

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement"), dated 08 June 2018, is entered into by and between:

The **OFFICE OF THE OMBUDSMAN** ("OMB"), with office address at Agham Road, Diliman, Quezon City, represented herein by the Ombudsman, **Conchita Carpio Morales**;

- and -

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

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

### RECITALS:

- (A) It is the State policy to maintain honesty and integrity in the public service and take effective measures against graft and corruption.
- (B) It is likewise the State policy to regulate or prohibit monopolies when the public interest so requires, and disallow combinations in restraint of trade or unfair competition.
- (C) The OMB is an anti-corruption agency created under the Constitution and empowered by Republic Act No. ("RA") 6770 to act promptly on complaints against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liabilities, where the evidence warrants, in ensuring that public officers and employees are accountable to the people at all times.
- (D) The PCC was organized and created under the Philippine Competition Act ("PCA") as an independent quasi-judicial body vested with 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.
- (E) Section 14(a) of the PCA prohibits agreements (i) restricting competition as to price, or components thereof, or other terms of trade; and (ii) fixing price at an auction or

in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation.

- (F) Section 31 of the PCA provides that the PCC shall have the sole and exclusive authority to initiate and conduct a fact-finding or preliminary inquiry for the enforcement of the PCA.
- (G) Under the PCA, the conduct of preliminary inquiry proceedings set forth under Section 31 of the PCA and the filing of a criminal complaint by the PCC are required to commence the preliminary investigation proceedings for criminal violations of the PCA and other competition laws.
- (H) Under RA 6770, the OMB has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.
- (I) The Parties recognize that violations of the PCA or other competition laws, which are committed by or facilitated with the participation of public officers or employees in relation to their office, may also constitute punishable offenses under other statutes, rules, and regulations falling within the jurisdiction of the OMB<sup>1</sup> (such violations are hereinafter referred to as "Covered Offenses") and may be subjected to fact-finding investigation, preliminary investigation/preliminary inquiry (for criminal offenses/forfeiture proceedings), and/or administrative adjudication proceedings (for administrative offenses) by the OMB.
- (J) 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 with respect to the various modes of coordinating the proper and effective performance of their respective roles in investigating and prosecuting Covered Offenses.
- (K) 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. *Notification of Complaints.* – Where one Party receives or otherwise becomes aware of any complaint or matter involving a Covered Offense, it shall promptly inform the other Party of such complaint or matter ("Notified Complaint"), with a view to coordinating, as appropriate, on any action or measure that may be taken by each of the Parties in relation to the Notified Complaint. Subject to Section 2 of this Agreement, a copy of the Notified Complaint shall be transmitted together with

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<sup>1</sup> This includes, but is not limited to: (i) violations of RA 3019 or the Anti-Graft and Corrupt Practices Act; (ii) violations of RA 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees; (iii) Plunder under RA 7080; (iv) violations of RA 9184 or the Government Procurement Reform Act; (v) Bribery under Section 2, Chapter Two, and Malversation under Chapter Four of Title VII, Book II of the Revised Penal Code, as amended; and (vi) violations of other graft laws.



copies of all documents and records pertaining to the Notified Complaint that are within the custody or control of the notifying Party.

- 1.2. *Action on the Notified Complaint.* – As soon as practicable, and subject to Section 2 hereof, a Party shall inform the other of its action on the Notified Complaint, with a view to coordinating, as appropriate, on any action or measure that may be taken by each of the Parties.
- 1.3. *Jurisdiction over the Notified Complaint.* – Subject to Section 1.4, the notification of a complaint or matter under Section 1.1. shall be without prejudice to either Party's exercise of its jurisdiction over the Notified Complaint, including the institution of administrative, criminal or forfeiture proceedings, in close coordination with each other.
- 1.4. *Preliminary Investigation of Covered Offenses.* – Pursuant to the PCC's responsibility under Section 31 of the PCA to initiate and conduct preliminary inquiry on violations of the PCA, the OMB agrees to commence its preliminary investigation, purely insofar as the Covered Offenses are concerned, only after the PCC's preliminary inquiry on the Notified Complaint. If warranted, the PCC may thereupon act as the nominal complainant in such preliminary investigation. Congruent with Section 1.2, the OMB may proceed with the preliminary investigation of other cognizable offenses that may also arise from the Notified Complaint.
- 1.5. *Formulation of Rules and Procedures.* – The Parties agree to consider the herein provisions in the formulation and amendment of their respective rules and procedures involving the investigation and prosecution of Covered Offenses.
- 1.6. *Leniency and Immunity.* – Where appropriate, the Parties endeavor to coordinate with each other with respect to the exercise of their respective powers to grant leniency or immunity to eligible applicants in connection with violations of the PCA and other competition laws.
- 1.7. *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.
- 1.8. *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.
- 1.9. *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 civil service laws and resource/operational considerations.
- 1.10. *Consultative Meetings.* – The Parties may conduct consultative meetings regarding matters of common concern, particularly those involving the effective implementation of this Agreement and the Parties' respective mandates.

- 1.11. *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 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, and RA 6770 and other anti-corruption laws. Access to information and documents under this Section shall be subject to applicable rules on confidentiality, 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, divulge to any third party any documents, records, data, or other information of a confidential, private, or privileged nature arising from or in any way related to this Agreement, and furnished directly or indirectly by one Party to the other.
- 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 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/mail or personal delivery to the addresses stated in this Agreement;
  - b) By electronic mail to the following email addresses:

For OMB:

[REDACTED]

For PCC:

[REDACTED]  
[REDACTED]  
[REDACTED]



or such other email address, as a Party may notify to the other by written notice sent in accordance with this Section.

A notice is deemed to have been received at the time of delivery if such notice is given by courier/mail or personal delivery. If written notice is given by electronic mail, the notice is deemed to have been received at the time of transmission of said electronic mail.

- 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 OMB: [REDACTED] (for legal concerns)  
Assistant Ombudsman

[REDACTED] (for case referrals)  
Director

For PCC: [REDACTED] (for legal concerns)  
Chief, Legal Services

[REDACTED] (for case referrals)  
Director

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

#### **Section 4. General Provisions**

- 4.1. *Effectivity.* – The Parties agree and understand that this Agreement shall become effective upon signing and shall remain in force until terminated in accordance with Section 4.2 hereof.
- 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 after the lapse of thirty (30) days following the receipt of such written notice by the other Party.
- 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.* – Subsequent revisions, amendments, repeals, and supplements to this Agreement shall be made upon mutual written agreement 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 Office of the Ombudsman:**

\_\_\_\_\_  
Signature  
Name: \_\_\_\_\_  
Title: Ombudsman

**For the Philippine Competition Commission:**

\_\_\_\_\_  
Signature  
Name: \_\_\_\_\_  
Title: Chairperson

**Witnessed By:**

\_\_\_\_\_  
Signature  
Name: \_\_\_\_\_  
Title: Assistant Ombudsman

\_\_\_\_\_  
Signature  
Name: \_\_\_\_\_  
Title: Chief, Legal Services