

CONFIDENTIALITY UNDERTAKING

This Confidentiality Undertaking ("Undertaking") is executed in favor of the Pampanga I Electric Cooperative, Inc. ("PELCO 1") by [Name of Bidder ("Acronym of Bidder's Name")].

Section 1. CONFIDENTIAL INFORMATION

1.1 [Acronym of Bidder's Name] is interested in obtaining information from PELCO 1 in connection with the bidding for the procurement of its 36MW requirement via a Power Supply Agreement ("PSA") for 123 months period under the terms and conditions in the Bidding Documents. The selection process shall be undertaken by the PELCO 1's Third Party Bids and Awards Committee ("TPBAC") via a Competitive Selection Process ("CSP") pursuant to the policy issued Department of Energy (DOE) Department Circular No. DC 2018-02-0003 and the guidelines issued by the National Electrification Administration (NEA) Memorandum No. 2019-007. In relation to this, PELCO 1 will disclose certain Confidential Information (as defined below) to [Acronym of Bidder's Name]. [Acronym of Bidder's Name] acknowledges that, in connection with its receipt and acceptance of the Bidding Documents and Supplemental Bulletins, and its participation in this CSP, it will have access to Confidential Information. [Acronym of Bidder's Name] acknowledges that PELCO 1 has the exclusive right to reasonably determine what information it may furnish to [Acronym of Bidder's Name].

1.2 As used herein, "Confidential Information" shall mean and include any information, whether written, oral or otherwise, concerning the business, operations, prospects, finances, assets, liabilities, obligations, affairs, affiliates, consortium/partnership of PELCO 1. Said information includes, but not limited to, documents, data, designs, sketches, photographs, graphs, drawings, researches, marketing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, computer software and programs, database technologies, systems, structures and architectures, historical financial statements, business plans, financial projections and budgets, historical and projected sales and energy purchases, capital spending budgets and plans, current or prospective financing sources, the names and backgrounds of personnel, personnel training techniques and materials, and the Bidding Documents, or other documents and materials prepared in connection with this CSP, furnished to [Acronym of Bidder's Name] directly by any of PELCO 1's TPBAC members, officials, employees, or other representatives, including: (i) information obtained by [Acronym of Bidder's Name] (a) during the due diligence process, (b) through site visits to PELCO 1 or its offices and

facilities and (c) through any TPBAC or management presentation by PELCO 1; (ii) information contained in any other written material furnished or otherwise made available to [Acronym of Bidder's Name]; (iii) information furnished to [Acronym of Bidder's Name] electronically; (vi) information presented to [Acronym of Bidder's Name] orally, whether presented in a management presentation or another forum; and (v) all analyses, compilations, forecasts, studies or other documents prepared by [Acronym of Bidder's Name] or its Representatives (as defined in Section 3 hereof) which contain or reflect any of the foregoing information.

1.3 Notwithstanding the foregoing, information disclosed by PELCO 1 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, [Acronym of Bidder's Name] shall use its best efforts to maintain the confidentiality 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 PELCO 1 thereof and give PELCO 1 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.

Section 2. NO REPRESENTATION

2.1 [Acronym of Bidder's Name] acknowledges and agrees that PELCO 1 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. [Acronym of Bidder's Name] releases PELCO 1 or any of its official and employees of any liability to [Acronym of Bidder's Name] or any other person arising out of or related to the Confidential Information or any interpretations or conclusions made or drawn therefrom by [Acronym of Bidder's Name]. Only those representations or warranties that are made to [Acronym of Bidder's Name] in a definitive agreement issued by PELCO 1 in connection with the PSA, as, and if it is executed by PELCO 1, and subject to such limitations and restrictions as may be specified in such agreement, will have any legal effect.

Section 3. [ACRONYM OF BIDDER'S NAME]'S OBLIGATIONS

3.1 Unless PELCO 1 gives its prior written authorization, [Acronym of Bidder's Name] shall, during a period of three (3) year from the date of disclosure of any Confidential Information hereunder:

- (a) not communicate, publish, sell, trade, or use the Confidential Information for any other purpose than for purposes of preparing and submitting a Bid as a Bidder, or for purposes of evaluating, reviewing, negotiating, executing, and implementing a PSA if [Acronym of Bidder's Name] has been declared as the winning bidder;
- (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, advisors and consultants, subsidiaries and affiliates, or other representative (collectively, the Representatives") who need to know such Confidential Information only for the purposes of preparing and submitting a Bid or for purposes of evaluating, reviewing, negotiating, executing, and implementing a PSA, and who, when requested by PELCO 1, will execute and deliver a confidentiality undertaking in favor of PELCO 1 covering the Confidential Information.

3.2 Confidential Information furnished in tangible form or on electronic media shall not be duplicated by [Acronym of Bidder's Name] except for purposes of preparing and submitting a Bid, or for purposes of evaluating, reviewing, negotiating, executing, and implementing the PSA. Upon the request of PELCO 1, [Acronym of Bidder's Name] 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 PELCO 1, within ten (10) days of such request; provided, however, that [Acronym of Bidder's Name] 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 [Acronym of Bidder's Name] providing PELCO 1 written notification of such regulatory purpose with details satisfactory to PELCO 1. Without limiting the generality of the foregoing, in the event that the Bid is not consummated with [Acronym of Bidder's Name] (for any reason whatsoever, including but

not limited to [Acronym of Bidder's Name]'s not (i) submitting Qualification Documents or Financial Proposal, or (ii) being declared the Winning Power Supplier, neither [Acronym of Bidder's Name] nor its Representatives shall use any of the Confidential Information for any other purpose. [Acronym of Bidder's Name] will be responsible for any breach of this Undertaking by its Representatives.

3.3 During the course of [Acronym of Bidder's Name]'s Bid evaluation, [Acronym of Bidder's Name] shall make all inquiries and other communications directly to PELCO 1 in writing and addressed to PELCO 1's TPBAC. [Acronym of Bidder's Name] agrees not to directly or indirectly contact or communicate with any other official or other employee of PELCO 1 concerning the Bid, or to seek any information in connection therewith from such person, without the express written consent of PELCO 1.

Section 4. COMMUNICATIONS WITH OTHER BIDDERS

4.1 Except as may be required by applicable law, [Acronym of Bidder's Name] shall refrain from communicating, and cause its Representatives to refrain from communicating, directly or indirectly, with any other bidder about the PSA, or about any subject related to the PSA; provided, however, that [Acronym of Bidder's Name] may communicate with its Representatives and any other third party (and any of its Representatives) bound by a confidentiality agreement with PELCO 1 covering the Confidential Information.

Section 5. GOVERNING LAW AND VENUE

5.1 This Undertaking shall be governed by and construed in accordance with the laws of the Republic of the Philippines and [Acronym of Bidder's Name] consents to the exclusive jurisdiction of the courts in the City of San Fernando (Pampanga) (to the exclusion of all others) for any dispute arising out of this Undertaking.

Section 6. NO IMPLIED WAIVER

6.1 Failure of PELCO 1 to insist in any one or more instances upon strict performance by [Acronym of Bidder's Name] 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.

Section 7. NO COMMITMENT

- (a) [Acronym of Bidder’s Name] acknowledges that PELCO 1 has reserved the right to terminate or suspend, at any time and without cause, further participation by [Acronym of Bidder’s Name] and to refuse to disclose any further Confidential Information to [Acronym of Bidder’s Name].
- (b) This Undertaking does not constitute a solicitation of bids for the PSA.
- (c) [Acronym of Bidder’s Name] also acknowledges and agrees that no contract or agreement providing for the PSA shall be deemed to exist between [Acronym of Bidder’s Name] and PELCO 1, as applicable, unless and until a definitive PSA has been executed and delivered by and between [Acronym of Bidder’s Name] and PELCO 1.

Section 8. SEPARABILITY

8.1 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.

[NAME OF BIDDER]

By:

[Signature]
[Name of Authorized Representative]
[Position/Designation]

Signed in the presence of:

ACKNOWLEDGEMENT

BEFORE ME, a notary public for and in the City of _____ this _____ day of _____, 2021 exhibiting to me his/her competent evidence of identity consisting of _____ with No. _____ issued on _____ valid until _____ known to me and to me known the same person who executed the foregoing instrument and acknowledged to me that the same is their own free and voluntary act and deed.

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2021.