

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Agreement”), dated 20 July 2018, is entered into by and between:

The **PUBLIC-PRIVATE PARTNERSHIP CENTER** (“PPPC”), with office address at 8th Floor, One Cyberpod Centris, EDSA corner Quezon Avenue, Barangay Pinyahan, Quezon City, represented herein by its Executive Director, **Ferdinand A. Pecson**;

- and -

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

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

RECITALS:

- (A) The PPPC, by virtue of Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, is mandated to facilitate the implementation of the country’s programs and projects involving public-private partnerships (“PPP Projects”), and serves as the central coordinating and monitoring agency for all PPP Projects in the Philippines.
- (B) Executive Order No. 8, series of 2010, identifies PPP Projects as one of the cornerstone strategies of the national development plan to accelerate the infrastructure development of the country and sustain economic growth, and thus recognizes the need to fast-track the implementation of PPP Projects.
- (C) 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, and anti-competitive agreements, as well as the power to review mergers and acquisitions that will substantially prevent, restrict, or lessen competition in the relevant market.
- (D) In recognition of the significant synergies and complementarity of working together towards a harmonized approach in performing their respective duties and functions, and in order to facilitate the review of PPP Projects and projects falling under the mandatory notification and review requirements under the PCA, the Parties have agreed to formalize their understanding on the acceptable modes of coordination and cooperation between them.

- (E) 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. *Formulation of Guidelines.* – The Parties shall formulate guidelines for the facilitation and review of PPP Projects and in furtherance of the effective exercise of their respective mandates relative to this Agreement.
- 1.2. *Consultation of competition enforcement matters.* – PPPC shall consult PCC regarding any actual, potential, or emerging competition concerns relating to existing or potential bidders involving PPP Projects, within 30 days from its discovery of the facts that gave rise to the competition concern. Such competition concerns shall be deemed to include, but shall not be limited to actual, potential, or emerging anti-competitive conduct or agreements reported to or discovered by PPPC in the course of the performance of its duties and functions.
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- 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.* – 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. The Parties may also mutually agree in writing to arrange temporary secondments of staff to one another when, on a case by case basis, determined to be appropriate.
- 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. The Parties are not precluded from inviting concerned stakeholders, such as the implementing agency and/or the project proponent of a particular PPP Project, when such invitation will assist the Parties in effectively implementing this Agreement and their 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.
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Section 2. Access to and Use of Information

- 2.1. *Access to Information and Documents.* – The PPPC, upon the request of PCC, shall facilitate obtaining the clearance of the relevant implementing agencies to provide the latter access to information and documents within the former's custody, which are relevant and necessary to the effective enforcement of this Agreement, the PCA, and other competition laws. Further to the consultative meetings contemplated under

Section 1.5 hereof, the PCC, upon the request of the PPPC, shall provide information and advice on matters that are relevant and necessary to the effective enforcement of this Agreement, issuances pursuant to this Agreement, and other applicable competition laws, rules, regulations, and issuances. 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, 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. The prior written consent of the owner thereof should likewise be obtained if such documents, records, data, or information belong to a third party.

For purposes of this Agreement, information of a confidential, private or privileged nature shall refer to information disclosed by one Party to the other which is labeled or designated as confidential, private, or privileged by the disclosing Party, or is determined to be confidential, private or privileged pursuant to applicable rules on confidentiality, data 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. Prior to the release of statements and responses pertaining to matters involving the mandate and/or competence of both Parties, either Party shall get the consent of the other and of the concerned stakeholder, as necessary.
- 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 or personal delivery to the addresses stated in this Agreement;
- b) By electronic mail to the following email addresses:

For PPPC: [REDACTED] and [REDACTED]

For PCC: [REDACTED] and [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 or personal delivery. If written notice is given by electronic mail, the notice is deemed to have been received on the next working day from the time of transmission of said electronic mail, subject to confirmation by the other party.

- 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 PPPC:

████████████████████
Director, Legal Service

For PCC:

████████████████████
Chief, Legal Services

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 become effective upon execution by the Parties and shall remain in force until terminated in accordance with Section 4.2 hereof.
- 4.2. *Termination.* – Either Party may terminate this Agreement, provided that such termination will not cause undue injury to any of Parties, by serving a written notice of termination to the other Party. Said termination by either Party shall take effect after the lapse of thirty (30) days following the receipt of such written notice by the other Party.
- 4.3. *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. This Agreement shall not be a cause for unnecessary delay in the exercise of each Party's mandate.
- 4.4. *Dispute Settlement.* – The Parties shall exert their best efforts to amicably settle any disputes arising out of or in connection with this Agreement.
- 4.5. *Amendments.* – Subsequent revisions, amendments, repeals, and supplements to this Agreement shall be made upon mutual written agreement by the Parties.
- 4.6. *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.
- 4.7. *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 Public-Private Partnership
Center:**

**For the Philippine Competition
Commission:**

Signature
Name: _____
Title: Executive Director

Signature
Name: _____
Title: Chairperson

Witnessed By:

Signature
Name: _____
Title: *Director IV, Legal Service, PPP Center*

Signature
Name: _____
Title: *Commissioner*