAR S. REYES, President & Chief Executive Officer, ALFREDO S. PANLILIO, Senior Vice President, Head, Customer Retail Services and Head, Corporate Communication and RONNIE L. APEROCHO, First Vice President & Head, Networks, are hereby directed and empowered, for and in behalf of the Company, to sign, execute and deliver any contract, agreement, instrument, and other documents which may be deemed necessary or appropriate for the purpose, and to perform or execute all other acts and deeds as may be necessary or appropriate to carry out or accomplish the said purpose;

"RESOLVED, FURTHERMORE, that the Board of Directors authorize, as it hereby authorizes, MERALCO, through Atty. JOSE RONALD V. VALLES, Vice President and Head, Regulatory Affairs, or any lawyer or employee of MERALCO that any of them may designate, name or appoint:

- (1) To file the appropriate application with the Energy Regulatory Commission (ERC) for the approval of the Power Supply Agreement between MERALCO and the Winning Power Supplier, for the supply and delivery of energy to MERALCO;
- (2) to sign, execute, and deliver in connection therewith the necessary pleadings, motions, verification, affidavit of merit, certificate of non-forum shopping, powers of attorney, and other instruments as may be necessary or proper; and
- (3) To designate, name, and appoint, a representative or an attorney-in-fact in behalf of the Company during the preliminary conference, pre-trial, trial, execution and all other stages of or incidents related to the case, proceeding or action; to negotiate, enter into, and agree

to an amicable settlement, make admissions or stipulations of fact and/or documents; and to perform and execute any and all actions and such other matters as may aid in the prompt disposition of such case, proceeding or action."

WITNESS THE SIGNATURE of the undersigned as such officer of the Company and its corporate seal hereunto affixed on this 12 JAN 2017 day of January 2017.


WILLIAM S. PAMINTUAN
 Assistant Corporate Secretary

SUBSCRIBED AND SWORN to before me this 12 JAN 2017 day of January 2017, affiant exhibited to me his Taxpayer Identification Number (TIN) 146-473-562, issued by the Bureau of Internal Revenue (BIR) as his competent evidence of identity.

Doc. No. 241 ;
 Page No. 50 ;
 Book No. XV ;
 Series of 2017.


 ATTY. CORNELIO MANUEL III C. DICCIAN
 NOTARY PUBLIC
 PASIG, SAN JUAN, TAGUIG AND PATEROS
 ISSUED ON FEBRUARY 1, 2016 AT PASIG CITY
 APPOINTMENT NO. 83 (2016-2017)
 ROLL NO. 45053 / IBP NO. 1020812/01-06-16 RSM CHAPTER
 PTR NO. 1473404/01-21-16 PASIG CITY
 8TH FLOOR LOPEZ BLDG., ORTIGAS AVENUE, PASIG CITY

REPUBLIC OF THE PHILIPPINES)
MAKATI CITY)s.s.

**VERIFICATION AND CERTIFICATION
OF NON-FORUM SHOPPING**

I, **Leandro Antonio L. Leviste**, Filipino, of legal age, and with office address at 2nd Floor LPL Towers, 112 Legaspi Street, Makati City, after having been sworn in accordance with law depose and state:

2. I am the President and duly appointed attorney-in-fact of Solar Philippines Tanauan Corporation ("**SPTC**"), the Co-Applicant in this case.

3. I caused the preparation of the foregoing Joint Application. I have read the allegations therein and certify that the same are true and correct of my own knowledge and belief and based on authentic documents made available to me in the ordinary course of business of SPTC.

4. Moreover, I have been authorized by the Board of Directors of SPTC to certify that Applicant has not heretofore filed any similar action, pleading or application involving the same issues before the Supreme Court, the Court of Appeals or any other lower courts or administrative bodies. A copy of the Secretary's Certificate authorizing me to cause the preparation of the instant Joint Application and sign this Verification and Certification is attached hereto.

5. To the best of my knowledge, SPTC has not commenced any action or proceeding involving the same issues before any other tribunal or quasi-agency, and to the best of my knowledge, no such action or proceeding is pending involving the same issues and parties.

6. If I should hereafter learn that the same or similar petition or proceeding has been filed or is pending I undertake to promptly inform the Honorable Commission within five (5) days therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand on **9** February 2017 in Makati City, Philippines.



Leandro Antonio L. Leviste
Affiant

SUBSCRIBED and SWORN to before me on this **9th** day of February 2017, at Makati City, by Affiant who has satisfactory proven to me his identity through his Passport No. EB5709403 issued at DFA Manila on 21 June 2012, valid until 20 June 2017, and that he is the same person who personally signed before me the foregoing Verification and Certification of Non-Forum Shopping and acknowledged that he executed the same.

Doc. No. 32;
Page No. 7;
Book No. I;
Series of 2017.


IRENE MAE B. ALCOBILLA
Notary Public for and in the City of Makati
Appointment No. M-131 (2017-2018)
2/F LPL Towers, 112 Legaspi Street,
Makati City 1229
Attorney's Roll No. 64106
PTR No. 5926625; 01/12/2017, Makati City
IBP No. 1007266, Lifetime/04-16-2015, Antique
MCLE Compliance No. V-0019617; 04/22/2016

Republic of the Philippines)
Makati City) s.s.

SECRETARY'S CERTIFICATE

I, **HAZEL IRIS P. LAFUENTE**, of legal age and the duly elected and qualified Corporate Secretary of **Solar Philippines Tanauan Corporation**, a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines (the "Corporation"), with office address at 2F LPL Towers, 112 Legaspi Street, Makati City, after having been duly sworn according to law, hereby certify that:

At the special meeting of the Board of Directors of the Corporation on 22 December 2016 where a quorum was present, the following resolutions were duly passed and approved:

RESOLVED, that **Solar Philippines Tanauan Corporation** be, and is hereby, authorized to file and pursue the appropriate application with the Energy Regulatory Commission (ERC) for the approval of the Power Supply Agreement dated 22 December 2016 it executed with Manila Electric Company (Meralco) for the supply and delivery of energy to Meralco;

RESOLVED FURTHER, that the Board of Directors authorizes any of the following officers of the Corporation: (a) **Leandro Antonio L. Leviste**, President (b) **Roy D. Oyco**, Chief Operating Officer, or (c) **Hazel Iris P. Lafuente**, Chief of Staff, to execute the foregoing authorization and perform the followings acts:

1. To sign, execute, and deliver in connection with the application the necessary pleadings, motions, verifications, affidavit of merit, certificate of non-forum shopping, powers of attorney, and other instruments as may be necessary or proper; and
2. To designate, name and appoint a representative or an attorney-in-fact in behalf of the Corporation during the preliminary conference, pre-trial, trial, execution and all other stages of or incidents related to the case, proceeding or action; to negotiate, enter into, and agree to an amicable settlement, make admission or stipulations of fact and/or documents; and to perform and execute any and all actions and such other matters as may aid in the prompt disposition of such case, proceeding or action.

RESOLVED FINALLY, that the Board of Directors appoints **Puno and Puno Law Offices**, its Partner, **Atty. John Maynard G. Atotubo**, or any of its lawyers to represent as counsel for the Corporation for this purpose and sign the application for and in its behalf.

These resolutions have not been revoked, amended or modified and remain valid and binding on the Corporation.

IN WITNESS HEREOF, I have hereunto affixed my signature this 31st day of January 2017 at Makati City.


HAZEL IRIS P. LAFUENTE
Corporate Secretary

SUBSCRIBED AND SWORN TO before me this 31st day of January 2017
at Makati City, affiant exhibiting to me her Passport No. EC2863170, issued at DFA Manila on 28 November 2014 and valid until 27 November 2019.

Notary Public

Doc. No.: 6;
Page No.: 2;
Book No.: I;
Series of 2017.


IRENE MAE B. ALCOBILLA
Notary Public for and in the City of Makati
Appointment No. M-131 (2017-2018)
2/F LPL Towers, 112 Legaspi Street,
Makati City 1229
Attorney's Roll No. 64106
PTR No. 5926625; 01/12/2017, Makati City
IBP No. 1007266, Lifetime/04-16-2015, Antique
MCLE Compliance No. V-0019617; 04/22/2016

A
"PSA"

Power Supply Agreement of Meralco and SPTC

POWER SUPPLY AGREEMENT

ANNEX " A "

This POWER SUPPLY AGREEMENT is entered into by and between:

Manila Electric Company (hereinafter "**Meralco**"), a corporation duly organized and existing under the laws of the Republic of the Philippines, with its address at Ortigas Avenue, Brgy. Ugong, Pasig City, Metro Manila;

and

Solar Philippines Tanauan Corporation (hereinafter "**Power Supplier**"), a corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal place of business at 112 Legaspi Street, Makati City, Metro Manila.

Each of the above-mentioned parties to this Agreement are referred to as a "**Party**," and together, the "**Parties**".

RECITALS

- A. Meralco is a distribution utility operating an electric power distribution system in Metro Manila and the surrounding provinces on the island of Luzon in the Philippines by virtue of its legislative franchise under Republic Act No. 9209 (the "**Franchise**").
- B. Power Supplier shall construct, own, operate, manage and maintain a solar power plant located in the Municipality of Tanauan, Batangas and its surrounding areas capable of supplying 25 MW (AC, net) and another solar power plant located in the Municipality of Naic, Cavite and its surrounding areas capable of supplying 25 MW (AC, net), (the "**Original Sites**"), or such other location as determined by Power Supplier (the "**Alternative Site**") under the terms and conditions contained herein.

In all cases, the Plant (as defined below) shall be connected to Meralco's distribution system.
- C. Meralco and Power Supplier acknowledge that the effectivity of this Agreement shall be subject to a competitive selection process.
- D. Power Supplier desires to supply and sell to Meralco, and Meralco desires to purchase, the Product (as defined below), on the terms and conditions contained herein.
- E. Meralco and Power Supplier desire to define in this Agreement their respective rights and obligations with respect to the sale and purchase of the Product.

NOW, THEREFORE, in view of the foregoing and in consideration of the mutual covenants and agreements set out in this Agreement, the Parties hereby agree, as follows:

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1. DEFINITION OF TERMS

The following terms, when used in this Agreement, shall have the following meanings:

Acceptable Bank has the meaning given to it in Section 4.1.

Acceptance Date means the date of receipt by Meralco of the written acceptance by Power Supplier of the ERC Final Approval, or the lapse of the period provided in, or otherwise in accordance with, Section 5.4.

Affiliate shall mean, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with, such Person.

Agreement means this Power Supply Agreement, including its appendices, attachments, and schedules, as amended from time to time in accordance with this Agreement.

Alternative Site has the meaning given to it in the Recitals.

Annual Regular Scheduled Maintenance has the meaning given to it in Section 6.6.

Applicable Laws means (i) the Philippine Constitution, (ii) all laws, statutes, treaties, rules, codes, ordinances, regulations, certificates, decisions, orders, memoranda, circulars, decrees, resolutions, directives, rulings, interpretations, approvals, licenses, and permits of any Governmental Authority, including any legislative franchise granted to Meralco, and (iii) judgments, decrees, injunctions, writs, orders or like actions of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency that are binding on a Party as they may be amended, supplemented, replaced or reinterpreted by a duly authorized Governmental Authority or otherwise modified from time to time.

Arbitration Rules has the meaning given to it in Section 13.2.

Bilateral Contract Quantities or BCQ refers to the quantity of electrical energy as declared by Power Supplier at the WESM for Meralco.

Billing Meter means the electricity meter installed by the Metering Services Provider at the asset boundary between each Site or Other Plants and Meralco's electric distribution system or the transmission system (as applicable) to measure the injection of electric energy from each Site or Other Plants.

Billing Period means the period beginning on the twenty-sixth (26th) day of a calendar month and ending on the twenty-fifth (25th) day of the succeeding calendar month; provided, however, that the first Billing Period after the Commercial Operations Date shall be the period beginning on the Commercial Operations Date and ending on the twenty-fifth (25th) day of the calendar month on which the Commercial Operations Date occurred, or the next succeeding calendar month if the Commercial Operations Date falls after the twenty-fifth; provided, finally, that the last Billing Period shall be the period beginning immediately after the end of the next to last Billing Period of the Term and ending on the last day of the Term, or if this Agreement is terminated earlier in accordance with the terms hereof, until the date of termination.





Business Day means any day from Monday to Friday on which banking institutions are open for the transaction of business in Pasig City or Makati City, as the context may require.

Change in Circumstances means the changes set out in Section 12.7.

Commencement Date has the meaning given to it in Section 3.2.

Commercial Operations Date or **COD** means the Commercial Operations Date (Site 1) and/or Commercial Operations Date (Site 2), as appropriate.

Commercial Operations Date Certificate (Site 1) means a certification from the EPC Contractor attesting to the occurrence of commercial operations for Site 1.

Commercial Operations Date Certificate (Site 2) means a certification from the EPC Contractor attesting to the occurrence of commercial operations for Site 2.

Commercial Operations Date (Site 1) means the date that the conditions set out in Section 3.4.1 (other than the Commercial Operations Date Certificate Site 1) have been satisfied and Site 1 of the Plant shall have consequently entered into commercial operation.

Commercial Operations Date (Site 2) means the date that the conditions set out in Section 3.4.2 (other than the Commercial Operations Date Certificate Site 2) have been satisfied and Site 2 of the Plant shall have consequently entered into commercial operation.

Contract Price means the price specified under Section 6.3 payable by Meralco in Philippine Pesos to Power Supplier for the purchase of the Product.

Contract Year means any successive twelve (12)-month period commencing on the Commercial Operations Date; provided, however, that if this Agreement terminates before the end of any such twelve (12)-month period, the Contract Year with respect to such year shall mean that portion of the year commencing on the day immediately succeeding the end of the immediately preceding Contract Year and ending on the last day of the Term or the date of termination, as applicable.

Control shall mean, in respect of any company or corporation, the ownership (whether directly or indirectly) of more than fifty percent (50%) of the total issued voting share capital of that company or corporation, or the ability to otherwise direct the business and affairs of that company or corporation or the ability to appoint a majority of the members of the board of directors or similar corporate body or bodies of that company or corporation through the ownership of securities with voting power or otherwise, and the terms Controls and Controlled shall have correlative meanings.

Day means a 24-hour period beginning 0001H and ending 2400H Philippine time. Unless expressly stated otherwise, a Day shall refer to a calendar day.

Delivery Point means the location of the Billing Meter.

Department of Energy or **DOE** is the department established under Republic Act No. 7638 otherwise known as the Department of Energy Act of 1992.

Dispute has the meaning given to it in Section 13.1.

Emergency Scheduled Maintenance has the meaning given to it in Section 6.6.

EPIRA means Republic Act No. 9136, otherwise known as "The Electric Power Industry Reform Act of 2001".

EPC Contractor is the engineering, procurement and construction contractor of Power Supplier.

Equity Interest means, at any date, the ownership rights as shareholders of Power Supplier.

ERC means the Energy Regulatory Commission as created under the EPIRA, or its successor agency.

ERC Application has the meaning given to it in Section 5.1.

ERC Final Approval means the decision issued by the ERC on the application filed jointly by the Parties, seeking approval of this Agreement

Excused Delay Event has the meaning given to in Section 3.5.

Excused Delay Limit has the meaning given to it in Section 3.5.

Finance Documents means the agreements for making available any loan, credit facility, notes (including floating rate notes and commercial paper), bonds, subordinated debt or other funds other than equity or equity-related funds and including working capital and any letters of credit (and related agreements), security agreements, swap agreements, any other hedging agreements, and any other documents, relating to the financing or refinancing of the development, construction, acquisition, ownership, operation and maintenance of each of the Plant.

Finance Parties means the creditors and their representatives that are parties to the Finance Documents.

Force Majeure is an event which cannot be foreseen or which though foreseen, cannot be avoided. The event must render it impossible for a Party to fulfill its obligation in a normal manner despite the exercise of due care. Force Majeure shall not excuse either Party from exercising due care to minimize its effects. Force Majeure includes a storm, typhoon, lightning, flood, earthquake, tsunami, fire, war, rebellion, insurrection, sabotage, acts of terrorism, riot, naval or other blockade, labor disturbance, civil unrest, and other events which are fortuitous or entirely beyond the control of either or both Parties, including, for the avoidance of doubt, an act or omission of the System Operator that results in (i) Curtailment [as defined by the OATS Rules] of the Plant; or (ii) a failure or inability of the Plant to connect to the grid or to deliver or transmit energy.

Franchise shall have the meaning given to it in the Recitals.

Franchise and Benefits to Host Communities Charge or FBHC Charge means the financial benefits due to the host local government unit as mandated by the DOE's Energy Regulations 1-94.

Governmental Authority means the Republic of the Philippines, any province, city, municipality or other political subdivision, agency, authority, board, bureau, commission, court, department, instrumentality, or any other governmental authority having jurisdiction over the Parties, their respective property and assets and the performance of obligations under this Agreement.

kWh means kiloWatt-hour.

Longstop Date means the date falling six (6) months after the filing at the ERC of the ERC Application.

Market Operator means the Person tasked with operating and administering the WESM in accordance with the WESM Rules.

Material Breach shall include:

- a. a breach of the general obligations of the Parties under Sections 6.1, 6.2 and 6.3 of this Agreement, provided that (i) breach under Sections 6.1 and 6.3 results in actual failure of Power Supplier to supply the Product from the Plant and any of the Other Plants, and (ii) breach under Sections 6.1 and 6.2 results in actual failure of Meralco to receive the Product, subject to Sections 6.6 and 6.7, and/or pay for it;
- b. a breach of any representation or warranty under Section 12.1, provided that such breach results in (i) actual failure of Power Supplier to supply the Product from the Plant and any of the Other Plants, or (ii) actual failure of Meralco to receive the Product, subject to Sections 6.6 and 6.7, and/or pay for it, as applicable; provided further that subject to Meralco exerting best efforts to procure the extension or renewal of its Franchise, the expiration and/or non-renewal of the Franchise shall not be considered a Material Breach by Meralco;
- c. the failure of Meralco to make full payment of any final invoice for over thirty (30) days from due date at any time during the Term of this Agreement, subject to the exceptions in Section 7.2.

Maximum Hourly Generation or MHG shall have the meaning given to it in Schedule 1.

Metering Services Provider means the person or entity authorized by the ERC to provide metering services subject to compliance requirements under existing ERC regulations and WESM Rules.

MHG Certification (Site 1) means a certificate from the EPC Contractor of the results of the MHG Test for Site 1.

MHG Certification (Site 2) means a certificate from the EPC Contractor of the results of the MHG Test for Site 2.

MHG Test means the test conducted on a Site, as applicable, to establish the maximum electrical energy (in MWh) that can be generated by such Site over a continuous period of one (1) hour.

MW means MegaWatt.

MWh means MegaWatt-hour.

OATS Rules means the "Rules, Terms and Conditions for the Provision of Open Access Transmission Service", as adopted by the ERC pursuant to ERC Case No. 2006-015RC, including amendments, modifications, exclusions, replacements or re-enactments thereof, as the case may be.

Original Sites has the meaning given to it in the Recitals.

Other Plants means up to a maximum number of three (3) of Power Supplier's solar-powered generation plants from the list in Schedule 2, to be determined by Power Supplier no later than Commercial Operations Date (Site 1) and may not be changed thereafter for the Term of this Agreement.

PDST-R2 means the Philippine Dealing System Treasury Reference Rate for a term equivalent to three months, or if there is no equivalent term, the next longest term closest to three months, as posted or displayed at 1700H (Manila time) on the relevant page of the website of the Philippine Dealing and Exchange Corp.; provided, that if the rate, page or website is not available on the relevant date, the applicable rate shall be the last rate posted or displayed on such page before the rate, page or website became unavailable; provided further, that if the page or website ceases to be available, the applicable rate shall be that rate posted or displayed on such page, website or other relevant service to be agreed upon by the Parties.

Person means any individual, corporation, partnership, association, joint stock company, unincorporated organization, joint venture or Governmental Authority.

Plant means the Original Sites, as may be revised by Power Supplier to the Alternative Site no later than the Commencement Date or the denial, determination of impending denial, or inaction on the land use conversion of the Original Sites, which Alternative Site shall be subject to the conduct anew of a competitive selection process and subject to Section 9.3 and 9.4.

Product means electric energy generated by the Plant, subject to the Maximum Hourly Generation as specified in Schedule 1 hereto.

Reduction in Product has the meaning given to it in Section 8.3.

Regulatory Event has the meaning given to it in Section 12.5.

Relevant Distribution Utility means the electric cooperative, private corporation, government-owned utility or existing local government unit with an exclusive franchise to operate a distribution system at the location of the Plant or Other Plants, as applicable.





Renewable Energy Law means Republic Act No. 9513, or the “Renewable Energy Act of 2008.”

Replacement Energy means electric energy procured from a renewable energy source by Power Supplier consistent with Section 6.4, or procured from WESM by Meralco, as the case may be, and at the WESM price or Contract Price, whichever is lower.

Retail Competition and Open Access or **RCOA** means the system implemented by the ERC allowing qualified persons open and non-discriminatory use of electric distribution systems and the transmission network, subject to the payment of transmission, distribution and wheeling charges and other fees approved by the ERC.

Security Amount means the amount referred to in Section 4.1, subject to the adjustment under Section 4.6 of this Agreement.

Scheduled Commercial Operations Date means the Scheduled Commercial Operations Date (Site 1) and/or Scheduled Commercial Operations Date (Site 2), as appropriate.

Scheduled Commercial Operations Date (Site 1) has the meaning given to it in Section 3.3.

Scheduled Commercial Operations Date (Site 2) has the meaning given to it in Section 3.3.

Site means Power Supplier’s solar power plant in either the Municipality of Naic, Cavite or the Municipality of Tanauan, Batangas, or the Alternative Site, as applicable.

Site 1 means the first Site that satisfies the conditions precedent for COD under Section 3.4.1 (ahead of the second Site).

Site 2 means the second Site that satisfies the conditions precedent for COD under Section 3.4.2 (after the first Site).

System Operator means the Person responsible under the WESM Rules for generation dispatch, the provision of ancillary services, and the operation and control of the transmission grid to ensure its safety, power quality, stability, reliability and security.

Take and Pay means Meralco shall consume all energy produced and delivered by Power Supplier to Meralco and Meralco shall pay the corresponding Contract Price for all electric energy (in kWh or MWh) declared by the Power Supplier at the WESM for Meralco up to the Maximum Hourly Generation, which quantity shall be based on the readings of Meralco’s Billing Meter.

Term has the meaning given to it in Section 2.1.

Term Extension has the meaning given to it in Section 6.7.

WESM means the Wholesale Electricity Spot Market established by the DOE under DOE Circular No. 2006-06-008 pursuant to Section 30 of the EPIRA.

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WESM Market Fees means the charges imposed on Power Supplier by the Market Operator, as approved by the ERC.

WESM Rules means the rules promulgated by the DOE under Department Circular No. 2002-006-003 pursuant to Section 30 of the EPIRA, including amendments, modifications, exclusions, replacements or re-enactments thereof, as the case may be, that establish the basic rules, requirements, procedures and standards that govern the operation of the Philippine electricity market.

2. CONTRACT DURATION

- 2.1. *Term of Agreement.* The Agreement shall commence on Effective Date and shall remain in full force and effect until the last day of the twentieth (20th) Contract Year for Site 2, unless otherwise extended in accordance with Section 2.2 below or earlier terminated in accordance with this Agreement (the “**Term**”); provided, that Section 5.1, Section 11.4, Article 12, Article 13, and Article 14 shall be effective upon Meralco’s issuance of a notice of award to Power Supplier as the winning power supplier after the conduct of a competitive selection process; provided further, that the obligations of Power Supplier and Meralco under this Agreement with respect to sale and purchase of the Product shall be for a duration of 20 years from Commercial Operations Date (Site 1) for Site 1 and 20 years from Commercial Operations Date (Site 2) for Site 2; provided finally, that termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination.
- 2.2. *Extension.* Subject to Applicable Laws and without prejudice to the provisions of Sections 6.6 and 6.7, the Term may be renewed for an additional period up to five (5) years under the same terms and conditions, upon mutual agreement by the Parties at any time during the Term, but no less than one hundred eighty (180) days prior to the end of the Term.

3. EFFECTIVE DATE, COMMENCEMENT DATE AND COMMERCIAL OPERATIONS DATE

- 3.1. *Effective Date.* The Effective Date shall be the date the following conditions precedent have been satisfied or waived by the relevant Party (the “**Effective Date**”):
- (a) Each of the Parties shall have received from the other Party evidence confirming the other Party’s corporate approvals for the execution, delivery and performance of this Agreement;
 - (b) Power Supplier has received from Meralco the documents and evidence set forth in Part 2 of Schedule 3;
 - (c) Meralco has received from Power Supplier the documents and evidence set forth in Parts 1 and 3 of Schedule 3; and

- (d) After the conduct of a competitive selection process with respect to this Agreement, Power Supplier has been declared as the winning power supplier and has been issued a notice of award. This condition precedent may not be waived by either Party.

The representations and warranties of Power Supplier and Meralco contained herein shall be true and correct in all material respects on and as of date of the execution of this Agreement, the Effective Date, the Commencement Date, and the Commercial Operations Date.

Within seven (7) Days after the satisfaction of the conditions referred to in this Section 3.1, Meralco and Power Supplier shall issue a joint certification confirming that the Effective Date has occurred.

3.2. *Commencement Date.* The “**Commencement Date**” shall occur upon the satisfaction of the conditions below:

- (a) The conditions set out in Section 3.1. have been fulfilled;
- (b) Each Party has delivered to the other Party a certification dated no earlier than two (2) Days prior to the proposed Commencement Date to the effect that its representations and warranties contained herein shall be true and correct in all material respects on and as of the Commencement Date; and
- (c) On or before the Longstop Date, (i) the ERC shall have issued an ERC Final Approval, including the pricing structure as set out herein (or as otherwise acceptable to Power Supplier), and (ii) the Acceptance Date has occurred pursuant to Section 5.4.

Within seven (7) Days after the satisfaction of the conditions referred to in this Section 3.2, Meralco and Power Supplier shall issue a joint certification confirming that the Commencement Date has occurred.

3.3 *Scheduled Commercial Operations Date.* Power Supplier covenants that the Plant shall achieve Commercial Operations Date (Site 1) by the later of February 28, 2017 and four (4) months from Commencement Date (the “**Scheduled Commercial Operations Date (Site 1)**”) and Commercial Operations Date (Site 2) within two (2) months from the Commercial Operations Date (Site 1) (the “**Scheduled Commercial Operations Date (Site 2)**”); provided, that if Power Supplier foresees that it will be able to achieve Commercial Operations Date for either Site at an earlier date, it may give thirty (30) Days’ prior notice thereof to Meralco and Meralco may consent to the adjustment of the Commercial Operations Date for that Site, which consent shall not be unreasonably withheld; provided further, that Meralco shall consent to an early occurrence of the Commercial Operations Date only if the coordinating committee of six (6) members, three (3) appointed by each of Power Supplier and Meralco, has been constituted and the said coordinating committee has established the operating procedures for this Agreement.

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3.4 *Commercial Operations Date.* The Plant shall achieve Commercial Operations Date for each Site of the Plant upon the delivery by Power Supplier of the documents enumerated below:

3.4.1 With respect to Commercial Operations Date (Site 1):

- (a) MHG Certification (Site 1) dated no earlier than thirty (30) Days prior to the date of the Commercial Operations Date Certificate (Site 1), which shall be the basis for re-stating the MHG for Site 1 under Schedule 1. If the MHG Test for Site 1 is conducted during the months of June to February and the MHG Certification (Site 1) shows that the MHG for Site 1 is at least 22.5 MWh but below 25 MWh, Power Supplier shall have an MHG Test conducted anew during the immediately succeeding months of March to May to confirm the MHG for Site 1, during which the Performance Security will be retained by Meralco. After the immediately succeeding month of May, or if the MHG Test for Site 1 is originally conducted during the months of March to May, and the MHG Certification (Site 1) shows that the MHG for Site 1 is less than 25 MWh, the Performance Security shall be forfeited in favor of Meralco.
- (b) Certified true copy of Power Supplier's Renewable Energy Service Contract from the DOE for Site 1; certified true copy of Power Supplier's certificate of compliance as a generation company issued by the ERC; Power Supplier's registration as a member of the WESM and evidence of its execution of a Market Participation Agreement with the Market Operator; and a certification that all relevant permits, licenses, authorizations and other approvals from all Government Authorities and other parties needed for the operation of Site 1 and the supply of electricity by Power Supplier to Meralco have been obtained by Power Supplier, including the interconnection agreement and metering services agreement with Meralco;
- (c) Certification from Power Supplier's insurance advisor or broker that the insurances required under this Agreement for Site 1 relevant for at least the first Contract Year have been obtained; and
- (d) Commercial Operations Date Certificate (Site 1).

Upon completion of the documents referred to in this Section 3.4.1, Power Supplier shall deliver written notice to Meralco with copies of said documents. Within seven (7) Days from receipt by Meralco of such documents, Meralco and Power Supplier shall issue a joint certification confirming that the Commercial Operations Date (Site 1) has occurred.

Following the Commercial Operations Date (Site 1), the obligations of Power Supplier and Meralco under this Agreement with respect to sale and purchase of the Product shall become effective.

3.4.2 With respect to Commercial Operations Date (Site 2):

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- (a) MHG Certification (Site 2) dated no earlier than thirty (30) Days prior to the date of the Commercial Operations Date Certificate (Site 2), which shall be the basis for re-stating the MHG for Site 2 under Schedule 1. If the MHG Test for Site 2 is conducted during the months of June to February and the MHG Certification (Site 2) shows that the MHG for Site 2 is at least 22.5 MWh but below 25 MWh, Power Supplier shall have an MHG Test conducted anew during the immediately succeeding months of March to May to confirm the MHG for Site 2, during which the Performance Security will be retained by Meralco. After the immediately succeeding month of May, or if the MHG Test for Site 2 is originally conducted during the months of March to May, and the MHG Certification (Site 2) shows that the MHG for Site 2 is less than 25 MWh, the Performance Security shall be forfeited in favor of Meralco.
- (b) Certified true copy of Power Supplier's Renewable Energy Service Contract from the DOE for Site 2; certified true copy of Power Supplier's certificate of compliance as a generation company issued by the ERC; Power Supplier's registration as a member of the WESM and evidence of its execution of a Market Participation Agreement with the Market Operator; and a certification that all relevant permits, licenses, authorizations and other approvals from all Government Authorities and other parties needed for the operation of Site 2 and the supply of electricity by Power Supplier to Meralco have been obtained by Power Supplier, including the interconnection agreement and metering services agreement with Meralco;
- (c) Certification from Power Supplier's insurance advisor or broker that the insurances required under this Agreement for Site 2 relevant for at least the first Contract Year have been obtained; and
- (d) Commercial Operations Date Certificate (Site 2).

Upon completion of the documents referred to in this Section 3.4.2, Power Supplier shall deliver written notice to Meralco with copies of said documents. Within seven (7) Days from receipt by Meralco of such documents, Meralco and Power Supplier shall issue a joint certification confirming that the Commercial Operations Date (Site 2) has occurred.

Following the Commercial Operations Date (Site 2), the obligations of Power Supplier and Meralco under this Agreement with respect to sale and purchase of the Product shall become effective.

- 3.4.3 For clarity, the Parties agree that the inability of one Site to achieve COD by the Scheduled Commercial Operations Date, or the Excused Delay Limit or any extension thereof, as applicable, shall not affect the rights and obligations of the Parties with respect to the other Site that achieves COD. For this purpose, either Party may terminate the rights and obligations under this Agreement with respect to the Site that is unable to achieve COD without affecting their rights and obligations with respect to the Site that achieves COD.

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3.5 *Excused Delay.* If Power Supplier has, after the Commencement Date, experienced a delay in designing, constructing, testing or commissioning the Site 1 or Site 2, as applicable, or any part thereof as a result or to the extent of any of the following (each, an “**Excused Delay Event**”):

- (a) any action or inaction or delay in action of any Governmental Authority; or
- (b) the occurrence of an event of Force Majeure,

then the Scheduled Commercial Operations Date shall be extended, Day for Day, by the same period that any Excused Delay Event subsists; provided that Power Supplier has exerted due diligence in achieving Commercial Operations Date according to the original Scheduled Commercial Operations Date and has no contributory negligence with respect to any Excused Delay Event, and provided further, that any such extension or relief (whether occurring before or after the Commercial Operations Date) shall not exceed one hundred eighty (180) Days (the “**Excused Delay Limit**”). For clarity, it shall not be considered contributory negligence if the Power Supplier has commenced securing relevant and necessary permits within one (1) month from the signing of this Agreement.

3.5.1 At the sole and exclusive option of Power Supplier, Power Supplier may extend the Excused Delay Limit for an additional period of one hundred eighty (180) Days, or such longer period as may be agreed upon by the Parties, on the condition that Power Supplier provides Replacement Energy to Meralco at the WESM price or Contract Price, whichever is lower, during the period beyond the Excused Delay Limit.

Notwithstanding that Power Supplier has the ability to supply Replacement Energy, from and after the lapse of the (i) Scheduled Commercial Operations Date, or (ii) the Excused Delay Limit or any extension thereof at the option of Power Supplier, as applicable, either Party shall have the right to terminate this Agreement, in which case the Performance Security shall be forfeited in favor of Meralco. For the avoidance of doubt, Meralco shall have no liability whatsoever to Power Supplier in case Power Supplier exercises its termination right under this Section 3.5.1.

3.5.2 If Power Supplier fails to provide Replacement Energy as contemplated in Section 3.5.1, Meralco will be deemed to sourced the Replacement Energy, subject to reimbursement by Power Supplier of the difference between (i) the price of Replacement Energy and (ii) the Contract Price. If Power Supplier fails to reimburse Meralco on or before twelve (12) Business Days from the end of the relevant Billing Period indicated in the notice of Meralco to Power Supplier, Meralco may draw on the Performance Security to the extent of the difference between (i) the price of Replacement Energy and (ii) the Contract Price. If Meralco draws against the Performance Security, Power Supplier shall, no later than three (3) Business Days after the amount falls below thirty percent (30%) of the then required Security Amount, immediately deliver additional irrevocable stand-by letter of credit or bank guarantee to meet the then required Security Amount. If Power Supplier fails to deliver additional irrevocable stand-by letter of credit or bank guarantee as required under this Section 3.5.2, Meralco may terminate this Agreement and, in such case, Meralco shall have the right to exercise its remedies at law or equity with respect to the extended 180-Day period in Section 3.5.1.

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4. PERFORMANCE SECURITY

- 4.1 Power Supplier shall, within fifteen (15) Days from the Commencement Date, deliver to Meralco one or more security (each, a "**Performance Security**") in an aggregate amount equivalent to Forty Million Philippine Pesos (PHP 40,000,000.00) ("**Security Amount**"). Each Performance Security shall (i) be in the form of an irrevocable stand-by letter of credit or bank guarantee, (ii) at the time of issuance thereof, be issued by an Acceptable Bank, and (iii) have a face value, when aggregated with the other Performance Securities, equivalent to not less than the Security Amount.

As used herein, "**Acceptable Bank**" means a domestic bank that is not an Affiliate included in the list of banks agreed between the Parties, as specified in Schedule 4 hereto.

- 4.2 Within sixty (60) Days from each anniversary of the Commencement Date, the Parties shall meet to review the list of Acceptable Banks and mutually agree on the list of Acceptable Banks from which any amended or replacement Performance Security shall be procured.
- 4.3 If a Performance Security is subject, pursuant to its terms, to a fixed expiry date, Power Supplier shall, not less than ten (10) Days prior to such expiry date, amend or replace the Performance Security with a duly-executed amended or replacement Performance Security with an effective date immediately succeeding the expiry date of the replaced Performance Security, compliant with the requirements under Section 4.1 of this Agreement.
- 4.4 If, at any time, a Downgrade Event occurs in respect of the issuing bank of the Performance Security, Power Supplier shall procure a replacement Performance Security from another Acceptable Bank within thirty (30) Days of the occurrence of the Downgrade Event. For this purpose, "**Downgrade Event**" means (a) in respect of an Acceptable Bank that is an international bank, (i) two consecutive downgrades from its credit rating at the time of the last review of the list of Acceptable Banks or (ii) a credit rating downgrade below investment grade, in each case as publicly announced by the Standard & Poor's or Moody's Investor Services; and (b) in respect of an Acceptable Bank that is a domestic bank, if its total equity as reported in the latest quarterly published Balance Sheet/Statement of Condition submitted to the *Bangko Sentral ng Pilipinas* falls below PHP40 billion.
- 4.5 The Performance Security shall be procured by Power Supplier and maintained until the occurrence of the Commercial Operations Date (Site 2). Within thirty (30) Days after the Commercial Operations Date (Site 2), Meralco shall return to Power Supplier the Performance Security less any amount properly due and owing from Power Supplier to Meralco under this Agreement.
- 4.6 Upon the occurrence of the Commercial Operations Date (Site 1), the Performance Security shall be reduced by the amount of Twenty Million Pesos (PHP

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20,000,000.00), unless an MHG Test is required to be conducted anew under Section 3.4.1.

- 4.7 Except as otherwise provided in Section 3.5.2, if any amounts are drawn from the Performance Security by Meralco, Power Supplier shall, on or before the date that is three (3) Days after the draw, deliver an additional irrevocable stand-by letter of credit or bank guarantee in an amount equivalent to the amount drawn by Meralco, to restore the amount of the Performance Security to the Security Amount.
- 4.8 Meralco may draw the entire amount of the Performance Security and hold the proceeds in trust as cash collateral if Power Supplier fails to procure a replacement Performance Security within the time required under Section 4.3 and Section 4.4 above or fails to deliver additional irrevocable stand-by letter of credit or bank guarantee in accordance with Section 4.7 above.

5. ERC APPROVAL

- 5.1. *Regulatory Approvals.* After signing, the Parties shall file a joint application with the ERC for the approval of this Agreement (the “**ERC Application**”). Both Parties shall cooperate in this undertaking and Power Supplier shall provide all the necessary support, including the submission of all the documents required to expedite the approval of the Agreement.
- 5.2. Upon receipt of the ERC Final Approval, Meralco shall provide a copy of such ERC Final Approval to Power Supplier. Power Supplier shall have ten (10) Business Days from the date of receipt from MERALCO of such ERC Final Approval to notify Meralco in writing that (i) it accepts such ERC Final Approval or (ii) it does not accept the ERC Final Approval, stating the grounds for non-acceptance.
- 5.3. In case of Power Supplier's non-acceptance, Power Supplier shall be free to: (i) file with the ERC a motion for reconsideration or (ii) terminate this Agreement upon sixty (60) days prior written notice to Meralco; provided that, any order on a motion for reconsideration shall be treated as an ERC Final Approval for purposes of the processes under this Article 5; provided further that, if the motion for reconsideration is denied by the ERC, or granted by the ERC but still with any material term or condition that is not acceptable to Power Supplier, Power Supplier may terminate this Agreement upon sixty (60) days prior written notice to Meralco.
- 5.4. Following (i) a written notice of acceptance from Power Supplier with respect to the ERC Final Approval (including upon reconsideration under Section 5.3 above), or (ii) the lapse of the period referred to in Section 5.2 without Power Supplier communicating its acceptance or non-acceptance in writing, the Acceptance Date shall be considered as having occurred on the date of the written notice of acceptance or on the last Day of such period, as applicable (“**Acceptance Date**”), provided that, in each case, Meralco has not filed any motion for reconsideration or appeal subsequent to the Power Supplier's acceptance of such ERC Final Approval.

6. OBLIGATIONS, DELIVERIES & CONTRACT PRICE

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- 6.1. *Obligations of the Parties.* Subject to the terms and conditions of this Agreement, the Power Supplier shall sell and deliver, and Meralco shall pay for, the Product up to the Maximum Hourly Generation, at the Contract Price.
- 6.1.1. *Flexibility of Source.* The Parties agree that Power Supplier shall supply the Product solely from the Plant, provided that should the Plant not be able to generate the Maximum Hourly Generation on an hourly basis from 9:01 A.M. to 5:00 P.M., Monday to Friday, the difference between actual generation and the Maximum Hourly Generation may be sourced, at Power Supplier's sole option, from any of the Other Plants at the Contract Price, in accordance with Section 6.4 and Section 7, and provided that the Power Supplier should give first priority to Meralco for energy sourced from the Other Plants.
- 6.1.2. *Interconnection.* Power Supplier shall, at all times from commissioning, ensure compliance with terms and conditions under its interconnection, metering and other agreements necessary for the performance of its obligations hereunder.
- 6.1.3. *Sale to Third Parties.* During the Term of this Agreement, and unless otherwise expressly stipulated herein, the Power Supplier commits to sell and deliver to Meralco energy up to the Maximum Hourly Generation in accordance with Section 6.1.1. Subject to existing ERC rules and regulations, Power Supplier shall be free to sell and deliver to the WESM or third parties additional energy produced by the Plant or Other Plants in excess of the Maximum Hourly Generation at a given hour, or energy within Maximum Hourly Generation but which Meralco is unable to purchase or accept.
- 6.2. *Take and Pay Contract.* Subject to circumstances of Force Majeure under this Agreement and Section 6.1.1, Meralco shall accept all electric energy deliveries from Power Supplier up to the Maximum Hourly Generation and Meralco shall pay the corresponding Contract Price for all electric energy (in kWh or MWh) declared by the Power Supplier at the WESM for Meralco, which quantity shall be based on the readings of Meralco's Billing Meter.
- 6.3. *Contract Price.* The Contract Price is PhP5.39 per kWh, which shall be subject to two percent (2%) annual escalation, *provided*, that the Franchise and Benefits to Host Communities Charge, if any, shall not form part of and is excluded from the computation of the Contract Price. For clarity, all taxes pertaining to the Power Supplier, including but not limited to the FBHC Charge, shall be shouldered by, and be for the sole account of, the Power Supplier. Any violation of this Section shall be a ground for termination of this Agreement upon prior notice.
- 6.4. *WESM Declarations.* Power Supplier shall ensure that its day-after daily declaration of BCQs submitted to the Market Operator, as required by the WESM Rules, accurately reflects the nominations furnished by Meralco.

On a daily basis, Power Supplier shall furnish Meralco, for its confirmation, a copy of the hourly BCQs for the preceding day that Power Supplier intends to declare to the Market Operator for Meralco. If Power Supplier does not receive a confirmation from Meralco by four o'clock in the afternoon (4:00 P.M.) of the day of receipt, such

BCQs shall be deemed confirmed and Power Supplier shall declare the same to the Market Operator. Meralco shall have the right, but not the obligation, to review such BCQ reports and upon its review, shall inform Power Supplier of any discrepancies or exceptions it may find. When necessary, Power Supplier shall immediately notify the Market Operator of any corrections to its declaration of BCQs in accordance with the WESM Rules.

- 6.5. *Cooperation in Complying with RPS Rules.* Subject to the rules on Renewable Portfolio Standards ("RPS") that may be promulgated pursuant to the Renewable Energy Law (the "RPS Rules"), the Parties acknowledge and agree that the Product under this Agreement shall be utilized by Meralco for the purpose of partially complying with RPS Rules requirements in the proportion that it bears to the sum of (i) the aggregate capacity and/or energy generated under Meralco's power supply agreements with all its RPS-qualified renewable energy suppliers and (ii) Meralco's procured renewable energy certificates. If Meralco fails to comply with the RPS Rules on account of Power Supplier's breach of the material terms and conditions of this Agreement, without necessarily resulting in Power Supplier's failure to supply the Product, and provided Meralco itself has not, in any way, contributed to such failure to comply, Power Supplier shall compensate Meralco for costs incurred as a result thereof. The Parties shall agree on a mechanism by which to implement this provision within six (6) months from promulgation of the RPS Rules.
- 6.6. *Extension of Term due to Failure to Receive Energy Deliveries.* Except as provided in Section 6.7 (Force Majeure), the failure by Meralco to receive energy deliveries for a continuous period of twenty-four (24) hours as a result of unscheduled maintenance, or an extension of a scheduled maintenance, of Meralco's distribution facilities shall result in the adjustment or extension of the Term of this Agreement equivalent to the aggregate period for which Meralco failed to receive such energy deliveries; provided, that in no event shall such extension of the Term of this Agreement be less than a Day or the aggregate period of such extension exceed one hundred eighty (180) Days; provided further, that (i) an annual regular scheduled maintenance notice will be furnished by Meralco to the Power Supplier on the first month of the applicable year (the "**Annual Regular Scheduled Maintenance**"), and should there be any changes by Meralco to the Annual Regular Scheduled Maintenance, it will provide relevant notice to the Power Supplier as soon as possible, and in no case later than seven (7) Days before the start of the Annual Regular Scheduled Maintenance, and (ii) in the event of maintenance necessitated by an emergency or hazardous condition (the "**Emergency Scheduled Maintenance**"), a prior notice will be furnished by Meralco to the Power Supplier at least two (2) hours before conduct of the Emergency Scheduled Maintenance.
- 6.7. *Force Majeure.* For the Term of this Agreement, when Meralco is not able to receive the Product due to Force Majeure, Meralco shall not pay for such energy not delivered and/or received due to Force Majeure. In such event, Power Supplier shall have the right to sell the Product to WESM or third parties, subject to existing ERC rules and regulations.

Similarly, during the Term of this Agreement, when Power Supplier is not able to deliver the Product due to Force Majeure, Power Supplier shall be excused from its obligation to deliver the Product.



Any event of Force Majeure, whether single or in aggregate, within the original Term of the Agreement shall result in the automatic extension of the Term for the same period that any event of Force Majeure, whether single or in aggregate, subsists, provided that in no instance shall such extension of the Term be less than a Day or the aggregate period of such extension exceed One Hundred Eighty (180) Days ("**Term Extension**"). For any extension of the Term in addition to the Term Extension by reason of Force Majeure, it shall be subject to the mutual agreement of the Parties. For any Force Majeure that results in Term Extension, Power Supplier shall remit to Meralco all revenues resulting from sale of the Product to WESM or third parties, if any, during the time the Force Majeure subsists.

- 6.8. *Annual MHG Tests.* Power Supplier shall at its own cost, conduct on an annual basis, an MHG Test on each of Site 1 and Site 2 at a date agreed to by the Parties. As a consequence thereof, the Maximum Hourly Generation under Schedule 1 shall be re-stated to reflect the results of such MHG Test.

7. BILLING AND PAYMENT

- 7.1. *Billing.* Power Supplier shall issue a preliminary bill not later than the last day of the calendar month of the Billing Period, and the final bill on the fifteenth (15th) day of the succeeding calendar month. Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable on the last day of the succeeding month or, if such day is not a Business Day, then on the next succeeding Business Day. Meralco will make payments by electronic funds transfer, or by other mutually agreed alternative method, to the account designated by the Power Supplier.
- 7.2. *Timeliness and Manner of Payment.* All invoices under this Agreement shall be paid on the due date by Meralco unless the same is disputed due to manifest error or apparent invalidity, or for not being in accordance with the terms of this Agreement. Any undisputed amounts which are not paid by due date will be deemed delinquent and will accrue interest under Section 7.8 hereof.
- 7.3. *Currency of Payment.* All payments shall be made in Philippine Peso.
- 7.4. *Disputed Bills.* Meralco may dispute any bills in writing within one hundred eighty (180) Days from the date of its receipt and shall be resolved by the Power Supplier within thirty (30) Days from the date of filing of the claim.
- 7.5. Disputed bills, other than those due to manifest error apparent invalidity, or for not being in accordance with the terms of this Agreement, shall be paid by Meralco without deductions or offsets and shall not be an excuse or ground for Meralco to delay payment of succeeding billings or to unilaterally deduct any amount therefrom; provided, however, that Power Supplier shall act in good faith in resolving the dispute and shall not unreasonably withhold action or delay the resolution of the dispute. Disputed bills not paid by Meralco, other than those due to manifest error, apparent invalidity, and those that are not in accordance with the terms of this Agreement shall be subject to Section 7.8. However, if the dispute is

resolved in favor of Meralco, the payment for the bill including interest shall be offset against outstanding obligations of Meralco to the Power Supplier.

- 7.6. Power Supplier and Meralco shall exercise good faith and due diligence in resolving disputed billings. If the dispute cannot be resolved by the Power Supplier, or if the dispute is resolved by the Power Supplier in its favor and Meralco is not satisfied with the resolution of the dispute, the matter shall be submitted for Dispute Resolution in accordance with Sections 13.1 and 13.2.
- 7.7. Each Party, respectively and as applicable, shall be entitled to a refund of any overpayment plus interest. Interest shall be calculated as an annual rate on a three hundred sixty-five (365)-day basis equivalent to the PDST-R2 plus two hundred (200) basis points, from the date upon which it was due until the date payment was received by either Party; provided, however, that if the protest or dispute is resolved by the Parties and payment is made, in each case within thirty (30) Days from date of the filing of such protest or dispute, the Parties shall waive the payment of any interest on the amount owing (or, if payment has been made under protest or dispute, due on the amount to be refunded). If the protest or dispute is resolved in one Party's favor, any amount due to that Party may be offset against its outstanding obligations to the other Party under the terms of this Agreement.
- 7.8. Any final bill not under dispute but not paid on due date shall also bear an interest. Interest shall be calculated as an annual rate on a three hundred sixty-five (365)-day basis equivalent to the PDST-R2 plus two hundred (200) basis points, from the date upon which it was due until the date payment was received by either Party, subject to waiver of interest as may be agreed by the Parties.
- 7.9. *Adjustment due to Erroneous Billings.* In the event of an error in the billing of Power Supplier due to arithmetical mistakes or omissions, or typographical error, the billing energy shall be corrected by whatever means available and, if none, to be estimated by Power Supplier from the best available information as concurred in by Meralco. Power Supplier shall send to Meralco a debit or credit memo to correct the error. Failure by Power Supplier to correct the error within thirty (30) Days from rendition of the bill shall constitute a waiver of any claim on such bill. Non-concurrence of Meralco to Power Supplier's estimates shall render the power bills as disputed bills under Section 7.5.
- 7.10. Notwithstanding the foregoing, the right of Power Supplier to recover any adjusted billing under Section 7.9 shall be limited by the amount that Meralco shall be allowed by the ERC or the courts to recover from its consumers.

8. ASSIGNMENT OR TRANSFER OF PRODUCT

- 8.1. Subject to existing laws and rules and regulations, Meralco shall be entitled to assign, transfer, designate, delegate or allocate (collectively in this context, "Transfer") its rights and obligations to purchase a portion of the Product that is no longer required by Meralco as a result of Retail Competition and Open Access or a reduction in demand of its captive customers, to any of its business segments or wholly-owned Affiliates, that is engaged in generation, distribution, supply or

aggregation of electricity and is a registered member of the WESM, without the prior consent of the Power Supplier.

Meralco shall also be entitled to Transfer its rights and obligations to purchase a portion of the Product that is no longer required by Meralco as a result of Retail Competition and Open Access or a reduction in demand of its captive customers to any other Person, subject to the prior written consent of Power Supplier, which consent shall not be unreasonably withheld, delayed or conditioned, it being understood that withholding consent would not be considered unreasonable if the proposed Transfer would be contrary to existing laws and rules and regulations and/or the reasonable requirements of Finance Parties under the Finance Documents, as evidenced by a written confirmation by the relevant Finance Parties. Power Supplier shall exert reasonable efforts to (i) procure that only the consent of Finance Parties representing no more than seventy-five percent (75%) of the debt plus undrawn commitments shall be required for a Transfer under the Finance Documents; and (ii) upon written notice being given by Meralco, procure such consent for the Transfer.

Meralco shall endeavor to cooperate with Power Supplier by providing documents and information in relation to the Transfer as may be reasonably required by the Finance Parties.

- 8.2. In respect of Transfers not requiring Power Supplier's consent, Meralco shall give written notice to Power Supplier of such Transfer at least five (5) Days prior to the first day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change. In respect of Transfers requiring Power Supplier's consent, Meralco shall give written notice to Power Supplier of such Transfer at least sixty (60) Days prior to the first day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change.

Subject to the receipt of Meralco and Power Supplier of the written acceptance of such Transfer by the transferee:

- (i) Meralco shall cease to have any rights and obligations under this Agreement, and
 - (ii) the transferee shall assume all rights and obligations of Meralco under this Agreement.
- 8.3. *Reduction in Product.* Meralco shall, from time to time, be entitled to a reduction in Product (the "**Reduction in Product**") equivalent to the reduction in the demand of its captive customers by reason of the enforcement of Retail Competition and Open Access, Renewable Energy Law and other Applicable Laws. For this purpose, Meralco shall give a written notice to Power Supplier of such reduction at least five (5) Days prior to the first day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change. Upon receipt by Power Supplier of such written notice, Meralco shall cease to have any rights and obligations under this Agreement in respect of such Reduction in Product.

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8.3.1. The Parties understand that the Reduction in Product shall be done in accordance with the guidelines set out under the regulations of ERC and/or DOE existing at the time of the exercise by Meralco of its right in Section 8.3, or, in the absence of such regulations, determined pro-rata or in proportion to a reduction in the other power supply agreements of Meralco that contain similar provision allowing the reduction in the Product or contract capacity or associated energy, as applicable, due to a reduction in captive customer demand. For this purpose, the Parties shall endeavor to cooperate in mitigating any adverse impact of the Reduction in Product, including sale by Power Supplier to third parties of the remainder of the Product unsold as a result of a Reduction in Product.

8.3.2. Nothing in this Section 8.3 and subsections shall be construed to limit the right of Meralco to determine, on its own, the amount in MW (and corresponding MWh) of the Reduction in Product under its power supply agreement with any power supplier, in accordance with its obligation under the law and its Franchise to supply power to its captive market in the least cost manner.

9. GOVERNMENTAL CHARGES, WESM CHARGES AND SYSTEM OPERATOR CHARGES

9.1. *Cooperation.* Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes and charges, so long as neither Party is materially adversely affected by such efforts and provided the same is not contrary to law.

9.2. *Governmental Charges.* The Power Supplier's own income taxes, property taxes and local business taxes are for its account. Value-Added Taxes (VAT) on the Product, if any, shall form part of the price that Meralco will charge to its customers.

9.3. *WESM and Line Rental Charges.* All WESM charges attributable to Power Supplier (e.g., WESM Market Fees) are not to be passed on to Meralco. If the Product or a portion thereof is delivered from one of the Other Plants, the line rental charges that will form part of the price that Meralco will charge to its customers shall be the lower of (i) the actual line rental charge for the applicable Other Plant; and (ii) the line rental charge for the applicable Site, provided that line rental charges in excess of ₱0.20 per kWh, reckoned on a monthly basis, shall be for the account of Power Supplier.

9.4. *System Operator charges.* Should Power Supplier deliver energy from the Original Sites, all fees, costs and expenses in connection with procuring ancillary services from the System Operator shall form part of the price that Meralco will charge to its customers. If the Plant is not embedded within Meralco's Franchise area, or Power Supplier delivers energy from the Other Plants, then Power Supplier shall be responsible for associated charges imposed by the Relevant Distribution Utility and for all incremental System Operator charges.

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10. INSURANCE

- 10.1. *Insurance Policies.* Power Supplier shall, at its own expense, obtain insurances to protect its properties (construction, Plant, machinery, equipment), including other types of insurances required by Governmental Authority, such as but not limited to social security system benefit for its employees. For this purpose, Power Supplier shall provide Meralco copies of the Certificate of Cover and insurance policy of the following:
- (a) Builder's/Contractor's All-Risk Insurance in an amount not less than the full replacement or sound value of the Plant, to be maintained for the duration of the construction of the Plant;
 - (b) Property All-Risk Insurance in an amount not less than the full replacement or sound value of the Plant; and
 - (c) Comprehensive General Liability, with limit of liability of One Million Dollars (USD 1,000,000.00) (or PHP equivalent) per occurrence and in the aggregate.
- 10.2. *Changes to Policies.* Any changes in the insurances which are not consistent with the requirements of this Agreement shall require the prior written consent of Meralco.
- 10.3. *Notification of Claims and Application of Proceeds.* Power Supplier shall in relation to each property damage insurance policy for the Plant required by Section 10.1 promptly notify Meralco of any circumstances which give rise or might reasonably be foreseen to give rise to a claim under such policy or policies which exceeds One Million Dollars (USD 1,000,000.00) (or PHP equivalent).

Power Supplier shall apply, to the extent required, any and all of the property damage insurance proceeds that it receives regarding any damage to the Plant toward the reinstatement of the Plant or resumption of the erection activities towards completion of the Plant.

11. LIMITATION OF REMEDIES, LIABILITIES, AND DAMAGES

- 11.1. *Limitations.* Except as may be set forth herein, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy or measure of damages. The obligor's liability shall be limited as provided for in said provision and all other remedies or damages at law or in equity are hereby waived. Except as provided in Section 3.5.1, if no remedy or measure of damages is or are expressly provided herein, the obligor's liability shall be limited to direct actual damages only. Such direct actual damages shall be the sole and exclusive remedy and all other remedies in law or in equity are waived.

- 11.2. *Indemnification.* A Party ("**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party ("**Indemnified Party**") from and against all claims of third parties made against or suffered by the Indemnified Party for any physical loss of or damage to property or death or injury to persons, resulting from any negligent act or omission of the Indemnifying Party or any of its contractors or their respective employees, directors, agents or shareholders that arises out of or is in any manner connected with the performance of this Agreement, except to the extent such loss, damage, injury or death is attributable to the negligence or misconduct of, or breach of this Agreement by the Indemnified Party or any of its employees, directors, agents or shareholders, or the latter's failure to take reasonable steps in mitigation thereof. Neither Party shall settle or compromise any claim, action, suit or proceeding in respect of which it is entitled to be indemnified by the other Party without the prior written consent of that Party.
- 11.3. *Liabilities and Damages.* Unless expressly provided herein, neither Party shall be liable for consequential, incidental, punitive, exemplary, or indirect damages, lost profits or other business interruption damages, by stature, in quasi-delict or contract, under any indemnity provision or otherwise. It is the intent of the Parties that the limitations imposed herein are without regard to the cause or causes related thereto, including negligence on any Party, whether such negligence be sole or joint or concurrent, active, or passive.
- 11.4. *Liquidated Damages.* The remedies in this Section 11.4, once availed of, are exclusive remedies in cases of termination of this Agreement under Article 14. To be valid, a notice of the exercise by a Party of its rights under this Section 11.4 must be delivered no later than sixty (60) Days after the effective date of termination of this Agreement.
- 11.4.1. Upon the occurrence of Material Breach by Power Supplier that continues unremedied upon the expiration of the Curing Period under Article 14, Meralco shall, subject to rights of the Finance Parties, have the right, but not the obligation, by written notice to Power Supplier, to acquire the Equity Interest in the Power Supplier at the price of Five Hundred Pesos (PhP500.00), it being understood that any tax and levies due on the acquisition of the Equity Interest shall be paid by Power Supplier; provided that in the event Meralco elects this option and following an acquisition by Meralco of the Plant under this Section 11.4.1, Meralco shall also have the right, but not the obligation, to suspend the performance by the Parties of their respective obligations in respect of the sale and purchase of the Product. In case of such suspension, the Parties understand and agree that the period of suspension shall be counted against (and shall reduce) the Term of this Agreement.

Following the completion of Meralco's acquisition of the Equity Interest of the Power Supplier:

- (a) Meralco shall have the option, but not the obligation, to operate, maintain, repair, and/or rehabilitate the Plant; and
- (b) Power Supplier shall have the right, but not the obligation, by written notice to Meralco (the "**Buy-Back Notice**"), exercisable only within a period of two (2) years reckoned from the later of the date of the execution of the sale or transfer

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documents in relation to Meralco's acquisition of the Equity Interest of the Power Supplier pursuant to the exercise of its option under this Section 11.4.1 and the completion of the repair or the rehabilitation of the Plant (if applicable), to reacquire the said Equity Interest ("**Buy-Back**"), at the sum of: (A) the price of Five Hundred Pesos (PhP500.00), (B) the costs and expenses incurred by Meralco to finance the operation or maintenance, repair and/or rehabilitation of the Plant, (C) the interest on (A) and (B) at the rate of eight percent (8%) *per annum*, reckoned from the time Meralco exercised its right under this Section 11.4.1, and calculated on a compounding basis, and (D) any loss suffered by Meralco, calculated as the difference between (i) the WESM price that Meralco paid for sourcing energy from the WESM due to the unavailability of the Plant; and (ii) the Contract Price that Meralco would have paid under this Agreement, for the period from the occurrence of the Material Breach by Power Supplier until the resumption of operations of the Plant (collectively, the "**Buy-Back Price**"). Further, it is understood that the net margin from the Plant's operations, commencing from the resumption of operations of the Plant until the execution of the sale and transfer documents relating to the Buy-Back, shall accrue to Meralco, and shall not be deducted from the Buy-Back Price. Furthermore, any tax and levies due on the Buy-Back shall be paid by the Power Supplier.

- 11.4.2. Upon the occurrence of Material Breach by Meralco that continues unremedied upon the expiration of the Curing Period under Article 14, Power Supplier shall have the right, but not the obligation, by written notice to Meralco, to require Meralco to acquire the Equity Interests in the Power Supplier at the price of the sum of (A) the obligations to Finance Parties (to be remitted directly to the Finance Parties) and (B) the book value of equity/ partner's capital (including accumulated retained earnings/losses and excluding revaluation adjustments), it being understood that any tax and levies due on the acquisition of the Equity Interest shall be paid by Meralco.

Upon the occurrence of Material Breach by Meralco and prior to the date of early termination of this Agreement, Power Supplier shall have the right to sell the Product to WESM or third parties, subject to existing ERC rules and regulations.

- 11.5. *Unauthorized use of battery storage.* The Parties hereby agree that should the Power Supplier use battery storage, without authorization or agreement as required under Section 12.7 (Change in Circumstances), in order to supply the Product to meet the Maximum Hourly Generation, the Product delivered to Meralco shall be paid at the rate of fifty percent (50%) of the Contract Price or the prevailing WESM price, whichever is lower.

12. MISCELLANEOUS

- 12.1. *Representations and Warranties.* Each Party represents and warrants that:

a. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

b. it has all Governmental Authority authorizations necessary, except those procured or renewed in the normal course of business, for it to legally perform its

obligations under this Agreement, provided that for the Effective Date and Commencement Date, the obligation referred to shall exclude the obligation to deliver the Product;

c. the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it; and,

d. this Agreement and each other document executed and delivered in accordance with this Agreement constitute its legally valid and binding obligation enforceable against it in accordance with its terms.

12.2. *Assignment.* Without prejudice to the stipulations in Section 8, neither Party shall assign this Agreement or any rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that Power Supplier, with notice to Meralco, may transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with the Finance Documents; provided, further, that any such assignee shall agree in writing to be bound by the terms and conditions hereof. In all such cases, Power Supplier agrees to keep Meralco whole and free from any liability or losses, not otherwise contemplated under this Agreement, as a result of such assignment.

12.3. *Governing Law.* This Agreement shall be governed by, construed, enforced, and performed in accordance with Applicable Laws.

12.4. *Notices.* Any notice or other communication to be given hereunder, shall be in writing and shall be sufficiently given if delivered by registered mail, courier or hand-delivered or if transmitted and clearly received by facsimile transmission addressed as follows:

12.4.1. In the case of the Power Supplier, to:

Solar Philippines
2/F L.P. Leviste Towers
112 Legaspi Street
Makati City, Metro Manila
Philippines 1229

Phone: +632 817 2585
Attention: President and Chief Executive Officer

12.4.2. In the case of MERALCO, to:

MERALCO
Lopez Building
Ortigas Avenue
Pasig City, Metro Manila
Philippines 0300

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Attention: Chief Executive Officer
Facsimile: (63-2) 1622-5590
Telephone: (63-2) 16220

With copy to:

MERALCO
4/F Technical Services Building
Ortigas Avenue
Pasig City, Metro Manila
Philippines 0300

Attention: Head – Energy Management
Facsimile: (63-2) 632-8683
Telephone: (63-2) 16226483

Attention: Head – Energy Sourcing
Facsimile: (63-2) 632-8643
Telephone: (63-2) 16226656

or sent to such other person by registered mail, courier or hand-delivery to such other address as any Party may designate for itself by notice given in accordance with this Section 12.4. Any such notice shall be deemed to have been received on the date of delivery.

- 12.5. *General Provisions.* This Agreement (including the schedules and any written supplements hereto), constitutes the entire agreement between the Parties relating to the subject matter. Neither Party makes any representations or warranties hereunder except as expressly set forth herein. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as a “**Regulatory Event**”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to modify this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twenty-four (24) months. This Agreement shall be binding on each party’s successors and permitted assigns.

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- 12.6. *Confidentiality.* Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 12.7. *Change in Circumstances.* The Parties shall faithfully perform all their obligations in accordance with the provisions of this Agreement as well as the Applicable Laws. In case of any (i) amendment, modification or change in Applicable Laws, (ii) any decision or order by the ERC or any court or government agency which provides for a new or change in the interpretation of Applicable Laws and ERC rules and regulations after the date of this Agreement, or (iii) Change in Circumstances that would prevent either or both Parties from performing or continuing to perform their obligations under this Agreement, or when such change in Applicable Law, or Change in Circumstance or the issuance of such decision or order would cause irreparable damage or would adversely affect the financial viability of either Party, the Parties shall meet and negotiate in good faith within ten (10) days from the effectivity of said amendment, modification, or change or issuance of decision or order, to mutually address and agree on appropriate solutions to the problem. Failure to arrive at a solution in accordance with this Section within sixty (60) Days from the commencement of such negotiations shall be a ground for termination of this Agreement upon prior notice.

For the avoidance of doubt, neither Party shall utilize battery storage in respect of their rights and obligations under this Agreement without prior notice and agreement of the other Party. For this purpose, the use of battery storage shall be deemed a Change in Circumstance.

13. DISPUTE RESOLUTION

- 13.1. *Executive Resolution.* If any dispute or disagreement shall arise between the Parties in connection with or arising out of this Agreement ("**Dispute**"), either Party may request in writing that the respective chief executive officers of the Power Supplier and Meralco, or their duly authorized representatives, meet within ten (10) days and attempt to resolve the dispute. In the event such officers are unable to resolve the dispute within thirty (30) days after such notice, upon written request of either Party, such dispute shall be settled pursuant to Section 13.2 below.
- 13.2. *ERC Proceedings/Arbitration.* Provided that the ERC has jurisdiction over a Dispute, any Dispute that is not resolved under Section 13.1 shall be referred to and shall be heard and resolved by the ERC in accordance with its rules on practice and procedure. Otherwise, the Dispute shall be finally resolved by binding arbitration under the Rules of Arbitration of the Philippine Dispute Resolution Center, Inc. (the "**Arbitration Rules**") in force on the date of commencement of the arbitration, which Arbitration Rules are deemed to be incorporated by reference into this



provision (save as otherwise provided for in this Article 13). The place and seat of the arbitration shall be Pasig City, Philippines.

The Parties agree that the Tribunal shall not have the power to award damages inconsistent with Section 11.4.

Each Party shall appoint an arbitrator within thirty (30) Days of the commencement of an arbitration, and the two Party-appointed arbitrators shall, within thirty (30) Days after the date of this appointment of the second Party-appointed arbitrator, jointly appoint a third arbitrator who shall act as Chairman of the Tribunal. Any arbitrator not appointed within the time limits set forth in this provision shall be promptly appointed by the Philippine Dispute Resolution Center, Inc.

The arbitration shall be conducted in the English language and all documents submitted in connection with such proceeding shall be in the English language.

14. TERMINATION

The Party not in Material Breach may terminate the Agreement, upon sixty (60) Days prior written notice to the other Party, for any Material Breach that remains unremedied after ninety (90) Days (the “Curing Period”), subject to Section 11.4 (Liquidated Damages). During such Curing Period, in the event of Material Breach on the part of the Power Supplier, Power Supplier shall deliver Replacement Energy to Meralco at the WESM price or Contract Price, whichever is lower, if the Power Supplier is unable to supply the Product from the Plant; while in the event of Material Breach on the part of Meralco, Power Supplier may opt to sell the Product to the WESM or third parties subject to existing ERC rules and regulations.

For clarity, the Parties agree that any Material Breach with respect to one Site shall be considered independent of, and shall not affect, the other Site. For this purpose, should the Material Breach be limited to one Site, the Party not in Material Breach may terminate this Agreement (and otherwise enforce any rights arising from such Material Breach) only with respect to the Site affected by Material Breach.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of ~~DEC 22 2016~~ in Pasig City.

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MANILA ELECTRIC COMPANY

**SOLAR PHILIPPINES TANAUAN
CORPORATION**

By: 
Name: **Alfredo S. Panlilio**
Title: *Senior Vice President and Head,
Customer Retail Services and
Corporate Communications*

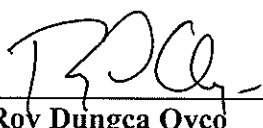
By: 
Name: **Leandro Antonio L. Leviste**
Title: *President*

By: 
Name: **Ronnie L. Aperoch**
Title: *First Vice President and Head,
Networks*

WITNESSED BY:

WITNESSED BY:

By: 
Name: **Ciprinilo C. Meneses**
Title: *Head, Energy Sourcing*

By: 
Name: **Roy Dungca Oyco**
Title: *Vice President and
Chief Operating Officer*

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
PASIG CITY) s.s.

BEFORE ME, a Notary Public for and in Pasig City, Philippines, this
DEC 22 2016, personally appeared:

Name	Personal Identification	Date/Place Issued
Leandro Antonio L. Leviste	Passport No. EB5709403	June 20, 2017/DFA Manila
Alfredo S. Panlilio	Passport No. EB 5654502	June 14, 2017/DFA Manila
Ronnie L. Apercho	Passport No. EB 9627487	Nov. 19, 2018/DFA Manila

all known to me and to me known to be the same persons who executed the foregoing instrument for and in behalf of their respective corporations, and they acknowledged before me that the same is their free and voluntary act and deed, as well as that of their respective corporations, and that they are duly authorized to sign, execute and deliver the same.

This instrument consists of thirty-six (36) pages, including this page on which this Acknowledgment is written, and Schedules 1 to 5, which are attached to this Power Supply Agreement, and all pages have been signed by their instrumental witnesses on each and every page hereof and sealed with my notarial seal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the date and the place first above-written.

Doc. No: 206 ;
Page No: 43 ;
Book No: II ;
Series of 2016.

ARTURO A. BONGIO, B. YAP
NOTARY PUBLIC
Pasig, Marikina, Taguig & San Juan
Issued: April 6, 2016 at Pasig City
and December 31, 2016
Rol. No. 55245; ISP No. 1523728; 01/09/16; Capiz
PTR No. 1473114; 01/21/15; Pasig City
P.O. Box 246, Ortigas Aven., Pasig City

SCHEDULE 1

- **Plant Description*:** The two solar power plants shall be power generation facilities located in Tanauan, Batangas and surrounding areas, and Naic, Cavite and surrounding areas, each capable of supplying 25 Megawatts (AC, net). Together, the two sites will be able to produce at least 50 Megawatts (AC, net) from photovoltaic (PV) panels. Medium voltage (MV) and high voltage (HV) lines will connect each site to deliver power to points within Meralco's distribution system.
- **Product** shall consider the following:

	Site 1	Site 2
MHG*	25 MWh	25 MWh

*Value will be restated upon MHG Test for each Site

- **Billing Energy** : Metered Energy at Delivery (in kWh)
- **Contract Price**** : PhP 5.39 per kWh, which is subject to 2% annual escalation on the full Contract Price, excluding the Franchise and Benefits to Host Communities (FBHC) charge.

*As may be updated upon COD of the Plant.

**The Contract Price assumes a forex rate of PhP 47.00 to USD \$1.00 as the cost of imported equipment. A one-time adjustment (upward or downward) of the USD portion of the Contract Price shall be done upon Commercial Operations Date to reflect the actual PhP to USD exchange rate applicable on the date of importation of the equipment, provided that for any upward adjustment shall be capped at the forex rate of PhP 49.00 to USD \$1.00. For clarity, such forex adjustment may only be exercised once during the Term of this Agreement.

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SCHEDULE 2

OTHER PLANTS

Cavite - Naic, Marogondon, Magallanes, Indang, Amadeo, and Tanza
Laguna - Calamba, Cabuyao, Sta Rosa, Biñan, San Pedro, Los Banos, Bay, Calauan, Alaminos, and San Pablo
Batangas - Tanauan, Balayan, Tuy, Nasugbu, Calaca, Lemery, Alitagtag, San Luis, Sta Teresita, Alitagtag, Bauan, San Pascual, San Jose, Ibaan, Lipa, Padre Garcia, Ibaan, and San Juan
Rizal - Rodriguez, San Mateo, and Taytay
Quezon - Lucena, Tayabas, Sariaya, Candelaria, and Tiaong
Metro Manila - All Cities
Bulacan - San Rafael, San Ildefonso, San Miguel, Norzagaray, Angat, and Santa Maria
Tarlac - Concepcion, Tarlac City, La Paz, and San Jose
Nueva Ecija - Cabanatuan, Peñaranda, General Tinio, Gapan, Palayan, San Jose, Lupao, Rizal, Pantabangan, Talugtug, Guimba, and Cuyapo
Zambales - Iba, Palauig, Botolan, Masinloc, Candelaria, Santa Cruz, and Cabangan
Bataan - Hermosa, Dinalupihan, Morong, and Mariveles
Pampanga - Porac, Floridablanca, Lubao, Mabalacat, Magalang, Mexico, and Arayat
Pangasinan - San Manuel, Binalonan, Sison, Bugallon, Labrador, Sual, Alaminos, Mabini, and Bani
Ilocos Norte - Laoag, Paoay, Currimaog, Pinili, Badoc Bacarra, Pasuquin, Burgos
Isabela - Ilagan, Cauayan, and Santiago
Camarines Sur - Naga, Pili, Ocampo, Bombon, and Calabanga
Leyte - Ormoc City, Kananga, and Matag-Ob
Cebu - Medellin, Daanbantayan, and Bogal
Negros Occidental - Kabankalan, Pontevedra, La Carlota, Bago, Bacolod, Talisay, and Silay
Iloilo - Passi, San Enrique, Dingle, Duenas, Barotac Viejo, Alimodian, Cabatuan, and Santa Barbara

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SCHEDULE 3

DOCUMENTS TO BE DELIVERED BY THE PARTIES

PART ONE: Documents to be Delivered by Power Supplier to Meralco

1. Latest Articles of Incorporation of Power Supplier
2. Resolution of the board of directors of the Power Supplier, approving the terms of, and authorizing the performance of the transactions contemplated by, this Agreement and resolving that it execute, sign and deliver this Agreement and all other documents in connection therewith.
3. Certificate from an authorized representative of the Power Supplier certifying that each copy document specified in this Part 1 of Schedule 2 relating to the Power Supplier is correct, complete, and in full force and effect as of Effective Date.
4. A certificate dated no earlier than two (2) Days prior to the Effective Date from the Power Supplier in favor of Meralco that the representations and warranties of Power Supplier contained in this Agreement are true and correct and shall remain true and correct in all material respects on and as of the Effective Date.

PART TWO: Documents to be delivered by Meralco to Power Supplier

1. Latest Articles of Incorporation, By-Laws and Certificate of Incorporation (or other constitutional document) of Meralco.
2. Resolution of the board of directors of Meralco approving the terms of, and authorizing the performance of the transactions contemplated by, this Agreement and resolving that it execute, sign and deliver this Agreement and all other documents in connection therewith.
3. Certificate from an authorized representative of Meralco certifying that each copy document specified in this Part 2 of Schedule 2 relating to Meralco is correct, complete and in full force and effect as of the Effective Date.
4. A certificate dated no earlier than two (2) Days prior to the proposed Effective Date from Meralco in favor of Power Supplier that the representations and warranties of Meralco contained in this Agreement are true and correct and shall remain true and correct in all material respects on and as of the Effective Date.
5. Copy of Meralco's Certificate of Public Convenience and Necessity.

PART THREE: Documents to be provided by Power Supplier to Support ERC Application

1. Certificate of Incorporation, Latest Articles of Incorporation and By-Laws of Power Supplier
2. SEC Certificate of Registration of the Power Supplier's Articles of Incorporation
3. Latest General Information Sheet of Power Supplier
4. Certificate of Registration of Power Supplier with the BOI, if available
5. Environmental Compliance Certificate issued by the DENR to Power Supplier (or an ECC application to DENR)
6. Information required by ERC from Power Supplier:
 - a. Expectations of Sources of Funds/Financial Plans

SCHEDULE 5

PAYMENT-RELATED PROCEDURES

1. Meralco shall deduct and withhold from the amounts payable under a Final Invoice, the applicable creditable withholding tax and Meralco shall remit any amounts withheld for such tax to the relevant taxing authorities. If Power Supplier believes such withholding tax is not applicable to it, Power Supplier shall provide Meralco with such documents and evidence to demonstrate that payments to Power Supplier are not subject to such withholding tax, such as but not limited to the following:
 - (a) Board of Investments ("BOI") Certificate of Registration indicating Power Supplier's entitlement to Income Tax Holiday ("ITH");
 - (b) BOI Certificate of ITH Entitlement indicating Power Supplier's entitlement to ITH renewed annually; and
 - (c) Such documents that the BIR may require to support Power Supplier's claim for exemption from creditable withholding tax.

Meralco shall no longer deduct and withhold creditable withholding tax from the amounts payable under a Final Invoice upon its reliance on the documents and evidence submitted by Power Supplier.

Power Supplier shall indemnify Meralco for any final assessment, liability, surcharge, interests, penalties and other costs or fees arising from Meralco's failure to withhold creditable withholding tax from payments due under this Agreement in accordance with applicable BIR rules and regulations, provided that such failure by Meralco to withhold is (a) upon Power Supplier's request, or (b) due to any change, reversal or ruling affecting Power Supplier's status or claim of exemption from withholding tax, provided further, that the Parties agree that any outstanding obligations of Power Supplier in respect of its obligation to indemnify under this provision shall not be considered a ground for termination.

2. Meralco shall remit to Power Supplier the applicable VAT on the Product, except in respect of any portion thereof that applies to VAT zero-rated/VAT-exempt customers of Meralco, in accordance with regulations, orders, circulars or other issuances applicable to a distribution utility issued by relevant governmental instrumentalities, including, but not limited to, BIR Revenue Memorandum Circular No. 61-2005 and ERC Resolution No. 20-2005. Meralco shall issue, for each Billing Period, a certification containing:
 - (a) the amount of VAT related to the actual energy volume covered by this Agreement and allocated as sold to Meralco's VAT zero-rated/VAT-exempt customers; and
 - (b) the amount of VAT billed for energy covered by this Agreement that is uncollected from Meralco's customers which are neither VAT zero-rated nor VAT-exempt.

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With respect to any VAT billed to Meralco by Power Supplier pertaining to actual energy volume for Meralco's VAT zero-rated and VAT-exempt customers, Power Supplier shall issue a credit memo reversing the corresponding amount of VAT billed to Meralco. Meralco shall indemnify Power Supplier for any final assessment, liability, surcharge, interests, penalties and other costs or fees ("**Assessments**") arising from Meralco's failure to remit the VAT collected from its customers. For purposes of this provision, Power Supplier shall notify Meralco of such Assessments, and the Parties shall meet and discuss within thirty (30) days from such notification, in order to reconcile the amount of unremitted VAT. The Parties agree that any outstanding obligations of Meralco in respect of its obligation to indemnify under this provision shall not be considered a ground for termination.

In its monthly VAT remittance to Power Supplier, Meralco shall show the amount of VAT being remitted for the current and prior months' billings. Meralco shall provide Power Supplier an annual statement of its VAT balances with Power Supplier, including a certification indicating the VAT amount related to any receivables written off attributable to Power Supplier.

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Judicial Affidavit of Ciprinilo Meneses