

**AFD AGREEMENT N° CPH 1032 01 M**

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**CREDIT FACILITY AGREEMENT**

**dated as of June 09, 2020**

**between**

**AGENCE FRANÇAISE DE DEVELOPPEMENT**

The Lender

**and**

**THE REPUBLIC OF THE PHILIPPINES**

**ACTING BY AND THROUGH THE DEPARTMENT OF FINANCE OF ITS GOVERNMENT**

The Borrower

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## CREDIT FACILITY AGREEMENT

### BETWEEN:

- (1) THE REPUBLIC OF THE PHILIPPINES, acting by and through the Department of Finance of its Government,

represented by Carlos G. Dominguez, in his capacity as Secretary of the Department of Finance, who is duly authorised to conclude, sign, execute and deliver for the purposes hereof pursuant to the special authority granted by the President of the Republic of the Philippines on June 9, 2019

(hereinafter referred to as the “Borrower”);

### AND

- (2) **AGENCE FRANCAISE DE DEVELOPPEMENT**, a French public entity governed by French law, with registered office at 5, Rue Roland Barthes, 75598 Paris Cedex 12, France, registered with the Trade and Companies Register of Paris under number 775 665 599, represented by Laurent Klein, in his capacity as Philippine Country Director, duly authorised to sign this Agreement,

(hereinafter referred to as “**AFD**” or the “**Lender**”);

(hereinafter jointly referred to as the “**Parties**” and each a “**Party**”);

### WHEREAS:

- (A) The Borrower wishes to accelerate infrastructure investment by increasing private participation, through the following :
- (i) strengthened government financial support for PPPs;
  - (ii) an expanded and efficiently implemented pipeline of PPP projects; and
  - (iii) a strengthened legal and regulatory framework for PPPs
- (B) The Borrower has requested that the Lender makes a facility available in support of the implementation of the second sub-program of the Expanding Private Participation in Infrastructure Program (the “**Program**”), as described further in Schedule 2 (*Program Description*).
- (C) The Asian Development Bank (ADB) is also supporting the Program, and has fully disbursed its portion to the financing of the Program.
- (D) Pursuant to a resolution n° C20190038 of the Board of Administration of AFD dated March 21<sup>st</sup> 2019, the Lender has agreed to make the Facility available to the Borrower pursuant to the terms and conditions of this Agreement.
- (E) In line with the resolution n°C20190038 of the Board of Administration of AFD dated March 21<sup>st</sup> 2019 the Borrower has agreed to consider including the fight against climate change in an upcoming capital markets infrastructure policy reform.

**THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

Capitalised words and expressions used in this Agreement (including those appearing in the recitals above and in the Schedules) shall have the meaning given to them in Schedule 1A (Definitions), except as otherwise provided in this Agreement.

**1.2 Interpretation**

Words and expressions used in this Agreement shall be construed pursuant to the provisions of Schedule 1B (*Construction*), unless the contrary intention appears.

**2. FACILITY, PURPOSE AND CONDITIONS OF UTILISATION**

**2.1 Facility**

Subject to the terms of this Agreement, the Lender makes available to the Borrower a Facility in a maximum aggregate amount of one hundred and fifty million Euros (EUR 150,000,000).

As specified in Clause 3.1 (*Drawdown amounts*) and 14.6 (*Place of payment*), and upon request by the Borrower, the Lender may transfer the funds under the Facility in their equivalent amount in US Dollars at a market exchange rate on the day of the Drawdown.

**2.2 Purpose**

The Borrower shall use all amounts borrowed by it under this Facility to support the general budgetary requirements of the Borrower to contribute to the implementation of the Program, excluding Taxes, in accordance with the Program's description set out in Schedule 2 (*Program Description*), in accordance with the Financing Plan described in Schedule 3 (*Financing Plan*) and the Policy Matrix described in Schedule 7 (Policy Matrix).

**2.3 Absence of Liability**

The Lender shall not be held responsible for the use of any amount borrowed which is not in accordance with the provisions of this Agreement.

**2.4 Conditions precedent**

- (a) No later than the Signing Date, the Borrower shall provide to the Lender all of the documents set out in Part I of Schedule 4 (*Conditions Precedent*).
- (b) The Drawdown Request for the single Drawdown may not be delivered to the Lender unless the Lender has been paid by the Borrower of all fees and expenses due and payable under this Agreement, has received all of the documents listed in Part II of Schedule 4 (*Conditions Precedent*) and has notified the Borrower that such documents are satisfactory in form and substance.
- (c) The Lender will have to make the Drawdown available only if, on the date of the Drawdown Request and on the proposed Drawdown Date for the relevant Drawdown, no Payment Systems Disruption Event has occurred and the conditions set out in this Agreement have been fulfilled, including:
  - (1) no Event of Default is occurring, continuing or would result from the proposed Drawdown;



- (2) the Drawdown Request has been made in accordance with the terms of Clause 3.2 (*Drawdown request*); and
- (3) each representation given by the Borrower in relation to Clause 10 (*Representations and warranties*) is true.

### 3. DRAWDOWN OF FUNDS

#### 3.1 Drawdown amounts

The Facility will be made available to the Borrower during the Availability Period, in one single Drawdown for a total maximum amount of one hundred and fifty million Euros (EUR 150,000,000).

Pursuant to Clause 14.6 (*Place of payment*), the Borrower may request the amount of the Drawdown to be transferred in its equivalent amount in US Dollars, which will be determined based on a market exchange rate on the day of the Drawdown.

#### 3.2 Drawdown request

Provided that the conditions set out in Clause 2.4 (*Conditions precedent*) are satisfied, the Borrower may draw on the Facility by delivery to the Lender of a duly completed Drawdown Request. Each Drawdown Request shall be delivered by the Borrower to the AFD office director at the address specified in Clause 16.1 (*In writing and addresses*).

The Drawdown Request is irrevocable and will be regarded as having been duly completed if:

- (a) the Drawdown Request is substantially in the form set out in Schedule 5A (*Form of Drawdown Request*);
- (b) the Drawdown Request is received by the Lender at the latest fifteen (15) Business Days prior to the Deadline for Drawdown;
- (c) the proposed Drawdown Date is a Business Day falling within the Availability Period;
- (d) the amount of the Drawdown complies with Clause 3.1 (*Drawdown amounts*); and
- (e) all of the documents set out in Part II of Schedule 4 (*Conditions Precedent*) for the purposes of the Drawdown are attached to the Drawdown Request, comply with the abovementioned Schedule and with the requirements of Clause 3.4 (*Payment mechanics*), and are in form and substance satisfactory to the Lender.

#### 3.3 Payment completion

Subject to Clause 14.7 (*Payment Systems Disruption*), if each of the conditions set out in Clause 2.4 (*Conditions precedent*) of this Agreement has been met, the Lender shall make the requested Drawdown available to the Borrower not later than the Drawdown Date.

The Lender shall provide the Borrower with a letter of Drawdown confirmation substantially in the form set out in Schedule 5B (*Form of confirmation of drawdown and rate*).

#### 3.4 Payment mechanics

The proceeds of the Drawdown shall be paid to the Borrower's Account or any other account which details will be duly notified by the Borrower to the Lender.



#### 4. INTEREST

##### 4.1 Interest Rate

###### 4.1.1 Selection of Interest Rate

The Borrower may select a fixed Interest Rate or a floating Interest Rate, which shall apply to the Facility, by stating the selected Interest Rate, i.e., fixed or floating, in the Drawdown Request delivered to the Lender substantially in the form set out in Schedule 5A (*Form of Drawdown Request*), subject to the following conditions:

###### (i) Floating Interest Rate

The Borrower may select a floating Interest Rate for the Facility, which shall be the percentage rate per annum, being the aggregate of:

- six-month EURIBOR; or, as the case may be, the Replacement Benchmark plus any Adjustment Margin, as determined in accordance with the provisions of Clause 5 (Change to the calculation of interest) of the Agreement, and
- the Margin.

Notwithstanding the above, if the first Interest Period is less than one hundred and thirty-five (135) days, the applicable EURIBOR shall be:

- one-month EURIBOR or, as the case may be, the Replacement Benchmark plus any Adjustment Margin, as determined in accordance with the provisions of Clause 5 (Change to the calculation of interest) of the Agreement, if the first Interest Period is less than sixty (60) days; or
- three-month EURIBOR or, as the case may be, the Replacement Benchmark plus any Adjustment Margin, as determined in accordance with the provisions of Clause 5 (Change to the calculation of interest) of the Agreement, if the first Interest Period is between sixty (60) days and one hundred and thirty-five (135) days.

###### (ii) Fixed Interest Rate

The Borrower may select a fixed Interest Rate for the Facility. The fixed Interest Rate shall be the Fixed Reference Rate increased or decreased by any fluctuation of the Index Rate from the Signing Date until the relevant Rate Setting Date.

The Borrower may specify in the Drawdown Request a maximum amount for fixed Interest Rate. If the fixed Interest Rate as calculated on the Rate Setting Date exceeds the maximum amount for fixed Interest Rate specified in the relevant Drawdown Request, such Drawdown Request shall be cancelled and the Drawdown amount specified in the cancelled Drawdown Request shall be credited to the Available Credit.

###### 4.1.2 Minimum Interest Rate

The Interest Rate determined in accordance with Clause 4.1.1 (*Selection of Interest Rate*), regardless of the elected option, shall not be less than zero percent (0.00%) per annum, notwithstanding any decline in the Interest Rate.

#### 4.1.3 Conversion from a floating Interest Rate to a fixed Interest Rate

The floating Interest Rate applicable to the Facility shall be converted to a fixed Interest Rate in accordance with the conditions set out below:

(i) Rate Conversion upon the Borrower's request

The Borrower may request at any time that the Lender converts the whole or part of the floating Interest Rate applicable to the Facility to a fixed Interest Rate, provided that the requested amount to be converted is equal to or exceeds three million Euros (EUR 3,000,000).

To this effect, the Borrower shall send to the Lender a Rate Conversion Request substantially in the form set out in Schedule 5C (*Form of Rate Conversion Request*). The Borrower may specify in the Rate Conversion Letter a maximum amount for fixed Interest Rate. If the fixed Interest Rate as calculated on the Rate Setting Date exceeds the maximum amount for fixed Interest Rate specified by the Borrower in the Rate Conversion Request, such Rate Conversion Request will be automatically cancelled.

The fixed Interest Rate will be effective two (2) Business Days after the Rate Setting Date.

(ii) Rate Conversion mechanics

The fixed Interest Rate applicable to the Facility subject to the Rate Conversion Request shall be determined in accordance with Clause 4.1.1(ii) (*Fixed Interest Rate*) above on the Rate Setting Date referred to in subparagraph (i) au-dessus.

The Lender shall send to the Borrower a letter of confirmation of Rate Conversion substantially in the form set out in Schedule 5D (*Form of Rate Conversion Confirmation*).

A Rate Conversion is final and at no costs.

#### 4.2 Calculation and payment of interest

The Borrower shall pay accrued interest on the Drawdown on each Payment Date.

The amount of interest payable by the Borrower on a relevant Payment Date and for a relevant Interest Period shall be equal to the sum of any interest owed by the Borrower on the amount of the Outstanding Principal in respect of the Drawdown. Interest owed by the Borrower in respect of the Drawdown shall be calculated on the basis of:

- (i) the Outstanding Principal owed by the Borrower in respect of the Drawdown as at the immediately preceding Payment Date or, in the case of the first Interest Period, on the corresponding Drawdown Date;
- (ii) the exact number of days which have accrued during the relevant Interest Period on the basis of a three hundred and sixty (360) day year; and
- (iii) the applicable Interest Rate determined in accordance with the provisions of Clause 4.1 (*Interest Rate*).



#### 4.3 Late payment and default interest

- (a) Late payment and default interest on all amounts due and unpaid (except for interest)

If the Borrower fails to pay any amount payable by it to the Lender under this Agreement (whether a payment of principal, a Prepayment Indemnity, any fees or incidental expenses of any kind except for any unpaid overdue interest) on its due date, interest shall accrue on the overdue amount, to the extent permitted by law, from the due date up to the date of actual payment (both before and after an arbitral award, if any) at the Interest Rate applicable to the current Interest Period (default interest) increased by two percent (2.0%) (late-payment interest). No formal prior notice from the Lender shall be necessary.

- (b) Late payment and default interest on unpaid overdue interest

Interest which has not been paid on its due date shall bear interest, to the extent permitted by law, at the Interest Rate applicable to the ongoing Interest Period (default interest), increased by two percent (2.0%) (late-payment interest), to the extent that such Interest has been due and payable for at least one (1) year. No formal prior notice from the Lender shall be necessary.

The Borrower shall pay any outstanding interest under this Clause 4.3 (*Late payment and default interest*) immediately on demand by the Lender or on each Payment Date following the due date for the outstanding payment.

- (c) Receipt of any payment of late payment interest or default interest by the Lender shall neither imply the grant of any payment extension to the Borrower, nor operate as a waiver of any of the Lender's rights hereunder.

#### 4.4 Communication of Interest Rates

The Lender shall promptly notify the Borrower of the determination of each Interest Rate in accordance with this Agreement.

#### 4.5 Effective Global Rate (*Taux Effectif Global*)

This mention of the Effective Global Rate is required under French public policy rules aiming at protecting and informing the Borrower on the full and effective cost of the credit they enter into and is for information purposes only.

In order to comply with Articles L. 314-1 to L.314-5 and R.314-1 *et seq.* of the French Consumer Code and L. 313-4 of the French Monetary and Financial Code, the Lender informs the Borrower, and the Borrower accepts, that the effective global rate (*taux effectif global*) applicable to the Facility may be valued at an annual rate of zero point fifty five percent (0.55%) on the basis of a three hundred and sixty-five (365) day year, and for an Interest Period of six (6) months, subject to the following:

- (a) the above rate is given for information purposes only ;
- (b) the above rate is calculated on the basis that:
- (i) drawdown of the Facility is in full on the Signing Date;
  - (ii) no Drawdown made available to the Borrower will bear interest on the floating rate; and



- (iii) the fixed rate for the duration of the facility should be equal to zero point fifty two percent (0.52%); and
- (c) the above rate takes into account the fees and costs payable by the Borrower under this Agreement, assuming that such fees and costs will remain fixed and will apply until the expiry of the term of this Agreement.

## 5. CHANGE TO THE CALCULATION OF INTEREST

### 5.1 Market Disruption

- (a) If a Market Disruption affects the interbank market in the Eurozone and it is impossible
  - (i) for the fixed Interest Rate, to determine the fixed Interest Rate applicable to the Drawdown, or
  - (ii) for the variable Interest Rate to determine the applicable EURIBOR for the relevant Interest Period,the Lender shall inform the Borrower.
- (b) Upon the occurrence of the event described in paragraph (a) above, the applicable Interest Rate, as the case may be, for the Drawdown or for the relevant Interest Period will be the sum of:
  - (i) the Margin; and
  - (ii) the percentage rate per annum corresponding to the cost to the Lender of funding the Drawdown from whatever source it may reasonably select. Such rate shall be notified to the Borrower as soon as possible and, in any case, prior to (1) the first Payment Date for interest owed under the Drawdown for the fixed Interest Rate or (2) the Payment Date for interest owed under such Interest Period for the variable Interest Rate.

### 5.2 Replacement of Screen Rate

#### 5.2.1 Definitions

**Relevant Nominating Body**" means any central bank, regulator, supervisor or working group or committee sponsored or chaired by, or constituted at the request of any of them.

**"Screen Rate"** means EURIBOR or, following the replacement of this rate by a Replacement Benchmark, the Replacement Benchmark.

**"Screen Rate Replacement Event"** means any of the following events or series of events:

- (a) the definition, methodology, formula or means of determining the Screen Rate has materially changed;
- (b) a law or regulation is enacted which prohibits the use of the Screen Rate, it being specified, for the avoidance of doubt, that the occurrence of this event shall not constitute a mandatory prepayment event;
- (c) the administrator of the Screen Rate or its supervisor publicly announces:

- (i) that it has ceased or will cease to provide the Screen Rate permanently or indefinitely, and, at that time, no successor administrator has been publicly nominated to continue to provide that Screen Rate;
- (ii) that the Screen Rate has ceased or will cease to be published permanently or indefinitely; or
- (iii) that the Screen Rate may no longer be used (whether now or in the future);
- (d) a public announcement is made about the bankruptcy of the administrator of that Screen Rate or any other insolvency proceedings against it, and, at that time, no successor administrator has been publicly nominated to continue to provide that Screen Rate; or
- (e) in the opinion of the Lender, the Screen Rate has ceased to be used in a series of comparable financing transactions.

**"Screen Rate Replacement Date"** means:

- with respect to the events referred to in items a), d) and e) of the above definition of Screen Rate Replacement Event, the date on which the Lender has knowledge of the occurrence of such event, which fact has been notified to the Borrower in accordance with the provisions of clause 5.2.4, and,
- with respect to the events referred to in items b) and c) of the above definition of Screen Rate Replacement Event, the date beyond which the use of the Screen Rate will be prohibited or the date on which the administrator of the Screen Rate permanently or indefinitely ceases to provide the Screen Rate or the date beyond which the Screen Rate may no longer be used.

- 5.2.2 Each Party acknowledges and agrees for the benefit of the other Party that if a Screen Rate Replacement Event occurs and in order to preserve the economic balance of the Agreement, the Lender may replace the Screen Rate with another rate (the "**Replacement Benchmark**") which may include an adjustment margin in order to avoid any transfer of economic value between the Parties (if any) (the "**Adjustment Margin**") and the Lender will determine the date from which the Replacement Benchmark and, if any, the Adjustment Margin shall replace the Screen Rate and any other amendments to the Agreement required as a result of the replacement of the Screen Rate by the Replacement Benchmark.
- 5.2.3 The determination of the Replacement Benchmark and the necessary amendments will be made in good faith and taking into account, (i) the recommendations of any Relevant Nominating Body, or (ii) the recommendations of the administrator of the Screen Rate, or (iii) the industry solution recommended by professional associations in the banking sector or, (iv) the market practice observed in a series of comparable financing transactions on the replacement date.
- 5.2.4 In case of replacement of the Screen Rate, the Lender will promptly notify the Borrower of the replacement terms and conditions to replace the Screen Rate with the Replacement Benchmark, which will be applicable to Interest Periods starting at least two Business Days after the Screen Rate Replacement Date.
- 5.2.5 The provisions of Clause 5.2 (*Replacement of Screen Rate*) shall prevail over the provisions of Clause 5.1 (*Market Disruption*).

## 6. FEES

### 6.1 Commitment fee

Starting from the expiry date of a three (3)-month period from the Signing Date onwards, the Borrower shall pay to the Lender a commitment fee of zero point fifteen percent (0.15%) per annum.

The commitment fee shall be computed at the rate specified above on the amount of the Available Credit pro-rated for the actual number of days elapsed increased by the amount of the Drawdown to be made available by the Lender in accordance with a pending Drawdown Request.

The first commitment fee shall be calculated for the period from (i) the date falling three (3) months after the Signing Date (excluded) up to (ii) the immediately following Payment Date (included). Subsequent commitment fees shall be calculated for periods commencing on the day immediately following a Payment Date (included) and ending on the next Payment Date (included).

The accrued commitment fee shall be payable (i) on each Payment Date within the Availability Period; (ii) on the Payment Date following the last day of the Drawdown Period; and (iii) in the event the Available Credit is cancelled in full, on the Payment Date following the effective date of such cancellation.

### 6.2 Appraisal Fee

Prior to the Drawdown and no later than one (1) month after the Signing Date, the Borrower shall pay to the Lender an appraisal fee of zero point twenty five percent (0.25%) calculated on the maximum amount of the Facility.



## 7. REPAYMENT

Following expiry of the Grace Period, the Borrower shall repay the Lender the principal amount of the Facility in twenty-eight (28) equal semi-annual instalments, due and payable on each Payment Date.

The first instalment shall be due and payable on September 30<sup>st</sup> 2026 and the last instalment shall be due and payable on March 31<sup>st</sup> 2040.

At the end of the Drawdown Period, the Lender shall deliver to the Borrower an amortisation schedule in respect of the Facility taking into account, if applicable, any potential cancellation of the Facility pursuant to Clauses 8.3 (*Cancellation by the Borrower*) and/or 8.4 (*Cancellation by the Lender*).

## 8. PREPAYMENT AND CANCELLATION

### 8.1 Voluntary prepayment

No prepayment of the whole or any part of the Facility is allowed within the Grace Period.

As from the day following the expiry of the Grace Period, the Borrower may prepay the whole or any part of the Facility, subject to the following conditions:

- (a) The Monetary Board of the Bangko Sentral ng Pilipinas (BSP) has approved the prepayment of the Facility
- (b) the Borrower shall notify the Lender of its intention to prepay by not less than thirty (30) Business Days' written and irrevocable notice prior to the contemplated prepayment date;
- (c) the amount to be prepaid shall be equal to one or several instalment(s) in principal;
- (d) the contemplated prepayment date shall be a Payment Date;
- (e) all prepayments shall be made together with the payment of accrued interest, any fees, indemnities and related costs in connection with the prepaid amount as provided under this Agreement;
- (f) there is no unpaid amount; and
- (g) no payment default pursuant to clause 13.1(a) (*payment default*) has occurred and is continuing; and
- (h) in case of a partial prepayment, the Borrower shall have given evidence, satisfactory to the Lender, that it has sufficient committed funding available for the purpose of financing the Program as determined in the Financing Plan.

On the Payment Date on which the prepayment is made, the Borrower shall pay the full amount of the Prepayment Indemnities due and payable pursuant to Clause 9.3 (*Prepayment Indemnity*).

### 8.2 Mandatory prepayment

The Borrower shall immediately prepay the whole or part of the Facility upon receipt of a notice from the Lender informing the Borrower of any of the following events:

- (a) Illegality: it becomes unlawful for the Lender pursuant to its applicable law to perform any of its obligations as contemplated by this Agreement or to fund or maintain the Facility;

- (b) Additional Costs: the amount of any Additional Costs referred to in Clause 9.5 (*Additional Costs*) is significantly high and the Borrower has refused to pay such Additional Costs;
- (c) Default: the Lender declares an Event of Default in accordance with Clause 13 (*Events of Defaults*);
- (d) Prepayment to the Co-Financier of the Program: the Borrower prepays whole or part of any amounts owed to the Co-Financier under the Program, in which case the Lender shall be entitled to request that the Borrower prepays, as the case may be, the Facility or an amount of the outstanding Facility under the Program in proportion with the amount prepaid to the Co-Financier.

Under the Program and in the case of each of the events specified in paragraphs (a), (b) and (c) au-dessus, the Lender reserves the right, after having notified the Borrower in writing, to exercise its rights as a creditor in the manner specified in paragraph (b) of Clause 13.2 (*Acceleration*).

In respect to paragraph 8.2.a), the Parties agree that payment is to be made within a reasonable delay, with consideration to the Borrower's standard payment procedures.

### 8.3 Cancellation by the Borrower

Prior to the Deadline for Drawdown, the Borrower may cancel the whole or any part of the Available Credit by giving the Lender a three (3) Business Days' prior notice,.

Upon receipt of such notice of cancellation, the Lender shall cancel the amount notified by the Borrower, provided that the eligible expenses, as specified in the Financing Plan, are covered in a manner satisfactory to the Lender, except in the event that the Program is abandoned by the Borrower or the cost of the implementation of the Program has been reduced.

### 8.4 Cancellation by the Lender

The Available Credit shall be immediately cancelled upon receipt by the Borrower of a written notice sent by the Lender and addressed by way of a letter with acknowledgement which shall be immediately effective, if:

- (a) the Available Credit is not equal to zero (0) on the Deadline for Drawdown;
- (b) an Event of Default has occurred, and has not been cured within the agreed curing period when applicable, and is continuing; or
- (c) an event referred to in Clause 8.2 (*Mandatory prepayment*) has occurred;

except where, in the case of paragraphs (a) and (b) of this Clause 8.4 (*Cancellation by the Lender*), the Lender has proposed to postpone the Deadline for Drawdown on the basis of new financial conditions which will apply to the Drawdown under the Available Credit and the Borrower has agreed on the proposition.

### 8.5 Restrictions

- (a) Any notice of prepayment or cancellation given by a Party pursuant to this Clause 8 (*Prepayment and Cancellation*) shall be irrevocable, and, unless otherwise provided in this Agreement, any such notice shall specify the date or dates on which the relevant prepayment or cancellation is to be made and the amount of that prepayment or cancellation.



- (b) The Borrower shall not prepay or cancel all or any part of the Facility except at the times and in the manner expressly provided for in this Agreement.
- (c) Any prepayment under this Agreement shall be made together with payment of (i) accrued interest on the prepaid amount, (ii) outstanding fees, and (iii) the Prepayment Indemnity referred to in Clause 9.3 (*Prepayment Indemnity*) below.
- (d) Any prepayment amount will be applied against the remaining instalments in inverse order of maturity.
- (e) The Borrower may not re-borrow the whole or any part of the Facility which has been prepaid or cancelled.

## 9. ADDITIONAL PAYMENT OBLIGATIONS

### 9.1 Costs and expenses

- 9.1.1 The Borrower shall reimburse to the Lender for all costs and expenses (including legal fees) incurred by it in connection with the enforcement or preservation of any of its rights under this Agreement.
- 9.1.2 The Borrower shall pay directly or, if applicable, reimburse the Lender in case of an advance made by the Lender, the amount of all reasonable and documented costs and expenses in connection with the transfer of funds to, or for the account of, the Borrower from Paris to any other place agreed with the Lender, as well as any transfer fees and expenses in connection with the payment of all sums due under the Facility.

For avoidance of doubt, it is specified that each Party shall bear its own costs and expenses which it has incurred in connection with the negotiation, preparation and signing of this Agreement, including but not limited to those relating to any legal opinion, or any other documents referred to in this Agreement

### 9.2 Cancellation Indemnity

If the Facility is cancelled in full or in part in accordance with the terms of Clauses 8.3 (*Cancellation by the Borrower*) and/or 8.4 (*Cancellation by the Lender*) paragraphs (a), 8.4(b) and (b), the Borrower shall pay a cancellation indemnity computed at one percent (1.0%) on the cancelled amount of the Facility.

Each cancellation indemnity shall be due and payable on the Payment Date immediately following a cancellation of all or part of the Facility.

### 9.3 Prepayment Indemnity

On account of any losses suffered by the Lender as a result of the prepayment of the whole or any part of the Facility in accordance with Clauses 8.1 (*Voluntary prepayment*) or 8.2 (*Mandatory prepayment*), the Borrower shall pay to the Lender an indemnity equal to the aggregate amount of:

- the Prepayment Compensatory Indemnity as defined in Schedule 1A herein; and
- in the case of a fixed Interest Rate Facility, any costs arising out of the break of any interest hedging swap transactions put in place by the Lender in connection with the amount prepaid.



#### 9.4 Taxes and duties

##### 9.4.1 Registration costs

The Borrower shall pay directly, or, only if applicable, reimburse the Lender in case of an advance made by the Lender, the costs of all stamp duty, registration and other similar taxes imposed in the Republic of the Philippines payable in respect of this Agreement and any potential amendment to this Agreement or in respect of any agreement in relation to the Agreement or the transactions contemplated herein and therein.

No part of the Facility may be disbursed or used to pay the mentioned costs or Taxes.

##### 9.4.2 Withholding Tax

The Borrower undertakes that all payments made to the Lender under this Agreement shall be free of any Withholding Tax imposed in the Republic of the Philippines.

If a Withholding Tax is required by law, the Borrower undertakes to gross-up the amount of any such payment to such amount which leaves the Lender with an amount equal to the payment which would have been due if no payment of Withholding Tax had been required.

The Borrower shall reimburse to the Lender all expenses and/or Taxes for the Borrower's account which have been paid by the Lender (if applicable), with the exception of any Taxes due in France.

#### 9.5 Additional Costs

The Borrower shall pay to the Lender, within sixty (60) calendar days of the Lender's request, all Additional Costs incurred by the Lender as a result of: (i) the coming into force of any new law or regulation, or any amendment to, or any change in the interpretation or application of any existing law or regulation, in the Republic of the Philippines; or (ii) compliance with any law or regulation which has come into force after the Signing Date.

In this Clause, "**Additional Costs**" means:

- (i) any reasonable cost arising after the Signing Date out of one of the events referred to in the first paragraph of this Clause and not taken into account by the Lender to compute the financial conditions of the Facility; including any cost related to the financing of this Facility, or
- (ii) any reduction of any amount due and payable under this Agreement;

which is incurred or suffered by the Lender as a result of (i) making the Facility available to the Borrower or (ii) entering into or performing its obligations under the Agreement.

#### 9.6 Currency indemnity

If any sum due by the Borrower under this Agreement, or any order, judgment or award given or made in relation to such a sum, has to be converted from the currency in which that sum is payable into another currency, for the purpose of:

- (i) making or filing a claim or proof against the Borrower; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall indemnify the Lender against and, within thirty (30) Business Days upon the Lender's request and as permitted by law, pay to the Lender, the amount of any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between: (A) the exchange rate used to convert the relevant sum from the first currency to the second currency; and (B) the exchange rate or rate(s) available to the Lender at the time of its receipt of that sum. This obligation to indemnify the Lender is independent of any other obligation of the Borrower under this Agreement.

The Borrower waives the right it may have in any jurisdiction to pay any amount due under this Agreement in a currency or currency unit other than that in which it is expressed to be payable.

#### 9.7 Due dates

Any indemnity or reimbursement payable by the Borrower to the Lender under this Clause 9 (*Additional Payment Obligations*) is due and payable on the Payment Date immediately following the circumstances which have given rise to the relevant indemnity or reimbursement.

Notwithstanding the above, any indemnity to be paid in connection with a prepayment pursuant to Clause 9.3 (*Prepayment Indemnity*) is due and payable on the date of the relevant prepayment.

### 10. REPRESENTATIONS AND WARRANTIES

All the representations and warranties set out in this Clause 10 (*Representations and warranties*) are made by the Borrower for the benefit of the Lender on the Effective Date provided under Clause 18 (*Effective Date and Duration*) of this Agreement. All the representations and warranties in this Clause 10 (*Representations and warranties*) are also deemed to be made by the Borrower on the date on which all of the conditions precedent listed in Part II of Schedule 4 (*Conditions Precedent*) are satisfied, on the date of the Drawdown Request, on the Drawdown Date and on each Payment Date, except that the repeating representations contained in Clause 10.8 (*No Misleading Information*) are deemed to be made by the Borrower in relation to the information provided by the Borrower since the date on which the representation was last made.

#### 10.1 Power and authority

The Borrower has the power to enter into, perform and deliver this Agreement and to perform all contemplated obligations. The Borrower has taken all necessary action to authorise its entry into, performance and delivery of this Agreement and the Policy Matrix.

#### 10.2 Validity and admissibility in evidence

All Authorisations required:

- (a) to enable the Borrower to lawfully enter into, and exercise its rights and comply with its obligations under this Agreement and the Policy Matrix; and
- (b) to make this Agreement and the Policy Matrix admissible in evidence in the courts of the jurisdiction of the Borrower or in arbitration proceedings as defined under Clause 17 (*Governing Law, Enforcement and Choice of Domicile*),

have been obtained and are in full force and effect, and no circumstances exist which could result in the revocation, non-renewal or modification, in whole or in part, of any such Authorisations.



10.3 Binding obligations

The obligations expressed to be assumed by the Borrower under this Agreement and the Policy Matrix comply with all laws and regulations applicable to the Borrower in its jurisdiction and are legal, valid, binding and enforceable obligations which are effective in accordance with their written terms.

10.4 Transfer of funds

All amounts due by the Borrower to the Lender under this Agreement whether as principal or interest, late payment interest, Prepayment Indemnity, incidental costs and expenses or any other sum are freely convertible and transferable to France or to any other country.

This representation shall remain in full force and effect until full repayment of all sums due to the Lender. In the event that the repayment dates of the Facility are extended by the Lender, no further confirmation of this representation shall be necessary.

The Borrower shall obtain Euros necessary for compliance with this representation in due course.

10.5 No conflict with other obligations

The entry into and performance by the Borrower of, and the transactions contemplated by, this Agreement do not conflict with its Constitution or any domestic law or regulation or any agreement or instrument binding upon the Borrower or affecting any of its assets.

10.6 Governing Law and Enforcement

- (a) The choice of French law as the governing law of this Agreement will be recognised and enforced by the courts and arbitration tribunals in the jurisdiction of the Borrower.
- (b) Any judgment obtained in relation to this Agreement in a French court or any award by an arbitration tribunal will be recognised and enforced in the jurisdiction of the Borrower, provided that such judgment or arbitral award may be repelled by evidence of (i) want of jurisdiction, (ii) want of notice to the Borrower, (iii) collusion, fraud or clear mistake, of law or fact or (iv) against public policy.

10.7 No Default

No Event of Default is continuing or is reasonably likely to occur.

No breach of the Borrower is continuing in relation to any other agreement binding upon it, or affecting any of its assets, which has, or is reasonably likely to have, a Material Adverse Effect.

10.8 No Misleading Information

All information and documents supplied by the Borrower to the Lender were true, accurate and up-to-date as at the date they were provided or, if appropriate, as at the date at which they are stated to be given and have not been varied, revoked, cancelled or renewed on revised terms, and are not misleading in any material respect as a result of an omission, the occurrence of new circumstances or the disclosure or non-disclosure of any information.

10.9 Pari Passu Ranking

The Borrower's payment obligations under this Agreement rank at least *pari passu* with the claims of all its other unsecured and unsubordinated External Indebtedness of the Borrower.



10.10 Origin of funds, Acts of Corruption, Fraud and Anti-Competitive Practices

The Borrower represents and warrants that:

- (i) all the funds invested in the Program are from the State budget;
- (ii) the Program has not given rise to any Act of Corruption, Fraud or Anti-Competitive Practice.

10.11 No Material Adverse Effect

The Borrower represents and warrants that no event or circumstance which is likely to have a Material Adverse Effect has occurred or is likely to occur since the date of its representation pursuant to this clause.

10.12 Compliance to sub-program 2 of the Policy Matrix:

As an exception to the heading of Clause 10 (Representations and Warranties) here above, the Borrower represents at the signing Date that it has complied with the commitments registered in the Policy Matrix (Schedule 7) and related to sub-program 2.

**11. UNDERTAKINGS**

The undertakings in this Clause 11 (*Undertakings*) take effect on the Signing Date and remain in full force and effect for as long as any amount is outstanding under this Agreement.

11.1 Compliance with Laws; Regulations and Obligations

The Borrower shall comply

- (a) in all respects with all laws and regulations to which it and/or the Program is subject under the laws of the Republic of the Philippines, particularly in relation to all applicable procurement, environmental protection, safety and labour laws; and
- (b) with all of its obligations under this Agreement.

11.2 Authorisations

The Borrower shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any applicable law or regulation to enable it to perform its obligations under this Agreement and to ensure their legality, validity, enforceability and admissibility in evidence under this Agreement.

11.3 Implementation and Preservation of the Program

The Borrower shall carry out the Program with due diligence and efficiency, and in conformity with sound administrative, financial management and government practices in the Philippines, as well as in accordance with the generally accepted safety principles and in accordance with technical standards in force:

11.4 Environmental and Social Responsibility

In order to promote sustainable development, the Parties agree that it is necessary to promote compliance with internationally recognised environmental and labour standards, including fundamental conventions of the International Labour Organization (“ILO”) and the international environmental laws and regulations applicable in the Borrower’s jurisdiction.

11.5 Additional Financing

The Borrower shall not amend or alter the Financing Plan without obtaining the Lender's prior written consent and shall finance any additional costs not anticipated in the Financing Plan on terms which ensure that the Facility will be repaid.

11.6 Pari Passu Ranking

The Borrower undertakes to ensure that its payment obligations under this Agreement rank at all times at least *pari passu* with its other present and future unsecured and unsubordinated External Indebtedness.

11.7 Inspections

The Borrower hereby authorizes the Lender and its representatives to carry out inspections on a yearly basis, the purpose of which will be to assess the implementation of the Program and the Policy Matrix on technical, financial and institutional aspects as well as the impact and the achievement of the objectives of the Program.

The Borrower shall co-operate and provide all reasonable assistance and information to the Lender and its representatives when carrying out such inspections, the timing and format of which shall be determined by the Lender following consultation with the Borrower.

The Borrower shall retain and make for inspection by the Lender, all documents relating to the expenses of the Program for a period of ten (10) years from the date of the Drawdown under the Facility.

11.8 Program Evaluation

The Borrower acknowledges that the Lender may carry out, or procure that a third party carries out on its behalf, an evaluation of the Program. This evaluation will be used to produce a performance report including information on the Program, such as: total amount and duration of the Facility, objectives of the Program, expected and actual performance of the Program, assessment of its relevance, efficiency, impact and viability/sustainability. The Borrower agrees on the publication of this performance report, in particular, on the Lender's Website.

11.9 Program Implementation

The Borrower shall:

- (i) ensure that any person, group or entity participating in the implementation of the Program is not listed on any Financial Sanctions List (including in particular the fight against terrorist financing); and
- (ii) not finance any supplies or sectors which are subject to an Embargo by the United Nations, the European Union or France.

11.10 Origin of funds, no Acts of Corruption, Fraud or Anti-Competitive Practices

The Borrower undertakes:

- (i) to ensure that the funds, other than those of State origin, invested in the Program will not be of an Illicit Origin;
- (ii) to ensure that the Program shall not give rise to any Act of Corruption, Fraud or Anti-Competitive Practice;



- (iii) as soon as it becomes aware of, or suspects, any Act of Corruption, Fraud or Anti-Competitive Practice, to inform the Lender without any delay;
- (iv) in the event referred to in paragraph (iii) au-dessus, or at the Lender's request if the Lender suspects that the acts or practices referred to in paragraph (iii) have occurred, take all necessary actions to remedy the situation in a manner satisfactory to the Lender and within the period determined by the Lender; and
- (v) to notify the Lender without delay if it has knowledge of any information which leads it to suspect any Illicit Origin of any funds used for the implementation of the Program.

#### 11.11 Tax exemption

The Borrower shall provide to the Lender, no later than ninety (90) calendar days after the Signing Date, an original of the tax exemption certificate related to the exemption of taxes of which could be applicable on payments made by the Borrower to the Lender pursuant to the Agreement, delivered by the Bureau of Internal Revenue, Department of Finance.

#### 11.12 Program Steering Committee

The Borrower shall invite the Lender to participate as an observer and upon the invitation from the chair, to the Program Steering Committee.

### 12. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 12 (*Information Undertakings*) take effect on the Effective Date and remain in full force and effect for as long as any amount is outstanding under this Agreement.

#### 12.1 Financial Information

The Borrower shall supply to the Lender any information that the Lender may reasonably require in relation to the Borrower's foreign and domestic debt as well as the status of any guaranteed loans provided by the Government of the Republic of the Philippines under Republic Act No. 4860 (Foreign Borrowings Act), as amended.

#### 12.2 Program Implementation

The Borrower undertakes to coordinate consultations with the national government agencies involved in the Program implementation of policies and actions monitored under the Program, and to provide to the Lender all relevant reports and information concerning the implementation of the Program, including transmission of any and all documentary evidence for the accomplishment of the targets and carrying out of the actions set out in the Policy Matrix.

These reports and information will be used by the Lender to conduct annual loan reviews in order to assess progress towards the achievement of the actions monitored under the Program. The Borrower undertakes to assist these loan reviews.

Moreover, the Borrower shall use the reports mentioned above to produce a comprehensive report on the overall impact of the policy reforms described in the Policy Matrix.



12.3 Public Expenditure and Financial Accountability (PEFA) Evaluations

Over the course of the Program, the Borrower shall promptly furnish to the Lender all PEFA reports and the corresponding actions plans when available.

12.4 Co-Financing

The Borrower shall promptly inform the Lender of any cancellation (in whole or in part) or any prepayment to a Co-Financier.

12.5 Additional Information

The Borrower shall supply to the Lender:

- (a) promptly upon becoming aware of them, details of any event or circumstance which is or may be an Event of Default or which has or may have a Material Adverse Effect, the nature of such an event and all the actions taken or to be taken to remedy it (if any); and
- (b) promptly, details of any decision or event which might affect the organisation, completion or operation of the Program;
- (c) subject to the confidentiality provisions of the agreements any information that the Lender may reasonably require in relation to the Borrower's foreign and domestic debt as well as the status of any guaranteed loans provided by the Government of the Republic of the Philippines under Republic Act No. 4860 (Foreign Borrowings Act), as amended.

**13. EVENTS OF DEFAULTS**

13.1 Events of Default

Each of the events or circumstances set out in this Clause 13.1 (*Events of Default*) is an Event of Default.

(a) **Payment Default**

The Borrower does not pay on the due date any amount payable by it under this Agreement in the manner required under this Agreement. However, without prejudice to Clause 4.3 (*Late payment and default interest*), no Event of Default will occur under this paragraph (a) if such payment is made in full by the Borrower within thirty (30) Business Days of the due date.

(b) **Undertakings and Obligations**

The Borrower does not comply with any term of the Agreement, including, without limitation, any of the undertakings it has given pursuant to Clause 11 (*Undertakings*) and Clause 12 (*Information Undertakings*).

Save for the undertakings given pursuant to Clause 11.4 (*Environmental and Social Liability*), Clauses 11.9 (*Program Implementation*) and 11.10 (*Origin of funds, no Acts of Corruption, Fraud or Anti-Competitive Practices*) in respect of which no grace period is permitted, no Event of Default will occur under this paragraph (b) if the non-compliance is capable of remedy and is remedied within sixty (60) Business Days of the earlier of (A) the date of the Lender's notice of failure to the Borrower; and (B) the Borrower becoming aware of the breach, or within the time limit determined by

the Lender in the case referred to in subparagraph (iv) of Clause 11.10 (*Origin of funds, no Acts of Corruption, Fraud or Anti-Competitive Practices*).

(c) **Misrepresentation**

A representation or warranty made by the Borrower in the Agreement, including under Clause 10 (*Representations and warranties*), or in any document delivered by or on behalf of the Borrower under or in relation to the Agreement, is incorrect or misleading when made or deemed to be made.

No Event of Default pursuant to this paragraph shall be declared if the breach of such provision has been cured within forty (40) calendar days.

(d) **Cross Default**

(i) Subject to paragraph (ii), any External Indebtedness of the Borrower is not paid on its due date or, if applicable, within any grace period granted pursuant to the relevant documentation.

(ii) A creditor has cancelled or suspended its commitment towards the Borrower pursuant to any External Indebtedness, or has declared the External Indebtedness due and payable prior to its specified maturity, or requested prepayment in full of the External Indebtedness, in each case, as a result of an event of default or any provision having a similar effect (howsoever described) pursuant to the relevant documentation.

(iii) No Event of Default will occur under this clause 13.1 (d) if the relevant amount of External Indebtedness or the commitment for External Indebtedness falling within paragraphs (i) and (ii) au-dessus is less than twenty five million dollars (USD 25,000,000) (or its equivalent in any other currency(ies)) or if such default has been cured within a period of thirty (30) calendar days.

(e) **Unlawfulness**

It is or becomes unlawful for the Borrower to perform any of its obligations under this Agreement.

(f) **Material adverse change**

Any event or any measure which is likely, according to the Lender's opinion, to have a Material Adverse Effect, as hereinafter defined in Schedule 1A occurs or is likely to occur.

No Event of Default pursuant to this paragraph shall be declared if the measure mentioned above likely to have a Material Adverse Effect has been cured within sixty (60) calendar days.

(g) **Withdrawal or suspension of the Program**

Any of the following occurs:

(i) the Borrower withdraws from the Program; or

(ii) the implementation of the Program is suspended for a period exceeding six (6) months;



(h) **Authorisations**

Any Authorisation required for the Borrower in order to perform or comply with its obligations under this Agreement or required in the ordinary course of the Program is not obtained within the required timeframe or is cancelled or becomes invalid or otherwise ceases to be in full force and effect.

No Event of Default pursuant to this paragraph shall be declared if the situation by which the Authorization is cancelled, becomes invalid or ceases to be in full force and effect has been cured within sixty (60) calendar days.

(i) **Judgments, rulings or decisions having a Material Adverse Effect**

Any judgment or arbitral award or any judicial or administrative decision affecting the Borrower has or is reasonably likely, according to the opinion of the Lender, to have a Material Adverse Effect, occurs or is likely to occur.

(j) **Suspension of free convertibility and free transfer**

Free convertibility and free transfer of any of the amounts due by the Borrower under this Agreement, or any other facility provided by the Lender to the Borrower or any other borrower of the jurisdiction of the Borrower, is challenged.

13.2 Acceleration

On and at any time after the occurrence of an Event of Default, the Lender may, without providing any formal demand or commencing any judicial or extra-judicial proceedings, by written notice to the Borrower:

- (a) cancel the Available Credit; and/or
- (b) declare that all or part of the Facility, together with any accrued or outstanding interest and all other amounts outstanding under this Agreement, are immediately due and payable.

Without prejudice to the above, in the event that an Event of Default occurs as set out in Clause 13.1 (*Events of Default*), the Lender reserves the right to, upon written notice to the Borrower, (i) suspend or postpone the Drawdown under the Facility; and/or (ii) suspend the finalisation of any agreements relating to other possible financial offers which have been notified by the Lender to the Borrower; and/or (iii) suspend or postpone any drawdown under any loan agreement entered into between the Borrower and the Lender.

If any drawdown is postponed or suspended by a Co-Financier under an agreement between such Co-Financier and the Borrower, the Lender reserves the right to postpone or suspend the Drawdown under the Facility.

13.3 Notification of an Event of Default

In accordance with Clause 12.5 (*Additional Information*), the Borrower shall promptly notify the Lender upon becoming aware of any event which is or is likely to be an Event of Default and inform the Lender of all the measures contemplated by the Borrower to remedy it.



## 14. ADMINISTRATION OF THE FACILITY

### 14.1 Payments

All payments received by the Lender under this Agreement shall be applied towards the payment of expenses, fees, interest, principal amounts or any other sum due under this Agreement in the following order:

- 1) incidental costs and expenses;
- 2) fees;
- 3) late-payment interest and default interest;
- 4) accrued interest;
- 5) principal repayments.

Any payment received from the Borrower shall be applied first in or towards payment of any sums due and payable under the Facility or under other loans extended by the Lender to the Borrower, should it be in the Lender's interest to apply these sums to such other loans, in the order set out above.

### 14.2 Set-off

Without prior approval of the Borrower, the Lender may, at any time, in compliance with or within the limits of French law, set-off due and payable obligations owed by the Borrower against any amounts held by the Lender on behalf of the Borrower or any due and payable obligations owed by the Lender to the Borrower. If the obligations are in different currencies, the Lender may convert either obligation at the prevailing currency exchange rate for the purpose of the set-off.

All payments made by the Borrower under the Agreement shall be calculated and made without set-off. The Borrower is prohibited from making any set-off.

### 14.3 Business Days

If a payment is due on a day which is not a Business Day, the due date for that payment shall be the next Business Day if the next Business Day is in the same calendar month, or the preceding Business Day if the next Business Day is not in the same calendar month.

During any extension of the Payment Date for a principal or unpaid amount under this Agreement, interest shall be payable on that amount during the extension period at the rate applicable on the original Payment Date.

### 14.4 Currency of payment

The currency of each amount payable under this Agreement is Euros, except as provided in Clause 14.6 (*Place of payment*).

### 14.5 Day count convention

Any interest, fee or expense accruing under this Agreement will be calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days in accordance with European interbank market practice.

#### 14.6 Place of payment

- (a) Any funds to be transferred by the Lender to the Borrower under the Facility will be paid to the bank account opened by the Borrower at the BSP specifically designated for such purpose by the Borrower.
- (b) The Borrower may request that the funds are transferred in: (i) Euros to a bank account denominated in Euros; or (ii); or US Dollars in the equivalent amount of the Drawdown at a market exchange rate on the day of the Drawdown and to a bank account denominated in US Dollar; or (iii) any other convertible and transferable currency, in an equivalent amount of the Drawdown on the day of the Drawdown and to a bank account denominated in such currency.
- (c) Any payment to be made by the Borrower to the Lender shall be paid on the due date by no later than 11:00 am (Paris time) to the following bank account:

RIB Code: 30001 00064 00000040235 03

IBAN Code: FR76 3000 1000 6400 0000 4023 503

Banque de France SWIFT code (BIC): BDFEFRPPCCT

opened by the Lender at the Banque de France (head office/main branch) in Paris or any other account notified by the Lender to the Borrower.

- (d) The Borrower shall request from the bank responsible for transferring any amount to the Lender that it provides the following information in any wire transfer messages in a comprehensive manner and in the order set out below (the caption numbers are referring to SWIFT MT 202 and 103 protocol)
  - Principal: name, address, bank account number (field 50)
  - Principal's bank: name and address (field 52)
  - Reference: name of the Borrower, name of the Program, reference number of the Agreement (field 70)
- (e) Applicable exchange rates will be the exchange rates obtained by the Lender through a Reference Financial Institution on the date of the Drawdown.
- (f) All payments made by the Borrower shall comply with this Clause 14.6 (*Place of payment*) in order for the relevant payment obligation to be deemed discharged in full.

#### 14.7 Payment Systems Disruption

If the Lender determines (in its discretion) that a Payment Systems Disruption Event has occurred or the Borrower notifies the Lender that a Payment Systems Disruption Event has occurred, the Lender:

- (a) may, and shall if requested by the Borrower, enter into discussions with the Borrower with a view to agreeing any changes to the operation and administration of the Facility as the Lender may deem necessary in the circumstances;
- (b) shall not be obliged to enter into discussions with the Borrower in relation to any of the changes mentioned in paragraph (a) au-dessus if, in its opinion, it is not practicable to do so under the circumstances and, in any event, it has no obligation to agree to such changes; and



- (c) shall not be liable for any cost, loss or liability arising as a result of its taking, or failing to take, any actions pursuant to this Clause 14.7 (*Payment Systems Disruption*).

## 15. MISCELLANEOUS

### 15.1 Language

The language of this Agreement is English. If this Agreement is translated into another language, the English version shall prevail in the event of any conflicting interpretation or in the event of a dispute between the Parties.

All notices given or documents provided under, or in connection with, this Agreement shall be in English.

The Lender may request that a notice or document provided under, or in connection with, this Agreement which is not in English is accompanied by a certified English translation, in which case, the English translation shall prevail unless the document is a statutory document of a company, legal text or other official document.

### 15.2 Certifications and determinations

In any litigation or arbitration arising out of or in connection with this Agreement, entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

Any certification or determination by the Lender of a rate or amount under this Agreement will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### 15.3 Partial invalidity

If, at any time, a term of this Agreement is or becomes illegal, invalid or unenforceable, neither the validity, legality nor enforceability of the remaining provisions of this Agreement will in any way be affected or impaired.

### 15.4 No Waiver

Failure to exercise, or a delay in exercising, on the part of the Lender of any right under the Agreement shall not operate as a waiver of that right.

Partial exercise of any right shall not prevent any further exercise of such right or the exercise of any other right or remedy under the applicable law.

The rights and remedies of the Lender under this Agreement are cumulative and not exclusive of any rights and remedies under the applicable law.

### 15.5 Assignment

The Borrower may not assign or transfer, in any manner whatsoever, all or any of its rights and obligations under this Agreement without the prior written consent of the Lender.

Subject to prior notification to the Monetary Board of the BSP and the Borrower, the Lender may assign or transfer to any third party its rights and obligations under the Agreement to any other third party and may enter into any sub-participation agreement relating thereto.

Assignments or transfers by the Lender shall be of no cost to the Borrower and the terms and conditions of the Loan shall remain the same.



15.6 Legal effect

The Schedules annexed hereto and the recitals hereof form part of this Agreement and have the same legal effect.

15.7 Entire agreement

As of the Effective Date, this Agreement represents the entire agreement between the Parties in relation to the matters set out herein, and supersedes and replaces all previous documents, agreements or understandings which may have been exchanged or communicated as part of the negotiations in connection with this Agreement.

15.8 Amendments

No amendment may be made to this Agreement unless expressly agreed in writing between the Parties.

15.9 Confidentiality – Disclosure of information

- (a) The Borrower shall not disclose the content of this Agreement to any third party without the prior consent of the Lender except pursuant to a disclosure obligation under any applicable law, regulation and rules, or by order of any courts, tribunals, or agencies of competent jurisdiction, or relevant regulatory bodies.
- (b) Notwithstanding any existing confidentiality agreement, the Lender may disclose any information or documents in relation to the Program to: (i) its auditors, experts, rating agencies, legal advisers or supervisory bodies; (ii) any person or entity to whom the Lender may assign or transfer all or part of its rights or obligations under the Agreement; and (iii) any person or entity for the purpose of taking any protective measures or preserving the rights of the Lender under the Agreement.
- (c) Furthermore, the Borrower hereby expressly authorizes the Lender:
  - (i) to exchange with the French Republic for publication on the French government website pursuant to any request from International Aid Transparency Initiative; and
  - (ii) to publish on the Lender's Website information relating to the Program and its financing as listed in Schedule 6 (*Information that may be published on the French Government Website and the Lender's Website*).

15.10 Limitation

The statute of limitations of any claim under this Agreement shall be ten (10) years, except for any claim of interest due under this Agreement.

**16. NOTICES**

16.1 In writing and addresses

Any notice, request or other communication to be given or made under or in connection with this Agreement shall be given or made in writing and, unless otherwise stated, may be given or made by fax or by letter sent by the post office to the address and number of the relevant Party set out below:

For the Borrower:

DEPARTMENT OF FINANCE

Address: DOF Building, Roxas Boulevard, Manila, Philippines

Telephone: + 63 2 8523 9911 / + 63 2 85254194

Facsimile: + 63 2 8523 9216

Attention: Head of the International Finance Group

For the Lender:

**AFD – PHILIPPINES COUNTRY OFFICE**

Attn: AFD Country director

34th Floor – Units A&B – Rufino Pacific tower | 6784 Ayala Avenue

Makati City 1200 | PHILIPPINES

Telephone +63 28 800 3456

With a copy to:

**AFD – PARIS HEAD OFFICE**

Address: 5, rue Roland Barthes – 75598 Paris Cedex 12, France

Telephone : + 33 1 53 44 31 31

Facsimile : + 33 1 44 87 39 65

Attention : Director of Eastern Europe, Middle East and Asia Department

or such other address, fax number, department or officer as one Party notifies to the other Party.

**16.2 Delivery**

Any notice, request or communication made or any document sent by a Party to the other Party in connection with this Agreement will only be effective::

- (a) if by fax, when received in a legible form; acknowledged in a readable form by an acknowledgment of receipt; and
- (b) if by letter sent through the post office, when it is actually received with confirmation of delivery,

and, where a particular person or a department is specified as part of the address details provided under Clause 16.1 (*In writing and addresses*), if such notice, request or communication has been addressed to that person or department.

**16.3 Electronic communications**

- (a) Any communication made by one person to another under or in connection with this Agreement may be made by electronic mail or other electronic means if the Parties:
  - (ii) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;



- (iii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iv) notify each other of any change to their address or any other such information supplied by them.
- (a) Any electronic communication made between the Parties will be effective only upon receipt and confirmation that the same is actually received in a readable form.

## **17. GOVERNING LAW, ENFORCEMENT AND CHOICE OF DOMICILE**

### **17.1 Governing Law**

This Agreement is governed by French law.

### **17.2 Arbitration**

Any dispute arising out of or in connection with this Agreement shall be referred to and finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce applicable on the date of commencement of arbitration proceedings, by one or more arbitrators to be appointed in accordance with such Rules.

The seat of arbitration shall be Singapore and the language of arbitration shall be English.

This arbitration clause shall remain in full force and effect if this Agreement is declared void or is terminated or cancelled and following expiry of this Agreement. The Parties' contractual obligations under this Agreement are not suspended if a Party initiates legal proceedings against the other Party.

The Parties expressly agree that, by signing this Agreement, the Borrower irrevocably waives all rights of immunity in respect of jurisdiction or performance on which it could otherwise rely, the enforcement of an arbitration award being also made in accordance with conditions as provided in Clause 10.6(*Governing Law and Enforcement*).

Notwithstanding the foregoing, the Borrower does not waive any immunity of its assets which are (i) used by a diplomatic or consular mission of the Republic of the Philippines, (ii) of a military character and under control of a military authority or defence agency of the Republic of the Philippines, or (iii) located in the Philippines and dedicated to a public or governmental use (as distinguished from patrimonial assets and assets dedicated to commercial use).

### **17.3 Service of process**

Without prejudice to any applicable law, for the purposes of serving judicial and extrajudicial documents in connection with any action or proceedings referred to above, the Borrower irrevocably chooses its registered office as at the date of this Agreement at the address set out in Clause 16 (*Notices*) for service of process, and the Lender chooses the address "AFD SIEGE" set out in Clause 16 (*Notices*) for service of process.

## **18. EFFECTIVE DATE AND DURATION**

This Agreement comes into force upon receipt by the Lender of the relevant government approvals, permits and authorizations which shall occur no later than three (3) months, subject to extension by the parties, after the Signing Date ("Effective Date") provided that all formalities required by the laws and remains in full force and effect for as long as any amount is outstanding under this Agreement.

Notwithstanding the above, the obligations under Clause 15.9 (*Confidentiality – Disclosure of information*) shall survive and remain in full force and effect for a period of (5) years after the last Payment Date.

Executed in three (3) originals, in Manila, on June 9, 2020.

## **BORROWER**



**THE REPUBLIC OF PHILIPPINES, acting through the DEPARTMENT OF FINANCE of its Government**

  
Represented by: 

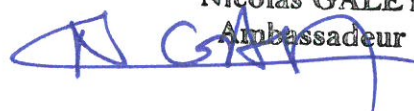
**Name: Carlos G. Dominguez**  
**Capacity: Secretary of Finance**  
JUN 09 2020

## **LENDER**

**AGENCE FRANÇAISE DE DÉVELOPPEMENT**

  
Represented by : 

**Name: Laurent Klein**  
**Capacity: Director of AFD Philippines Country Office**

  
**Nicolas GALEY**  
**Ambassadeur**

Co-signatory, His Excellency Mr Nicolas GALEY, French Ambassador to the Philippines and to Micronesia



## SCHEDULE 1A – DEFINITIONS

<b>Acceptable Bank</b>	means any bank acceptable to the Lender.
<b>Act of Corruption</b>	<p>means any of the following:</p> <ul style="list-style-type: none"> <li>(a) the act of promising, offering or giving, directly or indirectly, to a Public Official or to any person who directs or works, in any capacity, for a private sector entity, an undue advantage of any nature, for the relevant person himself or herself or for another person or entity, in order that this person acts or refrains from acting in breach of his or her legal, contractual or professional obligations and, having for effect to influence his or her own actions or those of another person or entity; or</li> <li>(b) the act of a Public Official or any person who directs or works, in any capacity, for a private sector entity, soliciting or accepting, directly or indirectly, an undue advantage of any nature, for the relevant person himself or herself or for another person or entity, in order that this person acts or refrains from acting in breach of his or her legal, contractual or professional obligations and, having for effect to influence his or her own actions or those of another person or entity.</li> </ul>
<b>Agreement</b>	means this credit facility agreement, including its recitals, Schedules and, if applicable, any amendment made in writing thereto.
<b>Anti-Competitive Practices</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) any concerted or implicit action having as its object and/or as its effects to impede, restrict or distort fair competition in a market, including without limitation when it tends to: (i) limit market access or the free exercise of competition by other companies; (ii) prevent price setting by the free play of markets by artificially favouring the increase or decrease of such prices; (iii) limit or control any production, markets, investment or technical progress; or (iv) share out markets or sources of supply;</li> <li>(b) any abuse by a company or group of companies of a dominant position within a domestic market or in a substantial part thereof; or</li> <li>(c) any bid or predatory pricing having as its object and/or its effect to eliminate from a market, or to prevent a company or one of its products from</li> </ul>

	accessing the market.
<b>Authorisation(s)</b>	means any authorisation, consent, approval, resolution, permit, licence, exemption, filing, notarisation or registration, or any exemptions in respect thereof, obtained from or provided by an Authority, whether granted by means of an act, or deemed granted if no answer is received within a defined time limit, as well as any approval and consent given by the Borrower's creditors.
<b>Authority(ies)</b>	means any government or statutory entity, department or commission exercising a public prerogative, or any administration, court, agency or State or any governmental, administrative, tax or judicial entity.
<b>Availability Period</b>	means the period from and including the Signing Date up to the Deadline for Drawdown.
<b>Available Credit</b>	means, at any given time, the maximum principal amount specified in Clause 2.1 ( <i>Facility</i> ) less: <ul style="list-style-type: none"> <li>(i) the aggregate amount of the Drawdown drawn by the Borrower;</li> <li>(ii) the amount of the Drawdown to be made pursuant to the pending Drawdown Request; and</li> <li>(iii) any portion of the Facility which has been cancelled pursuant to Clauses 8.3 (<i>Cancellation by the Borrower</i>) and/or 8.4 (<i>Cancellation by the Lender</i>).</li> </ul>
<b>Borrower's Account</b>	means the account with the following details: USD Account <ul style="list-style-type: none"> <li>• Bank and Bank's Address of the Borrower: Bangko Sentral ng Pilipinas, Manila (PHCBPHMM)</li> <li>• Correspondent Bank and Account Number of the Borrower's Bank: Federal Reserve Bank of New York, New York / Account No. 021086980</li> <li>• Bank SWIFT code: FRNYUS33</li> </ul> EUR Account <ul style="list-style-type: none"> <li>• Bank and Bank's Address of the Borrower: Bangko Sentral ng Pilipinas (PHCBPHMM)</li> <li>• IBAN Account Number: DE98504000005040040817</li> <li>• Correspondent Bank and Account Number of the Borrower's Bank: Deutsche Bundesbank Zentrale, Frankfurt</li> </ul>





	<ul style="list-style-type: none"> <li>• SWIFT Code: MARKDEFF</li> </ul> <p>opened in the name of the Borrower with the Bangko Sentral ng Pilipinas.</p>
<b>BSP</b>	means the Bangko Sentral ng Pilipinas, the central bank of the Republic of the Philippines, established on July 3 <sup>rd</sup> , 1993 as an independent monetary authority, pursuant to the 1987 Philippine Constitution and the New Central Bank Act (RA 7653) dated June 14 <sup>th</sup> , 1993, having its office at A. Mabini St. cor. P. Ocampo St., Malate Manila, Philippines 1004
<b>Business Day</b>	means a day (other than Saturday or Sunday) on which banks are open for general business in Paris, and which is a TARGET Day in the event that a Drawdown has to be made on such day.
<b>Certified</b>	means any copy, photocopy or other duplicate of an original document, the certification by any duly authorised person, as to the conformity of the copy, photocopy or duplicate with the original document.
<b>Co-Financier(s)</b>	means the Asian Development Bank (ADB) for an amount of three hundred million US Dollars (USD 300,000,000).
<b>Co-Financing</b>	means jointly a loan amount of three hundred Million US Dollars (300 000 000 USD) plus one hundred and fifty Million Euros (150 000 000 EUR) and, separately, any of such co-financing.
<b>Deadline for Drawdown</b>	means October 31 <sup>st</sup> , 2020, date after which no further Drawdown may occur.
<b>Drawdown</b>	means a drawdown of all or part of the Facility made available by the Lender to the Borrower pursuant to the terms and conditions set out in Clause 3 ( <i>Drawdown of Funds</i> ) or the principal amount outstanding of such Drawdown which remains due and payable at a given time.
<b>Drawdown Date</b>	means the date on which the Drawdown is made available by the Lender.
<b>Drawdown Period</b>	<p>means the period starting on the Drawdown Date up to and including the first of the following date:</p> <ul style="list-style-type: none"> <li>(i) the date on which the Available Credit is equal to zero ; and</li> <li>(ii) the Deadline for Drawdown.</li> </ul>

<b>Drawdown Request</b>	means a request substantially in the form set out in Schedule 5A ( <i>Form of Drawdown Request</i> ).
<b>Effective Date</b>	means the date defined in article 18 (Effective Date and duration) of the Facility Agreement
<b>Embargo</b>	means any sanction of a commercial nature aiming at prohibiting any import and/or export (supply, sale or transfer) of one or several goods, products or services going to and/or coming from a country for a given period as published and amended from time to time by the United Nations, the European Union or France.
<b>EURIBOR</b>	means the inter-bank rate applicable to Euro for any deposit denominated in Euro for a period comparable to the relevant period, as determined by the European Money Markets Institute (EMMI), or any successor administrator, at 11:00 am Brussels time, two (2) Business Days before the first day of the Interest Period.
<b>Euro(s) or EUR</b>	means the single currency of the member states of the European Economic and Monetary Union, including France, and having legal tender in such Member States.
<b>Event of Default</b>	means any event or circumstance set out in Clause 13.1 ( <i>Events of Default</i> ).
<b>External Indebtedness</b>	means money borrowed or guarantee for money borrowed which is (i) denominated or payable in a currency other than the lawful currency of the Borrower's country and (ii) owed by the Borrower to a person other than a person that is organised under the laws of, or is a resident of the Borrower's country
<b>Facility</b>	means the credit facility made available by the Lender to the Borrower in accordance with this Agreement up to the maximum principal amount set out in Clause 2.1 ( <i>Facility</i> ).
<b>Financial Sanctions List</b>	<p>means the list(s) of persons, groups or entities which are subject to financial sanctions by the United Nations, the European Union and/or France.</p> <p>For information purposes only and for the convenience of the Borrower, who may rely on, the following references or website addresses:</p> <p><b>For the lists maintained by the United Nations</b>, the following website may be consulted:</p> <p><a href="https://www.un.org/securitycouncil/content/un-sc-">https://www.un.org/securitycouncil/content/un-sc-</a></p>





	<p><a href="#">consolidated-list</a></p> <p><b>For the lists maintained by the European Union</b>, the following website may be consulted:</p> <p><a href="https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidated-list-sanctions_en">https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidated-list-sanctions_en</a></p> <p><b>For the lists maintained by France</b>, the following website may be consulted:</p> <p><a href="https://www.tresor.economie.gouv.fr/services-aux-entreprises/sanctions-economiques/dispositif-national-de-gel-des-avoirs">https://www.tresor.economie.gouv.fr/services-aux-entreprises/sanctions-economiques/dispositif-national-de-gel-des-avoirs</a></p>
<b>Financing Plan</b>	means the financing plan of the Program attached as Schedule 3 ( <i>Financing Plan</i> ).
<b>Fixed Reference Rate</b>	<p>means zero point fifty two percent (0.52%) per annum.</p> <p><i>For information purpose only, this rate was determined on 4<sup>th</sup> of June 2020 based on the fixed rate equivalent of EURIBOR + 43 basis points applicable for a loan of 20 year maturity with a grace period of 6 years, in compliance with the first and last Payment Dates defined in Clause 7 (Repayment) of the Agreement.</i></p>
<b>Fraud</b>	means any unfair practice (acts or omissions) deliberately intended to mislead others, to intentionally conceal elements there from, or to betray or vitiate his/her consent, to circumvent any legal or regulatory requirements and/or to violate internal rules and procedures of the Borrower or a third party in order to obtain an illegitimate benefit.
<b>Fraud against the Financial Interests of the European Community</b>	means any intentional act or omission intended to damage the European Union budget and involving (i) the use or presentation of false, inaccurate or incomplete statements or documents, of which an effect is an appropriation or wrongful retention of funds or any illegal reduction in resources of the general budget of the European Union; (ii) the non-disclosure of information with the same effect; and (iii) misappropriation of such funds for purposes other than those for which such funds were originally granted.
<b>Grace Period</b>	means the period from the Signing Date up to and including the date falling seventy two (72) months after such date, during which no principal repayment under the Facility is due and payable.

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<b>Illicit Origin</b>	<p>means funds obtained through:</p> <p>(a) the commission of any predicate offence as designated in the FATF 40 recommendations Glossary under “<i>Designated categories of offences</i>” (<a href="http://www.fatf-gafi.org/media/fatf/documents/recommendations/Recommendations_GAfi.pdf">http://www.fatf-gafi.org/media/fatf/documents/recommendations/Recommendations_GAfi.pdf</a>);</p> <p>(b) any Act of Corruption; or</p> <p>(c) any Fraud against the Financial Interests of the European Community, if or when applicable.</p>
<b>Index Rate</b>	<p>means the TEC 10 daily index, the ten-year constant maturity rate displayed on a daily basis on the relevant quotation page of the Reference Financial Institution or any other index which may replace the TEC 10 daily index. On the Signing Date, the Index Rate on 04<sup>th</sup> of June 2020 is zero point zero three per cent (0.03 %) per annum.</p>
<b>Interest Period(s)</b>	<p>means each period from a Payment Date (exclusive) up to the next Payment Date (inclusive). For each Drawdown under the Facility, the first interest period shall start on the Drawdown Date (exclusive) and end on the next successive Payment Date (inclusive).</p>
<b>Interest Rate</b>	<p>means the interest rate expressed as a percentage and determined in accordance with Clause 4.1 (<i>Interest Rate</i>).</p>
<b>Margin</b>	<p>means zero point forty-three percent (0.43%) per annum.</p>
<b>Market Disruption</b>	<p>means the occurrence of one of the following events:</p> <p>(iii) EURIBOR is not determined by the European Money Markets Institute (EMMI), or any successor administrator, at 11:00am Brussels time, two (2) Business Days before the first day of the relevant Interest Period or on the Rate Setting Date; or</p> <p>(iv) before close of business of the European interbank market, two (2) Business Days prior to the first day of the relevant Interest Period or on the Rate Setting Date, the Borrower receives notification from the Lender that (i) the cost to the Lender of obtaining matching resources in the relevant interbank market would be in excess of EURIBOR for the relevant Interest Period; or (ii) it cannot or will not be able to obtain matching resources on the relevant interbank market in the ordinary course of business to fund the relevant Drawdown for the relevant time period.</p>

<b>Material Adverse Effect</b>	<p>means a material and adverse effect on:</p> <ul style="list-style-type: none"> <li>(a) the Program, insofar as it would jeopardise the implementation and operation of the Program in accordance with this Agreement;</li> <li>(b) the business, assets, financial condition of the Borrower or its ability to perform its obligations under this Agreement;</li> <li>(c) the validity or enforceability of this Agreement; or</li> <li>(d) any right or remedy of the Lender under this Agreement.</li> </ul>
<b>Outstanding Principal</b>	<p>means, in respect of any Drawdown, the outstanding principal amount due in respect of such Drawdown, corresponding to the amount of the Drawdown paid by the Lender to the Borrower less the aggregate of instalments of principal repaid by the Borrower to the Lender in respect of such Drawdown.</p>
<b>Payment Dates</b>	<p>means March 31<sup>st</sup> and September 30<sup>th</sup> of each year.</p>
<b>Payment Systems Disruption Event</b>	<p>means either or both of:</p> <ul style="list-style-type: none"> <li>(a) a material disruption to the payment or communication systems or to the financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by this Agreement to be carried out), provided that the disruption is not caused by, and is beyond the control of, any of the Parties; or</li> <li>(b) the occurrence of any other event which results in a disruption (of a technical or system-related nature) to the treasury or payment operations of a Party preventing that, or any other Party: <ul style="list-style-type: none"> <li>(i) from performing its payment obligations under this Agreement; or</li> <li>(ii) from communicating with the other Parties in accordance with the terms of this Agreement;</li> </ul> <p>and which (in either case) is not caused by, and is beyond the control of, either Party.</p> </li> </ul>
<b>Policy Matrix</b>	<p>means the policy matrix as attached in Schedule 7 (Policy Matrix).</p>
<b>Prepayment Compensatory</b>	<p>means the indemnity calculated by applying the following</p>



<b>Indemnity</b>	<p>percentage to the amount of the Facility which is repaid in advance:</p> <ul style="list-style-type: none"> <li>- if the repayment occurs prior to the 6<sup>th</sup> anniversary (exclusive) of the Signing Date: two percent (2.0%);</li> <li>- if the repayment occurs between the 6<sup>th</sup> anniversary (inclusive) and the 11<sup>th</sup> anniversary (exclusive) of the Signing Date: one point five percent (1.5%);</li> <li>- if the repayment occurs between the 11<sup>th</sup> anniversary (inclusive) and the 16<sup>th</sup> anniversary (exclusive) of the Signing Date: one percent (1.0%);</li> <li>- if the repayment occurs after the 16<sup>th</sup> anniversary (inclusive) of the Signing Date: zero point five percent (0.5%).</li> </ul>
<b>Program</b>	means the Program as described in Schedule 2 ( <i>Program Description</i> ).
<b>Public Official</b>	means (i) any holder of legislative, executive, administrative or judicial office whether appointed or elected, serving on permanent basis or otherwise, paid or unpaid, regardless of rank, or (ii) any other person defined as a public official under the domestic law of the Borrower's jurisdiction, and (iii) any other person exercising a public function, including for a public agency or organisation, or providing a public service.
<b>Rate Conversion</b>	means the conversion of the floating rate applicable to all or part of the Facility into a fixed rate pursuant to Clause 4.1 ( <i>Interest Rate</i> ).
<b>Rate Conversion Request</b>	means a request from the Borrower substantially in the form attached as Schedule 5C ( <i>Form of Rate Conversion Request</i> ).
<b>Rate Setting Date</b>	<p>means:</p> <p>I - in relation to any Interest Period for which an Interest Rate is to be determined:</p> <ul style="list-style-type: none"> <li>(i) the first Wednesday (or, if that date is not a Business Day, the immediately following Business Day) following the date of receipt by the Lender of the Drawdown Request, provided that such date is at least two (2) full Business Days prior to said Wednesday;</li> <li>(ii) the second Wednesday (or, if that date is not a Business Day, the immediately following Business Day) following the date of receipt by the Lender of the Drawdown Request, if such</li> </ul>

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	<p>date does not at least two (2) full Business Days prior to the first Wednesday specified in paragraph (a) above:</p> <p>II - in the case of a Rate Conversion:</p> <p>(i) the first Wednesday (or, if that date is not a Business Day, the immediately following Business Day) following the date of receipt by the Lender of the Rate Conversion Request from the Borrower provided such date is at least two (2) full Business Days before the first Wednesday.</p> <p>(ii) the second Wednesday (or, if that date is not a Business Day, the immediately following Business Day) following the date of receipt by the Lender of the Rate Conversion Request, if such date is not at least two (2) full Business Days prior to the first Wednesday.</p>
<b>Reference Financial Institution</b>	means a financial institution chosen as a suitable reference financial institution by the Lender and which regularly publishes quotations of financial instruments on one of the international financial information networks according to the practices recognised by the banking industry.
<b>Schedule(s)</b>	means any schedule or schedules to this Agreement.
<b>Signing Date</b>	means the date of execution of this Agreement by all the Parties.
<b>TARGET Day</b>	means a day on which the Trans European Automated Real Time Gross Settlement Express Transfer 2 (TARGET2) system, or any successor thereto, is open for payment settlement in Euros.
<b>Tax(es)</b>	means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with a failure to pay or any delay in the payment of any such amounts).
<b>US Dollar(s) (or USD)</b>	means the currency having legal tender in the United States of America
<b>Website</b>	means the website of AFD ( <a href="http://www.afd.fr/">http://www.afd.fr/</a> ) or any other such replacement website.
<b>Withholding Tax</b>	means any deduction or retention in respect of a Tax on any payment made under or in connection with this

	Agreement.
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#### SCHEDULE 1B - CONSTRUCTION

- (a) “**assets**” include present and future properties, revenues and rights of every description excluding the assets of the Bangko Sentral ng Pilipinas ;
- (b) any reference to the “**Borrower**”, a “**Party**” or a “**Lender**” includes its successors in title, permitted assigns and permitted transferees;
- (c) any reference to the Agreement or other document is a reference to this Agreement or to such other document as amended, restated or supplemented and includes, if applicable, any document which replaces it through novation, in accordance with the Agreement;
- (d) a “**guarantee**” includes any *cautionnement*, *aval* and any *garantie* which is independent from the debt to which it relates;
- (e) “**indebtedness**” means any obligation of any person whatsoever (whether incurred as principal or as surety) for the payment or repayment of money, whether present, future, actual or contingent;
- (f) a “**person**” includes any person, company, corporation, partnership, trust, government, state or state agency or any association, or group of two or more of the foregoing (whether or not having separate legal personality);
- (g) a “**regulation**” includes any legislation, regulation, rule, decree, official directive, instruction, request, advice, recommendation, decision or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, supervisory authority, regulatory authority, independent administrative authority, agency, department or any division of any other authority or organisation (including any regulation issued by an industrial or commercial public entity) having an effect on this Agreement or on the rights and obligations of a Party;
- (h) a provision of law is a reference to that provision as amended;
- (i) unless otherwise provided, a time of day is a reference to Paris time;
- (j) The Section, Clause and Schedule headings are for ease of reference only and do not affect the interpretation of this Agreement;
- (k) unless otherwise provided, words and expressions used in any other document relating to this Agreement or in any notice given in connection with this Agreement have the same meaning in that document or notice as in this Agreement;
- (l) an Event of Default is “continuing” if it has not been remedied or if the Lender has not waived any of its rights relating thereto;
- (m) a reference to a Clause or Schedule shall be a reference to a Clause or Schedule of this Agreement; and
- (n) words importing the plural shall include the singular and vice-versa.

## **SCHEDULE 2 - PROGRAM DESCRIPTION**

The Program consists of the set of objectives, policies and actions described in the “Expanding Private Participation in Infrastructure Program” Policy Matrix (Schedule 7). The Program’s outputs are:

- (a) Output 1: Strengthened government financial support to PPPs.
- (b) Output 2: Expanded and efficiently implemented pipeline of PPP Projects.
- (c) Output 3: Strengthened Legal and Regulatory Framework for PPPs.

### SCHEDULE 3 - FINANCING PLAN

<b>Indicative Financing Plan</b>	<b>Amount (in EUR million)</b>	<b>%</b>
<b>AFD</b>	<b>150 M EUR</b>	<b>35</b>
- Sovereign Loan	(one hundred and fifty million EUR)	
<b>Co-financier</b>		
- Asian Development Bank (ADB)	<b>272.6 M EUR</b> (equivalent of three hundred million - 300 M - USD)	<b>65</b>
<b>Total</b>	<b>422.6 M EUR</b>	<b>100</b>



#### **SCHEDULE 4 - CONDITIONS PRECEDENT**

The following applies to all documents delivered by the Borrower as a condition precedent:

- if the document which is delivered is not an original but a photocopy, the original Certified photocopy shall be delivered to the Lender;
- the final version of a document which draft was previously sent to, and agreed upon by the Lender, shall not materially differ from the agreed draft;
- documents not previously sent and agreed upon, shall be satisfactory to the Lender.

#### **PART I – CONDITIONS PRECEDENT TO BE SATISFIED ON THE SIGNING DATE**

- (a) Delivery by the Borrower to the Lender of the following documents:
  - (i) a Certified true copy of the special authority issued by the President of the Republic of the Philippines;
    - authorising the Borrower to enter into this Agreement;
    - approving the execution of this Agreement; and
    - authorising one or more than one specified person or persons to execute the Agreement on its behalf;
  - (ii) a certified true copy of the approval in-principle of the Facility by the Monetary Board of the BSP
  - (iii) a specimen of the signature of each person listed in the last bullet point of paragraph (i)

#### **PART II - CONDITIONS PRECEDENT TO THE DRAWDOWN**

- (a) Delivery by the Borrower to the Lender of the following documents certified true and accurate by the Borrower:
  - (i) Evidence of approval of the borrowing by the Development Budget Coordination Committee of any filing or registration, deposit or publication requirements of this Agreement and payment of any stamp duty, registration fees or similar duties in connection with this Agreement, as applicable;
  - (ii) The final approval of the Facility by the Monetary Board of the BSP;
  - (iii) A Policy Matrix attached thereto in a format acceptable to the Lender;
  - (iv) The special authority issued by the President of the Republic of the Philippines authorizing representatives of the Borrower to sign and deliver the Agreement as listed in the last bullet point of paragraph (i)(a) Part I of the Conditions Precedent, statements, certificates, notices, drawdown requests and other documents and to act as representatives of the Borrower in the implementation of the Agreement, together with the delivery of specimen signatures of the authorized representatives referred to above.

- (v) A bank certificate of the Borrower with the following details: name of the bank account holder and its address; bank address and branch; bank account number; IBAN; and SWIFT code/BIC;
  - (vi) Delivery by the Borrower to the Lender of the relevant reports and documentary evidence of accomplishment of the 2015-2017 triggers and milestones detailed in the subprogram 2 of the Policy Matrix;
- (b) Delivery to the Lender of the original of the following document:
- (i) The legal opinion issued and signed by the Secretary of the Department of Justice confirming among others, that (1) the obligations stated in the Agreement are legally valid, binding and enforceable obligations of the Borrower and that (2) the Secretary of Finance acting on behalf of the Borrower has obtained all necessary authorizations and fulfilled all necessary conditions required by the laws of the Republic of the Philippines for entering into and implementation of the Agreement;
  - (ii) A certificate stating that no Event of Default has occurred or is continuing;
- (c) Payment by the Borrower to the Lender of all fees and expenses due and payable under this Agreement

## SCHEDULE 5A - FORM OF DRAWDOWN REQUEST

*[on the Borrower's letterhead]*

To: AGENCE FRANÇAISE DE DÉVELOPPEMENT

On: [date]

**Borrower's Name – Credit Facility Agreement n° [●] dated [●]**

**Drawdown Request n°[●]**

Dear Sirs,

1. We refer to the Credit Facility Agreement n° [●] entered into between the Borrower and the Lender dated [●] (the “**Agreement**”). Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.

2. We irrevocably request that the Lender makes a Drawdown available on the following terms:

Amount: EUR 150,000,000 or, if less, the Available Credit.

Interest Rate: [fixed / floating]

3. The Interest Rate will be determined in accordance with the provisions of Clause 4 (*Interest*) and Clause 5 (*Change to the calculation of interest*) of the Agreement. The Interest Rate applicable to the requested Drawdown will be provided to us in writing and we accept this Interest Rate (subject to the paragraph below, if applicable), including when the Interest Rate is determined by reference to a Replacement Benchmark plus any Adjustment Margin as notified by the Lender following the occurrence of a Screen Rate Replacement Event.

**[For fixed Interest Rate only:]** If the Interest Rate applicable to the requested Drawdown is greater than [●] percent ([●]%), we request that you cancel this Drawdown Request.

4. We confirm that each condition specified in Clause 2.4 (*Conditions precedent*) is satisfied on the date of this Drawdown Request and that no Event of Default is continuing or is likely to occur. We agree to notify the Lender immediately if any of the conditions referred to above is not satisfied on or before the Drawdown Date.

5. The proceeds of this Drawdown should be credited to the following bank account:

- |     |  |  |
|-----|--|--|
| (a) | Name [of the Borrower]:                    | Department of Finance  |
| (b) | Address [of the Borrower]:                 | Roxas Boulevard corner Pablo Ocampo Sr. Street, Manila 1004  |
|     | USD Account Number:                        | : Federal Reserve Bank of New York, New York/ A/C 021086980  |
| (c) | SWIFT Code:                                | FRNYUS33   |
| (d) | Bank and bank's address [of the Borrower]: | BangkoSentral ng Pilipinas A.<br>Mabini St., corner Pablo Ocampo Sr. St.,<br>Malate, Manila, Philippines(PHCBPHMM) |
| (e) | Correspondent bank and                     | Federal Reserve Bank of New York, New  |

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account number of the York / Account No. 021085295  
Borrower's bank:

For further credit to: TOP FCD Dollar Account of the Bureau of the Treasury

EURO Account

IBAN Account Number: DE98504000005040040817

SWIFT Code: MARKDEFF

Bank and bank's address [of the Borrower]: BangkoSentral ng Pilipinas A.  
Mabini St., corner Pablo Ocampo Sr. St.,  
Malate, Manila, Philippines (PHCBPHMM)

Correspondent bank and account number of Deutsche Bundesbank Zentrale, Frankfurt  
the Borrower's bank:

For further credit to: TOP-SA FCD EURO 350M BONDS 1999 of the Bureau of the Treasury

6. This Drawdown Request is irrevocable.
7. We have attached to this Drawdown Request all relevant supporting documents specified in Clause 2.4 (*Conditions precedent*) of the Agreement:

[List of supporting documents]

Yours sincerely,

.....

Authorised signatory of the Borrower



## SCHEDULE 5B - FORM OF CONFIRMATION OF DRAWDOWN AND RATE

*[on Agence Française de Développement letterhead]*

To: Department of Finance

Date: [●]

Ref: Drawdown Request n° [●] dated [●]

**Republic of the Philippines – Credit Facility Agreement n°CPH 1032 01 M dated [●]**

**Drawdown Confirmation n°[●]**

Dear Sirs,

1. We refer to the Credit Facility Agreement n°[●] entered into between the Borrower and the Lender dated [●] (the “**Agreement**”). Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.
2. By a Drawdown Request Letter dated [●], the Borrower has requested that the Lender makes available a Drawdown in the amount of EUR [●], pursuant to the terms and conditions of the Agreement.
3. The Drawdown which has been made available according to your Drawdown Request is as follows:
  - Amount: Euros [●*amount in words*] (EUR [●])
  - Applicable interest rate: [●*percentage in words*] percent ([●]%) per annum [equal to the aggregate of the six-month EURIBOR (equal to [●]%) per annum) and the Margin].
  - Drawdown Date: [●]

For fixed-Interest Rate loans only

For information purposes only:

- Rate Setting Date: [●]
- Fixed Reference Rate: [●*percentage in words*] percent ([●]%) per annum
- Effective global rate (per annum): [●*percentage in words*] percent ([●]%)
- Index Rate: [●*percentage in words*] percent ([●]%) per annum
- Index Rate on Rate Setting Date: [●*percentage in words*] percent ([●]%) per annum

It being specified that the above Interest Rate may vary in accordance with the provisions of clauses 4.1.3(i) (*Floating Interest Rate*) and 5.2 (*Replacement of a Screen Rate*) of the Agreement

Yours sincerely,

.....

Authorised signatory of *Agence Française de Développement*

## SCHEDULE 5C - FORM OF RATE CONVERSION REQUEST

*[on the Borrower's letterhead]*

To: AGENCE FRANÇAISE DE DÉVELOPPEMENT

On: [date]

**Borrower's Name – Credit Facility Agreement n°[●] dated [●]**

**Rate Conversion Request n°[●]**

Dear Sirs,

1. We refer to the Credit Facility Agreement n°[●] entered into between the Borrower and the Lender dated [●] (the “**Agreement**”). Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.
2. Pursuant to Clause 4.1.3 (i) (*Conversion from a floating Interest Rate to a fixed Interest Rate*) of the Agreement, we hereby request that you convert the floating Interest Rate of the [whole or a part of the] Facility, [if partial conversion: for an amount of EUR [●]], into a fixed Interest Rate in accordance with the terms of the Agreement.
3. This rate conversion request will be deemed null and void if the applicable fixed Interest Rate exceeds [insert percentage in words] percent [●%].

Yours sincerely,

.....

Authorised signatory of Borrower



## SCHEDULE 5D - FORM OF RATE CONVERSION CONFIRMATION

*[on Agence Française de Développement letterhead]*

To: *[the Borrower]*

Date: *[●]*

Re: Rate Conversion Request n° *[●]* dated *[●]*

**Borrower's Name – Credit Facility Agreement n°*[●]* dated *[●]***

**Rate Conversion Confirmation n°*[●]***

Dear Sirs,

**SUBJECT:** Conversion from a floating Interest Rate to a fixed Interest Rate

1. We refer to the Credit Facility Agreement n°*[●]* entered into between the Borrower and the Lender dated *[●]* (the “**Agreement**”). Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.
2. We refer also to your Rate Conversion Request dated *[●]*. We confirm that the fixed Interest Rate applicable to the amount referred to in your Rate Conversion Request delivered in accordance with Clause 4.1.3(i) (*Conversion from a floating Interest Rate to a fixed Interest Rate*) of the Agreement is:
  - *[●]*% per annum.
3. This fixed Interest Rate, calculated in accordance with Clause 4.1.1 (*Selection of Interest Rate*) will apply to the amount referred in your Rate Conversion Request from *[●]* (effective date).
4. Further, we notify you that the effective global rate per annum of the Facility is *[●]*%.

Yours sincerely,

.....

Authorised representative of *Agence Française de Développement*

**SCHEDULE 6 - INFORMATION THAT MAY BE PUBLISHED ON THE FRENCH  
GOVERNMENT WEBSITE AND THE LENDER'S WEBSITE**

**1.** Information regarding the Program

- Number and name in AFD's book;
- Description;
- Operating sector ;
- Place of implementation ;
- Expected starting date ;
- Expected Technical Completion Date;
- Status of implementation updated on a semi-annual basis ;

**2.** Information regarding the financing of the Program

- Kind of financing (loan, grant, co-financing, delegated funds) ;
- Principal amount of the Facility ;
- Amount of the Facility which has been drawn down (updated as the implementation of the Program goes) ;

**3.** Other information

- Transaction information notice and/or sheet presenting the transaction attached to this Schedule.

## SCHEDULE 7 – POLICY MATRIX

### POLICY MATRIX

Outputs	Subprogram 1 Accomplishments (Policy triggers in bold) June 2013 to June 2015	Subprogram 2 Accomplishments (Policy triggers in bold) July 2015 to August 2017	Post-program Partnership Framework 2018 to 2022
<b>Output 1: Strengthened Government Financial Support to PPPs</b>			
<p>1.1 Ensuring adequate budget funding for government obligations in PPP projects</p> <ul style="list-style-type: none"> <li>ADB TA Strengthening PPPs in the Philippines (TA 7796)</li> <li>ADB TA on Strengthening Evaluation and Fiscal Cost Management of PPPs in the Philippines</li> <li>JICA TA Capacity Development of Public Private Partnerships Project Formulation in the Philippines</li> </ul>	<p>The government implemented measures to ensure sustainable funding for government direct and contingent support to PPP projects in line with its national fiscal policy framework. Accomplishments included:</p> <p>1. In the 2015 GAA, the government allocated funds for government share in PPPs as follows:</p> <p>(i) P8.85 billion and P1.23 billion for DPWH and DOTr, respectively, to cover these agencies' costs of right-of-way acquisition and resettlement in PPP projects, and</p> <p>(ii) P3.8 billion for DPWH to ensure adequate access roads to major airports and RORO facilities developed by DOTr.</p>	<p>The government continues to improve fiscal sustainability of funding for direct and contingent support to PPP projects. These measures include:</p> <p>1. In the 2016 and 2017 GAA, the government allocated total funds for the government share in PPPs as follows:</p> <p>(i) P18.5 billion and P22.5 billion for DOTr and DPWH, respectively, to cover these agencies costs of right-of-way acquisition and resettlement in PPP projects, and</p> <p>(ii) P11.5 billion for DPWH to ensure adequate access roads to major airports, seaports and roll-on/roll-off facilities.</p>	<p>1. The government continues to allocate funding in the GAA for PPPs</p>

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Outputs	Subprogram 1 Accomplishments (Policy triggers in bold) June 2013 to June 2015	Subprogram 2 Accomplishments (Policy triggers in bold) July 2015 to August 2017	Post-program Partnership Framework 2018 to 2022
	<p>3. In the 2015 GAA, the government allocated P30 billion to cover contingent liabilities arising from the PPP contracts under the risk management program of the unprogrammed fund.</p> <p>4. To ensure fiscal sustainability of the growing PPP project portfolio: (i) DBCC established an inter-agency TWG, chaired by BTr with DOF's Privatization Group, DBM and PPPC as members, to monitor contingent liabilities of pipeline and ongoing PPP projects; and (ii) BTr developed the methodology for valuation of PPP projects' contingent liabilities to inform budgetary coverage of contingent liabilities under the risk management program of the unprogrammed fund.</p>	<p>2. In the 2016 and 2017 GAA, the government allocated funds (P30 billion and P29 billion respectively) to cover contingent liabilities arising from PPP contracts.</p> <p>3. The government strengthened fiscal risk management of PPPs through: (i) submitting to DBCC of a policy framework on management of PPP project's CLs which includes the implementing guidelines on the use of unprogrammed appropriations for the Risk Management Program (including disclosure policies, accountability and documentary requirements) and (ii) incorporated PPP fiscal risks in debt sustainability assessments and included in the Fiscal Risk Statement for 2015–2016 and 2017.</p>	<p>2. The TWG-CL periodically calculates the estimated costs of CL and updates the guidelines as necessary</p>
<b>Output 2: Expanded and Efficiently Implemented Pipeline of PPP Projects</b>			
<p>2.1. Enhancement of the strategic planning and institutions for a sustainable PPP program.</p> <ul style="list-style-type: none"> <li>ADB TA Strengthening PPPs in the</li> </ul>	<p>The government introduced measures to: improve long-term infrastructure planning; build capacity to implement PPP program; and strengthen results-based performance in the PPP program. Accomplishments included:</p> <p>5. Contracts for six national transport, health and education PDMF-supported PPP projects signed for at least a total</p>	<p>The government facilitated PPP arrangements as a way for government to tap private sector expertise, efficiency and innovation.</p> <p>4. A total of 12 national PPP projects over the program period have been competitively tendered, awarded, and</p>	<p>3. All solicited PPP projects originate from long-term integrated infrastructure plans. A total of 10 projects started construction</p> <p>4. LGU PPP projects prepared</p>

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Outputs	Subprogram 1 Accomplishments (Policy triggers in bold) June 2013 to June 2015	Subprogram 2 Accomplishments (Policy triggers in bold) July 2015 to August 2017	Post-program Partnership Framework 2018 to 2022
<p><i>Philippines (TA 7796)</i></p> <ul style="list-style-type: none"> <li>▪ <i>ADB TA on Strengthening Evaluation and Fiscal Cost Management of PPPs in the Philippines (TA 8650)</i></li> </ul>	<p>investment of \$1.5 billion. In addition, 10 feasibility studies completed for new PPP projects.</p>	<p>financially closed with a total project cost of P235.69 billion, nine of which are PDMF-supported. Six national projects completed gender-equality feasibility studies, three of which are supported by PDMF.</p> <p>5. For LGU PPP projects, with PPPC technical assistance, 2 LGU PPP projects were awarded (and commenced implementation), 1 tendered, 2 completed feasibility studies, and 10 are in project development stages. All projects reflect gender-equality in accordance to PPPC gender guidelines.</p> <p>6. To assist LGUs on PPP development, the PPPC updated and launched the LGU PPP strategy and guidelines to increase efforts to assist LGUs on PPP development and implementation. (Key components of the strategy include the legal basis for PPPs by LGUs, institutional framework to assist LGUs and technical assistance available).</p>	<p>5. Development of a transport master plan under the NTP</p>
	<p>6. NEDA finalized and submitted to NEDA Board the Roadmap for Infrastructure Development for Metro Manila and Its Surrounding Areas (Region III and Region IV-A), and initiated preparation of</p>	<p>7. The NEDA Board adopted the National Transport Policy (NTP), which integrates policy initiatives and strategies to guide future investments in the sector.</p>	

Outputs	Subprogram 1 Accomplishments (Policy triggers in bold) June 2013 to June 2015	Subprogram 2 Accomplishments (Policy triggers in bold) July 2015 to August 2017	Post-program Partnership Framework 2018 to 2022
	<p><b>the Philippine Transport Infrastructure Roadmap.</b></p> <p>7. A revised National Sewerage and Septage Management Program, allowing the participation of water districts, for INFRACOM approval</p> <p>8. DOTr initiated update of the Strategy for the Development of National Airports, and prepared a 3-year rolling infrastructure plan of DOTr that sets out the short and medium-term investment program for DOTr.</p>	<p>The government has initiated and developed PPP projects in the transport sector:</p> <p>8. (i) DOTr awarded 5 PPP projects (and commenced implementation); (ii) NEDA-InfraComm developed a Three Year rolling infrastructure plan (TRIP) for 2018-2020 covering priority projects, corresponding programming budget, including proposed PPP projects and DOTr priority projects; and (iii) NEDA launched the Priority Investments Program Online System (PIPOL) to aid in government planning, programming, budgeting, monitoring and evaluation. Projects identified were submitted for inclusion in the government's Public Investment Program (PIP) through the PIPOL.</p>	<p>6. PPPC's capacity further enhanced through advisory support and trainings. Knowledge Management Portal of PPPC completed</p>
<p>9. <b>Given an increased PPP program, the government enhanced PPPC's capacity through:</b></p> <p>(i) increased PDMF resources due to \$2 million equivalent contributions by line-</p>	<p>9. <b>The government enhanced PPPC's capacity to sustainably manage the PPP program by:</b> (i) allocating P800 million for PDMF in the 2016 GAA; (ii) establishing separate panels of probity advisors and independent construction supervisors; and (iii) providing capacity building to</p>		

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Outputs	Subprogram 1 Accomplishments (Policy triggers in bold) June 2013 to June 2015	Subprogram 2 Accomplishments (Policy triggers in bold) July 2015 to August 2017	Post-program Partnership Framework 2018 to 2022
	<p>departments and receipt of \$6 million refund from four successfully bid out PPP projects;</p> <p>(ii) increase of permanent staff positions from 70 (52 filled) in 2013 to 99 (80 filled, of which 56 are women) in 2015;</p> <p>(iii) Amendments to PDMF guidelines adopted to operationalize probity in PPP projects' procurement, oversight support during PPP project implementation, and development of local PPPs; and</p> <p>(iv) procedures drafted for interaction between PPC and PPP Units at sector departments to ensure efficient and effective collaboration, coordination, and accountability among government agencies.</p>	<p>PPPC in project implementation and monitoring, and contract management.</p>	<p>7. Probity and construction supervisors assigned to projects</p> <p>8. PPC's capacities enhanced to technically assist LGUs to prepare, structure and evaluate PPP projects for local public utilities (water supply, water sanitation, solid waste management, renewable energy, urban transport)</p> <p>9. IA's capacities enhanced to better identify and analyze aspects relative to climate mitigation and adaptation in their portfolio of PPP projects, facilitating access to new types of investors and financings<sup>1</sup></p>
	<p>10. To speed up and enhance quality of approval of PPP projects, the government introduced a new process for appraising PPP projects by assigning: (i) the PPC</p>		

<sup>1</sup> Actions 8 and 9 are subject to further discussion and confirmation by government agencies.

Outputs	Subprogram 1 Accomplishments (Policy triggers in bold) June 2013 to June 2015	Subprogram 2 Accomplishments (Policy triggers in bold) July 2015 to August 2017	Post-program Partnership Framework 2018 to 2022
	<p>as secretariat to coordinate appraisal of PPP projects' value for money, commercial viability, bankability, and financial structuring; (ii) the NEDA for appraisal of socioeconomic aspects; and (iii) the DOF for appraisal of risk allocation, financial viability, and fiscal sustainability of PPP projects.</p>		
	<p>11. PPPC initiated development of standard national PPP contracts for selected subsectors to streamline contract provisions on risk allocation, termination payments, dispute resolution, and material adverse government action.</p>	<p>10. A handbook on standard contract provisions for PPPs developed and made available to all implementing agencies.</p>	
		<p>11. Value engineering and value analysis (VE/VA) principles have been incorporated into NEDA's appraisal framework as a Technical Value Review process of PPP project proposals. Procedures included in the ICC review process and applied to all PPP projects submitted for approval</p>	

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Outputs	Subprogram 1 Accomplishments (Policy triggers in bold) June 2013 to June 2015	Subprogram 2 Accomplishments (Policy triggers in bold) July 2015 to August 2017	Post-program Partnership Framework 2018 to 2022
	<p>12. The government implemented measures to build capacity of implementing agencies at national and local levels. These measures included:</p> <ul style="list-style-type: none"> <li>• A PPP project development team established under the project development unit of DOTr that is responsible for preparation of own- and ODA-funded projects.</li> <li>• DOTr improved PPP project implementation through <ul style="list-style-type: none"> <li>i. establishment of dedicated assistant secretary position to oversee PPP project implementation;</li> <li>ii. establishment of ad hoc contract management units for PPP projects awarded in 2013–2014; and submission of request to DBM for establishment of a regular PPP Implementation Unit.</li> </ul> </li> </ul>	<p>12. DOTr reorganized its project development and implementing structure by: (i) designating an Undersecretary for Planning and Project Development responsible for GAA, ODA and PPP projects; and (ii) putting in place a planning and project development structure made up of an OIC Director for Planning that handles four sectoral division chiefs (air, rail, road, and water) and a division chief for project monitoring and evaluation to monitor projects after completion.</p>	<p>10. DOTr will continue its efforts in having the organization restructuring approved and institutionalized</p>
<p>2.2. Strengthening PPP systems at implementing agencies at national and local levels.</p> <ul style="list-style-type: none"> <li>• ADB TA <i>Strengthening PPPs in the Philippines</i> (TA 7796)</li> <li>• JICA TA: <i>Capacity</i></li> </ul>	<p>13. The government adopted and initiated implementation of the LGU Engagement Strategy envisaging support to LGUs via in-house project-based internships, partnerships with local training institutions on PPP trainings, and developing a project development facility for LGU PPPs.</p>	<p>13. The DPWH expanded its PPP Service Office staffing with now a total of 69 plantilla positions assigned to three divisions under the office.</p> <p>14. PPC assisted LGUs with PPP capacity development as follows: (i) signed 7 Memoranda of Agreement (MOAs) with Local Capacity Building Institutions (LCBIs), Mindanao Development Authority and the League of Cities for the provision of training to LGUs and delivery of programmatic capacity building; and (ii) provided project</p>	

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Outputs	Subprogram 1 Accomplishments (Policy triggers in bold) June 2013 to June 2015	Subprogram 2 Accomplishments (Policy triggers in bold) July 2015 to August 2017	Post-program Partnership Framework 2018 to 2022
Development of Public Private Partnerships Project Formulation in the Philippines		specific development support to 3 additional LGUs.	
		15. The government (through NEDA) initiated the development of a revised ICC project screening process to enhance the government's process in soliciting, developing, evaluating, approving, and budgeting for PPP projects.	11. Project screening processed revised and approved
<b>Output 3: Strengthened Legal and Regulatory Framework for PPPs</b>			
3.1 Enhancing the PPP legal and regulatory framework. • ADB TA Strengthening PPPs in the Philippines (TA 7796)	The government implemented measures to improve the PPP legal and regulatory framework. Accomplishments included:  14. Adoption by the PPP Governing Board and submission to Congress of amendments to the BOT Law that are important to sustain the country's PPP program. Salient proposed amendments are: (i) institutionalization of the PPP Governing Board, the empowered PPPC, the Project Development and Monitoring Facility and its consultant engagement framework, the new process of appraisal of PPP projects, and the funding for government direct and contingent liabilities arising from PPP projects; (ii) improved process of selection of investors for solicited and unsolicited PPP projects; and (iii) provision of investment incentives for more private participation in infrastructure.	The government continues to strengthen the legal and regulatory framework for PPP project preparation and approval.  16. The PPP Governing Board and PPPC continued to improve the PPP implementation guidelines and regulatory framework through issuances of relevant circulars covering: (i) guidelines for appraisal of PPP projects; (ii) managing the status of government employees affected by PPP projects; (iii) assessing Value for Money in PPP projects; (iv) public consultations and engagement for PPP projects; (v) appointment of probity advisers; and (vi) PPP Monitoring Framework and Monitoring Protocols.	12. Consistent and updated PPP legal and regulatory framework in place  13. Amendments to the BOT law and its implementing rules and regulations  14. Development of guidelines for unsolicited proposals and framework for PPP hybrid financing

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Outputs	Subprogram 1 Accomplishments (Policy triggers in bold) June 2013 to June 2015	Subprogram 2 Accomplishments (Policy triggers in bold) July 2015 to August 2017	Post-program Partnership Framework 2018 to 2022
	<p>15. Draft IRRs for EO78 on Alternative Dispute Resolution in PPP projects submitted to relevant agencies for their final reviews and comments.</p> <p>16. To improve quality of PPP projects and contractual arrangements, guidelines have been issued on termination payments, and guidelines on material adverse government action have been drafted.</p>	<p>17. The government approved and issued IRR for EO78 mandating the inclusion of provisions on the use of alternative dispute resolution mechanisms in all contracts involving PPP projects.</p>	

ADB = Asian Development Bank, BOT = Build-Operate-Transfer, BTr = Bureau of the Treasury, CLs = contingent liabilities, DBCC = Development Budget Coordination Committee, DBM = Department of Budget and Management, DOF = Department of Finance, DOTr = Department of Transportation, DPWH = Department of Public Works and Highways, EO = executive order, GAA = General Appropriations Act, ICC = Investment Coordination Committee, INFRACOM = Infrastructure Committee, IRRs = implementing rules and regulations, JICA = Japan International Cooperation Agency, LCBl = Local Capacity Building Institutions, LGU = local government unit, MOA = memorandum of agreement, NEDA = National Economic and Development Authority, NTP = National Transport Policy, ODA = official development assistance, OIC = officer-in-charge, PDMF = project development and monitoring facility, Program Online System = PIPOL, PPP = public-private partnership, PPC = Public-Private Partnership Center, RORO = roll-on/roll-off, TA = technical assistance, TWG = technical working group, VE/VA = value engineering and value analysis, VGF = viability gap funding.