

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement"), dated 20 November 2017, is entered into by and between:

The **COMMISSION ON AUDIT ("COA")**, with office address at Commonwealth Avenue, Quezon City, represented herein by its Chairperson, **Michael G. Aguinaldo**;

- and -

The **PHILIPPINE COMPETITION COMMISSION ("PCC")**, with office address at 2/F DAP Building, San Miguel Avenue, Ortigas Center, Pasig City, represented herein by its Chairperson, **Arsenio M. Balisacan**.

(The COA and the PCC are individually referred to in this Agreement as a "Party" and collectively, as the "Parties".)

RECITALS:

- (A) The COA is an independent constitutional body primarily charged under the Constitution to, among others, examine, audit, and settle all forms of government revenues and expenditures; and promulgate and enforce rules and regulations for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.
- (B) The PCC was organized and created under 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, which includes, among others, the power to conduct inquiries, investigate, and hear and decide cases involving anti-competitive conduct, abuse of dominant position, anti-competitive agreements, and other violations of the PCA.
- (C) In recognition of the significant synergies and complementarity of working together towards a harmonized approach in performing their respective duties and functions, the Parties have agreed to formalize their understanding on the various modes of coordination and cooperation through this Agreement.
- (D) Each Party has obtained all approvals, and has performed all actions necessary to authorize it to enter into this Agreement.

NOW THEREFORE, the Parties have agreed as follows:

Section 1. Coordination and Cooperation

- 1.1. *Referral of Information.* – Where either one of the Parties, in the exercise of their regular mandated functions, receives or otherwise becomes aware of any information relating

to prohibited activities enumerated under Chapter III of Republic Act No. 10667,¹ including irregularities and competition concerns relating to government procurement, it shall promptly notify the other Party of such information, with a view to agreeing or coordinating, as appropriate, on the actions or measures to be taken by each Party thereon. Subject to Section 2 of this Agreement, a referral of information under this Section shall be transmitted together with copies of all documents and records pertaining to the referred information that are within the custody or control of the referring Party.

- 1.2. *Investigation and Enforcement Support.* – Subject to resource and other operational considerations, and whenever appropriate, each Party shall provide investigation and enforcement support to the other, upon receipt of a request for assistance from the requesting Party.
- 1.3. *Joint Task Forces.* – Whenever appropriate, the Parties may organize joint task forces charged with implementing the coordination and cooperation efforts of the Parties under this Agreement. The Parties shall mutually agree in writing on the purpose, composition, and operational requirements of each joint task force.
- 1.4. *Capacity-Building.* – The Parties may agree to organize joint capacity-building activities and, whenever appropriate, arrange temporary secondments of staff to one another, on a case by case basis, for the purpose of promoting coordination and cooperation, subject to resource and other operational considerations
- 1.5. *Consultative Meetings.* – The Parties may conduct consultative meetings regarding matters of common concern, including the effective implementation of this Agreement and the Parties' respective mandates.
- 1.6. *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, shall promptly provide access to information and documents (*e.g.*, reports, analysis, papers, assessments, notices, opinions, and guidelines) within the custody or control of the requested Party and which are relevant and necessary to the effective enforcement of this Agreement, the PCA, and other competition laws. Access to information and documents under this Section shall be subject to applicable rules on confidentiality and privilege under relevant laws, rules, and regulations.
- 2.2. *Requests for Information and Documents.* – The request for information and documents by either Party shall be addressed to the Chairperson of COA or PCC or their Authorized Representatives and shall disclose the reason for the request and the purpose for which the information will be used to enable the Parties to act accordingly.

The requested Party may deny the request or defer the action on the request if that Party determines that the release of the information or documents requested may unduly prejudice or interfere with an on-going investigation or judicial proceeding, in relation to the transactions and activities for which the request was made.

¹ An Act Providing For A National Competition Policy Prohibiting Anti-Competitive Agreements, Abuse of Dominant Position and Anti-Competitive Mergers and Acquisitions, Establishing the Philippine Competition Commission and Appropriating Funds Therefor.

- 2.3. *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, divulge to any third party any documents, records, data, or other information of a confidential nature arising from or in any way related to this Agreement, and furnished directly or indirectly by one Party to the other.
- 2.4. *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.
- 2.5. *Use of Information and Documents.* – The Parties agree to limit the use of any and all information and documents obtained pursuant to this Agreement for lawful purposes and in pursuance of the objectives of this Agreement as well as the respective mandates of the Parties.
- 2.6. *Transmittal of Information.* – Transmittal of information, including pertinent documents, shall be in the form and manner as each Party may deem convenient and appropriate that will ensure the confidentiality of the subject information and documents.

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 shall be in writing and sent by the concerned Party's Authorized Representative(s) by courier or personal delivery to the addresses stated in this Agreement. An advance copy of the notices, requests, or communications may be sent by electronic mail to the following email addresses:

For COA: [REDACTED] and [REDACTED]

For PCC: [REDACTED] and [REDACTED]

A notice given by courier or personal delivery is complete upon the actual receipt by the addressee or the person authorized to receive the same in his/her behalf.

- 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 COA: Alexander B. Juliano
Assistant Commissioner

For PCC: Gianfrancis S. Camacho
Chief, Legal Services Division

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 immediately to the other Party and deemed effective upon the other Party's receipt of said notice.

Section 4. General Provisions

- 4.1. *Effectivity.* – This Agreement shall enter into force upon the signing of the Parties and shall remain in force until terminated.

- 4.2. *Termination.* – Either Party may terminate this Agreement, with or without cause, by serving a written notice of termination to the other Party. Said termination by either Party shall become effective thirty (30) days after the date of such written notice of termination.
- 4.3. *Reservation of Privileges and Immunities.* – The activities carried out by the Parties on the basis of this Agreement shall be without prejudice to the respective privileges and immunities of each Party, which are specifically reserved and which may be invoked at any time.
- 4.4. *Legal Effect.* – For the avoidance of doubt, nothing in this Agreement limits the powers or constitutes a waiver of the statutory functions or powers of either Party.
- 4.5. *Dispute Settlement.* – The Parties shall exert their best efforts to amicably settle any disputes arising out of or in connection with this Agreement.
- 4.6. *Amendments.* – This Agreement may be amended at any time by mutual consent. Any changes, revisions, amendments, repeals, and supplements to this Agreement shall be incorporated by written instrument, and effective when signed by the Parties.
- 4.7. *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.
- 4.8. *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.

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 Commission on Audit:



Signature

Name:

Title: Chairperson

For the Philippine Competition Commission:



Signature

Name:

Title: Chairperson

Witnessed By:



Signature

Name:

Title:



Signature

Name:

Title: