FORM OF CONFIDENTIALITY UNDERTAKING
Contract Capacity of 260 MW (net), effective 26 February 2024

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

1. CONFIDENTIAL INFORMATION

Recipient is interested in obtaining information from Meralco, in furtherance of the Competitive Selection Process ("**CSP**") for **Contract Capacity of 260 MW (net), effective 26 February 2024**, under the terms and conditions set out in the Invitation to Bid, Bid Documents and Power Supply Agreement template (the "**Project**"). The selection process shall be undertaken through CSP in accordance with the Instructions to Prospective Bidders issued by Meralco's Bids and Awards Committee for competitive selection process for the procurement of power supply agreements ("**BAC-PSA**"). 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, and how it may be furnished to the Recipient, which may be through transmission of either hard copies or electronic copies of documents containing such Confidential Information.

As used herein, "**Confidential Information**" means all information concerning Meralco or its assets, liabilities or obligations furnished to the Recipient directly or indirectly by any of Meralco's officials, employees, and legal, technical, financial advisors, agents or other representatives, including: (i) information obtained by the Recipient and/or its Representative/s (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; (ii) information contained in any other written material furnished or otherwise made available to the Recipient and/or its Representative/s; (iii) information furnished to the Recipient and/or its Representative/s electronically; (iv) information presented to the Recipient, its Representatives and/or its advisors orally, whether presented in a management presentation or another forum; and (v) all analyses, compilations, forecasts, studies or other documents prepared by the Recipient and/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 or electronic 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 and/or its Representative/s 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 officials 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 duly authorized officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors and lenders, agents or other representatives, including its potential suppliers and contractors, who need to know such Confidential Information only for the purpose of evaluating and/or preparing the Bid for the Project (collectively, the "**Representatives**");

(d) ensure that its Representatives do not use the Confidential Information for any other purpose than for the Project;

(e) ensure that its Representatives 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 they protect confidential information of their own; and

(f) be liable to Meralco for any and all unauthorized disclosure of the Confidential Information by it or any of its Representatives.

Confidential Information furnished in tangible form or on electronic media shall not be duplicated, and/or recorded in any manner, by the Recipient and/or its

Representative/s 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, including the Confidential Information given to its Representatives, and certify that it has been destroyed by the Recipient and/or its Representatives, as requested by Meralco, within ten (10) days of such request; *provided,* however, that the Recipient and its Representatives 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 and/or its Representatives 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 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 and/or its Representative/s shall make all inquiries and other communications directly to Meralco in writing or through email and addressed to Meralco's BAC-PSA, through the BAC-PSA Secretariat, as indicated in the Invitation to Bid. Recipient and/or its Representative/s agree 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 BIDDERS

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 Bidder 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 the Recipient 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 the 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 _____ City on _____ day of _____.

[NAME OF BIDDER]

By:

_____
(Authorized Representative)
Date: _____

Signed in the Presence of:

_____ _____

Before me, a Notary Public in and for _____ City, personally appeared:

Name	Competent Evidence of Identity	Issuing Authority and Date of Expiration

who were identified by me through competent evidence of identity to be the same persons who presented the foregoing instrument, and who acknowledged to me that their signatures on the instrument were voluntarily affixed by them for the purposes stated therein, and that this instrument represents their free and voluntary act and deed.

Witness my hand and seal this _____ day of _____ .

NOTARY PUBLIC

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