FORM OF CONFIDENTIALITY UNDERTAKING
(*For Corporations and Partnerships)*

This Confidentiality Undertaking (the "**Undertaking**") is executed in favor of the Manila Electric Company ("**Meralco**") by *[Name of Price Challenger]* (the "**Recipient**").

1. CONFIDENTIAL INFORMATION

Recipient is interested in obtaining information from Meralco, in furtherance of the supply of the Contract Capacity for the Required Contract Period to Meralco under the terms and conditions set out in the draft Power Supply Agreement (the "**Project**"). The selection process shall be undertaken through a Price Challenge in accordance with Meralco's Instructions to Prospective Price Challengers. By reason of such interest of the Recipient, Meralco proposes to disclose certain Confidential Information (as defined below) to the Recipient. Recipient acknowledges that Meralco has the exclusive right to determine what information it may furnish to the Recipient.

As used herein, "**Confidential Information**" means all information concerning Meralco or its assets, liabilities or obligations furnished to the Recipient directly by any of Meralco's officials, employees, and legal, technical, financial advisors, agents or other representatives, including: (i) information obtained by the Recipient (a) during the due diligence process, (b) through site visits to Meralco or its offices and facilities and (c) through any management presentation by Meralco; (iii) information contained in any other written material furnished or otherwise made available to the Recipient; (iv) information furnished to the Recipient electronically; (v) information presented to the Recipient or its advisors orally, whether presented in a management presentation or another forum; and (vi) all analyses, compilations, forecasts, studies or other documents prepared by the Recipient or its Representatives (as defined in Section 3 hereof) which contain or reflect any of the foregoing information.

Notwithstanding the foregoing, information disclosed by Meralco which would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that it can be proven by written records that said information is (i) part of the public domain without violation of this Undertaking or (ii) disclosed pursuant to administrative or judicial action; *provided,* that, the Recipient shall use its best efforts to maintain the confidentiality of the Confidential Information (including but not limited to asserting in such action any applicable privileges), and shall, immediately after getting knowledge or receiving notice of such action, notify Meralco thereof

and give Meralco the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence. If only a portion of the Confidential Information falls under any of the above, then only that portion of the Confidential Information shall be excluded from the use and disclosure restrictions of this Undertaking.

2. NO REPRESENTATION

Recipient acknowledges and agrees that Meralco is not making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information or that such information will remain unchanged. Recipient releases Meralco or any of its official and employees of any liability to the Recipient or any other person arising out of or related to the Confidential Information or any interpretations or conclusions made or drawn therefrom by the Recipient. Only those representations or warranties that are made to the Recipient in a definitive agreement issued by Meralco in connection with the Project, as, and if it is executed by Meralco, and subject to such limitations and restrictions as may be specified in such agreement, will have any legal effect.

3. RECIPIENT'S OBLIGATIONS

Unless Meralco gives its prior written authorization, the Recipient shall, during a period of one (1) year from the date of disclosure of any Confidential Information hereunder:

(a) not use the Confidential Information for any other purpose than for the Project;

(b) protect the Confidential Information against disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which it protects confidential information of its own;

(c) limit circulation of the Confidential Information to its officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors, agents or other representatives (collectively, the "**Representatives**") who need to know such Confidential Information only for the purpose of evaluating the Project, and who have executed and delivered a confidentiality undertaking in favor of Meralco covering the Confidential Information.

Confidential Information furnished in tangible form or on electronic media shall not be duplicated by the Recipient except for purposes of evaluating the

Project. Upon the request of Meralco, the Recipient shall either return all Confidential Information received in written, electronic or other tangible form, including copies, or reproductions or other media containing such Confidential Information or destroy the same and certify that it has been destroyed, as requested by Meralco, within ten (10) days of such request; *provided,* however, that the Recipient may retain one copy of all Confidential Information provided in written, electronic or tangible form for its corporate records if required for regulatory purposes, subject to the Recipient providing Meralco written notification of such regulatory purpose with details satisfactory to Meralco. Without limiting the generality of the foregoing, in the event that the Project is not consummated with the Recipient (for any reason whatsoever, including but not limited to the Recipient's not (i) submitting Qualification Documents or Financial Proposal, or (ii) being declared the Winning Power Supplier), neither the Recipient nor its Representatives shall use any of the Confidential Information for any purpose. Recipient will be responsible for any breach of this Undertaking by its Representatives.

During the course of the Recipient's evaluation, the Recipient shall make all inquiries and other communications directly to Meralco in writing and addressed to Meralco's representative as indicated in the Invitation for Price Challenge. Recipient agrees not to directly or indirectly contact or communicate with any other official or other employee of Meralco concerning the Project, or to seek any information in connection therewith from such person, without the express written consent of Meralco.

4. COMMUNICATIONS WITH OTHER PRICE CHALLENGERS

Except as may be required by applicable law, the Recipient shall refrain from communicating, and cause its Representatives to refrain from communicating, directly or indirectly, with any Price Challenger about the Project, or about any subject related to the Project; *provided,* however, that the Recipient may communicate with its Representatives and any other third party (and any of its Representatives) bound by a confidentiality agreement with Meralco covering the Confidential Information.

5. GOVERNING LAW AND VENUE

This Undertaking shall be governed by and construed in accordance with the laws of the Republic of the Philippines and the Recipient consents to the exclusive jurisdiction of the courts of Pasig City (to the exclusion of all others) for any dispute arising out of this Undertaking.

6. NO IMPLIED WAIVER

Failure of Meralco to insist in any one or more instances upon strict performance by the Recipient of any of the terms of this Undertaking shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

7. NO COMMITMENT

(a) Recipient acknowledges that Meralco has reserved the right to terminate or suspend, at any time and without cause, further participation by the Recipient and to refuse to disclose any further Confidential Information to the Recipient.

(b) This Undertaking does not constitute a solicitation of bids for the Project.

(c) Recipient also acknowledges and agrees that no contract or agreement providing for the Project shall be deemed to exist between the Recipient and Meralco, as applicable, unless and until a definitive agreement has been executed and delivered by the Recipient and Meralco.

8. SEVERABILITY

If any term of this Undertaking is held by a court of competent jurisdiction to be invalid or unenforceable, then this Undertaking, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

IN WITNESS WHEREOF, Recipient has executed this Undertaking in [*insert place of execution*] on [*insert date*].

[NAME OF PRICE CHALLENGER]

By:

_____
(Authorized Representative)
Date: _____

Signed in the Presence of:

_____ _____