

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") is made and effective the \_\_\_ day of \_\_\_\_\_ 2018 by and between **POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION** ("PSALM"), and \_\_\_\_\_ ("Recipient").

### 1. Confidential Information

- A. Recipient is interested in obtaining information from PSALM, in furtherance of the privatization of certain PSALM assets, specifically, 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"**, as mandated by the "Electric Power Industry Reform Act of 2001", Republic Act No. 9136 (the "Transaction"). By reason of such interest of Recipient, PSALM proposes to disclose pertinent confidential and proprietary information to Recipient (the "Confidential Information"). Such information may include non-public information, data, documents, marketing plans, business plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to the Recipient by PSALM. PSALM shall have the sole right to determine what information may be furnished the Recipient.
- B. Recipient acknowledges and agrees that none of PSALM or any of their other representatives or agents is making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information, and none of PSALM or any of their other representatives or agents, nor any of their respective officers, directors, employees, representatives, stockholders, owners, affiliates, advisors or agents, will have any liability to Recipient or any other person resulting from the use of Confidential Information by Recipient or any of its representatives. Only those representations or warranties that are made to the Recipient in a definitive agreement in relation to the Transaction, when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in such agreement, will have any legal effect.

### 2. Recipient's Obligations

- A. Recipient agrees that the Confidential Information is to be considered confidential and proprietary to PSALM and Recipient shall hold the same in confidence, shall not use the Confidential Information other than for the purpose of evaluating a potential purchase of the Asset and shall disclose it only to its officers, directors, employees or other representatives on a specific need to know basis. Recipient will not disclose, publish or otherwise reveal any of the Confidential Information to any third party unless (i) PSALM through their duly authorized officials give their specific prior written authorization, (ii) applicable Philippine law requires the Recipient to disclose or otherwise reveal Confidential Information, or (iii) the Confidential Information subsequently becomes part of the public domain. Each such Representative shall be bound under this Agreement as the Recipient is bound. Recipient will ensure that each Representative, to which it discloses, publishes or otherwise reveals any of the Confidential Information is made aware of the provisions of this Agreement, and, if so required by PSALM, ensure that each such Representative gives a direct undertaking in favor of PSALM.

- B. Confidential Information furnished in tangible form shall not be duplicated by Recipient except for the purpose of evaluating a potential purchase of the Asset. Upon the request of PSALM, Recipient shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within ten (10) days of such request. Without limiting the generality of the foregoing, in the event that the Transaction is not consummated neither Recipient nor its representatives shall use any of the Confidential Information for any purpose. Recipient will be responsible for any breach of this Agreement by its representatives.
- C. During the course of Recipient's evaluation, all inquiries and other communications are to be (i) made directly to specified employees or representatives of PSALM; and (ii) provide copies of all such inquiries and other communications to Irene Joy Besido-Garcia, President and CEO, and Arnold C. Francisco, Vice President - Asset Management Group at the address provided below. Accordingly, Recipient agrees not to directly or indirectly contact or communicate with any executive or other employee of PSALM concerning the Transaction, or to seek any information in connection therewith from such person, without the express consent of PSALM. Without PSALM's prior written consent, Recipient will not for a period of two years from the date of this Agreement directly solicit for employment any person who is now employed by PSALM (or whose activities are dedicated to PSALM) in an executive or management level position or otherwise considered by PSALM to be a key employee.

### 3. **Term**

The obligations of Recipient herein shall be effective upon the execution of this Agreement until the earlier of (i) consummation of the sale of the Asset and (ii) two (2) years after the date of this Agreement.

### 4. **Governing Law and Equitable Relief**

This Agreement shall be governed and construed in accordance with the laws of the Republic of the Philippines and Recipient consents to the exclusive jurisdiction of the courts of Makati City for any dispute arising out of this Agreement. Recipient agrees that in the event of any breach or threatened breach by Recipient, PSALM, may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect PSALM against any such breach or threatened breach.

### 5. **Final Agreement**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing duly executed by the parties.

### 6. **No Assignment**

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

## 7. Notices

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

If to PSALM:

**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, Metro Manila.

Attention: IRENE JOY BESIDO-GARCIA  
President and CEO

If to Recipient:

**Recipient Name:**  
Attention:  
Address:

## 8. No Implied Waiver

A party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

## 9. No Commitment

- A. By executing this Agreement, the Recipient acknowledges and agrees that PSALM reserves the right to negotiate with one or more potential parties at any time and to enter into a definitive agreement for a transaction involving some or all of the Asset without prior notice to Recipient.
- B. PSALM also reserves the right to terminate, at any time, further participation in the investigation and proposed process by the Recipient or any party, to modify any of the rules or procedures set forth herein or any other procedures without prior notice or assigning any reason therefore or to terminate the process contemplated hereby.
- C. This does not constitute a solicitation of bids for any aspect of the privatization of PSALM assets. Solicitation of bids and bidding guidelines will be announced and distributed at a later date.
- D. Recipient also acknowledges and agrees that no contract or agreement providing for the sale of the Asset shall be deemed to exist between Recipient and PSALM unless and until a definitive agreement has been executed and delivered by Recipient and each of the other parties thereto, and Recipient hereby waives, in advance, any claims (including, without limitation, breach of contract) in connection with the sale of the Asset.

- E. Recipient also agrees that unless and until a definitive agreement between PSALM and Recipient with respect to the acquisition of the Asset has been executed and delivered by Recipient and each of the other parties thereto, there shall not be any legal obligation of any kind whatsoever with respect to any such Transaction by virtue of this Agreement or any other written or oral expression with respect to such transaction except, in the case of this Agreement, for the matters specifically agreed to herein.

#### **10. Appointment of Process Agent**

For non-Philippine resident entities who are not licensed to do business in the Philippines, it shall be a condition precedent to the release of Bidding Package, Confidential Information, the conduct of due diligence or access to the data room that PSALM shall have received from Recipient evidence, in form and substance satisfactory to PSALM, that Recipient has irrevocably appointed for the term of this Agreement its Philippines counsel or another party within the Philippines and reasonably acceptable to PSALM as Recipient's agent for service of process, and that such agent shall have accepted the appointment and agreed to promptly forward to Recipient all legal process served in Metro Manila, Philippines addressed to Recipient and received by such process agent.

#### **11. Headings**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

#### **12. Severability**

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, shall remain in full force and effect as if such invalid or unenforceable term had never been included.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT  
CORPORATION  
(PSALM)**

By:

**IRENE JOY BESIDO-GARCIA**  
President and CEO

**RECIPIENT**

By:

\_\_\_\_\_  
\_\_\_\_\_

Signed in the Presence of:

\_\_\_\_\_

**ACKNOWLEDGEMENT**

REPUBLIC OF THE PHILIPPINES        )  
\_\_\_\_\_                                    ) s.s.

BEFORE ME, this \_\_\_ day of \_\_\_\_\_, 2018, at \_\_\_\_\_, personally appeared

Name	Identification Document Presented	Date and Place of Issue

known to me and to me known to be the same person who executed the foregoing Confidentiality Agreement and who acknowledged to me that the same is his true and voluntary act and deed and that of the Corporation which he represents.

WITNESS MY HAND AND SEAL at the date and place herein abovementioned.

Doc. No. \_\_\_\_\_  
Page No. \_\_\_\_\_  
Book No. \_\_\_\_\_  
Series of 2018

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