



Republic of the Philippines

Proposed Sale

of the

650 MW Malaya Thermal Power Plant

located in Barangay Malaya, Pililla, Rizal

Bidding Procedures

05 October 2018

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**BIDDING PROCEDURES FOR THE SALE OF THE
650 MW MALAYA THERMAL POWER PLANT
LOCATED IN BARANGAY MALAYA, PILILLA, RIZAL**

BID TERMS AND SPECIFICATIONS

PART I - INSTRUCTIONS TO BIDDERS

IB-01 REQUIREMENTS FOR THE ISSUANCE OF THE BIDDING PACKAGE

The Bidding Package is being issued by the Privatization, Bids and Awards Committee (“Committee”) of the Power Sector Assets and Liabilities Management Corporation (“PSALM”) to Bidders who want to participate and bid for the sale of the **650 MW Malaya Thermal Power Plant** called the “Plant”, and the land underlying the Plant called the “Land”, **located in Barangay Malaya, Pililla, Rizal** collectively the “Purchased Assets”. The Purchased Assets is defined in **Section GP-01 (Definitions)** and described in general terms in **Section IB-04 (Subject of the Bid)** and more specifically in Schedule A and Schedule B of the Asset Purchase Agreement.

The Bidding Package consists of the following:

- A. Bidding Procedures, which is composed of:
 - 1. Bid Terms and Specifications
 - a) Part I - Instructions to Bidders
 - b) Part II - Definitions and Construction
 - 2. Representations and Warranties Form (Schedule 1)
 - 3. Form of Acceptance of Bidding Procedures (Schedule 2)
 - 4. Statement Under Oath (Schedule 3)
 - 5. Form of Authority to Verify (Schedule 4)
 - 6. Tabular Form of Bidder’s Comments to the draft Asset Purchase Agreement (APA) for the Sale of the 650 MW Malaya Thermal Power Plant and the Land of more or less 233,470 square meters in total area (Purchased Assets) (Schedule 5)
 - 7. Form of Bid Security in the Form of SBLC (Schedule 6)
 - 8. Draft Asset Purchase Agreement - (Schedule 7)
 - List of Assets
 - Part I - Purchased Assets (Schedule A)
 - a) Part I-A (The Plant)
 - Part I-A.1 - Plant Fixed Assets
 - Part I-A.2 - Materials, Supplies & Equipment (MSE)
 - Part I-A.3 - General Plant Equipment (GPE)
 - b) The I-B (The Land)
 - Part II - Excluded Assets (Schedule B)
- B. Data Room and Due Diligence Procedures

C. Information Memorandum for the Purchased Assets

The Bidding Package is being issued to Bidders in accordance with the Invitation to Bid to be published on **05 - 07 October 2018** in three (3) leading newspapers of general circulation and on the PSALM website (<http://www.psalm.gov.ph>), upon: (1) submission of a Letter of Interest which expresses such Interested Party's intention to participate in the Bidding Process; (2) execution of the Confidentiality Agreement and Undertaking, both in the form provided by PSALM and (3) payment of a non-refundable fee of One Hundred Fifty Thousand Pesos (PHP150,000.00) ("*Participation Fee*").

Only Interested Parties that submit a Letter of Interest on or before **5:00 p.m. on 19 November 2018** shall be furnished the Confidentiality Agreement and Undertaking. The execution of the Confidentiality Agreement and Undertaking and payment of the Participation Fee shall enable Interested Parties to participate further in the Bidding Process. Only Interested Parties who have submitted the Confidentiality Agreement and Undertaking and paid the Participation Fee on or before **5:00 p.m. on 20 November 2018** in accordance herewith and the Invitation to Bid shall be allowed to receive the Bidding Package and participate further in the Bidding Process. A Bidder's participation in the Bidding Process shall be in accordance with the Bidding Procedures.

Certain capitalized terms used in the Bidding Procedures are defined in **Part II - Definitions and Construction, Section GP-01 (*Definitions*)**.

Bidders are required to acknowledge receipt of the Bidding Package and acceptance of the terms and conditions of the Bidding Procedures before the start of the Pre-bid Conference in the form attached as **Schedule 2 (*Form of Acceptance of the Bidding Procedures*)**. Should a Bidder fail to submit such acceptance before the Pre-bid Conference, it shall not be allowed to participate further in the Bidding Process until it submits the same. Bidders who failed to submit the said acceptance by the Documentary Deliverables Deadline shall be disqualified from the Bidding Process.

IB-02 ADDENDA AND CLARIFICATIONS TO THE BIDDING PROCEDURES

The Committee reserves the right to amend, revise, supplement, modify or clarify the Bidding Procedures through a Supplemental Bid Bulletin (SBB), a copy of which will be made available to all Bidders. The SBB, upon its issuance, shall automatically be incorporated in and made an integral part of the Bidding Procedures. It shall be the Bidder's responsibility to inquire into and secure the SBB that the Committee may issue.

Failure of a Bidder to secure the SBB and acknowledge receipt and acceptance of the terms and conditions of each SBB on the space provided in the transmittal

letter shall constitute a waiver of its right to be informed of its contents. The Bidder shall take into account the information and procedure set forth in the Bidding Package, including the Bidding Procedures and SBBs, in preparing its Bid.

Any request for clarification on any of the provisions of the Bidding Procedures should be immediately relayed to the Chairman of the Committee on or before the Pre-bid Conference. Any further revision or clarification on the Bidding Procedures shall be contained in an SBB for the general information of all Bidders.

Any deviation of a Bid from the Bidding Procedures shall render the Bid unresponsive, resulting in the disqualification and/or rejection of the Bid.

Nothing contained in this Section shall impair the rights reserved by the Committee in the Invitation to Bid and the Bidding Procedures.

IB-03 BIDDING SCHEDULE

The schedule and process for the Bidding (“*Bidding Schedule*”) is as follows:

Activity	Date
Publication of Invitation to Bid	05 - 07 October 2018
Submission of Letters of Interest	05 October 2018 to 5:00 p.m., 19 November 2018
Submission of Confidentiality Agreement and Undertaking and Payment of Participation Fee	05 October 2018 to 5:00 p.m., 20 November 2018
Issuance of the Bidding Package	05 October 2018 to 5:00 p.m., 20 November 2018
Due Diligence Period	05 October 2018 until 2 Business Days prior to the Bid Submission Deadline
Pre-Bid Conference	2:00 p.m., 17 October 2018
Bidders Comments Deadline on the Draft APA	5:00 p.m., 23 October 2018
Consortium Request Deadline	5:00 p.m., 24 October 2018
Initial Documentary Deliverables Deadline	5:00 p.m., 05 November 2018
Notice to Bidders on its compliance to the Initial Documentary Deliverables	5:00 p.m., 12 November 2018
Final Submission of Documentary Deliverables Deadline	5:00 p.m., 20 November 2018
Evaluation of Documentary Deliverables	21-23 November 2018
PSALM release of the Asset Purchase Agreement	07 December 2018
Bid Submission Deadline	12:00 noon, 14 December 2018

Evaluation of First Bid Envelope	12:30 p.m., 14 December 2018
PSALM Notification to Bidders whose First Bid Envelopes were rated “Passed” and those who were rated “Failed” PSALM Notification to Bidders whose First Bid Envelope was rated “Passed” that their Second Bid Envelope will be evaluated, if necessary	After Evaluation of all the First Bid Envelopes
Evaluation of the Second Bid Envelope and Determination of the Highest Ranking Bidder	After Notification to Bidders whose First Bid Envelopes were rated “Passed”
Notice of Award	Within thirty (30) days after the declaration of the Highest Bidder/s
Closing Date	17 January 2019

The Bidding Schedule may be changed by the Committee without prior notice. Bidders will be notified promptly of any change thereto through a Supplemental Bid Bulletin.

Unless otherwise expressly specified in writing, all references to times and dates shall refer to Philippine Standard Time. Should any of the above dates fall on a holiday, the deadline shall be extended to the same time of the immediately succeeding Business Day. Unless otherwise expressly specified in writing, the venue of all the above shall be at the PSALM Office with address at the 24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, Vertis North, Mindanao Avenue, 1105 Quezon City, Metro Manila.

IB-04 SUBJECT OF THE BID

Bids shall cover the sale of the Purchased Assets (Schedule A of the draft Asset Purchase Agreement) as described below:

A. The 650 MW Malaya Thermal Power Plant (the “Plant”) (Part I-A of Schedule A) located in Barangay Malaya, Pililla, Rizal consists of the following plants:

1. 300 MW Malaya Thermal Power Plant 1; and
2. 350 MW Malaya Thermal Power Plant 2

Note: The Malaya Land-Based Gas Turbine (LBGT) is excluded from the sale.

B. The Land (Part I-B of Schedule A)

The Malaya TPP Land consists of five (5) lots under Lot Nos. 32-A, 2-A, 2-B-1, 2-B-2-A and 3-A-2 with an estimated total area of Two Hundred Sixty-Two Thousand Eight Hundred Seven (262,807) square meters. Portions of Lot No. 2-A, currently occupied by the Meralco Substation and NGCP Substation comprising an estimated total area of Twenty-Nine Thousand Three Hundred

Thirty-Seven (29,337) square meters are excluded in the sale.

The Purchased Asset includes all the items listed in Schedule A. All other assets that may be found on the site but are not enumerated in Schedule A and Schedule B do not form part of the Purchased Asset. The Information Memorandum contained in the Bidding Package also contains relevant information on the Plant and the Land. The final list of the Plant and description of the Land shall be contained in the Final Asset Purchase Agreement.

IB-05 CONDITION OF THE SALE

The Purchased Assets shall be sold both on an “AS IS, WHERE IS” basis.

IB-06 DOCUMENTARY DELIVERABLES

On or before **5:00 P.M. of 20 November 2018** (Documentary Deliverables Deadline), each Bidder must submit four (4) copies (one original and three duplicates), of all the following:

- A. Acknowledgement under oath of receipt of the Bidding Package and acceptance of the terms and conditions of the Bidding Procedures in the form attached hereto as **Schedule 2** (Form of Acceptance of Bidding Procedures).
- B. Details of the Bidder and Foreign Bidder’s Local Representative:
 - 1. Bidder’s full name, which must be the name of the entity that submitted the LOI;
 - 2. The country under whose laws the Bidder derives and continues its existence as juridical persons;
 - 3. Complete address, telephone number, facsimile number and email address;
 - 4. Company profile in case of juridical entities or a brief personal/partnership background in case of persons or partnerships;
 - 5. Name, official designation, telephone number, facsimile number, email address of the authorized signatory who shall sign the APA; and
 - 6. Name of Bidder’s representative(s) to whom the notices or correspondence required under the APA are to be addressed or sent, and such person’s telephone number, facsimile number and email address.
- C. Constitutive Documents

For a Bidder organized and/or existing under Philippine Law, the following, in certified true copies, shall be submitted:

1. For a sole proprietorship:
 - a. Certified true copies of Registration Certificate by the Department of Trade and Industry (DTI)
2. For a corporation:
 - a. Latest Articles of Incorporation and By-laws;
 - b. Securities and Exchange Commission (SEC) Certificate of Registration and latest Certificate of Amendment, if applicable; and
 - c. Latest and updated General Information Sheet.
3. For a partnership:
 - a. Latest Articles of Partnership; and
 - b. SEC Certificate of Recording of the Articles of Partnership or Amended Articles of Partnership in the SEC's Books of Partnership.

For a Bidder organized or existing under laws other than Philippine Law, the equivalent of the above documents shall be submitted, certified true and correct by the Bidder's authorized representative and duly authenticated by the Philippine Consulate in the foreign country where the Bidder was organized and continues to exist.

For a non-Philippine resident Bidder, a nomination and acceptance letter under oath of the Bidder's representative with an address within Metropolitan Manila who is authorized to receive all Supplemental Bid Bulletins, the Asset Purchase Agreement, communications, correspondences, notices and legal process for and in behalf of the Bidder.

A foreign entity shall be limited to a maximum share/participation of forty percent (40%).

- D. Certification under oath issued by the Bidder's authorized officer (e.g. Corporate Secretary) attesting to the following:
1. Designation and authority of the Bidder's Authorized Representative to:
 - a. issue the LOI, sign the Confidentiality Agreement and Undertaking, and receive the Bidding Package;

- b. receive all SBBs, the APA, communications, correspondences, notices and legal processes for the Bidder;
- c. represent the Bidder in the Bidding Process, including the execution and signing of the APA; and,
- d. act for and in behalf of the Bidder during the opening and evaluation of Bids, on all matters to be taken, including the authority to represent, bid for and bind the Bidder in the event that an auction is called to settle a tie; and,

2. Limitations if any, of such designation or authority.

For a non-Philippine resident Bidder, a nomination and acceptance letter under oath of the Bidder's representative with an address within Metropolitan Manila, who is authorized to receive all SBBs, the APA, communications, correspondences, notices and legal process for and in behalf of the Bidder.

- E. In the event that the Confidentiality Agreement and Undertaking previously submitted were not under oath, a Confidentiality Agreement and Undertaking under oath must be submitted.
- F. A certified true copy of the Bidder's Latest Audited Financial Statements (FS) for the fiscal year ending 2017 and latest interim financial statement for 2018. The FS must include the auditor's report, balance sheet, statement of cash flow, income statement and notes to financial statement. For entities falling under the taxing authority of the Republic of the Philippines, the FS must have been stamped-received by the Bureau of Internal Revenue (BIR). For non-Philippine resident Bidder, the FS must have been audited by a reputable auditing firm and/or received by its equivalent government tax or regulatory agencies.

If the Bidder is a new corporation, the information required to be submitted under the previous paragraph shall pertain to its two stockholders who own the highest number of shares in the Bidder; provided, that each of these stockholders must own at least ten percent (10%) of the Bidder's equity. If more than two stockholders own the highest number of shares, then the information shall pertain to all such stockholders. If only one stockholder equals or exceeds the 10% equity threshold, then the information shall pertain to such stockholder. If no stockholder exceeds the 10% equity threshold, then the information shall pertain to the stockholder owning the largest number of shares.

If the stockholder is a natural person, he must submit the latest duly filed Income Tax Return for the year 2017 and latest quarterly filing for the year 2018.

- G. A Bidder shall submit a sworn statement and documentary proof which supports such statement, all of which must be acceptable to PSALM, to establish any of the following:
1. Net Asset Value (NAV), based on the Latest Audited FS or Market Capitalization, of at least **One Billion Seven Hundred Million Philippine Pesos (PhP 1,700,000,000.00)**.
 2. It has an Affiliate with a NAV, based on the Latest Audited FS or Market Capitalization, of at **One Billion Seven Hundred Million Philippine Pesos (PhP 1,700,000,000.00)** and shall have a financial support arrangement with such Affiliate. Only one Affiliate may be cited to meet the requirement of this paragraph. A Bidder who cites an Affiliate to comply with the financial capability must present proof to establish that the cited entity is its Affiliate; or,
 3. A bank certificate issued by a universal or commercial bank, stating that such Bidder, or the Affiliate under item (2) above, maintains accounts with said bank and the total average daily balance of the funds for the last three months immediately preceding the date of the bank certification in such accounts (as of the date of the certification) is at least **One Billion Seven Hundred Million Philippine Pesos (PhP 1,700,000,000.00)**. Should the Bidder maintain various accounts from different universal or commercial banks, the aggregate average daily balance shall be at least **One Billion Seven Hundred Million Philippine Pesos (PhP 1,700,000,000.00)**. The bank certification must be dated within 14 Business Days immediately preceding the Documentary Deliverables Deadline. The Bidder shall submit bank statements and other supporting documents if required by PSALM.

As used in this paragraph, NAV shall mean total assets minus total liabilities, while Market Capitalization shall mean the outstanding shares of a publicly listed corporation multiplied by the average closing price for the five Business Days immediately preceding the day of the Documentary Deliverables Deadline at the stock exchange where such shares are being traded.

For purposes of this paragraph, the conversion rate to be applied to the Philippine Peso *vis-à-vis* the U.S. Dollar shall be the average of the rate referred to as the Bangko Sentral ng Pilipinas (BSP) Reference Rate based on its Reference Exchange Rate Bulletin issued by the Treasury Department of the BSP of the five Business Days immediately preceding the date of the Documentary Deliverables Deadline.

H. Tax Clearance

Each Bidder, regardless of nationality, must submit a certified true copy of the valid original tax clearance certificate issued by the BIR National Office in Quezon City, together with a certification under oath that the original is in the possession of the bidder, as required by:

1. Executive Order (E.O.) 398 - Directing Timely and Complete Payment of Taxes as a Precondition for Entering into, and as a Continuing Obligation in Contracts with the Government, its Departments, Agencies and Instrumentalities, dated 12 January 2005;
2. BIR Revenue Regulation No. 3-2005 or the Rules and Regulations Implementing E.O. 398 and Requiring Directing Timely and Complete Payment of Taxes as a Precondition for Entering into, and as a Continuing Obligation in Contracts with the Government; and,
3. BIR Revenue Memorandum Circular No. 16-2005 or the Clarification to Revenue Regulation No. 3-2005 Implementing E.O. 398.

Pursuant to the requirements of EO 398, the latest income and business tax returns, together with the Tax Clearance Certificate (TCC), shall be submitted as part of the Documentary Deliverables.

Only a valid Tax Clearance Certificate issued by BIR National Head Office is acceptable. Provisional Tax Clearance Certificate or any other form is not accepted.

I. Each Bidder must submit a Statement Under Oath (Schedule 3) declaring that:

1. It is not disqualified or prohibited from participating in any bidding conducted by a government entity or entering into any kind of contract with a government entity;
2. From Documentary Deliverables Deadline until Closing Date, the Bidder, its parent company, stockholders, subsidiaries, Affiliates, directors or officers or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, have no conflict, dispute or unsettled issue, arising out of, or in connection with the EPIRA or its Implementing Rules and Regulations, the DOE, PSALM, NPC or TRANSCO, which affect the privatization of NPC assets or TRANSCO or the appointment of IPPAs, namely: (i) an unresolved issue, as determined by the inter-agency Committee, arising from the renegotiation of contracts

with IPPs mandated by Section 68 of the EPIRA; and (ii) any unpaid account arising from contractual obligations with the DOE, PSALM, NPC or TRANSCO. Any violation of this warranty shall constitute a sufficient ground for the disqualification of the Bidder, the termination of the APA, forfeiture of the Bid Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Bidder, and/or its representatives;

3. It is qualified under Philippine Law to bid for the Asset and in the event, it is declared the Winning Bidder, it is qualified under Philippine Law to own the Asset;
4. It has not been disqualified from participating in PSALM's bidding activities by reason of fraudulent acts or has not committed fraud or breach in the provisions of any agreement with PSALM; and
5. that the Bidder shall at all times fully comply with Philippine Law.

J. Name of Issuing/Confirming/Advising Bank(s)

Bidders shall submit, in writing, the name(s) of the issuing bank(s), confirming and/or advising bank(s), which it will use for the issuance of its Bid Security in the applicable form attached as **Schedule 6** (Form of Bid Security in the Form of SBLC).

K. Authority to Verify

A Bidder shall submit a duly executed authorization for PSALM to verify its records with the BIR, SEC, banks (with regard to the NAV, bank certification, bank statement showing average daily balance, Bid Security, and others), and other appropriate government entities.

The authorization must be separate for each of the entities, must be under oath and in the form attached as **Schedule 4** (Form of Authority to Verify).

The requirements and documents referred in paragraphs A to K, each of which must be acceptable to the Committee, are collectively referred to as Documentary Deliverables.

The Bidder may submit the above-enumerated Documentary Deliverables on or before **05 November 2018** for initial verification of the same. The Committee shall communicate to the submitting Bidders the result of the initial verification process. The result of this initial verification is without prejudice to the findings of the Committee during post-qualification evaluation.

The Committee reserves the right to disqualify any Bidder (including the Highest Ranking Bidder and Winning Bidder) should the Committee determine that any submission by a Bidder, including the Documentary Deliverables, were not accurate, truthful, complete, authentic, and/or non-compliant with the Bidding Procedures.

In any event, the Committee reserves the right to request a Bidder to submit clarifications to its Documentary Deliverables.

Should there be any change in any information furnished under the foregoing paragraphs, the Bidder must notify the Committee of such change immediately but in no case later than ten (10) calendar days after the Documentary Deliverables Deadline. The change in information pertains to events occurring after the Documentary Deliverables Deadline. Any such change in information may not be used by a Bidder to comply with the requirements of the Documentary Deliverables if it was not previously compliant as of the Documentary Deliverables Deadline. Such change in information shall be used only for an updating of the information contained in the Documentary Deliverables. A Bidder shall not be allowed to add to or replace any of the Documentary Deliverables. Unless the Committee acknowledges receipt of the written notice and the acceptance of the changes in the information submitted under the foregoing paragraphs, it is conclusively presumed that such information submitted with the Documentary Deliverables will remain valid until the expiration of the Bid Validity Period. In the case of Tax Clearance Certificate (TCC), it should be replaced/renewed until Bid Validity Period. Any material change in the information furnished with the Documentary Deliverables may result in the disqualification of a Bidder.

A Bidder shall be disqualified and shall not be allowed to participate in the Bidding Process, to submit a Bid, or be furnished with the APA for the Malaya Thermal Power Plant and the underlying Land if any of the following occurs:

1. It fails to submit any of the Documentary Deliverables on the Documentary Deliverables Deadline;
2. It fails to submit the Acceptance of the Bidding Procedures' terms and conditions on the Documentary Deliverables Deadline;
3. Any of the Documentary Deliverables submitted by such Bidder does not fully and completely comply with **Section IB-06** (Documentary Deliverables);
4. Any of the Documentary Deliverables is unacceptable to the Committee;
5. A Bidder changes the information in the Documentary Deliverables submitted without notice to and approval of the Committee;

6. There is a material change in the information submitted as part of the Documentary Deliverables, as determined by PSALM; or,
7. An event occurs after the Documentary Deliverables Deadline, which causes a material adverse change in the information part of the Documentary Deliverables, as determined by PSALM.

The information contained in the Documentary Deliverables submitted by the Bidder to PSALM is conclusively presumed to be valid until the expiration of the Bid Validity Period, unless the Committee acknowledges receipt of the written notice of the proposed change in the information and approves the same. In the case of Tax Clearance Certificate (TCC), it should be replaced/renewed until Bid Validity Period.

The Committee reserves the right to request a Bidder to clarify or submit documents to support its Documentary Deliverables. However, a Bidder cannot submit replacement documents such as but not limited to application filings, receipts or claim stubs, or any other documents in lieu of the requirements in the Documentary Deliverables.

The Committee shall inform each Bidder whether its Documentary Deliverables are compliant or non-compliant within thirty (30) Business Days from the Documentary Deliverables Deadline. Only compliant Bidders shall be allowed to further participate in the Bidding Process.

The Committee also reserves the right to disqualify any Bidder (including the Highest Ranking Bidder or Winning Bidder) should it determine that any of the Bidder's submissions is not authentic, accurate, truthful, complete and/or compliant with the Bidding Procedures, regardless of whether the Committee has furnished the Bidder with the APA and/or allowed it to participate in the Bidding Process.

IB-07 CONSORTIUM

After submission of LOI, a Consortium may be formed among the Bidders or among a Bidder with non-bidders. Bidders must communicate their request to bid through a Consortium (Request To Bid through Consortium) in writing, to the Committee on or before 5:00 P.M. on 24 October 2018 (Consortium Request Deadline). The Request To Bid through Consortium shall be accompanied by the following:

- A. A listing of all the members that form the Consortium with the following details: name, address and contact details, including telephone number, facsimile number and email address. The listing shall have the written conformity of all members of the Consortium;
- B. A duly executed agreement to form a Consortium;

- C. Bidder's Certification that it will be bidding through a Consortium; and
- D. Confidentiality Agreement and an Undertaking executed by the members of the Consortium under oath.

Consortia members that are foreign entities shall submit the equivalent of the above documents, duly acknowledged, sworn to or authenticated by the Philippine Consulate in such foreign country.

The Committee shall communicate its acceptance or rejection of a Request To Bid Through Consortium within seven (7) days from the Consortium Request Deadline. The Committee has sole and absolute discretion to accept or reject a Request To Bid Through Consortium.

A Request To Bid Through Consortium shall be automatically denied if submitted after the Consortium Request Deadline and without fully complying with the above requirements. In the event that PSALM rejects the Request To Bid Through Consortium, only the Bidder may proceed with the Bidding Process and bid on its own.

In case the Committee accepts a Request To Bid Through Consortium, the members of the proposed Consortium shall choose among themselves and appoint a Lead Member which shall act through a designated authorized representative.

The Lead Member shall substitute the Bidder member and shall proceed with the Bidding Process for and in behalf of the proposed Consortium, including the submission of the Documentary Deliverables on or before the Documentary Deliverables Deadline.

Each of the shareholders or members of the proposed Consortium shall submit through the Lead Member the documentary deliverables as required in IB-06 (C), (D), (E), (F), (G), (H), (I) and (K). For purposes of complying with IB-06 (D), Schedule 8 (Designation of Lead Member and its authorized representative) shall be used.

The requirement on Net Asset Value (NAV) may be complied with by any member or shareholder of the proposed Consortium, whether alone or in conjunction with other members/shareholders.

The proposed Consortium shall incorporate after the Committee accepts a Request To Bid Through Consortium.

On Bid Submission Deadline, the duly incorporated Consortium shall substitute the Lead Member and shall henceforth proceed with the Bidding Process as the Bidder. The Consortium shall sign and submit its Bid through its authorized representative in accordance with IB-11 (Preparation of Bids), IB-12 (Contents

of Bids), IB-13 (Bid Validity Period), IB-14 (Bid Security) and IB-15 (Submission of Bids).

The Consortium shall be bound by all previous actions of its Bidder member and Lead Member. PSALM shall not be required to:

- A. Change the Bidding Schedule by reason of the Consortium;
- B. Conduct another Pre-bid Conference for any Consortium. The attendance or participation of the pertinent Bidder/s shall be deemed to have been for the benefit of the Consortium; and
- C. Extend the Due Diligence Period or the deadlines for the submission of the Bidder's Comments. The opportunity for the Bidder/s to conduct Due Diligence or submit the Bidders' Comments shall be deemed to have been for the benefit of the Consortium.

All other Bidders shall be notified of the participation of the accepted Consortium.

IB-08 RESPONSIBILITIES OF BIDDER

By submitting its Bid, a Bidder represents and warrants that it has:

- A. Reviewed, is fully acquainted with, and unconditionally accepted the terms and conditions of the Bidding Procedures, SBBs, and the APA for the Sale of the 650 MW Malaya Thermal Power Plant and the Land with more or less 233,470 square meters (Purchased Assets) and related undertakings and documents.
- B. Informed itself and fully understood all the conditions and matters affecting or that could affect its Bid, participation, undertaking in the Bidding Process or the implementation of the sale of the Purchase Asset and other contemplated transactions; and
- C. Conducted an independent due diligence investigation of matters relative to the Bidding Process and related transactions.

Bidders shall bear the risk of failure to observe any of these responsibilities and will not be granted relief on the plea of negligence, error, or mistake in their Bids.

IB-09 DUE DILIGENCE

Bidders have the option to and shall be allowed to conduct due diligence on Business Days from **05 October 2018** until two Business Days prior to Bid Submission Deadline.

The conduct of the due diligence shall be in accordance with the Data Room and Due Diligence Procedures. All costs and risks associated with the conduct of the due diligence shall be for the Bidder's sole account.

IB-10 PRE-BID CONFERENCE

There will be a Pre-Bid Conference at 2:00 P.M. on **17 October 2018** at the 24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, Vertis North, Mindanao Avenue, 1105 Quezon City, Philippines.

Any statement made at the Pre-bid Conference shall not modify the terms of the Bidding Procedures, unless such statement is issued in an SBB.

PSALM or the Committee shall not be responsible for any verbal instruction communicated to a Bidder.

IB-11 PREPARATION OF BIDS

- A. Bidder shall submit a Bid composed of two separate envelopes containing the First Bid Envelope (Legal Component) and Second Bid Envelope (Financial Component) as detailed in **Section IB-12** (Contents of Bids).
- B. A Bidder shall properly and completely accomplish all the information and documents required by **Section IB-12** and the Bidding Procedures. No alterations and modifications of the documents, including the Schedule C - Purchase Price, the APA and Bid Security, shall be allowed.
- C. A Bidder must type/print its name below its signature or that of its authorized representative on all the documents submitted with the Bid.
- D. Bids of a partnership or a corporation shall be signed in the name of the entity by an authorized partner or authorized officer, as the case may be, followed by the name, signature and designation of the person authorized to sign the Bid and the APA.
- E. All Bids, documents, specifications and related information shall be prepared and submitted in the English language.
- F. Erasures or other changes in the Bid shall not be allowed.

IB-12 CONTENTS OF BIDS

The Bid shall be composed of two separate envelopes containing the First Bid Envelope (Legal Component) and Second Bid Envelope (Financial Component) as follows:

A. The first envelope shall be marked “Legal Component” (First Bid Envelope) and shall contain the following:

1. Four (4) sets of the duly executed APA for Malaya Thermal Power Plant including schedules, and other required documentation, except Schedule C - Purchase Price of the APA which shall be submitted in the Second Bid Envelope and shall not be submitted with the First Bid Envelope. Each page of the APA shall be initialed or signed in full by the authorized signatory/ies of the Bidder, except the signature pages, which must bear the full signature of such authorized signatory/ies. The APA shall be submitted in the same form and sequential order as it was issued to the Bidder by PSALM and shall be acknowledged before a Notary Public in the Philippines.

PSALM shall fill in the date on the cover page of the APA the date that a Winning Bidder is declared.

2. Two copies of the duly executed Schedule 1 (Representations and Warranties Form), containing all the required statements made under oath. Each page of the Schedule 1 must be signed by the Bidder’s authorized signatory/ies.
3. The original copy of the Bid Security and the confirmation of the Bid Security or advice of the Bid Security, if applicable. The Bid Security is described in **Section IB-14** (Bid Security).

In addition to the required documents under this section, a Consortium shall submit in its First Bid Envelope four (4) copies (one original and 3 certified true copies) of the following:

1. Constitutive Documents for a corporation listed under IB-06 (C) (2)
2. Certification under oath under IB-06 (D)
3. Tax Clearance under IB-06 (H)
4. Statement Under Oath, Schedule 3 under IB-06 (I)
5. Authority to Verify under IB-06 (K)

Failure to fully and completely comply with these requirements may cause the First Bid Envelope to be rated “fail”.

A. The second envelope shall be marked “Financial Component” (Second Bid Envelope).

The Second Bid Envelope shall contain four (4) original copies of the printed, duly completed, and signed **Schedule C - Purchase Price** of the Asset Purchase Agreement (APA).

The Financial Bid shall be the figure that is indicated in the Schedule C - Purchase Price. The Financial Bid must be based on the terms of the APA and must be unconditional, binding, and open for acceptance by PSALM, regardless of any event, including *force majeure* affecting Malaya Thermal Power Plant, throughout the duration of the Bid Validity Period.

The Financial Bid shall be the Total Purchase Price¹ denominated in Philippine Peso and must be made on the basis of the terms of the APA and must be unconditional, binding and open for acceptance by PSALM for a period of one hundred eighty (180) days from the day of the Bid Submission Deadline. Schedule C - Purchase Price of the APA requires that the Bidder insert the words and figures in the blanks provided therein and the authorized signatory/ies of the Bidder to sign his/their full signature on the space provided therein. In case of discrepancies between prices in words and figures, the prices in words shall be considered as the Financial Bid. Prices which shall be expressed in currencies other than Philippine Peso shall be rejected outright. In case of any discrepancy in the Financial Bid of the different copies of Schedule C of the APA, the highest Financial Bid shall be considered as the Financial Bid of the Bidder.

Failure to fully and completely comply with the requirements of Schedule C of the APA and the above may cause the Second Bid Envelope (Financial Bid Component) to be deemed non-compliant which may result in the Bid being disqualified. The amount of the Financial Bid shall be the basis of the Committee in the selection of the Highest Ranking Bidder as provided in **Section IB-20** (Opening and Evaluation of the Second Bid Envelope).

The First and Second Bid Envelopes shall be submitted in accordance with **Section IB-15** (Submission of Bids). Both envelopes must be sealed and signed by the Bidder's authorized signatory on the envelope flap, the tape binding the envelopes (should several envelopes be used) or the joint where the packing papers meet.

IB-13 BID VALIDITY PERIOD

The Bid shall be valid for the entire duration of the Bid Validity Period; provided that the Committee may request for an extension of the same. A Bid with a validity period shorter than the required Bid Validity Period shall be rejected outright.

IB-14 BID SECURITY

Each Bidder shall submit as part of the First Bid Envelope, a Bid Security in accordance with the following terms and conditions:

¹ PSALM vs. CIR, : GR NO. 198146, 08 August 2017.

- (a) The amount of the Bid Security must be equivalent to **PhP310,000,000.00**;
- (b) The Bid Security may be in any of the following forms:
 - 1. Cash;
 - 2. Cashier's or Manager's Check issued by a commercial or universal bank licensed to do business in the Philippines by the Bangko Sentral ng Pilipinas; or
 - 3. Irrevocable standby letter of credit issued by a Qualified Bank (defined).
- (c) The Bid Security shall guarantee that the Bidder completely, faithfully, fully and promptly complies with its obligations under the Bidding Procedures and the APA throughout the Bid Validity Period or its extension.

No addition, revision or modification may be made on applicable **Schedule 6** (Forms of Bid Security in the Form of SBLC).

PSALM shall reject a non-compliant Bid Security.

The Bidder shall have the option to provide the Bid Security either by wire transfer or telegraphic transfer in lieu of an SBLC; provided, that the funds must be credited to the PSALM-designated bank account by the Bid Submission Deadline. The confirmation of the PSALM depository bank of the crediting of the Bid Security amount to the PSALM-designated bank account shall be conclusive as to the receipt of the Bid Security amount by the Bid Submission Deadline. It shall be the responsibility of the Bidder to prove that the Bid Security amount was credited to the PSALM bank account at the PSALM depository bank. Any interest earned by the Bid Security amount shall belong to PSALM. Should a Bidder decide to use either a wire transfer or telegraphic transfer for the Bid Security, PSALM shall, upon the Bidder's request, provide the Bidder with the PSALM bank account details.

A Bid submitted without the required Bid Security shall be rejected, returned to the Bidder and shall disqualify the Bidder from participating in the Bidding Process.

PSALM shall draw on and forfeit the full amount of the Bidder's Bid Security, regardless of any event, including *force majeure* affecting Purchased Assets, if the Bidder violates its obligations or under any of the following instances:

- A. The event set forth in subparagraphs (1), (7), (8), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19) or (20) of paragraph M of **Section IB-28** (General Conditions);
- B. The Highest Ranking Bidder or Winning Bidder withdraws from, fails to comply with, terminates or repudiates the APA, until the submission of a Performance Bond;
- C. The Winning Bidder fails to comply with the Conditions Precedent on the Closing Date prior to the submission of a Performance Bond, to the extent that any of the Conditions Precedent have not been waived by PSALM;
- D. The Highest Ranking Bidder or Winning Bidder refuses to accept the award for the sale of Purchased Assets;
- E. The Highest Ranking Bidder or Winning Bidder violates **Section IB-27** (Performance Bond);
- F. The Bidder fails to extend the expiration date of its Bid Security in accordance with **Section IB-22** (Obligations of the Next Highest Ranking Bidder) and this Section; or
- G. The Bidder withdraws its Bid or any part of it after the Bid Submission Deadline.

A Bidder shall replace the Bid Security within three (3) Business Days after the issuing bank of the Bid Security ceases to be in good standing. The existing Bid Security shall be retained by PSALM and shall remain effective until PSALM accepts the replacement Bid Security.

PSALM will return the Bid Security of the Highest Ranking Bidder three (3) Business Days after the Closing Date. In case of cash or Manager's Check, the Bidder shall submit a formal request for the return of its Bid Security.

IB-15 SUBMISSION OF BIDS

The First Bid Envelope (Legal Component) and the Second Bid Envelope (Financial Component) must be submitted simultaneously on or before the Bid Submission Deadline. The envelopes shall be sealed and clearly marked as follows:

THE CHAIRPERSON

PSALM Privatization, Bids and Award Committee
Sale of Malaya Thermal Power Plant and the Underlying Land
Power Sector Assets and Liabilities Management Corporation

24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives,
Vertis North, Mindanao Avenue, 1105 Quezon City, Philippines

Re: Legal Component [or Financial Component]

The venue for the submission of Bids shall be at the PSALM Office at 24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, Vertis North, Mindanao Avenue, 1105 Quezon City, Philippines.

PSALM reserves the right to change the date, time, and venue for the submission, opening, or evaluation of the First Bid Envelope or Second Bid Envelope.

A Bid submitted after the Bid Submission Deadline shall be rejected and returned unopened to the Bidder.

IB-16 MODIFICATION AND WITHDRAWAL OF BIDS

A Bid cannot be modified or withdrawn for any reason after the Bid Submission Deadline, except when a Bidder permanently withdraws from the Bidding Process. PSALM shall automatically draw on or forfeit the Bid Security of a Bidder that modifies or withdraws its Bid or any of its part after Bid Submission Deadline.

The Committee shall disqualify Bids that do not fully comply with **Section IB-12** (Contents of Bids) and the Bidding Procedures.

IB-17 DISQUALIFICATION OF BIDS

The Committee shall disqualify the following Bids:

1. Bids of parties who are disqualified from participating in any bidding by a government entity or entering into any kind of contract with a government entity;
2. Bids submitted without a Bid Security or which do not comply with the requirements in **Section IB-14** (Bid Security);
3. Bids which are materially defective;
4. Bids that do not comply with the Bidding Procedures' requirements, including the requirements of **Section IB-12** (Contents of Bids);
5. Bids from parties, except Consortia, who are not Interested Parties;
6. Bids from parties who are not Bidders;
7. Financial Bids with prices expressed in currencies other than Philippine Peso;
8. Bids of Bidders whose First or Second Bid Envelope was rated "fail" by the Committee;

9. The Bid of a Bidder who breaches the warranty against offering or paying commission or consideration to any government officer or any PSALM official or employee provided in Paragraph A of **Section IB-28**;
10. The Bid of a Bidder who breaches the warranty against conflict, dispute or unsettled issue provided in Paragraph B of **Section IB-28**;
11. Bids from Bidders who breached the warranty on Compliance with Philippine Law, as provided in Paragraph C of **Section IB-28**;
12. Bid submitted by a Consortium whose Request to Bid Through Consortium was not accepted by the Committee;
13. Bid submitted by a Bidder who is an Affiliate of another Bidder, or holds or acquires any ownership interest in another Bidder as listed in the latest General Information Sheet;
14. Bid submitted by a Bidder who has an Affiliate and such Affiliate -
 1. is a Bidder; or
 2. holds or acquires any ownership interest in another Bidder as listed in the latest General Information Sheet;
15. When PSALM determines that there is a material change in the information provided in the Documentary Deliverables;
16. There is a subsequent event that causes a material adverse change in the information provided in the Documentary Deliverables;
17. Any other ground for disqualification of a Bid and/or a Bidder as provided for in the Bidding Procedures; or
18. Any other analogous cases.

In case of paragraphs 13 and 14, the Bidder affected shall be disqualified, regardless of whether it is the acquiring entity or the entity being acquired.

IB-18 OPENING AND EVALUATION OF THE FIRST BID ENVELOPE (LEGAL COMPONENT)

The First Bid Envelope (Legal Component) shall be opened and evaluated at the venue where the Bids are to be submitted, immediately after the Bid Submission Deadline. A Bidder, who has not been disqualified, or its duly authorized representatives may be present at the time, date and place when the Bids will be opened. The failure of a Bidder or its authorized representative to be present during the opening and/or evaluation of Bids shall be considered a waiver of its right to witness the proceedings.

In case an authorized representative represents the Bidder, the representative shall present his written authority to represent the Bidder and to act for and in behalf of the Bidder on or before the Bid Submission Deadline.

The First Bid Envelope (Legal Component) shall be opened and evaluated first.

After the Bid Submission Deadline, the Committee shall open and examine the First Bid Envelopes. If the Committee receives only one Bid, it shall not evaluate the Bid but shall declare a failure of Bidding and return the Bid to the Bidder. If

the Committee receives more than one Bid, it shall proceed to open and evaluate the First Bid Envelopes.

In the evaluation of the First Bid Envelopes, the Committee shall use the non-discretionary “pass/fail” criteria to determine whether all the documents and information required to be submitted are present and have been accomplished in accordance with the Bidding Procedures. The Committee or its duly authorized representatives shall inspect and review the documents submitted by each Bidder against the list required in **Section IB-12** (Contents of Bids). Only First Bid Envelopes that are determined to contain and fully comply with all the requirements stated in **Section IB-12** (Contents of Bids) shall be rated “pass”.

If there are one or more missing or non-compliant documents in the First Bid Envelope submitted by a Bidder, the Committee may confer with such Bidder’s authorized representative to verify the deficiency or non-compliance. The Bidder may only clarify the irregularity or identify and point to the missing document/s and shall not modify, change or add any information or document to its Bid. If the Bidder is unable to clarify the irregularity or point out the required document, the Committee shall rate its Bid as “fail”.

If a Bidder’s First Bid Envelope is rated “fail,” its Second Bid Envelope shall be returned to it unopened, prior to the evaluation of the Second Bid Envelopes. A Bidder whose First Bid Envelope is rated “fail” shall have no right to participate further in the Bidding Process.

A Bidder’s First Bid Envelope must be rated “pass” for it to be eligible to have its Second Bid Envelope opened for evaluation.

The Committee shall declare the Bidding a failure if none of the First Bid Envelopes submitted were rated “pass”. If at least a Bidder has a First Bid Envelope rated “pass”, the Committee shall open and evaluate the Second Bid Envelope of such Bidder.

After the Committee has evaluated all the First Bid Envelopes, it shall notify the Bidders whether their First Bid Envelopes were rated “pass” or “fail”. A Bidder whose First Bid Envelope is rated “pass” shall be notified of the time when its Second Bid Envelope shall be evaluated. A Bidder whose First Bid Envelope was rated “fail” shall be disqualified and shall not be allowed to further participate in the Bidding Process.

IB-19 RESERVE PRICE

Before the opening of the Second Bid Envelope, the PSALM Board of Directors, upon the recommendation of the Committee, shall meet to determine the minimum floor price (Reserve Price). The Committee reserves the right not to disclose the Reserve Price at any time prior to or following the opening and evaluation of the Second Bid Envelopes.

At any time after the Board of Directors determines the Reserve Price, but prior to the opening and evaluation of the Second Bid Envelope, the Committee shall ask the Commission on Audit (COA) representative and the authorized representative of each Bidder present to initial on the flap of the sealed envelope containing the Reserve Price. The Committee shall then place the sealed envelope in a clear container near or adjacent to where the Bid Envelopes are placed by the Bidders.

The Financial Bid of the Highest Ranking Bidder must be equal to or higher than the Reserve Price in order to qualify as the Winning Bidder.

IB-20 OPENING AND EVALUATION OF THE SECOND BID ENVELOPE (FINANCIAL COMPONENT)

The Second Bid Envelopes shall be opened and evaluated only after all the First Bid Envelopes have been evaluated.

The Financial Bids, which is at least equal to or higher than the Reserve Price, shall be ranked from the highest to the lowest, to identify the highest Financial Bid.

A tie in the Financial Bid shall be resolved immediately through an auction conducted by the Committee among the Bidders. The Bidders shall each submit a revised and signed Schedule C of the APA - Purchase Price. A Bidder shall not submit a Financial Bid lower than its original Financial Bid. This process shall be repeated until the tie is broken. Each Bidder must ensure that its representative has the authority to bind the Bidder in case of an auction. The Committee shall declare the Bidder who submitted the highest Financial Bid as the Highest Ranking Bidder. The highest among the Financial Bids that a Bidder submitted shall be deemed as its Financial Bid.

The Committee has the sole discretion to allow the correction of innocuous or clerical errors.

If none of the Financial Bids meets the Reserve Price, the Committee shall declare all the Financial Bids to be non-compliant and declare a failure of bidding.

IB-21 AWARD TO THE WINNING BIDDER

Within thirty (30) days after the Highest Ranking Bidder is declared, and subject to the verification of the accuracy, authenticity and completeness of all the documents submitted in the Bid, Documentary Deliverables, and other document submitted or information furnished during the Bidding Process, the Committee shall serve a Notice of Award to the Highest Ranking Bidder as the Winning Bidder.

In the event that the Committee determines, after due verification, that the Highest Ranking Bidder has not completely, fully and faithfully complied with the Bidding Procedures, the Committee shall not serve a Notice of Award to it, may declare it to be in breach with no right to participate in the Bidding Process, and shall draw on and forfeit its entire Bid Security.

In case of the preceding paragraph, PSALM may, at its option, conduct a verification of the accuracy, authenticity and completeness of all the documents submitted by the Next Highest Ranking Bidder in succession based on the ranking during the opening and evaluation of the second bid envelope (financial component) until a Winning Bidder is determined and a Notice of Award has been issued by PSALM.

IB-22 OBLIGATIONS OF THE NEXT HIGHEST RANKING BIDDER

The Next Highest Ranking Bidder shall have these obligations until after the Closing Date:

- A. PSALM may, at its option, execute and deliver the APA delivered by the Next Highest Ranking Bidder which submitted a Financial Bid which is at least equal the Reserve Price, if: (1) the Highest Ranking Bidder is post-disqualified; (2) the Highest Ranking Bidder fails to accept the Notice of Award from PSALM; (3) PSALM and the Highest Ranking Bidder fails to execute the APA; or, (4) after the Closing Date and within the Bid Validity of the Bid of the Next Highest Ranking Bidder, the Highest Ranking Bidder does not comply with, withdraws, terminates or repudiates the APA executed by it.

PSALM shall notify the Next Highest Ranking Bidder of its selection by written notice (Substitute Selection Notice). The Next Highest Ranking Bidder shall assume the status of the Winning Bidder on the date of receipt of the Substitute Selection Notice.

- B. In case a Substitute Selection Notice is served to the Next Highest Ranking Bidder, its Financial Bid shall be the basis of the award. In case of an auction to determine the Next Highest Ranking Bidder, the basis for the award shall be the revised Financial Bid.
- C. The Next Highest Ranking Bidder, upon assumption of the status of Winning Bidder, shall extend the expiration date of its Bid Security.

IB-23 FAILURE OF BIDDING

There shall be a failure of Bidding in any of these instances:

- A. Less than two (2) LOI is received;

- B. Less than two (2) entities execute the Confidentiality Agreement and Undertaking and pays the Participation Fee;
- C. The Bidding Package is issued to only one entity;
- D. Less than two (2) Bidders submit the Documentary Deliverables by the Documentary Deliverables Deadline;
- E. Less than two (2) Bidders submit Documentary Deliverables which the Committee considers compliant;
- F. All Bidders, except one, withdrew from the Bidding Process prior to Bid Submission Deadline;
- G. All Bidders, except one, withdrew their Bids prior to the Bid Submission Deadline;
- H. Less than two (2) Bids is received by Bid Submission Deadline;
- I. No First Bid Envelope is rated "Pass";
- J. No Financial Bid meets the Reserve Price;
- K. No Bid has passed the post qualification stage;
- L. Other grounds provided in the Bidding Procedures.

Should there be a failure of Bidding based on any of the above grounds, PSALM may, but shall not be required to, negotiate with Bidder/s, for the negotiated sale of the Purchased Asset in accordance with the procedures to be adopted by the Committee (if first round this is not applicable). PSALM shall conduct another round of bidding.

IB-24 ASSET PURCHASE AGREEMENT

A Bidder may provide written comments on or amendments to the draft APA (Bidder's Comments) in the form attached as **Schedule 5** (Tabular Form of Bidder's Comments to the Draft Asset Purchase Agreement).

The Committee may, at its sole discretion, grant Bidders the opportunity to discuss their comments with the Committee and/or its advisors on the date communicated by the Committee.

Bidders' Comments shall be provided through a single written communication, in printed and electronic copies, within the deadline set in the Bidding Procedures and addressed and submitted to the Chairman of the Committee. The Committee shall not accept any subsequent comment in this respect. Bidders' Comments shall be deemed submitted for consideration of the Committee upon receipt of the Bidder's written communication.

The Committee may, at its sole discretion, accept or reject any of the Bidder's Comments. If the Committee considers that a Bidder's Comment should be taken into account, suitable revisions will be made on the APA. The Committee has no obligation to give the reason for the acceptance or rejection of Bidders' Comments or for making its own amendments.

Only a Bidder who is notified that its Documentary Deliverables are fully compliant with the Bidding Procedures will be furnished with the APA. A Bidder with non-compliant Documentary Deliverables shall be disqualified from the Bidding Process from the time the Committee communicates such non-compliance.

At a specified time, PSALM will make available the APA to the Bidders who were notified that their Documentary Deliverables are compliant with the Bidding Procedures.

Each Bidder shall execute four (4) original copies of the APA, which shall be acknowledged before a Notary Public in the Philippines, to be submitted as part of the First Bid Envelope.

IB-25 EFFECTIVITY OF THE APA

The effectivity of the APA shall be in accordance with its terms.

IB-26 TURNOVER OF POSSESSION OF THE PURCHASED ASSET

PSALM shall turnover possession of the Purchased Asset in accordance with the APA duly executed by PSALM.

IB-27 PERFORMANCE BOND

The Winning Bidder shall deliver a Performance Bond in accordance with the terms specified in the APA.

IB-28 GENERAL CONDITIONS

- A. PSALM, its representatives, and the Committee, and NPC shall not be responsible for the interpretation or conclusion drawn by a Bidder from data or information furnished by PSALM, NPC, the Committee, their directors, officers, employees, advisors, consultants or agents, or for the accuracy or completeness of such data or information.
- B. A Bidder shall, at all times, comply with Philippine Law.
- C. All risks, taxes, costs, fees, expenses and liabilities incurred, directly or indirectly, by a Bidder in the preparation of its Bid, inclusive of its due diligence effort and the cost incurred in securing the Bid Security, including fees and disbursements of its advisors, shall be borne and paid by such Bidder whether its Bid is accepted or rejected. The PSALM, NPC and/or the Committee shall not be held liable for such risks, taxes, costs, fees, expenses and liabilities. PSALM, NPC, the Committee, their directors, officers, employees, advisors, consultants and agents shall not be held liable in the event that a court of competent jurisdiction or other

Government Entity declares the Bidding, selection and/or award invalid or sets it aside, for any reason and at any time.

- D. Nothing in the Bidding Procedures and other relevant document shall bind PSALM and/or the Committee to make an award of the Asset or select a Highest Ranking Bidder and a Winning Bidder.
- E. Any request and/or receipt of Bids or any information or document will not constitute an invitation or commitment by PSALM or the Committee to enter into any agreement, undertaking or covenant with the Bidder.
- F. All deadlines in the Bidding Procedures and other relevant document or communication issued during the course of the Bidding must be adhered to strictly. Late submissions will be refused.
- G. PSALM and the Committee, at their discretion, reserve the right to: (1) accept or reject any or all Bids or any part thereof; (ii) withdraw from the proposed privatization or any part of the Bidding Process or to vary any of its or their terms at any time without giving any reason therefore; (iii) waive any defect contained therein; (iv) accept the offer which the Committee deems most advantageous to the Government; (v) draw and forfeit the full amount of the Bid Security upon the occurrence of a Bid Security Drawing Event; (vi) exercise any other remedy granted by Philippine Law or the Bidding Procedures; and (vii) require the submission of additional documents and/or information in relation to the Bidding.
- H. The Committee reserves the right to: (1) add to, modify, supplement, change the Bidding Procedures, including the Bidding Schedule, without prior notice, at any time and for any reason thru SBBs; (2) accept or reject a Bid or any of its parts; (3) waive any defect contained in a Bid or any document; (4) accept an offer deemed most advantageous to the Government; (5) exercise any remedy granted by Philippine Law or the Bidding Procedures; and (6) require the submission of additional documents and/or information in relation to the Bidding.
- I. Bidders shall carefully examine the Bidding Package, including the Bidding Procedures, all SBBs, the Data Room and Due Diligence Procedure, the Information Memorandum (IM), the draft APA and the APA and fully inform themselves of all conditions and matters that could affect their Bid, participation or undertaking in the Bidding and the APA. The Bidder, by submitting its Bid, declares that it has read and understood each and every section and page of the Bidding Procedures, each SBB, and the APA, and the respective provisions, terms and conditions of the same, and accepts and agrees to be bound and fully abide by and comply with the aforestated documents.

- J. A document, which is required to be submitted under oath and acknowledged, shall comply with the following:
1. if executed in the Philippines, it shall be sworn to or acknowledged before a Philippine Notary Public; or,
 2. if executed outside the Philippines, either it is sworn to or acknowledged before: (a) a Philippine consular official authorized to administer oaths; or (b) any person authorized to administer oaths in that jurisdiction and the same is authenticated before a Philippine consular official authorized to authenticate documents.
- K. Bidders shall be responsible for their own due diligence investigation on all related matters, the Bidding Procedures, the Bidding Process, and the APA. The PSALM, NPC, the Committee, their directors, officers, employees, advisors, consultants or agents do not make any representation or warranty concerning any matter affecting this transaction except for the representations and warranties set out in the APA which shall be binding on PSALM only upon the Closing Date.
- L. In computing a period, the first day shall be excluded and the last day included. Unless otherwise expressly specified in writing, all references to times and dates shall refer to Philippine Standard Time. If any of the dates fall on a day that is not a Business Day, the deadline shall be extended to the same time of the immediately succeeding Business Day.
- M. Disqualification

In addition to the grounds for the disqualification of Bids stated in **Section IB-17** (Disqualification of Bids) and other provisions of the Bidding Procedures, the Committee shall be entitled, in its sole discretion, and without prejudice to its other rights or remedies, to disqualify a Bidder from participation in this Bidding Processing any of the following instances:

1. The Bidder makes a material misrepresentation in any document or information communicated to the Committee, whether verbal or written;
2. The Bidder submits a Bid, which is inconsistent with or fails to comply with the Bidding Procedures;
3. The Bidder fails to promptly comply with the Committee's reasonable request for further information or clarification in relation to documents, information or the Bid submitted by such Bidder;
4. An administrator, supervisor, receiver, liquidator or other lien holder takes possession of or is appointed over the whole or any

- part of the Bidder's assets, or any attachment, execution or other process is enforced upon the whole or any part of its assets;
5. If the Bidder is in the process of liquidation, winding up, bankruptcy, dissolution, corporate rehabilitation or suspension of payments;
 6. The Bidder fails to submit all the Documentary Deliverables by the Documentary Deliverables Deadline;
 7. The Bidder signifies its intention to withdraw or modify its Bid after the Bid Submission Deadline or actually withdraws or modifies its Bid;
 8. The Bidder withdraws its Bid during the Bid Validity Period;
 9. The Bidder submits a Bid with conditions or delivers a Bid Security that does not comply with the requirements of **Section IB-14** (Bid Security);
 10. The Bidder or its Affiliate has participated in the valuation of the PSALM generating assets or their respective advisors in relation to the Bidding Process of the Purchased Assets and the Bidder failed to disclose such fact;
 11. The Bidder breaches any of the conditions of the Bidding Procedures;
 12. The Bidder breaches the warranty against offering or paying commission or consideration to any government officer or any official or employee of PSALM provided in Paragraph A of **Section IB-28** (General Conditions);
 13. From Documentary Deliverables Deadline until Closing Date, the Bidder breaches the warranty against conflict, dispute or unsettled issue provided in Paragraph P, Item 2 of **Section IB-28** (General Conditions);
 14. The Bidder breaches the warranty against compliance with Philippine Law provided in Paragraph B of **Section IB-28** (General Conditions);
 15. The Bidder is disqualified or prohibited from participating in any bidding, or entering into a contract with, a Government Entity;
 16. The Bidder is an Affiliate of another Bidder, or holds or acquires any ownership interest in another Bidder as listed in the General Information Sheet;
 17. The Bidder has an Affiliate, and such Affiliate: (i) is a Bidder; or (ii) holds or acquires any ownership interest in another Bidder as listed in the latest General Information Sheet;
 18. Upon the occurrence of an event or omission which is a ground for disqualification in the Bidding Procedures;
 19. The Bidder makes a material change in the information provided in the Documentary Deliverables;
 20. There is a subsequent event that causes a material adverse change in the information provided in the Documentary Deliverables;
 21. The Bidder or anyone on its behalf, directly or indirectly offers or pays a PSALM director, official, employee, advisor, consultant, any

- member of the Committee, or agent consideration or commission for the Bidding or APA;
22. The Bidder or anyone on its behalf exerts or utilizes any corrupt or unlawful influence to secure or solicit the Bidding, the APA for a consideration or commission;
 23. Any ground for disqualification of a Bid and/or a Bidder provided for in the Bidding Procedures; or
 24. The Bidder has been disqualified from participating in PSALM's bidding activities by reason of fraudulent acts or has committed fraud or breach in the provisions of any agreement with PSALM.
- N. Whenever an address is required, the full address must be given. The use of Post Office box as an address is prohibited.
- O. All submissions to PSALM must be in the English language. If the document is in a foreign language, both the document in the foreign language and its legal translation in English must be submitted and the document must be authenticated before a Philippine consular official authorized to authenticate documents. The official language to be used in the Bidding, Bidding Procedures, the APA, reports, notices and correspondences shall also be in English.
- P. An Interested Party, Bidder, Highest Ranking Bidder, Buyer or Winning Bidder (collectively referred to as Bidder for purposes of this paragraph) represents and warrants that:
1. The Bidder, or anyone on its behalf, has neither directly or indirectly offered or paid a PSALM director, official, employee or any member of the Committee any consideration or commission for the Bidding or APA, nor exerted or utilized any corrupt or unlawful influence to secure or solicit the Bidding, the APA or award of the output for any consideration or commission. A violation of this warranty shall constitute sufficient ground for the disqualification of the Bidder, the termination of the APA and the forfeiture of the Bid Security, without prejudice to the filing of any civil and/or criminal action under Philippine Law, including the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) against the Bidder and the PSALM officials/employees involved;
 2. From Documentary Deliverables Deadline until Closing Date, the Bidder, its parent company, stockholders, subsidiaries, Affiliates, directors or officers or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, have no conflict, dispute or unsettled issue, arising out of, or in connection with the EPIRA or its Implementing Rules and Regulations, the DOE, PSALM, NPC or TRANSCO, which affect the privatization of NPC assets or TRANSCO or the appointment of

IPPs, namely: (i) an unresolved issue, as determined by the inter-agency Committee, arising from the renegotiation of contracts with IPPs mandated by Section 68 of the EPIRA; and (ii) any unpaid account arising from contractual obligations with the DOE, PSALM, NPC or TRANSCO. Any violation of this warranty shall constitute a sufficient ground for the disqualification of the Bidder, the termination of the APA, or forfeiture of the Bid Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Bidder and/or its representatives;

3. A Bidder shall comply with Philippine Law at all times. A violation of this warranty shall constitute sufficient ground for the disqualification of the Bidder, the termination of the APA, and the forfeiture of the Bid Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Bidder and/or its representatives;
 4. The Bidder shall indemnify PSALM and the Committee and hold them free and harmless against all losses, claims, liabilities, damages and expenses arising out of or relating to its fault or negligence in the Bidding, including but not limited to, third party claims for personal injuries, property damage, or consequential damages as provided in the APA for the Sale of the 650 MW Malaya Thermal Power Plant and the Land with more or less 233,470 square meters (Purchased Assets);
 5. The Bidder shall pay: (a) all costs, expenses, fees and taxes, including all documentary stamp taxes payable in connection with the execution, amendment, or modification of the APA (including any tax applicable to any draws made upon the Performance Bond); and (b) all costs, expenses, fees and taxes related to and arising from the exercise or performance of its obligations under the Bidding, Bidding Procedures or the APA; and,
 6. The Bidder unconditionally and irrevocably waives any right to seek and obtain a writ of injunction or prohibition or restraining order against the Committee, PSALM, NPC and/or any third party to prevent or restrain the Bidding Process or any related proceedings, the issuing bank, confirming or advising bank, the conduct of a bidding or any related proceeding, the selection of the Highest Ranking Bidder, Buyer or Winning Bidder, the performance of the APA and forfeiture of the Bid Security.
- Q. In case of conflict or discrepancy between the Bidding Procedures and the Bid, the Bidding Procedures shall prevail.

- R. Certified true copies of documents to be submitted under the Bidding Procedures shall be certified by the entity issuing such documents (e.g., the SEC Certificate of Registration shall be certified by the SEC). In case of documents which the issuing entity does not issue any certification, then the Bidder shall submit a written certification under oath that the document submitted is a true and faithful reproduction of the original and that the original document is in the Bidder's possession.
- S. PSALM's failure to exercise, or any delay in the exercise of, its rights under the Bidding Procedures and the APA shall not operate as a waiver of such rights. PSALM's single or partial exercise of a right shall not preclude the exercise of any other right. The right and remedies in this process and related documents are cumulative and not exclusive of any other right or remedy provided by Philippine Law.
- T. PSALM and the Committee shall not be liable to the Interested Party, Bidder, Highest Ranking Bidder, Buyer, Winning Bidder, or any third party in contract, tort or for any loss or damage sustained in connection with the utilization of the Malaya Thermal Power Plant, including without limitation to any claim for loss of use, lost income, lost profits, or consequential damages.
- U. All notices to and communications with PSALM and the Committee pursuant to the Bidding Procedures shall be in writing and shall be sent to:

THE CHAIRPERSON

PSALM Privatization, Bids and Award Committee
Sale of Malaya Thermal Power Plant Assets and Land
Power Sector Assets and Liabilities Management Corporation
24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives
Vertis North, Mindanao Avenue, 1105 Quezon City, Philippines

- V. PSALM, its representatives and the Committee shall not be liable for any loss or damage arising from their delay or inability to perform their obligations under the Bidding, Bidding Procedures and the APA, if the same is due to causes beyond their reasonable control including, without limitation to, acts of God, accidents, acts of war, labor shortages or labor difficulties, strikes, civil disturbances, insurrections, riots, revolutions, acts of sabotage, governmental actions, delay or failure by the appropriate Government Entity to issue necessary licenses, permits or authorizations, delay or accident occurring in the course of transportation, unavailability of material or equipment, acts or omissions of the Bidder for the Sale of the 650 MW Malaya Thermal Power Plant and the Land with more or less 233,470 square meters (Purchased Assets), their contractors, suppliers, agents, or employees, and/or third parties.

- W. The terms and conditions of the Confidentiality Agreement are deemed incorporated by reference and made an integral part of the Bidding Procedures.

Each Bidder agrees that its officers, directors, employees, affiliates, external auditors and legal, technical, financial advisors or other representatives are covered by the terms of the Confidentiality Agreement executed by the Bidder.

No Government official or employee shall directly or indirectly give, nor shall any Bidder be entitled to, any information regarding the Bidding Process or the other Bidders, other than what is contained in the Bidding Procedures, or disclosed in the Pre-bid Conference, SBBs and in the official announcements.

- X. If a provision of the Bidding Procedures or a part of the Bidding Package is held to be invalid, illegal or unenforceable, the validity, legality, or enforceability of the remaining provisions will not be affected and shall remain in full force and effect.
- Y. If the Bidder does not have the officer required by the Bidding Procedures, the Bidder must certify under oath that the person executing the required document is authorized to execute it and to bind the Bidder.

PART II - DEFINITIONS AND CONSTRUCTION

GP-01 DEFINITIONS

In the Bidding Procedures, the following capitalized terms and their variations have the meanings specified in this Section:

Affiliate	any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. Affiliate shall include a subsidiary company and parent company and subsidiaries, directly or indirectly, of a common parent.
Asset or Purchased Asset	shall mean the 650 MW Malaya Thermal Power Plant and the land with an area of more or less 233,470 square meters, more or less located in Brgy. Malaya, Pililla, Rizal, Philippines enumerated here as Schedule A and B and as further described in Section IB-04 (Subject of the Bid), the Information Memorandum and which will ultimately be set forth in the APA.
Asset Purchase Agreement or APA	shall mean the agreement to be entered into between the PSALM and the BUYER for the sale and purchase of the Asset and Land, including the schedules, attachments and annexes thereto as well as the pertinent attachment, annexes and schedules to such schedules, attachments and annexes, which was distributed to the Bidders as part of the Bidding Package.
Bid	a signed offer or proposal submitted by a Bidder in compliance with Section IB-12 (Contents of Bids) which is composed of both the First Bid Envelope (Legal Component) and Second Bid Envelope (Financial Component).
Bidder	an Interested Party to whom the Committee issues the Bidding Package and which shall participate in the Bidding Process. In case a Bidder submits a Request To Bid Through Consortium and is accepted by the Committee, the Consortium shall become the Bidder in accordance with the provisions of IB-07 (Consortium).
Bidder's Comments	shall have the meaning set forth in Section IB-24 (Asset Purchase Agreement).
Bidding or Bidding Process	the first (1 st) round bidding process for the sale of the Purchased Assets, as outlined in the Bidding Procedures.
Bidding Package	the set of documents for the privatization of the Purchased Assets, as specified in Section IB-01 (Issuance of the Bidding Package).
Bidding Procedures	shall have the meaning set forth in Section IB-01

	(Issuance of the Bidding Package).
Bidding Schedule	shall mean the schedule for the Bidding as set out in Section IB-03 (Bidding Schedule).
Bid Security	shall have the meaning set forth in Section IB-14 (Bid Security).
Bid Security Drawing Event	any occurrence which entitles PSALM to draw upon the Bid Security under Section IB-14 (Bid Security), including but not limited to: (i) a Bidder’s failure to completely, faithfully, fully and promptly comply with its obligations under the Bidding Procedures during the Bid Validity Period, or its extension; or (ii) a violation of the Bidding Procedures.
Bid Submission Deadline	the deadline for the submission of Bids set forth in Section IB-03 (Bidding Schedule).
Bid Validity Period	the 180-day period which starts on the Bid Submission Deadline.
Business Day	any day other than a Saturday, Sunday, public holiday in the Republic of the Philippines or Quezon City, or a day on which banks located in Quezon City are authorized by law to be closed.
Business Hours	shall mean 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. of a Business Day.
Buyer	shall mean the Winning Bidder with whom PSALM enters into the APA for the sale of the Purchased Asset. From the Effective Date, the Winning Bidder shall be referred to as the “Buyer”.
Closing Date	shall have the meaning set forth in the APA .
Committee	shall have the meaning set forth in Section IB-01 (Issuance of the Bidding Package).
Conditions Precedent	shall have the meaning set forth in the APA.
Confidentiality Agreement	the agreement executed by PSALM and the Bidder, as an Interested Party, as a prerequisite for the receipt of the Bidding Package.
Consortium	Subject to applicable naturalization requirements under the law, a juridical entity composed of two or more juridical entities as members which could be two or more Bidders, or among Bidders with non-bidders as shareholders or members, provided, that at least one Bidder directly owns a majority of the outstanding shares and entitled to vote in the Consortium, whose equity shall not be reduced until Closing Date.
Consortium Request Deadline	shall have the meaning set forth in Section IB-07 (Consortium).

Data Room	shall refer to the place located at the Ground Floor, National Power Corporation Building, Power Center, Quezon Avenue, cor. BIR Road, Diliman, Quezon City, Philippines where information, data, documents and other papers pertaining to the Plant and the Land are kept.
Documentary Deliverables	shall have the meaning set forth in Section IB-06 (Documentary Deliverables).
Documentary Deliverables Deadline	shall have the meaning set forth in Section IB-06 (Documentary Deliverables).
DOE	the Department of Energy of the Republic of the Philippines.
Effective Date	shall have the meaning set forth in the APA.
ERC	the Energy Regulatory Commission.
Excluded Assets	shall have the meaning set forth in the APA.
Execution Date	shall have the meaning set forth in the APA.
APA for Malaya Thermal Power Plant	the final version of the Asset Purchase Agreement for the Sale of the 650 MW Malaya Thermal Power Plant and the Land with more or less 233,470 square meters (Purchased Assets)
Financial Bid	shall mean the Total Purchase Price as indicated in the Schedule C - Purchase Price of the APA. The Financial Bid must be written, printed, or typewritten by the Bidder in Schedule C - Purchase Price of the APA.
Financial Bid Component	the contents of the Second Bid Envelope, detailed in Section IB-12 (Contents of Bids).
First Bid Envelope	shall have the meaning set forth in Section IB-12 (Contents of Bids).
Fitch	shall mean Fitch Ratings, a subsidiary of Fimalac S.A., co-headquartered in both New York and London, and any successor thereto that is an internationally recognized rating agency.
Government Entity	any government agency, authority, bureau, department, court, tribunal, legislative body, public official, statutory or legal entity or person (whether autonomous or not), commission, corporation or instrumentality, whether national or local, of the Republic of the Philippines having jurisdiction over these Bidding Procedures, the Bidding Process, and the APA.

Highest Ranking Bidder	shall have the meaning set forth in Section IB-20 (Opening and Evaluation of the Second Bid Envelope [Financial Component]).
Interested Party	a juridical entity that submitted the Letter of Interest on or before the deadline set in Section IB-01 (Issuance of the Bidding Package) and has been furnished with a Confidentiality Agreement and Undertaking.
Investment Grade	shall mean a Long-term Credit Rating of: at least Baa3 by Moody's, or BBB- by S&P, or BBB- by Fitch.
Latest Audited Financial Statements	the latest audited financial statements for fiscal year ending 2017.
Lead Member	a designated member of a proposed Consortium which shall proceed with the Bidding Process for and in behalf of the proposed Consortium.
Legal Component	the contents of the First Bid Envelope, detailed in Section IB-12 (Contents of Bid).
Letter of Interest	a letter addressed to the Committee where an Interested Party expresses its interest to participate in and bid for the sale of the Purchased Assets.
Long-term Credit Rating	shall mean any of the following: (i) long-term issuer rating for Moody's, (ii) long-term issuer credit for S&P, or (iii) long-term issuer default rating for Fitch.
Moody's	shall mean Moody's Investor Service, Inc. and any successor thereto that is an internationally recognized rating agency.
NGCP	shall mean National Grid Corporation of the Philippines, the concessionaire or operator of the transmission system
Net Asset Value (NAV)	shall have the meaning set forth in Section IB-06 (Documentary Deliverables)
Next Highest Ranking Bidder	shall have the meaning set forth in Section IB-22 (Obligations of the Next Highest Ranking Bidder).
Notice of Award	shall have the meaning set forth in Section IB-21 (Award to the Winning Bidder).
NPC	the National Power Corporation.
Philippine Law	shall mean: (i) the Constitution of the Republic of the Philippines and all Philippine laws, statutes, treaties, rules, codes, ordinances, regulations, certificates, decisions, orders, memoranda, circulars, decrees, resolutions, directives, rulings, interpretations, approvals, licenses, and permits of any Governmental Body; and (ii) judgments, decrees, injunctions, writs, orders or like actions of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, in each case: (a) that

	apply to these Bidding Procedures and the privatization and performance of the APA by the parties; and (b) as amended, supplemented, replaced, interpreted by a duly authorized Government Entity, or otherwise modified from time to time.
Philippine Peso	the lawful currency of the Republic of the Philippines.
Philippine Standard Time	shall have the meaning set forth in Republic Act No. 10535.
Pre-bid Conference	shall have the meaning set forth in Section IB-10 (Pre-bid Conference).
PSALM	the Power Sector Assets and Liabilities Management Corporation created under Republic Act No. 9136.
PSALM Office	shall mean the office of PSALM located at the 24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, Vertis North, Mindanao Avenue, 1105 Quezon City, Philippines
Purchase Price	shall have the meaning set forth in the APA.
Qualified Bank	shall mean a bank that is either: <ul style="list-style-type: none"> (a) a bank licensed by the Bangko Sentral ng Pilipinas, as of the date of issuance of the applicable Bid Security or Performance Bond, to operate as a Universal Bank rated at or above the Qualified Bank Minimum Rating; or, (b) a foreign bank rated at or above the Qualified Bank Minimum Rating which obligations under the applicable Bid Security or Performance Bond (or any Replacement Bond) have been: (i) confirmed (in the appropriate form set out in the APA by a bank licensed to do business and operating in the Philippines and having the Minimum Rating; or, (ii) advised by an advising bank licensed to do business and operating in the Philippines and must be a branch of the bank that issued the applicable Bid Security or Performance Bond.
Qualified Bank Minimum Rating	shall mean a bank that has a minimum Bangko Sentral ng Pilipinas CAMELS Rating of “3” for banks organized and existing under Philippine law; or Long-term Credit Rating of (i) Investment Grade by Moody’s, S&P, or Fitch for banks organized and existing under laws other than Philippine Law and a majority of whose shares outstanding and entitled to vote are owned by non-Philippine nationals; or (ii) either B1 by Moody’s, B+ by S&P, or B+ for Fitch for banks organized and existing under Philippine Law and a majority of whose shares outstanding and entitled to vote are owned by Philippine nationals.

Request to Bid through Consortium	shall have the meaning set forth in Section IB-07 (Consortium).
Reserve Price	shall have the meaning set forth in Section IB-19 (Reserve Price).
S&P	shall mean Standard & Poor’s Ratings Group, a division of McGraw-Hill Corporation, and any successor thereto that is an internationally recognized rating agency.
SBLC	shall have the meaning set forth in Section IB-14 (Bid Security).
Second Bid Envelope	shall have the meaning set forth in Section IB-12 (Contents of Bids).
Substitute Selection Notice	shall have the meaning set forth in Section IB-22 (Obligations of the Next Highest Ranking Bidder).
Supplemental Bid Bulletins (SBBs)	amendments, supplements or clarifications to the Bidding Procedures or the Bidding Process that the Committee may issue, which shall be in writing and numbered sequentially. The SBBs are automatically incorporated into and made an integral part of the Bidding Procedures.
TRANSCO	the National Transmission Corporation, a government-owned and controlled corporation created by virtue of the Republic Act No. 9136.
Undertaking	executed by an Interested Party in the form provided by PSALM, as a prerequisite for the issuance of the Bidding Package.
Winning Bidder	shall have the meaning set forth in Section IB-21 (Award to the Winning Bidder).

GP-02 CONSTRUCTION

In the Bidding Procedures, unless the context otherwise requires:

1. The singular shall include the plural and vice versa.
2. Words referred to as “he”, shall be deemed to include the male, female and neuter (e.g., his/hers/its), and vice-versa.
3. The terms “include” and “including” shall be construed as being at all times followed by the words “without limitation” unless the context specifically indicates otherwise.
4. Whenever a Bidder is required to form an opinion, make a determination or designation, give a notice of approval or consent, incur costs or expenses, request any item or action, exercise discretion or perform any act in relation to the Bidding, it must be done in accordance with the Bidding Procedures.

5. References to the Bidding Procedures shall, in addition to its terms, include SBB provision, terms and conditions, any amendment, supplement or modification of these provisions, and the Committee's decisions.
6. Article and Section headings are for convenience of reference only and shall not be deemed to limit or otherwise affect any of the provisions.
7. Unless expressly provided,
 - a. reference to a Paragraph, Section, Exhibit or Schedule shall refer to a Paragraph, Section, Exhibit or Schedule respectively, of the Bidding Procedures;
 - b. any reference to a "day" shall refer to a calendar day;
 - c. reference to a person shall refer to a natural or juridical person; and,
 - d. capitalized terms used in the Exhibits and Schedules shall have the meanings ascribed to those terms in the Bidding Procedures.

SCHEDULE 1 - REPRESENTATIONS AND WARRANTIES FORM

(To be submitted on the Bidder's letterhead)

[date of Bid Submission Deadline]

THE CHAIRPERSON

PSALM Privatization, Bids and Award Committee
Sale of Malaya Thermal Power Plant and the Land Assets
Power Sector Assets and Liabilities Management Corporation (PSALM)
24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives
Vertis North, Mindanao Avenue, 1105 Quezon City, Philippines

Sir/Madam:

We refer to the Bidding Procedures dated 05 October 2018, as amended or supplemented, (*Bidding Procedures*) for the Sale of the 650 MW Malaya Thermal Power Plant and the Land with more or less 233,470 square meters located in Brgy. Malaya, Pililla, Rizal, Philippines. We submit this Schedule C - Purchase Price of the Asset Purchase Agreement to the PSALM Privatization, Bids and Award Committee after having completed a comprehensive and complete business, legal, technical and financial due diligence.

Capitalized terms used but not defined in this document shall have the meaning given in the Bidding Procedures.

We unconditionally, voluntarily and irrevocably state that:

1. This document represents our voluntary offer for the purchase of the Purchased Asset, all on the basis and terms set forth in the Asset Purchase Agreement (APA) that we executed and delivered.
2. This document constitutes an unconditional and irrevocable offer, which shall be valid and may be accepted by PSALM within one hundred eighty (180) days from the day of the Bid Submission Deadline, regardless of any event including force majeure affecting the Purchased Assets, that may occur within such period or as may be extended, as provided in the Bidding Procedures.
3. The Bid for the sale of the Purchased Assets on the terms set forth in the APA, which we executed and delivered, is being made on an "as-is, where-is" basis.
4. [Bidder's name] unconditionally and voluntarily represents and warrants that:

- a. It has secured, read and understood all sections and pages of the Bidding Procedures, the Supplemental Bid Bulletin/s (SBB/s), their respective provisions, undertakings, terms and conditions, and corresponding amendments, supplements or modifications, the Committee's decisions and the APA for the Purchased Assets;
- b. It accepts, agrees to be bound, and shall fully abide by and comply with the terms and conditions of the Bidding Procedures, the SBB/s, their respective provisions, undertakings, terms and conditions, and corresponding amendments, supplements or modifications, the Committee's decisions and the APA for the Purchased Assets;
- c. The Bidder and its representatives have conducted an independent due diligence, investigation, analysis and verification of the quality, quantity and condition of the Purchased Assets and the Bidder confirms that it and its representatives have been provided adequate access to the Plant, Data Room, personnel, premises and pertinent records of PSALM and NPC;
- d. It has fully informed itself and understood all the conditions and matters affecting or that could affect its Bid, participation or undertaking in the Bidding or the implementation of the sale of the Purchased Assets and other contemplated transactions as contained in the APA;
- e. It unconditionally and irrevocably waives all claims and causes of action against the Committee, PSALM, or any of their advisors and consultants in the event that the Bidding, selection and/or award be: (i) stopped or terminated by PSALM; or (ii) restrained, enjoined, declared invalid or is set aside by a court of competent jurisdiction or any Governmental Entity for any reason;
- f. It unconditionally and irrevocably waives any defect, deviation, fault or infirmity in the Bidding Process conducted by the Committee or by PSALM;
- g. All of the documents submitted in satisfaction of the Bidding Procedures are original copies or true and faithful reproductions or copies of the original;
- h. All the documents and information submitted as part of the Documentary Deliverables are true and correct as of the Bid Submission Deadline;
- i. It will advise the Committee within two (2) Business Days of any change in the information contained in any portion of its Bid or in previous submissions to PSALM or the Committee;

- j. It is not barred or blacklisted from participating in any bidding by any Government Entity or in any contract with a Government Entity;
- k. It has not been disqualified from participating in PSALM's bidding activities by reason of fraudulent acts or has not committed fraud or breach in the provisions of any agreement with PSALM;
- l. The Bidder, its officers and directors are not related to the Chairman, President and CEO, members of the Board of Directors of PSALM and members of the Committee by consanguinity or affinity up to the fourth civil degree, legitimate or common law;
- m. The Bidder and/or its incorporators, past or present shareholders and directors, officers, employees, representatives or agents have not given, authorized or offered any commission or bribe or, in any manner, given or offered any money or other consideration directly or indirectly to any past or present director, officer, employee or agent of any Government Entity, including PSALM, which violates Philippine Law, including the Revised Penal Code (Act Number 3815, as amended) and the Anti-Graft and Corrupt Practices Act (RA 3019, as amended);
- n. The Bidder and/or its parent company, stockholders, subsidiaries, Affiliates, directors, officers, or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, have no conflict, dispute or unsettled issue, arising out of, or in connection with the EPIRA or its Implementing Rules and Regulations, the DOE, PSALM, NPC or TRANSCO, which affect the privatization of NPC assets or TRANSCO, namely: (i) an unresolved issue, as determined by the inter-agency Committee, arising from the renegotiation of contracts with IPPs mandated by Section 68 of the EPIRA; and (ii) any unpaid account arising from contractual obligations with the DOE, PSALM, NPC or TRANSCO. Any violation of this warranty shall constitute a sufficient ground for the disqualification of the Bidder, the termination of the APA, or forfeiture of the Bid Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Bidder and/or its representatives;
- o. It shall at all times comply with Philippine Law and it accepts Philippine Law as the law governing the Bidding and the APA for the Purchased Assets;
- p. It unconditionally and irrevocably waives any right to seek and obtain a writ of injunction or prohibition or restraining order against the Committee, PSALM, NPC and/or any third party to

prevent or restrain the Bidding Process or any related proceedings, the issuing bank, confirming or advising bank, the conduct of a bidding or any related proceeding, the selection of the Highest Ranking Bidder, Buyer or Winning Bidder, the performance of the APA for the Purchased Assets and the draw on or forfeiture of the Bid Security.

- q. In the event it is declared the Winning Bidder, it undertakes to submit a Performance Bond to guarantee prompt, faithful and complete performance of its obligations under the APA for the Purchased Assets in accordance with its terms;
 - r. It is qualified under Philippine Law to bid for the sale of the Purchased Assets and in the event, it is declared the Winning Bidder, it is qualified under Philippine Law to be its Winning Bidder for the Purchased Assets;
 - s. It has secured the necessary licenses and permits required by Philippine Law to participate in the Bidding Process and submit a Bid and all such permits and licenses are valid and existing;
 - t. It is not an Affiliate of another Bidder, or does not hold or acquire any ownership interest in another Bidder as listed in the General Information Sheet; and
 - u. It does not have any Affiliate: (i) who is a Bidder; or (ii) who holds or acquires any ownership interest in another Bidder as listed in the latest General Information Sheet.
5. The Second Bid Envelope contains four copies of Financial Bid.

[BIDDER'S NAME]

Signature
Printed Name
Title/Designation

Witnessed by:

ACKNOWLEDGEMENT

SCHEDULE 2 - FORM OF ACCEPTANCE OF BIDDING PROCEDURES

(To be submitted on the Bidder's letterhead)

[date]

THE CHAIRPERSON

PSALM Privatization, Bids and Award Committee
Sale of Malaya Thermal Power Plant and the Land Assets
Power Sector Assets and Liabilities Management Corporation (PSALM)
24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives
Vertis North, Mindanao Avenue, 1105 Quezon City, Philippines

Sir/Madam:

We refer to the Bidding Procedures, dated 31 August 2018, as amended or supplemented, (*Bidding Procedures*) for the Sale of the 650 MW Malaya Thermal Power Plant and the Land with more or less 233,470 square meters (Purchased Assets).

Capitalized terms used but not defined in this document shall have the meaning given in the Bidding Procedures.

[Bidder's name] declares, represents and warrants that:

1. It has received the Bidding Package dated 31 August 2018, which include the Bidding Procedures;
2. It has read and understood each and every section and page of the Bidding Procedures, its provisions, terms and conditions, amendment, supplement or modification, all Supplemental Bid Bulletins, and the Committee's decisions, and accepts and agrees to be bound and fully abide by and comply with their terms and conditions;
3. It unconditionally and irrevocably waives any right to seek and obtain a writ of injunction or prohibition or restraining order against the Committee, PSALM, NPC and/or any third party to prevent or restrain the Bidding Process or related proceedings, the conduct of a bidding or any related proceeding, the selection of the Highest Ranking Bidder, Buyer or Winning Bidder, the performance of the APA for the Purchased Assets and any draw on or forfeiture of the Bid Security. Such waiver shall be without prejudice to the right of the undersigned to question the basis for any disqualification or the rejection of its Bid by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order;
4. It shall at all times comply with Philippine Law; and,

5. It unconditionally and irrevocably waives any defect, deviation, fault or infirmity in the Bidding Process conducted by the Committee or by PSALM up to and including the date of this document.

[BIDDER'S NAME]

By:
[Name]
[Designation]
[Title]

Witnessed by:
[Name]

ACKNOWLEDGMENT

SCHEDULE 3 - STATEMENT UNDER OATH

(To be submitted on the Bidder's letterhead)

[date]

THE CHAIRPERSON

PSALM Privatization, Bids and Award Committee
Sale of Malaya Thermal Power Plant and the Land Assets
Power Sector Assets and Liabilities Management Corporation (PSALM)
24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives
Vertis North, Mindanao Avenue, 1105 Quezon City, Philippines

Sir/Madam:

We refer to the Bidding Procedures, dated 05 October 2018, as amended or supplemented, (*Bidding Procedures*) for the Sale of the 650 MW Malaya Thermal Power Plant and the Land with more or less 233,470 square meters (Purchased Assets).

[Bidder's name] declares, represents and warrants that:

- A. It is not disqualified or prohibited from participating in any bidding conducted by a government entity or entering into any kind of contract with a government entity;
- B. From Documentary Deliverables Deadline until Closing Date, the Bidder, its parent company, stockholders, subsidiaries, Affiliates, directors or officers or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, have no conflict, dispute or unsettled issue, arising out of, or in connection with the EPIRA or its Implementing Rules and Regulations, the DOE, PSALM, NPC or TRANSCO, which affect the privatization of NPC assets or TRANSCO or the appointment of IPPAs, namely: (i) an unresolved issue, as determined by the inter-agency Committee, arising from the renegotiation of contracts with IPPs mandated by Section 68 of the EPIRA; and (ii) any unpaid account arising from contractual obligations with the DOE, PSALM, NPC or TRANSCO. Any violation of this warranty shall constitute a sufficient ground for the disqualification of the Bidder, the termination of the APA, forfeiture of the Bid Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Bidder, and/or its representatives;
- C. It is qualified under Philippine Law to bid for the Purchased Asset and in the event, it is declared the Winning Bidder, it is qualified under Philippine Law to own the Asset;

- D. It has not been disqualified from participating in PSALM's bidding activities by reason of fraudulent acts or has not committed fraud or breach in the provisions of any agreement with PSALM; and
- E. It shall at all times fully comply with Philippine Law.

[BIDDER'S NAME]

Signature
Printed Name
Title/Designation

Witnessed by:

ACKNOWLEDGMENT

SCHEDULE 4 - FORM OF AUTHORITY TO VERIFY

(To be submitted on the Bidder's letterhead and must be separate for each of the entities)

[date]

The Commissioner
Bureau of Internal Revenue
Agham Road
Quezon City, Philippines

The Chairman
Securities and Exchange Commission
SEC Building
PICC Complex, Roxas Blvd.
Pasay City, Philippines

[Banks]

[Any other appropriate government agency]

Gentlemen:

This is to authorize the Power Sector Assets and Liabilities Management Corporation (PSALM) or its representatives to verify, examine and secure copies of all records pertaining to our Company on file with your office. We issue this authorization in furtherance of the Bidding Procedures dated 05 October 2018, for the Sale of the 650 MW Malaya Thermal Power Plant and the Land with more or less 233,470 square meters (Purchased Assets) located in Brgy. Malaya, Pililla, Rizal, Philippines.

[BIDDER'S NAME]

By:
[Name]
[Designation]
[Title]

Witnessed by:
[Name]

ACKNOWLEDGEMENT

SCHEDULE 5 - TABULAR FORM OF BIDDER'S COMMENTS TO THE DRAFT APA FOR THE SALE OF THE 650 MW MALAYA THERMAL POWER PLANT AND THE LAND WITH 233,470 SQ. M. LAND (Purchased Assets)

[to be submitted in printed and electronic copies]

<u>Section and Page</u>	<u>Comment / Suggested Revision</u>	<u>Explanation for the Comment / Suggested Revision</u>

Submitted by: _____
Bidder's Name and Authorized Signatory

Date: _____

SCHEDULE 6 - FORMS OF BID SECURITY IN THE FORM OF SBLC

6.1 FORM OF BID SECURITY ISSUED BY A BANK LICENSED TO DO BUSINESS AND IS OPERATING IN THE PHILIPPINESO

(To be submitted on the letterhead of the Issuing Bank)

IRREVOCABLE STANDBY LETTER OF CREDIT

Number: [●]
Amount: PhP _____
Stated Expiration Date [●]
Account Party: [●]

Power Sector Assets and Liabilities Management Corporation
24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives
Vertis North, Mindanao Avenue, 1105 Quezon City, Philippines

Subject: Letter of Credit No. [●]

We refer to the Bidding Procedures, dated 03 October 2018, as amended or supplemented, (*Bidding Procedures*) for the Sale of the 650 MW Malaya Thermal Power Plant and the Land with more or less 233,470 square meters (Purchased Assets). Unless otherwise defined, capitalized terms used in this document shall have the meaning ascribed to them in the Bidding Procedures.

We establish this Irrevocable Standby Letter of Credit No. [●] (*SBLC*) for the benefit of the Power Sector Assets and Liabilities Management Corporation (*PSALM* or *Beneficiary*) in the amount of Philippine Pesos _____ (PhP _____). Funds under this SBLC are available to PSALM, at sight, upon our receipt of the original copy of the SBLC and a Demand Certificate: (1) in the form of Annex A attached to this document notifying us of the occurrence of a Bid Security Drawing Event defined in the Bidding Procedures; (2) appropriately completed and signed by PSALM's authorized officer, employee or signatory; and, (3) presented as specified on or before the Expiration Date defined in this document. The SBLC does not contain any condition to drawing other than our confirmation that the Demand Certificate appears, on its face, to comply with the requirements of the immediately preceding sentence.

The SBLC shall be drawable at our office in Metro Manila, Philippines.

PSALM shall present one Demand Certificate dated the date of presentation for the drawing to [name and address of Issuing Bank]. If PSALM presents the Demand Certificate by 10:00 AM local time on any day on which we are open for business

(*Business Day*), in strict conformance with the SBLC's terms and conditions, we will honor it by making payment in immediately available funds: (1) in accordance with PSALM's payment instructions; (2) without any restrictions,

conditions, inquiry or right of objection on our part; (3) without notice to the Account Party prior to such payment; and, (4) notwithstanding any condition, demand, or objection by the Account Party or any other party, without PSALM having to further substantiate such demand, by 3:00 PM local time on such Business Day. Otherwise, we will honor PSALM's Demand Certificate by 10:00 AM local time on the following Business Day.

If demand for payment does not conform to the terms and conditions of this SBLC, we shall give PSALM prompt notice of and the reasons for the same, and that we will, upon PSALM's request, hold any document presented to us for five (5) Business Days or return the same to PSALM. Upon being notified that a demand for payment did not conform to this SBLC, PSALM may correct such non-conforming demand; provided that the corrected demand shall be made and presented to us on or before the Expiration Date.

This SBLC shall expire at 3:00 PM at our office on the earliest of the following: (1) the Stated Expiration Date; (2) our honoring of the Demand Certificate presented equal to the Drawing Amount, and, (3) PSALM's surrender of the original SBLC for cancellation. The earliest of these dates is the *Expiration Date*. Except if expressly provided in this paragraph, this SBLC shall not terminate prior to the Stated Expiration Date. Neither the Account Party nor us may terminate this SBLC prior to its Stated Expiration Date without the written consent of PSALM. Notwithstanding the occurrence of the Stated Expiration Date, we will honor and pay for the amount drawn by PSALM as stated in the Demand Certificate; provided, that the Demand Certificate was presented to us before the Expiration Date.

This SBLC sets forth in full our undertaking and references made to any document, instrument or agreement, except the Demand Certificate, shall not amend, modify, amplify or limit our undertaking.

All documents presented to us in connection with the demand for payment, and all notices and communications to us with respect to this SBLC shall be in writing and addressed and presented to us at our office at [address of Issuing Bank] Attention: [●], and shall make reference to this SBLC by number.

This SBLC shall be subject to the 1998 International Standby Practices and in case of dispute arising from, or in connection with, its interpretation or implementation, shall be subject to Philippine Law.

[Insert Date and Place of Issue]

[Issuing Bank]

THIS ANNEX A IS AN INTEGRAL PART OF
LETTER OF CREDIT NO. [●]
DATED [●]

ANNEX A
DEMAND CERTIFICATE
[Date]

[Address of Issuing Bank]

Attention: [●]

Re: Demand for Payment under Letter of Credit No.

Ladies and Gentlemen:

We refer to your Letter of Credit No. [●] (*SBLC*). Any term defined in the *SBLC* shall have the same meaning when used in this document. A Bid Security Drawing Event has occurred, and the Beneficiary demands payment of [amount] under the *SBLC*, such payment to be made to [insert account instructions].

This Certificate has been executed and delivered by the Beneficiary on [●] [date].

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

By: _____
Name:
Title:

6.2 FORM OF BID SECURITY ISSUED BY A BANK NOT LICENSED TO DO BUSINESS IN THE PHILIPPINES

(To be submitted on the letterhead of the Issuing Bank)

IRREVOCABLE STANDBY LETTER OF CREDIT

Number: [●]
Amount: PhP _____
Stated Expiration Date [●]
Account Party: [●]

Power Sector Assets and Liabilities Management Corporation
24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives
Vertis North, Mindanao Avenue, 1105 Quezon City, Philippines

Subject: Letter of Credit No. [●]

We refer to the Bidding Procedures, dated 03 October 2018, as amended or supplemented, (*Bidding Procedures*) for the Sale of the 650 MW Malaya Thermal Power Plant and the Land with more or less 233,470 square meters (Purchased Assets). Unless otherwise defined, capitalized terms used in this document shall have the meaning ascribed to them in the Bidding Procedures.

We establish this Irrevocable Standby Letter of Credit No. [●] (*SBLC*) for the benefit of the Power Sector Assets and Liabilities Management Corporation (*PSALM* or *Beneficiary*) in the amount of Philippine Pesos _____ (PhP _____). Funds under this SBLC are available to PSALM, at sight, upon our receipt of the original copy of the SBLC and the Demand Certificate: (1) in the form of Annex A attached to this document notifying us of the occurrence of a Bid Security Drawing Event defined in the Bidding Procedures; (2) appropriately completed and signed by PSALM's authorized officer, employee or signatory; and, (3) presented as specified on or before the Expiration Date defined in this document. This SBLC does not contain any condition to drawing other than our confirmation that the Demand Certificate appears, on its face, to comply with the requirements of the immediately preceding sentence. Regardless of the confirmation of the Confirming Bank, PSALM has the option to present the Demand Certificate directly to us and/or to the Confirming Bank. In the event that demand is made on the Confirming Bank, the Confirming Bank undertakes to pay the amount demanded by PSALM at sight.

This SBLC shall be drawable at our office in Metro Manila, Philippines. In the event that we do not have an office in Metro Manila, this SBLC shall be drawable at the office of the Confirming Bank in Metro Manila, Philippines.

PSALM shall present one Demand Certificate stating the date of presentation for the drawing to [name and address of Issuing Bank]. If PSALM presents the Demand Certificate by 10:00 AM local time on any day on which we are open for

business (*Business Day*), in strict conformance with the SBLC's terms and conditions, we will honor it by making payment in immediately available funds: (1) in accordance with PSALM's payment instruction; (2) without any restrictions, conditions, inquiry or right of objection on our part; (3) without notice to the Account Party prior to such payment; and, (4) notwithstanding any condition, demand, or objection by the Account Party or any other party, without PSALM having to further substantiate such demand, by 3:00 PM local time on such Business Day. Otherwise, we will honor PSALM's Demand Certificate by 10:00 AM local time on the following Business Day.

If the demand for payment does not conform to the terms and conditions of this SBLC, we shall give PSALM prompt notice of and the reasons for the same, and that we will, upon PSALM's request, hold any document presented to us for five (5) Business Days or return the same to PSALM. Upon being notified that a demand for payment did not conform to this SBLC, PSALM may correct any such non-conforming demand; provided that such corrected demand shall be made and presented to us on or before the Expiration Date.

This SBLC shall expire at 3:00 PM at our office on the earliest of the following: (1) the Stated Expiration Date; (2) our honoring of the Demand Certificate presented equal to the Drawing Amount; and (3) PSALM's surrender of the original SBLC for cancellation. The earliest of these dates is the *Expiration Date*. Except if expressly provided in this paragraph, this SBLC shall not terminate prior to the Stated Expiration Date. Neither the Account Party nor us may terminate this SBLC prior to its Stated Expiration Date without the written consent of PSALM. Notwithstanding the occurrence of the Stated Expiration Date, we will honor and pay for the amount drawn by PSALM as stated in the Demand Certificate; provided, that the Demand Certificate was presented either to us or the Confirming Bank before the Expiration Date.

This SBLC sets forth in full our undertaking and references made to any document, instrument or agreement, except the Demand Certificate, shall not amend, modify, amplify or limit our undertaking.

All documents presented to us in connection with the demand for payment, and all notices and communications to us with respect to this SBLC shall be in writing and addressed and presented to us at our office at [address of Issuing Bank] Attention: [●], and shall make reference to this SBLC by number.

The SBLC shall be subject to the 1998 International Standby Practices and in case of dispute arising from, or in connection with, its interpretation or implementation, shall be subject to Philippine Law.

[Insert Date and Place of Issue]

[Issuing Bank]

THIS ANNEX A IS AN INTEGRAL PART OF
LETTER OF CREDIT NO. [●]
DATED [●]

ANNEX A
DEMAND CERTIFICATE
[Date]

[Address of Issuing Bank]

Attention: [●]

Re: Demand for Payment under Letter of Credit No.

Ladies and Gentlemen:

We refer to your Letter of Credit No. [●] (SBLC). Any term defined in the SBLC shall have the same meaning when used herein. A Bid Security Drawing Event has occurred, and the Beneficiary demands payment of [amount] under the SBLC, such payment to be made to [insert account instructions].

This Certificate has been executed and delivered by the Beneficiary on [●]
[date].

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

By: _____
Name:
Title:

FORM OF CONFIRMATION OF BID SECURITY

(To be submitted on the letterhead of the Confirming Bank)

CONFIRMATION OF IRREVOCABLE STANDBY LETTER OF CREDIT

Our Confirmation Number: [●]

Amount: PhP _____

Stated Expiration Date: [●]

Issuing Bank: [●]

Issuing Bank's LC No. [●]

Beneficiary: Power Sector Assets and Liabilities Management Corporation
24th Floor Vertis North Corporate Center 1, Astra corner Lux
Drives, Vertis North, Mindanao Avenue, 1105 Quezon City,
Philippines

Subject: Confirmation of Letter of Credit

We hereby confirm the Irrevocable Standby Letter of Credit No. [●] (*SBLC*), the original of which is attached to this document, issued by [name of Issuing Bank] (*Issuing Bank*), for drawing in the amount of Philippine Pesos _____ (PhP _____) and expiring at 3:00 PM at our office on the Expiration Date defined in this document. Unless otherwise defined, capitalized terms used in this document shall have the meaning ascribed to them in the *SBLC*.

We undertake to honor PSALM's demand, at sight, and under the *SBLC* upon our receipt of the original copy of the *SBLC* and a Demand Certificate: (1) in the form of Annex A attached to this document notifying us of the occurrence of a Bid Security Drawing Event defined in the Bidding Procedures; (2) appropriately completed and signed by PSALM's authorized officer, employee or signatory; and, (3) presented as specified on or before the Expiration Date. This confirmation does not contain any condition to drawing other than our confirmation that the Demand Certificate appears, on its face, to comply with the requirements of the immediately preceding sentence.

This confirmation shall be drawable at our office in Metro Manila, Philippines.

PSALM shall present one Demand Certificate stating the date of presentation for the drawing to [name and address of Confirming Bank located in Manila]. If PSALM presents the Demand Certificate by 10:00 AM local time on any day on which we are open for business (*Business Day*), in strict conformance with the terms and conditions of this confirmation, we will honor the same by making payment in immediately available funds: (1) in accordance with PSALM's payment instructions; (2) without any restriction, condition, inquiry or right of objection on our part; (3) without notice to the Issuing Bank or its Account Party

prior to such payment; and, (4) notwithstanding any condition, demand, or objection by the Issuing Bank or its Account Party or any other party, without PSALM having to further substantiate such demand, by 3:00 PM local time on such Business Day. Otherwise, we will honor PSALM's Demand Certificate by 10:00 AM local time on the following Business Day.

If the demand for payment does not conform to the terms and conditions of this confirmation, we shall give PSALM prompt notice of and the reasons for the same, and that we will, upon PSALM's request, hold any document presented to us for five (5) Business Days or return the same to PSALM. Upon being notified that a demand for payment did not conform to this confirmation, PSALM may correct such non-conforming demand; provided that the corrected demand shall be made on or before the Expiration Date.

This confirmation shall expire at 3:00 PM at our office on the earliest of the following: (1) Stated Expiration Date; (2) our honoring of the Demand Certificate presented equal to the Drawing Amount, and, (3) PSALM's surrender of the original SBLC and this confirmation for cancellation. The earliest of these dates is referred to as the *Expiration Date*. Except if expressly provided in this paragraph, this confirmation shall not terminate prior to the Stated Expiration Date. Neither the Account Party nor us, nor the Issuing Bank may terminate this confirmation prior to its Stated Expiration Date without the written consent of PSALM. Notwithstanding the occurrence of the Stated Expiration Date, we will honor and pay for the amount drawn by PSALM as stated in the Demand Certificate; provided, that the Demand Certificate was presented either to us or the Issuing Bank before the Expiration Date.

This confirmation, together with the SBLC, sets forth in full our undertaking and references made to any document, instrument or agreement, except the Demand Certificate, shall not amend, modify, amplify or limit our undertaking.

All documents presented to us in connection with the demand for payment and all notices and communications to us with respect to this confirmation shall be in writing and addressed and presented to us at our office at [address of Confirming Bank] Attention: [●], and shall make reference to this confirmation by number.

This confirmation shall be subject to the 1998 International Standby Practices and in case of dispute arising from, or in connection with, its interpretation or implementation, shall be subject to Philippine Law.

[Insert Date and Place of Issue]

[Confirming Bank]

THIS ANNEX IS AN INTEGRAL PART OF
CONFIRMATION NO [●]
OF LETTER OF CREDIT NO [●]
DATED [●]

ANNEX A
DEMAND CERTIFICATE
[Date]

[Address of Confirming Bank]

Attention: [●]

Re: Demand for Payment under Confirmation of Letter of Credit

Ladies and Gentlemen:

We refer to your Confirmation No. [●] (*Confirmation*), confirming the Irrevocable Standby Letter of Credit No. [●] issued by [Issuing Bank] (*SBLC*). Any term defined in the Confirmation or the SBLC shall have the same meaning when used in this document. We are notifying you that a Bid Security Drawing Event has occurred, and the Beneficiary demands payment of [amount] under the Confirmation and the Letter of Credit, such payment to be made to [insert account instructions].

This Certificate has been executed and delivered by the Beneficiary on [●] [date].

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

By: _____

Name:

Title:

6.3 FORM OF BID SECURITY ISSUED BY A BANK NOT LICENSED TO DO BUSINESS IN THE PHILIPPINES WITH ADVISING BANK

(To be submitted on the letterhead of the Issuing Bank)

IRREVOCABLE STANDBY LETTER OF CREDIT

Number: [●]
Amount: PhP _____
Stated Expiration Date [●]
Account Party: [●]

Power Sector Assets and Liabilities Management Corporation
24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives
Vertis North, Mindanao Avenue, 1105 Quezon City, Philippines

Subject: Letter of Credit No. [●]

We refer to the Bidding Procedures, dated 03 October 2018, as amended or supplemented, (*Bidding Procedures*) for the Sale of the 650 MW Malaya Thermal Power Plant and the Land with more or less 233,470 square meters (Purchased Assets). Unless otherwise defined, capitalized terms used in this document shall have the meaning ascribed to them in the Bidding Procedures.

We establish this Irrevocable Standby Letter of Credit No. [●] (*SBLC*) for the benefit of the Power Sector Assets and Liabilities Management Corporation (*PSALM* or *Beneficiary*) in the amount of _____ Pesos (PhP_____). Funds under this SBLC are available to PSALM, at sight, upon our receipt of the original copy of the SBLC and a Demand Certificate: (1) in the form of Annex A attached to this document notifying us of the occurrence of a Bid Security Drawing Event defined in the Bidding Procedures; (2) appropriately completed and signed by PSALM's authorized officer, employee or signatory; and, (3) presented as specified on or before the Expiration Date. This SBLC does not contain any condition to drawing other than our confirmation that the Demand Certificate appears, on its face, to comply with the requirements of the immediately preceding sentence. PSALM has the option to present the Demand Certificate directly to us and/or to the Advising Bank.

The SBLC shall be drawable at our office or at the office of the Advising Bank in Metro Manila, Philippines.

PSALM shall present one Demand Certificate stating the date of presentation for the drawing to [name and address of Issuing Bank]. PSALM has the option to present the Demand Certificate either to us or the Advising Bank. If PSALM presents the Demand Certificate by 10:00 AM local time on any day on which we are open for business (*Business Day*), in strict conformance with the SBLC's terms and conditions, we will honor the same by making payment in

immediately available funds: (1) in accordance with PSALM's payment instructions; (2) without any restriction, condition, inquiry or right of objection on our part; (3) without notice to the Account Party prior to such payment; and, (4) notwithstanding any condition, demand, or objection by the Account Party or any other party, without PSALM having to further substantiate such demand, by 3:00 PM local time on such Business Day. Otherwise, we will honor PSALM's Demand Certificate by 10:00 AM local time on the following Business Day. If PSALM presents the Demand Certificate on the Advising Bank, we shall honor the same by making payment in immediately available funds: (1) in accordance with PSALM's payment instructions; (2) without any restriction, condition, inquiry or right of objection on our part; (3) without notice to the Account Party prior to such payment; and, (4) notwithstanding any condition, demand, or objection by the Account Party, the Advising Bank or any other party, without PSALM having to further substantiate such demand, by 3:00 PM on the second day from the day PSALM presented the Demand Certificate on the Advising Bank (e.g. if the demand certificate was presented to the Advising Bank on Monday, We will honor the demand by Wednesday).

If the demand for payment does not conform to the terms and conditions of this SBLC, we shall give PSALM prompt notice of and the reasons for the same, and that we will, upon PSALM's request, hold any document presented to us for five (5) Business Days or return the same to PSALM. Upon being notified that a demand for payment did not conform to this SBLC, PSALM may correct such non-conforming demand; provided that the corrected demand shall be made and presented to us on or before the Expiration Date.

This SBLC shall expire at 3:00 PM at our office on the earliest of the following: (1) the Stated Expiration Date; (2) our honoring of the Demand Certificate presented equal to the Drawing Amount; and, (3) PSALM's surrender of the original SBLC for cancellation. The earliest of these dates is the *Expiration Date*. Except if expressly provided in this paragraph, this SBLC shall not terminate prior to the Stated Expiration Date. We, the Account Party or the Advising Bank shall not terminate this SBLC prior to its Stated Expiration Date without the written consent of PSALM. Notwithstanding the occurrence of the Stated Expiration Date, we will honor and pay for the amount drawn by PSALM stated in the Demand Certificate; provided, that the Demand Certificate was presented either to us or the Advising Bank before the Expiration Date.

This SBLC sets forth in full our undertaking and references made to any document, instrument or agreement, except the Demand Certificate shall not amend, modify, amplify or limit our undertaking.

All documents presented to us in connection with the demand for payment, and all notices and communications with respect to this SBLC shall be in writing and addressed and presented to us at our office at [address of Issuing Bank] Attention: [●], and shall make reference to this SBLC by number.

All documents presented to the Advising Bank in connection with any demand for payment, and all notices and other communications to us that PSALM desire

to be coursed through the Advising Bank with respect to the SBLC shall be in writing and addressed and presented to the Advising Bank at [address of Issuing Bank] Attention: [●], and shall make reference to this SBLC by number.

This SBLC shall be subject to the 1998 International Standby Practices and in case of dispute arising from, or in connection with, its interpretation or implementation, shall be subject to Philippine Law.

[Insert Date and Place of Issue]

[Issuing Bank]

THIS ANNEX A IS AN INTEGRAL PART OF
LETTER OF CREDIT NO. [●]
DATED [●]

ANNEX A
DEMAND CERTIFICATE
[Date]

[Address of Issuing Bank]

Attention: [●]

Re: Demand for Payment under Letter of Credit No.

Ladies and Gentlemen:

We refer to your Letter of Credit No. [●] (SBLC). Any term defined in the SBLC shall have the same meaning when used in this document. A Bid Security Drawing Event has occurred, and the Beneficiary demands payment of [amount] under the SBLC, such payment to be made to [insert account instructions].

This Certificate has been executed and delivered by the Beneficiary on the [●] [date].

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

By: _____
Name:
Title:

FORM OF ADVICE BY THE ADVISING BANK

(To be submitted on the letterhead of the Advising Bank)

ADVICE ON IRREVOCABLE STANDBY LETTER OF CREDIT

Our Advice Number: [●]
Amount: PhP _____
Stated Expiration Date: [●]
Issuing Bank: [●]
Issuing Bank's LC No. [●]

Beneficiary: Power Sector Assets and Liabilities Management Corporation
24th Floor Vertis North Corporate Center 1, Astra corner Lux
Drives, Vertis North, Mindanao Avenue, 1105 Quezon City,
Philippines

Subject: Advice on Letter of Credit

We are a branch of the Issuing Bank.

At the request of the issuing bank, enclosed is the original of the above captioned Standby Letter of Credit (SBLC). Unless otherwise defined, capitalized terms used in this document shall have the meaning ascribed to them in the SBLC.

The attached Annex A of this Letter with the Demand Certificate shall be presented at the demand for payment and the amount payment being demanded. Any demand for payment shall be in the form attached to this Letter as Annex A. No other document shall be required in any negotiation or demand for payment, except the executed Annex A and the Demand Certificate.

All documents presented to us in connection with any demand for payment on the Issuing Bank, and all notices and communications to us with respect to the SBLC shall be in writing and addressed and presented to us at our office at [address of Advising Bank] Attention: [●], and shall make reference to the SBLC by number. We undertake to honor documents presented in strict compliance with the SBLC's terms and conditions.

This advice shall be subject to the 1998 International Standby Practices and in case of dispute arising from, or in connection with, its interpretation or implementation, shall be subject to Philippine Law.

[Insert Date and Place of Issue]

[Advising Bank]

THIS ANNEX A IS AN INTEGRAL PART OF
ADVICE NO. [●]
DATED [●]

ANNEX A
DEMAND CERTIFICATE
[Date]

[Address of Advising Bank]

Attention: [●]

Re: Demand for Payment under Letter of Credit

Ladies and Gentlemen:

We refer to Letter of Credit No. [●] (SBLC). Any term defined in the SBLC shall have the same meaning when used in this document. The Demand Certificate addressed to the Issuing Bank in the form attached as Annex A to the SBLC, is attached as Annex A to this letter. A Bid Security Drawing Event has occurred, and the Beneficiary demands payment of [amount] under the SBLC, such payment to be made to [insert account instructions].

This Certificate has been executed and delivered by the Beneficiary on [●]
[date].

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

By: _____

Name:

Title:

**SCHEDULE 7 - DRAFT ASSET PURCHASE AGREEMENT
(Please see attached CD)**

**SCHEDULE 8 - DESIGNATION OF CONSORTIUM LEAD MEMBER AND
ITS AUTHORIZED REPRESENTATIVE**

[Letterhead]

I, (Name, Corporate Secretary or equivalent officer) of (corporation/partnership) (the “Firm”), after having been duly sworn according to law, hereby depose and state that:

1. I am a (citizenship) citizen, of legal age and a resident of (address);

2. I am the duly elected Corporate Secretary or equivalent officer of the Firm, an entity organized and existing under and by virtue of the laws of (country) and a member of the (Consortium Name) (the “proposed Consortium”);

3. The Power Sector Assets and Liabilities Management (PSALM) Corp. is, pursuant to its legal mandate, in the process of bidding out the sale of the **650 MW Malaya Thermal Power Plant** called the “Plant”, and the land underlying the Plant called the “Land”, **located in Barangay Malaya, Pililla, Rizal** collectively the “*Purchased Assets*”;

4. The proposed Consortium shall, upon due incorporation, bid for PSALM’s Project in accordance with PSALM’s Bidding Procedure;

5. Pending the due incorporation of the proposed Consortium, there is a need to authorize among its members a Lead Member as required under PSALM’s Bidding Procedure;

6. In consideration of the foregoing, the Firm’s (authorized body), at a regular/special meeting held on (date) at (place), in which meeting a quorum was present, the following Resolutions were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that the Firm, in the exercise of its membership in the proposed Consortium, is designating the following:

Lead Member of the Proposed Consortium	Authorized Representative of Lead Member

RESOLVED FURTHER that the Lead Member shall proceed with the Bidding Process for the Project for and in behalf of the proposed Consortium. It shall have an authorized representative which shall receive all Supplemental Bid Bulletins, the Final Asset Purchase

Agreement, communications, correspondences, notices and legal processes for the proposed Consortium.

RESOLVED, FINALLY, that any and all acts done and/or performed by the Lead Member and (Name of Person) under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on the Firm;

5. That the above resolutions are in accordance with the records of the Firm.

(Place, Date of Execution.)

[Corporate Secretary or Equivalent Officer]

SUBSCRIBED AND SWORN TO before me this _____ day of (month and year) at (place), affiant exhibiting to me his/her (proof of identity acceptable under Philippine notarial regulations), issued at (City) on (date).

NOTARY PUBLIC

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