



Global Procurement
Global Infrastructure and Networks
Procurement
Smart Grids Materials and Equipments

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NON DISCLOSURE UNDERTAKING – GME000210252

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 srl 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 06377691008 (hereinafter, **ENEL**) want to publish technical specifications regarding the tender GME000210252 - published on GUCE number 2019/S 007-012913 - for the Supply of Antenna system 169Mhz, to be installed on distribution network (hereinafter “the project”). The material and equipment will be produced in accordance with the technical specifications drawn up by e-distribuzione spa (hereinafter e-distribuzione) that holds the Intellectual Property right of such technical specifications;

(b) the Applicant could submitted to ENEL its request for proposal about the supply for the project

(c) due to the confidential nature of the Technical Specifications and the information that would be disclosed by ENEL during the project, ENEL is requesting the Applicant to sign a non-disclosure undertaking for the purpose of being entitled to receive Technical specification, formal invitation to the project and access the confidential information to be disclosed at the date of Request for participation and proposal (including its documents and annexes) as well as during any subsequent phase of the Project (collectively, the Disclosing Period);

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

THE APPLICANT UNDERTAKES THE FOLLOWING TOWARDS ENEL

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 Project 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 Representative's 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 Project, 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 at the date of receipt by ENEL. The Undertaking duly signed by the Company shall be:
 - 1) anticipated by e-mail to the following addresses: roberto.perra@enel.com - mariacristina.parisi@enel.com. In case of digital signature is not necessary to send an original copy to ENEL. In case of no digital signature (no Italian company) it will be received by ENEL at the following address: ENEL - Global Procurement – Global Infrastructure & Networks Procurement - Global Smart Grids Materials and Equipments Procurement - Via Arno 44 – 00198 Roma (Italy) c.a Roberto Perra

This Undertaking shall terminate and expire after 5 (five) years from the date of this Undertaking.

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]

.....



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

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DIGITAL SIGNATURE OF THE LEGAL REPRESENTATIVE/OR POWER OF ATTORNEY