

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
Pasig City

**RESOLUTION NO. 07, Series of 2026**

**AMENDED IMPLEMENTING GUIDELINES FOR THE  
PROCUREMENT, EXECUTION, AND EVALUATION OF  
POWER SUPPLY AGREEMENTS ENTERED INTO BY  
DISTRIBUTION UTILITIES FOR THE SUPPLY OF  
ELECTRICITY TO THEIR CAPTIVE MARKET**

**WHEREAS**, Section 16 (d) of Commonwealth Act No. 146, as amended by Republic Act No. 11659, otherwise known as the “Public Service Act”, Sections 2 (b), (c), (f), 23, 25, and 45 (b) of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA), and Rule 7, Section 4 (h) and Rule 11, Section 5 of the Implementing Rules and Regulations (IRR) of the EPIRA are enacted to uphold the quality, reliability, security and affordability of supply of electric power, and protect the public interest by ensuring that the supply of electricity is in the least cost manner;

**WHEREAS**, on 30 June 2023, the Department of Energy (DOE) issued Department Circular (DC) No. DC2023-06-0021, entitled “*Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market*”, which was published on 04 July 2023 and took effect on 19 July 2023;

**WHEREAS**, Section 6 of DC No. DC2023-06-0021 (2023 DOE CSP Circular) emphasized the need for Regulatory Support from the Energy Regulatory Commission (ERC);

**WHEREAS**, Section 6.1 of the 2023 DOE CSP Circular states that the ERC shall issue the Implementing Guidelines in the conduct of Competitive Selection Process (CSP) and evaluation of Power Supply Agreements (PSAs);

**WHEREAS**, Section 6.3 of the 2023 DOE CSP Circular states that the ERC shall prescribe a PSA template, which shall indicate the minimum requirements and prescribed parameters to be incorporated by the DU in the preparation of the Terms of Reference (TOR);

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**WHEREAS**, on 03 October 2023, the Commission adopted ERC Resolution No. 16, Series of 2023, entitled, *“Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements Entered Into by Distribution Utilities for the Supply of Electricity to their Captive Market”* (CSP Guidelines), which was published on 08 October 2023 and took effect on 23 October 2023;

**WHEREAS**, the National Electrification Administration (NEA) issued Memorandum No. 2023-57 to all Electric Cooperatives (ECs), providing its own guidelines in implementing the 2023 DOE CSP Circular and the Commission’s CSP Guidelines;

**WHEREAS**, the ERC initiated a Rulemaking procedure, seeking to amend the CSP Guidelines (Draft Amended Implementing Guidelines);<sup>1</sup>

**WHEREAS**, on 13 August 2025, the ERC issued a *Notice of Posting* of the Draft Amended Implementing Guidelines on the ERC website for all interested parties to submit their comments until 01 September 2025;

**WHEREAS**, on various dates, the ERC received comments on the Draft Amended Implementing Guidelines from the following: (1) Aboitiz Power Corporation (APC); (2) ACEN Corporation (ACEN); (3) GNPowder Kauswagan Ltd. Co. (GNPK); (4) Lachica Madanlo Law Office (LM Law); (5) Maharlika Clean Power Holdings Corporation (MCPHC); (6) Manila Electric Company (MERALCO); (7) MERALCO Power Gen Corporation (MGen); and (8) Philippine Independent Power Producers Association, Inc. (PIPPA);

**WHEREAS**, on 08 September 2025, the Commission conducted a public consultation for the stakeholders and all interested parties to discuss the comments submitted on the Draft Amended Implementing Guidelines and its Appendices;

**WHEREAS**, on 08 October 2025, the DOE issued Department Circular No. DC2025-10-0022, entitled *“Prescribing Policies to Enhance the Procurement of Power Supply by Distribution Utilities for the Captive Market, Amending and Supplementing for this*

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<sup>1</sup> Docketed, ERC Case No. 2025-010 RM, “In Re: Adoption of the Proposed Amendments to the Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply agreements Entered into by Distribution Utilities for the Supply of Electricity to the Captive Market.”

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*Purpose Department Circular No. DC2023-06-0021” (2025 DOE CSP Circular);*

**WHEREAS**, Section 6 of the 2025 DOE CSP Circular provides that the ERC, within thirty (30) days from the effectivity of the Circular, shall issue the necessary rules and guidelines for the proper implementation thereof;

**WHEREAS**, on 19 November 2025, the ERC issued a *Notice of Posting* of the revised Draft of the Amended Implementing Guidelines and its Appendices, incorporating the 2025 DOE CSP Circular, and the stakeholders were given until 25 November 2025 to submit their comments thereto;

**WHEREAS**, on various dates, the ERC received comments on the revised draft from the following: (1) ACEN; (2) San Miguel Global Power (SMGPH); (3) APC; (4) Benguet Electric Cooperative (BENECO); (5) Emerging Power Inc. (EPI); (6) First Gen Corporation (FGC); (7) GNPK; (8) Greenlight Renewable Holdings, Inc. (GRHI); (9) Institute for Climate and Sustainable Cities (ICSC); (10) Manila Electric Company (MERALCO); (11) National Electrification Administration-Regulatory Affairs Office (NEA-RAO); and (12) Shell Energy Philippines, Inc (SEPH);

**WHEREAS**, taking into consideration the comments submitted by the stakeholders, and those made during the public consultations, the ERC, on 19 February 2026, approved the Amended Implementing Guidelines for the Procurement, Execution and Evaluation of Power Supply Agreements, including its Appendices;

**NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED**, that the ERC issues and adopts the *Amended Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements Entered Into by Distribution Utilities for the Supply of Electricity to their Captive Market* and its Appendices, hereto attached and made an integral part of this Resolution.

This Resolution shall take effect immediately following its publication in a newspaper of general circulation, or in the Official Gazette.

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Let copies of this Resolution be furnished to the University of the Philippines Law Center – Office of the National Administrative Register (UPLC-ONAR), as well as published on the ERC's official website and such other online platforms available to the ERC.

Pasig City. March 17, 2026

  
**FRANCIS SATURNINO C. JUAN**  
*Chairperson and CEO*

  
**FLORESINDA G. BALDO-DIGAL**  
*Commissioner*

  
**MARKO ROMEO L. FUENTES**  
*Commissioner*

  
**AMANTE A. LIBERATO**  
*Commissioner*

  
**PARIS G. REAL**  
*Commissioner*

  
LS: JRBC/ARG/MCCG

  
ROS: KGEY/AJMO

*\*Deliberated and approved during the 19 February 2026 Commission Meeting.*

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
Pasig City

**AMENDED IMPLEMENTING GUIDELINES FOR THE  
PROCUREMENT, EXECUTION, AND EVALUATION OF  
POWER SUPPLY AGREEMENTS ENTERED INTO BY  
DISTRIBUTION UTILITIES FOR THE SUPPLY OF  
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## TABLE OF ACRONYMS/ABBREVIATIONS

BAC	Bids and Awards Committee
BOD	Board of Directors
COP	Certificate of Posting
CSP	Competitive Selection Process
DC	Department Circular
DDP	Distribution Development Plan
DOE	Department of Energy
DOE CSP Policy	Department Circular No. DC2023-06-0021
DOJ	Department of Justice
DU	Distribution Utility
DU-BOD	Distribution Utility-Board of Directors
DTI	Department of Trade and Industry
EC	Electric Cooperative
EPIRA	Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”
EPSA	Emergency Power Supply Agreement
ERC	Energy Regulatory Commission
Genco	Generation Company
Guidelines	Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements Entered into by Distribution Utilities for the Supply of Electricity to their Captive Market
IPPA	Independent Power Producer Administrator
IR	Interim Relief
IRR	Implementing Rules and Regulations of the EPIRA
ITB	Invitation to Bid
LCRB	Lowest Calculated Responsive Bid
MW	Megawatt
NEA	National Electrification Administration
NPC	National Power Corporation
PA	Provisional Authority
PSA	Power Supply Agreement
PSALM	Power Sector Assets and Liabilities Management Corporation
PSPP	Power Supply Procurement Plan
RE	Renewable Energy
ROFR	Right of First Refusal
RRPP	ERC Revised Rules of Practice and Procedure
SEC	Securities and Exchange Commission
TOR	Terms of Reference
UC-ME	Universal Charge – Missionary Electrification
WESM	Wholesale Electricity Spot Market

# **AMENDED IMPLEMENTING GUIDELINES FOR THE PROCUREMENT, EXECUTION, AND EVALUATION OF POWER SUPPLY AGREEMENTS ENTERED INTO BY DISTRIBUTION UTILITIES FOR THE SUPPLY OF ELECTRICITY TO THEIR CAPTIVE MARKET**

Pursuant to Section 16 (d) of Commonwealth Act No. 146 as amended by Republic Act No. 11659, otherwise known as the “Public Service Act”, Sections 2 (b), (c), and (f), 23, 25, and 45 (b) of Republic Act (R.A.) No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA), and Rule 7, Section 4 (h) and Rule 11, Section 5 of the Implementing Rules and Regulations (IRR) of the EPIRA, and policies issued by the Department of Energy (DOE) governing the conduct of the Competitive Selection Process (CSP) for the procurement of power supply for the Captive Market of Distribution Utilities (DUs), particularly, DOE Department Circular No. DC2023-06-0021 (2023 DOE CSP Circular), and the DOE Department Circular No. DC2025-10-0022 (2025 DOE CSP Circular), the Energy Regulatory Commission (ERC) hereby issues these Amended Implementing Guidelines.

## **ARTICLE I GOVERNING PRINCIPLES**

Section 1. The implementation of these Amended Implementing Guidelines shall be governed by the following principles:

- (a) Promoting the protection of public interest as the paramount consideration of all relevant government agencies amidst the various interests in the electric power industry to ensure sustainability, sufficiency and stability of supply;
- (b) Enhancing efficiency in the manner of procurement and process of evaluation and approval of Power Supply Agreements (PSA) on a timely and sustainable basis;
- (c) Adopting a transparent process for the procurement of electric power supply by DUs for the Captive Market;
- (d) Promoting fair competition by providing equal opportunity to all eligible, existing or new, and qualified suppliers to participate in the power supply procurement process;
- (e) Adopting a simplified procurement process that optimizes the availability of automated platforms and other technology in accordance with best utility practice;
- (f) Reinforcing the accountability of DUs, acting on behalf of the Captive Market, in ensuring a reliable supply of power in the least-cost manner to its Captive Market;

- (g) Enforcing the responsibility and accountability of directors, officers, employees, and any other persons involved, directly or indirectly, in the procurement process;
- (h) Encouraging the development of Greenfield Power Projects to provide additional power generation capacity, as may be applicable;
- (i) Ensuring least cost pricing of generation rate charged to the Captive Market;
- (j) Promoting the utilization of indigenous and new renewable energy (RE) resources in power generation to reduce dependence on imported energy; and
- (k) Pursuing energy transition to clean energy in accordance with the targets set forth under the Philippine Energy Plan.

## ARTICLE II SCOPE AND APPLICATION

Section 2. These Amended Implementing Guidelines shall apply to all DUs, whether located on-Grid or Off-Grid, Generation Companies (Gencos), and Independent Power Producer Administrators (IPPAs) which supply power to the DUs for the Captive Market, except those which are expressly excluded under these Amended Implementing Guidelines.

## ARTICLE III DEFINITION OF TERMS

Section 3. As used in these Amended Implementing Guidelines, the terms enumerated hereunder shall have the following respective meanings:

- (a) **“Bid Security”** shall have the meaning ascribed to it in Section 10 of Appendix “B” (Competitive Selection Process).
- (b) **“Bid Security Validity Period”** shall have the meaning ascribed to it in Section 10 of Appendix “B” (Competitive Selection Process).
- (c) **“Bid Submission Deadline”** shall have the meaning ascribed to it in Section 8 of Appendix “B” (Competitive Selection Process).
- (d) **“Bid Validity Period”** shall have the meaning ascribed to it in Section 9 of Appendix “B” (Competitive Selection Process).
- (e) **“Bidding Documents”** shall be comprised of the documents referred in Section 1 of Appendix “B” (Competitive Selection Process).

- (f) “**Bids and Awards Committee**” (BAC) refers to the committee established in accordance with these Amended Implementing Guidelines to lead and manage a DU’s CSP.
- (g) “**Captive Market**” refers to electricity end-users who do not have the choice of a supplier of electricity, as may be determined by the ERC in accordance with the EPIRA.
- (h) “**Captive Market Supplier**” refers to either a Genco or IPPA contracted by the DU to supply power to the Captive Market from a single or portfolio of generating plants.
- (i) “**Certificate of Conformity**” refers to the certificate issued by the DOE or the National Electrification Administration (NEA), certifying the consistency of contract quantity and cooperation period in the latest and posted Power Supply Procurement Plan (PSPP) and Invitation to Bid (ITB) of DUs.
- (j) “**Certificate of Prior Submission**” shall have the meaning ascribed to it in **Section 24**.
- (k) “**Competitive Selection Process**” (CSP) refers to a process wherein DUs, on their own or acting as a group, undertake a transparent and competitive bidding to secure supply of electricity based on the evaluation criteria adopted by the DUs in accordance with the requirements of these Amended Implementing Guidelines to achieve least-cost supply to the DU’s Captive Market.
- (l) “**Contract Term**” shall have the meaning ascribed to it in Section 3.1 of Appendices “C1” (PSA Template for Financial PSA) and “C2” (PSA Template for Physical PSA), as may be applicable.
- (m) “**Control**” means the power to direct or cause the direction of the management policies of a person by contract, agency, or otherwise.
- (n) “**Covered RE Facilities**” shall refer to existing or prospective embedded or grid-connected RE power plants located within the franchise area of a DU, whether partly or in whole.
- (o) “**CSP Observers**” shall have the meaning ascribed to it in **Section 11** of these Amended Implementing Guidelines.
- (p) “**Distribution Development Plan**” (DDP) refers to the program for managing the distribution system through timely identification of infrastructure requirements and procurement of power supply to ensure the continuity, reliability and affordability of electric service to the consumers, which is prepared by the DU and submitted to the DOE for integration with the Power Development Plan and Philippine

Energy Plan, in accordance with DOE Circular No. DC2021-03-0003. In the case of Electric Cooperatives (ECs), it refers to such plan submitted by the ECs to the NEA for review and consolidation.

- (q) “**Distribution Utility**” (DU) refers to any EC, private corporation, government-owned utility, or existing local government unit, with an exclusive franchise or is authorized by law to distribute electricity to end-users.
- (r) “**DOE CSP e-based Portal**” refers to the DOE’s electronic website where the proponents shall submit its application for a CSP.
- (s) “**DU-BOD**” refers to the Board of Directors of the DU, or the Board of Directors of the aggregated DUs, as the case may be.
- (t) “**Eligibility Requirements**” shall have the meaning ascribed to it in Annex 1 of Appendix “B” (Competitive Selection Process).
- (u) “**Emergency Power Supply Agreement**” (EPSA) refers to a PSA for the supply of power to a DU when its existing PSAs are not sufficient to cover its demand, under the conditions provided under Section 2.3.5 of the DOE Circular No. 2023-06-0021.
- (v) “**Energy Regulatory Commission**” (ERC) refers to the regulatory agency created under Section 38 of the EPIRA.
- (w) “**Financial PSA**” refers to a power supply agreement with the following characteristics: (1) fixed price effective for the duration of the Contract Term; (2) supply is guaranteed for the entire contract term without reference to any physical power plant; and (3) no provision for outage allowance. Provisions for price adjustments in bid offers and in PSAs shall not be allowed under a financial PSA unless the TOR allows for such, providing therein a pre-defined criteria for economic price adjustment that may allow for either positive or negative changes in price under specified circumstances.
- (x) “**Force Majeure**” or “**Fortuitous Event**” refers to any extraordinary event not foreseeable or avoidable, or to an event that could not be foreseen, or which, though foreseen, is inevitable and independent of human will or the DU’s participation, whether by active intervention, neglect or failure to act.

This further refers to an event or circumstance generally caused: (1) by nature, such as, but not limited to, fires, floods, typhoons, or acts of God; and/or (2) by the acts of man, such as, but not limited to, war, national emergencies, revolution, riot, insurrection, civil unrest, or any other similar violent, or threatening actions.

Work stoppage due to labor strikes, picketing, lockouts or any other labor dispute is not considered as force majeure or fortuitous event.

- (y) “**Generation Company**” (Genco) refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.
- (z) “**Grid**” refers to the high voltage backbone system of interconnected transmission lines, substations, and related facilities.
- (aa) “**Independent Power Producer Administrator**” (IPPA) refers to qualified independent entities appointed by the Power Sector Assets and Liabilities Management (PSALM) Corporation to administer, conserve and manage the contracted energy output of the National Power Corporation (NPC) IPP contracts.
- (bb) “**Instruction to Bidders**” shall have the meaning ascribed to it in Section 2 of Appendix “B” (Competitive Selection Process).
- (cc) “**Joint BAC**” refers to the BAC constituted by DUs aggregating their demand or energy requirements, solely for the purpose of procuring their supply of electricity through CSP.
- (dd) “**Lowest Calculated Responsive Bid**” (LCRB) refers to the most responsive bid that conforms in all material respects to the requirements and criteria set out in the Invitation to Bid (ITB) and Terms of Reference (TOR), and found to have the lowest price after price evaluation and comparison.
- (ee) “**National Electrification Administration**” (NEA) refers to the government agency created under Presidential Decree No. 269, as amended by Republic Act No. 10531, otherwise known as the “National Electrification Administration Reform Act of 2013.”
- (ff) “**Notice of Award**” shall have the meaning ascribed to it in Section 13 of Appendix “B” (Competitive Selection Process).
- (gg) “**Off-Grid**” refers to an area or system that is not connected to the Grid.
- (hh) “**Performance Bond**” refers to the bond posted by the Winning Bidder in order to ensure timely filing of the joint application for approval of the PSA, as prescribed in **Section 15**, Appendix “B” (Competitive Selection Process), and secure its performance.
- (ii) “**Physical PSA**” refers to a PSA wherein the Captive Market Supplier sources its supply from an identified physical power plant/s, subject to allowable outage as determined by the ERC.

- (jj) **“Power Supply Agreement”** (PSA) refers to the agreement, regardless of nomenclature, between a DU and a Captive Market Supplier for the supply of capacity and/or energy intended for the DU’s Captive Market.
- (kk) **“Power Supply Procurement Plan”** (PSPP) refers to a DU’s plan for the acquisition of a variety of supply-side resources to cost-effectively meet the electricity needs of its customers. It shall likewise consider the DU’s anticipated effects of the implementation of the Retail Competition and Open Access (RCOA), Green Energy Option Program, Renewable Portfolio Standards, Net Metering programs, and other similar government programs to the DU’s demand.
- (ll) **“Pre-Bid Conference”** shall have the meaning ascribed to it in Section 6 of Appendix “B” (Competitive Selection Process).
- (mm) **“Reserve Bid Price”** shall refer to the price offer in PhP/kWh set by the DU for a particular CSP that shall be used as the ceiling price, which may either be disclosed before or during the opening of bids.
- (nn) **“Right of First Refusal”** (ROFR) shall mean the right of host DUs to purchase capacity of any Covered RE Facility within their franchise areas under such reasonable terms and conditions, to be exercised within the three-month period from receipt of the RE developer’s written notice of offer. If upon the expiration of the three-month period, the DU fails to exercise the ROFR, the ROFR shall cease and the RE developer may offer its capacity to any other offtakers.
- (oo) **“Tariff Structure”** shall mean the framework of the generation rates to be charged to the DUs for the duration of the contract term, which is either fixed or tiered, depending on the type of contract, as detailed in Section 16 of these Amended Implementing Guidelines.
- (pp) **“Terms of Reference”** (TOR) shall have the meaning ascribed to it in Section 3 of Appendix “B” (Competitive Selection Process).
- (qq) **“Time of Use”** (TOU) refers to the cost of power billed based on hourly generation rates.
- (rr) **“Winning Bidder”** refers to the Bidder issued a Notice of Award after the conduct of the CSP.

## ARTICLE IV COMPETITIVE SELECTION PROCESS

Section 4. **General Rule on the Mandatory CSP** – As a general rule, power supply intended to meet the electricity demand of the DU’s Captive

Market shall be procured through CSP, consistent with the latest and duly accepted DDP and posted PSPP. A DU shall undertake a transparent, competitive and non-discriminatory procurement process for the supply of electricity to its Captive Market in accordance with these Amended Implementing Guidelines, unless otherwise provided under Section 5 below. The CSP shall follow the procedure laid out in Appendix “B” (Competitive Selection Process).

**Section 5. Exceptions** – Conduct of CSP shall not be required under the limited instances specified in Section 2.3 of the 2023 DOE CSP Circular and Section 3 of the 2025 DOE CSP Circular, and subject to the compliance parameters in Appendix “A” (Compliance Parameters for CSP Exceptions).

All the instances in Appendix “A” are subject to the ERC’s determination of the DU’s compliance with its obligation to supply electricity in the least cost manner to its Captive Market, taking into consideration the quality, affordability, sustainability and reliability of the electric power supply.

**Section 6. Right of First Refusal (ROFR) of DUs Hosting RE Facilities** – A host DU shall have a ROFR over the capacity from a Covered RE Facility that is needed for compliance with its annual Renewable Portfolio Standards (RPS) requirements, consistent with its DDP and PSPP, duly accepted by the DOE and posted by the DU, and with its RPS Compliance Plan, pursuant to DOE DC No. 2017-12-0015, as may be amended from time to time.

To inform all prospective RE developers of the vesting of the ROFR in favor of their host DU, for the purpose of the submission of the offer as required in this Section, all DUs shall publish on their respective websites not later than January 15 of each year their latest RPS Compliance status for the previous year and their latest RPS Compliance Plans.

RE developers of Covered RE Facilities shall first offer their available capacity to the host DU. Such offer shall be made whenever the RE developers have determined that there is available capacity from their existing, expansion, or new plants; *Provided*, that the ROFR may be exercised by the host DU within a period of three (3) months from the receipt of written notice from the RE developers of such offer. After such period, the RE developers of Covered RE Facilities may offer their capacity to other offtakers, at the same rate and contract term.

The capacity offered by the RE developers in the Green Energy Option Program (GEOP) and capacity already covered by existing supply agreements with customers under the Competitive Retail Electricity Market Program (CREM) or the GEOP shall not be required to be offered to the host DU under this Section.

As used in the preceding paragraph, capacity covered by existing supply agreements with customers under the CREM shall include an agreement

between an RE developer and prospective offtaker covered by a signed and binding PSA or PSA Term Sheet as of the date of effectivity of these Amended Implementing Guidelines.

The ROFR shall not apply to capacities covered by: a) existing Power Supply Contracts/Agreements between Gencos and Retail Electricity Suppliers to serve the Retail Market End-Users; and b) binding commercial arrangements such as Shareholder Agreements (SHAs), Joint Venture Agreements (JVAs), or similar instruments that allocate generation capacities for the exclusive or priority use of companies for retail electricity or GEOP supply and other market mechanisms/opportunities.

## Section 7. **Rules on Acceptance or Rejection of Offer –**

### **(a) Offer**

An RE developer shall offer in writing its capacity from a Covered RE Facility that is needed for compliance with the host DU's annual RPS requirements, indicating its proposed rate and contract term. This can be done as early as when it is securing its Certificate of Authority for the construction of its RE Facility.

### **(b) Acceptance of Offer**

The host DU shall communicate in writing the acceptance of the RE developer's offer within three months from receipt of such offer.

In case of counter-offer from the host DU, any and all negotiations regarding the proposed contract rate and term shall not exceed the three-month period. These negotiations shall automatically be terminated upon the lapse of the said period.

### **(c) Rejection of Offer**

The host DU shall communicate the rejection of the RE developer's offer within three months from receipt of such offer.

There is rejection when:

- i) The DU failed to respond in writing within the three-month period;
- ii) The DU provided a written rejection notice to the RE developer at any time during the three-month period;
- iii) The host DU has accepted in writing an offer from another RE developer in compliance with its RPS requirement;
- iv) The RE developer rejected the counter-offer from the host DU; or
- v) There is failure of negotiations or failure of the host DU and the RE developer to agree within the three-month period.

Section 8. **Emergency Power Supply Agreement** – The DU may engage in negotiated procurement of an Emergency Power Supply Agreement (EPSA) under the circumstances contemplated in **Section 2.3.6** of the 2023 DOE CSP Circular, as amended.

The DU and the supplier of emergency power may immediately execute and implement the said EPSA provided the following conditions are present:

- (a) the cooperation period of such EPSA shall have a maximum and non-extendible period of one (1) year from its execution;
- (b) the interim rates to be charged under the EPSA shall be capped at the latest ERC-approved generation tariff in the following order of priority: (i) specific for the plant and under the same tariff structure; (ii) for the same technology, tariff structure, and supply type (i.e., peaking, intermediate, baseload, for RPS compliance, etc.); (iii) for the same tariff structure and supply type; **Provided**, such rates shall apply until the ERC issues its approval of the EPSA;
- (c) the DU shall, within five (5) calendar days from the occurrence of the Force Majeure or Fortuitous Event, notify in writing the ERC and the DOE, as well as the NEA (in the case of ECs) and the NPC (in the case of Off-Grid areas), of such Force Majeure or Fortuitous Event which will require the emergency power supply; and
- (d) the DU and the Captive Market Supplier shall jointly file with the ERC the application for approval of the said EPSA in accordance with the timeline prescribed in **Section 26** of these Amended Implementing Guidelines.

Procurement of emergency power supply shall not be entitled to any form of subsidy, except as allowed under existing DOE policies.

Section 9. **Bids and Awards Committee** – The DU, through its DU-BOD, shall prescribe its process for selecting the members of its BAC, which shall consist of at least five (5) members. The DU-BOD shall also provide for the qualification of the members of its BAC, provided that BAC members shall not be related to any of the DU-BOD and shall not be affiliated with any Generation Company within the fourth (4<sup>th</sup>) degree of consanguinity or affinity.

In accordance with its prescribed process, the DU-BOD shall establish the BAC which shall lead, conduct, and manage the CSP, in accordance with the policies and procedures provided in these Amended Implementing Guidelines. The BAC and the DU shall be accountable for their decisions in the conduct of the CSP.

The BAC shall notify, in writing, the DOE, copy furnish the ERC (and NEA, in the case of ECs), of the conduct of the CSP five (5) calendar days before the first publication of the Invitation to Bid (ITB).

The BAC shall be responsible for all aspects of the CSP. A quorum of the BAC shall be composed of a simple majority of all its members. A decision of the BAC shall require majority votes of those present in a meeting or proceeding where a quorum is constituted.

**Section 10. Joint BAC and Secretariat of Aggregated DUs** – DUs may choose to aggregate their demand or energy requirements, solely for the purpose of procuring their supply of electricity through CSP; provided, however, that individual PSAs shall be entered into between the Winning Bidder and the individual member DU.

In such case, the aggregated DUs shall agree on the process for constituting a Joint BAC, which process must be consistent with **Section 9** of these Amended Implementing Guidelines. The aggregated DUs, however, shall not be severally and jointly liable with the other DUs, with respect to their individual PSAs.

**Section 11. CSP Observers** – To assure all parties that the CSP is conducted in an open, transparent, efficient, and equitable manner, the BAC or Joint BAC shall open the procurement proceedings, and issue invitations to the following entities or groups in accordance with these Amended Implementing Guidelines:

- (a) Consumer representatives from the Department of Trade and Industry (DTI)-accredited consumer groups or from the Securities and Exchange Commission (SEC)-registered consumer groups;
- (b) Community representatives, such as the local chamber of commerce, homeowners associations, local pastoral councils, academe, parent-teachers associations, and/or for ECs, representatives from Multi-Sector Electrification Advisory Council and/or Barangay-Member Consumer Electrification Committee;
- (c) Interested civil society organizations and consumers; and
- (d) For CSPs conducted by the ECs, a representative from NEA.

The above identified entities or interested consumers shall inform, in writing, whether through physical or electronic means, the BAC or Joint BAC, of their interest to participate as observers, and of their designated observer (CSP Observer) for the whole CSP. If the CSP Observer is not available in any of the CSP stages, the concerned entity or interested consumer shall inform the BAC in writing and may send an alternate, provided the alternate is familiar with the ongoing CSP. Such written notice shall be submitted to the BAC at least two (2) calendar days before each of the scheduled procurement stages, otherwise,

failure to provide such written notice shall be considered as waiver of the Observers to attend the particular procurement stage.

All CSP Observers shall execute a sworn undertaking that they will strictly adhere to these Amended Implementing Guidelines, as well as the internal rules, policies, and procedures of the BAC governing the conduct of the CSP.

The DU is required to make and keep, as part of the BAC or Joint BAC records, a complete and unedited video record of the proceedings in all cases of CSP and live-stream proceedings in their social media websites.

The absence of CSP Observers will not nullify the CSP proceedings; provided that the CSP Observers have been duly invited in writing, whether through physical or electronic means, at least five (5) calendar days before each of the scheduled procurement stages.

**Section 12. Direct Negotiation.** – Direct negotiation with an interested Captive Market Supplier for the supply of electricity may be undertaken by the DU, using the PSA Template in Appendix “C-1” (PSA Template for Financial PSAs) for Financial PSAs or Appendix “C-2” (PSA Template for Physical PSAs) for Physical PSAs, after at least two (2) failed competitive public bidding or, in the case of EPSAs, in accordance with **Section 8 and for host DUs exercising their ROFR to Covered RE Facilities, in accordance with Sections 6 and 7 of these Amended Implementing Guidelines.**

A bidding is considered to have failed when, during its conduct, any of the circumstances exist:

- (a) All Bidders are declared ineligible;
- (b) No proposal was received by the BAC on Bid Submission Deadline;
- (c) No Captive Market Supplier purchased the Bidding Documents after the deadline set in the published ITB;
- (d) Offers of Bidders failed to meet the requirements prescribed under the Terms of Reference (TOR), as determined by the BAC or Joint BAC; or
- (e) In the event of refusal, inability, or failure of a Winning Bidder to enter into a PSA with the DU within thirty (30) calendar days from award.

If direct negotiation results from two (2) failed biddings, the entire process of direct negotiation should be completed and the PSA signed within **one hundred twenty (120)** calendar days from the date that the second failure of bidding is declared. With respect to the ECs, the NEA guidelines for the timeline for submission will govern. Within **thirty (30)** calendar days from execution of the PSA resulting from the direct negotiation, the resulting PSA must be submitted to the ERC for its review in accordance with these Amended Implementing Guidelines.

## ARTICLE V POWER SUPPLY AGREEMENT

Section 13. **General Principles** – In implementing its PSPP, DUs have the option to procure either a Physical or Financial PSA. The TOR must expressly indicate if the PSA to be procured is a Physical or Financial PSA.

For PSAs procured for purposes of compliance with the RPS under Republic Act No. 9513, or the Renewable Energy (RE) Act, and other applicable laws and policies, the supply should be in accordance with the applicable DOE Circulars and rules and regulations of the ERC.

All PSAs are subject to approval of the ERC, prior to their implementation, in accordance with applicable issuances of the ERC, including these Amended Implementing Guidelines, unless immediate implementation is allowed under the DOE CSP Circular and these Amended Implementing Guidelines, as in the case of EPSAs.

Section 14. **Draft PSA** – The draft PSA to be included in the Bidding Documents should clearly define the rights and obligations of the parties and shall include the minimum terms and conditions of a PSA as prescribed in Appendix “C-1” (PSA Template for Financial PSAs) for Financial PSAs and Appendix “C-2” (PSA Template for Physical PSAs) for Physical PSAs. The DU may include additional contractual terms and conditions in their draft PSA provided these are not contrary to the provisions of the TOR or these Amended Implementing Guidelines.

Section 15. **Maximum Term** – The term of the PSA shall be for a maximum period of ten (10) years in the case of Financial PSAs.

For Physical PSAs, the maximum term shall be for a period of fifteen (15) years, except for Physical PSAs where the nominated plants are renewable energy power plants, in which case, they may have a maximum term of twenty (20) years.

All of these terms shall be reckoned from commencement of supply.

Section 16. **Tariff Structure** – The tariff structure for Financial PSAs shall be fixed (expressed in PhP/kWh) for the duration of the contract term. The tariff structure for Physical PSAs shall be indicated by the DU in its TOR.

The ceiling price shall be indicated in the TOR.

Section 17. **Obligation to Provide Replacement Power.** – The Winning Bidder is under the obligation to provide the entire contracted capacity. In the case of Physical PSA, the Winning Bidder shall deliver the contracted capacities from its nominated plants, and where it is unable to deliver from these

plants beyond the allowable scheduled and unscheduled outages, it shall procure replacement power, subject to the guidelines provided herein.

In providing such replacement power, the DU and the Winning Bidder shall have the obligation to supply electricity in the least cost manner to the captive market. Further, the DU shall optimize its supply mix and sources in a way that this obligation shall be fulfilled.

Further, the Winning Bidder is under the obligation to pay for the difference, if any, between the cost of the replacement power incurred by the DU and the provisionally or finally approved generation rate.

Likewise, in any of the following cases, the Winning Bidder shall source and provide replacement power:

- (a) If the Physical PSA provides that the supply requirement shall be originating from a specific plant type with a provisional or final generation rate granted specifically to such plant, and the Winning Bidder was not able to provide supply from such plant type, the Winning Bidder shall be responsible for the provision of replacement power at the generation rate equivalent to the provisional or final approved generation rate for such plant type, or the actual rate of the replacement power, whichever is lower;
- (b) If the Winning Bidder was only able to provide partial electricity supply requirement of the DU, contrary to what is provided for under a duly executed Physical PSA, the Winning Bidder shall be responsible for the provision of replacement power for the deficient capacity at the generation rate equivalent to the provisional or final approved generation rate, or the actual rate of the replacement power, whichever is lower; or
- (c) In case of outages that exceeded the authorized outage allowance, the Winning Bidder must provide replacement power at the generation rate equivalent to the provisional or final approved generation rate, or the actual rate of the replacement power, whichever is lower.

For avoidance of doubt, this provision regarding replacement power does not apply to Financial PSAs since supply is guaranteed 24/7 and the Winning Bidder is not entitled to avail of any outage allowance.

## **ARTICLE VI PROTEST MECHANISM**

Section 18. **Requests for Reconsideration** – Decisions of the BAC or Joint BAC regarding the CSP may be questioned by the Bidders, including the host DU in cases of Covered RE Facility where the host DU's ROFR was not

observed by the RE developer in accordance with **Sections 6 and 7** hereof, by filing a written request for reconsideration within ten (10) calendar days upon receipt of the written notice of such decision of the BAC or Joint BAC. The BAC or Joint BAC shall decide on the request for reconsideration within ten (10) calendar days from receipt thereof. If the request for reconsideration is not acted upon within the said period by the BAC or Joint BAC, the same is deemed approved.

In the event that the request for reconsideration is denied, decisions of the BAC or Joint BAC may be protested, in writing, to the DU-BOD.

**Section 19. Protest on BAC or Joint BAC Decisions** - A protest shall be made by filing a position paper with the DU-BOD, accompanied by the payment of a non-refundable protest fee as may be determined by the concerned BAC or Joint BAC and prescribed in the ITB. In no case shall the protest fee be higher than the bid security. Such fees shall not be recovered from consumers.

The position paper shall contain the following information: the name of Bidder, address, name of the project, a brief statement of facts, issue to be resolved, and such other matters and information pertinent and relevant to the proper resolution of the protest.

The protest must be filed within ten (10) calendar days from receipt of the resolution denying its request for reconsideration.

The position paper shall be accompanied by an affidavit that the affiant has read and understood the contents thereof and that all allegations therein are true and correct according to his or her personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned and produces no legal effect, while non-payment of the protest fee will result in the outright dismissal of the protest.

**Section 20. Resolution of Protests** - Protests shall be resolved within ten (10) calendar days from receipt thereof. The decision of the DU-BOD shall be final. After protests have been resolved with finality, an aggrieved party may file a timely petition to intervene in the application to be filed by the parties before the ERC for approval of the resulting PSA.

**Section 21. Effect of Protest** - Any protest at any stage of the CSP shall not stay nor delay the bidding process. Likewise, no suit or action shall be filed by the CSP Observers while the CSP is underway.

## **ARTICLE VII PSA APPLICATION**

**Section 22. Applicability** – The following procedures shall apply to the ERC’s review of all PSAs and EPSAs duly executed in accordance with these

Amended Implementing Guidelines. Except to the extent provided in these Amended Implementing Guidelines, the ERC's Revised Rules of Practice and Procedure (RRPP) shall continue to apply.

**Section 23. Initiation of the Filing and Pre-Filing** – The filing for approval of the PSA or EPSA shall be initiated through the pre-filing process within the period set in **Section 25**. Applicants shall undergo pre-filing of applications for the approval of their PSA or EPSA either via electronic pre-filing or physical pre-filing at the designated offices of the ERC and complete the same within the period set in **Section 25**. All PSA or EPSA applications shall include the documents listed in Appendix “D-1” (Checklist of Pre-Filing Requirements for PSA Cases with CSP-Financial) or Appendix “D-2” (Checklist of Pre-Filing Requirements for PSA Cases with CSP-Physical) or Appendix “F” (Checklist of Pre-Filing Requirements for Emergency PSAs), as applicable, and as may be updated by the ERC from time to time, subject to the rule-making procedure of the ERC. Upon its receipt of the minimum pre-filing requirements, the assigned Legal Personnel handling the pre-filing shall immediately endorse the PSA or EPSA application for payment of filing fees and docketing, without prejudice to the submission of any additional relevant documents or requirements that the ERC may require in the course of the proceedings.

**Section 24. Documents Previously Submitted** - If any of the required documents in **Section 23** have been previously submitted to the ERC, the Applicant may issue a Certification of Prior Submission in lieu of the previously submitted document. The Certificate of Prior Submission shall state the following: (1) the fact of prior submission; (2) the date of such submission; (3) reference case wherein the document was submitted; and (4) that there are no amendments to said documents from the date of the previous submission.

Notwithstanding the submission by the Applicant of a Certification of Prior Submission, the ERC may require the Applicant to submit copies of the document(s) referred therein if, upon verification, the ERC determines that the document(s) referred therein was not submitted to or received by, nor otherwise found in the records of the ERC. The ERC may likewise direct the Applicants to furnish copies of such documents to parties other than the ERC.

**Section 25. Pre-Filing Process and Timelines** – The minimum pre-filing requirements must be submitted to the ERC within thirty (30) calendar days from execution of the PSA or EPSA.

The process for electronic pre-filing shall generally follow the process set out in ERC Resolution No. 09, Series of 2020 and ERC's Process Flow for Online Pre-Filing application through <https://prefiling.erc.ph>, except for the timelines specifically provided in these Amended Implementing Guidelines. The electronic pre-filing shall be completed within fifteen (15) calendar days from submission of the pre-filing request. For clarity, the submission of the pre-filing requests is reckoned from the ERC's receipt of the e-mail formally endorsing the documents for pre-filing evaluation.

The process for physical pre-filing shall be initiated through a request for pre-filing conference, which the ERC assigned Technical and/or Legal Personnel shall conduct within two (2) working days from the date the request was made. The request for physical pre-filing conference shall be made by electronic mail and must comply with the following conditions:

- a. The details of the request must indicate the following: that it is a physical pre-filing request; the type of case to be pre-filed; the full name of the applicant; and the proposed date and time;
- b. At the physical pre-filing conference, Applicants must present copies of the application, its annexes, and minimum pre-filing requirements, either as hard copies or soft/electronic copies;

The hard copy of any confidential document shall be placed in a sealed envelope and marked with the word "CONFIDENTIAL", after which, it shall be submitted physically to the ERC within the period provided under these Amended Implementing Guidelines; and

- c. The pre-filing requirements must be segregated into a legal pre-filing requirements folder and a technical pre-filing requirements folder.

If the minimum pre-filing requirements are complete, the physical pre-filing shall be terminated within the same day and (a) for technical pre-filing, the evaluating Technical Personnel shall issue a Certification of Completion or a signed copy of the filled-out pre-filing checklist, and (b) for legal pre-filing, the assigned Legal Personnel shall endorse and process the issuance of a Statement of Account (SOA) upon completion of the technical and legal pre-filing. If the SOA is not physically issued on the same day, the same shall be e-mailed to the Applicant on the next working day following the completion of physical legal pre-filing. The payment of the application filing fees shall be made by applicants within five (5) working days from receipt of the SOA from the ERC. For incomplete minimum requirements, submissions must be completed within five (5) working days counted after the last day of the physical pre-filing conference.

In the event the Applicants fail to submit the minimum pre-filing requirements within the prescribed period and without any justifiable reason, the ERC may either (a) impose penalties on the erring Applicant/s in an amount as prescribed in **Section 26** of these Amended Implementing Guidelines, or (b) refuse to accept the application for filing and docketing.

The PSA or EPSA application shall only be considered filed upon completion of the pre-filing process, payment of the application filing fees, and docketing of the application.

**Section 26. Filing of the Application** – The PSA or EPSA application shall be a joint responsibility of the DU and the Winning Bidder (or Captive

Market Supplier, in the case of EPSAs). Within thirty (30) calendar days from execution of the PSA or EPSA, the parties thereto shall initiate the filing of their joint application with the ERC in accordance with **Sections 23** and **25** hereof.

For PSAs procured through the host DU's exercise of its ROFR in a Covered RE Facility, the application must allege the offer of the capacity, the acceptance or rejection of such offer and acceptance of a revised offer, if applicable, within the three-month period from receipt of the written notice of offer, and the execution of the resulting PSA. The joint filing of the application must be initiated also within thirty (30) calendar days from execution of the resulting PSA, in accordance with **Section 26** of these Amended Implementing Guidelines.

The application must allege timeliness of the filing. In the event the Applicants fail to initiate the filing of the application for approval of the executed PSA or EPSA with the ERC within the prescribed period and without any justifiable reason, the erring Applicant/s or parties will be subject to imposition of a penalty equivalent to a range of a minimum of Fifty Thousand Pesos (PhP50,000.00) to a maximum of Fifty Million Pesos (PhP50,000,000.00) as provided under **Section 46** of the EPIRA.

The ERC will resolve the application for EPSA approval within one hundred eighty (180) calendar days from the submission of the application for resolution. After the lapse of the period to resolve the application for EPSA, the EPSA shall be deemed approved by the ERC subject to the parties' strict compliance with **Section 8(b)** hereof. For EPSA applications pending with the ERC upon effectivity of these Amended Implementing Guidelines, they shall likewise be deemed approved upon the lapse of one hundred eighty (180) calendar days from submission of said applications for resolution, again subject to the parties' strict compliance with **Section 8(b)**.

**Section 27. Review Procedure** – Any PSA resulting from CSP or direct negotiation shall be reviewed, at first instance to determine whether the CSP or direct negotiation was conducted in accordance with these Amended Implementing Guidelines (if applicable, including consistency of the PSA with the TOR) and to ensure that there are no indications of any form of anti-competitive behavior contemplated under Section 45 of R.A. No. 9136. In the event that the CSP or direct negotiation is found to be non-compliant with these Amended Implementing Guidelines, the application for the approval of the PSA shall be dismissed forthwith.

For PSAs resulting from CSP found to be compliant with these Amended Implementing Guidelines and with no indication of anti-competitive behavior, the Lowest Calculated Responsive Bid of the Captive Market Supplier as reflected in the PSA shall be deemed approved, and the ERC shall proceed to review the non-rate related terms and conditions of the PSA.

For PSAs resulting from direct negotiation in compliance with these Amended Implementing Guidelines, including EPSAs, the ERC shall proceed to review the PSA's reasonableness in terms of costs, risk allocation, and other contractual terms to ensure compliance with least cost obligation of the DU.

For purposes of evaluation, the ERC shall consider all evidence that are: (1) duly submitted by the Applicants; (2) duly authenticated by the Applicants' witnesses during the hearing; (3) formally offered in evidence; and (4) publicly available, which may be subject of judicial notice.

**Section 28. Issuance of Provisional Authority (PA) or Interim Relief (IR)** – For any PSA resulting from CSP or direct negotiation, which is found to be conducted in accordance with these Amended Implementing Guidelines (including consistency of the PSA with the TOR), the ERC may grant a PA or IR when warranted under the circumstances. However, for PSAs resulting from direct negotiation, any PA or IR issued shall be subject to the ERC's final determination of the applicable rate and issuance of final authority.

**Section 29. Issuance of Final Authority** – All PSA applications, including those which have been issued a PA or IR, shall be subject to the ERC's issuance of final authority.

Except for EPSAs covered by **Section 26** of these Amended Implementing Guidelines, the ERC shall resolve all applications for PSA approval within two hundred seventy (270) calendar days from filing of said application pursuant to R.A. No. 11234, otherwise known as the Energy Virtual One-Stop Shop (EVOSS) Act, as may be amended from time to time. After the lapse of the period to resolve the PSA application, the PSA shall be deemed approved by the ERC.

**Section 30. Motion for Reconsideration** – The procedures set forth in the RRPP shall apply. Pending resolution of the Motion for Reconsideration, the parties shall still be bound to fulfill their obligations under the PSA, as well as the rates approved by the ERC, unless any adjustment or amendment is directed.

**Section 31. Review of the ERC** – ERC's evaluation of the PSA shall be in accordance with the state policies and principles under the EPIRA and based on satisfaction of the following:

- (a) That the PSA guarantees Captive Market Supplier's compliance with the required legal, technical, environmental, and financial standards as may be prescribed in applicable laws and regulations and as set out in the Bidding Documents;
- (b) That the PSA has complied with the minimum terms and conditions embodied in the PSA Template under "C-1" (PSA Template for Financial PSAs) for Financial PSAs or Appendix "C-2" (PSA Template for Physical PSAs) for Physical PSAs; and

(c) That the PSA accords the parties with equitable rights.

Section 32. **Procedural Requirements** – Prior to the filing with the ERC of the application referred to in the preceding section, the parties shall comply with Section 4 (e), Rule 3 of the EPIRA IRR and relevant provisions of the RRPP, or any other applicable rules as may be issued by the ERC. Any application that fails to comply with the above requirements shall not be accepted.

The application shall be treated as a rate case, and the procedure applicable to rate cases shall be observed.

## **ARTICLE VIII PROHIBITED ACTS AND AGREEMENTS**

Section 33. **Prohibitions on the BAC** - The members of the BAC, Joint BAC, BAC Secretariat, and the members of the DU-BOD, are prohibited from doing any of the following acts:

- (a) Conducting bid-opening stage in a non-public manner;
- (b) Failing to read out or show the bid prices and terms at bid opening;
- (c) Changing or discarding parts of bids or deliberately misplacing all or parts of bids;
- (d) Changing the announced evaluation criteria during the evaluation process;
- (e) Arbitrarily assigning or changing bid scores, or making deliberate mistakes or errors in scoring;
- (f) Voiding all bids for alleged errors in specifications and re-bidding the work;
- (g) Extending the bid due date to permit late, changed, or altered bids;
- (h) Allowing unauthorized persons to participate in and influence the bid evaluation;
- (i) Failing to record important information in the bid evaluation report, such as the ranking of Bidders or bid prices;
- (j) Refusal to accept CSP Observers without valid reason;
- (k) Awarding of the contract to an entity other than the Winning Bidder; and
- (l) Any act or omission thereof that tends to undermine the objectives of these Amended Implementing Guidelines.

Section 34. **Prohibitions on Bidders** - Bidders are prohibited from doing any of the following acts:

- (a) Submission of eligibility requirements containing false information or falsified documents;
- (b) Submission of bids that contain false information or falsified documents, or the concealment of such information in the bids in order

- to influence the outcome of eligibility screening, or any other stage of the competitive bidding;
- (c) Allowing the use of one's name, or using the name of another for purposes of competitive bidding;
  - (d) Withdrawal of a bid, or refusal to accept an award, or enter into a contract with the DU without justifiable cause, after receiving the award;
  - (e) Refusal or failure to post the required Bid Security within the prescribed period;
  - (f) Termination of the contract due to the default of the Winning Bidder;
  - (g) Any documented attempt by a Bidder to unduly influence the outcome of the bidding in its favor;
  - (h) All other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late bids, or patently insufficient bids, for at least three (3) times within a year, except for valid reasons; and
  - (i) Any act or omission thereof that tends to undermine the objectives of these Amended Implementing Guidelines.

**Section 35. Withdrawal of the Application** – Pending provisional or final approval of the application, the Applicants desiring to withdraw the application shall file a joint motion to withdraw such application, stating therein the grounds for the withdrawal; provided that the grounds for withdrawal shall be limited only to the grounds for pre-termination as provided under **Section 36** of these Amended Implementing Guidelines.

In the event that only one of the parties thereto files the motion, the ERC shall direct the other party to submit a comment or opposition to the motion.

Such withdrawal shall only be allowed: (a) based on grounds stipulated in the PSA which should be consistent with these Amended Implementing Guidelines, (b) upon full compliance with the procedural requirements set forth in the PSA, and (c) with prior approval from the ERC.

**Section 36. Pre-termination of Contract** – No party to the PSA shall be allowed to terminate the contract within the validity period thereof, unless expressly allowed under these Amended Implementing Guidelines. Termination shall only be allowed (a) based on grounds stipulated in the PSA which should be consistent with these Amended Implementing Guidelines, (b) upon full compliance with the procedural requirements set forth in the PSA, and (c) with prior approval from the ERC. A motion for termination of a PSA must be justified only on any of the following grounds:

- (a) bankruptcy or insolvency of the Genco;
- (b) expiration, reduction or revocation of the franchise of the concerned DU;
- (c) breach of contract;
- (d) default of either party without fault or negligence on the other party;

- (e) force majeure rendering the supply of electricity impossible to accomplish; or
- (f) any other circumstance analogous to the foregoing grounds or otherwise expressly stipulated in the PSA as approved by the ERC.

Upon the approval by the ERC of the PSA termination, each party thereto shall cease to have any further obligations, responsibilities or liabilities, other than such obligations or liabilities that have accrued prior to the termination and remain undischarged, and those set forth by the ERC in the approval of such termination.

EPSAs may not be pre-terminated, unless a PSA is procured within the term of the EPSA and such PSA has been approved by the ERC.

**Section 37. Ineligible Supply Contracts** – For PSAs implemented prior to their approval or issuance of a PA or IR, as well as for PSAs approved either through an IR, PA, or Final Authority, even if subsequently nullified or invalidated after judicial review, and were otherwise implemented not in accordance with the authority granted, the DUs may be allowed recovery of the associated generation costs based on the “principle of full recovery of prudent and reasonable economic costs incurred” in accordance with Section 25 of the EPIRA, without prejudice to the imposition of a penalty equivalent to a range of a minimum of Fifty Thousand Pesos (PhP50,000.00) to a maximum of Fifty Million Pesos (PhP50,000,000.00), as provided under Section 46 of the EPIRA on the erring DUs and Gencos.

For the implementation of the Automatic Generation Rate Adjustment (AGRA) Formula under the AGRA Guidelines and Resolution No. 16, Series of 2009, entitled “*A Resolution Adopting the Rules Governing the Automatic Cost Adjustment and True-up Mechanisms and Corresponding Confirmation Process for Distribution Utilities*”, the DU’s recovery shall be capped at the lower of the DU’s Weighted Average Generation Cost (WAGC) derived from its ERC-approved PSAs for the corresponding billing month; the ERC-published WESM average generation price for the same billing month and grid (Luzon, Visayas, or Mindanao); or the actual rate as billed by the IPP. For off-grid DUs with no approved PSA or applicable WESM reference, the benchmark shall be the ERC-approved generation rate under the latest Small Power Utilities Group (SPUG) True Cost Generation Rate (TCGR), or, where available, the most recent ERC-approved generation rate of a comparable off-grid Genco within the same island grid or utilizing similar generation technology and fuel mix.

The final recoverable generation costs arising from ineligible supply contracts shall be based on the Final Authority to be rendered by the ERC in the pertinent PSA applications filed for their approval. Further, during the confirmation process of the DU’s over/under recovery of pass-through charges filed under ERC Resolution No. 14, Series of 2022, or any subsequent amendments thereto, the DU that implemented an ineligible supply contract shall prove the necessity and good faith in the procurement and utilization of the

ineligible supply contract, otherwise the ERC may disallow full recovery of the associated generation costs notwithstanding the preceding paragraph.

Section 38. **Bid Manipulation** – The following agreements between or among Bidders are considered as bid manipulation and are prohibited under these Amended Implementing Guidelines:

- (a) **Cover bidding** or when individuals or firms agree to submit bids that involve at least one of the following: (i) a competitor agrees to submit a bid that is higher than the bid of the designated winner, (ii) a competitor submits a bid that is known to be too high to be accepted, or (iii) a competitor submits a bid that contains special terms that are known to be unacceptable. Cover bidding is designed to give the appearance of genuine competition;
- (b) **Bid suppression.** Bid suppression schemes involve agreements among competitors, in which one or more companies agree to refrain from bidding or to withdraw a previously submitted bid, so that the designated winner's bid will be accepted. In essence, bid suppression means that a company does not submit a bid for final consideration;
- (c) **Bid rotation.** In bid rotation schemes, conspiring firms continue to bid, but they agree to take turns being the Winning (i.e., lowest qualifying) Bidder. The way in which bid-rotation agreements are implemented can vary. For example, conspirators might choose to allocate approximately equal monetary values from a certain group of contracts to each firm or to allocate volumes that correspond to the size of each company;
- (d) **Market allocation.** Competitors carve up the market and agree not to compete for certain customers or in certain geographic areas. Competing firms may, for example, allocate specific customers or types of customers to different firms, so that competitors will not bid (or will submit only a cover bid) on contracts offered by a certain class of potential customers which are allocated to a specific firm. In return, that competitor will not competitively bid to a designated group of customers allocated to other firms in the agreement;
- (e) Any other analogous practices of bid manipulation; and
- (f) Any other agreement in relation to the conduct or participation in a CSP which tends to substantially prevent, restrict or lessen competition.

Section 39. **Fifty Percent (50%) Limit Rule.** – The DU shall comply with the requirements of Section 45 (b) of the EPIRA when entering into PSAs.

## ARTICLE IX FINES AND PENALTIES

Section 40. **Penalties** – In case of violation of any of the provisions of these Amended Implementing Guidelines, the ERC or NEA (if allowed under its charter<sup>1</sup>), may, after due notice and hearing, impose any of the following:

- (a) A penalty not lower than One Hundred Thousand Pesos (PhP100,000.00) but not exceeding Five Hundred Thousand Pesos (PhP500,000.00) at the discretion of ERC, shall be imposed upon the BAC, Joint BAC, BAC Secretariat, and DU-BOD for violation of **Section 33**.
- (b) For failure to submit the required reportorial requirement under **Section 46**, a penalty amounting to Five Hundred Thousand Pesos (PhP500,000.00) shall be imposed upon the President or General Manager of the DU who fails to submit the sworn certification. Such penalty shall not be passed on to the consumers.
- (c) For commission of any act considered as bid manipulation, in addition to blacklisting by the ERC from participating in any CSP and from entering into any kind of PSA with any DU, such Bidder shall pay a fine of Fifty Million Pesos (PhP50,000,000.00).
- (d) For any other violation of these Amended Implementing Guidelines by any member of the BAC, Joint BAC, BAC Secretariat, DU-BOD, or its officers, each shall pay an administrative fine ranging from Five Hundred Thousand Pesos (PhP500,000.00) to One Million Pesos (PhP1,000,000.00).
- (e) In addition to the foregoing, if the evidence so warrants, the ERC may file with, endorse or refer before the Department of Justice (DOJ), violations of the EPIRA or other relevant laws, for preliminary investigation and prosecution before the proper court.

Section 41. **Blacklisting** – The DU shall blacklist a Winning Bidder in case such Winning Bidder fails or refuses to:

- (a) execute the PSA resulting from a successful CSP without justifiable reason; or
- (b) join in the pre-filing or filing of the application thereof; or
- (c) deliver the DU's electricity supply requirements as provided for under the duly executed PSA, without justifiable reasons as provided under the PSA that is provisionally or finally approved by the ERC.

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<sup>1</sup> Presidential Decree No. 269 as amended by Republic Act No. 10531

For this purpose, all DUs shall, within thirty (30) days from effectivity of these Amended Implementing Guidelines, formulate and adopt their own internal rules for blacklisting procedure. Within five (5) days upon adoption, the DUs shall notify, in writing, the ERC of the said internal rules. Such internal rules shall explicitly include clear procedures, such as the procedure through which the Winning Bidder may appeal blacklisting decisions, ensuring due process, transparency, and fairness.

The ERC, *motu proprio*, after due notice and hearing, may also impose the penalty of blacklisting against Winning Bidders under any of the circumstances described above should the DU concerned fail to effect such blacklisting based on the guidelines provided herein.

The concerned DU shall, within ten (10) days from blacklisting, notify the ERC in writing of the entity/ies that it blacklisted. The said blacklisted entities shall be duly recorded by the ERC in the list of suppliers blacklisted by all the DUs and the ERC, and which shall be posted and regularly updated on the ERC official website for the information of all DUs and stakeholders.

The blacklisted entity may appeal such blacklisting to the ERC.

**Section 41.a. Effect and Duration of Blacklisting** – All entities blacklisted by the DU, pursuant to these Amended Implementing Guidelines and the DU's own internal rules for blacklisting procedure, shall not be allowed to participate in any CSP conducted by the said DU or Aggregated DUs, or to enter into any new PSA with them. The prohibition to participate in any CSP and to enter into any PSA with the concerned DU or Aggregated DUs shall be for a minimum period of three (3) years from the receipt by the erring Winning Bidder of the DU's decision imposing such penalty (Disqualification Period).

**Section 41.b. Scope of Blacklisting** - The penalty of Blacklisting shall attach to the Supplier who was blacklisted and is currently serving the Disqualification Period. Such Supplier shall not participate in another CSP to be conducted by the concerned DU while serving the Disqualification Period.

A Winning Bidder with an approved PSA shall not source its supply from a blacklisted supplier serving the Disqualification Period.

**Section 41.c. Administrative Penalty on Blacklisted Entity** - An administrative penalty amounting to two (2) months' value of the PSA, computed using the Winning Bidder's bid price, shall be imposed by the ERC on the blacklisted Winning Bidder.

**Section 41.d. Effect of Blacklisted Status on PSAs entered into prior to receipt of Blacklisted Status.** – The PSAs, duly executed pursuant to a successful CSP and approved prior to the blacklisting of the

Winning Bidder, shall not be affected by the subsequent blacklisting of the Winning Bidder.

Section 41.e. **Other Grounds for Blacklisting** - The following shall also be blacklisted by the DU, through its own internal rules for blacklisting procedure, or by the ERC, after due notice and hearing:

- i) The Supplier in the PSA who is at fault in the termination of the PSA or withdrawal of the application;
- ii) The Winning Bidder who refuses to post performance bond without justifiable reason; and
- iii) The Winning Bidder who charges the DU a rate higher than the ERC-approved generation rate.

Section 42. **Administrative Penalty for Bid Manipulation** – Any Bidder found to have committed any acts considered as bid manipulation shall also be blacklisted by the ERC from participating in any CSP and from entering in any kind of PSA with any DU. In addition to Blacklisting, such Bidder shall pay a fine of Fifty Million Pesos (PhP50,000,000.00).

If the evidence so warrants, the ERC may file with, refer or endorse to the DOJ, criminal complaints for violations of the EPIRA or other relevant laws, for preliminary investigation and prosecution before the proper court.

Section 43. **Violation of the Fifty Percent (50%) Limit Rule** – In case of violation of **Section 39** of these Amended Implementing Guidelines, the erring DU shall pay an administrative fine in the amount of Fifty Million Pesos (PhP50,000,000.00) each. In addition to the payment of the fine, the PSA entered into by them and filed before the ERC shall be disapproved outright.

Section 44. **Violation of these Amended Implementing Guidelines by the DU** – In case of violation of any other provisions of these Amended Implementing Guidelines not covered above, by any member of the BAC, Joint BAC, BAC Secretariat, DU-BOD, or its officers, each shall pay an administrative fine ranging from Five Hundred Thousand Pesos (PhP500,000.00) to One Million Pesos (PhP1,000,000.00).

If the violation involves bid manipulation or violation of the fifty percent (50%) limit rule, the erring member of the BAC, Joint BAC, BAC Secretariat, DU-BOD or officer shall be liable to pay an administrative fine amounting to Five Million Pesos (PhP5,000,000.00).

Section 45. In no event shall penalties imposed under Article IX of these Amended Implementing Guidelines be passed on to consumers.

## ARTICLE X ENFORCEMENT

Section 46. **Reportorial Requirement** – All DUs shall submit a sworn certification executed by its President or General Manager, notifying the ERC of the status of the implementation of the duly executed PSA, within five (5) calendar days from the date of commencement of supply as provided for under the duly executed PSA.

Section 47. **Issuance of Show Cause Order** – The ERC, motu proprio, or upon the filing of a verified complaint by an interested party, shall issue a show cause order or require the submission of a verified answer, as the case may be, for any violation of these Amended Implementing Guidelines.

Upon receipt of the Order, the person charged shall be given five (5) calendar days within which to explain and respond, in writing and under oath, to the charges cited in the show cause order.

The penalties in the preceding Article shall be imposed only after the offender has been duly informed in writing of said violation and has been given an opportunity to present an explanation and has been duly warned of the consequences of said violation.

The imposition of any administrative sanction is without prejudice to any criminal action that may be filed, if warranted, under existing law, rules, and regulations.

After considering the statements made, or documents or articles produced in the course of the investigation, the ERC shall terminate the proceedings by:

- (a) Issuing a decision ordering its closure if no violation or infringement of these Amended Implementing Guidelines or relevant provisions of the EPIRA is found; or
- (b) Issuing a decision finding that a violation has been committed and imposing fines and penalties to the person charged.

If the evidence so warrant, the ERC may file, before the DOJ, criminal complaints for violations of these Amended Implementing Guidelines or relevant laws for preliminary investigation and prosecution before the proper court.

Section 48. **Continuing Obligations of the DUs** – The DU has the obligation to continuously supply electricity in the least cost manner to its Captive Market, taking into consideration the quality, affordability, sustainability and reliability of the electric power supply.

It is also the obligation of the DU to continuously observe that the DU's total annual demand shall be the total annual demand in MW for the year immediately preceding the conduct of the CSP, as certified by the System Operator.

Finally, all DUs have the obligation to regularly notify the ERC of the status of the implementation of the duly executed PSAs, pursuant to the reportorial requirement under Section 46.

## **ARTICLE XI TRANSITORY PROVISION**

**Section 49. Transitory Period.** – All DUs with ongoing CSP activities and have been issued with Certificates of Posting (COP), prior to the effectivity of the DOE CSP Circular, shall continue to observe the CSP policy in accordance with DC No. DC2018-02-0003, as amended and supplemented by DC No. DC2021-09-0030.

All COP issued by the DOE, and Notice to Proceed by the NEA, shall be valid for forty-five (45) calendar days from the date of issuance of COP.

All pending applications for Certificate of Exemption from the conduct of CSP and Third-Party Bids and Awards Committee/Joint TPBAC Selection Process submitted to the DOE on or before 18 July 2023 shall be reviewed by the DOE pursuant to DC No. DC2018-02-0003, as amended and supplemented by DC No. 2021-09-0030.

All DUs with issued COE-CSP for embedded generators for a contract capacity of less than 10MW, shall apply for the ERC's approval of the corresponding PSAs, subject to the ERC Revised Rules of Practice and Procedure.

All EPSAs executed before the effectivity of these Amended Implementing Guidelines and pursuant to DC No. DC2023-06-0021, shall be directly filed with the ERC.

**Section 50. PSAs pending approval by the ERC** – All PSAs procured and executed, including those filed and pending before the effectivity of these Amended Implementing Guidelines, shall be processed in accordance with the DOE CSP policy applicable at the time of the filing of the application and these Amended Implementing Guidelines as may be applicable.

## ARTICLE XII FINAL PROVISIONS

Section 51. All other articles of the ERC CSP Guidelines and its Appendices are hereby renumbered accordingly.

Section 52. **Interpretation** – If any provision in these Amended Implementing Guidelines is found to be inconsistent with its Appendices, the provision in these Amended Implementing Guidelines shall prevail.

Section 53. **Non-Impairment of Vested Rights** – These Amended Implementing Guidelines shall not be interpreted as impairing, amending, or invalidating any power supply agreements already executed and in place, even if those agreements contain provisions that are inconsistent with or contrary to the amended provisions hereof.

Section 54. **Exception Clause** – Where good cause appears, the ERC may allow an exception from any provisions of these Amended Implementing Guidelines if such exception is found to be for the interest of the public and is not contrary to law or any other related rules and regulations.

Section 55. **Separability Clause** – All rules, regulations, guidelines and other issuances not expressly revised herein shall remain in force and effect.

If, for any reason, any part or section of these Amended Implementing Guidelines is declared unconstitutional or invalid, the other parts or sections hereof which are not affected thereby shall continue to be in full force and effect.

Section 56. **Review and Revision of Annexes and Appendices Clause** – The checklists, forms, and all templates detailed in Appendices A to F of this Resolution are integral parts thereof. The ERC shall, in the exercise of its regulatory mandate, revise or update these Annexes and Appendices, from time to time, to align with updated administrative policies and international standards, to adapt to technological advancements, changes in auditing rules, or to streamline procurement process, for the benefit of all stakeholders. Such amendments shall be posted on ERC's official website.

Section 57. **Repealing Clause** – The pertinent provisions of any other ERC rules or guidelines inconsistent herewith are hereby repealed or modified accordingly.

Section 58. **Effectivity** – These Amended Implementing Guidelines and its Appendices shall take effect immediately following its publication in a newspaper of general circulation, or in the Official Gazette.

ROS: KGEY/AJMO

LS: JRBC/ARG/MCCG

**APPENDIX “A”  
COMPLIANCE PARAMETERS FOR CSP EXCEPTIONS**

<p style="text-align: center;"><b>DOE DC No. 2023-06-0021, as amended and supplemented by DOE DC No. 2025-10-0022</b></p>	<p style="text-align: center;"><b>Exceptional Event</b></p>	<p style="text-align: center;"><b>Compliance Parameters</b></p>
<p style="text-align: center;">2.3.1.</p>	<p>Provision for power supply by the National Power Corporation (NPC) in off-grid areas:</p> <p>(a) prior to and until the entry of the New Power Providers (NPP), or</p> <p>(b) in emergency circumstances</p>	<p>Recovery of cost shall be subject to relevant applications for the Universal Charge-Missionary Electrification (UC-ME) availment.</p>
<p style="text-align: center;">2.3.2.</p>	<p>Provision of power supply by the Power Sector Assets and Liabilities Management Corporation (PSALM) through bilateral contracts for the power produced from the undisposed generating assets and contracts with Independent Power Producers</p>	<p>Contracts shall be immediately implementable without need for the Energy Regulatory Commission’s (ERC) Provisional Authority (PA) or Interim Relief (IR) therefor, provided that recovery costs shall be filed by the parties with the ERC, subject to compliance with the pertinent ERC Resolution, no later than thirty (30) days from the commencement of implementation.</p>
<p style="text-align: center;">2.3.3.</p>	<p>Power supply procured by any DU exercising the Opt-in Mechanism under the Green Energy Auction Program</p>	<p>Must be filed by the parties with the ERC in accordance with the Guidelines, accompanied by applicable pre-filing requirements for the joint application for approval of Power</p>

		Supply Agreement (PSA) between a Distribution Utility (DU) and Generation Company (Genco) under Appendix "E".
2.3.4.	<p>Supply to any DU's captive market from Covered RE Facilities, wherein the contracted capacity shall not exceed 10 MW per DU. Supply contracts pursuant to this provision may be directly filed with the ERC for approval.</p> <p><i>"Covered RE Facilities"</i> shall refer to existing or prospective embedded or grid-connected RE power plants located within the franchise area of a DU, whether partly or in whole.</p>	Must be filed by the parties with the ERC in accordance with the Guidelines, accompanied by applicable pre-filing requirements for the joint application for approval of PSA between a DU and Genco under Appendix "E".
2.3.5.	<p>Procurement by a DU of supply for its captive market exceeding 10 MW from a Covered RE Facility pursuant to the exercise of its Right of First Refusal (ROFR) under Section 4 of this Circular; Provided, that this exemption shall only apply if:</p> <p>(a) the procurement is for the DU's compliance with the annual RPS requirements in accordance with the Distribution Development Plan (DDP) and Power Supply</p>	Must be filed by the parties with the ERC in accordance with the Guidelines, accompanied by applicable pre-filing requirements for the joint application for approval of PSA between a DU and Genco under Appendix "E".

	<p>Procurement Plan (PSPP) duly accepted by the DOE and as posted by the DU; and</p> <p>(b) the DU's distribution system is capable to absorb the additional capacity;</p> <p><i>Provided, further, that the DU, in coordination with the Genco and the Transmission Network Provider (TNP), shall adopt the necessary measures to ensure that the operation of the generating facility/ies shall not compromise the reliability of the distribution and transmission networks. For this purpose, the DU, the Genco, and the TNP shall seek the approval of the ERC on the measures to be undertaken for the delivery of the contracted capacity</i></p>	
2.3.6.	<p>Negotiated procurement of Emergency Power supply wherein the Emergency Power Supply (EPSA) shall be filed with the ERC within thirty (30) calendar days after the occurrence of the Force Majeure/ Fortuitous Events, without need of any prior clearance or certification from the DOE, and shall have a maximum and non-extendible period of one</p>	<p>The Emergency PSA (EPSA) shall be immediately implementable without need of a Provisional Authority or Interim Relief, provided that the following conditions are present:</p> <p>(1) the interim rates to be charged under EPSA shall be capped at the latest ERC-approved generation tariff in</p>

	<p>(1) year from its execution. The EPSA shall be immediately implemented to address the emergency, subject to conditions to be defined by the ERC; Provided, that the procurement of emergency power supply shall not be entitled to any form of subsidy</p>	<p>the following order of priority: (i) specific for the plant and under the same tariff structure; (i) for the same technology, tariff structure, and supply type (i.e., peaking, intermediate, baseload, for RPS compliance, etc.); (iii) for the same tariff structure and supply type; <i>Provided</i>, such rates shall apply until the ERC issues its approval of the EPSA;</p> <p>(2) The cooperation period of such EPSA shall not exceed one (1) year from its execution;</p> <p>(3) The DU shall, within five (5) calendar days from the occurrence of the force majeure or fortuitous event, notify in writing the ERC, Department of Energy (DOE), National Electrification Administration (NEA) in the case of ECs, and the NPC, in the case of off-grid areas, of such emergency power supply procurement; and</p> <p>(4) Filed with the ERC for approval within thirty (30) calendar days after the execution of the EPSA.</p>
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		Pre-filing requirements for the joint application for approval of EPSA between a DU and Genco are provided in Appendix "F".
2.3.7	Off-Grid Areas served or to be served by NPPs with less than 1MW demand with 24-hour electricity service is not covered in Section 2.3.1 above.	Must be filed by the parties with the ERC in accordance with the Guidelines, accompanied by applicable pre-filing requirements for the joint application for approval of PSA between a DU and Genco under Appendix "E".

## **APPENDIX “B” COMPETITIVE SELECTION PROCESS**

Section 1. **Bidding Documents.** – The Bidding Documents shall consist of clearly defined documents as follows:

- (a) Invitation to Bid (ITB);
- (b) Instruction to Bidders;
- (c) Terms of Reference (TOR);
- (d) Eligibility Requirements;
- (e) Technical and Financial Bid Forms;
- (f) Form of Acceptance of Bidding Procedures;
- (g) Form and Amount of Bid Security;
- (h) Form and Amount of Performance Security and Warranty;
- (i) Certification or Undertaking that the Bidder or his duly authorized representative shall:
  - i. Attest to the responsibilities of the Bidder; and
  - ii. Authorize the Bids and Awards Committee (BAC) or its duly authorized representative(s) to verify any information indicated in the documents submitted as part of the Bidder’s eligibility requirements; and
- (j) Draft Power Supply Agreement (PSA).

The BAC shall prescribe reasonable requirements, forms, authorizations, certifications, or other documents to be submitted by interested parties to obtain a copy of the Bidding Documents, such as a verified expression of interest.

Distribution Utilities (DUs) may charge a reasonable amount of fees for the Bidding Documents corresponding to the volume of power supply that is subject of the Competitive Selection Process (CSP); provided, such fees shall in no case be higher than Twenty-Five Thousand Pesos (PhP25,000.00) for every 1MW contracted capacity. Such fees shall not be recovered from the consumers.

Interested parties who obtained the Bidding Documents upon compliance with the aforementioned BAC requirements and payment of fees will be considered a prospective Bidder or Bidder under the Amended Implementing Guidelines.

Section 2. ***Instruction to Bidders.*** – The Instruction to Bidders, which establishes the procedures of the bidding, shall be clear, comprehensive, and fair to all Bidders. It shall provide prospective Bidders with the following information, among others:

- (a) TOR;
- (b) procurement activity schedule;
- (c) place, time, and website where the Bidding Documents may be secured or downloaded, and, when required, the fees to be paid for the Bidding Documents;
- (d) name, address, telephone number, facsimile number, e-mail, and website addresses of the Procuring DU, as well as its designated contact person;
- (e) Bid Submission Deadline; and
- (f) such other necessary information deemed relevant by the DU.

Section 3. ***Terms of Reference.*** – At the minimum, the TOR to be used by DUs shall include the following:

- (a) required/contracted capacity and/or energy volumes;
- (b) demand requirement (baseload, intermediate, or peaking);
- (c) type of contract (Physical or Financial);
- (d) contract term;
- (e) bid price in Philippine Peso per kilowatt-hour (PhP/kWh), inclusive of fuel cost but excluding any penalties and/or discounts to be implemented for the duration of the contract period;
- (f) form of payment;
- (g) penalties;
- (h) delivery date;
- (i) carve-out provisions to avoid stranded contract capacity by reason of the implementation of Retail Competition and Open Access, the Renewable Energy Law, or other laws and policies; and
- (j) other key parameters and specifications relevant to the type of PSA, such as replacement power for Physical PSAs, provisions for Prompt Payment Discount, among others.

The TOR, once published, can no longer be amended except through the issuance of Bid Bulletins in accordance with the bidding procedures.

The TOR shall form part of the PSA entered into by the parties as a result of a CSP. In case of conflict between the TOR and the PSA, the former shall prevail.

Section 4. **Access to Information.** – In all stages of the preparation of the Bidding Documents, the DU shall ensure equal access to information among all prospective Bidders. Prior to their official release, no portion or information on the Bidding Documents shall be divulged or released to any prospective Bidder or any person who has a direct or indirect interest in the supply requirement to be procured.

No unauthorized official or employee of the DU, nor shall any Bidder be entitled to any information regarding the Bidding Process, other than what is contained in the Bidding Documents, the Instruction to Bidders, Supplemental Bid Bulletins, and in the official announcement of the Bid results.

Section 5. **Publication and Posting.** – The BAC or Joint BAC shall cause the publication and posting of the ITB for the procurement opportunity in accordance with these Amended Implementing Guidelines for the period specified herein.

The National Electrification Administration (NEA) shall issue the guidelines for the review and approval of the Electric Cooperatives' (ECs) TOR, ITB, and draft PSA prior to the commencement of the ECs' CSP, guided by the CSP Policy adopted by the DOE under its Circulars, and the Amended Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements and its appendices, as adopted by the ERC.

Prior to the publication of the ITB, the DU must obtain from the DOE, through the Electric Power Industry Management Bureau (EPIMB), or the NEA, in the case of ECs, a Certificate of Conformity. The DU shall furnish a copy of the Certificate of Conformity to the ERC no later than three (3) days upon receipt thereof from the DOE. In the case of ECs, NEA, upon its issuance thereof, shall furnish copies to the DOE and the ERC.

The BAC or Joint BAC shall publish the ITB, in compliance with the Certificate of Conformity, which shall be valid for forty-five (45) calendar days from the date of certification, at least once (1x) every week for two (2) consecutive weeks in at least one (1) newspaper of general circulation. The weekly publications must be at least seven (7) calendar days apart.

The BAC or Joint BAC shall post the ITB on the DOE CSP e-based Portal, and on its website, if one is available. In the case of ECs, the ITB shall also be posted on the NEA website. The BAC or Joint BAC shall post updates on the progress of and status of the procurement activity through the DOE CSP e-based Portal and the NEA websites. Such progress updates shall be on top of other progress reports that the DOE and NEA may require from the procuring DU, if any.

The BAC or Joint BAC shall likewise ensure that all bid bulletins and related announcements shall be posted on the DOE CSP e-based Portal and also on the NEA website, in the case of ECs.

In cases where the DUs encounter problems in posting the necessary information on the DOE CSP e-based portal, the DUs shall inform the DOE accordingly, and seek assistance to ensure compliance with this posting requirement.

The BAC or Joint BAC may also opt to publish the ITB in one (1) local newspaper of local circulation in the region, province, city, or municipality indicating the CSP schedules, among other necessary information for the Bidders, once (1x) weekly for two (2) consecutive weeks. The weekly publications must not be less than seven (7) calendar days apart.

Section 6. ***Pre-Bid Conference.*** – A Pre-Bid Conference shall be conducted by the concerned DU at least thirty (30) calendar days before the deadline for the submission of bids to clarify any provisions, requirements, and/or terms and conditions of the bidding documents and/or any other matter that the prospective Bidders may raise. The Pre-Bid Conference may be held sooner should justifiable reasons warrant it.

Only CSP Observers and prospective Bidders are allowed to attend the Pre-Bid Conference.

Nothing stated at the Pre-Bid Conference shall modify any provisions or terms and conditions of the Bidding Documents unless such is made as a written amendment thereto by the concerned DU, through bid bulletins. Provided, that no amendment shall be made with respect to the contract quantity and cooperation period as certified by the DOE, or NEA in the case of ECs. All Bidders shall be duly notified by the DU of any amendment, not later than fifteen (15) calendar days before the deadline for submission of bids, to allow the participants to consider the same in the preparation of their bids. The notice of the amendment in the form of a bid bulletin shall be duly acknowledged by each Bidder prior to the submission of its bid and shall be so indicated and submitted in its bid. A summary of the Pre-Bid Conference proceedings shall also be issued to all prospective Bidders by the DU concerned. Attendance to the Pre-Bid Conference by prospective Bidders is not mandatory, but is encouraged.

Section 7. **Eligibility Requirements.** – Along with its bid submission, prospective Bidders shall submit the eligibility requirements contained in Annex “1” of this Appendix “B”.

Section 8. **Submission of Bids.** – Bidders shall be required to submit their bids on the deadline stipulated in the Instruction to Bidders, as well as in the published ITB. Bids shall be indicated in PhP/kWh.

In no case shall the deadline for submission of bids be set earlier than the forty-fifth (45<sup>th</sup>) day following the last publication of the ITB (Bid Submission Deadline).

Bids shall be submitted in two (2) separate sealed envelopes. The first main envelope shall contain the technical component of the bid, including the eligibility requirements in Annex “1”. The technical bid proposal and eligibility requirements shall be placed in separate sealed envelopes inside the first main envelope. The second main envelope shall contain the financial component of the bid.

All envelopes shall bear the name of the Bidder in capital letters and addressed to the BAC or Joint BAC of the concerned DU. They shall be marked “Do Not Open Before (date and time of opening of bids)”. The envelopes shall be appropriately labeled as “Eligibility Requirements and Technical Proposal” and “Financial Proposal”.

Bids submitted after the Bid Submission Deadline shall be rejected and returned unopened to the Bidder. The BAC or Joint BAC shall ensure that this circumstance is recorded in the minutes of the bid opening.

Section 9. **Validity of the Bid.** – A Bid must be valid for a period of not less than one hundred eighty (180) calendar days from the deadline for submission and opening of bids (Bid Validity Period). Any Bid with a shorter Bid Validity Period shall be immediately rejected.

Section 10. **Bid Security.** – Each Bidder shall submit, as part of its bid submission, a Bid Security in accordance with the following terms and conditions:

- (a) It is an amount expressed in Philippine Pesos in the form of:
  - i. Cash or cashier’s/manager’s check issued by a Universal or Commercial Bank or any other bank certified by the Bangko Sentral ng Pilipinas as authorized to issue such financial instrument;

- ii. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank; provided, however, that it shall be confirmed or authenticated by a local Universal or Commercial Bank if issued by a foreign bank; or
  - iii. In case the Bid Security is issued by an international bank, said security has to be confirmed and validated by its local branch in the Philippines or by a bank that is duly registered and authorized by the BSP. The Bid Security shall be expressed in or converted to Philippine Peso at the exchange rate prevailing on the date of its issuance;
- (b) The Bid Security shall be issued in favor of the DU/s;
  - (c) The amount shall be equivalent to at least one (1)-month contract cost but in no case be higher than the three (3)-month contract cost of the proposed power supply agreement computed using the bid price offered by the Bidder. If forfeited, the Bid Security shall be used by the DU in purchasing power covering the period affected by the delay in the bidding process, which it shall not recover from consumers;
  - (d) The Bid Security shall guarantee that each Bidder complies with its obligation under the bidding procedures during the Bid Validity Period, or any extension thereof. Refusal, inability or failure of the Winning Bidder to accept the award or enter into a contract with the DU shall cause the forfeiture of its Bid Security; however, the Bid Security shall not be forfeited should the failure or inability of the Winning Bidder to accept the award or enter into a contract be caused by force majeure or through no fault of its own;
  - (e) The Bid Security shall be governed by Philippine Laws; and
  - (f) The Bid Security shall provide for a contact person and address, telephone number, and facsimile of the issuing bank for notification and demand.

A Bid submitted (i) without the required Bid Security, (ii) in an amount less than the required amount, (iii) effectivity of which will expire prior to the Bid Validity Period, or (iv) which is materially defective, shall be rejected outright and returned to the Bidder.

The required Bid Security shall be valid for the duration of the bidding process but in no case beyond one hundred eighty (180) calendar days from the deadline for submission and opening of bids. The execution of the PSA

shall be made within the Bid Validity Period and Bid Security Validity Period. Bid Securities shall be returned to all unsuccessful Bidders after the Winning Bidder shall have signed the contract and submitted the Performance Bond.

Section 11. ***Evaluation of Bids.*** – The evaluation of bids shall be undertaken in three (3) stages in accordance with the procedures described below:

- (a) Stage 1 – the Bidders' eligibility shall be evaluated through non-discretionary "pass/fail" criteria in accordance with the requirements set forth in Annex "1".

Only those bids that have been determined to have positively passed the first stage of evaluation shall be considered for the second stage of evaluation.

The sealed envelopes containing the Technical and Financial Proposals of Bidders determined to be ineligible shall be returned unopened.

- (b) Stage 2 – The technical and operational capability of the proposal, vis-à-vis the prescribed requirements and minimum standards prescribed in the bidding documents, shall be evaluated through non-discretionary "pass/fail" criteria.

Only those bids that have been determined to have positively passed the first and second stages of evaluation shall be considered for the third stage of evaluation.

In case the eligible Bidder fails to pass the second stage of evaluation, the sealed envelope containing its financial proposal shall be returned to it unopened.

- (c) Stage 3 – evaluation of the financial proposal shall involve the assessment and comparison of the financial proposals of the Bidders.

The eligible Bidder with the Lowest Calculated Responsive Bid (LCRB), who passed both the technical and financial requirements of the DU, shall be declared as the Winning Bidder.

In case there is a tie after the evaluation of the financial proposals of eligible Bidders, each of the bidders will be given a period of five (5) calendar days to submit a better offer. The submitted offers will

be assessed and the eligible Bidder with the LCRB shall then be declared as the Winning Bidder. Subsequent occurrence of tie shall be resolved through the same manner until a Winning Bidder is determined.

Section 12. ***Award of Contract.*** – The BAC shall recommend to the DU-BOD the award of contract to the Winning Bidder with the LCRB.

The BAC or Joint BAC shall submit the following supporting documents to the DU-BOD:

- (a) Resolution of the BAC or Joint BAC recommending the award;
- (b) Abstract of Bids;
- (c) Bid Evaluation Report; and
- (d) Other pertinent documents required by existing laws, rules, and/or by the DU-BOD.

Within ten (10) calendar days from receipt of the recommendation of the BAC or Joint BAC, the DU-BOD shall approve or disapprove the said recommendation. Within the same period provided herein, the BAC or Joint BAC shall: (1) notify, in writing, including via electronic mail, the losing Bidders of its decision; and (2) return the bid security posted by the losing Bidders.

In the event the DU-BOD shall disapprove such recommendation, such disapproval shall be based only on any of the prohibited acts of the BAC or Joint BAC under **Section 33** or any of the prohibited acts of the Bidders under **Section 34** of these Amended Implementing Guidelines, to be expressed in writing, copy furnished the BAC or Joint BAC, who will inform the Bidder within reasonable time of the DU-BOD's disapproval of its LCRB.

Section 13. ***Notice of Award.*** – In case of approval by the DU-BOD, the BAC or Joint BAC shall issue the Notice of Award to the Winning Bidder with the LCRB within five (5) calendar days from such approval.

A Notice of Award shall be made within the Bid Validity Period as herein provided.

Section 14. ***Execution/Approval of the Contract.*** – Within twenty (20) calendar days from receipt by the Winning Bidder of the Notice of Award from the DU, the Winning Bidder and the DU shall execute and sign the PSA, as approved by the DU-BOD.

In the event that the executed PSA contains terms and conditions which are materially different from the TOR or draft PSA, as approved by the DU-BOD, and the difference is solely due to the act or omission of the Winning Bidder, the Bid Security shall be forfeited by the DU and the PSA shall be deemed of no force and effect. This is without prejudice to any administrative action that the Commission may take against the erring party. This clause shall not prevent the Winning Bidder and the DU from agreeing on changes to the draft PSA, which changes must clearly result to terms more favorable to the consumers.

In case of refusal, inability, or failure to enter into a PSA by the Winning Bidder, the Bid Security shall be forfeited by the DU.

The refusal, inability, or failure to enter into a PSA by the DU or the Winning Bidder shall be considered a violation of these Amended Implementing Guidelines. The ERC may motu proprio, or upon initiation of a case by another party, issue a show cause order against the erring party. If the refusal, inability, or failure to enter into a contract by the DU or the Winning Bidder is found to be unjustifiable, the concerned DU's or Winning Bidder's BOD and officers shall be penalized in accordance with Article IX of the Amended Implementing Guidelines.

Section 15. ***Posting of Performance Bond.*** – Within ten (10) calendar days from the execution of the contract, the Winning Bidder shall post a Performance Bond, equivalent to at least one (1)-month contract cost but in no case be higher than the three (3)-month contract cost of the proposed PSA computed using the bid price offered by the Winning Bidder.

Failure to post the required Performance Bond within the prescribed period will result in the forfeiture of the Bid Security.

Failure, inability or refusal of the Winning Bidder to join in the timely filing of the application will result in the forfeiture of the Performance Bond.

If forfeited, the Performance Bond shall be used by the DU in purchasing power covering the period affected by the delay or failure in the filing of the application. Any excess amount shall be used to defray the DU's other power purchase costs. In which case, such forfeited amount used in purchasing power shall not be passed-on to its consumers.

Section 16. ***Penalty for Delay or Failure in the Filing of the Application.*** – The Winning Bidder shall be obligated to join the Distribution Utility (DU) in the timely filing of the Application before the Energy Regulatory Commission (ERC) within the period prescribed under the Amended Implementing Guidelines.

Failure, inability, or refusal of the Winning Bidder to comply with such obligation shall render it liable to pay a penalty equivalent to one-tenth (1/10) of one percent (1%) of the Total Contract Cost for every day of delay, reckoned from the lapse of the prescribed period until actual compliance, provided that the aggregate amount of such penalties shall in no case exceed five percent (5%) of the Total Contract Cost.

All penalties collected shall accrue in favor of the DU to cover costs incurred due to the delay or failure in filing and shall not, under any circumstance, be charged or passed on to consumers.

Section 17. **Notice to Proceed.** – Within five (5) calendar days from receipt of the Performance Bond, the DU shall issue a Notice to Proceed stating therein that all conditions stated in the Notice of Award have been complied with.

Section 18. **Lock-up provision.** – The Winning Bidder shall not be allowed to sell and/or assign the executed PSA resulting from a successful CSP to any other entity, except under the following conditions: (1) assignment to the Winning Bidder's subsidiary project company, provided that the Deed of Assignment shall state that the Winning Bidder and its stockholders shall be jointly and severally liable for any violation of the PSA terms and these Amended Implementing Guidelines committed by its Assignee project company; and (2) upon ERC's approval and determination of the assignee or buyer's legal, technical and financial eligibility.

Section 19. **Duration of Competitive Public Bidding.** – The entire process of competitive public bidding, including the award of contract, shall be completed within one hundred eighty (180) calendar days from the first publication of the Invitation to Bid.

In the event of failed bidding under the circumstances prescribed in these Amended Implementing Guidelines, DUs are given a fresh period of one hundred eighty (180) calendar days from the publication of the second (2nd) Invitation to Bid within which to conclude the second (2nd) round of competitive public bidding. The DU shall submit a certification, as part of its pre-filing requirements, attesting to the completion of the entire process within the prescribed period.

## ANNEX "1"

### ELIGIBILITY REQUIREMENTS

The following eligibility requirements for prospective Bidders shall be submitted, together with the Bid Documents:

- (a) Executive Summary - Brief description of the Bidder's company history and structure, including relevant capabilities in the construction, operation, and maintenance of a power plant or in the supply of electricity to the DUs, ECs, or contestable customers
- (b) Organizational Structure - Basic information of the Bidder's legal status and organizational chart;
- (c) Legal Documents - The Bidder shall submit the following:
  - (i) Registration Certificate issued by the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for a sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives;
  - (ii) In case a special purpose company is formed for purposes of undertaking the project, proof of registration in accordance with Philippine laws;
  - (iii) Latest General Information Sheet (GIS), if available;
  - (iv) Power of Attorney and other documents - Each Bidder must submit the following documents:
    - i. Board Resolution or Secretary's Certificate evidencing the grant of authority to the individual submitting the Bid and making representation on behalf of the Bidder;
    - ii. Certification by the Bidder to the effect that it is not prohibited or restricted in any manner under applicable law or any agreement or license from participating in the Bidding Process; and
    - iii. Sworn Undertaking that the Bidder, if applicable, as well as their affiliates, assigns and successors-in-interest, shall abide by the decisions of the DU-BAC, shall hold the DU, its Board Members, Officers and Management, and BAC free and harmless from any claim or cause of action arising from the conduct and award of the Project, and shall undertake not to institute or file any case or claim before any court of competent jurisdiction and administrative agency in

relation to the conduct and award of the Project, except as provided for under Article VI (Protest Mechanism) and Article X (Enforcement) of these Amended Implementing Guidelines;

- (v) Sworn Attestation against Corruption; and
  - (vi) Sworn Attestation of No Conflict of Interest – The Bidder must disclose detailed information regarding any existing, potential, or future conflict of interest that a Bidder may have with the BAC or Joint BAC.
- (d) Technical Capability Information - To demonstrate compliance with the technical criteria established in the TOR, the Bidder shall submit the following:
- (i) List of projects undertaken over the last ten (10) years;
  - (ii) List of electricity generation plants that the Bidder has operated for the last five (5) years; and
  - (iii) Proof of/Documentation on track record for the last five (5) years of power plants operated by it.

In lieu of the foregoing requirements, the Bidder may submit the following:

- (a) Key Personnel Experience – curriculum vitae of key personnel of the prospective Bidder showing they have sufficient experience in the electric power industry, particularly in the generation sector; and
- (ii) Other relevant information showing proof of the technical capabilities of the Bidder that would be helpful to the BAC or Joint BAC.

The Bidder shall submit, as part of its technical proposal, the names of the power plants<sup>1</sup> from which it shall source the electricity, as well as the mechanism or protocol on how the manner of supply will be implemented.

- (e) Financial Information - The Bidder shall submit the following:
- (i) Latest Audited Financial Statement available, showing, among others, the prospective Bidder's total and current assets and liabilities, stamped "received" by the Bureau of

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<sup>1</sup> For Physical Contracts.

- Internal Revenue (BIR) for the preceding calendar year from the date of bid submission;
- (ii) Details of financial and operating background for the two (2) recent full financial years demonstrating the Bidder's financial viability;
  - (iii) Details of equity and financing plan indicating the capital structure and source of funds with supporting documents;
  - (iv) Proof of commitment to the required equity contribution, as specified by the DU:
    - i. in the case where the Winning Bidder is a corporation - e.g., treasurer's affidavit attesting to actual paid-up capital, subscription agreement(s) between a shareholder(s) of the Winning Bidder and the Winning Bidder itself covering said equity contribution, or shareholders agreement between and among two (2) or more shareholders of the Winning Bidder undertaking to contribute/subscribe the required equity contribution; or
    - ii. in the case of a consortium - an undertaking of the members thereof to infuse the required equity contribution to the consortium.
  - (v) Letter of Credit, Bank Guaranty or Committed Line of Credit, or any proof of firm commitments from a reputable financial institution to provide sufficient credit lines to cover the total estimated cost of the project for prospective generation facilities;
  - (vi) In the case of a consortium, the agreement indicating that the members are jointly and severally liable for the obligations of the Project Proponent under the contract; and
  - (vii) Any other relevant information regarding the financial track record and capabilities of the Bidder that it believes would be helpful to the BAC or Joint BAC.

**APPENDIX "C1"**  
**PSA TEMPLATE FOR FINANCIAL PSA**

[NAME OF BUYER]

- and -

[NAME OF SELLER]

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POWER SUPPLY AGREEMENT  
DATED AS OF [DATE OF SIGNING]

THIS POWER SUPPLY AGREEMENT (this "Agreement") is made at [LOCATION] on [DATE]

BETWEEN:

- (1) [NAME OF BUYER], an entity duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at [Address of the Buyer] represented herein by its [Designation of Representative], [Name of Representative] (hereinafter referred to as "Buyer"); and
- (2) [NAME OF SELLER], an entity duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at [Address of the Seller] represented herein by its [Designation of Representative], [Name of Representative] (hereinafter referred to as "Seller").

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

WHEREAS:

Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the energy and/or capacity pursuant to the terms and conditions set forth herein, consistent with the Terms of Reference of the relevant Competitive Selection Process (TOR-CSP) conducted by Buyer or the rules governing exemptions from the CSP, as the case may be.

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

**1. DEFINITION OF TERMS AND RULES OF INTERPRETATION**

- 1.1. In this Agreement, capitalized terms shall have the meaning prescribed in Schedule 1 hereof. Capitalized terms not therein defined shall have the meanings as provided for in the TOR-CSP or by the applicable laws.
- 1.2. The following rules of interpretation shall govern this Agreement:
  - 1.1.1 expressions defined in Schedule 1 shall bear the respective meanings set out therein;
  - 1.1.2 the headings and paragraph numbering are for convenience of Parties and to avoid any insertion, but will not prevail in construing this Agreement;
  - 1.1.3 terms not herein defined shall have the meanings as provided for in pertinent Energy Regulatory Commission (ERC) rules and regulations and Department of Energy (DOE) circulars;

- 1.1.4 references to Sections and Schedules are, unless the context otherwise requires, references to Sections of, and Schedules to, this Agreement;
- 1.1.5 references to any agreement, enactment, ordinance or regulation includes any amendment thereof or any replacement in whole or in part;
- 1.1.6 all references herein to time are in relation to Philippine time;
- 1.1.7 words importing any gender include the other gender;
- 1.1.8 the words “include,” “includes,” and “including” are not limiting;
- 1.1.9 the words “hereof,” “herein,” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and
- 1.1.10 Any ambiguity in the contract is to be construed in favor of the objectives of the Republic Act No. 9136 or its implementing rules, regulations or circulars issued by the DOE or ERC, as the case may be.

## **2. SALE AND PURCHASE OF ENERGY/CAPACITY**

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

## **3. TERM**

### **3.1 Contract Term**

This Agreement shall take effect immediately from Effective Date and from such date, shall remain in force and effect for [number of years or billing months], unless sooner terminated in accordance with this Agreement and upon approval by the ERC.

### **3.2 Effective Date**

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

- a) Corporate Approvals. The receipt of Seller of a certificate executed by the corporate or partnership secretary, as applicable, or a resolution duly and validly issued by the board of directors of Buyer, attesting to the fact that the board of directors of Buyer has

adopted resolutions (i) authorizing Buyer to execute and to enter into and deliver this Agreement and perform all its obligation hereunder, and (ii) designating the person authorized to execute this Agreement on behalf of Buyer; and

- b) Government Authorizations. All governmental authorizations (except ERC) which are required to have been obtained in connection with the execution, delivery and commencement of performance of this Agreement, shall have been obtained and be in full force and effect.

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

### 3.3 Delivery Date

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

## 4. **SUPPLY OF ENERGY**

### 4.1 Seller's and Buyer's Obligations

Beginning on the Delivery Date until the termination or expiration of this Agreement, Seller shall supply and deliver [Contract Capacity and/or Contract Energy] (whether from the capacity of the plants owned or operated by Seller or any of its Affiliates, Wholesale Electricity Spot Market (WESM), if any, or any other supplier) to Buyer at the Delivery Point, and Buyer shall purchase and pay Seller the [Contract Capacity and/or Contract Energy] at the rate of PhP[\_\_\_]/kwh, resulting from the CSP and subject to the approval of the ERC.

### 4.2 WESM Operations

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

- 4.2.1 For administrative and planning purposes only, Buyer shall furnish Seller with non-binding year-ahead, month-ahead and week-ahead nominations of Contract Capacity in accordance with the WESM Rules and the Operating Procedures.

4.2.2 Such nominations shall reflect Buyer's good faith estimate of its projected capacity requirements for such period. Buyer shall furnish Seller with the year-ahead nominations, the month-ahead nominations, and the week-ahead nominations.

4.3 Reduction of Contract Capacity and/or Contract Energy

From time to time upon and after the implementation of Retail Competition and Open Access (RCOA), Green Energy Option Program (GEOP), Renewable Portfolio Standards (RPS), Net Metering programs, and other similar government programs, Buyer shall deliver to Seller written notice specifying the reduction in Contract Capacity and/or Contract Energy resulting from the implementation of RCOA, GEOP, RPS, Net Metering programs, and other similar government programs, indicating when such reductions shall take place. Any such reduction shall be limited to an amount that will allow Buyer to comply with its obligation to supply electricity in the least cost manner to its captive market. Except for such reduction of amount of Contract Capacity and/or Contract Energy to be specified by Buyer (including the resulting reduction in payments payable under this Agreement), all other terms and conditions of this Agreement shall remain in full force and effect, subject to the approval by the ERC.

The Parties shall agree on and prepare the protocol to implement the reduction in the amount of Contract Capacity and/or Contract Energy, with observance of existing rules and regulations, as a result of the implementation of RCOA, GEOP, RPS, Net Metering programs, and other similar government programs. The Parties shall submit a copy of the protocol to the ERC.

4.4 Availability of Contract Capacity and/or Contract Energy.

Seller shall guarantee availability of the Contract Capacity/Energy during the term of this Agreement, except when caused by a Force Majeure event allowed under Section 7 in this Agreement. For clarity, this means that notwithstanding the outage of the plants to be utilized by Seller in order to supply Contract Capacity/Energy, Seller shall still be responsible in ensuring that the Contract Capacity and/or Contract Energy is delivered to Buyer.

**5. COMPENSATION, PAYMENT AND BILLING**

5.1 Payment of Fees

Buyer shall pay to Seller each Month, on the [\_\_\_\_\_] Business Day of each Month, an amount equal to the Monthly Payment in accordance with Schedule 3.

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

*Provided further* that, 1) there should be no offsetting of payment between Buyer and Seller; 2) withholding of disputed amounts, except for the inadvertent mistake in the amount; 3) if an invoice is not disputed within [\_\_\_\_\_] Days after payment, it is deemed to be accepted, final, and binding to Buyer and Seller.

## 5.2 Taxes

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

## 5.3 Prompt Payment Discount

Seller shall extend [\_\_\_] percent (\_\_\_ %) discount based on the total fee to Buyer as prompt payment if 1) payment is made within [\_\_\_\_\_] Days from receipt of Seller's billing, and 2) buyer is up to date with all its payment obligations under this Agreement.

## 5.4 Liquidated Damages

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

# 6. FORCE MAJEURE

## 6.1 Meaning of Force Majeure

In this Agreement, "Force Majeure" refers to any of the following that is beyond the reasonable control of the Party/Parties claiming force majeure which, through the exercise of due foresight and good industry practice, the Party/Parties could not have avoided, did not contribute to or participate in, and which, even by exercise of due diligence, the Party/Parties is unable to overcome, thus preventing the Party from carrying out its obligations or from enjoying its rights under this Agreement due to the impossibility of delivering the goods and services, or the imminent harm that such events, in the absence of safeguards and protocols, may bring upon its employees, agents or the general public in the performance of its obligations under this Agreement.

#### 6.1.1 Acts of God –

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

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

#### 6.1.2 Epidemic –

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

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

#### 6.1.3 Other Events of Force Majeure (Force Majeure – Acts of Man)

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

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

### 6.2 Notification and Obligation to Remedy

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

efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable; (d) perform acts to avoid further loss or wastage; (e) keep such other Party apprised of such efforts on a continuous basis; and (f) provide written notice of the resumption of performance hereunder. Notwithstanding the occurrence of a Force Majeure, the Parties shall perform their obligations under this Agreement to the extent the performance of such obligations is not impeded by the Force Majeure.

### 6.3 Consequences of Force Majeure

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

## 7. DEFAULTS AND TERMINATION

### 7.1 Events of Default

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

- 7.1.1 A Party fails to make any payment required pursuant to this Agreement when due and payable and such payment is not made within [number of days] Days after the due date;
- 7.1.2 A Party breaches any of its material representations, warranties, covenants or obligations under this Agreement; and

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

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

- (a) [number of days] Days, for Events of Default under Section 7.1.1,
- (b) [number of days] Days, for Events of Default under Section 7.1.2, and
- (c) [number of days] Days, for Events of Default under Section 7.1.3.

7.2 Notice of Default and Termination or Upon Event of Default

In case an Event of Default is not cured within the applicable Cure Period or if the Event of Default is not capable of being remedied, the Non-Defaulting Party may terminate this Agreement in accordance with Section 7.4, subject to the approval of the ERC, and may pursue any remedy available to it under this Agreement or at law.

7.3 Suspension upon Event of Default

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

7.4 Termination upon Event of Default

The following procedure shall apply in terminating this Agreement:

- 7.4.1 The Non-Defaulting Party shall issue a notice (a "Termination Notice") to the other Party, specifying in detail the Event of Default giving rise to such Termination Notice, and the date on which the Party giving such Termination Notice proposes to terminate this Agreement, subject to the approval of the ERC.
- 7.4.2 During the period of [number of days] Days (or such longer period set out in the Termination Notice or as the Parties may agree) following the giving of such Termination Notice, the Parties shall

negotiate as to what steps shall be taken with a view to mitigating or remedying the consequences of the relevant event having regard to all the circumstances.

7.4.3 If the Party receiving the Termination Notice intends to raise a Dispute regarding the right to give effect to the Termination Notice (the “Termination Notice Dispute”), such Party shall follow the procedure prescribed in Section 8; and

7.4.4 In circumstances where the Party in receipt of the Termination Notice has referred a Termination Notice Dispute for resolution in accordance with Section 7.4.3 above, if:

(ii) at any time after the expiry of the period referred to in Section 7.4.1, the event giving rise to the Termination Notice has not been remedied; and

(iii) the Termination Notice Dispute has been determined in favor of the Party who has issued the Termination Notice,

the Agreement may be terminated only upon prior notification to and approval by ERC pursuant to its rules, regulations, and applicable guidelines, by giving a written notice of termination pursuant to the order of the ERC.]

## 7.5 Termination as a Result of Events Other than Event of Default

7.5.1 Non-fulfillment of Conditions Precedent to Effectivity. If any condition to the Effective Date has not been fulfilled on or before [date], then either Party has the option to terminate this Agreement by giving written notice of such termination to the other Party, provided that the fulfilment of such condition is not within the control of the Party seeking to give such notice, subject to the prior notification to and approval of ERC, pursuant to its rules and regulations. Upon the giving of notice of termination, this Agreement shall terminate on the date specified for termination in such notice, which date shall not be earlier than [number of days] Days from the date of such notice, subject to the approval of the ERC.

7.5.2 Termination in Certain Events of Force Majeure. If an event of Force Majeure occurs under the circumstances described in Section 6, then this Agreement may be terminated, subject to prior notification to and approval by the ERC, by notice of either Party delivered to the other Party within [number of days] Days after the end of such [number of days]-day period. If any Force Majeure is expected by the Claiming Party to exceed [number of days] Days then the Claiming Party may give notice to the other Party at any time of the Claiming Party’s desire to terminate this

Agreement. The Non-Claiming Party shall notify the Claiming Party, within [number of days] Days of the receipt of such notice, of either: (1) its acceptance of the notice, in which case this Agreement shall terminate effective on the date of such responsive notice, subject to the prior notification and approval of the ERC, pursuant to its rules and regulations; or (2) its disagreement with the Claiming Party's expectation of the duration of such Force Majeure event, in which case the dispute shall be resolved pursuant to Section 8.

## **8. DISPUTE RESOLUTION**

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

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

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

## **9. ASSIGNMENT OF RIGHTS**

Seller may only assign or transfer its rights or obligations to its Affiliates or its consortium's special purpose vehicle under, pursuant to or associated with (a) this Agreement, (b) the movable property and intellectual property of Seller, or (c) the revenues or any of the rights or assets of Seller, in each of subsections (a) through (c) without the prior written consent of Buyer, provided, however, that any such assignee of Seller shall have the ability to perform all of Seller's obligations and duties under this Agreement. Such transfer of rights and obligations under this provision shall require prior notification and approval of the ERC. Nonetheless, both assignor and assignee are solidarily liable under this Agreement.

## **10. NOTICES**

### **10.1 Address for Notices**

Any notice, communication, request or correspondence (each a "notice") required or permitted under the terms and conditions of this Agreement shall be in writing, in the English or Filipino language (it being understood that any

such communication or paper in a language other than the same shall be of no force or effect), and shall be (a) delivered personally, or (b) transmitted by electronic mail and either (i) recipient acknowledges receipt to sender or (ii) sender delivers to recipient a transmission confirmation; to the following addresses:

If to Buyer:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail Add.: \_\_\_\_\_  
Attention: \_\_\_\_\_

If to Seller:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail Add.: \_\_\_\_\_  
Attention: \_\_\_\_\_

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

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

10.2 Effectiveness of Service

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

**11. MISCELLANEOUS PROVISIONS**

11.1 Variations in Writing

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

11.2 Entire Agreement

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

### 11.3 Severability

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

### 11.4 Waivers

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

11.4.2 The failure by either Party to insist on any occasion upon the performance of the terms, conditions or provisions of this Agreement or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of such breach or acceptance of any variation.

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

### 11.5 Successors and Assigns

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

### 11.6 No Liability for Review

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

#### 11.7 Consequential Damages

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

#### 11.8 Affirmation

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

#### 11.9 Governing Law

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

#### 11.10 Relationship of the Parties

This Agreement shall not make either of the Parties partners or joint venturers one with the other, nor make either the agent of the other. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise bind, the other Party.

#### 11.11 Survival

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

#### 11.12 Language

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

#### 11.13 Good Faith

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

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

[NAME OF BUYER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESSED BY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

[NAME OF SELLER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESSED BY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

**SECRETARY'S CERTIFICATE**

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

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

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

\_\_\_\_\_

Corporate Secretary

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

## **SCHEDULE 1**

### **DEFINITIONS**

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

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

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

**“Billing Period”** - the period of one (1) month commencing at 0001H of the twenty-sixth (26<sup>th</sup>) day of each calendar month to 2400H of the twenty-fifth (25<sup>th</sup>) day of the calendar month.

**“Business Day”** - A Day on which business by and between banks may be carried on in [Location] in the Philippines.

**“Contract Capacity”** - The capacity, expressed in kW allocated to Buyer during the Billing Period.

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

**“Contract Term”** - shall have the meaning ascribed to it in Section 3.1.

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

**“Delivery Date”** - shall have the meaning ascribed to it in Section 3.3.

**“Delivery Point”** - The Trading Node or NGCP/Metering Service providers’ metering point/s of Seller.

**“Dispute”** - shall have the meaning ascribed to it in Section 8.

**“Effective Date”** - means the date following the completion of the conditions referred to in Section 3.2.

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

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

**“Force Majeure”** - An event or occurrence specified in Section 6.

**“Foreign Currency”** or - The lawful currency of [\_\_\_\_\_].

**“kW”** - Kilowatts.

**“kWh”** - Kilowatt-hours.

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

**“Liquidated Damages”** - The meaning ascribed thereto in Section 5.4.

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

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

**“MW”** - Megawatts.

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

**“Notice of Default”** - The meaning ascribed thereto in Section 7.1.

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

**“Parties”** - Both Buyer and Seller.

**“Party”** - Either Buyer or Seller.

**“RCOA”** - The Retail Competition and Open Access.

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

**“WESM”** - Wholesale Electricity Spot Market.

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

**SCHEDULE 2**

**CONTRACT CAPACITY AND/OR CONTRACT ENERGY**

<b>Billing Month</b>	<b>Hours</b>	<b>Contract Capacity (kW)</b>	<b>Contract Energy (kWh)</b>	<b>Minimum Contract Energy (kWh), if any</b>
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

**SCHEDULE 3**

**MONTHLY PAYMENT**

Buyer shall pay Seller for the Energy/Capacity at the following Fees pursuant to the following formula:

$$\mathbf{TGC = DE * (GR)}$$

*Where:*

**TGC** = Total Generation Cost in PhP for the Billing Period

**DE** = Delivered Energy in kWh for the Billing Period

**GR** = The Generation Rate applicable for the Billing Period, as defined in the Bid Documents set at PhP\_\_\_\_\_/kWh

**APPENDIX "C2"**  
**PSA TEMPLATE FOR PHYSICAL PSA**

[NAME OF BUYER]

- and -

[NAME OF SELLER]

---

POWER SUPPLY AGREEMENT

DATED AS OF [DATE OF SIGNING]

THIS POWER SUPPLY AGREEMENT (this “Agreement”) is made at [LOCATION] on [DATE]

BETWEEN:

- (1) [NAME OF BUYER], an entity duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at [Address of the Buyer] represented herein by its [Designation of Representative], [Name of Representative] (hereinafter referred to as “Buyer”); and
- (2) [NAME OF SELLER], an entity duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at [Address of the Seller] represented herein by its [Designation of Representative], [Name of Representative] (hereinafter referred to as “Seller”).

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

WHEREAS:

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

Seller desires to sell to Buyer, and Buyer desires to purchase from the Seller, the energy and/or capacity pursuant to the terms and conditions set forth herein, consistent with the Terms of Reference of the relevant Competitive Selection Process (TOR-CSP) conducted by Buyer or the rules governing exemptions from the CSP, as the case may be.

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

**1. DEFINITION OF TERMS AND RULES OF INTERPRETATION**

- 1.1. In this Agreement, capitalized terms shall have the meaning prescribed in Schedule 1 hereof. Capitalized terms not therein defined shall have the meanings as provided for in the TOR-CSP or by the applicable laws.
- 1.2. The following rules of interpretation shall govern this Agreement:
  - 1.1.1 expressions defined in Schedule 1 shall bear the respective meanings set out therein;
  - 1.1.2 the headings and paragraph numbering are for convenience of parties and to avoid any insertion, but will not prevail in construing this Agreement;

- 1.1.3 terms not herein defined shall have the meanings as provided for in pertinent ERC rules and regulations and Department of Energy (DOE) circulars;
- 1.1.4 references to Sections and Schedules are, unless the context otherwise requires, references to Sections of, and Schedules to, this Agreement;
- 1.1.5 references to any agreement, enactment, ordinance or regulation includes any amendment thereof or any replacement in whole or in part;
- 1.1.6 all references herein to time are in relation to Philippine time;
- 1.1.7 words importing any gender include the other gender;
- 1.1.8 the words “include,” “includes,” and “including” are not limiting;
- 1.1.9 the words “hereof,” “herein,” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and
- 1.1.10 Any ambiguity in the contract is to be construed in favor of the objectives of the Republic Act No. 9136 or its implementing rules, regulations or circulars issued by the Department of Energy (DOE) or Energy Regulatory Commission (ERC), as the case may be.

**2. SALE AND PURCHASE OF ENERGY/CAPACITY**

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

**3. TERM**

3.1 Contract Term

This Agreement shall take effect immediately from Effective Date, and from such date, shall remain in force and effect for [number of years or billing months], unless sooner terminated in accordance with this Agreement and upon approval by the ERC.

### 3.2 Effective Date

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

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

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

### 3.3 Delivery Date

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

## 4. **SUPPLY OF ENERGY**

### 4.1 Seller's and Buyer's Obligations

Beginning on the Delivery Date, until the termination or expiration of this Agreement, Seller shall supply and deliver [Contract Capacity and/or Contract Energy as detailed in Schedule] to Buyer at the Delivery Point, and the Buyer shall purchase and pay Seller the [Contract Capacity

and/or Contract Energy] at the rate of [\_\_\_\_], resulting from the CSP and subject to the approval of the ERC.

#### 4.2 WESM Operations

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

4.2.1 For administrative and planning purposes only, Buyer shall furnish Seller with non-binding year-ahead, month-ahead and week-ahead nominations of Contract Capacity in accordance with the WESM Rules and the Operating Procedures.

4.2.2 Such nominations shall reflect Buyer's good faith estimate of its projected capacity requirements for such period. Buyer shall furnish Seller with the year-ahead nominations, the month-ahead nominations, and the week-ahead nominations.

#### 4.3 Reduction of Contract Capacity

From time to time upon and after the implementation of Retail Competition and Open Access (RCOA), Green Energy Option Program (GEOP), Renewable Portfolio Standards (RPS), Net Metering programs, and other similar government programs, Buyer shall deliver to Seller written notice specifying the reduction in Contract Capacity and/or Contract Energy resulting from the implementation of RCOA, GEOP, RPS, Net Metering programs, and other similar government programs, indicating when such reductions shall take place. Any such reduction shall be limited to an amount that will allow the Buyer to comply with its obligation to supply electricity in the least cost manner to its captive market. Except for such reduction of amount of Contract Capacity and/or Contract Energy to be specified by Buyer (including the resulting reduction in payments payable under this Agreement), all other terms and conditions of this Agreement shall remain in full force and effect, subject to the approval by the ERC.

The Parties shall agree on and prepare the protocol to implement the reduction in the amount of Contract Capacity, with observance of existing rules and regulations, as a result of the implementation of RCOA, GEOP, RPS, Net Metering programs, and other similar government programs. The Parties shall submit a copy of the protocol to the ERC.

#### 4.4 Scheduled Outages

4.4.1 At least [\_\_\_\_\_] Days prior to the Scheduled Commercial Operations Date, the Seller shall submit to Buyer its desired

Scheduled Outage periods for the remainder of the Year in which the Scheduled Commercial Operations Date occurs. Thereafter, by [DATE] of each Year after the Year in which the Scheduled Commercial Operation Date occurs, the Seller shall submit to Buyer its desired schedule of Scheduled Outage periods for the following Year. The outage periods shall be subject to the requirements under DOE guidelines and ERC rules and regulations.

- 4.4.2 At least [ ] Days prior to the Scheduled Commercial Operations Date and [ ] Months prior to the commencement of each Year after the Year in which the Scheduled Commercial Operation Date occurs, Buyer shall notify the Seller in writing whether the requested Scheduled Outage periods are acceptable. If Buyer cannot accept any of the requested Scheduled Outage periods, Buyer shall advise the Seller of a period when Buyer determines such unacceptable Scheduled Outage period can be rescheduled. Such rescheduled period shall be as close as reasonably practicable to the requested period, shall comply with the Minimum Functional Specifications indicated in Schedule 3, and shall be of equal duration as the requested period. The Seller shall conduct Scheduled Outages only during periods agreed to in writing by Buyer as aforesaid. The outage periods shall be subject to the approval requirements under DOE guidelines and ERC rules and regulations.
- 4.4.3 The Seller is allowed Scheduled Outages not to exceed the number of days for each Contract Year as set forth in Schedule [●], during which times reduced or no deliveries will be available to the Buyer, subject to ERC rules and regulations on Reliability Performance Indices.
- 4.4.4 Buyer may, upon [ ] Days prior written notice, require the Seller to reschedule a Scheduled Outage; provided, however, that Buyer shall not request that such Scheduled Outage be rescheduled in a manner or time outside the Minimum Functional Specifications.
- 4.4.5 Buyer shall use its reasonable endeavors to coordinate its maintenance program for the Interconnection Facilities with the approved Scheduled Outages so as to minimize any disruption to the operation of the Facility.

4.5 Unscheduled Outages

- 4.5.1 The Seller is allowed Unscheduled Outages not to exceed the number of days for each Contract Year as set forth in Schedule [●], during which times reduced or no deliveries will be available to the

Buyer, subject to ERC rules and regulations on Reliability Performance Indices.

4.6 Replacement Power

4.6.1 Within the Allowed Outage. The procurement of any Replacement Power within the Allowed Outage shall be the responsibility of the Buyer. During such outage, Buyer shall source Replacement Power from other suppliers or from the WESM, at its own expense.

4.6.2 Beyond the Allowed Outage. The procurement of any Replacement Power beyond the Allowed Outage shall be the responsibility of the Seller. In the event of failure by the Seller to provide the Contract Capacity and/or Contract Energy, the Buyer shall be allowed to source the Replacement Power at the expense of the Seller. Provided further, that the rates to be charged for the procurement of Replacement Power shall be a) the actual price of the Replacement Power; or b) the approved charge for the PSA, whichever is lower.

4.7 Transmission and Interconnection

4.7.1 If applicable, Seller [shall enter/ has entered/ is in the process of entering] into a Connection Agreement and Transmission Service Agreement with the NGCP to connect the Facility to the Grid.

4.7.2 At all times from and after the Effective Date, all interconnection, transmission and other agreements necessary for Seller to perform its obligations hereunder (including the Connection Agreement and Transmission Service Agreement) shall be in full force and effect.

5. **COMPENSATION, PAYMENT AND BILLING**

5.1 Payment of Fees

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

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

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

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

## 5.2 Taxes

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

## 5.3 Prompt Payment Discount

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

## 5.4 Liquidated Damages

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

# 6. **FORCE MAJEURE**

## 6.1 Meaning of Force Majeure

In this Agreement, "Force Majeure" refers to any of the following that is beyond the reasonable control of the Party/Parties claiming force majeure which, through the exercise of due foresight and good industry practice, the Party/Parties could not have avoided, did not contribute to or participate in, and which, even by exercise of due diligence, the Party/Parties is unable to overcome, thus preventing the party from carrying out its obligations or from enjoying its rights under this Agreement due to the impossibility of delivering the goods and services, or the imminent harm that such events, in the absence of safeguards and protocols, may bring upon its employees, agents or the general public in the performance of its obligations under this Agreement.

### 6.1.1 Acts of God –

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

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

#### 6.1.2 Epidemic –

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

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

#### 6.1.3 Other Events of Force Majeure (Force Majeure-Acts of Man)

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

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

### 6.2 Notification and Obligation to Remedy

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

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

### 6.3 Consequences of Force Majeure

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

## 7. DEFAULTS AND TERMINATION

### 7.1 Events of Default

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

- 7.1.1 A Party fails to make any payment required pursuant to this Agreement when due and payable and such payment is not made within [number of days] Days after the due date;
- 7.1.2 A Party breaches any of its material representations, warranties, covenants or obligations under this Agreement; and

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

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

- (a) [number of days] Days, for Events of Default under Section 7.1.1,
- (b) [number of days] Days, for Events of Default under Section 7.1.2, and
- (c) [number of days] Days, for Events of Default under Section 7.1.3.

7.2 Notice of Default and Termination or Upon Event of Default

In case an Event of Default is not cured within the applicable Cure Period or if the Event of Default is not capable of being remedied the Non-Defaulting Party may terminate this Agreement in accordance with Section 7.4, subject to the approval of the ERC, and may pursue any remedy available to it under this Agreement or at law.

7.3 Suspension upon Event of Default

In case an Event of Default is awaiting to be cured during the Cure Period under Section 7.2, the Non-Defaulting Party may suspend this Agreement, subject to the approval of the ERC, until such time the Event of Default is cured, or the applicable Cure Period lapsed.

7.4 Termination upon Event of Default

The following procedure shall apply in terminating this Agreement:

7.4.1 The Non-Defaulting Party shall issue a notice (a "Termination Notice") to the other Party, specifying in detail the Event of Default giving rise to such Termination Notice, and the date on which the Party giving such Termination Notice proposes to terminate this Agreement, subject to the approval of the ERC.

7.4.2 During the period of [number of days] Days (or such longer period set out in the Termination Notice or as the Parties may agree) following the giving of such Termination Notice, the Parties shall negotiate as to what steps shall be taken with a view to mitigating

or remedying the consequences of the relevant event having regard to all the circumstances.

7.4.3 If the Party receiving the Termination Notice intends to raise a Dispute regarding the right to give effect to the Termination Notice (the “Termination Notice Dispute”), such Party shall follow the procedure prescribed in Section 8; and

7.4.4 In circumstances where the Party in receipt of the Termination Notice has referred a Termination Notice Dispute for resolution in accordance with Section 7.4.3 above, if:

- (ii) at any time after the expiry of the period referred to in Section 7.4.1, the event giving rise to the Termination Notice has not been remedied; and
- (iii) the Termination Notice Dispute has been determined in favor of the Party who has issued the Termination Notice,

the Agreement may be terminated only upon prior notification to and approval by ERC pursuant to its rules, regulations, and applicable guidelines, by giving a written notice of termination pursuant to the order of the ERC.

## 7.5 Termination as a Result of Events Other than Event of Default

7.5.1 Nonfulfillment of Conditions Precedent to Effectivity. If any condition to the Effective Date has not been fulfilled on or before [date], then either Party has the option to terminate this Agreement by giving written notice of such termination to the other Party, provided that the fulfilment of such condition is not within the control of the Party seeking to give such notice, subject to the prior notification to and approval of ERC, pursuant to its rules and regulations. Upon the giving of notice of termination, this Agreement shall terminate on the date specified for termination in such notice, which date shall not be earlier than [number of days] Days from the date of such notice, subject to the approval of the ERC.

7.5.2 Termination in Certain Events of Force Majeure. If an event of Force Majeure occurs under the circumstances and having the consequences described in Section 6, then this Agreement may be terminated, subject to prior notification to and approval by the ERC, by notice of either Party delivered to the other Party within [number of days] Days after the end of such [number of days]-day period. If any Force Majeure is expected by the Claiming Party to exceed [number of days] Days then the Claiming Party may give notice to the other Party at any time of the Claiming Party’s desire to terminate this Agreement. The Non-Claiming Party shall notify

the Claiming Party, within [number of days] Days of the receipt of such notice, of either: (1) its acceptance of the notice, in which case this Agreement shall terminate effective on the date of such responsive notice, subject to the prior notification and approval of the ERC, pursuant to its rules and regulations; or (2) its disagreement with the Claiming Party's expectation of the duration of such Force Majeure event, in which case the dispute shall be resolved pursuant to Section 8.

## **8. DISPUTE RESOLUTION**

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

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

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

## **9. ASSIGNMENT OF RIGHTS**

The Seller may only assign or transfer its rights or obligations to its Affiliates or its consortium's special purpose vehicle under, pursuant to or associated with (a) this Agreement, (b) the Facility, (c) the movable property and intellectual property of the Seller, or (d) the revenues or any of the rights or assets of the Seller, in each of subsections (a) through (c) without the prior written consent of the Buyer, provided, however, that any such assignee of Seller shall have the ability to perform all of Seller's obligations and duties under this Agreement. Such transfer of rights and obligations under this provision shall require prior notification and approval of the ERC. Nonetheless, both assignor and assignee are solidarily liable under this Agreement.

## **10. NOTICES**

### **10.1 Address for Notices**

Any notice, communication, request or correspondence (each a "notice") required or permitted under the terms and conditions of this Agreement shall be in writing, in the English or Filipino language (it being understood that any

such communication or paper in a language other than the same shall be of no force or effect), and shall be (a) delivered personally, or (b) transmitted by electronic mail and either (i) recipient acknowledges receipt to sender or (ii) sender delivers to recipient a transmission confirmation; to the following addresses:

If to Buyer:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail Add.: \_\_\_\_\_  
Attention: \_\_\_\_\_

If to the Seller:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail Add.: \_\_\_\_\_  
Attention: \_\_\_\_\_

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

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

10.2 Effectiveness of Service

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

**11. MISCELLANEOUS PROVISIONS**

11.1 Variations in Writing

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

## 11.2 Entire Agreement

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

## 11.3 Severability

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

## 11.4 Waivers

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

11.4.2 The failure by either Party to insist on any occasion upon the performance of the terms, conditions or provisions of this Agreement or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of such breach or acceptance of any variation.

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

## 11.5 Successors and Assigns

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

## 11.6 No Liability for Review

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

other person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design.

#### 11.7 Consequential Damages

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

#### 11.8 Affirmation

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

#### 11.9 Governing Law

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

#### 11.10 Relationship of the Parties

This Agreement shall not make either of the Parties partners or joint venturers one with the other, nor make either the agent of the other. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise bind, the other Party.

#### 11.11 Survival

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

11.12 Language

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

11.13 Good Faith

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

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

[NAME OF BUYER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESSED BY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

[NAME OF SELLER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESSED BY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

**SECRETARY's CERTIFICATE**

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

1. I am the Corporate Secretary of \_\_\_\_\_, a \_\_\_\_\_ duly organized and existing under and by virtue of the laws of the Philippines with principal office address at \_\_\_\_\_.
2. At the special meeting of the Board of Directors held on \_\_\_\_\_, during which meeting a quorum was present and acting throughout, the following resolution was unanimously passed and approved:

RESOLVED, that the Board of Directors of \_\_\_\_\_ authorize, as it hereby authorizes \_\_\_\_\_ to sign the Agreement with \_\_\_\_\_, on behalf of the [Corporation].

3. This board resolution has not been revoked, amended or modified, and remains valid and binding on the [Corporation] as of the date hereof.
4. The foregoing statements are in accordance with the records of the [Corporation].

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

\_\_\_\_\_  
Corporate Secretary

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

## SCHEDULE 1

### DEFINITIONS

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

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

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

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

**“Billing Period”** - the period of one (1) month commencing at 0001H of the twenty-sixth (26<sup>th</sup>) day of each calendar month to 2400H of the twenty-fifth (25<sup>th</sup>) day of the calendar month.

**“Business Day”** - A Day on which business by and between banks may be carried on in [Location] in the Philippines.

**“Buyer Grid System”** - The Interconnection Facilities and any other transmission or distribution facilities on Buyer's side of the Interconnection Point(s) through which the Contract Capacity/Contract Energy of the Facility will be distributed by Buyer to users of electricity.

**“Contract Capacity”** - The capacity, expressed in kW allocated to the Buyer during the Billing Period.

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

**“Contract Term”** - shall have the meaning ascribed to it in Section 3.1.

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

**“Delivery Date”** - shall have the meaning ascribed to it in Section 3.3.

**“Delivery Point”** - The Trading Node or NGCP/Metering Service providers’ metering point/s of the Seller.

**“Dispute”** - shall have the meaning ascribed thereto in Section 8.

**“Effective Date”** - means the date following the completion of the conditions referred to in Section 3.2.

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

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

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

**“Force Majeure”** - An event or occurrence specified in Section 6.

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

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

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

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

**“kW”** - Kilowatts.

**“kWh”** - Kilowatt-hours.

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

**“Liquidated Damages”** - The meaning ascribed thereto in Section 5.4.

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

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

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

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

**“MW”** - Megawatts.

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

**“Notice of Default”** - The meaning ascribed thereto in Section 7.1.

**“Parties”** - Both Buyer and the Seller.

**“Party”** - Either Buyer or the Seller.

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

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

**“RCOA”** - The Retail Competition and Open Access.

**“Scheduled Outage”** - A planned partial or complete interruption of the Facility's generating capability that (a) is not an Unscheduled Outage; (b) has been scheduled and allowed by Buyer in accordance with Section 4.4; and (c) is for inspection, testing, preventive maintenance, corrective maintenance or improvement.

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

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

**“WESM”** - Wholesale Electricity Spot Market.

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

**SCHEDULE 2**

**CONTRACT CAPACITY AND/OR CONTRACT ENERGY**

<b>Billing Month</b>	<b>Hours</b>	<b>Contract Capacity (kW)</b>	<b>Contract Energy (kWh)</b>	<b>Minimum Contract Energy (kWh), if any</b>
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

### **SCHEDULE 3**

#### **MINIMUM FUNCTIONAL SPECIFICATIONS**

##### **Technical Limits of the Facility**

<b>Particulars</b>	<b>[Name of Plant/Facility]</b>	<b>[Name of Plant/Facility]</b>
Location		
Type of Technology		
Mode of Operation (baseload, intermediate, peaking, etc.)		
Commissioning Date		
Date of Completion		
Economic Life, years		
Installed Capacity, MW		
Dependable Capacity, MW		
Auxiliary Load, MW		
Scheduled Outage, days		
Unscheduled Outage, days		
Voltage Limits (kV)		

##### **Delivery Point/s**

<b>Location</b>	<b>Delivery Voltage</b>

##### **Interconnection Facilities**

Illustration of the Site Location

Illustration of the Site Layout Area

Detailed Single Line Diagram

**SCHEDULE 4**

**MONTHLY PAYMENT, INDEXATION AND ADJUSTMENT**

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

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

*Where:*

**TGC** = Total Generation Charge in PhP for the Billing Period

**CRF** = Capital Recovery Fee as defined in the Bid Documents at \_\_\_\_\_

**FOM** = Fixed Operation and Maintenance Fee as defined in the Bid Documents at \_\_\_\_\_

**VOM** = Variable Operation and Maintenance Fee as defined in the Bid Documents at \_\_\_\_\_

**FF<sub>Adj</sub>** = Current Fuel Fee **(if applicable)** for the Billing Period calculated as follows:

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

*Where:*

**FF<sub>base</sub>** = Base Fuel Fee as defined in the Bid Documents set at \_\_\_\_\_

**FO<sub>current</sub>** = Current cost of fuel at \_\_\_\_\_/(unit

**FO<sub>base</sub>** = Base cost of fuel set at \_\_\_\_\_/(unit)

## APPENDIX “D-1”

### CHECKLIST OF REQUIREMENTS FOR POWER SUPPLY AGREEMENT (PSA) CASES WITH COMPETITIVE SELECTION PROCESS (CSP) (FINANCIAL & PHYSICAL PSAs)

**Instructions:**

1. Use the designated ANNEX in the attachments to the Pre-Filing Request.
2. If there are any additional documents for submission, simply add a letter or number to the assigned ANNEX.
  - a. Example 1:  
DU’s Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission’s templates under Annex “1” and “2” of the Prefiling Checklist Requirement.  
ANNEX 18.  
ANNEX 18A. *(Additional Document like DDP)*
  - b. Example 2:  
Sample Computation of Power Rates with the supporting documents on the assumptions taken.  
ANNEX 26D. – sample bill  
ANNEX 26D-02. – *(Additional Document like rate impact analysis)*
3. For consolidated items (e.g. write-up), refer to the first Annex containing the said consolidated item. Note: Do not revise or adjust the Annexes on the checklist.
  - a. Example:

8.	Certificate of Endorsement (COE) from the Department of Energy (DOE) regarding Philippine Development Plan (PDP). <b>ANNEX 11. Write-up (e.g. contains Annexes 11-13)</b>
9.	For Genco utilizing or will utilize Renewable Energy technology: Renewable Energy Service and Operating Contract from the DOE <b>ANNEX 12. Refer to Annex 11</b>
10.	For Renewable Energy projects: Certificate of Confirmation of Commerciality issued by the DOE to the developer. <b>ANNEX 13. Refer to Annex 11</b>
4. For the filenames, indicate the assigned Annex number or letter and the document name (e.g. Annex 01. Power Supply Agreement)

#### PART I. TECHNICAL REQUIREMENTS

##### A. Salient Features

<b>Classification of Supplier</b>	<input type="checkbox"/> IPP Administrator <input type="checkbox"/> Wholesale Aggregator <input type="checkbox"/> IPP <input type="checkbox"/> Others (Please specify: _____)
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<b>Type of PSA</b>	<input type="checkbox"/> Physical <input type="checkbox"/> Financial	
<b>Technology</b>	<input type="checkbox"/> Coal <input type="checkbox"/> Bunker/Diesel <input type="checkbox"/> Others (Please specify: _____)	<input type="checkbox"/> Renewable <input type="checkbox"/> Hybrid
<b>Term of the Contract</b>	<input type="checkbox"/> Up to 6 months <input type="checkbox"/> More than 6 months to 1 year <input type="checkbox"/> Less than 10 years <input type="checkbox"/> Up to 10 years and above	
<b>Tariff Structure</b>	<input type="checkbox"/> Fixed <input type="checkbox"/> Tiered <input type="checkbox"/> Others (Please specify: _____)	
<b>Date of Commencement of Supply</b>		
<b>Installed Capacity</b>		
<b>Net Dependable Capacity</b>		
<b>Contracted Capacity/Energy (MW/kWh)</b>		
<b>Minimum Energy Off-take (MEOT)</b>		

## B. Minimum Documentary Requirements

Name of Document	
1.	<p><u>For Distribution Utility (DU) and Generation Company (Genco):</u></p> <p><u>If Private Corporation/s:</u> Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the (a) Articles of Incorporation (AOI), (b) Bylaws, and (c) latest General Information Sheet (GIS)</p> <p><u>If Electric Cooperative/s:</u> Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the (a) proof of Business Registration or a certified true copy of (b) Board Resolution or Secretary's Certificate that will indicate the list of the Board of Directors and Board Members. – <b>ANNEX 02</b></p>
2.	<p>DU's Supply and Demand Scenario (PDF and Excel format), Details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission's templates under Annex "1" and "2" of the Prefiling Checklist Requirement.</p> <p>DU's Distribution Development Plan (DDP) and the Power Supply Procurement Plan (PSPP) as submitted for issuance of Certificate of Conformity (COC) by the DOE – <b>ANNEX 03</b></p>
3.	<p>Duly signed PSA or Energy Conversion Agreement Contract. – <b>ANNEX 01</b></p>

Name of Document	
	Note: For application which includes the original and an amended/ supplemental/ addendum contract, the implementation for which is subject to prior approval of the Commission, provide a matrix to show the comparison of the amendments/ changes made, if any.
4.	Table showing matrix of comparison (Word format) showing the requirements in the DU Terms of Reference (TOR) and the relevant PSA provision. – <b>ANNEX 04</b>
5.	Generation Rate and Derivation - <b>ANNEX 05</b> a. Bid Form (PDF and Excel format) submitted by the GenCo during the bidding b. Financial model containing the derivation of rates including the equivalent PhP/kWh (excel file of the financial model required). c. Sample Computation of Power Rates with the supporting documents on the assumptions taken (i.e. Sample bill of the GenCo). – Rate Impact Analysis (PDF and Excel format)
6.	<u>For Physical PSAs (involving existing plant/s):</u> Certificate of Compliance (COC) or Provisional Authority to Operate (PAO) or any Certification coming from the ERC of the ongoing COC/PAO application or renewal, pursuant to the Guidelines for the issuance of COC for Generation Companies/Facilities including Annexes (For the specific plants or units that will be used in the PSA)  – <b>ANNEX 06</b>  Note: In the absence of COC/PAO, the Applicants must submit a notarized Affidavit (a) explaining why the document is not yet available, (b) justifying why the Application may still be filed notwithstanding its unavailability (i.e., plant is not yet built; plant is still in testing and commission stage; etc.) and (c) indicating timing for submission to the ERC.
7.	<u>For Physical PSAs:</u> Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the Wholesale Electricity Spot Market (WESM) Registration (for GenCo and DU) – <b>ANNEX 07</b>
8.	Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the Latest (and/or the AFS relevant to the proposed rates) and Complete Set of Audited Financial Statements of the Generation Company (Balance Sheet, Income Statement, and Statement of Cash Flows). – <b>ANNEX 08</b>

## **PART II. OTHER TECHNICAL REQUIREMENTS (DURING THE COURSE OF THE PROCEEDINGS)**

### **A. Other Documentary Requirements**

1.	Verified Certification showing list of Board of Directors and Board Members of the ultimate parent company, its subsidiaries, and all its affiliates. – <b>ANNEX 09</b>
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2.	For GenCos: Shareholder's Agreement (if any) – <b>ANNEX 10</b>
3.	DU's estimation of the potential for a reduction in load supplied by the DU due to retail completion, GEOP, etc. – <b>ANNEX 11</b>

## B. Other Documentary Requirements for Physical PSAs

	Name of Document
1.	<p>Certificate of Registration with attached Terms and Conditions issued by the DTI – Board of Investments (BOI) (if applicable) or proof of application to the BOI. – <b>ANNEX 12</b></p> <p>Note: For Genco utilizing Renewable Energy technology, applying for the BOI Certification is required.</p>
2.	Environmental Compliance Certificate (ECC) issued by the Department of Environment and Natural Resources (DENR) or proof of application to the DENR. – <b>ANNEX 13</b>
3.	Certificate of Endorsement (COE) from the Department of Energy (DOE) regarding Philippine Development Plan (PDP) or proof of application to the DOE. – <b>ANNEX 14</b>
4.	For Genco utilizing or will utilize Renewable Energy technology: Certificate of Confirmation of Commerciality issued by the DOE to the developer and Renewable Energy Service and Operating Contract from the DOE or proof of application to the DOE. – <b>ANNEX 15</b>
5.	Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the Distribution Wheeling Service (DWS) Agreement (for embedded generators), if applicable. – <b>ANNEX 16</b>
6.	<p>Water Permit from the National Water Resources Board (NWRB) or proof of application to the NWRB. – <b>ANNEX 17</b></p> <p>Note: Applicable for GenCo utilizing hydro technology.</p>
7.	<p>Details of any transmission projects or grid connection projects necessary to accommodate 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 the recovery of any costs related to such projects.</p> <p>If applicable, submit a copy of the Transmission Service Agreement, or application for dedicated Point to Point Limited Transmission Facility to ERC, e.g., ERC Case No. of Point to Point, Decision of Commission of the point-to-point application. – <b>ANNEX 18</b></p>
8.	<p>Copy of any Related Agreements such as: – <b>ANNEX 19</b></p> <ol style="list-style-type: none"> <li>Transmission Wheeling Contract;</li> <li>IPPA Agreement;</li> <li>EPC Contract;</li> <li>O&amp;M Contract;</li> <li>Project Feasibility Study;</li> <li>Wholesale Aggregator Agreement;</li> <li>Rental Agreements for rental generating units.</li> </ol>

<b>Name of Document</b>	
9.	For conventional power plants utilizing fuel: All details on the procurement process of fuel including requests, proposals received, tender offers, etc.- Fuel/Coal/Steam Sale Agreement. – <b>ANNEX 20</b>
10.	Sworn Statement by the competent Genco officer detailing how the fuel was competitively procured, contract terms, unbundled price components ( <i>e.g.</i> , product cost, transshipment, delivery container, etc.). – <b>ANNEX 21</b>

Note: In the absence of any of the above documents, the Applicants must submit a notarized Affidavit (a) explaining why the document is not yet available, (b) justifying why the Application may still be filed notwithstanding its unavailability (*i.e.*, plant is not yet built; plant is still in testing and commission stage; etc.) and (c) indicating timing for submission to the ERC.

### PART III. LEGAL REQUIREMENTS

REQUIREMENT	DETAILS	REMARKS		
1. <b>Electronic Pre-Filing</b>	Certificate of Email Registration (CER) No. <b>ANNEX A</b>			
	(If Not Yet Available)	Reference No. of the CER Application:		
	With Verified Declaration? (Y/N) <b>ANNEX A-1</b>	Date Of Execution:		
	Pre-Filing Date			
	Date of PSA Execution <b>ANNEX B</b>			
2. <b>Application</b> <b>ANNEX C</b>	Date of Application			
	Signed by Counsel	Y/N?		
	No. of Hard Copies (3) <i>Not applicable for Electronic Pre-Filing</i>			
	No. of Soft Copies (3) <i>Not applicable for Electronic Pre-Filing</i>			
3. <b>Verification (Verif)</b> <b>ANNEX C-1</b>		<b>DU</b>	<b>Genco</b>	
	Date Notarized			
	Details of Identification Cards (ID) Presented	Type of Government ID:		
		ID No.		
		Date of Issuance:		
	Date of Expiry:			
4. <b>Certification Against Forum Shopping (CAFS)</b> <b>ANNEX C-1</b>	Date Notarized			
	Details of Identification Cards (ID) Presented	Type of Government ID:		
		ID No.		
		Date of Issuance:		
		Date of Expiry:		
5. <b>Authority of Counsel to File the Subject Application</b> <b>ANNEX D</b>	Board Resolution (BR); or	BR No.:		
		Date of BR:		
		Name of Authorized Counsel as indicated in the BR:		
	Secretary Certificate (Sec. Cert)	Date Issued:		
		Name of Authorized Counsel as indicated in the Sec. Cert		
6. <b>Authority of Affiant to execute Verification or CAFS for the Subject Application</b> <b>ANNEX E</b>	BR (Y/N); or	BR No.:		
		Date of BR:		
		Name of Authorized Person to execute the Verif/CAFS as indicated in the BR:		
	Sec. Cert (Y/N)	Date Issued:		

REQUIREMENT	DETAILS		REMARKS		
		Name of Authorized Person to execute the Verif/CAFS as indicated in the Sec. Cert:			
<b>7. Service to Local Government Units (LGUs) of the Province, City or Municipality where Applicant Principally Operates</b> <b>ANNEX F</b>	<b>1. Certifications from the Governor, City or Municipal Mayor and Sangguniang Panlalawigan, Panlungsod or Bayan</b>				
	LGU of:				
	LGU of:				
	LGU of:				
	LGU of:				
	<i>Please provide additional information in the Other Remarks, if necessary.</i>				
	<b>2. In the Absence of Certification/s</b>				
	<b>LGU of:</b>				
	Affidavit of Service	Date of the Affidavit:			
	Application With Stamp "Received"/ Acknowledgement	Date Received by the LGU:			
	<b>LGU of:</b>				
	Affidavit of Service	Date of the Affidavit:			
	Application With Stamp "Received"/ Acknowledgement	Date Received by the LGU:			
	<b>LGU of:</b>				
	Affidavit of Service	Date of the Affidavit:			
	Application With Stamp "Received"/ Acknowledgment	Date Received by the LGU:			
	<b>LGU of:</b>				
	Affidavit of Service	Date of the Affidavit:			
	Application With Stamp "Received"/ Acknowledgment	Date Received by the LGU:			
	<i>Please provide additional information in the Other Remarks, if necessary.</i>				
<b>3. If Not Received, Reason and/or Proof of Refusal</b>					
LGU of:	Reason/Proof:				
LGU of:	Reason/Proof:				
LGU of:	Reason/Proof:				
<i>Please provide additional information in the Other Remarks, if necessary.</i>					
<b>8. Publication in a Newspaper of General Circulation within Applicant's Franchise Area</b>	Affidavit of Publication <b>ANNEX G</b>	Date of the Affidavit:			
	Newspaper <b>ANNEX G-1</b>	Name of the Publication:			
	Newspaper Issue Containing the Publication	Dates of the Publication:			
	a. Application	Volume:			
	b. Verification	Page where the Application can be found:			
	c. CAFS	Verification is included in the Publication: Y/N?			
	CAFS is included in the Publication: Y/N?				
<b>PROOF OF CONDUCT OF CSP</b>					

REQUIREMENT	DETAILS	REMARKS			
<b>9. Competitive Selection Process</b>	<i>(Please specify the paragraph numbers where the CSP description are alleged in the Application, including the annexes of documents pertaining to the CSP conducted)</i>				
	Brief Description of the CSP Conducted <b>ANNEX H</b>	Was the 1 <sup>st</sup> CSP Successful? (Y/N):			
		If the 1 <sup>st</sup> CSP failed, was the 2 <sup>nd</sup> CSP Successful? (Y/N):			
		If two (2) CSPs failed, was Direct Negotiation undertaken (Y/N):			
		Relevant Allegations in the Application:			
	BAC/Joint BAC <b>ANNEX I</b>	Proof of BAC Establishment by the DU:			
		Proof of Joint BAC establishment of aggregated DUs (if applicable):			
	CSP Observers <b>ANNEX J</b>	CSP Observers: <ol style="list-style-type: none"> <li>Consumer Representatives (from the Department of Trade and Industry–accredited consumer groups or Securities and Exchange Commission registered consumer groups):</li> <li>Community Representatives (<i>i.e.</i>, local chamber of commerce, homeowners associations, local pastoral councils, academe, parent-teachers associations, and/or for ECs, representatives from Multi-Sector Electrification Advisory Council (SMEAC) and/or Barangay-Member Consumer Electrification Committee:</li> <li>Interested Civil Society Organizations or consumers:</li> <li>For CSPs conducted by ECs, a representative from NEA:</li> </ol>			
	<b>BIDDING DOCUMENTS/PROCESS</b>				
	Invitation to Bid (ITB) <b>ANNEX K</b>	<b>A. Contents of the ITB:</b>			
1. Terms of Reference (TOR)					
2. Procurement activity schedule					
3. Place, time, website where Bidding Documents may be secured or downloaded, and price of Bidding Documents (when required)					
4. Name, address, telephone number, facsimile number, e-mail, and website addresses of procuring DU, and its designated contact person					
5. Deadline for submission of bids					
Certificate of Conformity from the DOE/NEA (in the case of ECs) <b>ANNEX L</b>	6. Other necessary information deemed relevant by the DU				
	DOE or NEA (in the case of ECs) Certificate of Conformity of the ITB in accordance with the latest and duly accepted Distribution Development Plan (DDP) and posted Power Supply Procurement Plan (PSPP), prior to publication of the ITB.				
Publication of the ITB <b>ANNEX M</b>	Publication at least once (1x) every week for two (2) consecutive weeks in at least one (1) newspaper of general circulation (for weekly publications, publication must be seven (7) calendar days apart).				
	<table border="1" style="width: 100%;"> <tr> <td style="width: 70%;">Name of the Newspaper:</td> <td></td> </tr> <tr> <td colspan="2" style="text-align: center;">Dates of the Publication</td> </tr> </table>		Name of the Newspaper:		Dates of the Publication
Name of the Newspaper:					
Dates of the Publication					

REQUIREMENT	DETAILS	REMARKS	
		1 <sup>st</sup> Publication Date:	
		2 <sup>nd</sup> Publication Date:	
	Posting of the ITB <b>ANNEX N</b>	Posting of the ITB on DU's website, if any, and in the DOE CSP e-based Portal, and in case of ECs: NEA website	
	Instruction to Bidders <b>ANNEX O</b>	Bidding procedure is clear, comprehensive and fair to all bidders	
	Terms of Reference (TOR) <b>ANNEX P</b>	A. Required/Contracted Capacity and/or Energy Volumes	
		B. Demand Requirement (baseload, intermediate, or peaking)	
		C. Contract Term:	
		D. Bid Price (in PhP/kwh), inclusive of fuel cost	
		E. Form of Payment	
		F. Penalties	
		G. Date of commencement of supply	
		H. Other key parameters that the DU may include in the TOR (i.e., replacement power, provisions for Prompt Payment Discount, if any)	
	Pre-bid Conference <b>ANNEX Q</b>	At least thirty (30) calendar days before the deadline for submission of bids to clarify any provision, requirement, and/or terms and conditions of the bidding documents.	
		Summary of Pre-Bid Conference proceedings <b>ANNEX Q-1</b>	
		Supplemental Bid Bulletins, if any. <b>ANNEX Q-2</b>	
	Eligibility Requirements <b>ANNEX R</b>	A. Executive Summary <b>ANNEX R-1</b>	
		B. Organizational Structure <b>ANNEX R-2</b>	
		C. Legal documents 1. Registration certificate (with SEC/DTI/CDA) <b>ANNEX R-3A</b> 2. Latest general information sheet (GIS) <b>ANNEX R-3B</b> 3. Power of attorney and other documents <b>ANNEX R-3C</b> 4. Sworn attestation against corruption <b>ANNEX R-3D</b> 5. Sworn attestation of no conflict of interest <b>ANNEX R-3E</b> 6. Bidder joint venture/consortium agreement (if applicable)	
		D. Technical capability information <b>ANNEX R-4</b>	
		E. Financial information <b>ANNEX R-5</b>	
		Submission of Bids <b>ANNEX S</b>	Form of Acceptance of the Bidding Procedures <b>ANNEX S-1</b>
	Form and amount of the Bid Security <b>ANNEX S-2</b>		
	Form and amount of Performance Security and Warranty <b>ANNEX S-3</b>		
	Certification or undertaking that the bidder or the duly authorized representative shall: <b>ANNEX S-4</b> 1. Attest to the responsibilities of the Bidder; and 2. Authorize the BAC or its duly authorized representative to verify any information indicated		

REQUIREMENT	DETAILS	REMARKS
		in the documents submitted as part of the Bidder's eligibility requirements.
		Technical Bid Forms <b>ANNEX S-5</b>
		Financial Bid Forms <b>ANNEX S-6</b>
		Draft Contract <b>ANNEX S-7</b>
	Evaluation of Bids <b>ANNEX T</b>	A. Stage 1 – Bidder's Eligibility <b>ANNEX T-1</b>
		B. Stage 2 – Technical and Operational Capability <b>ANNEX T-2</b>
		C. Stage 3 – Financial Proposal Evaluation <b>ANNEX T-3</b>
	Award of Contract <b>ANNEX U</b>	A. Resolution of the BAC or Joint BAC recommending the award <b>ANNEX U-1</b>
		B. Abstract of Bids <b>ANNEX U-2</b>
		C. Bid Evaluation Report <b>ANNEX U-3</b>
		D. Proposals/Offer Received <b>ANNEX U-4</b>
		E. Other pertinent documents
		F. Notice of Award <b>ANNEX U-5</b>
	Execution of Contract <b>ANNEX V</b>	Execution and Signing of the PSA <b>ANNEX V-1</b>
		Posting of the Performance Bond <b>ANNEX V-2</b>
		Notice to Proceed <b>ANNEX V-3</b>
		Affidavit of the BAC or Joint BAC on the conduct of the CSP <b>ANNEX V-4</b>
	Protests and Dispute Resolution: <b>ANNEX W</b>  Annex _____ of the Application  (Please specify the Annex/es where this/these document/s can be found)	Protest Mechanism
		<b>ANNEX W-1</b>

**SAMPLE SUPPLY – DEMAND SCENARIO**

**Supply-Demand Scenario (Yearly)**

**Table 1: Historical and Forecasted Supply-Demand Scenario showing five (5) years before the supply date and up to the end of the contract term of the PSA**

	ERC Case No.	Historical Year			Current Year	Forecasted Year		
		Last 5 Years			--	Up to End of Contract Term		
<b>Peak Demand (MW)</b>								
Captive								
Contestable								
Suppliers:								
Supplier 1								
Supplier 2								
Supplier 3								
Supplier 4								
<b>Total Supply (MW)</b>								
<b>(Deficit)/Surplus</b>								

**Table 2: DU’s Existing Supplier/s**

Name of Supplier with Existing Contract with the DU	ERC Case No.	Plant Technology	Mode of Operation (Baseload, Intermediate, Peaking)	Contracted Capacity/ Energy	Term of Contract		Approved Rates	Date of PA Order/ Decision
					Date of Effectivity mm/dd/yy	Date of Expiration mm/dd/yy		

**Table 3: Power Supply Contract Utilization for a period of three (3) years prior to the PSA execution date**

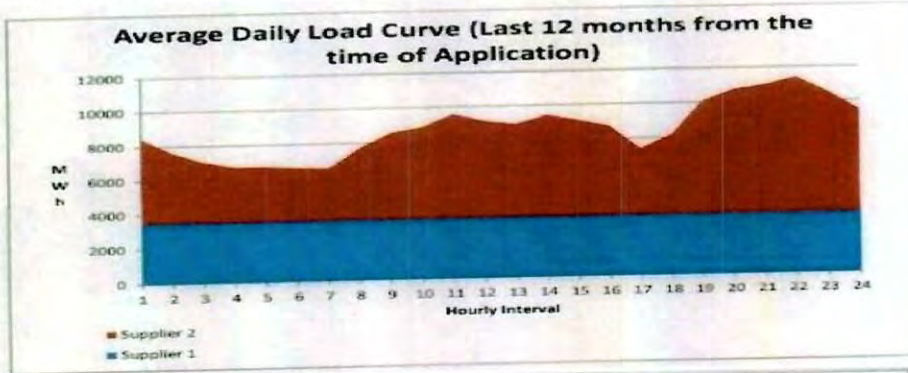
FOR THE MONTH OF \_\_\_\_\_ 20\_\_:

➤ **SUPPLIER 1 (and so on)**

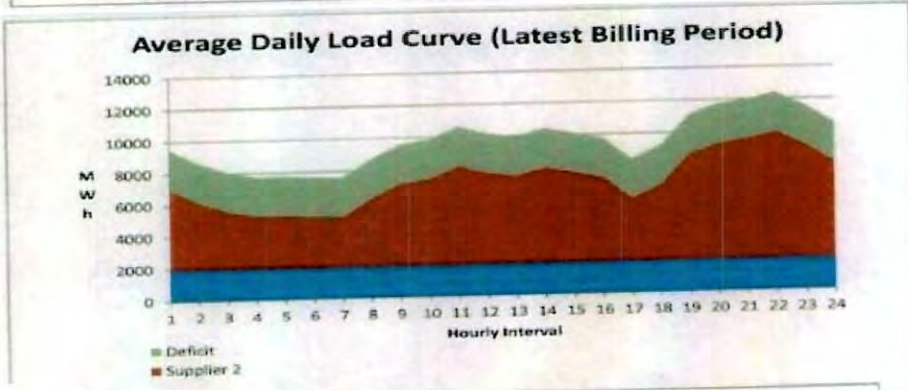
	Capacity, MW	Minimum Capacity, MW (if any)	Energy, kWh	Minimum Energy or MEOT, kWh (if any)
<b>As Contracted</b>				
<b>As Utilized (Actual)</b>				

**SAMPLE AVERAGE DAILY LOAD CURVE**

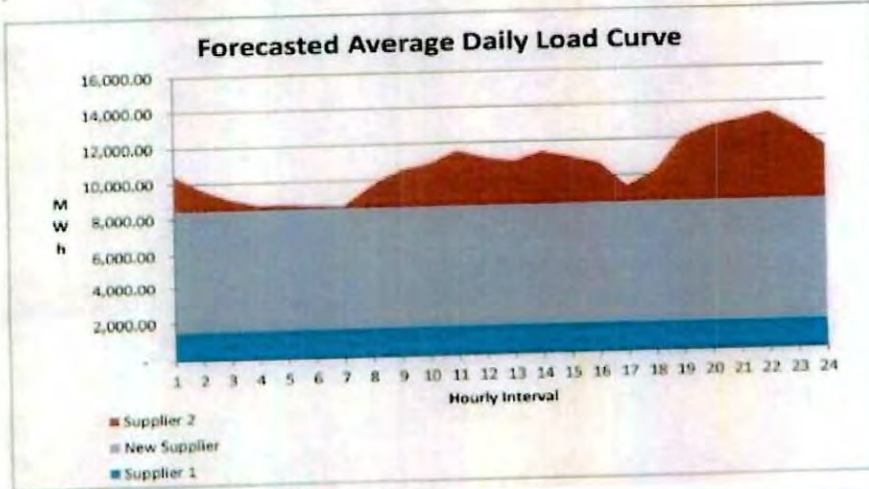
1.



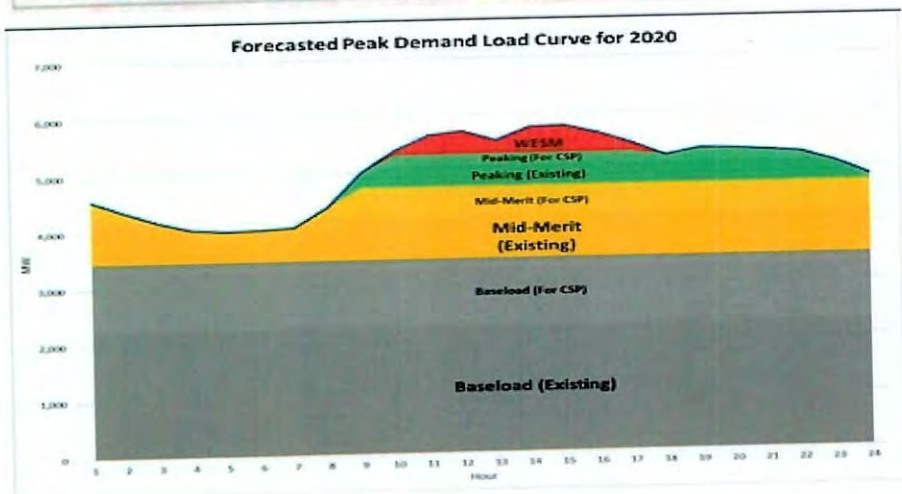
2.



3.



4.



## APPENDIX “D-2”

### CHECKLIST OF REQUIREMENTS FOR POWER SUPPLY AGREEMENT (PSA) RESULTING FROM DIRECT NEGOTIATION DUE TO FAILURE OF BIDDING (FINANCIAL & PHYSICAL PSAs)

**Instructions:**

1. Use the designated ANNEX in the attachments to the Pre-Filing Request.
2. If there are any additional documents for submission, simply add a letter or number to the assigned ANNEX.
  - a. Example 1:  
DU’s Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission’s templates under Annex “1” and “2” of the Prefiling Checklist Requirement. ANNEX 18.  
ANNEX 18A. *(Additional Document like DDP)*
  - b. Example 2:  
Sample Computation of Power Rates with the supporting documents on the assumptions taken.  
ANNEX 26D. – sample bill  
ANNEX 26D-02. – *(Additional Document like rate impact analysis)*
3. For consolidated items (e.g. write-up), refer to the first Annex containing the said consolidated item. Note: Do not revise or adjust the Annexes on the checklist.
  - a. Example:

8.	Certificate of Endorsement (COE) from the Department of Energy (DOE) regarding Philippine Development Plan (PDP). <b>ANNEX 11. Write-up (e.g. contains Annexes 11-13)</b>
9.	For Genco utilizing or will utilize Renewable Energy technology: Renewable Energy Service and Operating Contract from the DOE <b>ANNEX 12. Refer to Annex 11</b>
10.	For Renewable Energy projects: Certificate of Confirmation of Commerciality issued by the DOE to the developer. <b>ANNEX 13. Refer to Annex 11</b>
4. For the filenames, indicate the assigned Annex number or letter and the document name (e.g. Annex 01. Power Supply Agreement)

#### PART I. MINIMUM TECHNICAL REQUIREMENTS

##### A. Salient Features

<b>Classification of Supplier</b>	<input type="checkbox"/> IPP Administrator <input type="checkbox"/> IPP <input type="checkbox"/> Others (Please specify: _____)	<input type="checkbox"/> Wholesale Aggregator
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<b>Type of PSA</b>	<input type="checkbox"/> Physical <input type="checkbox"/> Financial
<b>Technology</b>	<input type="checkbox"/> Coal <input type="checkbox"/> Bunker/Diesel <input type="checkbox"/> Others (Please specify: _____) <input type="checkbox"/> Renewable <input type="checkbox"/> Hybrid
<b>Term of the Contract</b>	<input type="checkbox"/> Up to 6 months <input type="checkbox"/> More than 6 months to 1 year <input type="checkbox"/> Less than 10 years <input type="checkbox"/> Up to 10 years and above
<b>Tariff Structure</b>	<input type="checkbox"/> Fixed <input type="checkbox"/> Tiered <input type="checkbox"/> Others (Please specify: _____)
<b>Date of Commencement of Supply</b>	
<b>Installed Capacity</b>	
<b>Net Dependable Capacity</b>	
<b>Contracted Capacity/Energy (MW/kWh)</b>	
<b>Minimum Energy Off-take (MEOT)</b>	

## B. Minimum Documentary Requirements

	<b>Name of Document</b>
1.	<p><u>For Distribution Utility (DU) and Generation Company (Genco):</u></p> <p><u>If Private Corporation/s:</u> Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct.) of the (a) Articles of Incorporation (AOI), (b) Bylaws, and (c) latest General Information Sheet (GIS)</p> <p><u>If Electric Cooperative/s:</u> Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct.) of the (a) proof of Business Registration or a certified true copy of (b) Board Resolution or Secretary's Certificate that will indicate the list of the Board of Directors and Board Members. – <b>ANNEX 02</b></p>
2.	<p>DU's Supply and Demand Scenario (PDF and Excel format), Details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission's templates under Annex "1" and "2" of the Prefiling Checklist Requirement.</p> <p>DU's Distribution Development Plan (DDP) and the Power Supply Procurement Plan (PSPP) as submitted for issuance of Certificate of Conformity (COC) by the DOE – <b>ANNEX 03</b></p>
3.	<p>Duly signed PSA or Energy Conversion Agreement Contract. – <b>ANNEX 01</b></p>

Name of Document	
	Note: For application which includes the original and an amended/ supplemental/ addendum contract, the implementation for which is subject to prior approval of the Commission, provide a matrix to show the comparison of the amendments/ changes made, if any.
4.	Table showing matrix of comparison (Word format) showing the requirements in the DU Terms of Reference (TOR) and the relevant PSA provision. – <b>ANNEX 04</b>
5.	Generation Rate and Derivation: – <b>ANNEX 05</b> <ul style="list-style-type: none"> <li>a. Bid Form (PDF and Excel format) submitted by the GenCo during the bidding</li> <li>b. Financial model containing the derivation of rates including the equivalent PhP/kWh (excel file of the financial model required).</li> <li>c. Sample Computation of Power Rates with the supporting documents on the assumptions taken (i.e. Sample bill of the GenCo). – Rate Impact Analysis (PDF and Excel format)</li> </ul>
6.	<u>For Physical PSAs (involving existing plant/s):</u> Certificate of Compliance (COC) or Provisional Authority to Operate (PAO) or any Certification coming from the ERC of the ongoing COC/PAO application or renewal, pursuant to the Guidelines for the issuance of COC for Generation Companies/Facilities including Annexes. (For the specific plants or units that will be used in the PSA)  – <b>ANNEX 06</b>  Note: In the absence of COC/PAO, the Applicants must submit a notarized Affidavit (a) explaining why the document is not yet available, (b) justifying why the Application may still be filed notwithstanding its unavailability (i.e., plant is not yet built; plant is still in testing and commission stage; etc.) and (c) indicating timing for submission to the ERC.
7.	<u>For Physical PSAs:</u> Certified True Copy of the Wholesale Electricity Spot Market (WESM) Registration (for GenCo and DU) – <b>ANNEX 07</b>
8.	Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the Latest (and/or the AFS relevant to the proposed rates) and Complete Set of Audited Financial Statements of the Generation Company (Balance Sheet, Income Statement, and Statement of Cash Flows). – <b>ANNEX 08</b>

## **PART II. OTHER TECHNICAL REQUIREMENTS (DURING THE COURSE OF THE PROCEEDINGS)**

### **A. Other Documentary Requirements**

1.	Verified Certification showing list of Board of Directors and Board Members of the ultimate parent company, its subsidiaries, and all its affiliates. – <b>ANNEX 09</b>
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2.	For Gencos: Shareholder's Agreement (if any) – <b>ANNEX 10</b>
3.	DU's estimation of the potential for a reduction in load supplied by the DU due to retail completion, GEOP, etc. – <b>ANNEX 11</b>

**B. Other Documentary Requirements for Physical PSAs**

	Name of Document
1.	Certificate of Registration with attached Terms and Conditions issued by the DTI – Board of Investments (BOI) (if applicable) or proof of application to the BOI. – <b>ANNEX 12</b>  Note: For Genco utilizing Renewable Energy technology, applying for the BOI Certification is required.
2.	Environmental Compliance Certificate (ECC) issued by the Department of Environment and Natural Resources (DENR) or proof of application to the DENR. – <b>ANNEX 13</b>
3.	Certificate of Endorsement (COE) from the Department of Energy (DOE) regarding Philippine Development Plan (PDP) or proof of application to the DOE. – <b>ANNEX 14</b>
4.	For Genco utilizing or will utilize Renewable Energy technology: Certificate of Confirmation of Commerciality issued by the DOE to the developer and Renewable Energy Service and Operating Contract from the DOE or proof of application to the DOE. – <b>ANNEX 15</b>
5.	Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the Distribution Wheeling Service (DWS) Agreement (for embedded generators), if applicable. – <b>ANNEX 16</b>
6.	Water Permit from the National Water Resources Board (NWRB) or proof of application to the NWRB. – <b>ANNEX 17</b>  Note: Applicable for Genco utilizing hydro technology.
7.	Details of any transmission projects or grid connection projects necessary to accommodate 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 the recovery of any costs related to such projects.  If applicable, submit a copy of the Transmission Service Agreement, or application for dedicated Point to Point Limited Transmission Facility to ERC, e.g., ERC Case No. of Point to Point, Decision of Commission of the point-to-point application. – <b>ANNEX 18</b>
8.	Copy of any Related Agreements such as: – <b>ANNEX 19</b> a. Transmission Wheeling Contract; b. IPPA Agreement; c. EPC Contract; d. O&M Contract; e. Project Feasibility Study; f. Wholesale Aggregator Agreement; g. Rental Agreements for rental generating units.

Name of Document	
9.	For conventional power plants utilizing fuel: All details on the procurement process of fuel including requests, proposals received, tender offers, etc.- Fuel/Coal/Steam Sale Agreement. – <b>ANNEX 20</b>
10.	Sworn Statement by the competent Genco officer detailing how the fuel was competitively procured, contract terms, unbundled price components (e.g., product cost, transshipment, delivery container, etc.). – <b>ANNEX 21</b>
11.	Sources of Funds/ Financial Plans: – <b>ANNEX 22</b> <ol style="list-style-type: none"> <li>a. Debt-Equity Ratio</li> <li>b. Project Cost</li> <li>c. Computation of Return on Investment/WACC</li> <li>d. Certification from the Bank or Lending Institution specifying the principal amortization, term, and interest during the cooperation period of the loan agreement</li> <li>e. Life of Asset versus Term of Loan (Computation Levelized Cost)</li> <li>f. Bank Certification of Long-Term Loans, including Schedule of Original Loan (principal amount, interest payable, term of the loan) and updated balances (principal Amount, interest payable, and term of the loan)</li> </ol>
12.	Generation Rate and Derivation: – <b>ANNEX 23</b> <ol style="list-style-type: none"> <li>a. Breakdown of the base prices; Capital Recovery Fee, Fixed and Variable O&amp;M, and Fuel Fee.</li> <li>b. Breakdown of Project Cost and O&amp;M Cost including the description and justification/supporting of each component.</li> <li>c. Basis/rationale of indexation including the sources, reference date, and weight of indexation.</li> <li>d. Basis of proposed escalation, if applicable.</li> <li>e. Basis/rationale/derivation of Other Charges such as replacement, start-up, pre-commercial.</li> <li>f. Equivalent PhP/kWh with assumptions for foreign-denominated rates.</li> </ol>
13.	Cash Flow specifying the following: – <b>ANNEX 24</b> <ol style="list-style-type: none"> <li>a. Initial costs</li> <li>b. Breakdown of O&amp;M expenses.</li> </ol>
14.	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. – <b>ANNEX 25</b>
15.	Other documents: – <b>ANNEX 26</b> <ol style="list-style-type: none"> <li>a. For conventional power plants utilizing fuel: Certification (from the engine manufacturer or IPP) of the net heat rate (initial and every after major maintenance schedule) in liters per kWh.</li> <li>b. Simulation of the number of operating units necessary to meet the MEOT</li> </ol>

Note: In the absence of any of the above documents, the Applicants must submit a notarized Affidavit (a) explaining why the document is not yet available, (b) justifying why the Application may still be filed notwithstanding its unavailability (i.e., plant is not yet built; plant is still in testing and commission stage; etc.) and (c) indicating timing for submission to the ERC.

### PART III. LEGAL REQUIREMENTS

REQUIREMENT	DETAILS	REMARKS		
1. <b>Electronic Pre-Filing</b>	Certificate of Email Registration (CER) No. <b>ANNEX A</b>			
	(If Not Yet Available)	Reference No. of the CER Application:		
	With Verified Declaration? (Y/N) <b>ANNEX A-1</b>	Date Of Execution:		
	Pre-Filing Date			
	Date of PSA Execution <b>ANNEX B</b>			
2. <b>Application ANNEX C</b>	Date of Application			
	Signed by Counsel	Y/N?		
	No. of Hard Copies (3) <i>Not applicable for Electronic Pre-Filing</i>			
	No. of Soft Copies (3) <i>Not applicable for Electronic Pre-Filing</i>			
3. <b>Verification (Verif) ANNEX C-1</b>			<b>DU</b>	<b>Genco</b>
	Date Notarized			
	Details of Identification Cards (ID) Presented	Type of Government ID:		
		ID No.		
		Date of Issuance:		
Date of Expiry:				
4. <b>Certification Against Forum Shopping (CAFS) ANNEX C-1</b>	Date Notarized			
	Details of Identification Cards (ID) Presented	Type of Government ID:		
		ID No.		
		Date of Issuance:		
		Date of Expiry:		
5. <b>Authority of Counsel to File the Subject Application ANNEX D</b>	Board Resolution (BR); or	BR No.:		
		Date of BR:		
		Name of Authorized Counsel as indicated in the BR:		
	Secretary Certificate (Sec. Cert)	Date Issued:		
		Name of Authorized Counsel as indicated in the Sec. Cert:		
6. <b>Authority of Affiant to execute Verification or CAFS for the Subject Application ANNEX E</b>	BR (Y/N); or	BR No.:		
		Date of BR:		
		Name of Authorized Person to execute the Verif/CAFS as indicated in the BR:		
	Sec. Cert (Y/N)	Date Issued:		

REQUIREMENT	DETAILS		REMARKS		
		Name of Authorized Person to execute the Verif/CAFS as indicated in the Sec. Cert:			
<b>7. Service to Local Government Units (LGUs) of the Province, City or Municipality where Applicant Principally Operates</b> <b>ANNEX F</b>	<b>1. Certifications from the Governor, City or Municipal Mayor and Sangguniang Panlalawigan, Panlungsod or Bayan</b>				
	LGU of:				
	LGU of:				
	LGU of:				
	LGU of:				
	<i>Please provide additional information in the Other Remarks, if necessary.</i>				
	<b>2. In the Absence of Certification/s</b>				
	LGU of:				
	Affidavit of Service	Date of the Affidavit:			
	Application With Stamp "Received"/ Acknowledgement	Date Received by the LGU:			
	LGU of:				
	Affidavit of Service	Date of the Affidavit:			
	Application With Stamp "Received"/ Acknowledgement	Date Received by the LGU:			
	LGU of:				
	Affidavit of Service	Date of the Affidavit:			
	Application With Stamp "Received"/ Acknowledgment	Date Received by the LGU:			
	LGU of:				
	Affidavit of Service	Date of the Affidavit:			
	Application With Stamp "Received"/ Acknowledgment	Date Received by the LGU:			
	<i>Please provide additional information in the Other Remarks, if necessary.</i>				
	<b>3. If Not Received, Reason and/or Proof of Refusal</b>				
LGU of:	Reason/Proof:				
LGU of:	Reason/Proof:				
LGU of:	Reason/Proof:				
<i>Please provide additional information in the Other Remarks, if necessary.</i>					
<b>8. Publication in a Newspaper of General Circulation within Applicant's Franchise Area</b>	Affidavit of Publication <b>ANNEX G</b>	Date of the Affidavit:			
	Newspaper <b>ANNEX G-1</b>	Name of the Publication:			
	Newspaper Issue Containing the Publication	Dates of the Publication:			
	a. Application	Volume:			
	b. Verification	Page where the Application can be found:			
	c. CAFS	Verification is included in the Publication: Y/N?			
	<b>PROOF OF CONDUCT OF CSP</b>				

REQUIREMENT	DETAILS	REMARKS	
9. Competitive Selection Process	<i>(Please specify the paragraph numbers where the CSP description are alleged in the Application, including the annexes of documents pertaining to the CSP conducted)</i>		
	Brief Description of the CSP Conducted <b>ANNEX H</b>	Was the 1 <sup>st</sup> CSP Successful? (Y/N):	
		If the 1 <sup>st</sup> CSP failed, was the 2 <sup>nd</sup> CSP Successful? (Y/N):	
		If two (2) CSPs failed, was Direct Negotiation undertaken (Y/N):	
		Relevant Allegations in the Application:	
	BAC/Joint BAC <b>ANNEX I</b>	Proof of BAC Establishment by the DU:	
		Proof of Joint BAC establishment of aggregated DUs (if applicable):	
	CSP Observers <b>ANNEX J</b>	CSP Observers: <ol style="list-style-type: none"> <li>Consumer Representatives (from the Department of Trade and Industry-accredited consumer groups or Securities and Exchange Commission registered consumer groups):</li> <li>Community Representatives (<i>i.e.</i>, local chamber of commerce, homeowners associations, local pastoral councils, academe, parent-teachers associations, and/or for ECs, representatives from Multi-Sector Electrification Advisory Council (SMEAC) and/or Barangay-Member Consumer Electrification Committee:</li> <li>Interested Civil Society Organizations or consumers:</li> <li>For CSPs conducted by Ecs, a representative from NEA:</li> </ol>	
	<b>BIDDING DOCUMENTS/PROCESS</b>		
	Invitation to Bid (ITB) <b>ANNEX K</b>	A. Contents of the ITB:	
1. Terms of Reference (TOR)			
2. Procurement activity schedule			
3. Place, time, website where Bidding Documents may be secured or downloaded, and price of Bidding Documents (when required)			
4. Name, address, telephone number, facsimile number, e-mail, and website addresses of procuring DU, and its designated contact person			
5. Deadline for submission of bids			
Certificate of Conformity from the DOE/NEA (in the case of ECs) <b>ANNEX L</b>	6. Other necessary information deemed relevant by the DU		
	DOE or NEA (in the case of ECs) Certificate of Conformity of the ITB in accordance with the latest and duly accepted Distribution Development Plan (DDP) and posted Power Supply Procurement Plan (PSPP), prior to publication of the ITB.		
Publication of the ITB <b>ANNEX M</b>	Publication at least once (1x) every week for two (2) consecutive weeks in at least one (1) newspaper of general circulation (for weekly publications, publication must be seven (7) calendar days apart).		

REQUIREMENT	DETAILS	REMARKS								
		<table border="1"> <tr> <td>Name of the Newspaper:</td> <td></td> </tr> <tr> <td colspan="2">Dates of the Publication</td> </tr> <tr> <td>1<sup>st</sup> Publication Date:</td> <td></td> </tr> <tr> <td>2<sup>nd</sup> Publication Date:</td> <td></td> </tr> </table>	Name of the Newspaper:		Dates of the Publication		1 <sup>st</sup> Publication Date:		2 <sup>nd</sup> Publication Date:	
Name of the Newspaper:										
Dates of the Publication										
1 <sup>st</sup> Publication Date:										
2 <sup>nd</sup> Publication Date:										
	Posting of the ITB <b>ANNEX N</b>	Posting of the ITB on DU's website, if any, and in the DOE CSP e-based Portal, and in case of ECs: NEA website								
	Instruction to Bidders <b>ANNEX O</b>	Bidding procedure is clear, comprehensive and fair to all bidders								
	Terms of Reference (TOR) <b>ANNEX P</b>	A. Required/Contracted Capacity and/or Energy Volumes B. Demand Requirement (baseload, intermediate, or peaking) C. Contract Term: (not to exceed 15 years for Physical PSAs) (not to exceed 20 years for Physical PSAs where the nominated plants are renewable energy power plants) D. Bid Price (in PhP/kwh), inclusive of fuel cost E. Form of Payment F. Penalties G. Date of commencement of supply H. Other key parameters that the DU may include in the TOR (i.e., replacement power, provisions for Prompt Payment Discount, if any)								
	Pre-bid Conference <b>ANNEX Q</b>	At least thirty (30) calendar days before the deadline for submission of bids to clarify any provision, requirement, and/or terms and conditions of the bidding documents. Summary of Pre-Bid Conference proceedings <b>ANNEX Q-1</b> Supplemental Bid Bulletins, if any. <b>ANNEX Q-2</b>								
	Eligibility Requirements <b>ANNEX R</b>	A. Executive Summary <b>ANNEX R-1</b> B. Organizational Structure <b>ANNEX R-2</b> C. Legal documents <ol style="list-style-type: none"> <li>1. Registration certificate (with SEC/DTI/CDA)  <b>ANNEX R-3A</b></li> <li>2. Latest general information sheet (GIS)  <b>ANNEX R-3B</b></li> <li>3. Power of attorney and other documents  <b>ANNEX R-3C</b></li> <li>4. Sworn attestation against corruption  <b>ANNEX R-3D</b></li> <li>5. Sworn attestation of no conflict of interest  <b>ANNEX R-3E</b></li> <li>6. Bidder joint venture/consortium agreement (if applicable)</li> </ol> D. Technical capability information <b>ANNEX R-4</b> E. Financial information <b>ANNEX R-5</b>								
	Submission of Bids <b>ANNEX S</b>	Form of Acceptance of the Bidding Procedures <b>ANNEX S-1</b> Form and amount of the Bid Security <b>ANNEX S-2</b> Form and amount of Performance Security and Warranty								

REQUIREMENT	DETAILS	REMARKS
		<p><b>ANNEX S-3</b>  Certification or undertaking that the bidder or the duly authorized representative shall: <b>ANNEX S-4</b></p> <ol style="list-style-type: none"> <li>1. Attest to the responsibilities of the Bidder; and</li> <li>2. Authorize the BAC or its duly authorized representative to verify any information indicated in the documents submitted as part of the Bidder's eligibility requirements.</li> </ol> <p>Technical Bid Forms  <b>ANNEX S-5</b>  Financial Bid Forms  <b>ANNEX S-6</b>  Draft Contract  <b>ANNEX S-7</b></p>
	Evaluation of Bids <b>ANNEX T</b>	A. Stage 1 – Bidder's Eligibility <b>ANNEX T-1</b> B. Stage 2 – Technical and Operational Capability <b>ANNEX T-2</b> C. Stage 3 – Financial Proposal Evaluation <b>ANNEX T-3</b>
	Award of Contract <b>ANNEX U</b>	A. Resolution of the BAC or Joint BAC recommending the award <b>ANNEX U-1</b> B. Abstract of Bids <b>ANNEX U-2</b> C. Bid Evaluation Report <b>ANNEX U-3</b> D. Proposals/Offer Received <b>ANNEX U-4</b> E. Other pertinent documents F. Notice of Award <b>ANNEX U-5</b>
	Execution of Contract <b>ANNEX V</b>	Execution and Signing of the PSA <b>ANNEX V-1</b> Posting of the Performance Bond <b>ANNEX V-2</b> Notice to Proceed <b>ANNEX V-3</b> Affidavit of the BAC or Joint BAC on the conduct of the CSP <b>ANNEX V-4</b>
	Protests and Dispute Resolution: <b>ANNEX W</b>  Annex _____ of the Application  (Please specify the Annex/es where this/these document/s can be found)	Protest Mechanism   <b>ANNEX W-1</b>

**SAMPLE SUPPLY – DEMAND SCENARIO**

**Supply-Demand Scenario (Yearly)**

**Table 1: Historical and Forecasted Supply-Demand Scenario showing five (5) years before the supply date and up to the end of the contract term of the PSA**

	ERC Case No.	Historical Year			Current Year	Forecasted Year		
		Last 5 Years			--	Up to End of Contract Term		
<b>Peak Demand (MW)</b>								
Captive								
Contestable								
Suppliers:								
Supplier 1								
Supplier 2								
Supplier 3								
Supplier 4								
<b>Total Supply (MW)</b>								
<b>(Deficit)/Surplus</b>								

**Table 2: DU’s Existing Supplier/s**

Name of Supplier with Existing Contract with the DU	ERC Case No.	Plant Technology	Mode of Operation (Baseload, Intermediate, Peaking)	Contracted Capacity/ Energy	Term of Contract		Approved Rates	Date of PA Order/ Decision
					Date of Effectivity mm/dd/yy	Date of Expiration mm/dd/yy		

**Table 3: Power Supply Contract Utilization for a period of three (3) years prior to the PSA execution date**

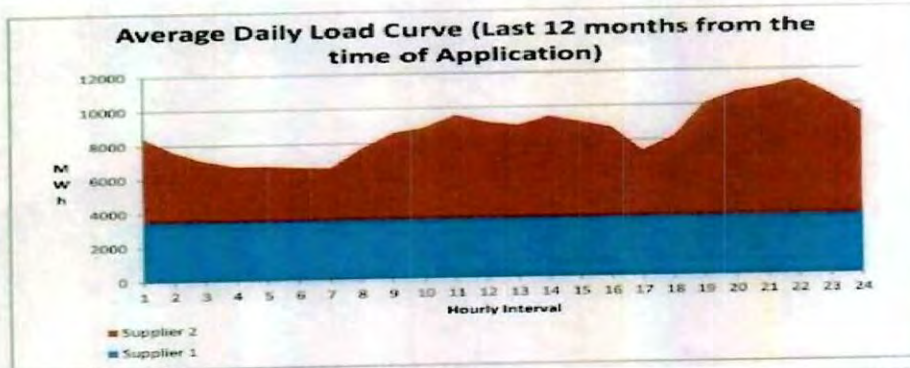
FOR THE MONTH OF \_\_\_\_\_ 20\_\_:

➤ **SUPPLIER 1 (and so on)**

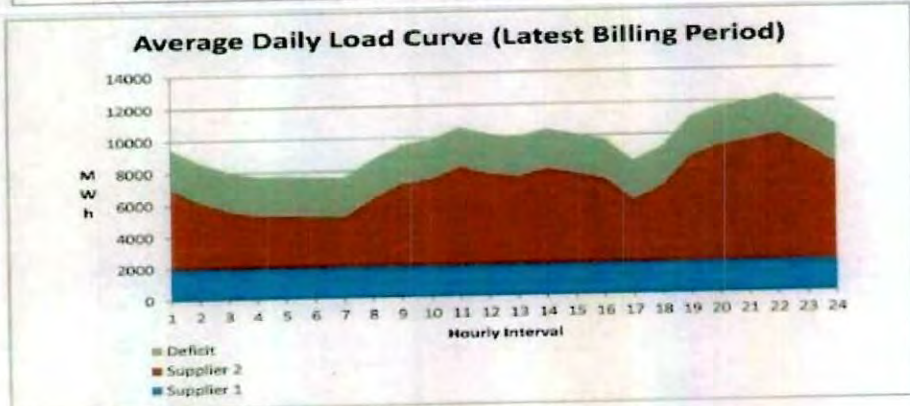
	Capacity, MW	Minimum Capacity, MW (if any)	Energy, kWh	Minimum Energy or MEOT, kWh (if any)
<b>As Contracted</b>				
<b>As Utilized (Actual)</b>				

**SAMPLE AVERAGE DAILY LOAD CURVE**

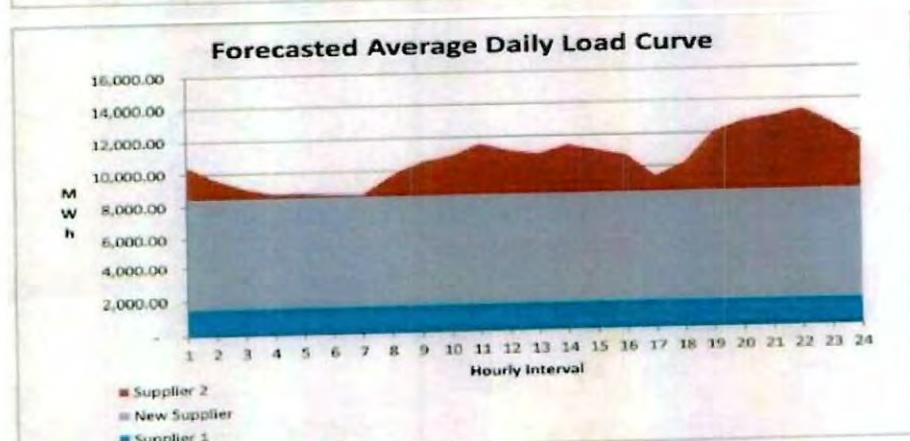
1.



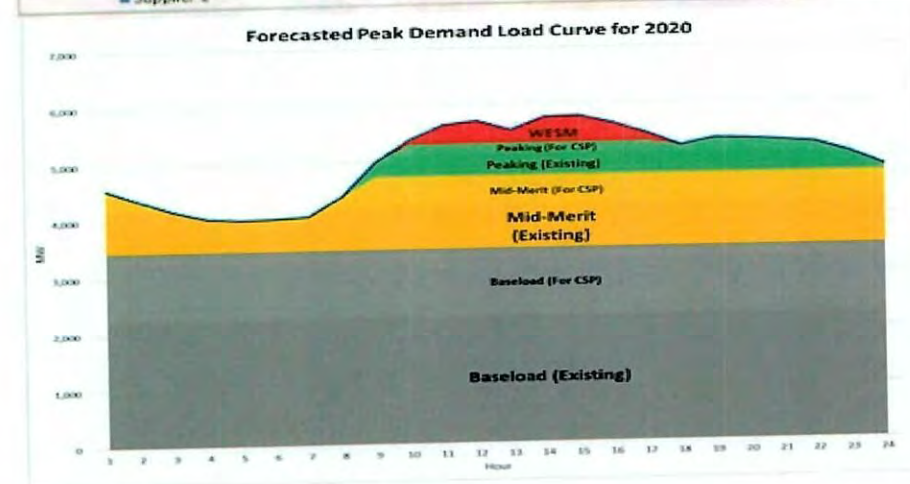
2.



3.



4.



## APPENDIX “E”

### CHECKLIST OF REQUIREMENTS FOR PSA CASES EXEMPTED FROM CSP (EXCLUDING EMERGENCY PSA) (FINANCIAL & PHYSICAL PSAs)

#### Instructions:

1. Use the designated ANNEX in the attachments to the Pre-Filing Request.
2. If there are any additional documents for submission, simply add a letter or number to the assigned ANNEX.
  - a. Example 1:  
DU’s Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission’s templates under Annex “1” and “2” of the Prefiling Checklist Requirement.  
ANNEX 18.  
ANNEX 18A. (*Additional Document like DDP*)
  - b. Example 2:  
Sample Computation of Power Rates with the supporting documents on the assumptions taken.  
ANNEX 26D. – sample bill  
ANNEX 26D-02. – (*Additional Document like rate impact analysis*)
3. For consolidated items (e.g. write-up), refer to the first Annex containing the said consolidated item. Note: Do not revise or adjust the Annexes on the checklist.
  - a. Example:

8.	Certificate of Endorsement (COE) from the Department of Energy (DOE) regarding Philippine Development Plan (PDP). <b>ANNEX 11. Write-up (e.g. contains Annexes 11-13)</b>
9.	For Genco utilizing or will utilize Renewable Energy technology: Renewable Energy Service and Operating Contract from the DOE <b>ANNEX 12. Refer to Annex 11</b>
10.	For Renewable Energy projects: Certificate of Confirmation of Commerciality issued by the DOE to the developer. <b>ANNEX 13. Refer to Annex 11</b>
4. For the filenames, indicate the assigned Annex number or letter and the document name (e.g. Annex 01. Power Supply Agreement)

## PART I. MINIMUM TECHNICAL REQUIREMENTS

### A. Salient Features

<b>Classification of Supplier</b>	<input type="checkbox"/> IPP Administrator <input type="checkbox"/> IPP <input type="checkbox"/> Wholesale Aggregator <input type="checkbox"/> Others (Please specify: _____)
<b>Type of PSA</b>	<input type="checkbox"/> Physical <input type="checkbox"/> Financial
<b>Technology</b>	<input type="checkbox"/> Coal <input type="checkbox"/> Bunker/Diesel <input type="checkbox"/> Renewable <input type="checkbox"/> Hybrid <input type="checkbox"/> Others (Please specify: _____)
<b>Term of the Contract</b>	<input type="checkbox"/> Up to 6 months <input type="checkbox"/> More than 6 months to 1 year <input type="checkbox"/> Less than 10 years <input type="checkbox"/> 10 years and above
<b>Tariff Structure</b>	<input type="checkbox"/> Fixed <input type="checkbox"/> Tiered <input type="checkbox"/> Others (Please specify: _____)
<b>Nature of CSP Exception</b>	<input type="checkbox"/> PSA exercising Opt-in Mechanism under GEAP <input type="checkbox"/> Embedded Generation Plant not exceeding 10 MW <input type="checkbox"/> PSA involving off-grid areas served by NPPs with less than 1MW demand with 24-hour electricity service <input type="checkbox"/> Others _____

<b>Date of Commencement of Supply</b>	
<b>Installed Capacity</b>	
<b>Net Dependable Capacity</b>	
<b>Contracted Capacity/Energy (MW/kWh)</b>	
<b>Minimum Energy Off-take (MEOT)</b>	

### B. Minimum Documentary Requirements

	<b>Name of Document</b>
1.	<p><u>For Distribution Utility (DU) and Generation Company (Genco):</u></p> <p><u>If Private Corporation/s:</u> Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the (a) Articles of Incorporation (AOI), (b) Bylaws, and (c) latest General Information Sheet (GIS)</p> <p><u>If Electric Cooperative/s:</u> Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the (a) proof of</p>

	<b>Name of Document</b>
	Business Registration or a certified true copy of (b) Board Resolution or Secretary's Certificate that will indicate the list of the Board of Directors and Board Members. – <b>ANNEX 02</b>
2.	<p>DU's Supply and Demand Scenario (PDF and Excel format), Details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission's templates under Annex "1" and "2" of the Pre-Filing Checklist Requirement.</p> <p>DU's Distribution Development Plan (DDP) and the Power Supply Procurement Plan (PSPP) as submitted for issuance of Certificate of Conformity (COC) by the DOE – <b>ANNEX 03</b></p>
3.	<p>Duly signed PSA of Energy Conversion Agreement Contract. – <b>ANNEX 01</b></p> <p>Note: For application which includes the original and an amended/ supplemental/ addendum contract, the implementation for which is subject to prior approval of the Commission, provide a matrix to show the comparison of the amendments/changes made, if any.</p>
4.	<p>Generation Rate and Derivation: – <b>ANNEX 04</b></p> <ol style="list-style-type: none"> <li>a. Financial model containing the derivation of rates including the equivalent PhP/kWh (excel file of the financial model required).</li> <li>b. Sample Computation of Power Rates with the supporting documents on the assumptions taken (i.e. Sample bill of the GenCo). <ul style="list-style-type: none"> <li>- Rate Impact Analysis (PDF and Excel format)</li> </ul> </li> </ol>
5.	<p><u>For Physical PSAs (involving existing plant/s):</u> Certificate of Compliance (COC) or Provisional Authority to Operate (PAO) or any Certification coming from the ERC of the ongoing COC/PAO application or renewal, pursuant to the Guidelines for the issuance of COC for Generation Companies/Facilities including Annexes (For the specific plants or units that will be used in the PSA)</p> <p>– <b>ANNEX 05</b></p> <p>Note: In the absence of COC/PAO, the Applicants must submit a notarized Affidavit (a) explaining why the document is not yet available, (b) justifying why the Application may still be filed notwithstanding its unavailability (i.e., plant is not yet built; plant is still in testing and commission stage; etc.) and (c) indicating timing for submission to the ERC.</p>
6.	<p><u>For Physical PSAs:</u> Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the Wholesale Electricity Spot Market (WESM) Registration</p> <p>– <b>ANNEX 06</b></p>
7.	<p><b>Documents Required in lieu of the Procurement Process:</b> – <b>ANNEX 07</b></p> <ol style="list-style-type: none"> <li>a. If applicable, DU's Certification of Board Resolution authorizing the CSP Exception, specifying the nature of exception</li> <li>b. If applicable, Certificate of Endorsement for Green Energy Tariff (COE-GET) issued by the DOE.</li> <li>c. If applicable, Certification from the DU of the necessary measures to ensure that the operation of the embedded facility shall not compromise the reliability of its network and the grid.</li> <li>d. If applicable, for off-grid areas served or to be served by NPPs, a DU's Affidavit attesting that the demand is not exceeding 1MW and that the supply from NPP shall be for 24-hour electricity service.</li> </ol>
8.	<p>Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the Latest (and/or the AFS relevant to the</p>

	<b>Name of Document</b>
	proposed rates) and Complete Set of Audited Financial Statements of the Generation Company (Balance Sheet, Income Statement, and Statement of Cash Flows). – <b>ANNEX 08</b>

**PART II. OTHER TECHNICAL REQUIREMENTS (DURING THE COURSE OF THE PROCEEDINGS)**

**C. Other Documentary Requirements**

	<b>Name of Document</b>
1.	Verified Certification showing list of Board of Directors and Board Members of the ultimate parent company, its subsidiaries, and all its affiliates. – <b>ANNEX 09</b>
2.	<u>For Gencos:</u> Shareholder’s Agreement (if any) – <b>ANNEX 10</b>
4.	DU’s estimation of the potential for a reduction in load supplied by the DU due to retail completion, GEOP, etc. – <b>ANNEX 11</b>

**D. Other Documentary Requirements for Physical PSAs**

	<b>Name of Document</b>
1.	Certificate of Registration with attached Terms and Conditions issued by the DTI – Board of Investments (BOI) (if applicable) or proof of application to the BOI. – <b>ANNEX 12</b>  <i>Note: For Genco utilizing Renewable Energy technology, applying for the BOI Certification is required.</i>
2.	Environmental Compliance Certificate (ECC) issued by the Department of Environment and Natural Resources (DENR) or proof of application to the DENR. – <b>ANNEX 13</b>
3.	Certificate of Endorsement (COE) Certification from the Department of Energy (DOE) regarding Philippine Development Plan (PDP) or proof of application to the DOE. – <b>ANNEX 14</b>
4.	For Genco utilizing or will utilize Renewable Energy technology: Certificate of Confirmation of Commerciality issued by the DOE to the developer and Renewable Energy Service and Operating Contract from the DOE or proof of application to the DOE. – <b>ANNEX 15</b>
5.	Certified True Copy (or Secretary’s Certificate signifying that the said documents are true and correct) of the Distribution Wheeling Service (DWS) Agreement (for embedded generators), if applicable. – <b>ANNEX 16</b>
6.	Water Permit from the National Water Resources Board (NWRB) or proof of application to the NWRB. – <b>ANNEX 17</b>  <i>Note: Applicable for Genco utilizing hydro technology.</i>
7.	<u>For PSA exercising Opt-In Mechanism under GEAP, if applicable:</u> Details of any transmission projects of grid connection projects necessary to accommodate 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 the recovery of any costs related to such projects.  If applicable, submit a copy of the Transmission Service Agreement, or application for dedicated Point to Point Limited Transmission Facility to ERC, e.g., ERC Case No. of Point to Point, Decision of Commission of the point-to-point application. – <b>ANNEX 18</b>

	<b>Name of Document</b>
8.	Copy of any Related Agreements such as: – <b>ANNEX 19</b> a. Transmission Wheeling Contract; b. IPPA Agreement; c. EPC Contract; d. O&M Contract; e. Project Feasibility Study; f. Wholesale Aggregator Agreement; g. Rental Agreements for rental generating units.
9.	For conventional power plants utilizing fuel: All details on the procurement process of fuel including requests, proposals received, tender offers, etc. – Fuel/Coal/Steam Sale Agreement – <b>ANNEX 20</b>
10.	Sworn Statement by the competent Genco officer detailing how the fuel was competitively procured, contract terms, unbundled price components (e.g., product cost, transshipment, delivery container, etc.) – <b>ANNEX 21</b>
11.	Source of Funds/Financial Plans: – <b>ANNEX 22</b> a. Debt-Equity Ratio b. Project Cost c. Computation of Return of Investment/WACC d. Certification from the Bank of Lending Institution specifying the principal amortization, term, and interest during the cooperation period of the loan agreement e. Life of Asset versus Term of Loan (Computation Levelized Cost) f. Bank Certification of Long-Term Loans, including Schedule of Original Loan (principal amount, interest payable, term of the loan) and updated balances (principal amount, interest payable and term of the loan)
12.	Generation Rate and Derivation: – <b>ANNEX 23</b> a. Breakdown of the base prices; Capital Recovery Fee, Fixed and Variable O&M, and Fuel Fee. b. Breakdown of Project Cost and O&M Cost including the description and justification/supporting of each component. c. Basis/rationale of indexation including the sources, reference date, and weight of indexation. d. Basis of proposed escalation, if applicable. e. Basis/rationale/derivation of Other Charges such as replacement, start-up, pre-commercial. f. Equivalent PhP/kWh with assumptions for foreign-denominated rates.
13.	Cash Flow specifying the following: – <b>ANNEX 24</b> a. Initial costs b. Breakdown of O&M expenses
14.	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. – <b>ANNEX 25</b>
15.	Other Documents: – <b>ANNEX 26</b> a. For conventional power plants utilizing fuel: Certification (from the engine manufacturer or IPP) of the net heat rate (initial and every after major maintenance schedule) in liters per kWh. b. Simulation of the number of operating units necessary to meet the MEOT

Note: In the absence of any of the above documents, the Applicants must submit a notarized Affidavit (a) explaining why the document is not yet available, (b) justifying why the Application may still be filed notwithstanding its unavailability (i.e. plant is not yet built; plant is still in testing and commission stage; etc.) and (c) indicating timing for submission to the ERC.

### PART III. LEGAL REQUIREMENTS

REQUIREMENT	DETAILS	REMARKS		
1. ELECTRONIC PRE-FILING	CERTIFICATE OF EMAIL REGISTRATION NO. <b>ANNEX A</b>			
	(If not yet available)	Reference No. of CER application: -		
	VERIFIED DECLARATION (Y/N) <b>ANNEX A-1</b>	Date of Execution:		
	PRE-FILING DATE			
	DATE OF PSA EXECUTION/ OCCURRENCE OF FORCE MAJEURE OR FORTUITOUS EVENT FOR EPSA <b>ANNEX B</b>			
	DATE			
	SIGNED BY COUNSEL	Y/N?		
2. APPLICATION <b>ANNEX C</b>	NO. OF HARD COPIES (3) [N/A FOR ELECTRONIC PRE-FILING]			
	NO. OF SOFT COPIES (3) [N/A FOR ELECTRONIC PRE-FILING]			
3. VERIFICATION (VERIF) <b>ANNEX C-1</b>			<b>DU</b>	
	DATE NOTARIZED		<b>Genco</b>	
	ID PRESENTED	Type of Government ID:		
		ID No.		
		Date of Issuance:		
Date of Expiry:				
4. CERTIFICATION AGAINST FORUM SHOPPING (CAFS) <b>ANNEX C-1</b>	DATE NOTARIZED			
	ID PRESENTED	Type of Government ID:		
		ID No.		
		Date of Issuance:		
Date of Expiry:				
5. AUTHORITY OF COUNSEL TO FILE THE SUBJECT APPLICATION <b>ANNEX D</b>	Board Resolution (BR); or	BR No.:		
		Date of Board Reso.		
	Secretary Certificate (Sec. Cert)	Name of Authorized Counsel as indicated in the BR:		
		Date Issued:		
6. AUTHORITY OF AFFIANT TO EXECUTE VERIF/ CAFS FOR THE SUBJECT APPLICATION <b>ANNEX E</b>	BR. (Y/N); or	Name of Authorized Counsel as indicated in the Sec. Cert:		
		Date of BR:		
		Name of Authorized Person to execute the VERIF/CAFS as indicated in the BR:		
	Sec. Cert. (Y/N)	Date Issued:		

REQUIREMENT	DETAILS	REMARKS		
		Name of Authorized Person to execute the VERIF/CAFS as indicated in the Sec. Cert:		
<b>7. SERVICE TO LOCAL GOVERNMENT UNITS (LGUs) OF THE PROVINCE, CITY OR MUNICIPALITY WHERE APPLICANT PRINCIPALLY OPERATES</b> <b>ANNEX F</b>	<b>A) CERTIFICATIONS FROM GOVERNOR, CITY OR MUNICIPAL MAYOR AND SANGGUNIANG PANLALAWIGAN, PANLUNGSOD OR BAYAN</b>			
	LGU OF:			
	LGU OF:			
	LGU OF:			
	LGU OF:			
	<b>Please provide additional information in the Other Remarks, if necessary.</b>			
	<b>B) IN THE ABSENCE OF CERTIFICATION</b>			
	LGU OF:			
	AFFIDAVIT OF SERVICE	Date of the Affidavit:		
	APPLICATION WITH STAMP "RECEIVED"/ ACKNOWLEDGEMENT	Date Received by the LGU:		
	LGU OF:			
	AFFIDAVIT OF SERVICE	Date of the Affidavit:		
	APPLICATION WITH STAMP "RECEIVED"/ ACKNOWLEDGEMENT	Date Received by the LGU:		
	LGU OF:			
	AFFIDAVIT OF SERVICE	Date of the Affidavit:		
	APPLICATION WITH STAMP "RECEIVED"/ ACKNOWLEDGEMENT	Date Received by the LGU:		
	LGU OF:			
	AFFIDAVIT OF SERVICE	Date of the Affidavit:		
	APPLICATION WITH STAMP "RECEIVED"/ ACKNOWLEDGEMENT	Date Received by the LGU:		
	LGU OF:			
<b>Please provide additional information in the Other Remarks, if necessary.</b>				
<b>C) IF NOT RECEIVED, REASON AND/OR PROOF OF REFUSAL</b>				
LGU OF:	REASON/PROOF:			
LGU OF:	REASON/PROOF:			
LGU OF:	REASON/PROOF:			
<b>Please provide additional information in the Other Remarks, if necessary.</b>				
<b>8. PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN APPLICANT'S FRANCHISE AREA</b>	AFFIDAVIT OF PUBLICATION <b>ANNEX G</b>	Date of the Affidavit:		
	• NEWSPAPER <b>ANNEX G-1</b>	Name of the Publication:		
		Date of the Publication:		
	NEWSPAPER ISSUE CONTAINING THE PUBLICATION	Volume:		
	• APPLICATION	Page where the Application can be found:		
	• VERIFICATION	Verification is included in the Publication: Y/N?		

REQUIREMENT	DETAILS	REMARKS
	<ul style="list-style-type: none"> <li>CERTIFICATION AGAINST FORUM SHOPPING (CAFS)</li> </ul>	CAFS is included in the Publication: Y/N?
<b>9. COMPETITIVE SELECTION PROCESS NOT REQUIRED<sup>1</sup></b>	<b>PROOF OF EXEMPTION FROM THE CONDUCT OF CSP (WHICHEVER IS APPLICABLE) ANNEX H</b>	
<b>PSA Exercising Opt-in Mechanism under GEAP</b>	<p>CERTIFICATE OF AWARD ISSUED BY THE DOE<sup>2</sup></p> <p>ANNEX ____ OF THE APPLICATION</p> <p>(Please specify the Annex/es where this/these document/s can be found)</p>	<p>Issuance Date:</p> <p>Other information in the Certificate of Award Issued by the DOE:</p>
<b>Supply to DU's Captive Market from Covered RE Facilities Not Exceeding 10MW</b>	<p>Any Proof that the Generation Plant is a Covered RE Facility wherein the Contracted Capacity Does Not Exceed 10MW</p> <p>ANNEX ____ OF THE APPLICATION</p> <p>(Please specify the Annex/es where this/these document/s can be found)</p>	<p>Supply to DU's captive market is from a Covered RE Facility (Y/N):</p> <p>Contracted Capacity Not Exceeding 10MW (Y/N):</p> <p>(All must be satisfied.)</p>
<b>Procurement by a DU from a Covered RE Facility pursuant to the exercise of its Right of First Refusal (ROFR)</b>	<p>DU'S LATEST DDP AND PSPP DULY ACCEPTED BY THE DOE</p> <p>PROOF THAT THE DU'S DISTRIBUTION SYSTEM IS CAPABLE TO ABSORB THE ADDITIONAL CAPACITY;</p> <p>Any other proof that the Procurement by a DU of supply for its captive market exceeding 10 MW from a Covered RE Facility is pursuant to the exercise of its ROFR</p> <p>ANNEX ____ OF THE APPLICATION</p> <p>(Please specify the Annex/es where this/these document/s can be found)</p>	<p>For the DU's compliance with the annual RPS requirements in accordance with the DDP and PSPP (Y/N):</p> <p>Supply is from a Covered RE Facility (Y/N):</p> <p>Demand exceeds 10MW (Y/N):</p> <p>DU's procurement is pursuant to the exercise of its ROFR (Y/N):</p> <p>(All must be satisfied.)</p>
<b>PSA Involving Off-Grid Areas Served by NPPs with Less than 1MW Demand with 24-hour Electricity Service</b>	<p>Any Proof that the PSA Involves Off-Grid Areas Served by NPPs with Less than 1MW Demand with 24-hour Electricity Service</p> <p>ANNEX ____ OF THE APPLICATION</p> <p>(Please specify the Annex/es where this/these document/s can be found)</p>	<p>PSA in Off-Grid Areas Served by NPPs (Y/N):</p> <p>Demand is Less than 1MW with 24-hour Electricity Service (Y/N):</p> <p>(All must be satisfied.)</p>

<sup>1</sup> Pursuant to the Department of Energy (DOE) Department Circular No. DC 2023-06-0021, "Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market," Section 2.3.

<sup>2</sup> DOE Department Circular DC2021-11-0036, "Providing the Revised Guidelines for the Green Energy Auction Program in the Philippines."

REQUIREMENT	DETAILS	REMARKS
<b>Others</b>	<p style="text-align: center;">Any Proof or Affidavit/Certification that the PSA Falls in Either One of the Exceptions from the Conduct of CSP under Section 2.3 of the DOE DC 2023-06-0021</p> <p style="text-align: center;">ANNEX ____ OF THE APPLICATION</p> <p style="text-align: center;">(Please specify the Annex/es where this/these document/s can be found)</p>	<p>Proof of the provision for power supply by NPC in off-grid areas (Y/N):</p> <p>Proof of the provision for power supply by PSALM from undisposed generating assets and contracts with Independent Power Producers Administrators (Y/N):</p> <p>(Any one must be satisfied.)</p>

**SAMPLE SUPPLY – DEMAND SCENARIO**

**Supply-Demand Scenario (Yearly)**

**Table 1: Historical and Forecasted Supply-Demand Scenario showing five (5) years before the supply date and up to the end of the contract term of the PSA**

	ERC Case No.	Historical Year			Current Year	Forecasted Year		
		Last 5 Years			--	Up to End of Contract Term		
<b>Peak Demand (MW)</b>								
Captive								
Contestable								
Suppliers:								
Supplier 1								
Supplier 2								
Supplier 3								
Supplier 4								
<b>Total Supply (MW)</b>								
<b>(Deficit)/Surplus</b>								

**Table 2: DU’s Existing Supplier/s**

Name of Supplier with Existing Contract with the DU	ERC Case No.	Plant Technology	Mode of Operation (Baseload, Intermediate, Peaking)	Contracted Capacity/ Energy	Term of Contract		Approved Rates	Date of PA Order/ Decision
					Date of Effectivity mm/dd/yy	Date of Expiration mm/dd/yy		

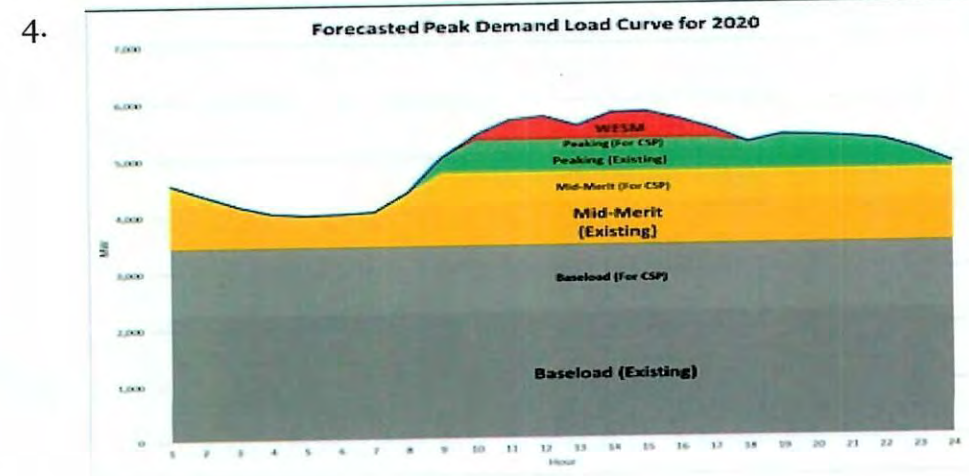
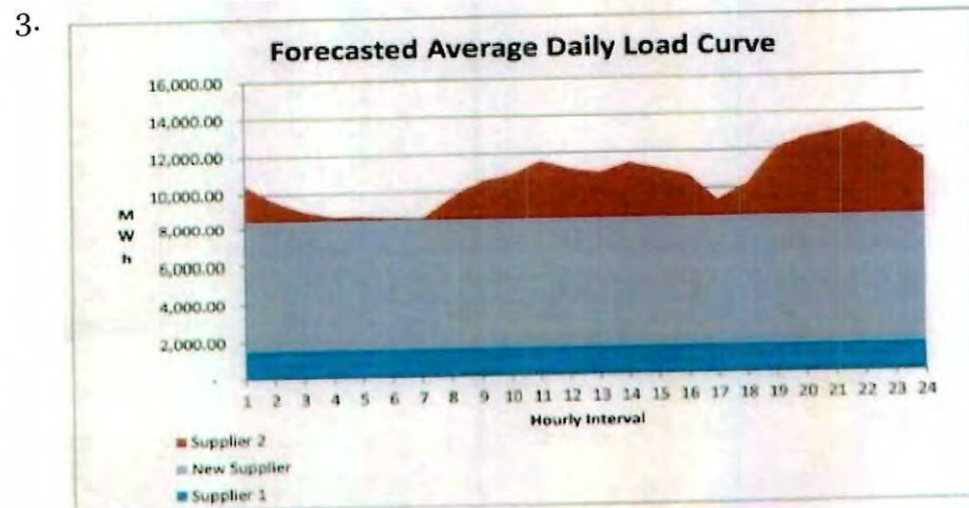
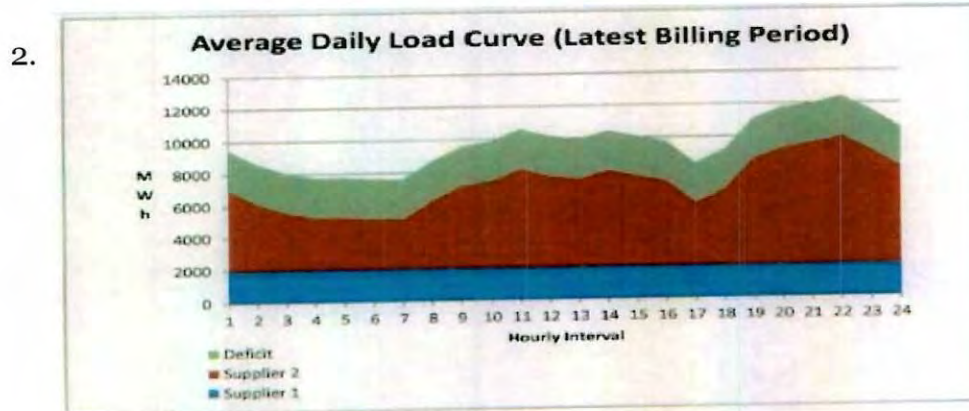
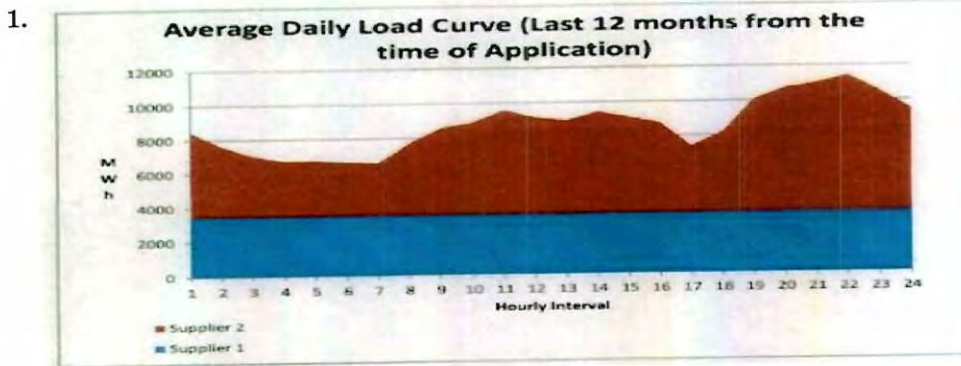
**Table 3: Power Supply Contract Utilization for a period of three (3) years prior to the PSA execution date**

FOR THE MONTH OF \_\_\_\_\_ 202\_\_ :

➤ **SUPPLIER 1 (and so on)**

	Capacity, MW	Minimum Capacity, MW (if any)	Energy, kWh	Minimum Energy or MEOT, kWh (if any)
<b>As Contracted</b>				
<b>As Utilized (Actual)</b>				

**SAMPLE AVERAGE DAILY LOAD CURVE**



## APPENDIX “F”

### CHECKLIST OF REQUIREMENTS FOR EMERGENCY PSAs (EPSAs) (FINANCIAL & PHYSICAL EPSAs)

**Instructions:**

1. Use the designated ANNEX in the attachments to the Pre-Filing Request.
2. If there are any additional documents for submission, simply add a letter or number to the assigned ANNEX.
  - a. Example 1:  
DU’s Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission’s templates under Annex “1” and “2” of the Prefiling Checklist Requirement. ANNEX 18.  
ANNEX 18A. *(Additional Document like DDP)*
  - b. Example 2:  
Sample Computation of Power Rates with the supporting documents on the assumptions taken.  
ANNEX 26D. – sample bill  
ANNEX 26D-02. – *(Additional Document like rate impact analysis)*
3. For consolidated items (e.g. write-up), refer to the first Annex containing the said consolidated item. Note: Do not revise or adjust the Annexes on the checklist.
  - a. Example:

8.	Certificate of Endorsement (COE) from the Department of Energy (DOE) regarding Philippine Development Plan (PDP). <b>ANNEX 11. Write-up (e.g. contains Annexes 11-13)</b>
9.	For Genco utilizing or will utilize Renewable Energy technology: Renewable Energy Service and Operating Contract from the DOE <b>ANNEX 12. Refer to Annex 11</b>
10.	For Renewable Energy projects: Certificate of Confirmation of Commerciality issued by the DOE to the developer. <b>ANNEX 13. Refer to Annex 11</b>

4. For the filenames, indicate the assigned Annex number or letter and the document name (e.g. Annex 01. Power Supply Agreement)

#### PART I. TECHNICAL REQUIREMENTS

##### A. Salient Features

<b>Classification of Supplier</b>	<input type="checkbox"/> IPP Administrator <input type="checkbox"/> Wholesale Aggregator <input type="checkbox"/> IPP <input type="checkbox"/> Others (Please specify: _____)
<b>Type of PSA</b>	<input type="checkbox"/> Physical <input type="checkbox"/> Financial

<b>Technology</b>	<input type="checkbox"/> Coal	<input type="checkbox"/> Renewable
	<input type="checkbox"/> Bunker/Diesel	<input type="checkbox"/> Hybrid
	<input type="checkbox"/> Others (Please specify: _____)	
<b>For Physical PSAs: Tariff Structure</b>	<input type="checkbox"/> Fixed	
	<input type="checkbox"/> Tiered	
	<input type="checkbox"/> Others (Please specify: _____)	
<b>Date of Commencement of Supply</b>		
<b>EPSA Rate Comparator</b>		
<b>Installed Capacity</b>		
<b>Net Dependable Capacity</b>		
<b>Contracted Capacity/Energy (MW/kWh)</b>		
<b>Minimum Energy Off-take (MEOT)</b>		

## B. Minimum Documentary Requirements

Name of Document	
1.	<p><u>For Distribution Utility (DU) and Generation Company (GenCo):</u></p> <p>If Private Corporation/s: Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the (a) Articles of Incorporation (AOI), (b) Bylaws, and (c) latest General Information Sheet (GIS)</p> <p>If Electric Cooperative/s: Certified True Copy (or Secretary's Certificate signifying that the said documents are true and correct) of the (a) proof of Business Registration or a certified true copy of (b) Board Resolution or Secretary's Certificate that will indicate the list of the Board of Directors and Board Members. – <b>ANNEX 02</b></p>
2.	<p>DU's Supply and Demand Scenario (PDF and Excel format), Details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission's templates under Annex "1" and "2" of the Prefiling Checklist Requirement. – <b>ANNEX 03</b></p>
3.	<p>Duly signed EPSA – <b>ANNEX 01</b></p>
4.	<p>Generation Rate and Derivation: – <b>ANNEX 04</b></p> <p>a. Financial model containing the derivation of rates including the equivalent PhP/kWh (excel file of the financial model required).</p> <p>b. Sample Computation of Power Rates with the supporting documents on the assumptions taken (i.e. Sample bill of the GenCo). - Rate Impact Analysis (PDF and Excel format)</p>
5.	<p><u>For EPSAs (involving existing plant/s):</u> Certificate of Compliance (COC) or Provisional Authority to Operate (PAO) or any Certification coming from the ERC of the ongoing COC/PAO application or renewal, pursuant to the Guidelines for the issuance of COC for Generation Companies/Facilities including Annexes (For the specific plants or units that will be used in the EPSA) – <b>ANNEX 05</b></p>

<b>Name of Document</b>	
	Note: In the absence of COC/PAO, the Applicants must submit a notarized Affidavit (a) explaining why the document is not yet available, (b) justifying why the Application may still be filed notwithstanding its unavailability ( <i>i.e.</i> , plant is not yet built; plant is still in testing and commission stage; etc.) and (c) indicating timing for submission to the ERC.

**PART II. OTHER TECHNICAL REQUIREMENTS (DURING THE COURSE OF THE PROCEEDINGS)**

**C. Other Documentary Requirements for Physical PSAs**

<b>Name of Document</b>	
1.	<p>Breakdown of Project Cost and O&amp;M Cost including the description and justification/supporting of each component.</p> <p>Basis/rationale of indexation including the sources, reference date, and weight of indexation. <u>(only applicable for PSA in which Tariff Structure involves indexation).</u></p> <p>Basis of proposed escalation, if applicable.</p> <p>Basis/rationale/derivation of Other Charges such as replacement, start-up, pre-commercial.</p> <p>Equivalent PhP/kWh with assumptions for foreign-denominated rates. - <b>ANNEX 06</b></p>
2.	<p>For conventional power plants utilizing fuel: All details on the procurement process of fuel including requests, proposals received, tender offers, etc. including a Sworn Statement by the competent Genco officer detailing how the fuel was competitively procured, contract terms, unbundled price components (product cost, transshipment, delivery container, etc.). Fuel/Coal/Steam Sale Agreement. - <b>ANNEX 07</b></p>
3.	<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.</p>
4.	<p>All costs analysis related to the generation in support of the proposed pricing provisions of the contract. - <b>ANNEX 08</b></p>

Note: In the absence of any of the above documents, the Applicants must submit a notarized Affidavit (a) explaining why the document is not yet available, (b) justifying why the Application may still be filed notwithstanding its unavailability (*i.e.*, plant is not yet built; plant is still in testing and commission stage; etc.) and (c) indicating timing for submission to the ERC.

### PART III. LEGAL REQUIREMENTS

REQUIREMENT	DETAILS	REMARKS		
1. ELECTRONIC PRE-FILING	CERTIFICATE OF EMAIL REGISTRATION NO. <b>ANNEX A</b>			
	(If not yet available)	Reference No. of CER application: -		
	VERIFIED DECLARATION (Y/N) <b>ANNEX A-1</b>	Date of Execution:		
	PRE-FILING DATE			
	DATE OF OCCURRENCE OF FORCE MAJEURE OR FORTUITOUS EVENT <b>ANNEX B</b>			
2. APPLICATION <b>ANNEX C</b>	DATE			
	SIGNED BY COUNSEL	Y/N?		
	NO. OF HARD COPIES (3) [N/A FOR ELECTRONIC PRE-FILING]			
	NO. OF SOFT COPIES (3) [N/A FOR ELECTRONIC PRE-FILING]			
3. VERIFICATION (VERIF) <b>ANNEX C-1</b>		<b>DU</b>	<b>Genco</b>	
	DATE NOTARIZED			
	ID PRESENTED	Type of Government ID:		
		ID No.		
		Date of Issuance:		
		Date of Expiry:		
4. CERTIFICATION AGAINST FORUM SHOPPING (CAFS) <b>ANNEX C-1</b>	DATE NOTARIZED			
	ID PRESENTED	Type of Government ID:		
		ID No.		
		Date of Issuance:		
		Date of Expiry:		
5. AUTHORITY OF COUNSEL TO FILE THE SUBJECT APPLICATION <b>ANNEX D</b>	Board Resolution (BR); or	BR No.:		
		Date of BR.		
		Name of Authorized Counsel as indicated in the BR:		
	Secretary Certificate (Sec. Cert.)	Date Issued:		
		Name of Authorized Counsel as indicated in the Sec. Cert:		
6. AUTHORITY OF AFFIANT TO EXECUTE VERIF/ CAFS FOR THE SUBJECT APPLICATION	BR (Y/N); or	BR No.:		
		Date of BR.		
		Name of Authorized Person to execute the		

REQUIREMENT	DETAILS	REMARKS		
<b>ANNEX E</b>		VERIF/CAFS as indicated in the BR:		
		Date Issued:		
	Sec. Cert. (Y/N)	Name of Authorized Person to execute the VERIF/CAFS as indicated in the Sec. Cert:		
<b>7. SERVICE TO LOCAL GOVERNMENT UNITS (LGUs) OF THE PROVINCE, CITY OR MUNICIPALITY WHERE APPLICANT PRINCIPALLY OPERATES</b> <b>ANNEX F</b>	<b>A) CERTIFICATIONS FROM GOVERNOR, CITY OR MUNICIPAL MAYOR AND SANGGUNIANG PANLALAWIGAN, PANLUNGSOD OR BAYAN</b>			
	LGU OF:			
	LGU OF:			
	LGU OF:			
	LGU OF:			
	<b>Please provide additional information in the Other Remarks, if necessary.</b>			
	<b>B) IN THE ABSENCE OF CERTIFICATION</b>			
	LGU OF:			
	AFFIDAVIT OF SERVICE	Date of the Affidavit:		
	APPLICATION WITH STAMP "RECEIVED"/ ACKNOWLEDGEMENT	Date Received by the LGU:		
	LGU OF:			
	AFFIDAVIT OF SERVICE	Date of the Affidavit:		
	APPLICATION WITH STAMP "RECEIVED"/ ACKNOWLEDGEMENT	Date Received by the LGU:		
	LGU OF:			
	AFFIDAVIT OF SERVICE	Date of the Affidavit:		
	APPLICATION WITH STAMP "RECEIVED"/ ACKNOWLEDGEMENT	Date Received by the LGU:		
	LGU OF:			
	AFFIDAVIT OF SERVICE	Date of the Affidavit:		
	APPLICATION WITH STAMP "RECEIVED"/ ACKNOWLEDGEMENT	Date Received by the LGU:		
	LGU OF:			
	AFFIDAVIT OF SERVICE	Date of the Affidavit:		
APPLICATION WITH STAMP "RECEIVED"/ ACKNOWLEDGEMENT	Date Received by the LGU:			
<b>Please provide additional information in the Other Remarks, if necessary.</b>				
<b>C) IF NOT RECEIVED, REASON AND/OR PROOF OF REFUSAL</b>				
LGU OF:	REASON/PROOF:			
LGU OF:	REASON/PROOF:			
LGU OF:	REASON/PROOF:			

REQUIREMENT	DETAILS	REMARKS
	<b>Please provide additional information in the Other Remarks, if necessary.</b>	
<b>8. PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN APPLICANT'S FRANCHISE AREA</b>	AFFIDAVIT OF PUBLICATION <b>ANNEX G</b>	Date of the Affidavit:
	• NEWSPAPER <b>ANNEX G-1</b>	Name of the Publication: Date of the Publication:
	NEWSPAPER ISSUE CONTAINING THE PUBLICATION	Volume:
	• APPLICATION	Page where the Application can be found:
	• VERIFICATION	Verification is included in the Publication: Y/N?
	• CERTIFICATION AGAINST FORUM SHOPPING (CAFS)	CAFS is included in the Publication: Y/N?
<b>9. COMPETITIVE SELECTION PROCESS NOT REQUIRED<sup>1</sup></b>	<b>PROOF OF EXEMPTION FROM THE CONDUCT OF CSP</b>	
<b>Emergency PSA (EPSA)</b>	Proofs that the Emergency PSA (EPSA) was undertaken due to the occurrence of force majeure or fortuitous event  ANNEX ___ OF THE APPLICATION (Please specify the Annex/es where this/these document/s can be found)	Date of Occurrence of Force Majeure or Fortuitous Event:  Date of Execution of the EPSA: <b>ANNEX H</b>  Cooperation Period of the EPSA - not to exceed one (1) year (Y/N):  Certification from a Relevant Government Agency or Institution certifying the occurrence of force majeure or fortuitous event (Y/N): <b>ANNEX I</b>  Notice in writing, within five (5) calendar days from the occurrence of the force majeure or fortuitous event, the DOE, ERC, NEA in the case of ECs, and NPC in the case of off-grid areas, of such event (Y/N): <b>ANNEX J</b>
		Affidavit on the write-up/details of force majeure or fortuitous event to support the claim of its occurrence (Y/N):  Details proving that the DU has performed all the necessary and required due diligence to address the emergency situation and to avert and/or mitigate its consequences. <b>ANNEX K</b>  (All must be satisfied.)

<sup>1</sup> Pursuant to the Department of Energy (DOE) Department Circular No. DC 2023-06-0021, "Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market," Section 2.3.

## SAMPLE SUPPLY – DEMAND SCENARIO

## Supply-Demand Scenario

Table 1: Historical and Forecasted Supply-Demand Scenario

	ERC Case No.	Historical Months (12 months prior to implementation of Emergency PSA)			Months covered by the EPSA		
		(Month n-12)	...	(Month n-1)	Month 1	...	Month 12
<b>Peak Demand (MW)</b>							
Captive							
Contestable							
Suppliers:							
Supplier 1							
Supplier 2							
Supplier 3							
Supplier 4							
<b>Total Supply (MW)</b>							
<b>(Deficit)/Surplus</b>							

Table 2: DU's Existing Supplier/s

Name of Supplier with Existing Contract with the DU	ERC Case No.	Plant Technology	Mode of Operation (Baseload, Intermediate, Peaking)	Contracted Capacity/ Energy	Term of Contract		Approved Rates	Date of PA Order/ Decision
					Date of Effectivity mm/dd/yy	Date of Expiration mm/dd/yy		

Table 3: Power Supply Contract Utilization

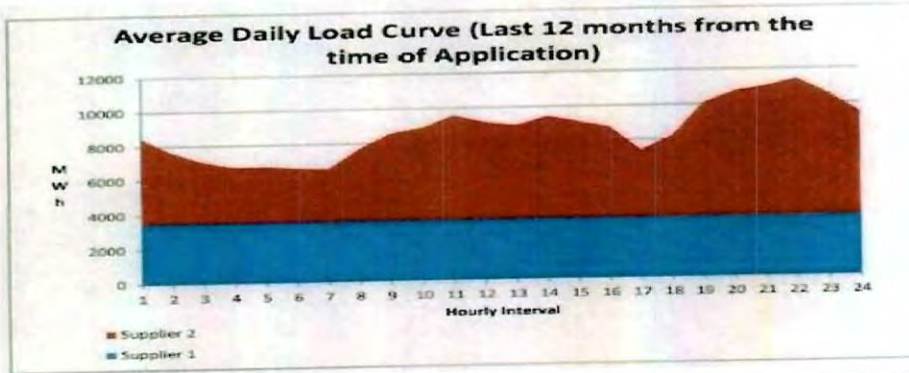
FOR THE MONTH OF \_\_\_\_\_ 202\_\_:

## ➤ SUPPLIER 1 (and so on)

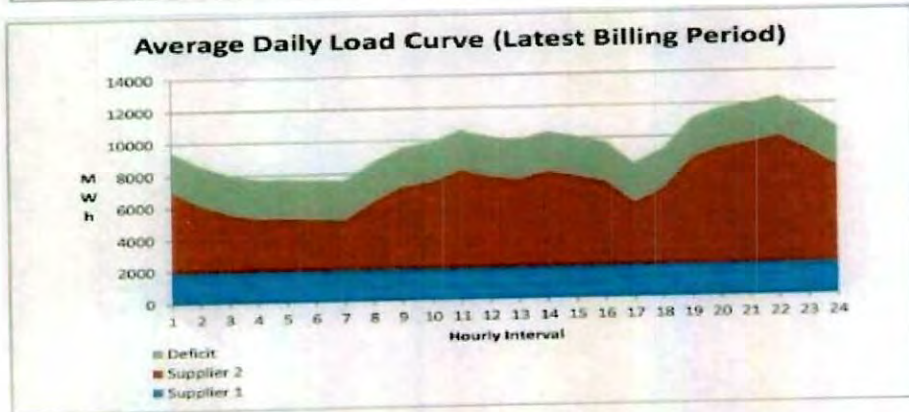
	Capacity, MW	Minimum Capacity, MW (if any)	Energy, kWh	Minimum Energy or MEOT, kWh (if any)
<b>As Contracted</b>				
<b>As Utilized (Actual)</b>				

**SAMPLE AVERAGE DAILY LOAD CURVE**

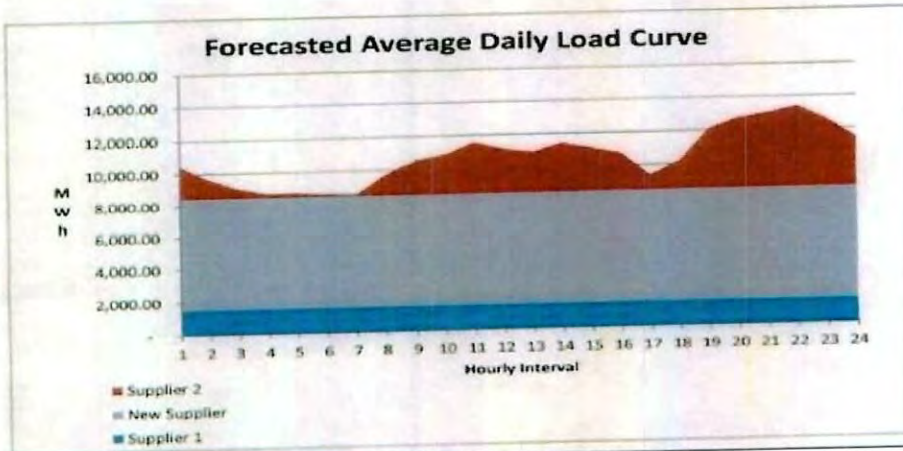
1.



2.



3.



4.

