



BIDDING
PEAKING CONTRACT CAPACITY OF 260 MW (NET),
EFFECTIVE 26 FEBRUARY 2024

BID BULLETIN NO. 5

To all Interested Bidders:

1. A matrix containing the set of queries that have been received by, and the corresponding responses of, the Meralco's BAC-PSA is set out in **ANNEX A**.
2. A matrix showing the amendments to the Instructions to Prospective Bidders and Power Supply Agreement is provided herein as **ANNEX B**.

For your guidance and information.

Issued on 8 February 2024.

Bids and Awards Committee-Power Supply Agreements ("BAC-PSA")
Manila Electric Company

(sgd)

Lawrence S. Fernandez
Chairman

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 260 MW (NET), EFFECTIVE 26 FEBRUARY 2024

FORMATTING/PROCEDURAL-RELATED QUERIES/COMMENTS					
		TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA's RESPONSE
1.		IPB Annexes for Bidders CN03	Annex Bid-2/ Bid Security Template/ page 31 (1st par)	Proposing the following revisions as banks require the LC applicant to submit specific documents and specific provisions that support the bid security requirement. “We, [●], a corporation organized and existing under the laws of the (<i>insert place of incorporation/registration</i>) (the “ Issuer ”), hereby establish our Irrevocable Standby Letter of Credit No. [●] (the “ Letter of Credit ”) in your favor relating to the obligations of [<i>insert name of Bidder</i>] (the “ Bidder ”) <u>under the Section 3.3 of Instructions to Prospective Bidders (“IPB”) for the supply of the Contract Capacity of 260 MW (NET), Effective 26 February 2024 dated January 3, 2024</u> and associated energy for the Required Contract Period to Manila Electric Company (“ Meralco ”) (the “ Project ”) x x x”	As consulted with the DU, Meralco is not amenable to the proposal. The current language of the portion i.e., “under the IPB for the supply of the Contract Capacity and associated energy for the Required Contract Period to Manila Electric Company (“ Meralco ”) (the “ Project ”)” is deemed by Meralco to be sufficient.
2.		IPB Annexes for Bidders CN03	Annex Bid-2/ Bid Security Template/ page 31 (1st par)	Please confirm that the expiry date of the SBLC to be submitted. Is it April 26, 2024 (60 days after bid submission date) or August 24, 2024 (180 days after bid submission date)? “x x x which shall be valid and effective until [<i>date that is sixty (60) days after Bid Submission Date but not beyond one hundred eighty (180) days after Bid Submission Date</i>].”	It is left to the Interested Bidder’s discretion for as long as the validity of the SBLC should be 60 days after the Bid Submission Date on February 26, 2024 (i.e., April 26, 2024) or beyond, but not beyond 180 days after Bid Submission Date on February 26, 2024 (i.e., not beyond August 24, 2024).
3.		IPB Annexes for Bidders CN03	Annex Bid-2/ Bid Security Template/ page 31	Proposed edit as the banks require a notarized demand letter. “2. Subject to the other provisions of this Letter of Credit, Meralco is hereby irrevocably authorized to make one drawing for the entire Stated Amount under this Letter of Credit by presenting to the Issuer, at its address set forth above, a demand for payment from Meralco in substantially the form attached as Annex A, duly completed <u>and notarized</u> , and is in the form of a letter on Meralco’s letterhead signed by any of its authorized signatories <u>accompanied by a Secretary Certificate containing the board resolution of Meralco appointing the aforementioned signatories.</u> ”	We are not amenable with the proposal. The requested changes will impose stringent requirements before the DU can draw from the SBLC, which can easily hinder physical submission of the demand letter.

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4.		IPB Annexes for Bidders CN03	Annex Bid-2/ Bid Security Template/ page 31	<p>1. Propose deletion of the phrase "but not beyond one hundred eighty (180) days after bid submission date" if the expiry is confirmed to be 60 days after bid submission.</p> <p>2. Propose edit to include the Bidder for the notice of cancellation to the Issuer.</p> <p>"6.This Letter of Credit shall expire, unless otherwise extended in accordance with the provisions hereof, on the earliest of (i) 5 p.m. at the place of presentation on [<i>insert date that is sixty (60) days after Bid Submission Date but not beyond one hundred eighty (180) days after Bid Submission Date</i>], (ii) the date on which we have honoured a drawing in an amount equal to the Stated Amount, or (iii) the date when we receive a written notice from Meralco that a replacement letter of credit, which is in full force and effect, has been substituted for this Letter of Credit, or (iv) the date when we receive a written notice from Meralco <u>and the Bidder</u> that <u>they are</u> canceling this Letter of Credit"</p>	(see response in the two immediately preceding rows)
5.		IPB Annexes for Bidders CN03	Annex Bid-2/ Bid Security Template/ page 31	<p>Proposed the following edit as this may be required by the banks:</p> <p>"5. If the demand for payment hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give prompt notice (but within the first Business Day succeeding the date of such demand) to Meralco that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold the documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, Meralco may attempt to correct the non-conforming demand and re-submit such demand <u>within the validity of the Letter of Credit</u> in accordance with the terms and conditions hereof."</p>	We are not amenable with the proposal. As relayed by the DU, it is already understood that Meralco will be allowed to attempt to correct the non-conforming demand within the validity period of the Bid Security, provided that Meralco will be able to present the necessary documents. The revision is not necessary.

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6.		IPB Annexes for Bidders CN03	Annex Bid-2/ Bid Security Template/ page 31	Proposed to be added in the Bid Security: <u>"This Standby Letter of Credit shall not be assignable or transferable without prior written consent by the Issuer and the prior written consent by the Bidder"</u>	We are not amenable with the proposal as this is too restrictive.
7.		IPB Annexes for Bidders CN03	Annex A to Annex Bid-2/Demand For Sight Payment/ page 34	Proposing the following edits to specify the drawing event/s. "The undersigned, a duly authorized officers of the Manila Electric Company (" Meralco "), makes reference to IPB for the supply of the Contract Capacity and associated energy for the Required Contract Period to Meralco (the " Project "): 1. Meralco hereby demands payment (the "Drawing") under the Letter of Credit in the amount of (PhP[•]) <u>due to the occurrence of [specify the drawing event] as indicated in Section 3.3.2 of</u> the IPB. x x x"	We are not amenable with the proposal. The requested changes will open the possibility that the Issuer will have a discretion whether or not to honor or not honor the Demand for Sight Payment tendered by the DU.
8.		IPB Annexes for Bidders CN03	ANNEX A of Annex QD-6/Table of Financial Lenders	Question 1: Do we need to indicate the Financial Lenders of the Bidder for its short term loans? Question 2: Do we have to indicate the Financial Lenders of the Bidder's Affiliates?	Yes, item 4 of Annex QD-6 of the IPB will serve as a guide on how to comply with this requirement, to wit: "xxx a complete list of all project(s) and contract(s) with Meralco and/or its Affiliates engaged in power generation, distribution, and supply/financial lenders of the (Insert name of Bidder) and any of its Affiliates engaged in power generation, which was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Deadline. Such project(s) and contract(s) shall only refer to power supply or off take agreements and financing documents with creditors in connection with the development and implementation of the said power supply or off take agreements. " To answer the query, the aforesaid requirement did not distinguish between short-term or long-term loans for the list of financial lenders, and only the financial lenders of the Bidder's Affiliates engaged in power generation for projects/contracts entered into five (5) years prior to the Bid Submission Deadline. Moreover, only those financial lenders / loans that are in relation to power supply or offtake agreements.

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9.		260 MW - IPB v3 FINAL CN03	Section 3.3.2/ Forfeiture of Bid Security	Question: Does the definition of "Conflict of Interest" fall under Section 2.10.2 Conflict of Interest of IPB? See below proposed edit: "an Interested Bidder is disqualified due to a Conflict of Interest <u>in accordance with Section 2.10.2 of this IPB</u> "	We are not amenable with the proposal. "Conflict of Interest" is already defined in Section 9.17 of the IPB, to wit: "9.17. "Conflict of Interest" is defined in Section 2.10.2 of this IPB."
10.		260 MW - IPB v3 FINAL CN03	Section 5.5/ Post Qualification and Notice of Award	Can we clarify the provision below, because the Bid Security and Performance Bond would actually have different purpose and different set of drawing events? "For this purpose, the Winning Power Supplier has the option to either (i) formally inform the BAC-PSA, in writing, that the Bid Security will serve as its Performance Bond, if it is still valid for more than 15 days, or (ii) replace its Bid Security with a new Performance Bond."	Considering that the Bid Security and Performance Bond, as provided in Sections 10 and 15, Appendix B of the ERC CSP Guidelines, have the same prescribed amount (i.e. equivalent to 3-month contract cost of the PSA using the bid price offered by the bidder), this provision allow the bidder the option, if it is declared the Winning Power Supplier, to not obtain a new SBLC as Performance Bond, and instead just formally inform the BAC-PSA in writing that the Bid Security will serve as the Performance Bond, provided it is still valid for more than 15 days.
11.		IPB / Bid Security	Section 3.3b	Please confirm that the Bid Security can be procured by Vivant Energy Corporation as 1590EC's parent company and shareholder with controlling interest.	See Section 3.3 of the IPB which provides: "xxx This Bid Security requirement may be complied with by the Interested Bidder directly, or, provided the Bid Security format in the IPB is followed, through any of its direct shareholders representing Controlling interest, Affiliates, or Ultimate Parent ; xxx"
12.		IPB Annexes/ Bid Security	ANNEX BID-2	Please confirm if acceptable: "We, [●], a corporation organized and existing under the laws of the (insert place of incorporation/registration) (the "Issuer"), <u>upon the request of [parent or stockholder with Controlling Interest] (the "Applicant")</u> , hereby establish our Irrevocable Standby Letter of Credit No. [●] (the "Letter of Credit") in your favor relating to the obligations of [insert name of Bidder] (the "Bidder") under the IPB for the supply of the Contract Capacity and associated energy for the Required Contract Period to Manila Electric Company ("Meralco") (the "Project"), x x x"	We are amenable with this proposal.
13.		IPB- Annex QD 1A	Resolution under paragraph 4	How many representatives are allowed? "RESOLVED FURTHER, that (<u>name of representative</u>) is hereby appointed as the authorized representative of the Company during the Bidding, authorized to execute, sign, submit and receive documents for, and otherwise act in the name of, the Company;"	Not more than three (3) persons (see pp. 10 and 19, IPB).

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INSTRUCTIONS TO PROSPECTIVE BIDDERS / BIDDING DOCUMENTS-RELATED QUERIES/COMMENTS					
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14.		Bid Requirements Contract Capacity of 260 MW (net)	Qualification Documents (Envelope 1) – 2. Technical Qualification Requirements / Page No. 11	<p>"The Bidder, whether directly or through any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent must submit: (i) list of power plant projects undertaken over the last ten (10) years; (ii) list of electricity generation plants that it has operated for the last five (5) years; and (iii) proof /documentation of track record for the last five (5) years of power plants operated by it;"</p> <p>Question 1: Is it within the Bidder's discretion to choose which among the requirements are to be submitted by its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent ? What are the definitions of "Controlling interest", "Affiliates", and "Ultimate Parent"?</p> <p>Question 2: Is there a format or template for documenting these requirements? If none, may we request for a template to ensure consistency and clarity in our documentation process.</p>	<p>1. Yes, as the opening paragraph of this provision stated: "The Bidder, whether directly or through any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent must submit xxx"</p> <p>2. No template or format is being prescribed. This Bid Requirement (and Section 3.1.4 of the IPB) was copied in verbatim from Item (d), Annex 1, Appendix B (p. 12 of Appendix B) of the ERC CSP Guidelines, which reads:</p> <p>"(d)Technical Capability Information - To demonstrate compliance with the technical criteria established in the TOR, the Bidder shall submit the following:</p> <p>(i) List of projects undertaken over the last ten (10) years;</p> <p>(ii) List of electricity generation plants that the Bidder has operated for the last five (5) years; and</p> <p>(iii) Proof of/Documentation on track record for the last five (5) years of power plants operated by it."</p> <p>The ERC CSP Guidelines did not provide a format or template to be followed for this requirement.</p>
15.		Bid Requirements Contract Capacity of 260 MW (net)	Qualification Documents (Envelope 1) – 3. Financial Qualification Requirements / Page No. 11	<p>"(a) The Bidder must show satisfactory evidence that it has the financial capacity to fulfill its obligations with Meralco. This requirement may be complied with by the Bidder directly or through any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent. As evidence thereof, the Bidder or any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent, or in case of an unincorporated joint venture or consortium, each entity or party thereto, must:</p> <p>(i) submit its audited (parent and consolidated, if applicable) financial statements for the last three (3) years (the latest of which must not be earlier than for the year ending December 31, 2022) and recent quarterly financial statements;</p>	<p>Yes, as the opening paragraph of this provision stated: "This requirement may be complied with by the Bidder directly or through any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent."</p>

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				<p>(ii) the consolidated financial statements must show an Unrestricted Net Worth equivalent to Seven Million Pesos (PhP7,000,000.00) multiplied by MegaWatt (MW) of Offered Contract Capacity ("Required Unrestricted Net Worth") based on its submitted financial statements.</p> <p>Question: Are items (i) and (ii) applicable to the parent, Controlling Interest, Affiliates, and/or Ultimate Parent?</p>	
16.		IPB- Annex QD 2	Section 3, page 8	Is there a need to go beyond the shareholders of the Bidder to determine the Beneficial Owners?	Yes, Bidder must go beyond its shareholders to determine the Beneficial Owners.
17.		IPB- Annex QD 1A	Resolution under paragraph 4	<p>What should be indicated in the highlighted portion below</p> <p>"RESOLVED, AS IT IS HEREBY RESOLVED, that the (<i>name of owner of the Nominated Plant</i>) (the "Company") be, and is hereby, authorized to participate in the Bidding to make available the Contract Capacity and supply associated energy, under the terms and conditions set out in the PSA template, to the Manila Electric Company pursuant to its (<i>indicate CSP requirement as appearing on title/cover page of IPB</i>) ("Project");"</p>	<p>This is the form on the "Authority to Participate in the Bidding and Designation of Authorized Representative" which must show authority of the representative to represent the Bidder in this Bidding.</p> <p>The Bidding referred to is for the requirement of "Contract Capacity of 260 MW (net), Effective 26 February 2024". Hence. This portion must state "xxx pursuant to its Contract Capacity of 260 MW (net), Effective 26 February 2024 xxx."</p>
18.		Bid Requirements Peaking TOR_Final	Bid Security	<p>The existing bid security and performance bond calculation places oil-based plants at a disadvantage due to its inclusion of fuel costs. We propose a revision to the bid security calculation to ensure fairness and impartiality to all participants, irrespective of their fuel sources.</p> <p>We recommend recalculating bid security and performance bond exclusively based on the Capital Recovery Fee and Fixed O&M Fee. This adjustment will promote a level playing field for participants employing diverse technologies, fostering a more equitable bidding process.</p> <p>Moreover, the financial evaluation worksheet calculated bid security assumes a 12-hour generation. We also suggest to lower the capacity factor</p>	<p>Please note that the indicated Bid Security amount in this Bidding is only strictly complying with Section 10(c) of the ERC CSP Guidelines, which prescribes that the Bid Security is equivalent to three (3) month contract cost of the PSA, computed using the bid price offered by the Bidder.</p> <p>We are also not amenable with the proposal to lower the capacity factor as this is aligned with the ITB/TOR that "[a]ll Bids shall be evaluated based on its Headline Rate at 50% plant capacity factor."</p>

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PSA TEMPLATE-RELATED QUERIES/COMMENTS					
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19.		PSA		<p>GENERAL COMMENT:</p> <p>1. The PSA template uploaded by MERALCO in the sharepoint data room, which refers to a PSA for a 400 MW capacity with a one-year term, is not consistent with the TOR.</p> <p>2. The periods provided in the PSA should be adjusted to take into account the short-term nature of the PSA.</p>	This is an inadvertent error. The correct PSA template has since been uploaded in the cloud-based folder of, and has since been acknowledged as received by, the Interested Bidder.
20.		PSA	Title	Please revise to "260 MW (net), 2024"	See response to item 19.
21.		PSA	Article 1 Section 1.1 Page 3	<p><i>Contract Year</i> is defined as "the period commencing from Operations Effective Date and ending on February 25, 2025, subject to Section 15.3.3."</p> <p>The definition should be aligned with the required Contract Period per TOR which is "<i>from OED until July 25, 2024</i>".</p>	See response to item 19.
22.		PSA	Article 2 Section 2.2.2. Page 13	<p>The Term in the PSA should be aligned with the Required Contract Period in the TOR.</p> <p>The Required Contract Period per TOR ends July 25, 2024, while the PSA indicates February 25, 2025 as its termination date.</p>	See response to item 19.
23.		PSA	Article 3 Section 3.2 Page 14	<p>The Operations Effective Date in the PSA should be aligned with the Required Contract Period in the TOR.</p> <p>The obligation of the Power Supplier with respect to the Contracted Capacity should terminate by July 25, 2024 and not February 25, 2025 as indicated in the PSA.</p>	See response to item 19.
24.		PSA	Article 1 Section 1.1 Page 6	<i>ITH</i> - kindly confirm if this is applicable for peaking supply.	As consulted with the DU, this shall be retained as there may be a power supplier to whom this applies. Note that, apart from this definition, ITH/Income Tax Holiday appears in Section 11.1.4 on the process when the Power Supplier claims its creditable withholding tax.
25.		PSA	Article 1 Section 1.1 Page 6	<i>Longstop Date</i> - Is this applicable considering that: (a) this is not part of the TOR; and (b) the term of the PSA (which us only until July 2024)	As consulted with the DU, this is applicable and aligned with the period of 75 days from the filing of the application within which the ERC may act on a motion for provisional authority.
26.		PSA	Article 4 Section 4.5	Section 4.5 refers to "Each Performance Bond". Are there multiple performance bonds required?	No. The premise of the provision is that a Power Supplier is allowed to deliver to Meralco " one or more security xxx " in an aggregate amount

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			Pages 15-16		equivalent to "[Security Amount Based on Bid] Philippine Pesos (PhP [•]) (the "Security Amount")," instead of a single one for the full amount.
27.		PSA	Article 12 Section 12.5.2	The provision should be restated and aligned with TOR	As consulted with the DU, this is aligned with the TOR. It is the responsibility of the Power Supplier to ensure that at all times, there is available continuous supply of fuel sufficient to operate the Plant.
28.		PSA	Article 4 Bid Security and Performance Bond	Question 1: What are the drawing events of the Performance Bond? Question 2: What is the expiry date of the Performance Bond?	1. Among others, Section 4.5 of the PSA states that "Each Performance Bond shall stand as security for the faithful and proper compliance by Power Supplier of its obligations under this Agreement, including those indicated in Section 12.1, and shall be procured and maintained by Power Supplier until after the satisfaction of the conditions for the Operations Effective Date." Please also see Section 12.1.2 of the PSA which allows Meralco to draw on the Performance Bond and forfeit to the extent of 10% in case there is delay in securing ERC Approval for reasons attributable to Power Supplier. 2. See response in item 2. "It is left to the Interested Bidder's discretion for as long as the validity of the SBLC should be 60 days after the Bid Submission Date on February 26, 2024 (i.e., April 26, 2024) or beyond, but not beyond 180 days after Bid Submission Date on February 26, 2024 (i.e., not beyond August 24, 2024)."
29.		PSA	Article 1. Section 1.1 Page 2	<i>Billing Period</i> is defined as: "xxx (iii) for the final Billing Period, the period starting immediately after the end of the next to the last Billing period of the Term to the last Day of the Term and ending on the 365th Day (or 366th Day in case of a leap year) of that Contract Year xxx " The definition should be aligned with the required Contract Period per TOR which is "from OED until July 25, 2024".	As consulted with the DU, the definition will be revised as follows: " Billing Period means xxx (iii) for the final Billing Period, the period starting immediately after the end of the next to last Billing Period of the Term to the last Day of the Term and ending on the 365th Day (or 366th Day, in case of a leap year) of that Contract Year which shall not be later than July 25, 2024 xxx. " Please see Annex B of this Bid Bulletin No. 5 reflecting this amendment to the PSA template.
30.		PSA	Article 1 Section 1.1 Page 6	<i>Guaranteed Output</i> - the definition should be aligned with the TOR.	The Guaranteed Output definition is inadvertently included. The defined term is not used in the provisions of the whole PSA template. This will be deleted. [Guaranteed Output means, on an annual basis, the Availability of Supply from: (a) Plant, shall result in an output of not less than [•]%

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					<div>PCF with respect to the Contract Capacity, and (b) subject to Section 5.5, Plant and Eligible Renewable Energy Power Plants, shall result in output of not less than [●]% PCF with respect to the Contract Capacity. For clarity, Guaranteed Output does not translate to a minimum energy off take.]</div> <div>Please see Annex B of this Bid Bulletin No. 5 reflecting this amendment to the PSA template.</div>						
31.		PSA	Article 1 Section 1.1 Page 7	<i>Material Adverse Government Action</i> - the definition should be aligned with the TOR. The cost impact is to be computed based on annual capacity payment whereas the TOR Contract Period is until July 25, 2024 only.	<div>As consulted with the DU, the provision shall be revised as follows:</div> <div>“Material Adverse Government Action means:<div>xxx</div>which causes or may cause serious damage to, or materially and adversely affects the financial condition of, any of the Parties. It is understood that there is serious damage to, or material and adverse effect on the financial condition of, a Party if the cost impact is more than ten percent (10%) of the annual <u>total monthly capacity payment for the Term</u>. xxx”</div> <div>Please see Annex B of this Bid Bulletin No. 5 reflecting this amendment to the PSA template.</div>						
32.		PSA	Article 1 Section 1.1 Page 10	<i>Scheduled Outage</i> - this should be deleted. The TOR provides no outage allowance.	<div>The defined term shall be retained. While the term “Scheduled Outage” is defined in the PSA, there is no outage allowance provisions under the PSA, consistent with the ITB/TOR. The definition should be read in conjunction with Section 8.2 of the PSA which requires Power Supplier to provide Meralco its proposed Schedule Outage.</div>						
33.		PSA	Article 4 Section 4.2 Page 15	Kindly provide the Performance Bond template. Appendix F refers to a different document.	<div>This is an inadvertent error.</div> <div>For this purpose, the PSA shall be revised as follows:</div> <div>“Appendices</div> <table><tr><td>Appendix A</td><td>Plant Description and Site Location</td></tr><tr><td>Appendix B</td><td>Documents to be Delivered by the Parties</td></tr><tr><td>Appendix C</td><td>Calculation of Payment</td></tr></table>	Appendix A	Plant Description and Site Location	Appendix B	Documents to be Delivered by the Parties	Appendix C	Calculation of Payment
Appendix A	Plant Description and Site Location										
Appendix B	Documents to be Delivered by the Parties										
Appendix C	Calculation of Payment										

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					<table><tr><td>Appendix D</td><td>List of Allowed Banks</td></tr><tr><td>Appendix E</td><td>Operating Procedures</td></tr><tr><td>Appendix F</td><td>Invoicing and Payment Procedures</td></tr><tr><td>Appendix G</td><td>Form of Performance Bond</td></tr></table> <p>xxx</p> <p>4.2 Power Supplier shall, within ten (10) Days from Execution Date, deliver to Meralco one or more security for the purpose indicated in Section 4.5 (each, a “Performance Bond”) in an aggregate amount equivalent to [Security Amount Based on Bid] Philippine Pesos (PhP[•]) (the “Security Amount”). Each Performance Bond shall (i) be an irrevocable stand-by letter of credit or bank guarantee, in the form customarily issued by an Allowed Bank, (ii) at the time of issuance thereof, be issued by an Allowed Bank, and (iii) have a face value, when aggregated with the other Performance Bonds, equivalent to not less than the Security Amount. A Performance Bond template is attached as Appendix F G. xxx”</p> <p>The Performance Bond template shall be included as Appendix G in the Appendices.</p> <p>Please see Annex B of this Bid Bulletin No. 5 reflecting this amendment to the PSA template.</p>	Appendix D	List of Allowed Banks	Appendix E	Operating Procedures	Appendix F	Invoicing and Payment Procedures	Appendix G	Form of Performance Bond
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Appendix F	Invoicing and Payment Procedures												
Appendix G	Form of Performance Bond												
34.		PSA	Article 4 Section 4.6 Page 16	For clarification - what are the amounts are contemplated here- “due and owing from Power Supplier to MERALCO”	Please refer to Sections 12.1.1 and 12.1.2 of the PSA.								
35.		PSA	Article 5 Section 5.1	The definition of Supply of Power should be aligned with the TOR which requires the Power Supplier to make available the Contract Capacity for 12 hours daily only covering the peak hours (from 9AM to 9PM), as opposed to the 24/7 supply as currently provided in the PSA currently provides.	<p>Section 5.1 is aligned with the TOR. Under Section 5.1, Power Supplier shall: (a) make Available to Meralco xxx the Contract Capacity from the Plant. xxx”</p> <p>“Availability of Supply or Available” under Section 1.1 of the PSA means one hundred percent (100%) of the Contract Capacity is available for twelve (12) hours daily covering the peak hours of Meralco. For clarity, the peak hours of Meralco are from 09:00 AM to 9:00 PM.</p>								

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 260 MW (NET), EFFECTIVE 26 FEBRUARY 2024

	PSA TEMPLATE-RELATED QUERIES/COMMENTS				
		TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA’s RESPONSE
36.		PSA	Article 11 Section 11.2.2 (a)	All references to “annual capacity payment” should be aligned with TOR.	<p>As consulted with the DU, the other provisions referencing to “annual capacity payment” shall be revised as follows:</p> <p>“11.2.2 xxx</p> <p>a. If the Application for Price Adjustment has been denied, in whole or in part, Power Supplier shall be entitled to terminate this Agreement in accordance with the provisions of Section 16.6.5(a); provided that, serious damage or material and adverse effect on Power Supplier has resulted in its having actually incurred costs amounting to more than thirty percent (30%) of the annual total monthly capacity payment for the Term. xxx</p> <p>b. Meralco may dispute the existence of a Material Adverse Government Action following the procedure set in Article 16. During the pendency of the Dispute, Power Supplier shall continue to make Available the Contract Capacity and supply the Associated Energy to Meralco; provided that, when the Material Government Action results in Power Supplier having actually incurred costs amounting to more than thirty percent (30%) of the annual total monthly capacity payment for the Term, Power Supplier shall be entitled to terminate this Agreement in accordance with the provisions of Section 16.6.5(a), subject to payment by Power Supplier of fifty percent (50%) of the liquidated damages calculated in accordance with Section 16.4.1; xxx.”</p> <p>Please see Annex B of this Bid Bulletin No. 5 reflecting this amendment to the PSA template.</p>
37.		PSA	Article 12 Section 12.2.2, page 26	<p>Suggest to revise paragraph (a) of Section 12.2.2 as follows:</p> <p>(a) Power Supplier shall be free to file a motion for reconsideration with the ERC. [provision on implementation of ERC Approval pending MR is deleted]</p>	As consulted with the DU, Meralco is not amenable with this proposal as Parties are generally constrained to comply with the ERC Approval. This is aligned with Rule 23, Section 3 of the ERC Rules of Practice and Procedure which provides that the filing of the motion for reconsideration “xxx shall not prevent the order or decision from becoming executory.”
38.		PSA	Article 1 1.1 Appendix E 6.2	On metered quantity, will there be adjustments if the final settlement metered quantity is not the same as the daily metered quantity which is the basis for BCQs?	If the deviation of the metered quantity from the day-ahead nomination was not due to an outage, then there will be no more adjustments.

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 260 MW (NET), EFFECTIVE 26 FEBRUARY 2024

PSA TEMPLATE-RELATED QUERIES/COMMENTS					
		TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA's RESPONSE
39.		PSA	Appendix F 3. Final Invoice	For Final Invoice, what are corrections and adjustments allowed? Will this include adjustments on the WESM Price and the Metered Quantity?	Only adjustments to correct erroneous BCQ declarations shall be allowed.
40.		PSA	Appendix E 8 Annual Scheduled Maintenance Outages	Is this still required given the PSA has a term of less than a year?	Yes, but nominations are for the 5-month term of the PSA only.
41.		PSA	Article 1 Section 1.1 Page 7	<p>Suggested mechanism for metered quantity allocation:</p> <p>1. Metered Quantity allocated to Meralco shall be the Plant's total metered quantity less any metered quantities or BCQs for other offtakers</p> <p>2. If the nominated unit is unable to deliver the entire nomination of Meralco, then the Power Supplier will be allowed to source the remainder from its other available units within the Plant. The total metered quantity will be the sum of the metered quantities of the Delivery Points of the nominated unit and the other available unit.</p>	The exact mechanism of the metered quantity allocation shall be part of the operating protocol, which shall be completed and agreed upon by the Parties prior to Operations Effective Date.
42.		PSA	Article 1 Section 1.1 Page 7	<p>Metered Quantity - for clarification.</p> <p>Is the mechanism different from Section 7.3 which states the "<i>Power Supplier undertakes to give Meralco Available Capacity (and associated energy) equivalent to at least Meralco's pro-rata share in the net dependable capacity</i>"?</p> <p>If a different mechanism is intended, will the Parties be given an opportunity to discuss and agree on the same prior to the signing of the PSA?</p> <p>If the Parties fail to agree on a mechanism, how will this affect the PSA?</p>	<p>Section 7.3 refers to instances that the Availability of the Plant is impaired for any reason and is different from the mechanism to be used in determining the Metered Quantity.</p> <p>The exact mechanism of the metered quantity allocation shall be part of the operating protocol, and considering that this simply refers to a mechanism for allocation, hence, non-contentious. Therefore, it should be completed and agreed upon by the Parties prior to Operations Effective Date.</p>
43.		PSA	Article 4	General Comment: Is there a need to replenish or replace the performance bond when drawn by Meralco?	Yes. See Section 4.3 which requires Power Supplier to procure replacement Performance Bond if the same is subject to a fixed expiry date and Section 4.5 which states that the Performance Bond shall be "procured and maintained by Power Supplier until after the satisfaction of the conditions for the Operations Effective Date." See also related response in item 41 of this matrix.

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 260 MW (NET), EFFECTIVE 26 FEBRUARY 2024

PSA TEMPLATE-RELATED QUERIES/COMMENTS					
		TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA's RESPONSE
44.		PSA	Article 5 Section 5.2 Section 5.3 Section 5.4 Article 9 Article 10 Article 11	We would like to ask for reconsideration on the Liquidated Damages rate if this could be lowered to Php 43,000 per MW per day.	As consulted with the DU, Meralco is not amenable with the proposal as this is a standard amount of Liquidated Damages in Meralco's brownfield PSAs, regardless of the Term. Notably, the amount of Php100,000 per MW per Day is applicable for both Power Supplier and Meralco.
45.		PSA	Article 7 Section 7.3 Page 18	For clarification. The second sentence refers to the rights that may be exercised by Meralco under Section 20.1, which in this PSA is a provision on "Language".	<p>This is a typographical error on the referenced Section. The correct Section is 19.1.</p> <p>For this purpose, Section 7.3 will be revised as follows:</p> <p>"7.3 Allocation of Available Capacity</p> <p>If the Availability of the Plant is impaired for any reason such that Power Supplier is unable to make Available all or a portion of the Contract Capacity, Power Supplier shall promptly notify Meralco in writing of such impairment. In the event that Meralco exercises its right under Article 9 and/or Section 20.1 19.1, notwithstanding the impairment, Power Supplier undertakes to give Meralco Available capacity (and associated energy) equivalent to at least Meralco's pro-rata share in the net dependable capacity."</p> <p>Please see Annex B of this Bid Bulletin No. 5 reflecting this amendment to the PSA template.</p>
46.		PSA	Article 12 Section 12.1.1	<p>Kindly clarify the provision cited below. Is the Power Supplier required to provide a replacement Performance Bond after Meralco draws the entire amount of the original Performance Bond?</p> <p><i>"Should Meralco exercise its right to forfeit and the Operations Effective Date has not occurred, Power Supplier shall replace the Performance Bond within thirty (30) Days after the forfeiture, without need of demand from Meralco."</i></p>	<p>Yes, the Power Supplier is required to provide a replacement Performance Bond for purpose of compliance with obligation in Section 12.2.2.</p> <p>It should be noted that Section 12.1.1 contemplates Parties' joint filing of the ERC Application albeit attended by failure to timely file such application for reasons attributable to Power Supplier, in which case, the Performance Bond shall be forfeited. On the other hand, Section 12.1.2 contemplates a scenario where the Application has already been filed but there is delay in ERC Approval for reasons attributable to Power Supplier. In such case, Meralco has to be able to forfeit the Performance Bond to the extent of 10%, hence, Power Supplier needs to provide a replacement Performance Bond. Be that as it may, we trust that Winning Power Supplier will cooperate</p>

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 260 MW (NET), EFFECTIVE 26 FEBRUARY 2024

PSA TEMPLATE-RELATED QUERIES/COMMENTS					
		TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA's RESPONSE
					towards timely filing and submission of ERC-required documents, which will ensure no need for forfeiture of the Performance Bond.
47.		PSA	Article 13	<p><i>We would like to seek clarification on the rationale behind the insurance requirements and thresholds provided under Section 13.1 considering the short Term of the PSA.</i></p> <p><i>We propose to delete this provision. If not acceptable to Meralco, we propose that the threshold be adjusted considering the short Term of the PSA.</i></p>	<p>As consulted with the DU, Article 13 of the PSA template will be revised to reflect / consider the short Term of the IPSA, to wit:</p> <p><u>Section 13.1 [not used]</u></p> <p>13.1 Insurance Policies</p> <p>Power Supplier will endeavor to purchase the following insurance coverage described below to the extent such insurance coverages are commercially available, provided that, the coverages, deductibles, and amounts of insurance indicated below can be adjusted from time to time as market conditions dictate, or based on mutual agreement between Power Supplier and Meralco:</p> <p>(a) Industrial All Risks (IAR) insurance with the following minimum coverage: (i) Fire and Allied Perils Insurance (based on sound value of the buildings, machinery/equipment, and all other materials (like fuel and maintenance parts); (ii) Machinery Breakdown Insurance (based on highest value of machinery/equipment); (iii) Business Interruption (at least twelve months indemnity period);</p> <p>(b) Comprehensive General Liability (CGL) with at least PHP equivalent of Five Million United States Dollars (USD5,000,000.00) per occurrence and annual aggregate with the following coverages: (i) Premises Operations Liability; (ii) Contractual Liability; (iii) Employer's Liability; (iv) Personal Injury Liability; (v) Excess Auto Liability Extension for all owned, hired, and non-owned vehicles; and (vi) Third Party Liability (at least PHP equivalent of One Million United States Dollars per occurrence and annual aggregate).</p> <p>13.2 Evidence of Insurance</p>

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 260 MW (NET), EFFECTIVE 26 FEBRUARY 2024

PSA TEMPLATE-RELATED QUERIES/COMMENTS					
		TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA’s RESPONSE
					<p>On or before the Operations Effective Date, Power Supplier shall provide Meralco with a copy of their <u>ir Industrial All Risks (IAR) insurance and (b) Comprehensive General Liability (CGL)</u> insurance policies as required under Section 13.1 above, which reasonably describes the <u>policy</u> terms and conditions of the insurance and includes <u>including</u> certifications from its insurers <u>and premium payments</u> evidencing payment of the premiums in respect of the insurance policies obtained by Power Supplier in connection with this Agreement.</p> <p>13.3 <u>Changes to Policies</u></p> <p>Any changes in the insurances that are not consistent with the requirements of this Agreement shall require the prior written consent of Meralco.</p> <p>13.4 <u>Notification of Claims and Application of Proceeds</u></p> <p>Power Supplier shall, in relation to each property damage insurance policy for the Plant required by Section 13.1, promptly notify Meralco of any circumstances that give rise or might reasonably be foreseen to give rise to a claim under such policy or policies, which exceeds Five Million United States Dollars (USD5,000,000.00) (or PhP equivalent).</p> <p>Power Supplier shall apply, to the extent required, any and all of the property damage insurance proceeds that it receives regarding any damage to the Plant toward the reinstatement of the Plant.</p> <p><u>Section 13.3 [not used]</u></p> <p><u>Section 13.4 [not used]</u></p> <p>Please see Annex B of this Bid Bulletin No. 5 reflecting this amendment to the PSA template.</p>

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 260 MW (NET), EFFECTIVE 26 FEBRUARY 2024

PSA TEMPLATE-RELATED QUERIES/COMMENTS					
		TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA's RESPONSE
48.		PSA	Article 12 Section 12.2.2 (a)	Please reconsider time periods provided given the term of the PSA i.e. if motion for reconsideration is not resolved by the ERC within 120 days after its filing.	<p>As consulted with the DU, the following revision shall be introduced in Section 12.2.2(a):</p> <p>"12.2.2. In case of Power Supplier's non-acceptance, it has the following options:</p> <p>(a) Power Supplier shall be free to file a motion for reconsideration with the ERC. In case Power Supplier decides to file a motion for reconsideration, and pending resolution thereof by the ERC, the Parties shall implement the ERC Approval subject to any adjustment or amendment that the ERC may direct. Any order on a motion for reconsideration shall be treated as an ERC Approval for purposes of the processes under this Section 12.2. If the ERC Approval requires any amendment to or modification of any provision of this Agreement that is not acceptable to either Party, acting reasonably, then the Parties shall cooperate in good faith to resolve the required amendment, including seeking a reconsideration by the ERC. If the Parties are unable to agree on the required amendment within thirty (30) Days from receipt of the ERC Approval, or if the motion for reconsideration is not resolved by the ERC within one hundred twenty (120) ninety (90) Days after its filing xxx."</p> <p>Please see Annex B of this Bid Bulletin No. 5 reflecting this amendment to the PSA template.</p>
49.		PSA	Article 15	In relation to Force Majeure provisions, since this is a short term PSA, Meralco should reconsider the periods (i.e. curing period, extension) provided.	There is no Term Extension under this PSA for the same period that the FM subsists.
50.		PSA	Article 16 Section 16.5 Section 16.6	Please reconsider time periods provided given the term of the PSA.	As consulted with the DU, Meralco shall retain the periods given that it deems these periods to be reasonable already for Parties to discuss and/or for Meralco to look for alternative supply.
51.		PSA	Appendix C Energy Payments	Is there a fuel efficiency cap for conventional power plants?	None
52.		PSA	Article 5 5.4 WESM Declaration s	What is the definition of erroneous declaration? Would there be a threshold in energy imbalances such that if BCQs declared breaches the threshold, then those BCQs are considered erroneous?	Erroneous declarations are BCQ declarations to the WESM made by the Power Supplier on behalf of Meralco wherein the declared BCQs did not match the nominations of Meralco.

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 260 MW (NET), EFFECTIVE 26 FEBRUARY 2024

PSA TEMPLATE-RELATED QUERIES/COMMENTS					
		TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA's RESPONSE
					Erroneous declarations are determined and subject to fines as stated in Section 5.4
53.		Article 16	Agreed Damages	In the event of default, we would like to clarify if Meralco is only entitled to Liquidated damages and not the Performance Bond.	<p>Yes, this is confirmed.</p> <p>It should be noted that under Section 4.6 of the PSA, "4.6 Within thirty (30) Days after the Operations Effective Date, Meralco shall return to Power Supplier the Performance Bond or replacement thereof less any amount properly due and owing from Power Supplier to Meralco under this Agreement as of the date of the return." Hence, as the Performance Bond has already been returned to Power Supplier 30 Days after the Operations Effective Date, in case of Power Supplier EOD, provisions on liquidated damages shall apply. Notably, Sections 12.1.1 and 12.1.2 are not among grounds for EOD and there are also separate grounds for EOD.</p>
54.		PSA Appendix E	Annual Energy Nomination Schedules	Please confirm if this is still applicable for an interim power supply agreement	Yes, but nominations are for the 5-month term of the PSA only
55.		Article 1 1.1	Replacement Power	Requesting to include in the definition of Replacement Power, to include other units available within the power plant facility, and the portfolio of other plants	As long as the trading node of the source of the Replacement Power is included in Appendix A of the PSA, then any supply from them shall be treated as Replacement Power.

AMENDMENTS TO THE INSTRUCTIONS TO PROSPECTIVE BIDDERS (3 January 2024)

Item	Reference / Subject Matter of Amendment	Amendments
1	Section 3.3.3	<p>[...]</p> <p>(c) The Bid Security of the Winning Power Supplier shall be retained <u>(and will be returned)</u> by Meralco until replacement thereof with a <u>upon submission of the</u> Performance Bond. The Winning Power Supplier must extend the validity of the Bid Security without need of demand from Meralco, no later than fifteen (15) days prior to its expiration, to ensure that it remains valid until replaced by a <u>the</u> Performance Bond <u>has been submitted</u>. In the alternative, if the Bid Security is still valid for more than 15 days, the Winning Power Supplier may notify Meralco that its Bid Security be deemed the Performance Bond.</p> <p>[...]</p>

AMENDMENTS TO THE POWER SUPPLY AGREEMENT (PSA) TEMPLATE

Item	Reference / Subject Matter of Amendment	Amendments														
1	Table of Contents	<div><div>[...]</div><div><div>Appendices</div><table><tr><td>Appendix A</td><td>Plant Description and Site Location</td></tr><tr><td>Appendix B</td><td>Documents to be Delivered by the Parties</td></tr><tr><td>Appendix C</td><td>Calculation of Payment</td></tr><tr><td>Appendix D</td><td>List of Allowed Banks</td></tr><tr><td>Appendix E</td><td>Operating Procedures</td></tr><tr><td>Appendix F</td><td>Invoicing and Payment Procedures</td></tr><tr><td>Appendix G</td><td>Form of Performance Bond</td></tr></table></div><div>[...]</div></div>	Appendix A	Plant Description and Site Location	Appendix B	Documents to be Delivered by the Parties	Appendix C	Calculation of Payment	Appendix D	List of Allowed Banks	Appendix E	Operating Procedures	Appendix F	Invoicing and Payment Procedures	Appendix G	Form of Performance Bond
Appendix A	Plant Description and Site Location															
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Appendix E	Operating Procedures															
Appendix F	Invoicing and Payment Procedures															
Appendix G	Form of Performance Bond															
2	Section 1.1	<div><div>[...]</div><div><div>Billing Period</div> means xxx (iii) for the final Billing Period, the period starting immediately after the end of the next to last Billing Period of the Term to the last Day of the Term and ending on the 365th Day (or 366th Day, in case of a leap year) of that Contract Year which shall not be later than July 25, 2024 xxx.</div><div>[...]</div></div>														
3	Section 1.1	<div><div>[...]</div><div><div>Guaranteed Output</div> means, on an annual basis, the Availability of Supply from: (a) Plant, shall result in an output of not less than 10% PCF with respect to the Contract Capacity, and (b) subject to Section 5.5, Plant and Eligible</div></div>														

Item	Reference / Subject Matter of Amendment	Amendments
		<p>Renewable Energy Power Plants, shall result in output of not less than [•]% PCF with respect to the Contract Capacity. For clarity, Guaranteed Output does not translate to a minimum energy off take.]</p> <p>[...]</p>
4	Section 1.1	<p>[...]</p> <p>Material Adverse Government Action means:</p> <p style="text-align: right;">xxx</p> <p>which causes or may cause serious damage to, or materially and adversely affects the financial condition of, any of the Parties. It is understood that there is serious damage to, or material and adverse effect on the financial condition of, a Party if the cost impact is more than ten percent (10%) of the annual total total monthly capacity payment for the Term. xxx</p> <p>[...]</p>
5	Section 4.2	<p>[...]</p> <p>4.2 Power Supplier shall, within ten (10) Days from Execution Date, deliver to Meralco one or more security for the purpose indicated in Section 4.5 (each, a “Performance Bond”) in an aggregate amount equivalent to [Security Amount Based on Bid] Philippine Pesos (Php[•]) (the “Security Amount”). Each Performance Bond shall (i) be an irrevocable stand-by letter of credit or bank guarantee, in the form customarily issued by an Allowed Bank, (ii) at the time of issuance thereof, be issued by an Allowed Bank, and (iii) have a face value, when aggregated with the other Performance Bonds, equivalent to not less than the Security Amount. A Performance Bond template is attached as Appendix F G. xxx</p> <p>[...]</p>
6	Section 7.3	<p>[...]</p> <p>7.3 Allocation of Available Capacity</p> <p>If the Availability of the Plant is impaired for any reason such that Power Supplier is unable to make Available all or a portion of the Contract Capacity, Power Supplier shall promptly notify Meralco in writing of such impairment. In the event that Meralco exercises its right under Article 9 and/or Section 20.1 19.1, notwithstanding the impairment, Power</p>

Item	Reference / Subject Matter of Amendment	Amendments
		Supplier undertakes to give Meralco Available capacity (and associated energy) equivalent to at least Meralco’s pro-rata share in the net dependable capacity. [...]
7	11.2.2	[...] 11.2.2 xxx a. If the Application for Price Adjustment has been denied, in whole or in part, Power Supplier shall be entitled to terminate this Agreement in accordance with the provisions of Section 16.6.5(a); provided that, serious damage or material and adverse effect on Power Supplier has resulted in its having actually incurred costs amounting to more than thirty percent (30%) of the annual total monthly capacity payment for the Term . xxx b. Meralco may dispute the existence of a Material Adverse Government Action following the procedure set in Article 16. During the pendency of the Dispute, Power Supplier shall continue to make Available the Contract Capacity and supply the Associated Energy to Meralco; provided that, when the Material Government Action results in Power Supplier having actually incurred costs amounting to more than thirty percent (30%) of the annual total monthly capacity payment for the Term , Power Supplier shall be entitled to terminate this Agreement in accordance with the provisions of Section 16.6.5(a), subject to payment by Power Supplier of fifty percent (50%) of the liquidated damages calculated in accordance with Section 16.4.1; xxx [...]
8	12.2.2(a)	[...] 12.2.2. In case of Power Supplier’s non-acceptance, it has the following options: (a) Power Supplier shall be free to file a motion for reconsideration with the ERC. In case Power Supplier decides to file a motion for reconsideration, and pending resolution thereof by the ERC, the Parties shall implement the ERC Approval subject to any adjustment or amendment that the ERC may direct. Any order on a motion for reconsideration shall be treated as an ERC Approval for purposes of the processes under this Section 12.2. If the ERC Approval requires any amendment to or modification of any provision of this Agreement that is not acceptable to either Party, acting

Item	Reference / Subject Matter of Amendment	Amendments
		<p>reasonably, then the Parties shall cooperate in good faith to resolve the required amendment, including seeking a reconsideration by the ERC. If the Parties are unable to agree on the required amendment within thirty (30) Days from receipt of the ERC Approval, or if the motion for reconsideration is not resolved by the ERC within one hundred twenty (120) ninety (90) Days after its filing xxx.</p> <p>[...]</p>
9	Article 13	<p>[...]</p> <p><u>Section 13.1 [not used]</u></p> <p>13.1 Insurance Policies</p> <p>Power Supplier will endeavor to purchase the following insurance coverage described below to the extent such insurance coverages are commercially available, <i>provided</i> that, the coverages, deductibles, and amounts of insurance indicated below can be adjusted from time to time as market conditions dictate, or based on mutual agreement between Power Supplier and Meralco:</p> <p>(a) Industrial All Risks (IAR) insurance with the following minimum coverage: (i) Fire and Allied Perils Insurance (based on sound value of the buildings, machinery/equipment, and all other materials (like fuel and maintenance parts); (ii) Machinery Breakdown Insurance (based on highest value of machinery/equipment); (iii) Business Interruption (at least twelve months indemnity period);</p> <p>(b) Comprehensive General Liability (CGL) with at least PHP equivalent of Five Million United States Dollars (USD5,000,000.00) per occurrence and annual aggregate with the following coverages: (i) Premises Operations Liability; (ii) Contractual Liability; (iii) Employer’s Liability; (iv) Personal Injury Liability; (v) Excess Auto Liability Extension for all owned, hired, and non-owned vehicles; and (vi) Third Party Liability (at least PHP equivalent of One Million United States Dollars per occurrence and annual aggregate).</p> <p>13.2 Evidence of Insurance</p> <p>On or before the Operations Effective Date, Power Supplier shall provide Meralco with a copy of their <u>Industrial All Risks (IAR) insurance and (b) Comprehensive General Liability (CGL)</u> insurance policies as</p>

Item	Reference / Subject Matter of Amendment	Amendments
		<p>required under Section 13.1 above, which reasonably describes the policy terms and conditions of the insurance and includes including certifications from its insurers and premium payments evidencing payment of the premiums in respect of the insurance policies obtained by Power Supplier in connection with this Agreement.</p> <p>13.3 Changes to Policies</p> <p>Any changes in the insurances that are not consistent with the requirements of this Agreement shall require the prior written consent of Meralco.</p> <p>13.4 Notification of Claims and Application of Proceeds</p> <p>Power Supplier shall, in relation to each property damage insurance policy for the Plant required by Section 13.1, promptly notify Meralco of any circumstances that give rise or might reasonably be foreseen to give rise to a claim under such policy or policies, which exceeds Five Million United States Dollars (USD5,000,000.00) (or PhP equivalent).</p> <p>Power Supplier shall apply, to the extent required, any and all of the property damage insurance proceeds that it receives regarding any damage to the Plant toward the reinstatement of the Plant.</p> <p>Section 13.3 [not used]</p> <p>Section 13.4 [not used]</p> <p>[...]</p>
10	Appendix G	<p>[...]</p> <p>Appendix G</p> <p>FORM OF PERFORMANCE BOND [On Bank Letterhead]</p> <p>TO: MANILA ELECTRIC COMPANY</p>

Item	Reference / Subject Matter of Amendment	Amendments
		<p>ORTIGAS AVENUE PASIG, METRO MANILA PHILIPPINES</p> <p>[DATE]</p> <p>DEAR SIR,</p> <p>LETTER OF CREDIT NO.</p> <p>AMOUNT : PHP/US\$</p> <p>STATED EXPIRATION DATE : [.....]</p> <p>ACCOUNT PARTY :</p> <p>WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. IN YOUR FAVOR FOR THE ACCOUNT OF _____, A PHILIPPINES _____ (THE ""), FOR AN AMOUNT NOT EXCEEDING A TOTAL OF PHP/US\$..... (PHILIPPINE PESOS/US DOLLARS [AMOUNT IN WORDS]) (THE "STATED AMOUNT"). FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO MANILA ELECTRIC COMPANY ("YOU" OR THE "BENEFICIARY") UPON OUR RECEIPT OF A CERTIFICATE IN THE FORM OF EXHIBIT A ATTACHED HERETO (THE "DEMAND CERTIFICATE"), PURPORTEDLY SIGNED BY YOUR DULY AUTHORIZED OFFICER OR EMPLOYEE AND APPROPRIATELY COMPLETED, IF SUCH DEMAND CERTIFICATE IS PRESENTED AS HEREINAFTER SPECIFIED ON OR BEFORE THE LOC EXPIRATION DATE (AS HEREINAFTER DEFINED).</p> <p>DRAWING PROCEDURES. ONE DEMAND CERTIFICATE SHALL BE PRESENTED FOR EACH DRAWING HEREUNDER. EACH DEMAND CERTIFICATE SHALL BE DATED THE DATE OF PRESENTATION AND SHALL BE PRESENTED BY ANY OF THE DELIVERY METHODS PROVIDED HEREIN TO [NAME OF BANK AND ADDRESS], SPECIFICALLY REFERRING TO THE NUMBER AND DATE OF THIS LETTER OF CREDIT. IF YOUR DEMAND CERTIFICATE IS PRESENTED BY [TIME] A.M. ([CITY] TIME) ON ANY DAY ON WHICH WE OPEN FOR BUSINESS (A "BUSINESS DAY"), IN STRICT CONFORMITY WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, WE WILL HONOR THE SAME BY MAKING PAYMENT, IN</p>

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		<p>ACCORDANCE WITH YOUR PAYMENT INSTRUCTIONS BY [TIME] P.M. ([CITY] TIME) ON SUCH BUSINESS DAY, OTHERWISE WE WILL HONOR YOUR DEMAND CERTIFICATE BY MAKING PAYMENT, IN ACCORDANCE WITH YOUR PAYMENT INSTRUCTIONS, BY [TIME] A.M. ([CITY] TIME) ON THE FOLLOWING BUSINESS DAY.</p> <p>LOC EXPIRATION DATE. THIS LETTER OF CREDIT SHALL AUTOMATICALLY TERMINATE AT [TIME] P.M. ([CITY] TIME) ON THE EARLIEST TO OCCUR OF (A) THE SURRENDER BY YOU OF THE ORIGINAL LETTER OF CREDIT FOR CANCELLATION ALONG WITH THE BENEFICIARY'S AUTHORIZATION LETTER, (B) OUR HONORING OF DRAFTS PRESENTED HEREUNDER THAT EQUALS THE AMOUNT ORIGINALLY AVAILABLE TO BE DRAWN HEREUNDER AND (C) THE STATED EXPIRATION DATE (AS SUCH DATE MAY BE EXTENDED BY US IN WRITING) (OR, IF NOT A BUSINESS DAY, THE IMMEDIATELY SUCCEEDING BUSINESS DAY). THE EARLIEST OF THE DATES DESCRIBED IN THE PRECEDING SENTENCE IS HEREIN REFERRED TO AS THE "LOC EXPIRATION DATE".</p> <p>TRANSFER. THIS LETTER OF CREDIT IS TRANSFERABLE UPON DELIVERY TO US OF THIS LETTER OF CREDIT ACCOMPANIED BY A NOTICE OF TRANSFER IN THE FORM ATTACHED AS EXHIBIT B. UPON RECEIPT THEREOF AND SURRENDER OF THIS LETTER OF CREDIT TO US, WE SHALL ISSUE A REPLACEMENT IRREVOCABLE LETTER OF CREDIT ON THE SAME TERMS AS THIS LETTER OF CREDIT BUT WITH A REVISED EXHIBIT A TO THE LETTER OF CREDIT SHOWING THE NAME OF THE TRANSFEREE INSTEAD OF THE NAME OF MANILA ELECTRIC COMPANY.</p> <p>FULL AGREEMENT. THIS LETTER OF CREDIT SETS FORTH IN FULL OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED, OR LIMITED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT, OR AGREEMENT REFERRED TO HEREIN, EXCEPT ONLY THE DEMAND CERTIFICATES AND DRAFTS.</p> <p>GOVERNING LAW. THIS LETTER OF CREDIT, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE REPUBLIC OF THE PHILIPPINES. THIS LETTER OF CREDIT SHALL BE SUPPLEMENTED BY THE PROVISIONS (TO THE EXTENT THAT SUCH PROVISIONS ARE NOT INCONSISTENT WITH THIS LETTER OF CREDIT AND SUCH ARTICLE 5) OF THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600, EXCEPT ARTICLE 32 THEREOF.</p> <p>ALL DOCUMENTS PRESENTED TO US IN CONNECTION WITH ANY DEMAND FOR PAYMENT HEREUNDER, AS WELL AS ALL NOTICES AND OTHER COMMUNICATIONS TO US IN RESPECT OF THIS LETTER OF CREDIT SHALL BE IN WRITING AND ADDRESSED AND PRESENTED TO US AT OUR OFFICE AT [NAME OF BANK AND ADDRESS], SPECIFICALLY REFERRING TO THE NUMBER AND DATE OF THIS LETTER OF CREDIT. SUCH DOCUMENTS, NOTICES AND OTHER</p>

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		<p>WRITTEN COMMUNICATIONS MAY BE: (A) PERSONALLY DELIVERED TO US; OR (B) SENT TO US BY FACSIMILE TO: [FAX NUMBER] AND PROMPTLY CONFIRMED BY ELECTRONIC MAIL FROM THE AUTHORIZED SIGNATORY TO: [EMAIL ADDRESS]. IF DELIVERY IS MADE IN ACCORDANCE WITH SUB-CLAUSE (B), YOU SHALL ALSO DELIVER AN ORIGINAL OF SUCH DOCUMENT, NOTICE AND OTHER WRITTEN COMMUNICATION BY OVERNIGHT MAIL TO THE ADDRESS PROVIDED ABOVE, PROVIDED THAT OUR HONORING OF DEMAND IN ACCORDANCE WITH THE DEMAND PROCEDURES IS NOT CONDITIONAL ON OUR RECEIPT OF SUCH ORIGINAL.</p> <p>WE MAY FROM TIME TO TIME MODIFY THE FACSIMILE NUMBER AND E-MAIL ADDRESS SET FORTH ABOVE BY WRITTEN NOTICE TO YOU.</p> <p>SIGNED FOR AND ON BEHALF OF [NAME OF BANK]</p> <p>BY: _____ NAME: TITLE:</p> <p>EXHIBIT A TO LETTER OF CREDIT NO. DEMAND CERTIFICATE OF MANILA ELECTRIC COMPANY</p> <p>[BANK AND ADDRESS DETAILS] I AM A DULY AUTHORIZED OFFICER OR EMPLOYEE OF MANILA ELECTRIC COMPANY ("MERALCO"). DEMAND IS HEREBY MADE FOR PAYMENT IN THE AMOUNT OF US\$/PHP, UNDER THAT CERTAIN IRREVOCABLE LETTER OF CREDIT NUMBER ISSUED BY YOU, DATED [DATE] (THE "LETTER OF CREDIT"), ISSUED FOR THE ACCOUNT OF _____ (THE "_____"). IN CONNECTION WITH SUCH DEMAND, I HEREBY CERTIFY AS FOLLOWS ON BEHALF OF MERALCO:</p> <p>(A) MERALCO IS THE PURCHASER UNDER THAT CERTAIN POWER SUPPLY AGREEMENT, DATED AS OF [DATE] (THE "POWER SUPPLY AGREEMENT"), BY AND AMONG THE _____ AND MERALCO.</p>

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		<p>(B) MERALCO IS MAKING A DRAWING UNDER THE LETTER OF CREDIT: [SELECT ONE AND DELETE UNUSED BRACKETED TEXT AND THESE ITALICIZED INSTRUCTIONS:</p> <p>[PURSUANT TO ITS RIGHTS UNDER SECTION [INSERT RELEVANT SECTION] OF THE POWER SUPPLY AGREEMENT AND THE AMOUNT OF THIS DEMAND FOR PAYMENT IS IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE POWER SUPPLY AGREEMENT.]</p> <p>[BECAUSE AS OF [INSERT DATE], THE _____ HAS NOT FURNISHED MERALCO A REPLACEMENT LETTER OF CREDIT OR OTHER SECURITY SATISFACTORY TO MERALCO.</p> <p>THE DRAFT ACCOMPANYING THIS DEMAND CERTIFICATE IS DRAWN IN THE AMOUNT SPECIFIED ABOVE. IF THIS DEMAND CERTIFICATE IS PRESENTED TO YOU BY [TIME] A.M. ([CITY] TIME) ON A BUSINESS DAY (AS DEFINED IN THE LETTER OF CREDIT) THEN BY [TIME] P.M. ([CITY] TIME) ON SUCH BUSINESS DAY, OR IF THIS DEMAND CERTIFICATE IS PRESENTED LATER THAN [TIME] A.M. ([CITY] TIME), THEN BY [TIME] A.M. ([CITY] TIME) ON THE FOLLOWING BUSINESS DAY, PLEASE TRANSFER THE AMOUNT SPECIFIED ABOVE TO MERALCO’S ACCOUNT AT ACCOUNT NO. BANK [INSERT WIRE INSTRUCTION FOR ACCOUNT OF MERALCO] FOR THE ATTENTION OF:</p> <p>IN WITNESS WHEREOF, MERALCO HAS EXECUTED AND DELIVERED THIS DEMAND CERTIFICATE AS OF THE DAY OF, 20.....</p> <p>MANILA ELECTRIC COMPANY</p> <p>BY: _____ NAME: TITLE:</p> <p>EXHIBIT B TO LETTER OF CREDIT NO. [BANK NAME AND ADDRESS DETAILS]</p> <p>NOTICE OF TRANSFER</p>

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		<p>RE: IRREVOCABLE LETTER OF CREDIT NO.</p> <p>THE UNDERSIGNED, A DULY AUTHORIZED OFFICER OF (THE "BENEFICIARY"), HEREBY ADVISES YOU THAT ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE IRREVOCABLE LETTER OF CREDIT REFERRED TO ABOVE (THE "LETTER OF CREDIT") HAVE BEEN, AND ARE HEREBY IRREVOCABLY TRANSFERRED TO [NAME OF TRANSFEREE] (THE "TRANSFEREE"):</p> <p>(NAME OF TRANSFEREE)</p> <p>(ADDRESS OF TRANSFEREE)</p> <p>BY THIS TRANSFER, ALL RIGHTS OF THE BENEFICIARY IN THE LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE AND SAID TRANSFEREE SHALL HEREAFTER HAVE EXCLUSIVELY THE SOLE RIGHTS AS BENEFICIARY OF THE LETTER OF CREDIT, INCLUDING (WITHOUT LIMITATION) THE RIGHT TO DRAW FUNDS UNDER THE LETTER OF CREDIT IN ACCORDANCE WITH ITS TERMS.</p> <p>AS PROVIDED UNDER THE TERMS OF THE LETTER OF CREDIT, PLEASE ISSUE A REPLACEMENT IRREVOCABLE LETTER OF CREDIT IN THE NAME OF THE TRANSFEREE, ADDRESSED TO THE TRANSFEREE AT THE ADDRESS SET FORTH ABOVE, IN THE AMOUNT EQUAL TO THE OUTSTANDING AMOUNT OF THE LETTER OF CREDIT ON THE DATE OF THIS NOTICE, AND OTHERWISE ON THE SAME TERMS AS THE ORIGINAL LETTER OF CREDIT BUT WITH A REVISED EXHIBIT A TO THE LETTER OF CREDIT SHOWING THE NAME OF THE TRANSFEREE INSTEAD OF THE NAME OF THE BENEFICIARY.</p> <p>ACCOMPANYING THIS NOTICE OF TRANSFER IS THE ORIGINAL LETTER OF CREDIT, WHICH IS BEING SURRENDERED TO YOU IN TRUST FOR THE BENEFIT OF SAID TRANSFEREE, UNTIL SUCH TIME AS YOU SHALL HAVE ISSUED A REPLACEMENT IRREVOCABLE LETTER OF CREDIT IN ACCORDANCE WITH THE TERMS OF THE LETTER OF CREDIT AND THIS NOTICE.</p> <p>SINCERELY,</p> <p>MANILA ELECTRIC COMPANY</p>

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		BY: _____ NAME: TITLE: