

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
San Miguel Avenue, Pasig City



RESOLUTION NO. 18, SERIES OF 2014

**A RESOLUTION APPROVING THE TEMPLATES FOR  
THE RENEWABLE ENERGY PAYMENT AGREEMENT  
(REPA) AND THE RENEWABLE ENERGY SUPPLY  
AGREEMENT (RESA)**

**WHEREAS**, it is the policy of the state to accelerate the exploration and development of renewable energy resources, increase its utilization and establish the necessary infrastructure and mechanisms;

**WHEREAS**, to achieve these objectives, the Energy Regulatory Commission (ERC) is mandated under Republic Act No. 9153 (R.A. 9513) to formulate and promulgate the feed-in tariff system rules, in consultation with the National Renewable Energy Board (NREB);

**WHEREAS**, in compliance with such mandate, the ERC promulgated Resolution No. 16, Series of 2010 adopting the Feed-in Tariff Rules (FIT Rules) on 12 July 2010 which was amended on 19 November 2012, through Resolution No. 15, Series of 2012;

**WHEREAS**, Section 2.6 of the FIT Rules provides that NREB shall establish more detailed guidelines for the collection and disbursement of the FIT-Allowance (FIT-All) Fund, for ERC's approval;

**WHEREAS**, Section 2.9 of the FIT Rules likewise provides that the ERC may consider the issuance of additional guidelines governing the dispatch and settlement process of the FIT mechanism;

**WHEREAS**, Section 6.e of the FIT Rules and Section 2.2 of the Guidelines on the Collection of the Feed-in Tariff Allowance and the Disbursement of the FIT-All Fund (FIT-All Guidelines) provide for an agreement between the FIT-All Fund Administrator and the Eligible RE Plant for the payment of the FIT, referred to as the Renewable Energy Payment Agreement (REPA), the template of which is to be prescribed by the ERC after due proceedings;

**WHEREAS**, any REPA executed by the FIT-All Fund Administrator and the Eligible RE Plant that conforms to the template shall be deemed approved;

**WHEREAS**, Section 1.1.1.B of the FIT-All Guidelines provides that Eligible RE Plants operating where the Wholesale Electricity Spot Market (WESM) is not operational, whether directly connected to the grid or connected to a distribution system, must enter into a Renewable Energy Supply Agreement (RESA) with the host Distribution Utility (DU);

**WHEREAS**, the RESA template shall be as prescribed by the ERC and shall stipulate that the host DU shall accept and pay for the Actual Cost Recovery Revenue of the concerned Eligible RE Plant;

**WHEREAS**, the NREB endorsed its proposed FIT-All Guidelines, together with the REPA and RESA templates on 16 April 2012, which the ERC approved for posting in the website for comments on 28 August 2012;

**WHEREAS**, the following public consultations were conducted: 20 September 2012 at the ERC Main Office, Metro Manila; 28 February 2013 at the ERC Main Office, Metro Manila; 12 March 2013 at ERC Visayas Field Office, Cebu City; and 15 March 2013 at the ERC Mindanao Field Office, Davao City;

**WHEREAS**, when the ERC promulgated the FIT-All Guidelines on 16 December 2013 without the approval of the corresponding REPA and RESA templates where; another public consultation was conducted on 05 August 2014 to discuss the contents of said templates;

**WHEREAS**, after careful consideration of the comments submitted by interested parties, the ERC deems it appropriate to adopt and implement the REPA and RESA templates;

**NOW THEREFORE**, the ERC, after thorough and due deliberation, hereby **RESOLVES**, as it is hereby **RESOLVED**, to **APPROVE** and **ADOPT**, the “**Renewable Energy Payment Agreement (REPA) Template**,” hereto attached as **Annex “A,”** and the “**Renewable Energy Supply Agreement (RESA) Template**,” hereto attached as **Annex “B,”** both made integral parts hereof.

This Resolution shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the country.

Let copies of this Resolution be furnished the University of the Philippines Law Center – Office of the National Administrative Register (UPLC-ONAR) and all parties concerned.

Pasig City, 03 November 2014.

  
**ZENAIDA G. CRUZ-DUCUT**

Chairperson



**ALFREDO J. NON**  
Commissioner

(On Official Travel)

**GLORIA VICTORIA C. YAP-TARUC**  
Commissioner



**JOSEFINA PATRICIA A. MAGPALE-ASIRIT**  
Commissioner

**RENEWABLE ENERGY PAYMENT AGREEMENT (REPA)**  
**(PRO-FORMA)**

This RENEWABLE ENERGY PAYMENT AGREEMENT ("Agreement") is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_, by and among:

[●FIT-ALLOWANCE ADMINISTRATOR], with its principal office at [●], and represented herein by its duly authorized [●Position], [●Name of Representative] ("ADMINISTRATOR");

- and -

[●NAME OF RE DEVELOPER], a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at [●], and represented herein by its duly authorized [●Position], [●Name of Representative] ("RE DEVELOPER");

(Each of the Administrator and the RE Developer may be referred to individually as a "Party", and collectively as the "Parties").

**WITNESSETH:** That -

**WHEREAS**, in order to accelerate the development of emerging renewable energy resources, Republic Act No. 9513, otherwise known as the "RE Act", mandates the establishment of the Feed-in Tariff System whereby the electricity produced from wind, solar, ocean, run-of-river hydropower and biomass are to be paid a fixed tariff, in accordance with, among others, the Feed-in Tariff Rules ("FIT Rules") and the Guidelines for the Collection of the Feed-in Tariff Allowance and Disbursement of the FIT-All Fund ("FIT-All Guidelines") adopted and promulgated by the Energy Regulatory Commission ("ERC") through ERC Resolution No. 16, Series of 2010, as amended by ERC Resolution No. 15, Series of 2012, and ERC Resolution No. 24, Series of 2013, respectively;

**WHEREAS**, the RE Developer is engaged in the exploration, development and utilization of [●] energy through its [●name of project], pursuant to its Renewable Energy [Service/ Operating] Contract (RESC/ REOC) No. [●] dated [●] for the development of a \_\_\_MW power generating plant using [type of] resources;

**WHEREAS**, the ERC issued FIT Certificate of Compliance ("FIT COC") No. \_\_\_\_\_ for the Eligible RE Plant of the RE Developer, thereby authorizing it to participate in the FIT System;

**WHEREAS**, under the FIT Rules and pertinent ERC Resolution setting the FIT Rate, the Eligible RE Plant is entitled to a FIT Rate of [●Rate in Words (P●/ kWh)], as may be adjusted from time to time for inflation and foreign exchange by the ERC in accordance with the FIT Rules;

**WHEREAS**, pursuant to the FIT Rules and the FIT-All Guidelines, the National Transmission Corporation (Transco), as Administrator shall, among others, administer the implementation of the FIT System, manage the FIT-All Fund from which the RE Developer shall be paid, and perform the function of settlement agent for the payment of the Actual FIT Revenue to the Eligible RE Plant based on its Actual RE Generation;

**WHEREAS**, the Parties hereby enter into this Agreement to set out their respective rights and obligations relating to the payment of the Actual FIT Revenue to the RE Developer for the electricity generated by the Eligible RE Plant.

**NOW, THEREFORE**, in view of the foregoing premises, the Parties hereby agree as follows:

**Section 1.0. Definitions and Interpretation**

- 1.1. **Definitions.** The definitions of terms used in this Agreement are set out in Schedule A of this Agreement. Capitalized terms used but not otherwise defined herein shall have the same meaning ascribed thereto in the FIT Rules and the FIT-All Guidelines.

- 1.2. **Interpretation.** In this Agreement, except where the context requires otherwise:
- i. Words indicating one gender include all genders;
  - ii. Words indicating the singular also include the plural and words indicating the plural also include the singular;
  - iii. Provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
  - iv. "Written" or "in writing" means hand-written, type-written or printed and resulting in a permanent record;
  - v. "Include" shall mean include, but not limited to;
  - vi. Marginal words and other headings shall not be taken into consideration in the interpretation of this Agreement;
  - vii. References to Sections and clauses are to Sections and clauses in this Agreement;
  - viii. References to "day", "month" or "year" shall mean calendar day, calendar month or calendar year, respectively;
  - ix. A reference to any legislation includes all delegated legislation made pursuant to, and amendments, consolidations, replacements or re-enactments of such legislation;
  - x. A reference to a Governmental Instrumentality, other than a party to this Agreement (including an institute, association or authority) whether statutory or not, (a) which ceases to exist; or (b) whose powers or functions are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers or functions; and
  - xi. Where the day on or by which any activity or thing is to be done pursuant to the Agreement is not a Business Day, that activity or thing must be done on or by the next succeeding Business Day.
- 1.3. **Supplemental Interpretation.** The FIT-All Guidelines shall form an integral part of this Agreement. The FIT Rules shall be applied in a suppletory manner to interpret the provisions of this Agreement. In case of any conflict between this Agreement and the FIT Rules and/ or the FIT-All Guidelines, the FIT Rules and the FIT-All Guidelines shall prevail.

**Section 2.0. Scope**

Subject to and in accordance with the FIT Rules and the FIT-All Guidelines, this Agreement shall govern the rights and obligations of the Parties in respect of the full payment of all Actual RE Generation of the Eligible RE Plant, at a price equivalent to the applicable FIT Rate, for the entire duration of its FIT Eligibility Period as set-out in the FIT COC.

**Section 3.0. Effectivity/ Term of Agreement**

- 3.1. This Agreement shall become effective on the date the documents enumerated in this Section 3.1 are submitted by the RE Developer to, and certified complete by, the Administrator (the "Effective Date"), as follows:
- a. Copies of the latest Articles of Incorporation and By-laws of the RE Developer, together with the SEC Certificate of Filing of the same, duly certified by the RE Developer's corporate secretary;
  - b. Certified true copy of the Certificate of Registration and RESC/REOC of the RE Developer from the DOE under RA No. 9513 for the Eligible RE Plant, certified by a duly authorized officer of the RE Developer;
  - c. Certified true copy of the FIT COC issued by the ERC for the Eligible RE Plant, certified by a duly authorized officer of the RE Developer;
  - d. Certified True Copy of the Metering Services Agreement executed between the Eligible RE Plant and the Metering Services Provider (MSP);
  - e. Certified True Copy of the Connection Agreement between the [NGCP/ DU where embedded] and the Eligible RE Plant;

- f. Certified True Copy of the Transmission Service Agreement between NGCP and the Eligible RE Plant, if applicable;
  - g. Certified True Copy of the Board of Investments (BOI) Certificate of Registration of the Eligible RE Plant;
  - h. Certified True Copy of the Bureau of Internal Revenue (BIR) Certificate of Registration of the Eligible RE Plant;
  - i. Certified True Copy of the Market Participation Agreement between the Philippine Electricity Market Corporation (PEMC) and the RE Developer for the latter's Eligible RE Plant / *Renewable Energy Supply Agreement between the Host DU and the RE Developer*;
  - j. Nomination of the receiving bank of the Eligible RE Plant for the FIT Revenue from the Administrator; and
  - k. Copies of the corporate approval authorizing the RE Developer to execute, deliver and perform its obligations hereunder, and authorizing its signatories hereto to execute and deliver this Agreement and all other documents incidental hereto, duly certified by the RE Developer's corporate secretary.
- 3.2. In the event that there are any updates, amendments, extensions or revisions of the foregoing documents, the RE Developer shall submit to the Administrator, together with the FIT Statement of Account, and on the Billing Period immediately following receipt of such documents, true copies of such documents duly certified by the authorized representative of the RE Developer.
- 3.3. The Term of this Agreement shall be from the Effective Date until the Payment Date for the last Billing Period occurring within the FIT Eligibility Period of the Eligible RE Plant.

**Section 4.o. FIT Payable to RE Developer**

- 4.1. The amount payable by the Administrator to the RE Developer for each Billing Period shall be the Actual FIT Revenue, for all Billing Periods occurring within the FIT Eligibility Period, subject to section 4.5 to 4.7 hereof.
- 4.2. The FIT Rate, as may be adjusted by the ERC in accordance with Section 2.10 of the FIT Rules, shall be applied to, and multiplied by, the Actual RE Generation of the Eligible RE Plant to determine the Actual FIT Revenue to be paid for each Billing Period during the entire Term of this Agreement.
- 4.3. The Record of Meter Reading shall indicate the amount of Actual RE Generation as measured at the Metering Point for each Billing Period, and shall be attached to the FIT Statement of Account.
- 4.4. The Actual FIT Revenue shall be paid by the Administrator to the RE Developer on every Payment Date out of the FIT-All Fund, in immediately available and cleared funds in Philippine currency.
- 4.5. All Actual RE Generation from the Commercial Operations Date until the Effective Date shall be metered and the Actual FIT Differential for such Actual RE Generation shall be billed to, and collected by the RE Developer from, the Administrator only after the occurrence of the Effective Date. The Actual FIT Differential for such period shall be billed to the Administrator over the number of months which lapsed from COD until the Effective Date, i.e., if two (2) months lapsed between COD and the Effective Date, the Actual FIT Differential shall be billed and collected over the first two Billing Months during the Term.
- 4.6. Prior to the Effective Date, the RE Developer shall bill and collect the ACRR for all Actual RE Generation for the period from COD until the Effective Date directly from the [PEMC/ Host DU]. Thereafter, the ACRR shall be remitted to the Administrator by the [PEMC/ Host DU] and paid to the RE Developer as part of the Actual FIT Revenue, and direct payments of ACRR from the [PEMC/ Host DU] shall not be allowed.

- 4.7. In the event that the total ACRR paid to the RE Developer for Actual RE Generation from COD until the Effective Date exceeds the Actual FIT Revenue payable for such Actual Generation, the RE Developer shall account for and remit such excess payment to the Administrator within thirty (30) days of the Effective Date. Thereafter, if the excess payment has not been received by the Administrator after the lapse of thirty (30) days from Effective Date, the Administrator shall, with prior written notice to the RE Developer, be authorized to offset the full amount of such excess payment from the succeeding payment of Actual FIT Revenue.

**Section 5.o. Metering and Measurement of Actual RE Generation**

Metering and measurement of the Eligible RE Plant's Actual RE Generation shall be in accordance with Section 3.4 of the FIT-All Guidelines and the Metering Services Agreement. The Metering Services Provider and the RE Developer shall utilize the Record of Meter Reading, which shall set out the Actual RE Generation for each Billing Period. In the event that PEMC utilizes an Adjusted Metered Quantity as basis for the Actual RE Generation in any Billing Period, the Administrator shall be authorized to use the same Adjusted Metered Quantity as the Actual RE Generation for the same Billing Period.

**Section 6.o. Requirements for Payment**

- 6.1. The Administrator shall pay the Actual FIT Revenue for all metered generation of the Eligible RE Plant twenty (20) years from Commercial Operations Date unless otherwise indicated in the FIT Certificate of Compliance, subject to the provisions of Section 1.4 of the FIT Rules. In order to collect all such payments of the Actual FIT Revenue, the RE Developer shall, in accordance with Section 3.3.2 of the FIT-All Guidelines, submit the following to the Administrator each Billing Period:
- a. FIT Statement of Account, stating the Actual FIT Revenue due to the Eligible RE Plant for the relevant Billing Period;
  - b. Actual FIT Differential Invoice, stating the amount of the Actual FIT Differential due to the Eligible RE Plant from the Administrator for the relevant Billing Period, as an attachment to the FIT Statement of Account;
  - c. Actual Cost Recovery Revenue (ACRR) Invoice, in the form of the [Summary of PEMC Proceeds/ *Billing Invoice to Host DU*] stating the amount of ACRR due from the [PEMC/ *Host DU*] to the Eligible RE Plant for the relevant Billing Period, as an attachment to the FIT Statement of Account; and
  - d. Record of Meter Reading, reflecting the Actual RE Generation for the relevant Billing Period, as an attachment to the FIT Statement of Account.
- 6.2. To assist the Administrator in verifying the Actual FIT Revenue due and to expedite the payment application process, the Eligible RE Plant shall submit the FIT Statement of Account and all documents stated in the preceding Section 6.1 to the Administrator, either by personal delivery of the original or by electronic copy/facsimile/electronic mail, not later than the fifteenth (15<sup>th</sup>) calendar day of the month following the close of the Billing Period. The original of the FIT Statement of Account and supporting documents shall be delivered by the RE Developer to the Administrator no later than three (3) days before the Payment Date, otherwise release of payment may be delayed.

**Section 7.o Payment by the Administrator**

- 7.1. The FIT Statement of Account in the amount of the Actual FIT Revenue shall be due and payable from the FIT-All Fund to the Eligible RE Plant on the fifth (5<sup>th</sup>) calendar day of the second (2<sup>nd</sup>) month following the close of the Billing Period for which the FIT Statement of Account is being submitted (the "Payment Date"), provided that the FIT Statement of Account has been received by the Administrator not later than the fifteenth (15<sup>th</sup>) calendar day of the month following the close of the Billing Period, and the original thereof has been received by the Administrator as provided in Section 6.2.

- 7.2. Notwithstanding that the Eligible RE Plant submits the FIT Statement of Account earlier, the Payment Date shall remain the same.
- 7.3. The Trustee shall execute payment to the Eligible RE Plant via any method utilized by the Philippine banking system in immediately available and cleared funds on Payment Date, from the FIT-All Fund to the nominated receiving bank of the Eligible RE Plant under Section 3.1 of this Agreement.
- 7.4. Before the close of the Business Day when the payment was made, the Eligible RE Plant shall issue a receipt to (i) the Administrator acknowledging receipt of actual payment of the Actual FIT Differential and to (ii) the [PEMC / Host DU] acknowledging actual receipt of the Actual Cost Recovery Revenue.
- 7.5. In the event that the Administrator fails to pay any amount stated in the FIT Statement of Account upon the lapse of one Billing Period after the relevant Payment Date the Administrator shall pay to the RE Developer such unpaid amount plus interest thereon, calculated from the Payment Date to the day such amount is actually paid, at the Late Payment Interest Rate.
- 7.6. For purposes of making payment to the RE Developer, the Administrator shall pay the Actual FIT Revenue to the Eligible RE Plant from the FIT- All Fund, and shall at no time be liable to pay any amounts due under this Agreement from its own funds or any other funds provided to it, other than in accordance with the FIT-All Guidelines. Subject to Section 7.5 above, the Administrator shall only be required to pay the Actual FIT Revenue and any applicable interest thereon at such time as such amounts are made available to it from the FIT-All Fund by the Trustee in accordance with the trust agreement.
- 7.7. Payments to the Eligible RE Plant shall be made by Administrator without deduction or offset, except as authorized below:
- (i) Remittance fees incurred by the Administrator for delivery of the Actual FIT Revenue, to the Eligible RE Plant, if any, under Section 8.8;
  - (ii) Excess payments of ACRR over Actual FIT for Actual RE Generation during the period from COD up to Effective Date, if any, under Section 4.7;
  - (iii) Any sum of money acknowledged by the RE Developer to be due and demandable in favor of the Administrator which has not been paid, notwithstanding the lapse of thirty (30) days from written demand by the Administrator; and
  - (iv) Any applicable market fees, withholding taxes, and similar expenses relating to the payment of the Actual FIT Revenue to the RE Developer, if any.

The maximum amount that the Administrator may withhold each Billing Month shall be equivalent to the Actual FIT Differential payable to the RE Developer for such Billing Month.

The official receipt to be issued by the RE Developer to the Administrator shall include any amounts deducted by way of authorized offset.

**Section 8.o. Obligations of the RE Developer.** For the entire term of this Agreement, the RE Developer shall:

- 8.1. Generate all Actual RE Generation, to be measured at the Metering Point, exclusively from the Eligible RE Plant, as and when available, in accordance with the type of RE resource for which the RE Developer has been issued its RESC/REOC and FIT COC, and deliver the same to the Metering Point; *provided* that, nothing in this Agreement shall be construed as the RE Developer guaranteeing to fulfil any nominated capacity or provide any generation quantity to the [PEMC / Host DU] for any hourly interval or any other period.
- 8.2. Not later than thirty (30) days from execution of this Agreement, and thereafter, not later than the 30th day of May of each year, submit to the Administrator its forecasted Annual RE Generation (showing monthly levels) for the succeeding year, in accordance with Section 1.4.4.1 of the FIT-All Guidelines, and information on any events that it foresees could affect the



forecast; *provided* that, nothing in this Agreement shall be construed as the RE Developer guaranteeing to deliver the forecasted Annual RE Generation or any portion thereof.

- 8.3. Render a FIT Statement of Account to the Administrator for the payment of the Actual FIT Revenue, supported by the documents enumerated in Section 6.1 of this Agreement, in accordance with Section 3.3.2 of the FIT-All Guidelines.
- 8.4. Comply with the terms and conditions of the FIT COC and perform all acts necessary to ensure that the same is not terminated, revoked or shall not expire at any time during and throughout the Term of this Agreement.
- 8.5. Issue official receipts corresponding to the payment of (i) the Actual FIT Differential by the Administrator; and (ii) the ACRR by the [PEMC/ Host DU] to the extent of the actual remittance of the ACRR to the FIT-All Fund.
- 8.6. Refrain or desist from receiving or claiming ACRR Proceeds from the [PEMC/ Host DU] during the Term of this Agreement.
- 8.7. Continue pursuing payment of the ACRR by the [PEMC/ Host DU] in accordance with Section 2.2.7 of the FIT-All Guidelines, notwithstanding payment in full by the Administrator of the Actual FIT Revenue to the Eligible RE Plant and in case of partial remittance of ACRR to the Fund, and provide the Administrator with regular updates on the status of the same. The RE Developer shall cause the [PEMC/ Host DU] to remit any and all recoveries of any delayed payments of ACRR which have already been covered by payments of the Actual FIT Revenue directly to the Administrator.
- 8.8. Pay or shoulder any and all additional fees incurred by the Administrator for the payment of the Actual FIT Revenue, in the event that the RE Developer opts to nominate another bank other than the Trustee bank as the receiving bank.
- 8.9. Allow the Administrator access to the facilities, records and books of the Eligible RE Plant, with prior written notice and during business hours.

**Section 9.0 Obligations of the Administrator.** For the entire term of this Agreement, the Administrator shall:

- 9.1. Validate for completeness the Eligible RE Plant's FIT Statement of Account, and cause the full and timely settlement and discharge of the Actual FIT Revenue due to the Eligible RE Plant from the FIT-All Fund on each Payment Date, in accordance with the FIT-All Guidelines. Such settlement and discharge of the Actual FIT Revenue shall be without set-off or deduction, except as provided in Section 7.7 of this Agreement.
- 9.2. Comply with its obligations under the trust agreement and under the FIT-All Guidelines, including but not limited to, causing the Trustee to make full and timely payment and settlement of the Actual FIT Revenue due to the RE Developer from the FIT-All Fund on each Payment Date.
- 9.3. Cause the timely and full collection of the FIT-All and Actual Cost Recovery Revenue from the relevant Collection Agents to the extent authorized by the FIT-All Guidelines.
- 9.4. Monitor compliance by the Collection Agents of the billing, collection and remittance of the FIT-All and Actual Cost Recovery Revenue, as may be applicable, to the FIT-All Fund. The Administrator shall report any partial, delayed or non-collection or non-remittance of the Actual Cost Recovery Revenue, or the FIT-All, or both, to the ERC and recommend and enforce sanctions therefor as may be authorized by the ERC and/or the FIT-All Guidelines.
- 9.5. In accordance with Section 7.5, pay applicable interest, at the Late Payment Interest Rate, on any amount due in the FIT Statement of Account which has not been paid by the Administrator on the relevant Payment Date, calculated from the relevant Payment Date to the day such amount is actually paid.

**Section 10.0. Representations and Warranties.**

Each Party hereby represents and warrants (solely for itself and not on behalf of the other Party) to the other Party, as of the date of this Agreement that:

- (a) It is an entity duly organized and existing under Philippine Law, with all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.
- (b) This Agreement has been duly executed and delivered by the individual(s) signing on its behalf, and such individual has been duly authorized to sign, execute and deliver the same.
- (c) Its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part or has obtained all material and necessary governmental consents, licenses, approvals and authorizations, and do not, and will not: (i) violate any Law, rule, judgment, order or regulation of any Governmental Instrumentality thereof applicable to it, (ii) violate its organizational documents, or (iii) constitute a breach of any agreement to which it is a party or bound (or by which its property is bound).
- (d) This Agreement is a legal and binding obligation enforceable against it in accordance with its terms.
- (e) On the part of the RE Developer alone, its FIT COC is valid and subsisting and has not been revoked.
- (f) In procuring and maintaining this Agreement and performing its rights and obligations hereunder, neither it nor its employees, agents and representatives have violated Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, in any material respect.
- (g) It undertakes to comply in all material respects with all applicable Laws, decrees, orders, rules, regulations, and resolutions promulgated by relevant and applicable Governmental Instrumentalities and which are necessary to perform its obligations under this Agreement.

#### **Section 11.0. Events of Default/ Pre-Termination**

- 11.1. **Administrator Default.** The failure of the Administrator to comply with any of its payment obligations which are due under this Agreement, and the same is not remedied within thirty (30) days from receipt of notice of such failure from the RE Developer, and such failure to remedy shall occur three (3) times in any period of twelve (12) successive Billing Months, shall constitute an event of default by the Administrator under this Agreement (each an "Administrator Default"). The payment in full of all outstanding amounts due, together with the applicable late payment interest under Section 7.5, shall be the remedy for any such failure of the Administrator to comply with its payment obligations under this Agreement.

If the Administrator receives a Notice of Default, and within fifteen (15) days from receipt thereof the Administrator makes full payment of any outstanding amounts, together with the applicable late payment interest under Section 7.5, the Notice of Default shall be withdrawn by the RE Developer.

- 11.2. **RE Developer Default.** Each of the following events shall constitute an event of default by the RE Developer under this Agreement (each, an "RE Developer Default"):
- (i) The FIT Certificate of Compliance of the Eligible RE Plant shall have been revoked or terminated by the ERC;
  - (ii) The Eligible RE Plant generates electricity from a source other than the RE resource for which it has been issued a FIT COC, and claims payment for such electricity under this Agreement; or
  - (iii) The RE Developer receives any payments of ACRR from the [PEMC/ Host DU] during the Term of this Agreement.

There are no cure periods for the RE Developer Defaults.

- 11.3. **Remedies.** Upon the occurrence of any of the events that shall, with the lapse of time provided herein to remedy such event, constitute an Event of Default, the Party affected by the breach (the "Non-Defaulting Party") shall send the Party causing the breach (the "Defaulting Party") a notice of default ("Notice of Default"), and upon the lapse of the period, if any, to cure the said event, the Non-Defaulting Party shall have the right to:
- (i) Suspend or pre-terminate this Agreement upon thirty (30) days prior written notice to the Defaulting Party and its DU where it is embedded, if applicable;
  - (ii) Apply for redress with the ERC for collection of any unpaid amounts; and
  - (iii) Pursue any other remedy provided under Section 2.2.8 of the FIT-All Guidelines, this Agreement, or now or hereafter existing at law.
- 11.4. If the Defaulting Party is the RE Developer, the Administrator shall, from the date of receipt of the Notice of Default by the RE Developer and the DU where it is embedded, if applicable, have the right to suspend any future payments to the RE Developer, excluding any Actual FIT Revenue which have become due and demandable, and the Administrator shall be authorized to pre-terminate this Agreement, notwithstanding that the RE Developer has made a full refund of any amounts received under Section 11.2 (iii).
- 11.5. In the event of pre-termination of this Agreement due to an Administrator Default, the RE Developer shall have the right to contract with other parties, including the DU wherein it is located, to sell the Actual RE Generation of the Eligible RE Plant. Notwithstanding such pre-termination, the Eligible RE Plant and [PEMC/ Host DU] shall continue to sell and purchase, respectively, the Actual RE Generation at the applicable cost recovery rate as provided in Section 2.2 of the FIT-All Guidelines, until such time that the RE Developer shall be able to contract for the RE Generation of the Plant.
- 11.6. Upon pre-termination of the Agreement due to an Event of Default, the Administrator's obligations shall thereupon cease, and the Administrator shall pay on the date of termination all valid unpaid and outstanding FIT Statements of Account payable up to and including the date of termination, subject to the payment by the RE Developer of any amounts which may be due to the FIT-All Fund.
- 11.7. The pre-termination of this Agreement shall be without prejudice to the imposition of other penalties on the Defaulting Party as may be provided for by Law, the FIT Rules, and the FIT-All Guidelines.

#### **Section 12.0. Dispute Resolution**

- 12.1. The Parties shall, in the first instance, attempt in good faith to mutually discuss any issue or concern arising out of or in connection with this Agreement. Any such issue or concern not resolved by such discussion between the Parties (a "Dispute") shall be sought to be resolved by amicable settlement between their authorized representatives for a period of thirty (30) calendar days from receipt by a party of a written notice from the other party setting out the particulars of a Dispute, and the amounts claimed thereunder ("Notice of Dispute"). The notice shall also designate the authorized representative of the Party. The period of settlement of a particular dispute may be extended upon the written agreement of the parties, such total period for amicable settlement not to exceed ninety (90) days, inclusive of the initial thirty (30) day period.
- 12.2. If after such period of amicable settlement, the Dispute remains unsettled, then any Party may submit the Dispute exclusively to arbitration before the Philippine Dispute Resolution Center, Inc. ("PDRCI") in accordance with the PDRCI Arbitration Rules in force at the time of submission. The arbitral decision shall be final and binding on the Parties and shall be the exclusive remedy among the Parties regarding the Dispute, and shall be enforced by judgment of a court having competent jurisdiction over the same.
- 12.3. During the pendency of any Dispute or proceeding in arbitration, the Parties shall continue to perform their respective obligations hereunder.

- 12.4. In the event the arbitral decision involves the return or payment of a sum of money to a Party, the Party found liable shall, in addition to the return/payment of such amount, be charged interest at the Late Payment Interest Rate, calculated from the relevant Payment Date to the day such amount is actually paid.
- 12.5. Neither Party shall take any dispute or claim subject to arbitration hereunder to any court except to enforce a final arbitration decision which the losing party refuses to comply with; *provided*, however, that either Party may take any legal action for provisional relief to protect its rights and obligations.

**13.0. Validity, Binding Effect and Assignability**

- 13.1. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; *provided*, however, that neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by any Party without thirty (30) days' prior written notice delivered to the other Party. A certified true copy of the instrument evidencing such assignment shall be provided with the notice, for the guidance of the other Party.
- 13.2. The rights and obligations of the Parties shall be governed by the terms and conditions of this Agreement, the relevant provisions of the FIT Rules and FIT-All Guidelines, and other related issuances, orders, rules and regulations as promulgated by the relevant Governmental Instrumentality, as well as all amendments and revisions thereof, as if originally written herein; *provided*, however, that such amendments and revisions shall not impair any rights which have vested under this Agreement prior to such amendments and revisions.

**14.0 General Provisions**

- 14.1. *Entire Agreement.* Save to the extent of the application of the FIT Rules, the FIT-All Guidelines, other applicable Laws (including any relevant decision of the ERC), this Agreement supersedes all previous agreements, understanding, practices and negotiations of the Parties and embodies the entire understanding among the Parties in respect of its subject matter.
- 14.2. *No Waiver.* None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing and signed by its duly authorized representative. The failure of either Party to insist, in any one or more instances, upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.
- 14.3. *Amendment.* No amendment of this Agreement shall be binding upon the Parties unless executed in writing, in a document expressly providing for the effectivity of such amendment, duly signed by the authorized representatives of the Parties, and approved by the ERC. If the amendment consists only of changes to accurately reflect the FIT COC or a change in the RE Developer resulting from an assignment of the Eligible RE Plant already approved by competent authority, no approval of the ERC shall be necessary,
- 14.4. *Notices.* All communications and notices provided for hereunder shall be in writing and shall be delivered addressed as follows:

To the Administrator: THE NATIONAL TRANSMISSION CORPORATION  
[•]

Attention: (Name)  
(Position)

To the RE Developer: COMPANY NAME  
(Address)

Attention: (Name)  
(Position)

Any Party may change its address for purposes hereof by serving written notice to the other Parties.

- 14.5. *Severability.* In case one or more of the provisions contained in this Agreement shall be declared invalid, illegal or unenforceable in any respect by competent authority, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Furthermore, upon the request of any Party, the Parties shall add, in lieu of such invalid, illegal or unenforceable provision(s), such provision(s) as similar in terms as may be possible and valid, legal and enforceable, to achieve as close a possible what the Parties intended.
- 14.6. *No Partnership or Joint Venture.* Nothing in this Agreement shall be construed to create an association, trust, partnership, joint venture, agency, or impose a trust or partnership duty, obligation, or liability on or with regard to either Party, or to create any duty, standard of care, or liability to any person or entity not a Party hereto.
- 14.7. *Change in Law.* The Parties shall perform their obligations under this Agreement in accordance with all applicable Laws. In case of any amendment, modification or change in such Law, the Parties shall continue to perform their respective obligations under this Agreement unless made expressly unlawful or impossible by such amendment, modification or change.
- 14.8. *Further Acts and Assurances.* Each Party agrees, in good faith, to execute and deliver all such instruments and documents, and to do and perform all such acts and things, as the other may reasonably require to consummate, evidence or confirm the agreements contained herein in the manner contemplated by this Agreement.
- 14.9. *Governing Law.* This Agreement shall be governed by and construed in accordance with the Laws of the Republic of the Philippines.

IN WITNESS WHEREOF, the Parties have caused their respective authorized representatives to execute this Agreement on the date and place first above written.

|  |                       |
|--|-----------------------|
| <b>NATIONAL TRANSMISSION CORPORATION</b> | <b>(Company Name)</b> |
| <b>Administrator</b>                     | <b>RE Developer</b>   |
| <b>By:</b>                               | <b>By:</b>            |
| (NAME)                                   | (NAME)                |
| (Position)                               | (Position)            |

Witnessed by:

\_\_\_\_\_  
(NAME)  
(Position)

\_\_\_\_\_  
(NAME)  
(Position)

**Definition of Terms**  
**Schedule A**

I. TERMS DEFINED UNDER THE FIT-ALL GUIDELINES

Actual RE Generation  
Actual Cost Recovery Revenue (ACRR)  
Actual Cost Recovery Revenue Invoice (ACRR Invoice)  
Actual FIT Differential Invoice  
Actual FIT Revenue  
Administrator (TransCo)  
Billing Period  
Business Day  
Collection Agents  
Distribution Utility (DU)  
Energy Regulatory Commission (ERC)  
FIT-All  
FIT-All Fund  
FIT-All Guidelines  
FIT Rules  
FIT Statement of Account  
FIT System  
Host DU  
Metering Point  
Metering Services Provider  
NGCP  
PEMC  
RE Law  
Record of Meter Reading  
Revenue Meter  
Trustee  
WESM

II. TERMS DEFINED UNDER THIS AGREEMENT

“Administrator Default” has the meaning ascribed thereto in Section 11.1.

“Agreement” means this Renewable Energy Payment Agreement, including all annexes, supplements, amendments, and schedules hereto.

“Annual RE Generation” has the meaning ascribed thereto in Section 8.2.

“Certificate of Registration” means the Certificate issued by the DOE pursuant to Section 26 of the RE Law and its Implementing Rules and Regulations, evidencing registration as an RE Developer under the RE Law.

“Connection Agreement” means the agreement between the [NGCP/ Host DU] and the Eligible RE Plant for the connection of the latter to the [Grid/ Distribution System] of the Host DU.

“Commercial Operations Date” or “COD” as used in this Agreement, means (i) the Commercial Operation Date of a new Eligible RE Plant which started commercial operations after the start of the FIT System as stated in the FIT COC or (ii) otherwise, the date stated in the FIT COC which establishes the date when the Eligible RE Plant becomes entitled to the FIT.

“Defaulting Party” shall have the meaning ascribed thereto in Section 11.3.

“Dispute” shall have the meaning ascribed thereto in Section 12.1.

“Effective Date” has the meaning ascribed thereto in Section 3.1.

“Eligible RE Plant” as used in this Agreement, means the [●name of project] power plant of the RE Developer, located in \_\_\_\_\_ which utilizes [●] energy, and covered by the FIT COC.

"FIT Certificate of Compliance" or "FIT COC", as used in this Agreement, has the meaning ascribed thereto in the 3<sup>rd</sup> Whereas clause of this Agreement.

"FIT Eligibility Period" means the period during which the Eligible RE Plant is entitled to bill and collect the relevant FIT Rate from the FIT Administrator, which period shall commence from Commercial Operations Date, as defined in this Agreement, until the date that is twenty (20) years from COD or such other date stated in the FIT COC.

"FIT Rate" means the prevailing feed-in tariff of [●Rate in Words (P●)] Php / kWh approved by the ERC for [●] renewable energy used by the Eligible RE Plant, as the same may be adjusted by the ERC from time to time for inflation and foreign exchange, applicable to and payable to the Eligible RE Plant for every kilowatt-hour of Actual RE Generation delivered by the Eligible RE Plant and measured at the Metering Point.

"Governmental Instrumentality" means the government of the Philippines and any department, political subdivision, agency, instrumentality, regulatory authority, corporation or commission, legislative, judicial or administrative body, whether national, provincial or local, having jurisdiction over the matter(s) in question.

"Law" means all applicable laws, statutes, rules, codes, ordinances, regulations, resolutions, orders, decrees, licenses, permits, approvals, agreements of any Governmental Instrumentality, including, interpretations of any of the foregoing by a Government Instrumentality, and the judgments, decrees, injunctions, writs, orders or similar action of any court, arbitrator, or other judicial or quasi-judicial tribunal or agency.

"Late Payment Interest Rate" means the penalty interest rate of the prevailing 91-day treasury bill rate per annum plus 300 basis points, as provided under Section 2.2.8 of the FIT All Guidelines.

"Market Participation Agreement" means the agreement between the PEMC and the Eligible RE Plant governing the participation of the latter in the WESM.

"Metering Services Agreement" means the agreement dated [●] between the NGCP and the Eligible RE Plant, which governs the use of a WESM-ready revenue meter and compliant with the WESM Rules and other applicable Laws, installed at the Plant to measure and record the electricity generated by the Plant at the Metering Point.

"Non-Defaulting Party" shall have the meaning ascribed thereto in Section 11.3.

"Notice of Default" shall have the meaning ascribed thereto in Section 11.3.

"Notice of Dispute" shall have the meaning ascribed thereto in Section 12.1.

"Payment Date" shall have the meaning ascribed thereto in Section 7.1, in accordance with the FIT-All Guidelines.

"RE Developer" means (Name of Developer) which is the developer of the Eligible RE Plant.

"RE Developer Default" has the meaning ascribed thereto in Section 11.2.

"RE Service Contract" or "RESC" refers to the Renewable Energy Service Contract No. \_\_\_\_\_, dated \_\_\_\_\_, issued by the DOE to the RE Developer for the Eligible RE Plant.

"RE Operating Contract" or "REOC" refers to the Renewable Energy Operating Contract No. \_\_\_\_\_, dated \_\_\_\_\_, issued by the DOE to the RE Developer for the Eligible RE Plant.

"Transmission Service Agreement" means the agreement between NGCP and the Eligible RE Plant for the provision of Transmission Services.

[NOTARIAL PAGE FOLLOWS]

**RENEWABLE ENERGY SUPPLY AGREEMENT (RESA)  
(PRO-FORMA)  
(FOR FIT ELIGIBLE RE PLANTS- Non-WESM)**

This FIT RENEWABLE ENERGY SUPPLY AGREEMENT ("Agreement") is executed this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_\_\_, by and between:

The [●Name of distribution utility/ electric cooperative], an electric distribution utility / cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, and [with a franchise to operate a distribution utility in \_\_\_\_\_] by virtue of [●], with principal office address at [●], represented herein by its [●Position], [●Name of Representative] ("Host DU");

- and -

[●NAME OF RE DEVELOPER], a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at [●], and represented herein by its [●Position], [●Name of Representative] ("RE DEVELOPER");

(Each of the Host DU and the RE Developer may be referred to individually as a "Party", and collectively as the "Parties").

**WITNESSETH: That -**

**WHEREAS**, in order to accelerate the development of emerging renewable energy resources, Republic Act No. 9513, otherwise known as the "RE Act," mandates the establishment of the Feed-In Tariff System whereby the electricity produced from wind, solar, ocean, run-of-river hydropower and biomass are to be paid a fixed tariff, in accordance with, among others, the Feed-in Tariff Rules ("FIT Rules") and the Guidelines for the Collection of the Feed-in Tariff Allowance and Disbursement of the FIT-All Fund ("FIT-All Guidelines") adopted and promulgated by the Energy Regulatory Commission (ERC) through ERC Resolution No. 16, series of 2010, as amended by ERC Resolution No. 15, series of 2012, and ERC Resolution No. 24, series of 2013, respectively;

**WHEREAS**, the RE Developer is engaged in the exploration, development and utilization of [●] energy through its [●name of project], pursuant to Renewable Energy [Service/ Operating] Contract (RESC/ REOC) No. [●] dated [●] for the development of a \_\_\_MW power generating plant using [type of] resources (the "Eligible RE Plant");

**WHEREAS**, pursuant to the FIT Rules and the FIT-All Guidelines, the National Transmission Corporation (TransCo), as Administrator shall, among others, administer the implementation of the FIT System, manage the FIT-All Fund from which the RE Developer shall be paid, and perform the function of settlement agent for the payment of the Actual FIT Revenue to the Eligible RE Plant based on its Actual RE Generation;

**WHEREAS**, under the FIT-All Guidelines, due to the Eligible RE Plant being located in Mindanao, the Eligible RE Plant is required to enter into this Agreement with a Host DU, which shall accept and pay for the Actual Cost Recovery Revenue (ACRR) for the Actual RE Generation of the Eligible Plant, and remit such payment to the Administrator;

**WHEREAS**, the Parties hereby enter into this Agreement to set out their respective rights and obligations relating to the priority dispatch of, and payment of the Actual Cost Recovery Revenue for, the electricity generated by the Eligible RE Plant.

**NOW, THEREFORE**, in view of the foregoing premises, the Parties hereby agree as follows:



## Section 1.0. Definitions and Interpretation

- (a) **Definitions.** The definitions of the terms used in this Agreement are set out in Schedule A of this Agreement. Capitalized terms used but not otherwise defined herein shall have the same meaning ascribed thereto in the FIT-All Guidelines and the FIT Rules.
- (b) **Interpretation.** In this Agreement, except where the context requires otherwise:
- i. Words indicating one gender include all genders;
  - ii. Words indicating the singular also include the plural and words indicating the plural also include the singular;
  - iii. Provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
  - iv. "Written" or "in writing" means hand-written, type-written or printed and resulting in a permanent record;
  - v. "Include" shall mean include, but not limited to;
  - vi. Marginal words and other headings shall not be taken into consideration in the interpretation of this Agreement;
  - vii. References to Sections and clauses are to Sections and clauses in this Agreement;
  - viii. References to "day" "month" or "year" shall mean calendar day, calendar month or calendar year, respectively;
  - ix. A reference to any legislation includes all delegated legislation made pursuant to, and amendments, consolidations, replacements or re-enactments of such legislation;
  - x. A reference to a Government Instrumentality, other than a party to this Agreement (including an institute, association or authority) whether statutory or not, (a) which ceases to exist; or (b) whose powers or functions are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers or functions; and
  - xi. Where the day on or by which any activity or thing is to be done pursuant to the Agreement is not a Business Day, that activity or thing must be done on or by the next succeeding Business Day.
- (c) **Supplemental Interpretation.** The FIT-All Guidelines shall form an integral part of this Agreement. The FIT Rules shall be applied in a supplementary manner to interpret the provisions of this Agreement. In case of conflict between this Agreement and the FIT Rules and/or the FIT-All Guidelines, the FIT Rules and FIT-All Guidelines shall prevail.

## Section 2.0. Scope

Subject to and in accordance with the FIT Rules and the FIT-All Guidelines, this Agreement shall govern the rights and obligations of the RE Developer and the Host DU/s in respect of supply of Actual RE Generation from the Eligible RE Plant to the Host DU, and the priority dispatch, purchase of, and full payment by the Host DU/s for such Actual RE Generation, at a price equivalent to the Cost Recovery Rate, as such terms are defined below; as well as the remittance by the Host DU/s of the Actual Cost Recovery Revenue ("ACRR") to the Administrator, for the entire duration of the FIT Eligibility Period of the Eligible RE Plant as set-out in the FIT Certificate of Compliance (FIT COC).

## Section 3.0. Effectivity/ Term of Agreement

- 3.1. This Agreement shall become effective on the date the documents enumerated in this Section 3.1 are submitted by the RE Developer to, and certified complete by, the Host DU/s (the "Effective Date"), as follows:
- (a) Copies of the latest Articles of Incorporation and By-laws of the RE Developer, together with the Securities and Exchange Commission ("SEC") Certificate of Filing of the same, duly certified by the RE Developer's corporate secretary;
  - (b) Certified true copy of the Certificate of Registration and RE [Service/Operating] Contract of the RE Developer under RA No. 9513 for the Eligible RE Plant, certified by a duly authorized officer of the RE Developer;

- (c) Certified true copy of the Provisional Authority to Operate or the FIT COC, if already available, issued by the ERC for the Eligible RE Plant, certified by a duly authorized officer of the RE Developer;
  - (d) Certification from the DOE that the Eligible RE Plant has applied for inclusion in the FIT System;
  - (e) Certified true copy of the Metering Services Agreement executed between the Eligible RE Plant and the applicable Metering Services Provider (MSP);
  - (f) Certified true copy of the Provisional Certificate of Approval to Connect issued by NGCP to the Eligible RE Plant;
  - (g) Certified True Copy of the Bureau of Internal Revenue (BIR) Certificate of Registration of the Eligible RE Plant;
  - (h) Nomination of the receiving bank of the Eligible RE Plant for the ACRR proceeds from the Host DU/s prior to the effective date of the RE Payment Agreement (REPA) between the RE Developer and the Administrator;
  - (i) Copies of the corporate approval authorizing the RE Developer to execute, deliver and perform its obligations hereunder, and authorizing its signatories hereto to execute and deliver this Agreement and all other documents incidental hereto, duly certified by the RE Developer's corporate secretary.
- 3.2. In the event that there are any updates, amendments, extensions or revisions of the foregoing documents, the RE Developer shall submit to the Host DU/s, together with the FIT Statement of Account, and on the Billing Period immediately following receipt of such documents, true copies of such documents duly certified by the authorized representative of the RE Developer.
- 3.3. The Term of this Agreement shall be from the Effective Date until the ACRR Due Date for the last Billing Period occurring within the FIT Eligibility Period of the Eligible RE Plant.

**Section 4.0. Supply and Purchase/ Price**

- 4.1. Commencing on the Effective Date and for the entire Term of this Agreement, the RE Developer shall generate electricity from the Eligible RE Plant in accordance with the type of renewable energy resource stated in its FIT COC and deliver such Actual RE Generation to the Host DU, at the Metering Point.
- 4.2. Commencing on Effective Date and for the entire Term of this Agreement the Host DU/s shall take, accept, purchase and pay for, all such Actual RE Generation at the Cost Recovery Rate; dispatch the same on a First Priority Dispatch basis; collect the Actual Cost Recovery Revenue from its electricity consumers; and remit payment of the Actual Cost Recovery Revenue for such Actual RE Generation on or before the relevant ACRR Due Date.
- 4.3. The Actual Cost Recovery Revenue shall be equivalent to (A) Actual RE Generation for the Billing Period multiplied by (B) the Cost Recovery Rate, which shall be the weighted average generation cost of the Host DU/s from all its generation sources for the relevant Billing Period, excluding generation from any other Eligible RE Plant-Non-WESM which has entered into a RESA with the Host DU/s, if any.
- 4.4. The Cost Recovery Rate used by the Host DU/s in each Billing Period shall be certified and submitted by the Host DU/s to the ERC within five (5) days from the close of every Billing Period, copy furnished the Administrator.
- 4.5. Prior to the effective date of the RE Payment Agreement (REPA), the RE Developer shall bill and collect the ACRR for all Actual RE Generation for the period from Commercial Operations Date until the effective date of the REPA directly from the Host DU/s. After the REPA effective date, direct payments of ACRR from the Host DU/s shall not be allowed, and the Host DU/s shall remit the ACRR to the Administrator such that the ACRR shall be paid to the RE Developer as part of the Actual FIT Revenue. Upon receipt by the RE Developer of notice from the Administrator that the REPA has become effective, the RE Developer shall immediately

deliver a copy thereof to the Host DU, which shall serve as notice to the Host DU to thereafter remit all ACRR due to the FIT-All Fund.

#### **Section 5.o. Supply of Actual RE Generation**

- 5.1. Supply of Actual RE Generation to the Host DU/s shall at all times be on a "non-firm", "as-available" and "variable" basis, based on the intermittency of the resource. For the avoidance of doubt, nothing in this Agreement shall be construed as the RE Developer guaranteeing to fulfill any fixed or nominated capacity or provide any generation quantity to the Host DU/s for any hourly interval, or any other period.
- 5.2. The Actual RE Generation shall be delivered to the Host DU/s at the Metering Point; thereafter, the title to and risk of loss of electric energy shall pass from the RE Developer to the Host DU/s.
- 5.3. The Eligible RE Plant shall be responsible for arranging with the National Grid Corporation of the Philippines, or its successor concessionaire, for the wheeling of the Actual RE Generation of the Eligible RE Plant to the Metering Point, if necessary.

#### **Section 6.o. Billing and Payment**

- 6.1. Within five (5) days from the close of every Billing Period, the RE Developer shall render the ACRR Invoice to the Host DU/s based on its Actual RE Generation for such Billing Period, measured by the Revenue Meter and reflected in the Record of Meter Reading. All payments of the ACRR Proceeds shall be remitted to the FIT-All Fund, except as provided in Section 4.5 hereof.
- 6.2. The Record of Meter Reading shall be used by the Parties in computing the ACRR due to the RE Developer to be remitted to the FIT-All Fund.
- 6.3. The payment of the ACRR, as stated in its Invoice, shall be due on the twenty-eight (28th) day of the month following the close of the Billing Period for which the ACRR Invoice is being rendered by the RE Developer (the "ACRR Due Date").
- 6.4. The Host DU/s shall timely remit the full amount of the ACRR for the relevant Billing Period directly to the FIT-All Fund, or to the RE Developer as provided in Section 4.5, on or before the relevant ACRR Due Date via any method utilized by the Philippine Banking System, in immediately available and cleared funds, and without deduction or set-off except as provided in Section 6.7. The Actual Cost Recovery Revenue shall form part of the FIT-All Fund. The Host DU/s shall furnish the RE Developer a copy of the bank deposit slip evidencing such payment.
- 6.5. The RE Developer shall issue a receipt directly to the Host DU/s for the amount of ACRR actually remitted by the Host DU/s to the FIT-All Fund.
- 6.6. In the event that the Host DU/s fail/s to remit the ACRR collection in full to the FIT-All Fund on the relevant ACRR Due Date, the Host DU/s shall be liable for the applicable penalties that the Administrator may impose under Section 2.2.7.1 of the FIT-All Guidelines, including the payment of interest at the Late Payment Interest Rate, calculated from the ACRR Due Date to the day such amount is actually paid.
- 6.7. Payments to the Eligible RE Plant shall be made by the Host DU/s without deduction or offset, except for actual fees incurred, if any, by the Host DU/s for remittance delivery of the ACRR Proceeds to the FIT-All Fund. The Host DU shall inform the Administrator in writing of any amounts deducted by way of offset. For avoidance of doubt, the official receipt to be issued by the RE Developer to the Host DU/s shall include any amounts deducted by way of authorized offset.

**Section 7.o. Metering and Measurement of Plant Generation**

The terms and conditions for the metering of the Eligible Plant's Actual RE Generation shall be further governed by a Metering Services Agreement.

**Section 8.o. Obligations of the RE Developer.** For the entire Term of this Agreement, the RE Developer shall, among other obligations provided under this Agreement:

- 8.1. Generate all Actual RE Generation exclusively from the Eligible RE Plant, as and when available, in accordance with the type of RE resource for which the RE Developer has been issued its RE [Service/ Operating] Contract and FIT COC, and deliver the same to the Metering Point, where such Actual RE Generation shall be measured; *provided* that, nothing in this Agreement shall be construed as the RE Developer guaranteeing to fulfill any nominated capacity or provide any generation quantity to the Host DU/s for any hourly interval or any other period.
- 8.2. Not later than thirty (30) days from execution of this Agreement, and thereafter, not later than the 30th day of May of each year, submit to the Administrator and the Host DU/s its forecasted Annual RE Generation (showing monthly levels) for the succeeding year, in accordance with Section 1.5.1 of the FIT-All Guidelines, with information on any events that it foresees could affect the forecast, *provided* that, nothing in this Agreement shall be construed as the RE Developer guaranteeing to deliver the forecasted Annual RE Generation or any portion thereof.
- 8.3. Render an ACRR Invoice to the Host DU/s for the payment of the ACRR.
- 8.4. Maintain the validity of its FIT-COC and perform all acts necessary to ensure that the same is not terminated, revoked or shall not expire at any time during and throughout the Term of this Agreement.
- 8.5. Issue an official receipt corresponding to the payment of the ACRR by the Host DU/s to the extent of the actual remittance of the ACRR to the FIT-All Fund.
- 8.6. Notwithstanding payment in full by the Administrator of the Actual FIT Revenue to the Eligible RE Plant and in case of partial remittance of ACRR by the Host DU/s to the Fund, continue pursuing payment of the same by the Host DU/s in accordance with Section 2.2.7 of the FIT-All Guidelines, and provide the Administrator with regular updates on the status of the same. The RE Developer shall cause the Host DU/s to remit any and all recoveries of any delayed payments of ACRR to the FIT-All Fund, together with interest at the Late Payment Interest Rate from the relevant ACRR Due Date until date of actual payment.

**Section 9.o. Obligations of the Host DU.** For the entire Term of this Agreement, the Host DU/s shall, among other obligations provided in this Agreement:

- 9.1. Ensure and help maintain the Eligible RE Plant's connection to the Host DU's distribution system on a priority basis.
- 9.2. Bill and enforce the collection in full, on a timely basis, of the ACRR for the Actual RE Generation and the FIT-All from its consumers, and remit the entire amount of the ACRR and the FIT-All collections to the FIT-All Fund in accordance with the FIT-All Guidelines. In no case shall the ACRR be paid by the Host DU/s directly to the RE Developer after the Effective Date of the REPA between the RE Developer and the Administrator.
- 9.3. Agree with the RE Developer on, and thereafter implement a dispatch protocol for the Actual RE Generation of the Eligible RE Plant, on a Priority Dispatch basis.
- 9.4. In the event that the Host DU/s has updated its collections of delayed or deficient payments of ACRR, the Host DU/s shall remit such delayed payments to the Administrator as soon as possible, together with interest at the applicable Late Payment Interest Rate, if applicable, from the relevant ACRR Due Date until date of actual payment.

## Section 10.0. Representations and Warranties

Each Party hereby represents and warrants (solely for itself and not on behalf of the other Party) to the other Party/ies, as of the date of this Agreement, that:

- (a) It is an entity duly organized and existing under the Philippine law, with all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (b) This Agreement has been duly executed and delivered by the individual(s) signing on each Party's behalf, and such individual has been duly authorized to sign, execute and deliver the same.
- (c) Its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part, or it has obtained all material and necessary governmental consents, licenses, approvals and authorizations, and do not, and will not: (i) violate any law, rule, judgment, order or regulation of any office, agency or instrumentality thereof applicable to it, (ii) violate its organizational documents, or (iii) constitute a breach of any agreement to which it is a party or bound (or by which its property is bound);
- (d) This Agreement is a legal and binding obligation enforceable against it in accordance with its terms;
- (e) On the part of the RE Developer alone, its FIT- COC is valid and subsisting and has not been revoked; and
- (f) It undertakes to comply in all material respects with all applicable Laws, decrees, orders, rules, regulations, and resolutions promulgated by relevant and applicable Governmental Instrumentalities and which are necessary to perform its obligations under this Agreement.

## Section 11.0. Events of Default/ Pre-Termination

- 11.1. **Host DU Default.** Each of the following events shall constitute an event of default by the Host DU under this Agreement (each, a "Host DU Default"):
- (i) The failure of the Host DU for more than two (2) Billing Periods to collect and remit the ACRR collection in full on the relevant ACRR Due Date; or
  - (ii) The failure of the Host DU to comply with any of its payment obligations which are due under this Agreement

A Host DU Default may, within thirty (30) days from receipt of notice of default, be remedied by the payment in full of all outstanding amounts due, together with interest at the applicable Late Payment Interest Rate, from the relevant ACRR Due Date until date of actual payment.

- 11.2. **RE Developer Default.** The termination of the REPA of the RE Developer due to an RE Developer Default under the REPA shall constitute an event of default by the RE Developer under this Agreement ("RE Developer Default"). There is no cure period for the RE Developer Default.

- 11.3. **Remedies.** Upon the occurrence of any of the events that shall, with the lapse of time provided herein to remedy such event, constitute an Event of Default, the Party affected by the breach (the "Non-Defaulting Party") shall send the Party causing the breach (the "Defaulting Party") a notice of default ("Notice of Default"), and upon the lapse of the period, if any, to remedy the said event, the Non-Defaulting Party shall have the right to:

- (i) In the case of a Host DU Default, request the Administrator for the disconnection of the Host DU under Section 2.2.7.1 of the FIT-All Guidelines;
- (iii) Apply for redress with the ERC for collection of any unpaid amounts; and
- (iv) Pursue any other remedy provided under Section 2.2.7.1 of the FIT-All Guidelines, this Agreement, or now or hereafter existing at law.

- 11.4. If the Defaulting Party is the RE Developer, the Host DU/s shall, with prior written notice to the Administrator, have the right to suspend any future payments of ACRR to the RE Developer, excluding any ACRR Proceeds which have become due and demandable, from the date of receipt by the RE Developer of the Notice of Default.
- 11.5. Upon pre-termination of the Agreement due to an RE Developer Default, the Host DU/s' obligations shall thereupon cease, and the Host DU/s shall pay on the date of termination all unpaid and outstanding ACRR Invoices payable up to and including the date of termination, subject to the payment by the RE Developer of any amounts which may be due to the Host DU/s.
- 11.6. This Agreement shall be further subject to the REPA, and shall be co-terminous therewith. In the event that the REPA is pre-terminated in accordance with its terms, this Agreement shall likewise be pre-terminated, except as provided in the succeeding Section 11.7.
- 11.7. In the event of pre-termination of this Agreement together with the REPA due to an Administrator Default under the REPA, the RE Developer shall have the right to contract with other parties, including the Host DU/s with which it has contracted a RESA, to sell the Actual RE Generation of the Eligible RE Plant. Notwithstanding such pre-termination, the Eligible RE Plant and Host DU/s shall continue to sell and purchase, respectively, the Actual RE Generation at the Cost Recovery Rate, until such time that the RE Developer shall be able to contract for the generation of the Plant, and the Actual Cost Recovery Revenue during such period shall be remitted by the Host DU/s directly to the RE Developer.
- 11.8. The pre-termination of this Agreement shall be without prejudice to the imposition of other penalties on the Defaulting Party as may be provided for by Law and the FIT-All Guidelines.
- 11.9. Upon the full implementation of the WESM in Mindanao, as confirmed by the ERC, and the registration of the Eligible RE Plant as a direct participant therewith, this Agreement shall automatically terminate on the effectivity date of, and be substituted by, the Market Participation Agreement of such Eligible RE Plant under the WESM in Mindanao. The obligations of the Parties under this Agreement shall cease upon the effectivity of such Market Participation Agreement, subject to the payment of all sums of money due under this Agreement.

#### **Section 12.0. Dispute Resolution**

- 12.1. The Parties shall, in the first instance, attempt in good faith to mutually discuss any issue or concern arising out of or in connection with this Agreement. Any such issue or concern not resolved by such discussion between the Parties (a "Dispute") shall be sought to be resolved by amicable settlement between their authorized representatives for a period of thirty (30) calendar days from receipt by a party of a written notice from the other party setting out the particulars of a Dispute and the amounts claimed thereunder ("Notice of Dispute"). The Notice shall also designate the authorized representative of the Party. The period of settlement of a particular dispute may be extended upon the written agreement of the parties, such total period for amicable settlement not to exceed ninety (90) days, inclusive of the initial thirty (30) day period.
- 12.2. If after such period of amicable settlement, the Dispute remains unsettled, then any Party may submit the Dispute exclusively to arbitration before the Philippine Dispute Resolution Center, Inc. ("PDRCI") in accordance with the PDRCI Arbitration Rules in force at the time of submission. The arbitral decision shall be final and binding on the Parties and shall be the exclusive remedy among the Parties regarding the Dispute, and may be enforced by judgment of a court having competent jurisdiction over the same.
- 12.3. During the pendency of any Dispute or proceeding in arbitration, the Parties shall continue to perform their respective obligations hereunder.
- 12.4. In the event the arbitral decision involves the return or payment of a sum of money, the Party found liable shall, in addition to the return/payment of such amount, be charged interest at the Late Payment Interest Rate, calculated from the relevant ACRR Due Date until date of actual payment.

- 12.5. Neither Party shall take any dispute or claim subject to arbitration hereunder to any court except to enforce a final arbitration decision which the losing party refuses to comply with; *provided*, however, that either Party may take any legal action for provisional relief to protect its rights and obligations.

**Section 13.0. Validity, Binding Effect and Assignability**

- 13.1. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, that neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by any of the Party/ies hereto without thirty (30) days' prior written consent of the other Party/ies. A certified true copy of the instrument evidencing such assignment shall be provided with the notice, for the guidance of the other Party/ies.
- 13.2. The rights and obligations of the Parties shall be governed by the terms and conditions of this Agreement, the relevant provisions of the FIT Rules and FIT-All Guidelines, and other related issuances, orders, rules and regulations as promulgated by the relevant Governmental Instrumentality, as well as all amendments and revisions thereof, as if originally written herein; *provided*, however, that such amendments and revisions shall not impair any rights which have vested under this Agreement prior to such amendments and revisions.

**Section 14.0. General Provisions**

- 14.1. *Entire Agreement.* Save to the extent of the application of the FIT Rules, the FIT-All Guidelines, other applicable Laws (including any relevant decision of the ERC), this Agreement supersedes all previous agreements, understanding, practices and negotiations of the Parties and embodies the entire understanding among the Parties in respect of its subject matter.
- 14.1. *No Waiver.* None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing and signed by its duly authorized representative. The failure of either Party to insist, in any one or more instances, upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.
- 14.2. *Amendment.* No amendment of this Agreement shall be binding upon the Parties unless executed in writing, in a document expressly providing for the effectivity of such amendment, and duly signed by the authorized representatives of the Parties, and approved by the ERC. If the amendment consists only of changes to accurately reflect the FIT COC or a change in the RE Developer resulting from an assignment of the Eligible RE Plant already approved by competent authority, no approval of the ERC shall be necessary,
- 14.2. *Notices.* All communications and notices provided for hereunder shall be in writing and shall be delivered addressed as follows:

To the Administrator: NAME OF HOST DU  
[•]

Attention: (Name)  
(Position)

To the RE Developer: COMPANY NAME  
(Address)

Attention: (Name)  
(Position)

Any Party may change its address for purposes hereof by serving written notice to the other Parties.

- 14.3. *Severability.* In case one or more of the provisions contained in this Agreement shall be declared invalid, illegal or unenforceable in any respect by competent authority, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Furthermore, upon the request of any Party, the Parties shall add, in lieu of such invalid, illegal or unenforceable provision(s), such provision(s) as similar in terms as may be possible and valid, legal and enforceable, to achieve as close a possible what the Parties intended.
- 14.4. *No Partnership or Joint Venture.* Nothing in this Agreement shall be construed to create an association, trust, partnership, joint venture, agency, or impose a trust or partnership duty, obligation, or liability on or with regard to either Party, or to create any duty, standard of care, or liability to any person or entity not a Party hereto.
- 14.5. *Change in Law.* The Parties shall perform their obligations under this Agreement in accordance with all applicable laws, decrees, orders, rules, regulations, and resolutions promulgated by relevant authorities. In case of any amendment, modification or change in such law, decree, order, rule, regulation or resolution, the Parties continue to perform their respective obligations under this Agreement unless made expressly unlawful or impossible by such amendment, modification or change.
- 14.6. *Further Acts and Assurances.* Each Party agrees, in good faith, to execute and deliver all such instruments and documents, and to do and perform all such acts and things, as shall be necessary or convenient to carry out the provisions of this Agreement.
- 14.7. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the Republic of the Philippines.

IN WITNESS WHEREOF, the Parties have caused their respective authorized representatives to execute this Agreement on the date and place first above written.

NAME OF HOST DU  
By:

NAME OF RE DEVELOPER  
By:

(NAME)  
(Position)

(NAME)  
(Position)

Witnessed by:

\_\_\_\_\_  
(NAME)  
(Position)

\_\_\_\_\_  
(NAME)  
(Position)



**Definition of Terms**  
**Schedule A**

I. TERMS DEFINED UNDER THE FIT-ALL GUIDELINES

Actual RE Generation  
Actual Cost Recovery Revenue (ACRR)  
Actual Cost Recovery Revenue Invoice (ACRR Invoice)  
Actual FIT Differential Invoice  
Actual FIT Revenue  
Administrator (TransCo)  
Billing Period  
Business Day  
Collection Agents  
Distribution Utility (DU)  
Eligible RE Plant-Non-WESM  
Energy Regulatory Commission (ERC)  
FIT-All  
FIT-All Fund  
FIT-All Guidelines  
FIT Rules  
FIT Statement of Account  
FIT System  
Grid  
Metering Point  
Metering Services Provider  
NGCP  
PEMC  
RE Law  
Record of Meter Reading  
Revenue Meter  
Trustee  
WESM

II. TERMS DEFINED UNDER THIS AGREEMENT

“ACRR Due Date” has the meaning ascribed in Section 6.3.

“Agreement” means this Renewable Energy Supply Agreement, including all annexes, supplements, amendments, and schedules hereto.

“Commercial Operations Date” or “COD” as used in this Agreement, means (i) the Commercial Operation Date of a new Eligible RE Plant which started commercial operations after the start of the FIT System as stated in the FIT COC or (ii) otherwise, the date stated in the FIT COC which establishes the date when the Eligible RE Plant becomes entitled to the FIT.

“Connection Agreement” means the agreement between the [NGCP/ Host DU] and the Eligible RE Plant for the connection of the latter to the [Grid/ Distribution System] of the Host DU.

“Cost Recovery Rate” shall have the meaning ascribed in Section 4.3.

“Defaulting Party” shall have the meaning ascribed in Section 11.3.

“Dispute” shall have the meaning ascribed in Section 12.1.

“Effective Date” has the meaning ascribed in Section 3.1.

“Eligible RE Plant” as used in this Agreement, means the [●name of project] power plant of the RE Developer which utilizes [●] energy, and with an installed capacity of [●] MW and estimated annual generation of [●] GWH, and which has been rendered eligible to participate in the FIT System.

“First Priority Dispatch” means that the Host DU/s shall dispatch the RE Developer’s Actual RE Generation first before all of its other suppliers or other sources of electricity, pursuant to priority dispatch for emerging RE technologies under Section 7 of the RE Law;

“FIT Eligibility Period” means the period during which the Eligible RE Plant is entitled to bill and collect the relevant FIT Rate from the FIT Administrator, which period shall commence from Commercial Operations Date, as defined in this Agreement, until the date that is twenty (20) years from COD or such other date stated in the FIT COC.

“Governmental Instrumentality” means the government of the Philippines and any department, political subdivision, agency, instrumentality, regulatory authority, corporation or commission, legislative, judicial or administrative body, whether national, provincial, or local, having jurisdiction over the matter(s) in question.

“Host DU” means the distribution utility or electric cooperative which has entered into this Agreement with the RE Developer for the purchase of the Actual RE Generation of the Eligible RE Plant and the payment of the relevant Actual Cost Recovery Revenue;

“Host DU Event of Default” has the meaning ascribed in Section 11.1.

“Late Payment Interest Rate” means the penalty interest rate of the prevailing 91-day treasury bill rate per annum plus 300 basis points, as provided under Section 2.2.8 of the FIT All Guidelines.

“Non-Defaulting Party” shall have the meaning ascribed in Section 11.3.

“Notice of Default” shall have the meaning ascribed in Section 11.3.

“Notice of Dispute” shall have the meaning ascribed in Section 12.1.

“Parties” means the Host DU, the RE Developer and the Administrator, collectively; and “Party” means either or each of them, as the context requires.

“RE Developer Default” has the meaning ascribed to it in Section 11.2.

“REPA” means the Renewable Energy Payment Agreement between the RE Developer and the Administrator dated \_\_\_\_\_.

[NOTARIAL PAGE FOLLOWS]