**M****ARKET PARTICIPATION AGREEMENT**

For WESM registration as Direct WESM Member – Customer Trading Participant

Supplier of Last Resort

This Agreement is made and entered into this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ by and among:

[Business name/corporation], (“**Company**”), a [form of business organization], duly [incorporate/formed/registered] under Philippine law, with its principal office at [address], represented herein by its [designation], [name of officer];

PHILIPPINE ELECTRICITY MARKET CORPORATION (“**PEMC**”), a non-stock, non-profit corporation duly organized and existing under the Corporation Code of the Philippines with principal address at 18th Floor, Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City, represented herein by its President, ELVIN HAYES E. NIDEA;

and

INDEPENDENT ELECTRICITY MARKET OPERATOR OF THE PHILIPPINES INC. (“**IEMOP**”), a non-stock, non-profit corporation duly organized and existing under the Corporation Code of the Philippines with principal address at 9th Floor, Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City, represented herein by its President, RICHARD J. NETHERCOTT,

Jointly or individually referred to as “Parties” or “Party”

WHEREAS,

The Electric Power Industry Reform Act of 2001 (EPIRA) and the EPIRA IRR mandates that the Wholesale Electricity Spot Market (WESM) shall be implemented by a Market Operator, which shall initially be an autonomous group market operator (AGMO) and, thereafter, the Independent Market Operator (IMO);

The Department of Energy (DOE) endorsed the transition to the IMO upon issuance of its Department Circular No. 2018-01-0002 dated 18 January 2018 and entitled “Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market”;

The industry participants likewise endorsed the transition through ratification by the members of PEMC during its membership meeting held on 6 February 2018 of the “Plan for Transition to the Independent Market Operator of the Philippine Wholesale Electricity Spot Market” (IMO Transition Plan);

IEMOP was incorporated under the Corporation Code of the Philippines as a non-stock non-profit corporation, upon the initiative of both DOE and PEMC, to be the IMO, and has assumed its functions and obligations as the Market Operator of the WESM commencing on 26 September 2018;

PEMC remains to be the Governing Body of the WESM;

Pursuant to Department Circular No. 2019-07-0011 and Operating Agreement between PEMC and IEMOP dated 19 September 2018, IEMOP, as the IMO was designated as the Central Registration Body (CRB);

In view of its intention to supply electricity to eligible End-Users under GEOP and pursuant to Section 9.4 of DOE Circular No. 2020-04-0009, the Company wishes to register in the WESM under **Supplier of Last Resort (“SOLR”)]** Category.

The WESM Rules stipulate that no person or entity shall be allowed to participate in the WESM or cause or allow electricity to be injected into or withdrawn from the Grid unless that person or entity has been registered as a WESM Member;

The Company has complied with all relevant pre-requisites under the WESM Rules, the WESM Market Manuals, Retail Rules, Retail Manuals, the Green Energy Option Rules promulgated through Energy Regulatory Commission (ERC) Resolution No. 08, Series of 2021 (the “ERC GEOP Rules”), DOE Circular Nos. DC2018-07-0019 and DC2020-04-0009, and other Market Documents (collectively referred hereto as “Relevant Rules and Issuances”) in order to be registered as SOLR in the WESM;

The Parties enter into this Agreement to satisfy the conditions contained in the Relevant Rules and Issuances on WESM membership and registration with the CRB;

NOW THEREFORE, the Parties agree as follows:

# INTERPRETATION

## Incorporation of Relevant Rules and Issuances Definitions. Capitalized terms used in this Agreement have the meanings ascribed thereto in Relevant Rules and Issuances.

## Interpretation. The interpretation in WESM Rule 9.1 and in Retail Rules Clause 1.2.5 shall apply to any interpretation of this Agreement and is incorporated by reference herein, with such modifications as the context may require.

## Relevant Rules and Issuances Govern. In the event of any inconsistency between this Agreement and the Relevant Rules and Issuances, the Relevant Rules and Issuances shall prevail to the extent of the inconsistency.

# COMPLIANCE WITH THE RELEVANT RULES AND ISSUANCES

## Compliance Obligation. The Company hereby agrees to be bound by and to comply with all the provisions of the Relevant Rules and Issuances, including amendments thereto in accordance with its provisions.

## Full Knowledge. The Company has read, has full knowledge of and understands the provisions of the Relevant Rules and Issuances and it understands that it must remain to be compliant with its obligations as a registered WESM Member and Trading Participant in order to maintain registration.

## PEMC Membership. Having registered as Direct Member, the Company understands that it is likewise eligible to be registered as a Member of PEMC under the sector in which it belongs, and that it shall likewise comply with such membership requirements that PEMC will additionally require from time to time.

# REPRESENTATIONS AND WARRANTIES

## Each of the Parties hereby represents and warrants, and acknowledges and confirms to the other Parties that its execution, delivery and performance of this Agreement is duly authorized by all necessary corporate action; that the individual(s) executing this Agreement, and any document in connection herewith, on behalf of such Party has/have been duly authorized to execute this Agreement and have the full power and authority to bind such Party; and that this Agreement constitutes a legal and binding obligation on each Party, including its respective successors-in-interest, assigns and agents or representatives in accordance with its terms.

## The Company further represents and warrants that:

### Organization and Qualification. It is a [form of business organization] duly [incorporated/formed/registered], validly existing and in good standing under Philippine laws;

### Corporate Power and Authority. It has all the necessary corporate power to enter into and perform all its covenants and obligations under and pursuant to this Agreement;

### Validity. The execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental action and in the Company’s good faith belief and after making reasonable inquiry does not (or would not, with the giving of notice, the lapse of time or the happening of any other event or condition) result in a violation or a breach of or a default under or give rise to a right of termination, greater rights or increased costs, amendment or cancellation or the acceleration of any obligation under (i) any term of Charter, Articles of Incorporation or By-laws of the Company; (ii) any contracts or instruments to which the Company is a party or by which it is bound; or (iii) any laws applicable to it;

### Authority. The individual(s) executing this Agreement, and any document in connection herewith, on behalf of the Company has/have been duly authorized to execute this Agreement and have the full power and authority to bind the Company;

### Binding Agreement. This Agreement constitutes a legal and binding obligation on the Company, enforceable against the it in its own name, in accordance with its terms;

### Licenses and Permits. It holds all permits, licenses and such other authorizations from all relevant government agencies and instrumentalities necessary to enable it to carry on the business and perform the functions and obligations of a WESM Member and Trading Participant as described in the Relevant Rules and Issuances and in this Agreement;

### Supply to End-Users. The Company understands and agrees that as an SOLR, it shall supply electricity to eligible end-users under the GEOP only. To this end, it warrants that it shall only supply electricity to end-users that have duly switched under GEOP.

### Administration and Solvency. To its knowledge, no event has occurred or is occurring that would result in the Company’s inability to pay its debt generally as they become due, cause the commission of an act of bankruptcy or insolvency, or result in suspension of payment, receivership, reorganization, insolvency or moratorium law or any other law or laws for the relief of, or in relation to, other obligors;

### Qualified Personnel. The Company has adequate qualified employees and other personnel and organization and other arrangements that are sufficient to enable it to perform all of the functions and obligations applicable to a WESM Members and to the sector and WESM membership category of which the Company intends to become part.

### Private and Commercial Acts. The Company, a government owned or controlled corporation, is subject to civil and commercial law with respect to its obligations under this Agreement and the execution, delivery and performance of this Agreement constitute private and commercial acts rather than public or governmental acts and neither the Company nor any of its property has, in relation to the execution, delivery and performance of this Agreement, any immunity (sovereign or otherwise) from any legal action, suit or proceeding from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) under the laws and regulations of the Philippines.

### Disclosures. The Company has provided to IEMOP all of the information required to be submitted in support of its application for registration and that such information is true, accurate and complete in all respects.

# COVENANTS

## Undertakings. The Company hereby undertakes, covenants and agrees that as at and after the date of this Agreement and until termination hereof:

### it will obtain, maintain and promptly renew from time to time all authorizations, consents, licences, permits and exemptions as may be required under any applicable Philippine law or regulation to enable it to perform its obligations under this Agreement and will comply with the requirements of all the foregoing; and

### it will advise PEMC and IEMOP in writing forthwith upon becoming aware of any event, circumstance or condition not known to it at the time of execution of this Agreement that individually or together with all other such events, circumstances or conditions has, had or could have the effect of resulting in the Company no longer qualifying as a Trading Participant.

## Breach. Any breach of the covenants above shall be deemed a breach of the Relevant Rules and Issuances and shall be sanctioned in accordance with WESM Rule 7.2, which is incorporated by reference herein with modifications as the context may require.

##

# DISPUTE RESOLUTION

Section 5.01 In case of disputes arising out of this Agreement, Article XII of the ERC GEOP Rules shall govern.

## Section 5.02 For disputes not expressly covered by the ERC GEOP Rules, Section of 7.3 of the WESM Rules on dispute resolution shall apply. Pursuant to WESM Rule clause 7.3 and the WESM Dispute Resolution Market Manual, in the event of any dispute with the IEMOP, the System Operator, and/or any WESM Member or Trading Participant or GEOP End-User arising out of or in connection with the Company’s participation and membership in the WESM, the Company agrees to submit the matter to dispute resolution under the WESM Rules and the relevant market manual provided that the dispute is not under the jurisdiction of the Energy Regulatory Commission, the Philippine Competition Commission or some other agency, tribunal or entity vested by law with jurisdiction over the subject of the dispute. If the dispute has not been settled pursuant to mediation rules contained in the relevant market manual, such dispute shall be finally settled under the arbitration rules contained in the market manual by three (3) arbitrators appointed in accordance with its provisions.

# TERM AND TERMINATION

##  Term. This Agreement shall come into force on the effective date of registration of the Company in the WESM under the **SOLR** Category as notified by IEMOP and shall remain in full force and effect until terminated in accordance with Section 6.02.

##  Termination Upon Ceasing to be a WESM Member. Subject to Section 6.03 and Section 6.04, this Agreement shall automatically terminate on the earlier of:

### The date the Company has ceased to be a WESM Member under the SOLR Category in accordance with WESM Rule 2.6 and with relevant provisions of the WESM Manual on Registration, Suspension and De-Registration Criteria and Procedures (the “WESM Registration Manual”); or

### The date the IEMOP issues a deregistration notice to the Company in accordance with WESM Rules and with the provisions on deregistration set forth in the WESM Registration Manual.

## Ongoing Liability. Notwithstanding Section 6.02, if the Company ceases to be a WESM Member under the **SOLR** Category or otherwise becomes subject to a deregistration notice in respect to its membership under such category, the Company shall remain subject to and liable for all of its obligations and liabilities that were incurred or arose under the Relevant Rules and Issuances prior to the date on which Company ceased to be a WESM Member or otherwise was deregistered, as the case may be, regardless of the date on which any claim relating thereto may be made.

## Confidentiality. Notwithstanding Section 6.02, if the Company ceases to be a WESM Member under the **SOLR** Category or otherwise becomes subject to a deregistration notice in respect to its membership under such category, the Company shall remain subject to any confidentiality provisions contained in the Relevant Rules and Issuances for all information obtained by or provided to the Company while it was a WESM Member.

## Survival. Notwithstanding any provision to the contrary and for greater certainty, the terms of Section 6.03 and Section 6.04 shall survive any termination of this Agreement without limit as to time.

# LIABILITY AND INDEMNIFICATION

## Liability of PEMC and IEMOP. The PEMC and IEMOP shall not be liable for any loss or damage suffered or incurred by the Company or any other person as a consequence of any act or omission of their respective officers, directors, employees, members, agents or other persons acting on their behalf or on behalf of PEMC and IEMOP, unless said officers, directors, employees, members, agents and other persons, or any one of them, as the case may be, acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence.

## Indemnification. The Company shall indemnify, defend, and hold the PEMC and IEMOP, its officers, directors, employees and members, and their successors and assigns, harmless from, against and with respect to any claim, liability, obligation, loss, damage, assessment, judgment, cost and expense (including, without limitation, reasonable attorneys’ and accountants’ fees and costs and expenses reasonably incurred in investigating, preparing, defending against or prosecuting any litigation or claim, action, suit, proceeding or demand) of any kind or character (the “Damages”), arising out of or in any manner incident, relating or attributable to:

### Any material inaccuracy in any representation or breach of warranty contained in this Agreement or in any other document or agreement executed by the Company with PEMC or IEMOP in connection with this Agreement or otherwise made or given in connection with this Agreement;

### Any failure to perform or observe, or to have performed or observed, in full, any covenant, agreement or condition to be performed or observed by the Company under this Agreement or under any certificates or other documents or agreements executed by the Company with PEMC or IEMOP in connection with this Agreement;

### Reliance by PEMC or IEMOP on any information furnished to them by the Company pursuant to this Agreement by or on behalf of the Company.

## Limitations of Liability.

### In no event shall a Party be liable to the other Party or Parties for any indirect, special, incidental, consequential or exemplary damages, including lost profits, opportunity or goodwill.

### Any provision in this Agreement to the contrary notwithstanding, the liability of PEMC or IEMOP for direct actual damages shall not exceed the aggregate of the market or transaction fees paid to the PEMC or IEMOP by the Company for the particular transaction involved in the claim.

# MISCELLANEOUS

## Amendment. No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

## Assignment. Unless otherwise expressly permitted by the Relevant Rules and Issuances, the Company shall not assign or transfer and shall not purport to assign or transfer any of its rights and obligations under this Agreement and the Relevant Rules and Issuances. However, the Company may authorize PEMC and/or IEMOP, in writing, to remit its receivables or to accept payments for its WESM transactions or a portion thereof to/from nominated banks or financial institutions pursuant to financing arrangements that the Company may have, or to/from such other person or entity as the Company shall identify, or to otherwise allow such other person or entity to settle the Company’s transactions in the WESM. For this purpose, the Company undertakes to comply with procedures and requirements as may be set by PEMC and/or IEMOP from to time to effect the assignment.

## Successors and Assigns. This Agreement shall inure to the benefit of, and be binding on, the Parties and their respective heirs, administrators, executors, successors and permitted assigns.

## Data Privacy – The Parties acknowledge and agree that in the course of the Company’s participation in the WESM, they may receive or have access to Personal Information of the other Parties employees or client’s. The Parties further represent and warrant that their collection, access, use, storage, disposal and disclosure of any Personal Information shall at all times comply with Data Privacy Act and all other applicable data privacy and data protection laws and regulations. As used in this Agreement, “Personal Information” shall have the meaning ascribed to it under Republic Act No. 10173, and its implementing rules and regulations, as may be amended from time to time.

## Further Assurances. Each Party shall promptly execute and deliver or cause to be executed and delivered all further documents in connection with this Agreement that the other Party or Parties may reasonably require for the purpose of giving effect to this Agreement.

## Waiver. A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party or Parties to be bound by the waiver. No waiver will be inferred or implied by any failure to act, by acting only in part, or by the delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by another Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party’s right under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature) by another Party.

## Severability. Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that invalidity or unenforceability and shall be deemed severed from the remainder of this Agreement, all without affecting the validity or enforceability of the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

## Notices. Any notice, demand, consent, request or other communication required or permitted to be given or made under this Agreement shall be given or made in the manner set forth in WESM Rule 9.6 and be addressed in accordance with the information set forth in the Application for Registration submitted to PEMC and/or IEMOP. The Company may change its address as set forth in the Application by written notice to the PEMC and IEMOP. Such change shall not constitute an amendment to this Agreement for purposes of the application of Section 8.02.

## Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of the Philippines.

## Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the Parties shall adopt any signatures received by a receiving facsimile machine as original signatures of the Parties; provided however that any Party providing its signature in such manner shall promptly forward to the other Parties an original signed copy of this Agreement which was so faxed.

## Waiver of Immunity. To the extent that the Company may claim for itself, its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise), or other legal processes, the Company hereto irrevocably and unconditionally:

### renounces and waives, to the maximum extent permitted by law, any immunity to which it or its assets may at any time be or become entitled, whether characterized as sovereign immunity or otherwise, from any set-off, proceeding or legal action in the Republic of the Philippines or elsewhere brought against it or its assets in relation to this Agreement or any matter contemplated by this Agreement, including immunity from service of process, immunity from jurisdiction of any court or tribunal, and immunity of any of its property from attachment prior to judgment or from execution of a judgment or award; provided, however, that the Government does not waive such immunity in respect of its property that is (i) used by a diplomatic or consular mission of the Republic of the Philippines (except as may be necessary to effect service of process), (ii) property of a military character and under the control of a military authority or defense agency of the Republic of the Philippines, or (iii) located in the Republic of the Philippines and dedicated to a public or governmental use (as distinguished from patrimonial property or property dedicated to commercial use); and

### agrees that, to the maximum extent permitted by law, the execution, delivery and performance by it of this Agreement shall constitute private and commercial acts rather than public or governmental acts.

IN WITNESS WHEREOF, the Parties have, by their duly appointed and authorized representatives, executed this Agreement.

***[ SIGNATURE PAGE FOLLOWS ]***

|  |  |
| --- | --- |
| **ELVIN HAYES E. NIDEA**President Philippine Electricity Market Corporation Date Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **RICHARD J. NETHERCOTT**PresidentIndependent Electricity Market Operator of the Philippines Inc.Date Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| (Name)(Position)(Company)Date Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

***Signed in the Presence of:***

|  |  |
| --- | --- |
| **Philippine Electricity Market Corporation** Name **CERISE M. CABACTULAN**Position **SENIOR MANAGER, CORPORATE COMMUNICATIONS** | **Independent Electricity Market Operator of the Philippines Inc**.Name Position **MANAGER, REGISTRATION AND STAKEHOLDER SERVICES** |
| **(Company)**(Name)(Position) |

REPUBLIC OF THE PHILIPPINES)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) S.S.

**ACKNOWLEDGMENT (FOR THE COMPANY)**

BEFORE ME, a Notary Public for and in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally appeared the following:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name | Competent Evidence of Identity | Number | Date of Issuance & Expiry | Place of Issuance  |
|       |       |       |       |       |
|       |       |       |       |       |

( ) showing to me their competent evidence of identity

( ) known to me and to me known

to be the same persons who executed the foregoing Agreement consisting of \_\_\_\_\_\_\_\_\_ (\_\_\_\_) pages, including this page whereon the acknowledgments are written, all pages signed by all parties and their instrumental witnesses and they acknowledged before me that the same is their free act and voluntary deed and of the entities herein represented.

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

Doc. No. \_\_\_\_\_\_\_;

Page No. \_\_\_\_\_\_\_;

Book No. \_\_\_\_\_\_\_;

Series of \_\_\_\_\_\_\_.

REPUBLIC OF THE PHILIPPINES)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) S.S.

**ACKNOWLEDGMENT (FOR PEMC)**

BEFORE ME, a Notary Public for and in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally appeared the following:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name | Competent Evidence of Identity | Number | Date of Issuance & Expiry | Place of Issuance  |
| Elvin Hayes E. Nidea |  |  |  |  |
|  |  |  |  |  |

( ) showing to me their competent evidence of identity

( ) known to me and to me known

to be the same persons who executed the foregoing Agreement consisting of \_\_\_\_\_\_\_\_\_ (\_\_\_\_) pages, including this page whereon the acknowledgments are written, all pages signed by all parties and their instrumental witnesses and they acknowledged before me that the same is their free act and voluntary deed and of the entities herein represented.

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

Doc. No. \_\_\_\_\_\_\_;

Page No. \_\_\_\_\_\_\_;

Book No. \_\_\_\_\_\_\_;

Series of \_\_\_\_\_\_\_.

REPUBLIC OF THE PHILIPPINES)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) S.S.

**ACKNOWLEDGMENT (FOR IEMOP)**

BEFORE ME, a Notary Public for and in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally appeared the following:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name | Competent Evidence of Identity | Number | Date of Issuance & Expiry | Place of Issuance  |
| Richard J. Nethercott |  |  |  |  |
|  |  |  |  |  |

( ) showing to me their competent evidence of identity

( ) known to me and to me known

to be the same persons who executed the foregoing Agreement consisting of \_\_\_\_\_\_\_\_\_ (\_\_\_\_) pages, including this page whereon the acknowledgments are written, all pages signed by all parties and their instrumental witnesses and they acknowledged before me that the same is their free act and voluntary deed and of the entities herein represented.

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

Doc. No. \_\_\_\_\_\_\_;

Page No. \_\_\_\_\_\_\_;

Book No. \_\_\_\_\_\_\_;

Series of \_\_\_\_\_\_\_.