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SAMPLE CONTRACT AND SCHEDULES

Prepared by



for the PEGR-funded Reform Agenda on
Institution Strengthening of the National Economic Development Authority
and other Oversight Agencies on Value Engineering, Contract Preparation
and Performance Monitoring of Infrastructure Projects (RA006-07)

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This sample contract is one of the following four sample contracts formulated by Castalia as part of the report for the second activity (Risk Management, Structuring of Public-Private Partnerships, Sample Contracts and Sample Bidding Documents) of the PEGR Reform Agenda RA006-07:

- 1 Urban Mass Rail Sample Contract and Schedules
- 2 Bulk Water Supply Sample Contract and Schedules
- 3 Solid Waste Management Sample Contract and Schedules
- 4 **Information and Communications Technology Sample Contract and Schedules**

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INFORMATION AND COMMUNICATIONS TECHNOLOGY MODERNIZATION PROJECT AGREEMENT

TABLE OF CONTENTS

1	DEFINITIONS AND PRINCIPLES OF INTERPRETATION	5
1.1	DEFINITIONS	5
1.2	PRINCIPLES OF INTERPRETATION	14
2	CONDITIONS PRECEDENT TO EFFECTIVE DATE	16
2.1	CONDITIONS PRECEDENT TO THE EFFECTIVE DATE	16
2.2	REASONABLE EFFORTS TO SATISFY CONDITIONS PRECEDENT	18
2.3	NON-OCCURRENCE OF EFFECTIVE DATE	18
2.4	SPECIFIC PROVISIONS EFFECTIVE ON THE SIGNATURE DATE	19
3	TERM OF THE AGREEMENT	18
3.1	CONTRACT TERM	18
3.2	PROVISIONS IN FORCE	18
4	PROJECT IMPLEMENTATION	18
4.1	PROJECT SCOPE	18
4.2	GRANT OF RIGHTS	19
4.3	CONSENTS AND APPROVALS	19
4.4	DATABASE AND SOURCE CODE	19
4.5	EXISTING ICT SERVICES AND FACILITIES	21
4.6	TITLE AND RISK OF LOSS	22
5	PROVISION OF SERVICES AND FACILITIES; TESTING AND COMMISSIONING	22
5.1	GENERAL RESPONSIBILITIES OF THE COMPANY	22
5.2	FURTHER RESPONSIBILITIES RELATED TO THE NEW ICT SERVICES AND FACILITIES	22
5.3	GENERAL WARRANTY	23
5.4	INDEPENDENT VERIFIER	23
5.5	IMPLEMENTATION PLAN	25
5.6	TESTING AND COMMISSIONING	27
5.7	PERFORMANCE SECURITY	28
5.8	LIQUIDATED DAMAGES FOR DELAY IN MEETING PROJECT MILESTONES	28
5.9	PROJECT MILESTONE SCHEDULE	29
5.10	CHANGE ORDER PROCEDURE	29
6	OPERATION AND MAINTENANCE	28
6.1	OPERATION AND MAINTENANCE RESPONSIBILITIES OF THE COMPANY	28
6.2	OPERATION MANUAL	28
6.3	OPERATING SECURITY	29
6.4	COMPANY STAFF	29
6.5	PLANNED DOWNTIME; MAINTENANCE PROGRAM, SCHEDULE AND FUND	29
6.6	UNPLANNED DOWNTIME	32
6.7	EXCESS DOWNTIME	32
7	DELIVERY OF SERVICES	32
7.1	COMPANY SERVICES	32
7.2	AGENCY SERVICES	35
7.3	SERVICE LEVEL AGREEMENTS	35
7.4	QUALITY ASSESSMENT	35
8	COPYRIGHTS, LICENSES AND WARRANTIES	35
8.1	COPYRIGHTS OVER WORK PRODUCTS	35

8.2	SPECIFIC WARRANTIES.....	36
8.3	FAILURES NOT APPLICABLE TO WARRANTIES.....	37
8.4	SOFTWARE LICENSES.....	37
8.5	AGENCY OBLIGATIONS AND WARRANTIES.....	38
9	PAYMENT TO COMPANY.....	38
9.1	COMPANY AND USER FEES.....	38
9.2	COMPANY FEE ADJUSTMENT.....	38
9.3	SPECIAL ACCOUNT.....	38
9.4	INVOICES.....	38
9.5	PAYMENT.....	39
9.6	MANNER OF PAYMENT.....	39
9.7	VALUE-ADDED TAX.....	39
9.8	NO SET-OFF OR DEDUCTIONS.....	36
9.9	PENALTY FOR LATE PAYMENT.....	39
9.10	DISPUTED INVOICES.....	39
9.11	EXCEPTIONS TO PAYMENT OF USER FEES.....	40
10	CONTRACT MANAGEMENT, MONITORING AND EVALUATION.....	40
10.1	CONTRACT MANAGEMENT BODY.....	40
10.2	PROJECT REPORTS.....	40
10.3	MONITORING AND REPORTING OBLIGATIONS.....	41
10.4	FINANCIAL REPORTS.....	39
10.5	OTHER REPORTING REQUIREMENTS FOR PUBLIC AUDIT.....	39
10.6	REGULAR MEETINGS.....	40
10.7	RIGHT TO INSPECT AND MONITOR.....	43
11	INSURANCE.....	44
11.1	REQUIRED INSURANCE POLICIES; ENDORSEMENTS.....	44
11.2	INSURANCE CERTIFICATES.....	44
11.3	FAILURE TO SECURE AND MAINTAIN REQUIRED INSURANCE.....	44
11.4	APPLICATION OF INSURANCE PROCEEDS.....	44
12	REPRESENTATIONS AND CERTIFICATIONS.....	45
12.1	CORPORATE EXISTENCE AND AUTHORITY.....	45
12.2	GOVERNMENT CONSENTS AND APPROVALS.....	46
12.3	NON-CONTRAVENTION OF LEGAL REQUIREMENTS.....	46
12.4	VALIDITY AND ENFORCEABILITY OF AGREEMENT.....	46
12.5	NO ADVERSE LITIGATION.....	46
12.6	DUE AUTHORIZATION & NON-CONTRAVENTION OF OTHER AGREEMENTS.....	46
12.7	CONTINUING REPRESENTATIONS AND WARRANTIES.....	46
13	COMPANY COVENANTS.....	47
13.1	CONDUCT OF COMPANY.....	47
13.2	COMPLIANCE WITH LEGAL REQUIREMENTS AND CONSENTS.....	47
13.3	NO OTHER BUSINESS.....	47
13.4	LOCAL CONTENT.....	47
13.5	COMPANY'S EMPLOYEES.....	48
13.6	ANTI-CORRUPTION WARRANTY.....	48
13.7	TRANSACTIONS WITH AFFILIATES OF COMPANY.....	48
14	FORCE MAJEURE.....	49
14.1	FORCE MAJEURE EVENTS.....	49
14.2	RESPONSIBILITIES OF THE PARTIES DURING FORCE MAJEURE EVENT.....	50
14.3	EFFECT OF FORCE MAJEURE EVENTS.....	50
15	INDEMNITY.....	51

15.1	INDEMNIFICATION BY THE COMPANY	51
15.2	INDEMNIFICATION BY AGENCY.....	52
15.3	INDEMNIFICATION PROCEDURES	49
16	EVENTS OF DEFAULT	53
16.1	COMPANY EVENTS OF DEFAULT.....	53
16.2	AGENCY EVENTS OF DEFAULT	54
17	LIMITATION OF LIABILITY	55
17.1	LIMITATION OF CONSEQUENTIAL DAMAGES; OTHER RIGHTS, REMEDIES, ETC.	55
17.2	LIMITATION OF LIABILITY FOR LIQUIDATED DAMAGES	55
18	AGENCY STEP-IN RIGHTS	55
18.1	STEP-IN RIGHTS.....	55
18.2	IMPLEMENTATION OF AGENCY STEP-IN RIGHTS	56
19	ASSIGNMENT OF RIGHTS; OWNERSHIP OF THE COMPANY	58
19.1	NO ASSIGNMENT.....	58
19.2	PERMITTED ASSIGNMENT TO LENDERS.....	58
19.3	OWNERSHIP OF CAPITAL STOCK OF COMPANY.....	59
20	DISPUTE RESOLUTION	60
20.1	MUTUAL DISCUSSIONS	60
20.2	EXPERT PROCEEDINGS	60
20.3	ARBITRATION.....	61
20.4	EXPERT PANEL AND ARBITRAL AWARD.....	61
20.5	ENFORCEMENT OF AWARD	61
20.6	CONTINUING OBLIGATIONS	61
20.7	EXCLUSIVE PROCEDURE FOR RESOLVING DISPUTES	8
21	TERMINATION	62
21.1	TERMINATION DUE TO AN EVENT OF DEFAULT.....	62
21.2	TERMINATION DUE TO PROLONGED FORCE MAJEURE EVENT	64
21.3	NECESSRY UPGRADE PRIOR TO TERMINATION.....	65
21.4	TRANSFER OF FACILITIES AT TERMINATION.....	65
22	GENERAL PROVISIONS	65
22.1	NOTICES	65
22.2	ENTIRE AGREEMENT.....	66
22.3	WAIVERS	66
22.4	CONFIDENTIALITY AND DISCLOSURE	66
22.5	FURTHER ASSURANCES	67
22.6	SEVERABILITY.....	67
22.7	LANGUAGE	68
22.8	COUNTERPARTS.....	68
22.9	REMEDIES CUMULATIVE.....	68
22.10	AMENDMENTS	68
22.11	GOVERNING LAW	68
22.12	SURVIVAL.....	68

**[NAME OF AGENCY] INFORMATION AND COMMUNICATIONS TECHNOLOGY
MODERNIZATION PROJECT AGREEMENT**

This **[Name of Agency]** Information and Communications Technology Modernization Project Agreement (this “**Agreement**”) is made this [●], 2009 (the “**Signature Date**”) at [●], Philippines, by and between:

[INSERT NAME OF Agency], a duly organized and existing Agency of the Government of the Republic of the Philippines by virtue of [●], with principal office at [●], Philippines, represented herein by its [●], [●], hereinafter referred to as the “**Agency**”;

and

[INSERT NAME OF COMPANY], a corporation duly organized and existing under the laws of [●], with its principal office at [●], represented herein by its [●], [●], hereinafter referred to as the “**Company**”.

The foregoing entities are hereinafter collectively referred to as the “**Parties**”.

RECITALS:

WHEREAS, the Agency has adopted an Information Systems Strategic Plan defining the computerization framework for the strategic use of modern Information and Communications Technology (“**ICT**”) to successfully carry out its Agency mission and functions;

WHEREAS, under such plan, the Agency seeks to enhance the delivery of its frontline services and transactions, improve internal and business processes to ensure greater transparency, efficiency and effectiveness in Agency operations, and allow easier and wider public access to government information and services;

WHEREAS, to partly implement that plan, the Agency obtained the approval of the Investment Coordination Committee (“**ICC**”) of the National Economic and Development Authority (“**NEDA**”) Board on [●], 2009, to develop and carry out the [Name of Agency] Information and Communications Technology Modernization Project under a build-operate-and-transfer (BOT) contractual arrangement in accordance with Republic Act No. 6957, as amended, and its Implementing Rules and Regulations and the Guidelines on the Preparation, Review and Approval, and Implementation of Information and Communications Technology Projects Proposed for Financing Under Republic Act No. 6957, as amended (the “**BOT Law**”);

WHEREAS, the Company has been selected by the Agency to undertake the Project on the terms and conditions set forth in this Agreement as the result of a competitive public bidding process conducted by the Agency under the applicable provisions of the BOT Law.

NOW THEREFORE, for and in consideration of these premises and the mutual commitments, obligations and undertakings assumed and accepted hereunder, the Parties have agreed as follows:

1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Agreement shall have the following meanings:

“Accounting Principles” means the generally accepted accounting principles applicable from time to time in the Philippines, as determined by the Financial Reporting Standards Council or its successor body.

“Affiliate” means, with respect to any specified person, any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified person. For purposes of this definition, “control” means the ownership, directly or indirectly, or as trustee, personal representative, or executor, of more than fifty percent (50%) of the outstanding capital stock of such person or other equity interests having the power to elect a majority of the board of directors, or similar body governing the affairs of such person, or the power to direct or cause the direction of the business affairs or management of such person.

“Agency Event of Default” is defined in Section 15.2.

“Agency Parties” is defined in Section 14.1.

“Agency Rectification Plan” is defined in Section 21.1.1(c).

“Agency Step-in Rights” is defined in Section 18.1.

“Agreement” means this [Name of Agency] Information and Communications Technology Modernization Project Agreement signed by the Parties on the Signature Date, including any amendments that may be made from time to time in accordance with its terms.

“Auditors” means the independent public accountants appointed by the Company with the prior written approval of the Agency.

“Billing Month” means (i) the period from the Provisional In-Service Date until the last Day of the calendar month in which the Provisional In-Service Date occurs; (ii) each successive period of one (1) calendar month thereafter, exclusive of the

calendar month in which the Termination Date occurs; and (iii) the period from the first Day of the calendar month in which the Termination Date occurs until the Termination Date.

“BOT Law” means Republic Act No. 6957, as amended, and its Implementing Rules and Regulations.

“Business Day” means any Day other than a Saturday, a Sunday, and any Day which is a legal non-working holiday in [●], Philippines or any Day when commercial banks in [●], Philippines are closed.

“Certificate of Acceptance of the New ICT Services and Facilities” or “CAIF” means the certification issued in accordance with Section 5.6 of this Agreement indicating the completion and acceptance of the New ICT Services and Facilities.

“Change-in-Law” means any of the following events occurring as a result of any action by any Government Authority of the Philippines:

- (a) A change in or repeal of a Legal Requirement;
- (b) An enactment or making of a new Legal Requirement; or
- (c) A change in the interpretation or the application of a Legal Requirement, which in any case was not reasonably foreseeable at the Signature Date, but not a change in Taxation and an improvement in ICT or operational policies or practices which are generally regarded by developers and regulatory authorities in advanced jurisdictions as appropriate for service providers to have to make.

“Change of Ownership” means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Company, including control over (i) the exercise of voting rights conferred on those shares, (ii) the right to elect, appoint or remove directors, or (iii) the right to declare dividends; and
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above.

“Claims” means with respect to any person, any and all suits, sanctions, legal proceedings, claims, assessments, judgments, damages, penalties, fines, liabilities, demands, reasonable out-of-pocket expenses of whatever kind (including reasonable attorneys’ fees and expenses) and losses incurred or sustained by or against such person but excluding any lost profits or other special, incidental, indirect, punitive, or consequential damages suffered by such person.

“Clients” means those persons who from time to time make use or avail of the different services or products provided by the Agency that are generated, processed or improved by the New ICT Services and Facilities.

“COA” means the Commission on Audit.

“Company Event of Default” is defined in Section 15.1.

“Company Fee” is defined in Section 8.1.

“Company Invoice” is defined in Section 8.4.

“Company Parties” is defined in Section 14.2.

“Company Rectification Plan” is defined in Section 21.1.1(b).

“Confidential Information” is defined in Section 22.4.1.

“Consent” means any permit, license, approval, concession, right, award, registration, certification, waiver, exemption, or other authorization, including any amendments thereto, that is required from any Government Authority under the terms of or in connection with this Agreement.

“Contract Year” means (i) initially, the period starting on the Provisional In-Service Date and continuing until the end of that calendar year (such initial period being **“Contract Year 1”**) and (ii) thereafter, each successive period consisting of twelve (12) consecutive monthly Billing Months (the first such period being **“Contract Year 2”** and so on), provided that the last Contract Year shall end on the Termination Date.

“Database” means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer, and includes all information, data, facts and documents supplied by the Agency, or persons dealing with the Agency, that are inputted, stored, categorized and processed by both the New and Existing ICT Services and Facilities.

“Day” means a 24-hour period beginning and ending at midnight, Philippine time.

“Delay Liquidated Damages” is defined in Section 5.8(a).

“Design and Technical Specifications” means the design and technical specifications set out in Schedule A to be followed and complied with by the Company in the systems design and development, supply, installation, testing, commissioning and operation, data conversion and creation of databases, rollout, as well as systems maintenance and upgrading of the Project.

“Dispute” means any difference or disagreement of any kind whatsoever arising between the Parties in connection with, arising out of, or relating to the interpretation, implementation, breach, termination, or validity of this Agreement.

“Dollar”, “\$”, and “USD” mean the lawful currency of the United States of America.

“Effective Date” is defined in Section 2.1.

“Equity” means (i) the capital stock, of any class, of the Company subscribed to by the Shareholders of the Company, including (ii) indebtedness of the Company given to it by a Shareholder or an Affiliate of any Shareholder that is subordinated to any indebtedness incurred by the Company under the Financing Agreements.

“Event of Default” is defined in Section 15.

“Event of Loss” means any occurrence during the term of the Financing Agreements which results in all or a substantial portion of the New ICT Services and Facilities being damaged, destroyed, or rendered unfit for normal operation in accordance with this Agreement.

“Expert Panel” is defined in Section 20.2.2.

“Existing ICT Services and Facilities” means all existing hardware, Software, communications network equipment, systems, technology, and schemes owned, leased, outsourced or otherwise lawfully possessed or used by the Agency under any other legal right, for the implementation of its current application systems, administration activities or programs, including but not limited to computers, servers, machines, auxiliary equipment, peripherals, point-to-point lines, satellite links, other communications network equipment, end user support infrastructure, and related facilities. If the Company uses any part of the Existing ICT Services and Facilities in accordance with this Agreement, such services and facilities shall form part of the New ICT Services and Facilities.

“Financial Model” means the financial base case for the Project as reflected in the computer model prepared by the Company and submitted and agreed to by the Lenders, which model incorporates the forecast cash flow statements of the Company including all expenditure, revenues, taxation and financing of the Project together with the projected income statements and balance sheets for the Company over the Operating Period, and details of all assumptions, calculations and methodology used in the compilation thereof, as amended from time to time in accordance with the Financing Agreements.

“Financing Agreements” means the agreements or instruments that make available or extend loans, credit facilities, notes, bonds, subordinated debt, letters of credit, credit security, swaps, derivatives, hedging instruments, and other documents relating to the financing or refinancing of the Project provided by any Lender, including any amendments, supplements, extensions, and renewals of that financing or refinancing.

“Force Majeure Event” is defined in Section 13.1.1.

“Government Authority” means any government, department, commission, board, bureau, Agency, regulatory body, instrumentality, fiscal, legislative, judicial, or administrative, national or local, having jurisdiction or authority over the matter in question.

“Implementation Plan” is defined in Section 5.5.

“Independent Verifier” means the person appointed by the Parties to review the detailed design and to supervise the installation of the New ICT Services and Facilities pursuant to Section 5.4 (*Independent Verifier*) hereof.

“Information and Communications Technology” or **“ICT”** means the totality of means employed to systematically generate, send, receive, store or otherwise process electronic data messages, electronic documents, and electronic information of any kind encompassing the use on an integrated basis of computers, computer peripherals, computer operating systems and Software applications, telecommunications networks, communications devices of any type, communications applications, and any other information and communications technology for the provision of information and value-added electronic services.

“Initial Shareholders” means all of the Shareholders of the Company as of the Signature Date, the names of which are set out in Schedule I (*Company Shareholders*).

“In-Service Date” means the Day on which a final acceptance certificate for the New ICT Services and Facilities is issued by the Agency to the Company in accordance with Section 5.6.2 (*Final Acceptance*).

“Intellectual Property Rights” means all rights of ownership recognized by law in inventions, technology, copyrighted material, computer Software, and firmware, including (a) patents, trade marks, service marks, rights in designs, trade names, copyrights, rights to trade secrets, proprietary information, and know-how in each case whether registered or not; (b) applications for their registration; (c) rights under licenses and consents in relation to any of them; and (d) all forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world.

“Key Performance Indicator” or **“KPI”** means the pre-determined or desired performance benchmark or standard set to measure the efficiency and effectiveness of the Facilities and the Services as provided in Schedule F (*Service Level Agreements*).

“Legal Requirements” means all laws, statutes, orders, decrees, injunctions, Consents, agreements, and regulations of any Government Authority having jurisdiction over the matter in question.

“Lender” means any person providing loans or other financing or refinancing to the Company under the Financing Agreements, including its successors, assignees, agents and trustees, but not including any Shareholder or Affiliate of a Shareholder with respect to any indebtedness of the Company that constitutes Equity in the Company.

“Lien” means any mortgage, pledge, lien, security interest, option agreement, claim, charge, or encumbrances of any kind.

“Lock-in Period” is defined in Section 19.3.2.

“Maintenance Schedule” is defined in Section 6.5.

“New ICT Services and Facilities” means all necessary services, hardware, basic Software, communications network equipment, systems, technology, and schemes provided, installed, tested, commissioned, supplied, operated, maintained, and/or upgraded by the Company for the implementation of the Project, including but not limited to computers, machines, auxiliary equipment, peripherals, point-to-point lines and satellite links, necessary to operate and process all Agency applications in addition to all operators and communications technicians responsible for hardware, basic Software and communications equipment development, maintenance and operation, specified in this Agreement.

“Non-Political Force Majeure Event” is defined in Section 13.1.3.

“Notice of Agency Event of Default” is defined in Section 21.1.1(c).

“Notice of Company Event of Default” is defined in Section 21.1.1(b).

“Open System” means a system with characteristics that comply with specified, publicly maintained, readily available technical standards and specifications so that the system can be connected to and, subject to access rules and permissions, work interoperable with other systems that also comply with these same technical standards and specifications.

“Operating Period” means the period commencing on the Provisional In-Service Date and ending on the Termination Date.

“Operating Security” is defined in Section 6.3.

“Party” means the Agency or the Company, as the case may be, and **“Parties”** means both the Agency and the Company.

“Penalty Rate” means [●] percent ([●]%) per annum.

“Performance Security” is defined in Section 5.7.

“Performance Security Issuer” means (i) if the Performance Security is in the form of an irrevocable standby letter of credit, a universal or commercial bank reasonably acceptable to the Agency whose issuer credit rating or long-term unsecured debt obligations are rated at least PRS A by PhilRatings, or (ii) if the Performance Security is in the form of a surety bond callable on demand, a reputable surety company reasonably acceptable to the Agency which is duly licensed and ranked by the Insurance Commission in its latest official publication to be among the top ten (10) surety firms in the Philippines in terms of net worth.

“Peso”, “P”, and “PHP” mean the lawful currency of the Republic of the Philippines.

“Philippines” means the Republic of the Philippines.

“Planned Downtime” means any normal maintenance, replacement or servicing of equipment, or other work that is planned or scheduled pursuant to Section 6.5 that causes a temporary interruption of or reduction in the volume, rate, or quality of service of the New ICT Services and Facilities provided by the Company.

“Planned Downtime Period” is defined in Section 6.5(b).

“Political Force Majeure Event” is defined in Section 13.1.2.

“Project” means the undertaking, in line with the terms and conditions of this Agreement and all Legal Requirements, to prepare, develop, finance, design, engineer, procure, install, supply, startup, test, commission, implement, own, operate, manage, and maintain the New ICT Services and Facilities and to provide the Services.

“Project Agreements” means:

- (a) this Agreement;
- (b) the Shareholders’ Agreement;
- (c) the Financing Agreements; and
- (d) Any other material agreement entered into by the Company pursuant to the agreements listed in sub-clause (a) through (c) above, for the purposes of the implementation of the Project, including any agreement or subcontract for the management, operation and maintenance, and provision of technical assistance for the Project.

“Project Milestones” means (i) the Effective Date; (ii) the Provisional In-Service Date; and (iii) the In-Service Date.

“Project Milestone Schedule” means the timetable or required dates for completing all the Project Milestones set out in Schedule B, as may be amended from time to time in accordance with this Agreement.

“Project Report” is defined in Section 10.2 (*Project Reports*).

“Provisional In-Service Date” means the Day on which a provisional acceptance certificate is issued to the Company after successful testing and commissioning of the New ICT Services and Facilities following the testing procedures provided in Schedule C (*Testing and Commissioning*).

“Prudent Utility Practice” means applying, in relation to the manner in which the development obligations and the performance of Services are rendered under this Agreement, the standards, practices, methods and procedures conforming to all Legal Requirements, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances, including taking reasonable steps to ensure that:

- (a) adequate materials, resources, and supplies are available to meet the New ICT Services and Facilities’ needs under normal conditions and reasonably anticipated abnormal conditions;
- (b) sufficient and duly licensed operating personnel (i) are available, (ii) are adequately experienced and trained to operate the New ICT Services and Facilities properly and efficiently taking into consideration manufacturers’ guidelines and specifications in full compliance with the provisions of Section 6.4 of this Agreement, and (iii) are capable of responding to abnormal conditions;
- (c) preventive, routine, and non-routine maintenance and repairs (i) are performed on a basis that ensures reliable long-term and safe operation taking into account manufacturers’ recommendations and (ii) are performed by knowledgeable, trained, and experienced personnel who are duly licensed and are using proper equipment, tools, and procedures;
- (d) appropriate monitoring and testing is done to ensure the New ICT Services and Facilities are functioning as designed and in accordance with applicable SLAs and to ensure that equipment will function properly under both normal and abnormal conditions; and
- (e) equipment is operated in a manner safe to workers, the general public, and the environment.

“Required Effective Date” means the date prescribed in the Project Milestone Schedule for the occurrence of the Effective Date, as such date may be changed from time to time in accordance with this Agreement.

“Required In-Service Date” means the date prescribed in the Project Milestone Schedule for the occurrence of the In-Service Date, as such date may be changed from time to time following the terms of this Agreement.

“Required Provisional In-Service Date” means the date prescribed in the Project Milestone Schedule for the occurrence of the Provisional In-Service Date, as such date may be changed from time to time in accordance with this Agreement.

“SEC” means the Philippine Securities and Exchange Commission.

“Service Level Agreement” or **“SLA”** means the required levels of service, contractual commitments, and operating standards for the Project that are stipulated in relevant provisions of this Agreement and specifically referred to in Section 7.3 and Schedule F (*Service Level Agreements*), or as may be further developed, revised or amended in accordance with this Agreement.

“Services” means the operational services to be provided by or on behalf of the Company for the Agency as set forth in Section 7 (*Supply of Services*) and Schedule F (*Service Level Agreements*).

“Shareholder” means any person owning any of the outstanding capital stock (of any class) of the Company, including any of the Initial Shareholders.

“Signature Date” means the date of signing of this Agreement as indicated in the preamble.

“Software” means (1) computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (2) recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

“Software Documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer Software or provide instructions for using the Software.

“Sponsor” means each of the Initial Shareholders and any transferee of the direct or indirect ownership of the outstanding capital stock of the Company.

“Tax” means any net income, gross income, gross receipts, sales, use, transfer, gains, *ad valorem*, franchise, profits, capital gains, license, value-added, withholding, payroll, employment, professional, business, excise, stamp, occupation, premium, property, environmental, windfall profit, documentary, registration, severance, custom duty, governmental fee, other like assessment or charge of any kind whatsoever imposed pursuant to the laws of any national, local, or foreign jurisdiction or by any political subdivision or taxing authority, together with any interest, penalty or other payment charged, and any liability for such amounts under all applicable laws as a result either of being a member of a combined, consolidated, unitary or affiliated group or of a contractual obligation to indemnify any person or other entity.

“Termination Date” means the date when any of the following events occurs first:

- (a) termination of this Agreement pursuant to Section 2.3.1 (*Termination due to Non-Occurrence of Effective Date*);
- (b) termination of this Agreement pursuant to Section 21.1 (*Termination due to an Event of Default*);
- (c) termination of this Agreement pursuant to Section 21.2 (*Termination due to Prolonged Force Majeure Events*); or
- (d) on the [●] ([●]th) anniversary of the Provisional Operations Start Date.

“Termination Notice” is defined in Section 21.1.1(a).

“Total Project Cost” has the meaning given to it in the BOT Law, which amount shall be calculated on the basis of information reasonably satisfactory to the Agency that may be provided by the Company.

“Unplanned Downtime” means any temporary loss of function of the New ICT Services and Facilities that is not a Planned Downtime and is not the result of a breach by the Company or its subcontractors of any of its obligations under this Agreement.

“Unplanned Downtime Period” is defined in Section 6.6.

“User Fee” means any amount charged to and paid by the Clients.

1.2 Principles of Interpretation

In the interpretation of this Agreement, unless the context otherwise requires:

- (a) Words importing a gender include any gender.
- (b) Words importing the singular number shall include the plural and *vice versa*.
- (c) References to persons shall include individuals, sole proprietorships, partnerships, associations, trusts, joint ventures, unincorporated organizations, corporations, States, governments and governmental entities.
- (d) References in this Agreement to any statute, law, decree, regulation, or other Legal Requirement shall be construed as a reference to such statute, law, decree, regulation, or other Legal Requirement as re-enacted, re-designated, amended, or extended from time to time, except as otherwise provided in this Agreement.
- (e) A reference to any person, Party, or entity includes its permitted successors and assigns. A reference to any government Agency or authority shall include any Agency or authority succeeding to such Agency’s or authority’s powers and functions.
- (f) The words “include” or “including” shall be deemed to be followed by “without limitation” or “but not limited to,” whether or not they are followed by such phrases or words with the same meaning.

- (g) References to a number of days shall refer to calendar days and references to “months” shall refer to calendar months.
- (h) The division of this Agreement into articles, clauses and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (i) The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular article, clause, section or other portion hereof and include any agreement supplemental hereto.
- (j) Unless something in the subject matter or context is inconsistent therewith, references to articles, clauses, sections and schedules are to articles, clauses, sections and schedules of this Agreement.
- (k) No provision of this Agreement shall be construed adversely to a Party solely on the ground that that Party was responsible for the preparation of this Agreement or that provision.

ARTICLE I
CONDITIONS PRIOR TO EFFECTIVE DATE

2 CONDITIONS PRECEDENT TO EFFECTIVE DATE

2.1 Conditions Precedent to the Effective Date

This Agreement shall be effective and the Parties shall be bound by all its terms and conditions on the date (the “*Effective Date*”) when the following conditions have been fully satisfied or waived by the Parties and a written notice to such effect has been jointly signed by them:

- (a) Each of the Project Agreements shall have been duly signed by the parties thereto, shall be in full force and effect, and all conditions precedent to the effectiveness of each Project Agreement shall have been satisfied. The Company shall have also delivered a true and correct copy of each Project Agreement to the Agency.
- (b) Certified true copies of resolutions adopted by the board of directors of the Company authorizing the signing, delivery, and performance of this Agreement shall have been delivered to the Agency.
- (c) True and correct copies of the articles of incorporation and by-laws (including all amendments thereto) of the Company, certified by its corporate secretary and the SEC, shall have been delivered to the Agency.
- (d) All Consents that are required to have been obtained in connection with the execution, delivery, exercise of rights, and commencement of performance of this Agreement shall have been obtained and continue to be in full force and effect, including but not limited to, the Consents listed on Schedule G.

- (e) A certificate in a form and substance reasonably satisfactory to the Agency shall have been issued and delivered by the Lenders to the Agency confirming that the Financing Agreements are in full force and effect and all conditions precedent under the Financing Agreements for the provision of debt financing for the Project have been satisfied.
- (f) True and complete printed and electronic copies of the Financial Model certified by the Lenders as part of the requirements to satisfy the condition described in Section 2.1(e) shall have been submitted to the Agency.
- (g) A certificate in a form and substance reasonably satisfactory to the Agency shall have been delivered by the Company to the Agency either proving the infusion of or expressing the commitment and undertaking of the Initial Shareholders to contribute the necessary equity into the Project and the Company.
- (h) The Performance Security required from the Company pursuant to Section 5.7 shall have been executed and delivered to the Agency and shall be in full force and effect.
- (i) Certified true copies of certificates of insurance coverage evidencing compliance with the requirements for insurance needed to be in force as of the Effective Date shall have been delivered to the Agency in line with Section 10.2 and Schedule E (*Insurance*).
- (j) The representations and warranties of the Company contained or incorporated herein by reference shall be true and correct in all material respects on and as of the Effective Date and the Agency shall have received a certificate to that effect dated as of the Effective Date and signed by the corporate secretary of the Company.
- (k) The Agency shall have received a legal opinion from the Company's external legal counsel, in a form and substance reasonably acceptable to the Agency, concerning the due organization and corporate good standing of the Company and the validity and enforceability of each of the Project Agreements.
- (l) The Company has paid the Agency the amount of [●] as reimbursement for the professional fees of the Agency's Project transaction advisors.
- (m) No Legal Requirement shall have been enacted, entered, promulgated, or enforced by any Government Authority having jurisdiction over the matter that restrains, prohibits, or declares illegal the consummation of the transactions contemplated in any of the Project Agreements and no action, suit, inquiry, or proceeding shall have been instituted or threatened that seeks to restrain, prohibit, or declare illegal the consummation of the transactions contemplated by any of the Project Agreements. Each Party, through its respective corporate secretary or chief legal officer, shall issue a sworn statement to this effect.
- (n) Certified true copies of resolutions adopted by the governing board of the Agency authorizing the execution, delivery, and performance of this Agreement shall have been delivered to the Company.

- (o) The representations and warranties of the Agency contained or incorporated herein by reference shall be true and correct in all material respects on and as of the Effective Date and the Company shall have received a certificate to that effect dated as of the Effective Date and signed by the corporate secretary or chief legal officer of the Agency.
- (p) The Agency shall submit to the Company a legal opinion from the Agency's chief legal officer, in a form and substance reasonably acceptable to the Company and the Lenders, concerning the due organization and legal existence of the Agency under the laws of the Philippines and the validity and enforceability of this Agreement.

2.2 Reasonable Efforts to Satisfy Conditions Precedent

- (a) Each Party shall use all reasonable efforts to satisfy the conditions enumerated in Section 2.1 on or before the Required Effective Date. On each date that a Party believes that any of the conditions precedent has been satisfied, it shall promptly give written notice of that fact to the other Party together with copies of all relevant documents which satisfy that condition.
- (b) Without prejudice to the rights of the Parties to terminate this Agreement pursuant to Section 21.2, if the occurrence of the Effective Date is delayed by a Force Majeure Event, the Parties shall confer on the effects of such delay and may mutually agree to extend or otherwise adjust the Required Effective Date equitably. The Parties shall endeavor to reschedule activities and resume the performance of their obligations in a way that will avoid or minimize any further delay in the implementation of the Project.

2.3 Non-Occurrence of Effective Date

2.3.1 Termination due to Non-Occurrence of Effective Date

- (a) The Agency may extend the period for the Company to comply with its obligations under Section 2.1 or may terminate this Agreement with immediate effect by giving written notice thereof to the Company at any time after the Required Effective Date (unless the Effective Date occurs before such notice is issued) if any of the conditions precedent set forth in Sections 2.1(a) through (m) inclusive has not been satisfied on or before the Required Effective Date.
- (b) The Company may extend the period for the Agency to comply with its obligations under Section 2.1 or may terminate this Agreement with immediate effect by giving written notice thereof to the Agency at any time after the Required Effective Date (unless the Effective Date occurs before such notice is issued) if any of the conditions precedent set forth in Sections 2.1(m) through (p) and (d) (insofar as Consents that the Agency must secure are concerned) has not been satisfied on or before the Required Effective Date.

2.3.2 Consequences of Termination

If this Agreement is terminated by the Agency pursuant to Section 2.3.1:

- (a) The Agency shall be paid liquidated damages by the Company equal to [●] percent ([●]%) of the Total Project Cost unless the Company's failure to fulfill any of its conditions precedent was actually due to (i) a Political Force Majeure Event, or (ii) an Agency Event of Default. For this purpose, the Agency shall draw down the amount claimed as liquidated damages from the Performance Security submitted by the Company.
- (b) This Agreement shall have no further effect. The Parties shall have no further rights and shall be released from all their obligations under this Agreement except in respect of any rights or obligations arising before the termination occurred.

2.4 Specific Provisions Effective on the Signature Date

The following sections shall be binding and effective on the Signature Date and the Parties' rights or obligations under those clauses shall not be conditional on the occurrence of the Effective Date:

- (a) Section 1 (*Definitions, Principles of Interpretation, and Priority of Documents*);
- (b) Section 2 (*Conditions Precedent to Effective Date*);
- (c) Section 11 (*Representations and Warranties*);
- (d) Section 13 (*Force Majeure*);
- (e) Section 14 (*Indemnity*);
- (f) Section 17 (*Limitation of Liability*);
- (g) Section 19 (*Assignment of Rights; Ownership of the Company*);
- (h) Section 20 (*Dispute Resolution*); and
- (i) Section 22 (*General Provisions*).

ARTICLE II TERM OF THE AGREEMENT

3 TERM OF THE AGREEMENT

3.1 Contract Term

Subject to Section 2.4 (*Specific Provisions Effective on the Signature Date*), the term of this Agreement runs from the Effective Date until the Termination Date.

3.2 Provisions In Force

From the Signature Date until the Effective Date, the provisions enumerated in Section 2.4 (*Specific Provisions Effective on the Signature Date*) shall be in full force and effect. From the Effective Date until the Termination Date, all of the provisions of this Agreement shall be in full force and effect.

ARTICLE III
CONDITIONS AFTER EFFECTIVE DATE

4 PROJECT IMPLEMENTATION

4.1 Project Scope

The Project shall comprise the planning, financing, development, design, engineering, supply, installation, testing, commissioning, management, operation, repair, maintenance and upgrade by the Company of the New ICT Services and Facilities during the Operating Period in accordance with the scope and specifications prescribed in Schedule A (*Design and Technical Specifications*), including their transfer upon the Termination Date, in accordance with this Agreement and all applicable laws.

Commentary:

The project scope is not limited to the description made in this sample contract but may change depending on the needs and unique circumstances of each project or transaction.

4.2 Grant of Rights

On the terms and subject to the conditions set forth in this Agreement, the Agency hereby grants to the Company in compliance with all Legal Requirements the sole and exclusive right and responsibility during the term of this Agreement to:

- (a) arrange financing for the Project;
- (b) plan, develop, design, build, supply, install, test, commission, deploy, and when applicable, rollout the New ICT Services and Facilities;
- (c) implement the Project in accordance with the Project Milestone Schedule;
- (d) provide, manage, use, occupy, operate, repair, maintain, and refurbish the New ICT Services and Facilities.

4.3 Consents and Approvals

Except for the Consents that the Agency is required to secure in accordance with Schedule G (*Consents*), the Company shall at its cost be responsible for obtaining all other Consents required for the financing, supply, installation, operation, maintenance, ownership and transfer of the New ICT Services and Facilities and the Project.

4.4 Database and Source Code

- (a) The Database shall be the exclusive property of the Agency throughout and after the term of this Agreement and under no circumstance shall ownership transfer at any time to the Company. However, the Company shall have use of and be given access to the Database for the sole and exclusive purpose of providing and operating the New ICT Services and Facilities in accordance with this Agreement. The Agency will also cooperate in providing the information from which the Database shall be created.
- (b) The source code for customized application systems that form part of the New ICT Services and Facilities will be owned by the Agency. For this purpose, such source code shall be deposited in escrow under a source code escrow agreement to be entered into by the Parties providing for the release of the source code to the Agency in case of termination of this Agreement due to a Company Event of Default or other valid reasons set forth in this Agreement.

4.5 Existing ICT Services and Facilities

The Company shall have the option to use, adapt, or enhance any portion of the Agency's Existing ICT Services and Facilities in the implementation of the Project. If the service, system or facility is currently outsourced by the Agency to a vendor or service provider, the Company may use such service or system under the same conditions as those available to the Agency, or at its election and its own cost, the Company may contract separately with the vendor or service provider concerned. If the Agency owns and operates such service, system or facility, the Company may use any system or facility subject to the payment of reasonable compensation to the Agency to be mutually agreed to by the Parties. If no agreement on use or compensation can be reached, the matter shall be treated and resolved as a Dispute under Section 20.

Commentary:

The use of any existing ICT services or facilities is not mandatory and will depend on the requirements of the Project.

4.6 Title and Risk of Loss

Subject to the terms of the Financing Agreements, title to the New ICT Services and Facilities (except the Database) will vest in the Company during the Operating Period. Such title including possession, custody and risk of loss will vest in the Agency on the Termination Date.

5 PROVISION OF SERVICES AND FACILITIES; TESTING AND COMMISSIONING

5.1 General Responsibilities of the Company

The Company shall plan, design, install, test, and commission the New ICT Services and Facilities and all other Project components covering application systems development and maintenance, hardware provisioning, communications, data processing, data capture, end user support, and system rollout, and where necessary, re-installation of equipment and accessories, conversion of documents, creation of databases, and systems upgrading, in compliance with:

- (a) the Design and Technical Specifications;
- (b) Prudent Utility Practice;
- (c) all relevant design, engineering, and construction standards and practices in the Philippines;
- (d) all applicable Legal Requirements; and
- (e) the Project Milestone Schedule.

5.2 Further Responsibilities Related to the New ICT Services and Facilities

For the purpose of performing its obligations under Section 5.1 (*General Responsibilities of the Company*), the Company shall, among other things, have the right to and be responsible for:

- (a) calling for tenders and awarding contracts with or without tender subject to the Financing Agreements and the provision on transactions with Affiliates of the Company set forth in Section 12.7 (*Transaction with Affiliates*);
- (b) causing the preparation of the Implementation Plan and approving or rejecting the same;
- (c) appointing and removing consultants and professional advisors;
- (d) procuring and installing the New ICT Services and Facilities;
- (e) hiring, organizing, removing and directing staff to manage and supervise the Project;
- (f) entering into contracts for the supply, purchase or lease of materials, equipment and services including the connection to all utilities needed during installation and operation;

- (g) taking the necessary measures to protect people and property, avoid unnecessary interference caused by people and equipment, and prevent any other nuisance and unreasonable disturbance; and
- (h) doing all other things necessary or desirable for the timely completion of the Project.

5.3 General Warranty

The Company expressly warrants that the New ICT Services and Facilities including the works to be performed by the Company and its subcontractors will conform to the Design and Technical Specifications in all respects and will be free from design, manufacturing, or other defects and deficiencies.

5.3.1 Duration

The Company's warranty under this Section 5.3 (*General Warranty*) shall commence on the Effective Date and shall extend for the duration of the Operating Period.

5.3.2 Breach

The Agency will notify the Company of any breach of the general warranty referred to in this Section 5.3 specifying in as much detail as possible the circumstances of the breach and providing supporting data and records that may be available. At the Company's expense and within a reasonable period to be mutually agreed to by the Parties, the Company shall rectify all such breaches. Nevertheless, the Company's obligations under this Section 5.3 are not conditional on notice being given by the Agency of such breach and the Agency's failure to send such notice should not be construed as a waiver of any warranty.

5.4 Independent Verifier

5.4.1 Role

The Parties shall appoint an independent engineer with the appropriate national or international standing having relevant experience in the planning, design, development, and operation of similar projects (the "***Independent Verifier***"), to review the Implementation Plan to be submitted by the Company to the Agency pursuant to Section 5.5 (*Implementation Plan*), and to monitor and check the progress of the installation and setup of the New ICT Services and Facilities.

5.4.2 Appointment Process

The Independent Verifier shall be appointed through an open, transparent and competitive bidding process to be conducted by the Parties as follows:

- (a) Within thirty (30) Days from the Effective Date, the Agency shall prepare the terms of reference and request for proposals for the selection of the Independent Verifier, and shall submit those documents to the Company for comment and approval, which approval shall not be unreasonably withheld.
- (b) The Agency shall publish an open invitation for qualified persons to apply for eligibility and to submit bids.
- (c) The Agency shall receive all proposals submitted by candidates for appointment as Independent Verifier and a group comprising an equal number of representatives from the Agency and the Company shall evaluate such proposals.
- (d) The candidate submitting the most responsive proposal shall be selected as the Independent Verifier for the Project.
- (e) Any dispute between the Parties arising from the selection of the Independent Verifier shall be resolved following the procedures for the settlement of Disputes stipulated in Section 20.

5.4.3 Specific Tasks

The Independent Verifier shall carry out all tasks assigned to it under this Agreement, including the following:

- (a) review of and determining whether the Implementation Plan and detailed designs meet the Design and Technical Requirements;
- (b) supervision, monitoring, and inspection of the state and progress of the installation and setup including performance by the LGU of any installation-related obligation under this Agreement;;
- (c) participation in testing and commissioning, and deciding whether the Company should be issued a provisional or final acceptance certificate;
- (d) determination of any time extensions for completing the Project Milestones; and
- (e) submission of reports and analyses that the Agency or the Company may reasonably request.

5.4.4 Access and Confidentiality

- (a) The contract for the retention of the Independent Verifier shall include confidentiality and non-disclosure provisions that provide a level of protection for the intellectual property and other proprietary information of the Company and the Agency, which shall be commensurate with the level of protection provided in Section 22.4 of this Agreement.

- (b) The Company shall provide the Independent Verifier with access to all job sites, installations, documents, personnel and such other information as the Independent Verifier may request for the purposes of carrying out its tasks provided in this Agreement and as more specifically described in Section 5.4.3.

5.4.5 Cost

The fees and expenses of the Independent Verifier shall be shared and paid equally by the Agency and the Company.

5.5 Implementation Plan

5.5.1 Submission

The Company shall provide the Agency and the Independent Verifier with four (4) printed copies and one (1) electronic copy each of the detailed implementation plan not later than [●] Days after the Required Effective Date (the "**Implementation Plan**"). The Implementation Plan shall contain and specify:

- (a) all the action items, hardware, applications, equipment, and personnel needed to carry out the ICT strategies of the Project;
- (b) the target dates for completing those items;
- (c) the responsible persons; and
- (d) test procedures that meet the requirements for testing provided in Schedule C (*Testing and Commissioning*).

5.5.2 Review and Comment

- (a) The Agency may, but shall have no obligation to, raise comments or questions on the Implementation Plan submitted in line with this Section 5.5 within [●] Days from its submission, provided that such comments or questions relate to compliance of the plan with the Design and Technical Specifications including Prudent Utility Practice or other design and technical requirements of this Agreement. Following the receipt of those comments or questions, the Company shall modify the Implementation Plan and submit the revised document to the Agency within [●] Days for its final review.
- (b) If a written comment is not received by the Company on the original or revised plan, the Agency shall be deemed to have no comments or further questions thereon.
- (c) The Independent Verifier shall be fully engaged by the Parties in the review, evaluation and analysis of the Implementation Plan to ensure that they comply with the Design and Technical Specifications. The Company shall consider the findings of the Independent Verifier in any revision of the Implementation Plan regardless of the fact that the Agency may not have made any comments on the original design plans. If there is an inconsistency in the findings of the Independent Verifier and the comments of the Agency, the matter shall be

resolved through mutual discussion involving the Parties and the Independent Verifier.

5.5.3 Disclaimer

The submission of the Implementation Plan for comment and the review by the Agency of such plan shall not constitute an approval or a warranty on its part of the plan's technical soundness. The Company acknowledges that the Agency does not assume any responsibility for the design or engineering soundness, safety, or reliability of any part of the New ICT Services and Facilities or the Project. A review done by the Agency or the Independent Verifier shall not relieve the Company of any obligation or liability under this Agreement or any other Project Agreement. It shall not also be construed as a waiver by the Agency of any of its rights under this Agreement. Neither the Agency nor the Independent Verifier shall have any liability to the Company or any other person by reason of its review of the design plans in line with this Section 5.5.

5.6 Testing and Commissioning

5.6.1 Testing Procedure; Provisional Acceptance

- (a) The Company shall, at its cost, carry out the testing and commissioning of the New ICT Services and Facilities in phases in accordance with Schedule C (*Testing and Commissioning*). The Company shall give the Agency and the Independent Verifier not less than thirty (30) Days' prior written notice before commencing any testing and commissioning of a phase.
- (b) Within five (5) Business Days of the Company carrying out the testing and commissioning, the Independent Verifier shall be required to determine whether the testing has been done in accordance with the relevant testing and commissioning procedures and whether or not that phase or portion of the New ICT Services and Facilities has satisfied the applicable commissioning and acceptance standards provided in Schedule C (*Testing and Commissioning*). The determination made by the Independent Verifier shall be final and binding on the Parties, except in case of fraud or manifest error.
- (c) If the Independent Verifier certifies that the phase or portion of the New ICT Services and Facilities fully meet the commissioning and acceptance standards, the Agency shall issue a provisional CAIF in favor the Company for that phase within five (5) Business Days from the receipt of such certification.
- (d) If the Independent Verifier certifies that the phase or portion of the New ICT Services and Facilities do not fully meet the commissioning and acceptance standards, it shall issue a report to the Parties detailing the reasons why such phase or portion of the New ICT Services and Facilities do not comply with the commissioning and acceptance standards and specifying the actions that the Company must take to meet such standards.
- (e) The Company shall immediately take the remedial actions specified in the report and shall notify the Agency and the Independent Verifier when they have been carried out. As soon as reasonably practicable, the Company shall conduct further testing and commissioning until a provisional CAIF has been issued.
- (f) If the Company fails to obtain a provisional CAIF for all phases on or before the Required Provisional In-Service Date, such failure shall constitute a delay and a Company Event of Default.

5.6.2 Final Acceptance

Following the satisfactory operation of the New ICT Services and Facilities after a period of six (6) months from the Provisional In-Service Date as certified by the Independent Verifier, the Agency shall issue a final CAIF and the New ICT Services

and Facilities shall thereafter be operated by the Company in conformity with the Service Level Agreements.

5.7 Performance Security

- (a) On or before the Signature Date, the Company shall provide and deliver to the Agency an unconditional and irrevocable standby letter of credit substantially in the form set out in Schedule D (*Form of Performance Security*) as security for the performance by the Company of its obligations under this Agreement from the Signature Date until the In-Service Date (the "**Performance Security**"). The Performance Security shall have a value equivalent to two percent (2%) of the Total Project Cost and shall be issued by a Performance Security Issuer in favor of the Agency.
- (b) The Performance Security shall be reduced proportionately as each phase or Project Milestone is completed following Schedule B (*Project Milestone Schedule*) and unless forfeited or otherwise called on by the Agency in accordance with this Agreement, shall be returned to the Company on the date on which the final acceptance certificate is issued but only after submitting an Operating Security in exchange pursuant to Section 6.3 (*Operating Security*).
- (c) In the event the Project Milestone Schedule is extended in accordance with this Agreement, the term of the Performance Security shall also be extended accordingly.

5.8 Liquidated Damages for Delay in Meeting Project Milestones

- (a) The Company undertakes to complete the New ICT Services and Facilities and start the Services on or before the Required Provisional In-Service Date. If the Provisional In-Service Date does not occur on or before the Required Provisional In-Service Date, the Company shall pay the Agency liquidated damages in the amount of PHP[●] for each Day of delay from the Day immediately following the Required Provisional In-Service Date to and including the Day on which the Provisional In-Service Date occurs ("**Delay Liquidated Damages**").
- (b) The Agency shall claim payment of Delay Liquidated Damages accruing under Section 5.8(a) above through invoices. The Company shall pay any amount due not later than thirty (30) Days after its receipt of each invoice, which may be issued no more frequently than every fifteen (15) Days. If the Company fails to pay on the due date, then the Agency shall be entitled to draw from the Performance Security the amount of Delay Liquidated Damages due. Notwithstanding Section 15.1 (*Company Events of Default*), if the Company's liability for Delay Liquidated Damages exceeds the amount available to be drawn under the Performance Security, the Company shall pay the excess upon written demand by the Agency. The Agency shall also have the right to deduct any unpaid amount from any amount otherwise due the Company under this Agreement.

5.9 Project Milestone Schedule

5.9.1 Compliance with Project Milestone Schedule

The Company undertakes to complete the Project in accordance with the Project Milestone Schedule, as they may be amended following the provisions of Section 5.9.2 below. To meet the timetable, the Company shall cause its subcontractors to immediately start work on the Project when the Effective Date occurs.

5.9.2 Extension of Project Milestone Schedule

- (a) Dates in the Project Milestone Schedule may be extended only if any of the following events causes or will cause a material delay in achieving one or more Project Milestones:
 - (i) an Agency Event of Default;
 - (ii) a Force Majeure Event; or
 - (iii) a delay or failure on the part of the Agency to carry out an obligation under this Agreement, other than an obligation related to payments by the Agency, and which failure or delay directly prevents the Company from completing a Project Milestone unless the delay or failure on the part of the Agency is excused under this Agreement or is attributable to an action or inaction of the Company, its subcontractors, or agents that is inconsistent with this Agreement.
- (b) When any of the foregoing events occurs, the Company shall promptly submit to the Agency and the Independent Verifier a written report setting forth in detail reasonably satisfactory to the Agency the reasons for and the expected length of the delay. The Company shall also recommend measures to minimize the period of the delay and provide a supplemental plan that demonstrates that the Project will be completed within the shortest period possible taking into account the effects of the delay. After submission of the report, the Parties and the Independent Verifier shall meet within five (5) days to consult about the delay and the supplemental plan. The Parties may thereafter agree to equitably adjust the Project Milestone Schedule to the extent that the Company is able to demonstrate that such delay is attributable to any of the events listed in Section 5.9.2(a).

5.10 Change Order Procedure

Subject to the rules on contract variations under the BOT Law, a Party may request a change in the Implementation Plan including the system hardware, Software, system interfaces, inputs, outputs, or functionality, in the manner set forth below:

- (a) The Party requesting the change shall submit in writing a change request to the other Party, which shall include, among other information, the name of the project, the name and signature of the authorized person making the request on behalf of the requesting Party, the date of the change request, a description of the proposed change, and the reasons or justification for the proposed change.

- (b) The Parties shall assign a unique reference number to and log each change request. All change requests shall be classified by the requesting Party based on their level of importance and urgency.
- (c) The requesting Party shall undertake reasonable efforts to investigate the impact of the change request on the User Fee, cost, timetable, scope of work, specifications and relevant obligations under the Agreement. If the Parties cannot agree on the results of the impact study or the proposed change, the change order request shall not be implemented.
- (d) Any change order request shall be acted upon by both Parties, in writing, within [●] Days from receipt of the request, or within a reasonable period as may be agreed upon by them.
- (e) The Agency at its discretion may seek the advice of the Independent Verifier and such other third parties as it may determine for the purposes of evaluating the change order request and determining an appropriate response.
- (f) The final approval of all change requests shall be made by the head of the Agency and ratified by its governing board.

6 OPERATION AND MAINTENANCE

6.1 Operation and Maintenance Responsibilities of the Company

The Company shall be responsible for the management, operation, maintenance, safety, and repair of the New ICT Services and Facilities from the Provisional In-Service Date until the Termination Date and shall ensure during such period that the New ICT Services and Facilities operate in accordance with all Legal Requirements, Prudent Utility Practice, and the SLAs.

6.2 Operation Manual

6.2.1 Submission of Operation Manual

- (a) The Company shall prepare an operation and maintenance manual for the New ICT Services and Facilities consistent with Prudent Utility Practice and Legal Requirements that also incorporate the operating and maintenance procedures specified or recommended by equipment suppliers and manufacturers and that will enable the Company to comply with Schedule F (*Service Level Agreements*).
- (b) The Company shall submit the operation and maintenance manual to the Agency not later than one hundred eighty (180) Days before the expected Provisional In-Service Date. The Agency shall review and may comment on the manual following the same steps provided in Section 5.5.2 (*Review and Comment*).

6.2.2 Disclaimer – Operation Manual

The review or approval by the Agency of the operation and maintenance manual shall not relieve the Company from any liability under this Agreement or any other Project Agreement nor shall it be considered a waiver by the Agency of any of its rights. The Agency and the Independent Verifier shall not be liable to the Company or any other person by reason of any review or approval of such manual.

6.3 Operating Security

Within five (5) Days from the In-Service Date, the Company shall provide and deliver to the Agency a surety bond callable on demand in the form set out in Schedule D (*Form of Performance Security*) as security for the performance by the Company of its obligations under this Agreement from the Provisional In-Service Date until the Termination Date (the “**Operating Security**”). The Operating Security shall have a value equivalent to PHP[●] and shall be issued by a Performance Security Issuer in favor of the Agency. The Company shall ensure that the Operating Security is always valid and regularly renewed or extended.

6.4 Company Staff

- (a) The Company shall ensure that a sufficient number of its personnel or those of its subcontractors with the necessary qualifications, expertise and experience most appropriate to operate the New ICT Services and Facilities are on duty on the Days and during the hours needed to meet the Service Level Agreements and as called for by Prudent Utility Practice. Such operation shall include the performance of regular data and system backups, periodic batch processing, disaster recovery processes and capacity monitoring and planning.
- (b) It is understood that staff provided by the Company for the purpose of performing all services under this Agreement are the employees of the Company or its subcontractors, and under no circumstances will be considered employees of the Agency.

6.5 Planned Downtime; Maintenance Program, Schedule and Fund

- (a) The Company shall conduct all regularly scheduled preventive and remedial maintenance of the New ICT Services and Facilities, including repairs, overhauls, improvements, and replacements, in accordance with the maintenance plans and schedules developed pursuant to this Section 6.5.
- (b) The Company shall submit to the Agency, not later than sixty (60) Days prior to the start of each Contract Year (in the case of Contract Year 1, prior to the Required Provisional In-Service Date), a maintenance plan and schedule for the New ICT Services and Facilities for that Contract Year. The maintenance schedule for a Contract Year shall indicate the dates and times during which the normal delivery of Services will be interrupted for each Planned Downtime during that Contract Year (the “**Planned Downtime Period**” for such Planned Outage). The Planned Downtime Period during any Contract Year shall not exceed [●] hours.

- (c) A Planned Downtime shall be confirmed by the Parties sixty (60) Days prior to such downtime and reconfirmed twenty-one (21) Days in advance. The Agency may request the Company to reschedule a Planned Downtime for any valid reason and the Company shall make reasonable efforts to accommodate the request consistent with Prudent Utility Practice. If the Company cannot accommodate the request, it shall inform the Agency in writing as early as possible, which should not be later than fifteen (15) Days after its receipt of a request for rescheduling any Planned Downtime.
- (d) The Company will carry out and provide back-up and recovery procedures or facilities to ensure the continuous operation of the Project even during system downtimes or breakdowns.
- (e) The Company shall set aside a special fund for the repair, maintenance and system upgrade of the New ICT Services and Facilities and to fund training and technology transfer activities under this Agreement. The fund shall be placed in escrow and shall be built up in accordance with the terms for the creation and operation of such fund provided in Schedule F (*Service Level Agreements*).

6.6 Unplanned Downtime

In case any Unplanned Downtime occurs or is foreseen to occur, the Company shall immediately notify the Agency in writing specifying the date and time of the commencement of the Unplanned Downtime and its expected duration. The period of time from the commencement of an Unplanned Downtime until the resumption of normal operation shall be termed as an “**Unplanned Downtime Period**”. Any Unplanned Downtime Period with a duration of more than [●] hours shall be treated as a Non-Political Force Majeure Event affecting the Company.

6.7 Excess Downtime

The Company shall pay liquidated damages equivalent to [●] for each hour or portion thereof in excess of the maximum number of Planned Downtime allowed that is not an Unplanned Downtime. The Performance Security will be used to guarantee the payment of such penalty. In the event the Company exceeds the allowable Planned Downtime indicated in Section 6.5 by more than [●] percent, such occurrence will either constitute a Company Event of Default or will result in the imposition of a penalty double the amount herein specified, at the option of the Agency.

7 DELIVERY OF SERVICES

7.1 Company Services

The Company shall, at its cost, perform and deliver the New ICT Services and Facilities for the duration of the Operating Period with the following components:

- (a) Applications development and maintenance, which includes the provision of:
 - (i) systems analysts and programmers to design, develop, test, install, operate, and maintain new Software applications to enhance and

improve the Database collection and management services, operations, and processes of the Agency, or to design, develop, test, install, operate, and maintain modifications and enhancements of current Agency applications,

- (ii) all hardware required for systems development and maintenance,
 - (iii) the facility where the systems analysts and programmers will work, and
 - (iv) the necessary Software development tools and relational database management systems (RDBMS)
- (b) Data center or warehousing services, which includes the provision of:
- (i) all hardware, basic Software (including but not limited to operating systems and RDBMS), communications network equipment and communications links for open system computer networks including but not limited to point-to-point lines and satellite links necessary to operate and process all Agency applications, and
 - (ii) all services to be provided by operators and communications technicians and includes responsibility for hardware, basic Software and communications equipment maintenance and operation
- (c) Data capture and conversion hardware provisioning and operation, which cover the provision of all hardware and operators required to key-in, capture and convert the input data used by the Agency applications including the maintenance of such hardware required for such data capture and conversion
- (d) Data security and integrity of all data used and generated by the Project which shall also cover physical, network and system facilities
- (e) End user support functions, including but not limited to the provision of adequate ICT support to Agency end users to be complemented by a minimal in-house support infrastructure to be maintained by the Agency
- (f) Rollout and deployment of the New ICT Services and Facilities with its modules and functionalities to appropriate Agency regional offices which are identified in Schedule F (*Service Level Agreements*).

- (g) Applications development and maintenance, which includes the provision of:
 - (v) systems analysts and programmers to design, develop, test, install, operate, and maintain new Software applications to enhance and improve the Database collection and management services, operations, and processes of the Agency, or to design, develop, test, install, operate, and maintain modifications and enhancements of current Agency applications,
 - (vi) all hardware required for systems development and maintenance,
 - (vii) the facility where the systems analysts and programmers will work, and
 - (viii) the necessary Software development tools and relational database management systems (RDBMS)
- (h) Data center or warehousing services, which includes the provision of:
 - (iii) all hardware, basic Software (including but not limited to operating systems and RDBMS), communications network equipment and communications links for open system computer networks including but not limited to point-to-point lines and satellite links necessary to operate and process all Agency applications, and
 - (iv) all services to be provided by operators and communications technicians and includes responsibility for hardware, basic Software and communications equipment maintenance and operation
- (i) Data capture and conversion hardware provisioning and operation, which cover the provision of all hardware and operators required to key-in, capture and convert the input data used by the Agency applications including the maintenance of such hardware required for such data capture and conversion
- (j) Data security and integrity of all data used and generated by the Project which shall also cover physical, network and system facilities
- (k) End user support functions, including but not limited to the provision of adequate ICT support to Agency end users to be complemented by a minimal in-house support infrastructure to be maintained by the Agency
- (l) Rollout and deployment of the New ICT Services and Facilities with its modules and functionalities to appropriate Agency regional offices which are identified in Schedule F (*Service Level Agreements*).

7.2 Agency Services

The New ICT Services and Facilities shall be planned, developed and provided by the Company for the sole purpose of supporting or enhancing the Agency's delivery of the following services and products to its officers, employees, or Clients:

- [●];
- [●];
- [●]; and
- [●].

7.3 Service Level Agreements

The Company shall provide and operate the New ICT Services and Facilities in a manner that shall at all times meet or exceed the Service Level Agreements. If the Company fails to provide or operate the New ICT Services and Facilities in line with the SLAs set in this Agreement, the Agency shall be entitled to impose a penalty provided for in Schedule F (*Service Level Agreements*) and may enforce payment through the Operating Security if the Company is unable to pay the penalty when due.

7.4 Quality Assessment

The Company shall implement a quality assessment and monitoring system which meets the requirements of Prudent Utility Practice to ensure that the New ICT Services and Facilities are delivered in a way that satisfies or exceeds all SLAs.

8 COPYRIGHTS, LICENSES AND WARRANTIES

8.1 Copyrights over Work Products

- (a) All Intellectual Property Rights in materials, products, goods, devices, inventions, works, outputs and other tangible or intangible property developed or prepared by the Company pursuant to this Agreement are the property of the Agency and all title and interest therein shall vest in the Agency exclusively.
- (b) All Intellectual Property Rights owned by the Agency shall belong to the Agency. If the Existing ICT Services and Facilities are used by the Company during the Operating Period in line with Section 4.5, the Agency shall grant the Company a non-exclusive, worldwide, royalty free license to use any of its Intellectual Property Rights but only for purposes related to the implementation of the Project.

8.2 Specific Warranties

Without limitation of the general warranty provided in Section 5.3, in the provision of the New ICT Services and Facilities, the Company specifically warrants that:

- (a) All equipment and materials to be provided, furnished, delivered, manufactured, supplied, installed and used by the Company are of good quality, genuine, meet the technical specifications prescribed in Schedule A (*Design and Technical Specifications*), and carry the necessary warranties from their manufacturers.
- (b) The equipment and facilities to be provided by the Company shall be in sufficient quantities and capacities, and shall at all times be capable of meeting or exceeding the SLAs.
- (c) All applications and Software to be developed or provided, after acceptance testing, will continue to meet the acceptance test criteria prescribed in Schedule C (*Testing and Commissioning*).
- (d) All Software developed or used for the Project shall not infringe or contribute to, directly or indirectly, infringement of Intellectual Property Rights held by subcontractors, vendors, or other third parties and all such rights necessary to fulfill the Company's obligations to the Agency under this Agreement have been obtained.
- (e) The New ICT Services and Facilities, including all goods and services provided to the Agency in connection therewith, shall be fit for the purpose for which they are provided.
- (f) The Company's management and personnel assigned to perform services under this Agreement are qualified, diligent, and morally fit to perform all the services required in this Agreement to the satisfaction of the Agency, and that each of them shall have the proper skill, training and background to perform the services to which they are assigned in a competent, efficient and professional manner.
- (g) The Company will comply, and cause its subcontractors and agents to comply, with all export control laws and regulations that may be applicable to the export from any jurisdiction of the hardware and other equipment and related technical data necessary for the provision of the New ICT Services and Facilities.
- (h) The Company will promptly respond to all service requests coursed through the agreed problem determination, problem analysis and warranty service request procedures established by the Company and accepted by the Agency.

8.3 Failures Not Applicable to Warranties

In this Agreement, the warranties do not apply if failures are due to:

- (a) an Event of Loss or other accidental damage or loss;
- (b) a Force Majeure Event;
- (c) an Agency Event of Default; or
- (d) misuse or other acts committed by the Agency that void an applicable warranty or warranties.

8.4 Software Licenses

- (a) The Company grants to the Agency a personal, non-exclusive and non-transferable license to execute, display, and use the Software, including the related Software Documentation, supplied under the terms and conditions of this Agreement solely to process the Agency's data applications and meet its other internal data processing requirements. Such license shall permit the use and the load of the Software not only on the hardware on which the Software is initially installed or which are supplied to the Agency under this Agreement, but also on all other hardware owned or used by the Agency. The Agency may also make copies or adaptations of the Software for archival purposes or when copying or adaptation is an essential step in the use of the Software on a backup device, provided that copies and adaptations are used in no other manner.
- (b) If a separate license agreement from the owner of the Software accompanies the Software, then the terms of the separate license agreement will prevail and supersede any agreed license terms between the Parties for that Software.
- (c) As the owner of any application Software developed by the Company for the Project, the Agency may cause to modify it or combine it with such other programs or materials to form an updated work. The Agency will not modify Software that bears a copyright notice from any third party (other than the Company) without the express written agreement of the copyright owner.
- (d) The Agency shall have the right of perpetual use to all licensed Software included in the New ICT Services and Facilities if not owned by the Company. For Software owned by third parties, the Company will transfer to the Agency the right to use the Software on the Termination Date. Such transfer will be covered by a license transfer agreement with the licensed Software owner.
- (e) This Agreement does not transfer to the Agency title to any Intellectual Property Rights contained in any pre-existing or licensed Software, documentation or proprietary information belonging to third parties.

8.5 Agency Obligations and Warranties

1. The Agency shall provide the Company with adequate access to its premises, records, officers, employees, and consultants including the designated sites within the Agency's offices for setting up the New ICT Services and Facilities.
2. Where the Company elects to use the Existing ICT Services and Facilities in accordance with Section 4.5, the Agency warrants, unless the Company is otherwise notified, that:
 - (i) It has all the necessary rights to allow such premises or items to be altered, moved, used, copied or distributed by the Company, as necessary, for the purpose of implementing this Agreement without infringing on any third party rights; and
 - (ii) The use of such premises, hardware, Software or other items by the Company for purposes solely related to the Project will not result in a violation of any Legal Requirement or a breach of any contract to which the Agency is a party.

9 PAYMENT TO COMPANY

9.1 Company and User Fees

For providing the New ICT Services and Facilities, the Company shall be entitled to charge monthly User Fees to be paid by the Clients of the Agency. The Company shall be entitled to receive its portion of the User Fees that will be charged and collected by the Agency (the "**Company Fee**") which will be calculated in accordance with the terms, formula, and other conditions shown in Table [●] of Schedule K (*User Fees*).

9.2 Company Fee Adjustment

The Company Fee shall be adjusted every [●] subject to the terms, formula, and other conditions provided in Schedule K (*User Fees*).

9.3 Special Account

The Company Fee shall be deposited by the Agency daily in a special interest-bearing trust account to be opened and maintained at an authorized government depository bank licensed and regulated by the *Bangko Sentral ng Pilipinas*. All interest or other income earned by such account shall accrue to the Company.

9.4 Invoices

At the end of each Billing Month, the Company shall submit to the Agency an invoice (each, a "**Company Invoice**") in the form set out in Schedule J (*Form of Invoice*) showing the total User Fees charged and the computation for the total amount due and payable from the Agency as Company Fees for such Billing Month.

9.5 Payment

The Agency shall pay the amount due in each Company Invoice including the interest and other income referred to in Section 9.3 above, within five (5) Business Days after the date of receipt by the Agency of such invoice. If the last day for payment is not a Business Day, then payment shall be made on the next Business Day.

9.6 Manner of Payment

All sums payable by the Agency under this Agreement shall be paid in Pesos and remitted in same-day funds on the due date to an account maintained in a bank doing business in [●], Philippines to be specified in writing by the Company to the Agency.

9.7 Value-added Tax

Any value-added tax on the sale of the Services shall be passed on by the Company to the Agency and shall be separately stated in the Company Invoices.

9.8 No Set-Off or Deductions

All payments made by the Agency under this Agreement shall be made free and clear of and without deduction for or on account of any setoff, counterclaim, Taxes, or otherwise, except those particularly allowed under the Civil Code of the Philippines or deductions required by Legal Requirements.

9.9 Penalty for Late Payment

Any amount due which is not paid by the Agency or received by the Company within the period indicated in this Section 9 shall bear interest at the Penalty Rate from the due date until payment is received by the Company.

9.10 Disputed Invoices

- (a) If the Agency disputes an amount or a computation in a Company Invoice, the Agency shall: (i) send a written notice to the Company informing it of such fact and detailing the basis for the dispute; and (ii) pay the undisputed portion not later than its due date.
- (b) The Parties shall endeavor to settle the billing dispute within thirty (30) Days after receipt by the Company of the Agency's notice following the steps for the settlement of disputes provided in Section 20. If the dispute is resolved in the Company's favor, then the amount disputed shall bear interest at the Penalty Rate from the original due date until payment is received by the Company.

9.11 Exceptions to Payment of User Fees

The Company shall allow discounts, exemptions from or reimbursements to the payment of Company Fees when:

- (a) a Client paid for a service or product of the Agency but had returned the same, was not processed, or was later found to be unavailable from the New ICT Services and Facilities, or
- (b) a Legal Requirement requires the Agency to provide the service or product at no cost or at a discount.

10 CONTRACT MANAGEMENT, MONITORING AND EVALUATION

10.1 Contract Management Body

Within five (5) Business Days after the Signature Date, each Party shall form a contract management body, either through the appointment of a contract manager or the creation of a contract management unit, which shall be responsible for monitoring, managing and evaluating the full implementation of the Project ("**Contract Management Body**"). Within two (2) Business Days from its creation, each Party shall immediately send written notice to the other naming the members of its Contract Management Body.

10.2 Project Reports

- (a) Within fifteen (15) Business Days from receipt of the notice referred to in Section 10.1, the Contract Management Bodies of the Parties shall meet and agree on the form of the report which the Parties shall use as a tool to exchange information and to monitor, manage and evaluate the implementation of the Project ("**Project Report**"). At the same meeting, the Parties shall also agree on:
 - (i) the method for monitoring and obtaining the information required;
 - (ii) the Party responsible for monitoring and reporting on each of the indicators; and
 - (iii) the frequency that each indicator should be monitored and reported.
- (b) The Parties shall ensure that the Project Report will have the following basic information:
 - (i) the Key Performance Indicators to determine the Company's compliance with its obligations under the Agreement;
 - (ii) relevant performance indicators to determine the Agency's compliance with its obligations under the Agreement;
 - (iii) major risk factors for the Project and the indicators to determine how such risk factors are affecting the Project;

- (iv) the costs of the Project and the Services measured against their expected costs;
- (v) any information required by relevant Government Authorities including government oversight agencies and public regulators in accordance with applicable Legal Requirements;
- (vi) significant contract management actions taken by each Party;
- (vii) any event or condition that has occurred which materially affects the Project or a Party's ability to comply with its obligations under the Agreement or if any of the representations made or warranties given by a Party ceases to be true in any material respect; and
- (viii) all other material information that may be included by the Parties.

10.3 Monitoring and Reporting Obligations

- (a) The Parties shall comply with their monitoring and reporting obligations mutually agreed upon pursuant to this Section 10 and embodied in the Project Report.
- (b) For this purpose, the Company shall establish appropriate monitoring and reporting systems to obtain data and perform calculations in order to measure compliance with the Service Level Agreements and Key Performance Indicators provided in this Agreement and the Project Report.
- (c) Performance of the New ICT Services and Facilities and compliance with the SLAs and KPIs shall be measured and calculated by the Company on a [●] basis. The Company shall gather the results and make them available to the Contract Management Bodies.
- (d) The Project Reports shall be prepared in English and shall be submitted within [●] Business Days after the end of the calendar month to which they apply. Source data applicable to a Project Report shall be retained by the Parties for a period of at least sixty (60) months after the report is submitted and shall be furnished to the other Party upon demand. All reports and source data for purposes of validation shall also be stored electronically by the Parties.
- (e) Where a Project Report shows that the operation of the New ICT Services and Facilities is below the SLAs or KPIs, the Company shall also separately submit with the report: (i) a full explanation of the reasons for the below-target performance; (ii) the steps that it has or will be taking to ensure that performance is improved to meet the standard; and (iii) the timeframe for their implementation. In case the cause of the below-target performance is not entirely the responsibility of the Company, it shall include a recommended solution in its report that identifies the proposed steps to remedy the other factors that contributed to the below-target performance.

- (f) At the request of the Agency, the Company shall prepare and submit supplemental reports related to the performance of the Facilities or compliance with the SLAs and KPIs.

10.4 Financial Reports

10.4.1 Fiscal Year; Accounting Principles

The Company shall have a fiscal year ending on December 31 of each year. The Company shall at all times comply with the Accounting Principles and maintain proper books and records in accordance with applicable Legal Requirements.

10.4.2 Financial Reports

- (a) The Company shall keep accurate records of all receipts and expenses related to the operation of the New ICT Services and Facilities and to any activity performed on the New ICT Services and Facilities by the Company.
- (b) It shall prepare unaudited quarterly financial statements in accordance with the Accounting Principles consistently applied. The quarterly unaudited financial statements shall be duly signed by the Company's chief accountant and shall be submitted to the Agency within thirty (30) Business Days after the end of each quarter for the duration of the Operating Period.
- (c) The Company shall prepare audited annual financial statements in accordance with the Accounting Principles consistently applied. The annual financial statements shall be audited by the Auditors. Within one hundred twenty (120) Business Days after the end of each fiscal year for the duration of the Operating Period (including the fiscal year in which the Termination Date occurs), the Company submit to the Agency an annual report on Seller's management, operations, and finance during the preceding year, including copies of the audited financial statements with the Auditors' notes and comments.
- (d) In addition to the foregoing reports, the Company shall provide the Company at its request and on a timely basis all financial information in respect of the Company's operations reasonably required to permit the Agency to satisfy its financial, tax, and other reporting requirements.

10.5 Other Reporting Requirements for Public Audit

The Company acknowledges that the Agency is subject to public audit by the Commission on Audit ("**COA**"). For this purpose, the Company shall provide on a timely basis pertinent information as may be requested by the Agency or COA for purposes of such audit.

10.6 Regular Meetings

The Contract Management Bodies of the Parties shall meet once a month or more frequently if necessary to discuss the progress of the Project, in particular:

- (a) the KPIs and other material information covered by the Project Report;
- (b) any problems or issues in the implementation of the Project and preventive or remedial actions that should be taken;
- (c) methods for managing significant Project risks; and
- (d) lessons learned from carrying out the Project and any adjustments that are necessary or can be made in its implementation to help improve Project outcomes.

10.7 Right to Inspect and Monitor

- (a) The Agency shall be entitled to inspect, check, test and monitor the installation and the extent and quality of the provision of the New ICT Services and Facilities at any time after the Provisional In-Service Date. The purpose of such monitoring shall be to determine whether the Facilities are being designed, constructed, tested, commissioned, operated and maintained in accordance with the terms of this Agreement.
- (b) The Company shall allow the Agency and the Independent Verifier or their duly authorized representatives to conduct such inspection and monitoring during normal business hours upon reasonable prior written notice to the Company. The monitoring and review shall be conducted in the presence of a duly designated representative of the Company. All costs incurred by the Agency in exercising its monitoring rights pursuant to this Section shall be borne solely by the Agency.
- (c) The Parties shall use all reasonable efforts to minimize any disruption to the operation or delivery of the New ICT Services and Facilities during a service inspection.
- (d) The Company shall ensure that the Agency or its agent or representative is given sufficient access to any part of the New ICT Services and Facilities to carry out a service inspection. For this purpose, the Company shall:
 - (i) provide assistance and make available equipment or materials as may be reasonably required;
 - (ii) not make any part of the New ICT Services and Facilities inaccessible; and
 - (iii) promptly correct any deficiency identified by the Agency or its agent during such service inspection.

11 INSURANCE

11.1 Required Insurance Policies; Endorsements

- (a) The Company at its cost shall obtain and maintain or cause its subcontractors to obtain, at a minimum, the insurance coverage and policies described in Schedule E (*Insurance*) and required by the Financing Agreements, Legal Requirements, and Prudent Utility Practice. The Company may procure additional insurance coverage not called for under this Agreement.
- (b) The insurance policies required to be obtained by the Company shall be issued by reputable and financially sound insurers or reinsurers duly licensed by the Insurance Commission and reasonably acceptable to the Agency. All policies shall have the endorsements and other terms set out in Schedule E (*Insurance*) but the Company shall not be required to obtain any insurance policy at a time when such policy or coverage is not available on reasonable commercial terms in the international or domestic insurance market.

11.2 Insurance Certificates

The Company shall provide the Agency with true and certified copies of insurance policies or certificates of coverage required to be obtained in accordance with this Agreement within ten (10) Days after the date such insurance policies are obtained or renewed.

11.3 Failure to Secure and Maintain Required Insurance

If the Company fails to obtain or maintain any insurance policy or endorsement required by this Agreement, the Agency shall have the right but not the obligation to procure such insurance policy or endorsement at the Company's expense. If the Company fails to reimburse the Agency within seven (7) Days after being notified of the Agency's payment of any insurance premium to obtain the needed insurance cover, the Agency can enforce reimbursement from the Performance or Operating Security in effect at that time. If the Performance or Operating Security is insufficient, the Agency shall deduct the cost of insurance from any amount due and payable by the Agency to the Company under this Agreement.

11.4 Application of Insurance Proceeds

11.4.1 Loss While the Financing Agreements are Effective

If all or a portion of the New ICT Services and Facilities is damaged, destroyed, or rendered unfit for normal operation, all insurance proceeds received under any insurance policy (other than proceeds of business interruption insurance) shall be applied in accordance with the applicable terms of the Financing Agreements.

11.4.2 Loss After the Financing Agreements Have Expired

If after the expiration of the Financing Agreements all or a portion of the New ICT Services and Facilities is damaged, destroyed, or rendered unfit for normal operation, the Company shall apply the insurance proceeds (except the proceeds of business interruption insurance) in accordance with the following provisions:

- (a) If the Company determines that the New ICT Services and Facilities can be rebuilt, repaired, and restored to permit operation on a commercially viable basis and the insurance proceeds are sufficient to restore such New ICT Services and Facilities, then all the proceeds shall be applied toward the cost of rebuilding, repairing, and/or restoring the New ICT Services and Facilities.
- (b) If the Company determines that the New ICT Services and Facilities cannot be rebuilt or can only be partially rebuilt, repaired, and restored or that the insurance proceeds are insufficient to restore such New ICT Services and Facilities, then either Party may elect to terminate this Agreement in accordance with Section 21.2.3 (*Termination by Either Party*) and all of the insurance proceeds shall be distributed in the following order of priority:
 - (i) to the payment of any amount that may be due the Agency under this Agreement; then,
 - (ii) any remaining amount from such proceeds shall be given to the Company or its successors or assigns or to whomever may be lawfully entitled to receive it.

12 REPRESENTATIONS AND CERTIFICATIONS

Each Party represents and certifies to the other Party that as of the Signature Date and the Effective Date:

12.1 Corporate Existence and Authority

It is a juridical person duly organized and validly existing under the laws of the Philippines and it has all requisite legal power and authority to conduct its business, to own its properties, and to execute, deliver and implement this Agreement.

12.2 Government Consents and Approvals

All Consents required to authorize the execution, delivery, and performance of this Agreement have been obtained and are in full force and effect except for those Consents and approvals identified in Schedule G (*Consents*) that the Parties have agreed to obtain at a later time.

12.3 Non-contravention of Legal Requirements

The execution, delivery, and performance of this Agreement do not conflict with any Legal Requirements applicable to such Party.

12.4 Validity and Enforceability of Agreement

This Agreement constitutes its legal, valid, and binding obligation, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or other similar laws affecting creditors' rights generally.

12.5 No Adverse Litigation

There is no litigation, arbitration, investigation or proceeding pending, or to its best knowledge, threatened, against or affecting such Party that could reasonably be expected to materially adversely affect its ability to fulfill its obligations under this Agreement or that may affect the legality, validity, or enforceability of this Agreement.

12.6 Due Authorization & Non-contravention of Other Agreements

The execution, delivery, and performance of this Agreement have been duly authorized by all requisite corporate action, and will not: (i) require any further consent or approval of its board of directors, shareholders, or any other third party, other than those that have been obtained, or (ii) violate its charter or incorporation documents, or other agreement or instrument to which it is a party or by which it or its property may be bound, or violate any law, judgment, order, writ, injunction, determination, or award presently in effect and applicable to it.

12.7 Continuing Representations and Warranties

The representations and warranties in Sections 12.1 to 12.6 shall be deemed to be repeated by each Party as of the Effective Date and as of December 31 of each Contract Year. Each Party shall immediately notify the other Party in writing if any of the representations and warranties given under Sections 12.1 to 12.6 ceases to be true in any material respect.

13 COMPANY COVENANTS

13.1 Conduct of Company

The Company shall exercise complete control over its employees, contractors and subcontractors and require them to comply with this Agreement, all Legal Requirements, and all applicable policies of the Company. The Company shall also require its employees, contractors and subcontractors to conform to the highest standards of professionalism and ethical conduct. To the extent permitted by applicable Legal Requirements, the Company shall dismiss or discipline any of its employees, contractors or subcontractors who do not conform to such standards and shall take immediate action at its own expense to correct any violations of such standards.

13.2 Compliance with Legal Requirements and Consents

The Company shall comply with applicable Legal Requirements and shall comply in all material respects and shall keep in full force and effect all Consents required to be in its name for the performance of its obligations under this Agreement.

13.3 No Other Business

Except with the prior written consent of the Agency, the Company shall not (a) engage in any business activity except those which are reasonably required to implement this Agreement, (b) enter into any merger, consolidation, or amalgamation with any entity or person, or (c) dispose of all or substantially all of its assets except as may be required by the Lenders to enforce any security interest permitted to be granted by the Company to such Lenders pursuant to Section 19.2 of this Agreement.

13.4 Local Content

In cases where goods or services required for the Project are available from both Philippine and non-Philippine suppliers, the Company shall, and shall cause each of its contractors and subcontractors to, assure the participation of such Philippine suppliers, in the call for tenders. When the goods or services of such Philippine suppliers are reasonably comparable in cost, quality, and delivery time to non-Philippine suppliers of goods or services, the Company, or its contractors or subcontractors, shall acquire such goods or services from such Philippine suppliers.

13.5 Company's Employees

13.5.1 Employment of Philippine Nationals

The Company shall employ qualified Philippine citizens to the maximum extent possible. The Company shall cause its subcontractors to do the same.

13.5.2 Status of Company's Employees upon Termination of Agreement

The Agency shall have no obligation to employ or hire any employees of the Company upon the termination of this Agreement. The Company shall be liable for all costs and expenses associated with the termination of the employment or contract of the Company's employees.

13.5.3 Education and Training

The Company shall implement education and training programs designed to upgrade the skills of its employees to a level or standard that meets or exceeds the requirements of Prudent Utility Practice.

13.6 Anti-Corruption Warranty

The Company warrants that neither it nor its representatives have offered any officer, official or employee of any Government Authority any consideration or commission for this Agreement nor has it or its representatives exerted or utilized any corrupt practice or unlawful influence to secure or solicit this Agreement for any consideration or commission. The Company shall not subcontract any portion or portions of its obligations under this Agreement to any public officer or Agency official or employee or to persons known by the Company to be relatives within the third degree of consanguinity or affinity of any public officer or Agency official or employee directly or indirectly involved in the award of this Agreement or the implementation of the Project. If any consideration or commission is paid to any private person, the Company shall disclose the name of the person and the amount paid. Any breach of the warranties and undertakings in this Section 13.6 shall constitute sufficient ground for the rescission or cancellation of this Agreement or the deduction of the consideration or commission paid from payments otherwise owed to the Company under this Agreement, without prejudice to the filing of civil or criminal actions against the Company and/or its representatives and officials and employees of the Agency under the Anti-Graft and Corrupt Practices Act and other applicable laws.

13.7 Transactions with Affiliates of Company

Any contract or other transaction entered into by the Company with any of its Affiliates in connection with the Project, whether for the purchase of goods or services or otherwise, shall be entered into on an arms length basis and on commercial terms that would reasonably be expected to apply in the open market between contracting parties that are not Affiliates. Without limiting the generality of the foregoing, in no event shall the Company, directly or indirectly, pay more than the fair market value for goods or services supplied to it by its Affiliates.

14 FORCE MAJEURE

14.1 Force Majeure Events

14.1.1 Definition of Force Majeure Event

A “**Force Majeure Event**” means any event, condition, or circumstance and the effects thereof not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that:

- (a) such event, condition, or circumstance is not the direct or indirect result of the breach by such Party of any of its obligations under this Agreement or the fault or negligence of such Party, its Affiliates, or any person under the Party’s or its Affiliates’ reasonable control;
- (b) despite the exercise of reasonable diligence, such event, condition, or circumstance cannot be prevented, avoided, or removed by such Party;
- (c) such event, condition, or circumstance has a material adverse effect on the ability of such Party to perform all or a material portion of any of its obligations under this Agreement, and such Party has taken all reasonable precautions, due care, and alternative measures in order to avoid or mitigate the effects of such event on such Party’s ability to perform its obligations under this Agreement; and
- (d) such Party has given the other Party notice in accordance with Section 14.2.1 (*Notice of Force Majeure Event*).

14.1.2 Political Force Majeure Event

Subject to Section 14.1.1 (*Definition of Force Majeure Event*), Force Majeure Events may include any of the following (each, a “**Political Force Majeure Event**”): war (declared or not); hostilities or belligerence; blockade; revolution or insurrection; riot or public disorder; Change-in-Law, expropriation, requisition, confiscation, or nationalization; export or import restrictions other than any in effect as of the Signature Date; closing of harbors, docks, canals, or other assistance to or adjuncts of the shipping or navigation of or within any place; rationing or allocation, whether imposed by law, decree, or regulation by, or by compliance of industry at the insistence of, any Government Authority.

14.1.3 Non-Political Force Majeure Event

Subject to Section 14.1.1 (*Definition of Force Majeure Event*), Force Majeure Events may include any of the following (each, a “**Non-Political Force Majeure Event**”): fire; unusual flood or drought; earthquake, volcano, storm, lightning, tide (other than normal tides), tidal wave, unusually severe weather conditions; perils of the sea; accidents of navigation or breakdown or injury of vessels; accidents to harbors, docks, canals, or other assistance to or adjuncts of the shipping or navigation; epidemic or quarantine; strikes or combination of workmen, lockouts, or other labor disturbances (other than those solely affecting the Party claiming the same as a Force Majeure Event); or any other cause similar to the foregoing that meets the requirements of Section 14.1.1

14.2 Responsibilities of the Parties during Force Majeure Event

14.2.1 Notice of Force Majeure Event

The Party seeking to be excused from any delay in the performance of its obligations (other than the payment of money) under Section 14 of this Agreement shall advise the other Party in writing of the date of commencement of such Force Majeure Event, the nature and expected duration thereof, and the actions to be taken to try to prevent or reduce the effects of such event. The notice shall be sent by such Party not later than ten (10) Days after the date on which such Party first gains knowledge of such Force Majeure Event. If it fails to deliver such notice in accordance with this provision, such Party shall not be entitled to invoke the benefits of this section.

14.2.2 Mitigation

Each Party shall exert all reasonable efforts in accordance with Prudent Utility Practice or other applicable standard to prevent or mitigate the consequences of the Force Majeure Event on the performance of its obligations under this Agreement. The Parties shall consult with each other in good faith and shall use all reasonable endeavors to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued implementation of the Project. The Parties shall exert all reasonable efforts to resume the performance of their obligations as soon as practicable following the declaration of a Force Majeure Event.

14.2.3 Additional Information about Force Majeure Event

Within three (3) Days following the termination of any Force Majeure Event, the Party having invoked such Force Majeure Event as a cause for the failure or delay in the performance of any obligation under this Agreement (other than the payment of money) shall submit to the other Party reasonable proof of the cause and nature of such delay and its effect upon the performance of the obligations of such Party under this Agreement.

14.3 Effect of Force Majeure Events

14.3.1 Delayed Performance Excused

The affected Party shall be excused from performance and shall not be in default of any obligation under this Agreement for so long as its failure to perform such obligation is due to a Force Majeure Event, provided that:

- (a) The affected Party makes continuous diligent efforts to prevent or mitigate the effects of the Force Majeure Event;
- (b) The Agency shall not be entitled to the benefit of this Section 14.3.1 in case of Political Force Majeure Events;
- (c) The Party claiming a Force Majeure Event shall not be entitled to suspend performance or be excused for delayed performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure Event or the delay occasioned thereby, and there shall be no presumption that a Party is entitled to or limited by a day-for-day extension of time equal to the period of the Force Majeure Event;

- (d) Neither Party shall be relieved of or excused from its obligations under this Agreement solely because there may be increased costs or other adverse economic consequences incurred through the performance of such obligations; and
- (e) The provisions of this Section 14.3.1 shall not excuse:
 - (i) Late payment of money;
 - (ii) Late performance by either Party due to such Party's fault or negligence; or
 - (iii) Delays resulting from an event, condition, or circumstance which is reasonably foreseeable such as but not limited to (A) weather conditions that are no more severe than any weather condition reported in or predictable from weather data for the period of fifty (50) years prior to the date of this Agreement or (B) unsuitable ground conditions (other than earthquakes or other geologic calamities).

14.3.2 Force Majeure Events prior to In-Service Date

If a Force Majeure Event occurs prior to the Provisional In-Service Date that results or will result in a delay in achieving that Project Milestone, then, immediately after the giving of the notice required under Section 14.2.1, the Project Milestone Schedule shall be equitably adjusted upon the written agreement of the Parties. If the Parties are unable to agree on an equitable adjustment to the Required Provisional In-Service Date or other affected Project Milestones within a period of sixty (60) Days after the giving of the notice required in Section 14.2.1, such inability to agree shall be considered a Dispute and either Party thereafter shall be entitled to bring such Dispute to arbitration in accordance with this Agreement.

14.3.3 Force Majeure Events on or after In-Service Date

If a Force Majeure Event occurs on or after the Provisional In-Service Date, the Company Fee shall be reduced accordingly to correspond to the level of services actually rendered by the Company to the Agency and the Users during the period that such Force Majeure Event was persisting. The adjustment to the Company Fee shall be done in accordance with Section 9.3 (*Company Fee Adjustment*) hereof.

15 INDEMNITY

15.1 Indemnification by the Company

The Company shall indemnify, defend, and hold harmless the Agency, its directors, officers, employees, and representatives, its Affiliates, agents, advisors, contractors, or licensees and their respective directors, officers, and employees (the "**Agency Parties**"), from and against all Claims asserted against the Agency or any Agency Party by any third party as a result of the following:

- (a) For any loss of or damage to property or death or injury to persons (except for workers' compensation claims), resulting from any negligent act or omission of

the Company or any Company Parties that results from the performance of this Agreement;

- (b) Failure of the Company to comply with any Legal Requirement in the performance of its obligations under this Agreement;
- (c) Failure of the Company to comply with its representations and certifications under Section 12 of this Agreement; or
- (d) Failure of the Company to comply with its covenants under Section 13 of this Agreement.

The Company shall not be obliged to indemnify the Agency to the extent that any of the matters referred to in paragraphs (a) to (d) above is caused by the negligence, misconduct, or breach of this Agreement by the Agency or any Agency Parties or arises as a direct and proximate result of the Company acting upon the instruction of the Agency.

15.2 Indemnification by Agency

The Agency shall indemnify, defend, and hold harmless the Company, its shareholders, directors, officers, employees, and representatives, its Affiliates, agents, contractors, or licensees and their respective directors, officers, and employees (the “**Company Parties**”), from and against all Claims asserted against the Company or any Company Parties for any loss of or damage to property or death or injury to persons (except for workers’ compensation claims) resulting from any negligent act or omission of the Agency or any Agency Parties that results from the performance of this Agreement by the Agency, except to the extent such loss, damage, injury, or death is attributable to the negligence, misconduct, or breach of this Agreement by the Company or any Company Parties.

15.3 Indemnification Procedures

15.3.1 Notice of Claim

Each Party shall provide the other Party with written notice of any matter constituting or that may lead to a Claim under this Agreement which may give rise to a request for indemnification under this Section 15 as soon as such Party becomes aware of the potential Claim.

15.3.2 Defense of Claim

- (a) The indemnifying Party may, at its option and at its expense, control the contest and defense of any claim with respect to which it is or may be obligated to indemnify the indemnified Party under this Agreement and with respect to which it or the indemnified Party is named as a party.
- (b) If the indemnified Party is also named as a party to any such proceeding, the indemnified Party shall have the right to retain its own counsel at its own expense. Except when the interests of the Parties with respect to such Claim are adverse, the indemnifying Party shall (i) keep the indemnified Party and its counsel reasonably informed as to the progress of such contest and defense, (ii) to the extent reasonably practicable give the indemnified Party and its counsel the opportunity to review and comment in advance on all written

submissions and filings relevant to the Claim, and (iii) consider in good faith any reasonable suggestions made by the indemnified Party or its counsel or permit the indemnified Party and its counsel to submit documentation or attend those portions of any meetings and proceedings that relate to the Claim.

15.3.3 Payment of Claim

The indemnifying Party shall pay the indemnified Party within thirty (30) Days after notice to the indemnifying Party of the actual payment of a Claim by the indemnified Party.

16 EVENTS OF DEFAULT

16.1 Company Events of Default

The occurrence of any of the following events shall constitute a “**Company Event of Default**”:

- (a) The Provisional In-Service Date has not occurred by [●] Days after the Required Provisional In-Service Date.
- (b) The In-Service Date has not occurred by [●] Days after the Required In-Service Date.
- (c) The Company fails to perform any of its obligations under this Agreement (other than a failure that constitutes a Company Event of Default under any other clause of this Section 21.1) which materially and adversely affects the performance of the New ICT Services and Facilities.
- (d) At any time prior to the In-Service Date, the aggregate amount (without double-counting) of all costs, expenses, and liabilities incurred or reasonably expected to be incurred in order to achieve the In-Service Date exceeds the amount available to the Company under the Financing Agreements and any other sources of funding including Equity that are unconditionally available to the Company.
- (e) The Company (i) becomes voluntarily or involuntarily the subject of rehabilitation, receivership, or suspension of payment proceedings under any bankruptcy or insolvency law or other law or procedure for the relief of financially distressed debtors; (ii) does not, is unable, or admits in writing its inability to pay its debts when due or as they mature; or (iii) becomes insolvent, takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any substantial part of its assets and, in the event any such occurrence is involuntary, it results in the entry of an order for relief or the adjudication of the Company or any such guarantor of the Company as bankrupt or insolvent and it remains undismissed or undischarged for a period of thirty (30) Days.
- (f) The Company, or its contractors or agents, abandons the engineering, design, supply, installation, operation, or maintenance of the Facilities for more than fifteen (15) Business Days within any period of twenty (20) consecutive Business Days.

- (g) The Company ceases to provide all or a substantial part of the New ICT Services and Facilities in accordance with this Agreement for more than fifteen (15) Business Days within any period of twenty (20) consecutive Business Days.
- (j) The Company defaults in the payment of any amount due and payable (which amounts are not in dispute) under this Agreement, which amount exceeds the sum of PHP[●] and such default continues unremedied for a period of sixty (60) Days from receipt by the Company of a notice in writing from the Agency of the amount due and payable.
- (k) The Company fails to provide a suitable replacement Performance Security Issuer with the required qualifications under this Agreement within sixty (60) Days when such Performance Security Issuer (i) fails to satisfy the requirements for the Performance Security Issuer set out in Section 1.1 (*Definition of "Performance Security Issuer"*) of this Agreement, (ii) becomes voluntarily or involuntarily the subject of rehabilitation, receivership, or suspension of payment proceedings under any bankruptcy or insolvency law or other law or procedure for the relief of financially distressed debtors, (iii) does not or is unable to pay its debts when due or as they mature, or (iv) becomes insolvent, takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any substantial part of its assets and, in the event any such occurrence is involuntary, it results in the entry of an order for relief or the adjudication of the Company's guarantor as bankrupt or insolvent and it remains undismissed or undischarged for a period of thirty (30) Days.
- (l) The Company breaches any provision of Section 13.6 (*Anti-Corruption Warranty*).
- (m) The Company assigns or transfers any of its rights or obligations under this Agreement, except as permitted by Section 19.2. (*Permitted Assignment to Lenders*).
- (n) There is a transfer of an interest in the Company that does not comply with Section 19.3 (*Ownership of Company*).
- (o) The Operating Security originally provided pursuant to Section 6.3 or any replacement Operating Security has been fully drawn and the Company has failed to procure within twenty-one (21) Business Days thereafter a replacement Operating Security in the amount of PHP[●] and otherwise satisfying the requirements of Section 6.3.

16.2 Agency Events of Default

The occurrence of any of the following events shall constitute an "**Agency Event of Default**":

- (a) The Company is ready, willing, and able to perform or provide the New ICT Services and Facilities but the Agency refuses to accept them without justifiable reason or completely obstructs the Company's ability to perform the Services.
- (b) The Agency defaults in the payment of any amount due and payable (which amounts are not in dispute) under this Agreement, which amount exceeds the

sum of PHP[●] and such default continues unremedied for a period of sixty (60) Days from receipt by the Agency of a notice in writing from the Company of the amount due and payable.

- (c) The Agency fails to perform any of its material obligations under this Agreement which renders it impossible for the Company to perform its own obligations under this Agreement for a continuous period of sixty (60) Days.
- (d) There is an expropriation, sequestration or requisition of a material part of the Project assets and/or shares of the Company by the Agency or other Government Authority.
- (e) There is a breach by the Agency of Section 19.1 (*No Assignment*).

17 LIMITATION OF LIABILITY

17.1 Limitation of Consequential Damages; Other Rights, Remedies, etc.

Neither Party shall be liable to the other Party whether in contract, tort, negligence, warranty, strict liability, breach of a statutory duty, or otherwise for (i) any special, consequential, moral, or punitive damages, (ii) indirect losses, costs, or expenses, or (iii) loss of actual or anticipated profits, loss of opportunities (including opportunities to enter into arrangements with third parties), or loss of use or production. However, this Section shall not limit the liquidated damages specifically provided for in this Agreement and the termination payments set forth in Schedule H (*Termination Buy-Out and Transfer Provisions*).

17.2 Limitation of Liability for Liquidated Damages

- (a) The total liability of the Company for liquidated damages if the Agency terminates this Agreement pursuant to Sections 2.3.1 and 2.3.2 due to non-occurrence of the Effective Date on or before the Required Effective Date shall be the amount of the Performance Security.
- (b) The total liability of the Company for Delay Liquidated Damages pursuant to Section 5.8 (*Liquidated Damages for Delay in Meeting Project Milestones*) shall be not more than PHP[●].

18 Agency STEP-IN RIGHTS

18.1 Step-in Rights

- (a) The Agency shall have the option to assume operational responsibility for the New ICT Services and Facilities (in the capacity of an operator only) in order to continue operation of the New ICT Services and Facilities or complete any necessary repairs to assure continued operations ("**Agency Step-in Rights**"). Agency Step-in Rights shall arise only upon the occurrence and continuance of a Company Event of Default that could reasonably be expected to materially adversely affect the Company's ability to operate and maintain the New ICT Services and Facilities in accordance with this Agreement.
- (b) The Agency shall notify the Company in writing of the following:
 - (i) its intention to exercise Agency Step-in Rights

- (ii) the reason for its exercise of Agency Step-in Rights; and
 - (iii) the date it will commence exercise of Agency Step-in Rights.
- (c) The Agency may only exercise the Agency Step-in Rights under the following conditions:
 - (i) Any applicable cure period specified in Section 16 (*Events of Default*) and Section 21 (*Termination*) has expired, unless the Agency is requested by the Lenders to step in earlier on their behalf pursuant to the Financing Agreements.
 - (ii) For so long as the Financing Agreements remain in effect, the Agency must first obtain the consent of the Lenders.
- (d) During the period of the Agency's exercise of the Agency Step-in Rights, the Agency shall be the operator of the New ICT Services and Facilities. The Company's obligation to operate the New ICT Services and Facilities shall be suspended, but the Agency shall retain the right to terminate the Agreement due to a Company Event of Default. The exercise of the Agency Step-in Rights shall not be deemed as or result in a transfer of title to the New ICT Services and Facilities or a transfer of the Company's obligations as owner of the New ICT Services and Facilities.

18.2 Implementation of Agency Step-in Rights

18.2.1 Agency's Contracts, Consents, etc.

- (a) Within three (3) Days of the Company's receipt of the Agency's notice of its exercise of Agency Step-in Rights, the Company shall assign to the Agency the Company's rights under all agreements necessary to operate the New ICT Services and Facilities, provided that such assignment shall automatically cease upon the reversion of operation responsibility to the Company.
- (b) The Company shall promptly take all steps necessary to permit the Agency to exercise as operator of the New ICT Services and Facilities the Company's rights under all Consents to the extent such rights are necessary for the Agency to operate the New ICT Services and Facilities during the Agency's exercise of Agency Step-in Rights. The Company shall give the Agency access to all operation manuals and other documentation, and shall disclose all underlying Software and hardware licenses required to operate the New ICT Services and Facilities.

18.2.2 Payments to Company and Agency

- (a) During any period in which the Agency exercises the Agency Step-in Rights, the Agency shall continue making payments to the Company in accordance with the terms of this Agreement.
- (b) During the exercise of the Agency Step-in Rights, the Agency shall be entitled to remuneration for the Agency's reasonable costs as an operator.

18.2.3 Payment of Company's Obligations

- (a) The Agency shall have the right to make any payments due from and on behalf of the Company which are necessary to operate the New ICT Services and Facilities, including payments for materials, supplies, utilities, fuel, maintenance, repairs, insurance, taxes, and other operating costs of the New ICT Services and Facilities, together with all regularly scheduled payments under the Financing Agreements (pro-rated for the amount attributable to such period), but only to the extent that the Company is unable to meet any such payments.
- (b) The Parties shall cooperate with each other and shall execute and deliver all documents necessary or desirable to make those payments in a timely and proper manner. The remuneration and payments referred to in Section 18.2.2(b) and Section 18.2.3(a) that become payable during this period shall be regarded as funds advanced by the Agency to the Company. The Agency shall send invoices for such amounts and the Company shall promptly reimburse the Agency. The Parties shall resolve disputed amounts on the same terms and conditions as the settlement of disputed invoices provided in Section 9.10 (*Disputed Invoices*). Notwithstanding the provisions of Section 9.8, the Agency may obtain payment by making deductions from any amounts due to the Company pursuant to this Agreement, provided that such payments shall be subordinated to sums owed to the Lenders.

18.2.4 Standards of Operation

During any period when the Agency is operating the New ICT Services and Facilities, the Agency shall operate and maintain the New ICT Services and Facilities in accordance with Prudent Utility Practice. The Company shall have the right to monitor the Agency's operation of the New ICT Services and Facilities to the extent reasonably required to ascertain whether the Agency is operating and maintaining the New ICT Services and Facilities in accordance with that standard. The Agency shall have no more liability to the Company than would a third party operation and maintenance contractor with respect to the operation and maintenance of the New ICT Services and Facilities by the Agency during the exercise of such step-in rights.

18.2.5 Reversion of Operational Responsibility to Company

The Agency shall return operational responsibility for the New ICT Services and Facilities to the Company following any exercise by the Agency of the Agency Step-in Rights (i) reasonably promptly following the cure of the Company Event of Default that led to the exercise of the Agency Step-in Rights, or (ii) at the sole discretion of the Agency, after fifteen (15) Days' prior written notice to the Company stating that the Agency will return operational responsibility over the New ICT Services and Facilities back to the Company. The Agency shall return the New ICT Services and Facilities to the Company in a physical condition no worse than the condition of the New ICT Services and Facilities at the time the Agency assumed operational responsibility for the New ICT Services and Facilities pursuant to such exercise of the Agency Step-in Rights, ordinary wear and tear excepted. The Agency shall not be responsible for or have any liability resulting from any condition of the New ICT

Services and Facilities or the Site that existed prior to such exercise of Agency Step-in Rights.

19 ASSIGNMENT OF RIGHTS; OWNERSHIP OF THE COMPANY

19.1 No Assignment

Neither Party may sell, assign, or transfer its rights or obligations under or pursuant to this Agreement without the prior written consent of the other Party, except that the Company may assign its rights to the Lenders in accordance with Section 19.2 (*Permitted Assignment to Lenders*).

19.2 Permitted Assignment to Lenders

(a) The Agency consents to the collateral assignment of the Company's rights under this Agreement to the Lenders pursuant to the Financing Agreements and agrees:

- (i) To afford the Lenders a reasonable opportunity to remedy any default by the Company or any other event or occurrence which gives the Agency the right to terminate or suspend this Agreement;
- (ii) In the event of a default under the Financing Agreements and a foreclosure sale of the Company's interest in the New ICT Services and Facilities, to accept the purchaser of the Company's interest as the successor to the Company under this Agreement, provided that such purchaser (A) if the In-Service Date has not occurred, has reasonable access to funding necessary to achieve the In-Service Date on or before the Required In-Service Date, and (B) meets all legal, technical, and financial qualifications of an operator set by the Agency for the Project, assumes the performance of the Company's obligations under this Agreement (except those obligations that by their nature cannot be performed by any person other than the Company), cures all outstanding payment defaults of the Company under this Agreement, and makes provision reasonably satisfactory to the Agency for the cure of all other outstanding defaults of the Company under this Agreement; and
- (iii) In the event of an acceleration of the loans under the Financing Agreements, to enter into, at the request of the Lenders, a replacement agreement substantially similar to this Agreement but that in no event increases the Agency's liabilities with the Lenders or their designee.

The Company acknowledges and agrees that any collateral assignment to the Lenders pursuant to the Financing Agreements shall not relieve the Company of its obligations to the Agency under this Agreement.

(b) The Agency agrees to enter into an acknowledgment and consent agreement with the Lenders as to the foregoing matters and as to such other matters of a type customarily dealt with in a consent to an assignment for security

purposes of a borrower's interest in a contract as the Lenders may reasonably request.

19.3 Ownership of Capital Stock of Company

19.3.1 Company's Capital Stock

Subject to the rights of the Lenders under the Financing Agreements and except as otherwise provided in Section 19.3.2 (*Restrictions on Transfer of Capital Stock of Company*), the Company covenants that:

- (a) The proportionate direct and indirect ownership of the capital stock of the Company held by each of the Sponsors shall be as set out in Schedule I (*Ownership Interests in Company*);
- (b) Each Initial Shareholder is the registered, legal, and beneficial owner of the number of shares of the Company set out opposite its name in Schedule I (*Ownership Interests in Company*);
- (c) All issued shares shall, when issued, have been authorized, allotted, and called-up and validly issued and registered and fully paid; and
- (d) There are no outstanding Liens, options, warrants, rights, calls, commitments, conversion rights, rights of exchange, plans, or other agreements of any character (including rights of first refusal or rights of first offer of any Initial Shareholder with respect to other Initial Shareholders) providing for the purchase, issuance, or sale of any shares of the capital stock in, or the voting of, the Company, other than as created under the Financing Documents.

19.3.2 Restriction on Transfer of Capital Stock of Company

- (a) From the Signature Date until the second (2nd) anniversary of the In-Service Date (the "**Lock-in Period**"), no Change of Ownership may occur, except a Change of Ownership arising as a consequence of:
 - (i) the grant or enforcement of security in favor of the Lenders over or in relation to any of the shares of the Company pursuant to the terms of the Financing Agreements;
 - (ii) any transfer by an Initial Shareholder to its Affiliate of such Initial Shareholder's capital stock in the Company; or
 - (iii) any change in legal or beneficial ownership of any shares that are listed on a registered securities exchange.
- (b) After the Lock-in Period, any Initial Shareholder may transfer its direct and indirect ownership interests in the capital stock of the Company, provided, however, that collectively and at any given time the Company's shareholders shall have the legal, financial, and technical capabilities of successfully carrying out the implementation and operation of the Project that are equal to or better than those of the Initial Shareholders.
- (c) If a shareholder desires to transfer any part of its direct or indirect ownership of the capital stock of the Company, the Company must first submit to the Agency a description of:

- (i) The proposed transfer of the Shareholder's direct or indirect interest in the capital stock of the Company;
- (ii) The identity of the proposed transferee; and
- (iii) If applicable, any proposed amendment to the articles of incorporation and by-laws of the Company.

The Agency may request the Company to and the Company shall provide the Agency within five (5) Days following such request, any additional information that the Agency considers necessary for its evaluation of the proposed transfer.

20 DISPUTE RESOLUTION

20.1 Mutual Discussions

In case any Dispute occurs, the Parties shall attempt in good faith to settle such Dispute by mutual discussions between them held at the principal office of the Agency and beginning not later than seven (7) Days after the receipt by one Party of a written notice from the other Party of the existence of the Dispute.

20.2 Expert Proceedings

20.2.1 Referral of Disputes to Expert Panel

If a Dispute cannot be settled by mutual discussion within thirty (30) Days or such longer period as may be agreed in writing by the Parties after the commencement of such discussions under Section 20.1, the Dispute shall be referred to the Expert Panel for determination.

20.2.2 Establishment and Operation of Expert Panel

- (a) Not later than sixty (60) Days after the Signature Date, each Party shall nominate [*number of experts*] independent experts comprising [*selected expertise of Expert Panel*] (the "*Expert Panel*"). The Parties will agree on the panel of three (3) experts selected from the persons nominated by the Parties. The Expert Panel shall be constituted and called upon only when required within thirty (30) Days from receipt of a Party of the written notice of the other Party's decision to refer a matter to the Expert Panel. If the Parties are unable to agree on the composition of the Expert Panel within such thirty (30)-Day period, then either Party may request the International Chamber of Commerce's International Centre for Expertise to appoint an expert.
- (b) Decisions of the Expert Panel shall be made by simple majority vote of the members. The members of the Expert Panel shall develop their own internal conduct and procedural rules based upon principles of transparency, impartiality, and efficiency. Proceedings of the Expert Panel shall not be required to follow the procedural laws related to arbitrations. The Expert Panel need not be bound by strict rules of law where it considers the application thereof to particular matters to be inconsistent with the spirit of this Agreement and the underlying intent of the Parties.
- (c) All costs incurred in connection with the convening of the Expert Panel and the referral and resolution of a Dispute before it, including reasonable

compensation of the members of the Expert Panel, shall be equally shared by the Parties.

20.2.3 Decisions of Expert Panel

Except as otherwise expressly provided in this Agreement, all decisions of the Expert Panel shall be made within sixty (60) Days after the receipt by the Expert Panel of a request from either Party for a decision pursuant to this Agreement, or by such later date as may be agreed by the Parties.

20.3 Arbitration

If a Dispute cannot be settled by mutual discussion within thirty (30) Days after the commencement of such discussions under Section 20.1 and either:

- (a) The Parties agree in writing to refer the Dispute to arbitration rather than to the Expert Panel, or
- (b) There was fraud or manifest error in connection with the decision of the Expert Panel,

then either Party may submit such Dispute to arbitration in [●] in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNICTRAL) for the time being in force, which rules are deemed to be incorporated by reference in this Agreement. The arbitration proceedings shall be conducted in the English language. The Parties agree that the arbitrators may apply equitable principles if they consider their application to particular matters to be consistent with the spirit of this Agreement and the underlying intent of the Parties.

20.4 Expert Panel and Arbitral Award

All Expert Panel and arbitral awards shall be in writing and shall state the reasons upon which they are based. The awards shall be final and binding on the Parties. The awards may include an award of costs, including reasonable attorney's fees and disbursements. Judgments upon the awards may be entered by any court having jurisdiction thereof or having jurisdiction over the Parties or their assets.

20.5 Enforcement of Award

By execution and delivery of this Agreement each Party hereby accepts and consents to the jurisdiction of the Expert Panel and arbitral panel and, solely for purposes of the enforcement of an Expert Panel or arbitral award under this Section 20, to the jurisdiction of any court of competent jurisdiction, for itself and in respect of its property, and waives in respect of both itself and its property any defense it may have as to or based on sovereign immunity, jurisdiction, improper venue, or inconvenient forum. Each Party hereby irrevocably consents to the service of any process or other papers by the use of any of the methods and to the addresses provided for the giving of notices in Section 22.1. Nothing herein shall affect the right of any Party to serve such process or papers in any other manner permitted by law.

20.6 Continuing Obligations

Pending settlement of any Dispute pursuant to this Section 20, the Parties shall continue to comply with and perform their obligations under this Agreement

without prejudice to a final adjustment in accordance with a final award rendered by the Expert Panel or arbitral panel in accordance with this Section 20.

20.7 Exclusive Procedure for Resolving Disputes

This Section 20 sets forth the sole procedures for resolving any Dispute between the Parties, and neither Party may commence or maintain any suit or legal or equitable proceeding concerning a Dispute until the Dispute has been determined in accordance with the arbitration procedure provided for in this Agreement, and then only to enforce or facilitate the execution of the award rendered in such arbitration. The Parties agree to waive, to the maximum extent permitted by Legal Requirements, the right of appeal to a court of law.

ARTICLE IV CONTRACT TERMINATION

21 TERMINATION

21.1 Termination due to an Event of Default

21.1.1 Termination Procedure

Upon the occurrence of a Company Event of Default or an Agency Event of Default, the following procedure shall apply:

- (a) The non-defaulting Party may give a notice (a ***“Termination Notice”***) to the defaulting Party, specifying in reasonable detail the Event of Default and the date on which the non-defaulting Party proposes to terminate this Agreement. Except in the case of paragraphs (b) and (c) below, the Agreement may be terminated on any date specified by the non-defaulting Party in the Termination Notice.
- (b) If a Company Event of Default occurs under Section 21.1(c) or Section 21.1(d), the Agency may provide written notice of default to the Company (a ***“Notice of Company Event of Default”***) within five (5) Days of becoming aware of the Company Event of Default. The Company shall have thirty (30) Days from its receipt of the Notice of Company Event of Default in which to cure such Company Event of Default. If the Company needs more than that period to cure the default, the Company shall deliver to the Agency a plan (the ***“Company Rectification Plan”***) within ten (10) Days from the receipt of the Notice of Company Event of Default (or within such longer time as the Agency may approve), specifying the remedial actions the Company plans to take and the number of Days necessary to correct such Company Event of Default. The Company Rectification Plan shall be subject to the Agency’s prior written approval, which should not be unreasonably withheld. If (i) such Company Event of Default is not cured within the thirty (30)-Day period (or such longer period as the Agency may have approved), (ii) the Company is not consistently striving to cure such Company Event of Default, or (iii) the Agency withholds its approval of the proposed Company Rectification Plan for valid reasons after

not less than ten (10) Days following its submittal, the Agency shall have the immediate right to terminate this Agreement by delivering a Termination Notice to the Company, which termination shall be effective as of the date specified by the Agency in the Termination Notice, which shall be not less than thirty (30) Days from the date the Company receives the Notice of Company Event of Default.

- (c) If an Agency Event of Default occurs under Section 21.2 (a) or Section 21.2 (c) the Company may provide written notice of default to the Agency (a “**Notice of Agency Event of Default**”) within five (5) Days of becoming aware of the Agency Event of Default. The Agency shall have thirty (30) Days from its receipt of the Notice of Agency Event of Default in which to cure such Agency Event of Default. If the Agency needs more than that period to cure the default, the Agency shall deliver to the Company a plan (the “**Agency Rectification Plan**”) within ten (10) Days from the receipt of the Notice of Agency Event of Default (or within such longer time as the Company may approve), specifying what remedial actions the Agency plans to take and the number of Days necessary to cure such Agency Event of Default. The Agency Rectification Plan shall be subject to the Company’s prior written approval, which should not be unreasonably withheld. If (i) the Agency Event of Default is not cured within the thirty (30)-Day period (or such longer period as the Company may approved), (ii) the Agency is not consistently working to cure such Agency Event of Default, or (iii) the Company reasonably withholds its approval of the proposed Agency Rectification Plan after not less than ten (10) Days following its submittal, the Company shall have the immediate right to terminate this Agreement by delivering a Termination Notice to the Agency, which termination shall be effective as of the date specified by the Company in the Termination Notice, which shall be not less than thirty (30) Days from the date the Agency receives the Notice of Agency Event of Default.

21.1.2 Default Termination Buy-Out Provisions

- (a) In the event of termination of this Agreement by the Agency under this Section 21.1 due to a Company Event of Default, the Agency shall allow the Lenders to enforce their rights under the Financing Agreements. If the Lenders do not exercise their rights under the Financing Agreements or if the Financing Agreements are no longer effective, the Agency shall have the right in its sole discretion to take over and purchase all of the Company’s right, title, and interest in the New ICT Services and Facilities and the Project for the purchase price and in accordance with the procedures set forth in Schedule H (*Buy-Out and Transfer at Termination Provisions*).
- (b) In the event of termination of this Agreement by the Company due to an Agency Event of Default, the Agency shall purchase from the Company, and the Company shall transfer to the Agency, all of the Company’s right, title, and interest in the New ICT Services and Facilities and the Project (including all amounts deposited in the escrow account mentioned in Section 6.5) for the buyout price and following the procedures set forth in Schedule H (*Buy-Out and Transfer at Termination Provisions*).

- (c) Section 21.1 (*Termination due to an Event of Default*) does not preclude either Party from resorting to dispute resolution pursuant to Section 20.

21.2 Termination due to Prolonged Force Majeure Event

21.2.1 Termination by Company

The Company may terminate this Agreement if a Force Majeure Event prevents either Party from performing any of its material obligations under this Agreement for a continuous period of one hundred eighty (180) Days.

21.2.2 Termination by Agency

The Agency may terminate this Agreement if:

- (a) A Non-Political or Political Force Majeure Event prevents the Agency from performing any of its material obligations under this Agreement for a continuous period of more than one hundred eighty (180) Days;
- (b) A Political Force Majeure Event prevents the Company from performing any of the Services for a continuous period of more than one hundred eighty (180) Days.

21.2.3 Termination by Either Party

Either Party may terminate this Agreement if an Event of Loss prevents the Company from rebuilding, repairing, and restoring the New ICT Services and Facilities or the affected portion thereof as determined in accordance with Section 11.4.2 (*Loss After the Financing Agreements Have Expired*).

21.2.4 Termination Procedure

If a Party has the right to terminate this Agreement pursuant to this Section 21.2 (*Termination due to Prolonged Force Majeure Event*), it may give notice to the other Party specifying the date on which this Agreement shall terminate, which date shall not be less than ninety (90) Days from the date of such notice. When such date occurs, subject to the satisfaction of any payment or other obligations hereunder, this Agreement shall terminate and shall no longer be binding.

21.2.5 Force Majeure Termination Buy-Out Provisions

Except for termination of this Agreement as a result of an Event of Loss caused by a Non-Political Force Majeure Event, in case of termination of this Agreement in accordance with the provisions of this Section 21.2 (*Termination due to Prolonged Force Majeure Event*), the Agency shall purchase from the Company, and the Company shall transfer to the Agency, the New ICT Services and Facilities and the Project (including all sums deposited in the escrow account described in Section 6.5) for the buyout price and following the procedures set forth in Schedule H (*Buy-Out and Transfer at Termination Provisions*).

21.3 Necessary Upgrade Prior to Termination

Not earlier than [●] years prior to the expected Termination Date on the [●] ([●]th) anniversary of the Provisional In-Service Date, the Company shall upgrade the New ICT Services and Facilities to ensure that the Project's ICT solutions and systems are

current with prevailing ICT industry standards and development, in line with the principles for system upgrading set forth in Schedule F (*Service Level Agreements*).

21.4 Transfer of Facilities at Termination

When the Termination Date occurs, if applicable, the Company shall transfer the New ICT Services and Facilities to the Agency in accordance with Schedule H (*Termination Buy-Out and Transfer Provisions*). The Company shall, at its cost, take all the advanced steps necessary to ensure that the Facilities are fully transferable on the Termination Date.

ARTICLE V GENERAL PROVISIONS

22 GENERAL PROVISIONS

22.1 Notices

22.1.1 Addresses

All notices, requests, agreements, or consents shall be in writing and in English and shall be deemed to have been duly given: (i) upon delivery if delivered by hand against written acknowledgment of receipt; (ii) on the Business Day following confirmed transmission if sent by facsimile; *provided* that such facsimile transmission shall be followed by notification by mail postmarked within three (3) Days; and (iii) upon delivery if sent by certified, registered (return receipt requested), or express mail, first-class postage prepaid, or by an express courier service, marked for overnight delivery. The word “notify” shall be construed accordingly. All notices shall be addressed as follows:

To the Agency:

[Full Agency Name]

[Agency Address]

Telephone: [●]

Facsimile: [●]

Attention: [●]

To the Company:

[Full Company Name]

[Company Address]

Telephone: [●]

Facsimile: [●]

Attention: [●]

22.1.2 Change of Address

A Party may change its address by giving the other Party written notice of such change pursuant to Section 22.1.1, provided that any such change shall not be effective until notice of such change has been received by the other Party in accordance with Section 22.1.1.

22.2 Entire Agreement

This Agreement, together with its Schedules, constitutes the entire agreement between the Parties with respect to the transactions contemplated herein. All previous documents, undertakings, and agreements, whether oral, written or otherwise, between the Parties concerning the subject matter of this Agreement are hereby cancelled and shall not affect or modify any of the terms or obligations set forth in this Agreement.

22.3 Waivers

The failure of a Party to insist upon a strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right thereafter to insist upon a strict adherence to that term or any other term of this Agreement. No waiver by a Party of any default or breach of this Agreement shall be construed as a waiver of any other provision, condition, or term hereof or of any other default or breach of the same provision, condition, or term. No delay in the exercise and no single or partial exercise by a Party of any right, remedy, or power hereunder, in equity, or at law, shall preclude any other or further exercise thereof or the exercise of any other right, remedy, or power existing hereunder, in equity, or at law. Any waiver must be in writing and signed by a duly authorized representative of the Party issuing the waiver.

22.4 Confidentiality and Disclosure

22.4.1 Confidentiality

Each Party shall hold in strict confidence from any other person all documents and information concerning any other Party or any of its Affiliates furnished to it or its advisors, consultants, contractors, or agents by the other Party in connection with this Agreement or the transactions contemplated hereby ("**Confidential Information**"), unless the information or that Party is:

- (a) Required to disclose any such information by judicial or administrative process (including in connection with obtaining from Government Authorities the necessary approvals of this Agreement and the transactions contemplated hereby) or by other Legal Requirements including the obligation to submit or publish the Agreement or any of the reports contemplated in Section 10;
- (b) Disclosed to persons providing or proposing to provide financing to the Company; or
- (c) Disclosed in an action or proceeding brought by either Party in pursuit of its rights or in the exercise of its remedies hereunder.

Notwithstanding the foregoing, this Section 22.4.1 shall not apply to such documents or information that were (i) previously known by the Party receiving such documents

or information, (ii) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no fault of such receiving Party, or (iii) later acquired by such receiving Party from another source so long as such receiving Party is not aware that such source is under an obligation to the other Party to keep such documents and information confidential.

22.4.2 Required Disclosure

Any Party required by any Legal Requirement or in the course of administrative or judicial proceedings or in accordance with required disclosures of publicly-listed companies by registered securities exchanges to disclose information that is otherwise required to be maintained in confidence pursuant to Section 22.4.1, may disclose such information notwithstanding the provisions of Section 22.4.1; *provided, however,* that the Party making the disclosure shall give prior notice to the other Party of the requirement and its terms and shall cooperate to the maximum extent legally possible to minimize the disclosure of the information. The Party disclosing such information shall use reasonable efforts, at the other Party's cost, to obtain proprietary or confidential treatment of such information by the third party to whom the information is disclosed, and to the extent such remedies are available, shall use reasonable efforts to seek protective orders limiting the dissemination and use of the information at the other Party's cost. For avoidance of doubt, this Agreement does not alter the rights of the Parties to object to the Legal Requirement or proceedings requiring the disclosure.

22.5 Further Assurances

The Parties will do, execute, and deliver, or will cause to be done, executed, and delivered, all such further acts and such other things as each Party may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties, and covenants of this Agreement.

The Parties further assure that they shall perform their obligations in a highly professional and diligent manner, with due efficiency and economy and timely execution of works and other obligations, in all respects with that degree of skill, diligence, prudence and foresight required from them, and with due attention to the need for fairness, openness and good faith in their dealings.

22.6 Severability

The validity of the remaining articles, clauses, provisions, terms, and parts of this Agreement shall not be affected by a court, administrative board, or other proceeding of competent jurisdiction deciding that an article, section, provision, term, or part of this Agreement is illegal, unenforceable, in conflict with any law, or contrary to public policy. In such event the Parties hereto shall, by amendment of this Agreement, properly replace such provision by a reasonable new provision or provisions that, as far as legally possible, approximate what the Parties intended by such original provision and the purpose thereof.

22.7 Language

This Agreement is being executed in the English language only. All documents, notices, waivers, and all other communications written or otherwise between the Parties in connection with this Agreement shall be in the English language. Any translation of this Agreement or any such communication, if any, shall be for convenience only and shall not be binding upon the Parties.

22.8 Counterparts

This Agreement may be executed in one or more duplicate counterparts and when signed by each of the Parties shall constitute an original and a single binding agreement. Any Party hereto may execute this Agreement by signing any such counterpart (including by facsimile). Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same counterpart.

22.9 Remedies Cumulative

Except with respect to liquidated damages payable pursuant to this Agreement for non-occurrence of the Effective Date and for delay in achieving the Provisional In-Service Date, no remedy or right herein conferred is intended to be exclusive of any other remedy or right, but every such remedy or right shall be cumulative and shall be in addition to every other remedy or right herein conferred or now or hereafter existing at law or in equity.

22.10 Amendments

No amendments or modifications of this Agreement shall be valid except by written agreement signed by duly authorized representatives of the Parties. Minutes of meetings or other informal documents shall not constitute a written agreement for purposes of the preceding sentence.

22.11 Governing Law

This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of the Philippines and shall for all purposes be conclusively deemed to be a Philippine contract.

22.12 Survival

All express representations, warranties, indemnities, and limitations of liability included in this Agreement shall survive its completion or termination for any reason.

[The remainder of this page has been intentionally left blank.]

**INFORMATION AND COMMUNICATIONS TECHNOLOGY MODERNIZATION PROJECT –
SCHEDULES**

TABLE OF CONTENTS

1 SCHEDULE A DESIGN AND TECHNICAL SPECIFICATIONS2

2 SCHEDULE B PROJECT MILESTONE SCHEDULE4

3 SCHEDULE C TESTING AND COMMISSIONING5

4 SCHEDULE D FORM OF PERFORMANCE SECURITY6

5 SCHEDULE E INSURANCE15

6 SCHEDULE F SERVICE LEVEL AGREEMENTS17

7 SCHEDULE G CONSENTS20

8 SCHEDULE H BUY-OUT AND TRANSFER AT TERMINATION PROVISIONS22

9 SCHEDULE I OWNERSHIP INTERESTS IN THE COMPANY28

10 SCHEDULE J FORM OF COMPANY INVOICE29

11 SCHEDULE K USER FEES.....30



Australian Government
AusAID

Philippines – Australia
Partnership for Economic
Governance Reforms (PEGR)

An Australian Government, AusAID Initiative

SCHEDULE A

DESIGN AND TECHNICAL SPECIFICATIONS

Definitions

Except as otherwise defined in this Schedule A, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of Agency] Information and Communications Technology Modernization Project Agreement between the Agency and the Company to which this Schedule A is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a Section beginning with the letter “A” is a reference to a Section within this Schedule A.

Overview

The New IT Services and Facilities shall be designed and implemented to *[describe the specific objectives and features of the Project.]*

Components and Capacities of the New IT Services and Facilities

[Enumerate and describe all the major Project components or facilities.]

Compliance and Compatibility

Compliance with Legal Requirements

The Company shall plan, design, supply, install, operate and maintain the New IT Services and Facilities in accordance with all applicable Legal Requirements (including all applicable Legal Requirements arising as the result of a Change-in-Law), Prudent Utility Practice, best international practice and standards, and manufacturers’ recommendations, and, without limitation, the Philippine and international standards listed below.

Non-Exclusive List of Philippine and International Standards

Philippine Standards

[List all applicable Philippine standards]

International Standards

- International Standard Organization (ISO)
- *[List other international standards]*

Resolution of Conflict between Standards

- (a) In the event of conflict between the foregoing standards, the regulations of the appropriate Government Authority in the Philippines shall take precedence.
- (b) Any reference to a specification, standard, or publication shall be understood to refer to the latest edition of the specification, standard, or publication in effect as of the Signature Date. Internationally accepted standards equal to or better than specified standards or specifications are acceptable.

Design Specifications

[Specify all design specifications for the Project and its components.]

SCHEDULE B

PROJECT MILESTONE SCHEDULE

B.1 Definitions

Except as otherwise defined in this Schedule B, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of Agency] Information and Communications Technology Modernization Project Agreement between the Agency and the Company to which this Schedule B is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “B” is a reference to a Section of this Schedule B.

B.2 Project Milestones

The Project Milestones and the required dates for their completion as of the Signature Date (which may be amended only following the terms of the Agreement) are as follows:

Project Milestone	Required Completion Date (As of the Signature Date)
Required Effective Date	[●] months after Signature Date
Required Provisional Operations Start Date	[●] months after Signature Date
Required Operations Start Date	[●] months after Signature Date

SCHEDULE C

TESTING AND COMMISSIONING

C.1 Definitions

Except as otherwise defined in this Schedule C, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of Agency] Information and Communications Technology Modernization Project Agreement between the Agency and the Company to which this Schedule C is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “C” is a reference to a Section of this Schedule C.

C.2 Commissioning Tests

[Describe the steps and procedures to demonstrate that all items of infrastructure, equipment and systems that form part of the New IT Services and Facilities are capable of operating in accordance with this Agreement. There can be separate pre-commissioning and commercial operation tests.]

C.3 Provisional Operations Start Date and Operations Start Date

[Describe the particular events, circumstances and test results that will lead to the issuance of the provisional and final acceptance certificate by the Agency in accordance with the Agreement.]

SCHEDULE D

FORM OF PERFORMANCE SECURITY

D.1 Definitions

Except as otherwise defined in this Schedule D, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of Agency] Information and Communications Technology Modernization Agreement between the Agency and the Company to which this Schedule D is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “D” is a reference to a Section of this Schedule D.

D.2 Form of Performance Security

The forms of the Performance Security and the Operating Security are set forth beginning on the following page.

[The remainder of this page has been intentionally left blank.]

SCHEDULE D-1

PERFORMANCE SECURITY

FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

[Letterhead of Bank]

Name of Agency

Address

Standby Letter of Credit No.

Date:

Dear Sirs:

KNOW ALL MEN BY THESE PRESENTS that we, [●], a corporation organized and existing under the laws of the Republic of the Philippines (the "**Issuer**"), hereby establish our Irrevocable Standby Letter of Credit No. [●] (the "**Letter of Credit**") in your favor and for the account of [*insert name of the Company*] (the "**Company**") relating to the obligations of the Company under the [name of Agency] Information and Communications Technology Modernization Agreement dated [●] (the "**Agreement**") between yourselves and the Company. Capitalized terms used in this Letter of Credit shall have the meanings given to them in the Agreement except as otherwise expressly defined herein.

1. The maximum aggregate amount available under this Letter of Credit is [●] Pesos (PHP [●]) (the "**Stated Amount**"). The Stated Amount shall be reduced from time to time by drawings made hereunder and by express notice in writing from the Agency to the Issuer, in accordance with the terms hereof and as hereinafter provided.
2. Subject to the other provisions of this Letter of Credit, the Agency is hereby irrevocably authorized to make one or more drawings under this Letter of Credit by presenting to the Issuer, at its address set forth above, a demand for payment from the Agency in substantially the form attached as Annex A, duly completed, and that is in the form of an original letter on the Agency's letterhead signed by any of its authorized signatories.
3. Multiple drawings may be made hereunder, provided that each drawing honored by the Issuer hereunder shall reduce the amount available under this Letter of Credit. The Issuer shall be deemed to have honored a drawing hereunder if the Issuer deposits the amount of such drawing in the account (the "**Designated Account**") designated by the Agency in accordance with Annex A. Forthwith upon any such drawing being honored, this Letter of Credit shall be deemed to be amended to effect a reduction in the Stated Amount hereunder equal to the amount of such drawing. Any such drawing made hereunder shall be free and clear of all interest and charges and any sums due to the Issuer.

4. We hereby agree to honor each drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds to the Designated Account the amount specified in a demand for payment at the opening of business on the first or second Business Day succeeding the date of such demand. As used herein, the term “**Business Day**” means any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions in [●], Philippines are authorized or obligated by law or executive order to remain closed.
5. If a demand for payment hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give prompt notice (but within the first Business Day succeeding the date of such demand) to the Agency that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold the documents at your disposal or return the same to you. Upon being notified that a demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand and re-submit such demand in accordance with the terms and conditions hereof.
6. This Letter of Credit shall expire (unless otherwise extended in accordance with the provisions hereof) on the earliest of (i) 5:00 p.m. at the place of presentation on [*insert date no less than one year from date of the Letter of Credit*], (ii) the date on which we receive confirmation from you that the Stated Amount has been reduced to zero, and (iii) the date on which we have honored a drawing or drawings in an aggregate amount equal to the Stated Amount (the “**Expiration Date**”); provided, however that with respect to subclause (i), on the Business Day immediately preceding such Expiration Date, the Expiration Date shall be automatically extended to the date one year after such Expiration Date (or, in the event that such date is not a Business Day, the Business Day immediately preceding such date), unless the Issuer notifies the Agency in writing not less than fourteen (14) Days prior to such Expiration Date that such Expiration Date will not be extended; and provided, further, that upon notification that this Letter of Credit will not be extended the Agency may draw hereunder for the full undrawn portion of this Letter of Credit by the Agency’s written certificate of demand for payment hereunder in substantially the form of Annex A hereto and signed by one of the Agency’s authorized representatives, provided that such demand is received by the Issuer before the then current Expiration Date.
7. All documents presented to the Issuer in connection with any drawing hereunder, as well as all notices and other communications to the Issuer in respect of this Letter of Credit, shall be in writing and addressed and presented to the Issuer at its address set forth above. Such documents, notices, and communications shall make specific reference to this Letter of Credit by number. Such documents, notices, and other communications may be delivered or sent by courier to the Issuer at its address set forth above (or at such other address as the Issuer shall have specified in writing to the Agency):
8. This Letter of Credit may not be cancelled or amended without the prior written consent of the Issuer and the Agency.
9. This Letter of Credit sets forth our undertaking and our agreement with you and such undertaking and such agreement may not in any way be modified, amended,

amplified, or limited by reference to any other document, instrument, or agreement referred to herein.

10. The Issuer hereby agrees that it shall have no recourse to the Agency if the Applicant fails at any time to pay any amounts which may from time to time to be due and payable by it to the Issuer in relation to this Letter of Credit.
11. References in this Letter of Credit to the Agreement or any other document or instrument, except to the Annexes hereto, are for identification purposes only. The Agreement and such other documents and instruments are not incorporated herein, nor are they made a part of this Letter of Credit.
12. This Letter of Credit is issued subject to the Uniform Customs and Practice for Documentary Credits, 1993 revision, International Chamber of Commerce Publication No. 500 ("**UCP 500**"), the provisions of which are incorporated into this Letter of Credit, except to the extent superseded by the express terms and conditions of this Letter of Credit and excluding Article 41 (Installment Shipments/Drawings) and Article 48 (Transferable Credit) in their entirety, excluding the last sentence of Article 17 (Force Majeure) and substituting therefor the following: If this Letter of Credit should expire during an interruption of our business as described in Article 17, the Issuer hereby agrees to honor any demand presented in accordance with this Letter of Credit within thirty (30) days after the resumption of our business.
13. To the extent that the provisions of this Letter of Credit are not governed by UCP 500 this Letter of Credit shall be governed by the laws of the Republic of the Philippines and construed in accordance with said laws, without regard to principles of conflicts of law.

IN WITNESS WHEREOF, we, Issuer, have caused these presents to be executed in our name and our corporate seal to be affixed by our attorney-in-fact on this [] day of [].

[ISSUER]

By:

Name:

Title:

Annex A
Irrevocable Standby Letter of Credit

DEMAND FOR SIGHT PAYMENT

To: [Name of Issuer]
[Address]

Attn: [•]

Re: Irrevocable Standby Letter of Credit No. [•]

The undersigned, the duly elected local chief executive of the Agency, a political subdivision of the Government of the Republic of the Philippines, with its principal office at [•], Philippines (together with its successors and assigns in such capacity, the "**Agency**") make reference to the [name of the Agency] Information and Communications Technology Modernization Agreement dated as of [•] between the Agency and [•], a corporation duly organized and existing under the laws of [•] having its principal office at [•], Philippines (the "**Company**") (the "**Agreement**").

1. The Agency hereby demands payment (the "**Drawing**") under the Letter of Credit in the aggregate amount of [•] Pesos (PHP [•]) in order to satisfy liabilities of the Company under the Agreement for one or more of the following reasons:
 - (a) [•]; and/or
 - (b) [•]; and/or
 - (c) Issuer has notified the Agency pursuant to Section 6 of the Letter of Credit that Issuer will not extend the Expiration Date (as defined in the Letter of Credit) and the Agency is entitled to draw the full Stated Amount.
2. The amount of the Drawing does not exceed the Stated Amount, as the Stated Amount has been reduced by all prior Drawings made under the Letter of Credit and honored by Issuer.

Please wire transfer the amount of the Drawing to [account details to be inserted by the Agency] (the "**Designated Account**").

IN WITNESS WHEREOF, the Agency has executed and delivered this certificate as of the [•] day of [•], 2009.

AGENCY

By:

Name:

Title:

SCHEDULE D-2

OPERATING SECURITY

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, **[the COMPANY]**, a corporation duly organized and existing under and by virtue of the laws of *[country]*, with office address at *[address]* and represented by *[name of representative]*, as **PRINCIPAL**, and **[PERFORMANCE SECURITY ISSUER]**, a corporation duly organized and existing under and by virtue of the laws of *[country]*, with office address at *[address]* and represented by *[name of representative]*, as **SURETY**, are held and firmly bound unto *[name of the Agency]* ("**Agency**") in the sum of PHP[●] for the payment of which sum well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

The conditions of this Surety Bond are as follows:

WHEREAS, PRINCIPAL, on *[date]*, executed the *[name of Agency]* Information and Communications Technology Modernization Agreement (the "**Agreement**") with the Agency to develop, plan, finance, design, engineer, procure, startup, test, commission, own, operate, manage and maintain the New IT Services and Facilities as provided in the Agreement;

WHEREAS, except as otherwise defined in this Surety Bond, capitalized terms used herein shall have the meanings assigned to them in the Agreement;

WHEREAS, Section 6.3 of the Agreement requires PRINCIPAL to post and deliver a surety bond callable on demand in favor of the Agency for the faithful performance by PRINCIPAL of its obligations under the Agreement from the Provisional Operations Start Date until the Termination Date of the Agreement;

NOW THEREFORE, if PRINCIPAL shall faithfully perform all the undertakings, covenants, terms, conditions and agreements under the Agreement from Provisional Operations Start Date until the Termination Date of the Agreement, then this Surety Bond shall be null and void; otherwise, it shall remain in full force and effect.

This bond is a penal bond callable on demand by the Agency upon the failure of PRINCIPAL to faithfully perform its obligations under the Agreement from the Provisional Operations Start Date until the Termination Date.

The Agency is hereby irrevocably authorized to make one or more claims for payment against this Surety Bond by presenting to SURETY, at its address set forth above, a written notice, in substantially the form attached as Annex A hereof, that PRINCIPAL, or its assignees, transferees or agents, has failed to faithfully perform any of its obligations under the Agreement from the Provisional Operations Start Date until the Termination Date; *Provided* that the aggregate amount of all claims for payment made by the Agency shall not exceed PHP[●].

Upon receipt of a written notice, SURETY shall pay the amount specified in the notice at the opening of business on the first or second Business Day succeeding the date of such claim for payment notwithstanding any objection which PRINCIPAL might raise against the Agency's entitlement to payment.

The liability of SURETY under this Surety Bond shall expire on *[termination of the Agreement]* and SURETY does not assume responsibility for any liability incurred or created thereafter. This Surety Bond will be cancelled ten (10) days after the expiration unless SURETY is notified in writing of any existing obligation hereunder.

This Surety Bond shall be governed by and construed in accordance with the laws of the Republic of the Philippines.

IN WITNESS WHEREOF, we have set our hands and signed our names on the *[date]* day of *[month]* 2009 at *[city/province]*, Philippines.

[THE COMPANY]

[THE PERFORMANCE SECURITY ISSUER]

**Principal
By:**

**Surety
By:**

Authorized Representative

Authorized Representative

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
 [City/Province]) S.S.

BEFORE ME, a Notary Public for and in [City/Province] this [date] day of [month] 2009 personally appeared:

	Government ID No.	Date of Issue		Place of Issue
<p>[The Company] [Authorized Representative of the Company] [The Performance Security Issuer] [Authorized Representative of Performance Security Issuer]</p>				

all known to me and to me known to be the same persons who executed the foregoing Surety Bond and they acknowledged to me that the same is their own free voluntary act and deed.

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

Notary Public

Doc. No. _____;
 Page No. _____;
 Book No. _____;
 Series of 2009.

Annex A

Surety Bond

NOTICE OF DEMAND

To: **[THE PERFORMANCE SECURITY ISSUER]**
 [Address]

Attn: [•]

Re: Surety Bond No. [•]

The undersigned, the duly elected local chief executive of the Agency, a political subdivision of the Government of the Republic of the Philippines, with its principal office at [•], Philippines (together with its successors and assigns in such capacity, the "**Agency**") make reference to the [name of the Agency] Information and Communications Technology Modernization Agreement dated as of [•] between the Agency and [•], a corporation duly organized and existing under the laws of [•] having its principal office at [•], Philippines (the "**Company**") (the "**Agreement**").

THE Agency hereby demands payment under the Surety Bond in the amount of [•] (P[•]) Philippine Currency as penalty payment by [the Company] under the Agreement for one or more of the following reasons:

[specify breach by the Company]

The aggregate amount of this claim and the other previous claims paid under the Surety Bond do not exceed the amount of PHP[•].

IN WITNESS WHEREOF, THE Agency has executed and delivered this notice on the [date] day of [month] 2009 at [city/province], Philippines.

AGENCY

By:

[Name of Local Chief Executive]
 [Title]

SCHEDULE E

INSURANCE

E.1 Definitions

Except as otherwise defined in this Schedule E, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of Agency] Information and Communications Technology Modernization Agreement between the Agency and the Company to which this Schedule E is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “E” is a reference to a Section of this Schedule E.

The insurance policies, endorsements, and terms required to be obtained and maintained by the Company in accordance with Section 10 of the Agreement are as follows:

E.2 Insurance Policies and Terms

[List all required insurances during the construction period which may include:

- *Delay in start-up*
- *Construction/erection all risks*
- *Third party liability*
- *Workmen’s compensation/employer’s liability*
- *Motor vehicle and other personal property.]*

For each type of insurance, specify the following:

Minimum Cover:	[●]
Minimum Sum Insured:	[●]
Minimum Sub-limits:	[●]
Maximum Deductible:	[●]
Period of Cover:	[●]
Insured Parties:	[●]
Required Coverage:	[●]
Required Extensions:	[●]
Permitted Exclusions:	[●]

E.3 Insurance Policy endorsements

[State the provisions or other clauses which should be incorporated in the insurance policies required under the Agreement]

SCHEDULE F

SERVICE LEVEL AGREEMENTS

F.1 Definitions

Except as otherwise defined in this Schedule F, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of Agency] Information and Communications Technology Modernization Agreement between the Agency and the Company to which this Schedule F is annexed (the "**Agreement**"). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter "F" is a reference to a Section of this Schedule F.

F.2 Service Level Agreements

[State all Service Level Agreements for each Project component including necessary system upgrades. For example:

Applications Development

- *All new applications shall be designed and developed to employ a multi-tier non-proprietary web-based architecture. They should be demonstrably proven to be able to connect to any database management system that meets applicable international standards, and provide web services that can be accessed by any of the commonly available web tools (e.g., Internet Explorer, Firefox, Safari, WAP, etc.). In addition, the systems must co-exist and support interoperability with other programs that may be developed in the future using a different development tool platform.*
- *Application systems delivered for acceptance testing must be 99.9% correct. This will be determined by comparing the lines of code against the number of non-cosmetic errors found during testing. Systems failing to meet the desired level of correctness shall be sent back to the Company for complete redesign and recoding.*
- *The Company shall ensure that all applications delivered meet the following Agency requirements:*

Metric	Agency Requirement
<i>Online Availability</i>	<i>99.5% during working hours (maximum 2 days downtime per year)</i>
<i>Batch Processing Window</i>	<i>7 p.m. to 7 a.m. on weekdays 7 p.m. Friday to 7 a.m. Monday on weekends</i>
<i>Data Back-up Duration</i>	<i>Incremental back-up daily and full database back-up weekly to be completed within the batch processing window</i>

Data Center

- *The Company must provide a physically secure area in a data center within the Philippines where the hardware devoted to run the Agency’s applications will be located. The data center shall adhere to accepted standards for internet data centers (IDCs) including multiple fiber paths from at least two (2) carriers, multiple power grids, full power protection (including generators, power filters and UPS), environmental controls, and fire and water protection.*
- *The Company shall provide a disaster recovery facility, also within the Philippines, and provide and implement a disaster recovery plan that will allow the Agency to resume normal processing operations with a maximum of twenty-four (24) hours disruption, in case of any Event of Loss or Force Majeure Event.*
- *Except in Force Majeure Events for which the SLA for disaster recovery applies, the computing service to be provided by the Company must have 99.9% availability, to be measured over a 24 x 7 operation (that is, less than 9 hours downtime per year).]*

F.3 Key Performance Indicators

[List all Key Performance Indicators]

F.4 Violations Subject to Penalties

[List offenses or violations that would result in the imposition of penalties for non-compliance with the SLAs and KPIs. For example:

SLA	Penalty
<i>Delay or non-performance of contractual obligations (including, unless otherwise indicated, failure to meet any SLA) due to the fault or negligence of the COMPANY</i>	<i>1/10 of 1% of the cost of the unperformed and/or undelivered work or portions of the Agreement for each day of delay or non-performance</i>
<i>99.9% system availability 99.5% online availability</i>	<i>1/10 of 1% of the total contract price for every hour of excess allowable downtime or hardware/system unavailability]</i>

F.5 Special Fund

[Specify the requirements for the creation and operation of the escrow fund for the repair, maintenance and system upgrade of the New IT Services and Facilities and to fund training and technology transfer activities under the Agreement, including but not limited to the following:

- *Size of the fund*
- *Obligation by the Company to replenish*
- *Right of the Agency to review and approve all proposed expenditures to be funded.]*

SCHEDULE G

CONSENTS

G.1 Definitions

Except as otherwise defined in this Schedule G, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of Agency] Information and Communications Technology Modernization Agreement between the Agency and the Company to which this Schedule G is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “G” is a reference to a Section of this Schedule G.

G.2 LIST OF ANTICIPATED CONSENTS

The list of Consents that the Parties anticipate as of the Signature Date will be required for the implementation of the Project is set out in Table G-1. The Parties acknowledge and agree that (i) this list is illustrative and not exclusive and that other Consents may be required in order to implement the Project, and (ii) the Party responsible for securing the Consent shall also undertake the cost and expense for obtaining and maintaining them, including any Consents that are not listed in Table G-1 that may be required.

TABLE G-1

LIST OF ANTICIPATED CONSENTS

CONSENT	PARTY RESPONSIBLE
Information Systems Strategic Plan accreditation from the National Computer Center	Agency
Project and contract approval from the NEDA-ICC	Agency
Company registration with the SEC	Company
Registration with the Social Security System	Company
Registration with Philhealth	Company
Registration of business name with the Department of Trade and Industry	Company
Registration with the Bureau of Internal Revenue as corporate income taxpayer, withholding agent, VAT, etc.	Company
Registration with the Home Development Mutual Fund (Pag-IBIG)	Company
Registration of remittance of foreign investment with the Bangko Sentral ng Pilipinas	Company
Business/Mayor's permit and license	Company
Approval by the Monetary Board of foreign loan obtained for the Project	Company
Registration for investment incentives with the Board of Investments	Company
Clearance or proof of payment of customs duties for imported capital equipment from the Bureau of Customs	Company
<i>[List other consents]</i>	Agency/Company

SCHEDULE H

BUY-OUT AND TRANSFER AT TERMINATION PROVISIONS

I.1 Definitions

I.1.1 Terms Defined in the Agreement

Except as otherwise defined in this Schedule H, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of Agency] Information and Communications Technology Modernization Agreement between the Agency and the Company to which this Schedule H is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “H” is a reference to a Section of this Schedule H.

I.1.2 Terms Defined Herein

In this Schedule H, the following terms shall have the meanings indicated below:

“**Accrued Interest**” means interest accrued on the Principal Amount as of the Calculation Date under the Financing Agreements; provided, however, that for the purpose of calculating the amounts due and payable by the Agency under this Schedule H, Accrued Interest shall not include default interest unless such default interest has accrued as the result of late payment or non-payment by the Agency.

“**Future Value**” means the future value calculated as of the Calculation Date using a rate of [●].

“**Present Value**” means the present value calculated as of the Calculation Date using a discount rate of [●].

“**Breakage Costs**” means an amount equal to the sum as of the Calculation Date of any reasonable (a) interest period breakage costs and (b) interest rate swap breakage costs, in each case due to or on behalf of the Lenders under the Financing Agreements upon termination of this Agreement, provided that any positive payments received by or on behalf of the Lenders as a result of such breakage shall reduce the amount of the relevant Buy-Out Prices calculated in accordance with the this Schedule I.

“**Buy-Out Price**” means Buy-Out Price A, Buy-Out Price B, or Buy-Out Price C, as the context may require.

“**Buy-Out Price A**” means:

- (a) The Senior Debt Amount, minus
- (b) The amount by which the Equity Commitment exceeds the Equity Amount, minus
- (c) The Cash Amount, minus
- (d) Any unpaid amounts due to the Agency under the Project Agreements through the Calculation Date.

“**Buy-Out Price B**” means:

- (a) The Senior Debt Amount, plus
- (b) The Equity Amount, plus

- (c) An amount equal to the Rate of Return on the Equity Amount compounded annually from the Effective Date (or, if later, the date any portion of the Equity Amount was actually contributed to the Company) until the earlier of (i) the Calculation Date and (ii) the Required Operations Start Date, plus
- (d) Termination Costs, minus
- (e) The Cash Amount, minus
- (f) Any unpaid amounts due from the Company to the Agency under the Project Agreements through the Calculation Date.

“Buy-Out Price C” means:

- (a) The Senior Debt Amount, plus
- (b) The Equity Amount, plus
- (c) An amount equal to the Future Value of the Rate of Return on the Equity Amount from the Effective Date (or, if later, the date any portion of the Equity Amount was actually contributed to the Company) until the Calculation Date, plus
- (d) An amount equal to the Present Value of the Rate of Return on the Equity Amount from the Calculation Date to a date that is the lesser of (i) number of calendar years from the Calculation Date to the [●]th anniversary of the Provisional Operations Start Date and (ii) seven (7) calendar years after the Calculation Date, minus
- (e) The Future Value of dividends and distributions made by the Company to its shareholders (including interest paid on shareholder loans) from the Provisional Operations Start Date until the Calculation Date; plus
- (f) Termination Costs, minus
- (g) the Cash Amount, minus
- (h) any unpaid amounts due from the Company to the Agency under the Project Agreements through the Calculation Date;

A sample computation is provided in Schedule H-1.

“Calculation Date” means the date specified for termination in the Termination Notice issued pursuant to Section 17 of the Agreement, provided that if (a) such date stated in the Termination Notice is deferred following the terms of the Agreement and (b) during such deferred period the Parties continue to honor their payment and other contractual obligations, the Calculation Date shall mean the Termination Date.

“Cash Amount” means the aggregate amount of cash held by the Company as of the Calculation Date, including cash on hand and the credit balance of any deposit, money market, reserve, escrow, or securities accounts maintained with any bank or other financial institution.

“Equity Amount” means the amount of cash capital actually contributed or caused to be contributed by the Shareholders or their Affiliates to the Company (including indebtedness for money borrowed by the Company from a Shareholder or any Affiliate of a Shareholder which by its terms is subordinated to any indebtedness for borrowed money incurred by the

Company under any Financing Agreement) as of the Calculation Date, provided that, for purposes hereof, the amount shall not exceed the Equity Commitment.

“Equity Commitment” means the cash amount required to be paid by or on behalf of the Shareholders for shares of the Company and to be provided by or on behalf of the Shareholders through loans to the Company, in accordance with the Financing Agreements.

“Principal Amount” means the amount required to repay the principal amount of the Senior Debt outstanding at the Calculation Date to the extent such principal amount was actually applied for the purpose of financing the Project.

“Rate of Return” means simple interest at the rate of [●] per cent per annum.

“Senior Debt Amount” means an amount equal to the sum of (a) the Principal Amount, (b) Accrued Interest, and (c) Breakage Costs.

“Senior Debt” means all amounts required to be repaid by the Company (excluding any indebtedness constituting Equity and any amounts to be paid or repaid in respect thereof) pursuant to the Financing Agreements in effect at the Effective Date, as those may be changed or amended following an event of default under such Financing Agreements to reflect any rescheduling or refinancing of the Senior Debt, *provided* that such rescheduling or refinancing does not increase the Senior Debt Amount the Agency would have been required to pay under this Schedule I if not for such rescheduling or refinancing.

“Termination Costs” means: (a) all Taxes imposed on the Company by any Government Authority of the Philippines as a result of the termination of this Agreement, the transfer of rights, title, and interest in the New IT Services and Facilities and the Project to the Agency, and the payment of the purchase price therefor; (b) all amounts payable by the Company with respect to the EPC Contractor’s termination costs for the termination of subcontracts entered into by the EPC Contractor under the EPC Contract subject to a maximum of one-half of one percent (0.5%) of the total price of the subcontracts; and (c) all amounts payable by the Company to the EPC Contractor upon termination of the EPC Contract with respect to work completed by the EPC Contractor but not yet paid for by the Company (including out of the proceeds of Equity or Senior Debt).

I.2 Buy-Out Price upon Termination by the Company

If the Company terminates this Agreement:

- (a) Pursuant to Section 17.1. (*Termination due to an Event of Default*) due to an Agency Event of Default or
- (b) Pursuant to Section 17.2.1 (*Termination by Company*) due to a prolonged Force Majeure Event,

then the Agency shall purchase all of the Company’s rights, title, and interest in the New IT Services and Facilities and the Project for a price equal to (i) Buy-Out Price B if such termination occurs prior to the Operations Start Date, or (ii) Buy-Out Price C if such termination occurs on or after the Operations Start Date; provided, in either case, that in the event of termination by the Company due to a prolonged Non-Political Force Majeure Event, the relevant Buy-Out Price shall be reduced by the amount of any payment received by the Company from insurance covering such Non-Political Force Majeure Event.

I.3 Buy-Out Price upon Termination by the Agency

- (a) If the Agency terminates this Agreement pursuant to Section 17.1 (*Termination due to an Event of Default*) due to a Company Event of Default and exercises its option pursuant to Section 17.1.2(a), then the Agency shall purchase all of THE

Company's rights, title, and interest in the New IT Services and Facilities and the Project for a price equal to Buy-Out Price A.

- (b) If the Agency terminates this Agreement pursuant to Section 17.2.2 (*Termination by the Agency*), then the Agency shall purchase all of the Company's rights, title, and interest in the New IT Services and Facilities and the Project for a price equal to (i) Buy-Out Price B if such termination occurs prior to the Operations Start Date, or (ii) Buy-Out Price C if such termination occurs on or after the Operations Start Date.

Termination at end of [●]th Anniversary of Provisional Operations Start Date

If the Termination Date occurs pursuant to Section 3.2(d) of the Agreement, the Company shall transfer the New IT Services and Facilities and the Project to the Agency at no cost to the Agency.

I.5 Computation and Payment of Buy-Out Price

- (a) All amounts payable pursuant to this Schedule I shall be paid in Pesos in immediately available funds within ninety (90) Days of the date of termination of this Agreement, provided that all of the Company's rights, title, and interest in the New IT Services and Facilities and the Project are transferred to the Agency, free and clear of all Liens and encumbrances, concurrently with the payment of the proper Buy-Out Price.
- (b) In the event that Buy-Out Price A shall be a negative number, the Company shall pay such amount to the Agency concurrently with the transfer of the Company's rights, title and interest in the New IT Services and Facilities and the Project to the Agency.
- (c) It is understood that there shall be no double-counting in the calculation of any Buy-Out Price or any other amount payable pursuant to this Schedule I.

I.6 Termination Costs

The Parties agree to carry out the transfer of the Company's rights, title, and interest in the New IT Services and Facilities and the Project and the payment of the Buy-Out Price in a way that would minimize Termination Costs.

I.7 Transfer of New IT Services and Facilities and Project

I.7.1 Assets to be Transferred

If the Company's rights, title, and interest in the New IT Services and Facilities and the Project is required to be transferred to the Agency pursuant to this Agreement, then immediately upon the termination of this Agreement:

- (a) The Company shall transfer to the Agency, free and clear of all Liens, all of the Company's rights, title, and interest in the New IT Services and Facilities and the Project, including, insofar as they are part of or used in, to, and for the New IT Services and Facilities and the Project: (i) all raw materials, consumables, and spare parts; (ii) all tangible personal property; (iii) all intangible personal property, including patents, copyrights, licenses, patent applications, tradenames, trademarks, trademark registrations, and applications therefor, trade secrets, copyrights, know-how, secret formulae, and any other Intellectual Property Rights; (iv) all Consents; (v) all buildings and fixtures; (vi) computerized and non-computerized records, reports, data, files, and information; (vii) all

drawings, operation manuals, test results, and documents; (viii) all warranties of equipment, materials and work; (ix) all contract rights and insurance policies; (x) all work in progress under contracts with vendors, suppliers, contractors, and subcontractors; and (xi) all rights with respect to any insurance proceeds payable to or for the account of the Company, but unpaid at the date of termination of this Agreement; and

- (b) The Company shall pay to the Agency any other amounts, if any, required to be paid by the Company to the Agency under the Project Agreements.

I.7.2 Pre-Termination Date Inspection and Repair

Not later than two (2) years prior to the Termination Date, or, in the event the Termination Date will occur earlier than the [●]th anniversary of the Provisional Operations Start Date, as soon as practicable after such earlier Termination Date is known to the Parties, the Company shall permit the Agency to inspect the New IT Services and Facilities. Based on the Agency's inspection, the Agency shall issue to the Company a schedule of replacements and repairs of the New IT Services and Facilities that are required in accordance with Prudent Utility Practice and to meet the Design and Technical Specifications. The Company shall, within ninety (90) Days from receipt of such schedule, carry out the required replacements or repairs. The Agency shall issue a certificate of compliance after the satisfactory completion of repairs or replacements by the Company and, if applicable, before the payment by the Agency of the Buy-Out Price.

I.7.3 Maintenance Spare Parts

When applicable, not later than one hundred twenty (120) days prior to the expected Termination Date, the Company shall deliver to the Agency the required maintenance spare parts and consumables sufficient for three (3) months operation after the Termination Date. For the purpose of determining the quantities required, the Company shall furnish the Agency, within one month (1) following the end of the Contract Year preceding the Contract Year in which the Termination Date is expected to occur, a copy of its annual record of spare parts and consumables utilization and consumption.

I.8 Responsibility for Obtaining Consents to Transfer

The Agency shall be responsible for obtaining or effecting, at its own cost, all Consents needed in order to obtain title to the New IT Services and Facilities and the Project. The Company shall cooperate with the Agency in identifying, applying for, and securing those Consents.

SCHEDULE I

OWNERSHIP INTERESTS IN THE COMPANY

Table I-1: Sponsors' Initial Ownership Interests

Sponsor	No. of Common Shares	Direct and Indirect Ownership Percentage

Table I-2: Initial Shareholders

Shareholder	No. of Common Shares	Ownership Percentage

SCHEDULE J
FORM OF COMPANY INVOICE

TO: THE Agency
Billing Month Number:
Date of Submission:
Date of Receipt:
Due Date:

1. Company Fee Computation

2. Computation of Penalties Applicable to Billing Month

3. Computation of Total Amount Due

4. Payment Instructions

Received and Acknowledged by the Agency:

Name:
Title:
Date:

SCHEDULE K

USER FEES

K.1 Definitions

Except as otherwise defined in this Schedule K, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of Agency] Information and Communications Technology Modernization Agreement between the Agency and the Company to which this Schedule K is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “K” is a reference to a Section of this Schedule K.

K.2 Revenue Sharing

[Specify the terms and percentage sharing of User Fees. This would normally reflect the financial proposal of the Company at the bidding.]

Agency Service	User Fee (in PHP)	Agency Share		Company Share	
	Initial Fee	Initial Fee	Percent Share	Initial Fee	Percent Share

K.3 Company Fee Adjustment

[State the terms and conditions for the adjustment of the Company/User Fee.]

A sample user fee adjustment procedure culled from a Philippine BOT-ICT contract is presented below for reference purposes only:

The user fee that may be applied in the next Review Period (the “New User Fee”) is as follows:

New User Fee $_{t+1} = AF_t \times$ **Initial Fee**

where:

Subscript *t* : Denotes the Review Period under evaluation

Subscript *t+1* : Denotes the next Review Period

AF : Adjustment Factor (indexation formula reflecting changes in inflation, foreign exchange rate, etc.)

Initial Fee : Proposed User Fee in the Winning Financial Proposal

The Approved User Fees may be adjusted based on the conditions and guidelines set forth below:

- The review of the User Fees will be conducted at the end of every [●] (the "Review Period") starting from [●]. The scheduled dates for the review of User Fees are as follows: [●].
- Outside the scheduled dates for the review of the User Fees, either the Agency or the Company can call for a review of the User Fees under either of the extraordinary conditions set forth below:
 - When the prevailing foreign exchange rate moves away from the "reference foreign exchange rate" by at least [●]%. The term "reference foreign exchange rate" shall mean the average foreign exchange rate during the previous Review Period or, prior to the end of the first Review Period, the foreign exchange rate of [●] Pesos for (1) one US dollar.
 - When the monthly inflation rate at the national level or the month-on-month change in the Consumer Price Index (CPI) reaches at least [●]%. The inflation rate referred to in this provision shall be that rate as published by the National Statistics Office.
- Under extreme conditions or extraordinary circumstances, such as a peso devaluation of more than 50% within a month, the Parties shall meet and negotiate the appropriate adjustment of the User Fees.
- There shall be no escalation in the User Fees for the first [●] years from the start of operations of the Project, except under extraordinary conditions stated above.
- The Agency reserves the right to file for an increase in the User Fees contingent on the regulatory body's approval, the affordability of service to end-users, the reasonableness of the financial rate of return to the Proponent, and the Proponent's ability to meet the prescribed service levels.
- The User Fees cannot be increased more than [●] times a year.
- There should be at least [●] months between changes in the User Fees.]