

Republic of the Philippines

**Proposed Sale of the 650 MW
Malaya Thermal Power Plant
and Its Underlying Land
in Pililla, Rizal**

Negotiation Procedures

05 October 2020

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**NEGOTIATION PROCEDURES FOR THE SALE OF THE
650 MW MALAYA THERMAL POWER PLANT AND ITS UNDERLYING LAND
IN PILILLA, RIZAL**

OFFER TERMS AND SPECIFICATIONS

PART I - INSTRUCTIONS TO NEGOTIATING PARTIES

IB-01 REQUIREMENTS FOR THE ISSUANCE OF THE NEGOTIATION PACKAGE

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

The Negotiation Package consists of the following:

- A. Negotiation Procedures, which is composed of:
1. Offer Terms and Specifications
 - a) Part I - Instructions to Negotiating Parties
 - b) Part II - Definitions and Construction
 2. Representations and Warranties Form (Schedule 1)
 3. Form of Acceptance of Negotiation Procedures (Schedule 2)
 4. Statement Under Oath (Schedule 3)
 5. Form of Authorization to Verify (Schedule 4)
 6. Forms of Offer Security in the Form of SBLC (Schedule 5)
 7. Final Asset Purchase Agreement - (Schedule 6)
 - Part I - Purchased Assets (Schedule A)
 - a) Part I-A (The Plant)
 - Part I-A.1 - Plant Fixed Assets
 - Part I-A.2 - Materials, Supplies & Equipment (MSE)
 - Part I-A.3 - General Plant Equipment (GPE)
 - b) The I-B (The Underlying Land)
 - Part II - Excluded Assets (Schedule B)
 8. Designation of Consortium/Joint Venture Lead Member and Its Authorized Representative - (Schedule 7)
 9. Representation of Survey Plan of the Land Underlying the NGCP Substation - (Schedule 8)
 10. Template for Affiliate’s Net Asset Value (NAV) Compliance - (Schedule 9)

11. Template for the Affiliate's Bank Certification Requirement - (Schedule 10)
12. Template for the Financial Support Guarantee by an Affiliate - (Schedule 11)
13. Template for the Certification Under Oath of True and Faithful Reproduction of the Original Documents - (Schedule 12)

B. Data Room and Due Diligence Procedures

C. Information Memorandum for the Purchased Assets

The Negotiation Package is being issued to Negotiating Parties in accordance with the Invitation to Negotiate and Submit Offer published on **05, 06, 07 October 2020** in three (3) leading newspapers of general circulation and on the PSALM website (<http://www.psalm.gov.ph>), upon: (1) submission of a Letter of Interest to Negotiate and Submit Offer which expresses such Interested Party's intention to participate in the Negotiation Process; and (2) execution of the Confidentiality Agreement and Undertaking, both in the form provided by PSALM.

Only Interested Parties that submit a Letter of Interest to Negotiate and Submit Offer, and the executed Confidentiality Agreement and Undertaking Forms

on or before **3:00 p.m. on 22 October 2020** shall be issued the Negotiation Package and allowed to participate further in the Negotiated Sale Process. A Negotiating Party's participation in the Negotiated Sale Process shall be in accordance with the Negotiation Procedures.

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

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

IB-02 ADDENDA AND CLARIFICATIONS TO THE NEGOTIATION PROCEDURES

The Committee reserves the right to amend, revise, supplement, modify or clarify the Negotiation Procedures through a Supplemental Negotiation Bulletin (SNB), a copy of which will be made available to all Negotiating Parties. The SNB, upon its issuance, shall automatically be incorporated in and made an

integral part of the Negotiation Procedures. It shall be the Negotiating Party's responsibility to inquire into and secure the SNB that the Committee may issue.

Failure of a Negotiating Party to secure the SNB and acknowledge receipt and acceptance of the terms and conditions of each SNB on the space provided in the transmittal letter shall constitute a waiver of its right to be informed of its contents. The Negotiating Party shall take into account the information and procedure set forth in the Negotiation Package, including the Negotiation Procedures and SNBs, in preparing its Offer.

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

Any deviation of an Offer from the Negotiation Procedures shall render the Offer unresponsive, resulting in the disqualification and/or rejection of the Offer.

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

IB-03 NEGOTIATION SCHEDULE

The indicative schedule and process for the Negotiation ("*Negotiation Schedule*") is as follows:

Activity	Date
Publication of Invitation to Negotiate and Submit Offer	05, 06, 07 October 2020
Letters of Interest (LOI) Submission Deadline	3:00 p.m., 22 October 2020
Deadline for Submission of Confidentiality Agreement and Undertaking & Waiver	3:00 p.m., 22 October 2020
Issuance of the Negotiation Package	05 October 2020 until 22 October 2020
Due Diligence Period	06 October 2020 until 2 Business Days prior to the Offer Submission Deadline
Pre-Negotiation Conference	2:00 p.m., 23 October 2020
Consortium Request Deadline	3:00 p.m., 30 October 2020
Submission of Documentary Deliverables Deadline	3:00 p.m., 04 November 2020
Notification to Qualified Negotiating Parties	09 November 2020
Offer Submission Deadline	12:00 noon, 16 November 2020

Activity	Date
Opening and Evaluation of Offers; Declaration of Highest-Ranking Negotiating Party	Immediately after the Offer Submission Deadline
Post-Qualification of the Highest-Ranking Negotiating Party	19 November 2020
Issuance of Notice of Award	Within 30 days from declaration of the Highest-Ranking Negotiating Party
Submission to PSALM of Request for Assignment	Within 5 days from issuance of NOA
PSALM's Approval of Assignment Request and Execution of new APA with the Assignee	Within 5 days from receipt of request for assignment
Submission to PCC	December 2020 (estimated to be at least 15 days processing)
Issuance of the Certificate of Effectivity of the APA to the Winning Negotiating Party	2 business days from receipt of PCC clearance
Closing	23 February 2020 or within 30 days from Winning Negotiating Party's receipt of the Certificate of Effectivity
Closing Date	25 February 2020 or 2 business days from Closing

The Negotiated Sale Schedule may be changed by the Committee without prior notice. Negotiating Parties will be notified promptly of any change thereto through a Supplemental Negotiation Bulletin.

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

IB-04 SUBJECT OF THE OFFER

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

- A. The 650 MW Malaya Thermal Power Plant (the "Plant") (Part I-A of Schedule A) located in Pililla, Rizal consists of the following plants:
 1. 300 MW Malaya Thermal Power Plant 1; and

2. 350 MW Malaya Thermal Power Plant 2

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

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

The Malaya TPP Land consists of five (5) lots under Lot Nos. 32-A, 2-A, 2-B-1, 2-B-2-A and 3-A-2 with an estimated total area of Two Hundred Sixty-Two Thousand Eight Hundred Seven (262,807) square meters. Portions of Lot No. 2-A are currently occupied by the Meralco Substation and NGCP Substation comprising an estimated total area of Thirty-Three Thousand One Hundred Forty-Six (33,146) square meters, more or less. Only the land underlying the NGCP Substation consisting of Sixteen Thousand Three Hundred Forty-Eight (16,348) square meters, more or less, is excluded from the sale. The land underlying the Meralco Substation consisting of Sixteen Thousand Seven Hundred Ninety-Eight (16,798) square meters, more or less, is included in the sale. Thus, the total net land area of the Malaya TPP Land subject of the offer is Two Hundred Forty-Six Thousand Four Hundred Fifty-Nine (246,459) square meters, more or less.

Provided herewith as Schedule 9 is the representation of survey plan and technical description of the land underlying the NGCP Substation. The land underlying the NGCP substation which has an area of Sixteen Thousand Three Hundred Forty-eight (16,348) square meters, more or less shall be excluded in the sale.

Pursuant to Transfer Certificate of Title (TCT) No. M-10275, while the land underlying the Meralco Substation is included in the Malaya TPP Land, it is important to stress that this sale is subject to rights and easements in favor of Meralco insofar as needed for its operations as an electric utility. For reference, Negotiating Parties may access the necessary documents (i.e. Deed of Sale dated 29 December 1978 executed by Meralco in favor of the Republic of the Philippines and the annotation on TCT No. M-10275) at the PSALM Data Room.

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

IB-05 CONDITION OF THE SALE

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

The 650 MW Malaya Therma Power Plant is currently operational and being dispatched as a Must Run Unit (MRU) by NGCP. However, on Closing Date, MTPP shall no longer be required to run as a MRU.

BUYER shall pay any and all costs, expenses, fees and Taxes including all documentary stamp taxes, capital gains tax and other taxes applicable to, arising out of, or related to the sale of the Purchased Assets.

Real Property Tax (RPT) accruing prior to Closing Date shall be for the account of the Seller. RPT accruing from Closing Date shall be for the account of the Buyer.

The Purchase Price shall be paid in full and in cash on Closing Date.

IB-06 DOCUMENTARY DELIVERABLES

On or before **3:00 P.M. of 04 November 2020** (Documentary Deliverables Deadline), each Negotiating Party must submit one (1) original or certified true copy) of the following, except items L and M which shall be submitted in four (4) and two (2) original copies respectively:

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

sent, and such person's telephone number, facsimile number and email address.

C. Constitutive Documents

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

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

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

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

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

D. Certification under oath issued by the Negotiating Party's authorized officer (e.g. Corporate Secretary) attesting to the following:

1. Designation and authority of the Negotiating Party's Authorized Representative to:
 - a. issue the LOI, sign the Confidentiality Agreement and Undertaking, and receive the Negotiation Package;
 - b. receive all SNBs, the APA, communications, correspondences, notices and legal processes for the Negotiating Party;
 - c. represent the Negotiating Party in the Negotiation Process, including the execution and signing of the APA; and,
 - d. act for and in behalf of the Negotiating Party during the opening and evaluation of Offers, on all matters to be taken, including the authority to represent, offer for and bind the Negotiating Party in the event that an auction is called to settle a tie; and,
2. Limitations if any, of such designation or authority.

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

- E. In the event that the Confidentiality Agreement and Undertaking previously submitted were not under oath, a Confidentiality Agreement and Undertaking under oath must be submitted.
- F. A certified true copy of the Negotiating Party's Latest Audited Financial Statements (AFS) for the fiscal year ending 2019 and interim financial statement (IFS) as of 30 September 2020 or at a later date. The AFS must include the auditor's report, balance sheet, statement of cash flow, income statement and notes to financial statement. For entities falling under the taxing authority of the Republic of the Philippines, the FS must have been stamped-received by the Bureau of Internal Revenue (BIR). For non-Philippine resident Negotiating Party, the AFS must have been audited by a reputable auditing firm and/or received by its equivalent government tax or regulatory agencies. The IFS must be certified by the Negotiating Party's Comptroller/Chief Financial Officer.

If the Negotiating Party is a new corporation, the information required to be submitted under the previous paragraph shall pertain to its two stockholders who own the highest number of shares in the Negotiating Party; provided, that each of these stockholders must own at least ten percent (10%) of the Negotiating Party's equity. If more than two stockholders own the highest number of shares, then the information shall pertain to all such stockholders. If only one stockholder equals or

exceeds the 10% equity threshold, then the information shall pertain to such stockholder. If no stockholder exceeds the 10% equity threshold, then the information shall pertain to the stockholder owning the largest number of shares.

If the stockholder is a natural person, he must submit the latest duly filed Income Tax Return for the year 2019 and latest quarterly filing for the year 2020.

G. A Negotiating Party shall satisfy and submit (1) or (2) or (3):

1. Net Asset Value (NAV) of Negotiating Party is at least One Billion Seven Hundred Million Philippine Pesos (PhP1,700,000,000.00)

The Negotiating Party must submit a sworn statement executed by the President and Comptroller categorically stating under oath that the NAV is at least PhP1,700,000,000.00 and the latest AFS showing that the NAV is at least PhP1,700,000,000.00.

If the Negotiating Party is a publicly listed company, it must submit the said sworn statement by the President and the Comptroller that NAV is at least PhP1,700,000,000.00 and either the Latest AFS showing NAV of at least PhP1,700,000,000.00 or documents showing that its Market Capitalization is at least PhP1,700,000,000.00 such as the latest and updated General Information Sheet (GIS).

If the Negotiating Party is a newly created corporation, it must submit the said sworn statement by the President and the Comptroller that the NAV is at least PhP1,700,000,000.00, and the latest IFS of the Negotiating Party as of 30 September 2020 or as of a later date showing NAV of at least PhP1,700,000,000.00 and such IFS must be duly certified as correct by an independent auditor.

A Negotiating Party who cites an Affiliate to comply with the financial capability must present proof to establish that the cited entity is its Affiliate.

2. NAV of Affiliate of Negotiating Party is at least PhP1,700,000,000.00

If the Negotiating Party does not have a Latest AFS or Market Capitalization (in case of publicly listed companies) showing NAV of at least PhP1,700,000,000.00, it must submit a sworn statement executed by the President and Comptroller of an Affiliate categorically stating under oath that the Net Asset Value (NAV) of the Affiliate is at least PhP1,700,000,000.00 and the Latest AFS of the Affiliate showing that the NAV is at least PhP1,700,000,000.00.

In addition, the Negotiating Party shall submit the duly executed Template for the Affiliate's Net Asset Value (NAV) Compliance and a notarized Affidavit on Net Asset Value (NAV) Compliance, herein attached as **Schedule 9**.

If the Affiliate is a publicly listed company, the Negotiating Party must submit the said sworn statement and either the Affiliate's Latest AFS showing a NAV of at least PhP1,700,000,000.00 or documents showing that its Market Capitalization is at least PhP1,700,000,000.00 such as the latest GIS. In addition, the Negotiating Party shall submit a duly executed Template for the Affiliate's Net Asset Value (NAV) Compliance and a notarized Affidavit on Net Asset Value (NAV) Compliance, herein attached as **Schedule 9**.

A Negotiating Party who cites an Affiliate to comply with the financial capability requirement must present proof to establish that the cited entity is its Affiliate

As used in paragraphs (1) and (2) above, NAV shall mean total assets minus total liabilities, while Market Capitalization shall mean the outstanding shares of a publicly listed corporation multiplied by the average closing price for the five Business Days immediately preceding the day of the Documentary Deliverables Deadline at the stock exchange where such shares are being traded.

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

3. Average Daily Balance for the last three (3) months in the bank account of Negotiating Party or Affiliate of Negotiating Party is at least PhP1,700,000,000.00

A Negotiating Party must submit a bank certificate issued by a universal or commercial bank, stating that such Negotiating Party, or the Affiliate under item (2) above, maintains accounts with said bank and the aggregate average daily balance of the funds for the last three months immediately preceding the date of the bank certification in such accounts (as of the date of the certification) is at least PhP1,700,000,000.00. Should the Negotiating Party maintain various accounts from different universal or commercial banks, the aggregate average daily balance shall be at least PhP1,700,000,000.00. The bank certification must be dated within 14 Business Days immediately preceding the Documentary

Deliverables Deadline. The Negotiating Party shall submit bank statements and other supporting documents if required by PSALM.

A Negotiating Party who cites an Affiliate to comply with the financial capability requirement must present proof to establish that the cited entity is its Affiliate.

If a bank certificate of an Affiliate is relied upon, the Negotiating Party must submit a duly executed Template for the Affiliate's Bank Certification Requirement and the required Affidavit, the template of which is attached as **Schedule 10**.

H. Tax Clearance

Each Negotiating Party, regardless of nationality, must submit a certified true copy of its valid original Tax Clearance Certificate issued by the BIR National Office in Quezon City or by the Revenue Regional Office where the Negotiating Party is currently and duly registered pursuant to Revenue Memorandum Order No. 46-2018 dated 4 September 2018, together with a certification under oath that the original is in the possession of the Negotiating Party, as required by:

1. Executive Order (E.O.) 398 - Directing Timely and Complete Payment of Taxes as a Precondition for Entering into, and as a Continuing Obligation in Contracts with the Government, its Departments, Agencies and Instrumentalities, dated 12 January 2005;
2. BIR Revenue Regulation No. 3-2005 or the Rules and Regulations Implementing E.O. 398 and Requiring Directing Timely and Complete Payment of Taxes as a Precondition for Entering into, and as a Continuing Obligation in Contracts with the Government; and,
3. BIR Revenue Memorandum Circular No. 16-2005 or the Clarification to Revenue Regulation No. 3-2005 Implementing E.O. 398.
4. BIR Revenue Memorandum Order No. 46-2018 or the Procedures in the Decentralized Processing and Issuance of Tax Clearance for Bidding Purposes Required under Republic Act No. 9184 and Executive Order No. 398.

Pursuant to the requirements of EO 398, the latest income and business tax returns, together with the Tax Clearance Certificate (TCC), shall be submitted as part of the Documentary Deliverables. A Negotiating Party shall submit a certified true copy of the latest Income and Business (VAT and/or Percentage) Tax returns by its Comptroller/Chief Financial

Officer, provided, that such returns have been stamped received by the BIR in case of manual filing.

Latest Income Tax Return (ITR) shall refer to the ITR for the year 2019 filed in 2020. For new entities which have no annual ITR yet, it shall refer to the most recent quarter's ITR. Further, for areas where e-filing is yet to be implemented, a Certification to that effect from BIR main office is acceptable.

Latest Business Tax Return refers to Value Added Tax (VAT) and/or Percentage Tax Returns, whichever is applicable, covering the last quarter prior to the Documentary Deliverables Deadline. Negotiating Parties filing both the VAT and Percentage Tax Returns must submit both returns.

Only a valid TCC issued by BIR pursuant to the above related BIR issuances is acceptable. Provisional Tax Clearance Certificate or any other form is not accepted. For the avoidance of doubt, a TCC issued by the Revenue Regional Office and submitted by a Negotiating Party should be issued on or after the date of effectivity of BIR Revenue Memorandum Order No. 46-2018.

In case the TCC is not yet posted in the BIR Website, the Negotiating Party must submit a certified true copy of the TCC issued by the BIR, or its original, which will be returned to the Negotiating Party after the Negotiation process.

- I. Each Negotiating Party must submit a Statement Under Oath (Schedule 3) declaring that:
 1. It is not disqualified or prohibited from participating in any bidding or Negotiation conducted by a government entity or entering into any kind of contract with a government entity;
 2. From Documentary Deliverables Deadline until Closing Date, the Negotiating Party, 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;

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

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

Negotiating Parties shall submit, in writing, the name(s) of the issuing bank(s), confirming and/or advising bank(s), which it will use for the issuance of its Offer Security in the applicable form attached as **Schedule 5** (Form of Offer Security in the Form of SBLC).

K. Authorization to Verify

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

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

L. Asset Purchase Agreement (APA)

The Negotiating Party shall submit four (4) sets of the duly executed PSALM-issued APA for Malaya Thermal Power Plant including schedules, and other required documentation, except Schedule C - Financial Offer/Purchase Price of the APA which shall be submitted in the Offer Envelope on or before Offer Submission Deadline.

On the other hand, Schedule Q- Form of Deed of Accession for the Operation and Maintenance Service Contract (OMSC) shall be executed by the Negotiating Party if it intends to continue the use of the services of PSALM's OMSC Contractor. Should the Negotiating Party intend to discontinue the use of the services of PSALM's OMSC Contractor, it must submit a letter to the PBAC, explaining in general terms therein what it intends to do with the Purchased Assets. The said letter shall form part of the documents included in the Negotiating Party's Documentary Deliverables. The contemplated disclosure need not be extensive or too detailed. The contents of the letter to the PBAC which shall be submitted

in lieu of an executed Schedule Q shall neither be a factor in the determination of the Winning Negotiating Party nor a ground for the disqualification of a Negotiating Party.

Each page of the APA shall be initialed or signed in full by the authorized signatory/ies of the Negotiating Party, except the signature pages, which must bear the full signature of such authorized signatory/ies. The APA shall be submitted in the same form and sequential order as it was issued to the Negotiating Party by PSALM and shall be acknowledged before a Notary Public in the Philippines.

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

M. Representations and Warranties

The Negotiating Party shall submit two copies of the duly executed Schedule 1 (Representations and Warranties Form), containing all the required statements made under oath. Each page of Schedule 1 must be signed by the Negotiating Party's authorized signatory/ies.

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

The Negotiating Party shall submit the above-enumerated Documentary Deliverables on or before **04 November 2020** for verification and evaluation of the same. The Committee shall communicate to the submitting Negotiating Parties the result of verification process. The result of this verification and evaluation shall be without prejudice to the findings of the Committee during post-qualification evaluation.

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

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

Should there be any change in any information furnished under the foregoing paragraphs, the Negotiating Party must notify the Committee of such change immediately but in no case later than ten (10) calendar days after the Documentary Deliverables Deadline. The change in information pertains to events occurring after the Documentary Deliverables Deadline. Any such change in information may not be used by a Negotiating Party to comply with the requirements of the Documentary Deliverables if it was not previously compliant

as of the Documentary Deliverables Deadline. Such change in information shall be used only for an updating of the information contained in the Documentary Deliverables. A Negotiating Party shall not be allowed to add to or replace any of the Documentary Deliverables. Unless the Committee acknowledges receipt of the written notice and the acceptance of the changes in the information submitted under the foregoing paragraphs, it is conclusively presumed that such information submitted with the Documentary Deliverables will remain valid until the expiration of the Offer Validity Period. In the case of Tax Clearance Certificate (TCC), it should be replaced/renewed within the Offer Validity Period. Any material change in the information furnished with the Documentary Deliverables may result in the disqualification of a Negotiating Party.

A Negotiating Party shall be disqualified and shall not be allowed to participate in the Negotiation Process, to submit an Offer, or be furnished with the APA for the Malaya Thermal Power Plant and the underlying Land if any of the following occurs:

1. It fails to submit any of the Documentary Deliverables on the Documentary Deliverables Deadline;
2. It fails to submit the Acceptance of the Negotiation Procedures' terms and conditions on the Documentary Deliverables Deadline;
3. Any of the Documentary Deliverables submitted by such Negotiating Party does not fully and completely comply with **Section IB-06** (Documentary Deliverables);
4. Any of the Documentary Deliverables is unacceptable to the Committee;
5. A Negotiating Party changes the information in the Documentary Deliverables submitted without notice to and approval of the Committee;
6. There is a material change in the information submitted as part of the Documentary Deliverables, as determined by PSALM; or,
7. An event occurs after the Documentary Deliverables Deadline, which causes a material adverse change in the information part of the Documentary Deliverables, as determined by PSALM.

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

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

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

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

The Committee shall issue to the Negotiating Parties who participated in the first, second and third rounds of Public Bidding, who already submitted Documentary Deliverables, a Certificate of Submission of Documentary Deliverables that are still valid and effective. The said Certificate shall be submitted by the Negotiating Parties on Documentary Deliverables Deadline. However, for other Documentary Deliverables not covered by the said Certificate, the Negotiating Parties shall submit such Documentary Deliverables as required under IB-06 in Documentary Deliverables Deadline.

IB-07 CONSORTIUM/JOINT VENTURE

After submission of Letter of Interest to Negotiate and Submit Offer, a Consortium/Joint Venture may be formed among the Negotiating Parties or among a Negotiating Party with non-Negotiating Parties. Negotiating Parties must communicate their request to offer through a Consortium/Joint Venture (Request To Offer through Consortium/Joint Venture) in writing, to the Committee on or before 3:00 P.M. on **30 October 2020** (Consortium/Joint Venture Request Deadline). The Request To Offer through Consortium/Joint Venture shall be accompanied by the following:

- A. A listing of all the members that form the Consortium/Joint Venture with the following details: name, address and contact details, including telephone number, facsimile number and email address. The listing shall have the written conformity of all members of the Consortium/Joint Venture;
- B. A duly executed agreement to form a Consortium/Joint Venture;
- C. Negotiating Party's Certification that it will be negotiating through a Consortium/Joint Venture; and

D. Confidentiality Agreement and an Undertaking executed by the members of the Consortium/Joint Venture under oath.

Consortium/Joint Venture members that are foreign entities shall submit the equivalent of the above documents, duly acknowledged, sworn to or authenticated by the Philippine Consulate in such foreign country. Consortium/Joint Venture members that are foreign entities shall be limited to a maximum share/participation of forty percent (40%) of the Consortium/Joint Venture.

The Committee shall communicate its acceptance or rejection of a Request To Offer Through Consortium/Joint Venture within three (3) days from the Consortium/Joint Venture Request Deadline. The Committee has sole and absolute discretion to accept or reject a Request To Offer Through Consortium/Joint Venture.

A Request To Offer Through Consortium/Joint Venture shall be automatically denied if submitted after the Consortium/Joint Venture Request Deadline and without fully complying with the above requirements. In the event that PSALM rejects the Request To Offer Through Consortium/Joint Venture, only the Negotiating Party may proceed with the Negotiation Process and offer on its own.

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

The Lead Member shall substitute the Negotiating Party member and shall proceed with the Negotiation Process for and in behalf of the proposed Consortium/Joint Venture, including the submission of the Documentary Deliverables on or before the Documentary Deliverables Deadline.

Each of the shareholders or members of the proposed Consortium/Joint Venture shall submit through the Lead Member the documentary deliverables as required in IB-06 (C), (D), (E), (F), (G), (H), (I) and (K). For purposes of complying with IB-06 (D), Schedule 7 (Designation of Lead Member and its authorized representative) shall be used.

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

The proposed Consortium/Joint Venture shall incorporate after the Committee accepts a Request To Offer Through Consortium/Joint Venture.

On Offer Submission Deadline, the duly incorporated Consortium/Joint Venture shall substitute the Lead Member and shall henceforth proceed with the

Negotiation Process as the Negotiating Party. The Consortium/Joint Venture shall sign and submit its Offer through its authorized representative in accordance with IB-11 (Preparation of Offers), IB-12 (Contents of Offers), IB-13 (Offer Validity Period), IB-14 (Offer Security) and IB-15 (Submission of Offers).

The Consortium/Joint Venture shall be bound by all previous actions of its Negotiating Party member and Lead Member. PSALM shall not be required to:

- A. Change the Negotiation Schedule by reason of the Consortium/Joint Venture;
- B. Conduct another Pre-Negotiation Conference for any Consortium/Joint Venture. The attendance or participation of the pertinent Negotiating Party/s shall be deemed to have been for the benefit of the Consortium/Joint Venture; and
- C. Extend the Due Diligence Period. The opportunity for the Negotiating Party/ies to conduct Due Diligence shall be deemed to have been for the benefit of the Consortium/Joint Venture.

All other Negotiating Parties shall be notified of the participation of the accepted Consortium/Joint Venture.

IB-08 RESPONSIBILITIES OF NEGOTIATING PARTY

By submitting its Offer, a Negotiating Party represents and warrants that it has:

- A. Reviewed, is fully acquainted with, and unconditionally accepted the terms and conditions of the Negotiation Procedures, SNBs, and the APA for the Sale of the Purchased Assets and related undertakings and documents.
- B. Informed itself and fully understood all the conditions and matters affecting or that could affect its Offer, participation, undertaking in the Negotiation Process or the implementation of the sale of the Purchase Asset and other contemplated transactions; and
- C. Conducted an independent due diligence investigation of matters relative to the Negotiated Sale Process and related transactions.

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

IB-09 DUE DILIGENCE

Negotiating Parties have the option to and shall be allowed to conduct due diligence on Business Days from **06 October 2020** until two Business Days prior to Offer Submission Deadline.

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

IB-10 PRE-NEGOTIATION CONFERENCE

There will be a Pre-Negotiation Conference at 2:00 P.M. on **23 October 2020** through video conferencing or webcasting via zoom, webex, google meet or other platforms which will be communicated to Negotiating Parties who signified interest to participate in the Negotiated Sale Process.

Any statement made at the Pre-Negotiation Conference shall not modify the terms of the Negotiation Procedures, unless such statement is issued in a SNB.

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

IB-11 PREPARATION OF OFFERS

- A. A Negotiating Party shall submit its Offer in one envelope as detailed in **Section IB-12 (Contents of Offers)**.
- B. A Negotiating Party shall properly and completely accomplish all the information and documents required by **Section IB-12** and the Negotiation Procedures. No alterations and modifications of the documents, including the Schedule C - Purchase Price, the APA and Offer Security, shall be allowed.
- C. A Negotiating Party must type/print its name below its signature or that of its authorized representative on all the documents submitted with the Offer.
- D. Offers of a partnership or a corporation shall be signed in the name of the entity by an authorized partner or authorized officer, as the case may be, followed by the name, signature and designation of the person authorized to sign the Offer and the APA.
- E. All Offers, documents, specifications and related information shall be prepared and submitted in the English language.

F. Erasures or other changes in the Offer shall not be allowed.

IB-12 CONTENTS OF OFFERS

On or before Offer Submission Deadline, Qualified Negotiating Parties shall submit their Offers. The Offer shall be in one sealed envelope, marked “FINANCIAL OFFER”, containing the following:

1. The original copy of the Offer Security and the confirmation of the Offer Security or advice of the Offer Security, if applicable. The Offer Security is described in **Section IB-14 (Offer Security)**.
2. Four (4) original copies of the printed, duly completed, signed **Schedule C - Financial Offer/Purchase Price** of the Asset Purchase Agreement (APA).

If the Negotiating Party will submit a Financial Offer that is higher than its NAV, it will have to secure from a Qualified Bank or an Affiliate a duly executed Financial Support Guarantee. For this purpose, provided herewith as **Schedule 11 (Template for the Financial Support Guarantee By an Affiliate)** is the template for the Financial Support Guarantee for Affiliates, which will be submitted by the Negotiating Party together with the Financial Offer.

The Financial Offer shall be the figure that is indicated in A3 of **Schedule C - Financial Offer/Purchase Price**. The Financial Offer must be based on the terms of the APA and must be unconditional, binding, and open for acceptance by PSALM, regardless of any event, unless there is a material adverse change in the condition of the Malaya Thermal Power Plant caused by force majeure, throughout the duration of the Offer Validity Period. In the event there is such material adverse change due to force majeure from the Offer Submission Deadline to Closing Date, Negotiating Parties will be notified of the same and the procedure under Clause 4.08 of the APA in force majeure event shall be followed.

The Financial Offer shall be the Purchase Price denominated in Philippine Peso and must be made on the basis of the terms of the APA and must be unconditional, binding and open for acceptance by PSALM for a period of one hundred eighty (180) days from the day of the Offer Submission Deadline. **Schedule C - Financial Offer/Purchase Price** of the APA requires that the Negotiating Party insert the words and figures in the blanks provided therein and the authorized signatory/ies of the Negotiating Party to sign his/their full signature on the space provided therein. In case of discrepancies between Financial Offer price in words and figures, the Financial Offer price in words shall be considered as the Financial Offer. Financial Offers Prices which shall be expressed in

currencies other than Philippine Peso shall be rejected outright. In case of any discrepancy in the Financial Offer in the different copies of Schedule C of the APA, the highest Financial Offer shall be considered as the Financial Offer of the Negotiating Party.

A Negotiating Party shall not be allowed to submit an Offer that deviates from the required payment structure as indicated in the APA.

Failure to fully and completely comply with the requirements of Schedule C of the APA and the above may cause the Financial Offer to be deemed non-compliant which may result in the Offer being disqualified. The amount of the Financial Offer shall be the basis of the Committee in the selection of the Highest-Ranking Negotiating Party as provided in Section IB-18 (Opening and Evaluation of the Financial Offer Envelope).

Failure to fully and completely comply with these requirements may cause the Financial Offer to be rated “failed”.

The Financial Offer Envelope shall be submitted in accordance with **Section IB-15** (Submission of Offers). The Financial Offer Envelope must be sealed and signed by the Negotiating Party’s authorized signatory on the envelope flap, the tape binding the envelopes (should several envelopes be used) or the joint where the packing papers meet.

IB-13 OFFER VALIDITY PERIOD

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

IB-14 OFFER SECURITY

Each Negotiating Party shall submit as part of the Financial Offer Envelope, an Offer Security in accordance with the following terms and conditions:

- (a) The amount of the Offer Security must be equivalent to at least ten percent (10%) of the Offer Price;
- (b) The Offer Security may be in any of the following forms:
 1. Cash, 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

2. Irrevocable standby letter of credit issued by a Qualified Bank.
- (c) The Offer Security shall guarantee that the Negotiating Party completely, faithfully, fully and promptly complies with its obligations under the Negotiation Procedures and the APA throughout the Offer Validity Period or its extension.

No addition, revision or modification may be made on applicable **Schedule 5** (Forms of Offer Security in the Form of SBLC).

PSALM shall reject a non-compliant Offer Security.

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

An Offer submitted without the required Offer Security shall be rejected, returned to the Negotiating Party and shall cause the disqualification of the Negotiating Party from participating further in the Negotiated Sale Process.

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

- A. The event set forth in subparagraphs (1), (7), (8), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19) or (20) of paragraph M of **Section IB-27** (General Conditions);
- B. The Highest-Ranking Negotiating Party or Winning Negotiating Party withdraws from, fails to comply with, terminates or repudiates the APA, until the submission of a Performance Bond;
- C. The Winning Negotiating Party fails to comply with the Conditions Precedent on the Closing Date, prior to the submission of a Performance Bond, to the extent that any of the Conditions Precedent have not been waived by PSALM;

- D. The Highest-Ranking Negotiating Party or Winning Negotiating Party refuses to accept the award for the sale of Purchased Assets;
- E. The Highest-Ranking Negotiating Party or Winning Negotiating Party violates **Section IB-26** (Performance Bond);
- F. The Negotiating Party fails to extend the expiration date of its Offer Security in accordance with **Section IB-21** (Obligations of the Next Highest-Ranking Negotiating Party) and this Section; or
- G. The Negotiating Party withdraws its Offer or any part of it after the Offer Submission Deadline.

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

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

IB-15 SUBMISSION OF OFFERS

The Financial Offer Envelope must be submitted on or before the Offer Submission Deadline. The envelopes shall be sealed and clearly marked as follows:

THE CHAIRPERSON
PSALM Privatization, Bids and Award Committee
Power Sector Assets and Liabilities Management Corporation
24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives
North Avenue, 1105 Quezon City, Philippines

Re: Financial Offer for the Negotiated Sale of the Malaya
Thermal Power Plant Assets and Underlying Land

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

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

An Offer submitted after the Offer Submission Deadline shall be rejected and returned unopened to the Negotiating Party.

IB-16 MODIFICATION AND WITHDRAWAL OF OFFERS

An Offer cannot be modified or withdrawn for any reason after the Offer Submission Deadline, except when a Negotiating Party permanently withdraws from the Negotiation Process. PSALM shall automatically draw on or forfeit the Offer Security of a Negotiating Party that modifies or withdraws its Offer or any of its part after Offer Submission Deadline.

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

IB-17 DISQUALIFICATION OF OFFERS

The Committee shall disqualify the following Offers:

1. Offers of parties who are disqualified from participating in any bidding or negotiation by a government entity or entering into any kind of contract with a government entity;
2. Offers submitted without an Offer Security or which do not comply with the requirements in **Section IB-14** (Offer Security);
3. Offers which are materially defective;
4. Offers that do not comply with the Negotiation Procedures' requirements, including the requirements of **Section IB-12** (Contents of Offers);
5. Offers from parties, except Consortia, who are not Interested Parties;
6. Offers from parties who are not Negotiating Parties;
7. Financial Offers with prices expressed in currencies other than Philippine Peso;
8. Offers of Negotiating Parties whose First or Second Offer Envelope was rated "failed" by the Committee;
9. The Offer of a Negotiating Party who breaches the warranty against offering or paying commission or consideration to any government officer or any PSALM official or employee provided in Paragraph P.1. of **Section IB-27**;
10. The Offer of a Negotiating Party who breaches the warranty against conflict, dispute or unsettled issue provided in Paragraph P.2. of **Section IB-27**;
11. Offers from Negotiating Parties who breached the warranty on Compliance with Philippine Law, as provided in Paragraph B of **Section IB-27**;
12. Offer submitted by a Consortium/Joint Venture whose Request to Offer Through Consortium/Joint Venture was not accepted by the Committee;

13. Offer submitted by a Negotiating Party who is an Affiliate of another Negotiating Party, or holds or acquires any ownership interest in another Negotiating Party as listed in the latest General Information Sheet;
14. Offer submitted by a Negotiating Party who has an Affiliate and such Affiliate -
 1. is a Negotiating Party; or
 2. holds or acquires any ownership interest in another Negotiating Party as listed in the latest General Information Sheet;
15. When PSALM determines that there is a material change in the information provided in the Documentary Deliverables;
16. There is a subsequent event that causes a material adverse change in the information provided in the Documentary Deliverables;
17. Any other ground for disqualification of an Offer and/or a Negotiating Party as provided for in the Negotiation Procedures; or
18. Any other analogous cases.

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

IB-18 OPENING AND EVALUATION OF THE FINANCIAL OFFER ENVELOPE

The Financial Offer Envelope shall be opened and evaluated at the venue where the Offers are to be submitted, immediately after the Offer Submission Deadline. A Negotiating Party who has not been disqualified, or its duly authorized representatives, may be present at the time, date and place when the Offers will be opened. The failure of a Negotiating Party or its authorized representative to be present during the opening and/or evaluation of Offers shall be considered a waiver of its right to witness the proceedings.

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

After the Offer Submission Deadline, the Committee shall open and examine the Financial Offer Envelopes. If the Committee receives only one Offer, it shall proceed with the opening and evaluation of the lone Negotiating Party's Financial Offer Envelope.

In the evaluation of the Financial Offer Envelopes, the Committee shall use the non-discretionary "pass/fail" criteria to determine whether all the documents and information required to be submitted are present and have been accomplished in accordance with the Negotiation Procedures. The Committee or its duly authorized representatives shall inspect and review the documents submitted by each Negotiating Party against the list required in **Section IB-12**

(Contents of Offers). Only Financial Offer Envelopes that are determined to contain and fully comply with all the requirements stated in **Section IB-12 (Contents of Offers)** shall be rated “passed”.

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

The Committee shall declare the Negotiation a failure if none of the Financial Offer Envelopes submitted were rated “passed”.

The Financial Offers, which is at least equal to or higher than the Minimum Offer Price, shall be ranked from the highest to the lowest, to identify the highest Financial Offer.

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

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

If none of the Financial Offers meets the Minimum Offer Price, the Committee shall declare all the Financial Offers to be non-compliant and declare a failure of Negotiation.

IB-19 MINIMUM OFFER PRICE

The Minimum Offer Price for the Purchased Assets in this negotiation is **Two Billion Seven Million Seven Hundred Eighty Thousand Philippines Pesos PHP2,007,780,000.00.**

The Financial Offer of the Highest-Ranking Negotiating Party must be equal to or higher than the Minimum Offer Price in order to qualify as the Winning Negotiating Party.

IB-20 AWARD TO THE WINNING NEGOTIATING PARTY

Within thirty (30) days after the Highest-Ranking Negotiating Party is declared, and subject 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 during the Negotiation Process, the Committee shall serve a Notice of Award to the Highest-Ranking Negotiating Party as the Winning Negotiating Party.

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

In case of the preceding paragraph, PSALM may, at its option, conduct a verification of the accuracy, authenticity and completeness of all the documents submitted by the Next Highest-Ranking Negotiating Party in succession based on the ranking during the opening and evaluation of the Financial Offer Envelopes until a Winning Negotiating Party is determined and a Notice of Award has been issued by PSALM.

In case the Winning Negotiating Party is a Negotiating Party which offer through a Consortium/Joint Venture, the Committee shall nullify an award to the Winning Negotiating Party should it fail to incorporate and submit incorporation documents on Closing Date. Consequently, the Committee shall forfeit the Performance Bond, and the process of selection shall proceed to the Next Highest-Ranking Negotiating Party.

IB-21 OBLIGATIONS OF THE NEXT HIGHEST-RANKING NEGOTIATING PARTY

The Next Highest-Ranking Negotiating Party shall have these obligations until after the Closing Date:

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

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

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

IB-22 FAILURE OF NEGOTIATION

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

- A. No LOI is received;
- B. No entities execute the Confidentiality Agreement and Undertaking, and pay the Participation Fee;
- C. No Negotiation Package is issued;
- D. No Negotiating Parties submit the Documentary Deliverables by the Documentary Deliverables Deadline;
- E. No Negotiating Parties submit Documentary Deliverables which the Committee considers compliant;
- F. All Negotiating Parties withdrew from the Negotiation Process prior to Offer Submission Deadline;
- G. All Negotiating Parties withdrew their Offers prior to the Offer Submission Deadline;
- H. No Offer is received by Offer Submission Deadline;
- I. No First Offer Envelope is rated "Passed";
- J. No Financial Offer meets the Minimum Offer Price;
- K. No Offer has passed the post-qualification stage;
- L. Other grounds provided in the Negotiation Procedures.

Should any of the above happen, the Committee shall declare a failure of the Negotiation.

IB-23 ASSET PURCHASE AGREEMENT (APA)

Only a Negotiating Party that signified interest to participate in the negotiation and submitted the required Confidentiality Agreement and Undertaking forms shall be furnished with the APA. A Negotiating Party with non-compliant

Documentary Deliverables shall be disqualified from the Negotiation Process from the time the Committee communicates such non-compliance.

Each Negotiating Party shall execute four (4) original copies of the APA, which shall be acknowledged before a Notary Public in the Philippines, to be submitted as part of the Documentary Deliverables.

In case the Winning Negotiating Party is a Negotiating Party which offer through a Consortium/Joint Venture, a new set of the Asset Purchase Agreement shall be executed between PSALM and the incorporated Consortium/Joint Venture on Closing Date, and the incorporated Consortium/Joint Venture shall attach to the Asset Purchase Agreement a Secretary's Certificate attesting to its authority to enter into such Agreement with PSALM and the authority of its representative to sign the Asset Purchase Agreement.

IB-24 EFFECTIVITY OF THE APA

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

IB-25 TURNOVER OF POSSESSION OF THE PURCHASED ASSETS

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

IB-26 PERFORMANCE BOND

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

IB-27 GENERAL CONDITIONS

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

rejected. PSALM, NPC and/or the Committee shall not be held liable for such risks, taxes, costs, fees, expenses and liabilities. PSALM, NPC, the Committee, their directors, officers, employees, advisors, consultants and agents shall not be held liable in the event that a court of competent jurisdiction or other Government Entity declares the Negotiation, selection and/or award invalid or sets it aside, for any reason and at any time.

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

Negotiation and the APA. The Negotiating Party, by submitting its Offer, declares that it has read and understood each and every section and page of the Negotiation Procedures, each SNB, and the APA, and the respective provisions, terms and conditions of the same, and accepts and agrees to be bound and fully abide by and comply with the aforestated documents.

J. A document, which is required to be submitted under oath and acknowledged, shall comply with the following:

1. if executed in the Philippines, it shall be sworn to or acknowledged before a Philippine Notary Public; or,
2. if executed outside the Philippines, either it is sworn to or acknowledged before: (a) a Philippine consular official authorized to administer oaths; or (b) any person authorized to administer oaths in that jurisdiction and the same is authenticated before a Philippine consular official authorized to authenticate documents.

K. Negotiating Parties shall be responsible for their own due diligence investigation on all related matters, the Negotiation Procedures, the Negotiation Process, and the APA. The PSALM, NPC, the Committee, their directors, officers, employees, advisors, consultants or agents do not make any representation or warranty concerning any matter affecting this transaction except for the representations and warranties set out in the APA which shall be binding on PSALM only upon the Closing Date.

L. In computing a period, the first day shall be excluded and the last day included. Unless otherwise expressly specified in writing, all references to times and dates shall refer to Philippine Standard Time. If any of the dates fall on a day that is not a Business Day, the deadline shall be extended to the same time of the immediately succeeding Business Day.

M. Disqualification

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

1. The Negotiating Party makes a material misrepresentation in any document or information communicated to the Committee, whether verbal or written;
2. The Negotiating Party submits an Offer, which is inconsistent with or fails to comply with the Negotiation Procedures;
3. The Negotiating Party fails to promptly comply with the Committee's reasonable request for further information or

- clarification in relation to documents, information or the Offer submitted by such Negotiating Party;
4. An administrator, supervisor, receiver, liquidator or other lien holder takes possession of or is appointed over the whole or any part of the Negotiating Party's assets, or any attachment, execution or other process is enforced upon the whole or any part of its assets;
 5. If the Negotiating Party is in the process of liquidation, winding up, bankruptcy, dissolution, corporate rehabilitation or suspension of payments;
 6. The Negotiating Party fails to submit all the Documentary Deliverables by the Documentary Deliverables Deadline;
 7. The Negotiating Party signifies its intention to withdraw or modify its Offer after the Offer Submission Deadline or actually withdraws or modifies its Offer;
 8. The Negotiating Party withdraws its Offer during the Offer Validity Period;
 9. The Negotiating Party submits an Offer with conditions or delivers an Offer Security that does not comply with the requirements of **Section IB-14 (Offer Security)**;
 10. The Negotiating Party or its Affiliate has participated in the valuation of the PSALM generating assets or their respective advisors in relation to the Negotiation Process of the Purchased Assets and the Negotiating Party failed to disclose such fact;
 11. The Negotiating Party breaches any of the conditions of the Negotiation Procedures;
 12. The Negotiating Party breaches the warranty against offering or paying commission or consideration to any government officer or any official or employee of PSALM provided in Paragraph P.1. of **Section IB-27 (General Conditions)**;
 13. From Documentary Deliverables Deadline until Closing Date, the Negotiating Party breaches the warranty against conflict, dispute or unsettled issue provided in Paragraph P.2. of **Section IB-27 (General Conditions)**;
 14. The Negotiating Party breaches the warranty against compliance with Philippine Law provided in Paragraph B of **Section IB-27 (General Conditions)**;
 15. The Negotiating Party is disqualified or prohibited from participating in any bidding or negotiation, or entering into a contract with, a Government Entity;
 16. The Negotiating Party is an Affiliate of another Negotiating Party, or holds or acquires any ownership interest in another Negotiating Party as listed in the General Information Sheet;
 17. The Negotiating Party has an Affiliate, and such Affiliate: (i) is a Negotiating Party; or (ii) holds or acquires any ownership interest in another Negotiating Party as listed in the latest General Information Sheet;

18. Upon the occurrence of an event or omission which is a ground for disqualification in the Negotiation Procedures;
 19. The Negotiating Party makes a material change in the information provided in the Documentary Deliverables;
 20. There is a subsequent event that causes a material adverse change in the information provided in the Documentary Deliverables;
 21. The Negotiating Party or anyone on its behalf, directly or indirectly offers or pays a PSALM director, official, employee, advisor, consultant, any member of the Committee, or agent consideration or commission for the Negotiation or APA;
 22. The Negotiating Party or anyone on its behalf exerts or utilizes any corrupt or unlawful influence to secure or solicit the Negotiation, the APA for a consideration or commission;
 23. Any ground for disqualification of an Offer and/or a Negotiating Party provided for in the Negotiation Procedures; or
 24. The Negotiating Party has been disqualified from participating in PSALM's bidding or negotiation activities by reason of fraudulent acts or has committed fraud or breach in the provisions of any agreement with PSALM.
- N. Whenever an address is required, the full address must be given. The use of Post Office box as an address is prohibited.
- O. All submissions to PSALM must be in the English language. If the document is in a foreign language, both the document in the foreign language and its legal translation in English must be submitted and the document must be authenticated before a Philippine consular official authorized to authenticate documents. The official language to be used in the Negotiation, Negotiation Procedures, the APA, reports, notices and correspondences shall also be in English.
- P. An Interested Party, Negotiating Party, Highest-Ranking Negotiating Party, Buyer or Winning Negotiating Party (collectively referred to as Negotiating Party for purposes of this paragraph) represents and warrants that:
1. The Negotiating Party, or anyone on its behalf, has neither directly or indirectly offered or paid a PSALM director, official, employee or any member of the Committee any consideration or commission for the Negotiation or APA, nor exerted or utilized any corrupt or unlawful influence to secure or solicit the Negotiation, the APA or award of the output for any consideration or commission. A violation of this warranty shall constitute sufficient ground for the disqualification of the Negotiating Party, the termination of the APA and the forfeiture of the Offer Security, without prejudice to the filing of any civil and/or criminal action under Philippine Law, including the Anti-Graft and Corrupt Practices Act (Republic Act

No. 3019) against the Negotiating Party and the PSALM officials/employees involved;

1. From Documentary Deliverables Deadline until Closing Date, the Negotiating Party, 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, and that it has not been disqualified from participating in other bidding or negotiation activities of PSALM;
3. A Negotiating Party shall comply with Philippine Law at all times. A violation of this warranty shall constitute sufficient ground for the disqualification of the Negotiating Party, the termination of the APA, and the forfeiture of the Offer Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Negotiating Party and/or its representatives;
4. The Negotiating Party shall indemnify PSALM and the Committee and hold them free and harmless against all losses, claims, liabilities, damages and expenses arising out of or relating to its fault or negligence in the Negotiation, including but not limited to, third party claims for personal injuries, property damage, or consequential damages as provided in the APA for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with more or less 246,459 square meters (Purchased Assets);
5. The Negotiating Party shall pay: (a) all costs, expenses, fees and taxes, including all documentary stamp taxes payable in connection with the execution, amendment, or modification of the APA (including any tax applicable to any draws made upon the Performance Bond); and (b) all costs, expenses, fees and taxes related to and arising from the exercise or performance of its obligations under the Negotiation, Negotiation Procedures or the APA; and,
6. The Negotiating Party unconditionally and irrevocably waives any right to seek and obtain a writ of injunction or prohibition or restraining order against the Committee, PSALM, NPC and/or any third party to prevent or restrain the Negotiation Process or any related proceedings, the issuing bank, confirming or advising bank, the conduct of a Negotiation or any related proceeding, the selection of the Highest-Ranking Negotiating Party, Buyer or

Winning Negotiating Party, the performance of the APA and forfeiture of the Offer Security.

- Q. In case of conflict or discrepancy between the Negotiation Procedures and the Offer, the Negotiation Procedures shall prevail.
- R. Certified true copies of documents to be submitted under the Negotiation Procedures shall be certified by the entity issuing such documents (e.g., the SEC Certificate of Registration shall be certified by the SEC). In case of documents which the issuing entity does not issue or cannot issue the certified true copy of the document on time, then the Negotiating Party shall submit the document certified true copy by its Corporate Secretary or the officer having repository of such document and a written certification under oath by such officer that the document submitted is a true and faithful reproduction of the original and that the original document is in the Negotiating Party's possession.

Provided herewith is the template of the certification attached as Schedule 12.

- S. PSALM's failure to exercise, or any delay in the exercise of, its rights under the Negotiation Procedures and the APA shall not operate as a waiver of such rights. PSALM's single or partial exercise of a right shall not preclude the exercise of any other right. The right and remedies in this process and related documents are cumulative and not exclusive of any other right or remedy provided by Philippine Law.
- T. PSALM and the Committee shall not be liable to the Interested Party, Negotiating Party, Highest-Ranking Negotiating Party, Buyer, Winning Negotiating Party, or any third party in contract, tort or for any loss or damage sustained in connection with the utilization of the Malaya Thermal Power Plant, including without limitation to any claim for loss of use, lost income, lost profits, or consequential damages.
- U. All notices to and communications with PSALM and the Committee pursuant to the Negotiation Procedures shall be in writing and shall be sent to:

THE CHAIRPERSON

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

- V. PSALM, its representatives and the Committee shall not be liable for any loss or damage arising from their delay or inability to perform their obligations under the Negotiation, Negotiation Procedures and the APA, if

the same is due to causes beyond their reasonable control including, without limitation to, acts of God, accidents, acts of war, labor shortages or labor difficulties, strikes, civil disturbances, insurrections, riots, revolutions, acts of sabotage, governmental actions, delay or failure by the appropriate Government Entity to issue necessary licenses, permits or authorizations, delay or accident occurring in the course of transportation, unavailability of material or equipment, acts or omissions of the Negotiating Party for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with more or less 246,459 square meters (Purchased Assets), their contractors, suppliers, agents, or employees, and/or third parties.

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

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

No Government official or employee shall directly or indirectly give, nor shall any Negotiating Party be entitled to, any information regarding the Negotiation Process or the other Negotiating Parties, other than what is contained in the Negotiation Procedures, or disclosed in the Pre-Negotiation Conference, SNBs and in the official announcements.

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

PART II - DEFINITIONS AND CONSTRUCTION

GP-01 DEFINITIONS

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

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. Affiliate shall include a subsidiary company and parent company and subsidiaries, directly or indirectly, of a common parent.
Assets or Purchased Assets	shall mean the 650 MW Malaya Thermal Power Plant and the underlying land with an area of 246,459 square meters, more or less, located in Pililla, Rizal, Philippines, and further described in Section IB-04 (Subject of the Offer), the Information Memorandum and which will ultimately be set forth in the APA.
APA for Malaya Thermal Power Plant	shall mean the final version of the Asset Purchase Agreement for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with an area of 246,459 square meters, more or less (Purchased Assets).
Asset Purchase Agreement or APA	shall mean the agreement to be entered into between PSALM and the BUYER for the sale of the Purchased Assets, including the schedules, attachments and annexes thereto as well as the pertinent attachments, annexes and schedules to such schedules, attachments and annexes, which was distributed to the Negotiating Parties as part of the Negotiation Package.
Business Day	shall mean any day other than a Saturday, Sunday or public holiday in the Republic of the Philippines or Quezon City, or a day on which banks located in Quezon City are authorized by law to be closed.
Business Hours	shall mean 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 3:00 p.m. of a Business Day.
Buyer	shall mean the Winning Negotiating Party with whom PSALM enters into the APA for the sale of the Purchased Asset. From the Effective Date, the Winning Negotiating Party shall be referred to as the “Buyer”.
Committee	shall have the meaning set forth in Section IB-01 (Issuance of the Negotiation Package).
Conditions Precedent	shall have the meaning set forth in the APA.
Confidentiality Agreement	shall mean the agreement executed by PSALM and the Negotiating Party, as an Interested Party, which is a prerequisite for the receipt of the Negotiation Package.

Consortium/Joint Venture	shall mean a juridical entity, subject to applicable naturalization requirements under the law, composed of two or more juridical entities as members which could be two or more Negotiating Parties, or among Negotiating Parties with non-Negotiating Parties as shareholders or members, provided, that at least one Negotiating Party directly owns a majority of the outstanding shares and entitled to vote in the Consortium/Joint Venture, whose equity shall not be reduced until Closing Date.
Consortium/Joint Venture Request Deadline	shall have the meaning set forth in Section IB-07 (Consortium or Joint Venture).
Closing Date	shall have the meaning set forth in the APA.
Data Room	shall refer to the place located at the 24 th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, North Avenue, 1105 Quezon City, Philippines where information, data, documents and other papers pertaining to the Plant and the Underlying Land are kept.
DOE	shall mean the Department of Energy of the Republic of the Philippines.
Documentary Deliverables	shall have the meaning set forth in Section IB-06 (Documentary Deliverables).
Documentary Deliverables Deadline	shall have the meaning set forth in Section IB-06 (Documentary Deliverables).
Effective Date	shall have the meaning set forth in the APA.
ERC	shall mean the Energy Regulatory Commission.
Excluded Assets	shall have the meaning set forth in the APA.
Execution Date	shall have the meaning set forth in the APA.
Financial Support Guarantee	shall mean a duly executed document issued by an Affiliate or a Qualified Bank on behalf of the Negotiating Party to guarantee full payment of the Purchase Price. The Financial Support Guarantee shall be equivalent to at least the difference between the Negotiating Party's Financial Offer and its Net Asset Value based on the Documentary Deliverables submitted.
Financial Offer	shall mean a signed offer or proposal submitted by a Negotiating Party in compliance with Section IB-12 (Contents of Offers). The Financial Offer must be written, printed, or typewritten by the Negotiating Party in Schedule C - Purchase Price of the APA.
Financial Offer Envelope	shall have the meaning set forth in Section IB-12 (Contents of Offers).
Fitch	shall mean Fitch Ratings, a subsidiary of Fimalac S.A., co-headquartered in both New York and London, and any successor thereto that is an internationally recognized rating agency.

Government Entity	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 having jurisdiction over these Negotiation Procedures, the Negotiation Process, and the APA.
Highest-Ranking Negotiating Party	shall have the meaning set forth in Section IB-18 (Opening and Evaluation of the Financial Offer Envelope).
Interested Party	shall mean a juridical entity that submitted the Letter of Interest on or before the deadline set in Section IB-01 (Issuance of the Negotiation Package) and has been furnished with a Confidentiality Agreement and Undertaking.
Investment Grade	shall mean a Long-term Credit Rating of: at least Baa3 by Moody's, or BBB- by S&P, or BBB- by Fitch.
Latest Audited Financial Statements	shall mean the latest audited financial statements for fiscal year ending 2019.
Lead Member	shall mean a designated member of a proposed Consortium/Joint Venture which shall proceed with the Negotiation Process for and in behalf of the proposed Consortium/Joint Venture.
Letter of Interest or LOI	shall mean a letter addressed to the Committee where an Interested Party expresses its interest to participate in and submit an offer for the sale of the Purchased Assets.
Long-term Credit Rating	shall mean any of the following: (i) long-term issuer rating for Moody's, (ii) long-term issuer credit for S&P, or (iii) long-term issuer default rating for Fitch.
Market Capitalization	shall mean the outstanding shares of a publicly listed corporation multiplied by the average closing price for the five Business Days immediately preceding the day of the Documentary Deliverables Deadline at the stock exchange where such shares are being traded.
Minimum Offer Price	shall have the meaning set forth in Section IB-19 (Minimum Offer Price).
Moody's	shall mean Moody's Investor Service, Inc. and any successor thereto that is an internationally recognized rating agency.
Negotiating Party	shall mean an Interested Party to whom the Committee issues the Negotiation Package and which shall participate in the Negotiation Process. In case a Negotiating Party submits a Request To Offer Through Consortium/Joint Venture and is accepted by the Committee, the Consortium/Joint Venture shall become the Negotiating Party in accordance with the provisions of IB-07 (Consortium or Joint Venture).

Negotiation or Negotiation Process	shall mean the Negotiation process for the sale of the Purchased Assets, as outlined in the Negotiation Procedures.
Negotiation Package	shall mean the set of documents for the privatization of the Purchased Assets, as specified in Section IB-01 (Issuance of the Negotiation Package).
Net Asset Value (NAV)	shall have the meaning set forth in Section IB-06 (Documentary Deliverables)
Next Highest-Ranking Negotiating Party	shall have the meaning set forth in Section IB-21 (Obligations of the Next Highest-Ranking Negotiating Party).
NGCP	shall mean the National Grid Corporation of the Philippines, the concessionaire or operator of the transmission system
Notice of Award	shall have the meaning set forth in Section IB-20 (Award to the Winning Negotiating Party).
NPC	shall mean the National Power Corporation.
Negotiation Procedures	shall have the meaning set forth in Section IB-01 (Issuance of the Negotiation Package).
Negotiation Schedule	shall mean the schedule for the Negotiation as set out in Section IB-03 (Negotiation Schedule).
Offer Security	shall have the meaning set forth in Section IB-14 (Offer Security).
Offer Security Drawing Event	shall mean any occurrence which entitles PSALM to draw upon the Offer Security under Section IB-14 (Offer Security), including but not limited to: (i) a Negotiating Party's failure to completely, faithfully, fully and promptly comply with its obligations under the Negotiation Procedures during the Offer Validity Period, or its extension; or (ii) a violation of the Negotiation Procedures.
Offer Submission Deadline	shall mean the deadline for the submission of Offers set forth in Section IB-03 (Negotiation Schedule).
Offer Validity Period	shall mean the 180-day period which starts on the Offer Submission Deadline.
Philippine Law	shall mean: (i) the Constitution of the Republic of the Philippines and all Philippine laws, statutes, treaties, rules, codes, ordinances, regulations, certificates, decisions, orders, memoranda, circulars, decrees, resolutions, directives, rulings, interpretations, approvals, licenses, and permits of any Governmental Body; and (ii) judgments, decrees, injunctions, writs, orders or like actions of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, in each case: (a) that apply to these Negotiation Procedures and the privatization and performance of the APA by the parties;

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

S&P	shall mean Standard & Poor’s Ratings Group, a division of McGraw-Hill Corporation, and any successor thereto that is an internationally recognized rating agency.
SBLC	shall have the meaning set forth in Section IB-14 (Offer Security).
Substitute Selection Notice	shall have the meaning set forth in Section IB-21 (Obligations of the Next Highest-Ranking Negotiating Party).
Supplemental Negotiation Bulletins (SNBs)	shall refer to the amendments, supplements or clarifications to the Negotiation Procedures or the Negotiation Process that the Committee may issue, which shall be in writing and numbered sequentially. The SNBs are automatically incorporated into and made an integral part of the Negotiation Procedures.
TRANSCO	shall mean the National Transmission Corporation, a government-owned and controlled corporation created by virtue of the Republic Act No. 9136.
Undertaking	shall mean an undertaking executed by an Interested Party in the form provided by PSALM, as a prerequisite for the issuance of the Negotiation Package.
Winning Negotiating Party	shall have the meaning set forth in Section IB-20 (Award to the Winning Negotiating Party).
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 Bidder. Notwithstanding the Winning Bidder’s assignment to the Winning Bidder’s Assignee, both the Winning Bidder and the Winning Bidder’s Assignee shall be solidarily liable for all obligations of the BUYER.

GP-02 CONSTRUCTION

In the Negotiation Procedures, unless the context otherwise requires:

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

perform any act in relation to the Negotiation, it must be done in accordance with the Negotiation Procedures.

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

SCHEDULE 1 - REPRESENTATIONS AND WARRANTIES FORM

(To be submitted on the Negotiating Party's letterhead)

[date of Offer Submission Deadline]

THE CHAIRPERSON

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

Sir/Madam:

We refer to the Negotiation Procedures dated 05 October 2020, as amended or supplemented, (*Negotiation Procedures*) for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with more or less 246,459 square meters located in Brgy. Malaya, Pililla, Rizal, Philippines. We submit this Schedule C - Purchase Price of the Asset Purchase Agreement to the PSALM Privatization Bids and Awards Committee after having completed a comprehensive and complete business, legal, technical and financial due diligence.

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

We unconditionally, voluntarily and irrevocably state that:

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

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

- j. It is not barred or blacklisted from participating in any bidding or negotiation by any Government Entity or in any contract with a Government Entity;
- k. It has not been disqualified from participating in PSALM's bidding or negotiation activities by reason of fraudulent acts or has not committed fraud or breach in the provisions of any agreement with PSALM;
- l. The Negotiating Party, its officers and directors are not related to the Chairman, President and CEO, members of the Board of Directors of PSALM and members of the Committee by consanguinity or affinity up to the fourth civil degree, legitimate or common law;
- m. The Negotiating Party and/or its incorporators, past or present shareholders and directors, officers, employees, representatives or agents have not given, authorized or offered any commission or bribe or, in any manner, given or offered any money or other consideration directly or indirectly to any past or present director, officer, employee or agent of any Government Entity, including PSALM, which violates Philippine Law, including the Revised Penal Code (Act Number 3815, as amended) and the Anti-Graft and Corrupt Practices Act (RA 3019, as amended);
- n. The Negotiating Party, 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, and that it has not been disqualified from participating in other bidding or negotiation activities of PSALM;
- o. It shall at all times comply with Philippine Law and it accepts Philippine Law as the law governing the Negotiation and the APA for the Purchased Assets;
- p. It unconditionally and irrevocably waives any right to seek and obtain a writ of injunction or prohibition or restraining order against the Committee, PSALM, NPC and/or any third party to prevent or restrain the Negotiation Process or any related proceedings, the issuing bank, confirming or advising bank, the conduct of a Negotiation or any related proceeding, the selection of the Highest-Ranking Negotiating Party, Buyer or Winning

Negotiating Party, the performance of the APA for the Purchased Assets and the draw on or forfeiture of the Offer Security.

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

[NEGOTIATING PARTY'S NAME]

Signature
Printed Name
Title/Designation

Witnessed by:

ACKNOWLEDGEMENT

SCHEDULE 2 - FORM OF ACCEPTANCE OF NEGOTIATION PROCEDURES

(To be submitted on the Negotiating Party's letterhead)

[date]

THE CHAIRPERSON

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

Sir/Madam:

We refer to the Negotiation Procedures dated 05 October 2020, as amended or supplemented, (*Negotiation Procedures*) for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with more or less 246,459 square meters (Purchased Assets).

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

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

1. It has received the Negotiation Package dated 05 October 2020, which includes the Negotiation Procedures;
2. It has read and understood each and every section and page of the Negotiation Procedures, its provisions, terms and conditions, amendments, supplements or modifications, all Supplemental Negotiation Bulletins, and the Committee's decisions, and accepts and agrees to be bound and fully abide by and comply with their terms and conditions;
3. It unconditionally and irrevocably waives any right to seek and obtain a writ of injunction or prohibition or restraining order against the Committee, PSALM, NPC and/or any third party to prevent or restrain the Negotiation Process or related proceedings, the conduct of a Negotiation or any related proceeding, the selection of the Highest-Ranking Negotiating Party, Buyer or Winning Negotiating Party, the performance of the APA for the Purchased Assets and any draw on or forfeiture of the Offer Security. Such waiver shall be without prejudice to the right of the undersigned to question the basis for any disqualification or the rejection of its Offer by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order;
4. It shall at all times comply with Philippine Law; and,

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

[NEGOTIATING PARTY'S NAME]

By:
[Name]
[Designation]
[Title]

Witnessed by:
[Name]

ACKNOWLEDGMENT

SCHEDULE 3 - STATEMENT UNDER OATH

(To be submitted on the Negotiating Party's letterhead)

[date]

THE CHAIRPERSON

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

Sir/Madam:

We refer to the Negotiation Procedures dated 05 October 2020, as amended or supplemented, (*Negotiation Procedures*) for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with more or less 246,459 square meters (Purchased Assets).

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

- A. It is not disqualified or prohibited from participating in any bidding or negotiation conducted by a government entity or entering into any kind of contract with a government entity;
- B. From Documentary Deliverables Deadline until Closing Date, the Negotiating Party, 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. Any violation of this warranty shall constitute a sufficient ground for the disqualification of the Negotiating Party, the termination of the APA, forfeiture of the Offer Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Negotiating Party, and/or its representatives;
- C. It is qualified under Philippine Law to offer for the Purchased Assets and in the event it is declared the Winning Negotiating Party, it is qualified under Philippine Law to own the Purchased Assets;

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

[NEGOTIATING PARTY’S NAME]

Signature
Printed Name
Title/Designation

Witnessed by:

ACKNOWLEDGMENT

SCHEDULE 4 - FORM OF AUTHORIZATION TO VERIFY

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

[date]

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

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

[Banks]

[Any other appropriate government agency]

Gentlemen:

This is to authorize the Power Sector Assets and Liabilities Management Corporation (PSALM) or its representatives to verify, examine and secure copies of all records pertaining to our Company on file with your office. We issue this authorization in furtherance of the Negotiation Procedures dated 05 October 2020, for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with more or less 246,459 square meters (Purchased Assets) located in Pililla, Rizal, Philippines.

[NEGOTIATING PARTY'S NAME]

By:
[Name]
[Designation]
[Title]

Witnessed by:
[Name]

ACKNOWLEDGEMENT

SCHEDULE 5 - FORMS OF OFFER SECURITY IN THE FORM OF SBLC

5.1 FORM OF OFFER SECURITY ISSUED BY A BANK LICENSED TO DO BUSINESS AND IS OPERATING IN THE PHILIPPINES

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

IRREVOCABLE STANDBY LETTER OF CREDIT

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

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

Subject: Letter of Credit No. [●]

We refer to the Negotiation Procedures dated 05 October 2020, as amended or supplemented, (*Negotiation Procedures*) for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with more or less 246,459 square meters (Purchased Assets). Unless otherwise defined, capitalized terms used in this document shall have the meaning ascribed to them in the Negotiation Procedures.

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

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

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

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

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

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

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

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

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

[Insert Date and Place of Issue]

[Issuing Bank]

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

ANNEX A
DEMAND CERTIFICATE
[Date]

[Address of Issuing Bank]

Attention: [●]

Re: Demand for Payment under Letter of Credit No.

Ladies and Gentlemen:

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

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

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

By: _____
Name:
Title:

5.2 FORM OF OFFER SECURITY ISSUED BY A BANK NOT LICENSED TO DO BUSINESS IN THE PHILIPPINES

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

IRREVOCABLE STANDBY LETTER OF CREDIT

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

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

Subject: Letter of Credit No. [●]

We refer to the Negotiation Procedures dated 05 October 2020, as amended or supplemented, (*Negotiation Procedures*) for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with more or less 246,459 square meters (Purchased Assets). Unless otherwise defined, capitalized terms used in this document shall have the meaning ascribed to them in the Negotiation Procedures.

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

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

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

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

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

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

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

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

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

[Insert Date and Place of Issue]

[Issuing Bank]

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

ANNEX A
DEMAND CERTIFICATE
[Date]

[Address of Issuing Bank]

Attention: [●]

Re: Demand for Payment under Letter of Credit No.

Ladies and Gentlemen:

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

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

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

By: _____
Name:
Title:

FORM OF CONFIRMATION OF OFFER SECURITY

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

CONFIRMATION OF IRREVOCABLE STANDBY LETTER OF CREDIT

Our Confirmation Number: [●]

Amount: PhP _____

Stated Expiration Date: [●]

Issuing Bank: [●]

Issuing Bank's LC No. [●]

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

Subject: Confirmation of Letter of Credit

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

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

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

PSALM shall present one Demand Certificate stating the date of presentation for the drawing to [name and address of Confirming Bank located in Manila]. If PSALM presents the Demand Certificate by 10:00 AM local time on any day on which we are open for business (*Business Day*), in strict conformance with the terms and conditions of this confirmation, we will honor the same by making payment in immediately available funds: (1) in accordance with PSALM's payment instructions; (2) without any restriction, condition, inquiry or right of objection on our part; (3) without notice to the Issuing Bank or its Account Party prior to such payment; and, (4) notwithstanding any condition, demand, or objection by the Issuing Bank or its Account Party or any other party, without

PSALM having to further substantiate such demand, by 3:00 PM local time on such Business Day. Otherwise, we will honor PSALM's Demand Certificate by 10:00 AM local time on the following Business Day.

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

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

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

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

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

[Insert Date and Place of Issue]

[Confirming Bank]

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

ANNEX A
DEMAND CERTIFICATE
[Date]

[Address of Confirming Bank]

Attention: [●]

Re: Demand for Payment under Confirmation of Letter of Credit

Ladies and Gentlemen:

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

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

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

By: _____
Name:
Title:

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

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

IRREVOCABLE STANDBY LETTER OF CREDIT

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

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

Subject: Letter of Credit No. [●]

We refer to the Negotiation Procedures dated 05 October 2020, as amended or supplemented, (*Negotiation Procedures*) for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with more or less 246,459 square meters (Purchased Assets). Unless otherwise defined, capitalized terms used in this document shall have the meaning ascribed to them in the Negotiation Procedures.

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

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

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

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

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

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

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

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

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

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

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

[Insert Date and Place of Issue]

[Issuing Bank]

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

ANNEX A
DEMAND CERTIFICATE
[Date]

[Address of Issuing Bank]

Attention: [●]

Re: Demand for Payment under Letter of Credit No.

Ladies and Gentlemen:

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

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

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

By: _____
Name:
Title:

FORM OF ADVICE BY THE ADVISING BANK

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

ADVICE ON IRREVOCABLE STANDBY LETTER OF CREDIT

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

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

Subject: Advice on Letter of Credit

We are a branch of the Issuing Bank.

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

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

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

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

[Insert Date and Place of Issue]

[Advising Bank]

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

ANNEX A
DEMAND CERTIFICATE
[Date]

[Address of Advising Bank]

Attention: [●]

Re: Demand for Payment under Letter of Credit

Ladies and Gentlemen:

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

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

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

By: _____
Name:
Title:

SCHEDULE 6 - FINAL ASSET PURCHASE AGREEMENT

**SCHEDULE 7 - DESIGNATION OF CONSORTIUM/JOINT VENTURE LEAD MEMBER
AND ITS AUTHORIZED REPRESENTATIVE**

[Letterhead]

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

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

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

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

4. The proposed Consortium/Joint Venture shall, upon due incorporation, offer for PSALM’s Project in accordance with PSALM’s Negotiation Procedure;

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

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

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

Lead Member of the Proposed Consortium/Joint Venture	Authorized Representative of Lead Member

RESOLVED FURTHER that the Lead Member shall proceed with the Negotiation Process for the Project for and in behalf of the

proposed Consortium/Joint Venture. It shall have an authorized representative which shall receive all Supplemental Negotiation Bulletins, the Final Asset Purchase Agreement, communications, correspondences, notices and legal processes for the proposed Consortium/Joint Venture.

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

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

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

(Place, Date of Execution.)

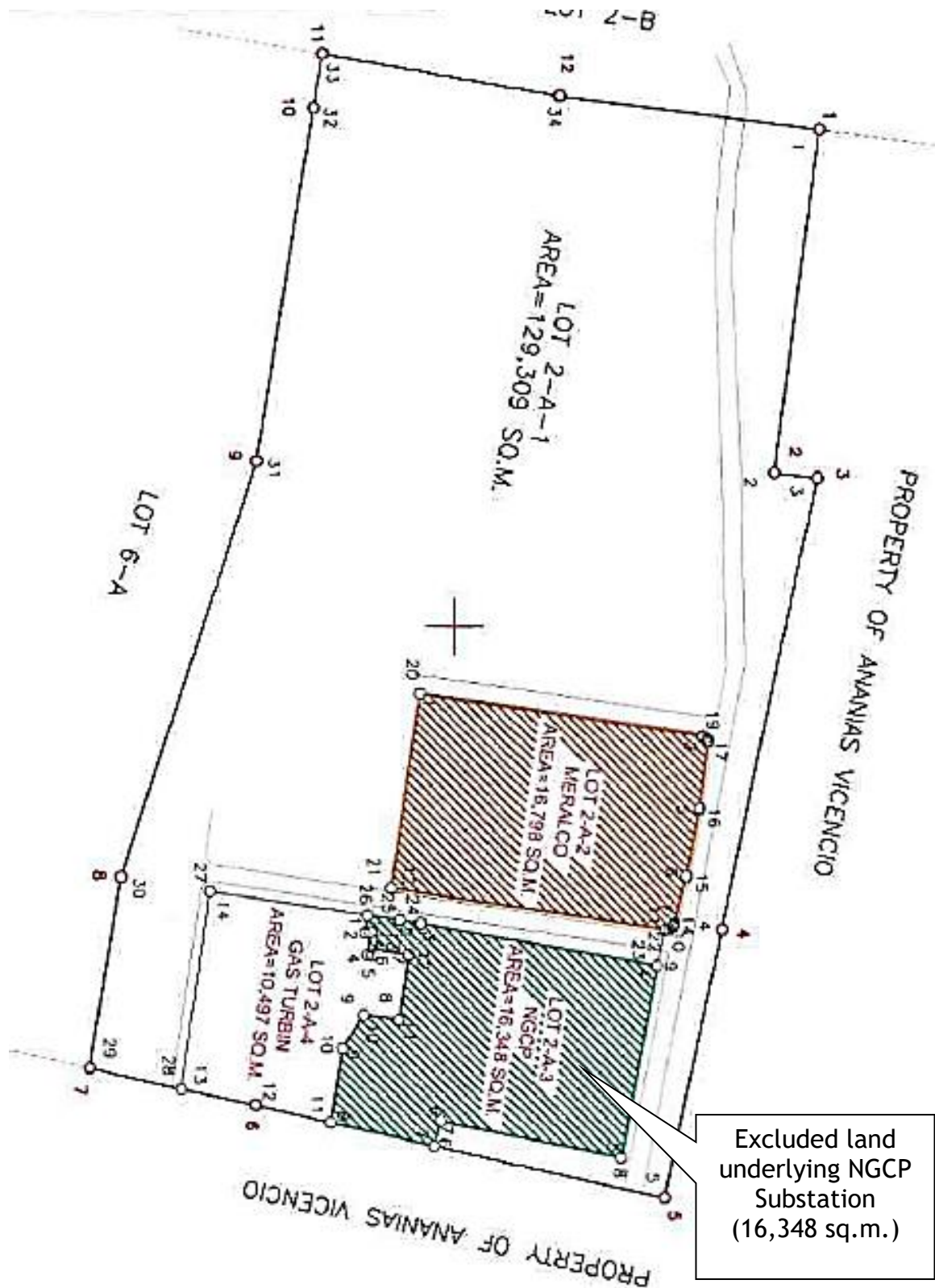
[Corporate Secretary or Equivalent Officer]

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

NOTARY PUBLIC

Doc. No.: _____
Page No.: _____
Book No.: _____
Series of 2020.

SCHEDULE 8 - REPRESENTATION OF SURVEY PLAN OF THE LAND UNDERLYING THE NGCP SUBSTATION (AN EXCLUDED LAND AREA IN THE SALE)



NARRATIVE TECHNICAL DESCRIPTION

LOT 2-A-3 (NGCP)

A PARCEL OF LAND (Lot 2-A-3 (NGCP), a being a portion of Lot 2-A, Psu-4578-AMD.-2), situated in the Barangay of Malaya, Municipality of Pililla, Province of Rizal, Island of Luzon.

Bounded on the NW,NE, along lines 1-2-3-4-5 by Road; on the SE,NE, along lines 5-6-7, by Lot 2-A-1 of the subdivision plan; on the SE, along line 7-8 by Property of Ananias Vicencio; and on the SE,SW,NW,SE,NE,SW,NE,SW, by Lot 2-A-4 (Gas Turbin) of the Subdivision plan.

Beginning at a point marked "1" on the plan, being S 03-40 W, 4,492.86 m. from BLLM No. 1, Quisao, MP of Pililla, Rizal to Corner "1".

thence	N 08-21 E	17.41 m.	to point 2;
thence	N 08-24 E	11.48 m.	to point 3;
thence	N 09-58 E	129.91 m.	to point 4;
thence	S 79-35 E	106.79 m.	to point 5;
thence	S 11-23 W	99-.35 m.	to point 6;
thence	S 76-21 E	14.09 m.	to point 7;
thence	S 12-44 W	57.54 m.	to point 8;
thence	N 81-06 W	41.32 m.	to point 9;
thence	N 57-47 W	21.44 m.	to point 10;
thence	N 08-00 E	18.99 m.	to point 11;
thence	N 81-39 W	35.98 m.	to point 12;
thence	S 08-18 W	19.03 m.	to point 13;
thence	S 77-27 E	2.52 m.	to point 14;
thence	S 05-44 E	2.75 m.	to point 15;
thence	N 82-37 W	12.16 m.	to point 16;
thence	S 03-21 E	3.00 m.	to point 17;
thence	N 81-56 W	9.39 m.	to point of beginning.

Containing an area of **Sixteen Thousand Three Hundred Forty Eight (16,348)** square meters more or less.

Prepared by:


WILFREDO P. DASAL
Geodetic Engineer
Reg. Cert. No. 3630 Date: Aug. 14, 1989

**SCHEDULE 9 - TEMPLATE FOR THE AFFILIATE’S NET ASSET VALUE (NAV)
COMPLIANCE**

(To be submitted on the Negotiating Party’s letterhead)

[date]

THE CHAIRPERSON

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

Sir/Madam:

We refer to the Negotiation Procedures dated 05 October 2020, as amended and/or supplemented, (the “*Negotiation Procedures*”) for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with more or less 246,459 square meters (the “*Assets*”).

Pursuant to [IB-06(G)] of the Negotiation Procedures, [Negotiating Party] is required to establish that [Negotiating Party] or a nominated Affiliate has a Net Asset Value (NAV) of at least One Billion Seven Hundred Million Philippine Pesos (PhP1,700,000,000.00).

Considering that [Negotiating Party] does not have a NAV of at least PhP1,700,000,000.00, [Negotiating Party] hereby submits [Affiliate’s] documentary proof in support of [Negotiating Party’s] Documentary Deliverables to show that [Affiliate] has a NAV of at least PhP1,700,000,000.00. Also attached to this letter is an **Affidavit** executed by [Affiliate] confirming and affirming that it has a NAV of at least PhP1,700,000,000.00.

We further affirm, represent and confirm that [Affiliate] and [Negotiating Party] are Affiliates because _____. We also acknowledge that pursuant to IB-06(G) of the Negotiation Procedures, all documentary proof supporting such statement are subject to the acceptability of PSALM.

For the Committee’s consideration.

[Negotiating Party Authorized Representative]
[Designation]

Conforme:

[Affiliate’s Authorized Representative]
[Designation]

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY) S.S.

AFFIDAVIT ON NET ASSET VALUE (NAV) COMPLIANCE

I, **[Name of Affiliate's Representative]**, of legal age, Filipino, [single/married], with address at _____, after having been duly sworn to in accordance with law, hereby depose and state that:

1. I am the **[Position]** and duly authorized representative of **[Affiliate]** (the "Corporation"), a corporation organized and existing by and under Philippine law, with address at _____, as evidenced by the Secretary's Certificate dated _____ hereto attached as Annex A;

2. The Corporation represents that it is an Affiliate of **[Negotiating Party]**, which participated in the negotiation process for the sale of 650 MW Malaya Thermal Power Plant and its underlying land in Pililla, Rizal (the "Asset");

3. **[Negotiating Party]**, pursuant to IB-06(G) of the Negotiation Procedures dated 05 October 2020, as amended and/or supplemented (the "Negotiation Procedures"), is required to establish that **[Negotiating Party]** or the Corporation, as the nominated Affiliate, has a Net Asset Value (NAV) of at least **One Billion Seven Hundred Million Philippine Pesos (PhP1,700,000,000.00)**;

4. Pursuant to the above-paragraph, the Corporation hereby submits its documentary proof in support of **[Negotiating Party's]** Documentary Deliverables under IB-06(G) of the Negotiation Procedures to show and confirm that the Corporation has a NAV of at least PhP1,700,000,000.00;

5. This affidavit is executed to attest to the truth of the foregoing pursuant to IB-06(G) of the Negotiation Procedures for the sale of above-mentioned Assets.

IN WITNESS WHEREOF, I hereunto set my hand this ___ day of _____.

Affiant

ACKNOWLEDGMENT

SCHEDULE 10 - TEMPLATE FOR THE AFFILIATE'S BANK CERTIFICATION REQUIREMENT

(To be submitted on the Negotiating Party's letterhead)

[date]

THE CHAIRPERSON

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

Sir/Madam:

We refer to the Negotiation Procedures dated 05 October 2020, as amended and/or supplemented, (the "*Negotiation Procedures*") for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with more or less 246,459 square meters (the "*Assets*").

Pursuant to [IB-06(G)] of the Negotiation Procedures, [*Negotiating Party*] is required to establish that [*Negotiating Party*] or a nominated Affiliate has a total Average Daily Balance ("ADB") for the last three (3) months of at least One Billion Seven Hundred Million Pesos (PhP1,700,000,000.00) in the bank accounts of [*Negotiating Party*] or its Affiliate.

Considering that [*Negotiating Party*] does not have an aggregate ADB of at least PhP1,700,000,000.00, [*Negotiating Party*] hereby submits [*Affiliate's*] Bank Certification/s in support of [*Negotiating Party's*] Documentary Deliverables to show that [*Affiliate*] has an aggregate ADB in its bank accounts of at least PhP1,700,000,000.00. Also attached to this letter is an **Affidavit** executed by [*Affiliate*] confirming and affirming that it has an aggregate ADB in its bank accounts of at least PhP1,700,000,000.00.

We further affirm, represent and confirm that [*Affiliate*] and [*Negotiating Party*] are Affiliates because _____. We also acknowledge that pursuant to IB-06(G) of the Negotiation Procedures, all documentary proof supporting such statement are subject to the acceptability of PSALM.

For the Committee's consideration.

[*Negotiating Party* Authorized Representative]
[Designation]

Conforme:

[*Affiliate's* Authorized Representative]
[Designation]

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY) S.S.

AFFIDAVIT ON THE AFFILIATE'S BANK CERTIFICATION COMPLIANCE

I, [Name of Affiliate's Representative], of legal age, Filipino, [single/married], with address at _____, after having been duly sworn to in accordance with law, hereby depose and state that:

1. I am the [Position] and duly authorized representative of [Affiliate] (the "Corporation"), a corporation organized and existing by and under Philippine law, with address at _____, as evidenced by the Secretary's Certificate dated _____ hereto attached as Annex A;
2. The Corporation represents that it is an Affiliate of [Negotiating Party], which participated in the Negotiation process for the sale of 650 MW Malaya Thermal Power Plant and its underlying land in Pililla, Rizal (the "Assets");
3. [Negotiating Party], pursuant to IB-06(G) of the Negotiation Procedures dated 05 October 2020, as amended and/or supplemented (the "Negotiation Procedures"), is required to establish that [Negotiating Party] or the Corporation, as the nominated Affiliate, has an aggregate Average Daily Balance ("ADB") for the last three (3) months of at least One Billion Seven Hundred Million Pesos (PhP1,700,000,000.00) in the bank accounts of [Negotiating Party] or the Corporation.
4. Considering that [Negotiating Party] does not have an aggregate ADB of at least PhP1,700,000,000.00, [Negotiating Party] hereby submits [Affiliate's] Bank Certification/s in support of [Negotiating Party's] Documentary Deliverables to show that the Corporation has an aggregate ADB in its bank accounts of at least PhP1,700,000,000.00. The bank certification is dated within 14 Business Days immediately preceding the Documentary Deliverables Deadline.
5. This affidavit is executed to attest to the truth of the foregoing pursuant to IB-06(G) of the Negotiation Procedures for the sale of the above-mentioned Assets.

IN WITNESS WHEREOF, I hereunto set my hand this ____ day of _____.

Affiant

SCHEDULE 11 - TEMPLATE FOR THE FINANCIAL SUPPORT GUARANTEE BY AN AFFILIATE

(To be submitted on the Negotiating Party's letterhead)

[date]

THE CHAIRPERSON

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

Sir/Madam:

We refer to the Negotiation Procedures dated 05 October 2020, as amended and/or supplemented (the "Negotiation Procedures") for the Sale of the 650 MW Malaya Thermal Power Plant and the Underlying Land with more or less 246,459 square meters (the "Asset").

In compliance with Section IB-12(B) of the Negotiation Procedures, the Negotiating Party is required to secure from a Qualified Bank or an Affiliate a duly executed Financial Support Guarantee if it will submit a Financial Offer that is higher than its Net Asset Value (NAV).

Considering that [Negotiating Party] will submit an Offer that is higher than its NAV, [Negotiating Party] and [Affiliate], as its nominated Affiliate, hereby confirm and affirm that [Affiliate] is financially capable to guarantee and support the financial obligations of [Negotiating Party], and binds itself to be solidarily liable to the financial obligations of [Negotiating Party], including but not limited to the posting of the Performance Bond and payment of the Purchase Price.

In support of this undertaking, attached in this letter is an Affidavit of Financial Support dated _____ executed by [Affiliate] in favor of [Negotiating Party].

We further affirm, represent and confirm that [Affiliate] and [Negotiating Party] are Affiliates because _____. We also acknowledge that all documentary proof supporting such statement are subject to the acceptability of PSALM.

For the Committee's consideration.

[Negotiating Party Authorized Representative]
[Designation]

Conforme:

[Affiliate's Authorized Representative]
[Designation]

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY) S.S.

AFFIDAVIT OF FINANCIAL SUPPORT

I, **[Name of Affiliate’s Representative]**, of legal age, Filipino, [single/married], with address at _____, after having been duly sworn to in accordance with law, hereby depose and state that:

1. I am the [Position] and duly authorized representative of [Affiliate] (the “Corporation”), a corporation organized and existing by and under Philippine law, with address at _____, as evidenced by the Secretary’s Certificate dated _____ hereto attached as Annex A;

2. The Corporation represents that it is an Affiliate of *[Negotiating Party]*, which participated in the Negotiation process for the sale of 650 MW Malaya Thermal Power Plant and its underlying land in Pililla, Rizal (the “Asset”);

3. *[Negotiating Party]*, pursuant to IB-12(B) of the Negotiation Procedures dated 05 October 2020, as amended and/or supplemented (the “Negotiation Procedures”), is required to secure from an Affiliate a duly executed Financial Support Guarantee if it will submit a Financial Offer that is higher than its Net Asset Value (NAV);

4. Considering that [Negotiating Party] will submit an Offer that is higher than its NAV, the Corporation, as its nominated Affiliate, hereby confirms and affirms that the Corporation will support the Financial Offer of [Negotiating Party] equivalent to at least the difference between the Negotiating Party’s Financial Offer and its NAV based on the Documentary Deliverables submitted;

5. The Corporation represents and warrants that it is financially capable to guarantee and support the financial obligations of *[Negotiating Party]*, and binds itself to be solidarily liable to the financial obligations of *[Negotiating Party]*, including but not limited to the posting of the Performance Bond and payment of the Purchase Price.

6. I further certify and attest that the Corporation possesses the financial capacity to support [Negotiating Party] during the course of the Negotiation process for the sale of the above-mentioned Asset.

7. This affidavit is executed to attest to the truth of the foregoing pursuant to IB-12(B) of the Negotiation Procedures.

IN WITNESS WHEREOF, I hereunto set my hand this ____ day of _____.

Affiant

ACKNOWLEDGMENT

