

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (Agreement) is executed on \_\_\_\_\_  
2017 by and between **POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM)** and \_\_\_\_\_  
(Recipient).

### **1. Confidential Information.**

Recipient is interested in obtaining information from PSALM on the sale of the structures, plant equipment, auxiliaries and accessories of the Decommissioned 850 MW Sucat Thermal Power Plant (STPP) located in Muntinlupa City, Philippines.

“Recipient” shall include but not be limited to the Interested Parties, officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors, agents or other representatives (collectively, Representatives).

In this regard, PSALM may disclose certain Confidential Information (as defined below) to the Recipient, who acknowledges that PSALM has the exclusive right to determine what information it may furnish.

Confidential Information refers to the information concerning the STPP, PSALM, its officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors, agents or other representatives, and other information (i) contained in the bidding package; (ii) that Recipient obtained from the data room and site visits during the due diligence process; (iii) contained in any other written material furnished or otherwise made available to Recipient; (iv) furnished to Recipient electronically; (v) presented to Recipient or its representatives orally, in any forum; and (vi) all analyses, compilations, forecasts, studies or other documents that PSALM or its representatives prepared.

### **2. No Representation.**

The Recipient acknowledges and agrees that PSALM or any of its representatives do not expressly or impliedly represent or warrant the accuracy or completeness of the Confidential Information or that such information will remain unchanged.

PSALM or any of its representatives shall not be liable to the Recipient, its representatives or any other person arising out of or in connection with or related to the Confidential Information or any interpretations or conclusions made or drawn from them by the Recipient or on its behalf.

### **3. Recipient’s Obligations.**

Unless PSALM authorizes it in writing, the Recipient shall, during a period of 3 years from the date of disclosure of any Confidential Information:

- (a) refrain from using the Confidential Information for any purpose other than sale of the structures, plant equipment, auxiliaries and accessories of the Decommissioned 850 MW Sucat Thermal Power Plant;
- (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: (i) its Representatives who need to know such Information and only for the purpose of evaluating the Bidding Process; and, (ii) subject to Section 4 below, third parties who have also executed and delivered a confidentiality agreement with PSALM.

The Recipient shall not duplicate any Confidential Information furnished in tangible form or on electronic media for any purpose except to evaluate the Bidding Process. Recipient shall, within three Business days after notice of the Bidding results, return all Confidential Information received in written, electronic or other tangible form, including copies, or reproductions or other media containing such Confidential Information. Upon the Recipient's written request and at its own cost, PSALM may, at its discretion, provide the Recipient with a copy of certain Confidential Information if required for regulatory purposes. In this regard, PSALM may further inquire into the details of these regulatory requirements.

Recipient will be responsible for any breach of this Agreement.

During the course of its evaluation, the Recipient shall inquire and communicate directly to PSALM in writing and addressed to the PSALM President and CEO at the address provided below. Recipient agrees not to directly or indirectly seek any information in relation to the Bidding from other PSALM directors, officers or employees without PSALM's written consent.

#### **4. Communication with Other Bidders.**

The Recipient shall refrain from directly or indirectly communicating with any Bidder about the Bidding or any related subject.

#### **5. Conditions Precedent.**

The Recipient must submit proof of its signatory's authority.

For non-resident Recipients, it must appoint a local agent with a Metro Manila business address who shall be authorized to receive notices, summons and all other legal processes for and in its behalf, for the duration of the term of this Agreement. The Recipient shall submit the sworn appointment of its local agent and his acceptance of such appointment in the same form and substance.

The proof of authority of the Recipient's signatory and the appointment under oath of the local agent and his acceptance must be submitted prior to PSALM's release of the Bidding Procedures.

**6. Governing Law and Venue.**

Philippine law shall govern this Agreement and the Recipient consents to the exclusive jurisdiction of Makati City courts for any dispute arising out of or in connection with this Agreement.

**7. Final Agreement.**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter. The parties may modify this Agreement only in writing.

**8. No Assignment.**

Recipient may not assign this Agreement or any of its interest without PSALM's prior written consent.

**9. Notices.**

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by registered mail, postage prepaid, or recognized courier service.

If to PSALM:

**PSALM President and CEO**  
**Power Sectors Assets and Liabilities Management Corporation**  
3<sup>rd</sup> Floor TransCo Bldg., Power Center  
Quezon Avenue corner BIR Road  
Diliman, Quezon City

If to Recipient:

**Recipient Name:** \_\_\_\_\_  
**Attention:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_

**10. No Implied Waiver.**

PSALM's failure to insist strict performance of any of the terms of this Agreement shall not be construed as a waiver of any delay or continuing or subsequent failure to perform any other provisions of this Agreement.

**11. No Commitment.**

- (a) PSALM reserves the right to terminate or suspend at any time the Recipient’s access to the Confidential Information with or without cause.
- (b) This Agreement does not constitute a solicitation of Bids.
- (c) Nothing in this Agreement shall be construed as a commitment by PSALM to execute further definitive agreements with the Recipient.

**12. Breach of Agreement.**

The Recipient is aware that its breach of the obligations under this Agreement’s paragraph 3 may cause damage to PSALM and/or third parties, who are the source of, are referred to in, or are themselves parties to, the Confidential Information. The Recipient shall be solely responsible to PSALM and/or these third parties should it commit such breach. Without prejudice to other available remedies, the Recipient agrees that these third parties shall (i) have the right to rely upon and enforce paragraph 3 of this Agreement, and (ii) be entitled to damages and other remedies under the law. No failure or delay by the third parties in exercising any right, power or privilege under this Agreement shall operate as a waiver of such rights.

The Recipient agrees that it will not revoke this stipulation in favor of these third parties.

**13. Severability.**

A declaration by a court of competent jurisdiction that a provision of this Agreement is invalid or unenforceable shall not affect other provisions which shall remain in full force and effect.

SIGNED ON \_\_\_\_\_ AT \_\_\_\_\_.

**POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION**

By: \_\_\_\_\_  
LOURDES S. ALZONA  
Officer-In-Charge

Date: \_\_\_\_\_

**(NAME OF RECIPIENT)**

By: \_\_\_\_\_  
Name  
Position

Date: \_\_\_\_\_

Signed in the Presence of:

\_\_\_\_\_

\_\_\_\_\_

**ACKNOWLEDGMENT**

Republic of the Philippines)  
\_\_\_\_\_ ) S.S.

Before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2017, at \_\_\_\_\_, personally appeared the following:

<u>Name</u>	<u>Identification Document Presented</u>	<u>Date And Place Of Issue</u>
Power Sector Assets and Liabilities Management Corporation Represented by: Lourdes S. Alzona		

known to me to the same person who executed the foregoing instrument, and acknowledged to me that the same is his voluntary acts and the entity that he represent.

SIGNED AND SEALED ON \_\_\_\_\_.

Doc. \_\_\_\_\_ ;  
Page \_\_\_\_\_ ;  
Book \_\_\_\_\_ ;  
Series of 2017.

NOTARY PUBLIC

**ACKNOWLEDGMENT**

Republic of the Philippines)  
\_\_\_\_\_ ) S.S.

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appeared the following:

<u>Name</u>	<u>Identification Document Presented</u>	<u>Date And Place Of Issue</u>
(Name of Recipient) Represented by:		

known to me to the same person who executed the foregoing instrument, and  
acknowledged to me that the same is his voluntary acts and the entity that he represent.

SIGNED AND SEALED ON \_\_\_\_\_.

Doc. \_\_\_\_\_ ;  
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