

1 The State recognizes the autonomy of local government units (LGUs) in entering and
2 implementing Local PPP Projects to enable them to attain their fullest development as self-
3 reliant communities and make them more effective partners in the attainment of national goals.
4

5 The State shall also ensure the integration of climate resilience, sustainability, and gender and
6 development policies and programs in the planning, design, and implementation of PPP
7 Projects.
8

9 The State shall take cognizance of partnerships that have not been submitted through the
10 administrative process as long as they are PPPs as defined in the Code and shall therefore
11 subject such projects under its jurisdiction and rules.
12

13 Finally, it is declared that the State and LGUs shall affirm open, fair, transparent, and
14 competitive selection as the central tenet for securing private investment in PPP Projects. It
15 shall implement a policy of full public disclosure of all its transactions involving public interest,
16 subject to terms and conditions as prescribed by pertinent laws.
17

18 **Section 3. Rules of Interpretation**

19 Unless expressly provided to the contrary, references to any statute, law, decree, regulation,
20 document, guidelines, or agreement made in this IRR shall be deemed to include references
21 to such statute, law, decree, regulation, document, guidelines, or agreement, as amended,
22 supplemented, novated, varied, or replaced from time to time: *Provided*, That there is no
23 impairment of the obligation of contract.
24

25
26 In computing a period indicated in the Code and this IRR, the first day shall be excluded and
27 the last day included, under Article 13 of RA No. 386 or the Civil Code of the Philippines.
28

29 If the last day of any period for action by a government entity or for submission to a government
30 entity falls on a non-working day (i.e. Saturday and Sunday), legal holiday, special non-
31 working holiday, or other nonworking days duly declared by the President, Governor, Mayor,
32 or other government official authorized to make such declaration for such government entity,
33 it is understood that the last day shall be the next working day.
34
35

1 **Section 4. Definition of Terms**

2
3 The following terms shall apply for purposes of this IRR:

4
5 (a) **Alternative Financial Instruments** refers to Green Financing instruments, carbon
6 finance mechanisms, corporate or project bonds, islamic bonds (sukuk), real estate
7 investment trust instruments, Blue Financing instruments, municipal bonds, bonds
8 from securitization, other forms of capital market financing, and such other instruments
9 suitable for PPP Projects;

10
11 (b) **Approving Body** refers to an entity authorized to approve PPP Projects, in
12 accordance with Section 7 of the Code and Title IV of this IRR;

13
14 (c) **Availability Payments** refer to predetermined payments by the Implementing Agency
15 to the Private Partner in exchange of delivering an asset or service in accordance with
16 the PPP Contract. Availability Payments shall not be construed as Government
17 Undertakings, Subsidy, or government contribution;

18
19 (d) **Blended Finance** refers to the approach to structured finance where a partner
20 government, bilateral or multilateral agency, or international or multilateral lending
21 institution may mobilize financing from private or commercial institutions for one or
22 more components of a PPP Project;

23
24 (e) **Confidential Business Information** refers to information which are proprietary in
25 nature and concerns or relates to the operations, production, sales, shipments,
26 purchases, transfers, identification of customers, inventories, or amount or source of
27 any income, profits, losses, expenditures, which are not generally known to the public
28 or to other persons who can obtain economic value from its disclosure or use, or is
29 liable to cause serious harm to the person who provided it, or from whom it originates,
30 and is the subject of efforts that are reasonable under the circumstances to maintain
31 its secrecy;

32
33 (f) **Consolidated Investment Programs** refers to the Public Investment Program (PIP),
34 Three-Year Rolling Infrastructure Program (TRIP), Local Development Investment
35 Programs (LDIPs), Regional Development Investment Programs (RDIPs), Land Use
36 Development and Infrastructure Plan (LUDIP), and the Institutional Development Plan
37 (IDP). This shall also include the official sector master plans of government entities;

- 1
2 (g) **Construction** refers to new construction, rehabilitation, improvement, expansion,
3 alteration, and related works and activities including the necessary design, supply,
4 installation, testing and commissioning of equipment, systems, plants, materials, labor
5 and services, and related items needed to build or rehabilitate an infrastructure or
6 development facility;
7
- 8 (h) **Contingent Liability** refers to an obligation that may arise from events specified in a
9 PPP Contract, the occurrence, timing, and amount of which are uncertain. These
10 events include, but are not limited to, regulatory action, *force majeure*, breach of
11 government warranties, and Material Adverse Government Action (MAGA), among
12 others;
13
- 14 (i) **Contractor** refers to any entity allowed and duly registered and licensed under
15 Philippine laws, which may or may not be the Private Partner, that shall be responsible
16 for the Construction and/or supply of equipment or services for PPP Projects;
17
- 18 (j) **Economic Model** refers to a model which presents the economic benefits and costs
19 of a project. The Economic Model must present the assumptions, which shall have
20 sufficient basis and justifications, used in calculating economic benefits, conversion of
21 financial costs to economic costs, and calculation of economic viability (i.e., economic
22 internal rate of return; economic net present value; benefit-cost ratio);
23
- 24 (k) **Facility Operator** refers to any entity allowed and duly registered and licensed under
25 Philippine laws, which may or may not be the Private Partner, that shall be responsible
26 for operating and/or maintaining a facility;
27
- 28 (l) **Financial Close** refers to the specific milestone in a PPP Contract where the Private
29 Partner successfully secures all necessary project and financing agreements. The
30 achievement of such milestone confirms that all prior conditions have been met,
31 allowing the Private Partner to draw down the financing to commence work on the PPP
32 Project;
33
- 34 (m) **Financial Model** refers to a model that presents the projected balance sheet, income
35 statement, and cash flows statement of a PPP Project for its full life cycle including
36 assumptions which shall have sufficient basis and justification. The Financial Model
37 must present the calculations on financial viability (i.e., debt service coverage ratio,

1 free cash flows to firm and equity holders; project and equity internal rates of return;
2 project and equity net present value; and weighted average cost of capital) of a PPP
3 Project;

4
5 (n) **Generic Preferred Risk Allocation Matrix (GPRAM)** refers to the document issued
6 by the Investment Coordination Committee (ICC) of the National Economic and
7 Development Authority (NEDA) Board to guide government entities and the private
8 sector in the optimal allocation of risks in structuring PPP Projects;

9
10 (o) **Government Financial Institutions (GFIs)** refer to financial institutions or
11 corporations in which the government directly or indirectly owns majority of the capital
12 stock and which are either: (i) registered with or directly supervised by the Bangko
13 Sentral ng Pilipinas (BSP); or (ii) collecting or transacting funds or contributions from
14 the public and places them in financial instruments or assets such as deposits, loans,
15 bonds, and equity, including, but not limited to, the Government Service Insurance
16 System (GSIS), the Social Security System (SSS), and the Maharlika Investment
17 Corporation (MIC);

18
19 (p) **Government Instrumentalities with Corporate Powers (GICPs) / Government**
20 **Corporate Entities (GCEs)** refer to instrumentalities or agencies of the government,
21 which are neither corporations nor agencies integrated within the departmental
22 framework, but vested by law with special functions or jurisdiction, endowed with some
23 if not all corporate powers, administering special funds, and enjoying operational
24 autonomy usually through a charter;

25
26 (q) **Government-owned or -controlled corporation (GOCC)** refers to any agency
27 organized as a stock or non-stock corporation, vested with functions relating to public
28 needs whether governmental or proprietary in nature, and owned by the government
29 of the Republic of the Philippines directly or through its instrumentalities either wholly
30 or, where applicable, as in the case of stock corporations, to the extent of at least a
31 majority of its outstanding capital stock, as defined in Republic Act No. 10149,
32 otherwise known as the "GOCC Governance Act of 2011", including GICPS, GCEs,
33 GFIs, water districts created under Presidential Decree (PD) No. 198, and economic
34 zone authorities, which are hereby authorized to undertake PPP Projects with a Private
35 Partner in accordance with the provisions of the Code;

36

- 1 (r) **Government Undertakings** refer to any form of contribution and/or support, which the
2 government may extend to a Private Partner for the implementation of PPP Projects,
3 as provided under the Code;
4
- 5 (s) **Green Financing** refers to investments that create environmental benefits in support
6 of green growth, low-carbon, carbon avoidance, and sustainable development, and the
7 use of alternative assets such as carbon credits, such as those pursuant to Article VI
8 of the Paris Agreement, or ecosystem services;
9
- 10 (t) **Guarantee on Demand** refers to an agreement where the Implementing Agency
11 undertakes to assume the market demand risks associated with the PPP Project:
12 *Provided*, That the adoption of availability-based schemes and Availability Payments
13 shall not be considered as Guarantee on Demand;
14
- 15 (u) **Guarantee on Loan Repayment** refers to an agreement where the Implementing
16 Agency guarantees to assume responsibility for the repayment of debt directly incurred
17 by the Private Partner in implementing the PPP Project in case of a loan default. As
18 an exception, government repayment of debt as part of Termination Payments shall
19 not be considered as Guarantee on Loan Repayment;
20
- 21 (v) **Guarantee on Private Sector Return** refers to an agreement where the Implementing
22 Agency guarantees to provide a predetermined rate of return on the investment of the
23 Private Partner. This shall not cover Termination Payments arising from government
24 events of default;
25
- 26 (w) **Implementing Agency** refers to a department, bureau, office, instrumentality,
27 commission, authority of the national government, state university and college (SUC),
28 local university and college (LUC), LGU, and GOCC;
29
- 30 (x) **Independent Consultant** refers to a non-aligned or neutral third-party, either
31 individual, partnership, or corporation, procured by the Implementing Agency to
32 provide independent advice to the contracting parties for the design and Construction
33 of the PPP Project and monitoring of the performance of the contracting parties during
34 such phases of the PPP Project. An IC may also be procured during the operations
35 and maintenance (O&M) phase and handover/turnover phase of the PPP Project;
36

- 1 (y) **Infrastructure Projects** refer to the construction, improvement, rehabilitation, repair,
2 and/or maintenance of facilities or provision of services for use by the public that
3 underlie and enable, sustain, and enhance the economic and social development of
4 the country. Infrastructure Projects include those listed under Section 8 of this IRR;
5
- 6 (z) **Joint Venture (JV)** refers to a national or local PPP contractual arrangement, whether
7 solicited or unsolicited, where both the Implementing Agency performing its proprietary
8 function and the Private Partner pool resources comprising of capital, services, or
9 assets, including equipment, land, or intellectual property, to jointly undertake a
10 specific investment activity within a specific period of cooperation, to deliver an
11 infrastructure or development project typically provided by the public sector;
12
- 13 (aa) **Key Performance Indicators (KPIs)** refer to the financial or non-financial indicators
14 used to measure the progress or success of the Private Partner on critical factors
15 relevant to the project, and which will normally vary depending on the contracted
16 services and other attributes of the PPP Project;
17
- 18 (bb) **Land Value Capture Strategies** refer to a set of mechanisms used to recover and re-
19 invest land-based value increases that arise in the catchment area of public
20 infrastructure investments, such as but not limited to, betterment contributions, grant
21 or sale of commercial development rights, and strategic land management. For
22 purposes of the Code and this IRR, land value capture strategies may be employed to
23 optimize the financial and economic efficacy of a PPP Project;
24
- 25 (cc) **Local PPP Project** refers to a PPP Project that is undertaken by LGUs and LUCs;
26
- 27 (dd) **Local Universities and Colleges (LUCs)** refer to Commission on Higher Education
28 (CHED)-accredited public Higher Education Institutions (HEIs) established by LGUs
29 through an enabling ordinance, financially supported by the LGU concerned, and
30 compliant with the policies, standards, and guidelines of the CHED;
31
- 32 (ee) **Market Sounding** refers to a feedback gathering exercise with the appropriate or
33 relevant stakeholders and potential partners, such as but not limited to prospective
34 investors, prospective bidders, financing groups, government institutions, and industry
35 and community groups.
36

1 Market Sounding aims to (i) assess the appropriateness and attractiveness of the PPP
2 scheme, (ii) solicit inputs on project requirements to achieve an optimal structure for
3 the PPP Project, and (iii) identify potential issues that may affect the viability of the
4 proposed PPP Project;

5
6 (ff) **Material Adverse Government Action (MAGA)** refers to any act of the government
7 which the Private Partner had no knowledge of, or could not be reasonably expected
8 to have had knowledge of, prior to the effectivity of the PPP Contract, and that occurs
9 after the effectivity of the PPP Contract, other than an act which is authorized or
10 permitted under the PPP Contract, which (i) specifically discriminates against the
11 sector, industry, or project, and (ii) has a significant negative effect on the ability of the
12 Private Partner to comply with any of its obligations under the approved PPP Contract.
13 MAGA may include unanticipated regulatory risks;

14
15 (gg) **Most Responsive Bid** refers to the bid that conforms, in all material respects, to the
16 bid solicitation requirements and approved bid parameters, and the one that is most
17 advantageous to the government. A bid that is most advantageous to the government
18 includes one that protects the public by providing affordable, accessible, and efficient
19 public service, taking into account the totality of circumstances;

20
21 (hh) **National PPP Project** refers to a PPP Project that is undertaken by the national
22 government, SUCs, and GOCCs;

23
24 (ii) **Original Proponent (OP)** refers to the Private Proponent conferred the “Original
25 Proponent status (OPS)”, in accordance with Section 10 of the Code and Section 52
26 of this IRR;

27
28 (jj) **PPP** refers to a contractual arrangement between an Implementing Agency and a
29 Private Partner to finance, design, construct, operate, and maintain, or any
30 combination or variation thereof, infrastructure or development projects and services
31 which are typically provided by the public sector, and where each party shares in the
32 associated risks;

33
34 (kk) **PPP Contract** refers to the contract for the PPP Project, as approved, executed, and
35 implemented;

36

1 (ll) **PPP Project** refers to any public infrastructure or development projects and services
2 implemented;

3
4 (mm) **Private Partner** refers to the private sector entity determined to be financially, legally,
5 and technically capable to undertake obligations under an awarded PPP Contract. The
6 Private Partner may create a special purpose company (SPC) or a special purpose
7 vehicle;

8
9 (nn) **Private Proponent** refers to the private sector entity which has submitted a bid in
10 relation to a Solicited Project, or a private sector entity which has submitted an
11 Unsolicited Proposal. The Private Proponent may be Filipino or foreign-owned, and
12 may engage the services of a foreign Contractor or foreign Facility Operator, subject
13 to requirements and limitations provided under the Constitution, existing laws, rules,
14 and regulations;

15
16 (oo) **Probity Advisor** refers to a non-aligned or neutral third-party, whether natural or
17 juridical, who shall provide guidance and advice on all aspects and stages of the
18 procurement process from commencement up to contract signing with the selected
19 bidder;

20
21 (pp) **Project Cost** refers to the total cost to be expended to plan, develop, and construct
22 the PPP Project to completion stage, including cost of feasibility studies, engineering
23 and design, Construction, equipment, land/right-of-way (ROW), taxes imposed on said
24 cost, and development cost. For this purpose, "completion stage" shall refer to
25 completion of Construction, as defined under the Code and this IRR. For avoidance of
26 doubt, interest charges and other financing costs incurred during Construction shall be
27 considered as part of the Project Cost.

28
29 For operations and maintenance (O&M) PPP Projects without initial capital
30 expenditures, the present value of costs incurred in delivering the contracted service,
31 including any reinvestment requirements shall be considered as the Project Cost. For
32 this purpose, "initial capital expenditures" shall refer to capital expenditures expended
33 during Construction, as defined under the Code and this IRR. The government
34 borrowing rate shall be the discount rate used in determining the present value of costs
35 incurred in delivering the contracted service, including any reinvestment requirements;

36

1 (qq) **Reasonable Rate of Return (RROR)** refers to the net gain of an investment over a
2 specified time period, expressed as an annualized percentage as prescribed by the
3 appropriate Approving Body and reflected in the PPP Contract: *Provided*, That where
4 the realized rate of return exceeds the prescribed RROR, the excess shall be remitted
5 to the National Treasury.

6
7 The RROR shall be a cumulative annualized percentage that shall in no case exceed
8 fifteen percent (15%), taking into account among others the prevailing costs of capital
9 (debt and equity) in the domestic and international markets, risks being assumed by
10 the Private Proponent, and appropriate risk premia;

11
12 (rr) **Regulatory Body** refers to any agency, whether national or local, in charge of
13 approving initial tolls, fares, fees, rentals, and other charges and adjustments in a PPP
14 Project;

15
16 (ss) **Solicited Project** refers to a PPP Project identified by an Implementing Agency as
17 part of its List of PPP Projects that is subjected to a public bidding as provided in
18 Section 9 of the Code and in accordance with Title VI, Chapter 1 of this IRR;

19
20 (tt) **State Universities and Colleges (SUCs)** refer to public HEIs established by the
21 national government and are governed by their respective independent Boards of
22 Trustees or Regents;

23
24 (uu) **Subsidy** refers to an agreement where the Implementing Agency will: (i) defray, pay
25 for, or shoulder a portion of the Project Cost or the expenses and costs in operating or
26 maintaining the PPP Project; (ii) bear a portion of capital expenditures associated with
27 the establishment of an infrastructure or development project and services; (iii)
28 contribute any property or assets to the PPP Project; and/or (iv) waive charges or fees
29 relative to business permits or licenses that are to be obtained for the Construction of
30 the PPP Project: *Provided*, That items (i) to (iv) shall not be considered as Subsidy if
31 the government receives payment or remuneration from the Private Partner for such;
32 *Provided, further*, That Subsidy falling under items (i) and (ii) shall not exceed fifty
33 percent (50%) of the Project Cost; *Provided, finally*, That in the case of solicited
34 proposals, the expenses for existing ROW or ROW to be acquired, shall not be
35 included in the said cap.

36

1 Subsidy shall also include Viability Gap Funding (VGF) which may be extended by the
2 government to make an economically viable revenue-based PPP Project financially
3 viable: *Provided*, That government payments for ROW and resettlement shall not be
4 considered as VGF;

5
6 (vv) **Tariff** refers to the tolls, fares, fees, rentals, and other user charges referred to in
7 Section 13 of the PPP Code and Title IX of this IRR;

8
9 (ww) **Termination Payment** refers to the amount payable by the government or the Private
10 Partner on the occurrence of an event or series of events provided for in the PPP
11 Contract that results in the early termination of said contract;

12
13 (xx) **Third-party Appraiser** refers to an independent third-party appraiser accredited by
14 the Securities and Exchange Commission (SEC), or a professional association of
15 appraisers engaged by the Implementing Agency or the Private Proponent, or both, to
16 determine the fair market value of a property or asset;

17
18 (yy) **Unsolicited Proposal** refers to a project proposal made by a Private Proponent to
19 undertake a PPP Project pursuant to Section 10 of the Code and Title V of this IRR;

20
21 (zz) **Value for Money (VFM)** refers to the effective, efficient, and economic use of
22 resources, which requires the evaluation of relevant costs and benefits, along with an
23 assessment of risks, and of non-price attributes and/or life cycle costs, as appropriate.
24 Price alone may not necessarily represent VFM;

25
26 (aaa) **VFM Model** refers to a model, including assumptions which shall have sufficient basis
27 and justification, which presents the quantitative VFM analysis of the project showing
28 PPP as the more beneficial mode of procurement;

29
30 (bbb) **Virtual Data Room** refers to a secure online facility provided by the government for
31 storing, accessing, and distributing bid documents, project studies, and other project-
32 related data among authorized prospective bidders. It may serve as a repository to
33 house relevant project information for authorized bidders to access as part of their due
34 diligence and review of the investment potential of a PPP Project.

TITLE II - PUBLIC-PRIVATE PARTNERSHIPS

Section 5. Definition and Elements

A PPP is a contractual arrangement between an Implementing Agency and a Private Partner to finance, design, construct, operate, and maintain, or any combination or variation thereof, infrastructure or development projects and services which are typically provided by the public sector, and where each party shares in the associated risks.

The PPP framework serves as a mechanism for delivering public assets or services, where both the Implementing Agency and the Private Partner share risk and management responsibility and link investment recovery to performance. The risk allocation shall be subject to the stipulations under the GPRAM or otherwise as approved by the appropriate Approving Body.

For purposes of this IRR, the Implementing Agency shall determine whether a contract “provides a public asset or service” through the following criteria:

- (a) the delivery of the public asset or service is within the mandate of the Implementing Agency; and
- (b) the delivery of the asset and/or service is for the public.

Section 6. Scope and Coverage of PPP

The Code and this IRR shall cover any infrastructure or development project or service that satisfies the elements of a PPP as provided in Section 5 of this IRR including but not limited to the following:

- (a) JVs as defined in the Code;
- (b) Toll operation agreements or supplemental toll operation agreements (STOA), or any contractual arrangements involving the Construction, O&M, or a combination or variation thereof, of toll facilities in accordance with Presidential Decree (PD) No. 1112 series of 1977, PD No. 1113, series of 1977, and PD No. 1894, series of 1983;
- (c) Lease agreements providing for the rehabilitation, operation, and/or maintenance, including the provision of working capital and/or improvements to, by the Private Partner of an existing land or facility owned by the government for a fixed period of time covering more than one (1) year;

- 1 (d) Lease agreements, when such lease is a component of a PPP Project, as defined
2 under the Code and this IRR;
- 3 (e) Build-Operate-Transfer (BOT) and its variants such as, but not limited to, Build-and-
4 transfer (BT), Build-lease-and-transfer (BLT), Build-operate-and-transfer (BOT),
5 Build-own-and-operate (BOO), Build-transfer-and-operate (BTO), Contract-add-and-
6 operate (CAO), Add-operate-and-transfer (AOT), Develop-operate-and-transfer
7 (DOT), Rehabilitate-operate-and-transfer (ROT), and Rehabilitate-own-and-operate
8 (ROO); and
- 9 (f) Operation and maintenance (O&M).

10
11 Any contractual arrangement that satisfies the characteristics or elements of a PPP as defined
12 under the Code and Section 5 of this IRR, or as may be approved by the appropriate Approving
13 Body, shall also be covered by the Code and this IRR.

14
15 The PPP contractual arrangement proposed for a PPP Project shall be part of the parameters,
16 terms, and conditions (PTCs) described under Title IV of this IRR, which the Implementing
17 Agency shall submit to the appropriate Approving Body for approval.

18
19 **Section 7. Non-Applicability**

20
21 The Code and this IRR shall not apply to the following:

- 22 (a) Infrastructure Projects undertaken under RA No. 9184 or the “Government
23 Procurement Reform Act” (GPRA);
- 24 (b) Infrastructure projects purely funded from foreign loans and grants covered by RA No.
25 8182, as amended by RA No. 8555, titled “An Act Excluding Official Development
26 Assistance (ODA) from the Foreign Debt Limit in order to facilitate the absorption and
27 optimize the utilization of ODA resources, amending for the purpose paragraph 1,
28 Section 2 of RA No. 4860, as amended,” unless the Government of the Philippines and
29 the foreign grantor/foreign or international financing institution agree otherwise;
- 30 (c) management contracts involving services contemplated by Section 6.5 of Annex B of
31 RA No. 9184 or the GPRA and its IRR;
- 32 (d) service contracts such as the following: (a) coal service contracts contemplated by PD
33 No. 972, as amended, or the Coal Development Act of 1976; (b) petroleum service
34 contracts contemplated by RA No. 387, as amended, or the Petroleum Act of 1949; (c)
35 agreements contemplated by RA No. 7942, or the Philippine Mining Act of 1995; (d)
36 renewable energy service or operating contracts awarded pursuant to RA No. 9513,

1 or the Renewable Energy Act of 2008; and (e) contracts contemplated by the relevant
2 circulars of the COA and DBM: *Provided*, That service contracts involving components
3 that provide public service and satisfy the elements of a PPP as defined in Section 5
4 of this IRR shall be covered by the Code and this IRR;

5 (e) divestments or dispositions which refer to the manner or scheme of taking away,
6 depriving, withdrawing of an authority, power or title over a government asset;

7 (f) corporatization or the transfer of any government assets and liabilities, staff, and the
8 ongoing business of a utility into a public corporation;

9 (g) incorporation of subsidiaries with private sector equity;

10 (h) onerous donations which refer to a donation subject to burdens, charges, or future
11 services equal to or more in value than the thing donated;

12 (i) gratuitous donations which refer to a donation disposed by a person without charge,
13 in favor of another who accepts it;

14 (j) joint venture and lease agreements involving purely commercial arrangements that
15 neither provide nor include public infrastructure or development services. The phrase
16 “purely commercial arrangements” refers to an arrangement for profit that solely
17 involves or seeks to address a private or business issue (such as sale of goods, supply
18 of equipment, and the like). These shall include, but are not limited to the following:

19 (i) where the private partner develops government land into private real estate
20 projects such as commercial buildings, condominium, non-socialized housing and
21 subdivisions, malls, office buildings, private schools, retail outlets, resorts, health
22 clinics, health spas, hotels and lodging facilities, service areas such as gas
23 stations with retail/commercial components, sports facilities, and mixed-use
24 development;

25 (ii) where the private partner sub-leases lots and building space for commercial use,
26 as enumerated in item (i).

27 The Implementing Agency shall determine whether the project is purely commercial in
28 nature based on the provisions of the Code and this IRR.

29 In such cases, the aforementioned contractual arrangements shall be implemented in
30 accordance with relevant governing laws. In determining the appropriate governing law, it is
31 the intent of the parties and not the nomenclature used to describe the contractual
32 arrangement that determines the nature of the contract.

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1 **Section 8. Eligible Types of PPP Projects**

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The Implementing Agency and the Private Partner may enter into a PPP as defined in Section 5 of this IRR for the following infrastructure or development projects and services, such as, but not limited to the following:

- (a) Highways, including expressways, roads, bridges, interchanges, tunnels, viaducts, and related facilities;
- (b) Land transportation systems, including railways, road-based transportation systems, bus rapid transit, high priority public utility vehicle systems, active transportation, transit-oriented developments, public utility vehicle stations, transport plazas, intermodal terminals, park & ride, and related facilities;
- (c) Transport and traffic management projects, including transportation databases, automated fare and toll collection systems, traffic signaling, traffic monitoring systems, traffic enforcement systems, congestion and management systems, and related facilities;
- (d) Port infrastructures like piers, wharves, quays, storage, handling, ferry services, roll-on roll-off facilities, and related facilities, navigable inland waterways, and related facilities;
- (e) Airports, air navigation, and related facilities;
- (f) Power generation, transmission, sub-transmission, distribution, including hydropower plants, and related facilities;
- (g) Energy efficiency and conservation, renewable energy, and electric vehicle charging stations, and related facilities;
- (h) Telecommunications, backbone network, terrestrial, aerial, and space infrastructure, and related service facilities;
- (i) Information technology (IT) networks and database infrastructure, geo-spatial resource mapping, cadastral survey for resource accounting and planning, and related facilities;

- 1 (j) Irrigation and related facilities;
2
3 (k) Water supply, sewerage, drainage, water treatment, desalination, and related facilities;
4
5 (l) Educational infrastructure and related facilities;
6
7 (m) Health infrastructure, hospitals, clinics, research facilities, and other related facilities;
8
9 (n) Multi-purpose water resources projects covering a combination of irrigation, power,
10 water supply, flood control, and related facilities;
11
12 (o) Land reclamation, dredging, flood control projects, and related facilities;
13
14 (p) Industrial and tourism estates or townships, including ecotourism projects such as
15 terrestrial and coastal/marine nature parks, among others and related infrastructure
16 facilities and utilities;
17
18 (q) Government buildings;
19
20 (r) Urban redevelopment, townships, and housing projects;
21
22 (s) Heritage preservation and adaptive reuse projects;
23
24 (t) Markets, slaughterhouses, trading posts, and related facilities;
25
26 (u) Warehouses and post-harvest facilities;
27
28 (v) Public fish ports and fishponds, including storage and processing facilities;
29
30 (w) Agri-fishery industrial hubs, agribusiness facilities, agricultural research facilities,
31 agricultural estates, agrilogistics systems, contract farming, and related facilities;
32
33 (x) Prisons, lease of patrol vessels/rescue helicopters, O&M of military facilities and
34 equipment, and other national defense or security-related facilities;
35

1 (y) Environmental and solid waste management related facilities such as but not limited
2 to waste collection, transportation and disposal facilities, transfer stations, composting
3 plants, material recovery, landfill and tidal barriers, among others;

4
5 (z) Climate change adaptation and mitigation and disaster risk reduction and management
6 Infrastructure Projects, and related facilities; and

7
8 (aa) Other infrastructure or development projects and services, as may be authorized by
9 the Implementing Agency pursuant to the Code and this IRR, and following applicable
10 laws, rules, and regulations.

11
12 Related facilities may include commercial spaces within the project scope.

13
14 **Section 9. Parties to PPP Contracts**

15
16 The contracting parties for all PPP Contracts shall be the Implementing Agency and the
17 Private Partner.

18 Implementing Agencies are authorized to identify, develop, assess, evaluate, approve,
19 negotiate, award, and undertake PPP Projects under the Code and this IRR.

20 No Implementing Agency shall implement a PPP Project in the sector that it regulates:
21 *Provided, That* any Regulatory Body implementing a PPP Project pursuant to its mandate
22 shall adopt a conflict mitigation plan as part of its contract management plan, pursuant to
23 Section 129 of this IRR.

24
25 **Section 10. Financing of PPP Projects**

26
27 Depending on the contractual arrangement, the PPP Project may be solely or partially
28 financed by the Private Partner. PPP Projects may also be financed partly from direct
29 government appropriations and/or from ODA of foreign governments or institutions through
30 Blended Finance.

31
32 In cases of Blended Financing where a component of the PPP Project is financed by
33 government appropriations, any procurement activities for such component shall be governed
34 by the provisions of RA No. 9184 or the GPRA, and its IRR. If a component of the PPP Project
35 is financed by an ODA agreement, any procurement activities for such component shall be in

1 accordance with RA No. 8182, as amended by RA No. 8555, and its IRR, subject to the terms
2 and conditions agreed in the ODA agreement. For purposes of the Code and this IRR, ODA
3 agreements shall be considered executive agreements.

4
5 PPP Projects may also be financed through Alternative Financial Instruments, subject to the
6 approval of relevant Regulatory Bodies for such instruments under existing laws, rules, and
7 regulations. The PPP Governing Board may, from time to time, provide an updated list of
8 Alternative Financial Instruments to assist Implementing Agencies and Private Partners
9 considering such instruments for PPP Projects.

11 **TITLE III – PREPARATION OF PPP PROJECTS PRIOR TO APPROVAL**

13 **Chapter 1 – PPP Units**

15 **Section 11. Establishment of PPP Units**

17 Implementing Agencies that undertake PPP Projects may form a dedicated PPP unit
18 responsible for planning, overseeing, implementing, and monitoring the PPP Projects.

20 The Head of the Implementing Agency may issue an official order, resolution, or a similar
21 instrument to formally institute the PPP unit, which can be:

- 22 (a) A newly established unit, office, committee, or group, which shall serve as focal
23 persons for PPP projects, and subject to applicable laws, rules, and regulations; or
- 24 (b) An existing unit, office, committee, or group designated to shoulder the responsibilities
25 set forth in this Section.

27 For this purpose, the Head of the Implementing Agency is encouraged to set up its own PPP
28 unit and develop its in-house personnel to undertake PPP Projects.

30 The PPP Center shall provide the necessary technical assistance and capacity development
31 needed by the PPP units to effectively discharge their roles and responsibilities.

1 **Section 12. Composition of PPP Units**

2

3 The PPP unit shall, at the minimum, include the following members who are knowledgeable
4 on PPPs:

5

6 (a) A senior official – acting as the head of the PPP unit who is at least a third ranking
7 official of the Implementing Agency;

8 (b) Technical personnel for project development;

9 (c) Technical personnel for planning;

10 (d) Technical personnel for contract procurement and management;

11 (e) Finance personnel;

12 (f) Legal personnel; and

13 (g) Local Economic Development and Investment Promotions (LEDIP) Officer, in the case
14 of LGUs.

15

16 The Implementing Agency may, subject to its discretion, add any other personnel which it
17 deems relevant and necessary to carry out the functions of the PPP unit.

18

19 In the case of an LGUs that does not have a legal officer, it shall seek legal advice from either
20 an external legal advisor or the legal officer of the next higher level of LGU, if applicable, to
21 assist its PPP unit on legal matters.

22

23 **Chapter 2 – Consolidated Investment Programs and the List of PPP Projects**

24

25 **Section 13. Guiding Principles in Identifying PPP Projects**

26

27 Implementing Agencies shall identify infrastructure or development projects and services that
28 may be financed, designed, constructed, operated, maintained, or any combination and
29 variation thereof, by a Private Partner through the Code and this IRR, without prejudice to the
30 right of the Private Proponents to submit Unsolicited Proposals under Section 10 of the Code
31 and Title V of this IRR.

32

33 In identifying PPP Projects, the Implementing Agencies shall be guided by the following
34 principles:

35

36 (a) Effectiveness in meeting government objectives;

- 1 (b) Appropriateness of the chosen procurement modality and source of funding;
- 2 (c) VFM, economic viability, and financial viability;
- 3 (d) Accountability and transparency;
- 4 (e) Consumer rights;
- 5 (f) Affordability;
- 6 (g) Market acceptability and commercial attractiveness; and
- 7 (h) Public access, safety, and security.

8
9 The Implementing Agency shall also consider the Consolidated Investment Programs,
10 consisting of all national, local, regional, sectoral development plans, and investment
11 programs of relevant government entities, which shall be submitted to NEDA and PPP Center
12 within thirty (30) calendar days from effectivity of this IRR. The Consolidated Investment
13 Program shall be posted in the websites of NEDA and the PPP Center. Updates thereto shall
14 be submitted to NEDA and the PPP Center within seven (7) calendar days from approval by
15 the relevant government entity. The NEDA, in coordination with the PPP Center, may issue
16 supplemental guidelines to ensure efficient submission and publication of the List of PPP
17 Projects.

18
19 Only projects that are included in the Consolidated Investment Programs may be included in
20 the List of PPP Projects to be prepared by Implementing Agencies pursuant to Section 14 of
21 this IRR.

22 23 **Section 14. Preparation of the List of PPP Projects**

24
25 Identified PPP Projects shall be included in the Lists of PPP Projects which the Implementing
26 Agencies shall prepare, and which shall include the following information:

- 27
28 (a) Name and brief description of the PPP project, as listed in the relevant investment and
29 infrastructure plan;
- 30 (b) Indicative Project Cost;
- 31 (c) Project location (region, city/municipality) which shall include information that are
32 sufficient for the Implementing Agency and the PPP Center to determine alignment
33 and effect to other projects;
- 34 (d) Plan or investment program where the PPP Project is included;
- 35 (e) Status of the project (e.g., under implementation, under procurement, for approval,
36 pending approval, ongoing negotiation, under development, under conceptualization);
- 37 (f) Development costs, as defined in Section 10(c) of the Code and Section X of this IRR.

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The PPP Center may issue further guidelines, forms, and templates in the preparation of the Lists PPP Projects.

All PPP Projects listed in the List of PPP Projects shall be consistent with and responsive to national, regional, local, and sectoral development direction, thrusts, and corresponding strategies embedded in, but not limited to the following documents, the Philippine Development Plan (PDP), National Framework for Physical Planning (NFPP), Regional Development Plans (RDPs), Regional Physical Framework Plans (RPFs), Provincial Development and Physical Framework Plans (PDPFPs), Comprehensive Development Plans (CDPs), Comprehensive Land Use Plans (CLUPs), development or master plans of Implementing Agencies, and such other plans or programs as may be mandated by the President or by law, or as may be confirmed or approved by the NEDA Board through its committees or the respective SUC and LUC boards.

Section 15. Submission of the List of PPP Projects

Within thirty (30) calendar days from the effectivity of this IRR, Implementing Agencies which intend to undertake PPP Project/s or are currently undertaking PPP Project/s, shall submit their respective Lists of PPP Projects or any update thereto to the following oversight agencies, for information and in accordance with existing laws, rules, and regulations:

- (a) For National PPP Projects:
 - (i) NEDA;
 - (ii) Regional development councils (RDCs) concerned; and
 - (iii) PPP Center.

- (b) For Local PPP Projects:
 - (i) NEDA;
 - (ii) RDCs concerned;
 - (iii) PPP Center; and
 - (iv) Local *Sanggunian* concerned.

Any updates to the Lists of PPP Projects shall also be submitted to the aforementioned oversight agencies within seven (7) calendar days from approval of the Implementing Agency.

1 **Section 16. Publication of the List of PPP Projects**

2

3 Implementing Agencies and the PPP Center shall ensure that the Lists of PPP Projects
4 proposed for implementation through the Code and this IRR shall be widely publicized to
5 inform interested parties.

6

7 For this purpose, Implementing Agencies shall post their respective Lists of PPP Projects on
8 their websites. In case the Implementing Agency does not have a website, the lists may be
9 posted in any of their official digital platforms.

10

11 The PPP Center shall post in its website a consolidated list of all submitted Lists of PPP
12 Projects, and shall be updated regularly. Any discrepancies between the list of the
13 Implementing Agency and the PPP Center, the consolidated list of the PPP Center shall
14 prevail.

15

16 Unsolicited Proposals shall be included in the List of PPP Projects once the PPP Center has
17 endorsed such proposal to the Implementing Agency for processing in accordance with Title
18 V of this IRR.

19

20 The PPP Center, in coordination with the aforementioned oversight agencies, may issue
21 supplemental guidelines to ensure efficient submission and publication of the List of PPP
22 Projects.

23

24 **Section 17. Delisting of projects in the List of PPP Projects**

25

26 Implementing Agencies may delist projects from their List of PPP Projects through a written
27 notice to the appropriate oversight agencies referred to in Section 15 of this IRR, which shall
28 include a justification.

29 Projects shall be automatically delisted from the List of PPP Projects, based on the following
30 grounds, among others:

- 31 (a) If the allowable period for procurement has lapsed, in case of Solicited Projects;
32 (b) If there is a failure of bidding, in the case of Solicited Projects, provided that the
33 Implementing Agency decides not to subject the PPP Project to re-bidding;
34 (c) If the Implementing Agency rejects the Unsolicited Proposal at any point of the process
35 under Title V of this IRR;

- 1 (d) If there is a failure of negotiation in the case of Unsolicited Proposals, unless the
- 2 Implementing Agency accepts a new Unsolicited Proposal for the same project or bids
- 3 out the project as a Solicited Project in accordance with Section 48 of this IRR;
- 4 (e) If the OPS has expired and the comparative challenge process for the subject
- 5 Unsolicited Proposal has not yet commenced;
- 6 (f) If the Implementing Agency revoked the OPS granted for the Unsolicited Proposal;
- 7 (g) If the project has been terminated and discontinued for whatever reason.

8

9 The delisting of a PPP Project based on the above grounds shall be without prejudice to the

10 Implementing Agency's right to reconsider such delisting and to continue the procurement of

11 the PPP Project, in accordance with the requirements of the Code and this IRR. For avoidance

12 of doubt, the rules and grounds for delisting shall only be applicable to the List of PPP Projects

13 and not to the Consolidated Investment Programs.

14

15 **Chapter 3 – Development of PPP Projects**

16

17 **Section 18. Guiding Principles in Developing PPP Projects**

18

19 In developing PPP Projects, the Implementing Agency shall consider the following, among

20 others:

- 21
- 22 (a) Legal, technical, economic, and financial feasibility of the PPP Project;
- 23 (b) VFM of the proposed PPP Project;
- 24 (c) Optimal risk allocation;
- 25 (d) Affordability of fees or tariffs;
- 26 (e) Climate resilience and sustainability;
- 27 (f) Commercial feasibility and market acceptability; and
- 28 (g) Social and environmental safeguards.

29

30 PPP Projects that encompass beyond jurisdictional boundaries, or where bundling of similar

31 projects can benefit from economies of scale and can increase the viability of a proposed PPP

32 Project, may be jointly implemented by Implementing Agencies concerned under a single PPP

33 Contract. In such cases, all the Implementing Agencies concerned shall secure the required

34 approvals of all Approving Bodies concerned pursuant Section 7 of the Code and Title IV of

35 this IRR.

1 In cases where Implementing Agencies concerned comprise of a national and a local
2 Implementing Agency, it shall be evaluated and approved following the processes for both
3 National and Local PPP Projects.

4 **Section 19. Scope and Depth of Feasibility Studies**

5

6 A PPP feasibility study shall be developed following the identification and initial screening of
7 PPP Projects by the Implementing Agency or Private Proponent. The scope and depth of the
8 study may vary depending on the size, nature, and complexity of the project: Provided, That,
9 at the minimum, the feasibility study shall contain the following information:

10

- 11 (a) Problem definition or statement of objectives;
- 12 (b) Project description;
- 13 (c) Project context in the Implementing Agency's overall strategy or program, including
14 information on which sectoral plan and/or investment program the project is included
15 in;
- 16 (d) Sectoral program context;
- 17 (e) Regional and spatial context;
- 18 (f) Expected outcomes and Key Performance Indicators, including means for verification
19 and key assumptions;
- 20 (g) Analysis of technical solutions or alternatives, including analysis of risks and impact;
- 21 (h) Project Costs;
- 22 (i) Legal due diligence, which includes policy and regulatory framework of the market/s
23 affected by the project, and institutional analysis;
- 24 (j) Demand and supply/market analysis including identification of potential competitors or
25 entities that provide substitutable products or services with the proposed PPP Project
26 and their corresponding market shares; alternatives available to suppliers and users of
27 the proposed PPP Project; barriers to entry into the markets affected by the proposed
28 PPP Project; and other information on industry structure and prevailing conditions of
29 the market;
- 30 (k) Information on the proposed tariff structure;
- 31 (l) Financial analysis, which includes information on projected financial statements
32 consistent with the financial model;
- 33 (m) Economic analysis, which includes information on economic benefits and costs
34 consistent with the economic model;

- 1 (n) Social and environmental analysis, including project safeguards with regard to, among
- 2 others, environmental quality, natural resources sustainability, climate change and
- 3 hazards, equity in development benefits, and health;
- 4 (o) Risk allocation and risk mitigating plan;
- 5 (p) VFM analysis, in the case of Solicited Projects;
- 6 (q) Information supporting the assumptions used in the demand, financial, economic and
- 7 VFM analysis, and other assertions and representations made in the feasibility study;
- 8 (r) PPP contractual arrangement options and assessment of the proposed contractual
- 9 arrangement;
- 10 (s) Information on job creation or impact from development to operation and maintenance
- 11 of the project, which includes corresponding sex-aggregated data and amount of
- 12 wages/salaries;
- 13 (t) Description of the supply chain of the market/s affected;
- 14 (u) Description of the products or services to be provided and its target users or
- 15 consumers; and
- 16 (v) Description of the geographic or catchment area where the Private Proponent will
- 17 operate.

18
19 For purposes of item (g) herein, the technical analysis shall include a minimum level of detail
20 of a conceptual design, schematic design or operational plan, as applicable, containing a
21 graphical representation of the elements of the intended physical structures of the project with
22 preliminary specifications, scale, shape, location and orientation.

23
24 The ICC or the PPP Governing Board may issue guidelines further specifying the requirements
25 on the scope and detail of the feasibility study.

26 27 **Section 20. Stakeholder Consultations**

28
29 The development process of PPP Projects to be implemented by the Implementing Agency
30 shall include stakeholder consultations that are conducted in line with the guidelines to be
31 issued by the PPP Governing Board.

32
33 The results of the said stakeholder consultations shall be reflected in the feasibility study of
34 the Implementing Agency in the case of Solicited PPP Projects. In the case of Unsolicited
35 Proposals, requirements pertaining to stakeholder analyses and consultations shall be in
36 accordance with guidelines to be issued by the PPP Center for completeness check under

1 Title V of this IRR, and the detailed approval guidelines to be issued by the ICC for National
2 PPP Projects and the PPP Governing Board for Local PPP Projects.

3
4 **Section 21. Investment Recovery Schemes**

5
6 In undertaking PPP Projects, the Private Partner shall be allowed to recover its investments
7 and earn reasonable profit through any of the following schemes or a combination thereof:

8
9 (a) Revenue-based – refers to a scheme where the Private Partner is authorized to charge
10 and collect, in whole or in part, from users, reasonable tolls, fares, fees, rentals, and
11 other charges subject to appropriate regulation in accordance with Section 13 of the
12 Code and Title IX of this IRR. Where applicable, the Private Partner may likewise be
13 repaid in the form of a share in the revenue of the PPP Project; and

14
15 (b) Availability-based – refers to a scheme where the Implementing Agency commits to
16 make predetermined payments, which do not take the form of charges paid by the
17 users of the works or of the service, but of regular payments by the Implementing
18 Agency in exchange of delivering an asset or service in accordance with the PPP
19 Contract.

20
21 For avoidance of doubt, a combination of the above schemes means that a PPP Project can
22 simultaneously be revenue-based and availability-based.

23
24 Other investment recovery schemes, such as commercial development rights, or the grant of
25 a portion or percentage of the reclaimed land, subject to the constitutional requirements on
26 land ownership, may also be allowed in both Solicited Projects and Unsolicited Proposals to
27 supplement the foregoing schemes: *Provided*, That such investment recovery scheme
28 involving the grant of a portion or percentage of a reclaimed land shall be subject to fair
29 valuation by a Third Party Appraiser.

30
31 **Section 22. Mitigation of Interconnectivity and Interface Risks**

32
33 All PPP Projects which will interconnect or interface with a local or national facility shall be
34 required to submit a Memorandum of Agreement (MOA) containing an interconnection and/or
35 interface plan agreed upon by all relevant parties including the Implementing Agency and the
36 Private Proponent.

1 All MOAs shall be submitted during the approval stage of the PPP Project to the following
2 oversight agencies, in accordance with the guidelines to be issued by the ICC for National
3 PPP Projects and the PPP Governing Board for Local PPP Projects:

4 (a) For National PPP Projects

5 (i) PPP Center; and

6 (ii) ICC.

7

8 (b) For Local PPP Projects

9 (i) PPP Center;

10 (ii) Local *Sanggunian* concerned, in the case of LGUs; and

11 (iii) Respective Boards, in the case of LUCs.

12

13 Implementing Agencies may seek the assistance of applicable statutory counsels in drafting
14 the MOA. For purposes of the Code and this IRR, statutory counsels may either be the Office
15 of the Solicitor General (OSG), the Office of the Government Corporate Counsel (OGCC), the
16 Office of the Legal Counsel in the case of Local PPP Projects, or as may be provided by the
17 Department of Justice (DOJ).

18

19 **Section 23. Land Value Capture Strategies**

20

21 PPP Project design shall consider adopting land value capture strategies to optimize the
22 financial and economic value of the PPP Project. Mechanisms for such may be proposed by
23 the Implementing Agency in reference to guidelines which the PPP Governing Board may
24 issue.

25

TITLE IV – EVALUATION AND APPROVAL OF PPP PROJECTS

26

Chapter 1 – Evaluation and Approval of National PPP Projects

28

Section 24. Appropriate Approving Body for National PPP Projects

30

31 National Solicited PPP Projects shall be approved as follows:

32 **Section 24.1.** For National PPP Projects with Project Cost of Fifteen billion pesos
33 (P15,000,000,000.00) and above, the Approving Body shall be the NEDA Board, upon
34 favorable recommendation by the ICC.

35

1 The NEDA Board shall render its decision on the PPP Project within one hundred twenty
2 (120) calendar days upon determination of the completeness of submitted requirements
3 for purposes of evaluation and approval, in accordance with the guidelines to be issued
4 by the ICC, adhering to the following time allocation:
5

6 *Table 1. Timeline for approval of PPP Projects to be approved by the NEDA Board*

MILESTONE	MAXIMUM PERIOD
Submission of complete requirements by the Implementing Agency to the ICC Core Secretariat	Sixty (60) calendar days from determination of completeness for purposes of evaluation and approval
Deliberation and decision of the ICC – Technical Board (TB)	
Deliberation and recommendation of the ICC – Cabinet Committee (CC) to the NEDA Board	Thirty (30) calendar days from ICC-TB decision
Decision of the NEDA Board	Thirty (30) calendar days from ICC-CC recommendation
TOTAL	One hundred twenty (120) calendar days from determination of completion

7
8 **Section 24.2.** For National PPP Projects to be implemented by SUCs with a Project Cost
9 of Fifteen billion pesos (P15,000,000,000.00) and above but do not require any
10 Government Undertaking from the national government, a green lane process shall be
11 established. For this purpose, the detailed approval guidelines to be issued by the ICC
12 shall contain the following:

- 13 (a) list of documentary requirements;
- 14 (b) guidance on what constitutes Government Undertakings described in this
15 subsection;
- 16 (c) procedures and mechanisms to facilitate, simplify, and expedite the approval
17 process for projects under the green lane, such as the creation of a subcommittee
18 to whom the review and evaluation of projects under the green lane can be
19 delegated.

Section 24.3. For National PPP Projects with Project Cost of below Fifteen billion pesos (P15,000,000,000.00), the Approving Body shall be as follows, whichever is applicable:

- (a) For Implementing Agencies with a governing board, whether or not it is an attached agency, the respective governing board;
- (b) For attached agencies without a governing board, the head of the department or agency to which the Implementing Agency is attached; or
- (c) For Implementing Agencies without a governing board or a mother agency, the Head of the Implementing Agency.

If the Approving Body is the Head of the Agency to which the Implementing Agency is attached or its governing board, the appropriate Approving Body shall render its decision in writing on the National PPP Project within ninety (90) calendar days from receipt of complete requirements for purposes of evaluation and approval, adhering to the following time allocation:

Table 2. Timeline for approval of National PPP Projects to be approved by the Head of Agency to which the Implementing Agency is attached, or by the governing board

MILESTONE	MAXIMUM PERIOD
Completion of requirements for evaluation and approval by the Implementing Agency	Sixty (60) calendar days from determination of completeness for purposes of evaluation and approval
Endorsement by the Implementing Agency to the Head of Agency to which it is attached to or its governing board	
Deliberation and decision of the Head of Agency to which the Implementing Agency is attached to or its governing board	Thirty (30) calendar days from Implementing Agency recommendation
TOTAL	Ninety (90) calendar days from determination of completeness

Such period may be extended up to one hundred twenty (120) calendar days, subject to the guidelines to be issued by the ICC.

1 If the Approving Body is the Head of Implementing Agency, the Implementing Agency
2 shall issue its internal guidelines that outline the process of its review and approval of
3 National PPP Projects with Project Cost of below Fifteen billion pesos
4 (Php15,000,000,000.00). These guidelines shall be consistent with the Code and this
5 IRR, and shall adhere to the approval guidelines to be issued by the ICC and the
6 following principles:

- 7
- 8 (i) A focal person or a focal unit of the Implementing Agency shall evaluate the project
9 and submit its recommendations to the Head of Implementing Agency with the
10 complete requirements for purposes of evaluation and approval.
 - 11 (ii) The Head of the Implementing Agency shall render its decision in writing within
12 ninety (90) calendar days upon receipt of the complete requirements for purposes
13 of evaluation and approval. Such period may be extended up to one hundred twenty
14 (120) calendar days, subject to the guidelines to be issued by the ICC.
 - 15 (iii) The processing and approval of each PPP Project shall be well documented using
16 the forms and templates prescribed by the ICC.
- 17

18 To ensure proper monitoring, all Implementing Agencies shall submit a copy of their
19 approval guidelines to the PPP Center within seven (7) calendar days from approval
20 of the Head of Implementing Agency. It shall also submit any changes to the guidelines
21 to the PPP Center within seven (7) calendar days from approval of the Head of
22 Implementing Agency. In case there are inconsistencies between the Code and this
23 IRR, and the approval guidelines internal guidelines to be issued by the Implementing
24 Agencies, precedence will be given to the Code and this IRR.

25

26 For monitoring purposes, the Implementing Agencies of PPP Projects approved under
27 Section 24.3 shall notify the NEDA and the PPP Center in writing of the details of the
28 PPP Project, and submit the complete set of project documents in accordance with the
29 approval guidelines to be issued by the ICC.

30

31 The Approving Body shall, in all cases, consult with the DOF prior to approval in
32 respect of the feasibility of the Government Undertakings and/or Availability Payments,
33 regardless of source of funds, involved in PPP Projects contemplated under this
34 Section 24.3, subject to the requirements of existing laws, rules, and regulations. The
35 DOF shall issue a non-binding letter in relation to the results of the consultation.

1 **Section 24.4.** Notwithstanding the above, a proposed National PPP Project with
2 Project Cost of below Fifteen billion pesos (Php 15,000,000,000.00) shall be approved
3 by the ICC in any of the foregoing circumstances:

4 (a) The proposed National PPP Project physically overlaps with a project approved
5 by a government authority or with a project being developed by another
6 government entity based on the Consolidated Investment Programs.
7

8 (b) The proposed National PPP Project negatively affects the economic benefits,
9 demand, and/or financial viability of a project approved by a government authority,
10 or a project being developed by another government entity based on the
11 Consolidated Investment Programs.
12

13 (c) The proposed National PPP Project requires financial Government Undertakings
14 to be sourced and funded under the General Appropriations Act (GAA).
15 Government Undertaking in the form of ROW shall not be considered as a financial
16 government under this subitem.
17

18 (d) The proposed PPP Project involves Availability Payments to be sourced and
19 funded under the GAA.
20

21 (e) The contribution of an Implementing Agency in a proposed JV exceeds fifty
22 percent (50%) of its entire assets based on either the average of its values for the
23 last three (3) years or the latest audited financial statement, whichever is lower,
24 and subject to Section 3(gg) of the Code.
25

26 For the determination of whether a National PPP Project falls under any of the items
27 listed as (a) to (e) above, the provisions under Section 25 of this IRR shall apply.
28

29 **Section 25. Determination if the National PPP Project below Php 15,000,000,000.00**
30 **requires ICC Approval**
31

32 **Section 25.1. Physical Overlap with or Negative Effects on Another Project.** To
33 determine if the proposed National PPP Project has any physical overlap with or has
34 negative effects on the economic benefits, demand, and/or financial viability of another
35 project approved by a government authority or with a project being developed by another
36 government entity based on the Consolidated Investment Programs, the Implementing

1 Agency shall check such National PPP Project against the Consolidated Investment
2 Programs referred to in Title III, Chapter 2 of this IRR and the List of PPP Projects published
3 by the PPP Center. The following shall be considered in such determination:

- 4 (a) The proposed project or a significant part thereof has the same alignment or site;
- 5 (b) The proposed project or a significant part thereof has the same catchment area; or
- 6 (c) The proposed PPP Project caters to the same market or group and offers the
7 substitutable services.

8
9 If the Implementing Agency deems that the information in such plans and in the list are
10 insufficient for its determination, the Implementing Agency shall be responsible for
11 validating the existence of a physical overlap or of negative effects contemplated herein
12 with the relevant government agencies. A finding of the existence of any physical overlap
13 or of negative effects pursuant to this Section will subject the National PPP Project to ICC
14 approval.

15
16 The above notwithstanding, any proposed PPP Project, which although covered by Section
17 25.1(c) above but in the determination by the Implementing Agency is justified to be
18 implemented due to the nature of the services involved, such as health facilities where
19 similar services among a network of services are necessarily included, shall not be required
20 to undergo approval by the NEDA ICC under this Section 24.4 as long as the following
21 conditions are present:

- 22 (i) the similar service in the proposed PPP Project must not be a significant component
23 of an existing project or a project being developed by another government entity;
24 and
- 25 (ii) the feasibility study of the proposed PPP Project must justify the entry of new
26 competing projects catering to the same market, such as showing proof of the
27 changes in demographics, market demand, and other relevant factors concerning
28 the geographic market catered to by existing projects.
29

30
31 The Implementing Agency shall take such steps necessary to confirm that the proposed
32 project is in accordance with the overall mandate of the department, bureau, agency, or
33 office of the government that has regulatory authority over the proposed and existing
34 projects.

1 **Section 25.2. Requires Government Undertakings or Availability Payments to be**
2 **funded by GAA.** A National PPP Project which requires financial Government
3 Undertakings, such as Subsidy, VGF, and any similar financial instrument, or which
4 includes Availability Payments shall be subject to ICC approval should such Undertakings
5 or Payments be sourced and funded under the GAA.

6 For avoidance of doubt, if a National PPP Project requires Government Undertakings or
7 Availability Payments sourced from funds other than the GAA, such project shall not be
8 subject to approval of the ICC: *Provided*, That if the Implementing Agency is subsidized
9 by the national government or other funds created by law, its proposed National PPP
10 Project shall be subject to approval of the ICC even if the Government Undertakings or
11 Availability Payments are represented to be sourced from funds other than the GAA.

12 **Section 25.3. JV Contribution of Implementing Agency Exceeds Fifty Percent of**
13 **Assets.** In determining whether the contribution of an Implementing Agency to a proposed
14 JV exceeds fifty percent (50%) of its entire assets, information from its latest audited
15 financial statements and other pertinent documents such as, but not limited to valuation
16 reports by Third-party Appraisers, development plans, financial performance reports, and
17 management reports, shall be considered.

18 Such contribution must be valued according to accepted standard methodologies and
19 practices commensurate to the nature of the assets. The assets contemplated herein shall
20 refer to the entire assets, whether current or noncurrent, of the Implementing Agency at
21 the time of its submission of the National PPP Project to the Approving Body, and not the
22 assets of the subject PPP Project.

23
24 For PPP Projects which have been determined to not fall under any or more of the scenarios
25 falling under Sections 25.1, 25.2, and 25.3 above and have been reported to NEDA and the
26 PPP Center as such pursuant to Section 7 of the Code, NEDA and the PPP Center may:

- 27 1. Validate scenarios falling under Section 25.1 above through the Consolidated
28 Investment Plans, the List of PPP Projects, and the project documents; and
- 29 2. Validate scenarios falling under Section 25.2 above with the ICC.

30
31 Upon finding that a National PPP Project falling under any of the scenarios has not been
32 brought before the ICC for its approval, the NEDA or the PPP Center shall notify the concerned
33 Implementing Agency and the ICC of such fact within seven (7) calendar days from its finding.
34 The Implementing Agency, upon receipt of such notice from NEDA or the PPP Center, shall
35 subject the concerned National PPP Project to ICC approval under the procedures laid down

1 in the Code and in this IRR. Failure to comply shall constitute a violation of Section 7 of the
2 Code and shall subject the Implementing Agency to the corresponding penalties provided in
3 the Code and in this IRR.

4
5 Prior to making a determination on whether its proposed National PPP Project falls under any
6 or more of the scenarios falling under Sections 25.1, 25.2, and 25.3 above which would subject
7 such project to ICC approval, an Implementing Agency may request for a consultation with the
8 PPP Center on whether its proposed National PPP Project falls under any such scenarios.
9 The PPP Center may provide a non-binding opinion to the Implementing Agency and such
10 non-binding opinion shall not be controlling or take precedence over the Implementing
11 Agency's own determination or of a later determination by NEDA or the PPP Center for the
12 determination of existence of any physical overlap or negative effects.

13
14 The determination of the Implementing Agency that its project does not fall in any of the
15 scenarios contemplated above may be subject to further validation pursuant to guidelines the
16 ICC may issue on the matter.

17 **Section 26. Non-delegation of Approving Authority by the Approving Body**

18
19 In no case shall the Approving Body delegate its authority to render a decision of a project for
20 approval. However, the Approving Body may be allowed to establish units to aid in rendering
21 such decision on the proposed PPP Project. The appropriate Approving Body may also
22 request capacity development assistance from the PPP Center to aid in their review and
23 approval of National PPP Projects.

24 25 **Section 27. ICC Review and Updating of Project Cost Thresholds**

26
27 The ICC may, as it deems necessary, and with strict adherence with the principles of prudence
28 and reasonableness, review, evaluate, and update the above threshold amounts. The ICC
29 may issue guidelines or protocols in reviewing and updating the threshold amounts.

30 31 **Section 28. Criteria for Approval of National PPP Projects**

32
33 The Approving Body shall be guided by the following criteria in evaluating and approving PPP
34 Projects, among others:

- 35 (a) project context and objectives are clearly specified;

- 1 (b) the scope, outputs, and performance indicators of the project are clearly specified;
- 2 (c) the proposed project is technically feasible and is optimal;
- 3 (d) the proposed project has an environment, climate change, and social safeguards
- 4 framework including identified risks and mitigating measures;
- 5 (e) the Project Cost is sufficient to achieve the technical requirements of the project,
- 6 including the general performance standards and targets set for the project, and those
- 7 components needed to meet gender, social and environmental standards;
- 8 (f) the operating costs are sufficient to achieve the operational requirements;
- 9 (g) the project is economically viable, and the information used are reasonable and robust
- 10 to determine viability;
- 11 (h) VFM analysis shows that PPP modality is the more viable procurement option;
- 12 (i) the project is financially viable for investors at the project level, and the information
- 13 used are reasonable and robust to determine viability;
- 14 (j) the project's cash flows are healthy and sufficient to service debt obligations;
- 15 (k) the risk allocation complies with the GPRAM. Any deviation must be justified by the
- 16 Implementing Agency and shall be approved by the appropriate Approving Body;
- 17 (l) the government undertakings and investment recovery schemes are justified by the
- 18 Implementing Agency;
- 19 (m) the proposed bid parameter is the most advantageous to the government, fosters
- 20 competition, fairness, and transparency, and ensures the best interest of the public;
- 21 (n) the Implementing Agency has the capability to deliver its assumed obligations for the
- 22 project;
- 23 (o) the proposed tariff regime is affordable to users; and
- 24 (p) fiscal considerations are sufficiently provided, including Contingent Liabilities, foregone
- 25 government revenue streams, and indirect costs associated with the project.

26
27 The ICC may prescribe additional criteria for the approval of National PPP Projects, provided
28 that the same are consistent with the Code and this IRR.

29 **Section 29. Completeness of National PPP Projects submitted to the Approving Body**

30

31 A National PPP Project shall be deemed complete for purposes of evaluation by the
32 appropriate Approving Body when the Implementing Agency has submitted a complete set of
33 documents, in form and in substance, in accordance with the approval guidelines to be issued
34 by the ICC, which shall include, but are not limited to:

35

- 36 (a) complete feasibility study;

- 1 (b) traceable economic and financial models in electronic copy;
- 2 (c) proposed parameters, terms, and conditions (PTCs);
- 3 (d) VFM analysis; and
- 4 (e) Valuation report, as applicable;
- 5 (f) documentation of the stakeholders' consultations conducted, including the
- 6 participating sector or communities consulted;
- 7 (g) Other documents, information, or materials that may be required by the ICC in its
- 8 approval guidelines, including the forms and templates, needed to commence project
- 9 evaluation.

10
11 The Economic and Financial Models shall be in traceable format, where the
12 assumptions/inputs shall be shown in a summary sheet, and are appropriately linked to the
13 relevant computation work sheets of the model, and which will sufficiently enable the
14 Approving Body to analyze and decide on a proposed project.

15
16 The Implementing Agency shall ensure that the information in the submissions are up-to-date,
17 and are not older than three (3) years from the date of submission to the appropriate Approving
18 Body.

19
20 Determination of completeness, in form and in substance, shall be conducted within seven (7)
21 calendar days from receipt thereof, and pursuant to the approval guidelines to be issued by
22 the ICC. Should the submission be determined as complete, the same shall be communicated
23 to the Implementing Agency, in writing, and the number of days within which the submission
24 was reviewed shall be included in the counting of the period for approval by the appropriate
25 Approving Body to render a decision on the National PPP Project.

26
27 In all cases, the period within which the appropriate Approving Body shall render its decision
28 on the National PPP Project shall only commence upon its receipt of complete requirements
29 for purposes of evaluation and approval. In cases where it receives a submission which is
30 determined as not complete, the period for the appropriate Approving Body to render its
31 decision shall not begin to run, and the Implementing Agency shall be informed, in writing, that
32 its submission is not complete within seven (7) calendar days from determination thereof.

33
34 In case the National PPP Project is subject of an Unsolicited Proposal, the Implementing
35 Agency shall ensure compliance with Title V of this IRR.

36

1 **Section 30. Minimum Parameters, Terms, and Conditions (PTCs) for National PPP**
2 **Projects**

3
4 The Implementing Agency shall submit to the Approving Body as part of the proposed PPP
5 Project for approval, the following minimum PTCs:

- 6
7 (a) Scope of the PPP Project;
8 (b) Contractual arrangement;
9 (c) Contract term;
10 (d) Rights and obligations of the Implementing Agency and the Private Proponent, and
11 corresponding penalties for failure to fulfill obligations under the PPP contract;
12 (e) Performance standards and targets upon which the Key Performance Indicators,
13 targets, and measurement for monitoring and reporting results may be derived in
14 preparing the draft PPP Contract;
15 (f) Investment recovery scheme, including terms of payment;
16 (g) Revenue share for the government, if any;
17 (h) Government Undertakings, including appropriate compensation to the Government, as
18 applicable;
19 (i) Proposed risk allocation for the PPP Project, including a risk mitigation plan for risks
20 assumed by the Government;
21 (j) Contingent liabilities arising from risks, in accordance with Title VIII, Chapter 2, and
22 including an intent to avail of the PPP Risk Management Fund, as applicable;
23 (k) Bid parameter;
24 (l) Ceiling for debt-to-equity ratio;
25 (m) In case of Solicited Projects, the proposed public bidding process, i.e., whether single-
26 stage or two-stage; and
27 (n) In case of Unsolicited Proposals, the proposed period for comparative challenge
28 process, i.e., not less than ninety (90) calendar days and not more than one (1) year.

29
30 The Approving Body shall set forth the required PTCs which shall be the basis for the drafting
31 and approval of tender documents and PPP Contract: *Provided*, That the same are consistent
32 with the Code and this IRR.
33
34

1 **Section 31. Guidelines, Forms, Templates for National PPP Project Review and**
2 **Approval**

3

4 The ICC, in coordination with the PPP Center, shall prescribe the detailed guidelines on the
5 process and procedures for the review and approval of National PPP Project, including the
6 forms and templates to be used by the Implementing Agency and the appropriate Approving
7 Body.

8 Such guidelines shall clearly define the timelines for approval, which shall in no case exceed
9 one hundred twenty (120) calendar days from receipt of complete requirements up to the
10 decision of the appropriate Approving Body rendered in writing, the actions required from
11 entities involved, and the list of complete set of documentary requirements.

12 The guidelines to be issued shall also cover the following:

- 13 (a) Review and approval of proposed changes for approved PTCs prior to bid submission;
14 (b) In case of Unsolicited Proposals, guidelines on cases where the appropriate Approving
15 Body requires PTCs outside of the negotiated PTCs;
16 (c) In case of single complying and responsive solicited bids, the determination of RROR;
17 (d) Review and approval of proposed variation, expansion, or extension of an existing PPP
18 Project requiring the approval of the appropriate Approving Body; and
19 (e) Guidelines on cases where the appropriate Approving Body failed to render its decision
20 on a PPP Project within one hundred twenty (120) calendar days from receipt of
21 complete requirements.

22

23 The ICC, in coordination with the PPP Center, may review and update the said guidelines,
24 forms, and templates, as may be necessary.

25

26 **Section 32. Failure of the Approving Body to render a final decision on the National**
27 **PPP Project**

28

29 The appropriate Approving Body shall provide its decision in writing within the timelines
30 provided in Section X of this IRR and the guidelines to be issued by the ICC.

31 If the Approving Body fails to render a final decision within the specified period, the PPP
32 Project shall be deemed approved, and the Implementing Agency may proceed with the
33 procurement of the PPP Project within seven (7) calendar days from receipt of a notification

1 from the PPP Center. Such notification shall be sent to the appropriate Approving Body and
2 the Implementing Agency in writing, stating that the approval period has lapsed and that the
3 project has been deemed approved. The proposed PTCs, as submitted, shall be used to guide
4 the procurement of the project that has been deemed approved.

5 If the Head of Implementing Agency acting as the Approving Body, fails to render a final
6 decision within the specified period, the PPP Center shall notify the appropriate Approving
7 Body and the Implementing Agency in writing, stating that the period for approval has lapsed
8 and that the project has been deemed approved. The PPP Center shall also require the
9 Implementing Agency to report its catch-up plan for the project that has not been acted upon,
10 within fifteen (15) calendar days from receipt of such notification.

11 If the Implementing Agency fails to comply with the catch-up plan within the specified period,
12 the PPP Center shall report to the Anti-Red Tape Authority (ARTA), the Commission on Audit
13 (COA), and the Joint Congressional Oversight Committee said failure to approve the project
14 within the specified period.

15 The foregoing actions shall be without prejudice to any liability that the erring or negligent
16 officials or employees may incur under the Code, this IRR, and other existing laws.

17 To ensure the timely processing of National PPP Projects, the NEDA Board and the ICC shall
18 hold its meetings as follows:

- 19 (a) NEDA Board – at least once a month;
- 20 (b) ICC Cabinet Committee – at least once a month;
- 21 (c) ICC Technical Board – at least twice a month.

22
23 The above recommended frequency of meetings of the Approving Body may not apply if
24 there is no project set for review or evaluation.

25
26 **Section 33. Finality of the Decisions of the Approving Body**

27
28 In case the PPP Project has been approved, the Implementing Agency shall proceed with the
29 procurement of the PPP Project pursuant to Title VI of this IRR.

30
31 In case the PPP Project has been approved by the appropriate Approving Body but the
32 Implementing Agency intends to convert such project to a different procurement modality, such
33 shall be accompanied with a justification, and shall be made pursuant to the guidelines to be
34 issued by the ICC.

1
2 In case the PPP Project has been disapproved and returned by the appropriate Approving
3 Body for whatever reason, the Implementing Agency may resubmit the project for approval:
4 *Provided, That* such resubmission shall be considered a submission of a new project.
5
6 The decision of the appropriate Approving Body in all cases above shall be final and executory.

7 **Chapter 2 – Evaluation and Approval of Local PPP Projects**

8 9 **Section 34. Confirmation by Local Development Councils of Local PPP Projects** 10 **Implemented by LGUs prior to Approval**

11
12 Local PPP Projects to be implemented by LGUs or LUCs shall be submitted to the respective
13 local development councils (LDCs) for confirmation prior to approval. The submission shall
14 include (a) a letter request for such confirmation, (b) the PTC forms for the project; and (c)
15 other documentary requirements to be issued by the PPP Governing Board.

16
17 Within thirty (30) calendar days from receipt of complete requirements, the Executive
18 Committee of the LDC shall:

- 19 (a) Review if the project is aligned and consistent with local development plans;
20 (b) Review the proposed project and identify concerns to aid the decision of the Approving
21 Body during approval; and
22 (c) Submit such confirmation and the results of review to the Approving Body.

23
24 If the LDC fails to issue such confirmation within this period, the proposal shall be deemed
25 confirmed, without prejudice to sanctions that may be imposed under Section X of this IRR.

26
27 Upon receipt of the notice from the LDC, or after the prescribed period for confirmation has
28 lapsed, whichever comes first, the LGU or LUC shall submit the Local PPP Project for approval
29 by the appropriate Approving Body, pursuant to Section 7 of the Code and the guidelines to
30 be issued by the PPPGB.

31
32 To improve ease of doing business and ensure expeditious processing of endorsements, the
33 PPP Governing Board shall prescribe guidelines and requirements to be followed by all LDCs
34 when endorsing Local PPP Projects.

35

1 Prior to its confirmation of Local PPP Projects, the LDC shall, in all cases, consult with the
2 DOF in respect of the feasibility of the LGU's Government Undertakings and/or Availability
3 Payments, which are not funded by the national government, involved in Local PPP Projects
4 under this Section 33, subject to the requirements of existing laws, rules, and regulations.
5

6 **Section 35. National Government Endorsement of Local PPP Projects Affecting**
7 **National or Sectoral Development Plans and National Projects**

8
9 Local PPP Projects affecting national or sectoral development plans, as well as national
10 projects, shall first secure the endorsement of the national government through the respective
11 RDCs. For this purpose, the RDC shall utilize its Standing Infrastructure Committee to
12 expedite the review and endorsement process. RDCs shall only review the alignment of the
13 project with the Consolidated Investment Programs and the list of PPP Projects defined under
14 Title III of this IRR.
15

16 Once the RDC endorsement is secured, the Local PPP Project shall also be endorsed by the
17 LDC concerned, and approved by the Local Sanggunians concerned in the case of LGUs, or
18 by the boards in the case of LUCs.
19

20 The NEDA shall provide the RDCs with copies of relevant national and sectoral development
21 plans and updates, with a copy furnished to the PPP Center for monitoring purposes.
22

23 Within thirty (30) calendar days from the submission of a written request for endorsement and
24 a complete set of requirements as prescribed by the PPPGB, the RDC shall send a written
25 notice to the LGU or LUC endorsing or rejecting the Local PPP Project, and stating its
26 justification(s) for its decision. In case the RDC does not endorse the Local PPP Project, the
27 LGU or LUC may, within seven (7) calendar days, resubmit the Local PPP Project with
28 appropriate modifications to address the grounds for the non-endorsement by the RDC, and
29 the RDC is given a fresh period of thirty (30) calendar days to endorse or reject the resubmitted
30 Local PPP Project.
31

32 If the RDC fails to render a final decision on the requested endorsement within the specified
33 period, it shall be deemed approved, without prejudice to sanctions that may be imposed under
34 Section X of this IRR.
35

36 Upon receipt of the notice from the RDC, or after the prescribed period for endorsement has
37 lapsed, whichever comes first, the LGU or the LUC shall submit the Local PPP Project to the

1 LDC for confirmation prior to the approval by the local *Sanggunian* concerned in the case of
2 LGUs, or by the boards in the case of LUCs.

3

4 To improve ease of doing business and ensure expeditious processing of endorsements,
5 meetings of the RDC shall be held at least once a month, and the PPP Governing Board shall
6 prescribe guidelines and requirements to be followed by all RDCs.

7

8 The recommended frequency of meetings of the RDCs shall not apply if there is no project set
9 for endorsement.

10

11 **Section 36. Approval of Proposed Government Undertakings or Availability Payments**
12 **using National Government Funds for Local PPP Projects**

13

14 Local PPP Projects that involve Government Undertakings or Availability Payments using
15 national government funds shall be submitted to the respective RDC for review and
16 endorsement. Prior to its endorsement the RDC shall, in all cases, consult with the DOF in
17 respect of the feasibility of any Government Undertaking and/or Availability Payments,
18 regardless of source of funds, involved in Local PPP Projects, subject to the requirements of
19 existing laws, rules, and regulations.

20

21 Such Government Undertakings shall include, among others, the following items to be
22 provided by the national government to a Local PPP Project:

23

24 (a) Guarantees on Demand;

25 (b) Guarantees on Private Sector Return;

26 (c) Guarantees on Loan Repayment;

27 (d) VGF and other forms of Subsidy; and/or

28 (e) Monetary payment of Contingent Liability through the PPP Risk Management Fund of
29 the national government.

30

31 Permits, clearances, licenses, or endorsements from national government agencies required
32 for Local PPP Projects under laws, rules, and regulations shall not be considered as
33 Government Undertakings by the national government for Local Solicited PPP Projects.

34

35 Within thirty (30) calendar days from the submission of a written request for endorsement and
36 a complete set of requirements as prescribed by the PPPGB, the RDC shall send a written

1 notice to the LGU or LUC endorsing or not endorsing the requested Government Undertaking
2 or Availability Payments for the PPP Project, and stating its justification(s) for such.

3

4 If the RDC fails to render a final decision on the requested endorsement within thirty (30)
5 calendar days, the requested Government Undertaking or Availability Payments shall be
6 deemed endorsed, without prejudice to sanctions that may be imposed under Section x of this
7 IRR.

8

9 After the receipt of the notice from the RDC, or once the prescribed period for endorsement
10 has lapsed, whichever comes first, the Implementing Agency shall submit the Government
11 Undertaking/s and Availability Payment/s using national government funds of the subject PPP
12 Project to the ICC for approval.

13

14 To improve ease of doing business and ensure expeditious processing of endorsements, the
15 PPP Governing Board shall prescribe guidelines and requirements to be followed by all RDCs
16 when endorsing Local PPP Projects that involve Government Undertakings using national
17 government funds. The RDCs shall also utilize the frequency of meetings described in the
18 preceding Section in endorsing Government Undertakings for Local PPP Projects.

19

20 Within sixty (60) calendar days from receipt of a written request for approval and a complete
21 set of requirements as prescribed by the ICC, the ICC shall send a written notice to the LGU
22 or LUC informing of its decision. In the event of ICC disapproval, it shall not be construed as
23 a disapproval of the Local PPP Project.

24

25 If the ICC fails to act on the request within this period, the proposed Government Undertakings
26 or Availability Payment/s using national government funds shall be deemed approved, without
27 prejudice to sanctions that may be imposed under Section X of this IRR.

28

29 Upon receipt of the notice from the ICC, or after the prescribed period for approval has lapsed,
30 whichever comes first, the LGU or LUC shall submit the Local PPP Project to the LDC for
31 confirmation prior to submission to the appropriate Approving Body for approval under Section
32 7 of the Code and the guidelines to be issued by the PPP Governing Board.

33

34

1 **Section 37. Appropriate Approving Body for Local PPP Projects**

2

3 Local PPP Projects shall be approved by the respective local *Sanggunians* in the case of
4 LGUs, or by the boards in the case of LUCs, subject to the guidelines to be issued by the
5 PPPGB.

6

7 In case of a Local PPP Project to be implemented by two or more LGUs, such PPP Project
8 shall be approved by the local *Sanggunians* concerned. The respective RDCs may assist in
9 the coordination of LGUs in the approval of such project.

10

11 In no case shall the Approving Body delegate its authority to render a decision of a project for
12 approval. However, the Approving Body may be allowed to establish units to aid in rendering
13 such decision on the proposed PPP Project. The appropriate Approving Body may also
14 request capacity development assistance from the PPP Center to aid in their review and
15 approval of Local PPP Projects.

16

17 **Section 38. Approval of a Local PPP Project covering of two or more LGUs**

18

19 A PPP Project covering two or more LGUs may be implemented by the national government,
20 subject to the approval process for National PPP Projects under Title IV, Chapter 1; or by the
21 next higher level of LGU or by the LGUs concerned, subject to the approval process for Local
22 PPP Projects under Title IV, Chapter 2. If the PPP Project is to be implemented by the next
23 higher level of LGU, such project shall only secure the approval of the next higher level of LGU
24 and not of the LGUs concerned.

25

26 **Section 39. Criteria for Approval of Local PPP Projects**

27

28 The Approving Body shall be guided by the following criteria in evaluating and approving PPP
29 Projects, among others:

30

(a) project context and objectives are clearly specified;

31

(b) the scope, outputs, and performance indicators of the project are clearly specified;

32

(c) the proposed project is technically feasible and is optimal;

33

(d) the proposed project has an environment, climate change, and social safeguards

34

framework including identified risks and mitigating measures;

- 1 (e) the Project Cost is sufficient to achieve the technical requirements of the project,
- 2 including the general performance standards and targets set for the project, and those
- 3 components needed to meet gender, social and environmental standards;
- 4 (f) the operating costs are sufficient to achieve the operational requirements;
- 5 (g) the project is economically viable, and the information used are reasonable and robust
- 6 to determine viability;
- 7 (h) VFM analysis shows that PPP modality is the more viable procurement option;
- 8 (i) the project is financially viable for investors at the project level, and the information
- 9 used are reasonable and robust to determine viability;
- 10 (j) the project's cash flows are healthy and sufficient to service debt obligations;
- 11 (k) the risk allocation complies with the GPRAM. Any deviation must be justified by the
- 12 Implementing Agency and shall be approved by the appropriate Approving Body;
- 13 (l) the government undertakings and investment recovery schemes are justified by the
- 14 Implementing Agency;
- 15 (m) the proposed bid parameter is the most advantageous to the government, fosters
- 16 competition, fairness, and transparency, and ensures the best interest of the public;
- 17 (n) the Implementing Agency has the capability to deliver its assumed obligations for the
- 18 project;
- 19 (o) the proposed tariff regime is affordable to users; and
- 20 (p) fiscal considerations are sufficiently provided, including Contingent Liabilities, foregone
- 21 government revenue streams, and indirect costs associated with the project.

22
23 The PPP Governing Board may prescribe additional criteria for the approval of local projects,
24 provided that the same are consistent with the Code and this IRR.

25
26 **Section 40. Completeness of Local PPP Projects submitted to the Approving Body**

27
28 A Local PPP Project shall be deemed complete for purposes of evaluation by the appropriate
29 Approving Body when the Implementing Agency has submitted a complete set of documents,
30 in form and in substance, in accordance with the approval guidelines to be issued by the PPP
31 Governing Board, which shall include, but are not limited to:

- 32
- 33 (a) complete feasibility study;
- 34 (b) traceable economic and financial models in electronic copy;
- 35 (c) proposed PTCs;
- 36 (d) VFM analysis; and
- 37 (e) Valuation report, as applicable;

1 (f) documentation of the stakeholders' consultations conducted, including the
2 participating sector or communities consulted;

3 (g) Other documents, information, or materials that may be required by the PPP Governing
4 Board in its approval guidelines, including the forms and templates, needed to
5 commence project evaluation.
6

7 The Economic and Financial Models shall be in traceable format, where the
8 assumptions/inputs shall be shown in a summary sheet, and are appropriately linked to the
9 relevant computation work sheets of the model, and which will sufficiently enable the
10 Approving Body to analyze and decide on a proposed project.
11

12 The Implementing Agency shall ensure that the information in the submissions are up-to-date,
13 and are not older than three (3) years from the date of submission to the appropriate Approving
14 Body.
15

16 Determination of completeness, in form and in substance, shall be conducted within seven (7)
17 calendar days from receipt thereof, and pursuant to the approval guidelines to be issued by
18 the PPP Governing Board. Should the submission be determined as complete, the same shall
19 be communicated to the Implementing Agency, in writing, and the number of days within which
20 the submission was reviewed shall be included in the counting of the period for approval by
21 the appropriate Approving Body to render a decision on the Local PPP Project.
22

23 In all cases, the period within which the appropriate Approving Body shall render its decision
24 on the Local PPP Project shall only commence upon its receipt of complete requirements for
25 purposes of evaluation and approval. In cases where it receives a submission which is
26 determined as not complete, the period for the appropriate Approving Body to render its
27 decision shall not begin to run, and the Implementing Agency shall be informed, in writing, that
28 its submission is not complete within seven (7) calendar days from determination thereof.
29

30 In case the Local PPP Project is subject of an Unsolicited Proposal, the Implementing Agency
31 shall ensure compliance with Title V of this IRR.
32

33 **Section 41. Minimum Parameters, Terms, and Conditions (PTCs) for Local PPP Projects**
34

35 The Implementing Agency shall submit to the Approving Body as part of the proposed PPP
36 Project for approval, the following minimum PTCs:
37

- 1 (a) Scope of the PPP Project;
- 2 (b) Contractual arrangement;
- 3 (c) Contract term;
- 4 (d) Rights and obligations of the Implementing Agency and the Private Proponent, and
- 5 corresponding penalties for failure to fulfill obligations under the PPP contract;
- 6 (e) Performance standards and targets upon which the Key Performance Indicators,
- 7 targets, and measurement for monitoring and reporting results may be derived in
- 8 preparing the draft PPP Contract;
- 9 (f) Investment recovery scheme, including terms of payment;
- 10 (g) Revenue share for the government, if any;
- 11 (h) Government Undertakings, including appropriate compensation to the Government, as
- 12 applicable;
- 13 (i) Proposed risk allocation for the PPP Project, including a risk mitigation plan for risks
- 14 assumed by the Government;
- 15 (j) Contingent liabilities arising from risks, in accordance with Title VIII, Chapter 2, and
- 16 including an intent to avail of the PPP Risk Management Fund, as applicable;
- 17 (k) Bid parameter;
- 18 (l) Ceiling for debt-to-equity ratio;
- 19 (m) In case of Solicited Projects, the proposed public bidding process, i.e., whether single-
- 20 stage or two-stage; and
- 21 (n) In case of Unsolicited Proposals, the proposed period for comparative challenge
- 22 process, i.e., not less than ninety (90) calendar days and not more than one (1) year.

23
24 The Approving Body shall set forth the required PTCs which shall be the basis for the drafting
25 and approval of tender documents and PPP Contract: *Provided*, That the same are consistent
26 with the Code and this IRR.

27
28 **Section 42. Guidelines, Forms, and Templates for Local PPP Project Review and**
29 **Approval**

30
31 The PPP Governing Board, after consultation with the relevant stakeholders, shall formulate
32 the detailed guidelines, forms, and templates that the appropriate Approving Body shall use
33 in reviewing and approving Local PPP Projects pursuant to Section 7(e) of the Code. Such
34 guidelines shall adhere to the same principles guiding the ICC in developing guidelines, forms,
35 and templates for the processing of National PPP Projects, as indicated in Section 31 of this
36 IRR.

1 **Section 43. Failure of the Approving Body to render a final decision on the Local PPP**
2 **Project**

3
4 The appropriate Approving Body shall provide its decision in writing within the timelines
5 provided in Section 37 of this IRR and the guidelines to be issued by the PPP Governing
6 Board.

7 If the Approving Body fails to render a final decision within the specified period, the PPP
8 Project shall be deemed approved, and the Implementing Agency may proceed with the
9 procurement of the PPP Project within seven (7) calendar days from receipt of a notification
10 from the PPP Center. Such notification shall be sent to the appropriate Approving Body and
11 the Implementing Agency in writing, stating that the approval period has lapsed and that the
12 project has been deemed approved. The proposed PTCs, as submitted, shall be used to guide
13 the procurement of the project that has been deemed approved.

14 The foregoing actions shall be without prejudice to any liability that the erring or negligent
15 officials or employees may incur under the Code, this IRR, and other existing laws.

16

17 **Section 44. Finality of the Decision of the Approving Body for the Local PPP Project**

18

19 In case the PPP Project has been approved, the Implementing Agency shall proceed with the
20 procurement of the PPP Project pursuant to Title VI of this IRR.

21

22 In case the PPP Project has been approved by the appropriate Approving Body but the
23 Implementing Agency intends to convert such project to a different procurement modality, such
24 shall be accompanied with a justification, and shall be made pursuant to the guidelines to be
25 issued by the PPP Governing Board.

26

27 In case the PPP Project has been disapproved and returned by the appropriate Approving
28 Body for whatever reason, the Implementing Agency may resubmit the project for approval:
29 *Provided*, That such resubmission shall be considered a submission of a new project.

30

31 The decision of the appropriate Approving Body in all cases above shall be final and executory.

32

33

TITLE V – UNSOLICITED PROPOSALS

Chapter 1 – Unsolicited Proposals for Projects in the Lists of PPP Projects

Unsolicited Proposals may be allowed for projects included in the List of PPP Projects referred to in Section X of this IRR, excluding those that have already been approved by the appropriate Approving Body.

In case the Implementing Agency has already incurred any development costs for projects subject of an Unsolicited Proposal, the winning bidder shall reimburse the Implementing Agency of such documented development costs notwithstanding whether it is funded through government appropriations, grants, and/or other sources.

For this purpose, development costs shall include the conduct of feasibility study, business case, and surveys, among others, for the last three (3) years from the submission of the Unsolicited Proposal to the Implementing Agency.

Such reimbursement shall be in an amount not exceeding six percent (6%) of the Project Cost, excluding the cost of ROW acquisition, and shall be based on the development costs indicated by the Implementing Agency in the submitted List of PPP Projects.

The development cost to be reimbursed shall be documented by the following:

- (a) Copies of invoices and proofs of payment for services provided to the project, as certified by the Commission on Audit (COA);
- (b) Contract of Consulting Services or similar contractual agreement/s covering the services paid;
- (c) Copies of outputs (e.g., Feasibility Study, business case, survey) for the services paid;
- (d) Copies of official receipt for other expenses incurred for the project, as certified by COA; and
- (e) Certificate of taxes withheld and proof of tax remittances to the Bureau of Internal Revenue (BIR), as certified by COA.

The reimbursement amount shall be included in the bidding documents for the comparative challenge, to be reimbursed by the winning bidder as a condition for award. The detailed scope and procedures for such reimbursement shall be determined by the Implementing Agency.

Chapter 2 – Limitations on Government Undertakings for Unsolicited Proposals

An Unsolicited Proposal shall not contain any of the following Government Undertakings:

- (a) VGF and other forms of Subsidy;
- (b) Payment of ROW-related costs, as defined in Section x of this IRR;
- (c) Performance Undertaking, as defined in Section x of this IRR;
- (d) Additional exemptions from any tax other than those provided for by applicable laws, ordinances, or government issuances made pursuant to applicable laws, at the time of submission of the Unsolicited Proposal by the Implementing Agency to the appropriate Approving Body;
- (e) Guarantee on Demand;
- (f) Guarantee on Loan Repayment;
- (g) Guarantee on Private Sector Return;
- (h) Government Equity, as defined in Section x of this IRR;
- (i) Credit Enhancements; and
- (j) Contribution of assets, properties, and/or rights.

Payment of ROW-related costs may be allowed if the government receives appropriate compensation, which shall in no case be lower than the value of the costs of ROW to be acquired; *Provided*, That the Private Partner must advance payment for such ROW acquisition and related costs and submit a ROW acquisition and resettlement plan.

Contributions of assets, properties, and/or rights may be allowed if the government receives appropriate compensation, which shall in no case be lower than the costs of ROW to be acquired and the usufruct of assets, properties and/or rights contributed, subject to fair valuation by a Third-party Appraiser. In determining such compensation, taxes, handback value of government assets, and cash flows incidental to the PPP Project shall not form part of the compensation for the usufruct of assets, properties, and rights contributed.

In the case of JV arrangements, Government Equity and contribution of assets, properties, and/or rights may be allowed.

Chapter 3 – Processing of an Unsolicited Proposal

Section 45. Submission of an Unsolicited Proposal to the PPP Center for determination of completeness and appropriate Approving Body

All Unsolicited Proposals shall first be submitted by the Private Proponent to the PPP Center for completeness check and determination of the appropriate Approving Body. In the case of National PPP Projects, this step will include determining whether the proposed Unsolicited Proposal will fall under the 5 circumstances requiring ICC approval as defined in Section x of this IRR. In the case of Local PPP Projects, this step will include determining whether an endorsement from the RDC and/or an approval from the ICC of a Government Undertaking is required.

The PPP Center shall issue an acknowledgement on the day of the receipt of the Unsolicited Proposal, and shall, within ten (10) calendar days from the issuance of the official acknowledgement, determine its completeness and the appropriate Approving Body, pursuant to Sections x and x of this IRR, respectively. Unsolicited Proposals submitted outside of business hours shall be considered submitted the following working day.

The completeness check to be conducted by the PPP Center is for purposes of the detailed evaluation of the appropriate Implementing Agency, and shall not be counted as part of the approval period by the appropriate Approving Body.

No Unsolicited Proposal is deemed submitted unless processed by the PPP Center for completeness check and determination of appropriate Approving Body.

Prior to submitting an Unsolicited Proposal to the PPP Center, a Private Proponent may request for a meeting with the PPP Center for purposes of clarifying the requirements in the determination of completeness of an Unsolicited Proposal.

Section 46. Assessing the Completeness of an Unsolicited Proposal

An Unsolicited Proposal shall be considered complete if it includes the following documents, among others:

- (a) Complete feasibility study;

- 1 (b) Traceable Economic and Financial Models;
- 2 (c) Minimum PTCs that will provide sufficient information for the Implementing Agency to
- 3 decide;
- 4 (d) Certification that the Unsolicited Proposal does not possess prohibited Government
- 5 Undertakings;
- 6 (e) Valuation report for the usufruct;
- 7 (f) Information on the qualifications of the Private Proponent; and
- 8 (g) Project site plan.

9
10 The PPP Center shall issue detailed guidelines on the procedures for submitting Unsolicited
11 Proposals, including a list of requirements to determine completeness of the submitted
12 Unsolicited Proposal, the descriptions for each requirement, and the use of a digital platform
13 to facilitate efficient processing.

14
15 The Private Proponent shall ensure that the information in its submissions are not older than
16 three (3) years from the date of submission to the PPP Center.

17
18 If the Unsolicited Proposal is determined to be complete by the PPP Center, it shall endorse
19 the proposal to the appropriate Implementing Agency in writing, and shall include the
20 confirmation of its completeness and the determined appropriate Approving Body for such
21 proposal. A copy of the notice shall be also sent by the PPP Center to the Private Proponent.
22 The endorsement shall include the PPP Center's confirmation that the Unsolicited Proposal
23 does not contain any Government Undertaking.

24
25 If the Unsolicited Proposal is determined to be incomplete by the PPP Center, it shall send a
26 written notice to the Private Proponent listing down the lacking information or requirement,
27 and returning all the documents submitted by the Private Proponent. The Private Proponent
28 whose submission is deemed incomplete shall not be precluded from resubmitting the
29 Unsolicited Proposal. The resubmission shall be considered as a new submission and shall
30 therefore restart the period for completeness check.

31
32 The decision of the PPP Center to return the Unsolicited Proposal shall be final and non-
33 appealable.

1 **Section 47. Processing of an Unsolicited Proposal**

2
3 Upon receipt of the complete Unsolicited Proposal endorsed by the PPP Center, the
4 Implementing Agency shall either:

- 5
6 (a) Continue processing the Unsolicited Proposal pursuant to Section 46 of this IRR;
7 (b) Reject the Unsolicited Proposal if such proposal is deemed not aligned with the
8 development plans of the Implementing Agency, or if the Implementing Agency is
9 already developing a project with similar scope and/or similar objective;
10 (c) Continue processing the Unsolicited Proposal even if a Solicited Project with similar
11 scope and/or objective is already being developed, subject to reimbursement pursuant
12 to Title V, Chapter 1 of this IRR.

13
14 In all the cases contemplated above, the Implementing Agency shall inform the Private
15 Proponent in writing of its decision, within five (5) calendar days from receipt of the Unsolicited
16 Proposal from the PPP Center. In case the Implementing Agency decides to reject the
17 Unsolicited Proposal with reasons under item (b) above, the written decision of the
18 Implementing Agency shall include the corresponding justification for such rejection. A copy
19 of the decision shall also be sent to the PPP Center, for monitoring purposes.

20
21 **Section 48. Detailed Evaluation of an Unsolicited Proposal**

22
23 Within ninety (90) calendar days from the issuance of the written decision of the Implementing
24 Agency to continue with the processing, the Implementing Agency shall conduct a detailed
25 evaluation of the Unsolicited Proposal as follows:

- 26
27 (a) Validate the absence of prohibited government undertakings under Chapter 2 of this
28 Title and Availability Payments to be sourced and funded under national government
29 funds through general appropriations;
30 (b) Validate the absence or presence of physical overlaps with a project(s) or with a
31 project(s) being developed by the Implementing Agency or any government authority,
32 based on the list of PPP Projects and the consolidated investment programs;
33 (c) Assess the appropriateness of the contractual arrangement and reasonableness of the
34 proposed risk allocation considering the GPRAM;
35 (d) Review the proposed PTCs for the PPP Project;
36 (e) Evaluate the robustness of the valuation by Third-party Appraiser(s) for the assets,
37 properties and/or rights contributed by the government, if any, to the PPP Project;

- 1 (f) Assess the appropriateness of the compensation to the government for Government
- 2 Undertakings, if any, relative to the valuation by Third-party Appraiser(s);
- 3 (g) Conduct detailed review of the technical, financial, and economic viability, the
- 4 corresponding Economic and Financial Models, and the Project Cost of the PPP
- 5 Project, pursuant to the criteria set under Sections 29 and 39 of this IRR, including
- 6 verification and vetting of the assumptions and estimates used;
- 7 (h) Conduct the VFM analysis for the Unsolicited Proposal;
- 8 (i) Assess the qualifications of the Private Proponent;
- 9 (j) Market sounding feedback; and
- 10 (k) Assess the entirety of the proposed project pursuant to the guidelines to be issued by
- 11 the ICC.

12
13 The Implementing Agency may request the assistance of the PPP Center in evaluating the
14 Unsolicited Proposal.

15
16 **Section 49. Treatment of More Than One Unsolicited Proposal for the Same or Similar**
17 **Project**

18
19 Similar proposals may be entertained within ten (10) calendar days from the receipt of the first
20 Unsolicited Proposal by the PPP Center. If a similar proposal has been received by the PPP
21 Center within the 10-day period, such shall be subject to completeness check pursuant to
22 Section 46 of this IRR.

23
24 In such cases, the Implementing Agency shall conduct a detailed evaluation on all endorsed
25 complete Unsolicited Proposals, and shall determine the most advantageous proposal for the
26 government and the public among the submitted proposals, considering, among others, the
27 Declaration of Policy under Section 2 of the Code and this IRR, and the following factors:

- 28 (a) Economic viability of the project;
- 29 (b) Financial viability of the project;
- 30 (c) Proposed project scope and terms;
- 31 (d) Investment recovery scheme;
- 32 (e) Risks proposed to be assumed by the government; and
- 33 (f) Qualifications of the Private Proponent.

34 The detailed evaluation of all similar proposals shall be conducted until the 90th day of the last
35 complete proposal endorsed by the PPP Center.

1 If the PPP Center receives similar proposal/s beyond the 10-day period, said submissions
2 shall no longer be assessed for completeness and shall be returned to the Private
3 Proponent/s. Such Private Proponent/s may instead participate in the comparative challenge
4 process, pursuant to Section 10(e) of the PPP Code.

5

6 **Section 50. Acceptance or Rejection of an Unsolicited Proposal**

7

8 After conducting the detailed evaluation, the Implementing Agency shall either:

9

- 10 (a) Accept the proposal and proceed to negotiation pursuant to Section 51 of this IRR;
- 11 (b) In case multiple Unsolicited Proposals for the same or similar project, accept the most
12 advantageous proposal and reject all other proposals;
- 13 (c) Reject the Unsolicited Proposal or all similar proposals; or
- 14 (d) Reject the Unsolicited Proposal or all similar proposals and bid out the project as a
15 Solicited Project.

16

17 The decision of the Implementing Agency shall be final and non-appealable.

18

19 In all the cases contemplated above, the Implementing Agency shall inform the Private
20 Proponent of its decision in writing within three (3) calendar days from the end of the detailed
21 evaluation period. The decision shall be accompanied by a proper justification, and a copy
22 furnished to the PPP Center.

23

24 If the Implementing Agency accepts the Unsolicited Proposal, the notice to be sent to the
25 Private Proponent shall also include the mechanics of the negotiation including the
26 commencement date and its representative(s).

27

28 If the Implementing Agency rejects the Unsolicited Proposal, all documents submitted shall
29 also be returned to the Private Proponent.

30

31 Private Proponents whose Unsolicited Proposals were rejected under item (b) shall have the
32 opportunity to submit a comparative proposal during the comparative challenge period.

33

34 If the Implementing Agency fails to render a decision on the Unsolicited Proposal within ninety
35 (90) calendar days from the end of the evaluation period, the proposal shall be deemed
36 approved to proceed to the negotiation process, without prejudice to sanctions that may be

1 imposed under Section 32 of the Code. The Implementing Agency and the Private Proponent
2 shall then commence Negotiation under Section 51 of this IRR.

3
4 If the Implementing Agency receives multiple similar proposals and fails to act on them, the
5 first submitted proposal that is deemed complete shall be considered approved to proceed to
6 the negotiation process. All other proposals shall have an opportunity to submit a comparative
7 proposal during the comparative challenge period.

8
9 **Section 51. Negotiation**

10
11 The Implementing Agency and the Private Proponent shall negotiate in good faith and shall
12 complete and conclude the negotiations within a period of eighty (80) calendar days, but not
13 less than thirty (30) calendar days from the commencement date of negotiation, as stipulated
14 in the formal advice to the Private Proponent.

15
16 Such negotiation period may be subject to extension for a period agreed upon by the
17 Implementing Agency and the Private Proponent: *Provided*, That the total negotiation period
18 shall not exceed one hundred fifty (150) calendar days.

19
20 The Implementing Agency shall designate, through a special order, permanent
21 representatives to the Negotiation Committee for the Unsolicited Proposal. These designated
22 representatives must have the authority to negotiate and make decisions on behalf of the
23 Implementing Agency. Any changes to the members of the negotiation committee shall also
24 be issued through a special order and subject to guidelines to be issued by the PPP Governing
25 Board.

26
27 The designated representatives shall, as far as practicable, consist of the following:

- 28 (a) A team lead officially designated by the Head of the Implementing Agency;
29 (b) A legal officer;
30 (c) An officer knowledgeable in finance; and
31 (d) An officer knowledgeable in the technical aspects and/or management and
32 operations of the project.

33
34 In case of co-grantors, each Implementing Agency shall have adequate representation in the
35 Negotiation Committee.

1 The Private Proponent shall also designate permanent representatives to the Negotiation
2 Committee. The Private Proponent shall, within seven (7) calendar days upon receipt of the
3 Notice to Commence Negotiations, notify in writing the Implementing Agency of its duly
4 authorized representatives.

5

6 The Implementing Agency shall also involve the PPP Center and government lawyers
7 specializing in PPPs from the OSG, the OGCC, or the prescribed statutory counsel of the
8 Implementing Agency, as the case may be, to assist in the negotiation process. The
9 Implementing Agency may also invite the DOF to assist in the negotiation process; *Provided,*
10 That the involvement of the DOF shall not prevent it to review and provide comments to the
11 final PPP Contract under Section 98 and 124 of the IRR.

12 **Section 51.1. Successful Negotiation**

13

14 If negotiation is successful, the Implementing Agency shall grant an OPS to the Private
15 Proponent, which shall be valid for a period not exceeding one (1) year from conferment.

16

17 The Implementing Agency and the Private Proponent shall submit the complete set of
18 requirements for approval, including the negotiated PTCs, to the appropriate Approving
19 Body, within thirty (30) calendar days from the end of negotiation.

20

21 If the Approving Body for a PPP Project is the Head of Implementing Agency, it shall
22 confirm that all requirements have been met and approve the negotiated PTCs. Once
23 approved, the Head of the Implementing Agency shall grant the OPS for the Private
24 Proponent. The Head of the Implementing Agency shall provide the PPP Center with the
25 complete set of requirements for monitoring purposes.

26 **Section 51.2. Failure of Negotiation**

27

28 In case of failure of negotiation, the Implementing Agency shall reject the proposal in
29 writing within seven (7) calendar days from the lapse of the negotiation period or the
30 declaration of the failure of negotiations. Thereafter, the Implementing Agency may
31 accept a new Unsolicited Proposal, if there be any, or bid out the project as a Solicited
32 Project.

33

34 If the Implementing Agency fails to act during the negotiation period, such shall be
35 deemed a failure of negotiation.

1
2 The Implementing Agency shall inform the PPP Center of such failure of negotiation, for
3 monitoring purposes.
4

5 **Section 52. Original Proponent Status**
6

7 All OPS shall automatically expire or become invalid after one (1) year from conferment. The
8 Implementing Agency shall inform the Private Proponent in writing about the expiration of the
9 OPS. The letter is not a prerequisite before the OPS shall be deemed invalid or expired.
10

11 The OPS granted to a Private Proponent may also be revoked by the Implementing Agency
12 which granted it based on any of the following grounds:
13

- 14 (a) It is found that the facts disclosed are incomplete, incorrect, misleading, fraudulent,
15 untrue, inaccurate, or different from what was presented;
- 16 (b) There is a non-compliance or violation of the Code and this IRR; or
- 17 (c) There is a change in the composition of the Original Proponent that will affect its legal,
18 technical, and/or financial capability to successfully carry out the PPP Project, or there
19 is a change in control that will affect its majority ownership and/or beneficial ownership.
20 For avoidance of doubt, majority ownership or control is presumed when the ownership
21 and/or control is more than fifty percent (50%) of the Original Proponent's outstanding
22 shares: *Provided*, That in the case of JVs, majority ownership or control is presumed
23 when such is more than half of its share in the JV.
24

25 In such cases, the Implementing Agency shall inform the Private Proponent of the revocation
26 of its OPS citing the grounds relied upon for its revocation.
27

28 Without prejudice to the OP's right-to-match during comparative challenge process, the
29 expiration of the OPS shall no longer have an effect or consequence once the Invitation for
30 Comparative Proposals have been issued pursuant to Section 108 of this IRR.

31 **Section 53. Government share in the upside of the PPP Project**
32

33 The Implementing Agency shall negotiate the inclusion of the following as part of the project's
34 PTCs during the negotiation process under Section 49 of this IRR:
35

- 1 (a) Setting a pre-determined rate of return based on prevailing market conditions, risks to
- 2 be assumed by the private partner, and duration of the PPP Project;
- 3 (b) Sharing by the private partner with the government, of revenues, net revenues,
- 4 earnings before interest and taxes, net income, or the like if there is an upside;
- 5 (c) Implementing a graduated share in cases where government already has a share in
- 6 the project revenues, net revenues, earnings before interests and taxes, net income,
- 7 or the like even without upside;
- 8 (d) Setting a period for monitoring the returns;
- 9 (e) Setting a period for remitting the share of the government in the upside.

10
11 Non-inclusion of any of the above items in the PTCs shall be justified by the Implementing
12 Agency to the Approving Body.

13
14 The Approving Body shall also require the above as part of the PTCs which it shall approve
15 during the approval stage under Title IV of this IRR.

17 **TITLE VI - PROCUREMENT OF PPP PROJECTS**

18 19 **Chapter 1 – Procurement of Solicited PPP Projects**

20 21 **Section 54. Composition of the PPP Pre-qualification, Bids and Awards Committee** 22 **(PBAC) of National Implementing Agencies**

23
24 The Head of the Implementing Agency undertaking PPP Projects shall create a PPP Pre-
25 qualification, Bids and Awards Committee (PBAC).

- 26
27 (a) **Minimum members** – The Head of the Implementing Agency shall determine the
28 appropriate composition of the PBAC of the national Implementing Agency: *Provided,*
29 That it shall, at the minimum, include the following members:
 - 30
31 (i) Chairperson – At least a third ranking official of the Implementing Agency;
 - 32 (ii) Secretary – A legal officer of the Implementing Agency;
 - 33 (iii) An officer of the Implementing Agency knowledgeable in finance;
 - 34 (iv) An officer of the Implementing Agency knowledgeable in procurement and in the
35 management/operation of the PPP Project; and

1 (v) An officer of the Implementing Agency knowledgeable in the technical aspects or
2 requirements of the PPP Project.

3
4 (b) **Non-voting members and Observers** – The PBAC, with the approval of the Head of
5 Implementing Agency, shall invite the following as non-voting members or observers
6 in its proceedings:

7
8 (i) Non-voting members:

9 (1) A representative from the Regulatory Body concerned duly authorized by its
10 Head, who is knowledgeable with the PPP Project and is to be invited by the
11 Implementing Agency on a project-to-project basis;

12 (2) A representative from the Implementing Agency's statutory counsel (OSG,
13 OGCC, or as designated by the DOJ);

14 (3) A representative from the Philippine Competition Commission (PCC); and

15 (4) A representative from the PPP Center, if PPP Center is not the procuring
16 entity.

17
18 (ii) Observers:

19 (1) A representative from COA;

20 (2) A representative from a Securities and Exchange Commission (SEC)-
21 registered association related to the PPP Project; and

22 (3) A representative from either the facility users, if applicable, or a duly
23 recognized accounting association and/or consumer group.

24
25 **Section 55. Composition of the PBAC of LGUs and LUCs**

26
27 (a) **Minimum members** – The Head of the Implementing Agency shall determine the
28 appropriate composition of the PBAC of the local Implementing Agency: *Provided,*
29 That it shall, at the minimum, include the following members:

30
31 (i) Chairperson – the Administrator or at least a third ranking permanent official of
32 the local Implementing Agency;

33 (ii) Treasurer or Accountant of the Implementing Agency;

34 (iii) Planning and Development Coordinator or Engineer of the Implementing
35 Agency;

36 (iv) Legal officer of the LGU;

1 (v) A representative from and selected by the local *Sanggunian* or by the LUC Board
2 designated through a resolution; and

3 (vi) Two (2) representatives from and chosen by the accredited civil society
4 organizations (CSOs), people's organizations (POs), and non-governmental
5 organizations (NGOs) who are members of the local development council.
6

7 In case the local Implementing Agency does not have a legal officer, the
8 Implementing Agency shall seek legal advice from either an external legal advisor
9 or the legal officer of the next higher level of LGU, as applicable, to assist the
10 PBAC.

11
12 The Implementing Agency may include other members to the PBAC through an
13 issuance of a formal office order.

14
15 The Implementing Agency may also constitute more than one PBAC, if the Head
16 of Implementing Agency deems it necessary.
17

18 (b) **Non-voting members and Observers** – The PBAC of a local Implementing Agency,
19 with the approval of the local chief executive, shall invite the following as non-voting
20 members or observers in its proceedings:
21

22 (i) Non-voting members:

23
24 (1) A representative from the Regulatory Body concerned duly authorized by its
25 Head, who is knowledgeable with the PPP Project and who is to be invited by
26 the LGU or Board on a project-to-project basis;

27 (2) LEDIP officer which shall serve as the Secretariat of the PBAC; and

28 (3) A representative from the PPP Center, if PPP Center is not the procuring entity.
29

30 (ii) Observers:

31
32 (1) A representative from COA;

33 (2) A representative from the Department of the Interior and Local Government
34 (DILG) Regional Office or Field Unit;

35 (3) A representative from the NEDA Regional Office, if applicable;

36 (4) A representative from a SEC-registered association related to the PPP Project;
37 and

- 1 (5) A representative from either the facility users, if applicable, or a duly recognized
2 accounting association and/or consumer group.

3
4 **Section 56. Roles and Responsibilities of the PBAC, Non-Voting Members, and**
5 **Observers**

6
7 The PBAC shall be responsible for all aspects of pre-bidding and bidding process, including,
8 among others:

- 9
10 (a) preparation of the tender documents;
11 (b) publication of the Invitation to Pre-qualify and Bid;
12 (c) pre-qualification of prospective bidders;
13 (d) conduct of pre-bid conferences and issuance of supplemental notices;
14 (e) interpretation of the rules regarding the bidding;
15 (f) conduct of bidding;
16 (g) evaluation of bids;
17 (h) resolution of disputes between bidders; and
18 (i) recommendation for the acceptance of the bid and/or for the award of the PPP
19 contract.

20
21 A quorum of the PBAC shall be composed of a simple majority of all voting members. The
22 Chairperson may vote and shall be counted as part of the simple majority.

23
24 Non-voting members can participate in the discussions and deliberations of the PBAC. They
25 may be consulted or be allowed to give advice or opinions to the voting members of the PBAC.
26 Observers may prepare a report indicating their observations and submit the same to the
27 Implementing Agency and furnish a copy to the Office of the Ombudsman, if deemed
28 necessary.

29 **Section 57. Rules for the Non-Voting Members and Observers**

30
31 Non-voting members and observers will be notified at least seven (7) calendar days before
32 the following stages: pre-bid conference, opening of bids, evaluation of bids, contract award,
33 and special meetings of the PBAC. The absence of observers and non-voting members shall
34 not nullify the PBAC proceedings: *Provided*, That they have been duly invited in writing. For
35 purposes of this Section, "in writing" shall include electronic mail. In case the non-voting

1 members cannot attend the PBAC proceedings, they may be allowed to submit their written
2 advice or opinions to the PBAC within a period provided for by the PBAC.

3

4 Non-voting members and observers shall be provided with the following documents free of
5 charge:

6

- 7 (a) minutes of BAC meetings;
- 8 (b) abstract of Bids;
- 9 (c) post-qualification summary report;
- 10 (d) APP and related PPMP; and
- 11 (e) opened proposals.

12

13 In all instances, non-voting members and observers other than the statutory counsel of the
14 Implementing Agency shall be required to enter into a confidentiality agreement with the
15 Implementing Agency. The PPP Governing Board may provide a template of the confidentiality
16 agreement, which shall cover confidentiality on both the information and the deliberations
17 during the proceedings.

18

19 The PBAC may organize a Technical Working Group (TWG) per project to assist in the pre-
20 bidding and bidding process.

21

22 Observers shall not influence or attempt to influence the votes/actions of the voting members
23 of the PBAC. Observers shall not be placed in a conflicted situation and, if placed in such a
24 situation, shall immediately inhibit and notify the Implementing Agency in writing.

25

26 **Section 58. PBAC in case the PPP Center is the procuring entity**

27

28 In cases where the PPP Center grants the request of the Implementing Agency and acts as
29 the procurement agent, the composition of the PBAC in such cases shall follow the
30 composition of the PBAC under Sections 54 and 55; provided, that all PBAC members coming
31 from the Implementing Agency shall come from the PPP Center; provided, further, that the
32 concerned Implementing Agency shall be a voting member of the PBAC.

33

34 The PPP Governing Board shall issue guidelines on the requirements and procedures
35 governing such cases where the PPP Center is requested by the Implementing Agency to act
36 as the procurement agent, and where the PPP Center acts as such accordingly.

1 **Section 59. Procurement of Probity Advisor**

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An Implementing Agency may procure the services of a Probity Advisor to assist with the PPP procurement process. The procurement of a Probity Advisor shall be undertaken, and the fees of the Probity Advisor shall be paid, in accordance with the guidelines to be issued by the PPP Governing Board and applicable laws, rules, and regulations. The Probity Advisor to be appointed shall perform the following duties:

- (a) Provide insights on the PPP procurement process to determine whether relevant government guidelines and appropriate policies are being complied with;
- (b) Ensure that the procurement process is impartial and fair to all bidders, with no bidder being given an advantage over another or unfairly discriminated against;
- (c) Protect confidential information;
- (d) Highlight potential conflict-of-interest situations, as they arise; and
- (e) Report any unlawful acts or concerns that occurred during the procurement process.

Section 60. Private Legal and Medical Assistance

All PBAC members and other public officials providing services to the PBAC shall be authorized to engage the services of private lawyers, or shall be provided with free legal assistance by the respective Implementing Agency, where a civil, criminal, or administrative action is filed against them by reason of the performance of their official functions or duties, unless they are found liable for gross negligence or misconduct or grave abuse of discretion in such action or proceeding by final decision of a court of competent jurisdiction.

An Implementing Agency may grant the free legal assistance contemplated under this Section pursuant to the appropriate guidelines to be issued by the said Implementing Agency.

The PBAC member or public official shall reimburse the legal fees they received that was paid for by the Implementing Agency if finally adjudged to be liable for gross negligence, misconduct, or grave abuse of discretion in such action or proceeding.

PBAC members shall also be entitled to medical assistance from the Implementing Agency for injuries incurred in the performance of their functions subject to guidelines to be issued by the said Implementing Agency.

1 **Section 61. Tender Documents**

2

3 The Implementing Agency concerned shall prepare the pertinent tender documents, which
4 shall include the following:

5

6 (a) Instructions to Bidders;

7 (b) Draft PPP contract (as approved in accordance with Section X of this IRR) reflecting
8 the PTCs as approved by the appropriate Approving Body;

9 (c) "Bid Form" reflecting the required information to properly evaluate the bid proposal;

10 (d) Forms of bid and performance securities;

11 (e) requirements and timelines/milestones of agencies concerned in granting of franchise,
12 if applicable; and

13 (f) Other documents as may be deemed necessary by the Implementing Agency.

14

15 **Section 62. Instruction to Bidders**

16

17 The Instruction to Bidders, which establish the rules of the bidding, shall be clear,
18 comprehensive, and fair to all bidders, and shall, as far as necessary and practicable, include
19 the following information:

20

21 (a) General description and objectives of the PPP Project, including a statement that the
22 PPP Project shall be implemented under the Code and this IRR;

23 (b) Contractual arrangement under which the PPP Project shall be undertaken;

24 (c) Bid parameters and documents comprising the bid;

25 (d) Bid submission procedures and requirements, which shall include information on the
26 manner of bid submission, the number of copies of the bids to be submitted, where the
27 bids are to be submitted, the deadline for the submission of bids, permissible mode of
28 transmission of bid proposals, etc.;

29 (e) Details of access to the physical and/or virtual data room (VDR) and a template
30 confidentiality agreement with prospective bidders in relation to the access to the
31 physical data room and/or VDR;

32 (f) Cost of application to pre-qualify and submit bids, which shall not be higher than the
33 cost prescribed in Section 68 of this IRR;

34 (g) Amount and form of the bid security, its validity period, and the grounds for its forfeiture;

35 (h) Project Milestones;

36 (i) Minimum performance standards and specifications for design/construction/operation
37 and maintenance for the project prescribed by the Implementing Agency;

- 1 (j) Method, parameters, and criteria for the evaluation of the proposals;
- 2 (k) Minimum amount of equity of the Private Partner;
- 3 (l) Requirements of the appropriate regulators, as may be pertinent or applicable to the
- 4 PPP Project;
- 5 (m) Nationality and ownership requirements as required by law;
- 6 (n) Grounds for revocation of award; and
- 7 (o) Lock-in or holding period during which the Private Partner cannot sell their ownership,
- 8 rights, or interests in the PPP Project, if applicable.

9
10 The PBAC shall provide a period of thirty (30) calendar days prior to bid submission date
11 wherein no new bid documents, bid bulletins, or changes thereto, shall be issued.

12 13 **Section 63. Safekeeping of PPP Tender Documents**

14 Without prejudice to the rules on publication of tender documents to commence bidding, the
15 Implementing Agency, through its PBAC, may disclose the tender documents to the public for
16 the entirety of the bidding process by posting such documents online on the websites of the
17 Implementing Agency concerned. However, copies of all tender documents shall be
18 considered, appropriately kept safe, and preserved, as public documents after execution of
19 the PPP Contract. Bid submissions and records of deliberations of the PBAC shall not be
20 considered as part of the tender documents to be disclosed to the public

21
22
23 Any entity, whether public or private, may claim confidentiality of information it submits in
24 relation to any activity being conducted pursuant to the Code and this IRR, as well as any
25 deliberation in relation thereto following the procedure under Section 64 of this IRR: *Provided,*
26 *That,* such information claimed to be confidential is Confidential Business Information as
27 defined under this IRR.

28 29 **Section 64. Nondisclosure of Confidential Business Information**

30
31 Confidential Business Information submitted by entities pursuant to the Code and this IRR,
32 shall not, in any manner, be directly or indirectly disclosed, published, transferred, copies, or
33 disseminated: *Provided,* That the confidentiality rule shall not apply if the entity consents to
34 the disclosure, or if the document or information is mandatorily required to be disclosed by law
35 or by a valid order of a court of competent jurisdiction or of a government or Regulatory Body

1 or may pose threats to national security or public safety. In such cases, the disclosure of
2 information shall be consistent with existing and applicable laws, rules, and regulations.

3 **Section 65. Claiming Confidentiality**

4

5 Any entity that claims confidentiality on tender documents that will be published by an
6 Implementing Agency shall submit to the Implementing Agency, copy furnished the PPP
7 Center, a table identifying the confidential information and giving reasons why the information
8 should be treated as confidential.

9

10 Blanket claims for confidentiality shall not be accepted. Failure to comply with the foregoing
11 shall result in the waiver of the entity's claim for confidentiality.

12

13 Should the Implementing Agency find the claim for confidentiality unjustified, it shall, prior to
14 any disclosure of such information, notify the entity which claimed confidentiality that the
15 information shall be treated as nonconfidential.

16

17 **Section 66. Invitation to Pre-Qualify and Bid**

18

19 (a) The Implementing Agency shall, after obtaining approval for the PPP Project, publish
20 the Invitation to-Pre-Qualify and Bid within ninety (90) calendar days from issuance of
21 the Notice of Approval by the appropriate Approving Body, in accordance with the
22 following:

23

- 24 (i) At least two (2) newspapers of general circulation, either print or online; and
- 25 (ii) For Local PPP Projects, at least one (1) local newspaper of general circulation,
26 either print or online, in the region, province, city, or municipality in which the PPP
27 Project shall be implemented.

28

29 (b) The Invitation to Pre-qualify and Bid shall also be posted continuously starting on the
30 date of the publication, on the following:

31

- 32 (i) Website and/or any official digital platform of the Implementing Agency, if
33 available;
- 34 (ii) Website and/or any official digital platform of the PPP Center and the NEDA; and
- 35 (iii) Any online government portal for the purpose.

1
2 (c) In addition to the medium enumerated in (b), the Implementing Agency may also
3 publish the invitation in a newspaper or appropriate publication of international
4 circulation.

5
6 The invitation shall, at the minimum, include the following:

- 7
8 (i) date and place where the bid/tender documents can be obtained;
9 (ii) objective and Scope of the PPP Project;
10 (iii) contract period;
11 (iv) period for bidding; and
12 (v) participation fees and manner of payment.

13
14 In case there are changes in the information provided in the invitation, the Implementing
15 Agency shall re-publish the invitation reflecting the said changes, at the minimum, in the
16 same manner of publication as the initial invitation.

17
18 **Section 67. Period to Prepare Pre-qualification Documents**

19
20 The Implementing Agency concerned shall allow prospective bidders at least fifteen (15)
21 calendar days from the last date of publication of the Invitation to Pre-qualify and Bid to prepare
22 their respective pre-qualification documents. The deadline for submission of pre-qualification
23 statements shall be indicated in the published Invitation to Pre-qualify and Bid.

24
25 **Section 68. Participation Fees for Pre-qualification and Bid Submission**

26
27 The Invitation to Pre-qualify and Bid shall include the amount of fees to participate and apply
28 for pre-qualification and bid submission.

29
30 The PBAC shall only consider the submission of prospective bidders upon full payment of the
31 corresponding participation fees to the collecting/disbursing officer of the Implementing
32 Agency. Payment of participation fees for pre-qualification shall be made anytime within the
33 period to submit the pre-qualification documents: *Provided*, That the participation fee for pre-
34 qualification shall not exceed ____ (%) of the approved Project Cost. Such percentage may be
35 updated by the PPPGB through an issuance of a resolution.

1 Payment of participation fees for bid submission by qualified bidders shall be made within the
2 period to submit bids.

3

4 Only those who have paid the corresponding participation fees shall be allowed to be pre-
5 qualified and submit bids; *Provided*, That in case of a consortium, purchase of the bidding
6 documents by one consortium member shall be sufficient. No transfer or assignment of the
7 purchased bidding documents by the purchasing entity to a third party (other than the
8 consortium in which the purchasing entity is a member or an affiliate of the purchasing entity)
9 shall be allowed, except with the prior written consent of the PBAC.

10

11 **Section 69. Qualification of Bidders**

12

13 Any individual, partnership, corporation, or firm, whether local or foreign, including consortia
14 of local, foreign, or both local and foreign firms, or cooperatives may participate or apply for
15 pre- or simultaneous qualification for PPP Projects implemented under the Code and this IRR,
16 subject to the limits set herein, and applicable laws, rules, and regulations.

17

18 **Section 70. Responsibility of the Bidders**

19

20 The prospective bidder shall take all the necessary steps to carefully examine and acquaint
21 itself with the requirements and terms and conditions of the tender documents with respect to
22 the cost, duration, and execution/operation of the PPP Project, as it affects the preparation
23 and submission of its proposal. The Implementing Agency concerned shall not be responsible
24 for the prospective bidder's erroneous interpretation or conclusion of any data furnished or
25 indicated in the tender documents.

26 Request for clarification(s) on any part of the tender documents or for interpretation must be
27 sent by prospective bidder(s) in writing and submitted to PBAC of the implementing on or
28 before the deadline set by the PBAC. The PBAC shall respond to the said request by issuing
29 a supplemental/bid bulletin, duly signed by the chairperson of the PBAC, to be made available
30 to all those who have properly secured the tender documents, at least seven (7) calendar days
31 before the deadline for the submission and receipt of bids.

32 Any supplemental/bid bulletin issued by the PBAC shall be posted on the website of the PPP
33 Center and the Implementing Agency and, if available, at any conspicuous place within the
34 premises of PBAC of the Implementing Agency. It shall be the responsibility of all those who
35 have properly secured the tender documents to inquire and secure supplemental/bid bulletins
36 that may be issued by the bac. However, bidders who have submitted bids before the issuance

1 of the supplemental/bid bulletin must be informed in writing and allowed to modify or withdraw
2 their bids in accordance with Section 89 of this IRR.

3
4 **Section 71. Pre-qualification Requirements**

5
6 To pre-qualify, a prospective Private Partner must comply with the following requirements:
7

8 **Section 71.1. Legal Requirements**

9
10 (a) For PPP Projects to be implemented under a contractual arrangement which requires
11 a public utility Franchise for its operation, and where the Private Partner and Facility
12 Operator are one and the same entity, the prospective Private Partner must be:

- 13
14 (i) a Filipino, or
15 (ii) if a corporation, must be duly registered with the SEC and owned up to at least
16 sixty percent (60%) by Filipinos, or
17 (iii) if a consortium of local, foreign, or local and foreign firms, Filipinos must have
18 at least sixty percent (60%) interest in said consortium, or
19 (iv) if a cooperative, must be duly registered with the Cooperative Development
20 Authority (CDA).

21
22 (b) For PPP Projects to be implemented through a contractual arrangement requiring a
23 public utility Franchise for its operation but where the Private Partner and Facility
24 Operator may be two separate and independent entities, the Facility Operator must
25 be:

- 26
27 (i) a Filipino, or
28 (ii) if a corporation, must be duly registered with the SEC and owned up to at least
29 sixty percent (60%) by Filipinos, or
30 (iii) if a cooperative, must be duly registered with the CDA.

31
32 (c) For PPP Projects that do not require a public utility Franchise for its operation, the
33 prospective Private Partner or the Facility Operator may be Filipino or foreign-owned,
34 subject to applicable laws, rules, and regulations.
35

1 For purposes of determining compliance with the required constitutional or statutory
2 requirement, the required Filipino ownership shall be determined in accordance with SEC
3 Memorandum Circular No. 8, s. 2013, as may be amended or supplemented from time to time.

4
5 In case the prospective Private Partner is a consortium, the members or participants thereof
6 shall be disclosed during the pre-qualification stage and shall undergo pre-qualification.
7 Further, the members or participants thereof shall execute an undertaking in favor of the
8 Implementing Agency that if awarded the PPP contract, they shall bind themselves to be jointly
9 and severally liable for the obligations of the Private Partner under the PPP Contract.

10
11 However, if members of the consortium organize themselves as a corporation registered under
12 Philippine laws, such corporation shall execute such an undertaking binding itself to the rights
13 and obligations of the Private Partner under the PPP contract, which shall substitute or be in
14 lieu of the undertaking submitted by the members or participants of the consortium.

15
16 For purposes of pre-qualification, the Contractor proposed to be engaged by the prospective
17 Private Partner to undertake the Construction of the PPP Project must be duly licensed by the
18 Philippine Contractors Accreditation Board (PCAB) in the case of a Filipino Contractor, or by
19 an equivalent accreditation institution in the Contractor's country of origin in the case of a
20 foreign Contractor. Once the Private Proponent is awarded the PPP Project, such foreign
21 Contractor must secure a license from PCAB.

22
23 Prospective Private Partners may be required to submit to the Implementing Agency a
24 certification under oath indicating that the prospective Private Partner is not included in
25 blacklists issued by any government agency, has no pending case filed against it by the
26 government or by it against the government, or, should there be any, that such cases shall not
27 impact the capability of the prospective Private Partner to carry out its obligations under the
28 PPP Project. The prospective Private Partner shall be required to submit full disclosure of its
29 pending cases, whether by it against the government or filed against it by the government.
30 Any misrepresentation in the certification under oath shall be a ground to disqualify the
31 prospective Private Partner.

32
33 For avoidance of doubt, pending cases shall include criminal, civil, administrative, and
34 arbitration proceedings.

35

1 **Section 71.2. Experience or Track Record**

2
3 The prospective Private Partner must possess adequate experience in terms of the
4 following:

5
6 **(a) Firm Experience**

7
8 By itself or through the member-firms in case of a consortium, or through a Contractor(s)
9 or nominated affiliates, proposed Facility Operators and/or entities bound by a technical
10 services agreement, collectively referred to as Nominated Entities, which the prospective
11 Private Partner may engage for the project, the prospective Private Partner, its
12 Contractors, and/or Nominated Entities, must have successfully undertaken a project(s)
13 similar or related to the subject infrastructure or development project to be bid. The
14 individual firms, their Contractors, and/or Nominated Entities may individually specialize
15 on any or several phases of the project. A consortium shall be evaluated based on the
16 individual or collective experience of the member-firms of the consortium and of the
17 Contractors and/or Nominated Entities that it has engaged for the project, even if the
18 Contractor and/or Nominated Entity is not a member of the consortium. The experience
19 of the Contractors and/or Nominated Entities which the prospective Private Partner will
20 engage for the project shall be evaluated if it is necessary for the determination of the
21 capacity of the consortium to undertake the project. In such case, the Contractors and/or
22 Nominated Entities must have successfully undertaken a project similar or related to the
23 project to be bid. Such Contractor and/or nominated entities shall be subject to a lock-in
24 period pursuant to the PPP contract.

25
26 In the bidding documents for each project, the Implementing Agency shall specify the
27 required minimum work experience – in terms of scope and costs - of projects similar or
28 related to the subject project that have been successfully undertaken by the prospective
29 private partner or its nominated entities. The prospective partner must submit documented
30 proofs of such work experience, including certificates of satisfactory accomplishments
31 from its concerned clients.

32
33 For purposes of the above, the consortia shall submit as part of their pre-qualification
34 statement a business plan which shall, among others, identify their members, the equity
35 interest/contribution of each member to the consortium, their prospective Contractors
36 and/or nominated entities, if the experience of their Contractors and/or nominated entities
37 are necessary for the determination of the capacity of the consortium to undertake the

1 project, and the description of the respective roles said members and Contractors and/or
2 nominated entities, if necessary, shall play or undertake in the project, including as to
3 which members are the prospective Facility Operators, if applicable. If undecided on a
4 specific Contractor and/or nominated entities, the prospective Private Partner may submit
5 a short list of Contractors and/or nominated entities from among which it will select from.
6 Shortlisted Contractors and/or nominated entities are required to submit a statement
7 indicating willingness to participate in the project and capacity to undertake the
8 requirements of the project.

9
10 **(b) Key Personnel Experience**

11
12 The key personnel of the prospective Private Partner and/or its Contractors and/or
13 nominated entities must have sufficient experience in the relevant aspect of schemes
14 similar or related to the subject project, as specified by the Implementing Agency. Any
15 substitution in the key personnel of the pre-qualified Private Proponent shall be allowed
16 prior to bid submission: *Provided*, That the substitute has equal or better qualifications.

17
18 **(c) Financial Capability**

19
20 The prospective Private Partner must have adequate capability to sustain the financing
21 requirements for the detailed engineering design, Construction, and/or operations and
22 maintenance phases of the PPP Project, as the case may be.

23
24 The Implementing Agency shall determine on a project-to-project basis, and before pre-
25 qualification, the minimum amount of equity needed.

26
27 For purposes of pre-qualification, this capability shall be measured in terms of proof of the
28 ability of the prospective Private Partner and/or the consortium to provide:

- 29
30 **(i) Equity** – a minimum amount of equity to the project measured in terms of the
31 latest net worth of the company nearest to the date of pre-qualification stage, or in
32 the case of a consortium, the net worth as of the nearest date of pre-qualification
33 stage of the lead member or the combined net worth of members

34

1 **(ii) Debt**

2 The prospective Private Partner shall demonstrate its capability to finance the PPP
3 Project with debt by submitting a current letter testimonial from a financial institution
4 attesting that:

5
6 (1) The prospective Private Partner and/or members of the consortium are banking
7 with them; and

8 (2) The prospective Private Partner and/or members of the consortium are in good
9 financial standing and/or qualified to obtain debt financing from such financial
10 institution to finance the PPP Project equivalent to the value of the debt
11 requirement in the proposal.

12
13 The testimonial must come from an established financial institution that (a) is
14 authorized by BSP to transact in the Philippines or (b) has an investment grade
15 foreign currency credit rating from a reputable agency which has an outstanding
16 rating on the Republic of the Philippines.

17
18 The Implementing Agency, through its PBAC, shall complete the evaluation of the pre-
19 qualification documents of the prospective Private Partners within twenty (20) calendar days
20 from receipt of the complete submission of the prospective Private Partner's pre-qualification
21 documents.

22
23 The ICC, in the case of National PPP Projects, and the PPPGB, in the case of Local PPP
24 Projects, may prescribe and revise detailed guidelines on the methodology to establish the
25 legal, technical, and financial qualifications of the Private Proponents.

26
27 **Section 72. Pre-qualified and Disqualified Proponents**

28
29 The Implementing Agency, through its PBAC, shall, within twenty (20) calendar days or such
30 longer period as the Approving Authority may allow but, in any case, not longer than thirty (30)
31 calendar days after the deadline set for the submission of pre-qualification documents,
32 determine which among prospective bidders are "pre-qualified" and "disqualified". Accordingly,
33 the PBAC shall duly inform the pre-qualified prospective bidders within ten (10) calendar days
34 after approval thereof. Disqualified bidders shall be similarly given notice of such
35 disqualification, stating therein the ground for disqualification within the same period. Those
36 disqualified may appeal the disqualification in accordance with the protest mechanism under
37 this IRR.

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Any substitution in the composition of the pre-qualified Private Proponent shall be allowed prior to bid submission: *Provided*, That the substitute has equal or better qualifications.

As may be authorized by the appropriate Approving Body, the Implementing Agency may opt to do a single-stage bidding process as provided under Title VI of this IRR, wherein prospective Private Partners shall be asked to simultaneously submit their qualification requirements and bids. In such cases, qualification of bidders shall be done in accordance with Title VI of this IRR.

Section 73. Acceptance of Criteria and Waiver of Rights to Enjoin Project

All prospective bidders shall be required to submit, as part of their qualification requirements, a statement stipulating that the bidder:

- (a) has accepted the qualification criteria established by the PBAC of the Implementing Agency concerned; and
- (b) waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the Implementing Agency or its PBAC to prevent or restrain the qualification process or any proceedings related thereto, the holding of a bidding or any proceedings related thereto, the negotiation of and award of the PPP contract to a successful bidder, and the carry out of the awarded PPP contract.

Such waiver shall, however, be without prejudice to the right of a disqualified or losing bidder to question the lawfulness of its disqualification or the rejection of its bid by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.

Section 74. Issuance of Tender Documents

Only bidders who have paid the non-refundable participation fee not later than the deadline for submission of pre-qualification documents or bid proposals shall be entitled to attend the Pre-Bid Conference, to One-on-One meetings, to send queries to the PBAC, and to submit a bid.

1 The bidders shall be provided ample time to examine the tender documents and to prepare
2 their respective proposals prior to the bid submission date which shall be at least thirty (30)
3 calendar days from the last bid bulletin posted by the PBAC. The PBAC shall not proceed with
4 the bid submission date unless the PPP Contract is approved by the Head of the Implementing
5 Agency and cleared in accordance with Section ___ of this IRR.

6
7 **Section 75. Changes to Pre-qualification and Tender Documents**

8
9 If changes to pre-qualification and tender documents are made prior to pre-qualification of
10 prospective bidders, the Implementing Agency shall issue a bid bulletin to all bidders who had
11 purchased the tender documents informing them of such changes, and afford them reasonable
12 time within which to consider the same in the preparation of their bids. Such issuance shall be
13 duly acknowledged by each bidder prior to the submission of his pre-qualification documents
14 and/or bid and shall be so indicated in its bid. This shall be observed under all types of bidding
15 processes.

16
17 Further, if changes to tender documents are made after the pre-qualification stage, the bid
18 bulletin shall be issued only to all pre-qualified bidders.

19
20 Changes in the PTCs approved by the Approving Body may be allowed prior to the issuance
21 of the bid bulletin for any documents obtained by prospective bidders all types of bidding
22 process: *Provided*, That the prior approval of the appropriate Approving Body and the Head
23 of the Implementing Agency shall be secured.

24
25 The Implementing Agency shall inform in writing the PPP Center, its statutory counsel, and
26 DOF, as the case may be in accordance with Section 98 and 124 of this IRR, of such changes.

27
28 **Section 76. Bid Bulletins**

29
30 In case a prospective bidder is in doubt as to the meaning of any data or requirements or any
31 part of the bid/tender documents, it may submit a written request to the PBAC of the
32 Implementing Agency at least ten (10) calendar days before the deadline for the submission
33 of bids or simultaneous submission of qualification requirements and bid proposals, as
34 applicable, for an interpretation of the same.

1 Any substantive interpretation given by the PBAC of the Implementing Agency concerned shall
2 be issued in the form of a Bid Bulletin, which shall be furnished to all prospective bidders at
3 least seven (7) calendar days before the deadline for the submission of bids or simultaneous
4 submission of qualification requirements and bid proposals, as applicable, for purposes of
5 clarifying any provisions of the bid/tender documents. Receipt of all Supplemental Notices
6 shall be duly acknowledged by each bidder prior to the submission of its bid and shall be so
7 indicated in the bid.

8
9 Any Supplemental Notice shall also be posted on the website of the Implementing Agency, if
10 available, and at any conspicuous place within the premises of the Implementing Agency.

11
12 **Section 77. Pre-Bid Conference and One-on-One meetings**

13
14 A pre-bid conference shall be conducted by the Implementing Agency at least forty-five (45)
15 calendar days before the deadline for the submission of bids, or simultaneous submission of
16 qualification requirements and bid proposals in the case of a single-stage bidding process, to
17 clarify any provisions, requirements, and/or terms and conditions of the bid/tender documents,
18 and/or any other matter that prospective bidders may raise.

19
20 Notwithstanding, the PBAC of the Implementing Agency may adjust said period as may be
21 appropriate for the nature, scope, size, and complexity of the proposed PPP Project: *Provided,*
22 That the principles of transparency, competition, and accountability are observed.

23
24 Nothing stated at the pre-bid conference shall modify any provisions or terms and conditions
25 of the tender documents, unless such is made as written amendment thereto by the PBAC of
26 the Implementing Agency concerned the form of Bid Bulletins. Any amendments shall be
27 issued by the PBAC of the Implementing Agency through Bid Bulletins to all bidders within a
28 reasonable time to allow them to consider the same in the preparation of their bids and shall
29 be duly acknowledged by each bidder prior to the submission their bid and shall be so
30 indicated in their bid.

31
32 A summary of the proceedings of the pre-bid conference shall also be issued to all prospective
33 bidders by the PBAC of the Implementing Agency. Attendance to the pre-bid conference by
34 prospective bidders shall not be mandatory.

35
36 The PBAC may arrange for One-on-One meetings with prospective bidders during the 45-day
37 period. No provision, term, or condition in the bid/tender documents shall be modified by

1 statements made during these meetings unless these are made in writing and contained in a
2 bid bulletin issued by the PBAC to all pre-qualified bidders.

3

4 **Section 78. Requirements for Submission of Bids**

5

6 Bidders shall be required to submit their bids through their authorized representative using the
7 forms specified in the tender documents on or before the deadline stipulated in the Instruction
8 to Bidders.

9

10 In case of a single-stage bidding process, bidders shall submit at least three (3) separate
11 documents: (1) the first document containing the qualification requirements, (2) the second
12 document containing the technical proposal, and (3) the third document containing the
13 financial proposal.

14

15 In case of a two-stage bidding process, pre-qualified bidders shall submit at least two (2)
16 separate documents: (1) the first document containing the technical proposal and (2) the
17 second document containing the financial proposal.

18

19 Submissions may be made manually or electronically as may be prescribed by the PBAC in
20 the Invitation to Pre-qualify and Bid.

21

22 **(a) Qualification Requirements**

23

24 Such document shall contain requirements set in Section 78 of this IRR.

25

26 **(b) Technical Proposal**

27

28 The technical proposal shall contain the following, as may be deemed necessary by
29 the Implementing Agency:

30

31 (i) Compliance statements with regard to the technical parameters as stated in the
32 bid/tender documents;

33 (ii) Operational feasibility of the PPP Project, which shall indicate the organization,
34 methods, and procedures for the operation and maintenance of the PPP Project
35 under bidding;

36 (iii) Technical soundness/preliminary engineering design, including the proposed
37 project timeline;

- 1 (iv) Preliminary environmental assessment, which shall indicate the probable
- 2 adverse effects of the PPP Project on the environment and the corresponding
- 3 mitigating measures to be adopted;
- 4 (v) Project Cost as proposed by the bidder;
- 5 (vi) Financing plan and third-party valuation of the bidder's contribution, in the case
- 6 of JV arrangements;
- 7 (vii) Bid security, which may be in cash, certified check, manager's check, letter of
- 8 credit, or bank draft/guarantee issued by a reputable local/foreign bank, or a
- 9 surety bond callable on demand issued by the Government Service Insurance
- 10 System (GSIS) or an entity duly registered and recognized by the Office of the
- 11 Insurance Commission acceptable to the Implementing Agency, or any
- 12 combination thereof payable to the Implementing Agency concerned based on
- 13 the total Project Cost (as estimated Project Cost during the approval stage) in
- 14 accordance with the following schedule:
- 15

Project Cost (as estimated by the Implementing Agency)	Required Bid Security
Less than Php 5.0 billion	2.0% of the Project Cost
Php 5.0 billion to less than Php 10 billion	Php 100 million + 1.5% of the Project Cost excess over Php 5.0 billion
Php 10.0 billion and above	Php 175 million + 1.0% of the Project Cost excess over Php 10.0 billion

16
17 The Implementing Agency shall determine whether the bid security shall be issued
18 by a local bank, an international bank, or both. In case the bid security is issued
19 by an international bank, said security must be confirmed and validated by its local
20 branch in the Philippines or by a bank that is duly registered and authorized by the
21 BSP.

22
23 The posting of the bid security is for the purpose of guaranteeing that the proposed
24 contract awardee shall enter into contract with the Implementing Agency within the
25 time prescribed therefore.

1
2 Bids and bid securities shall be valid for a period to be prescribed by the
3 Implementing Agency concerned in the tender documents, which shall in no case
4 be beyond one hundred and eighty (180) calendar days from the date of opening
5 of bids. The actual amount of bid security to be posted by bidders will be fixed by
6 the Implementing Agency concerned prior to bidding. Said actual amount shall not
7 be less than the amount prescribed in the above schedule.

8
9 The Implementing Agency may also require other documents to support the bidder's
10 technical proposal.

11
12 **(c) Financial Proposal**

13
14 The financial proposal shall contain the following, as the case may be:

- 15
16 (i) Compliance statements with regard to the financial parameters stated in the tender
17 documents;
18 (ii) Proposed Project Cost, operations and maintenance cost, and all other related
19 costs;
20 (iii) Project financing scheme, which may include the amount of equity to be infused,
21 debt to be obtained for the PPP Project, and sources of financing;
22 (iv) Financial proposal corresponding to the bid parameters set by the Implementing
23 Agency; and
24 (v) Other documents to support the bidder's financial proposal, as may be required
25 by the Implementing Agency.
26

27 **Section 79. Submission of Late Bids**

28
29 Bids submitted after the deadline for submission prescribed in the Instructions to Bidders shall
30 be considered late and shall be returned unopened.
31

32 **Section 80. Opening of Qualification of Bidder**

33
34 At the date, time, and place stipulated in the Instruction to Bidders, the PBAC shall open the
35 documents and ascertain whether the same is complete in terms of the information required
36 under Section 78 of this IRR. Such information shall be recorded at the time, including the

1 names and addresses of required witnesses. All bidders or their representatives present at
2 the opening of the qualification requirements shall sign a register of the opening of the
3 document containing qualification requirements.

4

5 In case the bids cannot be opened as scheduled due to justifiable reasons, the PBAC shall
6 take custody of the bids submitted and reschedule the opening of bids on the next working
7 day or at the soonest possible time through the issuance of a notice of postponement to be
8 posted on the website of the Implementing Agency and the PPP Center.

9

10 **Section 81. Evaluation of Qualification Requirements**

11

12 The qualification requirements will first be evaluated prior to the opening of the technical
13 proposal. The Implementing Agency shall inform bidders whether they are qualified or
14 disqualified, and for the latter, the reasons for disqualification, within ten (10) calendar days.
15 For this purpose, the PBAC shall check the submitted documents of each bidder against a
16 checklist of required documents to ascertain if they are all present, using a non-discretionary
17 “pass/fail” criterion, as stated in the instruction to bidders. If a bidder submits the required
18 document, it shall be rated “passed” for that particular requirement. In this regard, bids that
19 fail to include any requirement or are incomplete or patently insufficient shall be considered
20 as “failed.” Only qualified bidders shall be allowed to participate in the bid evaluation.
21 Disqualified bidders shall be informed of the grounds of disqualification and their technical and
22 financial proposals returned unopened.

23

24 **Section 82. Opening of the Technical Proposal**

25

26 At the date, time, and place of bid opening, as stipulated in the Instruction to Bidders, the
27 PBAC shall open only the technical proposal and ascertain: (a) whether the same is complete
28 in terms of the data/information required under Section 78 of this IRR, and (b) whether the
29 same is accompanied by the required bid security in the prescribed form, amount, and period
30 of validity. Such information shall be recorded at the time, including the names and addresses
31 of required witnesses. All bidders or their representatives present at the opening of the
32 qualification requirements shall sign a register of the bid opening.

33

34 In case the bids cannot be opened as scheduled due to justifiable reasons, the PBAC shall
35 take custody of the bids submitted and reschedule the opening of bids on the next working

1 day or at the soonest possible time through the issuance of a notice of postponement to be
2 posted on the website of the Implementing Agency and the PPP Center.

3
4 **Section 83. Evaluation of the Technical Proposal**

5
6 The evaluation of the technical proposal shall involve the assessment of the technical,
7 operational, environmental, and financing viability of the proposal as contained in the bidders'
8 first envelopes vis-à-vis the prescribed requirements and criteria/minimum standards and
9 basic parameters prescribed in the bidding documents. Only those bids that have been
10 determined to have passed the first stage of evaluation shall be qualified and considered for
11 the second stage of evaluation.

12
13 The Implementing Agency shall evaluate the technical proposals of the bidder in accordance
14 with the following criteria:

15
16 (a) Technical soundness (preliminary engineering design) - The basic engineering design
17 of the project should conform to the minimum performance standards and
18 specifications set by the Implementing Agency as prescribed in the bidding documents.
19 The engineering surveys, plans and estimates should be undertaken within +/- 20% of
20 the final quantities. The Construction methods and schedules should also be
21 presented and shown to be feasible or "doable" and shall conform to the minimum
22 performance standards and specifications set by the Implementing Agency.

23
24 (b) Operational feasibility - The proposed organization, methods, and procedures for
25 operating and maintaining the completed facility shall be well defined, should conform
26 to the prescribed minimum performance standards and specifications, and should be
27 shown to be workable. Where feasible, it should provide for the transfer of technology
28 used in every phase of the project.

29
30 (c) Environmental Standards - The proposed design and the technology of the project to
31 be used must be in accordance with the environmental standards set forth by the
32 Department of Environment and Natural Resources (DENR), as indicated in the bid
33 documents. Any risk of adverse effects on the environment as a consequence of the
34 project as proposed by the prospective Private Proponent must be properly identified,
35 including the corresponding corrective/mitigating measures to be adopted.

36

1 (d) Project Financing - The proposed financing plan should positively show that the same
2 could adequately meet the Construction cost as well as the operating and maintenance
3 costs requirements of the PPP Project. The Implementing Agency shall assess the
4 financing proposals of the bidders if the same matches and adequately meets the cost
5 requirements of the project under bidding.
6

7 The PBAC shall complete the evaluation of the technical proposal within thirty (30) calendar
8 days from the date the bids are opened.

9 **Section 84. Opening of the Envelope for the Financial Proposal**

10
11 Only bidders whose technical proposal passed the evaluation criteria as prescribed under
12 Section 78 hereof shall have their financial proposal opened for further evaluation. Those who
13 failed the evaluation of the technical proposal shall not be considered further, and the PBAC
14 shall return their financial proposals unopened together with the reasons for their
15 disqualification from the bidding.
16

17 Once the bidders who have qualified for the evaluation of the financial proposal have been
18 determined, the PBAC shall notify said bidders of the date, time, and place of the opening of
19 the envelopes for the financial proposal. The opening thereof shall follow the same procedures
20 prescribed for the opening of the previous documents.
21

22 **Section 85. Evaluation of the Financial Proposal**

23
24 The evaluation of the envelope containing the financial proposal shall involve the assessment
25 and comparison of the financial proposals of the bidders, based on the parameters stated in
26 Section 78 of this IRR. The second stage evaluation shall be completed by the PBAC of the
27 Implementing Agency within fifteen (15) calendar days from the date the first stage evaluation
28 shall have been completed.
29

30 **Section 86. Simultaneous Evaluation of the Technical and Financial Proposals**

31
32 In cases where the nature of the PPP Project shall warrant the appreciation of both the
33 technical and financial proposals as a whole in order to determine the best proposal,
34 simultaneous evaluation of the technical and financial proposals may be resorted to: *Provided*,
35 That said evaluation procedure shall be explicitly stated in the tender documents.

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For purposes of this section, the Implementing Agency may consider giving weight to the Technical Proposal apart from the Financial Proposal in determining the Most Responsive Bid, which shall be set out in the Instructions to Bidders.

Simultaneous evaluation of the technical and financial proposals shall be completed within forty-five (45) calendar days from the date the bids are opened.

Section 87. Prescriptive Periods

The periods stated for the evaluation of the technical and financial proposals are prescriptive. The Implementing Agency may adjust said periods to suit the nature, scope, size, and complexity of the PPP Project: *Provided*, That the Implementing Agency observes the principles of transparency, competition, and accountability.

Section 88. Rejection of Bids

Incomplete information on any of the proposals and/or non-compliance with the bid security requirements prescribed in this IRR shall be grounds for automatic rejection of bids.

Section 89. Withdrawal and/or Modification of Bids

Modification and/or withdrawal of bids may be allowed upon written notice by the bidder concerned to the Implementing Agency before the deadline for the submission and receipt of bids-as specified in the Instructions to Bidders. No bids shall be modified or withdrawn after the time prescribed. Bid modifications received after said period shall be considered late and will be returned unopened.

Withdrawal of bids after the bid opening date shall cause the forfeiture of the bidder's bid security and shall be subject to appropriate sanctions as prescribed in this IRR. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract.

1 **Section 90. Right to Reject All Bids**

2

3 The Implementing Agency reserves the right to reject any or all bids, waive any minor defects
4 therein, and accept the Most Responsive Bid, in accordance with the provisions of this IRR,
5 the Code, and issuances released by the PPP Governing Board and the ICC.

6

7 **Section 91. Breaking Tie Bids**

8

9 In case tie bids occur, the tie shall be broken by the drawing of lots or by similar non-
10 discretionary and non-discriminatory methods where results are based on a random event.

11

12 **Section 92. Single Complying Bid**

13

14 The Implementing Agency may consider, on a negotiated basis, a single complying and
15 responsive bid in case of any of the following and in accordance with the provisions of the
16 Code, this IRR, the tender documents, and the issuances to be released by the ICC in the
17 case of National PPP Projects and the PPP Governing Board in the case of Local PPP
18 Projects:

19

20 (a) If, after advertisement, more than one bidder applied for pre-qualification, but only one
21 met the pre-qualification requirements;

22 (b) If, after advertisement, only one bidder applied for and met the pre-qualification
23 requirements, provided such was allowed by the Head of the Implementing Agency,
24 upon recommendation of the PBAC;

25 (c) If, after pre-qualification of more than one bidder, only one submitted a bid; or

26 (d) If, after pre-qualification, more than one bidder submitted bids but only one is found by
27 the Implementing Agency to be complying.

28

29 In the case of solicited proposals with single complying and responsive bid, which shall require
30 the setting of an RROR by the Approving Body, the RROR shall refer to the net gain of an
31 investment over a specified period, expressed as an annualized percentage. The setting of
32 RROR shall consider prevailing market conditions, risks to be assumed by the Private Partner,
33 and duration of the project, as decided upon by the appropriate Approving Body. The RROR,
34 as prescribed by the appropriate Approving Body, shall be provided in the PPP contract.

35

1 The detailed process in approving, and the methodology in calculating, the RROR to be set
2 shall be in accordance with the guidelines to be issued by the ICC. Such guidelines may be
3 updated by the ICC as necessary.

4 When an RROR will be applied to a PPP Project, there shall be a trust account for the purpose
5 of retaining excess cash when the realized rate of return exceeds the RROR. The following
6 mechanisms to operationalize the trust account shall be considered in the PPP Contract:
7

8 (a) When the realized rate of return exceeds the prescribed RROR by more than [5%], the
9 Private Partner will deposit excess cash into the trust account in such amount as to
10 cause the realized rate of return to equal RROR plus [5%];

11 (b) When the realized rate of return falls below RROR by [5%], the Private Partner may
12 draw from the trust account in such amount as to cause the realized rate of return to
13 equal RROR;

14 (c) An independent financial consultant may be engaged and paid from the trust account
15 to evaluate the RROR; and

16 (d) At the end of the PPP Contract, the Private Partner shall deposit excess cash into the
17 trust account in such amount as to cause the realized rate of return to equal RROR.
18 After which, the trust account balance will be remitted to the National Treasury.
19

20 For purposes of this section, the 'realized rate of return' means the cumulative rate of return
21 from the start of the PPP Contract, expressed as an annualized percentage, based on actual
22 project cash flows available to all providers of capital calculated in accordance with the PPP
23 Contract.
24

25 The Implementing Agency shall monitor the RROR and determine the excess, if any. For an
26 Implementing Agency to do so, the Private Partner shall submit its audited financial statements
27 and other pertinent documents annually to the Implementing Agency.
28

29 **Section 93. Conditions for Negotiations between the Implementing Agency and the**
30 **Single Complying and Responsive Bidder**

31
32 Negotiations between the Implementing Agency and the single complying and responsive
33 bidder shall be limited to the financial proposal of the bidder and in compliance with the RROR
34 prescribed by the appropriate Approving Body.
35
36

1 **Section 94. Failure of Bidding**

2

3 The PBAC shall declare failure of bidding in case of any of the following events occur:

4

5 (a) If there are no bids received;

6 (b) If no prospective bidder is eligible;

7 (c) If there are no complying bids; or

8 (d) If there is failure to enter into contract as defined in Section 135 of this IRR.

9

10 The Head of the Implementing Agency, upon the recommendation of the PBAC, may opt to
11 declare a failure of bidding if, after advertisement, only one bidder applied for and met the pre-
12 qualification requirements.

13

14 **Section 95. Protests on Resolution of the PBAC for National PPP Projects**

15

16 In all stages of the procurement process for National PPP Projects, the mechanism for protest
17 shall be resolved in the most expeditious manner which shall not exceed forty-five (45)
18 calendar days from the filing of the Motion for Reconsideration to the PBAC.

19

20 **Section 95.1. Procedure in Filing a Motion for Reconsideration to the PBAC**

21

22 Within five (5) calendar days upon receipt of the written notice of the PBAC Resolution,
23 the aggrieved Private Proponent may file a Motion for Reconsideration of such PBAC
24 Resolution with the PBAC, or its equivalent. The PBAC shall render a decision within five
25 (5) calendar days upon receipt of the Motion for Reconsideration.

26

27 No party shall be allowed a second motion for reconsideration for the decision of the
28 PBAC.

29

30 **Section 95.2. Procedure in Filing an Appeal to the Head of the Implementing Agency**

31

32 Upon receipt of the decision on their Motion for Reconsideration, the aggrieved Private
33 Proponent may appeal to the Head of the Implementing Agency and pay a non-refundable
34 appeal fee within five (5) calendar days upon receipt of the decision by the PBAC. The

1 Head of the Implementing Agency shall act on the appeal and render its decision within
2 ten (10) calendar days upon receipt of the appeal and payment of the appeal fee.

3
4 The amount of appeal fee shall be as prescribed by the PBAC, provided that it shall be
5 within 0.1% to 0.75% of the Project Cost.
6

7 **Section 95.3. Procedure in Filing an Appeal to the Department Secretary**

8
9 If the Head of the Implementing Agency in the immediately preceding Section is not a
10 Department Secretary, the decision of the Head of the Implementing Agency may be
11 further appealed by the aggrieved Private Proponent to the Secretary of the Department
12 to which the Implementing Agency is attached, and pay a non-refundable appeal fee
13 within five (5) calendar days upon receipt of the decision by the Head of the Implementing
14 Agency. The Department Secretary shall act on the appeal and render a decision within
15 fifteen (15) calendar days upon receipt of the appeal and payment of the appeal fee,
16 otherwise it shall be deemed denied.
17

18 **Section 96. Protests on Resolution of the PBAC for Local PPP Projects**

19
20 In all stages of the procurement process for Local PPP Projects, the mechanism for protest
21 shall be resolved in the most expeditious manner which shall not exceed forty-five (45)
22 calendar days from the filing of the motion for reconsideration to the PBAC.
23

24 **Section 96.1. Procedure in Filing a Motion for Reconsideration to the PPP Bids and**
25 **Awards Committee (PBAC)**

26
27 Within five (5) calendar days upon receipt of the written notice, the aggrieved Private
28 Proponent may file a Motion for Reconsideration with the PBAC, or its equivalent. The
29 PBAC shall render a decision within ten (10) calendar days upon receipt of the Motion for
30 Reconsideration.
31

32 No party shall be allowed a second motion for reconsideration for the decision of the
33 PBAC.
34
35

Section 96.2. Procedure in Filing an Appeal to the Local Chief Executive

Upon receipt of the decision on their Motion for Reconsideration, the aggrieved Private Proponent may appeal to the Local Chief Executive, and pay a non-refundable appeal fee within ten (10) calendar days upon receipt of the decision by the PBAC. The Local Chief Executive shall act on the appeal and render its decision within twenty (20) calendar days upon receipt of the appeal and payment of the appeal fee.

Unless otherwise provided in the PPP Code, in no case shall a motion for reconsideration or an appeal from any decision by the PBAC, the Head of the Implementing Agency, the Department Secretary, or the Local Chief Executive stay or delay the bidding process. No award shall however be made until a decision on any pending appeal is rendered.

Section 97. Mandatory Provisions in a PPP Contract

The draft PPP Contract should clearly define the basic and legal relationship between the parties and their rights and responsibilities, including the specific Government Undertakings, and obligations and undertakings of the Private Partner relative to the PPP Project. The draft PPP Contract shall have the following mandatory terms or conditions:

- (a) specific contractual arrangement, term, and scope of work;
- (b) minimum performance standards and specification;
- (c) KPIs, targets, and procedures for measuring and reporting results;
- (d) implementation milestones, including those for securing other approvals and the project completion date;
- (e) cost recovery scheme via proposed tolls, fares, fess, rentals, and other charges, as the case may be;
- (f) obligation of the Private Partner to disclose loan or financing documents, as required under this IRR;
- (g) liquidated damages as contemplated under this IRR;
- (h) performance security requirements, including their validity and top-up mechanism procedures, contemplated under this IRR;
- (i) minimum insurance coverage as may be required for the project, such as Contractors' all risk, motor vehicle, workmen's compensation, third party liability, force majeure, or comprehensive general liability insurance, as may be applicable;
- (j) acceptance tests and procedures;
- (k) warranty period and procedures (after transfer) and warranty security;

- 1 (l) lock-in periods, as applicable;
- 2 (m) grounds for and effects of contract termination, including formula for termination
- 3 payment;
- 4 (n) conditions and procedures for lender step-in rights;
- 5 (o) conditions for acceptable permitted security interest;
- 6 (p) procedures for resolving disputes as detailed in this IRR;
- 7 (q) the manner and procedures for the resolution of warranty against corruption;
- 8 (r) wind-up and transfer measures pursuant to Section 22 of the Code;
- 9 (s) period within which Financial Close shall be achieved by the Private Partner;
- 10 (t) compliance with all other applicable laws, rules, and regulations;
- 11 (u) total cost of the project, project specifications and features;
- 12 (v) social and environment safeguards;
- 13 (w) provisions on the use of dispute avoidance and Alternative Dispute Resolution (ADR)
- 14 mechanisms as required under this IRR; and
- 15 (x) ownership or retention of patents, technology and consultant reports.

16

17 **Section 98. PPP Contract Review and Approval**

18

19 The Head of the Implementing Agency shall be responsible in ensuring the consistency of the
20 draft PPP Contract with the PTCs as approved by the appropriate Approving Body, pursuant
21 to Title IV of this IRR.

22

23 The draft PPP Contract to be released to bidders shall also be sent to the following reviewing
24 bodies for initial comments in relation with the jurisdiction provided by law, within seven (7)
25 calendar days from issuance to bidders:

26

27 (a) For National PPP Projects:

- 28 (i) PPP Center, for compliance with the approved PTCs;
- 29 (ii) Statutory counsel/s, for compliance with all other applicable laws, rules, and
- 30 regulations; and
- 31 (iii) Department of Finance (DOF), for national Government Undertakings or Availability
- 32 Payments under the draft PPP Contract.

33

34 (b) For Local PPP Projects:

- 35 (i) Statutory counsel/s, for compliance with all other applicable laws, rules, and
- 36 regulations; and

1 (ii) DOF, if there is a national Government Undertaking or Availability Payments under
2 the draft PPP Contract.

3
4 The statutory counsel to review the draft PPP Contract shall be the one as applicable to the
5 Implementing Agency, which may be the OSG, OGCC, DOJ, or as may be determined by the
6 DOJ.

7
8 Reviewing bodies shall have thirty (30) calendar days to review and provide their initial
9 comments.

10
11 Prior to the final review and approval of the Head of Implementing Agencies, draft PPP
12 Contracts shall undergo final review and clearance by the above-mentioned agencies, within
13 thirty (30) calendar days from the day of bid submission. Reviewing bodies shall have twenty
14 (20) calendar days to review and provide clearance.

15
16 The final letter of the concerned reviewing body shall be considered as their clearance of the
17 draft PPP Contract, for consideration of the Head of the Implementing Agency. The
18 unfavorable comments or clearance made by the appropriate reviewing body shall not be
19 deemed as a prima face evidence or claim, sufficient to sustain a judgment in favor of the
20 issue it supports.

21
22 Any Government Undertaking and Availability Payment commitments to be sourced and
23 funded under GAA stated in the draft PPP contract not approved by the Approving Body and
24 not cleared by the DOF shall not be binding against the government.

25
26 Thereafter, the Head of the Implementing Agency shall review and approve the draft PPP
27 Contract to be released to the bidders, and ensure that the same shall be based on the PTCs
28 set forth by the Approving Body pursuant to Title IV of this IRR. The release of the PPP
29 Contract to the bidders shall be thirty (30) calendar days before bid submission. The PBAC
30 shall not proceed with the bid submission date unless the PPP contract is approved by the
31 Head of the Implementing Agency and cleared in accordance with this section.

32
33 In no case shall the Head of the Implementing Agency sign the contract if it contains provisions
34 that are inconsistent or in conflict with the final PTCs approved by the Approving Body. If the
35 executed PPP contract contains provisions which are contrary with the final PTCs approved
36 by the Approving Body and are grossly disadvantageous to the government, the contract shall

1 be null and void, without prejudice to the liability which the erring or negligent officials may
2 incur under Section 32 of the Code and other existing laws.

3
4 **Section 99. Changes to the PTCs of the Draft PPP Contract**

5
6 Changes to the PTCs of the draft PPP contract may be allowed prior to submission of bids for
7 Solicited Projects: *Provided*, That the prior approval for such changes of the appropriate
8 Approving Body and the Head of the Implementing Agency shall be secured.

9
10 The Implementing Agency shall inform in writing the PPP Center, its statutory counsel, and
11 DOF, as the case may be in accordance with Section 98 of this IRR, of such changes.

12
13 Changes to the PTCs of the draft PPP contract after bid submission and prior to contract
14 execution shall not be allowed except for changes to contract terms affected or decided by the
15 winning bidder's bid.

16
17 **CHAPTER 2 – PROCUREMENT OF UNSOLICITED PROPOSALS**

18
19 **Section 100. Composition of the PPP Pre-qualification, Bids and Awards Committee**
20 **(PBAC) of National Implementing Agencies**

21
22 The Head of the Implementing Agency undertaking PPP Projects shall create a PPP Pre-
23 qualification, Bids and Awards Committee (PBAC).

24
25 (a) **Minimum members** – The Head of the Implementing Agency shall determine the
26 appropriate composition of the PBAC of the national Implementing Agency: *Provided*,
27 That it shall, at the minimum, include the following members:

- 28
29 (i) Chairperson – At least a third ranking official of the Implementing Agency;
30 (ii) Secretary – A legal officer of the Implementing Agency;
31 (iii) An officer of the Implementing Agency knowledgeable in finance;
32 (iv) An officer of the Implementing Agency knowledgeable in procurement and in the
33 management/operation of the PPP Project; and
34 (v) An officer of the Implementing Agency knowledgeable in the technical aspects or
35 requirements of the PPP Project.

1 (b) **Non-voting members and Observers** – The PBAC, with the approval of the Head of
2 Implementing Agency, shall invite the following as non-voting members or observers
3 in its proceedings:
4

5 (i) Non-voting members:

6 (1) A representative from the Regulatory Body concerned duly authorized by its
7 Head, who is knowledgeable with the PPP Project and is to be invited by the
8 Implementing Agency on a project-to-project basis;

9 (2) A representative from the Implementing Agency's statutory counsel (OSG,
10 OGCC, or as designated by the DOJ);

11 (3) A representative from the Philippine Competition Commission (PCC); and

12 (4) A representative from the PPP Center, if PPP Center is not the procuring
13 entity.
14

15 (ii) Observers:

16 (1) A representative from COA;

17 (2) A representative from a Securities and Exchange Commission (SEC)-
18 registered association related to the PPP Project; and

19 (3) A representative from either the facility users, if applicable, or a duly
20 recognized accounting association and/or consumer group.
21

22 **Section 101. Composition of the PBAC of Local Implementing Agencies**

23

24 (a) **Minimum members** – The Head of the Implementing Agency shall determine the
25 appropriate composition of the PBAC of the local Implementing Agency: *Provided,*
26 That it shall, at the minimum, include the following members:
27

28 (i) Chairperson – the Administrator or at least a third ranking permanent official of
29 the local Implementing Agency;

30 (ii) Treasurer or Accountant of the Implementing Agency;

31 (iii) Planning and Development Coordinator or Engineer of the Implementing
32 Agency;

33 (iv) Legal officer of the LGU;

34 (v) A representative from and selected by the local *Sanggunian* or by the LUC Board
35 designated through a resolution; and

1 (vi) Two (2) representatives from and chosen by the accredited civil society
2 organizations (CSOs), people's organizations (POs), and non-governmental
3 organizations (NGOs) who are members of the local development council.
4

5 In case the local Implementing Agency does not have a legal officer, the
6 Implementing Agency shall seek legal advice from either an external legal advisor
7 or the legal officer of the next higher level of LGU, as applicable, to assist the
8 PBAC.
9

10 The Implementing Agency may include other members to the PBAC through an
11 issuance of a formal office order.
12

13 The Implementing Agency may also constitute more than one PBAC, if the Head
14 of Implementing Agency deems it necessary.
15

16 (b) **Non-voting members and Observers** – The PBAC of a local Implementing Agency,
17 with the approval of the local chief executive, shall invite the following as non-voting
18 members or observers in its proceedings:
19

20 (i) Non-voting members:
21

- 22 (1) A representative from the Regulatory Body concerned duly authorized by its
23 Head, who is knowledgeable with the PPP Project and who is to be invited by
24 the LGU or Board on a project-to-project basis;
25 (2) LEDIP officer which shall serve as the Secretariat of the PBAC; and
26 (3) A representative from the PPP Center, if PPP Center is not the procuring entity.
27

28 (ii) Observers:
29

- 30 (1) A representative from COA;
31 (2) A representative from the Department of the Interior and Local Government
32 (DILG) Regional Office or Field Unit;
33 (3) A representative from the NEDA Regional Office, if applicable;
34 (4) A representative from a SEC-registered association related to the PPP Project;
35 and
36 (5) A representative from either the facility users, if applicable, or a duly recognized
37 accounting association and/or consumer group.

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Section 102. Roles and Responsibilities of the PBAC

The PBAC shall be responsible for all aspects of pre-bidding and bidding process, including, among others:

- (a) preparation of the tender documents;
- (b) publication of the Invitation to Pre-qualify and Bid;
- (c) pre-qualification of prospective bidders;
- (d) conduct of pre-bid conferences and issuance of supplemental notices;
- (e) interpretation of the rules regarding the bidding;
- (f) conduct of bidding;
- (g) evaluation of bids;
- (h) resolution of disputes between bidders in accordance with Section () of this IRR; and
- (i) recommendation for the acceptance of the bid and/or for the award of the PPP contract.

A quorum of the PBAC shall be composed of a simple majority of all voting members. The Chairperson may vote and shall be counted as part of the simple majority.

Non-voting members can participate in the discussions and deliberations of the PBAC. They may be consulted or be allowed to give advice or opinions to the voting members of the PBAC. Observers may prepare a report indicating their observations and submit the same to the Implementing Agency and furnish a copy to the Office of the Ombudsman, if deemed necessary.

Section 103. Rules for the Non-Voting Members and Observers

Non-voting members and observers will be notified at least seven (7) calendar days before the following stages: pre-bid conference, opening of bids, evaluation of bids, contract award, and special meetings of the PBAC. The absence of observers and non-voting members shall not nullify the PBAC proceedings: *Provided*, That they have been duly invited in writing. For purposes of this Section, “in writing” shall include electronic mail. In case the non-voting members cannot attend the PBAC proceedings, they may be allowed to submit their written advice or opinions to the PBAC within a period provided for by the PBAC.

1 Non-voting members and observers shall be provided with the following documents free of
2 charge:

3

- 4 (a) minutes of BAC meetings;
- 5 (b) abstract of Bids;
- 6 (c) post-qualification summary report;
- 7 (d) APP and related PPMP; and
- 8 (e) opened proposals.

9

10 In all instances, non-voting members and observers other than the statutory counsel of the
11 Implementing Agency shall be required to enter into a confidentiality agreement with the
12 Implementing Agency. The PPP Governing Board may provide a template of the confidentiality
13 agreement, which shall cover confidentiality on both the information and the deliberations
14 during the proceedings.

15

16 The PBAC may organize a Technical Working Group (TWG) per project to assist in the pre-
17 bidding and bidding process.

18

19 Observers shall not influence or attempt to influence the votes/actions of the voting members
20 of the PBAC. Observers shall not be placed in a conflicted situation and, if placed in such a
21 situation, shall immediately inhibit and notify the Implementing Agency in writing.

22 **Section 104. PBAC in case the PPP Center is the procuring entity**

23

24 In cases where the PPP Center grants the request of the Implementing Agency and acts as
25 the procurement agent, the composition of the PBAC in such cases shall follow the
26 composition of the PBAC under Sections 100 and 101; provided, that all PBAC members
27 coming from the Implementing Agency shall come from the PPP Center; provided, further, that
28 the concerned Implementing Agency shall be a voting member of the PBAC.

29

30 The PPP Governing Board shall issue guidelines on the requirements and procedures
31 governing such cases where the PPP Center is requested by the Implementing Agency to act
32 as the procurement agent, and where the PPP Center acts as such accordingly.

33

1 **Section 105. Procurement of Probity Advisor**

2

3 An Implementing Agency may procure the services of a Probity Advisor to assist with the PPP
4 procurement process. The procurement of a Probity Advisor shall be undertaken, and the fees
5 of the Probity Advisor shall be paid, in accordance with the guidelines to be issued by the PPP
6 Governing Board and applicable laws, rules, and regulations. The Probity Advisor to be
7 appointed shall perform the following duties:

8

- 9 (a) Provide insights on the PPP procurement process to determine whether relevant
10 government guidelines and appropriate policies are being complied with;
11 (b) Ensure that the procurement process is impartial and fair to all bidders, with no bidder
12 being given an advantage over another or unfairly discriminated against;
13 (c) Protect confidential information;
14 (d) Highlight potential conflict-of-interest situations, as they arise; and
15 (e) Report any unlawful acts or concerns that occurred during the procurement process.

16

17 **Section 106. Private Legal and Medical Assistance**

18

19 All PBAC members and other public officials providing services to the PBAC shall be
20 authorized to engage the services of private lawyers, or shall be provided with free legal
21 assistance by the respective Implementing Agency, where a civil, criminal, or administrative
22 action is filed against them by reason of the performance of their official functions or duties,
23 unless they are found liable for gross negligence or misconduct or grave abuse of discretion
24 in such action or proceeding by final decision of a court of competent jurisdiction.

25

26 An Implementing Agency may grant the free legal assistance contemplated under this Section
27 pursuant to the appropriate guidelines to be issued by the said Implementing Agency.

28

29 The PBAC member or public official shall reimburse the legal fees they received that was paid
30 for by the Implementing Agency if finally adjudged to be liable for gross negligence,
31 misconduct, or grave abuse of discretion in such action or proceeding.

32

33 PBAC members shall also be entitled to medical assistance from the Implementing Agency
34 for injuries incurred in the performance of their functions subject to guidelines to be issued by
35 the said Implementing Agency.

36

1 **Section 107. Comparative Challenge**

2

3 Upon approval of the Unsolicited Proposal and confirmation of the final negotiated terms by
4 the appropriate Approving Body, the Unsolicited Proposal shall be subjected to a comparative
5 challenge. The comparative challenge shall be conducted, either manually or electronically,
6 by the Implementing Agency within the period proposed by it and approved by the appropriate
7 Approving Body, taking into consideration the nature and complexity of the PPP Project:
8 Provided, That the period shall not be less than ninety (90) calendar days and shall not exceed
9 one (1) year from the issuance of the Invitation for Comparative Proposals.

10

11 **Section 108. Invitation for Comparative Proposals**

12

13 The PBAC of the Implementing Agency shall, within seven (7) calendar days upon approval
14 by the Approving Body, publish an Invitation for Comparative Proposals. The Implementing
15 Agency, through its PBAC, shall, within the prescribed period by the Approving Body, publish
16 the Invitation for Comparative Proposals at least once in the following:

17

- 18 (i) At least two (2) newspapers of general circulation, either print or online; and
19 (ii) For Local PPP Projects, at least one (1) local newspaper of general circulation, either
20 print or online, in the region, province, city, or municipality in which the PPP Project
21 shall be implemented.

22

- 23 (d) The Invitation for Comparative Proposals shall also be posted continuously starting on
24 the date of the publication, on the following:

25

- 26 (i) Website and/or any official digital platform of the Implementing Agency, if
27 available;
28 (ii) Website and/or any official digital platform of the PPP Center and the NEDA; and
29 (iii) Any online government portal for the purpose.

30

- 31 (e) In addition to the medium enumerated in (b), the Implementing Agency may also
32 publish the invitation in a newspaper or appropriate publication of international
33 circulation.

34

35

1 The invitation shall, at the minimum, include the following:

2

3 (vi) date and place where the bid/tender documents can be obtained;

4 (vii) objective and Scope of the PPP Project;

5 (viii) contract period;

6 (ix) period for bidding; and

7 (x) participation fees and manner of payment.

8

9 In case there are changes in the information provided in the invitation, the Implementing

10 Agency shall re-publish the invitation reflecting the said changes, at the minimum, in the

11 same manner of publication as the initial invitation.

12

13 **Section 109. Tender Documents**

14

15 The Implementing Agency concerned shall prepare the pertinent tender documents, which
16 shall include the following:

17

18 (a) Instructions to Bidders;

19 (b) Draft PPP contract (as approved in accordance with Section X of this IRR) reflecting
20 the PTCs as approved by the appropriate Approving Body;

21 (c) "Bid Form" reflecting the required information to properly evaluate the bid proposal;

22 (d) Forms of bid and performance securities;

23 (e) requirements and timelines/milestones of agencies concerned in granting of franchise,
24 if applicable; and

25 (f) Other documents as may be deemed necessary by the Implementing Agency.

26

27 **Section 110. Instruction to Comparative Proponents**

28

29 The Instruction to Comparative Proponents, which establish the rules of the comparative
30 challenge, shall be clear, comprehensive, and fair to all bidders, and shall, as far as necessary
31 and practicable, include the following information:

32

33 (a) General description and objectives of the PPP Project, including a statement that the
34 PPP Project shall be implemented under the Code and this IRR;

35 (b) Contractual arrangement under which the PPP Project shall be undertaken;

36 (c) Bid parameters and documents comprising the bid;

- 1 (d) Bid submission procedures and requirements, which shall include information on the
2 manner of bid submission, the number of copies of the bids to be submitted, where the
3 bids are to be submitted, the deadline for the submission of bids, permissible mode of
4 transmission of bid proposals, etc.;
- 5 (e) Details of access to the physical and/or virtual data room (VDR) and a template
6 confidentiality agreement with prospective bidders in relation to the access to the
7 physical data room and/or VDR;
- 8 (f) Cost of application to pre-qualify and submit bids, which shall not be higher than the
9 cost prescribed in Section 68 of this IRR;
- 10 (g) Amount and form of the bid security, its validity period, and the grounds for its forfeiture;
- 11 (h) Project Milestones;
- 12 (i) Minimum performance standards and specifications for design/construction/operation
13 and maintenance for the project prescribed by the Implementing Agency;
- 14 (j) Method, parameters, and criteria for the evaluation of the proposals;
- 15 (k) Minimum amount of equity of the Private Partner;
- 16 (l) Requirements of the appropriate regulators, as may be pertinent or applicable to the
17 PPP Project;
- 18 (m) Nationality and ownership requirements as required by law;
- 19 (n) Grounds for revocation of award; and
- 20 (o) Lock-in or holding period during which the Private Partner cannot sell their ownership,
21 rights, or interests in the PPP Project, if applicable.

22

23 **Section 111. Safekeeping of PPP Tender Documents**

24

25 Without prejudice to the rules on publication of tender documents to commence bidding, the
26 Implementing Agency, through its PBAC, may disclose the tender documents to the public for
27 the entirety of the bidding process by posting such documents online on the websites of the
28 Implementing Agency concerned. However, copies of all tender documents shall be
29 considered, appropriately kept safe, and preserved, as public documents after execution of
30 the PPP Contract. Bid submissions and records of deliberations of the PBAC shall not be
31 considered as part of the tender documents to be disclosed to the public

32

33 Any entity, whether public or private, may claim confidentiality of information it submits in
34 relation to any activity being conducted pursuant to the Code and this IRR, as well as any
35 deliberation in relation thereto following the procedure under Section 64 of this IRR: *Provided,*

1 *That*, such information claimed to be confidential is Confidential Business Information as
2 defined under this IRR.

3 **Section 112. Nondisclosure of Confidential Business Information**

4

5 Confidential Business Information submitted by entities pursuant to the Code and this IRR,
6 shall not, in any manner, be directly or indirectly disclosed, published, transferred, copies, or
7 disseminated: *Provided*, That the confidentiality rule shall not apply if the entity consents to
8 the disclosure, or if the document or information is mandatorily required to be disclosed by law
9 or by a valid order of a court of competent jurisdiction or of a government or Regulatory Body
10 or may pose threats to national security or public safety. In such cases, the disclosure of
11 information shall be consistent with existing and applicable laws, rules, and regulations.

12 **Section 113. Claiming Confidentiality**

13

14 Any entity that claims confidentiality on tender documents that will be published by an
15 Implementing Agency shall submit to the Implementing Agency, copy furnished the PPP
16 Center, a table identifying the confidential information and giving reasons why the information
17 should be treated as confidential.

18

19 Blanket claims for confidentiality shall not be accepted. Failure to comply with the foregoing
20 shall result in the waiver of the entity's claim for confidentiality.

21

22 Should the Implementing Agency find the claim for confidentiality unjustified, it shall, prior to
23 any disclosure of such information, notify the entity which claimed confidentiality that the
24 information shall be treated as nonconfidential.

25

26 **Section 114. Qualification of Comparative Proponents**

27

28 The evaluation criteria used to qualify the Original Proponent shall be the same criteria to be
29 defined in the Instructions to Comparative Proponents.

30

31 **Section 115. Disclosure of the Financial Proposal of the Original Proponent**

32

33 The decision to disclose the financial proposal of the Original Proponent in the tender
34 documents shall be mutually agreed upon between the Implementing Agency and the Original

1 Proponent. If the Original Proponent's financial proposal was not disclosed in the tender
2 documents, it shall be revealed upon the opening of the financial proposals of the comparative
3 proposals.

4

5 **Section 116. Posting of Bid Bond by the Original Proponent**

6

7 The Original Proponent shall be required at the date of the first day of the publication of the
8 Invitation for Comparative Proposals to submit a bid bond equal to the amount and in the form
9 required of the comparative proponents, following the requirements set forth this IRR.

10 **Section 117. Pre-Bid Conference and One-on-One Meetings**

11

12 A pre-bid conference shall be conducted by the Implementing Agency at least forty-five (45)
13 calendar days before the deadline for the submission of comparative proposals, to clarify any
14 provisions, requirements, and/or terms and conditions of the tender documents, and/or any
15 other matter that prospective comparative proponents may raise.

16

17 Notwithstanding, the PBAC of the Implementing Agency may adjust said period as may be
18 appropriate for the nature, scope, size, and complexity of the proposed PPP Project: *Provided,*
19 That the principles of transparency, competition, and accountability are observed.

20

21 Nothing stated at the pre-bid conference shall modify any provisions or terms and conditions
22 of the tender documents, unless such is made as written amendment thereto by the PBAC of
23 the Implementing Agency concerned the form of Bid Bulletins. Any amendments shall be
24 issued by the PBAC of the Implementing Agency through Bid Bulletins to all comparative
25 proposals within a reasonable time to allow them to consider the same in the preparation of
26 their proposals and shall be duly acknowledged by each comparative proponent prior to the
27 submission their proposal and shall be so indicated in their proposal.

28

29 A summary of the proceedings of the pre-bid conference shall also be issued to all prospective
30 bidders by the PBAC of the Implementing Agency. Attendance to the pre-bid conference by
31 prospective bidders shall not be mandatory.

32

33 The PBAC may arrange for One-on-One meetings with prospective bidders during the 45-day
34 period. No provision, term, or condition in the tender documents shall be modified by

1 statements made during these meetings unless these are made in writing and contained in a
2 bid bulletin issued by the PBAC to all comparative proponents.

3

4 **Section 118. Submission and Receipt of Comparative Proposals**

5

6 Comparative proponents shall develop and submit their respective comparative proposals
7 within the period approved by the appropriate Approving Body, in accordance with Title IV of
8 this IRR. Such period shall commence from the first date when a complete set of tender
9 documents is issued.

10

11 Comparative proponents are required to submit their respective proposals in three (3)
12 documents at the time and place specified in the tender documents. The contents of each
13 document and procedures for submission shall be pursuant to Section 114 of this IRR. The
14 PBAC may also allow comparative proponents to submit proposals electronically, subject to
15 existing laws, rules, and regulations.

16

17 If no other proposal is received after the challenge period, the PPP Project shall be awarded
18 to the Original Proponent.

19

20 **Section 119. Opening and Evaluation of Comparative Proposals**

21

22 Comparative proposals shall be opened and evaluated in accordance with Title VI, Chapter 2
23 of this IRR: *Provided*, That the evaluation criteria used to qualify the Original Proponent shall
24 be the same criteria to be used for comparative proponents;

25

26 **Section 120. Right-to-match mechanism**

27

28 The comparative challenge shall be conducted using the right-to-match mechanism. Under
29 such mechanism, the Original Proponent shall have the right to match the proposal submitted
30 by a challenger during the comparative challenge: *Provided*, that the Original Proponent shall
31 have thirty (30) calendar days to match the said proposal put forth by the challenger. For
32 avoidance of doubt, the period for right-to-match shall be excluded from the counting of the
33 period for comparative challenge process.

34 Should the original proponent fail to match the financial proposal of the comparative proponent
35 within the specified period, the contract shall be awarded to the comparative proponent.

1 In case the Government Entity determines the financial proposal of the original proponent to
2 be superior or more advantageous to the government or in case there is no challenger, the
3 PPP Contract shall be awarded to the original proponent.

4 If tie proposals occur between the original proponent and challenger(s), the PPP contract shall
5 be awarded to the original proponent.

6 If tie proposals occur between the challengers offering better financial proposals, the
7 procedure for breaking tie proposals shall be done through drawing of lots or similar methods
8 that are non-discretionary and non-discriminatory such that it is based on sheer luck or
9 chance.

10

11 **Section 121. Protests on Resolution of the PBAC for National PPP Projects**

12

13 In all stages of the procurement process for National PPP Projects, the mechanism for protest
14 shall be resolved in the most expeditious manner which shall not exceed forty-five (45)
15 calendar days from the filing of the motion for reconsideration to the PBAC.

16

17 **Section 121.1. Procedure in Filing a Motion for Reconsideration to the PBAC**

18

19 Within five (5) calendar days upon receipt of the written notice of the PBAC Resolution,
20 the aggrieved Private Proponent may file a Motion for Reconsideration of such PBAC
21 Resolution with the PBAC, or its equivalent. The PBAC shall render a decision within five
22 (5) calendar days upon receipt of the Motion for Reconsideration.

23

24 No party shall be allowed a second motion for reconsideration for the decision of the
25 PBAC.

26

27 **Section 121.2. Procedure in Filing an Appeal to the Head of the Implementing**
28 **Agency**

29

30 Upon receipt of the decision on their Motion for Reconsideration, the aggrieved Private
31 Proponent may appeal to the Head of the Implementing Agency and pay a non-refundable
32 appeal fee within five (5) calendar days upon receipt of the decision by the PBAC. The
33 Head of the Implementing Agency shall act on the appeal and render its decision within
34 ten (10) calendar days upon receipt of the appeal and payment of the appeal fee.

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The amount of appeal fee shall be as prescribed by the PBAC, provided that it shall be within 0.1% to 0.75% of the Project Cost.

Section 121.3. Procedure in Filing an Appeal to the Department Secretary

If the Head of the Implementing Agency in the immediately preceding Section is not a Department Secretary, the decision of the Head of the Implementing Agency may be further appealed by the aggrieved Private Proponent to the Secretary of the Department to which the Implementing Agency is attached, and pay a non-refundable appeal fee within five (5) calendar days upon receipt of the decision by the Head of the Implementing Agency. The Department Secretary shall act on the appeal and render a decision within fifteen (15) calendar days upon receipt of the appeal and payment of the appeal fee, otherwise it shall be deemed denied.

Section 122. Protests on Resolution of the PBAC for Local PPP Projects

In all stages of the procurement process for Local PPP Projects, the mechanism for protest shall be resolved in the most expeditious manner which shall not exceed forty-five (45) calendar days from the filing of the motion for reconsideration to the PBAC.

Section 122.1. Procedure in Filing a Motion for Reconsideration to the PPP Bids and Awards Committee (PBAC)

Within five (5) calendar days upon receipt of the written notice, the aggrieved Private Proponent may file a Motion for Reconsideration with the PBAC, or its equivalent. The PBAC shall render a decision within ten (10) calendar days upon receipt of the Motion for Reconsideration.

No party shall be allowed a second motion for reconsideration for the decision of the PBAC.

Section 122.2. Procedure in Filing an Appeal to the Local Chief Executive

Upon receipt of the decision on their Motion for Reconsideration, the aggrieved Private Proponent may appeal to the Local Chief Executive, and pay a non-refundable appeal fee

1 within ten (10) calendar days upon receipt of the decision by the PBAC. The Local Chief
2 Executive shall act on the appeal and render its decision within twenty (20) calendar days
3 upon receipt of the appeal and payment of the appeal fee.

4
5 Unless otherwise provided in the PPP Code, in no case shall a motion for reconsideration or
6 an appeal from any decision by the PBAC, the Head of the Implementing Agency, the
7 Department Secretary, or the Local Chief Executive stay or delay the bidding process. No
8 award shall however be made until a decision on any pending appeal is rendered.

9
10 **Section 123. Mandatory Provisions in a PPP Contract**

11
12 The draft PPP Contract should clearly define the basic and legal relationship between the
13 parties and their rights and responsibilities, including the specific Government Undertakings,
14 and obligations and undertakings of the Private Partner relative to the PPP Project. The draft
15 PPP Contract shall have the following mandatory terms or conditions:

- 16
17 (a) specific contractual arrangement, term, and scope of work;
18 (b) minimum performance standards and specification;
19 (c) KPIs, targets, and procedures for measuring and reporting results;
20 (d) implementation milestones, including those for securing other approvals and the
21 project completion date;
22 (e) cost recovery scheme via proposed tolls, fares, fess, rentals, and other charges, as
23 the case may be;
24 (f) obligation of the Private Partner to disclose loan or financing documents, as required
25 under this IRR;
26 (g) liquidated damages as contemplated under this IRR;
27 (h) performance security requirements, including their validity and top-up mechanism
28 procedures, contemplated under this IRR;
29 (i) minimum insurance coverage as may be required for the project, such as Contractors'
30 all risk, motor vehicle, workmen's compensation, third party liability, force majeure, or
31 comprehensive general liability insurance, as may be applicable;
32 (j) acceptance tests and procedures;
33 (k) warranty period and procedures (after transfer) and warranty security;
34 (l) lock-in periods, as applicable;
35 (m) grounds for and effects of contract termination, including formula for termination
36 payment;
37 (n) conditions and procedures for lender step-in rights;

- 1 (o) conditions for acceptable permitted security interest;
- 2 (p) procedures for resolving disputes as detailed in this IRR;
- 3 (q) the manner and procedures for the resolution of warranty against corruption;
- 4 (r) wind-up and transfer measures pursuant to Section 22 of the Code;
- 5 (s) period within which Financial Close shall be achieved by the Private Partner;
- 6 (t) compliance with all other applicable laws, rules, and regulations;
- 7 (u) total cost of the project, project specifications and features;
- 8 (v) social and environment safeguards;
- 9 (w) provisions on the use of dispute avoidance and Alternative Dispute Resolution (ADR)
- 10 mechanisms as required under this IRR; and
- 11 (x) ownership or retention of patents, technology and consultant reports.

13 **Section 124. PPP Contract Review and Approval**

14
15 The Head of the Implementing Agency shall be responsible in ensuring the consistency of the
16 draft PPP Contract with the PTCs as approved by the appropriate Approving Body, pursuant
17 to Title IV of this IRR.

18
19 The draft PPP Contract to be released to bidders shall also be sent to the following reviewing
20 bodies for initial comments in relation with the jurisdiction provided by law, within seven (7)
21 calendar days from issuance to bidders:

22
23 (a) For National PPP Projects:

- 24 (i) PPP Center, for compliance with the approved PTCs;
- 25 (ii) Statutory counsel/s, for compliance with all other applicable laws, rules, and
- 26 regulations; and
- 27 (iii) Department of Finance (DOF), for national Government Undertakings or Availability
- 28 Payments under the draft PPP Contract.

29
30 (b) For Local PPP Projects:

- 31 (i) Statutory counsel/s, for compliance with all other applicable laws, rules, and
- 32 regulations; and
- 33 (ii) DOF, if there is a national Government Undertaking or Availability Payments under
- 34 the draft PPP Contract.

35

1 The statutory counsel to review the draft PPP Contract shall be the one as applicable to the
2 Implementing Agency, which may be the OSG, OGCC, DOJ, or as may be determined by the
3 DOJ.

4

5 Reviewing bodies shall have thirty (30) calendar days to review and provide their initial
6 comments.

7

8 Prior to the final review and approval of the Head of Implementing Agencies, draft PPP
9 Contracts shall undergo final review and clearance by the above-mentioned agencies, within
10 thirty (30) calendar days from the day of bid submission. Reviewing bodies shall have twenty
11 (20) calendar days to review and provide clearance.

12

13 The final letter of the concerned reviewing body shall be considered as their clearance of the
14 draft PPP Contract, for consideration of the Head of the Implementing Agency. The
15 unfavorable comments or clearance made by the appropriate reviewing body shall not be
16 deemed as a prima face evidence or claim, sufficient to sustain a judgment in favor of the
17 issue it supports.

18

19 Any Government Undertaking and Availability Payment commitments to be sourced and
20 funded under GAA stated in the draft PPP contract not approved by the Approving Body and
21 not cleared by the DOF shall not be binding against the government.

22

23 Thereafter, the Head of the Implementing Agency shall review and approve the draft PPP
24 Contract to be released to the bidders, and ensure that the same shall be based on the PTCs
25 set forth by the Approving Body pursuant to Title IV of this IRR. The release of the PPP
26 Contract to the bidders shall be thirty (30) calendar days before bid submission. The PBAC
27 shall not proceed with the bid submission date unless the PPP contract is approved by the
28 Head of the Implementing Agency and cleared in accordance with this section.

29

30 In no case shall the Head of the Implementing Agency sign the contract if it contains provisions
31 that are inconsistent or in conflict with the final PTCs approved by the Approving Body. If the
32 executed PPP contract contains provisions which are contrary with the final PTCs approved
33 by the Approving Body and are grossly disadvantageous to the government, the contract shall
34 be null and void, without prejudice to the liability which the erring or negligent officials may
35 incur under Section 32 of the Code and other existing laws.

36

37

1 **Section 125. Changes to the PTCs of the Draft PPP Contract**

2

3 Changes to the PTCs of the draft PPP contract may be allowed prior to submission of bids for
4 Solicited Projects: *Provided*, That the prior approval for such changes of the appropriate
5 Approving Body and the Head of the Implementing Agency shall be secured.

6

7 The Implementing Agency shall inform in writing the PPP Center, its statutory counsel, and
8 DOF, as the case may be in accordance with Section 98 of this IRR, of such changes.

9

10 Changes to the PTCs of the draft PPP contract after bid submission and prior to contract
11 execution shall not be allowed except for changes to contract terms affected or decided by the
12 winning bidder's bid.

13 **TITLE VII - AWARD AND EXECUTION OF THE PPP CONTRACT**

14 **Section 126. Recommendation to Award**

15

16 Within seven (7) calendar days from the date of completion of the financial evaluation, the
17 PBAC of the Implementing Agency shall submit to the Head of the Implementing Agency a
18 recommendation to award. The PBAC shall prepare and submit a detailed
19 evaluation/assessment report on its decision regarding the evaluation of the bids and explain
20 in clear terms the basis of its recommendations.

21 **Section 127. Decision to Award**

22

23 Within seven (7) calendar days from the submission by the PBAC of the recommendation to
24 award, the Head of the Implementing Agency shall decide on the award. The approval shall
25 be manifested by signing and issuing the Notice to Award to the winning bidder within five (5)
26 calendar days from approval thereof.

27

28 All unsuccessful bidders shall be informed in writing of the decision of the Implementing
29 Agency to award the PPP contract to the winning Private Proponent. Such decision shall be
30 made available to the public.

31

1 **Section 128. Notice of Award**

2

3 The Notice of Award, which is issued by the Head of the Implementing Agency, shall indicate,
4 among others, that the winning bidder must submit within twenty (20) calendar days from
5 official receipt of the Notice of Award the following:

6

7 (a) prescribed performance security;

8 (b) proof of commitment of the required equity contribution, as specified by the
9 Implementing Agency:

10

11 (i) in the case where the winning bidder is a corporation - a treasurer's affidavit
12 attesting to actual paid-up capital, subscription agreement(s) between a
13 shareholder(s) of the winning bidder and the winning bidder itself covering said
14 equity contribution, or shareholders agreement between and amongst two (2) or
15 more shareholders of the winning bidder undertaking to contribute/subscribe the
16 required equity contribution; or

17 (ii) in the case of a consortium - an undertaking of the members thereof to infuse the
18 required equity contribution to the consortium.

19

20 (c) proof of firm commitments from reputable financial institution to provide sufficient credit
21 lines to cover the Project Costs to be shouldered by the winning bidder;

22 (d) in case a special purpose company (SPC) or a JV company (JVC) has been formed
23 for purposes of undertaking the project, proof of registration in accordance with
24 Philippine laws; and

25 (e) such other conditions imposed by the Implementing Agency.

26

27 Failure to submit the requirements within the prescribed period shall result in the automatic
28 cancellation of NOA and the confiscation of the bid security. Within five (5) calendar days upon
29 receipt of the foregoing requirements for award, the Head of the Implementing Agency shall
30 determine and notify the winning bidder of its compliance of all the conditions stated in the
31 said notice.

32

1 **Section 129. Public Dissemination of Bidding Results**

2

3 The PBAC shall post the Notice of Award and/or bidding results in the websites of the PPP
4 Center and the Implementing Agency, if any, within seven (7) calendar days from the issuance
5 of the Notice of Award.

6

7 **Section 130. Formation of a Special Purpose Company (SPC) or a JV Company (JVC)**

8

9 The Implementing Agency may require the winning Private Proponent to incorporate with the
10 Securities and Exchange Commission (SEC) in accordance with applicable Philippine laws.
11 The SPC or JVC that will be created shall assume and accede to all the rights and obligations
12 of the winning Private Proponent: *Provided, That:*

13

14 (a) the SPC shall be wholly-owned by the winning Private Proponent, subject to the
15 nationality and ownership requirements under the Constitution and other applicable
16 laws;

17

18 (b) in the case of a consortium, all members thereof shall present proof of contractual or
19 other legally binding ties to or relationships with the SPC or JVC for the development
20 and implementation of the project in accordance with their submitted business plan;

21

22 (c) in case of JVs involving the formation of a JVC, the JV Partners shall be further guided
23 by the following parameters:

24

25 (i) The shares of the Implementing Agency and the Private Partner in the profits,
26 losses, assets acquired and/or constructed, and any other interests derived from
27 the JV shall be proportionate to their respective contributions:

28

29 (ii) The Implementing Agency shall be represented in the Board of the JVC. The
30 composition of the Board shall be based on the JV Partners' proportional
31 contribution. The JV Partners may agree for the Implementing Agency to have
32 greater representation in the Board; and,

33

34 (iii) The Implementing Agency and the Private Sector Partner shall be entitled to
35 receive dividends from the net profits proportionate to the equity contributions of
each party. *Provided:* That the Implementing Agency and the Private Partner
may agree to include mechanisms that would provide a higher return for the

1 government entity than it is entitled to based on the actual percentage of
2 government contribution in the JV. The government entity may also accept any
3 other more favorable terms as may be agreed upon with the Private Partner in
4 the JV PPP Contract. Should the contracting parties deem it necessary,
5 dividends to be issued in favor of each party may be held in trust by the JV
6 Company for their exclusive benefit: *Provided*, That, the dividends to be issued
7 to the Implementing Agency for the government may be used to offset against
8 any of its payment obligations to the JV under the JV Agreement, including the
9 eligible liabilities of the JV: *Provided*, further, that such liabilities be limited to
10 reasonable obligations incurred for the purpose of pursuing the objectives of the
11 JV and that these be necessary expenses to the business and its operations;
12 and provided, finally, that any deduction charged to dividends of either JV Partner
13 that is held in trust by the JV Company must be properly accounted for and
14 reported to the JV Partners concerned. The foregoing shall be without prejudice
15 to existing laws, rules, regulations and issuances on the matter, including RA No.
16 7656.

17 (d) an accession undertaking is executed by the SPC or JVC and the winning Private
18 Proponent in favor of the Implementing Agency, making the SPC or JVC principally
19 liable for the performance of the winning Private Proponent's obligations under the
20 Notice of Award and/or the contract.

21 In the case of JVs, the formation of the JV between the Implementing Agency and the Private
22 Partner shall not prevent the parties from entering into other JV PPP contracts with other
23 parties or from profitably entering into other business ventures or markets: *Provided*, That
24 such other ventures shall not compete with the first JV for the same product and geographic
25 market. In the case of SPC, the Private Proponent which are members of the SPC, may
26 engage in other concessions, businesses, or undertakings only with the approval of the
27 Approving Body and the relevant Regulatory Body.

28 **Section 131. Withdrawal or Substitution of a Member**

29
30 Without prejudice to the application of lock-in provisions in the PPP Contract, changes in,
31 withdrawals, or substitution of Private Partners or member-firms of a consortium that results
32 in a change of control of the Private Partner or consortium that will affect its majority ownership
33 and/or beneficial ownership, after the approval of the project shall be subject to the approval

1 of the appropriate Approving Body. Any substitution of member-firms of a consortium should
2 be with substitutes of equal or better qualifications as with the original member.

3
4 In determining the whether there is a change of control, the Approving Body may consider the
5 following:

6
7 Control is presumed to exist when the parent owns directly or indirectly, through subsidiaries,
8 more than one half (1/2) of the voting power of an entity. Control also exists even when an
9 entity owns one half (1/2) or less of the voting power of another entity when:

- 10
- 11 (a) There is power over more than one half (1/2) of the voting rights by virtue of an
12 agreement with investors;
 - 13 (b) There is power to direct or govern the financial and operating policies of the entity
14 under a statute or agreement;
 - 15 (c) There is power to appoint or remove the majority of the members of the board of
16 directors or equivalent governing body;
 - 17 (d) There is power to cast the majority votes at meetings of the board of directors or
18 equivalent governing body;
 - 19 (e) There exists ownership over or the right to use all or a significant part of the assets of
20 the entity;
 - 21 (f) There exist rights or contracts which confer decisive influence on the decisions of the
22 entity;
 - 23 (g) Other factors which may be considered by the Approving Body such as but not limited
24 to the concept of Beneficial Owner under the relevant rules and regulations of the
25 Securities and Exchange Commission.
- 26

27 Further, in case of withdrawals, the remaining members or shareholders must still legally,
28 technically, and financially capable of successfully carrying out the implementation/operation
29 of the project.

30
31 A withdrawal made in violation of this Section shall be a ground for disqualification or
32 cancellation of the PPP Contract, as the case may be, and forfeiture of the winning Private
33 Proponent's bid or performance security.

34
35 The Implementing Agency shall inform in writing the PPP Center of such changes within five
36 (5) working days for monitoring purposes.

1 **Section 132. Validity of Bids/Return of Bid Security**

2

3 The execution of the PPP contract shall be made within the period of the validity of the bid
4 security. The required bid security shall be valid for a reasonable period but in no case beyond
5 one hundred eighty (180) calendar days following the opening of the bids. Bid securities shall
6 be returned to the winning bidder and unsuccessful bidders as soon as the PPP contract is
7 signed by the winning bidder.

8 **Section 133. Extension of Validity of Bids**

9

10 When an extension of validity of bids is considered necessary by the Head of the Implementing
11 Agency, those who submitted bids shall be requested in writing to extend the validity of their
12 bids before the expiration date of the same. However, bidders shall not be allowed to modify
13 or revise their bids apart from the validity of their bids.

14

15 Bidders shall have the right to refuse to grant such an extension without forfeiting their bid
16 security. As a condition of the extension of the validity of their bids, bidders must
17 correspondingly extend the validity of their bid securities.

18 **Section 134. Execution of the PPP Contract**

19

20 The authorized signatories of the winning bidder and the Head of the Implementing Agency
21 shall execute and sign the contract for the PPP Project, as approved in accordance with
22 Sections 98 and 124 of this IRR, within five (5) calendar days from receipt by the winning
23 bidder of the notice from the Implementing Agency that all conditions stated in the Notice of
24 Award have been complied with.

25

26 The Private Proponent that was pre-qualified and awarded with the PPP Project shall be the
27 signatory to the contract.

28

29 Consistent with Article 1159 of the New Civil Code, the contract is the law between the parties
30 and the parties shall perform their respective prestations, obligations, and undertakings
31 thereunder with utmost good faith with the end in view of attaining the objectives hereof. An
32 original signed copy of the PPP contract shall be submitted to the Approving Body and the
33 PPP Center within five (5) calendar days after signing thereof by the Implementing Agency.

1 Section 135. Failure to Enter into Contract

2

3 In the case of Solicited Projects, if the winning bidder fails to comply with any post-award
4 requirement which shall be set as part of the tender documents, or fails to enter into the PPP
5 Contract with the Implementing Agency, the latter shall forfeit the bid security of the former
6 without prejudice to other legal remedies available to the Implementing Agency and may
7 proceed to consider awarding the PPP Contract to the bidder with the next Most Responsive
8 Bid. In case the contract is awarded to the bidder with the next Most Responsive Bid, it shall
9 be without prejudice to legal remedies available to the Implementing Agency, such as forfeiture
10 of bid security, withdrawal of award, and such other remedies allowed under existing laws,
11 rules, and regulations. If the same shall likewise refuse or fail to enter into contract, its bid
12 security shall likewise be forfeited and the Implementing Agency shall consider awarding the
13 PPP Contract to the bidder with the next Most Responsive Bid. The procedure under this
14 section shall be repeated for the bidder with the next Most Responsive Bid until the PPP
15 Contract is executed or the PBAC declares a failure of bidding (as the case may be).

16

17 In the event that the Implementing Agency is unable to execute the PPP contract with a failure
18 of bidding shall be declared and the PPP Project may be subjected to a re-bidding.

19

20 The PBAC shall also declare failure of bidding if the winning bidder refuses without justifiable
21 cause to accept the award of contract. Thereafter, the PPP Project may be subjected to a re-
22 bidding.

23

24 In the case of Unsolicited Proposals, in the event of refusal, inability, or failure of a winning
25 comparative proponent to enter into contract with the Implementing Agency, its bid security
26 shall be forfeited in favor of the Implementing Agency. In such an event, the Implementing
27 Agency shall consider the comparative proponent with the next Most Responsive Bid. Such
28 comparative proposal shall be subjected to a right-to-match mechanism as enumerated in
29 Section 120, as approved by the Approving Body. If no other comparative proposal is
30 determined to be better than that of the Original Proponent, the contract shall be awarded to
31 the Original Proponent. If the second comparative proponent fails to comply with any post-
32 award requirement which shall be set as part of the tender documents, or fails to enter into
33 the PPP Contract with the Implementing Agency, its bid security shall be forfeited in favor of
34 the Implementing Agency. The procedure under this section shall be repeated for the
35 comparative proponent with the next Most Responsive Bid, subject to the Original Proponent's

1 right to match, until the PPP Contract is executed or the PBAC declares a failure of bidding
2 (as the case may be).

3 **Section 136. Issuance of Franchise**

4
5 Subject to the provisions of the Constitution and other existing laws, rules, and regulations,
6 once a PPP contract is executed by the Private Partner and the Implementing Agency, a
7 presumption arises that the public interest will be served by the implementation of the PPP
8 Project covered thereby, and immediately upon application by the Private Partner in
9 accordance with the guidelines of the Regulatory Body concerned. The latter shall, upon
10 determining compliance by the Private Partner with the said guidelines and, where applicable,
11 considering its prior clearance or approval of the maximum acceptable tariff set by the
12 Implementing Agency before the bidding, grant in favor of the Private Partner a franchise to
13 operate the facility and collect the toll, fares, fees, rentals, and other charges stipulated under
14 the PPP contract, including adjustment formula, if any.

15 **TITLE VIII - IMPLEMENTATION OF PPP PROJECTS**

16 **CHAPTER 1 – PROJECT MONITORING AND CONTRACT MANAGEMENT**

17 **Section 137. Project Monitoring**

18
19 Every PPP Project shall be implemented in accordance with the signed PPP contract. The
20 Implementing Agency shall be entitled to exercise sufficient powers of supervision, monitoring,
21 and control over the implementation of each PPP contract it has entered into, and it shall be
22 responsible for the submission of periodic monitoring reports, executed under oath, to the
23 appropriate oversight agencies.

24
25 The PPP Governing Board shall set the framework for monitoring and reporting the progress
26 of the implementation of PPP Projects, achievement of milestones, risks and issues
27 encountered, project spending and financial performance, and expected outputs and benefits,
28 and for the determination of appropriate penalties for the non-compliance of parties to the set
29 reportorial requirements. The framework shall also include the monitoring of the compliance
30 of the parties with contractual obligations, KPI and MPSS, and payment of financial liabilities.
31 The framework to be issued by the PPP Governing Board shall cover both national and local
32 PPP projects.

1 The PPP Center shall be responsible for the coordination and monitoring of all PPP Projects
2 and shall serve as the central repository of all PPP project information. For this purpose, the
3 Implementing Agency shall submit to the PPP Center a copy of all executed PPP contracts
4 within fifteen (15) calendar days upon the effectivity of this IRR, for existing contracts, and
5 within five (5) calendar days from signing, for contracts executed under the Code and this IRR.
6 The Implementing Agency shall also submit information on the status of PPP projects,
7 feasibility and other pre-award studies, including Unsolicited Proposals and related documents
8 it received, loan or financing documents of the Private Partner for the PPP Projects, arbitral
9 awards or settlement agreements, if any, and other such documents as may be required by
10 the PPP Center in the manner and form and within the deadlines to be prescribed by the PPP
11 Governing Board in its issuance.

12
13 At the end of every calendar year, the PPP Center shall submit a report to the President of the
14 Philippines and to Congress, particularly to the Senate President and the Speaker of the
15 House of Representatives, and the Joint Oversight Congressional Committee referred to in
16 Section 33 of the Code, on the progress of all PPP Projects.

17
18 These provisions shall also apply to contracts executed prior to the effectivity of the Code,
19 provided that such application does not infringe upon established rights and obligations.

20
21 **Section 138. Contract Management and Risk Mitigation**

22
23 The Implementing Agency shall adopt a contract management plan for each PPP Project it
24 undertakes through the Code and this IRR. Such plan shall include the agreed project
25 execution plan, project milestones, KPIs, a conflict mitigation plan, as applicable, and the risk
26 mitigation plan approved by the Approving Body pursuant to Section 137 of this IRR.

27
28 A copy of the plan, and any updates thereto, shall be submitted to the PPP Center within five
29 (5) calendar days after the approval of such plan by the head of the Implementing Agency.
30 The required minimum contents of the contract management plan shall be provided in the
31 guidelines to be issued by the PPP Governing Board.

32
33 The Implementing Agency shall ensure execution of the plan for the timely compliance with
34 contractual obligations and proper implementation of the PPP Project. The Implementing
35 Agency shall also report to the PPP Center any issues being faced in executing the plan.

36

1 **Section 139. Accountability in PPP Projects**

2

3 The Head of the Implementing Agency concerned shall at all times be accountable for PPP
4 Projects undertaken through this Code. The Private Partner shall likewise be held accountable
5 for the works it has delivered and services it has rendered for a PPP Project. All PPP contracts
6 are hereby required to clearly define the scope of each party's accountability under the PPP
7 Contract.

8

9 Without prejudice to the penalties stated in Section 32 of the Code, failure of the Head of the
10 Implementing Agency to comply with their obligations under the PPP contract shall allow the
11 Private Partner to avail the appropriate remedy as provided in the PPP contract.

12

13 PPP Projects shall be subject to the Government Auditing Code of the Philippines and the
14 2009 Revised Rules of Procedures of the Commission on Audit (COA) and any amendments
15 thereto. The COA, in consultation and coordination with the PPP Center, shall adopt and
16 promulgate the necessary framework and guidelines on accounting and auditing PPP
17 Projects, respectively. The same shall include auditing guidelines that will guide the COA
18 auditors who shall be assigned to audit PPP Projects.

19 **CHAPTER 2 – GOVERNMENT LIABILITIES IN PPP CONTRACTS**

20 **Section 140. Monitoring and Reporting of Government Liabilities**

21 Government liabilities in PPP contracts can come in the form of Availability Payments,
22 Government Undertakings, Contingent Liabilities, or other payments agreed to by the
23 Implementing Agency under the PPP Contract, such as its share in the payment of an
24 Independent Consultant.

25

26 (a) Availability Payments and Government Undertakings are foreseeable and definite
27 liabilities approved by the appropriate approving body as part of the project PTCs and
28 described in the provisions of the contract. The payment of these liabilities is tied to
29 the accomplishment of project milestones, the fulfillment of certain conditions, or is
30 made following specific schedules in the contract.

31

32 During project implementation, the Implementing Agency shall ensure that sources of
33 funds necessary for Availability Payments and payments of Government Undertakings

1 and other definite liabilities are identified and secured pursuant to existing laws, rules,
2 and regulations.

3
4 For purposes of monitoring, the Implementing Agency shall regularly report to the PPP
5 Center the status of payments made, following the prescribed form and frequency in
6 the framework to be issued by the PPP Governing Board.

7
8 (b) Contingent Liabilities, as defined in this IRR, and the risks from which such liabilities
9 arise shall be constantly monitored by the Implementing Agency. During project
10 implementation, the Implementing Agency shall keep the risk mitigation plan up-to-
11 date, and submit the updated plans to the PPP Center in accordance with Section 129
12 of this IRR.

13
14 Should risks materialize and lead to contingent liabilities, such as liquidated damages,
15 and deficit payments, among others, the parties shall exhaust all cures provided in the
16 PPP contract and the risk mitigation plan. Provided, that if such cures are insufficient
17 to address the government's contingent liabilities in the PPP project, the Implementing
18 Agency may tap the Risk Management Fund referred to in Title XVIII of this IRR,
19 subject to the eligibility rules and procedural guidelines to be issued by the DBCC.

20
21 The Implementing Agency shall prepare a quarterly report on its financial liabilities and
22 submit the same to the PPP Center, following the processes, procedures, and forms
23 to be issued by the PPP Governing Board. Relevant documents such as notices and
24 claims, among others, shall be attached to the report. To be able to comply with the
25 obligation under this Section, the Private Partner shall cooperate and provide the
26 Implementing Agency with all necessary information and documents within ten (10)
27 calendar days of the receipt of the request from the Implementing Agency.

28
29 A copy of the risk mitigation plan and the quarterly report with its attachments shall also be
30 submitted to relevant bodies monitoring the fiscal health of the Implementing Agency, as
31 follows: DOF-Bureau of Local Government Finance, for LGUs; and Bureau of Treasury.

32 **Section 141. Accounting for Liabilities**

33
34 The identification, reporting, and payment of government liabilities shall be based on the
35 applicable accounting rules and regulations adopted or issued by COA pursuant to Section __
36 of this IRR.

CHAPTER 3 - PRE-CONSTRUCTION

Section 142. Notice to Commence

The Implementing Agency, when deemed necessary, shall issue the Notice to Commence Implementation of the PPP Project, or any equivalent document, to the Private Partner within a reasonable period to be determined by the Implementing Agency and subject to the compliance to the conditions stated in the PPP contract.

Section 143. Preparation and Approval of the Detailed Engineering Design

Where the PPP Project involves design, the Private Partner shall be responsible for the preparation of the detailed engineering designs and plans based on the prescribed minimum performance standards and specifications, key performance indicators, and targets, and shall submit the same to the Implementing Agency pursuant to the timeline stipulated in the PPP Contract.

The Implementing Agency shall review the detailed engineering designs and plans prepared by the Private Partner in terms of its compliance with the prescribed minimum performance standards and specifications, and if found acceptable, shall approve the same for incorporation in the contract. This approval by the Implementing Agency notwithstanding, the Private Partner shall be solely responsible for the integrity of its detailed engineering designs and plans. The approval thereof by the Implementing Agency does not diminish this responsibility, nor does it transfer any part of such responsibility to the Implementing Agency.

The Implementing Agency shall ensure that the technical designs, plans, specifications, and related aspects necessary for the PPP Project's construction, operation and maintenance shall be based on relevant local and national laws, rules and regulations, policies, standards, and guidelines. Moreover, the Implementing Agency and its Private Partner may consult with appropriate regulators regarding relevant laws, rules and regulations, policies, standards, and guidelines in granting the necessary franchise.

CHAPTER 4 – PROJECT CONSTRUCTION

The Private Partner shall construct the PPP Project in accordance with the minimum performance standards and specifications prescribed in the approved detailed engineering

1 design. For this Construction stage, the Private Partner may engage the services of Filipino
2 and/or foreign Contractors that comply with the requirements as prescribed under this IRR. In
3 the case of foreign Contractors, Filipino workforce shall be employed in the different phases
4 of the Construction works where Filipino skills are available. Preference shall be given to the
5 hiring of Filipino construction workforce. Hiring of workforce shall be subject to existing labor
6 laws, rules and regulations.

7 **Section 144. Notice to Commence**

8

9 The Implementing Agency, when deemed necessary, shall issue the Notice to Commence
10 Construction of the PPP Project, or any equivalent document, to the Private Partner within a
11 reasonable period to be determined by the Implementing Agency and subject to the
12 compliance to the conditions stated in the PPP Contract.

13 **Section 145. Performance Security for Construction Works**

14

15 To guarantee the faithful performance by the Private Partner of its obligations after the signing
16 of the PPP Contract until the acceptance of the facility under the contract, including the
17 prosecution of the Construction works related to the project, the Private Partner shall post a
18 performance security in favor of the Implementing Agency, within the period and in the form
19 and amount stipulated in the PPP Contract and Notice of Award.

20

21 The form of performance security shall be in accordance with the PTCs approved by the
22 Approving Body, which may be in cash, bank draft or guarantee confirmed by a local bank (in
23 the case of foreign bidders bonded by a foreign bank), letter of credit issued by a reputable
24 bank, surety bond callable on demand issued by the GSIS or by surety or insurance
25 companies duly accredited by the office of the Insurance Commissioner, or a combination
26 thereof. The amount of security to be set by the Implementing Agency shall be in accordance
27 with the following schedules:

28

29 (a) Cash, irrevocable letter of credit, bank draft - a minimum of two percent (2%) of the
30 total Project Cost.

31 (b) Bank Guarantee - a minimum of five percent (5%) of the total Project Cost.

32 (c) Surety Bond - a minimum of ten percent (10%) of the total Project Cost. The
33 performance guarantee shall be valid up to acceptance by the Implementing Agency
34 of the facility.

35

1 Should the performance security fall below the amount as required in the contract, the Private
2 Partner shall provide for an additional performance security to meet such required amount
3 within fifteen (15) calendar days from the occurrence thereof.

4

5 The performance security shall be proportionately increased in the case of government-
6 approved variations causing an increase in the Project Cost. The Private Partner shall provide
7 for the necessary additional performance security within fifteen (15) days from the approval of
8 the variation.

9

10 The Implementing Agency shall strictly monitor compliance by the Private Partner of the
11 requirements for performance security and the sufficiency thereof.

12 **Section 146. Release of Performance Security for Construction Works**

13

14 Upon completion of Construction, the Implementing Agency shall issue a Certificate of
15 Completion. Within a period of no more than one (1) year after its issuance, the Implementing
16 Agency shall issue a Certificate of Acceptance of the Construction works upon (a)
17 determination that the works had been completed in accordance with the prescribed minimum
18 standards and specifications and with the approved detailed engineering design, and (b) in
19 case the contract includes operation, the posting of a performance security for operations.

20

21 The performance security for Construction works shall be released by the Implementing
22 Agency after the issuance of the Certificate of Acceptance of the Construction works provided
23 that there are no claims filed against the Private Partner or its Contractor.

24

25 As may be agreed upon in the contract, a portion of the performance security shall be released
26 upon compliance with corresponding milestones.

27 **Section 147. Review of Project Construction**

28

29 The Implementing Agency, the PPP Center, a panel of government offices designated by the
30 Approving Body, if any, and the Independent Consultant, if procured by the Implementing
31 Agency, may individually or jointly inspect and check, at any time, the project to determine
32 whether the project is constructed, operated and maintained in accordance with the approved
33 plans, specifications, standards and costs under the contract and applicable laws, rules,
34 regulations, and industry standards.

35

1 In the event that the Implementing Agency concerned, PPP Center, or a panel of government
2 offices designated by the Approving Body, if any, shall find any deviation from or non-
3 compliance with the approved plans, specifications, standards, and costs under the contract
4 and applicable law, rules, regulations, and industry standards, the Implementing Agency shall
5 bring the same to the attention of the Private Partner for the necessary corrective actions.
6 Failure of the Private Partner to correct the deviation within the time prescribed by the
7 Implementing Agency may be a ground for the termination of the contract, in accordance with
8 Title XVI of this IRR. Such technical supervision by the Implementing Agency shall not diminish
9 the singular responsibility of the Private Partner for the proper Construction, operation, and
10 maintenance of the PPP Project, nor does it transfer any part of that responsibility to the
11 Implementing Agency.

12 **Section 148. Liquidated Damages during Construction**

13
14 Where the Private Partner fails to satisfactorily complete the work on or before the completion
15 date, including any extension or grace period duly granted, or fail to perform any of its
16 obligations and undertakings as stipulated in the contract, the Private Partner shall pay the
17 Implementing Agency liquidated damages, as specified in the contract, as an indemnity and
18 not by way of penalty. The performance security for construction works may be applied to
19 answer for any liquidated damages due to the Implementing Agency.

20
21 The amount of liquidated damages due for every calendar day of delay beyond the completion
22 date will be determined by the Implementing Agency based on the formula in the contract.

23
24 Persistent breach of obligations by the Private Partner and a limit to the amount of consequent
25 liquidated damages shall be defined in the contract. Should the limit be reached, such shall
26 be considered a Private Partner event of default. Persistent breach of obligations by the
27 Private Partner shall be defined in the contract by using the following parameters:

- 28
- 29 (a) an accumulation of a significant number of breaches over a stated period of time;
 - 30 and/or
 - 31 (b) an accumulation of payment deductions from the performance security or of payment
 - 32 of liquidated damages above a certain threshold.

33
34 The imposition and collection of liquidated damages shall be without prejudice to the right of
35 the Implementing Agency to avail of its remedies provided under the PPP Contract and laws

1 including the right to terminate the contract and proceed with the procedures prescribed under
2 this IRR.

3 **Section 149. Independent Consultants for Construction Works**

4
5 An Independent Consultant, either an individual, partnership, or corporation, shall be procured
6 by the Implementing Agency to provide independent advice to the Implementing Agency and
7 Private Partner or its Contractor for the design and Construction of the facility, and monitoring
8 of the performance of the contracting parties during such phases of the PPP Project.

9
10 The procurement of the Independent Consultant shall commence within thirty (30) working
11 days from the signing of the PPP contract or from a date the Implementing Agency deems
12 appropriate for the project that is consistent with the requirements and timelines under the
13 contract. The period of appointment of the Independent Consultant shall be consistent with
14 the construction period as stipulated under the contract. Any delays or deviations from the
15 stipulated construction period that may result in the premature conclusion of the Independent
16 Consultant engagement may warrant an extension or a new procurement process for an
17 Independent Consultant, as deemed necessary by the Implementing Agency.

18
19 The terms of reference for the procurement of the Independent Consultant shall include, but
20 shall not be limited to, the scope of reports and the frequency of their submissions to the
21 Implementing Agency, and the process for their evaluation. The Implementing Agency shall
22 allow the Private Partner to comment on the terms of reference prior to approval within fifteen
23 (15) calendar days from receipt thereof.

24
25 A prospective Independent Consultant shall submit to the Implementing Agency and the
26 Private Partner a complete disclosure statement specifying all of its past, present, and
27 anticipated or planned future relationships to the PPP Project and with every person who has
28 or is likely to have a connection with it, confirming that there is or is not likely to be any conflict
29 of interest.

30
31 Upon selection of an Independent Consultant, the Implementing Agency shall notify the
32 Private Partner of its proposed award of the Independent Consultant contract with scope of
33 duties as agreed upon, and the Private Partner shall send a written acknowledgment thereof
34 to the Implementing Agency.

35

1 Costs of procurement of an Independent Consultant shall be borne equally by the
2 Implementing Agency and the Private Partner. Such costs borne by the Implementing Agency
3 shall not be considered as a Subsidy.

4
5 The parties shall provide all the assistance necessary to enable the Independent Consultant
6 to carry out its functions and duties under the Independent Consultant contract. The parties
7 shall not deceive, intimidate, influence, or otherwise exert undue pressure, upon the
8 Independent Consultant, or commit similar acts that would adversely impact the integrity and
9 the independence of the Independent Consultant.

10
11 The terms and conditions provided in the Independent Consultant contract shall be consistent
12 with the PPP contract. In addition to the responsibilities of the Independent Consultant set
13 forth in the Independent Consultant contract, the Independent Consultant shall provide the
14 Implementing Agency, Private Partner, COA, a panel of government offices designated by the
15 Approving Body, if any, and the PPP Center with copies of all documents procured by the
16 Independent Consultant during its period of appointment.

17
18 The Independent Consultant report shall, at the minimum, contain the following: project
19 progress plan and schedule, project status in terms of accomplishments and backlogs, project
20 issues and concerns, materials report, Independent Consultant activities, and other
21 documents as may be required.

22 **CHAPTER 5 – OPERATIONS AND MAINTENANCE**

23 **Section 150. Notice to Commence**

24
25 The Implementing Agency, when deemed necessary, shall issue the Notice to Commence
26 Operations of the PPP Project, or any equivalent document to the Private Partner within a
27 reasonable period to be determined by the implementing agency and subject to the
28 compliance to the conditions stated in the PPP contract.

29 **Section 151. Performance Security for Operations and Maintenance**

30
31 For PPP Projects where the Private Partner or other third parties shall operate the facility, the
32 Implementing Agency shall require the Private Partner to post a performance security for
33 operations, simultaneously with the acceptance of the facility. The performance security for

1 operations will be issued to guarantee the proper operation of the facility in accordance with
2 the prescribed minimum performance standards and specifications under the contract.

3

4 The Implementing Agency shall determine the amount but the form shall be in accordance
5 with this IRR. This performance security for operations shall be valid during the entire
6 operations period.

7

8 Should the performance security fall below the amount as required in the contract, the Private
9 Partner shall provide for an additional performance security to meet such required amount
10 within fifteen (15) days from the occurrence thereof.

11

12 The performance security shall be proportionately increased in the case of government-
13 approved variations causing an increase in the Project Cost. The Private Partner shall provide
14 for the necessary additional performance security within fifteen (15) days from the approval of
15 the variation.

16

17 The Implementing Agency shall strictly monitor compliance by the Private Partner with the
18 requirements for performance security and the sufficiency thereof.

19 **Section 152. Release of Performance Securities**

20

21 The Performance Security for Operations shall be released by the Agency/LGU concerned on
22 the transfer date of the facility, provided that there are no claims filed against the Project
23 Proponent and its Contractor.

24 **Section 153. Review of Operations and Maintenance**

25

26 The Implementing Agency, the PPP Center, a panel of government offices designated by the
27 Approving Body, if any, or the Independent Consultant, if procured by the Implementing
28 Agency, may individually or jointly inspect and check, at any time, the project to determine
29 whether the project is operated and maintained in accordance with the approved plans,
30 specifications, standards and costs under the contract.

31

32 In the event that the Implementing Agency, the PPP Center, or a panel of government offices
33 designated by the Approving Body, if any, or the Independent Consultant, if procured by the
34 Implementing Agency, shall find any deviation from or non-compliance with the approved
35 plans, specifications and standards, the Implementing Agency shall bring the same to the

1 attention of the Private Partner for the necessary corrective actions. Failure of the Private
2 Partner to correct the deviation within the time prescribed by the Implementing Agency may
3 be a ground for the termination of the contract, in accordance with Title XVI of this IRR. Such
4 technical supervision by the Implementing Agency shall not diminish the singular responsibility
5 of the Private Partner for the proper Construction, operation, and maintenance of the PPP
6 Project, nor does it transfer any part of that responsibility to the Implementing Agency.

7 **Section 154. Liquidated Damages during Operations**

8
9 Where the Private Partner fails to meet the operating performance standard as prescribed in
10 the contract, or fails to perform any of its obligations and undertakings as stipulated in the
11 contract, the Private Partner shall pay the Implementing Agency liquidated damages, as
12 specified in the contract, as an indemnity and not by way of penalty. The performance security
13 for operations may be applied to answer for any liquidated damages due to the Implementing
14 Agency.

15
16 The amount of liquidated damages, which will be determined by the Implementing Agency,
17 shall be based on the principle of fair compensation for damages which the Implementing
18 Agency will sustain as a result of the Private Partner's failure to meet its obligations.

19
20 Persistent breach of obligations by the Private Partner and a limit to the amount of consequent
21 liquidated damages shall be defined in the contract. Should the limit be reached, such shall
22 be considered a Private Partner event of default. Persistent breach of obligations by the
23 Private Partner shall be defined in the contract by using the following parameters:

- 24
25 (a) an accumulation of a significant number of breaches over a stated period of time;
26 and/or
27 (b) an accumulation of payment deductions from the performance security or of payment
28 of liquidated damages above a certain threshold.

29
30 The imposition and collection of liquidated damages shall be without prejudice to the right of
31 the Implementing Agency avail of its remedies under the PPP Contract including the right to
32 terminate the contract and proceed with the procedures prescribed under this IRR.

33

1 **Section 155. Repair and Maintenance Costs**

2

3 The Private Partner shall, within the contract term and the warranty period prescribed under
4 this IRR, undertake the necessary and appropriate repair and maintenance of the project, in
5 accordance with the prescribed minimum performance standards, and other terms prescribed
6 in the approved contract, in order to ensure that the facility operates at the desired level of
7 service. For this purpose, and where applicable, a portion of the project's revenues equivalent
8 to the cost of the project's repair and maintenance, as indicated in the Private Partner's bid
9 shall be set aside and reserved exclusively for repair and maintenance costs of the project.
10 For facility, an escrow account may be established for the purpose.

11 **Section 156. Independent Consultants for Operations and Maintenance**

12

13 As may be necessary, an Independent Consultant may also be procured during the operations
14 and maintenance phase of the PPP Project.

15

16 The procurement of the Independent Consultant shall commence within thirty (30) working
17 days from the signing of the PPP contract or from a date the Implementing Agency deems
18 appropriate for the project that is consistent with the requirements and timelines under the
19 contract.

20

21 The terms of reference for the procurement of the Independent Consultant shall include, but
22 shall not be limited to, the scope of reports and the frequency of their submissions to the
23 Implementing Agency, and the process for their evaluation. The Implementing Agency shall
24 allow the Private Partner to comment on the terms of reference prior to approval within fifteen
25 (15) calendar days from receipt thereof.

26

27 A prospective Independent Consultant shall submit to the Implementing Agency and the
28 Private Partner a complete disclosure statement specifying all of its past, present, and
29 anticipated or planned future relationships to the PPP Project and with every person who has
30 or is likely to have a connection with it, confirming that there is or is not likely to be any conflict
31 of interest.

32

33 Upon selection of an Independent Consultant, the Implementing Agency shall notify the
34 Private Partner of its proposed award of the Independent Consultant contract with scope of

1 duties as agreed upon, and the Private Partner shall send a written acknowledgment thereof
2 to the Implementing Agency.

3

4 Costs of procurement of an Independent Consultant shall be borne equally by the
5 Implementing Agency and the Private Partner. Such costs borne by the Implementing Agency
6 shall not be considered as a Subsidy.

7

8 The parties shall provide all the assistance necessary to enable the Independent Consultant
9 to carry out its functions and duties under the Independent Consultant contract. The parties
10 shall not deceive, intimidate, influence, or otherwise exert undue pressure, upon the
11 Independent Consultant, or commit similar acts that would adversely impact the integrity and
12 the independence of the Independent Consultant.

13

14 The terms and conditions provided in the Independent Consultant contract shall be consistent
15 with the PPP contract. In addition to the responsibilities of the Independent Consultant set
16 forth in the Independent Consultant contract, the Independent Consultant shall provide the
17 Implementing Agency, Private Partner, COA, a panel of government offices designated by the
18 Approving Body, if any, and the PPP Center with copies of all documents procured by the
19 Independent Consultant during its period of appointment.

20

21 The Independent Consultant report shall, at the minimum, contain the following: project
22 progress plan and schedule, project status in terms of accomplishments and backlogs, project
23 issues and concerns, materials report, Independent Consultant activities, and other
24 documents as may be required.

25

CHAPTER 6 – HANDOVER

Section 157. Expiring Contracts and Transfer of and Warranty Over the Facility

27

28 Under contractual arrangements involving transfer of the facility to the Implementing Agency,
29 the transfer or turnover will necessarily include the transfer of full legal ownership over the
30 PPP Project, all documents, property rights, source codes, equipment, among others, which
31 are related to the project in favor of the Implementing Agency, subject to any existing liens as
32 may be agreed upon in the PPP Contract. The facility, upon transfer to Implementing Agency,
33 shall be operable and in good condition. The performance indicators for the PPP Project and
34 frequency of monitoring the indicators shall be stipulated in the contract. A third-party valuator

1 shall be commissioned by the Implementing Agency to assess the residual value of the facility
2 upon transfer or turnover of the facility to the Implementing Agency.

3 **Section 158. Transfer Security**

4
5 To guarantee the faithful performance by the Private Partner of its obligations during the
6 transfer of the facility, the Private Partner shall post an asset transfer security in favor of the
7 Implementing Agency, in the form, amount, and period stipulated in the PPP contract.

8
9 The Implementing Agency shall determine the amount taking into account the valuation of a
10 Third-party Appraiser. The asset transfer security shall be valid until the Implementing Agency
11 determines that the facility complies with the transfer requirements as stipulated in the contract
12 and issues an acceptance certificate.

13 **Section 159. Warranty Security**

14
15 The Private Partner shall provide warranty that the facility meets the KPIs and targets in
16 connection therewith for a period not less than one (1) year from the transfer of the facility.
17 The Private Partner shall put up a warranty security, and the amount of which shall be
18 determined by the Implementing Agency and shall be stipulated in the PPP Contract. The
19 warranty security shall be made effective immediately upon transfer of full legal ownership
20 over the project in favor of the Implementing Agency, as described above.

21 **Title IX - Regulation of Tariffs**

22 **Section 160. Identification of Regulatory Bodies**

23
24 The PPP Center shall identify all relevant regulatory bodies including, but not limited to, the
25 Toll Regulatory Board, the Civil Aviation Authority of the Philippines, and the Land
26 Transportation Franchising and Regulatory Board charged with approval of initial tolls, fares,
27 fees, rentals, and other charges and adjustments thereof, and within a reasonable time after
28 the effectivity of this IRR, shall conduct consultations with these regulatory bodies on the
29 issuance of franchise, and regulation of tolls, fares, fees, rentals, and other charges.

30
31 This shall include a process for early engagement of the Regulatory Bodies with the
32 Implementing Agencies - before the approval of a PPP Project and its procurement -

1 particularly to obtain the comments and inputs of the Regulatory Bodies on the draft contract
2 and other bidding documents pertaining to tariffs and other regulatory aspects.

3

4 In the absence of an appropriate regulatory body, the initial tolls, fares, fees, rentals, and other
5 charges and adjustments thereof shall be as stipulated in the PPP contract.

6 **Section 161. Issuance of a Memorandum Circular**

7

8 The Head of regulatory bodies charged with approval of initial tolls, fares, fees, rentals, and
9 other charges and adjustments thereof shall issue a Memorandum Circular, or its equivalent,
10 within 180 calendar days from the effectivity of this IRR detailing the guidelines, frameworks,
11 or mechanisms for consultation, review, and approval of said initial tolls, fares, fees, rentals,
12 and other charges and adjustments.

13

14 The PPP Center shall coordinate and assist, as necessary, on the formulation of these
15 guidelines, frameworks, or mechanisms.

16 **Section 162. Minimum Guidelines/Frameworks/Mechanisms**

17

18 All regulatory bodies shall include the following minimum provisions in the formulation of their
19 policy documents:

20

21 (a) Regulatory approvals shall be made prior to the approval of the PPP Project,
22 provided that such regulatory approvals shall be limited to proposed initial tolls,
23 fares, fees, rentals, and other charges and adjustments thereof;

24 (b) During the implementation period of the PPP Project, the Private Partner shall have
25 the right to file the application for tolls, fares, fees, rentals, and other charges and
26 adjustments thereof;

27 (c) Procedure of approval of initial, adjusted, or periodic increase of rates;

28 (d) Publication and Hearing of initial, adjusted, or periodic increase of such rates;

29 (e) Factors in determining the rates (which may include the parametric formula as
30 approved by the Approving Body);

31 (f) Decision and Order; and

32 (g) Appeal Process.

1 Section 163. Basis of approval of initial rates and other charges and adjustments

2

3 All regulatory bodies shall approve the initial tolls, fares, fees, rentals, and other charges and
4 adjustments thereof, on the basis of service quality, key performance indicators, the principles
5 of fairness, transparency, predictability, and protection of public interest while providing for a
6 Reasonable Rate of Return on capital or investment by the Private Partner, as applicable, and
7 other stipulations in the PPP contract.

8

9 Pursuant to Section 13 of the Code, in the case of solicited proposals where the bid parameter
10 is the initial value of the tariff which shall not exceed the maximum acceptable value or ceiling
11 of the tariff set by the Implementing Agency, the Implementing Agency shall, prior to the
12 issuance of the bidding documents to the bidders, obtain from the appropriate regulatory body
13 its clearance or approval of the said maximum acceptable value or ceiling of the tariff.

14 Section 164. Upholding of initial rates and other charges and adjustments

15

16 During implementation of the PPP Project, all regulatory bodies shall uphold the approved
17 initial tolls, fares, fees, rentals, and other charges and adjustments thereof.

18

19 Any government entity that fails to implement the initial tolls, fares, fees, rentals, and other
20 charges and adjustments thereof as stipulated in the PPP contract, including action or inaction
21 of the Regulatory Body, the Private Partner shall be allowed to recover the difference through
22 measures consistent with the PPP Contract and applicable laws, rules, and regulations, and
23 without prejudice to the penal sanctions provided under Section 32 of the Code.

**24 Section 165. Inclusion of the initial rates and other charges and adjustments or the
25 maximum acceptable initial values in the final Draft of the PPP Contract**

26

27 The approved initial tolls, fares, fees, rentals, and other charges - or the maximum acceptable
28 initial values of the toll, fare, fee, rental, or charge that may be proposed by bidders in the case
29 of projects for public bidding where the bid parameter is the initial value of the toll, fare, fee,
30 rental, or charge itself - and adjustments thereof shall be included in the final draft PPP
31 contract that will be circulated to all bidders prior to the bid submission date to be set by the
32 Implementing Agency.

1 **Section 166. Absence of an appropriate regulatory body and creation of a local rate**
2 **setting body**

3
4 In the absence of an appropriate regulatory body, the initial tolls, fares, fees, rentals, and other
5 charges and adjustments thereof shall be as stipulated in the PPP contract. In the case of
6 Local PPP Projects, the Implementing Agency may also opt to create and establish a local
7 rate setting body: Provided, That the composition, powers, and responsibilities of such body
8 shall be set forth in an ordinance or resolution approved by the local Sanggunian of the
9 Implementing Agency.

10 **Section 167. Posting of the approved initial rates and other charges and adjustments**
11 **in the websites**

12
13 The Implementing Agency and the PPP Center shall post in their respective websites the
14 approved initial tolls, fares, fees, rentals, and other charges and adjustments thereof in a
15 PPP Project.

16 **TITLE X - GOVERNMENT UNDERTAKINGS**

17
18 The Implementing Agency may offer any or more Government Undertakings to a PPP Project,
19 which shall be pre-cleared in principle, in writing, by the department, bureau, office,
20 commission, authority, agency, GOCC, or LGU, or any other government entity that will grant
21 the same as mandated by law. *Provided, That for JVs, the total government undertakings shall*
22 *not exceed fifty percent (50%) of the project cost.*

23
24 The Government Undertakings shall be based on the approved risk allocation matrix which
25 the Approving Body shall issue.

26
27 Subject to existing laws, policies, rules and regulations, the Government may provide form of
28 support or contribution to PPP Projects, unless otherwise prohibited by the Code and this IRR,
29 such as, but not limited, to the following:

- 30
31 (a) VGF and other forms of subsidy;
32 (b) Payment of ROW related costs;
33 (c) Performance undertaking;
34 (d) Additional exemptions from any tax other than those provided for by law;

- 1 (e) Guarantee on Demand;
- 2 (f) Guarantee on Loan Repayment;
- 3 (g) Guarantee on Private Sector Return;
- 4 (h) Government equity;
- 5 (i) Contribution of assets, properties, and rights; and
- 6 (j) Credit enhancements.

7 **Section 168. Subsidy**

8

9 For purposes of the Code and this IRR, Subsidy shall refer to an agreement whereby the
10 Implementing Agency or the national government will:

11

- 12 (a) defray, pay for, or shoulder a portion of the Project Cost or the expenses and costs in
13 operating or maintaining the project;
- 14 (b) bear a portion of capital expenses associated with the establishment of an
15 infrastructure or development project and services and/or any partial financing of the
16 PPP Project, or components thereof;
- 17 (c) contribute any property or assets to the project; and/or
- 18 (d) waive charges or fees relative to business permits or licenses that are to be obtained
19 for the Construction and Operations and Maintenance of the project:

20

21 *Provided*, That items (a) to (d) shall not be considered as Subsidy if the government receives
22 appropriate compensation from the Private Partner for such; *Provided further*, That Subsidy
23 falling under items (a) and (b) shall not exceed fifty percent (50%) of the Project Cost; *Provided*
24 *finally*, That in the case of solicited proposals, the expenses for existing ROW or ROW to be
25 acquired shall not be included in the said cap. Subsidy shall also include Viability Gap Funding
26 (VGF) which may be extended by the government to make an economically viable revenue-
27 based PPP Project financially viable: *Provided*, That government payments for ROW, and
28 resettlement shall not be considered as VGF.

29

30 In the case of a contribution of assets or property, compensation shall be considered
31 appropriate if the value of the compensation is at least equal to the value of the contribution
32 or undertaking as determined by a Third-party Appraiser. For Unsolicited Proposals, the
33 Private Proponent shall procure, at its own cost, the services of a Third-party Appraiser.

34

1 Payment of the compensation shall be made not later than the start of operations.
2 Nonpayment of compensation on the said date shall incur interest on the compensation.

3

4 The PPP Contract shall include the interest rate to be applied taking into consideration relevant
5 rules and regulations on interest. In no case shall the parties agree on an interest below the
6 prevailing risk-free rate. In cases where the proposed compensation mechanism is not fixed,
7 the Private Proponent shall ensure that the totality of payments shall meet the requirements
8 set herein; *Provided*, That at the end of concession period, if compensation still falls short of
9 the required amount, the private proponent shall pay the difference between the required
10 payment and the actual payments.

11 **Section 169. Credit Enhancements**

12

13 This shall refer to support to an infrastructure or development project by the Private Partner
14 and/or Implementing Agency concerned, the provision of which is contingent upon the
15 occurrence of certain events and/or risks, as stipulated in the contract. Credit enhancements
16 are allocated to the party that is best able to manage and assume the consequences of the
17 risk involved. Credit enhancements may include, but are not limited to, government
18 guarantees on the performance, or the obligation of the Implementing Agency under its
19 contract with the Private Partner. This shall not be applicable for Unsolicited Proposals.

20 **Section 170. Guarantee on Demand**

21

22 This refers to an agreement whereby the Implementing Agency undertakes to assume the
23 market demand risks associated with the PPP Project: *Provided*, That adoption of availability-
24 based schemes and Availability Payments shall not be considered as Guarantee on Demand.
25 This shall not be applicable for Unsolicited Proposals.

26 **Section 171. Guarantee on Loan Repayment**

27

28 This refers to an agreement whereby the Implementing Agency guarantees to assume
29 responsibility for the repayment of debt directly incurred by the Private Partner in implementing
30 the PPP Project in case of a loan default. As an exception, government repayment of debt as
31 part of Termination Payments shall not be considered as Guarantee on Loan Repayment. This
32 shall not be applicable for Unsolicited Proposals.

1 **Section 172. Guarantee on Private Sector Return**

2

3 This refers to an agreement whereby the Implementing Agency guarantees to provide a
4 predetermined rate of return on the investment of the Private Partner. This shall not cover
5 Termination Payments arising from government events of default. This shall not be applicable
6 for Unsolicited Proposals.

7 **Section 173. Government Equity**

8

9 This shall refer to the subscription by the Implementing Agency of shares of stock or other
10 securities convertible to shares of stock of the project company, whether such subscription
11 will be paid by the money or assets.

12 **Section 174. Performance Undertaking**

13

14 This shall refer to an undertaking of a department, bureau, office, commission, authority,
15 agency, GOCC, LGU, or by the Republic of the Philippines, in assuming responsibility for the
16 performance of the Implementing Agency's obligations under the contractual arrangement
17 including the payment of monetary obligations, in case of default. These undertakings may be
18 subject to payment of risk premium to the Government or LGU, or any other authorized
19 agency.

20 **Section 175. Legal Assistance**

21

22 This shall refer to the extension of representation by government lawyers to a Private Partner
23 but only in cases, hearings, or inquiries where the Implementing Agency and Private Partner
24 are party-defendants/respondents therein including the adoption by such government lawyers
25 of positions and strategies consistent with upholding the validity of the approved contractual
26 arrangement.

27 **Section 176. Security Assistance**

28

29 This shall refer to the deployment of government security forces, either from the Philippine
30 National Police (PNP) or the Armed Forces of the Philippines (AFP) in the vicinity of the project

1 site to provide security during the implementation of the project up to completion, subject to
2 the request of the Implementing Agency or Private Party.

3 **TITLE XI - Investment Incentives**

4
5 PPP Projects undertaken through the Code and this IRR, whether Solicited or Unsolicited,
6 shall be entitled to national and local investment incentives, subject to the qualifications,
7 criteria, and conditions set forth under applicable laws and policies of the government:
8 Provided, that appropriate investment incentives shall be granted to registered business
9 enterprises only to the extent of their approved registered project or activity under the Strategic
10 Investment Priority Plan, in the case of national incentives, and the applicable Local
11 Investment and Incentives Code, in the case of local incentives.

12
13 Intent to avail incentives shall be disclosed to the appropriate Approving Body during the
14 project approval stage. Further, such incentives shall be included as part of the assumptions
15 in the financial and economic models submitted during project approval.

16
17 Any exemptions or special rates on taxes for a PPP Project granted during the term of its PPP
18 contract shall be reported by the Implementing Agency to the PPP Center in writing. The PPP
19 Center may also enter into agreements with Investment Promotion Agencies and other
20 government agencies administering tax incentives for joint monitoring and information sharing
21 on PPP projects with incentives granted.

22 **TITLE XII – Valuation of Government Assets**

23 Assets, properties and/or rights to be contributed by an Implementing Agency to a PPP Project
24 shall be valued through a fair valuation as determined by a GFI or by an IPA included in the
25 list of Accredited Asset Valuers of the SEC. The report should not be older than one (1) year
26 from the date of submission to the Approving Body. In case of IPA, proof of the valuation
27 company's inclusion in the list of Accredited Asset Valuers of the SEC must be also submitted.

28
29 In case of Unsolicited Proposals containing GUs in the form of payment of ROW related costs
30 and/or contribution of assets, properties and rights, where the government receives
31 appropriate compensation, the valuation shall cover government assets and property,
32 pursuant to Section 10(c) of the Code.

33

1 In case of Joint Venture agreements, the valuation shall cover the equity contribution of the
2 government and the private partner, pursuant to Section 11(b)(2) of the Code.

3

4 In projects where the investment recovery scheme involves the grant of a portion or
5 percentage of a reclaimed land, the valuation shall cover the reclaimed land, pursuant to
6 Section 18 of the Code.

7

8 The foregoing rules shall likewise apply to Local PPP Projects.

9

TITLE XIII – Auditing of PPP Projects

10

11 Pursuant to the Government Auditing Code of the Philippines, all revenues, share, and/or
12 receipts pertaining to or accruing to the Implementing Agency derived from any PPP Project
13 undertaken through the Code and this IRR, including expenditures or uses of funds and
14 property, owned or held in trust by, or pertaining to the Government, shall be subject to
15 examination/audit by COA, including (a) ensuring that such revenues, share and/or receipts
16 are fully and properly accounted for and remitted to the Implementing Agency, and (b)
17 determining if the mandated return on rate base is complied with, in the case of negotiated
18 contracts and public utility projects which are natural monopolies.

Section 177. Private Partner Revenues

20

21 All revenues and receipts pertaining to or accruing to the Private Partner in a PPP
22 arrangement may be remitted directly to the Private Partner, as may be stipulated in the
23 contract and subject to applicable laws, rules, and regulations.

Section 178. Disclosure of Information

25

26 PPP Projects awarded under the Code and this IRR shall be subject to the Government
27 Auditing Code of the Philippines and the 2009 Revised Rules of Procedures of the
28 Commission on Audit and any amendments thereto. The COA, in consultation and
29 coordination with the PPP Center, shall adopt and promulgate the necessary framework and
30 guidelines on accounting and auditing PPP Projects, respectively. The same shall include
31 auditing guidelines that will guide the COA auditors who shall be assigned to audit PPP
32 Projects.

33

1 Furthermore, the COA, in coordination with the PPP Center, shall have the authority to access
2 all project-related documents. Notwithstanding the provisions of the Non-Disclosure
3 Agreement, the Implementing Agency and the Private Partner shall cooperate with the PPP
4 Center and provide the latter the disclosure of information to the COA and other necessary
5 documents to conduct the audit of the project as mandated by law.

6 **TITLE XIV - Variation, Expansion, or Extension of an Existing PPP Project**

7

8 A contract variation, expansion, or extension of an existing PPP Project may be allowed,
9 subject to due diligence and recommendation of the Head of the Implementing Agency.

10

11 The following variation, expansion, or extension of an existing PPP Project, shall be approved
12 by the appropriate Approving Body as identified under Section 7 of the Code:

13

14 (a) Changes in the agreed schedule or parametric formula to calculate tolls, fares, fees,
15 rentals, and other charges and adjustments thereof, as stipulated in the PPP contract,
16 unless already regulated and publicly-disclosed;

17 (b) Decrease in the Implementing Agency's revenue or profit share derived from the
18 project, except as may be allowed under a formula approved by the relevant regulatory
19 or Approving Body;

20 (c) Change in the approved scope of works, decrease in the performance standards,
21 deferment of committed service levels, or change in the contractual arrangement;

22 (d) Extension in the contract term; or

23 (e) Any variation that will result in an increase in the financial liabilities of the government
24 under the PPP Project.

25

26 All variations outside of items (a) to (e) above shall be approved in writing by the Head of the
27 Implementing Agency, and reported to the PPP Center, also in writing: *Provided*, That for
28 projects to be approved by ICC, the ICC may establish limitations on variations under (c) and
29 (e) which may be approved by the head of the implementing agency, as part of the approved
30 PTCs of the PPP Project during the project approval process of the project.

31

32 Provided that if the approving body is the Head of the Implementing Agency, the head of the
33 implementing agency shall not be allowed to approve any contract variation, expansion or
34 extension which will result in a PPP Project that is under the jurisdiction of the ICC as provided
35 in Section.

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For the avoidance of doubt, in cases where the relief afforded to the Private Partner falls under items (b) and (c) above, the change or the decrease may be allowed, subject to due diligence and recommendation of the Head of the Implementing Agency. In cases where the relief afforded to the Private Partner falls under item (d) above, the extension shall be approved by the appropriate Approving Body.

A variation relating to items (c), (d), and (e) undertaken during the term of the PPP Contract and within the limitations established by the Approving Body shall not require further approval from the Approving Body.

Failure to secure the approval of the Head of the Implementing Agency and/or the appropriate Approving Body, as provided in this Section, shall render the variation, expansion, or extension void. no variation, expansion, or extension shall be implemented before it is approved. The splitting of any proposed changes, for the purpose of circumventing the limitations and conditions prescribed in the PTCs set by the Approving Body, is expressly prohibited.

Guidelines to be used by the Head of the Implementing Agency and the appropriate Approving Body in reviewing and approving endorsed variations shall be formulated by (1) the ICC, in coordination with the PPP Center, for National PPP Projects; and (2) the PPP Governing Board for Local PPP Projects.

All new variations, including those pending approval, shall be governed by the Code and this IRR, unless there is an infringement on the substantive rights.

For avoidance of doubt, any allowable amendments to the approved PPP Contract and waivers executed by and between the Implementing Agency and the Private Partner which have the same effect or consequence as items (a) to (e) above shall constitute variations and shall require approval in accordance with this Title XIV.

TITLE XV - DIVESTMENT OR TAKEOVER BY THE GOVERNMENT

Section 179. Divestment

Subject to the approval of the Head of the Implementing Agency, a Private Partner may divest its ownership, rights, or interest in a PPP Project: *Provided*, That the divestiture shall be after

1 a holding or lock-in period as indicated in the PPP contract; *Provided further*, That the new
2 Private Partner has equal or better qualifications as with the previous Private Partner.

3
4 The Implementing Agency may divest its ownership, rights, or interest in a project: *Provided*,
5 That projects which involve full or partial divestment or transfer of ownership of government
6 assets or properties shall be subject to approval of the appropriate Approving Body and
7 applicable laws, decrees, orders, rules, and regulations.

8
9 A divestment made in violation of the Code and this IRR shall be a ground for disqualification
10 of the Private Partner or cancellation of the PPP contract, as the case may be, and forfeiture
11 of the Private Partner's bid or performance security.

12
13 The Implementing Agency shall, within five (5) calendar days from the approval of any change
14 in ownership, inform in writing the PPP Center of such change for monitoring purposes.

15 **Section 180. Temporary or Permanent Takeover by the Government**

16
17 Subject to the provisions of the Constitution, existing laws, rules and regulations, and the PPP
18 Contract, in cases of emergency or when public interest so requires, the Implementing Agency
19 may, by written notice to the Private Partner immediately takeover the PPP Project or any part
20 thereof.

21
22 **(a) Temporary Takeover**

23
24 During a temporary takeover, the Implementing Agency shall retain the tolls, fares,
25 fees, rentals, and other charges from the PPP Project and shall be responsible for the
26 corresponding costs to rectify, operate and maintain the PPP Project. Once the
27 temporary takeover has ceased, the Implementing Agency shall return the PPP Project
28 to the Private Partner.

29
30 During such temporary takeover, the contract term shall be suspended until the PPP
31 Project or operations thereof is returned to the Private Partner.

32
33 The PPP Contract must include provisions allowing for a temporary takeover by the
34 Implementing Agency along with the conditions that must be met for the cessation of
35 the temporary takeover. The PPP Contract must also provide for the terms of the return

1 of the PPP Project to the Private Partner after a temporary takeover, such as but not
2 limited to:

- 3
- 4 (i) Compensation due to the Private Partner resulting from the temporary takeover;
 - 5 (i) Adjustment of KPIs to the extent that defects in the PPP Project cannot be
6 rectified; and
 - 7 (ii) Warranty in favor of the Private Partner that the PPP Project is capable of
8 meeting the KPIs as adjusted, covering a reasonable period from the time of
9 return of the PPP Project to the Private Partner.

10

11 **(b) Permanent Takeover**

12

13 In case of a permanent takeover, the Private Partner shall be entitled to claim
14 Termination Payments in accordance with Title XVI. For purposes of this Section
15 173(b), the continuous and uninterrupted takeover by the Implementing Agency of the
16 PPP Project over a minimum period to be defined in the PPP Contract from the date
17 of receipt by the Private Partner of a written takeover notice shall be deemed to be a
18 permanent takeover.

19

20 If necessary, the Implementing Agency shall immediately enact the relevant rules,
21 regulations, or ordinance to facilitate the takeover of PPP Projects.

22

23 **TITLE XVI - CONTRACT TERMINATION**

24 **Section 181. Contract Termination**

25

26 All PPP contracts shall define all events that may lead to its termination, including but not
27 limited to:

- 28
- 29 (a) Implementing Agency event of default;
 - 30 (b) Private Partner event of default;
 - 31 (c) Force majeure and other no-fault termination events; and
 - 32 (d) Other termination events, as may be agreed upon by the parties.

33

34 For such events that may lead to contract termination, the PPP contract shall provide
35 remedies, curing periods, lender step-in rights, remittance procedures, default interest rates,

1 and written notice requirements agreed upon by both parties. The contract shall likewise
2 provide that termination shall take place only upon failure to remedy or cure the default in
3 accordance with the PPP contract.

4 **Section 182. Termination Payments**

5
6 The amount of termination payment shall be determined by the parties pursuant to the
7 contract, following the guidelines and related reportorial requirements issued by the PPP
8 Governing Board.

9
10 An independent appraiser shall be required under the PPP Contract for purposes of computing
11 the termination payment. Such independent appraiser shall be chosen by mutual consent of
12 the parties. The cost of hiring the independent appraiser shall be borne by the party at fault,
13 except in cases of termination that is neither the fault of the Implementing Agency nor the
14 Private Partner, in which case, the cost shall be divided equally.

15
16 The amount of termination payment determined by the independent appraiser shall be binding
17 on both the Private Partner and the Implementing Agency, absent manifest error or fraud.

18
19 For the continuity of public services, the government is authorized to take possession of the
20 assets or facilities prior to the payment of termination payment.

21

22 **Section 183. Commission of Administrative, Civil, and Penal Sanctions**

23
24 The acts committed by the Private Partner, its concerned officers, and the Implementing
25 Agencies through its present and former officers or employees, in violation of Section 32 of
26 the PPP Code may cause the termination of the PPP Contract.

27 **TITLE XVII - PPP Center**

28 **Section 184. Institutionalization of the PPP Center**

29
30 To achieve the goals of the Code and this IRR, the PPP Center created under Executive Order
31 No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, and further
32 amended by Executive Order No. 30, series of 2023, is institutionalized by the Code. It is

1 authorized by the Code to adopt its current organizational structure, absorb its existing
2 employees, and upgrade its human resource component, as may be necessary, subject to
3 applicable laws, rules, and regulations.

4

5 The PPP Center shall report directly to the PPP Governing Board and be attached to the
6 NEDA for policy and program coordination.

7 **Section 185. Powers and Functions of the PPP Center**

8

9 To work towards a more efficient and effective performance of its mandate, the PPP Center
10 shall have the following powers and functions:

11

12 (a) Assist Implementing Agencies in identifying, prioritizing, developing, and maintaining
13 a pipeline of PPP Projects;

14 (b) Provide project advisory services and technical assistance to Implementing Agencies,
15 Approving Bodies, and other oversight agencies in all PPP-related matters, and act as
16 a procurement agent upon the request of the Implementing Agency, in accordance
17 with Section X of this IRR;

18 (c) Facilitate the appraisal and approval of PPP Projects by the ICC and the NEDA Board;

19 (d) Review PPP contracts pursuant to Section 8(a) of the Code;

20 (e) Require the submission of PPP Project documents including executed PPP contracts,
21 and any subsequent amendment or supplement thereto, including settlement
22 agreements, entered into by Implementing Agencies, notwithstanding the
23 confidentiality clauses that are stipulated therein;

24 (f) Provide regular monitoring and status reports on the implementation of the PPP
25 Program and all PPP Projects entered into by Implementing Agencies, including
26 potential public interest concerns and violations of the PPP Code, to the Office of the
27 President, the Congress of the Philippines, and relevant oversight committees and
28 agencies, and publish the same in the official website of the PPP Center unless
29 otherwise prohibited by existing laws, rules, and regulations;

30 (g) Serve as the central repository of all PPP Project information;

31 (h) Develop the capacities of Implementing Agencies, Approving Bodies, PPP units
32 referred to in Section 28 of the Code, and other relevant stakeholders on PPPs;

33 (i) Promote and market the PPP Program and PPP Projects, in collaboration with other
34 government investment promotion agencies;

- 1 (j) Recommend plans, policies, and implementation guidelines related to PPPs, in
- 2 consultation with appropriate oversight committees or agencies, Implementing
- 3 Agencies, private sector, and other relevant stakeholders;
- 4 (k) Draft policy matter opinions for approval by the PPP Governing Board in response to
- 5 requests by government agencies and private entities;
- 6 (l) Issue non-policy matter opinions relating to PPPs;
- 7 (m) Ensure sustainability of the implemented PPP Program and PPP Projects through
- 8 monitoring, documenting, and sharing the lessons learned and best practices to
- 9 Implementing Agencies, Approving Bodies, oversight committees or agencies, and
- 10 other relevant stakeholders;
- 11 (n) Advise and assist Implementing Agencies and oversight agencies in developing and
- 12 periodically updating an organizational development plan that will enable them to
- 13 competently perform their functions under the Code and this IRR; and recommend to
- 14 the Department of Budget and Management (DBM) the standards of training,
- 15 qualification, and compensation for necessary personnel under these organizational
- 16 development plans;
- 17 (o) Manage and administer the Project Development and Monitoring Facility (PDMF) as
- 18 provided in Section 26 of the Code and Title XIX of this IRR;
- 19 (p) Manage and administer the PPP Risk Management Fund as provided in Section 27 of
- 20 the Code and Title XX of this IRR;
- 21 (q) Act as Secretariat to the PDMF Committee and the PPP Governing Board; and
- 22 (r) Perform such other functions as may be necessary to achieve the objectives and
- 23 purposes of the Code and this IRR.

24

25 The PPP Center may receive contributions, grants, and/or other funds from, among others,

26 government agencies and corporations, LGUs, local and foreign donors, development

27 partners, and private sector/institutions subject to applicable laws, rules, and regulations.

28

29 **Section 186. The Executive Director**

30

31 The PPP Center shall be headed by an Executive Director with the rank equivalent to an

32 Undersecretary, who shall be appointed by and co-terminus with the President of the

33 Philippines. The Executive Director shall perform the following functions:

- 34
- 35 (a) Undertake the day-to-day management and supervise the operations of the PPP
- 36 Center;

- 1 (b) Recommend to the PPP Governing Board such policies and measures which are
- 2 deemed necessary for the effective exercise and discharge of the powers and
- 3 functions of the PPP Center;
- 4 (c) Sit as a member of the PPP Governing Board, the Infrastructure Committee -
- 5 Technical Board (INFRACOM), and ICC - Technical Board, and other inter-agency
- 6 bodies in cases where PPPs are concerned; and
- 7 (d) Perform such other functions as may be assigned by the PPP Governing Board.

8 **Section 186. PPP Center as Procurement Agent**

9

10 During the procurement stage, the Implementing Agency may request in writing that the PPP

11 Center conduct procurement for a specific PPP Project on their behalf. The PPP Center may

12 accept such request for a reasonable fee under the following circumstances:

- 13
- 14 (a) If the PPP Project to be procured is complex and the Implementing Agency lacks the
- 15 capacity to procure such project; or
- 16 (b) If the PPP Project is considered pioneering and the Implementing Agency lacks
- 17 capacity.

18

19 As a procurement agent, the PPP Center shall assume the functions of the PBAC under Title

20 VI of this IRR and recommend to the Head of the Implementing Agency the award of the PPP

21 contract. The Implementing Agency shall appoint at least one (1) qualified member in the

22 PBAC as a voting member to oversee the procurement and represent their interests in all

23 relevant decisions.

24

25 The Implementing Agency and the PPP Center shall execute a legal document that clearly

26 states the terms and conditions of the procurement arrangement. Both agencies must strictly

27 adhere to best practices and principles that promote accountability, integrity, fairness,

28 transparency, and efficiency in the procurement process.

29

30 The PPP Governing Board shall issue supplemental guidelines to operationalize such function

31 of the PPP Center.

1 TITLE XVIII - PPP GOVERNING BOARD

2 CHAPTER 1 – POWERS, FUNCTIONS, AND COMPOSITION

3 **Section 187. Powers and Functions of the PPP Governing Board**

4
5 The PPP Governing Board, created under EO No. 136, series of 2013, as amended by EO
6 No. 30, series of 2023, is institutionalized by the Code. It shall be the overall policy-making
7 body for all PPP-related matters, including the PDMF. It shall also be responsible for setting
8 the strategic direction of the PPP Program and PPP Projects and in creating an enabling policy
9 and institutional environment for PPP.

10
11 All issuances, orders, resolutions, decisions, or other acts of the PPP Governing Board shall
12 be binding, unless otherwise stated thereby.

13
14 **Section 188. Composition of the PPP Governing Board**

15
16 The PPP Governing Board shall be composed of the following:

17
18 **Chairperson:** Secretary of NEDA

19 **Vice-Chairperson:** Secretary of DOF

20 **Secretariat:** PPP Center

21 **Members:**

22 (a) Secretary of DBM;

23 (b) Secretary of DOJ;

24 (c) Secretary of Department of Trade and Industry;

25 (d) Secretary of the DILG;

26 (e) Secretary of the DENR;

27 (f) Chairperson of the CHED;

28 (g) Executive Secretary;

29 (h) Executive Director of the PPP Center; and

30 (i) One (1) private sector representative from the infrastructure sector to be
31 appointed by the PPP Governing Board.

32
33 The members of the PPP Governing Board may designate, through a special order, their
34 respective alternates, who shall in no case be lower than Assistant Secretary, and whose acts

1 shall be considered the acts of their principals. The official designation of alternates signed by
2 the principal member concerned shall be submitted to the PPP Center within fifteen (15)
3 calendar days after the effectivity of this IRR.

4

5 The presence of the Chairperson and five (5) other members of the PPP Governing Board
6 shall constitute a quorum and a majority vote of the members present shall be necessary for
7 the adoption of any issuance, order, resolution, decision, or other act of the PPP Governing
8 Board in the exercise of its functions. The PPP Governing Board shall act as a collegial body.

9

10 The PPP Governing Board may prescribe and, as deemed necessary, update guidelines and
11 protocols for the conduct of its regular and special meetings.

12 **Section 189. Appointment of the Private Sector Representative**

13

14 The PPP Governing Board shall issue the necessary rules and procedures on appointing the
15 private sector representative from the infrastructure sector, including its alternate
16 representative, if any, and their duration of service.

17

18 The private sector representative shall promptly notify the Board of any actual, perceived, or
19 potential conflict of interest that could affect the performance of their duties as a member of
20 the PPP Governing Board.

21 **TITLE XIX - PROJECT DEVELOPMENT AND MONITORING FACILITY (PDMF)**

22 **Section 190. Institutionalization of the PDMF**

23

24 The PDMF referred to under EO No. 8, series of 2010, as amended by EO No. 136, series of
25 2013, and further amended by EO No. 30, series of 2023, is institutionalized by the Code. The
26 PDMF is a funding mechanism available to Implementing Agencies for the procurement of
27 advisory and support services related to the preparation, structuring, evaluation, procurement,
28 probity management, Financial Close, and monitoring of implementation of PPP Projects.
29 These services may include preparation and conduct of business case, pre-feasibility and
30 feasibility studies, preparation of tender documents, appointment of probity advisors,
31 procurement of independent consultants, and other activities in the preparation, procurement,
32 and implementation of PPP Projects.

33

1 The PDMF may also be used for such other services as may be required or contemplated
2 under applicable laws, rules, and regulations, and as may be determined by guidelines and
3 procedures to be issued by the PPP Governing Board.

4 **Section 191. Sources of the PDMF Funds**

5
6 The PDMF may be funded through the GAA, ODA, or other sources, subject to applicable
7 laws, rules, and regulations.

8
9 The Implementing Agencies are authorized to reallocate their funds for purposes of the PDMF,
10 subject to the provisions of the GAA and relevant accounting and auditing rules and
11 regulations.

12 **Section 192. PDMF Management**

13
14 The PDMF shall be managed and administered by the PPP Center as a revolving fund. To
15 sustain the PDMF, the PPP Center may recover amounts disbursed and receive fees under
16 the guidelines to be issued by the PDMF Committee and approved by the PPP Governing
17 Board. Such amount shall be retained and authorized to be used by the PPP Center for the
18 purposes indicated in the Code and this IRR.

19 **Section 193. Institutionalization of the PDMF Committee and its Powers and Functions**

20
21 The PDMF Committee institutionalized by the Code shall approve applications for PDMF
22 support submitted by the Implementing Agencies.

23
24 Subject to the approval of the PPP Governing Board, the PDMF Committee shall also
25 formulate, prescribe, and recommend policies, procedures, and guidelines for PDMF use and
26 recovery of costs charged to the fund.

27 **Section 194. Composition of the PDMF Committee**

28
29 The PDMF Committee shall be composed of one (1) representative from the following
30 agencies, who shall in no case be lower than Assistant Secretary:

- 31
32 (a) NEDA as Chairperson;
33 (b) DOF as Vice Chairperson;

- 1 (c) DBM as member; and
- 2 (d) PPP Center as member and Secretariat.

3

4 The official designation of the representatives signed by the head of the Agency concerned
5 shall be submitted to the PPP Center within fifteen (15) calendar days after the effectivity of
6 this IRR.

7

TITLE XX - PPP RISK MANAGEMENT FUND

8

Section 195. Creation and the Use of the PPP Risk Management Fund

9

10 The Code creates a PPP Risk Management Fund to ensure fiscal sustainability and negotiate
11 better financing terms for PPP Projects. The Fund shall be used to pay government Contingent
12 Liabilities arising from PPPs, in accordance with its contract terms; *Provided*, That the
13 Implementing Agency has exhausted all remedies under the PPP contract and other identified
14 measures in the risk mitigation plan prior to availing the fund.

15

16 The PPP Risk Management Fund shall serve as a measure to manage the national
17 government's fiscal risks arising from PPP Projects, strengthen the country's credibility among
18 the private sector, and ensure timely compliance with the contractual obligations of the
19 Implementing Agencies.

20

Section 196. Eligible PPP Projects for PPP Risk Management Fund

21

22 A PPP Project shall be eligible to avail of the PPP Risk Management Fund support upon the
23 Implementing Agency's payment of contribution to the fund, following the guidelines to be
24 issued by the Development Budget Coordination Committee (DBCC).

25

26 Local PPP Projects may be eligible for the PPP Risk Management Fund of the national
27 government even if the LGU has its own PPP Risk Management Fund, subject to the payment
28 of contributions under the guidelines to be issued by the DBCC.

29

Section 197. Coverage of the PPP Risk Management Fund

30

31 The fund support for a PPP Project shall start thirty (30) calendar days upon confirmation by
32 the PPP Center of the Implementing Agency's first contribution. Any Contingent Liabilities

1 arising from events specified in a PPP Contract that occurred prior to the coverage date shall
2 not be covered by the fund, except for exceptional and urgent circumstances identified by the
3 DBCC in the guidelines it shall issue.

4 **Section 198. Roles of Agencies or Committees Involved**

5

6 (a) The PPP Center – The PPP Center shall have the following responsibilities:

7

(i) Manage and administer the PPP Risk Management Fund;

8

(ii) As the repository of all PPP Project information, undertake the monitoring of
9 project risks and Contingent Liabilities and report them to the Inter-Agency
10 Technical Working Group on Contingent Liabilities (TWG-CL) created under the
11 DBCC Resolution No. 2015-2; and

12

(iii) In coordination with the TWG-CL, formulate guidelines on managing Contingent
13 Liabilities arising from PPP Projects and using the PPP Risk Management Fund,
14 for approval by the DBCC.

15

16 (b) TWG-CL - The TWG-CL shall have the following responsibilities:

17

(i) Recommend the target amount of the PPP Risk Management Fund using risk-
18 adjusted methods or such other means that estimate the exposure of the
19 Government of the Philippines to PPP contingent liabilities, for further
20 determination of the DBCC;

21

(ii) Evaluate applications for fund support, using the criteria in the guidelines to be
22 issued by the DBCC, and submit its recommendation to the DBCC;

23

(iii) Issue regular reports to the DBCC on the status of the fund, and any other relevant
24 information on PPP projects as may be requested; and

25

(iv) As necessary, recommend to the DBCC appropriate actions to mitigate and avoid
26 the recurrence of realized obligations, subject to prudent risk management
27 measures in the event a Contingent Liability is realized.

28

29 The TWG-CL shall be composed of the Bureau of Treasury as the Secretariat,
30 with the DOF, DBM, and PPP Center as permanent members.

31

32 (c) DBCC – The DBCC shall have the following responsibilities:

33

(i) Determine the target amount of the PPP Risk Management Fund using risk-
34 adjusted methods or such other means that estimate the exposure of the
35 Government of the Philippines to Contingent Liabilities;

- 1 (ii) Issue the guidelines on the management of Contingent Liabilities arising from PPP
2 Projects and the use of the PPP Risk Management Fund; and
3 (iii) Considering the recommendation of the TWG-CL, decide on the application
4 through the issuance of a resolution, or if circumstances warrant, refer the matter
5 to the President.
6

7 For Local PPP Projects, the LGUs may establish a similar risk management fund according to
8 the guidelines to be issued by the PPP Governing Board. The fund may be sourced from the
9 budget of the LGU and income earned from PPP Projects.

10 **Section 198. Determination of the Target Amount**

11
12 The target amount in the PPP Risk Management Fund is to be determined by the DBCC using
13 risk-adjusted methods or such other means that estimate the exposure of the Government of
14 the Philippines to Contingent Liabilities.

15 **Section 199. Sources of Funding**

16
17 The PPP Risk Management Fund shall be funded by: (a) general appropriations; (b) income
18 from existing PPP Projects; and (c) other sources as may be determined by the DBCC.

19 **Section 200. Payment of Contribution and Release of Funds**

20
21 The amount, timing, and process of payment of the contribution to be made by the
22 Implementing Agency for their PPP Project shall be based on the guidelines to be issued by
23 the DBCC. The process for the release of funds after approval of an application shall be
24 similarly determined in the guidelines.

25 **Section 201. Guidelines for availing the PPP Risk Management Fund**

26
27 The DBCC shall issue the guidelines for the collection of contributions, the application for fund
28 support, the evaluation and approval of applications, and the disbursement of funds, subject
29 to applicable laws, rules, and regulations.
30

Section 202. Monitoring and Reporting of Contingent Liabilities and Utilization of the PPP Risk Management Fund

The guidelines to be issued by the DBCC shall also provide the mechanisms for reporting of project risks and Contingent Liabilities for monitoring the fiscal exposure of the government arising from PPPs. It shall also provide mechanisms for reporting of status of the fund, including the status of the contribution of the Implementing Agencies, applications for fund support, and disbursements made.

TITLE XXI - PROHIBITION ON THE ISSUANCE OF TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS, PRELIMINARY MANDATORY INJUNCTIONS, AND SIMILAR PROVISIONAL REMEDIES

No temporary restraining order, preliminary injunction, preliminary mandatory injunction, temporary environmental protection order, or similar temporary or provisional reliefs or remedies shall be issued by any court, except the Supreme Court, against any Implementing Agency or the PPP Center, its officials or employees, or any person or entity, whether public or private acting under the government direction, to restrain, prohibit, or compel the following acts:

- (a) Evaluation, acceptance, and rejection of Unsolicited Proposals, including but not limited to, preliminary examination and screening for completeness, and any and all acts, determinations, or decisions by the Implementing Agency, and the PPP Center, in relation thereto;
- (b) Bidding, rebidding, or declaration of failure of bidding of any PPP Project;
- (c) Awarding of any PPP contract;
- (d) Acquisition, clearance, development of the ROW, site. or location of any PPP Project;
- (e) Construction, operation and maintenance of any PPP Project;
- (f) Commencement, execution, implementation, termination or rescission of any PPP contract; and
- (g) Undertaking or authorization of any other lawful activity necessary for such PPP Project.

This prohibition shall apply in all cases, disputes, or controversies instituted by any person, including cases filed by bidders or those claiming to have rights through such bidders. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable

1 injury will arise. The applicant shall file a bond, in an amount to be fixed by the court. The bond
2 shall accrue in favor of the government if the court should finally decide that the applicant was
3 not entitled to the relief sought.

4
5 In addition to any civil and criminal liabilities a judge may incur under existing laws, any judge
6 who shall issue a temporary restraining order, preliminary injunction or preliminary mandatory
7 injunction, temporary environmental protection order, or similar temporary or provisional reliefs
8 or remedies in violation of this Section, shall suffer the penalty of suspension of at least sixty
9 (60) calendar days without pay.

10
11 Any temporary restraining order, preliminary injunction, preliminary mandatory injunction,
12 temporary environmental protection order, or similar temporary or provisional reliefs or
13 remedies issued in violation of this Section is void and of no force and effect. If after due
14 hearing the court finds that the award of the contract is null and void, the court may, if
15 appropriate under the circumstances, award the contract to the qualified and winning bidder
16 or order a rebidding of the same, without prejudice to any liability that the guilty party may
17 incur under existing laws.

18 **TITLE XXII - ADMINISTRATIVE, CIVIL, AND PENAL SANCTIONS**

19 **Section 203. Prohibited Acts and Penalties**

20
21 A penalty of imprisonment of three (3) to six (6) years and a fine ranging from One million
22 pesos (P1,000,000.00) to Five million pesos (P5,000,000.00) shall be imposed on any person,
23 whether a private individual or a public officer or employee, who commits the following
24 prohibited acts:

- 25 (a) Downgrading the category of the Project Cost for purposes of evading the required
26 approvals under the PPP Code;
- 27 (b) Falsifying or inserting provisions in the execution copy of the PPP contract which are
28 materially and substantially different from the approved final draft contract;
- 29 (c) Violating the following sections under the Code:
- 30 (i) Section 6 on the Identification and Development of PPP Projects;
 - 31 (ii) Section 7 on the Approval of PPP Projects;
 - 32 (iii) Section 8 on the PPP Pre-qualification, Bids and Awards Committee;
 - 33 (iv) Section 9 on Solicited Proposals;
 - 34 (v) Section 10 on Unsolicited Proposals;
 - 35 (vi) Section 11 on Joint Ventures;

- 1 (viii) Section 13 on the Issuance of Franchise and Regulation of Tolls, Fares, Fees,
2 Rentals, and Other Charges;
- 3 (ix) Section 16 on Project Supervision and Monitoring;
- 4 (x) Section 19 on Variation, Expansion, or Extension of an Existing PPP Project;
- 5 (xi) Section 20 on Divestment;
- 6 (xii) Section 29 on Safekeeping and Public Disclosure of Tender Documents and PPP
7 Contracts;
- 8 (xiii) Section 30(b) on Conflict of Interest; and
- 9 (xiv) Section 30(c) on Confidentiality of Information.

10
11 Insofar as the determination of completion and the conduct of a detailed evaluation of
12 an Unsolicited Proposal and the qualification of the Private Proponent is concerned,
13 neglecting or refusing to act on the Unsolicited Proposal within the prescribed period
14 shall constitute a violation of Section 10 of the PPP Code;

- 15
- 16 (d) In case of public officer/s acting as the approving authority or member of the Approving
17 Body, knowingly or with gross negligence, approving any PPP contract that is contrary to
18 law or manifestly and grossly disadvantageous to the government and the public, whether
19 or not the public officer/s is/are signatory/ies to the PPP contract;
- 20 (e) In case of two (2) or more Private Proponents, agreeing and submitting different bids as
21 if *bona fide*, with the knowledge that such will not be accepted, and that the PPP contract
22 will be awarded to the pre-arranged Most Responsive Bid;
- 23 (f) In case of a Private Proponent, maliciously submitting different bids through two or more
24 persons, corporations, partnerships, or any other business entity in which they have
25 interest in to create the appearance of competition that does not in fact exist so as to be
26 adjudged as the winning Private Proponent;
- 27 (g) In case of two or more Private Proponents or prospective Private Proponents, entering
28 into an agreement which call upon one to refrain from bidding or participating in a PPP
29 Project, or which call for withdrawal of bids already submitted, or which are otherwise
30 intended to secure as undue advantage to any one of them;
- 31 (h) Participating in a public bidding using the name of another or allow another to use one's
32 name for the purpose of participating in a public bidding; and
- 33 (i) Withdrawing a bid, after it shall have been declared the winner, or refusing award, without
34 just cause for the purpose of forcing the Implementing Agency to award the PPP contract
35 to another bidder. This shall include the non-submission of requirements such as, but not
36 limited to, performance security, preparatory to the final award of the contract.
- 37

1 A penalty of imprisonment of three (3) to six (6) years **or** a fine ranging from One million pesos
2 (P1,000,000.00) to Five million pesos (P5,000,000.00) shall be imposed on any person,
3 whether a private individual or a public officer or employee, who commits the following
4 prohibited acts:

- 5 (a) Submitting of any false information or falsified documents, or concealing any information
6 at any stage of a PPP Project by a Private Proponent or Private Partner that may affect
7 their eligibility or is otherwise required by the PPP contract or the law;
- 8 (b) Opening any proposal or any sealed bid including any and all documents required to be
9 sealed or divulging their contents, prior to the appointed time for their public opening;
- 10 (c) Unduly influencing or exerting undue pressure on any member, officer, or employee of
11 the Approving Body or Implementing Agency to take a particular action with the intent to,
12 or tends to favor a particular Private Proponent or Private Partner; and
- 13 (d) Performing any act which restricts transparency or tend to restrain the natural rivalry of
14 parties or operates to stifle or suppress competition in the PPP process.

15
16 Each act committed in violation of the Code shall be treated as a separate and independent
17 violation and shall each be subject to the appropriate penalty.

18 **Section 204. Setting of the Fine**

19
20 The setting of the fine shall be on a case-by-case basis, depending on the gravity and duration
21 of the violation, taking into account all the relevant circumstances of the case, *Provided: That*,
22 in no case shall the imposable fine for each violation exceed Five Million Pesos
23 (P5,000,000.00) nor shall the imposable fine be less than One Million Pesos (P1,000,000.00)
24 for each offense.

25 **Section 205. Liability of Private Individuals**

26
27 The commission of prohibited acts under the Code and this IRR by the Private Partner and its
28 concerned officers may cause the termination of the PPP contract, the lapse of any applicable
29 warranty period, and the perpetual disqualification of the Private Partner from participating in
30 any public bidding or entering into any contractual arrangement allowed in the Code. This is
31 without prejudice to any other civil or administrative liability that erring officials, Private
32 Proponents, or Private Partners may incur.

33

1 **Section 206. Liability of Public Officers and Employees**

2

3 The liability of the public officer or employee, or former public officer or employee for any
4 violation of the Code and this IRR shall survive the retirement, resignation, expiration of term,
5 or removal from office, of said public officer or employee, and shall include the prohibition for
6 the erring officer to hold public office, either as an elected, or an appointed government official
7 to any local or national position. The said public officer or employee is also prohibited to act
8 as a consultant for the Philippine Government with regard to any activity provided or
9 authorized in the Code, the termination of the PPP contract, and the lapse of any applicable
10 warranty period/s.

11 **Section 207. Effect of Lawful Performance of Duties**

12

13 No administrative, criminal, or civil proceedings shall lie against any person for having
14 committed acts in violation of the Code and this IRR in the regular performance of his duties
15 in good faith.

16 **TITLE XXIII - Transitory Clause**

17

18 For purposes of this Title XXIII, “established rights and obligations” shall refer to rights and
19 obligations, which are absolute, complete, and no longer open to doubt or controversy at the
20 time of the effectivity of the PPP Code. For this purpose, the concepts of vested rights and the
21 non-impairment clause under the Constitution shall be relevant in the application of this Title
22 XXIII.

23

24 Upon effectivity of this IRR, the following rules shall apply:

25 **Section 208. Existing Contracts**

26

27 All existing contracts shall be governed by the agreements entered into by the concerned
28 parties. The provisions of the PPP Code shall be applied suppletorily to the extent that such
29 application does not infringe upon established rights and obligations of the parties under the
30 existing contracts.

1 **Section 209. PPP Projects with a Winning Bidder but no executed contracts**

2

3 All PPP Projects issued with a Notice of Award (NOA) but without any executed contracts at
4 the time of the effectivity of the Code to the extent that such application does not infringe upon
5 established rights and obligations, shall be governed by the Code and this IRR, except for the
6 rules provided under the instruction to bidders and the conditions stated in the NOA that was
7 issued prior to the effectivity of the Code.

8

9 The composition of the Special Bids and Awards Committee (SBAC), Joint Venture Selection
10 Committees (JVSC), and all other applicable bidding committees of the projects covered under
11 this section at the time of the effectivity of the Code shall remain the same and effective.

12 **Section 210. Solicited PPP Projects which have published an Invitation to Bid prior to**
13 **the effectivity of the Code**

14

15 Solicited PPP Projects which have commenced bidding before the effectivity of the Code, shall
16 be governed by the rules under the Code and this IRR to the extent that such application does
17 not infringe upon established rights and obligations, except for the bidding rules or any
18 amendments thereto issued by SBAC, PBAC, JVSC, or the applicable bidding committee. In
19 case of gaps in the rules of the bidding process, the respective bidding committee shall use
20 the provisions of the PPP Code as reference.

21

22 The composition of the SBAC, PBAC, JVSC, and all other applicable bidding committees of
23 the projects covered under this section, created before the effectivity of the Code, shall remain
24 the same and effective.

25 **Section 211. Unsolicited PPP Projects which have commenced comparative**
26 **challenge prior to the effectivity of the Code**

27

28 Unsolicited PPP Projects which have commenced comparative challenge before the effectivity
29 of the Code shall be governed by the rules under the PPP Code and this IRR to the extent
30 that such application does not infringe upon established rights and obligations, except for the
31 comparative challenge rules or any amendments thereto issued by SBAC, PBAC, JVSC, or
32 the applicable bidding committee. In case of gaps in the rules of the comparative challenge
33 process, the respective bidding committee shall use the provisions and principles of the PPP
34 Code as reference.

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For avoidance of doubt, the prequalification rules and requirements, which were used to pre-qualify the Original Proponent before the effectivity of the Code and this IRR, shall apply to all challengers.

The Original Proponent Status conferred to the Original Proponent and the issued Certificate of Successful Negotiation shall remain effective.

Section 211. Solicited and Unsolicited Projects pursuant to the BOT Law which are already approved for bidding or comparative challenge but pending publication of applicable invitation prior to the effectivity of the Code

Projects which have secured the approvals necessary to publish an Invitation to Bid or invitation for comparative challenge but have not yet published the applicable invitation shall proceed with its publication.

The rules under the PPP Code and this IRR shall be applied for the bidding process or the comparative challenge process, and all succeeding stages.

Section 212. Solicited Projects pursuant to the BOT Law pending approval of the appropriate approving body prior to the effectivity of the Code

Solicited Projects pursuant to the BOT Law, pending approval of the appropriate Approving Body, shall mean those PPP Projects that have been submitted to the appropriate Approving Body prior to the effectivity of the PPP Code. This does not include PPP Projects pursuant to the BOT Law that have been returned by the appropriate Approving Body, and have not yet been resubmitted to the appropriate Approving Body.

Such projects shall be continuously and expeditiously processed in accordance with the approval rules in effect at the time the project was submitted to the appropriate Approving Body.

Upon securing the approval of the appropriate Approving Body, the PPP Code and its IRR shall be applied to the bidding process and the succeeding stages, based on the approved parameters, terms, and conditions.

1 Such solicited projects which fail to secure the approval of the appropriate approving body
2 may be resubmitted in accordance with the approval rules under the PPP Code and this IRR.

3 **Section 213. Unsolicited Projects pursuant to the BOT Law pending approval of the**
4 **appropriate Approving Body prior to the effectivity of the PPP Code**

5
6 Unsolicited Projects pursuant to the BOT Law, and pending approval of the appropriate
7 approving body, shall mean those PPP Projects that have been granted an OPS and
8 submitted to the appropriate approving body prior to the effectivity of the PPP Code. This does
9 not include PPP Projects pursuant to the BOT Law that have been returned by the appropriate
10 approving body and have not yet been resubmitted to the appropriate Approving Body.

11
12 For such projects, the Original Proponent shall have the option to proceed with the approval
13 process pursuant to BOT Law or resubmit the Project under the PPP Code.

14
15 Original Proponents shall notify the Implementing Agency in writing within thirty (30) calendar
16 days after the effectivity of this IRR of its decision on whether to proceed with the approval
17 process pursuant to BOT Law or resubmit the Project under the PPP Code.

18
19 (a) Approval process under the BOT Law

20
21 Should the Original Proponent decide to proceed with the approval process pursuant
22 to the BOT law, such projects shall be continuously and expeditiously processed in
23 accordance with the approval rules in effect at the time the project was submitted to
24 the appropriate Approving Body. For avoidance of doubt, the approval process shall
25 refer to the approval of the PTCs for negotiation, the negotiation process under the
26 BOT Law and its Revised 2022 IRR, and the approval of the negotiated PTCs by the
27 appropriate Approving Body.

28
29 Unsolicited proposals which are in the negotiation process upon the effectivity of the
30 Code and this IRR, or fail to reach successful negotiation after having secured the
31 approval of the PTCs for negotiation, shall proceed in accordance with PPPGB
32 Resolution No. 2023-06-02 or the Guidelines on the Negotiation Process for
33 Unsolicited Proposals under the Revised 2022 IRR of the BOT Law.

34

1 Upon securing the approval of negotiated PTCs by the appropriate Approving Body,
2 the PPP Code and its IRR shall apply in the comparative challenge process and the
3 succeeding stages based on the approved negotiated PTCs.

4
5 Such projects which fail to secure the approval of the appropriate approving body shall
6 be returned to the IA concerned and may be resubmitted in accordance with the
7 approval rules under the PPP Code and this IRR.

8
9 (b) Approval process under the Code and this IRR

10
11 Should the Original Proponent decide to resubmit under the Code, its submission shall
12 be processed in accordance with the rules stated in the PPP Code and this IRR,
13 starting from the completeness check by the PPP Center. The OPS that was previously
14 conferred to the Original Proponent shall remain effective.

15 **Section 214. Non-BOT Law PPP Projects pending approval of the relevant approving**
16 **authorities prior to the effectivity of the PPP Code**

17
18 For non-BOT Law PPP projects (e.g., JVs of GOCCs, JVs of LGUs, Toll Operation
19 Agreements or STOA), pending approval of the relevant approving authorities, the rules and
20 procedures under the PPP Code shall apply.

21 **Section 215. Miscellaneous**

22
23 (a) The enactment of the PPP Code shall not affect or alter the PTCs of PPP projects that
24 have already been approved by the appropriate approving body prior to the effectivity
25 of the PPP Code. The same principle of recognizing approved project terms shall be
26 applicable to (a) Local PPP Projects processed and approved under local PPP or JV
27 codes and ordinances, and (b) PPP projects of GOCCs processed and/or approved
28 under their respective charters or the 2023 Revised Guidelines and Procedures for
29 Entering into Joint Venture (JV) Agreements between Government and Private
30 Entities.

31 (b) All unexpended funds of the PPP Center at the end of the fiscal year, as well as
32 unreleased appropriations, and undisbursed funds after the end of the validity period,
33 shall revert to the National Treasury and shall not thereafter be available for
34 expenditure, except by subsequent legislative enactment. The amount necessary to
35 carry out the organizational changes of the PPP Center provided in this Code shall be

1 determined by the PPP Governing Board. Appropriations for succeeding years shall
2 be incorporated in its budget proposals, subject to the existing budgeting rules and
3 regulations. All officials and employees of the PPP Center shall be retained and shall
4 not suffer any loss of seniority or rank or decrease in emoluments.

5 **Title XXIV - Repealing Clause**

6 **Section 216. Repealed and Modified Laws, Decrees, and Special Charters**

7
8 The following are hereby repealed or modified accordingly:

- 9 (a) Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as
10 “An Act Authorizing the Financing, Construction, Operation and Maintenance of
11 Infrastructure Projects by the Private Sector, and for Other Purposes”;
- 12 (b) Section 10(e)(1) of Republic Act No. 7227, otherwise known as the “Bases Conversion
13 and Development Act”, insofar as it refers to Republic Act No. 6957, as amended by
14 Republic Act No. 7718;
- 15 (c) Section 6(p) of Republic Act No. 10844, otherwise known as the “Department of
16 Information and Communications Technology Act of 2015”;
- 17 (d) Section 4(r) of Republic Act No. 8292, otherwise known as the “Higher Education
18 Modernization Act of 1997”;
- 19 (e) Section 3(a) of Presidential Decree No. 1112, otherwise known as “An Act Authorizing
20 the Establishment of Toll Facilities on Public Improvements, Creating a Board for the
21 Regulation Thereof and for Other Purposes”;
- 22 (f) Second paragraph of Section 1 of Presidential Decree No. 1894, series
23 1983, Amending the Franchise of the Philippine National Construction Corporation
24 (PNCC), granting the PNCC the right, privilege and authority to construct, maintain and
25 operate any and all such extensions, linkages or stretches, together with the toll
26 facilities appurtenant thereto, from any part of the North Luzon Expressway, South
27 Luzon Expressway or Metro Manila Expressway or to divert the original route and
28 change the original end-points of the North Luzon Expressway or South Luzon
29 Expressway as may be approved by the Toll Regulatory Board;
- 30 (g) Pertinent provisions of Presidential Decree No. 857, as amended, or the “Revised
31 Charter of the Philippine Ports Authority” created under Presidential Decree No. 505,
32 which are inconsistent with the provisions of this Code;
- 33 (h) Sections of Presidential Decree (P.D.) No. 1113, Series of 1977, granting to the
34 Construction and Development Corporation of the Philippines (CDCP) the right to

1 construct, operate and maintain toll facilities in the North and South Luzon Toll
2 Expressways, which are inconsistent with the provisions of this Code;

- 3 (i) Specific provisions in the special charters of GOCCs, SUCs, and other government
4 agencies that allow the issuance of guidelines governing partnerships between
5 government and private sector for the financing, designing, constructing, operating,
6 and maintaining, or any combination or variation thereof, of infrastructure or
7 development projects outside of Republic Act No. 9184.

8 **Section 217. Amended or Modified Laws and Decrees**

9
10 The provisions pertaining to the identification, evaluation, approval, procurement, and/or
11 implementation of PPP Projects including leases and Joint Ventures in the following laws are
12 hereby amended or modified accordingly:

13 (a) Sections 22(C) and 22(E) of RA No. 9500, otherwise known as the “University of the
14 Philippines Charter of 2008”; and

15 (b) PD No. 1113, Series of 1977 and PD No.1894, Series of 1983 granting a franchise to
16 the Philippine National Construction Corporation (PNCC) (then the Construction and
17 Development Corporation of the Philippines (CDCP)) to construct, operate, and
18 maintain the North and South Luzon Expressways and Metro Manila Expressways.

19 **Section 218. Amendment of all laws, decrees, and other legislations**

20
21 All other references to RA No. 6957 and RA No. 7718 in existing laws, decrees, and other
22 legislations are hereby amended to refer to the Code.

23 **Section 219. General Repeal or Modification**

24
25 All executive orders and administrative laws, decrees, orders, codes, issuances, rules and
26 regulations, and ordinances, including Local PPP and JV codes and ordinances, or any part
27 thereof inconsistent with or contrary to the Code are hereby repealed or modified accordingly.

28 **TITLE XXV - FINAL PROVISIONS**

29 **Section 220. Oversight Provision**

30
31 Pursuant to Section 33 of the Code, a Joint Congressional Oversight Committee on PPP is
32 created to oversee the implementation of the Code. The Committee shall be composed of five

1 (5) members each from the Senate and House of Representatives to be designated by the
2 Senate President and the Speaker of the House of Representatives, respectively. The
3 Committee shall be jointly chaired by the respective Chairpersons of the House Committee on
4 Public Works and Highways, the House Committee on Appropriations, the Senate Committee
5 on Public Works, and the Senate Committee on Finance.

6 **Section 221. IRR Committee**

7

8 Pursuant to Section 34 of the Code, the IRR Committee shall be composed of the members
9 of the PPP Governing Board. The Secretary of NEDA shall serve as the Chairperson, and the
10 PPP Center shall serve as the Secretariat.

11

12 The members of the IRR Committee may designate their respective alternates in writing,
13 whose acts shall be considered the acts of their principals.

14 **Section 222. Amendments to the IRR**

15

16 The IRR Committee may be reconvened by the Chairperson at their instance, or upon the
17 recommendation of any member of the IRR Committee, to conduct, formulate, and prescribe,
18 after due public hearing and publication, amendments to this IRR, consistent with the
19 provisions of the Code. Amendments to this IRR shall take effect fifteen (15) calendar days
20 after its complete publication in the Official Gazette or in a newspaper of general circulation.

21 **Section 223. Separability Clause**

22

23 If any provision of this IRR is held unconstitutional or invalid, other parts or provisions hereof
24 not affected thereby shall continue to be in full force and effect.

25 **Section 224. Effectivity**

26

27 This IRR shall take effect fifteen (15) calendar days after its publication in the Official Gazette
28 or in any newspaper of general circulation.

29