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AusAID

**Philippines – Australia
Partnership for Economic
Governance Reforms (PEGR)**

An Australian Government, AusAID Initiative

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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URBAN MASS RAIL SYSTEM CONCESSION AGREEMENT

This **Urban Mass Rail System Concession Agreement** (this “**Agreement**”) is made this [●] (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, *[state the rationale for and background of the Project]*;

WHEREAS, on [●], 2009, the Agency obtained the approval of the Investment Coordination Committee (“**ICC**”) of the National Economic and Development Authority (“**NEDA**”) to develop and implement the [●] Project under a [●] contractual arrangement in line with Republic Act No. 6957, as amended, and its Implementing Rules and Regulations (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:

DEFINITIONS, PRINCIPLES OF INTERPRETATION, AND PRIORITY OF PROJECT DOCUMENTS

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 Events of Default*).

“Agency Parties” is defined in Section 14.1 (*Indemnification by the Company*).

“Agency Rectification Plan” is defined in Section 20.1.1(c).

“Agency Revenue” is defined in Section 8.1.3 (*Agency Revenue*).

“Agency Step-in Rights” is defined in Section 17.1 (*Step-in Rights*).

“Agreement” means this Concession 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.

“Asset Register” is defined in Section 6.5(b)(ii).

“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 Operations Start Date until the last Day of the calendar month in which the Provisional Operations Start Date occurs; (ii) each successive period of one 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.

“BOI” means the Board of Investments of the Department of Trade and Industry.

“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.

“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 rail technology or operational policies or practices which are generally regarded by rail developers or operators 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 the exercise of voting rights conferred on those shares, control over the right to elect, appoint or remove directors, or control over 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.

“COA” means the Commission on Audit.

“Commercial Development” means the commercial development of the Facilities and Project Land upon terms to be separately agreed between the Agency and the Company/provided in Schedule 18 (*Commercial Development*).

“Company Event of Default” is defined in Section 15.1 (*Company Events of Default*).

“Company Parties” is defined in Section 14.2 (*Indemnification by Agency*).

“Company Rectification Plan” is defined in Section 20.1.1(b).

“Company Revenue” is defined in Section 8.1.1 (*Company Revenue*).

“Concession Fee” means the fee payable by the Company to the Agency for the exclusive right to carry out the Project calculated in accordance with Schedule 19 (*Concession Fee*);

“Confidential Information” is defined in Section 21.4.1 (*Confidentiality*).

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

“Continuous Construction Date” means the date on which the Company commences continuous construction activities to perform the Works at the Site, including clearing, earthworks, excavation, formworks, piledriving, laying of foundations, or other activities approved in writing by the Agency as constituting commencement of continuous construction activities for the Works.

“Contract Management Body” is defined in Section 9.1 (*Contract Management Body*).

“Contract Year” means (i) initially, the period starting on the Provisional Operations Start 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.

“Customers” shall mean those persons who from time to time use the Facilities and avail of the Services provided by the Company, including those who patronize the Commercial Development by the Company.

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

“Delay” is defined in Section 5.8.1 (*Occurrence of Delay*).

“Delay Liquidated Damages” is described in Section 5.8.2 (*Delay Liquidated Damages*).

“DENR” means the Department of Environment and Natural Resources.

“Design and Technical Specifications” means the design and technical specifications set out in Schedule 1 (*Design and Technical Specifications*) to be followed and complied with by the Company in the design, engineering, procurement, and construction of the Works.

[“Design Timetable” means the timetable for submitting the detailed engineering designs and plans to the Agency specified in Schedule 2 (*Design Timetable*).]¹

“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.

¹ Delete all references to “Design Timetable if all detailed engineering designs and plans will be submitted prior to the Required Continuous Construction Start Date (*See Section 5.5*).

“Dollars”, “US Dollars”, and “US\$” means the lawful currency of the United States of America.

“ECC” means the Environmental Compliance Certificate issued by the DENR for the Project.

“Effective Date” is defined in Section 2.1. (*Conditions Precedent to the Effective Date*).

“EIA” means the environmental impact assessment for the Project conducted or caused by the Company to be conducted in line with all applicable Legal Requirements.

“EPC Contract” means the turnkey engineering, procurement, and construction contract made or to be made between the Company and the EPC Contractor for the design, engineering, procurement, construction, rehabilitation, startup, testing, and commissioning of the Facilities.

“EPC Contractor” means the contractor or person engaged by the Company under the EPC Contract to undertake the Works, by itself or through a subcontractor acceptable to the Agency.

“Equity” means (i) the capital stock, of any class, the Company subscribed to by the Shareholders of the Company, and (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 (*Events of Default*).

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

“Expert Panel” is defined in Section 19.2.2 (*Establishment and Operation of Expert Panel*).

“Existing Facilities” means the existing urban mass rail facility of [line], including the existing depots, electrical and mechanical systems, railway vehicles, stations, tracks and other assets, as described in Schedule 1 (*Design and Technical Specifications*).

“Facilities” means the Existing Facilities and New Facilities.

“Fare” is described in Schedule 17 (*Fares*).

“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, 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 (*Definition of Force Majeure Event*).

“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.

“Government Performance Undertaking” is defined in Section 2.1(r) (*Conditions Precedent to Effective Date*).

“ICC” means the Investment Coordination Committee of the National Economic and Development Authority.

“Independent Verifier” means the person appointed by the Parties to review the detailed engineering designs and plans and to monitor the rehabilitation and construction of the Facilities pursuant to Section 5.4 (*Independent Verifier*) hereof.

“Initial Shareholders” means all of the Shareholders of the Company as of the Signature Date, the names of which are set out in Schedule 21 (*Company Shareholders*).

“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.

“Legal Requirements” means all laws, statutes, orders, decrees, injunctions, Consents, agreements, EIAs, 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 18.3.2 (*Restriction on the Transfer of Capital of Company*).

“Maintenance Schedule” is defined in Section 6.5 (*Planned Downtime; Maintenance Program and Schedule*).

“NEDA” means the National Economic and Development Authority.

“New Facilities” means the new electrical and mechanical systems, railway vehicles, stations, tracks and other assets described in Schedule 1 (*Design and Technical Specifications*).

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

“Notice of Agency Event of Default” is defined in Section 20.1.1(c) (*Termination Procedure*).

“Notice of Company Event of Default” is defined in Section 20.1.1(b) (*Termination Procedure*).

“Operating Period” means the period commencing on the Provisional Operations Start Date and ending on the Termination Date.

“Operating Procedures” means the plans, manuals, methods and procedures for operating the Facilities developed by the Company pursuant to Section 6.2 (*Operating Procedures*) and Schedule 14 (*Operating Procedures*).

“Operating Security” is defined in Section 6.3 (*Operating Security*).

“Operations Start Date” means the Day on which a final acceptance certificate for the Facilities is issued by the Agency to the Company in accordance with Section 5.6.2 (*Final Acceptance*).

“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*).

“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 (*Planned Downtime; Maintenance Program and Schedule*).

“Planned Downtime Period” is defined in Section 6.5(b) (*Planned Downtime; Maintenance Program and Schedule*).

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

“Project” means:

- (a) the carrying out and financing of the Works;
- (b) the operation, maintenance, renewal and financing of the integrated Facilities during the Operating Period;
- (c) the provision of the Services during the Operating Period;
- (d) the carrying out and financing of Commercial Development; and
- (e) the transfer of the integrated Facilities to the Agency at the Termination Date,

all in accordance with the terms and conditions of this Agreement and all Legal Requirements.

“Project Agreements” means:

- (a) this Agreement;
- (b) the EPC Contract;
- (c) the Shareholders’ Agreement;
- (d) the Financing Agreements; and
- (e) any other material agreement entered into by the Company pursuant to the agreements listed in sub-clauses (a) through (d) above, for the purposes of the implementation of the Project, including any agreement or subcontract for the

rehabilitation, construction, management, operation and maintenance, and provision of technical assistance for the Project.

“Project Land” means all lands and land rights required for carrying out the Project as described in Schedule 8 (*Land Rights*).

“Project Milestones” means:

- (a) the Effective Date;
- (b) the Continuous Construction Date;
- (c) the Provisional Operations Start Date;
- (d) the Operations Start Date; and
- (e) the transfer of Facilities to the Agency upon termination of this Agreement.

“Project Milestone Schedule” means the timetable or required dates for completing all the Project Milestones set out in Schedule 5 (*Project Milestones Schedule*), as may be amended from time to time in accordance with this Agreement.

“Project Report” is defined in Section 9.2 (*Project Report*).

“Provisional Operations Start Date” means the Day on which a provisional acceptance certificate is issued to the Company after successful testing and commissioning of the New Facilities and the rehabilitated Existing Facilities following the testing procedures provided in Schedule 13 (*Testing and Commissioning*).

“Prudent Utility Practice” means applying, in relation to the manner in which the construction 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 including taking reasonable steps to ensure that:

- (a) adequate materials, resources, and supplies are available to meet the 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 Facilities properly and efficiently taking into consideration manufacturers’ guidelines and specifications, 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 Facilities are functioning as designed and to provide assurance that infrastructure and 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 Continuous Construction Date” means the date prescribed in the Project Milestone Schedule for the occurrence of the Continuous Construction Date, as such date may be changed from time to time in accordance with this Agreement.

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

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

“Revenue” is defined in Section 8 (*Revenues and Payments*).

“Ridership Levels” means the number of passengers who travel on the Facilities.

“SEC” means the Philippine Securities and Exchange Commission.

“Security” means:

- (a) the Performance Security;
- (b) the Operating Security; and
- (c) the Warranty Bond.

“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*).

“Service Quality Requirements” is defined in Schedule 15 (*Service Quality Requirements*).

“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.

“Site” is identified in Figure 1 in Schedule 3 (*Site and Interface*).

“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 20.1 (*Termination due to an Event of Default*);
- (c) termination of this Agreement pursuant to Section 20.2 (*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 20.1.1(a) (*Termination Procedure*).

“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 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 (*Unplanned Downtime*).

“Warranty Bond” is defined in Schedule 23 (*Termination Buy-Out and Transfer Provision*).

“Works” means:

- (a) the design, procurement, engineering, construction, completion, testing and commissioning of the New Facilities;
- (b) the rehabilitation, replacement and upgrade of the Existing Facilities; and
- (c) the integration of the New Facilities with the Existing Facilities,

all in accordance with the design and technical specifications provided in Schedule 1 (*Design and Technical Specifications*).

“Works Timetable” means the timetable for the Works specified in Schedule 6 (*Works Timetable*).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.

² Delete all references to Works Timetable if Works will not be undertaken in phases.

- (i) The terms “this Agreement” 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

CONDITIONS PRECEDENT TO EFFECTIVE DATE

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 applicable Consents listed on Schedule 9 (*Consents*).
- (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) A true and complete copy, certified by the corporate secretary of the Company, of the unconditional notice to proceed issued by the Company to the EPC Contractor authorizing and directing the EPC Contractor to start work under the EPC Contract.
- (i) The Performance Security required from the Company pursuant to Section 5.7 (*Performance Security*) shall have been executed and delivered to the Agency and shall be in full force and effect.
- (j) 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 (*Insurance Certificates*) and Schedule 11 (*Insurance*).
- (k) 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.
- (l) 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.
- (m) The Company has paid the Agency the amount of [●] as reimbursement for the professional fees of the Agency's Project transaction advisors.
- (n) 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.

- (o) 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.
- (p) The Agency shall have obtained [all land rights and rights-of-way in respect of the Site in such form and substance sufficient to complete the Project/all Phase 1 land rights and rights-of-way described in Schedule 8 (*Land Rights*)] and shall have legal, peaceful and unencumbered use and possession of and access to the Site.
- (q) 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.
- (r) The Company shall have received (i) a performance undertaking of the Republic of the Philippines duly executed and delivered by the Philippine Department of Finance substantially in the form set out in Schedule 10 (*Form of Government Performance Undertaking*) (the "**Government Performance Undertaking**"), (ii) a full powers authorization issued by the President of the Republic of the Philippines confirming the authority of the Philippine Department of Finance to execute and deliver the Government Performance Undertaking on behalf of the Republic of the Philippines, and (iii) a legal opinion of the Secretary of Justice of the Republic of the Philippines as to the validity, enforceability, and binding effect of the Government Performance Undertaking.³
- (s) 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.

Reasonable Efforts to Satisfy Conditions Precedent

- (a) Each Party shall use all reasonable efforts to satisfy the conditions enumerated in Section 2.1 (*Conditions Precedent to the Effective Date*) 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 20.2 (*Termination Due to Prolonged Force Majeure Event*), if the occurrence of the Effective Date is delayed by a Force Majeure Event, the

³ Alternatively, the Agency may provide a performance undertaking issued by a commercial guaranty provider in lieu of a Government Performance Undertaking.

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.

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 (*Conditions Precedent to the Effective Date*) 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 (n) 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 (*Conditions Precedent to the Effective Date*) 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(n) through (s) 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 pursuant to Section 2.3.1 (*Termination Due to Non-Occurrence of Effective Date*):

- (a) If the Company is at fault, 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 posted by the Company.
- (b) If the Agency is at fault, the provisions of Section 20.1.2 (*Default Termination Buy-out Provisions*) will apply.
- (c) 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.

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 16 (*Limitation of Liability*);
- (g) Section 18 (*Assignment of Rights; Ownership of the Company*);
- (h) Section 19 (*Dispute Resolution*); and
- (i) Section 21 (*General Provisions*).

ARTICLE II
TERM OF THE AGREEMENT

2. TERM OF THE AGREEMENT

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, only 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

PROJECT IMPLEMENTATION

Project Scope

The Project shall comprise:

- (a) the carrying out and financing of the Works in accordance with the scope and specifications prescribed in Schedule 1 (*Design and Technical Specifications*);
- (b) the operation, maintenance, renewal and financing of the integrated Facilities during the Operating Period;
- (c) the provision of the Services during the Operating Period;
- (d) the carrying out and financing of Commercial Development; and
- (e) the transfer of the integrated Facilities to the Agency at the Termination Date,

all in accordance with the terms and conditions of this Agreement and all Legal Requirements.

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.

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, rehabilitate, build, test, commission, and decommission the Facilities;
- (c) implement the Project in accordance with the Project Milestone Schedule;
- (d) manage, use, occupy, operate, repair, maintain, decommission and refurbish the Facilities;
- (e) provide and manage the Services;
- (f) carry out Commercial Development upon terms [to be separately agreed with the Agency / described in Schedule 18 (*Commercial Development*)]; and
- (g) bill and collect payment from the Customers for all Services and Commercial Development.

Land Acquisition and Right-of-Way

- (a) The Agency shall be:
 - (i) responsible at its own cost and expense for obtaining all land rights and permanent rights-of-way enumerated in Schedule 8 (*Land Rights*) and required in order to build, rehabilitate, own, and operate the Facilities, including, without limitation, temporary rights-of-way to install and construct the Facilities as detailed in Schedule 8 (*Land Rights*);
 - (ii) make the Project Land available to the Company in accordance with the Phases specified in Schedule 8 (*Land Rights*) [and enabling the Company to comply with the Works Timetable] under a written lease, license, right of use or another form of express grant or disposition, as appropriate, and free from such Liens as to ensure that the Company can carry out the Project and enforce the land rights against all third parties during the term of this Agreement; and

- (iii) ensure the establishment and operation of a road traffic management regime necessary to allow the Company to discharge its obligations under this Agreement.
- (b) The Company shall:
- (i) assist the Agency, using reasonable efforts, to acquire temporary rights-of-way or construction easements which the Company needs for the construction and operation of the Facilities in addition to those that the Agency may have obtained on or before the Effective Date;
 - (ii) be responsible for and bear the costs of the restoration, relocation and reconnection of any utility pipes, cables or other media which may be present on the Project Land;
 - (iii) not erect or permit the erection of any housing, shelter or other structure on the Project Land which is not necessary for the carrying out of the Works;
 - (iv) obtain, at its own risk and cost, any rights over land or other additional facilities outside the Project Land which it considers necessary or expedient for the carrying out of the Works; and
 - (v) immediately notify the Agency if any Project Land is not required for the Project, and transfer possession thereof to the Agency on the date agreed between the parties, and, in the absence of agreement, within [●] Days after receipt by the Agency of the Company's notice.
- (c) The Company shall be responsible, at its sole cost and expense, for obtaining land rights or rights-of-way not included in Schedule 8 (*Land Rights*). The Agency shall exercise its power of eminent domain in the Company's acquisition of such additional land, provided:
- (i) the Company has given to the Agency not less than [●] Days notice of its request;
 - (ii) such additional land right or right-of-way is necessary for the construction or operation of the Facilities and there are no feasible alternatives which do not require the use of powers of compulsory acquisition of the land right or right-of-way in question;
 - (iii) the Company has undertaken, in form and substance satisfactory to the Agency, to pay all of the Agency's costs in that respect, including, but not limited to, filing fees, service of legal processes and documents, professional fees of external counsel to be engaged by the Agency, the amount of the deposit, just compensation, legal interest and other amounts determined by the relevant court or tribunal, the costs of entry into and taking possession of the land in question, the appointment and fees of commissioners, the costs of defending any appeal taken by the

owner of the land in question, and costs relating to the recording of judgment and the transfer of title;

- (iv) the Agency shall be the owner and titleholder of the land rights so acquired;
- (v) the Company shall be entitled to exclusive use and possession of such land rights in the period beginning on the date the Authority becomes legally entitled to enter the land and ending on the Termination Date;
- (vi) the Agency does not make any undertaking, representation, or warranty that the institution of expropriation proceedings will result in a favorable judgment or outcome and the Company acknowledges that there is no legal certainty as to how the court may consider and rule upon the right of the Agency to take possession of the subject land rights, the possible defenses or objections that an owner of the land rights may raise, and the amount of just compensation for the property so taken; and
- (vii) notwithstanding the Agency's exercise of the right of eminent domain and the institution and pendency of any expropriation proceedings, the Company shall not be relieved from its obligations under this Agreement and may still be held to be responsible for delay or a failure to meet any required milestone.

Access to Existing Facilities

After the Effective Date, the Agency shall allow the Company to enter the Project Land, access to the Existing Facilities, including information regarding the Existing Facilities, for purposes of implementing the Works, subject to Section 6.1 (*Operation and Maintenance Responsibilities*).

Consents and Approvals

The Company shall at its own cost be responsible for obtaining all Consents required for the financing, building, construction, rehabilitation, operation, maintenance, and ownership of the Facilities and the Project other than the Consents that the Agency itself is required to secure under Schedule 9 (*Consents*) including all permanent rights-of-way or other land rights described in Section 4.3(a).

CONSTRUCTION, TESTING AND COMMISSIONING

Construction Responsibilities of the Company

The Company shall design, engineer, procure, and construct and rehabilitate the Facilities 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.

Further Responsibilities Related to Construction

For the purpose of performing its obligations under Section 5.1 (*Construction 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 final engineering designs and plans and approving or rejecting the same;
- (c) appointing and removing consultants and professional advisors;
- (d) purchasing and installing the Facilities;
- (e) hiring, organizing, removing and directing staff to manage and supervise the Project;
- (f) entering into contracts for the supply of materials, equipment and services including the connection to all utilities needed during construction and operation at the Site;
- (g) taking the necessary measures to protect people and property, avoid unnecessary interference caused by people and vehicles, minimize traffic, prevent any nuisance and unreasonable noise and disturbance, and ensure that emissions, discharges, and effluents from the Company's construction activities comply with all Legal Requirements; and
- (h) doing all other things necessary or desirable for the timely completion of the Facilities.

Warranties on Design and Construction

5.3.1 General Warranties

The Company expressly warrants that the design and construction of the Facilities including the works to be performed by the EPC Contractor and its subcontractors will conform to the Design and Technical Specifications in all respects and will be free from defects and deficiencies.

5.3.2 Duration

The Company's warranties under this Section 5.3 (*Warranties on Design and Construction*) shall commence on the Effective Date and shall extend for a period of two (2) years after the Operations Start Date. If repairs or replacements are made by the Company to rectify any defects found during the original warranty period, the part repaired or replaced will be covered by the same warranty but with a new two (2)-year warranty period starting on the date that part has been retested and commissioned, and accepted by the Agency.

5.3.3 Breach

The Agency will notify the Company of any breach of the general warranties referred to in Section 5.3.1 (*General Warranties*) 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 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 (*Warranties on Design and Construction*) 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 general warranty.

Independent Verifier

5.4.1 Role

The Parties shall appoint an independent verifier with the appropriate national or international standing having not less than [ten (10) years] relevant experience in the planning, design, development, rehabilitation, construction, and operation of similar projects (the "*Independent Verifier*"), to review proposals for the preparation of and changes to the detailed engineering design and plans to be submitted by the Company to the Agency pursuant to Section 5.5 (*Design, Drawings and Other Documents*), and to monitor and check the state and progress of the Works.

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 comprised of an equal

number of representatives from the Agency and the Company shall evaluate the proposals.

- (d) The candidate submitting the most responsive proposal shall be selected as the Independent Verifier for the Project. The Parties shall execute an appointment letter in substantially the form provided in Schedule 12 (*Independent Verifier Appointment Letter*).
- (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 19 (*Dispute Resolution*).

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 detailed engineering designs and plans meet the Design and Technical Specifications;
- (b) monitoring, inspection and verification of the state and progress of rehabilitation and construction including the performance by the Agency of its construction-related obligations 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 Cost

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

Design, Drawings and Other Documents

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 engineering designs and plans in respect of the Works not later than **[[●] Days** prior to the Required Continuous Construction Date/each date required in the Design Timetable]. These main drawings and technical plans shall include the following:

- (a) final drawings for the general layout of the Works including permanent access roads;

- (b) general and detailed drawings of the New Facilities and the Existing Facilities to be rehabilitated, including all ancillary facilities, structures and civil works;
- (c) final arrangements of plans for the general layout of machineries and equipment;
- (d) an explanation, in such detail as is necessary and expedient for the Agency to fully understand the detailed engineering designs and plans, and how it complies with the Design and Technical Specifications, Prudent Industry Practice and Consents; and
- (e) test procedures that meet the requirements for testing and commissioning provided in Schedule 13 (*Testing and Commissioning*).

5.5.2 Review and Comment

- (a) The Agency may, but shall have no obligation to, raise comments or questions on any of the documents submitted in line with this Section 5.5 (*Design, Drawings and Other Documents*) within [●] Days from their submission, provided that such comments or questions relate to compliance of the documents with the Design and Technical Specifications [and Design Timetable], including Prudent Utility Practice and other engineering and design requirements of this Agreement. Following the receipt of written comments or questions, the Company shall modify the documents and submit the revised documents to the Agency within [●] Days for its final review.
- (b) If the Agency does not have any or further comments, it shall give written notice to the Company of its acceptance of the detailed engineering designs and plans. If no written comment is received by the Company on the original or modified design plans within the prescribed periods, the Agency shall be deemed to have accepted the detailed engineering designs and plans.

5.5.3 Changes after Acceptance

- (a) If the Agency wishes to change the detailed engineering designs and plans after acceptance is given pursuant to Section 5.5.2(b) (*Review and Comment*):
 - (i) the Agency shall submit to the Company a written notice of the proposed changes and reasons for the same;
 - (ii) the Company shall respond in writing within [●] Days from receipt of the notice and specify its estimate of the financial consequences of the proposed change, and the impact on the Project Milestone Schedule [, Design Timetable and Works Timetable];
 - (iii) the change shall be made only if (A) the Agency has agreed in writing to bear the financial consequences thereof and grant any necessary extension of the applicable part of the Project Milestone Schedule[, Design Timetable and Works Timetable], as applicable; and (B) the change complies with Design and Technical Specifications, including Prudent

Utility Practice or the other engineering and design requirements of this Agreement.

- (b) If the Company wishes to change the detailed engineering designs and plans after acceptance is given by the Agency pursuant to Section 5.5.2(b) (*Review and Comment*):
- (i) The Company shall submit to the Agency a written notice of the proposed changes, reasons for the same, the extent to which it complies with Design and Technical Specifications, its estimate of the financial consequences of the proposed change, and the impact on the Project Milestone Schedule[, Design Timetable and Works Timetable].
 - (ii) The Company shall be entitled to make the proposed changes, at its own cost, if such changes do not, or are not likely to, have a material adverse effect on the cost or quality of the Works, or the Project Milestone Schedule[, Design Timetable and Works Timetable, as applicable]; provided, that notice to that effect is given to the Agency.
 - (iii) The Agency may reject the proposed changes if such changes have, or are likely to have, a material adverse effect on the cost or quality of the Works, or the Project Milestone Schedule[, Design Timetable or Works Timetable]. The Agency shall not have the option to reject the proposed changes if (A) the Company undertakes to bear the financial consequences of the change including the consequences of any delay (such as liquidated damages); (B) the proposed changes do not contemplate a delay in the commencement of the Services later than the Required Operations Start Date; (C) the Company provides the Agency with assurances or security for such obligations upon terms, and from a person, reasonably acceptable to the Agency; and (D) the changes do not breach the Design and Technical Specifications, Prudent Utility Practice and other engineering and design requirements of this Agreement.
- (c) The Party proposing to change the detailed engineering designs and plans shall send a copy of the notice described in Section 5.5.3(a)(i) and Section 5.5.3(b) to the Independent Verifier at the same time as it sends the proposal to the other Party, and shall ensure that the Independent Verifier receives copies of all other papers and communications in that respect.

5.5.4 Involvement of Independent Verifier

The Independent Verifier shall be fully engaged by the Parties in the review, evaluation and analysis of the detailed engineering designs and plans to ensure that they comply with the Design and Technical Specifications [and Design Timetable]. The Company shall consider the findings of the Independent Verifier in any revision of the documents 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.

5.5.5 Disclaimer

The submission of design plans for comment and the review by the Agency of such plans shall not constitute an approval or a warranty on its part of the technical soundness of the detailed engineering design done by the Company. The Company acknowledges that the Agency does not assume any responsibility for the engineering or construction soundness, safety, or reliability of any part of the 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 (*Design, Drawings and Other Documents*).

Testing and Commissioning

5.6.1 Testing Procedure; Provisional Acceptance

- (a) The Company shall carry out the testing and commissioning of the Facilities at its cost in accordance with Schedule 13 (*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 the Facilities.
- (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 the Facilities have satisfied the applicable commissioning and acceptance standards provided in Schedule 13 (*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 Facilities fully meet the commissioning and acceptance standards, the Agency shall issue a provisional acceptance certificate in favor the Company within five (5) Business Days from the receipt of such certification.
- (d) If the Independent Verifier certifies that the Facilities do not fully meet the commissioning and acceptance standards, it shall issue a report to the Parties detailing the reasons why the Facilities do not comply with the commissioning and acceptance standards and specifying the actions that the Company must take to meet such standards. Notwithstanding the assessment made by the Independent Verifier, the Company shall be solely responsible for the engineering or construction soundness, safety, or reliability of the Facilities.

- (e) The Company shall immediately take the remedial actions necessary to ensure that the Facilities meet the commissioning and acceptance standards taking into account the report of the Independent Verifier, 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 acceptance certificate has been issued.
- (f) If the Company fails to satisfactorily take remedial actions as specified in the report, the Agency shall be entitled, upon reasonable notice to the Company, to take the necessary remedial actions. The Agency shall be entitled to require the Company to promptly reimburse the reasonable costs, or to enforce the Performance Security.
- (g) If the Company fails to obtain a provisional acceptance certificate on or before the Required Provisional Operations Start Date, such failure shall constitute a Delay and a Company Event of Default.

5.6.2 Final Acceptance

If the Facilities meet the Service Quality Requirements for a period of six (6) months from the Provisional Operations Start Date as certified by the Independent Verifier, the Agency shall issue a final acceptance certificate and the Facilities shall thereafter be operated by the Company in accordance with the Operating Procedures and Service Quality Requirements.

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 7 (*Form of Performance Security*) as security for the performance by the Company of its obligations under this Agreement from the Signature Date until the Provisional Operations Start Date (the "**Performance Security**"), including:
 - (i) Delay resulting from the acquisition of additional Land Rights as provided in Section 4.3(c)(vii) (*Land Acquisition and Right-of-Way*);
 - (ii) failure to comply with the Design and Technical Specifications, unless the failure was due to a change in the detailed engineering designs and plans at the instance of the Agency pursuant to Section 5.5.3(a) (*Changes after Acceptance*) after acceptance has been given;
 - (iii) failure to implement the detailed engineering designs and plans, including integration between the Existing Facilities and New Facilities, unless the failure was due to a change in the engineering designs and plans at the instance of the Agency after acceptance has been given pursuant to Section 5.5.3(a) (*Changes after Acceptance*); or

- (iv) Delay Liquidated Damages under Section 5.8 (*Liquidated Damages for Delay*).
- (b) 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.
- (c) The Performance Security shall be reduced proportionately as each Project Milestone is completed following Schedule 5 (*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 provisional acceptance certificate is issued but only after submitting an Operating Security in exchange pursuant to Section 6.3 (*Operating Security*).

Liquidated Damages for Delay

5.8.1 Occurrence of Delay

If an event occurs that delays the Company:

- (f) in completing the detailed engineering designs and plans as required in Section 5.5 (*Design, Drawings and Other Documents*) [and the Design Timetable];
- (g) in completing the Works in accordance with the Schedule 1 (*Design and Technical Specifications*)[and Schedule 6 (*Works Timetable*)]; or
- (h) in meeting any of the Project Milestones,

(each, a “**Delay**”), the Company shall forthwith provide written notice to the Agency of the occurrence and cause of the Delay, its estimate of the financial consequences of the Delay, impact on the Project Milestone Schedule[, Design Timetable and Works Timetable] and actions taken or proposed to be taken to mitigate the effects of the Delay.

5.8.2 Delay Liquidated Damages

- (a) Except as provided in this Section 5.8.2 and 5.9.2 (*Extension of Project Milestone Schedule*), or when the Delay is caused without justifiable reason by the intervention of the Agency or Government Authority, the Company shall pay the Agency Delay Liquidated Damages for the following Delays and in the following amounts:
 - (i) If the Effective Date does not occur on or before the Required Effective Date, the Company shall pay the Agency Delay Liquidated Damages in the total amount of the Performance Security as provided in Section 16.2(a) (*Limitation of Liability for Liquidated Damages*).
 - (ii) Subject to the limit provided in Section 16.2(b) (*Limitation of Liability for Liquidated Damages*), if the Continuous Construction Date does not occur

on or before the Required Continuous Construction Date, the Company shall pay the Agency Delay Liquidated Damages in the amount of [●] for each Day of delay from the Day immediately following the Required Continuous Construction Date to and including the Day on which the Continuous Construction Date occurs.

- (iii) Subject to the limit provided in Section 16.2(b) (*Limitation of Liability for Liquidated Damages*), if the Provisional Operations Start Date does not occur on or before the Required Provisional Operations Start Date, the Company shall pay the Agency Delay Liquidated Damages in the amount of [●] for each Day of delay from the Day immediately following the Required Provisional Operations Start Date to and including the Day on which the Provisional Operations Start Date occurs.
 - (iv) Subject to the limit provided in Section 16.2(b) (*Limitation of Liability for Liquidated Damages*), if the Operations Start Date does not occur on or before the Required Operations Start Date, the Company shall pay the Agency Delay Liquidated Damages in the amount of [●] for each Day of delay from the Day immediately following the Required Operations Start Date to and including the Day on which the Operations Start Date occurs.
 - (v) If the Delay occurs in relation to the submission of detailed engineering designs and plans[or the requirements of the Design Timetable or the Works Timetable], the Company shall pay the Agency Delay Liquidated Damages in the amount of [●] for each Day of Delay.
- (b) The Agency shall claim payment of Delay Liquidated Damages accruing under Section 5.8.2(a) (*Delay Liquidated Damages*) 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.

Project Milestone Schedule

5.9.1 Compliance with Project Milestone Schedule

The Company undertakes to complete the Works in accordance with the Project Milestone Schedule, as they may be amended in line with Section 5.9.2 (*Extension of Project Milestone Schedule*) below. To meet the timetable, the Company shall cause the EPC Contractor to immediately commence the Works when the Effective Date occurs.

5.9.2 Extension of Project Milestone Schedule

- (a) Dates in the Project Milestone Schedule [or Works Timetable] 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;
 - (iii) a change in the detailed engineering designs and plans reasonably proposed by the Agency as described in Section 5.5.3(a) (*Changes after Acceptance*);
 - (iv) failure, after due diligence, of the Agency to obtain the Consents from the relevant Local Government Units as described in Schedule 9 (*Consents*);
 - (v) 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 and proximately prevents the Company from meeting 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; or
 - (vi) in case of discovered articles described in Section 5.10 (*Discovered Heritage Resources*).
- (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).
- (c) The Company shall take all reasonable action necessary or expedient to mitigate the consequences of the delay and resume performance of its obligations under this Agreement as soon as practicable.

Discovered Heritage Resources

If the Company, the EPC Contractor or any subcontractor finds any fossil, antiquity or other object having artistic, cultural, historic or monetary value or importance

discovered on the Site during construction, the Company shall promptly notify the Agency of such discovery and shall take all reasonable steps (including temporary stoppage of work) to prevent its loss or damage. The Company shall also consult with the Agency before incurring any substantial cost in relation to the discovered articles. If the Project Milestone Schedule is affected as a result of any direction given by the Agency, then the Project Milestone Schedule shall be equitably extended. The Company shall be reimbursed for any additional costs reasonably incurred in order to prevent the loss, removal or damage of the discovered articles.

Financing of Project

5.11.1 Percentage Shares and Contribution of the Agency

The cost of the Works shall be borne by the Parties in the following proportions:

- (a) by the Agency - [●] per cent; and
- (b) by the Company - [●] per cent.

The Agency shall contribute towards the financing of the Works in accordance with Schedule 4 (*Government Works Funding Arrangement*).⁴

5.11.2 Cost Overruns

Increases in the costs of carrying out the Works shall be governed by this Section 5.11.2 (*Cost Overruns*).

- (a) If the costs of carrying out the Works increased because of the occurrence of a Force Majeure Event, that increase shall:
 - (i) be met by the application of the proceeds of any Insurance; or
 - (ii) if the Insurance do not cover the increased cost in full and the parties fail within [one hundred eighty (180)] Days of notice by one party to the other to agree on a suitable amendment to the applicable Project Documents, either party may terminate this Agreement by giving the other party [sixty (60)] Days prior notice.
- (b) If the costs of carrying out the Works increased by reason of a breach of this Agreement on the part of the Agency, the financial and other consequences of that breach shall be borne by the Agency.
- (c) If the costs of carrying out the Works increased by reason of a breach of this Agreement on the part of the Company, the financial and other consequences of that breach shall be borne by the Company.

⁴ Delete if the Project will be financed entirely by the Company.

- (d) If the costs of carrying out the Works increased by reason of a change in the detailed engineering designs and plans proposed by the Agency, the Agency shall bear the financial and other consequences.
- (e) If the costs of carrying out the Works increased by reason of a change in the detailed engineering designs and plans proposed by the Company, the Company shall bear the financial and other consequences.
- (f) If the costs of carrying out the Works increased by any other reason, the financial and other consequences of that occurrence shall be borne by the Agency and the Company in proportion to their respective contributions specified in Section 5.11.1 (*Contribution of the Agency*).

Importation of Equipment and Materials

The Company shall be responsible for importing equipment and materials necessary to carry out the Works and the clearance of such equipment and materials through customs in the Republic of the Philippines.

OPERATION AND MAINTENANCE

Operation and Maintenance Responsibilities

- (a) Before the Provisional Operations Start Date, the Agency shall continue to operate and maintain the Existing Facilities in the same manner and based on the standards as at Signature Date; provided, that the Agency shall consult with the Company before taking any decision which may or may be likely to have a material adverse effect on the Existing Facilities or the Project. The Agency shall transfer possession of the Existing Facilities to the Company on the Provisional Operations Start Date in the physical condition described in Section 1.2 (*Requirements of Existing Facilities as of Operations Start Date*) of Schedule 1 (*Design and Technical Specifications*). Thereafter, responsibility for the operation and maintenance of the Existing Facilities in accordance with all Legal Requirements, Prudent Utility Practice, and the Operating Procedures and Service Quality Requirements, shall transfer to the Company.
- (b) The Company shall be responsible for the management, operation, maintenance, safety and repair of the New Facilities from the Provisional Operations Start Date until the Termination Date and shall ensure during such period that the Facilities operate in accordance with all Legal Requirements, Prudent Utility Practice, and the Operating Procedures and Service Quality Requirements.
- (c) If the Company fails to operate, maintain, repair and renew the Facilities in accordance with Legal Requirements, Prudent Utility Practice, and the Operating Procedures and Service Quality Requirements, the failure shall constitute a Company Event of Default and the Agency shall be entitled to impose a penalty in the manner provided in Schedule 15 (*Service Quality Requirements*).

Operating Procedures

6.2.1 Submission of Operating and Maintenance Procedures

- (a) The Company shall devise and implement Operating Procedures for the Facilities consistent with Prudent Utility Practice that incorporate the operating and maintenance procedures specified or recommended by equipment suppliers and manufacturers and that will enable the Company to comply with Schedule 14 (*Operating Procedures*) and Schedule 15 (*Service Quality Requirements*).
- (b) The Company shall submit the Operating Procedures to the Agency not later than one hundred eighty (180) Days before the expected Provisional Operations Start Date. The Agency shall review and may comment on the Operating Procedures following the same steps provided in Section 5.5.2 (*Review and Comment*).
- (c) No later than one hundred eighty (180) Days before the earlier of the Required Operations Start Date and Operations Start Date:
 - (i) and every twelve months thereafter, the Company shall prepare and deliver to the Agency an operating plan containing its business plan for the next twelve months, its organizational and management structure (and of its subcontractor, as applicable), and its detailed plans for operation, maintenance and renewal of the Facilities, provision of Services and handling of and recovery from operations disruptions; and
 - (ii) the Company shall prepare and deliver to the Agency detailed manuals for the maintenance, repair and renewal of the railway vehicles, stations, tracks and other components of the Facilities in accordance with Prudent Industry Practice, relevant Consents and the requirements of this Agreement. The Company shall consult the Authority in preparing the manuals and shall take into consideration the Authority's comments.
- (d) If the Agency wishes to change the Operating Procedures for the Facilities after acceptance is given pursuant to this Section 6.2.1 (*Submission of Operating and Maintenance Procedures*):
 - (i) the Agency shall submit to the Company a written notice of the proposed changes and reasons therefor;
 - (ii) the Company shall respond in writing within [●] Days from receipt of the notice and specify its estimate of the financial consequences of the proposed change, and the impact on the Project Milestone Schedule;
 - (iii) the change shall be made only if (A) the Agency has agreed in writing to bear the financial consequences thereof and grant any necessary extension of the applicable part of the Project Milestone Schedule; and (B) that the change complies with the Service Quality Requirements,

Prudent Utility Practice, and operating and maintenance procedures specified or recommended by equipment suppliers and manufacturers and that will enable the Company to comply with Schedule 14 (*Operating Procedures*).

- (e) If the Company wishes to change the Operating Procedures for the Facilities after acceptance is given by the Agency pursuant to Section 6.2.1 (*Submission of Operating and Maintenance Procedures*):
 - (i) the Company shall submit to the Agency a written notice of the proposed changes, reasons therefor, the extent to which it complies with the Service Quality Requirements, Prudent Utility Practice, and operating and maintenance procedures specified or recommended by equipment suppliers and manufacturers, its estimate of the financial consequences of the proposed change, and the impact on the Project Milestone Schedule[, Design Timetable and Works Timetable].
 - (iv) the Company shall be entitled to make the proposed changes, at its own cost, if such changes do not, or are not likely to, have a material adverse effect on the cost or quality of the Works, or the Project Milestone Schedule[, Design Timetable or Works Timetable]; provided, that notice to that effect is given to the Agency.
 - (v) the Agency may reject the proposed changes if such changes have, or are likely to have, a material adverse effect on the cost or quality of the Works, or the Project Milestone Schedule[, Design Timetable or Works Timetable]. The Agency shall not have the option to reject the proposed changes if (A) the Company undertakes to bear the financial consequences of the change including the consequences of any delay (such as liquidated damages); (B) the proposed changes do not contemplate a delay in the commencement of the Services later than the Required Operations Start Date; (C) the Company provides the Agency with assurances or security for such obligations upon terms, and from a person, reasonably acceptable to the Agency; and (D) the changes do not breach the Design and Technical Specifications, Service Quality Requirements, Prudent Utility Practice and other requirements of this Agreement.
- (f) The Party proposing to change the Operating Procedures for the Facilities shall send a copy of the notice described in Section 6.2.1(d)(i) and 6.2.1(e)(i) to the Independent Verifier at the same time as it sends the proposal to the other Party, and shall ensure that the Independent Verifier receives copies of all other papers and communications in that respect.

6.2.2 Disclaimer – Operating Procedures

The review or approval by the Agency of the Operating Procedures for the Facilities 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 the Operating Procedures.

Operating Security

- (a) Within five (5) Days from the Operations Start Date, the Company shall provide and deliver to the Agency a surety bond callable on demand in the form set out in Schedule 7 (*Form of Performance Security*) as security for the performance by the Company of all of its obligations under this Agreement from the Provisional Operations Start Date until the Termination Date (the “**Operating Security**”), including:
 - (i) failure of the Company to comply with the Operating Procedures for the Facilities unless the failure results from a change in the Operating Procedures after approval at the instance of the Agency pursuant to Section 6.2.1(d); or
 - (ii) failure of the Company to comply with the Service Quality Requirements in Schedule 15 (*Service Quality Requirements*).
- (b) The Operating Security shall have a value equivalent to [●] 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.

Company Staff

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 provide the Services are on duty at the Facilities in accordance with Prudent Utility Practice and the Operating Procedures.

Planned Downtime; Maintenance Program and Schedule

- (a) The Company shall conduct all regularly scheduled maintenance of the 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 Operations Start Date), a maintenance plan and schedule (“**Maintenance Schedule**”) for the Facilities for that Contract Year. The Maintenance Schedule for a Contract Year shall indicate:
 - (i) 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), which shall not exceed [●] hours during any Contract Year; and

- (ii) in relation to the Facilities, a register of all properties necessary for the Project over which the Agency has a legal interest (through ownership, lease or otherwise), including such information on the existence of the assets, their condition, capacity and capability as are necessary to determine proper maintenance, replacement or enhancement of the assets (**“Asset Register”**).
- (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 shall use reasonable effort to minimize disruption to the provision of Services during the Planned Downtime.

Unplanned Downtime

- (a) 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 delivery of the Services 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.
- (b) The Company shall use reasonable effort to minimize disruption to the provision of Services during Unplanned Downtime.

Parties to Cooperate

The Parties shall establish appropriate cooperative arrangements to ensure the efficient and economic operation, maintenance, repair and renewal of the Facilities, including real-time exchange of information relating to the operation of the Facilities.

SUPPLY OF SERVICES

Supply and Delivery of Services

The Company shall, at its cost and in compliance with the Service Quality Requirements, perform and deliver the following Services relating to the Facilities

from the Provisional Operations Start Date and for the duration of the Operating Period:

- (a) operate the railway vehicles;
- (b) provide information reasonably required by passengers regarding the operation of the Facilities, including the times of arrival and departure of trains at origin and destination and at every intermediate stopping point;
- (c) control of passengers and other persons on the Facilities in normal, degraded and emergency operations; and
- (d) provide services relating to the operation of a station, such as providing access to and egress from trains which stop at the station, including the provision of elevators and escalators, facilities and services for the purchase and issue of tickets, and reasonable levels of personal security for passengers .

Service Level and Quality

The Company shall operate the Facilities and provide the Services in accordance with the Operating Procedures and the Service Quality Requirements. If the Company fails to operate the Facilities in line with the prescribed procedures and service level requirements set in this Agreement, the Agency shall be entitled to impose a penalty provided for in Schedule 15 (*Service Quality Requirements*) and may enforce payment through the Operating Security if the Company is unable to pay the penalty when due.

Quality Assessment

The Company shall implement a quality assessment and management system which meets the requirements of Prudent Utility Practice and any other applicable standards to ensure that the delivery of Services satisfies all Service Quality Requirements.

Changes to Service Quality Requirements

- (i) Either Party may propose a change to the Service Quality Requirements provided that the proposal is made during the [●] year of the Operating Period and it is done for the purpose of reflecting improvements in railway technology or operational policies or practices (including signaling and communications, and asset management) which are generally regarded by railway operators and regulatory authorities in advanced railway jurisdictions as appropriate for operators to have to make.
- (j) If the Agency wishes to change the Service Quality Requirements, the Agency shall submit a notice to the Company specifying the proposed changes to the Service Quality Requirements it proposes and the reasons therefor:

- (i) The Company shall respond in writing within [●] Days from receipt of the notice and specify its estimate of the financial consequences of the proposed change, and its estimated impact on the revenues and the ability of the Company to repay amounts outstanding under the Financing Agreements.
 - (ii) The change shall be made only if (A) the Agency has agreed in writing to bear the financial consequences of the proposed changes to the revenue or the Company's ability to repay amounts outstanding under the Financing Agreements, or both; and (B) the proposed changes do not breach Prudent Utility Practice, Legal Requirements, Consents and other Service requirements under this Agreement.
- (k) If the Company wishes to change the Service Level Requirements, the Company shall submit to the Agency a written notice of the proposed changes, reasons therefor, and its estimate of the financial consequences of the proposed change.
- (i) The Company shall be entitled to make the proposed changes if such changes (A) do not, or are not likely to, have a material adverse effect on the revenues, or the ability of the Company to repay amounts outstanding under the Financing Agreements [or on the ability of the Agency to repay amounts outstanding under its Financing Agreements]; and (B) do not breach Prudent Utility Practice, Legal Requirements, Consents and other Service requirements under this Agreement.
 - (ii) The Agency may, by notice to the Company, reject the proposed changes if such changes have, or are likely to have, a material adverse effect on the revenues, or the ability of the Company to repay amounts outstanding under the Financing Agreements [or on the ability of the Agency to repay amounts outstanding under its Financing Agreements].
- (l) The Party proposing to change the Service Level Requirements shall send a copy of the notice described in Section 7.4(b) or 7.4(c) to the Independent Verifier at the same time as it sends the proposal to the other Party, and shall ensure that the Independent Verifier receives copies of all other papers and communications in that respect.

REVENUES AND PAYMENTS

Revenues

8.1.1 Company Revenue

The revenues of the Company ("**Company Revenue**") shall consist of:

- (a) [●%] of amounts collected as Fare, except those accruing prior to the Provisional Operations Start Date;

- (b) [●%] of amounts collected from Commercial Development [up to a threshold amount]; and
- (c) [●%] of amounts collected from Commercial Development exceeding the threshold amount.

8.1.2 Application of Company Revenue

Subject to the Financing Agreements, the Company shall apply the Company Revenue in the following order of priority:

- (a) all costs and expenses of an operational or administrative nature incurred by the Company in connection with the operation of the Facilities;
- (b) all costs and expenses of an operational or administrative nature incurred by the Company in connection with the maintenance or renewal of the Facilities;
- (c) applicable Taxes;
- (d) amounts due under the Financing Agreement;
- (e) the Concession Fee;
- (f) maintenance reserve account established and operated by the Company pursuant to the terms of the Financing Agreements; and
- (g) distributions (dividends).

8.1.3 Agency Revenue

- (a) The Company shall pay monthly Revenues due to the Agency (“**Agency Revenue**”) equivalent to:
 - (i) 100% of the amounts collected as Fare until Provisional Operations Start Date;
 - (ii) [●%] of the amounts collected as Fare after the Provisional Operations Start Date;
 - (iii) [●%] of amounts collected from Commercial Development [up to a threshold amount]; and
 - (iv) [●%] of amounts collected from Commercial Development exceeding the threshold amount.
- (b) At the end of each Billing Month, the Agency shall submit to the Company an invoice in the form set out in Schedule 20 (*Form of Invoice*) showing the computation for the Agency Revenue and stating the total amount due and payable to the Agency for the previous Billing Month.

Fares

The terms and conditions relating to Fares are in Schedule 17 (*Fares*).

Commercial Development

- (m) Payments collected from Commercial Development include payments by way of rent, license fee or otherwise from shops, stalls and other outlets at the stations, or advertising within the Facilities.
- (n) In relation to Section 8.1.1(b) and (c) (*Company Revenue*) and Section 8.1.3(a)(iii) and (iv) (*Agency Revenue*), the threshold amount for payments collected from Commercial Development is equivalent to [[●]% of the amount collected from Commercial Development/to be separately agreed between the Agency and the Company].

Concession Fees

- (o) The Company shall pay the Concession Fee to the Authority annually on the [●] Business Day after the end of the Contract Year in respect of which it is calculated. The Concession Fee is calculated in accordance with Schedule 19 (*Concession Fee*).
- (p) The Company shall provide to the Agency all information relating to Ridership Levels in accordance with Section 9 (*Contract Management, Monitoring and Evaluation*).
- (q) At the end of each Contract Year, the Agency shall submit to the Company an invoice in the form set out in Schedule 20 (*Form of Invoice*) showing the computation for the Concession Fee and stating the total amount due and payable to the Agency for the previous Contract Year.

Payment Terms

The Company shall pay the amount due in each invoice within (30) Days after the date of receipt by the Company of such invoice. If the last day for payment is not a Business Day, then payment shall be made on the next Business Day.

Manner of Payment

All sums payable by the Company 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 Metro Manila, Philippines to be specified in writing by the Agency to the Company.

Value-added Tax

Any value-added tax on the sale of the Services shall be borne by the Company and shall be separately stated in the invoices.

No Set-Off or Deductions

All payments made by the Company 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.

Penalty for Late Payment

Any amount due which is not paid within the period indicated in this Section 8 shall bear interest at the Penalty Rate from the due date until payment is received by the Agency.

Disputed Invoices

- (a) If the Company disputes an amount or a computation in an Agency invoice, the Company shall: (i) send a written notice to the Agency 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 Agency of the Company's notice following the steps for the settlement of disputes provided in Section 19 (*Dispute Resolution*). If the dispute is resolved in the Agency's favor, then the amount disputed shall bear interest at the Penalty Rate from the original due date until payment is received by the Agency.

CONTRACT MANAGEMENT, MONITORING AND EVALUATION

9.1 Contract Management Body

Within five (5) Business Days after the Signature Date, each Party shall form a contract management body within its organization, either through the appointment of a contract manager or the creation of a contract management unit, which shall be primarily responsible for monitoring, managing and evaluating the 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.

9.2 Project Report

- (r) Within fifteen (15) Business Days from receipt of the notice referred to in Section 9.1, 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.
- (s) The Parties shall ensure that the Project Report will have the following basic information:
- (i) performance indicators to determine the Company's compliance with its obligations under the Agreement;
 - (ii) 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.
- (t) In addition, the Company shall submit and comply with all other reporting requirements provided in Schedule 16 (*Reports*).

9.3 Regular Meetings

The Contract Management Body of the Parties shall meet once a month or more frequently if necessary in order to discuss the progress of the Project, including but not limited to the following:

- (a) the indicators and information reported using the Project Report;
- (b) any problems or issues in the implementation of the Project and solutions to the same, including preventive or remedial actions which should be taken when the agreed outputs or costs of the Project deviate from their expected values;
- (c) methods for managing significant Project risks; and

- (d) lessons learned from the monitoring and management of the Project and, based on such lessons, the necessary adjustments that can be made in the implementation of the Project in order to improve Project outcomes.

9.4 Right of Agency to Monitor

- (a) The Agency shall be entitled to inspect, check, test and monitor the Project and the Facilities during the construction period and the Operating Period. The purpose of such monitoring shall be to determine whether the Facilities are being designed, rehabilitated, constructed, integrated, tested, commissioned, operated and maintained in accordance with the terms of this Agreement.
- (b) The Company shall allow the Agency, 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 delivery of the Services 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 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 Facilities inaccessible; and
 - (iii) promptly correct any deficiency identified by the Agency or its agent during such Service inspection.

INSURANCE

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 11 (*Insurance*) and required by the Legal Requirements, the Financing Agreements, 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 11

(*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.

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.

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.

Application of Insurance Proceeds

10.4.1 Loss While the Financing Agreements are Effective

If all or a portion of the 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.

10.4.2 Loss After the Financing Agreements Have Expired

If after the expiration of the Financing Agreements all or a portion of the 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 Facilities can be rebuilt, repaired, and restored to permit operation on a commercially viable basis and the insurance proceeds are sufficient to restore such Facilities, then all the proceeds shall be applied toward the cost of rebuilding, repairing, and/or restoring the Facilities.
- (b) If the Company determines that the Facilities cannot be rebuilt or can only be partially rebuilt, repaired, and restored or that the insurance proceeds are insufficient to restore such Facilities, then either Party may elect to terminate this Agreement in accordance with Section 20.2.3 (*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.

REPRESENTATIONS AND WARRANTIES

Representations and Warranties of Each Party

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

11.1.1 Corporate Existence and Authority

It is a corporation duly organized and validly existing under the laws of [●] and it has all requisite legal power, authority and Consents to conduct its business, to own its properties, and to execute, deliver and implement this Agreement and the Project Agreements, as applicable.

11.1.2 Consents

All Consents required to authorize the execution, delivery, and performance of this Agreement and each of the Project Agreements, as applicable, have been obtained and are in full force and effect except for those Consents and approvals identified in Schedule 9 (*Consents*) that the Parties have agreed to obtain at a later time.

11.1.3 Non-contravention of Legal Requirements

The execution, delivery, and performance of this Agreement or any of the Project Agreements, as applicable, do not conflict with any Legal Requirements applicable to such Party, or obliges it to create a security or is likely to result in the creation of any security other than pursuant to the terms of the Financing Agreements.

11.1.4 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.

11.1.5 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.

11.1.6 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.

11.2 Continuing Representations and Warranties

The representations and warranties in Section 11.1 (*Representations and Warranties of Each Party*) 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 Section 11.1 (*Representations and Warranties of Each Party*) ceases to be true in any material respect.

COVENANTS

Company Covenants

12.1.1 Conduct of Company

The Company shall exercise complete control over its employees, contractors and subcontractors and require them to comply with this Agreement, all applicable 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.

12.1.2 Compliance with Legal Requirements and Consents

The Company shall comply with all 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.

12.1.3 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 Lien permitted to be granted by the Company to such Lenders pursuant to Section 18.2 (*Permitted Assignment to Lenders*) of this Agreement.

12.1.4 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.

12.1.5 Company's Employees

- (a) The Company shall employ qualified Philippine citizens to the maximum extent possible. The Company shall cause its EPC Contractor to do the same.
- (b) 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.
- (c) The Company shall implement education and training programs designed to upgrade the skills of its employees with a view to bringing the skills of such employees to international standards in accordance with Prudent Utility Practice.

12.1.6 Disposals

- (a) The Company shall not dispose of any of its assets or the Agency's assets except for:
 - (i) disposal on an arm's length basis and on commercial terms of obsolete equipment which in the reasonable opinion of the Independent Verifier are no longer required for the purpose of the Project;
 - (ii) disposal of assets which are replaced by items of equivalent or better quality in accordance with the maintenance, renewal or replacement obligations of the Company under this Agreement;
 - (iii) disposal of assets expressly contemplated by this Agreement;
 - (iv) payment of money in accordance with this Agreement or the other Project Agreements, or otherwise as consideration for the acquisition of assets, or the receipt of services required for the implementation of the

Project, on arm's length terms and subject to any restrictions imposed pursuant to this Agreement or the other Project Documents; and

(v) distributions made in accordance with the restrictions and conditions specified for the purposes of this Agreement in the Financing Agreements.

(b) The proceeds of disposal of any of the Agency's assets shall be immediately paid over to the Agency. All disposals must also comply with all relevant Legal Requirements, in particular, the applicable government auditing, accounting and asset disposal laws, rules and regulations.

12.1.7 Negative pledge

The Company shall not create any Lien over any part of the Project assets other than in favor of Lenders to secure indebtedness under the Financing Agreements.

12.1.8 Acquisitions

The Company shall not acquire any assets other than assets required to enable it to carry out the Project.

12.1.9 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 12.6 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.

12.1.10 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 arm's 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.

12.2 Agency Covenant

The Agency shall not permit the construction or operation of competitive land transport services in accordance with Schedule 22 (*Competitive Land Transport System*).

13 FORCE MAJEURE

13.1 Force Majeure Events

13.1.1 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 13.2.1 (*Notice of Force Majeure Event*).

13.1.2 Political Force Majeure Event

Subject to Section 13.1.1 (*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; 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.

13.1.3 Non-Political Force Majeure Event

Subject to Section 13.1.1 (*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 13.1.1 (*Definition of Force Majeure Event*).

13.2 Responsibilities of the Parties during Force Majeure Event

13.2.1 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 13 (*Force Majeure*) 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 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.

13.2.2 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.

13.2.3 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.

13.3 Effect of Force Majeure Events

13.3.1 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 13.3.1 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 13.3.1 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).

13.3.2 Force Majeure Events Prior to Provisional Operations Start Date

If a Force Majeure Event occurs prior to the Provisional Operations Start 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 13.2.1 (*Notice of Force Majeure Event*), 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 Operations Start Date or other affected Project Milestones within a period of sixty (60) Days after the giving of the notice

required in Section 13.2.1 (*Notice of Force Majeure Event*), 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.

13.3.3 Force Majeure Events on or After Provisional Operations Start Date

If a Force Majeure Event occurs on or after the Provisional Operations Start Date, the Operations Start Date may be equitably extended upon written agreement of the Parties. If the Parties are unable to agree on an equitable adjustment to the Required Operations Start Date or other affected Project Milestones within a period of sixty (60) Days after the giving of the notice required in Section 13.2.1 (*Notice of Force Majeure Event*), 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.

13.4 Change-in-Law

13.4.1 Procedure

- (a) If a Change-in-Law has or is likely to have a major effect as defined in Section 13.4.2(b) (*Consequences of Change-in-Law*), the Company shall, as soon as reasonably practicable after becoming aware of that fact, give notice to the Agency stating:
 - (i) that a major Change-in-Law has occurred or is likely to occur;
 - (ii) its reasons and evidence for that categorization;
 - (iii) the estimated general impact, financial impact and effect on the [Design Timetable, Works Timetable,] Project Milestones Schedule and operation and maintenance of the Facilities;
- (b) Within 10 Business Days from the giving of the notice, the Parties shall meet to discuss whether the Change-in-Law is minor or major in accordance with Section 13.4.2 (*Consequences of Change-in-Law*) and agree on mitigation and other measures in relation to the Change-in-Law.

13.4.2 Consequences of Change-in-Law

- (a) A Change-in-Law, including a change relating to Taxes, shall not be deemed a Force Majeure Event.
- (b) A Change-in-Law shall be classified as major when it is likely to lead the Company to incur or save a material amount; otherwise, the Change-in-Law is classified as minor. For this purpose, the amount shall be deemed material if as a result of the Change-in-Law the present value of cash flows saved or incurred by the Company, acting with due efficiency and economy, is more than [●] million, as computed based on the Financial Model.

- (c) If the Change-in-Law is classified as minor, the Company shall not be entitled to any additional payment of money, adjustment of Revenues or Fares, or extension of periods.
- (d) If the Change-in-Law is classified as major and likely to increase the costs of the Company in performing its obligations under this Agreement, the Agency shall hold the Company harmless from the financial consequences in question, including as follows:
 - (i) the Concession Fee for each Contract Year in which the Major Change has effect shall be reduced by an amount equal to the amount incurred by the Company due to the Change-in-Law for that Contract Year, to be determined by an Expert Panel under Section 19.2.2 (*Establishment and Operation of Expert Panel*);
 - (ii) extension of the [Design Timetable, Works Timetable and] Required Operations Start Date or Operating Period;
 - (iii) permitting the Company to raise Fares;
 - (iv) direct payment by the Agency to the Company;
 - (v) such other means as the Agency and the Company may agree;
 - (vi) termination of this Agreement;
 - (vii) a combination of any two or more of the remedies specified in paragraphs (i) – (vi).
- (e) If the Change-in-Law is classified as major and likely to decrease the costs of the Company in performing its obligations under this Agreement, the Concession Fee for each Contract Year in which the Major Change has effect shall be increased by an amount equal to the amount saved by the Company due the Change-in-Law for that Contract Year, but there shall be no alteration in the [Design Timetable, Works Timetable and] Required Operations Start Date or Operating Period.
- (c) The Company shall:
 - (i) use all reasonable endeavors to mitigate the adverse effects of any Change-in-Law and take all reasonable steps to minimize any increase in cost arising from it;
 - (ii) exploit the benefits of any Change-in-Law and take all reasonable steps to maximize any reduction in costs or other advantages arising from it; and
 - (iii) be responsible for obtaining any Consents which may be required in connection with its compliance with a Change-in-Law.

14 INDEMNITY

14.1 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 warranties under Section 11 (*Representations and Warranties*); or
- (d) Failure of the Company to comply with its covenants under Section 12 (*Covenants*).

The Company shall not be obliged to indemnify the Agency to the extent that any of the matters referred to in sub-clauses (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 result of the Company acting upon the instruction of the Agency.

14.2 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.

14.3 Indemnification Procedures

14.3.1 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 14 (*Indemnity*) as soon as such Party becomes aware of the potential Claim.

14.3.2 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.

14.3.3 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.

15 EVENTS OF DEFAULT

15.1 Company Events of Default

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

- (a) The Provisional Operations Start Date has not occurred by one hundred eighty (180) Days after the Required Provisional Operations Start Date.
- (b) The Operations Start Date has not occurred by one hundred eighty (180) Days after the Required Operations Start 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 15.1) which materially and adversely affects the performance of the Service.
- (d) At any time prior to the Operations Start 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 Operations Start Date exceeds

the amounts 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 abandons the Project 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 Services in accordance with this Agreement for more than fifteen (15) Business Days within any period of twenty (20) consecutive Business Days.
- (j) The Company fails to meet any of the base service level requirements indicated in Part 1 of Schedule 15 (*Service Quality Requirements*) or the penalties in any Contract Year exceeds [●].
- (k) 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.
- (l) 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.

- (m) A representation or warranty by the Company under Section 11 (*Representations and Warranties*) is incorrect in any material respect and is reasonably likely to have a material adverse effect on the ability of the Company to carry out the Project.
- (n) The Company breaches any provision of Section 12.2.9 (*Anti-Corruption Warranty*).
- (o) The Company assigns or transfers any of its rights or obligations under this Agreement, except as permitted by Section 18.2 (*Permitted Assignment to Financing Parties*).
- (p) There is a transfer of an interest in the Company that does not comply with Section 18.3 (*Ownership of Capital Stock of Company*).
- (q) The Operating Security originally provided pursuant to Section 6.3 (*Operating Security*) or any replacement Operating Security has been fully drawn and the Company has failed to procure within twenty-one (21) Business Days thereafter replacement Operating Security in the amount of PHP[●] and otherwise satisfying the requirements of Section 6.3 (*Operating Security*).

15.2 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 the Services 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) A representation or warranty by the Agency under Section 11 (*Representations and Warranties*) is incorrect in any material respect and is reasonable likely to have a material adverse effect on the ability of the Company to carry out the Project.

- (f) There is a breach by the Agency of Section 18.1 (*No Assignment*).

16 LIMITATION OF LIABILITY

16.1 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 in this Agreement and the termination payments set forth in Schedule 23 (*Termination Buy-Out and Transfer Provisions*).

16.2 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 (*Termination Due to Non-Occurrence of Effective Date*) and 2.3.2 (*Consequences of Termination*) 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*) shall not be more than PHP[●].

17 AGENCY STEP-IN RIGHTS

17.1 Step-in Rights

- (a) The Agency shall have the option to assume operational responsibility for the Facilities (in the capacity of an operator only) in order to continue operation of the Facilities or complete any necessary repairs to assure the continued delivery of the Services ("**Agency Step-in Rights**"). Agency Step-in Rights shall arise only upon the occurrence and continuance of:
 - (i) a Company Event of Default that could reasonably be expected to materially adversely affect the Company's ability to operate and maintain the Facilities in accordance with this Agreement;
 - (ii) hostilities or serious natural disasters which, in the opinion of the Agency, is or may be likely to give rise to such disruption of the means of transport such that the population in [Metropolitan Manila], or a substantial part thereof, is or may be likely to be deprived of essential goods or services.
- (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) in relation to Section 17.1(a)(i), any applicable cure period specified in Section 15 (*Events of Default*) and Section 20 (*Termination*) has expired, when applicable, unless the Agency is requested by the Lenders to step in earlier on their behalf pursuant to the Financing Agreements; and
 - (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 Facilities. The Company's obligation to provide part of the Services covered by the exercise of the Agency Step-in Rights 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 Facilities or a transfer of the Company's obligations as owner of the Facilities.

17.2 Implementation of Agency Step-in Rights

17.2.1 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 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 Facilities the Company's rights under all Consents to the extent such rights are necessary for the Agency to operate the Facilities during the Agency's exercise of Agency Step-in Rights. The Company shall give the Agency access to all design manuals, construction drawings, and other documentation required to operate the Facilities.

17.2.2 Payments to Company and Agency

- (a) During any period in which the Agency exercises the Agency Step-in Rights, the Agency shall pay to the Company the Revenues corresponding to the Company in accordance with Section 8.1 (*Revenues*).
- (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.

17.2.3 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 Facilities, including payments for fuel, maintenance, repairs, insurance, taxes, and other operating costs of the 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 17.2.2(b) (*Payments to Company and Agency*) and Section 17.2.3(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 8.10 (*Disputed Invoices*). Notwithstanding the provisions of Section 8.8 (*No Set-Off or Deductions*), 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.

17.2.4 Standards of Operation

During any period when the Agency is operating the Facilities, the Agency shall operate and maintain the Facilities in accordance with Prudent Utility Practice. The Company shall have the right to monitor the Agency's operation of the Facilities to the extent reasonably required to ascertain whether the Agency is operating and maintaining the 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 Facilities by the Agency during the exercise of such step-in rights.

17.2.5 Reversion of Operational Responsibility to Company

The Agency shall return operational responsibility for the 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. The Agency shall return the Facilities to the Company in a physical condition no worse than the condition of the Facilities at the time the Agency assumed operational responsibility for the 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 Facilities or the Site that existed prior to such exercise of Agency Step-in Rights.

18 ASSIGNMENT OF RIGHTS; OWNERSHIP OF THE COMPANY

18.1 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 18.2 (*Permitted Assignment to Lenders*).

18.2 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 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 Operations Start Date has not occurred, has reasonable access to funding necessary to achieve the Operations Start Date on or before the Required Operations Start 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.

18.3 Ownership of Capital Stock of Company

18.3.1 Company's Capital Stock

Subject to the rights of the Lenders under the Financing Agreements and except as otherwise provided in Section 18.3.2 (*Restriction 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 Initial Shareholders shall be as set out in Schedule 21 (*Company Shareholders*);
- (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 21 (*Company Shareholders*);
- (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 Agreements.

18.3.2 Restriction on Transfer of Capital Stock of Company

- (a) From the Signature Date until the second (2nd) anniversary of the Operations Start 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' legal, financial, and technical qualifications.

- (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.

19 DISPUTE RESOLUTION

19.1 Mutual Discussions

In case any Dispute occurs, the Parties shall attempt in good faith to settle such Dispute by mutual discussions between the Parties 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.

19.2 Expert Proceedings

19.2.1 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 19.1 (*Mutual Discussions*), then the Dispute shall be referred to the Expert Panel for determination.

19.2.2 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 experts selected from the experts so 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 the members of the Expert Panel.

- (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.

19.2.3 Decisions of Expert Panel

Except as otherwise expressly provided in this Agreement, all decisions of the Expert Panel shall be taken within not more than sixty (60) Days after the receipt by the Expert Panel of a request by either Party for a decision of the Expert Panel pursuant to this Agreement or by such later time as may be agreed by the Parties.

19.3 Arbitration

If a Dispute cannot be settled by mutual discussion within thirty (30) Days after the commencement of such discussions under Section 19.1 (*Mutual Discussions*) 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 the application thereof to particular matters to be consistent with the spirit of this Agreement and the underlying intent of the Parties.

19.4 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 attorneys' 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.

19.5 Enforcement of Award

By execution and delivery of this Agreement each Party hereby accepts and consents to the jurisdiction of the aforesaid Expert Panel and arbitral panel and, solely for purposes of the enforcement of an Expert Panel and arbitral award under this Section 19 (*Dispute Resolution*), 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 set for the giving of notices in Section 21.1 (*Addresses*). Nothing herein shall affect the right of any Party to serve such process or papers in any other manner permitted by law.

19.6 Continuing Obligations

Pending settlement of any Dispute pursuant to this Section 19 (*Dispute Resolution*), 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 by an arbitral panel in accordance with this Section 19 (*Dispute Resolution*).

19.7 Exclusive Procedure for Resolving Disputes

This Section 19 (*Dispute Resolution*) 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 hereunder until the Dispute has been determined in accordance with the arbitration procedure provided for herein, 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

20 TERMINATION

20.1 Termination Due to an Event of Default

20.1.1 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 15.1 (c), (d), (j) or (m) (*Company Events of Default*), 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 15.2 (a), (c) or (e) (*Agency Events of Default*), 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.

20.1.2 Default Termination Buy-Out Provisions

- (a) In the event of termination of this Agreement by the Agency under this Section 20.1 (*Termination Due to an Event of Default*) 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 Facilities and the Project for the purchase price and in accordance with the procedures set forth in Schedule 23 (*Termination Buy-Out and Transfer Provisions*). The Agency may require the Company to continue performing its obligations under this Agreement for a reasonable fee until the Agency has procured suitable arrangements to continue the Project.
- (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 Facilities and the Project for the buyout price and following the procedures set forth in Schedule 23 (*Termination Buy-Out and Transfer Provisions*).
- (c) Section 20.1 (*Termination due to an Event of Default*) does not preclude either Party from resorting to dispute resolution pursuant to Section 19 (*Dispute Resolution*).

20.2 Termination due to Prolonged Force Majeure Event

20.2.1 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. The Agency may require the Agreement to continue if the Agency pays the Company [●] percentage of the Company Revenues described in Section 8.1.1 (*Company Revenue*) and complies with the procedures in Section 20.2.4 (*Termination Procedure*).

20.2.2 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.

20.2.3 Termination by Either Party

Either Party may terminate this Agreement if an Event of Loss prevents the Company from rebuilding, repairing, and restoring the Facilities or the affected portion thereof as determined in accordance with Section 10.4.2 (*Loss After the Financing Agreements Have Expired*).

20.2.4 Termination Procedure

If a Party has the right to terminate this Agreement pursuant to this Section 20.2 (*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.

20.2.5 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 20.2 (*Termination due to Prolonged Force Majeure Event*), the Agency shall purchase from the Company, and the Company shall transfer to the Agency, the Facilities and the Project for the buyout price and following the procedures set forth in Schedule 23 (*Termination Buy-Out and Transfer Provisions*).

20.3 Effect of Termination : Transfer of Facilities

When the Termination Date occurs, the Company shall transfer the Facilities and the Project to the Agency in accordance with the provisions of Schedule O (*Termination Buy-Out and Transfer Provisions*). The Company shall, at its cost, take all the steps necessary in advance to ensure that the Facilities, including all contracts and licenses, are fully transferable on the Termination Date.

ARTICLE V

GENERAL PROVISIONS

21 GENERAL PROVISIONS

21.1 Notices

21.1.1 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 e-mail or telefacsimile; *provided* that such e-mail or telefacsimile 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: [●]

Telex: [●]

Answerback: [●]

Attention: [Name of authorized representative/s]

[Designation/Position]

To the Company:

[Full Company Name]

[Company Address]

Telephone: [●]

Facsimile: [●]

Telex: [●]

Answerback: [●]
Attention: [Name of authorized representative/s]
[Designation/Position]

21.1.2 Change of Address

A Party may change its address by giving the other Party written notice of such change pursuant to Section 21.1.1 (*Addresses*), 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 21.1.1 (*Addresses*).

21.2 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.

21.3 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.

21.4 Confidentiality and Disclosure

21.4.1 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 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;

- (b) Disclosed to persons providing or proposing to provide financing to Seller; 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 21.4.1 (*Confidentiality*) 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.

21.4.2 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 21.4.1 (*Confidentiality*), may disclose such information notwithstanding the provisions of Section 21.4.1 (*Confidentiality*); *provided, however*, that the Party making the disclosure shall give prior notice to the other Party of the requirement and the terms thereof and shall cooperate to the maximum extent practicable to resist or 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.

21.5 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.

21.6 Severability

The validity of the remaining sections, 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 a clause, 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.

21.7 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.

21.8 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.

21.9 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 Operations Start 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.

21.10 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.

21.11 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.

21.12 Survival

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

URBAN MASS RAIL SYSTEM CONCESSION – SCHEDULES

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Tracks [specifications]

Stations [specifications]

Electrical and Mechanical Systems [specifications]

Depot [specifications]

Others [specifications]

Requirements of Existing Facilities as of Operations Start Date

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Tracks [specifications]

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Electrical and Mechanical Systems [specifications]

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Others [specifications]

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Tracks [specifications]

Stations [specifications]

Electrical and Mechanical Systems [specifications]

Depot [specifications]

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2.1 Vehicles and Trains

General Vehicle Issues

Vehicle Type [Specifications]

Train Configuration [Specifications]

Design Life [Specifications]

Appearance [Specifications]

Acceptance and Safety License [Specifications]

Environmental Issues [Specifications]

Future Upgrades [Specifications]

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Others [Specifications]

Car Structure

Gauge and Length [Specifications]

Weight [Specifications]

Bodyshell [Specifications]

Bogies [Specifications]

Coupling [Specifications]

Others [Specifications]

Performance

Acceleration [Specifications]

Braking [Specifications]

Maximum Speed [Specifications]

Crew Facilities [Specifications]

Others [Specifications]

Train Systems

- Doors [Specifications]
- Traction System [Specifications]
- Brake System [Specifications]
- Power Supply [Specifications]
- Air Conditioning [Specifications]
- Lighting [Specifications]
- Communications [Specifications]
- Others [Specifications]

Safety

- Crashworthiness [Specifications]
- Detrainment [Specifications]
- Fireworthiness [Specifications]
- Train Protection [Specifications]
- Others [Specifications]

2.2 Tracks

Design Requirements

The New Facilities must contain a track system which is in every respect compatible with the operational, railway vehicles and alignment design requirements of the Existing Facilities. [Other specifications]

Geometric Design

Design Requirements

The alignment is to be designed to ensure passenger comfort and safety and, unless otherwise agreed by the Parties, must be compatible with the alignment design standards for the Existing Facilities. [Other specifications]

- Horizontal Alignment [Specifications]
- Vertical Alignment [Specifications]
- Clearances [Specifications]

Survey and Mapping [Specifications]

Ground Control [Specifications]

Mapping [Specifications]

Utilities [Specifications]

Roadways

Design General

Road works shall be designed to the DWPH Design Guidelines, Criteria and Standards for Public Works and Highways, Volume 2. [Other Specifications]

Road Alignment [Specifications]

Pavement Design [Specifications]

Drainage Design [Specifications]

Drainage design is to comply with requirements specified in DPWH Design Guidelines Criteria and Standards for Public Works Volume 2. [Other Specifications]

Environmental Mitigation and Landscaping

All adverse environmental impacts arising from the project shall be mitigated to the fullest extent possible by the designers. Impacts and their mitigation must be agreed with the relevant environmental agency. Specific issues to be addressed will include:

- noise and vibration
- visual impact
- construction waste
- effect on watercourses

Landscaping shall be sympathetic with the surroundings and mitigate visual impact. A maintenance program should be provided. [Other Specifications]

Intermodal facilities

The station designs shall include development of intermodal facilities to meet the interchange requirements at these stations. The designs shall make adequate provision for car, bus and jeepney set-down and pick-up facilities and associated pedestrian flows. [Other Specifications]

Others [Specifications]

2.3 Stations

Station Structures

Station structures and maintenance facilities must be designed in accordance with the National Building Code of the Philippines and the National Structural Code of the Philippines. [Other Specifications]

Elevated Guideway Structures

General [Specifications]

Loading [Specifications]

Derailment Containment [Specifications]

Provisions for Railway Systems [Specifications]

Station Architecture

General Scope [Specifications]

Company's Obligations

The Company is responsible for providing the infrastructures and equipment necessary to operate the Existing Facilities and New Facilities efficiently and safely. [Other Specifications]

Capacity

As a minimum, stations shall be designed to meet the passenger demand and peak flows forecast for [year] at each station in reasonably foreseeable operating conditions.

Levels of service

Capacities and areas within each station for the circulation of people must comply with NFPA 130 (Standard for Fixed Guideway Transit and Passenger Rail Systems) which is the minimum requirement applicable to peak hours only. [Other Specifications]

Standards

In addition to compliance with all Legal Requirements, stations must comply with applicable international standards, including [●]. [Other Specifications]

Design

The stations shall provide safe and secure environments for passengers, with designs that provide for natural surveillance including the avoidance of alcoves and other obstructed spaces.

All public levels of the station shall be fully accessible to all disabled people.

All components which cannot easily be repaired or replaced shall be designed to provide a [●]-year economic life. [Other Specifications]

Dimensional Criteria [Specifications]

Vertical Clearances [Specifications]

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Others [Specifications]

2.4 Electrical and Mechanical Works

The Company is required to design and construct the entire infrastructure and supply all of the equipment required to operate the New Facilities and for it to integrate with the Existing Facilities. The integration shall provide and enable safe, reliable, consistent, seamless operations between the New Facilities and the Existing Facilities. [Other Specifications]

Systems Operations Specification [Specifications]
 System Operating Schedule and Capacity [Specifications]
Environmental Requirements [Specifications]
Electromagnetic Compatibility [Specifications]
Stray Current [Specifications]
Train Control System (Signaling) Specification [Specifications]
 General [Specifications]

Train Detection [Specifications]

Headway [Specifications]

Central Control Requirements [Specifications]

Training [Specifications]

Technical Support [Specifications]

Spares and Repairs to Equipment [Specifications]

Operations Control Centre (OCC) Specification [Specifications]

Communications Specification [Specifications]

 Fiber Optic Network [Specifications]

Master Clock [Specifications]

Telephones [Specifications]

Operations and Maintenance Radio [Specifications]

Public Address (PA) System [Specifications]

Closed Circuit Television [Specifications]

SCADA (non traction) [Specifications]

Traction Power System Specification [Specifications]

 General [Specifications]

Incoming Supply [Specifications]

Traction Sub-stations [Specifications]

Protection [Specifications]

Uninterruptible Power Supplies [Specifications]

Overhead Contact System (OCS) [Specifications]

OCS Design Requirements [Specifications]

Earthing Systems [Specifications]

Corrosion Prevention/Stray Current Control [Specifications]

SCADA [Specifications]

Fare Collection Specification

 System Description [Specifications]

Station Equipment [Specifications]

Centralized Equipment [Specifications]

Uninterruptible Power Supplies (UPS) [Specifications]

Maintenance and Test Equipment [Specifications]

Training [Specifications]

Quality Assurance [Specifications]

System Assurance [Specifications]

Others [Specifications]

Part 3. Integration of Existing Facilities and New Facilities

[Specifications]

Part 4. General Conditions

Accreditation and other official bodies shall mean [●].

DESIGN TIMETABLE

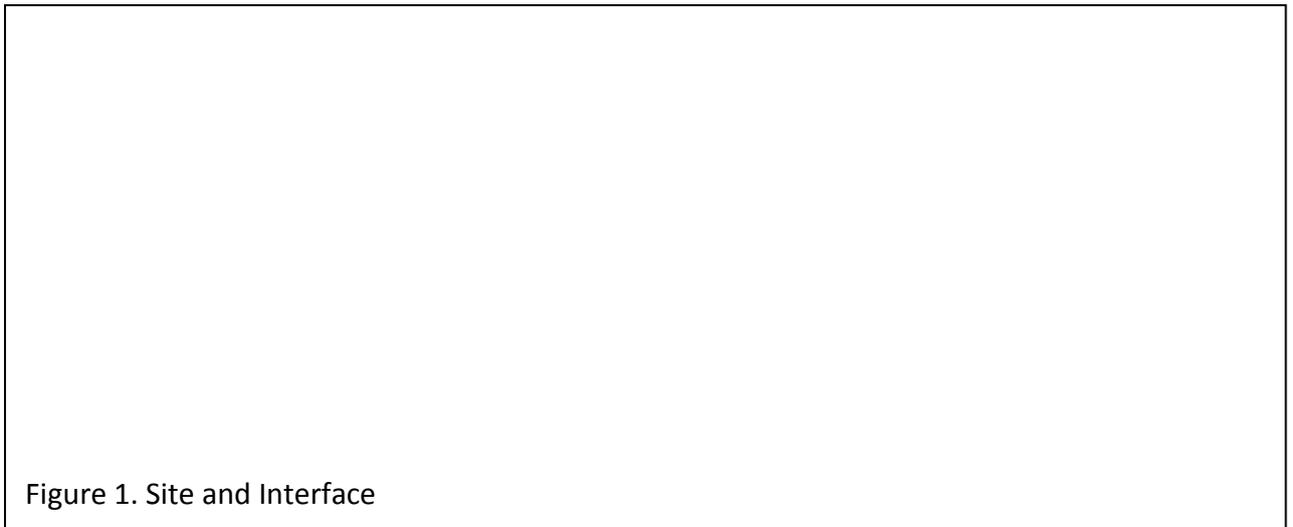
<i>No.</i>	<i>Detailed Design</i>	<i>Date Required</i>
1	<i>Design of [●] Works</i>	[●]
2	<i>Design of [●] Works</i>	[●]
3	<i>Design of [●] Works</i>	[●]
4	<i>Design of [●] Works</i>	[●]
5	<i>Design of [●] Works</i>	[●]
6	<i>Design of [●] Works</i>	[●]
7	<i>Design of [●] Works</i>	[●]
8	<i>Design of [●] Works</i>	[●]

SITE AND INTERFACE

The Existing Facilities are found at the following coordinates: [●]

The New Facilities are found at the following coordinates: [●]

The interface between the Existing Facilities and New Facilities is found at the following coordinates: [●]



GOVERNMENT WORKS FUNDING ARRANGEMENT

[Describe any funding arrangements entered into by the Agency/Government for the financing of any component/s of the Works.]



An Australian Government, AusAID Initiative

PROJECT MILESTONES SCHEDULE

<i>No.</i>	<i>Milestone</i>	<i>Date Required</i>
1	<i>Effective Date</i>	<i>[●](the “Required Effective Date”)</i>
2	<i>Continuous Construction Date</i>	<i>[●](the “Required Continuous Construction Date”)</i>
3	<i>Provisional Operations Start Date/Issue by the Independent Verifier of the provisional acceptance certificate</i>	<i>[●](the “Required Provisional Operations Start Date”)</i>
4	<i>Operations Start Date/Issue by the Independent Verifier of the acceptance certificate</i>	<i>[●](the “Required Operations Start Date”)</i>
5	<i>Transfer of Facilities to the Agency upon termination of this Agreement</i>	<i>[●](the “Required Termination Date”)</i>

WORKS TIMETABLE

<i>No.</i>	<i>Works</i>	<i>Date Required</i>
1	<i>Commencement of [●] Works</i>	<i>[●]</i>
2	<i>Commencement of [●] Works</i>	<i>[●]</i>
3	<i>Commencement of [●] Works</i>	<i>[●]</i>
4	<i>Commencement of [●] Works</i>	<i>[●]</i>
5	<i>Commencement of [●] Works</i>	<i>[●]</i>
6	<i>Commencement of [●] Works</i>	<i>[●]</i>
7	<i>Commencement of [●] Works</i>	<i>[●]</i>
8	<i>Commencement of [●] Works</i>	<i>[●]</i>

FORM OF PERFORMANCE SECURITY

Definitions

Except as otherwise defined in this Schedule 7, capitalized terms used in this Schedule 7 have the respective meanings assigned to them in the Concession Agreement between the Agency and the Company of which this Schedule 7 is a part. Unless otherwise specified, all references to Sections without other attribution are references to Sections of the Concession Agreement.

Form of Performance Security

The form of the Performance Security and Operating Security is set forth beginning on the following page.

[Remainder of page intentionally left blank.]

SCHEDULE 7-1

PERFORMANCE SECURITY

IRREVOCABLE STANDBY LETTER OF CREDIT

[Letterhead of Issuer]

[Agency]
[Address]

Place: [●]
Standby Letter of Credit No. [●]
Date: [●]

Dear Sirs:

KNOW ALL MEN BY THESE PRESENTS that we, the Agency, 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 Company*] ("*Company*") relating to the obligations of Company from the Signature Date until the Provisional Operations Start Date under the Concession Agreement dated [●] (the "*Agreement*") between yourselves (the "*Agency*") 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 Issuer, in each case 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 (i) a letter on the Agency's letterhead signed by any of its authorized signatories, or (ii) a tested telex sent 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 as aforesaid, 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 notwithstanding any objection that the Company might raise against the Agency's entitlement to payment, 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, the Agency 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 p.m. at the place of presentation on [*date no less than one year from date of the Letter of Credit*], (ii) the date on which we receive confirmation from the Agency that the Stated Amount has been reduced to zero, (iii) the date on which we have honored a drawing or drawings in an aggregate amount equal to the Stated Amount, and (iv) the date when we receive a written notice from the Agency that a replacement letter of credit, which is in full force and effect, has been substituted for this letter of credit (the "Expiration Date"); provided, however that with respect to sub-clause (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, or sent to the Issuer by tested telex to the following number:

Telex No. [●]

(Answerback: [●])

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 the Agency 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 Company fails at any time to pay any amounts which may from time to time 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 Section 41 (Installment Shipments/Drawings) and Section 48 (Transferable Credit) in their entirety, excluding the last sentence of Section 17 (Force Majeure) and substituting therefore the following: If this Letter of Credit should expire during an interruption of our business as described in Section 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.
14. IN WITNESS WHEREOF, we 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 [●].

[Issuing Bank]

By:

DEMAND FOR SIGHT PAYMENT

To: [Name of Issuer]
[Address]

Attn: [●]

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

The undersigned, a duly authorized officer of the [Agency] , a [nature of the agency] duly organized and existing by virtue [●], with its principal office at [●] (together with its successors and assigns in such capacity, "Agency") make reference to the Concession Agreement dated [●] between the Agency and [●], a corporation duly organized and existing under the laws of the Republic of the Philippines with its principal office at [●] ("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 Company under the Agreement for one or more of the following reasons:

[●]; and/or

[●]; and/or

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 [●].

[AGENCY]

By: _____

Name:

Title:

SCHEDULE 7-2
OPERATING SECURITY
SURETY BOND

Know All Men By These Presents:

That we, **[COMPANY]**, a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, 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 **AGENCY** in the sum of [●] Pesos (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 a Concession Agreement ("**Agreement**") with AGENCY to develop, finance, design, construct, rehabilitate, test, commission, own, operate, manage and maintain the urban mass rail facilities of Line [●];

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 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 AGENCY upon the failure of PRINCIPAL faithfully to perform its obligations under the Agreement from the Provisional Operations Start Date until the Termination Date.

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 has failed to faithfully to perform any of its obligations under the Agreement from the Provisional Operations Start Date until the Termination Date. The aggregate amount of all claims for payment made by AGENCY shall not exceed [●] Pesos (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 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] [year] at [city/province], Philippines.

[COMPANY]

Principal

By:

Authorized Representative

[PERFORMANCE SECURITY ISSUER]

Surety

By:

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] [year] personally appeared:

	CTC No.	Date of Issue	Place of Issue
[Company]			
[Authorized Representative of Company]			
[Performance Security Issuer]			
[Authorized Representative of Performance Security Issuer]			

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 200_.

NOTICE OF DEMAND

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

Attn: [●]

Re: Surety Bond No. [●]

The undersigned, a duly authorized officer of *[Agency]* ("**Agency**"), *[description of Agency]*, with its principal office at [●], Philippines make reference to the Concession Agreement ("**Agreement**") dated as of [●] between Agency and *[Company]*, a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with its office address at [●].

Agency hereby demands payment under the Surety Bond in the amount of [●] Pesos (PHP [●]) as penalty payment by *[Company]* under the Agreement for one or more of the following reasons:

[specify breach by Company and proof of consequent damages]

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

IN WITNESS WHEREOF, Agency has executed and delivered this notice on the *[date]* day of *[month]* 200[●] at *[city/province]*, Philippines.

AGENCY

By:

[Name of Authorized Representative]
[Title]

SCHEDULE 8

LAND RIGHTS

The following tables describe the Land Rights which are to be provided by the Agency:

Table 1: [Existing Facilities/New Facilities] located in [●]

Table 2: [Existing Facilities/New Facilities] located in [●]

Table 3: [Existing Facilities/New Facilities] located in [●]

For purposes of the foregoing, the Agency shall acquire the Land Rights in accordance with the following schedule:

Phase 1: Prior to the Required Effective Date

Phase 1 comprises the Land Rights necessary for the Company to design, construct and operate [●]

Phase 2: Prior to [●]

Phase 2 comprises the Land Rights necessary for the Company to design, construct and operate [●]

Phase 3: Prior to [●]

Phase 3 comprises the Land Rights necessary for the Company to design, construct and operate [●]

No .	Title No.	Name of Owner	Land Area (in square meters)	Required Area	Procurement Phase

SCHEDULE 9

CONSENTS

Part 1. Company Consents

1.1 Consents Required for Financing

The Following Consents must be obtained within [●] Days from [●]:

Bangko Sentral ng Pilipinas/Monetary Board

[Approval of the terms of the Financing Agreements]

Register of Deeds

[Registration of Liens]

Bureau of Internal Revenue

[Proof of payment of documentary stamp taxes payable in connection the execution of the Financing Agreements and Liens]

1.2 Consents Required for Construction

The Following Consents must be obtained within [●] Days from [●]:

Board of Investments

[Certificate of registration of the Company, setting out the tax and other investment incentives granted by the BOI to the Company, as applicable, under Executive Order No. 226, as amended, if applicable and at the sole option of the Company]

[Specific authorization to employ foreign nationals in supervisory, technical or advisory positions]

Department of Labor

[Specific authorization to employ foreign nationals in supervisory, technical or advisory positions]

Department of Public Works and Highways

[Authority or clearance for the construction of any structures within the Project Land which may interfere with the flow of navigable or floatable waters]

[Excavation permits for excavation works along national roads outside the Metropolitan Manila area]

[Clearances for excavation permits to be issued by the Metropolitan Manila Development Authority for all excavation works along national roads within the Metropolitan Manila area]

Metropolitan Manila Development Authority

[Approval of traffic management plans]

[Excavation permits for excavation works along national roads within the Metropolitan Manila area]

[Exemptions from vehicular volume reduction program/scheme (if desired)]

Department of Environment and Natural Resources

[Environmental compliance certificate (ECC) and such other permits as may be required pursuant to the ECC]

[Certification that the Company has complied with the terms and conditions set out in the ECC]

[Authority to construct air pollution source and control facilities]

[Permit for cutting trees (other than coconut trees)]

[Authority to construct water treatment facilities]

[Registration of the Company as a hazardous waste generator]

[Authority to import or export hazardous wastes]

[Approval of disposal site for construction debris]

Philippine Coconut Authority

[Permit for cutting coconut trees]

National Water Resources Board

[Water permit for the use of ground or surface water located on the Project Land and for the use of sea water]

Philippine Contractors' Accreditation Board

[Contractor's license]

Land Transportation Office

[Registration of Liens over motor vehicles]

Department of Labor and Employment

[Registration of Project for occupational health and safety]

Toll Regulatory Board

[Approval of all crossings of toll roads]

Air Transportation Office

[Height clearance permit within the flight path of airport]

Bangko Sentral ng Pilipinas

[Registration, after the initial drawdown, of the Financing Agreements and registration in respect of each advance or disbursement subsequent to the initial drawdown]

[Authority to purchase foreign exchange from the Philippine banking system to service registered obligations of the Company outside of the approved schedule of payment dates under the Financing Agreements]

[Approval of any (i) assignment of rights and obligations of the Company under the Financing Agreements and (ii) amendment of any provision of the Financing Agreements materially affecting the terms and conditions previously approved by the Bangko Sentral ng Pilipinas]

Bureau of Customs

[Clearance or proof of payment of customs duties on imported capital equipment]

Bureau of Immigration

[Working visas for all permanent and full-time non-Philippine personnel, if applicable]

Other Consents

[Renewal of Consents obtained]

[Routine filings, notices and registration to be made by the Company in the ordinary course of business]

1.3 Consents Required for Operation & Maintenance

The Following Consents must be obtained within [●] Days from [●]:

Bangko Sentral ng Pilipinas

[Authority to purchase foreign exchange from the Philippine banking system to service registered obligations of the Company outside of the approved schedule of payment dates under the Financing Agreements]

[Approval of any (i) assignment of rights and obligations of the Company under the Financing Agreements and (ii) amendment of any provision of the Financing Agreements materially affecting the terms and conditions previously approved by the Bangko Sentral ng Pilipinas]

Local Government Units

[Mayor's/Business permit to conduct business as the Company]

[Local government permits for the repair and maintenance of the Facilities]

Department of Environment and Natural Resources

[Permit to operate air pollution source and control facilities]

[Permit to operate water treatment facilities]

[Authority to import or export hazardous wastes]

Post-Company Registration Requirements

[Registration of business name with the Department of Trade & Industry]

[Registration as a taxpayer with the Bureau of Internal Revenue]

[Registration of employees with the Social Security System, PhilHealth and Home Development Mutual Fund (Pag-IBIG Fund)]

Other Consents

[Renewals of Consents obtained]

[Routine filings, notices and registration to be made by the Company in the ordinary course of business during the Operating Period]

Part 2. Agency Consents

Consents Required for Financing

The Following Consents must be obtained within [●] Days from [●]:

Department of Justice

[Opinion as to the validity, enforceability and binding effect of the Government Performance Undertaking]

[Opinion as to the validity, enforceability and binding effect of the Financing Agreements]

National Economic and Development Authority – Investment Coordination Committee

[Approval of the Project]

[Approval of the Concession Agreement]

[Approval of the financing for the Works]

Office of the Government Corporate Counsel

[Opinion as to the validity, enforceability and binding effect of the [●] Agreement]

Agency's Lenders

[Consent to the grant of the concession and handover of the Existing Facilities to the Company under the terms of this Agreement]

Consents Required for Construction and Operation

The Following Consents must be obtained within [●] Days from [●]:

Local Government Unit

[Mayor's permit issued by the relevant city or municipal mayor's office]

[Building permit issued by the relevant local building official/Verifier's office]

[Electrical permit and mechanical permit issued by the relevant local building official/Verifier's office]

[Fire inspection certificate issued by the relevant local fire department]

[Health, sanitation and plumbing permits, as may be applicable]

[Excavation permits for excavation works along local roads]

Department of Public Works and Highways

[Rights of way along national roads]

[Rights of way along and crossing waterways]

Appropriate Register of Deeds

[Registration of the notice of *lis pendens* in connection with the filing of expropriation proceedings with respect to the Project Land]

[Registration and annotation of the Land Rights obtained by the Agency over Project Land]

Regional Trial Courts (having jurisdiction over expropriation proceedings)

[Writ of Possession in respect of the Project Land]

[Final order of expropriation]

Landowner (of properties subject of negotiated agreement)

[Agreements between the landowners and the Agency in respect of the Project Land]

[Permit to Enter]

Other Consents

[Renewal of Consents obtained]

[Routine filings, notices and registration in the ordinary course of business]

SCHEDULE 10

FORM OF GOVERNMENT PERFORMANCE UNDERTAKING

[Letterhead of the Department of Finance]

[Date]

[Name and address of Company]

Gentlemen:

Subject: Government Performance Undertaking – [Project]

In my capacity as the Secretary of Finance of the Republic of the Philippines (the “**Republic**”), I hereby deliver this undertaking letter (the “**Undertaking**”) on behalf of the Republic in connection with the execution on [●] of the Concession Agreement (the “**Agreement**”) between the [●] (the “**Agency**”), and [●], a corporation duly organized and existing under the laws of the Republic of the Philippines with its principal office at [●] (the “**Company**”). This letter is furnished to you as contemplated by Section 2.1(r) of the Agreement. All terms used but not otherwise defined in this letter shall have the meanings given to them in the Agreement.

In connection with your entering into the Agreement, the Republic hereby undertakes with you as follows:

Guarantee of Payment Obligations

The Republic guarantees the payment obligations of the Agency set forth in Section 13.4 (*Change-in-Law*), Schedule 4 (*Government Works Funding Arrangements*), Schedule 17 (*Fares*) and Schedule 23 (*Termination Buy-Out and Transfer Provisions*) of the Agreement (the “**Guaranteed Payment Obligations**”) at all times as they fall due and until such Guaranteed Payment Obligations have been fully discharged in accordance with the Agreement.

Guarantee of Other Obligations

The Republic also guarantees the full, faithful and timely performance by the Agency of the following obligations (“**Other Guaranteed Obligations**”) at all times as they fall due (the Other Guaranteed Obligations and the Guaranteed Payment Obligations are referred to collectively as the “**Guaranteed Obligations**”):

- (a) implementation of the proper Fares in accordance with Schedule 17 (*Fares*);
- (b) obligation not to allow any government entity to authorize the construction or operation of any competing passenger land transport system within the Project Land during the Operating Period pursuant to Schedule 22 (*Competitive Land Transport System*);
- (c) acquisition of the land rights and peaceful use and occupation of the Project Land during the Operating Period in accordance with Schedule 8 (*Land Rights*); and
- (d) [•].

Nature of Guarantee

This Undertaking shall remain in full force and effect until its lawful termination in accordance with its terms. Accordingly, upon failure by the Agency to pay or fulfill any of the Guaranteed Obligations, you may call upon this Undertaking for the full amount of the Guaranteed Obligations and the Republic shall discharge such Guaranteed Obligations in accordance with all applicable laws. For this purpose, the Republic does not waive any right of excussion.

Foreign Exchange Availability, Convertibility and Remittance

Subject to all applicable laws and regulations of the *Bangko Sentral ng Pilipinas*, in each case as in effect as of the date of this Undertaking, but without prejudice to your rights under the Concession Agreement, the Republic assures you that you shall be entitled to:

- (a) convert revenues received in Philippine Pesos in connection with the Agreement into foreign exchange from time to time; and

- (b) remit outside the Philippines without restriction any foreign exchange received in connection with the Agreement or obtained through the conversion of Philippine Pesos so received.

Should you encounter any difficulties in exercising your rights to convert Philippine Pesos into foreign exchange or remit any foreign exchange abroad, the Republic shall render to you its full assistance to procure that such conversion or remittance takes place expeditiously.

Duration, Survivability and Termination

This Undertaking is valid until [●] or the termination of the Agreement in accordance with its terms, whichever is earlier, and shall survive, *inter alia*, the insolvency, bankruptcy, dissolution, reorganization, merger and/or amalgamation of the Agency, any assignment of the Agreement by the Agency, and the divestment or other privatization of the Agency.

This Undertaking shall remain valid and shall not be released, discharged or otherwise adversely affected by reason of the termination, invalidity, or unenforceability of the Agreement or any of the agreements contemplated thereby or of any provision thereof, caused by an Agency Event of Default or other reason directly attributable to the Agency.

This Undertaking is in addition to and shall not impair, discharge, or prejudice or be impaired, discharged, or prejudiced by any security or any other right or remedy you may have against the Agency or the Republic or any of its instrumentalities or agencies and shall not be discharged by any intermediate payment or settlement. However, any payment to be made by the Republic or any of its instrumentalities or agencies to the Company or its lenders pursuant to other valid security or guarantee arrangements shall reduce and be deducted from the amount payable by the Republic in this Undertaking. The obligations of the Republic in Sections 1 and 2 hereof shall remain in full force and effect until the Guaranteed Obligations have been fully discharged or (without prejudice to any portion of the Guaranteed Obligations being incurred with respect to periods preceding such termination) this Undertaking has terminated in accordance with its terms.

This Undertaking shall not be adversely impaired, affected or discharged by reason of any forbearance or waiver by you in favor of the Agency (whether as to payment, time or otherwise) of the Guaranteed Obligations or any deferment, financing or other arrangement entered into or composition accepted by you modifying (by operation of law or otherwise) your rights and remedies under the Agreement, provided that the Republic's obligations hereunder shall thereupon relate to the Guaranteed Obligations as affected by such waiver, forbearance, deferment, financing or other arrangement or composition.

Fees

In consideration for this Undertaking, you shall pay an annual fee equivalent to [●], payable to the Department of Finance on or before each anniversary date hereof until the termination of this Undertaking pursuant to its terms. Failure to pay the annual fee or to make acceptable arrangements toward its payment shall suspend the performance by the Republic of all its obligations and undertakings hereunder.

Governing Law

This Undertaking is governed by, and shall be construed in accordance with, the laws of the Republic of the Philippines.

Arbitration

Any dispute arising out of or relating to this Undertaking shall be exclusively referred to and finally settled by arbitration before a panel consisting of three (3) members appointed and conducting proceedings in Singapore, or such other place as the parties may agree in writing, in accordance with the arbitration rules of the UNCITRAL in effect as of the date of this Undertaking. The proceedings shall be conducted in English. Any award rendered in such arbitration proceedings shall be final and binding upon the parties and enforceable by any court having jurisdiction for that purpose.

Waiver of Sovereign Immunity

This Undertaking shall be deemed commercial in nature and shall not be regarded as a governmental or public act. The Republic waives for itself and its assets and revenues, to the extent permitted by applicable law, any and all immunity from suit, execution, or other legal process in connection with any action or proceedings to obtain or enforce an arbitral award relating to this Undertaking.

Notwithstanding the foregoing, the Republic does not waive any such immunity:

- (a) in respect of property which is (i) used by a diplomatic or consular mission of the Philippines, (ii) of a military character and under the control of a military authority or defense agency of the Republic, or (iii) located in the Philippines and dedicated to a public or government use; or
- (b) in respect of special accounts with banks outside the Republic of the Philippines which are established pursuant to binding agreements between the Republic and its lenders, are administered by paying agents, and are pledged and used solely to service the Republic's external debt to such lenders.

Nothing in this provision is intended to waive immunity from attachment prior to entry of a judgment in aid of execution of an award.

Assignment

Neither Party may assign, transfer or novate this Undertaking, nor its rights, benefits or obligations hereunder, without the prior written consent of the other Party, except for assignments by you of some or all of your rights, benefits or obligations hereunder for purposes of financing the Project, including in order to secure all amounts owing under Financing Agreements entered into pursuant to the Agreement.

Severability

If any provision of this Undertaking is determined finally to be void, illegal, unenforceable or contrary to law or public policy, that fact shall not affect the validity of the remaining provisions of this Undertaking.

Authority for Undertaking

This Undertaking is provided under the exercise of full powers of the President of the Republic in accordance with all applicable laws.

Further Assurance

In consideration of the debt and equity financing to be provided for the Project, the Republic hereby undertakes on a best efforts basis to execute and deliver all such documents and instruments, including without limitation a direct agreement between the Republic and [●] or your Shareholders, as may be reasonably necessary or desirable to achieve financial closing.

This Undertaking is furnished to you by the undersigned, in my capacity as the Secretary of Finance of the Republic, solely in connection with the execution of the Agreement, and is strictly limited to the matters stated in this Undertaking and is not to be read as extending, by implication or otherwise, to any other matter. This Undertaking is not to be used, circulated, quoted or otherwise referred to for any other purposes without the written consent of the Department of Finance but may be, however, disclosed to and relied upon by your Shareholders, the lenders under the Financing Agreement and any party contemplating the acquisition of any part of your interests, rights and obligations under the Agreement.

Please confirm your acceptance of the terms and conditions of this Undertaking by signing the three copies of this Undertaking as indicated below and returning one signed copy to the undersigned.

Very truly yours,

Secretary of Finance
For and on behalf of
THE REPUBLIC OF THE PHILIPPINES

SCHEDULE 11

INSURANCE

Part 1. Company Required Insurance

Professional Liability

US\$[●]M (to last from Signature Date until [24] Billing Months after Provisional Operations Start Date)

Delayed Start-Up:

US\$[●]M (no cover for first [●] days of delay per incident)

Business Interruption:

US\$[●]

Physical Loss or Damage to Facilities

US \$[●]

Marine Cargo:

US\$[●]

Property-integrated System:

US \$[●]

General Liability:

US\$[●]

Other Cover:

Automotive; loss or damage to construction equipment; death and personal injury, other cover required by law

Part 2. Agency Required Insurance

Physical Loss or Damage to Existing Facilities (until Provisional Operations Start Date)

US\$[●]

SCHEDULE 12

INDEPENDENT VERIFIER APPOINTMENT LETTER

To: [Name and address of appointed Independent Verifier]

Gentlemen:

Introduction

Having followed the procedure for your appointment as Independent Verifier specified in the Concession Agreement dated [●] (the “**Agreement**”) between [●], a [nature of the Agency], with its principal address at [●] (the “**Agency**”) and [●], a corporation duly organized and existing under the laws of the Republic of the Philippines with its principal office at [●] (the “**Company**”), you are hereby engaged by the Agency and the Company on the following terms and conditions:

Scope of mandate

You are appointed by the Agency and the Company to carry out the functions assigned to, or contemplated to be performed by, the Independent Verifier under the terms of the Agreement.

Joint and several obligations

The obligations of the Agency and the Company under this appointment are joint and several.

Duration of appointment

You are appointed for the period of [●] years from the date of this letter. The Agency and the Company may reappoint you for further periods of [●] years on terms agreed with you.

Standard of care

You will perform your role as Independent Verifier to the standard of a reasonable and prudent Verifier and with that degree of skill, diligence, prudence and foresight that may be reasonably expected of an Verifier operating at international level on projects of the complexity and duration equal or comparable to the [Project].

Maintenance of records and reporting

You will maintain such records, and provide to the Agency and the Company such reports, as are necessary or expedient for the proper performance of your functions. The

Agency and the Company shall be entitled to have access to such records upon reasonable notice and at reasonable times.

Fees and expenses

[•]

Access to premises, persons and papers

The Agency and the Company shall afford you such access to premises, persons and papers as you reasonably require for the purposes of your functions, upon reasonable notice and at reasonable times.

In that respect, the Agency and the Company grant you the right to enforce against them the provisions of Section 9.4 (*Right to Inspect and Monitor*).

Confidentiality and security

You will keep confidential all information gathered by you in relation to this assignment and may only disclose it to the Agency and the Company and such financial institutions and governmental agencies as require to see it, as contemplated by the Concession Agreement. You will maintain and operate such measures for the security and safekeeping of the information as is necessary or expedient in order to be able to comply with this obligation.

Assignment and sub-contracting

You may not assign or subcontract any part of your functions as Independent Verifier .

Insurance

You will maintain professional liability insurance in respect of this assignment in the minimum sum of PHP[•].

Default and termination

If you fail to perform your obligations under the terms of this appointment, or you become insolvent or steps in connection with insolvency are taken in relation to you, the Agency and the Company may dismiss you upon not less than [•] days notice. Such dismissal shall not affect any accrued obligations up to the date of termination. You will cooperate fully with the Agency and the Company in connection with the termination of this appointment and transfer to them, or a successor independent verifier , all books, records and other information relating to this appointment which it is necessary or expedient for the successor independent verifier to have for the purposes of his appointment.

Governing law and dispute resolution

This appointment is governed by the law of the Republic of the Philippines and the courts of the Republic of the Philippines shall have exclusive jurisdiction to determine any dispute or difference arising in connection with it.

SCHEDULE 13

TESTING AND COMMISSIONING

Part 1. Commissioning and Acceptance Tests

1.1 The Company will prepare a system testing and commissioning plan ("***Testing and Commissioning Plan***") for all of the works, systems and equipment to be constructed or installed in accordance with the requirements of the Agreement.

1.2 The first draft of the Testing and Commissioning Plan shall be submitted to the Agency by the Company within [●] Business Days from the first deadline for the submission of the Verifier ing designs and plans as specified in Schedule 2 (*Design Timetable*). The Company is required to keep the Testing and Commissioning Plan continually updated during the design stage to reflect the development of and the final detailed Verifier ing designs and plans. These include but will not necessarily be restricted to:

- (a) renewals or other works arising from independent audit of the Existing Facilities and as agreed between the Agency and the Company;
- (b) any other works carried out by the Agency for any reason; and
- (c) increasing knowledge of the Existing Facilities acquired by the Company.

It shall be the responsibility of the Company to be fully cognizant with all issues arising from the above or other reasons through regular and appropriate dialogue with and information seeking from the Agency.

1.3 The Testing and Commissioning Plan shall be resubmitted to the Agency and the Independent Verifier within [●] Business Days from the last deadline for the submission of the Verifier ing designs and plans as specified in Schedule 2 (*Design Timetable*). The Testing and Commissioning Plan shall:

include details of all testing and commissioning processes, outputs and contractual requirements by all suppliers and subcontractors of the Company; and

provide clear milestones by which the progress of the completion of the rehabilitation of the Existing Facilities, completion of the construction of the New Facilities, integration of the New Facilities with the Existing Facilities and the opening of integral services can be measured.

1.4 The Company shall incorporate any additions or changes required by the Independent Verifier or the Agency to the Testing and Commissioning Plan. Any subsequent changes proposed to the Testing and Commissioning Plan for whatever reason shall be submitted to the Independent Verifier. The Company shall give justification for such changes and demonstrate that the changes will have no detrimental effect on the overall demonstration of the suitability and compliance of any system or equipment on the New Facilities and its integration with the Existing Facilities to provide a seamless system.

1.5 The Company shall report on the progress of the testing and commissioning as required by:

- (a) the Testing and Commissioning Plan;
- (b) the specific requirements of the Agreement; and
- (c) general reporting obligations.

This shall include for the recovery from any delays to the Testing and Commissioning Plan arising from either late completion of previous activities or failure of any system or equipment to perform to the required standards during any part of the testing and commissioning.

1.6 The Company shall have sole responsibility to ensure that any certificates of testing, performance or compliance required by:

- (a) the Testing and Commissioning Plan;
- (b) the Agency; or
- (c) any Government Authority;

are acquired and handed over by the dates or within the periods in Schedule [5 (*Project Milestones Schedule*)/6 (*Works Timetable*)] to achieve the Required Operations Start Date or such other date as the Agency or the Independent Verifier may reasonably specify and notify to the Company. This shall include for any re-testing or witnessing required by any of the above parties.

Part 2. Commissioning and Acceptance Procedures

2.1 The scope of the Testing and Commissioning Plan must include as a minimum:

- (i) the scope and objectives of the tests;
- (ii) organizational and administrative responsibilities;
- (iii) test pre-conditions, conditions and logistical support requirements;
- (iv) detailed test schedules;
- (v) test procedures and test data collection, collation and analysis methodology;
- (vi) test acceptance criteria;
- (vii) pre-conditions for re-testing if required; and
- (viii) test report documentation and format.

2.2 The Testing and Commissioning Plan must encompass but is not necessarily restricted to all of the procedures and actions to cover:

- (a) factory testing of components and complete equipments;
- (b) individual system testing after installation of Facilities;

- (c) interface proving between systems and equipments;
- (d) combined testing of groups of systems;
- (e) complete testing of the extension;
- (f) integration with the Existing Facilities;
- (g) interfaces with all aspects of operations training for the integrated operation of the combined Facilities;
- (h) trial running prior to commercial operation on the extension;
- (i) acquisition of all permits and licenses to enable full integrated commercial operation of the combined system;
- (j) demonstrations of reliability growth during the trial running; and
- (k) completion of all agreed outstanding works, testing and remediation.

The Company is required to demonstrate that all works, equipment and systems procured or carried out give the required performance measured against:

- (a) recognized international standards;
- (b) the particular requirements of the procurement specification and contract; and
- (c) best international practice for [urban mass rail transit systems].

The Company must further show that all the works, equipment and systems procured or carried out for the extension:

- (a) meet the required levels of integration with other systems and equipment; and
- (b) do not import any level of risk to the operation of the New Facilities, the Existing Facilities, or the operation of any system of a third party adjacent to or in direct contact with any part of the extension or the Facilities.

The Company is solely responsible for the resolving of any conflicts, performance, or other interface issues which affect the performance of any system on, linked or adjacent to the Facilities. The Company shall carry out any required modifications, upgrading or change-out required on any piece of equipment or system to achieve the required level of system performance and risk. This shall extend to the entire Operating Period.

The Company shall carry out at any stage sufficient testing to demonstrate that all new or modified equipment meets all required system performance and safety requirements. This shall include for re-testing, or modified testing at the expense of

the Company on as many times as necessary to demonstrate the system requirements are fully met.

The Agency reserves the right to witness all or any part of any part of testing and commissioning or retesting. However the responsibility for the output of any testing procedure is solely that of the Company irrespective of any level of involvement of the Agency or its representatives, or any other third party.

Part 3. Commissioning and Acceptance Costs

3.1 The Company shall pay the Agency's costs incurred in connection with all the actions to be taken in relation to the Testing and Commissioning Plan as agreed at any stage of the Agreement.

3.2 The Agency shall provide to the Company a full schedule of hourly rates for all categories of staff that will or might be employed for any aspect of assurance or witnessing of any stage of the Testing and Commissioning Plan. This shall include the Agency or its representatives that they may employ or empower at any time during the full period of the Concession Agreement.

3.3 The aforementioned hourly rates shall be changed over time in accordance with a pre-agreed local price inflation multiplier. The Agency retains the absolute right to determine the necessity to attend, witness or review any testing of results thereof. In the event that the Agency does elect to attend, witness or review any testing of results then the Company shall be responsible for meeting the costs at the rates in force at the time.

3.4 In the event that any tests have to be repeated on one or more occasions for any reason whatsoever, the Company shall meet the costs of the Agency representatives on each occasion.

SCHEDULE 14

OPERATING PROCEDURES

[Describe the operating procedures for the operation and maintenance of the Facilities.]

SCHEDULE 15

SERVICE QUALITY REQUIREMENTS

1. *Introducion*

This Schedule contains:

the service level requirements for the Facilities in terms of operations, customer service, train cleaning, station cleaning, station equipment and safety;

the measures that will be used to assess the performance of the Company;

the performance regime associated with these measures.

A number of vital areas exist which need to perform consistently well in providing customer service to regular users and to attract new ridership. These include the operational performance of the railway, running a reliable train service; service quality; asset stewardship, ensuring a sustainable service; and operational safety. The train service is made up of a number of key railway disciplines: railway vehicles, signaling, trackwork, power supply, station facilities and telecommunications systems. Unreliability or loss of availability of any of these affects the train service.

PART 1

Operations – Base Service Level

Required Operations Start Date

The Required Operations Start Date is [●].

Hours of Service

Trains shall operate on the Facilities to the minimum service levels set out below.

The first through-service from any of the indicated stations must depart from the relevant station at or before the first time given. The last through-service departing from any of the indicated stations must depart at or after the last time given.

First trains southbound

	[Station] to [Station]	[Station] to [Station]	[Station] to [Station]
Monday to Friday	[time]	[time]	[time]

Saturdays	[time]	[time]	[time]
Sundays/Public Holidays	[time]	[time]	[time]

(b) First trains northbound

	[Station] to [Station]	[Station] to [Station]	[Station] to [Station]
Monday to Friday	[time]	[time]	[time]
Saturdays	[time]	[time]	[time]
Sundays/Public Holidays	[time]	[time]	[time]

(c) Last trains southbound

	[Station] to [Station]	[Station] to [Station]	[Station] to [Station]
Monday to Friday	[time]	[time]	[time]
Saturdays	[time]	[time]	[time]
Sundays/Public Holidays	[time]	[time]	[time]

(d) Last trains northbound

	[Station] to [Station]	[Station] to [Station]	[Station] to [Station]
Monday to Friday	[time]	[time]	[time]
Saturdays	[time]	[time]	[time]
Sundays/Public Holidays	[time]	[time]	[time]

Operating Days per Year

Every day is an operating day, except [Black Saturday and days during Holy Week that are decreed National Holidays].

Maximum Headways

Trains shall operate on the Facilities to the maximum headways set out below. Maximum headways are shown in minutes, averaged over a 1 hour period.

Daily Time Period	[Station]	[Station]	[Station]
0500-0700	[Maximum Headway]	[Maximum Headway]	[Maximum Headway]
0700-0900	[Maximum Headway]	[Maximum Headway]	[Maximum Headway]
0900-1700	[Maximum Headway]	[Maximum Headway]	[Maximum Headway]
1700-1900	[Maximum Headway]	[Maximum Headway]	[Maximum Headway]
1900-2200	[Maximum Headway]	[Maximum Headway]	[Maximum Headway]

Peak Hour Capacity

Average train occupancy over any 60 minute period shall not exceed [80%] of the full service load of passengers seated plus 7 (seven) passengers per m² standing.

Operations – Performance

Daily System Reliability (“*Performance Measure PM1*”)

Definitions

An “**Actual Trip**” is one in which a train departs from the published originating station no later than [●] minutes after the published departure time and travels to the published terminating station and during which passengers can board and alight at all operational intermediate stations.

A “**Part Completed Trip**” is one in which a train departs from the published originating station no later than [●] minutes after the published departure time, and travels as far as (or further than) half of its published journey, allowing passengers to board and alight at all operational intermediate stations but does not reach the published terminating station. For the purposes of the performance measure, a Part Completed Trip shall count as 0.25 of an Actual Trip.

An Actual Trip or Part Completed Trip occurs even if the train is replaced en route, provided that the passengers are able to transfer between the original and a replacement tram.

The scheduled number of trips (“**Scheduled Trips**”) for reliability measurement purposes shall be the number of Actual Trips shown in the timetable for the day or month concerned.

Performance Measure

PM1 is a percentage equal to the number of Actual Trips divided by the number of Scheduled Trips on daily basis.

This shall apply except on:

- (a) days during Holy Week that are decreed national holidays; and
- (b) days on which public events occur are excluded from the calculation by omitting those days from the calculation of this performance measure.

Assessment Period

For each Day.

Monitoring Method

Trip completion will normally be monitored by SCADA but may be monitored by manual methods if necessary.

Target Performance

Greater than or equal to [96%] per day.

Monthly System Reliability (“Performance Measure PM2”)

Definitions

An “**Actual Trip**” is one in which a train departs from the published originating station no later than 45 minutes after the published departure time and travels to the published terminating station and during which passengers can board and alight at all operational intermediate stations.

A “**Part Completed Trip**” is one in which a train departs from the published originating station no later than 45 minutes after the published departure time, and travels as far as (or further than) half of its published journey, allowing passengers to board and alight at all operational intermediate stations but does not reach the published terminating station. For the purposes of the performance measure, a Part Completed Trip shall count as 0.25 of an Actual Trip.

An Actual Trip or Part Completed Trip occurs even if the train is replaced en route, provided that the passengers are able to transfer between the original and a replacement tram.

The scheduled number of trips (“**Scheduled Trips**”) for reliability measurement purposes shall be the number of Actual Trips shown in the timetable for the day or month concerned.

Performance Measure

PM2 is a percentage equal to the number of Actual Trips divided by the number of Scheduled Trips on a monthly basis.

This shall apply except on:

days during Holy Week that are decreed national holidays; and

days on which public events occur are excluded from the calculation by omitting those days from the calculation of this performance measure.

Assessment Period

For each Billing Month.

Monitoring Method

Trip completion will normally be monitored by SCADA but may be by manual methods if necessary.

Target Performance

Greater than or equal to [98%] per Billing Month.

System Punctuality: Early Departures (“Performance Measure PM3”)

Definitions

An “*Early Trip*” is an Actual Trip which departs more than 15 seconds before the published departure time from the published originating station or if the timetable specifies an interval only, the train departs the originating station no more than 15 seconds before the specified interval from the previous departure from that originating station. A trip which did not depart does not also count as an Early Trip.

Performance Measure

PM3 is a percentage equal to the total number of Actual Trips minus the Early Trips divided by the total number of Actual Trips.

Days on which public events occur are excluded from the calculation by omitting those days from the calculation of this performance measure.

Assessment Period

For each Billing Month.

Monitoring Method

Departure times will normally be monitored by SCADA and compared with published departure times.

Target Performance

[95%] per Billing Month.

System Punctuality: Late Departures (“Performance Measure PM4”)

Definitions

A “**Late Trip**” is either an Actual Trip which departs more than 3 minutes after the published departure time from the published originating station or if the timetable specifies an interval only, the train departs the originating station no later than 3 minutes after the expiration of the specified interval from the previous departure from that originating station. A Scheduled Trip which does not depart is also a late trip.

Performance Measure

PM4 is a percentage is equal to the number of Actual Trips which are not Late Trips divided by the number of daily Scheduled Trips.

Days on which public events occur are excluded from the calculation by omitting those days from the calculation of this performance measure.

Assessment Period

For each Billing Month.

Monitoring Method

Departure times will normally be monitored by SCADA and compared with published departure times but may be by manual methods if necessary.

Target Performance

Greater than or equal to [95%] per Billing Month.

System Punctuality: First/Last Trips (“Performance Measure PM5”)

Definitions

The “*First Scheduled Trips*” and the “*Last Scheduled Trips*” are documented in Part 1 of this Schedule.

Performance Measure

PM5 is a percentage equal to the total number of First Scheduled Trips and Last Scheduled Trips minus the total number of First Scheduled Trips and Last Scheduled Trips which are Early Trips (as per PM3) or Late Trips (as per PM4) divided by the total number of First Scheduled Trips and Last Scheduled Trips.

Assessment Period

For each Billing Month.

Monitoring Method

Departure times will normally be monitored by SCADA and compared with published departure times but may be by manual methods if necessary.

Target Performance

[95%] per Billing Month.

Customer Service (“PERFORMANCE MEASURE PM6”)

Base Service Level

The Company shall procure that all comments received regarding the Services provided under this Agreement shall be investigated and responded to. If the cause of the complaint is outside the Company’s responsibility, the response shall include the name and address of the relevant body and, if appropriate, confirmation that the complaint has been passed on.

All comments shall be recorded in a customer comments log which shall detail the date of entry and response to the comment.

Following receipt of a complaint, a response shall be sent within one week. If this is not possible, an acknowledgement shall be sent within one week and a response or further follow-up within three weeks.

The Company’s conditions of carriage and regulations shall be available to passengers on request.

The Company shall ensure that where possible all trains carry an internal notice in a conspicuous position giving the name of the designated official in the Company’s organization and the address to which complaints should be sent, together with contact details for the Agency.

Performance

A monthly audit of the customer comments log will be undertaken by the Agency. The target is that [98%] of customer comments received in the month are responded to in accordance with the requirements above.

Train Cleaning (“PERFORMANCE MEASURE PM7”)

Base Service Level

The Company shall clean all rail vehicles in revenue service to the following minimum standards:

- (a) for daily cleaning:
 - (i) exterior wash using washing plant;
 - (ii) floor sweep and mop;
 - (iii) wipe handrails;
 - (iv) clean windows and interior glass;
 - (v) wipe cab desk surfaces; and
 - (vi) examine seats and interior hard surfaces (except windows) for dirty marks and graffiti.
- (b) for monthly cleaning:
 - (i) as for daily cleaning;
 - (ii) wash all visible interior hard surfaces except ceilings;
 - (iii) clean exterior louvres pockets, etc; and
 - (iv) clean driver’s seat (or replace seat cover with clean).
- (c) for six (6) monthly cleaning:
 - (i) as for monthly cleaning;
 - (ii) wet vacuum (or equivalent) all saloon upholstery; and
 - (iii) clean ceilings and lighting diffusers.

Trains will be checked daily for graffiti. A report of incidents of graffiti shall be recorded in a report and repair log. Incidents of graffiti on trains (except etched graffiti on windows which shall be dealt with as soon as practicable) which are reported shall be cleared within 24 hours of the report, unless the train is taken out of service.

A report of all cleaning work shall be recorded in a train cleaning log.

From time to time the methods, standards and frequencies of cleaning of trains shall be reviewed and where necessary amended to meet the aspirations of the Agency and the Company to provide a high quality service.

Performance

A monthly audit of train cleaning will be undertaken by the Agency. The target is that number of actual train cleans carried out in a month shall be at least [98%] the required number of cleans according to the requirements above.

Station Cleaning (“PERFORMANCE MEASURE PM8”)

Base Service Level

The Company shall clean all stations to the following minimum standard.

(a) for daily cleaning:

- (i) empty litter bins;
- (ii) sweep platforms;
- (iii) clean ticket window glass;
- (iv) wipe passenger information display screen;
- (v) wipe ticket machine screens and buttons;
- (vi) check legibility of timetable and fare information; and
- (vii) inspect for graffiti and general damage.

(b) for monthly cleaning:

- (i) clean all station furniture (seats, cabinets, bins, ticket machine housings); and
- (ii) all cleaning work shall be recorded in a station cleaning log.

From time to time the methods, standards and frequencies of cleaning the stations shall be reviewed and where necessary amended to meet the aspirations of the Agency and the Company to provide a high quality service.

Performance

A monthly audit of station cleaning will be undertaken by the Agency. The target is that number of actual cleans at stations carried out in a month shall be at least [98%] the required number of cleans according to the requirements above.

Station Equipment

Base Service Level

The objective of the station equipment availability standards is to ensure that the Company maintains the station equipment for the convenience and assistance of customers.

The Company shall use its best endeavors to ensure that the Station equipment listed below meets or exceeds the applicable standard of availability specified below:

- (a) Ticket vending machines ("**Performance Measure PM9**"). All ticket vending machines shall be fully operational (including providing change) and available for [98%] of the station opening hours of that station for each service day.
- (b) Lifts ("**Performance Measure PM10**"). All lifts at Stations with lift access shall be available to customers for [95%] of the station opening hours of that station for each service day.
- (c) Escalators ("**Performance Measure PM11**"). All escalators shall be operating and available to customers for [98%] of the station opening hours of that station for each service day.
- (d) Passenger Information Displays ("**Performance Measure PM12**"). All automated passenger information displays shall be operating and available to customers during [98%] of the station opening hours of that station for each service day.

Performance

Performance shall be measured using the following mechanisms:

- (a) Ticket vending machines. The actual number of hours that each ticket vending machine is fully operational (including providing change) and available to customers at each station for each service day shall be measured and recorded by the Company. To the fullest extent possible, data from the SCADA system should be used to undertake and verify this calculation.
- (b) Lifts. The actual number of hours within station opening hours that each lift at a station with lift access has all platforms available and accessible by lift and is fully available to passengers for each service day shall be measured and recorded by the Company. To the fullest extent possible, data from the SCADA system should be used to undertake and verify this calculation.

- (c) Escalators. The actual number of hours within station opening hours that each escalator is operating and available to customers at each station for each service day shall be measured and recorded by the Company. To the fullest extent possible, data from the SCADA system should be used to undertake and verify this calculation.
- (d) Passenger Information Displays. The actual number of hours within station opening hours that each automated passenger information display is operating and available to customers at each station during each service day shall be measured and recorded by the Company. To the fullest extent possible, data from the SCADA system should be used to undertake and verify this calculation.

Safety

Base Service Level

The Company shall prepare a proactive safety plan to attain and sustain safe operational and maintenance safety practices, maintain and improve safety of passengers, contractors and the Company and Agency staff and maintain a risk management program. Safety objectives and targets are as follows:

Safety Awareness

- (a) Objective: To achieve and maintain a high level of safety awareness among staff in all divisions/ departments and at all levels
- (b) Targets:
 - (i) Performance Measure PM13: Maintain “Safety” as a standing agenda item in all communication meetings with staff.
 - (ii) Performance Measure PM14: Maintain a safety promotion program.

Passenger Safety

- (a) Objective: To maintain and improve passenger safety through safety management
- (b) Targets:
 - (i) Performance Measure PM15: Zero passenger fatalities.
 - (ii) Performance Measure PM16: Number of serious injuries to passengers to be at or below [2.0] per [25 million] passengers. Serious injuries to passengers are those which require admission to hospital for observation or treatment immediately after an accident, but exclude suicide, attempted suicide or the passenger’s mental condition.

- (iii) Performance Measure PM17: Maintain a passenger safety promotion program.

Staff Safety on the Operating Railway

- (a) Objective: To maintain and improve staff safety on the operating railway
- (b) Targets:
 - (i) Performance Measure PM18: Zero staff fatalities.
 - (ii) Performance Measure PM19: Staff lost time injury frequency rate to be at or below [1.0] per [200,000] person hours worked. Staff injuries are those where a staff member, as a result of an accident while on duty, is unable to work for one complete shift or more immediately following the accident. 200,000 person hours is approximately 100 staff per year.

PART 2

Required Level for First Two Contract Years

For each of the Billing Months in column 1 of the table below, the required level for each performance measure in Part 1 of this Schedule to be used in connection with the performance regime set out in Part 3 of this Schedule shall be determined by multiplying the target with the percentage set out against that Billing Month in column 2 of the table below.

Operating Period (Billing Months)	Multiplier to obtain the Required Level
Billing Month 1-12 inclusive	[90%]
Billing Month 13-24 inclusive	[95%]
Billing Month 25 and thereafter	[100%]

PART 3

Performance Regime

System Reliability: Daily (PM1)

For each Day in which the performance does not meet the performance target the Company shall pay the Agency the sum of [50% of 5%] of the Company Revenue from Fares for the previous twelve Billing Months divided by the number of days in the Contract Year.

System Reliability: Monthly (PM2)

For each Billing Month in which the performance does not meet the performance target the Company shall pay the Agency the sum of [20% of 5%] of the Company Revenue from Fares for the previous twelve Billing Months divided by the number of Billing Months in the Contract Year.

System Punctuality: Early Departures (PM3)

For each Billing Month in which the performance does not meet the performance target the Company shall pay the Agency the sum of [5% of 5%] of the Company Revenue from Fares for the previous twelve Billing Months divided by the number of Billing Months in the Contract Year.

System Punctuality: Late Departures (PM4)

For each Billing Month in which the performance does not meet the performance target the Company shall pay the Agency the sum of [5% of 5%] of the Company Revenue from Fares for the previous twelve Billing Months divided by the number of Billing Months in the Contract Year.

System Punctuality: First/Last Trip (PM5)

For each Billing Month in which the performance does not meet the performance target the Company shall pay the Agency the sum of [5% of 5%] of the Company Revenue from Fares for the previous twelve Billing Months divided by the number of Billing Months in the Contract Year.

Station Equipment: Lifts (PM10)

For each Billing Month in which the performance does not meet the performance target the Company shall pay the Agency the sum of [5% of 5%] of the Company Revenue from Fares for the previous twelve Billing Months divided by the number of Billing Months in the Contract Year.

Station Equipment: Escalators (PM11)

For each Billing Month in which the performance does not meet the performance target the Company shall pay the Agency the sum of [5% of 5%] of the Company Revenue from Fares for the previous twelve Billing Months divided by the number of Billing Months in the Contract Year.

Station Equipment: Passenger Information Displays (PM12)

For each Billing Month in which the performance does not meet the performance target the Company shall pay the Agency the sum of [10% of 5%] of the Company Revenue from Fares for the previous twelve Billing Months divided by the number of Billing Months in the Contract Year.

Daily Computations

In each of the circumstances contemplated in paragraphs 10.1 – 10.8 above, the penalty in question shall be computed on a daily basis.

PART 4

Performance Regime Penalties

Calculation

Penalties under the performance regime shall be calculated as specified in Parts 2 and 3 of Schedule 15 and administered according to this Part 4 of Schedule 15.

Maximum Monthly Penalty

The maximum penalty under the performance regime in any Billing Month shall be 5% of the Company Revenue for the previous twelve Billing Months.

Monthly Calculations

- (a) In respect of each Billing Month, the Agency shall:
 - (i) calculate the amount of the penalty using data provided by the Company which, at the Agency's discretion, shall be subject to audit and/or check by the Agency; and
 - (ii) notify the Company of the amount of the penalty so calculated.
- (b) The Agency's calculation under paragraph 11.3(a) shall be conclusive unless within five (5) Business Days of receiving notice under paragraph 11.3(a)(ii) the Company serves a notice of objection on the Agency specifying its objections, the corrections which it believes should be made and its reasons.

Payment

Payment of penalties shall be made by the Agency drawing upon the Operating Security.

SCHEDULE 16

REPORTS

Part 1. Construction Period Report

1.1 General

From the Continuous Construction Date until the Provisional Operations Start Date, the Company shall prepare and submit to the Agency [monthly] reports, in a form acceptable to the Agency, relating to the progress, cost and completion of the Works.

The Company shall include in such reports the following: :

- (a) the progress which has been made and is likely to be made in carrying out the Works;
- (b) the extent to which difficulties have been encountered in that respect and the likelihood that the Project Milestones will be met, and, if it is not likely to be met, the extent to which it will be exceeded;
- (c) the Company's expectations as to the consequences of the Works Timetable not being met and, in each case, its reasons;
- (d) information as to any accident, serious injury or fatality occurring during the Works and any claim or action which may be likely to have a material adverse effect on the Project; provided that the information in this subsection (d) must be given to the Agency as soon as reasonably practicable after the occurrence of the event in question; and
- (e) information and other assistance as the Agency may reasonably request to comply with the Agency's reporting obligations under any Legal Requirement as it relates to the construction of the Facilities.

1.2 Specific Reports

The monthly report shall provide sufficient information to enable the Agency to monitor progress of the works against baseline project implementation programs and baseline project cost estimates. The monthly report must indicate, at the minimum, the following:

- (a) Project implementation programs with clearly identifiable work breakdown structures (WBS), activity interdependencies, external interfaces, critical path(s), milestones linked to financial drawdown and program risk assessment. This should be available in electronic format and utilize recognized project planning software.
- (b) Project cost estimates clearly linked to program (WBS) and specification details with evidence to support the basis of cost estimates (for example, subcontract indicative estimates) and a risk assessment of each major cost item. This must be available in electronic format.

(c) An assessment of progress against program and budget with details of activities completed and planned, milestones achieved, measures of value earned and expected completion program and outturn costs for each element of the works.

(d) An updated and revised project risk register identifying risks to expected completion program and outturn costs and mitigating actions.

(e) Any claim or action against the Company or any of its subcontractors which may be likely to have a material adverse effect on the completion of the works.

(f) [Others]

1.3 Safety Information

The Company shall notify the Agency orally and in writing as soon as reasonably practicable after becoming aware of the occurrence of any accident or incident, including those affecting third parties, resulting in serious bodily injury or loss of life, or serious damage to the works ("**Construction Unusual Incident**"). A complete description of any Construction Unusual Incident, including the time and location of the incident, an explanation of what occurred and the action taken by all parties shall be included in the monthly report.

Part 2. Operation Period Report

2.1 General

During the Operating Period, the Company shall prepare and submit to the Agency [monthly] reports, in a form acceptable to the Agency, relating to the performance of the Facilities and compliance with the Operating Standards.

The Company shall include in such reports the following:

- (a) planned activities and volumes of work on or in connection with the Facilities for its operation, maintenance and renewal, including any work to be done by a person other than the Company ("**Relevant Activities**");
- (b) the expected effect of Relevant Activities on the quality and capability of the Facilities and the quality and ability of the Company to provide Services;
- (c) the expected effect of Relevant Activities on the ability of the Company to perform its obligations under this Agreement;
- (d) a plan for identifying and managing the material risks which are likely to be faced in carrying out Relevant Activities;
- (e) a statement of the Company's expected expenditure in carrying out Relevant Activities;

- (f) information as to any accident, serious injury or fatality occurring during the operation of the Facilities and any claim or action which may be likely to have a material adverse effect on the Project; provided that the information in this subsection (f) must be given to the Agency as soon as reasonably practicable after the occurrence of the event in question;
- (g) information and other assistance as the Agency may reasonably request to comply with the Agency's reporting obligations under any Legal Requirement as it relates to the operation, maintenance and repair of the Facilities; and
- (h) such other information in relation to the Company's performance of its obligations under this Agreement as the Agency shall reasonably require and specify in a notice given to the Company.

2.2 Specific Reports

The Company shall prepare and submit to the Agency monthly reports, in a form acceptable to the Agency, relating to the Services, the condition of the Facilities and other information reasonably requested by the Agency.

The [monthly] report must indicate, at the minimum, the following:

- (a) number of service failures by discipline;
- (b) number of service minutes lost, by discipline;
- (c) reliability trends, for each discipline;
- (d) notable incidents and Unusual Incidents;
- (e) actions in hand to address failures and unreliability trends;
- (f) safety record, number, rate and nature of incidents involving customer or staff injury or loss of worked time together with preventative measures planned or carried out;
- (g) any other requirements as required under Schedule 15 (*Service Quality Requirements*);
- (h) any other requirements as required under Section 8.4 (*Concession Fees*) relating to ridership levels;
- (i) plans for the forthcoming month, including train service plan and planned activities and volumes of work by discipline. The plan must separately identify activities related to the operation of the system, on-going system maintenance and longer-term renewal work. It should identify changes to staff numbers, the number and condition, capability and capacity of assets. The reporting of assets should follow the categorization and descriptions contained in the Asset Register (Section 6.5(b)(ii)); and

(j) the Company's performance, including the amounts payable as Penalties, in respect of all the measures identified in Parts 2 and 3 of Schedule 15 (*Service Quality Requirements*), showing daily, monthly and annual trends as appropriate for each measure.

2.3 Annual Report

Not later than forty (40) Business Days after the end of each Contract Year, the Company shall furnish to the Agency an annual report in a form acceptable to the Agency, certifying the completion and results of all maintenance and renewal activities and reviewing the operation and performance of the Facilities for the preceding Contract Year. This must also include plans for the maintenance, renewal and operation of the Facilities for the forthcoming Contract Year.

2.4 Event Reports

2.4.1 If any event or condition occurs that materially affects the Project or the Company's ability to perform its obligations under this Agreement and any other Project Agreement or if any of the warranties given by the Company under Section 12 (*Representations and Warranties*) ceases to be true in any material respect, the Company shall promptly provide the Agency a report detailing such fact or occurrence.

2.4.2 The Company shall notify the Agency orally and in writing as soon as reasonably practicable after becoming aware of the occurrence of any incident resulting in serious bodily injury or loss of life, the entire Facilities or a material portion thereof being inoperable, or serious damage to the site ("**Operation Unusual Incident**"). A complete description of any Operation Unusual Incident, including the time and location of the incident, an explanation of what occurred and the action taken by all parties shall be included in the monthly report.

2.5 Service Reports

2.5.1 When the operation of the Facilities is below the Service Quality Requirements, the Company shall include in the report: (i) a full explanation 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 in its report a full explanation of the problem and its recommended solution.

2.5.2 The Company shall inform the Agency in writing within twenty-four (24) hours of any circumstances resulting in delay of any vehicle/train for more than thirty (30) minutes, more than ten (10) trains late in any day, or cancellation of more than two (2) trains, when the cause is known to be or is likely to have been an equipment failure, defect or irregularity.

2.6 FINANCIAL REPORTS

2.6.1 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.

2.6.2 Financial Reports

- (u) The Company shall prepare unaudited monthly financial statements in accordance with the Accounting Principles consistently applied. The [monthly/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 [month/quarter] for the duration of the Operating Period.
- (v) 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.
- (w) The Company shall give to the Agency, as soon as available, the audited consolidated financial statements of each Shareholder and each subcontractor for each of their accounting periods ending after the date of this Agreement.
- (x) In addition to the foregoing reports, the Company shall provide the Agency, at the Agency's 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.

2.7 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.

SCHEDULE 17

FARES

Definitions

A "**Fare**" is the amount of money payable for the purchase of a right, exercisable against the Company as operator of the Facilities, subject to any applicable rights or restrictions, to make one or more journeys on the Facilities or to carry on such a journey an item of luggage [or an animal].

"**Inflation Factor**" means the change as between one Contract Year and the next in the [Consumer Price Index] (annual headline Inflation Rate) published or determined by the National Statistics Office with respect to the first Billing Month of the Contract Years in question.

"**Foreign Exchange Factor**" means [●], but only in relation to Financing Agreements denominated in a currency other than Philippines Pesos.

Right to charge and collect Fares

General

The Company has the right to charge, collect and retain Fares paid by users of the Facilities in respect of journeys made during the Operating Period. The Agency does not have that right.

Subcontracting of Ticket Selling

If the Company enters into arrangements with any other person, including retailers and providers of online travel services, for tickets to be sold by that other person, it shall ensure that the tickets which are sold comply in all respects with the provisions of this Agreement [and, in particular, that no discounts are given].

Setting of Fares

Agency's Right to Set Fares

Fares shall be set by the Agency. The Agency is responsible for obtaining all necessary governmental consents and approvals to Fares and any changes to them.

General Principle

The Agency shall set Fares at levels which are reasonably likely to encourage ridership on the Facilities.

Fare Components

Each single Fare shall consist of:

- (a) a base fare component, being a boarding fee set for the first Contract Year at [PhP[●]]; and
- (b) a distance fare component, being a fee set for the first Contract Year at [PhP[●]] per kilometer travelled.

Pricing Categories

The Agency may establish different types of Fare, including:

- (a) Fares which entitle users to travel on the Facilities or any specified part of it for different periods, such as a year, a month, a week, only at weekends, or only on weekdays; and
- (b) concessionary Fares or free travel for [children under five years old, students, senior citizens, people with disabilities, members of the armed forces of the Philippines, or public officials].

Paragraph 6 deals with how the Company is compensated by the Agency for concessionary and free travel.

Change Over Time

Fares (including concessionary Fares):

- (a) shall be adjusted:
 - (i) with effect from the beginning of each of the first five Contract Years, by the Inflation Factor [plus [●] %]; and
 - (ii) with effect from the beginning of each subsequent Contract Year, by the Inflation Factor [plus [●] %]; and
 - (iii) with effect from the beginning of each of the first five Contract Years, by the Foreign Exchange Factor [plus [●] %]; and
 - (iv) with effect from the beginning of each subsequent Contract Year, by the Foreign Exchange Factor [plus [●] %]; and
- (b) may be changed at any other time by the Agency.

Interim Increase

- (a) If, in any Contract Year
 - (i) the annual rate of inflation in the Philippines is more than [[●] %] of its rate in the previous Contract Year, or

- (ii) the annual rate of change in the foreign currency exchange in the Philippines is more than **[[●]]%** of the previous Contract Year,

the Company shall be entitled, by notice to the Agency, to require the Agency to increase Fares by such amounts.

- (b) Any increase under this paragraph 3.6 shall be made as soon as reasonably practicable after the Company's notice under paragraph 3.6(a).

Restrictions on Increases

In relation to a change in Fares by the Agency under paragraphs 3.5 or 3.6, no change may exceed **[[●]]%** of the [nominal annual average] amount of the Fare in the previous Contract Year.

Due Process

Before making any change under paragraph 3.5(b), the Agency must:

- (a) consult with the Company, stating its proposal for change and its reasons;
- (b) allow the Company a proper opportunity to make objections or representations in relation to the proposal;
- (c) take into consideration such objections and representations; and
- (d) give the Company its reasons for its decision in writing.

Effective date of change

No change of a Fare may have effect earlier than:

- (a) **[[●]]** days before notice of the change is given by the Agency to the Company; or
- (b) **[[●]]** days before notice of the change is published by the Company in accordance with paragraph 3.

Publicity about Fares and concessionary travel

The Company shall publicize:

- (a) the levels of Fares, including any applicable concessions, and any changes to Fares or concessions; and
- (b) the range of available tickets

in such manner as shall give reasonable notice to passengers and intending passengers of the Facilities, including by displaying such information in prominent positions at all Stations, on the trains and (in the case of changes) in the local print press.

Fare collection and revenue protection

The Company is responsible for:

- (a) the installation, operation, maintenance and performance of the Fare collection and revenue protection systems; and
- (b) the enforcement of the obligation to pay Fares, including the conduct of any legal proceedings against passengers who fail to pay their Fares.

Protections for Company

Circumstances of Protection

The Company shall be entitled to financial compensation from the Agency in the following circumstances:

- (a) the establishment by the Agency of concessionary Fares or entitlements to free travel;
- (b) a decrease in Fares imposed by the Agency;
- (c) a failure by the Agency to comply with its obligations under this Schedule 17 in relation to the structure or level of Fares; and
- (d) a new requirement to charge value added tax, sales or any other tax on Fares.

Nature of protection

In the circumstances specified in paragraph 6.1, the Company shall be entitled to be placed by the Agency in the financial position it would have been in had the circumstance in question not occurred.

Procedure for Invoking Protection

If the Company wishes to claim protection under this paragraph 6, it must:

- (a) give notice to the Agency of the nature of its claim, including as much information as is reasonably practicable about the circumstance giving rise to the claim and the financial effects which it believes have followed or will follow that occurrence;
- (b) provide the Agency with such additional information as it reasonably requests; and
- (c) discuss with the Agency the ways in which it may be compensated, including by the adjustment of Concession Fee payments for all or part of the remainder of the Operating Period.

Failure to Agree Protective Measures

If, within [●] days of notice from the Company under paragraph 6.3 (or such longer period as the Agency may reasonably require), the Company and the Agency fail to agree on the protective measures to be taken under this paragraph 6, either party shall be entitled to have the matter referred for determination by an expert under Section 19.2 (*Expert Proceedings*).

SCHEDULE 18

COMMERCIAL DEVELOPMENT

[Describe the terms of Commercial Development agreed between the Parties.]

SCHEDULE 19

CONCESSION FEE

Company to calculate

The Company shall calculate the Concession Fee for each account period to be paid on or before 30 calendar days from the end of each Contract Year.

Formula

The Concession Fee for each account period is determined in accordance with the following formula:

[●]

Company to Provide Calculations and Supporting Evidence

The Company shall provide the calculations of the Concession Fee and all supporting documentary evidence to the Agency.

Consequences of Non-Payment

If the Company does not pay the Concession Fee by the due date for payment:

- (a) the amount due shall carry Default Interest; and
- (b) a Company Event of Default shall occur.

Default Interest

Default Interest shall be equivalent to [●]% of the unpaid amount and shall run from the date on which payment of the amount in question should have been paid until it is paid.

SCHEDULE 20

FORM OF INVOICE

[This Schedule should contain the form of invoice for the Concession Fees or Revenues due to the Agency.]

SCHEDULE 21**COMPANY SHAREHOLDERS**

The Initial Shareholders are to hold the following interests in the Company at the Effective Date:

Name of Shareholder Nationality Address/Registered Corporate Office Tax Identification Number	Class of Shares	Number of Shares	Value (\$)/(PhP)	Percentage Shareholding
1.				
2.				
3.				
4.				
5.				
6.				

SCHEDULE 22

COMPETITIVE LAND TRANSPORT SYSTEM

Rail

During the Operating Period, the Agency shall not permit the construction by Government Authorities of any new rail infrastructure or the operation of any new rail services which may directly compete with the Project.

Buses and jeepneys

The Agency shall use all reasonable endeavors to initiate and conduct the necessary studies, plans and follow-on activities to procure that all relevant Government Authorities exercise their powers to ensure that bus and jeepney services (including other means of passenger transport) which have the potential to compete with the Project:

- (a) will not receive any government subsidies which have the effect of permitting them to charge lower fares than would otherwise be the case; and
- (b) will instead be rationalized to the extent possible to provide services which are complementary to the project.

Buses and jeepneys – specifics

In particular, the Agency shall conduct the relevant studies and plans which will look into the feasibility of ensuring that:

- (a) [rerouting to allow Station accessibility];
- (b) [limiting issuance of new franchises]; and
- (c) [others].

Failure to protect Project – Agency indemnity

If the Agency fails to comply with its obligations under this Schedule 22:

- (a) it shall indemnify the Company against its losses arising out of such failure; and
- (b) the limitation on liability provided for in Section 16 (*Limitation of liability*) of the Agreement shall not apply.

SCHEDULE 23

TERMINATION BUY-OUT AND TRANSFER PROVISIONS

Introduction

This Schedule is concerned with the transfer of the Facilities to the Agency at the Termination Date.

Definitions

“Accrued Interest” means interest accrued pursuant to the Financing Agreements on the Principal Amount as at the Calculation Date, excluding any amount payable by way of default interest (however described).

“Adjusted Value” means the present value or future value (as applicable) calculated as of the Termination Date, discounted at [●]%.

“Breakage Costs” means an amount equal to the sum, as at 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 parties to the Financing Agreements after deducting any rebate or other financial advantage receivable by such parties as a result of either such breakage.

“Buy-Out Price” means Buy-Out Price A, Buy-Out Price B or Buy-Out Price C (as the case may be).

“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 by the Company up to and including 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 to the Agency by the Company up to and including 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 Adjusted Value of 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 date [60] calendar months after the Calculation Date; minus
- (d) the Adjusted Value of dividends and distributions made by the Company to its shareholders (including interest paid on shareholder loans) from the [Required Operations Start Date] to the Calculation Date; plus
- (e) Termination Costs, minus
- (f) the Cash Amount, minus
- (g) any unpaid amounts due to the Agency by the Company up to and including the Calculation Date;

and if the sum of (c) and (d) of this definition is less than zero, (c) plus (d) shall be deemed to equal zero.

“Calculation Date” means the date specified for termination of this Agreement in the relevant termination notice.

“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 or securities accounts maintained with any bank or other financial institution.

“Equity Amount” means the amount of capital actually contributed or caused to be contributed by the Shareholders or any Affiliate of a Shareholder (including indebtedness for money borrowed by the Company from a Shareholder or Affiliate of a Shareholder which by its terms is subordinated to any indebtedness for borrowed money incurred by the Company under any of the Financing Agreements) as of the Calculation Date; but for the purposes of the calculations in this Schedule 23, that amount may not exceed the Equity Commitment.

“Equity Commitment” means the 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 purposes of financing the Works.

“Rate of Return” means [15]% (nominal).

“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 paid or repaid by the Company (excluding any indebtedness constituting Equity and any amounts paid or repaid in respect thereof) pursuant to the Financing Agreements as in effect at the Effective Date.

“Termination Costs” means:

- (a) all Taxes payable by the Company as a result of the termination of this Agreement, the transfer of the Project Assets to the Agency and the payment to the Company of any amount in consideration of that transfer; and
- (b) all amounts payable by the Company with respect to costs incurred by any subcontractor as a result of the termination of this Agreement, subject to a maximum of [●]% of the Total Project Cost.

Financial aspects of transfer

Buy-Out – Termination by Company

- (a) If the Company terminates the Agreement under Section 15.2 (*Agency Events of Default*), Section 20.1 (*Termination Due to an Event of Default*) or Section 20.2 (*Termination Due to Prolonged Force Majeure Event*) of the Agreement, the Agency shall pay to the Company an amount equal to:
 - (i) Buy-Out Price B if such termination occurs before the Required Operations Start Date; or
 - (ii) Buy-Out Price C if such termination occurs on or after the Required Operations Start Date.
- (b) If such termination occurs as a result of a Force Majeure Event, the Buy-Out Price under paragraph 3.1(a) shall be reduced by the amount receivable by the Company from insurance in respect of such Force Majeure Event.

Buy-Out – Termination by Agency

- (a) If the Agency terminates this Agreement under Section 15.1 (*Company Events of Default*) or Section 16.1 (*Termination Due to an Event of Default*):
 - (i) the Agency shall pay to the Company an amount equal to Buy-Out Price A, but
 - (ii) if Buy-Out Price A is a negative number, the Company shall pay such amount to the Agency.
- (b) If the Agency terminates this Agreement under Section 16.2 (*Termination Due to Prolonged Force Majeure Event*), the Agency shall pay to the Company an amount equal to:
 - (i) Buy-Out Price B if such termination occurs before the Required Operations Start Date; or
 - (ii) Buy-Out Price C if such termination occurs on or after the Required Operations Start Date.

Termination at Expiry Date

If this Agreement terminates on the [●] ([●]th) anniversary of the Provisional Operations Start Date, no Buy-Out Price shall be payable to the Company.

Transfer of facilities

General

Upon the termination of this Agreement, the Company shall:

- (a) transfer the Facilities to the Agency:
 - (i) in the condition provided for in paragraph 5 (*Condition of Facilities*); and
 - (ii) free from any Lien; and
- (b) enter into and grant such contracts and other instruments, and do such other things, as are necessary or expedient to ensure that the Agency obtains all right, title and interest in and to the Facilities.

Training of Personnel

On or before the date falling not later than twelve (12) months before the Termination Date, the Company shall arrange for the training of such personnel as the Agency shall determine are required to operate the Facilities after the Termination Date in accordance with the Service Quality Requirements.

Condition of Facilities

General

The Company shall transfer the Facilities to the Agency in the condition which is necessary or expedient for the continued efficient and economical operation, maintenance and renewal of the Facilities in compliance with:

- (a) the terms of this Agreement (on the assumption that it will continue in force on the same terms but with a new concession holder); and
- (b) all Legal Requirements

on the basis that the Facilities will continue to be operated until at least the date which is one (1) year from the Termination Date.

Spare parts and consumables

The transfer of assets provided for in paragraph 5.1 shall include spare parts and consumable items in sufficient numbers and of sufficient quality for the operation, maintenance and renewal of the Facilities for [three] months after the transfer.

Pre-transfer inspection & special payment

If, following a service inspection or a maintenance inspection carried out during the last two years of the Operating Period, the Agency is of the opinion that the Facilities are in, or are likely to reach, a condition which is or would be so poor that the making of a Penalty under Section 6.1(c) (*Operation and Maintenance Responsibilities*) and Section 7.2 (*Service Level and Quality*) of the Agreement would not enable the Agency to recover an amount sufficient to compensate for that condition, the Company shall pay to the Agency an amount equal to the reasonable costs of the Agency in restoring the Facilities to the condition provided for in paragraph 5.1. Such payment shall be made within thirty (30) days of a demand from the Agency in that respect.

Warranty Bond

On or before the Termination Date, the Company shall provide and deliver to the Agency a bond or other form of security or financial assurance as security for the performance of the Facilities in accordance with the performance standards specified the Agreement for a period of one (1) year after the transfer of such to the Agency ("**Warranty Bond**"). The Warranty Bond shall have a value equivalent to 50% of the amount of the aggregate costs of the operation and maintenance of the Facilities in the last year before the transfer of the Facilities to the Agency.

Title, Custody and Risk of Loss

Title, custody and risk of loss will vest in the Agency on the Termination Date.⁵

⁵ If there is Government Works Funding Arrangements, then title properties covered by such funding arrangements shall vest in the Agency as soon as final acceptance is issued.