



NON DISCLOSURE UNDERTAKING – TENDER GME000218854 FOR SUPPLY OF POWER QUALITY INSTRUMENTS

THE APPLICANT (COMPANY NAME)..... (VAT NUMBER) a company incorporated under the laws of with its registered office in, duly represented by (hereinafter, the **Applicant**), ID number.....

WHEREAS

a) Enel Italia S.r.l. a company incorporated under the laws of Italy, with registered office in Rome, Viale Regina Margherita, n. 125, registered in Registro Imprese of Rome, with tax code and VAT number 06377691008, with fully paid up share capital amounting to EUR 50.100.000 (hereinafter, **ENEL**), published the public announcement for the tender GME000218854 (hereinafter, the **Bid**) for the supply of Power Quality Instruments (hereinafter **PQI**), to be produced in accordance with the following ENEL Technical Specifications and other subsequent documents related to (to be shared eventually during the tender):

- GSTQ001_02;
- GSTQ002_02;
- Cyber Security Guideline no. 12

b) ENEL issued a new Public European Tender on the Supplement to the Official Journal of European Union, concerning the tender GME000218854 for the supply of PQI and due the confidential nature of the Technical Specifications, is requesting the Company to sign a non-disclosure undertaking (hereinafter NDU) for the purpose of entitling the Company to receive the Technical Specifications as a part of the tender announcement;

c) The Company is willing to know these Technical Specifications, in order to evaluate its interest to participate to the present ENEL's tender. This communication does not represent an invitation to participate to the Public European Tender. If the Company is interested into taking part to the Public European Tender, the Company shall follow all the steps and respect all the requirements stated in the Public European Tender. The NDU is part of the administrative requirements necessary to participate in the public announcement.

WHEREAS ALL THE FOREGOING, which forms integral part of this non-disclosure undertaking (hereinafter, the **Undertaking**),

THE APPLICANT UNDERTAKES THE FOLLOWING TOWARDS ENEL GROUP

1. The Technical Specifications, as well as all and any related analyses, compilations, studies, technical specifications or other documents/software and information (whether oral or written and either prepared by ENEL or otherwise, as well as whether or not marked 'confidential' or otherwise) which will be provided – during the Disclosing Period - to the Applicant or any of its directors, officers, employees, or advisors or subcontractors, or Affiliates (hereinafter the Applicant's Representatives), by or on behalf of ENEL or any of its directors, officers, employees, as well as of Enel's Affiliates and Enel's Non Controlled Affiliates (or any of their directors, officers, employees), or advisors or subcontractors (collectively, the ENEL's Representatives), are collectively referred to hereinafter as the ENEL's Material. The term ENEL's Material does not include information which is or becomes



generally available to the public other than as a result of a breach of non-disclosure undertaking by any person or entity. The Company undertakes that it: (i) may not at any time and in any way copy, reproduce, process, translate, modify, adapt, develop, decompile, dismantle, disaggregate, subject to reverse engineering operations (or, in any case, subject to operations intended to extract the source codes) – in full or in part – such ENEL's Material and (ii) shall ensure that the aforementioned prohibitions are complied with also by the Company's Representatives involved by the Company in its Evaluation Activities. For the purposes of this Undertaking:

- the term **Affiliates** means, at any time, any company controlling, under common control with, or controlled by ENEL or by the Company at that time and until the control exists. To this purpose the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities, partnership or other ownership interests, by contract or otherwise), provided that, in any event, any company that owns or holds, directly or indirectly, more than fifty percent (50%) of the share capital or of the voting securities, or other equity interests of any other company will be deemed to control such company.
 - the term **Non Controlled Affiliates** means, at any time, any company partially owned, under common partial ownership with, or partially owned by ENEL at that time and until such ownership exists. To this purpose the term "partial ownership" means the possession by ENEL, directly or indirectly, of less than fifty percent (50%) of the share capital of any other company.
2. The Applicant hereby undertakes to keep the ENEL's Material strictly confidential, to use it only for the purpose of participating in the Bid and, in any event, not to use it in any way that, directly or indirectly, is detrimental to ENEL. The Applicant will be responsible for any of its or its Applicant's Representatives' action or inaction that would constitute breach of this Undertaking and hereby agrees to indemnify ENEL from and hold it harmless against any and all losses and liabilities (including, without limitation, legal fees and expenses) arising out of any such action or inaction.
 3. Without the prior written consent of ENEL, the Applicant will not, and will cause the Applicant's Representatives not to, disclose to any person the fact that ENEL's Material exists or has been provided to the Applicant.
 4. Although ENEL will endeavour to include in ENEL's Material any information which it believes to be relevant for the purpose of Applicant's participation in the Bid, the Applicant understands and agrees that neither ENEL, nor any of ENEL's Representatives have made or make any representation or warranty as to the accuracy or completeness of ENEL's Material. Moreover, the Applicant agrees that neither ENEL, nor any of ENEL's representatives shall have any liability to the Applicant resulting from or arising out of the use of ENEL's Material by the Applicant and/or any Applicant's Representatives.
 5. At any time, upon request of ENEL, the Applicant shall redeliver to ENEL or destroy all copies of the written or other tangible ENEL's Material in its possession or that of any of Applicant's Representatives; the Applicant will also use its reasonable efforts to redeliver or destroy electronically held data.
 6. No amendment, modification or discharge of this Undertaking, and no waiver hereunder, shall be valid unless expressly consented in writing by ENEL.
 7. This Undertaking shall enter into force only on the date of Company signature and shall terminate and expire after 5 (five) years.



8. This Undertaking has been construed in accordance with and shall be governed by the laws of Italy.

9. Any dispute whatsoever arising on the basis of this Undertaking or in relation to the same, including those related to its asserted total or partial invalidity or non-enforceability, interpretation, execution or possible termination, shall be submitted to the review and decision of an arbitration board which shall rule definitively in accordance with customary arbitration practice on the basis of the law referenced in Article 8, pursuant to (i) the settlement and arbitration rules of the Arbitration Chamber in Milan and (ii) the Italian Civil Procedure Code for any matter not regulated by the rules sub (i). The Arbitration Panel shall consist of three arbitrators appointed in accordance with the aforementioned rules. The seat of any arbitration proceedings shall be Milan, and the language of the proceedings shall be English. The arbitrators shall be charged with interpreting the respective rights and obligations of the Parties as provided in this Undertaking, in conformity with the Italian law, as provided by Article 8 above.

[Place and Date]

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Pursuant to Article 1341 and 1342 of Italian Civil Code, the Company expressly accepts the provisions set forth in Articles 8 (applicable law) and 9 (arbitration clause) of this Undertaking.

[Place and Date]

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PERSONAL DATA PROTECTION: POLICY AND CONSENT

Pursuant to and for the purposes of EU Regulations 2016/679 (referred to hereinafter as GDPR) and to any other relevant national law in force, on the implementation of the same, the personal data that are acquired and processed for the purposes of procurement and possible conclusion of the eventual contract is collected and processed using automated means as hard copies, as well as (should specific consent be provided) for the promotion of commercial services or to meet obligations required by law. Such data will be kept for the duration of procurement and possible eventual contract and after its termination for a period not exceeding the terms indicated by applicable laws.



In this respect, it should be noted that:

- the acquisition of data, as and when necessary, for purposes connected with procurement and eventual contract conclusion process is fundamental for performing such process; failure to consent to its processing will make it impossible to carry out such activity. The acquisition of data for promoting business services is optional;
- the personal data acquired, as well as that processed, may be communicated to selected appointed suppliers of the customer company, as data processors, to perform document control activities relating to the company and/or natural person involved in the customer's procurement process; the data may also be communicated to Companies subject to management and coordination of ENEL S.p.A or otherwise associated with the same and will not be communicated/divulged to third parties except when permitted by law;
- The applicant where natural person (and / or any other concerned parties, such as attorneys, contractual contacts persons, etc.) has the right to exercise, with regard to the existence and processing of personal data concerning him/her, the rights provided for in Articles 15-21 of the GDPR; by contacting the DPO of the Enel Group that commissioned the data¹, appointed pursuant to art. 37 GDPR;
- the Data Controller of the data in question is the ENEL Group Company - Customer, in the person of its legal representative pro tempore;

I declare to have received and read the Privacy Policy provided pursuant to GDPR and consent to the processing of my personal data for the activities related to participation in the procurement process of the customer company as indicated above.

Company stamp

Signature of legal representative

¹ Company of the Enel Group which stipulates the contract or the company in whose name and on whose behalf it is stipulated



I also declare to consent to the processing of personal data for purposes related to the promotion of commercial services in the manner and within the limits of said Privacy Policy.

Company stamp

Signature of legal representative

DIGITAL SIGNATURE OF THE LEGAL REPRESENTATIVE/ATTORNEY

Compilation instructions

This declaration must be digitally signed by the legal representative/attorney of the economic operator competitor.

In the case of a declaration signed by an attorney, the related power of attorney must be attached.

In the case of economic operators with collegiate eligibility, this declaration must be submitted by each member of the grouping, ordinary consortium, EEIG or companies adhering to the network contract and, in the case of permanent consortia or consortia among cooperative societies, by both the consortium as well as each consortium member identified as executors of the eventual contract.