

NON-DISCLOSURE AGREEMENT

<THIS TEMPLATE CONTEMPLATES THAT BOTH PARTIES WOULD DISCLOSE AND WOULD RECEIVE CONFIDENTIAL INFORMATION>

This Non-Disclosure Agreement ("Agreement") is entered into this ____ day of ____ ("Effective Date"), by and between:

MANILA ELECTRIC COMPANY, a corporation duly organized and existing under the laws of the Philippines, with principal office at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City, represented herein by its Vice President and Head of Networks Technology Management, MR. JOSE S. REYES, JR., and its Assistant Vice President and Head of Technology Strategy & Program Management, MR. RAMON L. ASANA, hereinafter referred to as "MERALCO";

and

[OTHER PARTY'S FULL REGISTERED NAME], a corporation duly organized and existing under the laws of the Philippines, with principal office at [Address], represented herein by its (Position Title of Representative), (Name of Representative) and its (Position Title of Representative), hereinafter referred to as "<ABBREVIATED NAME OF THE OTHER PARTY>".

MERALCO and <ABBREVIATED NAME OF THE OTHER PARTY> shall hereafter be collectively referred to as "Parties" and each individually as "Party".

The Party providing Confidential Information shall be referred to as "DISCLOSER" and the Party receiving the said Confidential Information shall be referred to as "RECIPIENT."

WITNESSETH:

WHEREAS, the Parties are exploring a possible cooperation on [brief description of the subject of discussion] ["Purpose"];

WHEREAS, in the course of their discussions, Confidential Information, as it is defined under this Agreement, may be shared or disclosed by DISCLOSER to RECIPIENT in connection with the Purpose and/or the Project;

WHEREAS, the Parties aim to define their rights and obligations with respect to Confidential Information supplied or communicated by DISCLOSER to RECIPIENT;

NOW, THEREFORE, for and in consideration of the foregoing premises, the Parties hereby agree as follows:

A. Definitions

- As used herein, "Confidential Information" shall refer to all information supplied orally or in writing (whatever the form or storage medium) by DISCLOSER, or any of its agents or representatives in connection with the Purpose, including without limitation, any information relating to the business of DISCLOSER, together with any analyses, compilations, notes, summaries, studies or other documents or materials prepared or derived by RECIPIENT or its representatives, which contain or otherwise reflect such information. It shall also include any and all commercial, financial, technical, operating, logistical, or other information concerning DISCLOSER that may be disclosed by DISCLOSER herein, whether in oral, written, or electronic form, including trade secrets, know-how, designs, drawings, processes, machines, mock-ups, processing and control information, manuals, supplier lists, customer lists, sales records, marketing information, and finished and unfinished originals or copies (when originals are unavailable) of source and object code, flow charts, data studies, files, computer printouts,

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estimates, memoranda, computation, papers, supplies, notes, and other materials and including the materials that may be disclosed by **DISCLOSER** herein.

Without limiting the generality of the foregoing provision, Confidential Information shall further include information provided by **DISCLOSER** to **RECIPIENT** that:

- a. is marked confidential;
- b. if disclosed orally or not marked confidential, is identified prior to its disclosure as Confidential Information, and is confirmed Confidential Information in a signed writing by **DISCLOSER** promptly thereafter;
- c. contains **DISCLOSER**'s customer lists, customer information, account information and trade secrets such as but not limited to information regarding business planning and business operations and administrative, financial, or marketing activities; provided:
 - c.1. **DISCLOSER** treats such information as confidential; or
 - c.2. Such information can be reasonably considered as Confidential Information based upon the nature of the information and the business of **DISCLOSER**; or
- d. without designation or limitation, is related to the Purpose.

For the avoidance of doubt, Confidential Information shall include this Agreement and the fact that discussions or negotiations regarding the Purpose are taking or have taken place between the Parties. Confidential Information also includes any information that may be considered as Personal Data as defined under Philippine Privacy Laws.

"Personal Data" refers to all types of personal information as defined under Philippine Privacy Laws.

"Philippine Privacy Laws" collectively refers to Republic Act No. 10173 otherwise known as the Data Privacy Act of 2012 (Data Privacy Act); Implementing Rules and Regulations of the Data Privacy Act of 2012 (Data Privacy Act IRR); Supreme Court decisions; National Privacy Commission issuances; and other applicable laws, rules, and regulations relating to privacy and data protection.

- 2. **"Confidential Materials"** refers to all tangible materials not available to the public containing Confidential Information, including, but not limited to, written or printed documents, documents in electronic forms, computer data and software, and computer disks or tapes, whether machine- or user-readable. For purposes of this Agreement, "Confidential Materials" shall be treated as "Confidential Information" for as long as the same is within the purview of "Confidential Information" as defined in Section A (1) hereof.
- 3. Notwithstanding the foregoing, information disclosed that would otherwise be Confidential Information shall not be deemed so where such information:
 - a. is already in the possession of **RECIPIENT** and developed by it independently prior to the execution of this Agreement;
 - b. is already known to **RECIPIENT** having been disclosed to **RECIPIENT** by a third party without such third party having an obligation of confidentiality to **DISCLOSER**;
 - c. is made public by **DISCLOSER**, or generally becomes available to the public other than through a disclosure by **DISCLOSER** through no wrongful act of **RECIPIENT**, its employees, officers, directors or agents;
 - d. is disclosed and given by **DISCLOSER** to another entity without obligation of confidentiality;
 - e. is approved for release (and only to the extent so approved by **DISCLOSER**);
 - f. is independently developed by **RECIPIENT** without reference to any Confidential Information disclosed hereunder; and

- g. is disclosed pursuant to the lawful requirement of a court or government agency or where required by operation of law.

B. Nature of Confidential Information

RECIPIENT recognizes that **DISCLOSER** has developed and acquired valuable Confidential Information and Confidential Materials and that the unauthorized dissemination of the same would diminish or destroy the value of such information and materials. **RECIPIENT** acknowledges that any breach may constitute immediate and irreparable damage and injury for which no amount of monetary damage can adequately compensate and no remedy at law may be adequate to protect **DISCLOSER** against the consequences of any actual or threatened breach. **DISCLOSER** may enforce this Agreement through specific performance or a temporary restraining order or injunction. **DISCLOSER's** rights to such equitable remedies shall be in addition to all other rights and remedies that **DISCLOSER** may have hereunder or under applicable law.

C. Obligations of RECIPIENT

1. **RECIPIENT** acknowledges and agrees to, and shall ensure that its employees, agents, counsels, and authorized representatives (the "**Authorized Representatives**") shall:
 - a. treat as confidential all Confidential Information and Confidential Materials that may be made or become available to **RECIPIENT** or any of its Authorized Representatives in connection with this Agreement by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information and Confidential Materials as **RECIPIENT** uses to protect its own information and materials of like nature;
 - b. use **DISCLOSER's** Confidential Information and Confidential Materials only for the Purpose and only for the benefit of **DISCLOSER** and not to procure a commercial advantage over **DISCLOSER**;
 - c. maintain in a secure place any Confidential Information and Confidential Materials delivered to it and limit access to the same on a need-to-know basis to those Authorized Representative of **RECIPIENT** involved in the Project and to whom it is strictly necessary to disclose the Confidential Information in furtherance thereof;
 - d. prevent disclosure of any Confidential Information and Confidential Materials by any agent or representative of **RECIPIENT** to unauthorized parties and assume liability for any breach of this Agreement, or for any other unauthorized disclosure or use of Confidential Information, by it or any of its Authorized Representative; and
 - e. notify **DISCLOSER** promptly upon discovery of any unauthorized disclosure, publication, photocopying, dissemination and/or use of Confidential Information and/or Confidential Materials, or of any other breach of this Agreement by **RECIPIENT**, and shall cooperate with **DISCLOSER** in every reasonable way to help **DISCLOSER** regain possession of the Confidential Information and Confidential Materials and prevent its further unauthorized disclosure, publication and use;
2. **RECIPIENT** shall refrain and cause its Authorized Representative to likewise so refrain, from communicating, directly or indirectly with any third party about the Purpose or the relationship between the Parties (prospective or otherwise) or about any subject related to the Purpose and this Agreement without the prior written approval of **DISCLOSER**.
3. **RECIPIENT** may disclose, publish, or disseminate Confidential Information to its contractors, provided it obtains **DISCLOSER's** prior written consent. **RECIPIENT** shall ensure that such contractors shall treat the Confidential Information and Confidential Materials in accordance with the applicable terms of this Agreement.

4. In case **RECIPIENT** is legally required to disclose Confidential Information and/or Confidential Materials belonging to **DISCLOSER** in order to comply with applicable laws pursuant to an order from a judicial, governmental or other competent authority, **RECIPIENT** shall promptly and before performing such order, when legally possible, notify **DISCLOSER** in writing of such request, so that the latter may object to the full or partial transfer or release of such information.
5. Upon expiration of the Disclosure Period, **RECIPIENT** shall, upon the request of the **DISCLOSER**: (i) return to **DISCLOSER** all documents and materials (and any copies) containing, reflecting, incorporating, or based on **DISCLOSER**'s Confidential Information and Confidential Materials; (ii) erase and remove all of **DISCLOSER**'s Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and (iii) certify in writing to **DISCLOSER** that it has complied with the requirements of this Section, provided that **RECIPIENT** may retain documents and materials containing, reflecting, incorporating, or based on **DISCLOSER**'s Confidential Information and Confidential Materials to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit **RECIPIENT** to keep evidence that it has performed its obligations under this Agreement.

D. Disclosure and Confidentiality Period

This Agreement shall cover Confidential Information and Confidential Materials disclosed by **DISCLOSER** to **RECIPIENT** from the execution of this Agreement and until the earlier of: (i) **<insert here appropriate period>** thereafter; (ii) the termination of the discussions on the Purpose; or (iii) the execution by the Parties of a written agreement in furtherance of the Purpose, which stipulates similar or strengthened confidentiality obligations with respect to the Confidential Information and Confidential Materials disclosed and received in connection with the Purpose (the "**Disclosure Period**"). The obligation to keep and maintain the Confidential Information and Confidential Materials in strict confidence and in accordance with this Agreement shall however survive the Disclosure Period for a period of **<insert here appropriate period>** thereafter (the "**Confidentiality Period**").

E. Ownership

All rights, title and interest in the Confidential Information and Confidential Materials are and shall remain the sole property of **DISCLOSER**. By disclosing, publishing, disseminating, permitting, and/or permitting the use of, Confidential Information and/or Confidential Materials to or by **RECIPIENT**, **DISCLOSER** does not grant any express or implied right in favor of **RECIPIENT** to or under **DISCLOSER**'s patents, copyrights, trademarks, or trade secret information.

F. Relationship between the Parties

Nothing in this Agreement shall create an agency, broker, joint venture or partnership relationship between the Parties. No Party shall, by virtue of this Agreement, have power or authority to enter into any agreement or undertaking for or to act on behalf of or otherwise to bind the other Party as to any matter or thing to be done in relation to the subject matter of this Agreement.

No Party shall be entitled to claim any broker's fees or commission from the other Party by reason of the execution of this Agreement, the exercise by the Parties of their rights hereunder, or the implementation of the transactions contemplated hereby.

G. No Commitment

Nothing contained in this Agreement or in any discussions or disclosures made pursuant hereto shall be deemed a commitment by any Party to engage in any business relationship, contract or future dealing with the other Party.

- H. Warranty [This provision may be modified in case Meralco is more of a Recipient (though NDA is mutual) and Meralco needs protection in relying upon the disclosures made by the other Party].

RECIPIENT recognizes that the Confidential Information and Confidential Materials are provided to it by **DISCLOSER** without representation and warranty of any kind, whether express, implied or statutory, as to the accuracy or completeness of such Confidential Information and Confidential Materials. **RECIPIENT** expressly agrees that any reliance or conclusions drawn therefrom shall be at **RECIPIENT'S** own risk and shall not give rise to any liability on the part of **DISCLOSER**. **RECIPIENT** waives and releases any claims against **DISCLOSER** arising from such reliance and/or conclusions.

I. Modification or Waivers

No modification or waiver of any provisions hereof, or any representation, promise or addition hereto, waiver of any breach hereof will be binding upon either Party unless made in writing and signed by the Party to be charged thereby. No waiver of any particular breach shall be deemed to apply to any other breach, whether prior or subsequent to a waiver.

Neither **DISCLOSER** or its officers, employees, representatives or permitted assigns shall be liable to **RECIPIENT** or to any person arising out of or related to their interpretations of or conclusions based on the Confidential Information obtained pursuant to this Agreement.

J. Binding Effect; Assignment

This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors and assigns. This Agreement may not be assigned or otherwise transferred by either Party in whole or in part without the express prior written consent of the other Party.

<**ABBREVIATED NAME OF THE OTHER PARTY**> acknowledges that **MERALCO** provides professional services to other clients and agrees that nothing in this Agreement shall be deemed or construed to prevent **MERALCO** from carrying on such business provided it does not violate the provisions of this Agreement.

K. Data Privacy

1. Each Party agrees to comply with all the requirements of Philippine Privacy Laws for the processing of personal data that it may receive pursuant to this Agreement.
2. **RECIPIENT** shall process only those personal data that are necessary to fulfill its obligations under this Agreement, and only upon the documented instructions and at the direction of **DISCLOSER**.
3. **RECIPIENT** shall use appropriate technical, organizational, and physical safeguards to protect personal data from *inter alia*, loss, usage, access, disclosure, alteration or destruction, whether unauthorized or accidental. Such safeguard shall include, but not limited to the following:
 - a. Maintaining adequate physical controls and password protection for any server or system in which personal data are stored through which personal data are transferred;
 - b. Ensuring that personal data, whether in transit or at rest, are encrypted using appropriate technology following industry standards;
 - c. Ensuring that personal data are only used, accessed or disclosed, to the extent necessary, by employees, representatives or agents of **RECIPIENT** who have a need-to-know the personal data; and
 - d. Implementing other measures reasonably necessary to prevent any use or disclosure of personal data other than as allowed under this Agreement.
4. The Parties further agree to execute the relevant data processing or data sharing agreement should there be any further disclosure or transfer of personal data between them.

L. Dispute Resolution and Arbitration

Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, that cannot be settled amicably by the Parties, shall be finally settled by arbitration in accordance with Philippine Dispute Resolution Center, Inc. (PDRCI) Rules as at present then in force. The arbitration shall be conducted in English by three (3) arbitrators, with each Party having the right to be choose one (1) arbitrator each and with the third (3rd) arbitration to be chosen by PDRCI. The arbitration proceedings, including all records, documents, pleadings, orders and judgments filed or rendered in pursuant thereto, shall be kept confidential. The seat and venue of arbitration shall be Metro Manila, Philippines.

It is agreed that if a Party is held by the arbitral tribunal to be in violation, breach or nonperformance of any of the terms of this Agreement, that Party shall promptly pay the other Party all costs of such action or suit, including reasonable attorney’s fees.

Nothing in this Agreement shall prevent the Parties from applying to a court of a competent jurisdiction for provisional or interim measures or injunctive relief as may be necessary to safeguard the property or rights that are the subject matter of the dispute.

M. Attorney’s Fees and Governing Law

If either Party employs attorneys to enforce any rights arising out of or in relation to this Agreement, the prevailing Party shall be entitled to recover reasonable attorney’s fees.

This Agreement shall be construed and controlled in accordance with the laws of the Philippines without regard to the principles of conflicts of law.

N. Severability

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

O. Notices

Any notice given under this Agreement will be delivered personally or sent by prepaid registered mail, E-mail or fax.

Notice will be given to **MERALCO** through:

LUISITO B. ACUÑA
Office Address: 2/F TSB Meralco Center Ortigas Ave., Pasig City
E-mail: lbacuna@meralco.com.ph

Notice will be given to **<ABBREVIATED NAME OF THE OTHER PARTY>** through:

(INDICATE NAME)
Office Address:
Fax Number:
E-mail:

Notices delivered personally will be deemed to be received on that day while notices delivered by fax or E-mail will be deemed to be received on the next business day.

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P. Counterparts

This Agreement may be executed in several counterparts, all of which together shall constitute one agreement binding upon all Parties hereto, notwithstanding that all of the Parties have not signed the same counterpart.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and place first above written.

MANILA ELECTRIC COMPANY

JOSE S. REYES, JR.

Vice President and Head of
Networks Technology Management

Date

RAMON L. ASANA

Assistant Vice President and Head of
Technology Strategy & Program Management

Date

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(FULL REGISTERED NAME OF THE OTHER PARTY)

[Name of Representative]
[Position Title of Representative]

Date

[Name of Representative]
[Position Title of Representative]

Date

SIGNED IN THE PRESENCE OF:

FIRST ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY OF PASIG) s.s.

BEFORE ME, a Notary Public in and for the _____, this ____ day of _____, 20__, personally appeared:

<u>Name</u>	<u>ID Number (TIN/Passport)</u>	<u>Issued at</u>	<u>Issued on</u>
<u>Jose S. Reyes, Jr.</u>	<u>TIN # 109316242</u>		
<u>Ramon L. Asana</u>	<u>TIN # 109259425</u>		

known to me and to me known to be the same person/s who executed the foregoing instrument and he/they acknowledged that the same is their own free and voluntary act and deed.

WITNESS MY HAND AND SEAL, on the date and place first above written.

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Book No. ____;
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SECOND ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY OF _____) s.s.

BEFORE ME, a Notary Public in and for the _____, this _____ day of _____, 20____,
personally appeared:

Name	ID Number (TIN/Passport)	Issued at	Issued on
<u>(Name of other party's representative)</u>	<u>(ID Number of other party's representative)</u>		
<u>(Name of other party's representative)</u>	<u>(ID Number of other party's representative)</u>		

known to me and to me known to be the same person/s who executed the foregoing instrument and they
acknowledged that the same is his/their own free and voluntary act and deed.

WITNESS MY HAND AND SEAL, on the date and place first above written.

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Page No. ____;
Book No. ____;
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