

PUBLIC

Renewable Energy Market (REM) Manual

**Dispute Resolution
Issue 1.0**

Abstract

This document covers detailed procedures and requirements for the resolution of REM related disputes.

Document Identity: REM-DRM-001
Issue: 1.0
Reason for Issue: Original
Effective Date:

Document Approval

Author:	PEMC	Date:	
Technical Review:		Date:	
Quality Review:		Date:	
DOE Approval:	Issue 1.0	Date:	

Document Change History

Issue No.	Modifier	Date	Synopsis/Reason for Change
1.0	PEMC		Original Document

Related Documents

Document ID	Document Title
REM Rules	RE Market Rules (REM Rules)
REM-XXX-001	Procedures on the Registration and De-Registration of REM Members Manual Issue 1.0
REM-XXX-001	Procedures and Methodology for Allocating FIT-Eligible RE Generation Manual Issue 1.0
REM-ECM-001	REM Enforcement and Compliance Manual Issue 1.0

Distribution List

Copy Number	Organization	Name of Recipient
	PUBLIC	

Table of Contents

SECTION 1 INTRODUCTION	1
1.1 Purpose	1
1.2 Scope	1
SECTION 2 DEFINITIONS, INTERPRETATION AND CONSTRUCTION.....	2
2.1 Definitions.....	2
2.2 Interpretation and Construction	3
SECTION 3 APPLICATION	5
3.1 Dispute Categories and Parties.....	5
3.2 Resort to Administrative or Judicial Process	5
3.3 Effect of Dispute Resolution Process	5
SECTION 4 THE DISPUTE RESOLUTION ADMINISTRATOR	7
4.1 Objectives and Responsibilities	7
4.2 Powers and Functions	7
4.3 Designation	8
4.4 Report Obligations.....	8
SECTION 5 ACCREDITATION OF MEDIATORS AND SERVICE PROVIDERS	9
5.1 Objectives for Accrediting Mediators and Service Providers	9
5.2 Selection and Accreditation of REM Mediators	9
5.3 REM Alternative Dispute Resolution Support Service Centers.....	10
SECTION 6 GENERAL PROCEDURAL PROVISIONS.....	11
6.1 Process prior to Resorting to Judicial Or Quasi-Judicial Remedies.....	11
6.2 Disputes with the RE Registrar on the Calculation Of Quantities For Compliance By On-Grid Mandated Participants	11
SECTION 7 PROCEDURE PRIOR TO MEDIATION.....	13
7.1 Objective	13
7.2 Establishment and Posting of the Dispute Management Protocol	13
7.3 Negotiation	13
SECTION 8 MEDIATION.....	14
8.1 Referral of Dispute to the DRA	14
8.2 Mediation	15
8.3 Fees and Costs	18
SECTION 9 DATA AND INFORMATION.....	20
9.1 Obligations	20
9.2 Confidentiality	20
SECTION 10 LIMITATION OF LIABILITY	21
Annex A Establishment of Dispute Management Protocol	A-1
Annex B Schedule of Mediation Costs	B-1
Annex C Treasury Services.....	C-1
Annex D Oath of Office Form	D-1

SECTION 1 INTRODUCTION

1.1 PURPOSE

- 1.1.1 This Manual contains the dispute resolution procedures pursuant to Clause 6.3 of the *Renewable Energy Market (REM) Rules*.
- 1.1.2 The general objectives of this Manual are the following:
- a) Establish the mechanisms and procedures to ensure speedy, efficient and cost-effective administration and resolution of *REM Disputes* between and among *REM Participants* and the *Renewable Energy Registrar (RE Registrar)*;
 - b) Establish the criteria and procedures for non-discriminatory and transparent resolutions on *REM Disputes*;
 - c) Clarify the scope of responsibilities and functions of persons involved in the *REM Dispute* resolution process;
 - d) Establish the responsibilities of the *Dispute Resolution Administrator (DRA)* in accordance with Clause 6.3 of the *REM Rules*.

1.2 SCOPE

This Manual covers all related activities and processes regarding dispute administration and *REM Dispute* resolution, as well as the following:

- a) Description of the qualifications, functions and responsibilities of the *Dispute Resolution Administrator* in the administration and facilitation of the resolution of *REM Disputes*;
- b) Process of accrediting *REM Mediators*;
- c) Process of appointing *REM Mediators* and the conduct of mediation proceedings;
- d) Procedures for referring a *REM Dispute* to the *Dispute Resolution Administrator*; and
- e) Procedures for submission of information and the responsibilities of the parties in dispute.

SECTION 2 DEFINITIONS, INTERPRETATION AND CONSTRUCTION

2.1 DEFINITIONS

Unless otherwise defined in this Manual, terms and acronyms used herein have the same meanings ascribed to them in the *REM Rules*.

- a) **Alternative Dispute Resolution (ADR)** is herein defined as the process or procedure used to resolve a *REM Dispute* or controversy other than by adjudication of a presiding judge of a court or an officer of a government agency, in which, a neutral third party participates to assist in the resolution of issues. For the resolution of *REM Disputes*, the processes for *Alternative Dispute Resolution* shall be limited to conciliation and mediation only.
- b) **Claimant** refers to the party in a dispute who filed the *Request for Mediation (RM)*.
- c) **Dispute Management Protocol (DMP)** is the process established for purposes of negotiation before referral of a *REM Dispute* to the *Dispute Resolution Administrator* for mediation, as defined under Clause 7.2.1 and Annex A of this Manual.
- d) **Dispute Management Protocol Focal Person** refers to the person designated under Section 2, Annex A of this Manual for purposes of the *Dispute Management Protocol*.
- e) **Dispute Reports** refer to the reports prepared by the *Dispute Resolution Administrator* for submission to the *PEM Board* and the *REM Governance Committee* and for publication in the Market Information Website in accordance with Section 4.4 of this Manual.
- f) **Dispute Resolution Administrator (DRA)** is the person appointed by the *PEM Board* to perform the functions provided for under the *REM Rules* and Section 4 of this Manual.
- g) **DRA Secretariat** refers to the designated unit within *PEMC* tasked to assist the *Dispute Resolution Administrator* in the performance of his/her responsibilities under the *REM Rules*.
- h) **Notice of Dispute** refers to the notice described in Annex A of this Manual.
- i) **Philippine Electricity Market Corporation (PEMC)** refers to the corporation designated by the *DOE* to act as the *RE Registrar* pursuant to Republic Act No. 9513 or the *RE Act*.
- j) **Renewable Energy Certificate (REC)** refers to a certificate issued by the Registrar in accordance with Clause 3.1.1 of the *REM Rules* representing all renewable and environmental attributes from one MWH of electricity generation sourced from an eligible *RE Generation Facility*.
- k) **REM Governance Committee (RGC)** is the Committee defined under Clause 1.3. of the *REM Rules* to perform such obligations specified under Clause 1.3.4 of the same.

- l) **REM Mediators** refer to mediators who have been accredited pursuant to Section 5 of this Manual.
- m) **REM Alternative Dispute Resolution Support Service Centers (ASSC)** refer to the companies described in Section 5.3.1 and accredited by the *Dispute Resolution Administrator* pursuant to Section 5 of this Manual.
- n) **REM Dispute** refers to a dispute falling within the coverage of Section 3.1 of this Manual, in accordance with the *REM Rules*.
- o) **Request for Mediation (RM)** refers to the notice described under Section 8.1.1 of this Manual.
- p) **Secretariat** refers to the *REM Alternative Dispute Resolution Support Service Center* appointed to a particular case assisting the *REM Mediator* pursuant to Section 5.3 of this Manual.
- q) **REM Dispute Resolution Market Manual** refers to this *Market Manual*, which describes the procedures for resolution of *REM Disputes*, as may be amended from time to time.

2.2 INTERPRETATION AND CONSTRUCTION

- 2.2.1 Any annex to this Manual shall be considered an integral part hereof.
- 2.2.2 Any reference to "this Manual" is a reference to the whole of this *REM Dispute Resolution Manual*, including all its annexes.
- 2.2.3 The singular includes the plural and vice versa.
- 2.2.4 The words "such as", "include", "including", "for example" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not limit or prejudice the generality of any foregoing words.
- 2.2.5 The word "shall" shall be construed as mandatory.
- 2.2.6 Headings in this Manual are for convenience only and shall not affect the construction and interpretation of the provisions of this Manual.
- 2.2.7 Any reference to any law, regulation made under any law, rules or codes shall be to that item as amended, modified, revised or replaced from time to time.
- 2.2.8 Unless otherwise stated or contextually inherent, any reference to a numbered rule corresponds to that Clause in the *REM Rules*.
- 2.2.9 The provisions in this Manual, the *REM Rules* and other *REM Market Manuals* shall be read, construed and interpreted in such a manner as to harmonize and reconcile each and every provision thereof. In the event of inconsistency, the *REM Rules* shall prevail.

- 2.2.10 Should any part or provision of this Manual be declared invalid or nullified by any court or authority of competent jurisdiction, provisions not affected by the declaration of invalidity or nullity shall continue to be in full force and effect.
- 2.2.11 If part of a provision of this Manual be invalidated or nullified by any court or authority of competent jurisdiction, but the rest of such provision would remain valid if part of the wording were deleted, the provision shall apply with such minimum modification as may be:
- a) Necessary to make it valid and effective; and
 - b) Most closely achieves the result of the original wording but without affecting the meaning or validity of any other provision of this Manual.

SECTION 3 APPLICATION

3.1 DISPUTE CATEGORIES AND PARTIES

3.1.1 As established in the *REM Rules*, the provisions and procedures in this Manual shall apply in the case of *REM Disputes* that may arise between and among any of the following parties:

- a) *REM Members*; and
- b) *RE Registrar*;

3.1.2 The provisions and procedures in this Manual shall apply to *REM Disputes* arising from or in connection with or in relation to one or more of the following:

- a) The application of any of the provision of the *REM Rules* or *REM Market Manuals* and all other applicable provisions in the *WESM Rules* related to *REM*;
- b) The interpretation of any of the provisions of the *REM Rules* or *REM Manuals* and all other applicable provisions in the *WESM Rules* related to *REM*;
- c) Any *REM Dispute* relating to or in connection with a transaction in the *REM*; provided that the same shall not involve a breach of the *REM Rules* or *REM Manuals* or such other policy or regulatory rules. For avoidance of doubt, breaches shall fall under the coverage Clause 6.1 of the *REM Rules* and the *REM Investigation Procedures and Penalty Manual*.

3.2 RESORT TO ADMINISTRATIVE OR JUDICIAL PROCESS

A person or entity with a *REM Dispute* belonging to any of the categories described in Clause 3.1 should first comply with the *REM Dispute* resolution process set out in this Manual before filing a formal complaint with the quasi-judicial body or court of competent jurisdiction.

3.3 EFFECT OF DISPUTE RESOLUTION PROCESS

3.3.1 The initiation of the *REM Dispute* resolution process shall put on hold any *REM* transaction specified under Clauses 3.2.1 and 3.2.3 of the *REM Rules for a Renewable Energy Certificate (REC)* that is the subject of such *REM Dispute* until the same is resolved.

3.3.2 The initiation of the *dispute* resolution process shall not relieve a *REM Member* from any of its obligations stipulated under the Clause 4.1.1 of the *REM Rules* and *Market Manuals* and any other applicable policy, rules, and regulation governing the *REM*.

- 3.3.3 Pursuant to Clause 4.4.3, a *REM Dispute* lodged under Clause 4.4.1.1 and 4.4.2.1 shall not affect an *On-Grid Mandated Participant's Renewable Portfolio Standards (RPS)* obligations as specified under Clause 4.3 of the *REM Rules*.
- 3.3.4 The final resolution of a *REM Dispute* may include compensatory measures if actual and proven damages were suffered directly from the continuing compliance with an order or direction in *dispute* and the *dispute* resolution establishes that such order or direction was inconsistent with the *REM Rules* or such relevant *REM Market Manuals*.

SECTION 4 THE DISPUTE RESOLUTION ADMINISTRATOR

4.1 OBJECTIVES AND RESPONSIBILITIES

4.1.1 The primary objectives and main responsibilities of the *Dispute Resolution Administrator* are to facilitate the amicable resolution of *REM Disputes* in a timely and cost-effective manner and ensure the application of the provisions of the *REM Rules and this REM Manual* in the process of resolution of a *REM Dispute*.

4.1.2 In the performance of its duties and responsibilities under Section 4.2 and in any other part of this Manual, the *Dispute Resolution Administrator* shall endeavor to administer the *REM Dispute* resolution processes and make recommendations that:

- a) Are consistent with the *REM* objectives¹;
- b) Are efficient, consistent and transparent;
- c) Are non-discriminatory;
- d) Facilitate the development of full and fair competition; and
- e) Utilize efficient and effective mechanisms to resolve *REM Disputes*.

4.2 POWERS AND FUNCTIONS

4.2.1 The *Dispute Resolution Administrator* shall exercise the following powers and functions:

- a) Administer and ensure the effective implementation and operation of the *REM Dispute* resolution provisions of this Manual;
- b) Determine preliminarily if the dispute is a *REM Dispute* under Clause 3.1 of this Manual;
- c) Draft and issue standard forms to help expedite the resolution of disputes as contained in this Manual;
- d) Facilitate the accreditation process of *REM Mediators*;
- e) Coordinate with *PEMC* regarding the applicable training modules on the *REM* for the accreditation of *REM Mediators*;
- f) Update the list of accredited *REM Mediators* who are in good standing as published in the *PEMC* public website;
- g) Maintain data, reports and other information regarding the development and results of the *REM Disputes* referred to it; and

¹ *REM Rules* Clause 1.1.4

- h) Such other powers and functions that may be provided elsewhere in this Manual.

4.2.2 The *Dispute Resolution Administrator* shall be assisted in its functions by the *DRA Secretariat* under the *PEMC* unit that may be appointed by the *PEM* Board.

4.3 DESIGNATION

The *Dispute Resolution Administrator* appointed under the *WESM Rules* shall be designated to perform the duties and responsibilities of the *REM Dispute Resolution Administrator* set forth in this Manual subject to the same terms under Section 5 of *WESM Dispute Resolution Market Manual* and the *WESM Rules*.

4.4 REPORT OBLIGATIONS

4.4.1 The *Dispute Resolution Administrator* shall prepare monthly *Dispute Reports* for the *PEM* Board. The monthly report shall contain the following:

- a) Summaries and updates on new and pending *REM Disputes* referred to the *Dispute Resolution Administrator*, and
- b) Issues arising from the resolution of such *Disputes* and from the implementation of the procedures and provisions established in this Manual.

SECTION 5 ACCREDITATION OF MEDIATORS AND SERVICE PROVIDERS

5.1 OBJECTIVES FOR ACCREDITING MEDIATORS AND SERVICE PROVIDERS

- 5.1.1 It is the objective of this Manual to attract and maintain a roster of *REM Mediators* from a wide array of experts and professionals from the private sector who have the education, training, and experience to mediate *REM Disputes*, who shall be compensated only for their professional services when called to handle a case.
- 5.1.2 It is also the objective of this Manual to pre-qualify and accredit *REM Alternative Dispute Resolution Support Service Centers (ASSC)*, which have the appropriate *Alternative Dispute Resolution* facilities, trained staffs, and tested organization and systems to serve as the *Secretariat* during the *dispute* resolution proceedings.

5.2 SELECTION AND ACCREDITATION OF REM MEDIATORS

5.2.1 Accreditation

Eligible for accreditation as *REM Mediators* are those who are:

- (a) Members in good standing from certified *Alternative Dispute Resolution (ADR)* providers;
- (b) Any person having the training, education and/or experience in REM operations/ trading, and have passed the examination administered by the *Dispute Resolution Administrator* for prospective *REM Mediators*;
- (c) Upon the *Dispute Resolution Administrator's* recommendation, the *PEM* Board may consider accrediting *WESM-Accredited Mediators* as *REM Mediators*, provided that the *WESM-accredited Mediators* have undergone basic training on the *REM* conducted by *PEMC* and have taken the oath in the form provided under Annex D of this Manual.

5.2.2 Examination

- 5.2.2.1. All aspirants for accreditation as *REM Mediators* shall be required to undergo a Basic REM Training Course conducted by *PEMC*.
- 5.2.2.2. All aspirants for accreditation shall be required to take and pass an examination given out by *PEMC* and/or a *PEM* Board-approved third-party provider on Basic *REM* and Mediation subjects.

- 5.2.3 The roster of *REM Mediators* shall be posted by the DRA Secretariat in the *PEMC* public website.

- 5.2.4 In the selection and appointment of an *REM Mediator*, the *Dispute Resolution Administrator* shall ensure to the best of its ability the impartiality of its *REM Mediator* and shall require the *REM Mediator* to disclose prior to any assigned *REM Dispute* whether or not he or she is:
- a) Related to either party within the fourth degree of consanguinity or affinity; or
 - b) Directly or indirectly interested, whether pecuniary or otherwise, in the outcome of the *REM Dispute*; or
 - c) Had been employed or engaged in whatever capacity by any of the parties within one (1) year immediately preceding the filing of the request for mediation with the *Dispute Resolution Administrator*.

Furthermore, any *REM Mediator* assigned or appointed to facilitate a *REM Dispute* shall be prohibited from being employed or engaged in whatever capacity by any of the parties within one (1) year following the termination of the mediation proceedings.

5.3 REM ALTERNATIVE DISPUTE RESOLUTION SUPPORT SERVICE CENTERS

- 5.3.1 The accreditation of *REM ASSC* shall follow the selection and accreditation process specified under Section 6.2.4 of the *WESM Manual on Dispute Resolution*.
- 5.3.2 The *Dispute Resolution Administrator* shall be responsible for selecting and appointing the *REM ASSC* to act as the *Secretariat* for each case. In such selection process, the *Dispute Resolution Administrator* shall consider the costs as well as the convenience of the parties involved in the *dispute*.
- 5.3.3 If selected as the *Secretariat* for the case, the *REM ASSC* shall also perform the treasury functions provided in Annex C of this Manual.

SECTION 6 GENERAL PROCEDURAL PROVISIONS

6.1 PROCESS PRIOR TO RESORTING TO JUDICIAL OR QUASI-JUDICIAL REMEDIES

- 6.1.1 The parties in dispute shall make good faith efforts to settle amicably their *dispute* between and/or among themselves pursuant to their respective *Dispute Management Protocols* in accordance with Section 7.2.1.
- 6.1.2 Should the negotiation fail, any of the parties may refer the *dispute* to the *Dispute Resolution Administrator* in accordance with Section 8.1. Such act shall set in motion the *REM Dispute Resolution* process established in this Manual.
- 6.1.3 If the *Dispute Resolution Administrator* determines that the *dispute* qualifies as a *REM Dispute* pursuant to Section 3.1 he/she shall, subject to Section 8.1.1, initiate the selection of an *REM Mediator* as provided for under Section 8.2 of this Manual.
- 6.1.4 Should mediation efforts fail, the *Claimant* may refer the matter to a quasi-judicial body, tribunal or court of competent jurisdiction.

6.2 DISPUTES WITH THE RE REGISTRAR ON THE CALCULATION OF QUANTITIES FOR COMPLIANCE BY ON-GRID MANDATED PARTICIPANTS

- 6.2.1 Subject to Clauses 4.3.2.2 and 4.3.2.3 of the *REM Rules*, *disputes* between an *REM Member* and the *RE Registrar* related to a *Final REC Statement* or its supporting data must be referred to the *Dispute Resolution Administrator* within twelve (12) months from receipt of such *Final REC Statement* and/or its supporting data. The *REM Member* shall notify the *RE Registrar* of its *REM Dispute* of the *Final REC Statement* or part of the supporting data.
- 6.2.2 Whenever the *Dispute Resolution Administrator* receives a *Notice of Dispute* regarding the *Final REC Statement* and/or supporting data, the *Dispute Resolution Administrator* shall request the *REM Registrar* for information as to which other *REM Members* may be affected by the dispute, particularly any *REM Member* whose *Final REC Statement* for the same month as the one in dispute may be affected as a consequence of the resolution of the dispute. The *Dispute Resolution Administrator* shall then send copies of the *Notice of Dispute* to all the *REM Members* that the *RE Registrar* signifies as possibly being affected.
- 6.2.3 Until the *REM Dispute* is resolved, the *Final REC Statement* and supporting data shall continue to be treated as valid and all parties are bound by the payment obligations resulting from the relevant *Final REC Statement* issued by the *RE Registrar* in accordance with the *REM Rules*.

- 6.2.4 Once the dispute is resolved, the *RE Registrar* shall ensure, if necessary and applicable, that any corrections are reflected as an adjustment in the next *Final REC Statement/s*. All parties and *REM Members* shall be bound by the payment obligations arising from such adjustment.

SECTION 7 PROCEDURE PRIOR TO MEDIATION

7.1 OBJECTIVE

To efficiently and pro-actively settle *REM Disputes* amicably between parties, *REM Members* and the *RE Registrar* shall establish a *Dispute Management Protocol* or *System*, which shall enable them to negotiate between and/or among themselves before referring the matter to the *REM Dispute Resolution Administrator* for mediation.

7.2 ESTABLISHMENT AND POSTING OF THE DISPUTE MANAGEMENT PROTOCOL

- 7.2.1 The *RE Registrar* and *REM Members* upon registration, shall establish their respective *Dispute Management Protocols* in the manner indicated in Annex A of this Manual, and shall submit copies of the same to the *Dispute Resolution Administrator* for publication in the *PEMC* public website.
- 7.2.2 It shall be the responsibility and duty of the *Dispute Resolution Administrator* to require the *RE Registrar* and every *REM Member* to comply with Section 7.2.1 of this Manual in a timely manner.
- 7.2.3 The failure or refusal of the *RE Registrar* and/or any *REM Member* to comply with Section 7.2.1 of this Manual shall be considered a breach of the *REM Rules*.

7.3 NEGOTIATION

- 7.3.1 The parties shall act in good faith, use all reasonable efforts and sincerely endeavor to negotiate and amicably settle their *REM Dispute* through the procedures and mechanisms established in their *Dispute Management Protocol*.
- 7.3.2 Parties of the *REM Dispute* shall be represented by individuals of sufficiently senior status in their organization and/or other representatives, duly authorized in writing to negotiate the matter in *REM Dispute* and to participate in the negotiations.
- 7.3.3 After the lapse of forty-five (45) working days from the commencement of the negotiations, depending on the result, any of the parties may:
- a) File a notice to the other party or parties involved in the *dispute* that negotiations have failed and are terminated and that the *dispute* shall be referred to the *Dispute Resolution Administrator* for resolution; or
 - b) File a notice to the *Dispute Resolution Administrator* that the negotiation is successful.

SECTION 8 MEDIATION

8.1 REFERRAL OF DISPUTE TO THE DRA

8.1.1 To refer a *REM Dispute* to the *Dispute Resolution Administrator* and initiate the procedures established in this Manual, a *Claimant* shall file a *Request for Mediation* with the *Dispute Resolution Administrator* and shall furnish copies of the same to all parties involved in the *dispute* that the party is aware of. The *Request for Mediation* shall contain:

- a) The names of all other parties involved in the *dispute*;
- b) A brief history of the *dispute* including:
 - i. The nature and time of the *dispute*;
 - ii. The specific *REM* transaction(s) which is/are the subject(s) of the *dispute*;
 - iii. The summary and grounds of the *dispute*;
 - iv. The listing of all unresolved issues, with their description, factual background, arguments and claims including, if possible, an assessment of its value.
- c) Where the *Request for Mediation* is filed jointly by all parties, the request shall include the choice of at least three (3) preferred accredited *REM Mediators* listed in the *PEMC* public website.
- d) Where the *Request for Mediation* is not filed jointly by all of the parties, the *Claimant* may include any proposal regarding the qualifications of the *REM Mediator* or any proposal of one or more *REM Mediators* to be designated by all of the parties. Thereafter, all of the parties may jointly designate the *REM Mediator* or may agree on the qualifications of the *REM Mediator* to be appointed by the *Dispute Resolution Administrator*. In such cases, the parties shall promptly notify the *Dispute Resolution Administrator* thereof.

8.1.2 The *Dispute Resolution Administrator* may, in his discretion, require the *Claimant* to submit additional information or documents.

8.1.3 The *Dispute Resolution Administrator* shall, within thirty (30) working days from the receipt of a *Request for Mediation*, assess the same and determine whether the allegations and issues contained therein are considered a *REM Dispute* pursuant to Section 3.1 of this Manual, taking into account:

- a) The parties involved in the *dispute*; and
- b) The type of *dispute*.

8.1.4 If the *Dispute Resolution Administrator* reasonably considers that the *dispute* as contained in the *Request for Mediation* is not a *REM Dispute*

under Clause 3.1 of this Manual, he/she shall reject the same and notify the *Claimant* and all other parties to the dispute citing his/her reasons therefor.

- 8.1.5 If the *Claimant* believes that the dispute lodged is a *REM Dispute*, then it may challenge the *Dispute Resolution Administrator's* preliminary finding with the *PEM Board*. The *PEM Board* may remand the case to the *Dispute Resolution Administrator* for further review. The case may proceed if the *Claimant* can provide sufficient documents and information to the *Dispute Resolution Administrator*, supporting the nature of the case as a *REM Dispute*.
- 8.1.6 If the *Dispute Resolution Administrator* makes a preliminary determination that the *dispute* is a *REM Dispute* under Clause 3.1 of this Manual, he/she shall request from the *RE Registrar* information as to which other *REM Members* may be affected by the *REM Dispute*. The *Dispute Resolution Administrator* shall then notify all other relevant parties that may be involved in or affected by the *REM Dispute*, whether or not identified in the *Claimant's Request for Mediation*, in such form as the *Dispute Resolution Administrator* may prescribe and may, where applicable, transmit a copy of the *Request* within five (5) working days from receipt thereof.
- 8.1.7 The *Dispute Resolution Administrator* may summon all parties to attend a compulsory meeting, whether conducted in-person or remotely via electronic or similar medium, for the purpose of expediently identifying which parties intend to participate in the mediation, and selecting and appointing the *REM Mediator*
- 8.1.8 in accordance to Section 8.2.7 of this Manual.

8.2 MEDIATION

- 8.2.1 *Mediation* refers to a *dispute* resolution process in which an *REM Mediator* selected by the parties in *dispute* facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement regarding a *REM Dispute*.
- 8.2.2 Where the *REM Dispute* has been referred to *Mediation*, and the parties have not mutually agreed on the *REM Mediator*, the *Dispute Resolution Administrator* shall nominate three (3) possible *REM Mediators* from the roster of *REM Mediators* considering the following:
- a) The nature and particular circumstances of the *REM Dispute*;
 - b) The level of mediation expertise required to resolve the *REM Dispute*; and
 - c) The available schedule of the *REM Mediator*.

- 8.2.3 The *Dispute Resolution Administrator* shall provide each possible *REM Mediator* with information on the nature of the *REM Dispute*, the parties involved therein and other pertinent data.
- 8.2.4 A person included in the list of possible *REM Mediators* may request not to be included if he/she has:
- a) Official, financial or personal conflict of interest with respect to the parties in *Dispute*; or
 - b) Any other issue that is or may be perceived as affecting his independence or ability to mediate in earnest.
- 8.2.5 If the *Dispute Resolution Administrator* determines that the basis for the request of the possible *REM Mediator* for non-inclusion is valid, the *Dispute Resolution Administrator* shall replace that person with another *REM Mediator* using the selection criteria outlined in Section 8.2.2.
- 8.2.6 The *Dispute Resolution Administrator* shall then forward the list of *REM Mediators* to the parties in *dispute* within twenty (20) *working days* after sending the Notice advising of the initiation of the *Mediation* in accordance with Section 8.1.5 of this Manual. The *Dispute Resolution Administrator* shall include a description of the particular expertise in *Mediation* or technical or business experience in the electric power industry or the *REM*, or both, as deemed appropriate to mediate the *REM Dispute*.
- 8.2.7 The parties shall then choose the *REM Mediator* by alternately striking off one name at a time from the list with the last name on the list becoming the *REM Mediator* for the case. The *Claimant* shall have the right to strike off first from the list. If the parties fail to select a mediator after five (5) *working days* from receipt of the list of nominees or within the meeting convened for the purpose, whether conducted in-person or remotely via electronic or similar medium, the *Dispute Resolution Administrator* shall select and appoint the *REM Mediator*, which selection and appointment are binding and final among the parties.
- 8.2.8 The *REM Mediator* shall, upon his appointment, sign a statement of acceptance, impartiality, independence and agreement to devote as much time and attention to the *Mediation* as the circumstances require in order to achieve the objective of a speedy, effective and fair resolution of the dispute. The *REM Mediator* shall disclose in writing to the *Dispute Resolution Administrator* and to the parties any facts or circumstances which might be of such nature as to call into question the *REM Mediator's* independence as well as any circumstances that could give rise to reasonable doubts as to the mediator's impartiality.

8.2.9 The *Dispute Resolution Administrator* shall refer the case to *REM Mediator* within three (3) working days following the latter's appointment under Section 8.2.8.

8.2.10 The *Dispute Resolution Administrator* shall appoint the *ASSC* who shall assist the mediator in facilitating the mediation proceedings. The *ASSC* which shall provide administrative support in the case shall be selected on rotation basis among the *WESM-accredited ASSCs*.

Once the *ASSC* has been appointed, the *Dispute Resolution Administrator Secretariat* shall turnover to the *ASSC* the files of the case, and the handling of the account opened for the particular *Mediation* case.

8.2.11 The parties shall have thirty (30) working days within which to complete the *Mediation* process, unless the time is extended by mutual agreement. The *REM Mediator* shall propose and the parties shall agree on the *Mediation* milestones and timetable.

8.2.12 With the assistance of the *REM Mediator*, the parties in *REM Dispute* shall attempt in good faith to resolve their *REM Dispute* following the procedures and timetable established by the *REM Mediator* and agreed upon by the parties in dispute.

8.2.13 To facilitate the mediation, the *REM Mediator* may:

- a) Require the parties in *REM Dispute* to meet and discuss the matter in *dispute*, with or without the *REM Mediator*;
- b) Act as intermediary between the parties in *REM Dispute*; and/or
- c) Require the parties in *REM Dispute* to submit a written statement of their issues and positions.

8.2.14 If an agreement has been reached by the parties in *REM Dispute*, the *REM Mediator* shall prepare within the next five (5) *working days* a report on the agreement that has been reached including, when appropriate, a summary of the settlement agreement.

8.2.15 The report under Section 8.2.13 shall be sent to:

- a) The *Dispute Resolution Administrator*; and
- b) The *PEM Board*; and
- c) The *REM Governance Committee*.

8.2.16 If the parties in *REM Dispute* are unable to resolve the *REM Dispute* after the timeline specified by the *REM Mediator* under Section 8.2.10:

- a) The parties and/or the *REM Mediator* shall sign a declaration that the *Mediation* has failed and is terminated, and the *REM Mediator* shall send a copy thereof to the *Dispute Resolution Administrator*; and

- b) The recommendation of the *REM Mediator* and any statements made by any party in the mediation process shall have no further force and effect, and shall not be admissible for any purpose in the arbitration or any administrative or judicial proceeding.
- 8.2.17 Upon the written declaration and transmittal thereof that the mediation has failed, the *REM Mediator* shall cause the destruction of all documents made in connection with the mediation process. Any statements made or documents submitted during the mediation process shall have no legal effect and shall not be admissible for any purpose, in arbitration, or any administrative or judicial proceeding.
- 8.2.18 The agreement reached during a mediation process shall be binding and enforceable on each and all the parties in *REM Dispute*. The resolution therein shall include, but not limited to:
 - a) any decision on calculation of *RECs*; and/or
 - b) any provision as to specific performance by any of the parties.

8.3 FEES AND COSTS

- 8.3.1 The party or parties filing a *Request for Mediation* shall pay an advance on mediation fees and costs, as set out in Annex B hereof. A *Request for Mediation* shall be processed only if such is accompanied by the requisite advance payment. Such advance payment will be refunded if the *Dispute Resolution Administrator* determines that the *Request for Mediation* does not raise a *REM Dispute* within thirty (30) working days from the issuance of the determination.
- 8.3.2 If the *Dispute Resolution Administrator* has determined that the Request for Mediation raises a *REM Dispute*, the *Dispute Resolution Administrator Secretariat* or the *ASSC* shall request the parties to pay within five (5) business days a deposit in an amount likely to cover the administrative expenses of the *Secretariat* and the fees and expenses of the *Mediator* for the *Mediation* proceedings, as set out in Annex B hereof. The *Mediation* proceedings shall proceed only upon payment of such deposit to the *Secretariat*.
- 8.3.3 In any case where the *Dispute Resolution Administrator* considers that the deposit is not likely to cover the total administrative costs of the mediation proceedings, the amount of such deposit may be subject to adjustment and/or readjustment. The parties shall be notified in writing by the *Dispute Resolution Administrator* of such determination and the reasons therefor. The *Dispute Resolution Administrator* may stay the mediation proceedings until the corresponding adjustment in payment is made by the parties.

- 8.3.4 Upon termination of the *Mediation* proceedings, the *Secretariat* shall prepare and render an accounting of the total costs of the proceedings and shall, as the case may be, refund to the parties any excess payment or bill the parties for any balance required pursuant to this Manual.
- 8.3.5 All above deposits and costs shall be borne in equal shares by the parties in *dispute*, unless they agree otherwise in writing. However, any party may be free to, within the period stated in the request for payment of deposit, pay the unpaid balance of such deposits and costs should another party fail to pay its share.
- 8.3.6 If the *REM Mediator* determines that one of the parties failed to comply with the agreed milestones and timetable described under Section 8.2.11, resulting in delays in the proceedings, then all other costs or expenses incurred due to such delay by any parties shall be borne by that party.
- 8.3.7 If any of the parties refuses or fails to comply with the payment or to pay its share of the mediation fees and costs, the Dispute Resolution *Administrator* may request the *PEM Board* on behalf of the affected party to make a demand for payment.

The *Dispute Resolution Administrator* may declare a failure of mediation in the event that required deposit is not paid.

SECTION 9 DATA AND INFORMATION

9.1 OBLIGATIONS

- 9.1.1 The parties in *REM Dispute* shall submit the complete data, documents and other information related to the *Dispute* as ordered by the *REM Mediator* at the soonest possible time and no later than the time specified in the order. Failure to comply with such an obligation shall be deemed to be a breach of the *REM Rules*.
- 9.1.2 Unless otherwise specified in this Manual or otherwise directed by the *Dispute Resolution Administrator* or *REM Mediator*, only one copy of any document is required to be served or filed.

9.2 CONFIDENTIALITY

- 9.2.1 The *dispute* resolution proceedings contained in this Manual shall take into consideration the confidentiality of commercially sensitive documents.
- 9.2.2 In all cases, the documents or other information designated as confidential shall not be used by the receiving party or anyone working for and in behalf of the receiving party, for any purpose other than the *dispute* resolution proceeding.
- 9.2.3 Parties in *REM Dispute*, *REM Mediators*, or any party gaining access to documents submitted in the course of a *REM Dispute* resolution process shall implement procedures as may be reasonable and necessary to protect the confidentiality and commercial value of documents or other information obtained during the *REM Dispute* resolution process and marked as “Confidential”, and shall comply with all confidentiality provisions in Chapter 5 of the *REM Rules* and other applicable rules and manuals governing the confidentiality of information.
- 9.2.4 Each party in *REM Dispute*, *REM Mediators*, service providers and the *Dispute Resolution Administrator* shall execute sworn confidentiality undertakings.

SECTION 10 LIMITATION OF LIABILITY

The *REM Mediators*, the *Dispute Resolution Administrator* and its *Secretariat* shall not be liable for any loss or damage suffered by the *RE Registrar*, *REM Members*, or any other party or person as a consequence of any act or omission of those parties or persons unless the *REM Mediators*, the *Dispute Resolution Administrator* and its *Secretariat* acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence.

Annex A Establishment of Dispute Management Protocol

1. OBJECTIVES

To encourage the timely and voluntary settlement of disputes, this document has the following objectives:

- a. Establish the processes in the management of disputes between the parties in *Dispute*; and
- b. Govern the processes in the requests for information and negotiation stage to avoid resorting to formal *Dispute* resolution processes.

2. DMP FOCAL PERSON

The *DMP Focal Person* is the first point of contact for the notification of *Disputes*. The *REM Member* and the RER shall submit to the *DRA* their *Focal Persons* and *Alternates* which will be published in the *Market Information Website*.

2.1. In the identification of the *DMP Focal Person* and his/her *Alternate*, the following shall be considered:

2.1.1. Access to the DMP Focal Person and his/her Alternate

- a. The *DMP Focal Person* and his/her *Alternate* is easily accessible through landline phone, mobile, fax, email and postal address contact on weekdays, during office hours; and
- b. The *Focal Person* shall notify the *DRA* of any changes to keep the records updated.

2.1.2. Training of DMP Focal Person

The *DMP Focal Person* must be familiar with and has understanding of the *Dispute* resolution processes prescribed in the *REM Rules* and this Manual and other applicable rules. The *DMP Focal Person* must have proper training and experience in negotiation and conflict management.

2.1.3. Authority of DMP Focal Person

A high level of authority for the resolution of disputes or possession of a quick and easy access to people with requisite level of authority is required for a *DMP Focal Person*. This will ensure that all agreements reached during the negotiation are binding to all concerned parties.

3. NOTICE OF DISPUTE

Parties to a *Dispute* shall complete the following steps before taking any other action:

- a. Serve a *Notice of Dispute* to the other party/ies and furnish a copy to the *DRA*; and
- b. Attempt to resolve the dispute in good faith through negotiation.

3.1. Protocols on sending a *Notice of Dispute*

- a. To properly notify the other party of a *Dispute* the party shall fill-out the *Notice of Dispute* (Form 1) and transmit the form to the other party/ies addressed to the *DMP Focal Person*. The mode of transmittal may be through ~~fax~~, email or personal service depending on the order of preference of the receipt of *Notice of Dispute* mentioned in the other party's *DMP*.
- b. The *Notice of Dispute* must be signed by an officer who has the proper authority to prepare and sign a *Notice of Dispute*.

3.2. Protocols on receiving a *Notice of Dispute*

- a. An acknowledgement of receipt should be properly made by the *DMP Focal Person* within five (5) working days.
- b. The acknowledgement receipt shall be transmitted in accordance with the mode of transmittal depending on the order of preference of receipt mentioned in the other party's *DMP*.

4. REQUESTS FOR INFORMATION

4.1. The *DMP* shall set out the procedures for responding to requests for information from another *REM Member* and the *RER* in relation to a *Dispute*.

4.1.1. Documents for Information Request

After a *Notice of Dispute* has been transmitted and received by the other party, either party may fill-up the Document Request Form (Form 2) that shall include details on the information needed and the relevance of the information requested. The party from whom information is requested may file a response on the same document (Form 2) with an option on raising the exchange of information confidential and privileged and not binding if the dispute reaches mediation.

4.1.2. Time period for Information Request

There should be a response to the request within ten (10) *working Days* from receipt of the request.

4.1.3. Dispute on Information Request

In the event that the information request is something that cannot be easily responded to for whatever reason, the *DMP Focal Person* should respond

quickly to the requesting party in identifying the aspects of the request which are contentious. If the requested party refuses to heed the requested information, the parties may thresh out this issue in the negotiation stage.

5. NEGOTIATION

5.1. Within fifteen (15) *working Days* after the receipt of the *Notice of Dispute*, the parties must meet by agreement to determine the feasibility of voluntary and amicable settlement of the dispute.

5.2. Before the conduct of negotiation, it may be useful if the parties will consider exchanging written summaries of the issues in dispute to apprise all the concerned parties of the unresolved issues including their description, factual background, arguments and claims.

5.3. During the negotiation stage, the parties have forty-five (45) *working Days* from the *Notice of Dispute* to resolve the dispute by themselves. The parties may agree in writing to extend this 45-working day period.

Should there be failure of negotiation, either of the parties may file a *Request for Mediation* to the *DRA*.

ATTACHMENTS

Form 1- *Notice of Dispute*

Form 2- Document Request Form

**NOTICE OF DISPUTE
Form 1**

Note:

The *DRA* must be furnished a copy of the *Notice of Dispute* with the address below:

Dispute Resolution Administrator
18th Floor, Robinsons Equitable Tower,
ADB Avenue, Ortigas Center,
Pasig City

I. PARTY SERVING NOTICE OF DISPUTE

Name of company: _____

DMP Focal Person

Name: _____

Position: _____

Tel. _____ Mobile _____

Fax _____ Email _____

Address _____

Alternate DMP Focal Person

Name: _____

Position: _____

Tel. _____ Mobile _____

Fax _____ Email _____

Address _____

Signature _____

Name _____

Date _____

II. PARTY/IES NOTIFIED

(1) Name of Company _____

DMP Focal Person

Name: _____

Position: _____

Tel. _____ Mobile _____

Fax _____ Email _____

Address _____

Alternate DMP Focal Person

Name: _____

Position: _____

Tel. _____ Mobile _____

Fax _____ Email _____

Address _____

(2) Name of Company _____

DMP Focal Person

Name: _____

Position: _____

Tel. _____ Mobile _____

Fax _____ Email _____

Address _____

Alternate DMP Focal Person

Name: _____

Position: _____

Tel. _____ Mobile _____

Fax _____ Email _____

Address _____

(3) Name of company _____

DMP Focal Person

Name: _____

Position: _____

Tel. _____ Mobile _____

Fax _____ Email _____

Address _____

Alternate DMP Focal Person

Name: _____

Position: _____

Tel. _____ Mobile _____

Fax _____ Email _____

Address _____

(Please attach additional sheets if necessary)

3. CIRCUMSTANCES GIVING RISE TO THE DISPUTE

Date(s) Dispute arose _____

A description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made including copies of any relevant documents and amount of claims, if any.

(Please attach additional sheets if necessary)

4. REMEDY/RELIEF SOUGHT

**DOCUMENT REQUEST FORM
Form 2**

Date: _____

I. REQUESTING PARTY

DMP Focal Person

Name: _____

Position: _____

Tel. _____ Mobile _____

Fax _____ Email _____

Address _____

Alternate DMP Focal Person

Name: _____

Position: _____

Tel. _____ Mobile _____

Fax _____ Email _____

Address _____

II. REQUESTED PARTY

DMP Focal Person

Name: _____

Position: _____

Tel. _____ Mobile _____

Fax _____ Email _____

Address _____

Alternate DMP Focal Person

Name: _____

Position: _____

Tel. _____ Mobile _____

Fax _____ Email _____

Address _____

III. PLEASE SPECIFY THE DOCUMENTS REQUESTED.
(Kindly attach additional sheets if necessary)

IV. PLEASE STATE RELEVANCE OF THE REQUESTED DOCUMENTS TO THE
DISPUTE.
(Kindly attach additional sheets if necessary)

V. RESPONSE OF REQUESTED PARTY
(To be filled-up by the requested party)

Date: _____

Name: _____

Signature: _____

Annex B Schedule of Mediation Costs

- A. The party or parties filing a *Request for Mediation* shall include in the request an advance of PHP50,000 to cover the fees and costs of processing the *Request for Mediation*. No *Request for Mediation* shall be processed unless accompanied by the requisite payment. Such advance payment shall be credited to the Claimant's share of the advance on fees and costs.
- B. The administrative expenses of the *Secretariat* for the mediation proceedings shall be fixed at the *DRA*'s discretion depending on the tasks carried out by the *Secretariat*. Such administrative expenses shall not exceed the maximum sum of PHP150,000. However, the parties are not precluded from agreeing between/among them to disburse beyond the prescribed maximum amount if they or the circumstances of the dispute resolution proceedings so require.
- C. The fees of the *REM Mediator* shall be calculated on the basis of the time reasonably spent by the *Mediator* in the mediation proceedings, at an hourly rate fixed for such proceedings by the *DRA* in consultation with the *REM Mediator* and the parties. Such hourly rate shall be reasonable in amount and shall be determined in light of the complexity of the dispute and any other relevant circumstances. The amount of reasonable expenses of the *REM Mediator* shall be fixed by the *DRA*.
- D. Amounts paid to the *REM Mediator* do not include any possible value added taxes (VAT) or other taxes or charges and imposts applicable to the *REM Mediator's* fees. Parties have a duty to pay any such taxes or charges; however, the recovery of any such taxes or charges is a matter solely between the *REM Mediator* and the parties.

Annex C Treasury Services

- I. The REM-Accredited *ADR* Support Service Center (“ASSC”), appointed under this Manual to assist the *REM Mediator* on the administrative aspects of a particular case shall also provide the integrated services of (1) billing/invoicing the parties for fees, costs, expenses, etc. imposable to them under this Manual; (2) keeping the funds collected in an interest-bearing checking account/savings account; (3) issuing receipts, and like services, all under its own name, letterhead, official receipt, etc. but only acting as a trustee or in a fiduciary capacity for the said funds so received; (4) disbursing payments to the *REM Mediator* their fees, and to suppliers of services, facilities or goods the costs therefor and such other expenses as may be authorized by the *DRA*, or *REM Mediator* as the case may be, according to or under this Manual, as well as to (5) act as the Withholding Agent in favor of the Government for taxes that needed to be withheld under applicable laws; (6) rendering accounting services for each account as aforesaid, including bookkeeping entries, etc., and submitting records and reports on the same to the *PEM Board* through the *DRA*; and (7) to do whatever services are necessary under the circumstances or towards the final and complete disposition of the subject dispute or case.
- II. After the subject dispute/case has been terminated or otherwise has for whatever situation or reason closed (i.e., upon the date of the report to the *DRA* by the *Mediator* e.g., of the successful closure of a mediation case), the *ASSC* shall maintain any and all excess or unused funds from that particular dispute/case, in the bank until after one (1) year (when it is reasonably certain that no expenditures would need be made for the said dispute/case), in which case the *ASSC* concerned shall submit a final accounting and report on the said account to the *PEM Board* through the *DRA*.
- III. Finally, the *ASSC* concerned shall dispose of the aforesaid excess or unused funds including interest earned, if any, only in the manner instructed in writing by the *PEM Board*.
- IV. Treasury services provided under this section shall not be a separate fee chargeable to the parties.

Annex D Oath of Office Form

OATH OF OFFICE

I, _____, do solemnly swear that I will faithfully and conscientiously discharge my responsibilities as a mediator of the Renewable Energy Market (REM).

I will preserve and support the Rules of the Renewable Energy Market (*REM Rules*) and related issuances; I will promote its aims and objectives; I will faithfully observe its Dispute Resolution Market Manual; I will conduct myself in a manner becoming of a mediator) of the REM, according to the best of my knowledge and ability, with all good fidelity; and I impose upon myself these voluntary obligations, without any mental reservation or purpose of evasion.

SO HELP ME GOD.

(Date)

Inductee

Inducting Officer