

## MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT ("Agreement") dated 8 June 2016 is made and entered into by and between:

The **PHILIPPINE COMPETITION COMMISSION ("PCC")**, with office address at the 6<sup>th</sup> Floor, Development Academy of the Philippines Building, San Miguel Avenue, Ortigas Center, Pasig City, represented herein by Chairman Arsenio M. Balisacan;

- and

The **OFFICE OF THE SOLICITOR GENERAL ("OSG")**, with office address at 134 Amoroso St., Legaspi Village, Makati City, represented herein by Solicitor General Florin T. Hilbay.

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

### RECITALS:

- (A) The PCC was organized and created under Republic Act No. 10667 (the "Philippine Competition Act") as an independent quasi-judicial body mandated to implement the National Competition Policy and to enforce the provisions of the Philippine Competition Act.
- (B) The OSG, by virtue of Book IV, Title III, Chapter 12 of Executive Order No. 292 (Instituting the Administrative Code of 1987), is mandated to represent the Government of the Republic of the Philippines (the "Government"), its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer.
- (C) The PCC, in order to effectively fulfill its mandate under the Philippine Competition Act, requires certain legal services (as described in Article 1 hereof), the performance of which fall within the mandate of the OSG, as official counsel of the Government.
- (D) The OSG, pursuant to Section 8 of Republic Act No. 9417 (An Act to Strengthen the Office of the Solicitor General by Expanding and Streamlining its Bureaucracy, Upgrading Employee Skills and Augmenting Benefits, and Appropriating Funds Therefor and for Other Purposes), is allowed to receive honoraria and allowances from client departments, agencies, and instrumentalities of the Government for whom it renders legal services.
- (E) The Parties have previously discussed possible modes of cooperation and assistance, including through this Agreement.
- (F) Each Party has obtained all requisite approvals, and has performed all actions necessary, to authorize it to enter into this Agreement.

20 NOV 2016

NOW THEREFORE, the Parties have agreed as follows:

**Article 1. Scope of Services**

- 1.1. As of the Effective Date of this Agreement (as such term is defined in Article 4.1 below), the OSG hereby undertakes to perform the following legal services (the "Services") for the PCC:
- (i) Assist and/or represent the PCC and/or any of its officers or personnel before judicial courts, quasi-judicial bodies or administrative tribunals, in any dispute, suit or proceeding involving the implementation and enforcement of the Philippine Competition Act and other related laws, rules, and regulations;
  - (ii) Provide legal advice<sup>1</sup> to the PCC and/or any of its officers or personnel in connection with any legal concerns that may arise from the management and discharge of the PCC's official functions;
  - (iii) Submit periodic reports on the status of PCC cases or legal concerns being handled by the OSG pursuant to this Agreement; and
  - (iv) Render any such service or advice as the Parties may from time to time determine to be relevant and necessary, including assisting the PCC in its initial capacity build-up, rule-making, and policy formulation activities.
- 1.2. For the avoidance of doubt, the Services described under Article 1.1 hereof shall not include representing or advising officers or personnel of the PCC in connection with (i) criminal cases before the Ombudsman, Sandiganbayan, or regular courts and/or (ii) civil cases for damages before regular courts, which cases have been filed against such officers or personnel in their personal capacity.

**Article 2. PCC-OSG Task Force**

- 2.1 For the effective performance of the Services described under this Agreement, the OSG hereby undertakes to establish and maintain a PCC-OSG Task Force which shall be charged with rendering such Services on behalf of the OSG.
- 2.2 The PCC-OSG Task Force shall be composed of the OSG lawyers listed in Annex A hereof (which Annex shall form an integral part of this Agreement). The OSG shall give prompt notice to and consult with the PCC on any modifications, including substitutions or additions, to the composition of the PCC-OSG Task Force (as provided in Annex A hereof). Any such modifications shall give due consideration to ongoing business of the Parties and continuity in servicing pending assignments.
- 2.3 The PCC-OSG Task Force shall follow a defined Work Program which will require, *inter alia*, physical detail of the assigned State or Associate Solicitors at the PCC premises on certain days of the month. The Work Program, including the schedule of such physical detail, shall be agreed on and periodically reviewed and modified, as needed, by the PCC and the concerned Solicitor.
- 2.4 Subject to availability of funds, the PCC and/or the OSG shall organize and conduct trainings, seminars, and other capacity-building activities for the members of the PCC-OSG Task Force for purposes of enhancing or cultivating technical knowledge and skills.

<sup>1</sup> Subject to the DOJ Memorandum on the Issuance of Legal Opinions dated 4 June 2012.

which are deemed necessary for the effective performance of the Services described under this Agreement.

- 2.5 The PCC hereby undertakes to provide monthly honoraria to the members of the PCC-OSG Task Force or their successors or substitutes in accordance with the rates provided in Annex A hereof.
- 2.6 The Parties agree and understand that the PCC's payment of monthly honoraria under Article 2.5 hereof shall be:
- (i) Subject to availability of funds;
  - (ii) Subject to applicable laws, rules, and regulations;
  - (iii) Supported by certifications submitted to the OSG that the applicable taxes, if any, had already been deducted by the PCC; and
  - (iv) Directly remitted to the Financial Management Service of the OSG.

### **Article 3. Confidentiality**

- 3.1 Except as may otherwise be required by law, the OSG shall keep confidential and shall not, without the prior written consent of the PCC, 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 the PCC to the OSG prior to or during the implementation, or following the termination of this Agreement.

### **Article 4. Term of the Agreement**

- 4.1. Notwithstanding the actual date of execution of this Agreement, the Parties agree and understand that this Agreement shall become effective on 8 June 2016 (the "Effective Date of this Agreement"). Unless sooner terminated in accordance with Article 5 hereof, this Agreement shall be deemed to have been successively renewed on a year to year basis, commencing on the Effective Date of this Agreement.

### **Article 5. Termination**

- 5.1. 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 immediately upon receipt of such written notice by the other Party.

### **Article 6. Miscellaneous Provisions**

- 6.1. The Parties shall exert their best efforts to amicably settle any disputes arising out of or in connection with this Agreement. In case of failure to amicably settle such disputes, the Parties shall observe the applicable dispute resolution provisions of the Administrative Code of 1987.
- 6.2. Any amendment to the terms and conditions of this Agreement may only be made by written agreement between the Parties.
- 6.3. Each provision of this Agreement shall be treated as a separate and independent clause. If any provision of this Agreement is held to be invalid, illegal, excessively broad, or

unenforceable under Philippine Law, such finding shall not affect any other provision of this Agreement, or the enforceability of such provision.

- 6.4. 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 executed as of the date first indicated above.

**PHILIPPINE COMPETITION  
COMMISSION**

By:

  
Chairman

**OFFICE OF THE SOLICITOR  
GENERAL**

By:

  
Solicitor General

WITNESSES:





**CERTIFIED FUNDS AVAILABLE:**

  
Commissioner

