

POWER SUPPLY AGREEMENT

Between

**ORIENTAL MINDORO
ELECTRIC COOPERATIVE, INC.**

&

WINNING BIDDER

for the

**___ MW GUARANTEED DEPENDABLE
CAPACITY
POWER SUPPLY**

(date)

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POWER SUPPLY AGREEMENT

This Power Supply Agreement is made and entered into this *(date)* by and between:

ORIENTAL MINDORO ELECTRIC COOPERATIVE, INC., a non-stock, non-profit rural electric cooperative duly organized and existing under the laws of the Republic of the Philippines with principal address at Brgy. Sta. Isabel, Calapan City, Province of Oriental Mindoro, herein represented by its President, **Dir. TEODORO M. DELA CRUZ, JR.**, by virtue of ORMECO Board Resolution No. xxx dated xx January 2023 and hereinafter referred to as the "**ORMECO**";

-and-

THE WINNING BIDDER, a _____ duly organized and existing under the laws of the Republic of the Philippines with principal address at _____, herein represented by its (position), (name), by virtue of Secretary's Certificate dated xx January 2023, hereinafter referred to as "**WINNING BIDDER**"

RECITALS:

WHEREAS, based on the results of the Power Supply Procurement Plan (PSPP) for 2022 to 2031, there will be an uncontracted demand of 61.20MW on June 2031. The table shown below indicates the uncontracted demand for ten (10) years of ORMECO;

Year	Uncontracted Demand
2022	22.30
2023	28.48
2024	31.72
2025	34.96

2026	38.20
2027	48.24
2028	51.48
2029	54.72
2030	57.96
2031	61.20

WHEREAS, in compliance with Section 2.1.2 of Department of Energy (DOE) Circular No. DC 2021-09-0030 states that “All PSAs should be procured through CSP, consistent with the latest and duly reviewed Distribution Development Plan (DDP) and Power Supply Procurement Plan (PSPP) and consistent with the principles enshrined in Section 1 of DC 2018-02-0003 and the observance of the principle of technology neutrality”;

WHEREAS, in compliance with Section 5 of the same DOE Circular, the ORMECO, Inc. Board approved the composition of the Third-Party Bids and Awards Committee (TPBAC), TPBAC Technical Working Group (TWG) and Secretariat through Board Resolution No. 22-044 dated 08 February 2022 entitled “Confirmation of the Composition of the ORMECO, Inc. Third Party Bids and Awards Committee (TPBAC), TPBAC Technical Working Group (TPBAC TWG), TPBAC Secretariat and Support Group”

WHEREAS, due to the appointment of Engr. Humphrey A. Dolor as Project Supervisor/ Acting General Manager (PS/AGM) of ORMECO, Inc. through Board Resolution No. 22-195 dated 14 June 2022, the composition of the TPBAC was amended through Board Resolution No. 22-227 dated 20 July 2022 entitled “Resolution Partially Amending Resolution No. 22-044 dated 08 February 2022 thereby appointing both Engr. Darius A. Atienza and Engr. Edson S. Magnaye as Vice Chairman of the TPBAC and TPBAC TWG, respectively, while the rest of the Resolution’s contents remain valid and in effect.”;

WHEREAS, the Management, through the Technical Services Department (TSD), presented to the Board the Distribution Development

Plan 2022 (DDP 2022) and Power Supply Procurement Plan 2022 (PSPP 2022), which was approved on 08 March 2022 through Board Resolution No. 22-079 entitled “Approval for the Adoption and Submission of ORMECO, Inc.’s Distribution Development Plan (DDP) and Power Supply Procurement Plan (PSPP)”;

WHEREAS, the Terms of Reference (TOR) was a result of comments and inputs from various organizations who participated in the joint review on 01 August 2022 of the previously submitted TOR of ORMECO, Inc. that was participated by representatives from the Department of Energy (DOE), National Electrification Administration (NEA), National Power Corporation (NPC), and the National Transmission Corporation (TransCo);

WHEREAS, on 02 August 2022, Board Resolution No. 22-241 entitled “Adoption and Approval of Third-Party Bids and Awards Committee (TPBAC) of the Revised Terms of Reference (TOR) for the Conduct of Competitive Selection Process (CSP) and the Adoption of System Impact Study (SIS) for the 41MW Guaranteed Dependable Capacity Plant” was approved

WHEREAS, it is recommended that the new power provider should employ open-type technology and must deliver the needed guaranteed dependable capacity of 8 MW as baseload-type power plant located at Calapan City, and 30MW as load-following type power plant and 3 MW as peaking-type power plant, both located at Municipality of Roxas, Oriental Mindoro;

(Insert CSP events regarding contracts)

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

CLAUSE 1

DEFINITION OF TERMS AND INTERPRETATIONS

1.1 Definitions. In this Agreement:

"Access Road" means the road or roads required to be built and improved to access the Project Site from existing roads as provided in [Clause 2.2\(d\)](#).

"Agreement" means this Power Supply Agreement and each of the Schedules hereto, as the same may be supplemented or amended from time to time.

"Ancillary Agreements" mean those agreements associated with the Project and this Agreement as set forth in [Seventh Schedule](#).

"Applicable Law" – refers to laws, statutes, orders, issuances, rules, rulings, codes, decisions, opinions, or interpretation of a Government Authority pertinent to or affecting a Party or Parties existing at the date of execution of the corresponding Power Supply Agreement.

"Availability Factor" – refers to the amount of time that a power plant can produce electricity over a certain period, divided by the total amount of time in the same period.

"Billing Month" – refers to the period commencing immediately after the taking of a photograph of the electricity meters on the Twenty-Fifth (25th) day of each calendar month and ending upon the taking of such photograph on the Twenty-Fifth (25th) day of the next calendar month. In the case of the first month, "Billing Month" means the period commencing on the first day of the Cooperation Period and ending upon the taking of a photograph on the Twenty-Fifth (25th) day of the current calendar month (or the next calendar month). In the case of the last month, "Billing Month" means the period commencing immediately after the end of the immediately preceding month and ending upon the taking

of a photograph of the electricity meters at the end of the Cooperation Period.

“**BSP**” means the Bangko Sentral ng Pilipinas

“**Capacity Credit Factor (CCF)**” – refers to the factor that is applied to the Dependable Capacity of the generating unit to determine its Credited Capacity.

“**Capacity/Capital Recovery Fee (CRF)**” refers to the fee imposed by a Generation Company to recover the cost of building/leasing the power plant plus a reasonable return.

“**Capacity Utilization Factor (CUF)**” – refers to the level of utilization of the Guaranteed Dependable Capacity which is measured by the energy consumption drawn from the dispatchable plant expressed as a percentage of the total energy that could have been supplied if the GDC was fully utilized in a Billing Month.

“**Capital Recovery Rate (CRR)**” – refers to the rate which allows the NPP to recover its capital investment. The CRR is fixed for the contract duration of the project life/plant economic life.

“**Certificate of Compliance (COC)**” refers to the certificate or license issued by the Energy Regulatory Commission (“ERC”) to the NPP/GenCo and/or Compliance of the Power Plant of the GenCo consistent with Rule 5 of the Implementing Rules and Regulations of Republic Act No. 9136 and other operating guidelines as ERC may establish.

“**Change in Circumstances**” shall have the meaning given to it in [Clause 14](#).

“**Commercial Operation Date**” refers to the start of the commercialization of the Plant or the receipt of the provisional or final approval of the ERC.

“Competitive Selection Process (CSP)” refers to the process where the ORMECO, Inc. implements a competitive procurement process in compliance with Department of Energy (DOE) Circular No. 2018-02-0003 amended by Department of Energy (DOE) Circular No. 2021-09-0030.

"Completion Date" means the day upon which the NPP certifies that the Power plant is capable of operating in accordance with the operating parameters and has successfully completed all its tests in accordance with the Schedule.

“Conditions Precedent” – refers to the requirements and conditions that must be satisfied to achieve the Effective Date including, but not limited to, provisional approval or final approval of the PSA by the Energy Regulatory Commission, power plant site(s) land conversion requirements, and Connection Agreement with the NPC.

“Connection Agreement” – refers to an agreement between NPC and NPP(s), which specifies the terms and conditions pertaining to the connection of the Small Grid User’s System or Equipment to a new Connection Point in the Small Grid.

“Connection Point” – refers to the location prescribed by ORMECO, Inc. where the Guaranteed Dependable Capacity shall be supplied and measured. It also refers to the location of the switchgear to be controlled by the System Operator.

“Cooperation Period” – refers to the period of ___months commencing on the Commercial Operations Date until (*date*), unless earlier terminated in accordance with the provisions of the PSA.

"Delegated NPC-SPUG Area" shall refer to an area that is not connected to the national grid transmission system where an NPP or NPPs on behalf of NPC-SPUG are providing electric generation

services and its associated power delivery systems.

"Delivery Points" means the point/s in the electric system agreed upon by the NPP and ORMECO, Inc. where power and energy shall be delivered and measured and as specified on the single-line drawings attached and incorporated into this Agreement.

"Department of Energy" or "DOE" shall refer to the government agency created pursuant to Republic Act No. 7638.

"Dollars" or the sign "\$" means the lawful and official currency of the United States of America.

"Downtime - Generation" refers either to a planned downtime and/or unplanned downtime generation of the power plant.

"Downtime - Distribution" means the downtime of ORMECO, Inc.

"Effective Date" shall have the meaning given to it in Clause 19.

"Electric Cooperative (EC)" refers to a distribution utility organized under Presidential Decree No. 269 or as otherwise provided under EPIRA. Unless otherwise stated, this particularly refers to Oriental Mindoro Electric Cooperative, Inc. (ORMECO, Inc.).

"Electricity Fees" means the fees payable by ORMECO, Inc. to NPP as provided in the [Sixth Schedule](#).

"Environmental Compliance Certificate" or "ECC" means a certificate issued by the Department of Environment and Natural Resources.

"Effective Date" shall have the meaning given to it in [Clause](#) 19.

"Emergency" means unforeseen circumstances affecting the power supply which reasonably requires ORMECO, Inc. to request

the NPP to supply it with power and energy as soon as practicable in order to avoid damage to the ORMECO, Inc. electric system and/or a failure in the reliable supply of electricity.

"Electric Power Industry Reform Act" or **"EPIRA"** shall refer to Republic Act No. 9136.

"Energy Regulatory Commission (ERC)" refers to the Government Agency tasked with the regulation of the power and energy industries under Republic Act No. 9136 or commonly known as the EPIRA.

"Event of Default" shall have the meaning given to it in [Clause 12](#).

"Fixed Operation & Maintenance Rate (FOMR)" – refers to the fees covering the operating and maintenance costs of the power structures and equipment, and plant management and supervision costs, which do not vary with changes in energy generation or supply.

"Force Majeure" shall have the meaning given to it in [Clause 13](#).

"FOREX" refers to the foreign exchange rate to be used for converting the foreign currency components of the Bid into its equivalent in local currency. ForEx Base equivalent to \$1=PhP ____ as of _____ 2023.

"Franchise and Benefits to Host Communities" refer to the obligations of Generation Companies and energy resource developers to communities hosting the Generation Facilities and/or energy resource development projects as defined under Chapter II Section 289 to 294 of Republic Act No. 7160 (Local Government Code), Section 5 (i) of Republic Act. No. 7638 (DOE Law), and Section 66 Republic Act No. 9136 (EPIRA).

"Generation Rate Adjustment Mechanism" or "GRAM" shall

refer to the mechanism for the adjustment of fuel and purchase power cost, which the ERC approved in ERC Case No. 2003-44 entitled "In the Matter of the Adoption of the Generation Rate Adjustment Mechanism (GRAM) and Incremental Currency Exchange Recovery Adjustment Mechanism (ICERA).

"Good Utility Practices" mean any of the practices, methods and activities approved or utilized by a significant portion of the Philippine electric generation industry as good practices especially in compliance with the Grid Code and Distribution Code of the Philippines, including any of the practices, methods or activities that, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expeditious and in full compliance with all applicable legal requirements. Good Utility Practices is not intended to be limited by the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts expected to accomplish the desired results, having due regard for among other things, the above principles, the requirements of Government Authorities or competent jurisdiction and the provisions of the Agreement. These should include, but are not limited to, performing due diligence to ensure that:

- a) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the power plant needs;
- b) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- c) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

- d) equipment is not operated in a reckless manner, in violation of Specifications or in a manner unsafe to workers, the general public, or the ORMECO, Inc. system or contrary to environmental laws or regulations or without regard to defined limitations such as safety inspection requirements, operating voltage, current, volt-ampere (reactive), loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and
- e) the equipment will function properly under both normal and emergency conditions;

"Governmental Authority" means the Republic of the Philippines or any national, regional, provincial, municipal or other political subdivision thereof and any department, ministry, instrumentality, agency, corporation or commission under the direct or indirect control or supervision of the Republic of the Philippines or any political subdivision thereof, provided, however, that ORMECO, Inc. shall not be considered a Governmental Authority under this Agreement.

"Governmental Permit" means any permit, license, agreement, order, certificate, franchise, registration, filing, authorization, consent or other approval issued by or filed with any Governmental Authority; a complete list of the Governmental Permits required completing the Project and to own and operate the Power Plant.

"Grid" means the transmission lines and distribution lines which interconnect sources of energy

"Incremental Currency Exchange Recovery Adjustment" or "ICERA" shall refer to the mechanism for the adjustment of fuel and purchase power cost, which the ERC approved in ERC Case No. 2003-44 entitled "In the Matter of the Adoption of the Generation Rate Adjustment Mechanism (GRAM) and Incremental

Currency Exchange Recovery Adjustment Mechanism (ICERA).

"**IRR**" refers to the Implementing Rules and Regulations of the EPIRA.

"**kW**" means kilowatt.

"**kWh**" means kilowatt-hour.

"**kV**" means kilovolt.

"**LGU**" means Local Government Unit.

"**Missionary Electrification**" or "**ME**" shall refer to the provision of basic electricity service in unviable areas with the ultimate aim of bringing the operations in these areas to viability levels, including the provision of power generation and its associated power delivery systems in areas that are not connected to the national grid transmission system.

"**MW**" means megaWatt.

"**NEA**" means National Electrification Administration.

"**Guaranteed Dependable Capacity (GDC)**" refers to the net dispatchable capacity excluding the Station Service and in-house load requirements of the Power Plant.

"**NPC**" means the National Power Corporation.

"**NPC-SPUG**" shall refer to the functional unit of the NPC created to pursue the Missionary Electrification function as provided in Section 70 of the EPIRA.

"**NPC-SPUG Area**" shall refer to an area not connected to the National Grid Transmission System wherein NPC-SPUG directly provides or will provide electric generation services and its associated power delivery system.

"NPC-SPUG True Cost Generation Rate" or "NPC-SPUG TCGR" shall refer to the cost, expressed in Peso per Kilowatt-hour, determined through a Return on Rate Base (RORB) methodology that includes all NPC-SPUG allowable expenses incurred in providing electric generation services.

"New Power Provider" or "NPP" refers to the Generation Company awarded to supply the capacity and energy requirements as a result of this CSP.

"NPP True Cost Generation Rate" or "NPP TCGR" shall refer to the rate, expressed in Peso per kilowatt-hour, which will allow recovery of the NPP's efficient costs of generation for the relevant period, as regularly determined by the ERC pursuant to Resolution No. 11 Series of 2005, as amended. To enable the NPP to operate viably, the NPP's TCGR shall be sufficient to allow the recovery of just and reasonable costs and a reasonable return on the investment.

"Operating Parameters" means the operating parameters of the Project as stated in the [Second Schedule](#).

"Operation and Maintenance Fee" are fees imposed to cover the cost of recurring expenses related to the operations and maintenance of the Power plant and its facilities

"Party" means ORMECO, Inc. or WINNING BIDDER as the case may be, collectively, ORMECO, Inc. and WINNING BIDDER shall be referred to as the "Parties".

"Peso" and the sign **"PhP"** means the lawful and official currency of the Republic of the Philippines.

"Philippine Arbitration Rules" means the arbitration rules in the Revised Rules of Court of the Philippines.

“**Philippine CPI**” or “**PHCPI**” refers to the Consumer Price Index in the Philippines published by Philippine Statistics Authority (PSA). PH CPI (2018 = 100) for All Items base to be used is ____ dated _____.

“**Power Plant**” shall refer to the facility with 8 MW Guaranteed Dependable Capacity (GDC) to be installed in the following schedule, as well as any additions thereto, in accordance with this Agreement, where electrical power is generated for distribution:

Schedule No.	Start Month	Capacity (in MW)	Location
TOTAL			

“**Project**” means the design, construction, equipping, financing, completion, testing and commissioning of the Power Generation Facility with __MW Guaranteed Dependable Capacity in the corresponding Sites by the WINNING BIDDER and all activities (other than those assumed by the ORMECO, Inc.) necessary therefor.

“**Resolution No. 11, Series of 2005**” refers to ERC Adopting the Guidelines for the Setting and Approval of Electricity Generation Rates and Subsidies for Missionary Electrification Areas.

“**Related Group**” shall refer to a person and any business entity controlled by that person, along with the affiliates of such business entity, and the directors and officers of the business entity or its affiliates, and relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree of the person or any of the foregoing directors or officers.

“**Schedule** ” refers to the __MW power generation facility which will be deployed, installed, and operated at (*location*) .

“**Site**” means the land on which the power plant is to be constructed, including: all easements and rights of way required

to operate or maintain the Project, roads for construction of and access to the Project, and Interconnection Facilities as described in the [First Schedule](#)

"**Specifications**" mean the specifications of the Project as set forth in the [First Schedule](#).

"**Subsidized Approved Generation Rate**" or "**SAGR**" refers to the generation rate, expressed in Pesos per kiloWatt-hour, which the ERC has approved for the EC to charge its consumers for electricity generation services.

"**Subsidy Agreement**" or "**SA**" refers to the agreement among the EC, NPP, and NPC-SPUG for a particular delegated NPC-SPUG area, pursuant to the DOE Circular for NPC-SPUG, Section 5 (a)(1)(3).

"**Target Completion Date**" for each Unit and for the Project shall have the meaning given it in [Clause 3.1](#).

"**TOR**" means the Terms of Reference.

"**Total Electricity Fees**" mean the fees payable by the ORMECO, Inc. to the NPP as provided in [Clause 8.1](#) and [Clause 27](#).

"**TRANSCO**" means the Transmission Corporation of the Philippines or its successor.

"**Transition Index**" shall refer to the index that the ERC may approve to affect the gradual phase-out of the ME Subsidy requirements for the Delegated NPC-SPUG areas and NPC-SPUG areas.

"**Transition Period**" shall refer to the period of time over which the SAGR will increase from its current value to the NPP's TCGR or the NPC-SPUG's TCGR, as the case maybe, applying the transition index that the ERC may approve.

"Transmission Service Charges" shall refer to Power Delivery Charges such transmission delivery and sub-transmission delivery, as well as Ancillary Services Charges such as Load Following and Load Regulation, Spinning Reserve and Back-up Power Cross-subsidy Charges, System Operations Charge, Supply and Metering Charge and Adjustments.

"Treasury-Bill Rate" means, in respect of any day for which interest based on such rate is being calculated under this Agreement, the rate per annum at which Philippine Treasury Bills with terms or ninety-one (91) days (or If no such bill with a term of 91 days is issued, then such bill which is issued having the term nearest to 91 days) were issued by the Philippine Government on the regular auction date immediately preceding such day, or, if there were no Philippine Treasury Bills are issued, the "Treasury Bill Rate" shall mean such alternative rate of interest as may be agreed between the Parties at such time, or in the absence of agreement, the rate per annum certified and evidenced by the NPP to be its effective cost of borrowing at such time.

"True Cost of Generation Rate" or **"TCGR"** refers to the generation rate, expressed in Pesos per kiloWatt-hour, which the ERC has approved for the EC to charge its consumers for electricity generation services.

"Universal Charge - Missionary Electrification" or **"UC-ME"** shall refer to the Missionary Electrification component of the universal charge, expressed in Peso per Kilowatt-hour, determined, fixed and approved by the ERC and applied to all electricity end-users, as provided in Section 34 of the EPIRA.

"Unit" means one or the other of the generating unit of the Power Plant.

"Universal Charge" refers to the charge imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 of

Republic Act No. 9136.

“Variable Operation and Maintenance Fees” or **“VOMF”** refers to the operation and maintenance cost which varies with the amount of energy generated or supplied.

"Value Added Tax" or "VAT" is the tax that shall apply to the sale of generated power by a Generation Company through stages of sale until it reaches the end user, if applicable, in this Agreement.

1.2 Interpretation. In this Agreement, unless the context otherwise requires:

- a. the singular includes the plural and vice versa;
- b. reference to a statute, rule, regulation, delegated legislation, memorandum circular or order, includes when it is amended, modified, supplemented, or replaced from time to time and to any statute, regulation, rule, delegated legislation or memorandum circular or order made thereunder;
- c. reference to a consent includes when it is amended, modified or replaced from time to time, and to any proper order, instruction, requirement, or decision of any Governmental Authority thereunder;
- d. reference to an agreement or Instrument includes when it is amended, modified, or replaced from time to time;
- e. reference to a Party to this Agreement includes its successors, transferees and permitted assigns;
- f. reference to a clause, schedule, section or Item refers to a Clause, Schedule, Section or Item of, or to this Agreement;
- g. the word "including" shall not be construed as being by way

of limitation and otherwise shall not be construed as limited by the word with which it is associated;

- h. any reference to a government department, authority or agency shall be construed as being to any governmental department; authority or agency which succeeds to the functions thereof; and
- i. the use of the phrase power station shall likewise mean power plant, and vice versa.
- j. the word 'reasonable' appearing before 'approval', 'satisfaction' or any similar word shall mean that the approval, expression of satisfaction or other decision to be made as to the particular matter or thing concerned shall not be unreasonably withheld or delayed. Conversely, if the word 'reasonable' does not so appear, the approval, expression of satisfaction or other decision to be made may be given or made solely at the sole discretion of the Party concerned.

CLAUSE 2

GENERAL AGREEMENT

ORMECO, Inc. recognizes that the Project is being implemented for its exclusive use. The Parties must take equal responsibility and provide reasonable approvals, and the acceptance and endorsements of the community, local government units, and community leaders. WINNING BIDDER and ORMECO, Inc. shall assist each other in the performance of its responsibilities as set forth in this Agreement.

2.1 Purpose. The purpose of this Agreement is to assure the adequate provision of power supply to ORMECO, Inc.'s franchise area by providing generating units that are capable of synchronized and baseload operation in parallel with the power system.

2.2 Responsibilities of WINNING BIDDER. WINNING BIDDER shall

be responsible for the following tasks:

- a. Investigate, design, develop, finance, equip, construct, complete, test, and commission the Power Generation Facility with __MW Guaranteed Dependable Capacity in the *(location)*.
- b. Undertake the site preparation and development as necessary in the *(location)*, including the construction of support facilities;
- c. Install generating units and accessories, in compliance with all the applicable regulations and quality standards as set by Philippine Small Grid Guidelines (PSGG) and Philippine Distribution Code (PDC);
- d. Make available on the Effective Date all land and right of way for the construction/improvement of an Access Road, if necessary;
- e. Except as otherwise set forth in this Agreement and subject to the provisions hereof, cover all costs in connection with the performance of WINNING BIDDER's obligations under this Agreement and in connection with the Project including the transactions hereby contemplated;
- f. Initiate, negotiate and finalize all requirements needed to achieve the rates and implementation of this Power Supply Agreement such as with the NPC, DOE, ERC, NEA, and LGUs.
- g. Except as otherwise provided in this Agreement, secure Governmental Permits for the Project, including, but are not limited to, certificate of compliance, environmental permits, building permits, local government permits, safety permits, and other work permits for its own personnel *(if necessary)* and recruit local labor in compliance with all local

regulations including, the payment of all fees and costs thereof;

- h. Obtain the requisite permits and authorities pertaining to the construction, installation and operation of the Power Plant shall be the main responsibility of the WINNING BIDDER;
- i. Jointly with ORMECO, Inc., apply for the approval of this Agreement with the ERC;
- j. From the Effective Date of Operations until the termination or expiration of this Agreement, the WINNING BIDDER shall supply, deliver and make available to ORMECO, Inc. the Guaranteed Dependable Capacity of the Plant at the rates determined in the [Sixth Schedule](#).
- k. Operate the Project in accordance with all applicable agreements to ensure the reliable delivery of energy to the Grid through Good Utility Practices.
- l. Ensure that the Power Plant is capable of continuous supply (24/7 operation).
- m. Maintain the capability of the Power Plant to operate at N-1 contingency.
- n. The WINNING BIDDER shall provide replacement power the rate of which shall be equal or lower equal to ERC approved tariff. The supply of replacement power shall be the main obligation of the WINNING BIDDER. However, in the event of failure of WINNING BIDDER to provide the contracted capacity, ORMECO, Inc. shall be allowed to source the replacement power from other IPPs at the expense of the WINNING BIDDER with corresponding payment of damages in favor to ORMECO, Inc.

2.3 Responsibility of ORMECO, Inc. ORMECO, Inc. shall be

responsible for the following tasks:

- a. Provide the necessary and reasonable support and assistance to WINNING BIDDER in ensuring compliance with its obligations as set forth in this Agreement;
- b. Assist WINNING BIDDER in a timely manner in obtaining all Governmental Permits necessary or appropriate for issuance of an ECC, Certificate of Compliance, importation of equipment, necessary for the investigation, design, development, equipment supply, construction, completion, testing, commissioning, operating or maintaining the Project or completing the Project;
- c. Provide and give access to WINNING BIDDER to all technical, financial, and other information, data, reports and drawings that WINNING BIDDER may need to complete the designs, permits, agreements, and approvals required to implement and realize this Agreement and its purposes;
- d. Supply construction and start-up electricity when available of the required quantity and the required time, as determined by WINNING BIDDER for the construction, testing and commissioning of the Project, the cost of which shall be for the account of WINNING BIDDER;
- e. To review its network, feeder, loads, and sectionalizing configuration together with WINNING BIDDER's engineers to assure absorption of WINNING BIDDER's base load output as agreed to by the Parties; and
- f. Jointly with WINNING BIDDER, apply for the approval of this Agreement with the ERC.

2.4 Ownership of Power Station. WINNING BIDDER shall own the Power Station built under Build-Own-Operate basis (BOO) and all the structures, fixtures, fittings, machinery, installations and equipment on the Site or used in connection with the Project,

which have been supplied by the WINNING BIDDER

2.5 Contract Duration

- a. The Parties shall mutually collaborate and cooperate with each other and act in good faith in order to achieve the objectives of this Agreement and the performance by each of the Parties of their respective obligations under this Agreement. The contract duration shall take effect upon the declaration of the Power Plant's commercial operation between the Parties and shall be effective for the period hereunder provided:

Unless earlier terminated in accordance with this Agreement, the Contract duration shall be __ months.

- b. The Cooperation Period may be terminated in accordance with the provisions of the Agreement upon the mutual consent of the Parties;
- c. ORMECO, Inc. covenants and undertakes that it will provide its full and timely cooperation in connection with WINNING BIDDER's efforts to complete the Project and to respond to all reasonable requests for Audited Financial Statements on the ORMECO Inc. 's finances and financial condition and other relevant information relating to the status of this Agreement; and
- d. WINNING BIDDER shall exert its reasonable efforts to assist ORMECO, Inc. in improving its distribution systems and overall capability to provide reliable power within its franchise area, under terms and conditions to be discussed and agreed upon by the Parties.

- 2.6 Monitoring Right.** ORMECO, Inc. shall be entitled, at its own cost, to monitor the progress and quality of the construction and installation work. For this purpose, WINNING BIDDER shall:

- a. Ensure that ORMECO, Inc. and any experts duly appointed by them in connection with the Project are afforded reasonable access to the Site at times to be agreed by both Parties, provided, however, that ORMECO, Inc. does not have to afford such access, if or to the extent it would materially interfere with the works comprising the power plant or expose any person on the Site to any danger;
- b. Agree that in no event shall ORMECO, Inc. be required to suspend or delay construction or other work pending submission to ORMECO, Inc. of any report, plan or design or the commencement or completion by WINNING BIDDER of any inspection, monitoring, review or other action hereunder;
- c. Accept that any engineering review of the Project conducted by ORMECO, Inc. is solely for ORMECO Inc.'s own information and accordingly that in conducting any such review, ORMECO, Inc. makes no representation as to the engineering soundness of the Project; and
- d. Agree that WINNING BIDDER shall, subject to other provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project.

CLAUSE 3
CONSTRUCTION SCHEDULE

3.1 Project Milestone Dates. The Parties shall work together in order to achieve the timely completion of the Project in accordance with the following timetable:

Milestone	Target Completion Date
Effective Date	Upon completion of condition

	precedents under Clause 19
Site Mobilization	<i>(location) : (date)</i>
Completion of the Project	___months from commercial operation date
Commercial Operation Date	<i>(date)</i>

The duration of deployment for the power facility including the period for test and commissioning up to start of commercial operation is _____ calendar days reckoned from the date of issuance of Notice of Award by ORMECO, Inc. During the course of generating unit project implementation, the WINNING BIDDER shall regularly provide ORMECO, Inc. an update report stating the progress and status of delivery of equipment and schedule of shipment.

Failure of WINNING BIDDER to complete the Project or meet the Commercial Operation Date of the Project shall cause the forfeiture of the Performance Security, and WINNING BIDDER shall be liable to pay a monthly penalty in the amount equivalent to 1% of the Non-Fuel Cost, computed at the monthly contracted energy, for every day of delay after the scheduled Commercial Operation Date, but in no case the extension shall exceed two (2) months. Failure of WINNING BIDDER to complete the Project or meet the Commercial Operation Date after the two-month extension shall cause the automatic termination of this Agreement.

3.2 No Fault/Delay. In the event that, without the fault of WINNING BIDDER, a milestone is not completed by the date set out in Clause 3.1 then the date shall be automatically extended by a period equal to the days of delay in achieving a particular milestone and the balance of the subsequent milestones shall be extended by the same number of days. For such purpose, the actual number of days in delay shall be counted from the date set out in Clause 3.1 up to the date the particular milestone is completed.

3.3 Early Completion. In the event that the Target Completion Date is achieved early and such Schedule is ready for commercial

operation ahead of the milestone schedule provided in Clause 3.1, the ORMECO, Inc. shall take and pay for the electricity delivered by Power Station in accordance with Clause 8 and Clause 27.

CLAUSE 4

TESTING

- 4.1 Testing Procedures.** The Parties agree that the procedures, standards, protective equipment settings, and program for the testing and commissioning of the Power Station shall be performed. ORMECO, Inc. undertakes to take and pay for all electricity delivered to the Delivery Point prior to the Completion Date at approved tariff.
- 4.2 Notice of Testing.** WINNING BIDDER shall give ORMECO, Inc. not less than seven (7) day notice, or such lesser period as the Parties may agree, of WINNING BIDDER's intention to commence any testing of the Power Station. In the event that the WINNING BIDDER encounters any difficulty in obtaining any Governmental Permit required for the testing or for the commercial operation of the Power Station, ORMECO, Inc. shall assist WINNING BIDDER to obtain such permit/s for the testing or for the commercial operation of the Power Station.
- 4.3 Responsibility During Testing.** The ORMECO, Inc. whenever capable, shall ensure that there is made available to WINNING BIDDER for any testing of the Power Station or ancillary equipment, start-up electricity in sufficient quantity to conduct such testing, the cost of which shall be for the account of WINNING BIDDER.
- 4.4 Attendance at Testing.** The ORMECO, Inc. and/or its experts and representatives shall be entitled to observe any testing of the Power Station, provided, however, that the presence of the ORMECO, Inc. and/or its experts and representatives shall not be deemed necessary in order for the testing to be deemed valid.

- 4.5 Certificate.** Upon completion of any testing of the Power Station, WINNING BIDDER shall certify whether the Power Station have satisfied such test and shall provide the ORMECO, Inc. with copy of such certificate.

CLAUSE 5
OPERATION OF THE POWER STATION

- 5.1 Responsibility of WINNING BIDDER.** WINNING BIDDER shall, at its own cost, be responsible for the management, operation, maintenance and repair of the Power Station during the Cooperation Period and shall endeavor to ensure that during such period, the Power Station is in good operating condition and capable of delivering electricity in a safe and reliable manner within the [Operating Parameters](#).
- 5.2 No Outage Allowance for the Project.** Notwithstanding Clause 5.1, it is understood and agreed by the Parties that in order to undertake the necessary overhaul, maintenance, inspection and repair, WINNING BIDDER shall be maintaining the continuous supply of the Guaranteed Dependable Capacity using its non-firm back-up supply (N-1 Contingency).

In the event that WINNING BIDDER failed to maintain the supply of electricity due to downtime, WINNING BIDDER shall pay corresponding damages to ORMECO, Inc. This adjustment shall be computed by determining the resulting deficiency in energy through the average-to-contracted-capacity ratio attributable to the delay. The amount shall be equal to the deficiency in energy multiplied by the Non-Fuel Rate equivalent to _____ per kWh.

Any excess in operations in a Billing Period as set forth in the Second Schedule shall be converted to additional Planned Downtime only for the immediate succeeding Billing Period. The excess in operations shall be determined by converting the excess in monthly Contracted Energy to an equivalent 'hours of operation'

using the Guaranteed Dependable Capacity.

5.3 Downtime. WINNING BIDDER shall notify the ORMECO, Inc. of the occurrence of any downtime and provide its best estimate of the probable duration of such downtime.

5.4 ORMECO, Inc.'s Obligations.

- a. ORMECO, Inc. shall ensure, during the Cooperation Period, the prompt release of payment for the Electricity Fees from the payment agreement as provided under Clause 8 and Clause 27. Otherwise, ORMECO, Inc. shall be liable to pay interest at the rate of ___ percent (__%) of the amount due, per month of delay.
- b. ORMECO, Inc. shall ensure that there is available at the Site during the construction, testing and commissioning period, a continuing and uninterrupted supply of electricity and the cost of which shall be for the account of the WINNING BIDDER.
- c. The ORMECO, Inc. shall maintain its own 13.8kV distribution lines.
- d. Ensure that the output of the contracted plant can be absorbed by ORMECO Inc.'s distribution grid.

CLAUSE 6
SUPPLY OF FUEL AND LUBE OIL

WINNING BIDDER shall ensure the continued and timely supply of fuel and lube oil to the Power Plants in the needed quantities and qualities. For this purpose, WINNING BIDDER shall strictly adhere to the procurement, supply and management schedule contained in the Fuel Supply and Management Agreement drawn up by _____. and WINNING BIDDER for the purpose.

The Parties shall draw up a Fuel Supply and Management Agreement to assure the continued and timely supply of fuel to the power plant, and to put in place a transparent process in order to ensure at all times the lowest cost, therefore. The Fuel Supply and Management Agreement should be so structured to avoid exorbitant financial costs to ORMECO and to attain reasonable power costs to the consumers.

CLAUSE 7
SUPPLY OF ELECTRICITY

7.1 Supply of Electricity. WINNING BIDDER agrees to supply electricity generated by the Power Station to ORMECO, Inc. in accordance with the following schedule:

YEAR	MONTH	Schedule	TOTAL

ORMECO, Inc. agrees to take and pay for all such electricity delivered by WINNING BIDDER in accordance with this Agreement except, however, that the cause is beyond the control of ORMECO, Inc.

The Parties agree that the annual energy may be increased subject to terms and conditions to be agreed by the Parties.

7.2 Quantity. The quantity of electricity delivered to ORMECO, Inc. by WINNING BIDDER shall be monitored, measured and recorded by both Parties in accordance with the provisions of the [Fifth Schedule](#).

7.3 Failure to Supply Electricity. WINNING BIDDER shall promptly notify the ORMECO, Inc. of the occurrence of any event which results or may result in the Power Plant's inability to supply the electricity requirements of ORMECO, Inc. whether such inability is caused by either the WINNING BIDDER's being unable to operate in accordance with the Operating Parameters, and Specifications, or inadvertent trippings of protective apparatus, or the ORMECO, Inc. 's Systems emergency.

In case of failure to supply the Guaranteed Dependable Capacity, the WINNING BIDDER must secure replacement power at its own expense with corresponding damages to be computed in terms of sales profit loss in favor of ORMECO, Inc. should there be any delay in the provision of the replacement power.

However, in the event of failure of WINNING BIDDER to provide the Guaranteed Dependable Capacity, ORMECO, Inc. shall be allowed to source the replacement power from other IPPs at the expense of the WINNING BIDDER with corresponding payment of damages in favor to ORMECO, Inc.

7.4 Failure to Accept Electricity. ORMECO, Inc. shall promptly notify WINNING BIDDER of the occurrence of any event, which result in the ORMECO Inc. 's being unable to accept the electricity in accordance with this Agreement. If the failure to accept electricity results to lower energy quantity than the agreed monthly contracted energy, WINNING BIDDER's fixed costs shall still be paid provided that, upon ORMECO, Inc.'s evaluation and records, the Power Plant is capable of delivering the Guaranteed Dependable Capacity.

- 7.5 Delivery Points.** The place for delivery of the electricity shall be the Delivery Points. Title to and all risks associated with electrical energy generated by the Power Station shall pass to the ORMECO, Inc. at the Delivery Points.
- 7.6** That the risks associated with the supply of electricity such as those pertaining to the economic conditions of the country, foreign exchange fluctuation, changes in world crude prices, and the like are efficiently allocated between the ORMECO, Inc. and the WINNING BIDDER and the same is herewith addressed in the context of this Agreement and the Parties are given latitude to renegotiate the terms thereof, subject to the ERC's approval to reflect the prevailing conditions.

CLAUSE 8
FEES

8.1 Electricity Fees.

- a. During each Month or part thereof within the Cooperation Period, ORMECO, Inc. shall pay WINNING BIDDER the Electricity Fees for all electricity delivered by WINNING BIDDER in accordance with this Agreement.
- b. Other fees duly approved by ERC such as Universal Charge, Franchise and other Transmission Service Charges as defined in Clause 1.1, if applicable, shall be directly passed-on to ORMECO, Inc., if not sufficiently covered by the ORMECO Inc.'s approved unbundled rates by the ERC.

8.2 Payment. The mode and manner of payment of the Total Electricity Fees under 8.1 (a) above shall be as provided for herein.

8.3 Monthly Invoice. WINNING BIDDER will deliver each Month to the ORMECO, Inc., separate invoices in respect of the Electricity Fees and Other Fees for the previous Month, and the ORMECO,

Inc. shall pay to WINNING BIDDER the amount of such invoices within the fees and payment schedule. The ORMECO, Inc.'s payment shall be made in the same funds to WINNING BIDDER's designated account opened for the purpose with a commercial bank acceptable to both Parties.

8.4 Payment Free and Clear. All payments made by the ORMECO, Inc. hereunder shall be made free and clear of, and any deductions for an account of any set-off, counterclaim, all taxes/applicable taxation shall be based on type of energy source, government taxes shall be required. In the event the ORMECO, Inc. is prohibited by law from making payments hereunder free from deductions or withholdings, then the ORMECO, Inc. shall pay such additional amounts to WINNING BIDDER as may be necessary in order that the actual amount received by WINNING BIDDER after the deduction or withholding (*and after the payment of any such additional taxes or other charges due as a consequence of the payment of such additional amount*) shall equal the amount that would have been received by WINNING BIDDER if such deduction or withholding had not been required. New tax, fees and levy impositions on WINNING BIDDER electricity sales to the ORMECO, Inc. shall be added to the electric bill provided it is approved by the ORMECO, Inc. Prompt Payment Discount (PPD) shall be based on ___ % of the _____ Cost if ORMECO, Inc. pays in full within ___ calendar days upon receipt of the Billing Statement.

8.5 Billing Disputes. If any element of WINNING BIDDER's invoice is disputed, ORMECO, Inc. shall not withhold payment of the whole invoice but pay the full amount under protest. Disputed amounts shall then be resolved within fifteen (15) days from the date when ORMECO, Inc. notify WINNING BIDDER that the invoice or part thereof, is in dispute.

In the event that the resolution of the dispute indicates that ORMECO, Inc. have overpaid WINNING BIDDER, then WINNING BIDDER shall be liable to pay ORMECO, Inc. interest at the rate

of _____% per annum on the amount of the overpayment from the date the overpayment was made until the overpayment is credited on the next invoice falling due after the dispute is resolved.

8.6 Non-discrimination of payments to WINNING BIDDER. The ORMECO, Inc. hereby warrants and guarantees to WINNING BIDDER that the ORMECO, Inc. shall not accord any person or entity with whom the ORMECO, Inc. has a power supply or power plant operating agreement any preference or priority or any better treatment in the payment of the ORMECO, Inc's obligations with NPC and the Transco any priority or preference over the herein payment obligations of the ORMECO, Inc. to WINNING BIDDER.

8.7 Power Bill Account. WINNING BIDDER shall establish depository account in Calapan City in a commercial bank acceptable to ORMECO, Inc. through which account the ORMECO, Inc. shall deposit or cause to be deposited during each billing month before the close of the banking hours according to payment due dates agreed to by the Parties.

CLAUSE 9

SECURITY GUARANTEE

The Project envisioned in this Agreement will be installed for the exclusive or priority use of ORMECO. The ORMECO recognizes that WINNING BIDDER will make significant investments to build and operate the Power Plant and provide the services spelled out in this Agreement. The Parties hereby undertake to work closely together to assure the protection of WINNING BIDDER's investments, the smooth operations of the power facilities, and the sustainable and faithful compliance of the Parties to their respective obligations under this Power Supply Agreement.

The ORMECO, with the assistance of WINNING BIDDER, commits to undertake the necessary strengthening of its electric distribution

cooperative to assure its financial integrity especially in the areas of systems loss reduction, fiscal controls, collections efficiency and cash management, and overall efficiency as an electric distribution utility.

CLAUSE 10

TAXES

10.1 WINNING BIDDER shall be responsible for the payment of the following:

- a. Real estate taxes on land and improvements, if applicable. However, tax abatements from LGU's may be necessary to achieve the contracted rates; and
- b. All provincial, municipal and other local government taxes and fees on the project site or on the operation and maintenance of the Project.

10.2 Each party shall be responsible for their respective taxes on Net Income.

CLAUSE 11

INSURANCE

11.1 Employees. ORMECO and WINNING BIDDER shall each effect such Insurance as is required by law in respect of injury to, or death of, its personnel, and shall insure that its contractors and sub-contractors similarly comply with such requirement.

11.2 Power Station. WINNING BIDDER shall be responsible for effecting Insurance as it considers necessary in its sole discretion in connection with the loss of or damage to the Power Station during the construction, operation, maintenance, repair or dismantling phases of the Power Station.

CLAUSE 12

INDEMNITIES

12.1 Loss or Damage Third Party Persons and Property. Each Party shall indemnify and hereby holds the other party free and harmless from any and all claims, liabilities, costs, damages, indemnities and expenses of whatsoever kind and nature in respect of personal injury or death to any third party or person, and damage to and destruction of any property of any third party, arising directly or indirectly as a result of any wrongful omission, default or negligent act of the indemnifying party, their contractors, and/or sub-contractors and their respective employees. Third party shall not include ORMECO or WINNING BIDDER, its/their shareholders, contractors, sub-contractors, and or their respective officers or employees.

12.2 Injury or Death of Employees or Sub-contractors' Employees. Each Party shall indemnify and hold the other Party free and harmless from any and all claims, liabilities, costs, damages, and expenses of whatsoever kind and nature in respect of personal injury or death of any persons in the indemnifying parties employ or in the employ of any of the indemnifying parties contractors or sub-contractors arising out of the performance of this Agreement except to the extent caused by the wrongful omission, default or negligent act of the party entitled to be indemnified or its contractors or sub-contractors and their respective officers and employees.

12.3 Loss of or Damage to the Power Station. ORMECO shall indemnify WINNING BIDDER against loss of or damage to the Power Station caused by the wrongful omission, default or negligent act of ORMECO, its contractors and sub-contractors, and/or their officers and employees while working on official duty. The limit of ORMECO's liability in this respect shall, where applicable, be the relevant deductible under any policy of insurance affected by WINNING BIDDER as provided in [Clause 11.2](#).

12.4 Limits of Liability

12.4.1 Rights and Remedies

For the avoidance of any doubt, ORMECO's and *WINNING BIDDER*'s duties, obligations, liabilities, warranties, representations and guarantees are fully set forth in this Agreement, and the rights and remedies stated in this Agreement shall be the sole and exclusive rights and remedies which might otherwise be available at law, in tort, by statute or otherwise. No other rights or remedies shall, or shall be deemed, to apply.

12.4.2 Consequential Loss

Except to the extent the same may be included (a) in liquidated damages or bonus payable by one Party to the other Party as stated in the Agreement, or (b) within any third-party insurance coverage required under the Agreement, or (c) within any termination payment payable under the Agreement, or (d) in interest for delayed payment; neither Party shall be liable to the other Party for any special, indirect. Incidental or consequential loss or expense, or for overheads, loss of actual or anticipated surplus or profit, loss of revenue, loss of use, loss of production, loss of opportunity or goodwill, cost of capital, cost of replacement power, financing costs, or any other financial or economic loss whatsoever suffered by that other Party, howsoever arising.

CLAUSE 13

FORCE MAJEURE

13.1 No Liability. No failure or omission by a Party to carry out or observe any of its obligations under this Agreement, (*other than other obligation on the part of ORMECO to make payment*) shall give rise to any claim by the other Party, or be deemed to be a breach of this Agreement, if the same shall be caused by or arise out of Force Majeure.

13.2 Definition of Force Majeure. Force Majeure shall be defined as any circumstance beyond the control of the affected Party including:

- Earthquake, tempest, storm, volcanic activity, flood, tide (other than normal tide), lightning, tsunami, tornado, tidal wave, landslide, drought, whirlwind, typhoon, hurricane, and any other natural disaster or adverse climatic conditions, and the consequences of any of the foregoing;
- Riot, commotion or disorder;
- Strikes and Industrial and labour disputes;
- Fires and explosions, ionization radiation or contamination by radioactivity from any nuclear fuel or from any nuclear wastes from combustion of nuclear fuel, radioactive toxic explosives, or other hazardous properties of any explosive nuclear assembly or nuclear components thereof, together with contamination by toxic material or toxic wastes or other hazardous effect of any toxic substance or substances acting singly or in combination;
- Action or failure to act of public officers or government authorities;
- War and other hostilities (whether declared or not), invasion, terrorism, act of foreign enemies, mobilization of armed forces, requisition or embargo;
- Insurrection, revolution, blockade, rebellion, military or usurped power, or civil war;
- Closing of roads, rail, canal, air and other transportation

links, and of bridges, tunnels, harbours or docks, and other transportation interruptions or delays, including breakdown of shipping vessels;

- General shortage of materials;
- Expropriation, confiscation or nationalization;
- Pandemic, Epidemic or quarantine;
- The occurrence of any circumstances as described in Clause 14 (Change in Circumstances); and
- Export or import restrictions or delays or inability to obtain permits and consents caused by Governmental Authorities.

Provided, that the term 'Force Majeure' shall not include with respect to any act or omission of ORMECO and in the case of clause (a) below with respect to equipment, but not infrastructure, and clause (b) below with *WINNING BIDDER* substituted for "ORMECO or any competent authority", any act or omission of WINNING BIDDER:

- (a) infrastructure and equipment failures due to ordinary wear and tear, or defects in design or defects in material quality or installation of the Project; or
- (b) event, matter or thing which shall reasonably be within the control of ORMECO or any competent authority, or any closure, restriction or other material change in the operation of the Project, which directly causes a material and adverse impact on the Project, caused by or contributed by ORMECO or any competent authority; and
- (c) in any such case, the effects of which cannot reasonably be overcome by it by the exercise of Good Utility Practices.

13.3 Mitigation. The relief provided in this Clause shall be available only if, and only to the extent, the Party claiming relief has and continues to take all steps reasonably within its control to mitigate the effects of such Force Majeure, and the other Party shall take such steps as it can in order to assist in this respect.

13.4 Procedure. The Party Invoking Force Majeure shall:

- a. Notify the other Party as soon as reasonably possible of the nature of the Force Majeure and the extent to which the Force Majeure affects the affected party's obligations under this Agreement;
- b. Keep the other Party fully informed as to the actions taken or to be taken by it to overcome the effects thereof; and
- c. Resume performance of its obligations as soon as possible after the Force Majeure condition ceases to exist.

CLAUSE 14
CHANGE IN CIRCUMSTANCES

14.1 Consequences. In the event that, and as a result of:

- a. the coming into force after the date of signing of this Agreement of any new laws or regulations of Governmental Authorities; or
- b. any such laws or regulations (*including any official interpretation thereof which WINNING BIDDER has relied upon in entering into this Agreement*) in force at the Effective Date being amended, modified or repealed.
- c. WINNING BIDDER is able to establish that its costs in connection with the building, operation or maintenance of the Power Station are increased and/or its financial return on its investment is materially reduced, prejudiced or otherwise adversely affected (*including any restriction on the ability to remit funds in United States Dollars outside the Philippines*) then, upon WINNING BIDDERS giving notice to

ORMECO, the Parties hereto shall meet as soon as possible and in any event within fourteen days (14) days from the date of such notice and endeavour to agree such changes to this Agreement and/or a reasonable increase in the fees payable to WINNING BIDDER under this Agreement as considered necessary to preserve and restore the Project's viability and enable the Power Station to continue to operate as aforesaid. Further, if no agreement has been reached within fifteen (15) days from the date of the aforesaid notice, either Party may then, or at any time thereafter provided in the Agreement has still not been reached, refer the matter for decision pursuant to the provisions of [Clause 22.3](#) hereof as if the preceding provisions of that Clause had already been fulfilled.

14.2 Determination of WINNING BIDDER Economic Return on Investment. The Parties acknowledge that the WINNING BIDDER economic return on investment may be difficult to determine. Therefore, the Parties agree, as follows:

- (a) if the change in circumstances pursuant to Article 8.1 results in an additional cost to WINNING BIDDER and the additional cost can be reasonably determined, such as a change in tax rate or a new or additional tax, or new interpretation of and existing tax, then the Tariff will be revised to incorporate the change;
- (b) if a change in circumstance pursuant to Article 8.1 results in a change in requirements that prevents or restricts the operation of the Project, then the Tariff shall be adjusted such that the Tariff rate results in the same return on investment to WINNING BIDDER as would have been received if the change in circumstances had not occurred;
- (c) if a change in circumstance pursuant to Article 8.1 requires WINNING BIDDER to change the design of the Project or provide additional or different facilities, or change the Specifications, then the cost of compliance and associated cost of financing shall be considered in the determination of

additional payment required to preserve the WINNING BIDDER economic return.

CLAUSE 15
CONTRACT SUSPENSION OR TERMINATION

15.1 Events of Default. If any of the following events occur, the provisions for Contract Suspension or Termination shall apply:

15.1.1 WINNING BIDDER Defaults

15.1.1.1 Prior to Completion Date

- (i) Failure by WINNING BIDDER to commence work at the Site by the target Completion Date, other than by reason of Force Majeure or fault of ORMECO or other Government entities;
- (ii) Prior to target Completion Date, WINNING BIDDER notifies ORMECO in writing that it has terminated all construction work (other than following completion) other than by reason of Force Majeure or fault of ORMECO or Governmental entities and does not intend to recommence such work;
- (iii) WINNING BIDDER, having been prevented from continuing construction work by Force Majeure, fails to resume such work within 180 days after the cessation of the effects of such Force Majeure, other than by reason of (a) the postponement of work due to wet season, (b) another Force Majeure, or (c) fault of ORMECO;
- (iv) Bankruptcy, insolvency, or fraud by WINNING BIDDER; and
- (v) the Completion Date fails to occur within ___ months

after the target Completion Date due to the sole fault of WINNING BIDDER and through no fault of ORMECO.

15.1.1.2 During Cooperation Period

- (a) WINNING BIDDER notifies ORMECO in writing that it has permanently terminated the operation of the Project other than by reason of Force Majeure, or fault of ORMECO, and does not intend to recommence operation, subject always to relevant provisions on Force Majeure;
- (b) Except for assignment by WINNING BIDDER, and prior to the Termination Date, and due to the fault of WINNING BIDDER, there shall have been a transfer, conveyance, loss or relinquishment of WINNING BIDDER rights to own and/or operate the Project, or to occupy the Site, to any person without written approval of ORMECO; and,
- (c) Failure to provide Replacement Power;
- (d) Bankruptcy, insolvency, or fraud by WINNING BIDDER.

15.1.2 ORMECO Defaults

15.1.2.1 Prior to Completion Date

- (a) Failure to comply with any provisions required by this Agreement; and
- (b) Bankruptcy, insolvency, or fraud by ORMECO

15.1.2.2 During Cooperation Period

- (a) Failure to pay any amount due to WINNING BIDDER by the Payment Date;
- (b) Failure to comply with any provisions required by this

Agreement;

- (c) Bankruptcy, insolvency, or fraud by ORMECO; and
- (d) a consecutive Forced Outage of ___ months other than by reason of Force Majeure or fault of WINNING BIDDER.

Suspension and Termination payments include the Capacity Fee and Fixed Operation and Maintenance Fee of the unexpired periods of Cooperation, payable annually.

15.2 Notice. If an Event of Default occurs after the Effective Date, either Party shall give notice ('Notice of Default') to the other Party, specifying the Event of Default, and the Parties shall enter into discussions in good faith with the view of mitigating the consequences of such an event and to agreeing on the terms, if any, upon which the arrangements contemplated in the Agreement may be continued, giving regard to all circumstances existing at such time.

CLAUSE 16

ACCESSION UNDERTAKING

Accession Undertaking by way of formation of a Management Group for the assumption of this Agreement, or formation of its subsidiaries and/or transfer, cede and assignment for the purpose of arranging or re-arranging financing, construction, development and/or management of the Project shall be allowed in this Agreement. The transfer and assignment as stated herein shall be with conformity by ORMECO after due consultation between the Parties. In case there will be transfer and assignment, the provisions of this Agreement shall be binding with ORMECO and the new Project Company or subsidiaries.

CLAUSE 17
REPRESENTATIONS AND WARRANTIES

17.1 WINNING BIDDER hereby represents and warrants the following:

- a. **Corporate Existence.** WINNING BIDDER represents that it is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, and that it possesses the corporate power and authority to execute, deliver and perform obligations under the terms and conditions provided under this Agreement.
- b. **Governmental Permits.** WINNING BIDDER represents and warrants that it has taken, or by the Effective Date shall have taken all necessary corporate action and secured or caused to be secured, with the active assistance of the ORMECO, all Governmental Permits (*except such Governmental permits which, by their nature, are normally obtained in the course of construction or operation of the Power Station*) needed in order for it to construct, own and operate the Power Station.
- c. **Warranty Against Corruption.** WINNING BIDDER hereby warrants that neither it nor its representatives have offered any government officer and/or the ORMECO official or employee any consideration for this Agreement nor has it or its representatives exerted or utilized any corrupt or unlawful influence to secure or solicit this Agreement for any consideration.
- d. **No Legal Constraint.** WINNING BIDDER represents and warrants that it is free to enter into this Agreement.
- e. **Compliance with Laws.** WINNING BIDDER shall at all times, conform to all laws, rules, regulations and ordinances applicable to it, the failure to comply with which will have a

material adverse effect on its ability to perform its obligation hereunder.

17.2 The ORMECO hereby represents and warrants the following:

- a. **Corporate Existence.** The ORMECO represents that it is an electric cooperative duly organized and existing under and by virtue of Presidential Decree No. 269, as amended, the corporate power and authority to execute, deliver and carry out the terms of this Agreement.
- b. **Governmental Permits.** The ORMECO represents and warrants that it has taken, or by Effective Date shall have taken, all necessary corporate action and has secured or caused to be secured all necessary Governmental Permits to permit it to enter into this Agreement, purchase electricity from WINNING BIDDER and make payments therefore in the currency referred to herein.
- c. **Compliance with Laws.** The ORMECO shall, at all times, conform to all laws, rules, regulations and ordinances applicable to it, the failure to comply with which will have a material adverse effect on its ability to perform its obligations hereunder.
- d. **No Legal Constraint.** The ORMECO represents and warrants that it is free to enter into this Agreement.

CLAUSE 18
OTHER PROVISIONS

18.1 Confidentiality.

- a. Each of the Parties agrees that all information and documents (*whether financial, technical, or otherwise*) obtained by its agents from WINNING BIDDER or the ORMECO or from its agents' inspections which are not generally publicly available, shall be kept confidential and shall not be disclosed to any other person or entity without the prior written approval of the WINNING BIDDER or the ORMECO, as the case may be;
- b. Each of the Parties may, with the prior written consent of the other, issue from time-to-time press releases containing non-sensitive information in relation to the progress of the Project;
- c. This Clause 18.1 shall not apply to:
 - i. disclosure as may be required by law or by a judicial decree or order, or as required by the laws and regulations of any agency including disclosures required or otherwise regulating the sale and/or exchange of securities;
 - ii. disclosure made by WINNING BIDDER to its affiliates or related companies, lenders, professional advisers, employees, agents or authorized representatives;
 - iii. disclosure made by the ORMECO to its lenders, professional advisors, employees, agents or authorized representatives; and

- iv. disclosure made to persons, firms, organizations or institutions who are already participating in or with whom either Party is discussing a potential participation In the Project, including any existing or proposed contractors, export credit agencies, lender or prospective lenders and their professional advisors.
- d. The provisions contained in this Clause 18.1 shall survive for three (3) years following the termination or expiration of this Agreement.

18.2 Compliance with Laws. WINNING BIDDER shall construct and operate the Power Station in accordance with all applicable laws, rules, and regulations in force as of the commencement of construction and shall comply with any changes in such laws, rules and with any new laws, rules and regulations, provided, however, that if compliance with such changes in laws, rules, or regulations would (i) result in Power Station being rendered unable to be constructed pursuant to the specifications or to be operated within the Operating Parameters; or (ii) result in the Interest of WINNING BIDDER and/or its expectation of Financial Return (*net of tax or other imposition*) on its investment being materially adversely affected, to the extent that will render WINNING BIDDER unable to construct or operate the Power Station in accordance with this Agreement, then, upon WINNING BIDDER giving notice to the ORMECO, the Parties agree to amend the Agreement in order to put the Power Station in compliance with the applicable laws, rules, or regulations and restore the financial viability of the Project. If the Agreement cannot be amended to place the Power Station in compliance with the applicable laws, rules or regulations and restore the project's financial viability, then the provisions of Clause 15 shall apply.

CLAUSE 19
EFFECTIVE DATE

19.1 Conditions Precedent. Save for Clauses 12, 13, 14, 15, 16, 17, 18, 19, and 23, this Agreement shall take effect on the date that the following conditions precedent are met (the "Effective Date"):

- a. **The ORMECO's Conditions Precedent.** The ORMECO shall submit to WINNING BIDDER the following documents, each in form and substance satisfactory to, unless such document is waived by WINNING BIDDER:
 - i. A sworn certificate by the corporate secretary of the resolution of the Board of Directors of the ORMECO confirming that (a) the ORMECO has the corporate power to enter into this Agreement and perform its obligations hereunder; (b) all necessary corporate and other approvals and actions have been duly obtained and taken for the execution, delivery and performance by the ORMECO of this Agreement in behalf of the ORMECO was/were authorized to sign and bind the ORMECO;
 - ii. A resolution adopted by the ORMECO's Board of Directors and certified by its corporate secretary stating the ORMECO financial obligation in this Agreement;
 - iii. A copy of the Articles of Incorporation/association and By-laws of the ORMECO duly certified by the corporate secretary of the ORMECO;
 - iv. Copies of the necessary Governmental Permits and/or endorsements from the relevant Governmental Authorities;
 - v. A copy of the ORMECO's Certificate of Registration with the National Electrification Administration duly certified

- by the corporate secretary of the ORMECO;
 - vi. Approval of this Agreement by the ERC, DOE, notification to the NEA; and
 - vii. A certified true copy of the ERC's Approval of Tariff Rate under this Agreement.
- b. **The WINNING BIDDER's Conditions Precedent.** The WINNING BIDDER shall submit to ORMECO the following document, each in form and substance satisfactory to ORMECO, unless such requirements are waived by the ORMECO:
- i. A copy of the Articles of Incorporation and By - laws of the WINNING BIDDER as certified by its corporate secretary;
 - ii. A sworn certificate of the corporate secretary of WINNING BIDDER confirming that all necessary corporate and other approvals and actions have been duly obtained and taken for the execution, delivery and performance by the WINNING BIDDER of this Agreement;
 - iii. The ECC issued for the Project;
 - iv. Copies of endorsement/approvals of the relevant municipal or other local government unit for the Sites and all the lands required for the Access Road;
 - v. A certificate certifying that the Ancillary Agreements to which the WINNING BIDDER is a party has been duly executed;
 - vi. Certificate of Compliance (COC) issued by Energy Regulatory Commission (ERC); and
 - vii. Building/Construction Permits.

- c. **Parties' Conditions Precedent.** The Parties jointly commit, with the WINNING BIDDER taking the lead, to secure the following:
- i. Approval of this Agreement, Tariff and the WINNING BIDDER's TCGR by the ERC;
 - ii. Preferred payment security agreement;
 - iii. Signing of enabling agreement with NPC/SPUG for the use of transmission line, if applicable; and
 - iv. Such other documents that the other Party may require for permitting process.

19.2 Certificate of Effective Date. Once all the conditions set forth in Clause 19.1 have been satisfied, then the Parties shall meet and jointly certify that the Effective Date has been achieved.

CLAUSE 20

NOTICES

20.1 Writing. Each communication to be made hereunder shall be made in writing and unless otherwise, may be sent through telex, facsimile, first class mail, and/or electronic mail or any other means of communication.

20.2 Addresses. Any communication or document to be made or delivered by the Parties to one another pursuant to this Agreement shall be made or delivered to the other Party at the following address, telex or facsimile:

For: **WINNING BIDDER**
Name:
Designation:

Address:
Telephone:

For: **ORIENTAL MINDORO
ELECTRIC COOPERATIVE, INC.**
Name: DIR. TEODORO M. DELA CRUZ, JR.
Designation: President, Board of Directors
Address: Brgy. Sta. Isabel, City of Calapan,
Province of Oriental Mindoro
Telephone: (043) 288-7801, 288-7802, 288-7803
Fax No.: (043) 288-7804

Or such other address, telex or facsimile number notified by that Party to the other Party by giving not less than fifteen (15) day notice of such change of address or number, and shall be deemed to have been made or delivered (i) in the case of any communication made by telefax with correct answerback, when dispatched, (ii) in the case of any communication made by mail, when left at that address or otherwise received by the addressee; and (iii) in the case of any communication made by facsimile, when a legible copy of such communication has been received.

**CLAUSE 21
NON-WAIVER**

None of the provisions of this Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of either Party to insist, in any one or more instances, upon strict performance of any provisions of this Agreement or to take advantage of any of the rights granted hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights in the future, but the same shall continue and remain in full force and effect.

CLAUSE 22
DISPUTE RESOLUTION

22.1 Regular Meetings. Throughout the term of this Agreement, authorized representatives of the ORMECO and WINNING BIDDER shall meet regularly at not less than once every two (2) months, or as the need arises, to discuss the progress of the Project and the operation of the Power Station to ensure that the arrangements between the Parties proceed on a mutually satisfactory basis.

22.2 Amicable Settlement. The Parties agree that in the event that there is any dispute, controversy, claim or difference between them arising out of or relating to this Agreement, or the breach thereof, or in the interpretation of any of the provisions hereof they shall meet together and endeavour to resolve such dispute by discussion between them, failing such resolution, the Chief Executives of the Parties shall meet to resolve such dispute or difference. If the Chief Executives are unable to resolve the dispute or difference within three (3) months from their initial meeting then Clause 22.3 shall apply.

22.3 Arbitration. Any dispute or difference arising out of this Agreement which cannot be settled amicably by the Parties pursuant to Clause 22.2 shall be referred to arbitration in accordance with Arbitration Rules provided for in the Revised Rules of Court of the Philippines. No Party shall take any dispute or claim subject to arbitration hereunder to any court except to enforce a final arbitration decision; provided, however, that any party shall have the right to institute any legal action for provisional relief pending final settlement by arbitration. Notwithstanding the foregoing the Parties may take any legal action for provisional relief to protect their rights and obligations set forth in Clause 15, 18.1 or 18.2, including seeking injunctive relief for the threatened breach of Clause 18.1 or 18.2.

CLAUSE 23

JURISDICTION

In case of any court action permitted by Clause 22.3, then the Parties submit to the non-exclusive jurisdiction of the proper courts of the City of Calapan, Province of Oriental Mindoro, Philippines for the hearing and determination of any action or proceeding arising out of or in connection with this Agreement.

CLAUSE 24

GOVERNING LAW

This Agreement shall be governed-in accordance with the laws of the Republic of the Philippines.

CLAUSE 25

MISCELLANEOUS

25.1 Entire Agreement. This Agreement, its Schedules and Annexes supersede any previous agreements, arrangements or representations between the Parties with respect to the Power Station, whether oral or written, in respect of the subject matter hereof and shall constitute the entire agreement between the Parties In relation thereto.

25.2 Severability. If any provision or part of this Agreement shall be declared invalid by competent courts, the other provisions or parts shall not thereby be affected or impaired. In the event any provision of this Agreement is declared invalid, the Parties shall meet in good faith to agree, to the fullest extent allowed by law, on a substitute provision that would most closely approximate the intention of the invalid provision, and amend this Agreement accordingly.

25.3 Remedies. Unless otherwise provided, the remedies under this

Agreement shall be cumulative and not exclusive, and the exercise of one remedy shall not exclude the exercise or shall not be construed as a waiver of the right to exercise the other remedies.

25.4 Amendments. No changes or modifications of this Agreement shall be in force unless otherwise provided in another written agreement by the Parties.

CLAUSE 26
FILING AND APPROVAL OF THE PSA AND THE WINNING BIDDER'S
UCME SUBSIDY AVAILMENT

ORMECO and WINNING BIDDER shall jointly file with the ERC an application for approval of the PSA and WINNING BIDDER's UCME Subsidy Availment following the award of the PSA to *WINNING BIDDER*.

Together with the Application, the ORMECO and WINNING BIDDER shall submit the copy of the signed PSA and other supporting contracts and agreements and such other documents that the ERC may require.

CLAUSE 27
FEEES AND ADJUSTMENTS

Consistent with Article II Section 3 of ERC Resolution No. 11, Series of 2005, as amended, ERC's Decision on the approval of the PSA and WINNING BIDDER's UCME Subsidy Availment will be based on its satisfaction:

- i. That the WINNING BIDDER's rate (including any adjustment mechanism for variable costs and inflation) set in the PSA, with reference to the BNE Rate, is fair and reasonable;
- ii. That the WINNING BIDDER supplies electricity in accordance with the applicable technical, financial and environmental standards, and that it undertakes to put in place a transparent process for

the procurement of its fuel requirements in order to ensure at all times the lowest cost therefore;

- iii. That WINNING BIDDER's compliance with the applicable standards is guaranteed by a reasonably-valued performance bond or other forms of financial guarantee; and
- iv. That the risks associated with the supply of electricity such as those pertaining to the economic conditions of the country, foreign exchange fluctuation, changes in world crude prices, and the like are efficiently allocated between the ORMECO and the WINNING BIDDER and the same are sufficiently addressed in this PSA and that the Parties are given some latitude under this PSA to negotiate the terms thereof, subject to the ERC's approval to reflect the prevailing conditions.

Parties agree on the following fees to reflect specific and verifiable fluctuations and inflation, fuel, and foreign exchange for the duration of the Agreement. In the event that the sources stated herein cease to provide indices or bases which are used in the calculation of the Total Electricity Fee, no unilateral nor automatic adjustment shall be performed by WINNING BIDDER unless an amendment reflecting such change is signed by both parties.

The Total Electricity Fees shall be computed, as follows:

1. The **Total Electricity Fees** to be paid by ORMECO for the supply of power by WINNING BIDDER shall be the sum of the Capital Recovery Fee, the Fixed O&M Fee, the Variable O&M Fee, Lube Oil Fee and the Fuel Fee, less the Prompt Payment Discount. The Billing Determinant is equal to the Monthly Contracted Energy as provided in Clause 7.

$$TEF_{month} = \sum_{Plant, Tech} EF_{month}^{PlantTech}$$

Where:

$$TEF_{month}^{PlantTech} = (CRF + FOMF + VOMF + FF + LF)_{month} - \text{Prompt Payment Discount}$$

2. **Capital Recovery Fee (CRF)** – The monthly Capital Recovery Fee to be paid by ORMECO shall be the product of Capital Recovery Rate and Energy Delivered by the NPP’s Power Plant in the Billing Month.

$$CRF_{month}^{PlantTech} = CR\ Rate \times Q_{month}^{PlantTech}$$

Where:

$Q_{month}^{PlantTech}$ - Energy Delivered by the NPP’s Power Plant in the Billing Month

$CR\ Rate$ – Applicable Price of Capital Recovery for the Billing Month

For CR Rate;

$$CR_{month} = CRL_{Base}^{Plant} (CUF_{month})$$

$$CUF_{month} = \frac{Q_{month}}{TDCC - (H_T - H_{TFM})}$$

Where:

$CRL_{Base}^{Plant} (CUF_{month})$ – the Bid Price of local fixed capacity recovery cost at a given CUF in the Billing Month

CUF_{month} – Capacity Utilization Factor in the Billing Month

H_T – Total number of hours of the Billing Month

H_{TFM} – Equivalent Hours of Outages due to Force Majeure for the Billing Month

3. **Fixed O&M Fee** – The monthly Fixed Operation and Maintenance Fee to be paid by ORMECO shall be computed in accordance with the following formula:

$$FOMF_{month}^{PlantTech} = FOMRate \times Q_{month}^{PlantTech}$$

For FOMRate;

$$FOMRate_{month} = k_{local}^{FOM} \times FOM_{local,base}^{Plant} (CUF_{month}) \times \frac{PHCPI_{month-1}}{PHCPI_{Oct2022}} + (1 - k_{local}^{FOM}) \times FOM_{local,base}^{Plant} (CUF_{month}) + k_{foreign}^{FOM} \times FOM_{foreign,base}^{Plant} (CUF_{month}) \times \frac{USCPI_{month-1}}{USCPI_{Oct2022}} \times \frac{FOREX_{month-1}}{FOREX_{Oct2022}} + (1 - k_{foreign}^{FOM}) \times FOM_{foreign,base}^{Plant} (CUF_{month}) \times \frac{FOREX_{month-1}}{FOREX_{Oct2022}}$$

Where:

$FOM_{local,base}^{Plant}(CUF_{month})$ - is the value of local Fixed O&M cost component at a given CUF in the Billing Month

$FOM_{foreign,base}^{Plant}(CUF_{month})$ - is the value of foreign Fixed O&M cost component at a given CUF in the Billing Month

$PHCPI_{month-1}$ - is the value of the Philippine Consumer Price Index on the month preceding the Billing Month

$PHCPI_{Oct2022}$ - is the base value of the Philippine Consumer Price Index (2018 = 100) of All Income Households for All Items for the reference month of October 2022, equal to 117.9, published by the Philippine Statistics Authority

$USCPI_{month-1}$ - is the value of the US Consumer Price Index on the month preceding the Billing Month

$USCPI_{Oct2022}$ - is the average of the US Consumer Price Index for All Urban Consumers (CPI-U) (1982-84 = 100, by expenditure category, for the reference month October 2022, equal to 298.012, published by the US Bureau of Labor Statistics

$FOREX_{month-1}$ - is the value of the Monthly Average Foreign Exchange between the Philippine Peso and US Dollar on the month preceding the Billing Month published by Bangko Sentral ng Pilipinas

$FOREX_{Oct2022}$ - is the value of the Monthly Average Foreign Exchange between the Philippine Peso and US Dollar on October 2022, equal to PhP per USD, as published by Bangko Sentral ng Pilipinas

k_{local}^{FOM} - is the indexation parameter in percent with an effective value between 0 (for no indexation) to 1 (for full indexation) for local Fixed O&M

$k_{foreign}^{FOM}$ - is the indexation parameter in percent with an effective value between 0 (for no indexation) to 1 (for full indexation) for foreign Fixed O&M

4. **Variable O&M Fee** - The monthly Variable Operation and Maintenance Fee to be paid by ORMECO shall be computed in

accordance with the following formula:

$$VOMF_{month}^{PlantTech} = VOMRate \times Q_{month}^{PlantTech}$$

For VOMR;

$$\begin{aligned} VOMR_{month} = & k_{local}^{VOM} \times VOM_{local,base}^{Plant}(CUF_{month}) \times \frac{PHCPI_{month-1}}{PHCPI_{Oct2022}} \\ & + (1 - k_{local}^{VOM}) \times VOM_{local,base}^{Plant}(CUF_{month}) \\ & + k_{foreign}^{VOM} \times VOM_{foreign,base}^{Plant}(CUF_{month}) \times \frac{USCPI_{month-1}}{USCPI_{Oct2022}} \times \frac{FOREX_{month-1}}{FOREX_{Oct2022}} \\ & + (1 - k_{foreign}^{VOM}) \times VOM_{foreign,base}^{Plant}(CUF_{month}) \times \frac{FOREX_{month-1}}{FOREX_{Oct2022}} \end{aligned}$$

Where:

$VOM_{local,base}^{Plant}(CUF_{month})$ - is the value of local variable Fixed O&M cost component at a given CUF in the Billing Month

$VOM_{foreign,base}^{Plant}(CUF_{month})$ - is the value of foreign variable Fixed O&M cost component at a given CUF in the Billing Month

k_{local}^{VOM} - is the indexation parameter in percent with an effective value between 0 (for no indexation) to 1 (for full indexation) for local Variable O&M

$k_{foreign}^{VOM}$ - is the indexation parameter in percent with an effective value between 0 (for no indexation) to 1 (for full indexation) for foreign Variable O&M

5. **Fuel Fee** - The monthly Fuel Fee to be paid by ORMECO shall be computed in accordance with the following formula:

$$FF_{month}^{PlantTech} = FC \times FuelRate \times Q_{month}^{PlantTech}$$

Fuel Fee is passed on charge based on actual market price i.e. Fuel Cost (FC) but limited to a fuel rate of 0.2725 Liter per kWh for diesel-fired power plants and 0.25 Liter per kWh for bunker C-fired power plant, and/or whichever is lower based on the actual consumption.

6. **Lube Oil Fee** - The monthly Lube Oil Fee to be paid by ORMECO shall be computed in accordance with the following formula:

$$LF_{month}^{Plant_{tech}} = LOC \times Lube\ Oil\ Rate \times Q_{month}^{Plant_{tech}}$$

Lube Oil is based on local market price i.e. Lube Oil Cost (LOC) but limited to a guaranteed lube oil consumption rate of 0.001Liter per kWh for diesel-fired power plants and 0.00168 Liter per kWh for Bunker C-fired power plants, and/or whichever is lower based on the actual consumption.

Should the ERC find that this WINNING BIDDER's rate is not fair and reasonable with reference to the established BNE Rate by ORMECO or that it is unreasonably higher than such benchmark, the ERC may determine the reasonable or allowable WINNING BIDDER's rate that maybe recovered by the WINNING BIDDER. And should it be acceptable to the WINNING BIDDER, then it shall be considered as the prevailing WINNING BIDDER's rate of this PSA. The ORMECO commits to present the justifications for the applied WINNING BIDDER's rate and/or propose the appropriate adjustments to it to make it acceptable to the ERC.

WINNING BIDDER is hereby allowed to recover the WINNING BIDDER rate as approved by the ERC.

CLAUSE 28

REPLACEMENT POWER

In any of the following cases, WINNING BIDDER shall source and provide replacement power:

- a. If WINNING BIDDER was not able to provide supply from the specific plant type with which a provisional or final generation rate has been granted;
- b. If WINNING BIDDER was only able to provide partial electricity supply requirement on the date of commencement of supply; and

- c. If WINNING BIDDER failed to provide the entire electricity supply requirement on the date of commencement of supply;
- d. If the Winning Bidder fails to perform its obligation to supply power to ORMECO, Inc. for sixty (60) days, ORMECO, Inc. may terminate the contract and shall require settlement of liquidated damages.
- e. If the Power Supplier cannot deliver Replacement Power, ORMECO shall charge the Power Supplier during the relevant period using the following formula:

$$Penalty\ Fee_{shortfall} = Energy\ Shortfall * (CRRate + FOMRate)$$

However, in the event of failure of WINNING BIDDER to provide the contracted capacity, ORMECO shall be allowed to source the replacement power from other IPPs at the expense of the WINNING BIDDER with corresponding payment of damages in favor to ORMECO, Inc.

CLAUSE 29

PENALTIES

In case of violation of any of the provisions of this Agreement, a Party may, after due notice, impose any of the following:

29.1 WINNING BIDDER's Grounds for Penalties

- 29.1.1 **Project Delay.** As set forth in Clause 3.1 of this Agreement, failure of the WINNING BIDDER to complete the Project or meet the Commercial Operation Date of the Project shall cause the forfeiture of the Performance Security. The Winning Bidder shall also be liable to pay 1% of the Non-Fuel Cost computed at the monthly Contracted Energy for every day of delay.

29.1.2 **Failure to deliver guaranteed dependable capacity and contracted energy.** As set forth in clause 7.1 of this agreement, failure of the WINNING BIDDER to deliver guaranteed dependable capacity and contracted energy shall pay corresponding damages as computed in the formula below:

$$\text{Average – to – Contracted – Capacity Ratio (AC ratio)} \\ = \frac{\text{hourly average capacity (in MW)}}{\text{guaranteed dependable capacity (in MW)}}$$

$$\text{Energy Deficiency (in kWh)} \\ = \text{AC Ratio} \\ * \text{monthly Contracted Energy (in kWh)}$$

$$\text{Damages (in PhP)} = \text{Energy Deficiency} * 2.3200$$

29.1.3 **Delay in the provision of Replacement Power.** Any delay in the provision of Replacement Power that incur loss in sales to ORMECO shall be paid for by the WINNING BIDDER. The determination of the loss shall be computed using the method stated in Clause 28.

29.1.4 **Overpayment made by ORMECO.** In the event that the resolution of a billing dispute constitutes any overpayment made by ORMECO, WINNING BIDDER shall be liable to pay ____% per annum on the amount of the overpayment from the date the overpayment was made until the overpayment is credited on the next invoice falling due after the dispute is resolved.

29.2 ORMECO's Grounds for Penalties

29.2.1 **Delay in payment.** For any late payments, ORMECO shall be liable to pay interest at the rate of ____% of the amount due per month of delay. For purposes of definition, late payment is a payment made 30 days after the issuance of the Billing Statement.

29.3 Automatic inclusion in the Billing Statement where a penalty is applicable

Any determinable penalty, as in the case stated in Clause 29.1.2 and Clause 29.1.3, during the Billing Period shall be included in the corresponding Billing Statement.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement on the date and at the place first above written.

**ORIENTAL MINDORO ELECTRIC
COOPERATIVE, INC.**

WINNING BIDDER

By:

By:

DIR. TEODORO M. DELA CRUZ. JR
President, Board of Directors

NAME
Director

Witnessed by:

ENGR. HUMPHREY A. DOLOR
General Manager

NAME
Authorized Representative,

DIR. ROBERTO R. MACALALAD
Vice President, BOD

DIR. DANILO A. ACEVEDA
Secretary, BOD

DIR. ANACLETO A. BACULO
Treasurer, BOD

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
PROVINCE OF ORIENTAL MINDORO S.S.

Name	Valid ID No.
Danilo A. Aceveda	Driver's License No. D05-81-005795
Ma. Cristina C. Young	

All known to me and to me known to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their own free and voluntary act and deed of the Corporation/Cooperative represented.

I further certify that the foregoing Agreement, consisting of _____ pages including this page of the Acknowledgement and the Schedules but excluding all Annexes, has been duly signed by the parties hereto and two instrument witnesses on each and every page hereof.

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

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of 2023.