

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement"), dated 30 August 2019, is entered into by and between:

The **BASES CONVERSION AND DEVELOPMENT AUTHORITY** ("BCDA"), a government instrumentality vested with corporate powers under Republic Act (RA) 7227 or the Bases Conversion and Development Act of 1992, as amended, with office address at the BCDA Corporate Center, 2nd Floor, Bonifacio Technology Center, 31st St., corner 2nd Avenue, Bonifacio Global City, Taguig, Metro Manila 1634, represented herein by its President and Chief Executive Officer, **VIVENCIO B. DIZON**, who is authorized to represent BCDA and sign this agreement under Item No. 127, Issue No. 2, Page 23 of the BCDA Manual of Approval;

- and -

The **PHILIPPINE COMPETITION COMMISSION** ("PCC"), with office address at 25/F Vertis North Corporate Center 1, North Avenue, Quezon City, represented herein by its Chairperson, **ARSENIO M. BALISACAN**.

(The BCDA and the PCC are individually referred to as a "Party" and collectively, as the "Parties".)

RECITALS:

- (A) BCDA was organized and created by virtue of R.A. No. 7227 or the Bases Conversion and Development Act of 1992, mandated to help strengthen the Armed Forces of the Philippines (AFP) while building great cities, remaining as a major force in creating economic opportunities in the country – through its establishment of integrated developments, dynamic business centers and vibrant communities. To this end, BCDA engages in public-private partnership projects ("PPP Projects") to push forward vital public infrastructure such as tollways, airports, seaports, and major real estate developments.
- (B) PCC was organized under R.A. No. 10667 or the Philippine Competition Act (the "PCA") as an independent quasi-judicial body vested with the original and primary jurisdiction over the enforcement of the PCA and the power to review and prohibit business combinations that may result in the substantial lessening of competition in the relevant market(s).
- (C) BCDA and PCC have agreed to formalize their understanding to better coordinate their efforts, reinforce their cooperation, and facilitate the review of BCDA's PPP Projects and other transactions falling under the mandatory notification and review requirements of the PCA (the "Covered Transactions"), to efficiently promote the National Government's development initiatives and policies.

- (D) Each Party has obtained all approvals, and has performed all necessary actions authorizing it to enter into this Agreement.

NOW THEREFORE, the Parties have agreed as follows:

Section 1. Coordination and Cooperation

- 1.1. *Referral of Competition Concerns.* – BCDA shall refer to PCC any actual or potential emerging competition concern arising from its PPP Projects within thirty (30) days from its discovery of the facts underlying such concerns. Competition concerns shall be deemed to include, but shall not be limited to, actual or potential anti-competitive conduct or agreements reported to or discovered by BCDA in the course of the performance of its duties and functions.
- 1.2. *Coordination and Cooperation on Covered Transactions.* – The Parties agree and understand that facilitating PCC's efficient and timely review of Covered Transactions require close cooperation and coordination between the Parties as well as BCDA's counterparts to such transactions. As such, BCDA hereby undertakes to promptly and faithfully observe the applicable timelines and requirements for the notification and review of Covered Transactions pursuant to the PCA and its implementing rules and regulations. BCDA further undertakes to exert its best efforts in encouraging its transaction counterparts' close cooperation and coordination with PCC in the notification and review of Covered Transactions.
- 1.3. *Consultative Meetings.* – The Parties may conduct consultative meetings regarding matters of common concern, including the notification, review, and monitoring of any actual or potential competition concerns arising from BCDA's PPP Projects.
- 1.4. *Capacity-Building.* – Subject to resource and operational considerations, the Parties may agree to organize joint capacity-building activities for the purpose of promoting coordination and cooperation under this Agreement, including but not limited to workshops, seminars and conferences, the cost of which shall be duly agreed by the Parties in a separate agreement.
- 1.5. *Continuing Review.* – The Parties undertake to keep the operation of this Agreement under review and, in light of experience, execute amendments or supplements to this Agreement for purposes of improving its operation and resolving any issue that may arise during its implementation.

Section 2. Access to and Use of Information

- 2.1. *Access to Information and Documents.* – Each Party, upon the request of the other and subject to Non-Disclosure Agreement/s and/or confidentiality clauses in agreements executed with third party/ies, shall promptly provide access to information and documents, such as, but not limited to reports, data sets, analyses, papers, assessments, notices, opinions, and guidelines within the custody or control of the requested Party and which are relevant and necessary to the requesting Party for the effective enforcement of this Agreement, the PCA, and other competition-

related laws. Whenever permissible, the PCC shall be granted, free of any fees and charges, access to information and documents obtained by the requested Party from other sources, which are relevant, pertinent or related to, or in connection with the undertakings being performed or to be performed by the PCC in compliance with and pursuant to its legal mandate, *provided, however*, that should the requested information and/or documents be deemed classified by the requested Party, the requesting Party shall obtain written approval of the same from the Head of Agency of the requested Party. Access to information and documents under this Section shall be subject to applicable rules on confidentiality, data privacy, and privilege under relevant laws, rules, and regulations.

- 2.2. *Confidentiality.* – Except as may otherwise be required or allowed by law, the Parties shall keep confidential and shall not, without the prior written consent of the other or applicable third party/ies, divulge or provide to any third party any documents, records, data, or other information of a confidential and/or classified, private, or privileged nature, arising from or in any way related to this Agreement, that have been furnished, directly or indirectly, by one Party to the other.

For purposes of this Agreement, information of a confidential and/or classified, private, or privileged nature shall refer to information disclosed and/or provided by one Party to the other which is labeled or designated as confidential and/or classified, private, or privileged by the disclosing Party, or is determined confidential and/or classified, private, or privileged pursuant to applicable rules on confidentiality, privacy, and privilege under relevant laws, rules, and regulations.

- 2.3. *Communications to the Public.* – The Parties, where appropriate, shall liaise with each other in preparing statements and responses relating to matters of media interest and as regards arrangements for the publication of information for and consultations with relevant stakeholders.
- 2.4. *Use of Information and Documents.* – The Parties agree to limit and restrict the use of any and all information and documents obtained pursuant to this Agreement to purposes deemed consistent with the objectives of this Agreement as well as the respective mandates of the Parties.

Section 3. Notices and Authorized Representatives

- 3.1. *Notices.* – Any notice, request, or other communication given under, or in connection with the implementation or enforcement of this Agreement shall be in writing and sent by the concerned Party's Authorized Representative(s) through any of the following modes:

- a) By courier or personal delivery to the addresses stated in this Agreement;
- b) By electronic mail to the following email addresses:

For BCDA: [REDACTED] with a copy to the relevant Authorized Representative(s) specified in Section 3.2, if applicable.



For PCC: [REDACTED] and [REDACTED] with a copy to the relevant Authorized Representative(s) specified in Section 3.2, if applicable.

A notice is deemed to have been received at the time of delivery if such notice is given by courier or personal delivery. If written notice is given by electronic mail, the notice is deemed to have been received at the time of its transmission on a business day.

- 3.2. *Authorized Representatives.* – The Parties hereby designate the following persons as their respective Authorized Representatives, who shall be responsible for the implementation or enforcement of this Agreement:

For BCDA:

Subject	Authorized Representative	Email Address
<i>For MOA administration, policy, and general legal concerns</i>	General Counsel, Legal Services Department (LSD)	[REDACTED]
<i>For cartel investigations and enforcement-related concerns</i>	Vice President, Subsidiaries, Affiliates, Projects Monitoring Department (SAPMD)	[REDACTED]
<i>For merger review-related concerns</i>	Vice President, Business and Development Department (BDD)	[REDACTED]
<i>For economic analysis and market studies</i>	Vice President, Marketing Department (MD)	[REDACTED]

For PCC:

Subject	Authorized Representative	Email Address
<i>For merger review, policy, and enforcement-related concerns</i>	Executive Director	[REDACTED]
<i>For MOA administration, policy, and general legal concerns</i>	Chief, Legal Services Division	[REDACTED]

Each Party may appoint additional Authorized Representative(s), as may be necessary for the efficient implementation of this Agreement. Any change in the designated Authorized Representative(s) of each Party shall be notified, in writing, immediately to the other Party and shall be deemed effective upon the other Party's receipt of said notice.

Section 4. General Provisions

- 4.1. *Effectivity.* – This Agreement shall become effective upon execution by the Parties and shall remain in force and effect until otherwise amended or revised in writing by the Parties.
- 4.2. *Legal Effect.* – For the avoidance of doubt, nothing in this Agreement shall limit the powers or shall constitute a waiver of the statutory functions or powers of either Party.
- 4.3. *Amendments.* – Any subsequent revisions, amendments, repeals, and supplements to this Agreement shall be made upon mutual written agreement by the Parties
- 4.4. *Separability.* – If any one of the provisions contained in this Agreement shall be declared invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
- 4.5. *Counterparts.* – This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement shall be effective as delivery of a manually executed counterpart of this Agreement.
- 4.6. *Review by the OGCC.* - Pursuant to Presidential Memorandum Circular No. 9, S-1998, this Agreement has been passed upon by the Office of the Government Corporate Counsel ("OGCC") in its OGCC Contract Review No. 216 Series of 2019 dated 11 April 2019, and all its corrections and recommendations have been incorporated herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives on the date and place first above written.

**For the Bases Conversion and
Development Authority:**

Signature _____
Name: _____
Title: President & Chief Executive Officer

**For the Philippine Competition
Commission:**

Signature _____
Name: _____
Title: Chairperson

Witnessed By:

Signature
Name: _____
Title: *Executive Vice President*

Signature
Name: _____
Title: *Commissioner*

REPUBLIC OF THE PHILIPPINES)
CITY OF **QUEZON CITY**) s.s.

ACKNOWLEDGMENT

Before me, a notary public for and in the City of **QUEZON CITY**, this **10 4 SEP 2019**, personally appeared the following:

Name	Competent Evidence of Identity/Community Tax Certificate	Date/Place Issued
_____	_____	_____
_____	_____	_____

known to me to be the same persons who executed the foregoing Memorandum of Agreement consisting of six (6) pages, including the page on which this Acknowledgment is written, and they acknowledged to me that the same is their free and voluntary act and deed, as well as that of their respective principals.

WITNESS MY HAND AND SEAL, on the date and in the place first above written.

Doc. No. 464
Page No. 44
Book No. 111
Series of 2019.

Vicente R. Marquez
VICENTE R. MARQUEZ
Notary Public for Quezon City
Valid Until December 31, 2020
Adm. Matter No. NP-094 (2019-2020)
Roll of Atty. No. 35074 IBP LRN 018893
PTR No. 7324392 01.04.2019 Q.C.
MCLE No. VI-0022504 Until 04.14.2022
Rm. 305 DM Bldg. 32 Visayas Ave. Q.C