

Annex C-2

DISTRIBUTION WHEELING SERVICE AGREEMENT (For GEOP End-Users)

This **AGREEMENT** is entered into this _____ day of _____ at _____ City, Philippines, by and between:

_____, a (corporation/sole proprietorship/partnership) duly organized and existing under the laws of the Republic of the Philippines, with principal office at _____, duly represented by Mr. _____ (designation) and Mr. _____, (designation) hereinafter referred to as “**GEOP End-User**”;

-and-

_____, a corporation/cooperative duly organized and existing under the laws of the Republic of the Philippines, with principal office at _____, duly represented by Mr. _____ (designation) and Mr. _____, (designation) hereinafter referred to as “Distribution Utility or **DU**”;

“**GEOP End-User**” and “**DU**” hereinafter shall collectively be referred to as “**PARTIES**”.

WITNESSETH THAT:

WHEREAS, the **GEOP End-User** refers to any person or entity requiring the supply and delivery of electricity sourcing 100% of its requirements from RE Resources for its own use;

WHEREAS, the **DU** is a Distribution Utility (DU), with a legislative franchise to operate and maintain an electric distribution system in the Cities/Municipalities of _____;

WHEREAS, Distribution Wheeling Service (DWS) is one of the services provided by the DU to entities such as captive and contestable customers, wherein the relationship regarding the delivery of electric power and energy (“Distribution Wheeling Service”) will be governed by the terms and conditions set forth in the Distribution Services and Open Access Rules (“DSOAR”).

WHEREAS, the **GEOP End-User** intends to avail itself of Distribution Wheeling Service (DWS) offered by the **DU**;

WHEREAS, the **PARTIES** agree to permit the wheeling transaction to take place based on the terms and conditions as set out in this Agreement, subject to rules and regulations of the ERC and any other applicable laws;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth herein, the **PARTIES** hereto agree as follows:

Section 1. Scope. This Agreement is solely for the provision of DWS for a **GEOP End-User**, which pertains to those services performed for the conveyance of electricity to the **GEOP End-User** through the distribution system in order to meet the services required by such **GEOP End-User**. This Agreement does not constitute an Agreement to supply electricity.

Section 2. Provision of DWS. Subject to the terms and conditions of this Agreement, and applicable rules and regulations, the **DU** shall provide DWS to the **GEOP End-User** under the technical specifications specified in the attached Schedule with the concerned **GEOP End-User**.

The **GEOP End-User** shall not modify or allow the modification of the technical specifications without the written consent of the **DU**. Should the **GEOP End-User** seek to modify said specifications, the **GEOP End-User** shall notify the **DU** no less than thirty (30) calendar days from the intended implementation of the plan. Any incremental

cost attributable to any modification in the specifications of the **GEOP End-User** shall be made at its sole expense.

Section 3. Charges. The **GEOP End-User** shall pay DWS charges, including all applicable taxes, based on the applicable rate schedule approved by the ERC for the provision of DWS, which include, among others, the:

- (i) Distribution Charge;
- (ii) Standard Connection Charge (SCC), or Guaranteed Minimum Billing Demand (GMBD);
- (iii) Supply Charge;
- (iv) Metering Charge;
- (v) System Loss Charge;
- (vi) Transmission Charge;
- (vii) Local Franchise Tax;
- (viii) Senior Citizen Discount, if applicable;
- (ix) Lifeline Subsidy;
- (x) Universal Charge;
- (xi) FIT-All; and
- (xii) Other Charges and Adjustments which shall include, but not limited to, over/under-recoveries and other pass-through charges approved by the ERC to be billed by the **DU** to the **GEOP End-User**.

Said charges shall be payable in accordance with Section 9 (Billing & Payment) hereof, commencing on the first billing month from the effectivity of this Agreement.

Should the **GEOP End-User** fail to pay the **DU** the DWS Charges within the timeframe specified in its billing agreement, the **GEOP End-User** shall pay interest on the unpaid amount. The **DU** shall calculate the late payment charges provided under Section 4.8.3, Article IV of the DSOAR, or based on the approved surcharge by the ERC, whichever is applicable, from the date the payment was due to be received by the **DU**.

Section 4. Eligibility for DWS. A **GEOP End-User** shall be eligible for DWS if it: (i) continues to possess all the eligibility

requirements under the Distribution Services and Open Access Rules (DSOAR), as *amended*, Green Energy Option Program (GEOP), and other pertinent guidelines, or any amendments thereto; (ii) has no outstanding balance with the **DU**, the Transmission Service Provider (TSP), or the Wholesale Electricity Spot Market (WESM).

Section 5. Duties and Responsibilities of the GEOP End-User. The **GEOP End-User** shall:

- a. Comply with the technical specifications and requirements, and technical infrastructure/equipment standards prescribed by the **DU**, as embodied in the Connection Agreement (CA) executed by the **GEOP End-User**, including applicable provisions of the Philippine Distribution Code (PDC), rules and regulations of the ERC and any other applicable law or guidelines;
- b. Be solely responsible for its contractual obligations with the **DU** and other entities regarding supply of electricity and billing matters, including disputes; and
- c. Not engage in pilferage of electricity as defined under R.A. 7832 otherwise known as “Anti-electricity and Electric Transmission Lines/Materials Pilferage Act of 1994.

Section 6. Duties and Responsibilities of the DU. The **DU** shall:

- a. Subject to system constraints and performance standards approved by the ERC, make reasonable provisions to provide steady and continuous DWS to the **GEOP End-User**;
- b. Comply with applicable laws, and pertinent government rules and regulations, as well as good utility practice;
- c. Use as reference, the registrations of the metering facilities which are capable of measuring energy use and demand,

unless an estimated meter reading is necessary, in accordance with Section 3.5.4 of the Distribution Services and Open Access Rules (DSOAR) on the utilization of estimated billing and any amendments thereto; and

- d. Protect the interests of the GEOP End-Users in good standing.

Section 7. Additional Terms and Conditions. Any terms and conditions specifically applicable to the **PARTIES** shall be specified in the applicable Schedule, which shall be considered integral part hereof.

Section 8. Switching of GEOP End-User. Switching of the **GEOP End-User** shall follow the procedure laid down in the applicable rules and regulations.

- a. The switching of the **GEOP End-User** shall not be allowed in the absence of the required switch approval from the Central Registration Body (CRB); and
- b. The **DU** shall have the right to fully rely on the Switch Approval sent to it by the CRB and shall not be responsible for verifying the validity of such approval. In all cases, the **GEOP End-User** shall hold the **DU** free from any liability arising therefrom.

Section 9. Billing and Payment. The **GEOP End-User** shall be billed by the **DU** for all the charges stipulated under this Agreement and the applicable Schedule, if any, including any billing adjustment, differential bills and such other charges as may be approved by the ERC. Said bill shall become due and demandable within ____ calendar days from the receipt of said bill by the **GEOP End-User**. Any amount unpaid shall be charged with interest at the rate previously approved by the ERC or late payment charges as provided under Section 4.8.3, Article IV of the DSOAR, whichever is applicable, from the date the bill was due to be paid. The payment of

the interest is in addition to, and not in lieu of, all other rights and remedies otherwise available to the **DU**.

The **GEOP End-User** may dispute any bill, in writing, within thirty (30) calendar days from receipt of the bill. Notwithstanding the foregoing, the **GEOP End-User** shall continue to pay the disputed bills without deductions or any offset and shall not be an excuse or ground for the **GEOP End-User** to delay payment of succeeding bills or to unilaterally deduct any amount therefrom. The **DU** shall resolve any disputed bills within thirty (30) calendar days from receipt of the written complaint.

Section 10. Bill Deposit. Prior to the commencement of the services to the **GEOP End-User**, a bill deposit to secure payment of any outstanding regular bills shall be paid by the **GEOP End-User** to the **DU**, equivalent to the one (1) month estimated billing for all DWS Charges of the **GEOP End-User** under Section 3 (Charges) hereof, based on the latter's average billing in the immediately preceding twelve (12) months, or in case of a newly connected **GEOP End-User**, based on projected demand and/or energy of such **GEOP End-User**.

The **DU** may likewise apply such bill deposit to any outstanding bill, billing adjustment or differential billing upon termination of the contract.

Said deposit shall be adjusted: (i) annually, to reflect the average billing of the **GEOP End-User** during a one (1) year period; or (ii) to replace any deposit previously applied to any outstanding bill, billing adjustment or differential. Any excess or deficiency in the amount of bill deposit, after said adjustment, shall be correspondingly refunded through credit to bill to, or collected from the **GEOP End-User** by the **DU**.

A **GEOP End-User** that has paid its electric bills on or before its due date for three (3) consecutive years may demand for the full refund of the deposit prior to the termination of his service. The provisions of the DSOAR shall apply.

Section 11. Disconnection of Service of GEOP End-User.

Subject to prior notice to the **GEOP End-user** by the CRB, the services of the **GEOP End-User** may be disconnected under any of the following circumstances:

- a. Failure to pay the DWS charges, or any adjusted or differential bills or such other charges stipulated in this Agreement, on the due date, in part or in whole;
- b. Violation of R.A. 7832, otherwise known as "Anti-electricity and Electric Transmission Lines/ Materials Pilferage Act of 1994", and of any of the terms and conditions of this Agreement;
- c. Non-compliance with any of the provisions of the applicable laws, including any amendments thereon;
- d. Violation of any of the terms and conditions of this Agreement by the **GEOP End-User**; and
- e. Other circumstances allowed by law or government rules and regulations.

The **DU's** exercise of its rights under this Section shall not entitle the **GEOP End-User** to renege on its obligation to pay the DWS charges, disconnection fees or other billings rendered under this Agreement.

Nothing in this agreement shall prevent the **DU** from temporarily discontinuing the provision of DWS whenever it finds it necessary to execute any routine maintenance, repairs or modifications on its distribution system or in the event of an emergency or to correct unsafe operating conditions in the distribution or connection facilities; *Provided however*, that except in cases of *force majeure*, forced outage/interruption, event of emergency or the need to correct unsafe operating conditions, the **DU** shall give advance notice to the **GEOP End-User** within a reasonable time of said temporary discontinuance of DWS, in a manner allowed by the applicable rules and regulations.

In case the DWS is temporarily discontinued under this Section, the **DU** shall likewise effect the reconnection of **GEOP End-User's** service, when the **DU's** routine maintenance, repairs or modification to the facilities and nearby facilities have been completed or when the emergency has ceased or the unsafe operating conditions in the distribution or connection facilities have been corrected.

Section 12. Reconnection of Service of the GEOP End-User. The services of the **GEOP End-User** shall be reconnected after the latter has settled its obligation with the DU.

Reconnection of the **GEOP End-User** shall be subject to payment of appropriate reconnection fees as approved by the ERC. If the emergency or unsafe operating condition, which brought about the suspension of the DWS is due to the fault of the **GEOP End-User**, the same shall likewise be subject to payment of appropriate reconnection fees.

The procedures for disconnection, deferment of disconnection and reconnection of **GEOP End-User** shall likewise be governed by ERC rules and relevant issuances.

Section 13. Undelivered Energy, Damages and Other Losses. The **GEOP End-User** understands that the **DU** undertakes scheduled and/or unscheduled maintenance, repairs and replacement of its facilities to improve service. In such cases, and in other cases of outages due to events stated in Section 15 (Force Majeure/Fortuitous Event/Other Event) or for reasons not attributable to the fault of the **DU**, the **GEOP End-User** agrees that the **DU** shall not be liable for any undelivered energy, or for damages, whether direct or consequential, including without limitation, loss of profits, loss of revenue, or loss of production capacity, as a result of interruption or disconnection of its service.

Section 14. Liability for Non-technical System Losses and Damages as a result of Pilferage. The **GEOP End-User** shall be liable for non-technical system losses if it condones, colludes,

conspires with, or engages in the pilferage of electricity or tampering of meters or facilities of the **DU**. The **GEOP End-User** shall likewise be liable for any damages caused to the **DU** or third persons arising, or resulting, from such pilferage.

Section 15. Force Majeure/Fortuitous Event/Other Event. The **DU** shall not be liable to the **GEOP End-User** with respect to the non-performance of any of its obligations under this Agreement in the event and to the extent that such non-performance is the direct result of or has been directly caused by force majeure and fortuitous event including other event that are beyond the control of the **DU**. Force majeure and fortuitous event including other event shall mean such event: (i) that is not within the reasonable control, directly and indirectly, of the **DU**; and (ii) which, despite the exercise of reasonable diligence, cannot be prevented, avoided or removed by the **DU**; Provided that, the **DU** has taken all reasonable precautions, and due care in order to avoid or mitigate the effect of such event on the **DU's** ability to perform its obligations under this Agreement. These events shall include, but may not be limited to the following:

- a. A typhoon, storm, tropical depression, flood, drought, volcanic eruption, earthquake, tidal wave, or landslide;
- b. An act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, or any violent or threatening actions;
- c. Non system-wide and system-wide Transmission constraints and/or outages in the Transmission and Distribution System;
- d. Any lawful orders rendered by competent authority, including any advice or warnings of government authorities for safety reasons; and
- e. Other analogous circumstances.

Section 16. Amendment/Modification of Agreement.

This Agreement, including the applicable Schedule with the GEOP End-User, constitutes the sole and entire agreement between the **PARTIES** and supersedes all previous arrangements or agreements in respect of the subject-matter of this Agreement. No amendments of this Agreement or the applicable Schedule with the GEOP End-User, or consent to any departure therefrom, shall in any way be of any force or effect unless confirmed in writing and signed by the **PARTIES**. If necessary, such amendment or departure shall be effective only upon approval by the ERC.

Section 17. Non-Waiver of Rights. The failure of any Party, at any time, to require performance of any provision hereof shall in no manner affect the right to enforce the same at a later time. No waiver by any Party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, shall be deemed to be construed as a further or continuing waiver of such breach or waiver of the breach of any other term or covenant, unless such waiver is in writing.

Section 18. Effectivity and Termination of Agreement.

This Agreement shall be valid and binding to the **PARTIES** upon execution hereof unless terminated by either party by serving written notice to the other at least thirty (30) calendar days before the effective date of termination. It shall take effect on the earliest next regular meter reading date of the GEOP End-User as contained in the attached Schedule, after the execution date hereof, provided that such **GEOP End-User** has/have validly executed Connection Agreement/s with the **DU**.

This Agreement may likewise be terminated:

- a) after due notice, for violation of any of the obligations set forth herein by any Party; and/or
- b) without any need of prior notice:

- i. under Section 4 (Eligibility for DWS), when the **GEOP End-User** is no longer eligible for DWS;
- ii. when this Agreement is rendered invalid and/or unenforceable by law or competent authority;
- iii. when the performance of any obligations under this Agreement has been rendered legally or physically impossible;
- iv. in case of the **GEOP End-User's** failure to pay the bill deposit or the corresponding adjustment thereon; and
- v. in case of violation of R.A. 7832 otherwise known as "*Anti-electricity and Electric Transmission Lines/Materials Pilferage Act of 1994*".

Upon termination or expiration of this Agreement, all rights and obligations of the **PARTIES** hereunder shall cease, except (a) such rights and obligations as may have accrued as of the date of termination or expiration, such as but not limited to payment of any outstanding bills; and (b) any right or obligation which survives the termination of this Agreement.

Section 19. Delivery of Notices. All notices, letters and/or communications shall be addressed to the following:

For the DU:

Name: _____
Mailing Address: _____
Phone Number: _____
Fax Number: _____
Email Address: _____
Billing Address: _____
(both electronic and postal)

For the GEOP End-User:

Name: _____
Mailing Address: _____
Phone Number: _____
Fax Number: _____
Email Address: _____
Billing Address: _____
(both electronic and postal)

Either Party may change the above information through written notice to the other Party.

Section 20. Warranties. Each Party hereby represents and warrants that: (a) it is [duly incorporated/a sole proprietorship/a partnership/a cooperative] validly existing and in good standing under the laws of the Republic of the Philippines; (b) it possesses full power and authority to enter into this Agreement, and has taken all the necessary action to authorize the person/s signing the contract on its behalf; (c) that it has taken all actions to authorize the entry into and the delivery of this Agreement, and the transactions contemplated hereby, and the performance of its obligations hereunder; (d) it has the power, licenses and permits required to carry on its business as it is being conducted and as proposed to be conducted; (e) this Agreement and the consummation of the transactions contemplated herein are its legal, valid, binding and enforceable obligations; and (f) it shall, in good faith, comply with all its obligations under this Agreement.

Section 21. Severability. If at any time, one or more provisions in this Agreement shall be determined to be illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby, provided that the remaining provisions are sufficient to render to each Party the benefits contemplated hereby.

Section 21. Assignment of Rights. The **GEOP End-User** shall not assign its rights under this Agreement. In case of any change in its corporate name, or status brought about by merger, consolidation, amendment of articles of incorporation, sale of business or transfer of ownership, the **GEOP End-User** shall advise the **DU** of such fact in writing, within thirty (30) calendar days from the effective date thereof. Violation of this provision shall give the **DU** the right to terminate this Agreement, without prejudice to any action that the **DU** may bring for the collection of any outstanding obligation of the **GEOP End-User** to the **DU**.

Section 22. Disputes. If any dispute shall arise between the **PARTIES** in connection with or arising out of this Agreement, either party may request in writing to meet within five (5) business days from occurrence thereof and attempt to resolve the dispute. In the event that such dispute remains unresolved within ten (10) business days after such request, the aggrieved party may bring the dispute before the ERC for resolution, if said dispute is within the exclusive jurisdiction of the ERC. Otherwise, the aggrieved party may seek redress from the regular courts. In case of the latter, the **PARTIES** hereby agree that the venue for any court action shall be the regular courts of the principal address where the **DU** is located.

Section 23. Counterparts. This Agreement may be executed by the Parties in counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

Section 24. Non-waiver of Rights. The failure or delay of any Party, at any time, to require performance of any provision hereof shall in no manner affect the right to enforce the same at a later time. No waiver by any Party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, shall be deemed to be construed as a further or continuing waiver of such breach or waiver of the breach of any other term or covenant, unless such waiver is in writing.

IN WITNESS WHEREOF, the **PARTIES** hereto have caused the foregoing instrument to be executed by their respective officers and/or their representatives, thereunto duly authorized at the place and on the date first above written.

For the DU:

For the GEOP End-User:

**Signature Over Printed
Name and Designation**

**Signature Over Printed
Name and Designation**

Date signed:

Date signed:

SIGNED IN THE PRESENCE OF:

Witness Name, Signature Over
Printed Name

Witness Name, Signature Over
Printed Name

ACKNOWLEDGMENT

Republic of the Philippines }
_____} S.S.

Before me, a Notary Public, for and in the City of _____, personally appeared the following parties with their respective competent proof of identities:

DU
Valid government issued id

GEOP End-User
Valid government issued id

known to me and to me known to be the same persons who executed the foregoing instrument, consisting of _____ pages, including the page wherein this Acknowledgment is written, with all pages signed by both **PARTIES** and their instrumental witnesses, and they acknowledged to me that the same is their free and voluntary act and deed and that of the Corporation/DU they respectively represent.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, at _____, Philippines.

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of _____.