

CONTRACT FOR THE SUPPLY OF ELECTRIC ENERGY

This Contract for the Supply of Electric Energy (Contract) entered into in Quezon City, Philippines, between:

The **NATIONAL POWER CORPORATION**, a government-owned and controlled corporation duly organized and existing by virtue of Republic Act No. 6395, as amended, with principal office at Building 1, NPC Building Complex, BIR Road corner Quezon Avenue, Diliman, Quezon City, Philippines, represented herein by its **Senior Vice President for Corporate Services, ROLAND S. QUILALA**, who is duly authorized to represent it in this transaction, and is hereinafter referred to as the **"SUPPLIER"**;

and

_____, a private corporation (or an electric cooperative), organized and existing under the laws of the Philippines, with principal office at _____, represented herein by its _____ (*designation*), _____ (*name*), who is duly authorized to represent it in this transaction, hereinafter referred to as **"CUSTOMER"**;

SUPPLIER and CUSTOMER are sometimes referred to herein collectively as "Parties".

WITNESSETH THAT:

WHEREAS, SUPPLIER has authority under its Charter (RA 6395, as amended) to sell electricity to electric cooperatives, private electric distribution utilities, government-owned electric distribution utilities or local government units which have exclusive franchise to operate a distribution system (collectively, "Distribution Utilities");

WHEREAS, SUPPLIER is required under Section 67 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act (EPIRA) of 2001", to file with the Energy Regulatory Commission (ERC) for the approval of a Transition Supply Contract (TSC) duly negotiated with the distribution utilities;

WHEREAS, the existing Contract for the Supply of Electricity between the Parties does not comply with the requirements of the EPIRA, such as, but not limited to, contract duration, pricing and functional unbundling of the SUPPLIER (i.e. separation of generation and transmission functions), thus the need to negotiate for a Transition Supply Contract;

WHEREAS, upon the commercial operation of the Wholesale Electricity Spot Market (WESM), all energy produced by generation companies (including those operated by SUPPLIER) shall be bid through the power pool, and the customers (including CUSTOMER) shall draw all their requirements from the pool (including Contracted levels under this Contract);

WHEREAS, among others, the price of and payments for energy traded through the WESM are to be determined under this Contract and the WESM Rules;

NOW THEREFORE, for and in consideration of the foregoing premises, and the mutual covenants, hereinafter contained, the Parties agree as follows:

SECTION ONE -- DEFINITION OF TERMS

- 1.1 ADJUSTMENTS** - refer to the adjustments and/or indexation formulas approved by ERC which shall be applied to the terms of this Contract.
- 1.2 BASIC ENERGY CHARGE (in ₱/kWh)** - is the unit price applied to CUSTOMER's Contract Energy and monthly or hourly energy consumption.
- 1.3 BILLING ENERGY (in kWh)** - the aggregate actual energy (in kilowatt-hours) supplied by SUPPLIER to CUSTOMER per billing period, as registered hourly or monthly by the billing meters at various delivery points. If required, the actual energy supplied for the billing period as registered in a particular billing meter/s may be adjusted for whatever loss/correction factors, rounded to the nearest full kWh. The Billing Energy shall be used for calculating the power bills.
- 1.4 BILLING PERIOD** - the time interval or duration specified by SUPPLIER in which CUSTOMER's consumption is regularly recorded, accumulated, and read for the purpose of billing.
- 1.5 CONTRACT** - means this Contract for the Supply of Electric Energy and its Annexes as well as other applicable laws, rules and regulations including those rules issued by NPC except when the context otherwise provides. It is the intention of the PARTIES that this Contract shall be deemed a Transition Supply Contract (TSC) for the period from the effectivity date until June 25, 2005 (for private/public utilities)/June 25, 2007 (for electric cooperatives) in compliance with the provisions of the EPIRA. Thereafter, this Contract shall be considered a Regular Bilateral Contract (RBC).
- 1.6 CONTRACT ENERGY** - refers to the energy in kilowatt-hour (kWh) whether monthly or hourly (in case of Time of Use Rate) allocated by SUPPLIER to CUSTOMER within the contract period, as stated in "Annex I" of this Contract.
- 1.7 DELIVERY** - means the transmission of electricity from the generating plant to the Point(s) of Delivery of CUSTOMER.
- 1.7.1 DELIVERY VOLTAGE** - the nominal service voltage/s at the Point/s of Delivery
- 1.7.2 POINTS OF DELIVERY** - the points in the electric system agreed upon by SUPPLIER and CUSTOMER (as shown in "Annex II") where power and energy shall be delivered and measured.
- 1.8 DOE** - refers to the Department of Energy.
- 1.9 ERC** - refers to the Energy Regulatory Commission, an independent and quasi-judicial regulatory body created under R. A. 9136.
- 1.10 MARKET OPERATOR** - is the entity created under RA 9136, which is responsible for the operation of the electricity spot market.
- 1.11 PSALM** - refers to the Power Sector Assets and Liabilities Management Corporation, a government-owned and -controlled corporation created under R. A. 9136.

- 1.12 SECURITY DEPOSIT** - is a financial instrument posted by the CUSTOMER with the SUPPLIER to guarantee payment of its outstanding power accounts.
- 1.13 SUPPLIER** - means the National Power Corporation (NPC). When the context refers to the period after the assignment of the Contract by SUPPLIER to PSALM or assignees, the term "SUPPLIER" shall apply to a buyer, transferee, assignee, or successor-in-interest who has assumed rights and obligations of the NPC under the Contract to sell or supply of power generation to CUSTOMER.
- 1.14 WESM** - refers to the Wholesale Electricity Spot Market.

SECTION TWO -- SUBJECT MATTER (SUPPLY)

- 2.1** This Contract governs the relationship between SUPPLIER and CUSTOMER for the supply of power generation at the Point/s of Delivery.

SECTION THREE -- SCOPE AND TERM OF CONTRACT

CONTRACT DURATION

- 3.1** This Contract consisting of the Transition Supply Contract and the Regular Bilateral Contract shall remain in full force and effect for a period of _____ years from the Effectivity Date. Unless otherwise provided, the applicable provisions of this Contract shall be deemed modified by the applicable WESM Rules, upon the commercial operation of the WESM, as declared by DOE.

SECTION FOUR -- SERVICE SPECIFICATIONS

CONTRACT ENERGY

- 4.1** Contract Energy as indicated in "Annex I" shall not be changed by either party except in cases as provided for in this Contract.

AVAILABILITY OF SUPPLY

- 4.2** SUPPLIER shall supply the Contract Energy in accordance with good utility practice and in compliance with appropriate rules and regulations such as the Philippine Grid Code, and Open Access Transmission Service (OATS). Provided however that for as long as the ERC-approved rates of NPC for electrical energy are being applied, CUSTOMER agrees to procure all of its corresponding backup and generation-related ancillary services requirements from NPC through TRANSCO under the terms and conditions of the OATS and/or the WESM. Supply of energy shall be available except for interruption or reduction due to: a) causes beyond the control of SUPPLIER despite the exercise of due care; b) transmission failure; c) maintenance to ensure system stability and safety reasons as may be provided by laws, rules or regulation.

CONSUMPTION IN EXCESS OF CONTRACT ENERGY

- 4.3** Whenever available, in accordance with good utility practice, SUPPLIER may, but shall not be obliged to provide electricity to CUSTOMER in excess of Contract Energy provided that CUSTOMER shall pay the appropriate charges as provided for in Section 6.0 of this Contract.

APPLICATION FOR INCREASE IN CONTRACT ENERGY

- 4.4** CUSTOMER may be allowed to increase its Contract Energy: a) in the event another customer of SUPPLIER assigns its contract energy to CUSTOMER with the approval of SUPPLIER or b) the CUSTOMER wants to increase its energy requirement from SUPPLIER.
- 4.5** CUSTOMER may apply in writing in accordance with the procedures set forth below for increases in Contract Energy requirement through an amendment in Contract Energy for any particular year or years subject to the approval of the SUPPLIER and subject to capacity and technical constraints of generating plants, transmission lines/substations and other facilities, subject to such rates and to other terms and conditions as the parties may agree upon:
- a.** CUSTOMER shall seek approval and certification from TRANSCO, that the transmission, sub-transmission, substation and other facilities can accommodate the increase in its power requirements.
 - b.** CUSTOMER shall apply for an increase in its power requirements at the principal office of the SUPPLIER ninety (90) days prior to the date when the increase will take effect. The application shall be evaluated, and if approved, the Parties may execute a Letter of Agreement amending the Schedule of Contract Energy in "Annex I."

BUY-OUT

- 4.6** CUSTOMER shall be entitled to a reduction in its Contract Energy only upon written application to SUPPLIER and payment of the corresponding buy-out fee at least sixty (60) days prior to the effectivity of the buy-out. The buy-out fee shall be equivalent to the present value of the fixed cost component of the applicable generation rate schedule or price of electric energy including adjustments of the reduction in the Contract Energy sought at a discount rate (i) equivalent to the prevailing 91-day T-Bill rate. The buy-out fee shall be computed using the standard present value formula:

$$P = \sum_{j=1}^n \left[A_j \times \left(1 + \frac{i}{12} \right)^{-j} \right]$$

where:

- P - buy-out fee that the CUSTOMER must pay, equivalent to the present value for the remaining term of the contract.
- A_j - projected power bill using the fixed cost component of the applicable generation rate or price of electric energy, including adjustments, for month j
- i - discount rate equivalent to the prevailing 91-day T-Bill rate
- j - months 1 to n
- n - total number of periods (months) remaining in the Contract

EXEMPTION FROM THE BUY-OUT PROVISION

- 4.7** CUSTOMER may be allowed to reduce its Contract Energy without the application of the buy-out provision, provided that the reduction was caused by the transfer by a consumer of its power and energy source from CUSTOMER to SUPPLIER or, to another customer of SUPPLIER located within the same grid prompting the other customer to correspondingly increase its electric supply requirement with SUPPLIER, notwithstanding that CUSTOMER may have itself imposed penalties or buy-out provisions to such transferring consumer. CUSTOMER shall have sixty (60) days from transfer within which to request the appropriate reduction and the decrease shall be deemed effective from such date of transfer. Provided further that CUSTOMER and SUPPLIER shall ensure that the transfer shall not disadvantage any assignee(s) of the SUPPLIER. This provision shall not apply in all other cases where CUSTOMER has lost its clients or where its clients have failed or refused to receive electricity or have fluctuating requirements.

ASSIGNABILITY

- 4.8** SUPPLIER may assign or transfer part or all of its rights and obligations in the supply of Contract Energy herein stated, to any such entity, provided that prior written notice is given to CUSTOMER. This Contract shall remain binding to both Parties, their successors and assignees. SUPPLIER warrants that any sale, assignments, transfer, or subcontracting of the Contract shall not affect or impair CUSTOMER's rights and obligations with respect to quantity and price of electricity, Contract effectivity, incentives, discounts and other terms and conditions of this Contract. The assignee shall, by written instrument, assume the rights and obligations of SUPPLIER to CUSTOMER.
- 4.9** CUSTOMER may assign, sell or transfer a part or all of its Contract Energy either permanently or for a certain number of billing periods, subject to the written consent of SUPPLIER under the following conditions:

- a. CUSTOMER has obtained prior clearance from TRANSCO on the assignment or transfer.
 - b. CUSTOMER has submitted necessary proof that the buyer, assignee or transferee has no outstanding obligation to SUPPLIER, and undertakes to assume the obligations of CUSTOMER and to pay for the additional expenses necessary or incidental to the transfer.
- 4.10** The sale assignment or transfer by CUSTOMER of all its Contract Energy shall relieve the CUSTOMERS of all its rights and obligations to SUPPLIER, provided that CUSTOMER has paid all its outstanding obligations to SUPPLIER.
- 4.11** Any application for sale, assignment or transfer shall be acted upon by SUPPLIER within thirty (30) days from compliance by CUSTOMER of the requirements for such sale, assignment or transfer, and filing by CUSTOMER with the principal office of SUPPLIER of a copy of the deed of sale, assignment or transfer.

SECTION FIVE -- SECURITY DEPOSIT

AMOUNT

- 5.1** The Security Deposit shall be equivalent to 100% of the estimated average monthly power bill during the first year of this Contract and shall be updated annually. Each update shall be executed at least one week prior to the beginning of the ensuing year. The updated Security Deposit shall be similarly calculated based on the next 12 months of the ensuing year.

FORM AND TIME OF POSTING

- 5.2** The Security Deposit shall be posted upon privatization of the generating asset/s upon which the TSC and this Agreement is allocated/assigned as provided for in Section 4.4 hereof, or upon commercial operation of the WESM, whichever comes first. Failure of the CUSTOMER to post the required Security Deposit within fifteen (15) days upon receipt of the demand letter of the SUPPLIER shall be a ground for disconnection. It shall be in the form of cash, manager's or cashier's check, certified check, irrevocable stand-by letter of credit, or performance bond "callable on demand" issued by a financial institution acceptable to SUPPLIER. CUSTOMER shall ensure that the Security Deposit remains valid during the commercial operation of the WESM. Once it is drawn partially or fully by the SUPPLIER, the CUSTOMER shall replace the Security Deposit within fifteen (15) days thereafter. In the event that the CUSTOMER fails to replace the full amount of the Security Deposit as required herein, the SUPPLIER reserves the right to refuse or discontinue supply of electric energy.

RELEASE OF SECURITY DEPOSIT

- 5.3** The Security Deposit (for the portion that should be settled within the WESM) shall be returned to the CUSTOMER within thirty (30) days upon presentation of proof of compliance with the prudential requirements of the WESM subject to the provisions of Section 7 of this Contract. SUPPLIER shall return or release the Security Deposits to CUSTOMER including interest earned, subject to deductions for any

amounts owed by CUSTOMER to SUPPLIER. Security Deposits, except those in the form of letter of credit or performance bond, shall earn interest based on prevailing savings deposit rate of the Land Bank of the Philippines (LBP).

WAIVER AND CREDIT WORTHINESS INDICATORS

- 5.4** The Security Deposit shall be waived provided the CUSTOMER meets all of the following indicators:

Indicators

1. Current Ratio -- not less than 1:1

$$\text{Current Ratio} = \frac{\text{Current Assets}}{\text{Current Liabilities}}$$

2. Debt Service Coverage Ratio -- not less than 1.3 : 1

$$\text{Debt Service Coverage Ratio} = \frac{\text{Internally-Generated Funds After Working Capital}}{\text{Debt Service for Operations}}$$

3. Return on Assets -- at least 8%

$$\text{Return on Assets} = \frac{\text{Net Income}}{\text{Total Assets}}$$

4. Total Debt to Total Assets -- not to exceed 0.6 to 1.0

$$\text{Total Debt to Total Assets} = \frac{\text{Total Debt}}{\text{Total Assets}}$$

5. Payment history – no overdue account for the preceding 12-month period.

SECTION SIX -- CHARGES AND ADJUSTMENTS

BASIC ENERGY CHARGE

- 6.1** The ERC-approved generation rates which is deemed attached as “Annex III” and other charges exclusive of penalties, bonuses, shall be applied to the CUSTOMER’s contracted monthly or hourly energy consumption. For consumption higher than one hundred ten (110) percent of the contracted level prior to the commercial operation of the WESM, the basic energy charge shall be the prevailing ERC approved rate and other adjustments plus twenty (20) percent of such rate. Upon the commercial operation of the WESM, the basic energy charge to be applied to the contracted energy shall be the rates including the adjustments, escalations etc. specified in “Annex IV”. For the consumption in excess of the Contract Energy, this shall be subject to Section 8 of this Contract.

MINIMUM CHARGES

- 6.2** CUSTOMER shall pay the minimum charge based on the Contract Energy per billing period as indicated in Section 4.1 of this Contract using the basic energy charge if CUSTOMER has not fully taken or failed to consume the Contract Energy, subject to deductions and adjustments as expressly provided for in this Contract.

SERVICE INTERRUPTION ADJUSTMENT

- 6.3** Should the supply of electricity be interrupted or curtailed to a level below the Contract Energy due to the fault or lack of generation capacity of the SUPPLIER, even if CUSTOMER was at that time unable to take or consume electricity, the Contract Energy shall be adjusted taking into account the ratio of the number of hours that electric service was interrupted to the total number of hours in the billing period. The adjusted Contract Energy shall be used in the calculation of Minimum Charge. (This Section shall only apply if there is no Time Of Use rates).
- 6.4** Should the supply of electricity be interrupted or curtailed to a level below the Contract Energy due to the fault or lack of generation capacity of the SUPPLIER, even if CUSTOMER was at that time unable to take or consume electricity, the Contract Energy shall be adjusted to actual off-take below contract level for all hours when service was curtailed or interrupted (This Section shall only apply if there is Time Of Use rates).
- 6.5** Contract Energy not taken due to CUSTOMER's fault or negligence or other causes affecting CUSTOMER's ability to take or consume electricity shall not entitle CUSTOMER to interruption adjustment.

MAINTENANCE SERVICE ADJUSTMENT

- 6.6** CUSTOMER may avail of the service adjustment during the scheduled maintenance of its facilities, not to exceed two (2) billing periods in one year. The minimum charge on the energy consumption shall be fifty percent (50%) of the Contract Energy. To be able to avail of this adjustment, CUSTOMER must inform SUPPLIER in writing thirty (30) days prior to the commencement of the scheduled maintenance.

FORM OF PAYMENT

- 6.7** Payment may be in the form of cash, demand drafts, checks or other cash equivalents. Bank charges shall be borne by the CUSTOMER.

SERVING OF POWER BILLS AND PLACE OF PAYMENT

- 6.8** Bills for the electric energy supplied during a billing period and/or bills for other charges covered by this Contract due SUPPLIER, if any, shall be served upon CUSTOMER within ten (10) days of the succeeding billing period and must be paid without the necessity of demand not later than twelve noon of the last working day of the said succeeding billing period.
- 6.9** Payments shall be made to the authorized collector of the SUPPLIER.

PROMPT PAYMENT DISCOUNT

- 6.10** The Prompt Payment Discount (PPD) prior to the commercial operation of the WESM shall be in accordance with the NPC's credit and collection policies duly approved by the NPC Board. Upon the commercial operation of the WESM, as declared by the DOE, the PPD shall no longer be applicable.

DISPUTED BILLS

- 6.11** Disputed bills shall be questioned in writing by CUSTOMER within sixty (60) days from the date of its receipt and shall be resolved within sixty (60) days from the date of filing of the claim. Failure to question such bills on time shall constitute a waiver by CUSTOMER of any claim on such bills.
- 6.12** Disputed bills shall be paid by CUSTOMER without deductions or offsets and SUPPLIER shall evaluate the claim and adjust the billings in accordance with its findings. Disputed billing shall not be an excuse or ground for CUSTOMER to delay payment of succeeding billings or to unilaterally deduct any amount therefrom.
- 6.13** CUSTOMER and SUPPLIER shall seek to resolve disputed billings. If the dispute cannot be resolved by the Parties, the matter shall be submitted for Arbitration.
- 6.14** The CUSTOMER shall be entitled to a refund of any overpayment plus interest equivalent to the 91-day T-Bill rate from the date that the payment was made, if such demand is later found to be meritorious.

OVERDUE ACCOUNT

- 6.15** In the event that a power bill remains unpaid within five (5) days after its due date, SUPPLIER has the option to call on or draw against the Security Deposit as provided for under Section 5 – Security Deposit.
- 6.16** Any power bill or account of CUSTOMER not paid on due date shall bear a floating rate of interest computed from the first day after it becomes due and payable, based on the non-prime lending rate for each quarter of the Land Bank of the Philippines or the Philippine National Bank, whichever is higher. Interest on overdue accounts shall be computed based on a 360-day year.
- 6.17** If the account of the CUSTOMER is overdue for more than six (6) months, CUSTOMER shall pay an additional penalty of one percent (1%) per month for every additional month of delay beyond six (6) months. Moreover, a restructuring agreement of the overdue account shall be executed by the CUSTOMER, with the following salient terms and conditions:
- 6.17.1** The restructured account shall be subject to interest as prescribed under the current credit and collection policies of the SUPPLIER.
 - 6.17.2** CUSTOMER cannot avail of the Prompt Payment Discount during the restructuring period.
 - 6.17.3** Automatic power service disconnection without need of notice, for failure to pay the monthly amortization, current bill and other charges.
 - 6.17.4** CUSTOMER shall grant the SUPPLIER auditorial rights.
 - 6.17.5** Restructured account shall rank pari-passu with other creditors.
 - 6.17.6** Execution of real estate/chattel mortgage by CUSTOMER over eligible properties or assets as security on the restructured account.

- 6.17.7** CUSTOMER's reduction of systems loss by at least 20% if such loss is above the industry standard.
 - 6.17.8** CUSTOMER's reduction of Average Days Outstanding (ADO) in receivables to sixty (60) days within one year.
 - 6.17.9** No cash dividends shall be issued without prior approval of SUPPLIER during the restructuring period.
- 6.18** To evaluate the CUSTOMER's restructuring proposal, CUSTOMER shall be required to submit its last two (2) years audited financial statements stamped received by the Bureau of Internal Revenue (BIR) and the latest interim statements. The projected cash flows covering the restructuring period shall likewise be submitted together with the assumptions made for such projections. The proposed measures to be adopted to improve the CUSTOMER's payment performance shall also be indicated. Cash flows shall show that funds would be sufficient to cover the monthly amortization due.

ADJUSTMENT DUE TO INACCURATE METERS AND ERRONEOUS BILLINGS WITHIN A BILLING PERIOD.

- 6.19** In the event that a billing is found erroneous due to wrong reading, incorrect use of kWh meter multiplier, arithmetical mistakes, omissions or typographical error, SUPPLIER shall send CUSTOMER a debit or credit memo to correct the error.

BILLING PROCEDURE FOR A RATE REVISION WITHIN A BILLING PERIOD

- 6.20** Should the effective date of a new and duly approved rate schedule falls within a billing period, two computation sheets shall be prepared. The first sheet shall be calculated by applying the old rate schedule to CUSTOMER's Billing Energy (as if the old rate schedule was in effect for the entire billing period), and then multiplying the resulting charges including any Billing Adjustments by the ratio of the number of days that the old rate schedule was effective during the billing period to the total number of days in the billing period. The second sheet, on the other hand, shall be calculated by applying the new rate schedule to CUSTOMER's Billing Energy (as if the new rate schedule was in effect for the entire billing period), and then multiplying the resulting charges including any Billing Adjustments by the ratio of the number of days that the new rate schedule was effective during the billing period to the total number of days in the billing period. These shall be consolidated in a single power bill.

DISCONNECTION OF POWER SERVICE

- 6.21** In addition to the above-stated penalty interest charges and without prejudice to its right under Section 9.11 of this Contract, SUPPLIER shall have the right, subject to not less than seven (7) days advance written notice to CUSTOMER, to discontinue supplying electric services and to refuse to resume electric service for failure of CUSTOMER to post the required Security Deposit, for non-payment of bills, or if any amount including any accrued interest and other charges not necessarily limited to the foregoing, remains unpaid. Notwithstanding such discontinuance of electric service, CUSTOMER shall pay at least the Minimum charge based on the Contract Energy, and failure by CUSTOMER to make full payment within a period of six (6) months shall entitle SUPPLIER to terminate the Contract without prejudice to the right of SUPPLIER to recover unpaid bills and other penalties from CUSTOMER.

**SECTION SEVEN -- SETTLEMENT OF OUTSTANDING ACCOUNT
INCURRED PRIOR TO WESM**

- 7.1 Upon the commercial operation of WESM as declared by the DOE, all amounts due and owed by CUSTOMER to SUPPLIER or its assignees shall be settled, as follows:
- a. Within ten (10) days after the commercial operation of the WESM, SUPPLIER shall provide a billing statement for all outstanding accounts of the CUSTOMER up to the commercial operation of the WESM.
 - b. Within thirty (30) days after the commercial operation of the WESM, CUSTOMER shall pay SUPPLIER the amount stated in said billing statement.
 - c. Any accounts payable including restructured accounts due to the SUPPLIER shall be paid in accordance with the memorandum of agreement duly executed by the Parties.

**SECTION EIGHT -- PRICE SETTLEMENT MECHANISM DURING
THE WESM OPERATION**

- 8.1 During the Commercial operation of the WESM the Basic Energy Charge (BEC) as provided under Section 6.1 of this Contract shall remain the basis for settlement of Contract Energy. Settlement of the transactions shall be made through the Market Operator. In the event WESM rules provide for a pricing mechanism that renders the BEC as defined herein inappropriate or inapplicable, the Parties shall meet and discuss the matters in good faith and exert their best efforts in arriving at a mutually agreeable solution.

SECTION NINE - MISCELLANEOUS PROVISIONS

LIABILITIES

- 9.1 Except as expressly provided, SUPPLIER shall not be liable for any damage suffered by CUSTOMER due to the failure of SUPPLIER to supply electric energy to CUSTOMER in accordance with prescribed standards, except when such failure is caused by SUPPLIER's bad faith, gross negligence or malicious intent. This provision, however, shall not affect the rights of CUSTOMER to applicable deduction in its electricity charges provided in this Contract.

FORCE MAJEURE

- 9.2 Force majeure is an extraordinary event which cannot be foreseen or which though foreseen, cannot be avoided. The event must render it impossible for a party to fulfill its obligation in a normal manner despite the exercise of due care. Force majeure shall not excuse either party from exercising due care to prevent it or minimize its effects. Force majeure includes a storm, typhoon, lightning, flood, earthquake, tsunami, fire, war, rebellion, insurrection, riot, naval or other blockade, labor disturbance, civil unrest, and other events which are entirely beyond the control of either or both parties. A party shall not be excused from its failure to perform its obligations under this Contract even if the same is caused by force majeure except as provided in this Section and Sections 9.6 to 9.8.

- 9.3** Insolvency or business losses shall not be considered as an event of force majeure.
- 9.4** The affected party shall notify the other in writing of a force majeure situation. The other party shall have sixty (60) days to verify or deny in writing that such situation exists.
- 9.5** A verified event of force majeure which prevents a party from supplying or taking electricity for at least six (6) months, or agreed upon by both parties to prevent the supply or taking of electricity for a continuous period of at least six (6) months shall entitle either party to terminate this Contract. Buy-out shall not apply to such termination.

DEDUCTION DUE TO FORCE MAJEURE (This section shall apply only if there is no Time Of Use rates.)

- 9.6** SUPPLIER shall have a maximum of seventy-two (72) hours from the time a force majeure event prevented it from supplying electricity and perform its other obligations under the Contract to resume supply. CUSTOMER shall not be entitled to interruption adjustment for such period, unless interruptions exceed seventy-two (72) hours and the CUSTOMER failed to fully take or consume its Contract Energy.
- 9.7** Likewise, CUSTOMER shall have a maximum of seventy-two (72) hours from the time a force majeure event prevented it from fully taking its Contract Energy to resume taking electricity. CUSTOMER shall be entitled to interruption adjustment based on the actual number of hours that it was unable to receive electricity, should its consumption be curtailed below the levels of Contract Energy. Excess hours shall not be considered. However, if both SUPPLIER and CUSTOMER were simultaneously unable to supply and consume electricity by reason of Force Majeure, CUSTOMER shall be entitled to interruption adjustment.
- 9.8** The number of hours of interruptions or of failure to receive electricity caused by one force majeure event shall be cumulated.

SETTLEMENT OF DISPUTES

- 9.9** The Parties shall exert reasonable efforts to amicably settle all disputes arising in connection with this Contract, as a condition precedent to dispute resolution which will be filed by either party with the ERC.
- 9.10** Any dispute arising in connection with this Contract and to which exclusive jurisdiction has not been vested in the ERC or any appropriate government agency, shall be settled in accordance with the Philippine Arbitration Law (RA 876). The proper court covering the principal office of SUPPLIER or CUSTOMER shall have exclusive jurisdiction over such arbitration. No court action shall be initiated except as provided under the Philippine Arbitration Law.

CONTRACT TERMINATION

- 9.11** Either party will have the right to terminate this Contract upon failure of the other to perform its obligation under this Contract, provided that the party at fault will have to pay all its outstanding account and reimburse the costs incurred by the other party as a result of the termination.

ATTORNEY'S FEES AND LITIGATION EXPENSES

- 9.12** In the event of arbitration or litigation as provided in this Section, an amount of twenty percent (20%) of the value of the award by the arbitrator or court shall be paid by the losing party to the prevailing party to cover attorney's fees and other expenses of litigation but in no case shall such amount be less than Ten Thousand Pesos (₱10,000.00).

NOTICES

- 9.13** Any notice, demand or request by the Parties to this Contract shall be deemed properly served if transmitted by registered mail with return card, postage prepaid, or delivered personally to the signatories or their duly authorized representatives at their indicated addresses, as follows:

The Senior Vice President,
Corporate Services
National Power Corporation
Bldg. 1, BIR Road corner Quezon Ave., Diliman, Quezon City, 1100

CHANGE IN LAW

- 9.14** The Parties shall perform all their obligations under this Contract in accordance with applicable laws and regulations. In case of any amendment, modification or change in applicable laws and regulations, the Parties shall continue to perform their obligations under this Contract unless made expressly unlawful or impossible by such amendment, modification or change.

VALIDITY AND BINDING EFFECT

- 9.15** This Contract shall bind the Parties, their respective assigns, buyers, transferees, or successors-in-interest. If for any reason, any provision of this Contract is declared invalid by competent courts during its effectivity, the other provisions hereof which are not affected thereby shall continue to be in full force and effect.

REPORTORIAL REQUIREMENT

- 9.16** For monitoring and regulatory purposes, the Parties shall disclose market information and load profiles to the DOE and ERC to ensure transparency and facilitate access to market information.

ENTIRE AGREEMENT

- 9.17** This Contract and its Annexes and other attachments supercedes any previous agreements, understanding and practices between the parties, relating to the subject matter hereof. Consequent with the commercial operation of the WESM,

the parties upon mutual agreement may amend, modify and/or revise any provision of this Contract.

EFFECTIVITY

9.18 This Contract shall take effect on _____ and shall be filed immediately with the ERC for approval.

IN WITNESS OF THE FOREGOING, the Parties affix their signatures this ____ the day of _____ 2004 in _____.

NATIONAL POWER CORPORATION _____

By:

By:

Witnesses:

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

ACKNOWLEDGMENT

Before me, a Notary Public for and in Quezon City, Philippines, this ____ day of _____, 200__, personally appeared **MR. ROLAND S. QUILALA**, Senior Vice-President for Corporate Services, National Power Corporation, and - _____, _____, with their respective Community Tax Certificates Nos. _____, issued on _____, 2004 at _____ and _____, issued on _____, 2004 at _____, known to me and to me known to be the same person who executed the foregoing instrument, consisting of fifteen(15) pages, including this pages whereon the Acknowledgments is written, all pages signed by both parties and, their instrumental witnesses, and they acknowledged before me that the same is their free and voluntary act and deed and that of the Corporation they respectively represents.

WITNESS MY HAND AND SEAL, on the date and place first above written.

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 200_ _____.