**SAMPLE FORM 2**

**Non-Disclosure Undertaking**

This Non-Disclosure Undertaking (“Undertaking”) is executed in favor of MORE Electric and Power Corporation by *[ name of Prospective Bidder]* (“Receiving Party”).

1. CONFIDENTIAL INFORMATION

Receiving Party is interested in obtaining information from MORE Power, in furtherance of the bid for the supply of the \_\_\_\_\_\_\_\_MW to MORE Power (“Bid”) under the terms and conditions set out in the “Invitation to Bid for the Supply of Power to MORE Electric and Power Corporation,” as published on \_\_\_\_\_\_\_\_\_\_\_\_\_ in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Invitation”). By the reason of such interest of the Receiving Party, MORE Power proposes to disclose certain Confidential Information (as defined below) to Receiving Party. Receiving Party acknowledges that MORE Power has the exclusive right to determine what information it may furnish to the Receiving Party.

As used herein, “Confidential Information” means all information concerning MORE Power or its assets, liabilities or obligations furnished to the Receiving Party directly by any of MORE Power’s officials, employees, and legal, technical, financial advisors, agents or other representatives, including: (i) information obtained by the Receiving Party through any communication or presentation by MORE Power; (ii) information contained in any other written material furnished or otherwise made available to the Receiving Party; (iii) information furnished to the Receiving Party electronically; (iv) information presented to the Receiving Party or its advisors orally, whether presented in a presentation, letter or another forum; and (vi) all analyses, compilations, forecasts, studies or other documents prepared by the Receiving Party or its Representatives which contain or reflect any of the foregoing information.

Notwithstanding the foregoing, information disclosed by MORE Power which would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that it can be proven by written records that said information is (i) part of the public domain without violation of this Undertaking or (ii) disclosed pursuant to administrative or judicial action; provided, that, the Receiving Party shall use its best efforts to maintain the confidentially of the Confidential Information (including but not limited to asserting in such action any applicable privileges), and shall, immediately after getting knowledge or receiving notice of such action, notify MORE Power thereof and give MORE Power the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence. If only a portion of the Confidential Information falls under any of the above, then only that portion of the Confidential Information shall be excluded from the use and disclosure restrictions of this Undertaking.

1. NO REPRESENTATION

Receiving Party acknowledges and agrees that MORE Power is not making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information or that such information will remain unchanged. Receiving Party releases MORE Power or any of its official and employees of any liability to the Receiving Party or any other person arising out of or related to the Confidential Information, or any interpretations or conclusions made or drawn therefrom by the Receiving Party. Only those representations or warranties that are made to the Receiving Party in the Power Supply Agreement, as, and if it is executed by MORE Power with the Receiving Party, and subject to such limitations and restrictions as may be specified in such agreement, will have any legal effect.

1. RECEIVING PARTY’S OBLIGATIONS

Unless MORE Power gives its prior written authorization, the Recipient shall:

(a) not use the Confidential Information for any other purpose than the Bid or in connection with the Power Supply Agreement as, and if it is executed by MORE Power with the Receiving Party;

(b) protect the Confidential Information against disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which it protects confidential information of its own;

(c) limit circulation of the Confidential Information to its officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors, agents or other representatives (collectively, the “Representatives”) who need to know such Confidential Information only for the purpose of the Bid.

Confidential Information furnished in tangible form or on electronic media shall not be duplicated by the Receiving Party except for the purposes of the Bid or in connection with the Power Supply Agreement as, and if it is executed by MORE Power with Receiving Party. Upon the request of MORE Power, the Receiving Party shall either return all Confidential Information received in written, electronic or other tangible form, including copies, or reproductions or other media containing such Confidential Information or destroy the same and certify that it has been destroyed, as requested by MORE Power, within ten (10) days such request; provided, however, that the Receiving Party may retain one copy of all Confidential Information provided in written, electronic, or tangible form for its corporate records if required for regulatory purposes, subject to the Receiving Party providing MORE Power written notification of such regulatory purpose with details satisfactory to MORE Power. Without limiting the generality of the foregoing, in the event that the Power Supply Agreement is not consummated with the Receiving Party for any reason whatsoever, neither the Receiving Party nor its Representatives shall use any of the Confidential Information for any purpose. Receiving Party will be responsible for any breach of this Undertaking by its Representatives.

During the course of the Receiving Party’s evaluation, the Receiving Party shall make all inquiries and other communications directly to MORE Power in writing and addressed to MORE Power’s representatives as indicated in the invitation. Receiving Party agrees not to directly or indirectly contact or communicate with any other official or other employee of MORE Power concerning the PSA, or to seek any information in connection therewith from such person, without the express written consent of MORE Power.

1. COMMUNICATIONS WITH OTHER BID PARTICIPANTS

Except as may be required by applicable law, Receiving Party shall refrain from communicating, and cause its Representatives to refrain from communicating, directly or indirectly, with any Bid Participant about PSA, or about any subject related to PSA; provided, however, that the Receiving Party may communicate with its Representatives and any other third party (and any of its Representatives) bound by a confidentiality agreement with MORE Power covering the Confidential Information.

1. INDEMNIFICATION

The Receiving Party shall at all times indemnify MORE Power in respect of any loss, damage or cost, direct or indirect, suffered or incurred by MORE Power as a result of breach of any of the Receiving Party’s obligations under this Agreement, provided, further, that the Receiving Party shall indemnify MORE Power in the amount of Five Million Pesos (Php 5,000,000.00) as liquidated damages in case of a disclosure of the Confidential Information.

1. GOVERNING LAW AND VENUE

This Undertaking shall be governed by and construed in accordance with the laws of the Republic of the Philippines and the Recipient consents to the exclusive jurisdiction of the courts of Iloilo City (to the exclusion of all others) for any dispute arising out of this Undertaking.

1. NO IMPLIED WAIVER

Failure of MORE Power to insist in any one or more instances upon strict performance by the Receiving Party of any of the terms of this Undertaking shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

1. NO COMMITMENT

(a) The Receiving Party acknowledges that MORE Power has reserved the right to terminate or suspend, at any time and without cause, further participation by the Receiving Party in the Bid and to refuse to disclose any further Confidential Information to the Receiving Party.

(b) The Receiving Party also acknowledges and agrees that no contract or agreement providing for the power supply to MORE Power shall be deemed to exists between the Receiving Party and MORE Power, as applicable, unless and until definitive power supply agreement has been executed and delivered by the Receiving Party and MORE Power.

1. SEVERABILITY

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

IN WITNESS WHEREOF, Receiving Party has executed this Undertaking in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_ day of \_\_\_\_\_\_\_ 2023.

[NAME OF THE RECEIVING PARTY]

By:

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

(Authorized Representative)

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

Signed in the Presence of:

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

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_\_ day of \_\_\_\_\_\_ 2023 at \_\_\_\_\_\_\_\_\_\_\_\_\_, affiant exhibiting to me his/her \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ issued at \_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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