

REPUBLIC OF THE PHILIPPINES



**Negotiated Sale
of the Malaya
Thermal Power
Plant and Its
Underlying
Land Located
in Pililla, Rizal**

ASSET PURCHASE AGREEMENT

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (*Agreement*) is entered into on _____ by:

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, a government owned and controlled corporation created by virtue of Section 49 of Republic Act No. 9136, otherwise known as the “*Electric Power Industry Reform Act of 2001*” (“*EPIRA*”), with principal office at the 24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, North Avenue, 1105 Quezon City, Philippines represented by its President and CEO, **IRENE JOY BESIDO-GARCIA**, hereinafter referred to as the “**SELLER**” or “**PSALM**”,

-and-

BUYER named in Schedule O (*Details of BUYER*) hereinafter referred to as the “**BUYER**”.

WITNESSETH:

WHEREAS, Section 49 of the EPIRA created PSALM to take ownership of all existing generation assets, real estate and other disposable assets of the National Power Corporation (“*NPC*”) with the principal purpose of managing the orderly sale, disposition and privatization of NPC generation assets, real estate and other disposable assets;

WHEREAS, among the assets that PSALM is selling are the Purchased Assets, as hereinafter defined;

WHEREAS, pursuant to the mandate of the EPIRA and in accordance with the Negotiation Procedures for the sale of the Malaya Thermal Power Plant and the Land located at Pililla, Rizal, PSALM conducted an open and competitive Negotiated Sale Process for the sale of the Purchased Assets, at which BUYER was selected as the winning party;

WHEREAS, PSALM desires to sell, and BUYER desires to purchase, the Purchased Assets on the terms set forth in this Agreement;

NOW, THEREFORE, for and in consideration of the foregoing, this Agreement is entered into under the following terms and conditions:

ARTICLE 1

DEFINITIONS AND USE OF TERMS

1.01 Construction

Any reference in this Agreement to an “Article”, “Section”, “Paragraph”, or “Schedule” refers to the corresponding Article, Section, Paragraph, or Schedule of this Agreement, unless the context indicates otherwise. The headings of Articles, Sections, and Schedules are provided for convenience only and shall not affect the construction or interpretation of

this Agreement. The language for the purpose of administering this Agreement shall be English. All words used in this Agreement should be construed to be of such gender or number, as the circumstances require. Words referred to as “he” shall be deemed to include the male, female and neuter (e.g. his/hers/its) and *vice-versa*. The terms “include”, “including” and “such as” indicate examples of a foregoing general statement and not a limitation on that general statement. Any reference to a law or statute refers to the law or statute, any amendments thereto, succeeding or supplemental legislation and all regulations promulgated under or implementing such law or statute, as in effect at the relevant time. Any reference to the agreement or other document as of a given date means the agreement or other document as amended, supplemented and modified from time to time through such date. All references to times and dates shall refer to Philippine Standard Time. Should any of the dates fall on a holiday, the deadline shall be extended to the same time of the immediately succeeding Business Day. In computing a period, the first day shall be excluded and the last day included. Unless specified, all references to days shall refer to calendar days, a month shall be equal to thirty (30) calendar days and a year to three hundred sixty-five (365) calendar days. A fraction of a month shall be considered as one (1) month.

1.02 Definitions

For the purposes of this Agreement, the following capitalized terms and variations thereof have the meanings specified in this Section.

“**Adjoining Property**” shall mean any parcels of land (i) underlying, adjoining, adjacent to or in the vicinity of the Purchased Assets and (ii) that are used or may be used in the operation of the Purchased Assets, which do not form part of the Purchased Assets.

“**Affiliate**” shall mean 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. Affiliates shall include a subsidiary company and parent company and subsidiaries, directly or indirectly, of a common parent.

“**Agreement**” shall mean this Asset Purchase Agreement.

“**Award Date**” shall refer to the date of receipt by the Winning Negotiating Party of the Notice of Award.

“**Board of Independent Appraisers**” shall mean an independent body constituted by the Parties in accordance with Section 4.09 to perform duties under this Agreement.

“**Business Day**” shall mean any day other than a Saturday, Sunday, public holidays in Metro Manila, or a day on which banks located in Metro Manila are authorized by Philippine Law to be closed.

“**BUYER**” shall have the meaning defined in the preamble.

“**Buyer’s Closing Deliveries**” shall mean all the documents enumerated in **Section 4.02(b)**.

“**Certificate of Closing**” shall mean the respective certificates executed by each Party affirming that the conditions precedent in **Sections 4.06** for SELLER and **4.07** for BUYER and the closing deliveries in **Section 4.02(a)** of SELLER and **Section 4.02(b)** of BUYER have

been complied with by the proper Party or waived by the other Party, in accordance with this Agreement.

“**Certificate of Effectivity**” shall mean the certificate to be issued that will commence the Effective Date as defined herein.

“**Closing**” shall have the meaning defined in **Section 4.01**.

“**Closing Date**” shall have the meaning defined in **Section 4.01**.

“**Committee**” shall mean the Privatization Bids and Awards Committee.

“**Concessionaire**” shall mean National Grid Corporation of the Philippines, a corporation organized and existing under Philippine Law.

“**Control**” shall mean the power to direct or cause the direction of the management policies of a Person by contract, agency or otherwise.

“**Data Room**” shall mean the place located at the 24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, North Avenue, 1105 Quezon City, where information, data, documents and other papers pertaining to the Purchased Assets were made available for review, examination and assessment of BUYER as specified and in accordance with the Data Room and Due Diligence Procedures dated 05 February 2021.

“**Deed of Absolute Sale**” shall have the meaning defined in **Section 5.02(b)** and is in the form attached as **Schedule D**.

“**Documentary Deliverables**” shall have the meaning defined in the Negotiation Procedures.

“**DOE**” shall mean the Department of Energy of the Republic of the Philippines.

“**ECC**” shall refer to the Environmental Compliance Certificate issued by the Department of Environment and Natural Resources - Environmental Management Bureau.

“**Effective Date**” shall mean the earlier of the receipt by BUYER of the Certificate of Effectivity or the third (3rd) Business Day from delivery by SELLER of the Certificate of Effectivity.

“**Encumbrance**” shall mean any charge, claim, mortgage, servitude, easement, right of way, community or other marital property interest, covenant, equitable interest, lease or other possessory interest, lien, option, pledge, security interest, preference, priority, right of first refusal or similar restriction.

“**EPIRA**” shall mean Republic Act No. 9136, otherwise known as the “*Electric Power Industry Reform Act of 2001*”.

“**ERC**” shall mean the Energy Regulatory Commission of the Republic of the Philippines.

“**Excluded Assets**” shall mean the assets that do not form part of the Purchased Assets, which are described and listed in Schedule B (Excluded Assets).

“Fair Market Value” shall mean the value of the Purchased Assets as of a specific date in accordance with the provisions of this Agreement and which value shall be determined by the Board of Independent Appraisers.

“Final Transaction Documents” shall mean the final versions of the Asset Purchase Agreement duly executed by the Parties including their respective schedules (which include the Deed of Absolute Sale), attachments and annexes as well as the pertinent schedules, attachments and annexes to such schedules, attachments and annexes as provided by PSALM in accordance with the Negotiation Procedures.

“Financial Offer” shall mean the amount indicated in item B of Schedule C.

“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.

“Force Majeure Event” shall mean an act, event, or cause, that is unexpected or unforeseen, or if foreseen, must be impossible to avoid, or that is beyond the control of a Party, including rebellion, insurrection, blockade, flood, typhoon, earthquake, terrorism, or any other similar crime.

“Governmental Body” shall mean 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.

“Highest-Ranking Negotiating Party” shall mean the Negotiating Party which the Committee declares as having submitted the Highest Financial Offer.

“Indemnified Party” shall have the meaning defined in Section 8.06(a).

“Indemnifying Party” shall have the meaning defined in Section 8.06(a).

“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.

“Judgment Currency” shall have the meaning defined in Section 13.12.

“Judgment Currency Conversion Date” shall have the meaning defined in Section 13.12.

“Liabilities” shall mean liabilities or obligations of any nature, whether known or unknown, whether absolute, accrued, contingent, choate, inchoate, or otherwise, whether due or to become due and whether or not required to be reflected on a balance sheet prepared in accordance with PFRS/PAS, including any advance or loan made by any direct or indirect shareholder or Affiliate of BUYER which BUYER has neither converted to additional paid-in capital or shares in its capital stock nor reimbursed to such shareholder and any obligation arising out of or related to any preferred equity.

“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.

“**Must-Run Unit**” or “**MRU**” shall mean a generating unit identified and instructed, by the System Operator to either a) come on-line, or b) provide additional energy on a particular Trading Interval but the Dispatch of which is said to be Out of Merit, to address System Security requirements (as defined under the Wholesale Electricity Spot Market (WESM) Rules). For clarity, MRU shall be utilized only after the System Operator has exhausted all available Ancillary Services (as defined under 2016 Philippine Grid Code).

“**National Power Corporation**” or “**NPC**” shall mean the government-owned and controlled corporation created by virtue of Republic Act No. 6395, as amended.

“**National Transmission Corporation**” or “**TRANSCO**” shall mean the government-owned and controlled corporation created by virtue of Section 8 of the EPIRA.

“**Negotiated Sale Date**” refers to the day of the Offer Submission Deadline specified in the Negotiation Procedures.

“**Negotiation Procedures**” shall mean the procedures issued by PSALM to govern the privatization of the Purchased Assets dated 05 February 2021, including all supplements thereto.

“**Negotiation Security**” shall mean the cash, cashier’s or manager’s check issued by a commercial or universal bank or an irrevocable standby letter of credit issued by a qualified bank that was posted by the BUYER pursuant to the Negotiation Procedures dated 05 February 2021 as amended.

“**Notification of Exercise of Right Under Section 13.09**” shall mean the document executed between the Winning Negotiating Party and the Winning Negotiating Party’s Assignee wherein the Winning Negotiating Party assigns, and the Winning Negotiating Party’s Assignee accepts, all rights, liabilities and obligations under this Agreement.

“**Operating Contracts**” shall mean contracts entered by SELLER in the Ordinary Course of Business or those entered into for the operation and maintenance of the Purchased Assets that are effective or remain effective on Closing Date.

“**Operation and Maintenance Service Contracts**” or “**OMSC**” shall mean the one (1)-year operation and maintenance contract between PSALM Corporation and its OMSC Contractor for the Malaya Thermal Power Plant.

“**Order**” shall mean any order, injunction, judgment, decree, ruling or arbitration award of any Governmental Body or arbitrator.

“**Ordinary Course of Business**” shall mean actions taken by SELLER or NPC as previous owner and/or operator of the Purchased Assets in the normal course of business or operation, consistent with its past practice.

“**Parties**” shall mean BUYER and SELLER, collectively.

“**Party**” shall mean BUYER or SELLER, individually.

“Paying Party” shall have the meaning defined in **Section 13.12**.

“Performance Bond” shall mean the performance security in the form of cash, manager’s check or SBLC.

“Performance Bond Drawing Event” shall mean any act or event wherein BUYER has failed, was not willing, was not able to or was not ready to completely, faithfully, fully and promptly comply with any of its obligations under this Agreement.

“Person” shall mean any natural or juridical person.

“PFRS/PAS” shall mean the Philippine Financial Reporting Standards and Philippine Accounting Standards issued by the Philippine Accounting Standards Council to govern the preparation of financial statements.

“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; as amended, supplemented, replaced, interpreted by a duly authorized Governmental Body, or otherwise modified from time to time.

“Philippine Pesos” or **“PHP”** shall mean the lawful currency for the time being of the Republic of the Philippines.

“Proceeding” shall mean any action, arbitration, audit, examination, investigation, hearing or suit brought before or heard by any Governmental Body or arbitrator.

“Purchased Assets” shall mean the assets subject of this Agreement, which are more particularly described, listed and defined in Schedule A - Purchased Assets [Part I-A, Plant Assets; and Part I-B (The Land)].

“Purchase Price” shall mean the amount indicated in Item A of Schedule C, which is to be paid by BUYER to SELLER for the purchase of the Purchased Assets in accordance with this Agreement.

“Qualified Bank” shall mean a bank that, as of the date of issuance of any Negotiation Security, Performance Bond or bank certification, is either: (i) rated at or above the Qualified Bank Minimum Rating, or (ii) has been granted a license by the Bangko Sentral ng Pilipinas to operate as a Universal Bank and which license is valid and existing.

“Qualified Bank Minimum Rating” shall mean a minimum of 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.

“Representative” shall mean, with respect to a Party or a particular Person, any director, officer, employee, agent, consultant, advisor, legal counsel, accountant, or other Person acting on behalf a Party or of that Person which is presumed to be authorized by such Party or Person.

“Responsible Officer” shall mean with respect to any Party or Person, the person duly authorized by the governing board of such Party or Person, including the chairman, president, chief executive officer, chief operating officer, the chief financial officer, or any senior vice president.

“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 mean an irrevocable standby letter of credit.

“Security Interest” shall mean any mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, third party right of interest, encumbrance, hypothecation, security interest or other preferential arrangement or interest of any kind, including any assignment by way of security and including any title transfer or retention arrangement.

“SELLER” or **“PSALM”** shall have the meaning defined in the preamble.

“Seller’s Closing Deliveries” shall mean all the documents enumerated in Section 4.02(a).

“Seller’s Compliance Date” shall have the meaning defined in Section 4.01.

“Subsequent Privatization Proceedings” shall mean the appropriate proceedings to commence and conduct the appropriate re-privatization of the Purchased Assets in accordance with Philippine Law.

“Sunset Date” shall mean the sixtieth (60th) day after the Effective Date.

“Tax” or **“Taxes”** shall mean all forms of taxation including (as may be applicable) national, local, foreign and other taxes, charges, fees, duties (including customs duties), levies or other assessments (including assessments or taxes on insurance premiums), including income, gross receipts, net proceeds, alternative or add-on minimum, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, franchise, excise, value-added, stamp, withholding, leasing, lease, user, transfer, fuel, excess profits, occupational, interest equalization, windfall profits, severance, license, payroll, environmental, capital stock, disability, employee’s income withholding, other withholding, unemployment and social security taxes, that are imposed by any Governmental Body, and including any interest, penalties or additions to tax attributable thereto.

“Total Purchase Price” shall mean the Total Purchase Price indicated in Item A3 of Schedule C.

“Transition Period” shall mean the period starting on Effective Date until Closing Date.

“Units” or **“Malaya Thermal Power Plant”** or **“Plant”** shall mean one (1) unit of 300 MW Malaya Thermal Power Plant Unit 1 and one (1) unit of 350 MW Malaya Thermal Power Plant

Unit 2 that collectively comprise the 650 MW Malaya Thermal Power Plant located in Pililla, Rizal and forms part of the Purchased Assets.

“**Winning Negotiating Party**” shall mean the Highest-Ranking Negotiating Party in the Negotiated Sale Process conducted by the Committee for the sale of the Purchased Assets to which, after having been subjected to the verification of the accuracy, authenticity and completeness of all the documents submitted in the Offer, Documentary Deliverables and other documents submitted or information furnished in the Negotiated Sale Process, the Committee serves the Notice of Award.

“**Winning Negotiating Party’s Assignee**” shall mean the special purpose corporation wholly-owned by the Winning Negotiating Party, which shall assume all the rights, liabilities and obligations of the Winning Negotiating Party. Notwithstanding the Winning Negotiating Party’s assignment to the Winning Negotiating Party’s Assignee, both the Winning Negotiating Party and the Winning Negotiating Party’s Assignee shall be solidarily liable for all obligations of the BUYER.

ARTICLE 2

PURCHASE AND DELIVERY OF THE ASSETS

2.01 Purchased Assets

Subject to the terms and conditions of this Agreement, on Closing Date, SELLER sells, conveys, assigns, transfers and delivers to BUYER, and BUYER purchases and acquires from SELLER, all of SELLER’s rights and interests in the Purchased Assets on an “**AS IS, WHERE IS**” basis, including the obligation to undertake and perform the transport, treatment and disposal including clean-up obligation of the toxic substances and hazardous wastes and materials in accordance with Philippine Law and the provisions of this agreement, and the obligation to honor existing rights and easements indicated in TCT No. M-10275. The **AS IS, WHERE IS**” basis of the Purchased Assets shall be reckoned as of the date of the Offer Submission Deadline.

For the avoidance of doubt, toxic substances and hazardous wastes and materials shall refer to any and all wastes and materials (i) associated with, (ii) accumulated, (iii) contained in, (iv) inside of, (v) located inside of, (vi) attached to, (vii) used by, (viii) residue of, (ix) by-produce of, (x) imbedded in, or (xi) those that may develop or surface on the Purchased Assets prior to or after Closing Date.

Anything in this Agreement notwithstanding, legal title to the Purchased Assets shall transfer to BUYER only on Closing Date and upon the execution of the Deed of Absolute Sale by the Parties in accordance with Section 5.02(b). It shall remain the BUYER’S obligation to obtain the necessary approvals, clearances and permits to transfer title from the pertinent Governmental Bodies, while the SELLER will assist by providing available documentations on best efforts basis.

The Purchased Assets shall be those that are described, listed and defined in Schedule A (Purchased Assets). Notwithstanding the Purchased Assets described, listed and defined in said Schedule A, the Offer submitted by the BUYER shall likewise deemed to encompass the results of the due diligence conducted by the BUYER. The Assets that were installed by SELLER in the Ordinary Course of Business prior to Closing Date as a replacement for damaged and unserviceable portions of the Purchased Assets shall be reflected as the

replacement for the Purchased Assets in Schedule A (Purchased Assets); *provided*, the Purchased Assets replaced shall belong to SELLER and shall no longer form part of the Purchased Assets. SELLER shall have no obligation to replace parts of the Purchased Assets, which are enumerated in Schedule A that were installed or used by SELLER to comply with its obligation to operate and maintain the Units in the Ordinary Course of Business.

Schedule A (Purchased Assets), with the corresponding revisions and amendments to reflect replacements for the Purchased Assets, shall be attached to the Deed of Absolute Sale regardless of whether the Purchased Assets, or any portion thereof, exists on Closing Date.

2.02 Excluded Assets

Anything in this Agreement notwithstanding, any asset not included in Schedule A (Purchased Assets) shall be deemed to be Excluded Assets even though the same are not listed or enumerated in Schedule B (Excluded Assets). BUYER will not acquire ownership or any interest in the Excluded Assets. Some of the Excluded Assets that may be embedded in or located within the Purchased Assets and that are necessary or desirable for the operation of the Purchased Assets may be owned by SELLER, TRANSCO, the Concessionaire, and/or other entities, and BUYER shall allow SELLER, TRANSCO, the Concessionaire, their respective assignees or successors-in-interest, and such other entities access to the same.

2.03 Rights, Liabilities and Obligations

The rights and Liabilities pertaining to the Purchased Assets shall be treated in the following manner:

- (a) From Closing Date, BUYER shall unconditionally and directly assume, be liable for and discharge all the rights, liabilities and obligations pertaining to the Purchased Assets, including:
 - (i) all rights, obligations and Liabilities of SELLER and/or NPC arising from Operating Contracts, including all liabilities as a result of breach of any of them;
 - (ii) contracts that remain effective on or after the Closing Date for infrastructure, rehabilitation, repair, preservation, operation and/or maintenance of the Purchased Assets;
 - (iii) any and all administrative or regulatory fees due any Governmental Body, Taxes, assessments, fees, licenses, costs and expenses arising out of or related to the ownership, operation, or use of the Purchased Assets accruing from Closing Date;
 - (iv) any fine or penalty imposed by any Governmental Body with respect to the Purchased Assets (a) resulting from an investigation, proceeding, request for information, or inspection conducted by a Governmental Body and/or (b) relating to non-compliance with environmental laws in the Philippines; and
 - (v) in the event that there are sums due from BUYER as provided in Section 66 of the EPIRA and the Philippine Law provisions referred to therein, BUYER shall be liable for all such sums that accrue from Closing Date and BUYER shall pay such sums on the earlier of each anniversary of Closing Date or as

the same falls due, as defined in Section 66 of the EPIRA and other applicable issuances.

Subject to the provisions of this Agreement, all such Liabilities, obligations, Taxes, fees, fines or penalties under Section 2.03(a) pertaining to the Purchased Assets and Operating Contracts accruing or incurred prior to Closing Date, regardless of the date when the demand for payment or assessment is made, shall be for the account of SELLER; *provided*, BUYER must notify SELLER of any such demand or assessment on the earlier of: (a) seven (7) days prior to the expiration of the period for responding to such demand or assessment or (b) three (3) Business Days from receipt of such demand or assessment; otherwise BUYER shall be liable for the same. For Liabilities accruing prior to Closing Date, BUYER shall, upon prior written notice to SELLER and SELLER's issuance of written consent, have the option to pay for the same; *provided*, that unless otherwise specified in this Agreement, SELLER shall reimburse BUYER for such sums within three (3) months from receipt of a final judgment declaring SELLER liable for such Liabilities accruing prior to Closing Date which were paid by BUYER; *provided however*, that should SELLER give prior written consent for the payment of such Liabilities by BUYER, SELLER shall reimburse BUYER for such payment within fifteen (15) days from presentation by BUYER of the complete documentation from the party paid evidencing such payment. All Liabilities, obligations, Taxes, fees, fines and penalties under this Section 2.03(a) accruing or incurred from Closing Date shall be for the sole account of BUYER.

- (b) Should any portion of the Purchased Assets be located on an Adjoining Property, it shall be the obligation of BUYER to secure whatever, right, title or interest that is necessary for its use, enjoyment, occupancy and possession of the said Adjoining Property.

2.04 Fuel

The SELLER shall not be obligated to have any fuel inventory on Closing Date. However, should there be any fuel inventory on or within the vicinity of the Purchased Assets, BUYER undertakes to pay SELLER for the said fuel within ten (10) days from Closing Date. The fuel quality shall be on an "as-is, where-is" basis after a joint inventory of the remaining fuel, if any, is conducted by the Parties on Closing Date. The volume of the remaining fuel shall be based on the tank's calibration table at 15 degrees centigrade. Any fuel delivery in transit after Closing Date shall be for the account of the BUYER.

The fuel price is the price of the latest delivered contracted fuel price for the Purchased Assets inclusive of Value Added Tax (VAT) and other applicable taxes.

2.05 Indicative Condition of the Malaya Thermal Power Plant

BUYER has full knowledge that the Malaya Thermal Power Plant is currently operational and being dispatched as an MRU by NGCP, however, on Closing Date, MTPP is no longer required to run as an MRU. The following table shows the indicative condition of the Plant:

Plant	Rated Capacity, MW	Dependable Capacity, MW
Unit 1	300	0
Unit 2	350	130

MTPP Unit 1 was declared unavailable on 03 May 2019 due to damaged Low Pressure (LP) turbine as a result of equipment failure of the National Grid Corporation of the Philippines' (NGCP) Power Circuit Breaker.

MTPP Unit 2 was declared available on 22 June 2019 to support the Luzon Grid with dependable capacity of 130 MW. Unit 2 is running with deteriorated Air Preheater Heating Elements.

ARTICLE 3

PURCHASE PRICE

In consideration for the sale of the Purchased Assets, BUYER shall pay SELLER the Purchase Price as stated in BUYER's duly accomplished Item A of the Schedule C (Financial Offer).

On or before Closing Date, BUYER shall (i) pay the Purchase Price in Philippine Peso, by wire transfer of immediately available funds to a bank account designated in writing by SELLER, or by such other reasonable means of payment required by SELLER with reasonable advance written notice to BUYER; (ii) bear all Taxes, fees, charges, costs and expenses relating to the Purchase Price, including those relating to its remittance and all bank and wire transfer fees; and (iii) pay, or cause the payment of the Purchase Price without any deduction, set-off or counterclaim of any nature whatsoever, free and clear of any Tax or other deductions whatsoever.

ARTICLE 4

CLOSING, CLOSING DELIVERIES AND CLOSING DATE

4.01 Closing Date

Closing ("*Closing*") shall occur upon the (A) satisfaction of all the conditions precedent in Sections 4.06 by SELLER and 4.07 by BUYER (unless otherwise waived by either BUYER or SELLER, as the case may be) and (B) receipt by (i) SELLER of BUYER's Closing Deliveries and (ii) BUYER of SELLER's Closing Deliveries, but no later than Sunset Date unless Sunset Date is extended upon mutual agreement of parties. The closing date ("*Closing Date*") shall be the date two (2) Business Days immediately after Closing, unless the Parties agree on an earlier date, or (a) the date when physical possession of the Purchased Assets is transferred to the BUYER; and (b) shall coincide with the date of the Deed of Absolute Sale. On Closing Date, upon verification by SELLER of the Purchase Price being credited to its bank account, the Parties shall execute a Joint Certificate of Turn-Over in the form attached as Schedule M (Joint Certificate of Turn-Over).

Anything in this Agreement notwithstanding and notwithstanding the immediately preceding paragraph, once SELLER communicates to BUYER that it has complied with all the conditions precedent under Section 4.06 and is prepared with SELLER's Closing Deliveries (the "*Seller's Compliance Date*"), SELLER shall have the option to (i) demand from BUYER (in accordance with the period set by SELLER in the demand, which may be on the same day as the demand) the (a) payment of the Purchase Price, (b) delivery of BUYER's Closing Deliveries, (c) compliance with Section 4.05(b) and/or (d) compliance with the conditions precedent under

Section 4.07; or (ii) terminate this Agreement in accordance with Section 12.01(d) if within fifteen (15) days from SELLER's Compliance Date, BUYER fails, is not willing, is not able or is not ready to: (1) pay the Purchase Price amount, (2) comply with this paragraph, (3) deliver BUYER's Closing Deliveries, (4) comply with Section 4.05(b) or (5) comply with the conditions precedent under Section 4.07. Upon the failure of BUYER to fully comply with any of the matters in (i) above, including the payment of the Purchase Price amount upon the expiration of SELLER-specified period for payment and receipt of the same, SELLER shall have the right to automatically draw upon and forfeit the Performance Bond. The exercise of one or more of the above remedies shall not prevent SELLER from availing of other remedies under this Agreement or Philippine Law.

On Closing Date (i) the control and possession of the Purchased Assets by transfer of physical possession, shall be transferred to BUYER and (ii) risk of loss of, damage and/or destruction, regardless of cause (including those resulting from Force Majeure Events or fortuitous events) to the Purchased Assets or any portion thereof shall automatically transfer, be assumed by and remain at all times with BUYER. For the avoidance of doubt, any damage, loss and/or destruction, regardless of cause, of the Purchased Assets or any portion thereof from Closing Date shall not diminish nor affect the Purchase Price.

From Closing Date, BUYER shall (i) be solely liable for all expenses, costs, Taxes, and fees arising out of or related to the Purchased Assets, its use and/or operation, including real property taxes, and those incurred and paid to operate, maintain, rehabilitate, convert and repair the Purchased Assets, and (ii) defend, indemnify, and save harmless SELLER for any loss, damage, injury or destruction to (a) the Purchased Assets or (b) any Person arising out of or related to this Agreement.

4.02 Closing Deliveries

(a) As a condition to Closing, SELLER shall deliver to BUYER:

- (i) the Seller's Certificate of Closing, in the form attached as **Schedule G** (Form of Certificate of Closing for SELLER), executed by a Responsible Officer of SELLER; and
- (ii) a certificate, in the form attached as **Schedule H** (Certification on Accuracy of Representations and Warranties of SELLER and Compliance with the Conditions Precedent by SELLER), executed by a Responsible Officer of SELLER and acknowledged before a person authorized to administer oaths stating that: (a) each of SELLER's representations and warranties in Article 6 is accurate in all material respects as of the Closing as if then made; and (b) all conditions precedent specified in **Section 4.06** have been satisfied or otherwise waived by BUYER in writing.

(b) As a condition to Closing, BUYER shall deliver to SELLER:

- (i) the certification in the form attached as **Schedule I** (Form of Bank Certification of Availability of Purchase Price) from a Qualified Bank acceptable to SELLER that the funds for the payment of the Purchase Price are complete and immediately ready for delivery to SELLER on Closing Date upon the receipt of instruction from SELLER by the bank issuing such certification. Such delivery shall not be subject to any condition;

- (ii) BUYER's Certificate of Closing, in the form attached as Schedule J (Form of Certificate of Closing for BUYER), executed by a Responsible Officer of BUYER;
- (iii) a certificate, in the form attached as Schedule K (Certification on Accuracy of Representations and Warranties of BUYER, Compliance with the Conditions Precedent by BUYER, Compliance with Section 4.05(b) and Undertaking to comply with Article 7(s)) executed by a Responsible Officer of the BUYER and acknowledged before a person authorized to administer oaths stating that: (a) each of BUYER's representations and warranties in this Agreement is accurate in all material respects as of Closing as if then made; (b) all conditions precedent specified in Section 4.07 have been satisfied or otherwise waived by SELLER in writing; (c) BUYER's full compliance with the first paragraph of Section 4.05(b); and (d) in case of a foreign investor, an undertaking to comply with Article 7(s).

4.03 Transition Period

- (a) During the Transition Period, SELLER shall (i) operate and maintain the Units in the Ordinary Course of Business, (ii) ensure that the permits and licenses enumerated in Schedule N (Permits and Licenses), if due to expire or has expired, that applications or renewals for such permits and licenses have been submitted to the proper Governmental Body; *provided*, SELLER makes no representation that the applications or renewals for such permits and licenses will be granted, renewed or approved, and (iii) not have any liability or responsibility for any action taken, suffered, or omitted by it in good faith, or by mistake of fact or law, or for anything it may do or refrain from doing in accordance with this Agreement. In the performance of its obligations in this Section 4.03(a), SELLER shall not dismantle nor relocate the Purchased Assets or any portion thereof, unless such dismantling or relocation is necessary to operate and maintain the Purchased Assets in the Ordinary Course of Business; *provided*, SELLER shall notify BUYER within a reasonable time before such dismantling or relocation.
- (b) Anything in this Agreement notwithstanding, all revenues derived from the Purchased Assets during the Transition Period shall inure to and be for the benefit of SELLER while those that accrue from Closing Date shall inure to and be for the benefit of BUYER. Any sum received by either Party due to the other Party under this paragraph shall be given by the receiving Party to the other Party within fifteen (15) days from the receipt of written demand.
- (c) At least ten (10) days prior to SELLER's intended delivery of SELLER's Closing Deliveries or BUYER's intended delivery of BUYER's Closing Deliveries, a Party must notify the other Party of such intended delivery. Within three (3) days from receipt of such notice, the Parties shall commence a joint inventory of the Purchased Assets. Only Purchased Assets under Part I-A.1 (Plant Fixed Assets) shall be subject to inventory. Thereafter, the Parties shall jointly sign the inventory report or make a notation of their disagreement with the same. Failure of a Party to appear at such inventory shall be deemed a waiver of such Party of its rights to contest the inventory conducted by the other Party. Any failure of or delay in the conduct of the inventory or issuance of the said inventory report shall not affect Closing and Closing Date. This paragraph (c) shall not apply if the delivery of SELLER's Closing Deliveries is by reason of the 2nd paragraph of Section 4.01.

4.04 Covenants of SELLER Before Closing Date

- (a) During the Transition Period, except as may be necessary to comply with Philippine Law, upon prior notice from BUYER, SELLER will grant BUYER reasonable access during normal business hours to the Purchased Assets, contracts, books, records and other relevant documents in relation to the Purchased Assets that BUYER may reasonably request. During the Transition Period, BUYER may, subject to the prior written approval of SELLER, which approval shall not be unreasonably withheld, assign a maximum of ten (10) Representatives to witness the operation and maintenance of the Purchased Assets. BUYER's rights under this paragraph (a) shall be subject to BUYER and its Representatives at all times (i) being accompanied by a Representative of SELLER and (ii) strictly abiding by the rules of SELLER or the plant and corporate policies being implemented at the site where the Purchased Assets are situated. BUYER shall and shall cause its Representatives to hold confidential all information obtained pursuant to this Section in accordance with the terms of the Confidentiality Agreement executed by BUYER as an interested party as part of the Negotiated Sale Process. BUYER shall not restrict or interfere with SELLER's rights over the Purchased Assets, including the latter's operation and maintenance, at any time before the Closing Date.
- (b) Except as otherwise expressly permitted by this Agreement, during the Transition Period, SELLER will not, without the prior written consent of BUYER, which consent shall not be unreasonably withheld:
- (1) take any affirmative action or fail to take any reasonable action within its control exercising ordinary diligence, as a result of which any of the representations of SELLER in Article 6 shall be untrue; or
 - (2) enter into any contract or commitment that:
 - (i) would impose an obligation on BUYER from Closing Date in an aggregate amount in excess of Ten Million Philippine Pesos (PHP 10,000,000.00) or its foreign currency equivalent as of Effective Date;
 - (ii) will materially and adversely affect and decrease the Fair Market Value of the Purchased Assets as of the Negotiated Sale Date (which in no case shall go below the Minimum Offer Price, as defined in the Negotiation Procedures) in an amount equivalent to or greater than ten percent (10%) of such Fair Market Value; or
 - (iii) is for a term of longer than one (1) year from Closing Date.
 - (3) amend, waive, modify, or consent to the pre-termination or extension of any Operating Contract.

In cases where the prior written consent of BUYER is required under this Section 4.04 (b) and SELLER does not obtain the same, SELLER's failure to obtain such consent shall not constitute a breach of this Agreement by SELLER and would not entitle BUYER to terminate this Agreement; *provided*, BUYER shall not assume any cost associated with the contracts or commitments that exceed the thresholds specified in Paragraph 2 above. In cases where the prior written consent of BUYER is not

required under this Section 4.04(b), BUYER shall assume the obligations arising out of the said contracts and commitments.

On or before Closing Date, SELLER shall notify BUYER in writing of such contracts or commitments, wherein the costs or obligations thereof are to be assumed by BUYER as provided for in this Section 4.04(b). SELLER's failure to give such notice shall not constitute a breach of this Agreement and would not entitle BUYER to terminate this Agreement.

- (c) There shall be no employer-employee relationship between the employees of BUYER and SELLER and vice-versa.
- (d) As promptly as practicable after the Negotiated Sale Date, SELLER will seek to obtain the necessary governmental approvals that Philippine Law requires it to make in order for this Agreement to be effective in accordance with Section 13.14(b).
- (e) From Effective Date until Closing Date, SELLER will exert reasonable efforts to cooperate with BUYER with respect to all filings of legal requirements required of BUYER, in connection with the consummation of this Agreement; and
- (f) SELLER will exert its best efforts to cause the conditions precedent in Section 4.06 to be fully and completely satisfied on or before the Sunset Date.

4.05 Covenants of BUYER Before Closing Date

- (a) BUYER will exert its best efforts to cause the conditions precedent in Section 4.07 to be fully and completely satisfied promptly after Effective Date.
- (b) On Seller's Compliance Date, neither the BUYER, 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 with PSALM, DOE, DOF, NPC and TRANSCO, or a pending litigation case or arbitration case against PSALM, DOE, DOF, NPC or TRANSCO, arising out of any issue, or contractual obligation, or any matter relating to EPIRA or its Implementing Rules and Regulations, such as but not limited to: having an unresolved issue arising from contracts or renegotiation of contracts with IPPs and having any unpaid account arising from contractual obligations with PSALM, DOE, DOF, NPC or TRANSCO.

From Closing Date, the BUYER shall not breach the installed generating capacity restrictions prescribed by Section 45(a) of the EPIRA.

The failure of BUYER to comply with the first paragraph of this Section 4.05(b) or deliver the certification required under Section 4.02(b)(iii) shall be a material breach of this Agreement which gives SELLER the right to draw on and forfeit the Performance Bond and/or terminate this Agreement.

4.06 Conditions Precedent Required of SELLER Prior to Closing

BUYER's obligation to purchase the Purchased Assets is subject to the satisfaction by SELLER, by Closing, of the condition stated herein, which can be waived in writing by BUYER.

SELLER shall have delivered to BUYER an original copy of a legal opinion by SELLER's general counsel confirming that: (1) SELLER has (i) taken all corporate action necessary to authorize the execution, delivery, and performance of this Agreement, (ii) obtained all approvals and authorizations required under Philippine Law to lawfully execute, deliver, and perform the obligations undertaken in this Agreement, and (iii) the Final Transaction Documents constitute legal and valid agreements binding and enforceable against SELLER in accordance with their terms; and (2) BUYER may enforce the obligations of SELLER under the Final Transaction Documents in accordance with the terms of such agreements.

4.07 Conditions Precedent Required of BUYER Prior To Closing

SELLER's obligation to sell the Purchased Assets is subject to the satisfaction (compliance) by BUYER by Closing (unless waived in writing by SELLER in whole or in part) of the following conditions:

- (a) BUYER shall have delivered to SELLER the certification in the form attached as Schedule I from a Qualified Bank acceptable to SELLER certifying that the funds for the payment of the Purchase Price is complete and immediately ready for delivery to SELLER on Closing Date upon receipt of instruction from SELLER by the bank issuing such certification. Such delivery of the payment shall not be subject to any condition.
- (b) BUYER shall have delivered to SELLER an original copy of a legal opinion (in the form attached as Schedule L) by the Philippine counsel reasonably acceptable to SELLER, addressed to SELLER, confirming that (i) the execution, delivery and performance by BUYER of the Final Transaction Documents, including the authority of its representative to sign and execute the same for and in behalf of BUYER, have been duly authorized by all necessary corporate actions on the part of BUYER, (ii) the Final Transaction Documents constitute legal and valid agreements binding and enforceable against BUYER in accordance with their terms, (iii) BUYER has obtained all approvals and authorizations required under Philippine Law to lawfully perform the obligations arising under all the Final Transaction Documents, and (iv) SELLER may enforce the obligations of BUYER under each of the Final Transaction Documents in accordance with the terms thereof.

SELLER has the option to waive any of the above.

4.08 Change in the Condition of the Asset

The BUYER shall accept the Purchased Assets on the Closing Date on an "AS-IS, WHERE-IS" basis, regardless of any change in their physical condition or other circumstances from Negotiated Sale Date until Closing Date, except when the change in the Purchased Assets' condition or circumstance is caused by a Force Majeure Event that happened after the Negotiated Sale Date but prior to Closing Date that results in a failure to operate as a generation plant and/or generate electricity for a continuous period of more than two (2) months.

In case of the above Force Majeure Event, the parties may still proceed with the Agreement, subject to mutually acceptable terms. If the parties should fail to agree on these terms within a negotiation period of thirty (30) days from the commencement of negotiation proceedings, the Agreement shall be terminated thirty (30) days from the last day of the negotiation period with each party bearing its own cost resulting from such termination.

Certain occurrences, including: depreciation and ordinary wear and tear of the Purchased Assets; change in the project income or revenue stream of BUYER; changes in generation, transmission, distribution and supply tariff rates and the components thereof; decrease in electricity demand; change in the assumptions used by BUYER in purchasing the Purchased Assets; changes that are not physical in nature; and other analogous cases shall not be included and shall not affect the determination of any change in the physical condition or quantity of the Purchased Assets.

Any change in the physical condition, quality, or quantity of the Purchased Assets from the Closing Date shall be for the account of BUYER.

4.09 Board of Independent Appraisers

The Board of Independent Appraisers shall be composed of three (3) members, where the first member shall be nominated and selected by SELLER, the second to be nominated and selected by BUYER, both of whom must be selected within three (3) days from receipt in writing of any matter exclusively pertaining to Section 4.04(b)(2)(ii). The third member shall be selected by the two (2) members previously selected; *provided*, the third member shall be independent from and shall in no case be associated with the Parties. If within five (5) days from the selection of the two (2) members, such members cannot agree on the third member, they shall ask the incumbent President of the Philippine Chamber of Commerce and Industry to appoint the said third member.

The Board of Independent Appraisers shall resolve matters brought before it within a period of thirty (30) days. The decision of the Board of Independent Appraisers shall be final and binding on the Parties. All the costs and expenses of the Board of Independent Appraisers arising out of or related to this Agreement shall be for the account of BUYER.

ARTICLE 5

OTHER OBLIGATIONS

5.01 Obligations of BUYER from Closing Date

In addition to the obligations in the Final Transaction Documents, BUYER shall:

- (a) comply with Philippine laws, including environmental standards; *provided*, that the Buyer may rehabilitate, convert, uprate or decommission the plant subject to prior clearance from the DOE and other pertinent offices.
- (b) make the necessary filings, acquire, and maintain all the necessary permits and licenses from the proper Governmental Body, including the ERC, Energy Virtual One-Stop Shop (EVOSS) Steering Committee pursuant to Republic Act (R.A.) 11234, if applicable, and other pertinent offices relative to the purchase, operation, maintenance, rehabilitation and repair of the Purchased Assets (as may be applicable);
- (c) within fifteen (15) Business Days from Closing Date, BUYER shall deliver to SELLER a certification issued by the ERC confirming that BUYER has not violated Section 45(a) of the EPIRA;

- (d) observe and fully comply with: (i) Philippine Law, including the Philippine Grid Code, Philippine Distribution Code, Wholesale Electricity Spot Market Rules, EVOSS Act (R.A. 11234), applicable environmental laws, rules and regulations in the operation and maintenance of the Purchased Assets, (ii) the environmental reportorial requirements of the Governmental Body in charge with the implementation and enforcement of such applicable environmental laws, rules and regulations, and (iii) whenever applicable, the terms and conditions of the ECC including any condition which requires NPC/PSALM to: (a) be part of a multipartite environmental monitoring group and (b) to submit environmental reports under and in accordance with the ECC both of which shall heretofore be performed by BUYER; and
- (e) pay due attention to the protection and conservation of the environment, including the giving of due consideration to such issues as air pollution, water pollution, and industrial waste treatment.

5.02 Obligations of SELLER from Closing Date

SELLER will have the following obligations:

- (a) SELLER shall, on a best effort basis, assist BUYER in securing the necessary permits and licenses from the appropriate Governmental Body for the operation of the Purchased Assets;
- (b) on Closing Date, upon verification by SELLER of the Purchase Price being credited to its bank account, execute a deed of absolute sale (the “*Deed of Absolute Sale*”) in favor of BUYER, its assignee, or successor-in-interest in the form attached as Schedule D (Deed of Absolute Sale);
- (c) defend the Purchased Assets against any legal action that questions SELLER’s authority to sell the Purchased Assets; and
- (d) within three (3) Business Days of the Purchase Price payment being credited to SELLER’s designated bank account, SELLER shall execute a receipt for the same to BUYER;

Failure of SELLER to comply with the obligations stated in this **Section 5.02** shall not give BUYER the right to terminate this Agreement.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF SELLER

SELLER represents and warrants to BUYER on the Award Date and on Closing Date, except as provided herein, that:

- (a) it is a corporation created by virtue of Section 49 of the EPIRA and is validly existing under Philippine Law;
- (b) it has full corporate power and authority to execute, deliver and perform this Agreement;

- (c) the execution, delivery and performance of this Agreement by SELLER has been duly authorized by all requisite corporate action on the part of SELLER and no further corporate action or proceeding on the part of SELLER is necessary to authorize the execution, delivery and performance by SELLER of this Agreement, except in compliance with Executive Order 423, Series of 2005, as amended, that SELLER will comply as a precondition to Effective Date, if applicable;
- (d) on Effective Date and on Closing Date, this Agreement will constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by Philippine Law. Each Person executing and delivering this Agreement on behalf of SELLER and any other document required to be executed and delivered by SELLER under this Agreement has been duly authorized by it to execute and deliver such document;
- (e) the execution, delivery and performance of this Agreement by SELLER does not or will not: (i) violate or contravene any provision of Philippine Law or (ii) conflict with or violate any provisions of its charter;
- (f) SELLER shall have the right necessary to deliver and transfer legal title to the Purchased Assets to BUYER on Closing Date, subject to Section 2.01;
- (g) from Effective Date until the Closing Date, SELLER shall not sell, assign, transfer, convey, create, or permit the creation of any Encumbrance or Security Interest on the Purchased Assets.

BUYER acknowledges and agrees that except for the representations and warranties contained in this Article 6, neither SELLER nor any person acting for SELLER makes any other representation or warranty, express or implied, about the Purchased Assets or any matter related to this Agreement, including all warranties of merchantability and fitness of the Purchased Assets for a particular use. SELLER makes no representation as to the (i) electricity market, (ii) access of the Purchased Assets to the electricity market, (iii) sale, transmission or distribution of the energy produced by the Purchased Asset to the electricity market, (iv) existence, use and operation of the Excluded Assets or any portion thereof and (v) ownership of, transferable title or transferable right to any real property. SELLER disclaims any such representation or warranty, whether made by it or any of its officials, employees, agents or Representatives or any other Person, with respect to the execution, delivery or performance by it of this Agreement or with respect to the transactions contemplated herein, notwithstanding the delivery or disclosure to BUYER or any of its officers, directors, employees, agents, or Representatives or any other Person of any communication, oral or written, documentation or other information (financial or otherwise) by SELLER or any of its officers, directors, employees, agents or Representatives or any other Person with respect to any one or more of the foregoing. Except as stated in Section 4.08, BUYER absolutely releases SELLER from any liability whatsoever arising from any defect or deficiency in the Purchased Assets and as to any and all matters which has not been warranted by SELLER in this Article 6.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES OF BUYER

BUYER represents and warrants to SELLER from Award Date until Closing Date, except as provided herein, that:

- (a) for corporations organized under Philippine Law, it is a corporation duly organized, validly existing and in good standing under Philippine Law and it shall preserve and maintain in full force and effect its existence as a corporation duly organized under Philippine Law and/or its qualifications to do business in the Republic of the Philippines;
- (b) it has full corporate power and authority to execute, deliver and perform this Agreement and has obtained or effected all consents, approvals, authorizations, permits, licenses, Orders, filings with, or notifications to, any Governmental Body or any other Person, necessary for the valid execution, delivery and performance of this Agreement and all such consents, approvals, authorizations, permits, licenses, Orders, filings and notifications remain in full force and effect;
- (c) the execution, delivery and performance of the Final Transaction Documents has been duly authorized by all requisite corporate action of BUYER and no further corporate action or proceeding on its part is necessary to authorize the execution, delivery and performance of the Final Transaction Documents;
- (d) this Agreement has been duly executed and delivered by BUYER and on Award Date will constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by Philippine Law relating to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally or by principles governing the availability of equitable remedies. Each Person executing and delivering this Agreement on behalf of BUYER and any other document required to be executed and delivered by BUYER under each of the Final Transaction Documents have been duly authorized by BUYER to execute and deliver such document;
- (e) the execution, delivery and performance of this Agreement by BUYER does not or will not: (i) violate or contravene any provision of Philippine Law; (ii) conflict with or violate any provisions of its organizational document and (iii) conflict with or result in the breach of or constitute a default (or an event which with notice or lapse or time or both would become a default) under, or give to others any rights of termination, cancellation or acceleration of, or result in the creation of any security interest on any of the assets or properties of BUYER pursuant to any of the terms, conditions, or provisions of, any note, bond, mortgage, indenture, permit, license, franchise, lease, contract, agreement or other instrument or obligation to which BUYER is a party or by which any of its properties or assets are bound or affected; and (iv) should BUYER be incorporated under laws of a jurisdiction other than the Philippines, it will not violate or contravene the laws of such jurisdiction;
- (f) neither it nor its Representatives have (i) offered, either directly or indirectly, any government officer, or official or employee of SELLER, including its Representatives and advisors, any consideration or commission for this Agreement and (ii) exerted or utilized any corrupt or unlawful influence to secure or solicit this Agreement for any

consideration or commission. If any commission is being paid to any Person, BUYER shall disclose the name of the person and the amount being paid;

- (g) no arbitrator, court or other Governmental Body has issued any injunction, writ, preliminary or temporary restraining order or other Order of any nature against BUYER in connection with the transactions contemplated in this Agreement. BUYER is not a party to any legal, administrative, arbitral, investigative or other proceeding or controversy pending, or to the best of BUYER's knowledge, threatened, that would adversely affect BUYER's ability to perform its obligations under this Agreement;
- (h) BUYER shall at all times fully comply with Philippine Law;
- (i) neither it nor any of its assets or revenues, has any immunity from jurisdiction or execution;
- (j) no bankruptcy, suspension of payments arising from or in connection with bankruptcy, winding-up, liquidation, receivership, corporate rehabilitation, re-organization due to financial difficulty, re-adjustment of debt, dissolution or similar proceedings of or relating to BUYER has been commenced or is contemplated;
- (k) none of its incorporators, nor past or present shareholders, directors, officers, employees, Representatives, consultants or agents have given, authorized or offered any commission, bribe, pay-off, kickback, or has in any other manner given or offered any money or anything of value directly or indirectly to any past or present director, officer, employee or agent of any Governmental Body that violates any Philippine Law;
- (l) it, including anyone acting on its behalf or under its direction or influence, waives its right and unconditionally undertakes that it will not apply for, seek and/or obtain a writ of injunction, prohibition or restraining order from any court or Governmental Body, that will enjoin, prevent or restrain (i) SELLER from calling, making a draw-on and/or forfeiting the Performance Bond or any portion thereof, (ii) the issuing bank or confirming bank as well as any Person from complying with its obligations and/or making payment to SELLER in accordance with the terms of the Performance Bond and their respective confirmation, when applicable; (iii) any Person that will affect the performance and/or compliance by BUYER with its obligations under this Agreement; and (iv) SELLER from enforcing any of its rights under this Agreement, including Subsequent Privatization Proceedings, if applicable;
- (m) there is no pending Proceeding by or against BUYER that challenges or may have the effect of preventing, delaying, making illegal or otherwise interfering with the execution and performance of its obligations under each of the Final Transaction Documents and other agreements giving effect to any of the contemplated transactions under each of the Final Transaction Documents and to BUYER's knowledge, no such proceeding has been threatened;
- (n) BUYER shall possess the technical experience and has the financial capability that it represented to have as contained in the Documentary Deliverables;
- (o) On Seller's Compliance Date, BUYER has immediately available funds to pay the Purchase Price amount, which shall be paid to SELLER and credited by Closing Date

or the period specified in the 2nd paragraph of Section 4.01, as the case may be, to the account specified by SELLER to receive the payment of the Purchase Price;

- (p) it and its Representatives have conducted an independent investigation, analysis, and verification of the quality, quantity and condition of the Purchased Assets, the Adjoining Property and the business, operations, and prospects of the Purchased Assets. BUYER and its Representatives have been provided adequate access to the Purchased Assets, the Adjoining Property, Data Room, personnel, premises and records of SELLER, including loans and/or credit transactions pertaining to the Purchased Assets. Except for the representation and warranties made by SELLER in Article 6, BUYER has not relied upon any representation or warranty, expressed or implied, oral or written, as to the Purchased Assets, Adjoining Property, their operations, condition, fitness for any particular purpose, merchantability, liabilities, prospects, or the completeness of any information provided by SELLER. BUYER voluntarily entered into this Agreement and the transactions contemplated herein;
- (q) it has purchased the Purchased Assets on an “AS-IS, WHERE-IS” basis;
- (r) it has entered into this Agreement fully aware that the Purchased Assets has no market supply contract, power supply contract, transmission service agreement and other contracts for the generation, sale, transmission, or distribution of energy and/or electricity;
- (s) in the event that BUYER is a foreign investor, it shall comply with Section 47(b) of the EPIRA;
- (t) BUYER shall, at its own cost and expense, secure whatever licenses, permits, or rights over the Adjoining Property, including those for the enjoyment, use, peaceful possession, right of way, and/or occupancy over such property necessary for the operation of the Purchased Assets from the proper Person or Governmental Body;
- (u) other than Tax liabilities that are being contested in good faith in accordance with Philippine Law, BUYER is free and clear of any material Tax liability as of the Negotiated Sale Date and undertakes to make timely payments of all Tax assessments, including income and business taxes. It shall at all times comply with Executive Order No. 398 dated January 12, 2005 (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). BUYER shall submit to SELLER certified copies of tax clearances issued by the proper Governmental Body or other proofs of payment of the Taxes due acceptable to SELLER within ten (10) days from the earlier of the (i) actual payment thereof or (ii) due date indicated in the assessment;
- (v) it is not prohibited by Philippine Law from entering into a contract with any Governmental Body;
- (w) on and after the Closing Date, BUYER shall not breach the installed generating capacity restrictions prescribed by Section 45(a) of the EPIRA; and
- (x) neither it nor 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, has any conflict, dispute or unsettled issue,

arising out of, or in connection with the DOE, PSALM, NPC or TRANSCO, that affects the privatization of NPC assets or TRANSCO, namely (i) unresolved issues, as determined by the inter-agency committee, from the renegotiation of contracts with independent power producers as mandated by Section 68 of the EPIRA; and (ii) unpaid accounts arising from contractual obligations with the DOE, PSALM, NPC or TRANSCO.

The breach by BUYER of any of the above paragraphs of this Article 7 shall be considered a material breach which entitles SELLER to draw-on the Performance Bond and/or terminate this Agreement under Section 12.01(a).

Unless prohibited by Philippine Law, SELLER shall have the option to waive in writing any of the representations and warranties contained in this Article 7.

ARTICLE 8

INDEMNIFICATION

8.01 Survival

Except as provided elsewhere in this Agreement, all representations, warranties, covenants and obligations in this Agreement by each of the Parties will survive the period(s) set forth in Section 8.04.

8.02 Indemnification By SELLER

SELLER shall indemnify and hold BUYER free and harmless against any loss or damage arising from or due to the SELLER's material breach of its obligations under this Agreement subject to Section 8.04 (a).

8.03 Indemnification By BUYER

BUYER shall indemnify and hold SELLER free and harmless against any loss or damage arising from or due to BUYER's material breach of its obligations under this Agreement subject to Section 8.04 (b).

Notwithstanding any other provisions under this Agreement, BUYER shall indemnify and hold SELLER free and harmless against any liability, claim, loss or damage arising from or due to any pre-existing conditions of the Purchased Assets, including but not limited to pollution or toxic substances and hazardous wastes and materials as defined in Section 2.01, regardless whether known or unknown to the Parties prior to the Closing Date of the Agreement.

8.04 Time Limitations

- (a) If the Closing Date occurs, SELLER will not have any liability (for indemnification or otherwise) for breach, unless all the following conditions are complied with: (1) the said breach is material and solely attributable to SELLER, (2) the said material breach arises from any covenant or obligation to be performed or complied with by SELLER up to Closing Date, (3) BUYER notifies SELLER in writing of such material breach before the first year anniversary of Closing Date and (4) the said material

breach was not previously disclosed by SELLER. The notice must specify the factual basis of the said claim in reasonable detail to the extent known by BUYER. If the liability is related to (i) Tax pertaining to the Purchased Assets or imposed by a Governmental Body arising before the Closing Date or (ii) SELLER's obligations under the last paragraph of Section 2.03(a) and Section 4.03(c), the time limitation stated in this Section 8.04 shall not apply.

For the avoidance of doubt, once Closing Date occurs, SELLER shall not have any liability for any breach of a representation or warranty of SELLER specified in this Agreement, except for those in Paragraphs (f) and (g) of Article 6.

- (b) Upon the occurrence of Closing Date, BUYER shall have no liability (for indemnification or otherwise) for breach of (i) a covenant or obligation to be performed or complied with before the Closing Date or (ii) a representation or warranty, unless on or before the first anniversary of Closing Date, SELLER notifies BUYER in writing of a claim accruing on or before the Closing Date, specifying the factual basis of that claim in reasonable detail to the extent then known by SELLER.

8.05 Limitation for Knowledge

Neither Party may claim from the other Party for any cause of action that it had no knowledge of but should have known in the exercise of ordinary diligence with respect to any matter pertaining to this Agreement, including the Purchased Assets, the Adjoining Property and any ancillary matter necessary to accomplish the objectives of the Final Transaction Documents, unless the other Party concealed any matter pertaining to the aforementioned.

8.06 Indemnification for Third-Party Claims

- (a) Promptly after receipt by a Party entitled to indemnity (the "*Indemnified Party*") of a notice of the assertion of a third-party claim against it for causes attributable to the other Party (the "*Indemnifying Party*"), the Indemnified Party will, if a claim is to be made against the Indemnifying Party, give written notice to the Indemnifying Party of the assertion of such claim. Without prejudice to the period set by Section 8.04, if notice is not given within ninety (90) days from the date of receipt of a third-party claim, the Indemnifying Party will not be liable to the Indemnified Party. The Indemnified Party must not enter into any compromise or settlement of the claim without the prior written consent of the Indemnifying Party, which consent must not be unreasonably withheld.
- (b) If any claim referred to in Section 8.06(a) is brought against an Indemnified Party by means of a Proceeding and the Indemnified Party gives notice to the Indemnifying Party of the commencement of such Proceeding, the Indemnifying Party will be entitled to participate in such Proceeding and to the extent that it wishes (unless (i) the Indemnifying Party is also a party to such Proceeding and the Indemnified Party determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Party fails to provide reasonable assurance to the Indemnified Party of its financial capacity to defend such Proceeding and provide indemnification with respect to such Proceeding) to assume the defense of such Proceeding with counsel satisfactory to the Indemnified Party. After notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such Proceeding, the Indemnifying Party will not, as long as it diligently conducts such defense, be liable

to the Indemnified Party under this Article for any fees of counsel or any other expenses with respect to the defense of such Proceeding, in each case subsequently incurred by the Indemnified Party in connection with the defense of such Proceeding other than reasonable costs of investigation.

8.07 General Provisions on Indemnification

- (a) A Party will take all reasonable steps to mitigate loss or damage upon becoming aware of any event that could reasonably be expected to give rise to a loss or damage.
- (b) In the determination of any loss or damage, the following shall be taken into account: (i) the amount of any Tax benefit or Tax detriment inuring to a Party arising from the facts and circumstances giving rise to the loss or damage and (ii) any insurance proceeds received by a Party on account of the loss or damage. The Parties shall act in good faith in the determination of such loss or damage and to amicably settle the matter.

ARTICLE 9

REMEDIES

9.01 SELLER's Remedies

Upon the occurrence of any breach by BUYER that entitles SELLER to enforce its rights, including the (i) draw-on and/or forfeiture of the Performance Bond and/or (ii) termination of this Agreement, SELLER may exercise remedies granted both under this Agreement and Philippine Law. SELLER shall have the option to extend any periods imposed under this Agreement for BUYER to comply with its obligations. Notwithstanding anything contained in this Agreement, BUYER shall be liable to SELLER for legal interest accruing until actual payment of SELLER's claims, damages and costs of suit.

Except as provided in this Agreement, BUYER shall not be liable for incidental, consequential or punitive damages, including loss of profits sustained or claimed by SELLER.

9.02 BUYER's Remedies

Upon the occurrence of any material breach by SELLER during the Transition Period, BUYER may (i) terminate this Agreement under Section 12.01(a) or (ii) claim for damages. In the event of a material breach by SELLER of this Agreement, and BUYER (1) terminates the Agreement under Section 12.01(a), SELLER shall not be liable for anything, or (2) does not terminate the Agreement, the maximum aggregate liability of SELLER under (ii) above shall not exceed One Hundred Fifty Thousand Philippine Pesos (PHP150,000.00).

The exercise of any remedy by BUYER under this Agreement and under Philippine Law shall be mutually exclusive and shall be deemed a waiver of other remedies. Upon the occurrence of Closing Date, SELLER shall not be made liable for any matter under this Agreement.

SELLER shall not be liable for incidental, consequential, or punitive damages, including loss of profits sustained or claimed by BUYER.

ARTICLE 10

PERFORMANCE BOND

BUYER shall deliver the Performance Bond to SELLER within ten (10) days from Effective Date. The Performance Bond must have the following features:

- (a) is in an amount denominated in Philippine Peso and must be equivalent to five percent (5%) of the Purchase Price;
- (b) shall guarantee that BUYER completely, faithfully, fully and promptly complies with each of its obligations under this Agreement until the Performance Bond Expiration Date;
- (c) must initially be effective for a period of one (1) year from date of issue and shall remain valid in full force and effect in the required amount until the Performance Bond Expiration Date; and
- (d) must be in the form of cash, manager's check or SBLC issued by a Qualified Bank licensed to do business and is operating in the Philippines in favor of SELLER. If it is issued by a foreign bank that is not licensed to do business in the Philippines, it must be confirmed by a Qualified Bank licensed to do business and is operating in the Philippines. In the event that demand is made on the confirming bank, the confirming bank undertakes to pay the amount demanded by SELLER at sight.

The Performance Bond, in case of SBLC, must be in the form attached as Schedule E (Form of Performance Bond) which includes the form of the Demand Certificate (Annex A of Schedule E). The confirmation of the Performance Bond issued by a confirming bank must be in the form attached as Schedule F (Form of Confirmation of Performance Bond) which includes the form of the Demand Certificate (Annex A of Schedule F).

SELLER shall immediately draw-on and/or forfeit the Performance Bond, without need of notice to BUYER, upon the occurrence of a Performance Bond Drawing Event.

BUYER may not use or apply the Performance Bond to pay any amount due from BUYER under this Agreement.

SELLER shall return the Negotiation Security (as set forth in IB-14, Negotiation Security of the Negotiation Procedures dated 05 February 2021 as amended) within two (2) Business Days from its receipt of the Performance Bond; *provided*, SELLER finds the said Performance Bond to fully comply with this Article 10.

ARTICLE 11

INSURANCE

SELLER, at its own expense, shall ensure that any and all insurance affecting the Purchased Assets which existed on Effective Date shall remain enforceable and effective during the Transition Period; *provided however*, that all proceeds of such insurance policies for claims arising and accruing until Closing Date shall inure to the benefit of SELLER and no portion of the same shall be released to BUYER. BUYER's obligation to procure its insurance shall commence on Closing Date.

On Closing Date, the BUYER shall reimburse the SELLER for the proportionate portion of any insurance premium already paid by the SELLER pertaining to the Purchased Assets from Closing Date until the expiration of such insurance policy. The BUYER's obligation to procure insurance on Closing Date under this section shall commence only upon the expiration of the insurance policy for which reimbursements were made by the BUYER under this paragraph.

ARTICLE 12

TERMINATION

12.01 Termination Events

This Agreement may, by written notice and subject to Section 12.02, be terminated by the indicated Party below only upon the occurrence of any of the following events:

- (a) by the SELLER, upon the BUYER'S failure to cure a material breach of its obligations under this Agreement within forty-five (45) days from receipt of written notice of such breach from the SELLER. For the avoidance of doubt, the breach of Sections 2.03, 4.01, 4.02(b), 4.05, 8.03, 13.01, 13.02 and 13.09 and Articles 3, 7 and 10 or any portion of the said Sections and Articles, shall be considered a material breach of this Agreement;
- (b) by mutual written agreement of the Parties; provided, neither Party is in breach of the Agreement;
- (c) by the BUYER should the Closing Date not occur by the Sunset Date due to sole fault of the SELLER;
- (d) by the SELLER should the Closing Date not occur by the Sunset Date due to sole fault of the BUYER;
- (e) notwithstanding anything contained in this Agreement, by SELLER, should Seller's Compliance Date be achieved and BUYER fails, is not willing, is not able to or is not ready to either (i) pay the Purchase Price amount to SELLER, (ii) comply with the second paragraph of Section 4.01, (iii) deliver BUYER's Closing Deliveries, (iv) comply with the requirements of Section 4.05(b) or (v) comply with the conditions precedent under Section 4.07; and
- (f) by the BUYER in accordance with Section 4.08.

Except as provided under Section 4.08, BUYER shall have no right to terminate the Agreement upon the occurrence of Closing Date.

BUYER may not terminate this Agreement prior to Closing Date except for the grounds stated in paragraphs (b) and (c).

12.02 Effect of Termination

Anything in this Agreement notwithstanding, in the event of termination of this Agreement for any of the grounds enumerated in Section 12.01, the SELLER shall not be liable for any claim, cost, damage, expense, fee, sum, and/or tax incurred by the BUYER from the commencement of the Negotiated Sale Process up to and including the date of termination of this Agreement.

12.03 Procedure for Termination

Except when the cause of termination is under **Section 12.01(b)**, the Party terminating this Agreement shall notify the other Party in writing specifying the reason for termination at least thirty (30) days prior to the effective date of termination. The right to terminate this Agreement shall be without prejudice to the right of the Party terminating the Agreement to exercise remedies granted in favor of or otherwise available to it under Philippine Law, subject to the limitations contained in this Agreement.

After the service of the notice of termination but prior to the effective date of termination under this **Section 12.03**, should termination be by reason of paragraphs (a) or (d) of **Section 12.01**, SELLER may, but is not obligated to, accept BUYER's payment, compliance, and/or delivery of its obligations under this Agreement. Despite SELLER's said acceptance, BUYER shall still be deemed to have breached this Agreement and SELLER may exercise the remedies under Philippine Law and this Agreement, including draw-on and forfeiture of the Performance Bond.

Upon the occurrence of any breach by BUYER that entitles SELLER to enforce its rights, including the (i) draw-upon and forfeiture of the Performance Bond and/or (ii) termination of this Agreement, SELLER may exercise remedies granted both under this Agreement and Philippine Law. SELLER shall have the option to extend any periods imposed under this Agreement for BUYER to comply with its obligations. Notwithstanding anything contained in this Agreement, BUYER shall be liable to SELLER for legal interest accruing until actual payment of SELLER's claims, damages and costs of suit.

Upon the effective date of termination in accordance with this **Section 12.03**, all proceeds and revenues derived from the operation of the Purchased Assets shall inure to and be for the benefit of SELLER.

ARTICLE 13

GENERAL PROVISIONS

13.01 Taxes

BUYER shall not be liable for the payment of taxes and costs, if any, relating to the transfer of the Purchased Assets from Republic of the Philippines/NPC to SELLER. BUYER shall pay

any and all costs, expenses, fees and Taxes (including all documentary stamp taxes and Taxes applicable to any draws made upon the Performance Bond) payable, arising out of, related to or in connection with (i) each of the Final Transaction Documents, including the execution, amendment or other modification of any of the Final Transaction Documents and (ii) BUYER's exercise or performance of its obligations under each of the Final Transaction Documents.

13.02 Expenses

BUYER shall pay for the reasonable out-of-pocket costs, fees and expenses of SELLER (including the fees and disbursements of its attorneys, agents and independent experts) incurred in connection with (i) any amendment or modification to the Final Transaction Documents, except when such amendment or modification was at the instance of SELLER, (ii) the registration and/or recordation of the Final Transaction Documents with the proper Governmental Body and (iii) the enforcement or exercise by SELLER of any right or remedy under this Agreement from Award Date until Closing Date.

Except as otherwise expressly provided in this Agreement, each Party will bear its respective cost and expenses incurred in connection with the preparation, execution and performance of this Agreement, including all fees and expenses of its Representatives. If this Agreement is terminated, the obligation of each Party to pay its own cost and expenses will be subject to any rights of such Party arising from a breach of this Agreement by the other Party as provided in this Agreement.

13.03 No Relationship

Nothing contained in this Agreement shall be deemed to create an association, joint venture, partnership or principal-agent relationship between SELLER and BUYER and vice-versa or to impose any partnership obligation or liability on either Party. Except as otherwise expressly provided in this Agreement, neither Party shall have the right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

13.04 Notices

Each notice, demand or any other communication to be given or made or other documents to be delivered under this Agreement shall be in writing and in the English language and delivered or sent to the relevant Party at its address or fax number set out in Schedule P (*Notice*), with a copy to all parties indicated in Schedule P (*Notice*) at the address or fax number indicated in Schedule P (*Notice*). Any notice, demand or other communication shall be deemed to have been received when (a) delivered to the appropriate address personally, by registered mail or by any recognized courier service (costs prepaid, with written confirmation of receipt); (b) sent by facsimile with written confirmation of transmission by the transmitting equipment, provided that a copy is subsequently sent by registered mail return receipt requested or (c) received or rejected by the addressee, if sent by any of the modes in (a); in each case to the address or fax number indicated in Schedule P (*Notice*). Any Party may change the address and fax number to which notices are to be sent by giving the other Parties notice in the manner set forth herein.

13.05 Further Assurances

The Parties shall perform their obligations and exercise all their rights in the Final Transaction Documents in good faith. The Parties agree to (a) furnish upon request to each other such further information, (b) execute and deliver to each other such other documents and deeds, and (c) do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement. Any and all costs, charges, Taxes, expenses and interest due as a result of or arising from the execution of the foregoing documents, deeds and acts shall be borne by the Party requesting for such execution and/or performance.

13.06 Incorporation of Schedules

The Schedules identified in this Agreement as enumerated below are incorporated herein by reference and made integral parts of this Agreement.

Schedule	Caption
A	Purchased Assets
B	Excluded Assets
C	Purchase Price
D	Form of Deed of Absolute Sale
E	Form of Performance Bond
F	Form of Confirmation of Performance Bond
G	Form of Certificate of Closing for SELLER
H	Certification on Accuracy of Representations and Warranties of SELLER and Compliance with Conditions Precedent by SELLER
I	Form of Bank Certification of Availability of Purchase Price
J	Form of Certificate of Closing for BUYER
K	Certification on Accuracy of Representations and Warranties of BUYER, Compliance with the Conditions Precedent by BUYER, Compliance with Section 4.05(b) and undertaking to comply with Article 7(s)
L	Form of Legal Opinion of BUYER's Counsel
M	Joint Certificate of Turn-Over
N	Permits and Licenses
O	Details of BUYER
P	Notice
Q	Form of Deed of Accession for the Operation and Maintenance Service Contract
R	Form of Notification of Exercise of Right Under Section 13.09

13.07 Entire Agreement, Modification and Conflict

This Agreement (along with the documents delivered pursuant to this Agreement) (i) supersedes all prior agreements among the Parties with respect to its subject matter and (ii) constitutes a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be amended, supplemented or otherwise modified except by a written agreement of the Parties. In resolving any conflict between the provisions of this Agreement and the other Final Transaction Documents, the provisions of this Agreement shall prevail.

13.08 Waiver of Immunity

To the extent permitted by Philippine Law, each of the Parties irrevocably waives any immunity to which it or its property may at any time be or become entitled from any legal action in any jurisdiction, including immunity from service of process, immunity from jurisdiction of any court or tribunal and any immunity of any of its property from attachment prior to judgment or from execution of a judgment.

13.09 Assignment, Successors, and No Third-Party Rights

The Winning Negotiating Party may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of SELLER. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of each of the Party's respective successors and permitted assigns. Nothing in this Agreement will be construed to give any person, other than the Parties, any legal or equitable right, remedy or claim with respect to this Agreement or any provision of this Agreement except such rights as shall inure to a successor or permitted assignee pursuant to this Section.

In the event that the Winning Negotiating Party wishes to assign its rights, liabilities and obligations to Winning Negotiating Party's Assignee, the Winning Negotiating Party must submit to PSALM within five (5) Business Days from receipt of the Notice of Award the following documents before PSALM can approve such assignment:

- a) Accomplished Schedule R - Notification of Exercise of Right Under Section 13.09, signifying that the Winning Negotiating Party intends to assign its rights, liabilities and obligations under this Agreement to the Winning Negotiating Party's Assignee;
- b) Guarantee issued by the Winning Negotiating Party in favor of the Winning Negotiating Party's Assignee;
- c) Board Resolution issued by the Winning Negotiating Party approving the assignment to the Winning Negotiating Party's Assignee; and
- d) Board Resolution issued by the Winning Negotiating Party's Assignee accepting the assignment and approving the assumption of all rights, liabilities and obligations of the Winning Negotiating Party as BUYER under this Agreement.

In the event that PSALM approves the assignment, PSALM as the SELLER and the Winning Negotiating Party's Assignee as the BUYER shall execute a new set of this Agreement.

13.10 Non-Waiver

Except as expressly provided in this Agreement the remedies of the Parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by a Party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege except to the extent this Agreement specifies a time period for such exercise. No single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by Philippine Law (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by a Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing and signed by the other Party and (b) no notice to or demand on one Party

will be deemed to be a waiver of any obligation of that Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

13.11 Dispute, Venue, Service of Process and Waiver of Objection

The Parties shall first endeavor to resolve any dispute or controversy arising from or relating to the interpretation, execution, or implementation of this Agreement, including its termination or invalidity, or a breach of its terms, through negotiations in good faith between their Representatives. If the Parties fail to resolve the matter through negotiations within thirty (30) days from the receipt of the written request to negotiate, they may refer the matter to a mutually acceptable mediator.

In the event that an amicable settlement is not reached, a Party may bring a legal action or proceeding to resolve any dispute arising out of this Agreement against the other Party in the courts of proper jurisdiction of the Republic of the Philippines. Exclusive venue of the legal proceeding or action shall be in Quezon City, Metro Manila. Each Party irrevocably accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Each Party agrees that a final and executory judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon it and may be enforced in any other jurisdiction, including by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment. Each Party irrevocably waives any objection that it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement. Each Party further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

Each Party further irrevocably consents to the service of process by any of the aforementioned courts in any such action or proceeding in accordance with the provisions of Rule 14 of the 1997 Rules of Civil Procedure, to such Party at the address set out in Schedule P (*Notice*). Nothing herein shall affect a Party's right to serve process in any other manner permitted by Philippine Law or to commence legal proceedings or otherwise proceed against any of the Parties or in any other court or tribunal.

13.12 Judgment Currency

Unless otherwise expressly provided, all payments under this Agreement, including contingent payments, shall be denominated in Philippine Pesos. Each Party's obligations hereunder to make payments in Philippine Pesos shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than Philippine Pesos, except to the extent that such tender or recovery results in the effective receipt by a Party of the full amount of Philippine Pesos expressed to be payable to such Party under this Agreement. If for the purpose of obtaining or enforcing judgment against a Party (the "*Paying Party*") in any court or jurisdiction, it becomes necessary to convert into or from any currency other than Philippine Pesos (such other currency being hereinafter referred to as the "*Judgment Currency*") an amount due in Philippine Pesos, the conversion shall be made at the rate of exchange determined as of the day on which the judgment is given (such day being hereinafter referred to as the "*Judgment Currency Conversion Date*"). If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, the Paying Party shall pay, or cause to be paid, such additional amounts,

if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Philippine Pesos that could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Judgment Currency Conversion Date. For purposes of determining the rate of exchange under this Section 13.12, such amounts shall include all premium and costs payable in connection with the purchase of Philippine Pesos.

13.13 Counterparts

This Agreement may not be executed in counterparts.

13.14 Effectivity

- (a) This Agreement shall take effect on the Effective Date.
- (b) The Certificate of Effectivity shall be issued by the SELLER only after obtaining approval of the Award from the Board of Directors of the SELLER, and compliance with the following, if applicable: (i) Executive Order No. 423, Series of 2005 as amended; (ii) Republic Act No. 10667 otherwise known as the Philippine Competition Act; and (iii) other relevant issuances of pertinent offices.

13.15 Survival

The provisions of the last paragraph of Article 6, Articles 10 and 12, and Sections 8.04, 8.05, 8.06, 8.07, 9.01, 9.02, 13.01, 13.02, 13.03, 13.04, 13.08, 13.10, 13.11, 13.12, and 13.16 shall survive the termination of this Agreement.

13.16 Governing Law

This Agreement shall be construed and governed in accordance with Philippine Law.

13.17 Severability

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will be in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part will remain in full force and effect to the extent not held invalid or unenforceable.

[Nothing Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed at Quezon City on the date written below their names.

**POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION
SELLER**

Represented by:

IRENE JOY BESIDO-GARCIA
President and CEO

Date: _____, 2021

BUYER

Represented by:

Date: _____, 2021

Signed in the Presence of:

ACKNOWLEDGMENT

Republic of the Philippines)
_____) S.S.

Before me, this ____ day of _____, 20____, at _____,
personally appeared the following:

Name	Identification Document Presented	Date and Place of Issue
Power Sector Assets and Liabilities Management Corporation Represented by:		

known to me to be the same person who executed the Asset Purchase Agreement, and he acknowledged to me that the same is his free and voluntary act and deed, and that of the corporation he represents.

The Asset Purchase Agreement consists of ____ pages including this page on which this Acknowledgment is written, exclusive of schedules and annexes, signed by the parties and their instrumental witnesses on the signature page, and sealed with my notarial seal.

IN WITNESS WHEREOF, I have hereunto set my hand, the day, year and place above written.

Doc. No. ;
Page No. ;
Book No. ;
Series of 20____.

NOTARY PUBLIC
Until _____
PTR No. _____

ACKNOWLEDGMENT

Republic of the Philippines)
_____) S.S.

Before me, this ____ day of _____, 20____, at _____,
personally appeared the following:

Name	Identification Document Presented	Date and Place of Issue
BUYER Represented by:		

known to me to be the same person who executed the Asset Purchase Agreement, and he acknowledged to me that the same is his free and voluntary act and deed, and that of the corporations he represents.

The Asset Purchase Agreement consists of ____ pages including this page on which this Acknowledgment is written, signed by the parties and their instrumental witnesses on the signature page and on the left-hand margin of each and every page thereof, and sealed with my notarial seal.

IN WITNESS WHEREOF, I have hereunto set my hand, the day, year and place above written.

Doc. No. ;
Page No. ;
Book No. ;
Series of 20____.

NOTARY PUBLIC
Until _____
PTR No. _____

SCHEDULE A - PURCHASED ASSETS
(See attached List)

Part I-A - THE PLANT OF THE PURCHASED ASSETS

I-A.1 - Plant Fixed Assets

I-A.2 - Materials, Supplies, Equipment (MSE)

I-A.3 - General Plant Equipment (GPE)

Part I-B - THE LAND OF THE PURCHASED ASSETS

SCHEDULE B - EXCLUDED ASSETS
(See attached Schedule B)

SCHEDULE C - FINANCIAL OFFER/PURCHASE PRICE

PARTICULARS	AMOUNT IN PHILIPPINE PESOS
A. Purchase Price A1. Plant Price A2. Land Price A3. Purchase Price [A1 + A2] equivalent to the Financial Offer	A1. PhP _____ A2. PhP _____ A3. PhP _____ In words: _____ _____ _____ _____ _____ Philippine Pesos.

BUYER

Represented by:

Date: _____, 20__

Signed in the presence of:

*The Financial Offer (B) is equal to the Total Purchase Price (A3)

SCHEDULE D - FORM OF DEED OF ABSOLUTE SALE

DEED OF ABSOLUTE SALE

KNOW ALL MEN BY THESE PRESENTS:

This Deed of Absolute Sale (the “Contract”), made and executed this ____ at the City of _____, by and between:

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (“PSALM”), a government owned and controlled corporation created by virtue of Section 49 of Republic Act No. 9136, otherwise known as the “*Electric Power Industry Reform Act of 2001*” (“EPIRA”), with principal office at the 24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, North Avenue, 1105 Quezon City, represented by its President and CEO, IRENE JOY BESIDO-GARCIA, hereinafter referred to as the “**SELLER**”,

-and-

_____, a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at _____, represented by its _____, hereinafter referred to as the “**BUYER.**”

WITNESSETH:

WHEREAS, SELLER is the owner of the Purchased Assets, herein described, listed and defined in Schedule A.

WHEREAS, SELLER has offered to sell the Purchased Assets to BUYER and BUYER has accepted the offer.

NOW, THEREFORE, for and in consideration of the foregoing premises, this Deed of Absolute Sale is entered into under the following terms and conditions:

1. **PURCHASED ASSETS:** In consideration of the Purchase Price and on the terms and subject to the conditions of this Contract and of the Asset Purchase Agreement dated _____ between SELLER and BUYER, SELLER hereby sells, transfers and conveys to BUYER and BUYER hereby purchases and accepts from SELLER, all of SELLER’s right, title, interest in and to the Purchased Assets, free and clear of any and all encumbrances. BUYER purchases the Purchased Assets on an “As Is, Where Is” Basis and shall be limited to those that are described, listed and defined in Schedule A. Any asset not included in Schedule A shall be deemed to be an Excluded Asset even though the same is not listed or enumerated in Schedule B.

2. **TOTAL PURCHASE PRICE:** The total consideration for the sale of the Purchased Assets is _____.

3. **PAYMENT:** Full payment of the Total Purchase Price is acknowledged to be received by SELLER upon the signing of this Contract.

4. **EXPENSES:** BUYER shall be liable for all expenses for documentation, taxes (except for taxes on the income of SELLER), transfer fees and other expenses for the transfer of the title to its name.

5. TAXES and ASSESSMENTS: Upon the execution of this Contract, all taxes related to this Agreement, including the payment of all transfer and documentary stamp taxes, except for taxes on the income of SELLER, shall be for the account of BUYER.

6. VENUE: Should any dispute arise out of this Contract, the Parties agree to file any action exclusively in the Court of proper jurisdiction of Quezon City.

7. CONSENT: The Parties hereby acknowledge that the contents of this Contract have been explained to them in a language know to them and that they fully understood the same.

8. INCORPORATION: The terms of the Asset Purchase Agreement executed between SELLER and BUYER on _____ are incorporated herein by reference. Unless otherwise defined in this Contract, capitalized terms used herein shall have the meanings ascribed to those terms in the Asset Purchase Agreement.

9. SEPARABILITY: Should any portion of this Contract be declared unconstitutional, illegal and void or contrary to public policy, the remainder of the Contract shall remain in full force and effect.

10. REGISTRATION: This Contract shall be registered with the appropriate Register of Deeds and all cost and expenses necessary to cause the registration of this Contract shall be for the sole account of BUYER.

11. EFFECTIVITY: This Contract shall be effective and bind SELLER only after the necessary governmental approvals have been obtained.

IN WITNESS WHEREOF, the Parties and their witnesses have hereunto set their hands on the date and place first above-written.

**POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION
SELLER**

Represented by:

IRENE JOY BESIDO-GARCIA

President and CEO

Date: _____, 2021

BUYER

Represented by:

Date: _____, 2021

Signed in the Presence of:

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
) S.S.

Before me, this ____ day of _____, 20__, at _____,
personally appeared the following:

Name	Identification Document Presented	Date and Place of Issue
BUYER		
Represented by:		

known to me to be the same persons who executed the foregoing Agreement, and he/she acknowledged to me that the same is his/her free and voluntary act and deed, and that of the corporation he/she represents.

This instrument consists of four (4) pages including this page where the acknowledgment appears.

WITNESS my hand and seal at the date and place above-written.

Notary Public

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of 20__.

SCHEDULE E - FORM OF PERFORMANCE BOND

[Issue Date]

IRREVOCABLE STANDBY LETTER OF CREDIT

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

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

Subject: Letter of Credit No. [●]

We refer to the Asset Purchase Agreement (the "APA") executed by and between _____ ("Buyer" or "Account Party") and the Power Sector Assets and Liabilities Management Corporation ("PSALM", "You" or the "Beneficiary") for the sale of the Malaya Thermal Power Plant and the Land underlying the plant located in Pililla, Rizal. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the APA.

We hereby establish this Irrevocable Standby Letter of Credit No. [●] (this "SBLC") for the benefit of the Beneficiary in an amount not exceeding a total of _____ Philippine Pesos (Php _____) (the "Drawing Amount"). Funds under this SBLC are available to You at sight upon our receipt of a certificate (a "Demand Certificate") in the form attached hereto as Annex A notifying us that the Buyer failed, was not willing, was not able to, or was not ready to comply with any of its obligations under the APA (the "Performance Bond Drawing Event"), appropriately completed and signed by Your duly authorized officer, employee or signatory, if such Demand Certificate is presented as hereinafter specified on or before the Expiration Date (as hereinafter defined). This SBLC does not contain any condition to drawing other than the confirmation by us that the Demand Certificate appears to comply on its face with the requirements of the immediately preceding sentence.

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

You shall present one Demand Certificate dated the date of presentation for each drawing hereunder to [name and address of issuing bank]. If You present the Demand Certificate by 10:00 a.m. local time on any day on which we are open for business (each such day, a "Business Day"), in conformance with the terms and conditions of this SBLC, we will honor the same by making payment in immediately available funds, in accordance with Your payment instructions and without any restrictions, conditions, inquiry or right of objection whatsoever on our part, without notice to the Account Party prior to such payment and notwithstanding any conditions, demands, or objections by the Account Party or any other party, without You having to further substantiate such demand, by 3:00 p.m. local time on such Business Day, otherwise we will honor Your Demand Certificate by 10:00 a.m. local time the following Business Day. Upon payment to You, we will immediately notify the Account Party.

If any demand for payment does not conform to the terms and conditions of this SBLC, we shall give You prompt notice of the same stating the reasons therefor and that we

will, upon Your request, hold any documents presented to us for five (5) Business Days or return the same to You. Upon being notified that any demand for payment did not conform to this SBLC, You 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 (as defined below).

This SBLC shall expire at 3:00 p.m. at our office on the earliest of the following: (i) the Stated Expiration Date; (ii) our honoring of the Demand Certificate presented hereunder equals the Drawing Amount and (iii) the surrender by You of the original SBLC for cancellation. The earliest of the foregoing dates is referred to herein as the “Expiration Date.” Except as otherwise expressly provided in this paragraph, this SBLC shall not terminate prior to the Stated Expiration Date for any reason whatsoever. Notwithstanding the occurrence of the Expiration Date, We will honor and pay for the amount drawn by You as stated in the Demand Certificate; *provided*, that the Demand Certificate was presented either to Us before the Expiration Date.

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

All documents presented to us in connection with any demand for payment hereunder, as well as all notices and other communications to us in respect of this 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. You shall deliver such documents, notices and other communications to us or send them to us by facsimile to [●], or such other number as we may specify from time to time in writing to You.

This SBLC shall be subject to International Standby Practices 1998 (“ISP98”) and in case of dispute arising from, or in connection with, the interpretation or implementation thereof, shall be subject to Philippine Law.

Very truly yours,
[Issuing Bank]

THIS ANNEX 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

Ladies and Gentlemen:

We refer to your Letter of Credit with No. [●] (the "SBLC"). Any term defined in the SBLC shall have the same meaning when used herein. We are notifying you that a Performance Bond Drawing Event has occurred, and the Beneficiary hereby demands payment of [amount] under the SBLC, such payment to be made to [insert account instructions].

IN WITNESS WHEREOF, this Certificate has been executed and delivered by the Beneficiary on the [●] day of [●].

POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION

By: _____
Name:
Title:

SCHEDULE F - FORM OF CONFIRMATION OF PERFORMANCE BOND

FORM OF CONFIRMATION TO THE PERFORMANCE BOND

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

[Issue Date]

CONFIRMATION OF IRREVOCABLE STANDBY LETTER OF CREDIT

Our Confirmation Number: [●]
Amount: [●]
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, North Avenue
1105 Quezon City

Subject: Confirmation of Letter of Credit

We hereby confirm the confirmed Irrevocable Standby Letter of Credit with No. [●] (the "SBLC"), the original of which is attached hereto, issued by [name of issuing bank] (the "Issuing Bank"), for drawings in an amount not exceeding a total of _____ Philippine Pesos (PHP _____) (the "Drawing Amount") and expiring at 5:00 p.m. at our office on the Expiration Date (as hereinafter defined). Capitalized terms used herein without definition shall have the respective meanings given thereto in the SBLC.

We hereby undertake to honor Your demand hereunder at sight and under the SBLC upon our receipt of a certificate (a "Demand Certificate") in the form attached hereto as Exhibit A notifying us of the occurrence of a Performance Bond Drawing Event pursuant to the SBLC, appropriately completed and signed by Your duly authorized officer, employee or signatory, if such Demand Certificate is presented as hereinafter specified on or before the Expiration Date (as hereinafter defined). This confirmation does not contain any condition to drawing other than the confirmation by us that the Demand Certificate appears to comply on its face with the requirements of the immediately preceding sentence.

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

You shall present one Demand Certificate dated the date of presentation for each drawing hereunder to [name and address of confirming bank located in Manila]. If You present the Demand Certificate by 10:00 a.m. local time on any day on which we are open for business (each such day, a "Business Day"), in conformance with the terms and conditions of this confirmation, we will honor the same by making payment in immediately available funds, in accordance with Your payment instructions and without any restrictions, conditions, inquiry or right of objection whatsoever on our part, without notice to the Issuing Bank or its Account Party prior to such payment and notwithstanding any conditions, demands, or objections by the Issuing Bank or its Account Party or any other party, without You having to

further substantiate such demand, by 4:00 p.m. local time on such Business Day, otherwise we will honor Your Demand Certificate by 10:00 a.m. local time the following Business Day.

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

This confirmation shall expire at 5:00 p.m. at our office on the earliest of the following: (i) Stated Expiration Date; (ii) our honoring of the Demand Certificate/s presented hereunder equals the Drawing Amount and (iii) the surrender by You of the original SBLC and this confirmation for cancellation. The earliest of the foregoing dates is referred to herein as the "Expiration Date." Except as otherwise expressly provided in this paragraph, this confirmation shall not terminate prior to the Stated Expiration Date for any reason whatsoever. Notwithstanding the occurrence of the Expiration Date, We will honor and pay for the amount drawn by You as stated in the Demand Certificate; *provided*, that the Demand Certificate was presented to Us before the Expiration Date

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

All documents presented to us in connection with any demand for payment hereunder, as well as all notices and other communications to us in respect of this 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. You shall personally deliver such documents, notices and other communications to us or send them to us by facsimile to [●], or such other number as we may specify from time to time in writing to You.

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

Very truly yours,
[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 with No. [●] (the “Confirmation”), confirming the Irrevocable Standby Letter of Credit with No. [●] issued by [issuing bank] (the “SBLC”). Any term defined in the Confirmation or the SBLC shall have the same meaning when used herein. We are notifying you that a Performance Bond Drawing Event pursuant to the SBLC has occurred and the Beneficiary hereby demands payment of [amount] under the Confirmation and the SBLC, such payment to be made to [insert account instructions].

IN WITNESS WHEREOF, this Certificate has been executed and delivered by the Beneficiary on the [●] day of [●].

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

By: _____
Name:
Title:

SCHEDULE G - FORM OF CERTIFICATE OF CLOSING FOR SELLER

CERTIFICATE OF CLOSING

The Power Sector Assets and Liabilities Management Corporation (“PSALM”) issues this Certificate of Closing in accordance with Section 4.01 of the Asset Purchase Agreement (the “Agreement”) with Effective Date on _____ between PSALM and BUYER for the sale of the Malaya Thermal Power Plant and the Land underlying the plant located at Pililla, Rizal. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the Agreement. PSALM certifies that:

- A. PSALM has complied with all conditions precedent which it undertook to accomplish under Article 4 of the Agreement, particularly Section 4.06 as a pre-requisite to the occurrence of Closing Date, to wit:
- (i) Delivery by PSALM to _____ (“_____”) of an original copy of a legal opinion by PSALM’s general counsel confirming that: (1) SELLER has (i) taken all corporate action necessary to authorize the execution, delivery, and performance of this Agreement, (ii) obtained all approvals and authorizations required under Philippine Law to lawfully execute, deliver, and perform the obligations undertaken in this Agreement, and (iii) the Final Transaction Documents constitute legal and valid agreements binding and enforceable against SELLER in accordance with their terms; and (2) BUYER may enforce the obligations of SELLER under the Final Transaction Documents in accordance with the terms of such agreements.
- B. PSALM has complied with and delivered to _____ its Closing Deliveries as stated in Section 4.02(a) of the Agreement, namely:
- (i) this Certificate of Closing executed by the duly authorized Representative of PSALM; and
 - (ii) a certificate executed by the duly authorized Representative of PSALM, and acknowledged before a person authorized to administer oaths, to the effect that, except as otherwise stated in such certificate: (a) each of PSALM’s representations and warranties in this Agreement is accurate in all material respects as of the Closing Date as if then made; (b) all conditions precedent specified in Section 4.06 have been satisfied or otherwise waived by BUYER in writing. Attached hereto as Annex “A” is a copy of the certification referred to in this paragraph (ii).

Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Agreement.

The statements contained in this Certificate of Closing are true and correct as of the date of this certification.

(Date and Place of Execution)

President and CEO

SCHEDULE H - CERTIFICATION ON ACCURACY OF REPRESENTATIONS AND WARRANTIES OF SELLER AND COMPLIANCE WITH CONDITIONS PRECEDENT BY SELLER

[Letterhead of PSALM]

[date]

Attention: _____

Subject: Certification that the Representations and Warranties are Accurate in all Material Respects as of Closing, and that All the Conditions Precedent under Section 4.06 of the Asset Purchase Agreement have been satisfied

Gentlemen:

We refer to the Asset Purchase Agreement (the “*Agreement*”) between the Power Sector Assets and Liabilities Management Corporation (“*PSALM*”) as SELLER and _____ as BUYER with Effective Date on _____ for the sale of the Malaya Thermal Power Plant and the Land underlying the plant located at Pililla, Rizal, particularly Section 4.02(a)(ii).

PSALM certifies that each of its representations and warranties in Article 6 of the Agreement is accurate in all material respects as of the Closing as if then made.

PSALM certifies that each of the conditions precedent required of SELLER prior to Closing specified in Section 4.06 of the Agreement have been satisfied or otherwise waived by BUYER in writing.

Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Agreement.

Power Sector Assets and Liabilities Management Corporation

By:

SUBSCRIBED AND SWORN to before me at _____ on this ___ day of
_____ 20__ by Affiant who exhibited to me
_____ issued at _____ on _____.

Doc. No. ___;
Page No. ___;
Book No. ___;
Series of 20__.

SCHEDULE I - FORM OF BANK CERTIFICATION OF AVAILABILITY OF PURCHASE PRICE

[bank stationary]

[amount of deposit must be machine printed on the side together with bank logo/seal]

[date]

Greetings:

This is to certify that there is on deposit with this bank, the sum of _____ (PHP _____) under Savings Account No. _____ in the name of _____ for payment to the Power Sector Assets and Liabilities Management Corporation ("PSALM") and shall be immediately delivered by this bank to PSALM, in accordance with PSALM's delivery instructions, upon receipt of a written request from PSALM to cause the delivery of the amount indicated in this certification.

The said deposit is clear and free from lien, restriction, condition or holdout and shall be immediately ready to be delivered to PSALM in accordance with PSALM's instructions.

SUBSCRIBED AND SWORN to before me at _____ on this ___ day of _____ 20__ by Affiant who exhibited to me _____ issued at _____ on _____.

Doc. No. ___;
Page No. ___;
Book No. ___;
Series of 20__.

SCHEDULE J - FORM OF CERTIFICATE OF CLOSING FOR BUYER

CERTIFICATE OF CLOSING

_____ (the “BUYER”) issues this Certificate of Closing in accordance with Section 4.01 of the Asset Purchase Agreement (the “Agreement”) with Effective Date on _____ between the Power Sector Assets and Liabilities Management Corporation (“PSALM”) and BUYER for the sale of the Malaya Thermal Power Plant and the Land underlying the plant located at Pililla, Rizal. Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Agreement. BUYER certifies that:

- A. BUYER has complied with all conditions precedent which it undertook to accomplish under Article 4 of the Asset Purchase Agreement, particularly Section 4.07 (a), (b) and (c), as a pre-requisite to the occurrence of Closing Date, to wit:
- (i) BUYER has obtained a certification from a bank or financial institution acceptable to the PSALM and delivered the same to the PSALM that the funds for the payment of the Purchase Price is complete and immediately ready for delivery to the PSALM on Closing Date upon request of the PSALM from the bank or financial institution issuing such certification. Attached hereto as Annex “A” is a photocopy of the certification issued by _____ dated _____ which is referred to in this paragraph (i).
 - (ii) BUYER has delivered to PSALM an original copy of a legal opinion, addressed to PSALM by Philippine counsel reasonably acceptable to the PSALM confirming that (i) it has taken all necessary corporate action to authorize the execution, delivery and performance of the Agreement, and obtained all approvals and authorizations required under Philippine Law to lawfully perform the obligations arising under the Final Transaction Documents; (ii) PSALM may enforce the obligations of _____ under the Final Transaction Documents in accordance with the terms of such documents and (iii) it has obtained all approvals and authorizations required under Philippine Law to lawfully perform the obligations arising under the Final Transaction Documents. Attached hereto as Annex “B” is a copy of the legal opinion issued by _____ dated _____ referred to in this paragraph (iii).
- B. BUYER has complied with and delivered to PSALM its Closing Deliveries as stated in Section 4.02 (b) of the Asset Purchase Agreement, namely:
- (i) this Certificate of Closing executed by the duly authorized Representative of BUYER;
 - (ii) the certification from a bank or financial institution acceptable to PSALM that the funds for the payment of the Purchase Price is complete and immediately ready for delivery to PSALM on Closing Date upon the request of the PSALM from the bank or financial institution issuing such certification. Attached hereto as Annex “A” is a copy of the certification issued by _____ dated _____ referred to in this paragraph (i); and
 - (iii) a certificate executed by the duly authorized Representative of the BUYER, and acknowledged before a person authorized to administer oaths, to the effect that: (a) each of BUYER’s representations and warranties in this Agreement is accurate in all material respects as of the Closing as if then made; (b) all conditions

precedent specified in Section 4.07 of the Agreement has been satisfied or otherwise waived by PSALM in writing; and (c) BUYER has fully complied with the first paragraph of Section 4.05(b) of the Agreement. Attached hereto as Annex "C" is a copy of the Certification on Accuracy of Representations and Warranties of BUYER, Compliance with Conditions Precedent by BUYER and Compliance by BUYER with Section 4.05 (b), referred to in this paragraph (iii).

The statements contained in this Certificate of Closing are true and correct as of the date of this certification.

(Date and Place of Issue)

Buyer

By:

SCHEDULE K - CERTIFICATION ON ACCURACY OF REPRESENTATIONS AND WARRANTIES OF BUYER, COMPLIANCE WITH THE CONDITIONS PRECEDENT BY BUYER, COMPLIANCE WITH SECTION 4.05 (b) AND UNDERTAKING TO COMPLY WITH ARTICLE 7(s)

[Letterhead of BUYER]

[date]

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

Attention: _____
President and CEO

Subject: Certification on Accuracy of Representations and Warranties of BUYER, Compliance with the Conditions Precedent by BUYER, compliance with the Section 4.05(b) and undertaking to comply with Article 7(s)

Gentlemen:

We refer to the Asset Purchase Agreement (the “*Agreement*”) between the Power Sector Assets and Liabilities Management Corporation (“*PSALM*”) and BUYER with Effective Date on _____ for the sale of the Malaya Thermal Power Plant and the Land underlying the plant located at Pililla, Rizal, particularly Section 4.02(b)(iii). Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Agreement.

BUYER certifies that each of its representations and warranties in the Asset Purchase Agreement is accurate in all material respects as of the Closing as if then made.

BUYER likewise certifies that each of the conditions precedent required of BUYER prior to Closing specified in Section 4.07 of the Agreement have been satisfied or otherwise waived by the PSALM in writing.

Finally, BUYER also certifies that:

- (i) on _____ (“Closing Date”), neither the BUYER nor its parent company, subsidiaries, Affiliates, directors or officers or any of their relatives within the fourth civil degree of consanguinity or affinity, shall have any conflict, dispute or unsettled issue, arising out of, or in connection with the EPIRA or its Implementing Rules and Regulations with the DOE, PSALM, NPC or TRANSCO, which affect the privatization of NPC assets or TRANSCO, namely: (i) unresolved issues, as determined by the inter-agency committee, for the renegotiation of contracts with independent power producers as mandated by Section 68 of the EPIRA; and (ii) unpaid accounts arising from contractual obligations with the DOE, PSALM, NPC or TRANSCO.

- (ii) on and after the Closing Date, BUYER shall not breach the installed generating capacity restrictions prescribed by Section 45(a) of the EPIRA; and

(iii) in the event that BUYER is a foreign investor, it shall comply with Section 47(b) of the EPIRA.

BUYER

By:

SUBSCRIBED AND SWORN to before me at _____ on this ___ day of _____ 20___ by _____ Affiant who exhibited _____ to me _____ issued at _____ on _____.

Doc. No. ___;
Page No. ___;
Book No. ___;
Series of 20___.

SCHEDULE L - FORM OF LEGAL OPINION OF BUYER'S COUNSEL

[letterhead of BUYER's Counsel]

[date]

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

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

Attention: _____
President and CEO

Re: **Sale of the Malaya Thermal Power Plant located at Pililla, Rizal**

Gentlemen:

We have acted as Philippine counsel to _____ in connection with its participation in the proceedings for the privatization of the Malaya Thermal Power Plant and the Land underlying the plant located at Pililla, Rizal, undertaken by the Power Sector Assets and Liabilities Management Corporation (the "Seller") where _____ has been declared the Winning Negotiating Party. This opinion is delivered to you pursuant to Article 4.07(c) of the Asset Purchase Agreement (the "Agreement") executed between PSALM as SELLER and _____ as BUYER with Effective Date on _____. Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Agreement.

For purposes of this opinion, we have examined executed copies of the Agreement, including _____ (indicate corporate resolutions relating to the grant of authority to BUYER to participate in the privatization proceedings for the sale of the Malaya Thermal Power Plant and the Land underlying the plant located at Pililla, Rizal, the authority to submit an Offer, the authority to sign, execute and perform the obligation in the Final Transaction Documents) (collectively, the "Corporate Documents").

In rendering this opinion, we have assumed in relation to the documents referred to above, that (i) the signatures or initials on the originals of each of such Final Transaction Documents and Corporate Documents are genuine; (ii) all such Final Transaction Documents and Corporate Documents submitted to us are authentic and complete; (iii) all such Final Transaction Documents and Corporate Documents submitted to us as copies conform to the originals and (iv) except in the case of BUYER, all such documents have been executed and delivered by the parties thereto pursuant to due authorization and that the parties thereto have the capacity, power and authority to execute the documents and have duly executed the documents and that they thereby constitute its valid and legally binding and enforceable obligations. As to questions of fact material to our conclusions expressed herein, we have relied upon statements of fact contained in the documents we have examined.

The opinions hereinafter set forth are limited to matters of Philippine law in force as of the date of this opinion and as currently applied by the courts of the Republic of the Philippines and is given on the basis that this opinion will be governed and construed in accordance with the laws

of the Republic of the Philippines and no opinion is expressed as to the laws of any jurisdiction other than the Republic of the Philippines.

Based upon the foregoing, we are of the opinion that:

1. the execution, delivery and performance by BUYER of each of the Final Transaction Documents, including the authority of its representative to sign and execute the same for and in behalf of BUYER, have been duly authorized by all necessary corporate actions on the part of BUYER;
2. each of the Final Transaction Documents constitute legal and valid agreements binding and enforceable against BUYER in accordance with their terms;
3. BUYER has obtained all approvals and authorizations required under Philippine Law to lawfully perform the obligations arising under each of the Final Transaction Documents, and
4. SELLER may enforce the obligations of BUYER under each of the Final Transaction Documents in accordance with the terms thereof.

This opinion is addressed to and for the benefit of SELLER only and is not to be relied upon by any other person for any other purpose.

This opinion is limited to matters addressed herein and is not to be read as an opinion with respect to any other matter.

Very truly yours,

SCHEDULE M - JOINT CERTIFICATE OF TURN-OVER

JOINT CERTIFICATE OF TURN-OVER

Consistent with the provisions of the Asset Purchase Agreement (the “*Agreement*”) executed by and between the Power Sector Assets and Liabilities Management Corporation (“*PSALM*”) and _____ (“*BUYER*”) (collectively, the “*Parties*”) dated _____ for the privatization of the Malaya Thermal Power Plant and the Land underlying the plant located at Pililla, Rizal (the “*Purchased Assets*”). Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Agreement. The Parties affirm and confirm the following consequences of the occurrence of Closing Date on _____, to wit:

1. On Closing Date, PSALM has turned over the control and possession of the Purchased Assets by transfer of physical possession and operation of the Purchased Assets to BUYER and the latter voluntarily assumes possession, operation and control over the Purchased Assets as turned over by PSALM;
2. From Closing Date, BUYER
 - (a) shall be the recipient of all the revenues derived from the operation of the Purchased Assets; and
 - (b) assume all rights, liabilities and obligations pertaining to the Purchased Assets, particularly those referred in Section 2.03(a) of the Agreement; and
3. On Closing Date, BUYER (a) attests to the physical qualitative and quantitative condition of the Purchased Assets and (b) certifies, affirms and confirms that after a careful and thorough inventory, inspection, evaluation, assessment and appraisal of the Purchased Assets prior to and including Closing Date, the Purchased Assets have not suffered any material change.

Issued this ___ day of _____ 20___ at _____, Philippines.

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION

Represented by:

Represented by:

Signed in the presence of:

SCHEDULE N - PERMITS AND LICENSES

Issuing Authority	License/ Permit	Legal Basis	No./Date Issued	Expiration Date	Remarks
Environmental Management Bureau	Certificate of Non-Coverage	DAO 30, Series of 2003	08 November 2012	N/A	One Time Issuance
Laguna Lake Development Authority	Discharge Permit (DP)	R.A. 4850, as amended by PD 813 and further clarified by E.O. 927, R.A. 9275 & LLDA Board Resolution No. 33 series of 1996	12 November 2018	11 November 2021	DP shall be revalidated from 30 October 2019 until 27 November 2019 and 28 October 2020 until 26 November 2020. DP shall be renewed within thirty (30) days prior to its expiration.
Environmental Management Bureau-Region 4A	Permit to Operate (PTO) Air Pollution Source and Control Installations	R.A. 8749	16 September 2020	16 September 2021	Application for the renewal of PTO must be filed thirty (30) days before the expiration date.
Energy Regulatory Commission (ERC)	Certificate of Compliance (COC) Malaya Thermal Power Plant	R.A. 9136 and the 2014 Revised COC Rules for the issuance of COC to Generation Companies, Q.E. and Entities with Self-Generation Facilities.	08 June 2019	07 June 2024	Application for renewal shall be filed at least six (6) months before its expiration date.
Environmental Management Bureau-Central Office	PCL Compliance Certificate	R.A. 6969 as implemented by DAO 23, Series of 2007	10 September 2020	11 September 2021	Renewal of PCL Compliance Certificate must be filed thirty (30) days before the expiration date.

Issuing Authority	License/ Permit	Legal Basis	No./Date Issued	Expiration Date	Remarks
PDEA	P6 & P3 Licenses	R.A. 9165	09 June 2020	08 May 2021	The license may be renewed three (3) months prior to expiration date.
Laguna Lake Development Authority	Shoreland Occupancy Permit (SOP)	R.A. 4850, as amended by PD 813 and further clarified by E.O. 927, and LLDA's Board Resolution No. 23 Series of 1996 as amended by LLDA's Board Resolution No. 113 Series of 1999	16 Jan 2017	24 July 2017	PSALM applied/ filed for SOP renewal on 20 June 2017 and paid the amount of PhP 61,691.70 (w/ O.R. No. 9216114). All SOP application: new & renewal were put on-hold by new LLDA GM for further review per LLDA Memo Circular No. 2018-02 dated 13 February 2018.

SCHEDULE O - DETAILS OF BUYER

Name:

Juridical Character:

Principal Office:

Authorized Signatory:

Title:

SCHEDULE P - NOTICE

SELLER:

Power Sector Assets and Liabilities Management Corporation

Attention: IRENE JOY BESIDO-GARCIA
President and CEO, PSALM Corporation
Address: 24th Floor Vertis North Corporate Center 1
Astra corner Lux Drives, North Avenue, 1105 Quezon City
Telefax No.: + (632) 7739-5279

With copies to but which does not constitute notice:

Attention: ARNOLD C. FRANCISCO
Vice President, Privatization and Asset Management Group

Address:

Telefax No.: + (632) 7739-5277

Attention: JULIUS M. LOTILLA
Vice President, Legal Group

Address:

Telefax No.: + (632) 7902-9007

BUYER:

Attention:
Address:
Telephone Nos.:
Facsimile No.:

SCHEDULE Q - Form of Deed of Accession for the Operation and Maintenance Service Contract

To:

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (“PSALM”)
24th Floor Vertis North Corporate Center 1
Astra corner Lux Drives, North Avenue, 1105 Quezon City

[Name of OMSC Contractor]
[Address of OMSC Contractor]

AND THEIR RESPECTIVE SUCCESSORS-IN-INTEREST

We refer to the Operation and Maintenance Service Contract (the “OMSC”) dated _____ executed between PSALM and [OMSC Contractor], including any contract extension thereof.

In accordance with this Deed, PSALM (the “SELLER”) shall ensure that its assignee and successor(s)-in-interest, including the BUYER, shall be bound by, and comply with, the terms and conditions of this Deed.

NOW THIS DEED WITNESSETH as follows:

1. Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Asset Purchase Agreement for the Sale of the Malaya Thermal Power Plant and its Underlying Land.
2. In consideration of the assignment by the SELLER of this Deed in favor of [name of BUYER] (the “BUYER”), the BUYER hereby unconditionally and irrevocably (a) agrees and undertakes to abide by and comply with the terms of the OMSC in all respects as they apply to the SELLER and its obligations therein, as if the BUYER was named as an original party to the OMSC, in place of the SELLER in respect of the obligations undertaken thereunder, and (b) undertakes to not at any time take any action which is inconsistent with the terms of the OMSC.
3. This DEED shall be governed by and construed in accordance with the laws of the Republic of the Philippines.

[name of BUYER]

By:

[Name of Authorized Representative]
[Title]

SCHEDULE R - Form of Notification of Exercise of Right Under Section 13.09

This Notification of Exercise of Right under Section 13.09 (“Notification”), made and entered into by and between:

[Name of Winning Negotiating Party], a corporation organized and existing under and by virtue of the _____ with _____ registered business address at _____ represented herein by its _____, _____ hereinafter referred to as "Winning Negotiating Party"

-and-

[Name of Winning Negotiating Party’s Assignee], a corporation organized and existing under and by virtue of the _____ with registered business address at _____ represented herein by its _____, _____ hereinafter referred to as "Winning Negotiating Party’s Assignee"

WITNESSETH that -

WHEREAS, Winning Negotiating Party is the Winning Negotiating Party in the open and competitive Negotiated Sale Process conducted by PSALM for the sale of the Malaya Thermal Power Plant and its Underlying Land as evidenced by and indicated in the Asset Purchase Agreement (APA) submitted by Winning Negotiating Party to PSALM on Offer Submission Deadline;

WHEREAS, Section 13.09 of said APA provides:

“13.09 Assignment, Successors, and No Third-Party Rights

The Winning Negotiating Party may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of SELLER. Subject to the preceding sentence, this Agreement will apply to, and be binding in all respects upon and inure to the benefit of each of the Party’s respective successors and permitted assigns. Nothing in this Agreement will be construed to give any person, other than the Parties, any legal or equitable right, remedy or claim with respect to this Agreement or any provision of this Agreement except such rights as shall inure to a successor or permitted assignee pursuant to this section.

In the event that the Winning Negotiating Party wishes to assign its rights and obligations to an Assignee, the Winning Negotiating Party must submit to PSALM within five (5) Business Days from receipt of the Notice of Award the following documents before PSALM can approve the assignment:

- a) Accomplished Schedule R - Notification of Exercise of Right Under Section 13.09, signifying that the Winning Negotiating Party intends to assign its rights, liabilities and obligations under this Agreement to the Winning Negotiating Party's Assignee;
- b) Guarantee issued by Winning Negotiating Party in favor of the Winning Negotiating Party's Assignee;
- c) Board Resolution issued by the Winning Negotiating Party approving the assignment to the Winning Negotiating Party's Assignee; and
- d) Board Resolution issued by the Winning Negotiating Party's Assignee accepting the assignment and approving the assumption of all rights, liabilities and obligations of the Winning Negotiating Party as BUYER under this Agreement.

In the event that PSALM approves the assignment, PSALM as the SELLER and the Winning Negotiating Party's Assignee as the BUYER shall execute a new set of this Agreement.”

WHEREAS, according to the APA, any assignments to be made by the Winning Negotiating Party, to be valid, must comply with the provisions of the abovementioned Section 13.09 thereof, which mandates, among others, that:

- any proposed assignment and the corresponding Notification of Exercise of Right under Section 13.09 shall be submitted to PSALM for its prior approval,
- in the event of PSALM's approval of the proposed assignment, the Winning Negotiating Party's Assignee would be required to execute its own Asset Purchase Agreement with PSALM, separate and distinct from the APA between PSALM and the Winning Negotiating Party,

WHEREAS, Winning Negotiating Party's Assignee, 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, has no conflict, dispute or unsettled issue, arising out of, or in connection with the DOE, PSALM, NPC or TRANSCO, that affects the privatization of NPC assets or TRANSCO, namely (i) unresolved issues, as determined by the inter-agency committee, from the renegotiation of contracts with independent power producers as mandated by Section 68 of the EPIRA; and (ii) unpaid accounts arising from contractual obligations with the DOE, PSALM, NPC or TRANSCO.

WHEREAS, fully aware of the abovementioned requirements of the APA, the Winning Negotiating Party has offered to assign and/or transfer all of its rights, liabilities and obligations arising from or granted to the Winning Negotiating Party by the APA to Winning Negotiating Party's Assignee and Winning Negotiating Party's Assignee hereby accepts said assignment in accordance with the terms herein set forth in this Notification which are consistent with the terms of the APA;

NOW, THEREFORE, in compliance with Section 13.09 of the APA and for and in consideration of the foregoing premises, this Notification is issued by the Winning Negotiating Party in accordance with the following terms and conditions:

ARTICLE 1

DEFINITIONS AND USE OF TERMS

1.01 Construction

Any reference in this Notification to an “Article”, “Section”, “Paragraph”, or “Schedule” shall refer to the corresponding Article, Section, Paragraph, or Schedule of this Notification, unless the context indicates otherwise. The headings of Articles, Sections, and Schedules are provided for convenience only and shall not affect the construction or interpretation of this Notification. The language for the purpose of administering this Notification shall be English. All words used in this Notification should be construed to be of such gender or number, as the circumstances require. Words referred to as “he” shall be deemed to include the male, female and neuter (e.g. his/hers/its) and vice-versa. The terms “include”, “including” and “such as” indicate examples of a foregoing general statement and not a limitation on that general statement. Any reference to a law or statute refers to the law or statute, any amendments thereto, succeeding or supplemental legislation and all regulations promulgated under or implementing such law or statute, as in effect at the relevant time. Any reference to the Notification or other document as of a given date shall mean the Notification or other document as amended, supplemented and modified from time to time through such date. All references to times and dates shall refer to Philippine Standard Time. Should any of the dates fall on a holiday, the deadline shall be extended to the same time of the immediately succeeding Business Day. In computing a period, the first day shall be excluded and the last day included. Unless specified, all references to days shall refer to calendar days, a month shall be equal to thirty (30) calendar days and a year to three hundred sixty-five (365) calendar days. A fraction of a month shall be considered as one (1) month.

1.02 Definitions

For the purposes of this Notification, the following capitalized terms and variations thereof have the meanings specified in this Section.

“**APA**” shall mean or refer to the Asset Purchase Agreement submitted by Winning Negotiating Party to PSALM on Offer Submission Deadline.

“**Assignment Security**” shall mean or refer to a form of security deposit posted by the Winning Negotiating Party Assignee in an amount equivalent to the Negotiation Security in the form of: a) Cash, b) 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 c) Irrevocable standby letter of credit (SBLC) issued by a Qualified Bank. This shall be submitted upon execution of the Notification of Exercise of Right Under Section 13.09.

“Offer Submission Deadline” shall mean or refer to the deadline for the submission of Offers as set forth in the Negotiation Procedures dated 05 February 2021, as amended, for the sale of the Malaya Thermal Power Plant and its Underlying Land.

“EPIRA” shall mean Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”.

“its own APA” shall mean and refer to the Asset Purchase Agreement mandated to be executed between PSALM and The Winning Negotiating Party’s Assignee.

“Negotiation Security” shall mean or refer to the Negotiation Security as defined in the Negotiation Procedures dated 05 February 2021, as amended, for the sale of the Malaya Thermal Power Plant and its Underlying Land.

“Notification” shall mean or refer to this “Notification of Exercise of Right under Section 13.09”.

“Parties” shall mean the Winning Negotiating Party and the Winning Negotiating Party’s Assignee, collectively.

“Party” shall mean the Winning Negotiating Party or the Winning Negotiating Party’s Assignee, individually.

“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; as amended, supplemented, replaced, interpreted by a duly authorized Governmental Body, or otherwise modified from time to time.

“Philippine Pesos” or **“PHP”** shall mean the lawful currency for the time being of the Republic of the Philippines.

“Winning Negotiating Party” shall mean and refer to the Highest-Ranking Negotiating Party in the Negotiated Sale Process conducted by the Committee for the sale of the Purchased Assets to which, after having been subjected to the verification of the accuracy, authenticity and completeness of all the documents submitted in the Offer, Documentary Deliverables and other documents submitted or information furnished in the Negotiated Sale Process, the Committee serves the Notice of Award.

“Winning Negotiating Party’s Assignee” shall mean and refer to the special purpose corporation wholly-owned by the Winning Negotiating Party, which shall assume all the rights, liabilities and obligations of the Winning Negotiating Party. Notwithstanding the Winning Negotiating Party’s assignment to the Winning Negotiating Party’s Assignee, both the Winning Negotiating Party and the Winning Negotiating Party’s Assignee shall be solidarily liable for all obligations of the BUYER.

ARTICLE 2

ACCEPTANCE AND APPROVAL OF ASSIGNMENT

2.01 Acceptance by the Winning Negotiating Party's Assignee, Solitary Liability and Submission of Assignment Security

The Winning Negotiating Party's Assignee hereby accepts the abovementioned assignment and agrees to be bound by the terms and conditions of the APA.

Both the Winning Negotiating Party and the Winning Negotiating Party's Assignee shall be solidarily liable for all obligations of the BUYER under the APA.

The Winning Negotiating Party shall secure consent from its issuing bank to cause the assignment of its Negotiation Security to the Winning Negotiating Party's Assignee. Alternatively, the Winning Negotiating Party's Assignee shall post an Assignment Security to be submitted to PSALM together with this Notification.

2.02 Approval by PSALM

PSALM, through the signature of its undersigned representative, _____, _____ hereby gives the necessary approval required under Section 13.09 of the APA.

2.03 Undertaking by the Winning Negotiating Party's Assignee

The Winning Negotiating Party's Assignee undertakes to enter into its own Asset Purchase Agreement with PSALM, separate and distinct from the APA submitted by the Winning Negotiating Party to PSALM on Offer Submission Deadline.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE WINNING NEGOTIATING PARTY

3.01 Representations and Warranties

The Winning Negotiating Party represents and warrants to the Winning Negotiating Party's Assignee on the date of execution of this Notification, except as provided herein, that:

- (a) it is a corporation duly organized and validly existing under and by virtue of Philippine Law;
- (b) it has full corporate power and authority to execute, deliver and perform this Notification;
- (c) the execution, delivery and performance of this Notification by the Winning Negotiating Party has been duly authorized by all requisite corporate action on the part of the Winning Negotiating Party and no further corporate action or proceeding on the part of the Winning Negotiating Party is necessary to

- authorize the execution, delivery and performance by the Winning Negotiating Party of this Notification;
- (d) upon execution, this Notification will constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by Philippine Law. Each Person executing and delivering this Notification on behalf of the Winning Negotiating Party and any other document required to be executed and delivered by the Winning Negotiating Party under this Notification has been duly authorized by it to execute and deliver such document; and
 - (e) the execution, delivery and performance of this Notification by the Winning Negotiating Party does not or will not: (i) violate or contravene any provision of Philippine Law or (ii) conflict with or violate any provisions of its charter.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF THE WINNING NEGOTIATING PARTY'S ASSIGNEE

4.01 Representations and Warranties

The Winning Negotiating Party's Assignee represents and warrants to the Winning Negotiating Party that:

- (a) for corporations organized under Philippine Law, it is a corporation duly organized, validly existing and in good standing under Philippine Law and it shall preserve and maintain in full force and effect its existence as a corporation duly organized under Philippine Law and/or its qualifications to do business in the Republic of the Philippines;
- (b) it has full corporate power and authority to execute, deliver and perform this Notification and has obtained or effected all consents, approvals, authorizations, permits, licenses, Orders, filings with, or notifications to, any governmental body or any other Person, necessary for the valid execution, delivery and performance of this Notification and all such consents, approvals, authorizations, permits, licenses, Orders, filings and notifications remain in full force and effect;
- (c) the execution, delivery and performance of this Notification has been duly authorized by all requisite corporate action of the Winning Negotiating Party's Assignee and no further corporate action or proceeding on its part is necessary to authorize the execution, delivery and performance of this Notification;
- (d) upon execution, this Notification will constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by Philippine Law relating to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally or by principles governing the availability of equitable remedies. Each Person executing and delivering this Notification on behalf of the Winning Negotiating Party's Assignee and any other document required to be executed and delivered by the Winning Negotiating Party's Assignee has been duly authorized by the Winning Negotiating Party's Assignee to execute and deliver such document;

- (e) the execution, delivery and performance of this Notification by the Winning Negotiating Party's Assignee does not or will not: (i) violate or contravene any provision of Philippine Law; (ii) conflict with or violate any provisions of its organizational document and (iii) conflict with or result in the breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, cancellation or acceleration of, or result in the creation of any security interest on any of the assets or properties of the Winning Negotiating Party's Assignee pursuant to any of the terms, conditions, or provisions of, any note, bond, mortgage, indenture, permit, license, franchise, lease, contract, deed or other instrument or obligation to which the Winning Negotiating Party's Assignee is a party or by which any of its properties or assets are bound or affected; and (iv) should the Winning Negotiating Party's Assignee be incorporated under laws of a jurisdiction other than the Philippines, it will not violate or contravene the laws of such jurisdiction;
- (f) neither it nor its representatives have (i) offered, either directly or indirectly, any government officer, or official or employee of the Winning Negotiating Party, including its representatives and advisors, any consideration or commission for this Notification and (ii) exerted or utilized any corrupt or unlawful influence to secure or solicit this Notification for any consideration or commission. If any commission is being paid to any person, the Winning Negotiating Party's Assignee shall disclose the name of the person and the amount being paid;
- (g) no arbitrator, court or other governmental body has issued any injunction, writ, preliminary or temporary restraining order or other Order of any nature against the Winning Negotiating Party's Assignee in connection with the transactions contemplated in this Notification. ASSIGNEE is not a party to any legal, administrative, arbitral, investigative or other proceeding or controversy pending, or to the best of the Winning Negotiating Party's Assignee's knowledge, threatened, that would adversely affect the Winning Negotiating Party's Assignee's ability to perform its obligations under this Notification;
- (h) the Winning Negotiating Party's Assignee shall at all times fully comply with Philippine Law;
- (i) neither it nor any of its assets or revenues, has any immunity from jurisdiction or execution;
- (j) no bankruptcy, suspension of payments arising from or in connection with bankruptcy, winding-up, liquidation, receivership, corporate rehabilitation, re-organization due to financial difficulty, re-adjustment of debt, dissolution or similar proceedings of or relating to the Winning Negotiating Party's Assignee has been commenced or is contemplated;
- (k) none of its incorporators, nor past or present shareholders, directors, officers, employees, Representatives, consultants or agents have given, authorized or offered any commission, bribe, pay-off, kickback, or has in any other manner given or offered any money or anything of value directly or indirectly to any past or present director, officer, employee or agent of any governmental body that violates any Philippine Law; and
- (l) there is no pending Proceeding by or against the Winning Negotiating Party's Assignee that challenges or may have the effect of preventing, delaying, making illegal or otherwise interfering with the execution and performance of its obligations under this Notification giving effect to any of the

contemplated transactions under this Notification and to the Winning Negotiating Party's Assignee's knowledge, no such proceeding has been threatened.

ARTICLE 5

GENERAL PROVISIONS

5.01 Entire Agreement

This Notification embodies the entire agreement between the parties and supersedes all previous understandings and/or agreements of the parties relative thereto.

5.02 Effectivity

This Notification shall take effect upon its execution.

5.03 Governing Law

This Notification together with all incidents arising therefrom shall be governed and construed in accordance with the laws of the Republic of the Philippines.

5.04 Venue for Disputes

Should any disputes arise in connection with this Notification, the parties hereby agree to submit the same to the appropriate courts of Quezon City to the exclusion of all other courts.

5.05 Severability

If any part of this Notification shall for any reason be declared invalid and unenforceable, the remaining portion not affected thereby shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Notification to be duly executed at _____ on the date written below their names.

WINNING NEGOTIATING PARTY

Represented by:

(Name)

(Position)

Date: _____, 2021

--and--

WINNING NEGOTIATING PARTY'S ASSIGNEE

Represented by:

(Name)

(Position)

Date: _____, 2021

---and signifying its approval for this Notification---

PSALM

Represented by:

IRENE JOY BESIDO-GARCIA

President and CEO

Date: _____, 2021

Signed in the Presence of:
