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| **GREEN ENERGY OPTION PROGRAM SUPPLY AGREEMENT**  TERM SHEET | |
| ***End User*** page1image5778608 | (Name and address) |
| ***Renewable Energy Supplier*** | (Name and address) |
| The following Terms and Conditions of Service apply to the supply of electric power by a Renewable Energy Supplier (the “ReES”) and End User (the “End User”), both under the Green Energy Option Program (GEOP). | |

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| 1. **CONTRACT PERIOD**    1. **EFFECTIVE DATE and COMMENCEMENT DATE**. This Agreement shall be valid and in effect from the date of its signing (the “Effective Date”) until the date of its termination unless otherwise extended pursuant to the terms hereof. The obligation of the ReES to supply electric power to the END USER shall commence on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Commencement Date”).    2. **CONDITIONS PRECEDENT**. The obligation of the ReES to supply electric power to the End User shall begin on the Commencement Date \_\_\_\_\_\_\_\_\_\_\_\_ and End On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Provided, that the following conditions precedent have been satisfied:       1. The supply of electric power by the ReES to the End User has been permitted by applicable laws, rules and regulations, or by competent government authorities, and by the distribution utility (DU) where End User’s facility is located;       2. On the Distribution and Wheeling Service Agreement (DWSA):          1. The execution of a new DWSA between the ReES and the DU where the End User’s Facility is located; or          2. The inclusion of the End User’s facility among the customers of the ReES covered by a previous DWSA executed by the ReES with the DU;       3. Receipt by the ReES from the End User of:          1. the Security Deposit;          2. the Bill Deposit for Distribution and Wheeling Service (DWS) Charges; |

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| 1. **GUARANTEED DEMAND AND ENERGY**   **2.1 SUPPLY.** ReES shall supply the electric power requirements of the END USER’s facility, as follows:  The electric power supplied to the End User by the ReES as a result of this Agreement, shall be generated solely from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and shall be based on the metered quantities of the End User’s facility.  **2.2. NO PREMIUMS ON REPLACEMENT POWER**. Replacement power for the End User’s facility shall be the sole responsibility of the ReES. Replacement power is herein defined as the power to be delivered to the END USER in the event that the original power source of the ReES is unavailable for whatever reason. The supply by the ReES of Replacement Power for the END USER’s facility shall be at no additional cost to the End User. The Generation Fees to be paid by the End User shall continue to be the fees stipulated hereunder.   1. **CONTRACT PRICE**   3.1 In consideration of the electric power supplied by the ReES to the End User under this Agreement, the End User shall pay the Generation Fees with the following itemized and unbundled all-in fees and charges:  and in accordance with the formula specified in Annex “A”.  3.2 It is understood that power and electricity supplied under this contract shall be exempted from the payment of Universal Charge provided for under Sec. 34 of the Republic Act (RA) No. 9136 as reiterated in RA No. 9513.   1. **BILLING AND PAYMENT**   **4.1 ELECTRIC POWER BILL**   * + 1. ReES shall deliver to the END USER on or before the fifth (5th) day of each calendar month, an advance copy of the billing details through electronic mail.     2. The hard copy of the electric power bill shall be delivered to the END USER on or before the eighth (8th) calendar day of each month. Should the dates mentioned herein, fall on a non-business day, the advance or hard copy of the electric power bill, shall be delivered to the END USER on the immediately succeeding business day.   **4.2 PAYMENT OF ELECTRIC POWER BILL.** The electric power bill shall be paid without the necessity of demand, not later than twelve noon (12:00 nn), one (1) business day. Should this date fall on a non-business day, the electric power bill shall be paid not later than twelve noon (12:00nn) of the immediately succeeding business day. Any amount not paid on the day the bill becomes due shall be automatically charged and drawn from the Security Deposit posted by the END USER. Should the amount drawn from the Security Deposit be insufficient to fully pay the electric power bill, the remaining unpaid amount shall bear interest at the rate stipulated in Section 5.03 below.  **4.3 INTEREST**. Any amount remaining unpaid shall bear interest at the rate equal to two percent (2%) per month.  **4.4 FORM OF PAYMENT**. Payment may be in the form of cash, checks or through electronic funds transfer (EFT). If the check/s issued by the END USER is dishonored for whatever reason, all subsequent payments will have to be in the form of cash, manager’s/cashier’s check or EFT, without prejudice to the REES enforcing its legal remedies by reason of the dishonor of such check/s.  **4.5 DISPUTED ELECTRIC BILLS.** Electric power bills shall be disputed in writing by the END USER within thirty (30) business days from the date of its receipt and shall be resolved by the REES within thirty (30) business days from receipt of notice of dispute.  Failure of the END USER to dispute the electric power bill within the period abovestated constitutes as a waiver by the END USER of its right to subsequently dispute such electric power bill.  If the ReES fails to act on the claim of the END USER within the period abovestated, the dispute shall be deemed resolved in favor of the END USER.  Should the parties fail to resolve the dispute within the period abovestated, the matter may be referred by either party to arbitration pursuant to Section \_\_\_\_ below.  Disputed electric power bills shall be paid by the END USER in full, without deductions or offsets. Should the ReES recognize the END USER’s claim, it shall cause an adjustment of the subject electric power bill by issuing a credit/debit memo.  Disputed electric power bills shall not be an excuse for the END USER to delay payment of succeeding electric power bills or to unilaterally deduct any amount therefrom.  Notwithstanding any such disputed Electric Power Bill, the END USER shall continue to pay in full, under protest, such amounts specified in the disputed Electric Power Bill without deductions or any offset and such disputed Electric Power Bill shall not be an excuse or ground for the END USER to delay payment of succeeding bills or to unilaterally deduct any amount therefrom.   1. **SECURITY DEPOSIT AND BILL DEPOSIT FOR DWS CHARGES**   **5.1 SECURITY DEPOSIT FOR GENERATION FEES**   1. The END USER shall post, not later than fifteen (15) business days from the Effective Date, an amount hereinafter referred to as the Security Deposit, to cover Generation Fees, equivalent to the electricity bill for one (1) month which shall be computed based on the average electricity bill of the END USER’s facility for the last twelve (12) billing periods prior to the Effective Date. Within thirty (30) calendar days before each anniversary date of this Agreement, the END USER shall, upon notice by the ReES, pay the new Security Deposit to reflect the most recent twelve (12) billing periods. 2. The Security Deposit shall be in the form of cash or an irrevocable standby letter of credit issued by a reputable universal banking institution. 3. In the event the Security Deposit is fully or partially utilized, the END USER shall, within a period of ten (10) business days from notice by the ReES, replenish the same. In the event of the failure of the END USER to replenish the Security Deposit within the 10-day period provided above, the ReES shall, upon prior written notice to the END USER, either (a) refuse or discontinue the supply of electricity to the END USER; or (b) continue the supply of electricity to the END USER only to the extent of the unutilized portion of the Security Deposit. 4. Within thirty (30) business days from the termination of this Agreement, the Security Deposit, if any, shall be returned to the END USER after deducting therefrom any amounts owed by the END USER to the ReES by virtue of this Agreement.   **5.2 WAIVER OF SECURITY DEPOSIT** The Security Deposit required to be posted by the END USER, may be waived in writing by the ReES and provided that the END USER submit the following: (i) Invoices issued by its current Supplier for the immediately preceding twelve (12) months prior to the effectivity of this Agreement; (ii) Official Receipts for the above invoices showing the END USER’s prompt payment of its electricity bills; (iii) Latest Audited Financial Statement (“AFS”) and AFS for the past three (3) years.  Should the END USER be delayed once in its payments of its electric power bills, the ReES shall require the immediate posting of the Security Deposit in accordance with the computation stipulated in Section \_\_\_\_ within ten (10) calendar days from receipt of notice from the ReES.   1. **SERVICE RELIABILITY**   The supply of electric power shall be made available continuously except for interruption due to:  (a) Force Majeure;  (b) transmission, sub-transmission, distribution failure in the area/grid that will prevent the ReES from delivering electricity to the END USER;  (c) termination, disruption or interruption of the Distribution Wheeling Service due to maintenance, repairs and replacement by the DU of its facilities to improve its services or for any reason not attributable to the fault of the ReES; or  (d) other causes analogous to the foregoing. |
| 1. **OTHER PROVISIONS:**    1. **CHANGE OF CIRCUMSTANCES**   **7.1.1 SCOPE**. The occurrence of any event which will materially and substantially affect the scope, manner or nature of the performance of obligations under this Agreement; the adoption, promulgation or repeal of any applicable law or the interpretation thereof; non-renewal or non-issuance of a material permit required in the performance of this Agreement or imposition of any new additional term or condition in connection with the issuance or renewal of such material permit (each a “Change in Circumstance”), that, in each case:  a. the Party affected by the Change in Circumstance (the “Affected Party”) had no knowledge, or could not reasonably be expected to have knowledge, that the Change in Circumstance was likely to occur; and  b.the Affected Party is able to establish its inability to perform its obligations or its financial interest in this Agreement has been materially, substantially and adversely affected or prejudiced by the Change in Circumstance, and  c.the Change in Circumstance did not arise out of a cause attributable to the Affected Party or failure to conduct business with reasonable prudence and diligence or enforce contracts with third persons;  **7.1.2 PROCEDURE IN THE EVENT OF A CHANGE IN CIRCUMSTANCE**. The parties agree to meet within fourteen (14) calendar days from notice by the Affected Party, to resolve such difficulties with a view of putting the Affected Party in a “no better, no worse” position. Should the parties fail to reach an agreement and the Change in Circumstance remains unresolved for thirty (30) calendar days from such notice, the Affected Party shall have the right to terminate this Agreement. The Affected Party shall notify the other party, at least sixty (60) calendar days prior to termination, of its intent to terminate the Agreement.  **7.1.3 IMPOSSIBILITY OF PERFORMANCE**. In the event that this Contract cannot be performed, without fault of either Party, on account of any law, court decision or order, restraining order, ordinance, order or regulation passed, adopted or promulgated by any agency of the government, the Party concerned shall be excused for its failure to perform its obligations under this Agreement. **REPRESENTATION AND WARRANTIES**  * 1. The ReES hereby warrants to the END USER that: (a) it is a person, partnership or corporation existing under Philippine laws and the ReES, together with the authorized signatories indicated below, possesses the corporate authority to execute and perform all the obligations under this Agreement; (b) it is not prohibited or blacklisted by any governmental authority to provide electric power to the END USER; (c) it is free to enter into this Agreement and is not prevented by any government authority from providing electric power to the END USER;   2. The END USER hereby warrants to the ReES that: (a) it is a person, partnership or a corporation existing under Philippine laws and the ReES, together with the authorized signatories indicated below, possesses the corporate authority to execute and perform the obligations under this Contract; (b) it has secured or cause to be secured during the period of this Contract, with assistance of the REES, all permits, licenses or approvals needed to perform its obligations under this Contract; (c) it is free to enter this Contract; and (d) in all dealings, ReES is protected against fraud, bad faith, malicious intent, corruption, bribery or any unlawful practice attributable to the END USER.  **ASSIGNMENT** This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns. No assignment hereof by either party shall be valid without the written consent of the other party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement or any interest herein without the other party’s consent to any financing institution or consortium of financing institutions, as part of security arrangements for project financing transactions involving such party (whether as borrower or project sponsor) under the same terms and conditions provided in this Agreement, upon prior written notice to the other party. Notwithstanding such assignment, the party making the assignment shall continue to be liable for all its obligations under this Agreement which it assumed prior to such assignment. **TERMINATION** **10.1 EVENTS OF DEFAULT**. The following shall constitute an Event of Default:  10.1.1 Material breach or violation by a party of any covenant or obligation under this Agreement, unless such breach is cured within thirty (30) calendar days after receipt of notice by the other party;  10.1.2 Failure of a party to pay any amounts due and payable under this Agreement and such amounts remains unpaid after the lapse of seven (7) calendar days from receipt of notice of default and demand to pay from the other party;  10.1.3. A party takes any action, step or legal proceeding for its winding-up, dissolution, bankruptcy or insolvency, corporate rehabilitation, administration or re-organization or such similar proceedings; appointment of a liquidator, receiver, administrator, conservator, custodian, trustee or similar officer of any or all of its revenues or assets; or such party makes a general assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due;  **10.2 TERMINATION FEE**. The defaulting party shall, within thirty (30) calendar days from the date of termination, without the necessity of demand or judicial action, pay the other party an amount (the “Termination Fee”) computed on the basis of the schedule provided for under Annex “\_\_” hereof.  This Termination Fee shall be in addition to such other amounts that may be owed by the defaulting party under this Agreement.  **10.3 REMEDIES**. Upon the occurrence of an Event of Default:  If the defaulting party is the END USER, the ReES may, at its own option:   * + 1. Discontinue the supply of electric power to the END USER after seven (7) calendar days from the END USER’s receipt of written notice of the demand to settle its arrears, and the latter failed to do so. During such discontinuance of service, any unpaid amounts shall continue to be payable with the applicable interest accruing thereupon; the REES shall restore the supply of electric power upon the curing of the Event of Default;     2. Immediately discontinue the supply of electric power, upon the failure of the END USER to settle its arrears within seven (7) calendar days’ written notice or demand to pay as stipulated herein. During such discontinuance of service, any unpaid amounts shall continue to be payable with the applicable interest accruing thereupon, the REES shall restore the supply of electric power upon the curing of the Event of Default; or     3. Terminate this Agreement without necessity of court action, if the END USER fails to cure the Event of Default within thirty (30) calendar days from written notice to the END USER.   If the defaulting party is the ReES, the END USER shall be entitled to terminate this Contract without the necessity of court action, if the ReES fails to cure the Event of Default within a period of thirty (30) calendar day from receipt of notice from the END USER.   * 1. **FORTUITOUS EVENT/FORCE MAJEURE**   The party so affected by the fortuitous event or *force majeure* shall notify the other party in writing, within five (5) days of the occurrence of any fortuitous event or *force majeure*. As used herein, the terms fortuitous event or *force majeure* shall mean events attributable to the causes specified hereunder including but not limited to:   * + 1. Natural causes, such as earthquakes, typhoons, storms, floods, epidemic and other similar phenomena affecting the project to the extent that would make it impossible or impracticable for the affected party to carry out, in whole or in part, its obligations under this Agreement; or     2. Human causes, including but not limited to the following, such as war, armed invasion, revolution, insurrection, blockades, riots, civil disturbances, strikes or other analogous or similar causes, including the occurrence of a national banking moratorium to the extent that would make it impossible or impracticable for the affected party to carry out in whole or in part, its obligations under this Agreement.   Upon the giving of such notice, the affected party shall be relieved from liability for its failure to carry out its obligations due to the occurrence of any event of fortuitous event or *force majeure*.  If such fortuitous event or *force majeure* continues for a period of six (6) months after notice thereof has been given to the other party as provided above, either party may terminate this Agreement not earlier than thirty (30) days from receipt of such notice.  If a Force Majeure occurs, the Contract Period shall, upon mutual written agreement of the parties, be extended by a period equal to that during which the effect of Force Majeure applies.   1. **MISCELLANEOUS PROVISIONS.**    1. **INDEMNITY.** Each party hereby expressly agrees and binds itself to hold and keep the other party free and harmless at all times from any and all claims, demands, suits or actions made by any person, for damages to properties or injuries to persons arising out of, or caused by, such party’s own fault or negligence or non-compliance with this Agreement. Likewise, a party shall not be liable for the damages or injuries suffered by the other party due to the latter’s fault or negligence, or non-compliance with this Agreement.    2. **CONFIDENTIALITY**. This Agreement and all information and documents (whether technical, financial or otherwise) obtained by either party from the other, 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 concerned party. This clause shall not apply to disclosures as may be required by a judicial decree or order, or as required by applicable law; disclosures to lenders, professional advisors, employees or agents provided the party making such disclosure shall bind such lenders, professional advisors, employees or agents to similar confidentiality agreements. This obligation shall survive for one (1) year following termination or expiration of the Agreement.    3. **SETTLEMENT OF DISPUTES AND ARBITRATION.** Any dispute arising out of the implementation or interpretation of any provisions hereof, the parties, with their authorized representatives, shall resolve such disputes within thirty (30) calendar days from notice by either party and their joint decision shall be binding upon the parties. If the parties are unable to resolve the dispute, all disputes shall be settled by arbitration in accordance with the Alternative Dispute Resolution Act of 2004 and/or the Philippine Dispute Resolution Center Inc. Arbitration Rules.   The place of arbitration shall be in\_\_\_\_\_\_\_\_\_\_\_-, or such place determined by the arbitral tribunal. The arbitration shall be in the English language and there shall be a panel of three (3) arbitrators with each party appointing one (1) each and the two (2) arbitrators so appointed shall select the third arbitrator who shall be the chair of the arbitral panel. The exclusive venue all court actions or request for interim measures, should these become necessary, shall be in Makati City.   * 1. **COURT LITIGATION**. Any dispute arising in connection with the Contract that the Parties failed to settle amicably and are non-arbitrable shall be brought exclusively in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.   2. **ATTORNEY’S FEES AND LITIGATION EXPENSES**. In the event of arbitration or litigation, the prevailing party shall be entitled to attorney’s fees in an amount of twenty percent (20%) of the value of the award of the arbitrator, administrative agency, or court of law, but in no case shall such amount be less than One Hundred Thousand Pesos (PhP 100,000.00)**.**   3. **NOTICES**. Any notice, demand or request by the Parties to this Contract shall be deemed properly served if transmitted by registered mail with return card, postage prepaid, or sent through facsimile or electronic mail, with electronic confirmation or receipt, or delivered personally to the signatories or their duly authorized representatives at their indicated addresses.   4. **ENTIRE AGREEMENT, AMENDMENTS AND SEVERABILITY.** This Agreement together with its annexes, as applicable, constitute the entire agreement of the parties and shall be governed and construed in accordance with the laws of the Philippines without regard to conflict of laws rules. No changes, modifications of waiver of the terms and conditions shall be binding unless in writing and signed by the Parties’ authorized representatives. If any provision or part of this Agreement is declared invalid by a court of competent jurisdiction, other provisions shall not be affected or impaired. |

# **ANNEX A**

**1. FEES** - In computing the fees to be paid by the End User to the ReES under the Green Energy Option, the following formula will be used:

Electricity Supply

+ DWS

Total

***\*Dual billing at the option of the customer***

# **2. DWS CHARGES**

# The DWS Charges, including all applicable taxes such as local franchise tax for the provision of DWS to END USER’s Facility under the DWSA, billed by the DU to the ReES shall be for the account of the END USER.

# ReES undertakes to dispute any error, anomaly and/or discrepancy in any of the DUs billing within the applicable period under the DWSA. Notwithstanding any such disputed DU billing, the END USER shall continue to pay the corresponding DWS Charges billed by ReES without deductions or any offset and such disputed DU billing shall not be an excuse or ground for the END USER to delay payment of succeeding bills or to unilaterally deduct any amount therefrom.

# **LOCAL BUSINESS TAX**. To the extent that the DWS, WESM and other charges paid by the END USER to ReES form part of the gross receipts of ReES subject to local business tax and increases the amount of local business tax that would have otherwise been payable by REES, the amount of local business tax payable by ReES in respect of such DWS, WESM and Other Charges shall be for the account of END USER. ReES shall include the bill for the local business taxes to be shouldered by END USER based on the DWS and WESM Charges in the Electric Power Bill.

# Parties shall coordinate with each other and make appropriate arrangements for the payment of DWS Charges, WESM and Other Charges should some other payment mechanism or arrangement be later authorized by Applicable Law.

# **VALUE ADDED TAX**. Value-Added tax (VAT) on the Generation Fees, DWS Charges, WESM and Other Charges shall be included in the Electric Power Bill and shall be paid by the END USER in accordance with Applicable.

1. **. Termination Fees**

The following formula shall be used in computing termination fees:

1. **OTHER PRINCIPLES**
2. Pursuant to Sec. 9 of Republic Act No. 9513, the END USER must be informed, by way of its monthly electric bill, how much of its monthly energy consumption and generation charge is provided by RE facilities.
3. Pursuant to Sec. 17 of RA No. 9513, the power and electricity generated though the retail electricity supplier (the ReES in this case) for the generator’s own consumption, shall be exempt from payment of universal charge as provided in Sec. 4 of RA 9136.