

CONFORMED COPY

LOAN NUMBER 3746 PH

Counter-Put Option Agreement

(Leyte-Luzon Geothermal Project)

between

REPUBLIC OF THE PHILIPPINES

NATIONAL POWER CORPORATION

and

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Dated as of July 11, 1994

LOAN NUMBER 3746 PH

COUNTER-PUT OPTION AGREEMENT

Agreement, dated as of July 11, 1994 between REPUBLIC OF THE PHILIPPINES (the "Republic") and NATIONAL POWER CORPORATION (NPC) of the one part and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the "Bank") of the other part.

WHEREAS (A) pursuant to a Subscription Agreement (the "Subscription Agreement") dated July 1, 1994 among NPC, as issuer, the Republic, as guarantor as to the payment of interest (the "Republic Guarantee"), and Morgan Stanley & Co. International Limited and Salomon Brothers International Limited (the "Managers"), the Managers have agreed to subscribe and pay for the 9.75% Guaranteed Bonds due 2009 to be issued by NPC (the "Bonds") in an aggregate amount of US\$100,000,000, upon the terms and conditions contained in the Subscription Agreement;

(B) the proceeds of the Bonds are to be used to assist in financing the Sub-Project referred to in Section 1.02 (t) of this Agreement and spare parts required under Part A of the Project referred to in Section 1.02 (r) of this Agreement;

(C) at the request and with the agreement of the Republic and NPC, the Bank has agreed to provide a put option with respect to the Bonds, on terms and conditions set forth in the Option Deed referred to in Section 1.02 (p) of this Agreement (the "Put Option"); and

(D) in consideration of the Bank's agreeing to provide the Put Option, the

Republic and NPC have agreed to undertake the obligations towards the Bank as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

## ARTICLE I

### General Conditions; Definitions

Section 1.01. Sections 8.01 (b), 9.01, 9.02, 9.03, 9.04, 9.05, 9.06, 9.07 (a) and (c), 9.08, 9.09, 10.01, 10.03, 10.04, 11.01, 11.02, 11.03, 11.04, 12.01 and 12.02 of the General Conditions Applicable to the Loan and Guarantee Agreements of the Bank, dated January 1, 1985, are hereby incorporated and constitute an integral part of this Agreement, and the several terms defined in said General Conditions have the respective meanings assigned to them therein, provided, however, and except as the context may otherwise require, that references in said Sections to:

(a) the "Borrower" and the "Guarantor" shall be deemed to be made to "NPC" and "the Republic," respectively;

(b) the "Loan Agreement" and "Guarantee Agreement" shall be deemed to be made to "this Agreement;"

(c) the "proceeds of the Loan" shall be deemed to be made to the "proceeds of the Bonds;"

(d) principal, interest and/or charges on the "Loan" shall be deemed to be made to amounts payable to the Bank under this Agreement; and

(e) the "purposes of the Loan" shall be deemed to be made to the "objectives of the Sub-Project."

Section 1.02. Wherever used in this Agreement, unless otherwise defined below or unless the context otherwise requires, the several terms defined in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "BITS Grant" means the grant of 325 million Swedish kronor to provide partial financing for the Sub-Project, to be made by the Swedish Board for Investment and Technical Support to NPC;

(b) "Business Day" means a day on which commercial banks and foreign exchange markets are open for business in Washington, D.C. and New York City;

(c) "Closing Date" has the meaning set forth in the Subscription Agreement;

(d) "Counter-Put Exercise Period" means any day from and including the date on which notice of exercise of the Put Option is given to the Bank by the Option Trustee under the Option Deed to but excluding July 1, 2010;

(e) "Counter-Put Option" means the options granted pursuant to Section 2.01 (a) (i) hereof;

(f) "Counter-Put Option Price" means the aggregate principal amount of the Option Bonds;

(g) "Counter-Put Purchase Date" means the later of (i) the fifth Business Day after the Bank gives the Republic and/or NPC notice that it has received notice of exercise of the Put Option from the Option Trustee, and (ii) the date on which the Bank purchases the Option Bonds;

(h) "Eligible Expenditures" means expenditures for goods and services reasonably required for the Sub-Project and for spare parts under Part A of the Project as they are actually incurred and which have not been financed out of the proceeds of the BITS Grant or out of the proceeds of the IBRD Loan;

(i) "Fiscal Agency Agreement" has the meaning set forth in the Subscription

Agreement;

- (j) "Fiscal Agent" has the meaning set forth in the Fiscal Agency Agreement;
- (k) "General Conditions" means the General Conditions Applicable to Loan and Guarantee Agreements of the Bank, dated January 1, 1985;
- (l) "IBRD Loan" means the US\$113 million equivalent loan made by the Bank to NPC pursuant to the IBRD Loan Agreement;
- (m) "IBRD Loan Agreement" means the loan agreement between the Bank and NPC in respect of the Leyte-Luzon Geothermal Project (Loan No. 3746 PH);
- (n) "Maturity Date" means July 1, 2009;
- (o) "Option Bonds" means any Bonds which the Bank has purchased in accordance with the Option Deed;
- (p) "Option Deed" means the deed dated July 11, 1994 among NPC, the Republic, the Bank, the Option Trustee and the Registrar relating to the Bonds;
- (q) "Option Trustee" has the meaning set forth in the Option Deed;
- (r) "the Project" means the Project described in Schedule 2 of the IBRD Loan Agreement;
- (s) "Registrar" has the meaning set forth in the Option Deed;
- (t) "the Sub-Project" means Part A (1) of the Project; and
- (u) "Special Deposit Account" has the meaning set forth in Section 3.02 hereof.

## ARTICLE II

### Counter-Put Option

Section 2.01. (a) Without limitation or restriction upon any of its respective obligations under this Agreement, NPC and the Republic hereby (i) jointly and severally grant to the Bank the option to require of NPC and/or the Republic (in such proportions as the Bank deems fit) to purchase all of the Option Bonds at the Counter-Put Option Price, (ii) agree that the Bank may exercise the Counter-Put Option at any time during the Counter-Put Exercise Period by giving notice to NPC and/or the Republic, as the case may be, (iii) agree that the Counter-Put Option Price will be paid on the Counter-Put Purchase Date or as the Bank may otherwise direct, (iv) irrevocably authorize the Bank to comply with any demands and make any payments which may be due from or claimed or made upon the Bank under the Put Option, (v) undertake to punctually perform all of their respective obligations under the Bonds and the Republic Guarantee, (vi) agree that the Bank, having paid the Option Trustee the Option Price (as defined in the Option Deed), will have title to the Option Bonds and will have the ability to transfer such title to NPC and/or the Republic, as the case may be, whether or not the Bank is at the time registered as the holder of the Option Bonds, (vii) jointly and severally agree to indemnify the Bank on demand in respect of all actions, proceedings, liabilities, claims, losses, damages, costs and expenses suffered or incurred by the Bank in relation to or arising out of the Put Option or the Counter-Put Option, including those in relation to or arising out of the grant of the Put Option or the Counter-Put Option, the exercise of the Put Option or the Counter-Put Option, the purchase, holding or sale of Option Bonds by the Bank and the exercise of any rights or performance of any obligations by the Bank as holder of Option Bonds, and (viii) waive all defenses of whatever nature they may in future have against the Bank as purchaser or holder of the Option Bonds and agree that their obligations hereunder shall not be discharged except by performance and then only to the extent of such performance.

(b) NPC and the Republic jointly and severally agree that any payment required to be made by the Republic and/or NPC pursuant to the terms of this Agreement

shall be:

(i) paid in the currency paid by the Bank in respect of such amount, or if such payment shall have been made in a currency which the Bank shall have purchased with another currency for the purpose of such payment, in such other currency;

(ii) paid with interest at the rate per annum specified by the Bank in respect of such currency, which rate will be based on the Bank's prevailing borrowing cost in such currency plus the applicable margin over such cost, from the due date until such amount is paid to the Bank;

(iii) paid at such places as the Bank shall reasonably request;

(iv) made in such manner, and in currencies acquired in such manner, as shall be permitted under the laws applicable to the making of such payment and effecting the deposit of such currencies to the account of the Bank with a depository designated by the Bank for this purpose;

(v) paid without deduction for, and free from, any taxes levied by, or in the territory of, the Republic;

(vi) paid without any restrictions of any kind imposed by, or in the territory of, the Republic; and

(vii) applied first to pay all interest and other charges due to the Bank and second, after such interest and other charges are paid, to pay all principal then due.

For the purposes of Section 2.01 (b) (ii), "due date" shall mean the date on which the corresponding liability, claim, loss, damage, cost or expense was suffered or incurred by the Bank, which, in the case of the principal amount of the Option Bonds, shall be the date on which the Bank purchased the Option Bonds.

(c) The Bank agrees that, if (but only if) it is at the time registered as the holder of the Option Bonds and is able to obtain a certificate or certificates evidencing its title to the Option Bonds, it will deliver such certificate or certificates, together with an instrument or instruments of transfer in respect thereof, to NPC and/or the Republic, as the case may be, against payment in full of the Counter-Put Option Price pursuant to Section 2.01 (a) (iii) above.

(d) The Bank agrees that any interest paid to it by NPC or the Republic pursuant to its rights as holder of the Option Bonds shall be deducted from any interest payable to the Bank by NPC or the Republic pursuant to Section 2.01 (b) (ii) above and that any principal paid to it by NPC pursuant to its rights as holder of the Option Bonds shall be deducted from any amounts payable to the Bank by NPC or the Republic pursuant to Section 2.01 (a) (i) above.

(e) In consideration of the Bank's providing the Put Option, NPC shall pay to the Bank a put option fee of one million, two hundred and seven thousand, three hundred and fifty-eight Dollars (US\$1,207,358) on the Closing Date. The Republic hereby unconditionally guarantees, as primary obligor and not as surety merely, the punctual payment by NPC of the said put option fee.

Section 2.02. The Bank shall not be obliged before taking steps to enforce any rights conferred on it by this Agreement or exercising any of the rights, powers and remedies conferred on it by this Agreement, the Bonds, the Option Deed or by law (i) to take action or obtain judgment in any court against any other person or entity, or (ii) to enforce or seek to enforce any other rights it may have against the Republic or NPC or its rights against any other person or entity.

Section 2.03. Without limitation or restriction upon any of its other obligations under this Agreement, the Republic agrees that any amount due to the Bank by the Republic and NPC jointly and severally hereunder shall be deemed, for purposes of Sections 6.02 (b) and 7.01 (d) of the General Conditions, an amount due in

consequence of a financial obligation extended by the Bank to a third party with the agreement of the Republic.

### ARTICLE III

#### Other Covenants

Section 3.01. The proceeds of the Bonds shall be used as follows:

(a) Except as provided in Section 3.01 (b) below, the proceeds of the Bonds shall be used for the purposes of financing Eligible Expenditures as set forth in this Article III.

(b) On the Closing Date, NPC shall use two million, three hundred and ninety-four thousand, eight hundred and fifty-eight Dollars (US\$2,394,858) from the proceeds of the Bonds to pay the amounts payable to the Managers, the Fiscal Agent, the Registrar, the Exchange Agents, the Transfer Agents, the Paying Agents and the Option Trustee as specified in the Subscription Agreement, the Fiscal Agency Agreement and the Option Deed, and the put option fee specified in Section 2.01 (e) of this Agreement.

Section 3.02. NPC shall on the Closing Date deposit the balance, after application of Section 3.01 (b) above, of the proceeds of the Bonds in a special deposit account (the "Special Deposit Account") to be opened and maintained by NPC exclusively for the purposes of meeting Eligible Expenditures. The Special Deposit Account shall be opened in the Bangko Sentral ng Pilipinas or another financial institution acceptable to the Bank, on terms and conditions satisfactory to the Bank, including appropriate protection against set-off, seizure or attachment. NPC agrees that such proceeds shall be paid out of the Special Deposit Account only to meet Eligible Expenditures.

Section 3.03. The goods and services required for the Sub-Project and to be financed out of the proceeds of the Bonds shall be procured with due regard to considerations of economy and efficiency in accordance with procedures satisfactory to the Bank.

Section 3.04. NPC shall:

(a) (i) maintain records and separate accounts adequate to identify the expenditures financed out of the proceeds of the Bonds, and (ii) furnish to the Bank all such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Bonds and the goods and services financed out of such proceeds including, without limitation, all such documents and other evidence as shall be required to show that amounts disbursed from the Special Deposit Account were disbursed for Eligible Expenditures; and

(b) (i) have the records and accounts referred to in paragraph (a) of this Section and those for the Special Deposit Account for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank, (ii) furnish to the Bank as soon as available, but in any case not later than six (6) months after the end of each such year: (A) certified copies of said accounts for such year as so audited; and (B) the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested, and (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof as the Bank shall from time to time reasonably request.

Section 3.05. (a) If at any time the Bank determines that any sum paid out of the Special Deposit Account was paid out in respect of any expenditure which was not an Eligible Expenditure, or was not justified by the evidence furnished pursuant to Section 3.04 of this Agreement, NPC shall, promptly following notice from the Bank, deposit in the Special Deposit Account an amount equal to such sum.

(b) If at any time the Bank determines that any sum outstanding in the Special Deposit Account will not be required to cover further payments for Eligible Expenditures, NPC may, upon notice to that effect from the Bank, use such funds for such other expenditures under the Project as the Bank may determine to be eligible for

this purpose.

Section 3.06. NPC shall take such actions, satisfactory to the Bank, as shall be necessary to protect itself against the risk of loss resulting from changes in the rates of exchange between the currencies used in the financing of the Sub-Project and spare parts required under Part A of the Project out of the proceeds of the Bonds.

Section 3.07. NPC and the Republic shall obtain the prior written consent of the Bank before agreeing to any change (whether by way of amendment, waiver or otherwise) in the terms and conditions of the Bonds, the Republic Guarantee or the Fiscal Agency Agreement.

#### ARTICLE IV

##### Remedies of the Bank

Section 4.01. If NPC or the Republic fails to make any payment due to the Bank under this Agreement or to perform any of its obligations under this Agreement, and such failure is continuing, the Bank may, by notice to NPC or the Republic, as the case may be, suspend in whole or in part the right of NPC or the Republic, as the case may be, to make withdrawals under: (a) the IBRD Loan Agreement, and (b) any other loan, credit or grant agreement between the Republic and the Bank or NPC and the Bank, as the case may be.

#### ARTICLE V

##### Miscellaneous Provisions

Section 5.01. (a) The Secretary of Finance of the Republic of the Philippines is hereby designated as representative of the Republic for the purposes of Section 11.03 of the General Conditions.

(b) The President of NPC is hereby designated as representative of NPC for the purposes of Section 11.03 of the General Conditions.

Section 5.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Republic:

Secretary of Finance  
Department of Finance  
Manila  
Republic of the Philippines

Cable Address:

SECFIN  
Manila

Telex:

40268 CB-CONF

For NPC:

National Power Corporation  
Quezon Avenue  
East Triangle, Diliman  
Quezon City  
Republic of the Philippines

Cable Address:

NAPOCOR

Telex:

742-40120 (PM)

For the Bank:

International Bank for  
Reconstruction and Development  
1818 H Street, N.W.

Washington, D.C. 20433  
United States of America

Cable Address:

INTBAFRAD  
Washington, D.C.

Telex:

197688 (TRT),  
248423 (RCA),  
64145 (WUI) or  
82987 (FTCC)

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names as of the day and year first above written.

REPUBLIC OF THE PHILIPPINES

By /s/ Romeo L. Bernardo

Authorized Representative

NATIONAL POWER CORPORATION

By /s/ Francisco L. Viray

Authorized Representative

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ Nina B. Shapiro

Authorized Representative

