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IMEM Manual

Dispute Resolution Issue 1.0

Abstract	This document covers detailed procedures and requirements for the resolution of IMEM related disputes.
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IMEM-IPC-001	IMEM Information Provision and Confidentiality Manual 1.0

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SECTION 1 INTRODUCTION

1.1 PURPOSE

- 1.1.1 This Manual contains the dispute resolution procedures pursuant to Section 8.3 of the *IMEM 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 *Disputes*;
 - b) Establish the criteria and procedures for non-discriminatory and transparent resolutions to *Disputes*;
 - c) Clarify the scope of responsibilities and functions of persons involved in the *Dispute* resolution process;
 - d) Establish the responsibilities of the *Dispute Resolution Administrator* (DRA) in accordance with Clause 8.3.3 of the *IMEM Rules*.

1.2 SCOPE

This Manual covers all related activities and processes regarding *Dispute* administration and *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 Disputes;
- b) Process of accrediting mediators;
- c) The process for appointment of mediators and the conduct of mediation proceedings;
- d) Procedures on how to refer a dispute to the *Dispute Resolution Administrator*;
- e) Procedures for submission of information and the responsibilities of the parties in the *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 *IMEM Rules*.

- a) *ADR* refers to *Alternative Dispute Resolution*, herein defined as process or procedure used to resolve a *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 *IMEM Disputes*, the processes for *Alternative Dispute Resolution* shall be limited to conciliation and mediation only. *Claimant* refers to the party in a *Dispute* who filed the *Request for Mediation*.
- b) *Dispute Management Protocol Focal Person* refers to the person designated under Section 2XX, Annex AXX of this Manual for purposes of the *Dispute Management Protocol*.
- c) *Dispute* refers to a dispute falling within the coverage of Clause **Error! Reference source not found.**XX of this Manual, in accordance the *IMEM Rules*.
- d) *Dispute Management Protocol* is the process established for purposes of negotiation before referral of a *Dispute* onto the *Dispute Resolution Administrator* for mediation, as defined under Clause 7.2.1XX and Annex AXX of this Manual.
- e) *Dispute Reports* refers to the monthly report prepared by the *Dispute Resolution Administrator* for the *PEM Board* in accordance with Clause **Error! Reference source not found.**XX of this Manual.
- f) *IMEM Mediators* refers to mediators who have been accredited pursuant to Clause 5.2.1 of this Manual.
- g) *IMEM Alternative Dispute Resolution Support Service Centers* refers to the companies described in Clause 5.3.1XX and accredited by the *Dispute Resolution Administrator* pursuant to Clause 5.3.2 of this Manual.
- h) *Market Assessment Group* refers to the unit within *Philippine Electricity Market Corporation* created pursuant to Clause 1.4.7.1 of the *WESM Rules*.
- i) *Notice of Dispute* refers to the notice described in Annex AXX.
- j) *Philippine Electricity Market Corporation (PEMC)* refers to the corporation designated by the *DOE* to act as the *IMEM Operator*.
- k) *Request for Mediation* refers to the notice described under Clause **Error! Reference source not found.**XX of this Manual.

- l) *Secretariat* refers to the *IMEM Alternative Dispute Resolution Support Service Center* appointed to a particular case assisting the *IMEM Mediator*.
- m) *WESM-Accredited Mediators and Arbitrators* refer to mediators and arbitrators who have been accredited by the *Dispute Resolution Administrator* pursuant to the *WESM Dispute Resolution Market Manual*.
- n) *WESM Dispute Resolution Market Manual* refers to the *Market Manual* describing the procedures for resolution of disputes in the *WESM*, 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 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 *IMEM Rules*.
- 2.2.9 The provisions in this Manual, the *IMEM Rules* and other *IMEM 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 *IMEM 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 *IMEM Rules*, the provisions and procedures in this Manual shall apply in the case of *Disputes* that may arise between or among any of the following parties:

- a) The *IMEM Operator*;
- b) The *Mindanao System Operator*; and
- c) *IMEM Members*.

3.1.2 For *Disputes* arising under or in connection with or in relation to one or more of the following:

- a) The application of any of the provision of the *IMEM Rules* or *IMEM Manuals*;
- b) The interpretation of any of the provisions of the *IMEM Rules* or *IMEM Manuals*;
- c) Any obligation to settle payment under the *IMEM Rules* or the *IMEM Billing and Settlement Manual*; or
- d) Any *Dispute* relating to or in connection with a transaction in the *IMEM*; provided that the same shall not involve breach of the *IMEM Rules* or *IMEM Manuals* or such other regulatory policy. For avoidance of doubt, breaches shall fall under the coverage of Section 8.1 of the *IMEM Rules* and the *IMEM Enforcement and Compliance Manual*.

3.2 RESORT TO ADMINISTRATIVE OR JUDICIAL PROCESS

An entity with a *Dispute* belonging to any of the categories described in Clause 3.1XX should first comply with the *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 a *Dispute* resolution process shall not stay the payment or recovery of monetary amounts due under the *IMEM Rules* and the payment of monetary amount shall continue to be due and payable at the time specified for payment under the *IMEM Rules* until the *Dispute* is resolved.

3.3.2 The initiation of a *Dispute* resolution process shall not stay any order made or direction given to an *IMEM Member* by the *IMEM Operator* or by the *Mindanao System Operator* pursuant to the *IMEM Rules* and the party

concerned shall or continue to, comply with the order or direction until the *Dispute* is resolved.

- 3.3.3 Except for *Disputes* on the settlement of *IMEM* transactions where the resolution of the *Dispute* shall be administered as an adjustment to the *Final Settlement Statement* in accordance with Chapter 5 of the *IMEM Rules* and the *IMEM Billing and Settlement Manual*, the final resolution of a *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 *IMEM Rules* or such relevant *IMEM 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 *Disputes*, speed up the resolution of conflicts and ensure the application of the provisions of this Manual and the *IMEM Rules*.

4.1.2 In the performance of its duties and responsibilities within this Manual, the *Dispute Resolution Administrator* shall endeavor to administer the *Dispute* resolution processes and make recommendations that:

- a) Are consistent with the *IMEM* objectives¹;
- b) Are efficient, consistent and transparent;
- c) Are non-discriminatory;
- d) Facilitate the development of full and fair competition; and
- e) Utilizes efficient and effective mechanisms to resolve *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 *Dispute* resolution provisions of this Manual;
- b) Determine preliminarily if the dispute is a *Dispute* under Clause **Error! Reference source not found.**XX 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 mediators;
- e) Coordinate with *PEMC* regarding the applicable training modules on the *IMEM* for the accreditation of mediators;
- f) Update the list of accredited *IMEM Mediators* who are in good standing published on the *Market Information Website*²;
- g) Maintain data, reports and other information regarding the development and results of the *Disputes* referred to the *Dispute Resolution Administrator*, and

¹ *IMEM Rules* Clause 1.1.4

² [http://www.wesm.ph/inner.php/the_market/interim_mindanao_electricity_market_\(imem\)](http://www.wesm.ph/inner.php/the_market/interim_mindanao_electricity_market_(imem))

- 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 work by the *Market Assessment Group*.

4.3 DESIGNATION

The *Dispute Resolution Administrator* appointed under the *WESM Rules* shall be designated to perform the duties and responsibilities of the *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

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

- a) Summaries and updates on new and pending *Disputes* referred to him/her; 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 *IMEM Mediators* from a wide array of experts and professionals from the private sector who have the education, training, and experience to mediate *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 *IMEM Alternative Dispute Resolution Support Service Centers* which have the appropriate *Alternative Dispute Resolution* facilities, trained staffs, and tested organization and systems within Davao City to serve as the *Secretariat* during *Dispute* resolution.

5.2 ELECTION AND ACCREDITATION

- 5.2.1 The *Dispute Resolution Administrator* shall accredit *WESM-Accredited Mediators* and *Arbitrators* as *IMEM Mediators* provided they have undergone basic training on the *IMEM* conducted by *PEMC*, and have taken the oath in the form provided under Annex DXX of this Manual.
- 5.2.2 The roster of *Mediators* shall be posted in the *Market Information Website*³.

5.3 IMEM ALTERNATIVE DISPUTE RESOLUTION SUPPORT SERVICE CENTERS

- 5.3.1 Only those companies or organizations with adequate facilities, trained staff, tested organization and systems, and have the experience in administering *Alternative Dispute Resolution* cases, may be eligible for accreditation as *IMEM Alternative Dispute Resolution Support Service Centers*.
- 5.3.2 The *Dispute Resolution Administrator* shall submit a list of recommended companies or organizations for the approval of the *IMEM Governance Committee (IGC)* as accredited *IMEM Alternative Dispute Resolution Support Service Centers*.
- 5.3.3 The *Dispute Resolution Administrator* shall be responsible for selecting the *IMEM Alternative Dispute Resolution Support Service Centers* to act as the *Secretariat* for each case. In the selection of the *Secretariat*, the *Dispute Resolution Administrator* shall consider the costs as well as the convenience of the parties.

³ [http://www.wesm.ph/inner.php/the_market/interim_mindanao_electricity_market_\(imem\)](http://www.wesm.ph/inner.php/the_market/interim_mindanao_electricity_market_(imem))

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- 5.3.4 If selected as the *Secretariat*, the *IMEM Alternative Dispute Resolution Support Service Center* shall also perform the treasury functions provided in Annex CXX of this Manual.
- 5.3.5 The list of *IMEM Alternative Dispute Resolution Support Service Center* shall be posted in the *Market Information Website*⁴ by the *Dispute Resolution Administrator*.

⁴ [http://www.wesm.ph/inner.php/the_market/interim_mindanao_electricity_market_\(imem\)](http://www.wesm.ph/inner.php/the_market/interim_mindanao_electricity_market_(imem))

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 Clause 7.2.1XX.
- 6.1.2 Should the negotiation fail, any of the parties may refer the matter in *Dispute* to the *Dispute Resolution Administrator* in accordance with Clause **Error! Reference source not found.**XX. Such act shall set in motion the *IMEM Dispute* resolution process established in this Manual.
- 6.1.3 If the *Dispute Resolution Administrator* determines that the dispute is a *Dispute* under Clause **Error! Reference source not found.**XX he/she shall, subject to Clause **Error! Reference source not found.**XX, initiate the selection of an *IMEM Mediator* as provided for under Clause **Error! Reference source not found.**XX 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 IMEM OPERATOR ON SETTLEMENT AND PAYMENTS

- 6.2.1 In accordance with Clause 5.5.3.2 of the *IMEM Rules*, *Disputes* between an *IMEM Member* and the *IMEM Operator* related to a *Final Settlement Statement* or its supporting data must be referred to the *Dispute Resolution Administrator* within twelve (12) months from receipt of such *Final Settlement Statement* and/or its supporting data. The *IMEM Member* shall notify the *IMEM Operator* of its *Dispute* of the *Final Settlement Statement* or part of the supporting data.
- 6.2.2 Whenever the *Dispute Resolution Administrator* receives a *Notice of Dispute* regarding the *Final Settlement Statement* and/or supporting data, the *Dispute Resolution Administrator* shall request the *IMEM Operator* for information as to which other *IMEM Members* may be affected by the *Dispute*, particularly any *IMEM Member* whose *Final Settlement 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 *IMEM Members* that the *IMEM Operator* signifies as possibly being affected.
- 6.2.3 Until the *Dispute* is resolved, the *Final Settlement Statement* and supporting data shall be continued to be treated as valid and all parties are bound by the payment obligations that result from the relevant *Final*

Settlement Statement issued by the *IMEM Operator* in accordance with the *IMEM Rules*.

- 6.2.4 Once the *Dispute* is resolved, the *IMEM Operator* shall ensure, if necessary, that any corrections are reflected as an adjustment in the next *Final Settlement Statement/s*. All parties and *IMEM Members* shall be bound by the payment obligations that arise from such adjustment.

SECTION 7 PROCEDURE PRIOR TO MEDIATION

7.1 OBJECTIVE

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

7.2 ESTABLISHMENT AND POSTING OF THE DISPUTE MANAGEMENT PROTOCOL

7.2.1 The *IMEM Operator* and the *Mindanao System Operator* upon commercial operation of the *IMEM*, and *IMEM Members* upon registration, shall establish their respective *Dispute Management Protocols* in the manner indicated in Annex AXX of this Manual, and shall submit copies of the same to the *Dispute Resolution Administrator* for publication on the *Market Information Website*⁵.

7.2.2 It shall be the responsibility and duty of the *Dispute Resolution Administrator* to require the *IMEM Operator*, the *Mindanao System Operator* and every *IMEM Member* to comply with Clause 7.2.1XX of this Manual in a timely manner.

7.2.3 The failure or refusal of the *IMEM Operator*, the *Mindanao System Operator* or any *IMEM Member* to comply with Clause 7.2.1XX of this Manual shall be considered a breach of the *IMEM 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 *Dispute* through the procedures and mechanisms established in their *Dispute Management Protocol*.

7.3.2 Parties shall be represented by individuals of sufficiently senior status in their organization, and duly authorized in writing to negotiate the matter in *Dispute* and to participate in the negotiation procedures.

7.3.3 After the lapse of forty-five (45) days after commencing negotiations, any of the parties may:

- a) File a notice to the other party or parties involved that negotiations have failed and are terminated and refer the

⁵ [http://www.wesm.ph/inner.php/the_market/interim_mindanao_electricity_market_\(imem\)](http://www.wesm.ph/inner.php/the_market/interim_mindanao_electricity_market_(imem))

Dispute 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 *Dispute* to the *Dispute Resolution Administrator* and trigger the procedures established in this Manual, a *Claimant* must 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 describe:

- a) The names of all other parties involved in the *Dispute*; and
- b) A brief history of the *Dispute* including:
 - i. The nature and time of the *Dispute*;
 - ii. The summary and grounds of the *Dispute*;
 - iii. 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 should include the choice of at least three (3) preferred *Mediators* listed in the *Market Information Website*⁶.
- 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 *IMEM Mediator* or any proposal of one or more *IMEM Mediators* to be designated by all of the parties. Thereafter, all of the parties may jointly designate the *IMEM Mediator* or may agree upon the qualifications of the *IMEM 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* will assess the *Request for Mediation* and determine whether the allegations and issues contained therein are considered a *Dispute*, taking into account:

- a) The type of *Dispute*; and
- b) The parties involved.

8.1.4 If the *Dispute Resolution Administrator* reasonably considers that the *Dispute* as contained in the *Request for Mediation* is not a *Dispute* under Clause **Error! Reference source not found.**XX of this Manual, he/she

⁶ [http://www.wesm.ph/inner.php/the_market/interim_mindanao_electricity_market_\(imem\)](http://www.wesm.ph/inner.php/the_market/interim_mindanao_electricity_market_(imem))

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 *Dispute Resolution Administrator* makes a preliminary determination that the *Dispute* is a *Dispute* under Clause **Error! Reference source not found.**XX of this Manual, he/she shall notify all other relevant parties that may be involved in or affected by the *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) days from receipt thereof.

8.2 MEDIATION

- 8.2.1 *Mediation* refers to a *Dispute* resolution process in which an *IMEM Mediator* selected by the disputing parties, facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement regarding a *Dispute*.

- 8.2.2 Where the *Dispute* has been referred to *Mediation*, and the parties have not mutually agreed on the *IMEM Mediator*, the *Dispute Resolution Administrator* shall nominate three (3) possible *Mediators* from the roster of *IMEM Mediators* considering the following:

- a) The nature and particular circumstances of the *Dispute*;
- b) The level of mediation expertise required to resolve the *Dispute*; and
- c) The available schedule of the *IMEM Mediator*.

- 8.2.3 The *Dispute Resolution Administrator* shall provide each possible *IMEM Mediator* with information on the nature of the *Dispute*, the parties involved therein and other pertinent data.

- 8.2.4 A person included in the list of possible *IMEM 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 basis for the non-inclusion is valid, the *Dispute Resolution Administrator* shall replace that person with another *IMEM Mediator* using the selection criteria outlined in Clause 8.2.2XX.

- 8.2.6 The *Dispute Resolution Administrator* shall then forward the list of *IMEM Mediators* to the parties in *Dispute* within twenty (20) *Business Days* after sending the notice advising the initiation of the mediation in accordance

with Clause 8.1.5XX 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 *IMEM*, or both, as deemed appropriate to mediate the *Dispute*.

- 8.2.7 The parties shall then choose the *IMEM Mediator* by alternately striking off one name at a time from the list with the last name on the list becoming the *IMEM Mediator* for the case. The *Claimant* shall have the right to strike off first from the list.
- 8.2.8 The parties shall have ten (10) *Business Days* to complete the mediation process, unless the time is extended by mutual agreement. The *IMEM Mediator* shall propose the mediation procedures and timetable to finalize the mediation within the specified deadline.
- 8.2.9 With the assistance of the *IMEM Mediator*, the parties in *Dispute* shall attempt in good faith to resolve their *Dispute* following the procedures and timetable established by the mediator.
- 8.2.10 To facilitate the mediation, the *IMEM Mediator* may:
- a) Require the parties to meet for face-to-face discussions, with or without the *IMEM Mediator*;
 - b) Act as intermediary between the disputing parties; and/or
 - c) Require the disputing parties to submit written statement of issues and positions.
- 8.2.11 If a resolutive agreement has been reached by the parties to the *Dispute*, the *IMEM Mediator* shall send within the next five (5) *Business Days*, a report of a resolutive agreement being reached including, when appropriate, a summary of the settlement agreement to:
- a) The *Dispute Resolution Administrator*; and
 - b) The PEM Board.
- 8.2.12 If the parties are unable to resolve the *Dispute* after the timeline specified by the *IMEM Mediator* under Clause 8.2.8:
- a) The parties and/or the *IMEM Mediator* shall sign a declaration that the mediation has failed and is terminated, and the *IMEM Mediator* shall send a copy thereof to the *DRA*; and
 - b) The recommendation of the *IMEM 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.
- 8.2.13 Upon the written declaration and transmittal thereof that the mediation has failed, the *IMEM 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.

8.2.14 The agreement reached during a mediation process shall be binding and enforceable on each and all the parties in *Dispute*. The resolution therein shall be considered as an obligation under *IMEM Rules* and shall include, but not limited to:

- a) any decision on settlement of payment; and/or
- b) any provision as to specific performance by any of the parties.

8.2.15 Failure to comply with the agreement reached during the mediation process shall be considered a breach of the *IMEM Rules* and this Manual.

8.3 FEES AND COSTS

8.3.1 The party or parties filing a *Request for Mediation* shall pay a non-refundable registration fee, as set out in the Annex BXX hereto. No *Request for Mediation* shall be processed unless accompanied by the requisite payment.

8.3.2 Following the receipt of a *Request for Mediation*, the *Dispute Resolution Administrator* shall request the parties to pay a deposit in an amount likely to cover the administrative expenses of the *Secretariat* and the fees and expenses of the *IMEM Mediator* for the mediation proceedings, as set out in the Annex BXX hereto. The mediation shall not proceed until payment of such deposit has been received by the *Secretariat*.

8.3.3 In any case where the *Dispute Resolution Administrator* considers that the deposit is not likely to cover the total costs of the mediation proceedings, the amount of such deposit may be subject to 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 payments are made by the parties.

8.3.4 Upon termination of the mediation proceedings, the *Secretariat* shall settle the total costs of the proceedings and shall, as the case may be, return to the parties for 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, unless they agree otherwise in writing. However, any party may be free to pay the unpaid balance of such deposits and costs should another party fail to pay its share.

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- 8.3.6 All other costs or expenses incurred by any party shall be borne by the party which incurred the cost or expense.
- 8.3.7 If any of the parties refuse to comply with the payment of the mediation costs, the *Dispute Resolution Administrator* may request the *PEM Board* on behalf of the affected party to make a demand for payment.

SECTION 9 DATA AND INFORMATION

9.1 OBLIGATIONS

- 9.1.1 The parties in *Dispute* shall submit the complete data, documents and other information related to the *Dispute* as ordered by the *IMEM 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 *IMEM Rules*.
- 9.1.2 Unless otherwise specified in this Manual or otherwise directed by the *Dispute Resolution Administrator*, or *IMEM 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 *Dispute*, *IMEM Mediators*, or any party gaining access to documents submitted in the course of a *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 *Dispute* resolution process and marked as “Confidential”, and shall comply with all confidentiality provisions in Chapter 6 of the *IMEM Rules* and the *IMEM Information Provision and Confidentiality Manual*.
- 9.2.4 Each party in *Dispute*, mediators, service providers and the *Dispute Resolution Administrator* shall execute sworn confidentiality undertakings.

SECTION 10 LIMITATION OF LIABILITY

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

Appendix 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; 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 *IMEM Operator*, the *Mindanao System Operator* and all *IMEM Members* shall submit to the *DRA*, through the *Market Assessment Group*, their *Focal Persons* and *Alternates* which will be published on 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 *IMEM Rules* and this Manual. 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 has 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 parties 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-up 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 sent within the time limit set out under the *IMEM Dispute Resolution Manual*.
- c. 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*.
- b. In case the *Dispute* is already outside the time limit set out under the *DRMM*, the receiving party must notify the other party of the same within ten (10) *Business Days* from receipt of the *Notice of Dispute*.
- c. 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 *IMEM Member*, *IMEM Market Operator* or *Mindanao System Operator* 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) *Business Days* of 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 would not heed on the requested information, the parties may thresh out this issue in the negotiation stage.

5. NEGOTIATION

5.1. Within fifteen (15) *Business 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) *Business Days* from the *Notice of Dispute* to resolve the dispute by themselves. The parties may agree in writing to extend this 45-business 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
c/o Market Assessment Group
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 _____

Interim Mindanao Electricity Market Dispute Resolution

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: _____

Appendix B Schedule of Mediation Costs

- A. The party or parties filing a *Request for Mediation* shall include with the request a non-refundable registration fee of PHP50,000 to cover the costs of processing the *Request for Mediation*. No *Request for Mediation* shall be processed unless accompanied by the requisite payment.
- 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.
- C. The fees of the *IMEM 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 *IMEM 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 *IMEM Mediator* shall be fixed by the *DRA*.
- D. Amounts paid to the *IMEM Mediator* do not include any possible value added taxes (VAT) or other taxes or charges and imposts applicable to the *IMEM 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 *IMEM Mediator* and the parties.

Appendix C Treasury Services

- I. The IMEM-Accredited *ADR* Support Service Center (“ASSC”), appointed under this Manual to assist the *IMEM 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 *IMEM 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 *IMEM 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.

Appendix 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 Interim Mindanao Electricity Market (IMEM).

I will preserve and support the Rules of the Interim Mindanao Electricity Market (*IMEM Rules*); 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 IMEM, 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