Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Understanding (the "MOU") is made and entered into at **[City or municipality of signing: _____]**, Philippines, on **[Date of signing: _____]** (the "Execution Date"), by and between the parties named below.

If the Parties sign on different dates, the Execution Date is the date on which the last Party signs, and the place of execution is the place where that Party signs, unless the Parties record otherwise in writing.

[First Party's full legal name: _____], [First Party's legal form and registration: _____], with principal office at [First Party's principal office address: _____], represented in this act by its [First Party signatory's position: _____], **[First Party signatory's full name: _____]**, who is duly authorized for this purpose as shown in [First Party's proof of authority: _____] (the "First Party");

- and -

[Second Party's full legal name: _____], [Second Party's legal form and registration: _____], with principal office at [Second Party's principal office address: _____], represented in this act by its [Second Party signatory's position: _____], **[Second Party signatory's full name: _____]**, who is duly authorized for this purpose as shown in [Second Party's proof of authority: _____] (the "Second Party").

The First Party and the Second Party are each a "Party" and together the "Parties". Each expression includes the Party's successors and permitted assigns.

Authority to sign. Each Party represents to the other that:

(a) it has the legal capacity and power to sign this MOU and to perform the Binding Provisions;

(b) if it is a corporation, its board of directors or board of trustees has authorized the signing of this MOU and has named its representative for that purpose, and a secretary's certificate of that board resolution is attached to this MOU;

(c) if it is a partnership, cooperative, association or foundation, its governing body has authorized the signing of this MOU in accordance with its constitutive documents;

(d) if it is a local government unit, the sanggunian concerned has given prior authorization for the local chief executive to sign this MOU, a certified copy of that ordinance or resolution is attached, and the local government unit will post a legible copy of this MOU at a conspicuous place in its provincial capitol or city, municipal or barangay hall;

(e) if it is a department, agency or other instrumentality of the national government, its head or a duly delegated official has authorized the signing of this MOU; and

(f) if it is an individual, he or she is of legal age, signs in his or her own name, and is not under any legal disability.

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Each Party will give the other, on request, a copy of the document that evidences the authority described above. Only the two persons or entities named above are Parties. An affiliate, subsidiary, branch, office or employee of a Party does not become a Party because it takes part in an activity described in this MOU.

WITNESSETH:

WHEREAS, the First Party is engaged in [First Party's business: _____];

WHEREAS, the Second Party is engaged in [Second Party's business or mandate: _____];

WHEREAS, the Parties wish to explore and, where each of them decides to do so, carry out the following project: [Project description: _____] (the "Project");

WHEREAS, the Parties wish to record their present understanding of the Project so that each can plan its own work, and to agree on a short and complete list of binding terms that protect both of them while they cooperate and negotiate;

WHEREAS, the Parties do not intend this MOU to be a contract for the Project itself, and intend that commitments about the Project will arise only from a Definitive Agreement;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual promises in the Binding Provisions, the Parties state their understanding and agree as follows. These recitals describe background facts and intentions only and do not create any obligation.

1. Definitions and interpretation

1.1 **Defined terms.** In this MOU:

(a) "Background IP" means Intellectual Property that a Party owned or controlled before the Execution Date, or that it creates or acquires independently of the Project;

(b) "Binding Provisions" means the provisions listed in Section 4.1;

(c) "Business Day" means a day other than a Saturday, a Sunday or a regular or special non-working holiday in the place where the Party receiving a notice has its principal office;

(d) "Confidential Information" has the meaning given in Section 14.1;

(e) "Coordinator" means the person each Party names in Annex C, or a replacement named under Section 8.2;

(f) "Definitive Agreement" means a later written agreement about all or part of the Project that states expressly that it is binding and is signed by a duly authorized representative of each Party;

(g) "Government Party" means a Party that is a department, agency or other instrumentality of the national government or a local government unit;

(h) "Intellectual Property" means patents, utility models, industrial designs, copyright and related rights, trademarks, service marks, trade names, domain names, software, databases, know-how and trade secrets, with all applications, registrations and similar rights anywhere in the world;

(i) "Non-Binding Provisions" means every part of this MOU that is not a Binding Provision;

(j) "Personal Data" means personal information and sensitive personal information as those terms are used in the Data Privacy Act of 2012 (Republic Act No. 10173) and its implementing rules;

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(k) "Project Materials" means reports, data, designs, software, presentations and other materials that a Party prepares for the Project during the Term; and

(l) "Term" means the period described in Section 21.

1.2 **Interpretation.** Headings are for convenience only and do not affect meaning. "Including" means including without limitation. The singular includes the plural and the reverse. A reference to a Section or Annex is to a section of, or annex to, this MOU. A reference to a law includes that law as amended or replaced and its implementing rules and regulations.

1.3 **Plain meaning.** The Parties have used clear words on purpose. They intend the literal meaning of each provision to control, in particular the words in Sections 3 and 4 that state which provisions are binding and which are not.

1.4 **Shared drafting.** Each Party has reviewed this MOU and had the chance to propose changes. Neither Party is to be treated as the sole author of any provision for the purpose of resolving an unclear word.

1.5 **Words of intention.** In the Non-Binding Provisions, words such as "intends", "expects", "proposes", "plans", "will" and "is responsible for" describe present intention only and do not create an obligation.

1.6 **Order of priority.** If Section 3 or Section 4 conflicts with any other part of this MOU, Sections 3 and 4 prevail. If the body of this MOU conflicts with an Annex, the body prevails.

2. Purpose and objectives

2.1 **Purpose.** The purpose of this MOU is to describe the Project, the part each Party expects to play in it, and the way the Parties intend to work together while each of them decides whether and how to proceed.

2.2 **Objectives.** The Parties share the following objectives:

(a) [First objective: _____];

(b) [Second objective: _____]; and

(c) [Third objective: _____].

2.3 **Measures of progress.** The Parties expect to judge progress against the following measures: [How progress will be measured: _____].

2.4 **No guarantee of result.** The objectives and measures are goals. Neither Party promises that any goal will be met, that the Project will go ahead, or that the Project will produce any income, saving or other benefit.

3. Legal nature: non-binding understanding

3.1 **No contract for the Project.** Except for the Binding Provisions, this MOU records only the present understanding and intentions of the Parties. The Parties expressly declare that they have not reached a meeting of minds on the Project, that they do not consent to be bound by the Non-Binding Provisions, and that the Non-Binding Provisions create no right, obligation or liability between them.

3.2 **Essential terms still open.** The Parties have not yet agreed on the essential terms of the Project, including the price or other consideration, the detailed scope, the allocation of risk, the security to be given (if any) and the duration of any commitment. These and other matters remain to be negotiated

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and agreed in a Definitive Agreement.

3.3 **Definitive Agreement required.** A Party becomes bound to any commitment about the Project, beyond the Binding Provisions, only when a Definitive Agreement is signed and delivered by both Parties, and only on the terms of that Definitive Agreement. The Parties do not intend a Definitive Agreement to be a mere formality or a means of carrying out an agreement already reached.

3.4 **Conduct does not create a contract.** The Parties may start preparatory work, exchange information or spend money before a Definitive Agreement is signed. Each Party does so at its own risk and by its own choice. None of the following makes a Non-Binding Provision binding or shows consent to be bound: negotiations; drafts; letters, emails or chat messages; minutes of meetings; press statements; the start, continuation or length of any work; spending in reliance on this MOU; the exchange of samples, data or staff; or a Party's internal approval of the Project.

3.5 **Voluntary cooperation.** Any activity that a Party carries out under the Non-Binding Provisions is voluntary and may be stopped at any time, subject to the Binding Provisions and to Section 11.

4. Binding provisions and consideration

4.1 **Binding Provisions.** Only the following provisions of this MOU are legally binding on the Parties:

(a) the paragraph headed "Authority to sign" in the description of the Parties;

(b) Sections 1, 3 and 4 (definitions, legal nature and this list);

(c) Section 10 (costs, funding and public funds), but not Annex B;

(d) Sections 11.2 to 11.6 (good faith and no obligation to conclude);

(e) Sections 12.3 to 12.5 (status of approvals and due diligence);

(f) Section 13 (exclusivity), only if Section 13.1 states that it applies;

(g) Sections 14 to 20 (confidentiality, data privacy, Intellectual Property, publicity, relationship of the Parties, non-exclusivity and compliance with laws);

(h) Sections 21 to 35 (term, termination, survival, liability, force majeure, disputes, governing law and the general provisions); and

(i) the statement immediately above the signatures.

4.2 **Complete list.** The list in Section 4.1 is complete. Every other provision, including each Annex, is a Non-Binding Provision. By naming some provisions as binding, the Parties confirm that no other provision binds them.

4.3 **Consent, object and cause.** The Parties consent to the Binding Provisions. Their object is the conduct of the Parties while they cooperate and negotiate. The cause of each Party's promises in the Binding Provisions is the promises of the other Party in the Binding Provisions.

4.4 **Good faith performance.** The Parties shall perform the Binding Provisions in good faith. The Binding Provisions have the force of law between the Parties.

4.5 **Mutual and certain.** The Binding Provisions bind both Parties equally. No Binding Provision may be performed, waived or ended at the sole will of one Party, except where this MOU gives both Parties the same right. Where a Binding Provision refers to a period, amount or person to be fixed later, it also states how that period, amount or person is fixed.

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4.6 **Independent effect.** The Binding Provisions apply whether or not the Project proceeds and whether or not a Definitive Agreement is signed, until they end under Section 22 or Section 23.

5. Scope of cooperation

5.1 **Planned activities.** The Parties intend to explore cooperation in the following areas: [Planned activities: _____].

5.2 **Location.** The Parties expect the Project to take place in or to serve the following area: [Area the project covers: _____].

5.3 **Matters outside the scope.** The following matters are outside the scope of this MOU: [Matters outside the scope: _____]. Any work on them needs a separate written agreement.

5.4 **Terms not settled.** A term that this MOU does not settle remains unsettled. Neither Party may require the other to accept a term, a level of contribution, a security arrangement or a percentage that this MOU does not state, and the absence of such a term may not be filled by the conduct of either Party.

5.5 **Changes in scope.** The Coordinators may propose changes to the planned activities. A change takes effect as a change in the Non-Binding Provisions when both Coordinators confirm it by email. A change to a Binding Provision needs a written amendment under Section 30.

6. Roles and responsibilities of each party

6.1 **First Party.** The First Party intends to:

[First Party's planned role: _____].

6.2 **Second Party.** The Second Party intends to:

[Second Party's planned role: _____].

6.3 **Own resources.** Each Party intends to carry out its role with its own staff, facilities and funds, unless Annex B states otherwise.

6.4 **Own staff.** Each Party alone directs, supervises, pays and is responsible for its own officers, employees, agents and subcontractors. Nothing in this MOU makes the personnel of one Party the employees of the other, and each Party remains responsible for its own obligations to its personnel under labor and social legislation.

6.5 **Standards.** Each Party intends to carry out its role with reasonable skill and care and in line with any reasonable site rules, security procedures and safety rules that the other Party gives it in writing.

7. Joint undertakings

7.1 **Joint activities.** The Parties intend to carry out the following activities together: [Activities done together: _____].

7.2 **Joint planning.** Before each joint activity, the Coordinators intend to agree in writing on the lead Party, the persons involved, the timetable, the expected outputs and each Party's contribution.

7.3 **Shared facilities.** Where one Party gives the other access to its premises, systems or equipment for a joint activity, the visiting Party shall follow the host Party's reasonable rules and return all equipment in the same condition, ordinary wear excepted.

7.4 **Joint outputs.** The ownership and use of any output of a joint activity are governed by Section 16

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and by any Definitive Agreement.

8. Governance, coordinators and joint committee

8.1 **Coordinators.** Each Party names a Coordinator in Annex C. The Coordinators are the main points of contact for the day-to-day operation of this MOU.

8.2 **Replacement.** A Party may replace its Coordinator at any time by notice to the other Party's Coordinator.

8.3 **Joint committee.** The Parties intend to form a joint committee of [Joint committee members from each party: _____] members from each Party, including the Coordinators. The joint committee intends to meet [How often the joint committee meets: _____], in person or by video conference, to review progress against Annex A, decide on changes to the workplan, and refer issues to senior officers.

8.4 **Minutes.** The host of each meeting intends to circulate short minutes within five Business Days. Minutes record discussions only. Minutes and joint committee decisions do not amend this MOU and do not create obligations under Section 3.4.

8.5 **Limits on authority.** The Coordinators and the joint committee have no authority to amend a Binding Provision, to sign a Definitive Agreement, or to commit a Party to spend money, unless that Party gives them such authority in writing.

8.6 **Escalation.** Any issue that the joint committee cannot resolve within fifteen Business Days goes to the senior officers named in Annex C, who intend to meet within ten Business Days to resolve it.

9. Workplan, timeline and milestones

9.1 **Workplan.** Annex A sets out the planned tasks, the lead Party for each task and the target dates.

9.2 **Target date for a Definitive Agreement.** The Parties intend to decide, by [Target date to decide on a Definitive Agreement: _____], whether to negotiate a Definitive Agreement and on what main points.

9.3 **Targets only.** The dates in Annex A are targets. A missed target is not a breach of this MOU. The Coordinators intend to agree on a revised date when a target is likely to be missed.

9.4 **Progress reports.** Each Party intends to give the joint committee a short written report on its tasks before each joint committee meeting.

10. Costs, funding and no commitment of public funds

10.1 **Own costs.** Each Party bears its own costs and expenses in connection with this MOU, the Project and any negotiation, including the fees of its lawyers, accountants and other advisers and any taxes due on its own income or activities, unless the Parties agree otherwise in a written agreement signed by both of them.

10.2 **Shared costs.** Annex B describes the contributions and cost sharing the Parties expect. Annex B is not binding. A Party is obliged to pay or reimburse a shared cost only if the Parties sign a written agreement that states the amount, the payee, the due date and the method of payment.

10.3 **No commitment of public funds.** Nothing in this MOU obliges a Government Party to spend public funds. Before a Government Party pays any amount for the Project, it must have an appropriation whose unexpended balance, free of other obligations, is sufficient to cover the expenditure, and it must comply with the certification, budgeting, auditing and government

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procurement rules that apply to it. A Government Party enters into a commitment of funds only through a separate agreement that complies with those rules.

10.4 **No profit sharing.** No Party is entitled to a share of the profits of the other Party's business by reason of this MOU.

10.5 **Taxes on documents.** If this MOU or any document signed under it attracts documentary stamp tax or another tax on documents, the Parties shall share that tax equally unless they agree otherwise in writing.

11. Negotiation in good faith and definitive agreement

11.1 **Intention to negotiate.** The Parties intend to discuss in good faith whether to enter into a Definitive Agreement about the Project.

11.2 **Honesty and good faith.** While they discuss the Project, each Party shall act with justice, give the other its due, and observe honesty and good faith. In particular, neither Party shall knowingly give the other false or misleading information about a matter material to the Project, and neither Party shall negotiate without any real intention of reaching an agreement.

11.3 **No obligation to conclude.** Subject to Section 11.2, each Party may decide in its sole discretion whether to enter into a Definitive Agreement and on what terms. A Party that ends negotiations for a genuine business, technical, financial or legal reason does not breach this MOU.

11.4 **Wilful harm.** Nothing in this MOU excuses a Party that wilfully causes loss or injury to the other in a manner contrary to morals, good customs or public policy.

11.5 **Notice of withdrawal.** A Party that decides not to proceed with the Project shall tell the other Party in writing without undue delay, so that the other Party can stop work and limit its costs.

11.6 **Own decision.** Each Party enters into this MOU on its own judgment and with its own advisers.

12. Due diligence, approvals and conditions

12.1 **Expected approvals.** The Parties expect that the following approvals, licenses or consents may be needed before the Project or a Definitive Agreement can proceed: [Approvals the project may need: _____].

12.2 **Due diligence.** Each Party may carry out the legal, financial, technical and regulatory checks it considers appropriate. The other Party intends to give reasonable access to information for that purpose, subject to Section 14.

12.3 **Approvals are conditions of any later commitment.** Any commitment in a Definitive Agreement may be made subject to the approvals listed in Section 12.1. Each Party shall take reasonable steps within its control to apply for the approvals that it is responsible for obtaining and shall keep the other Party informed of their progress.

12.4 **No condition at one Party's sole will.** No condition in this MOU or in a Definitive Agreement prepared under it may depend only on the will of the Party who is to perform. Where a Party's internal approval is a condition, that Party shall decide on it in good faith within a reasonable time after it receives the information it needs.

12.5 **No reliance on findings.** Each Party relies on its own due diligence. Information exchanged during due diligence carries no warranty unless a Definitive Agreement gives one.

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13. Exclusivity (optional)

13.1 **Election.** Exclusivity under this Section [Does exclusivity apply?: _____]. If it applies, the exclusivity period runs for [Exclusivity period in days: _____] days from the Execution Date (the "Exclusivity Period").

13.2 **Undertaking.** If exclusivity applies, during the Exclusivity Period neither Party shall negotiate or enter into an agreement with a third person for a project that is substantially the same as the Project, as described in Section 5.1.

13.3 **Limits.** The exclusivity undertaking covers only the Project. It does not restrict any Party from carrying on its ordinary business, from dealing with customers or suppliers, or from taking part in public bidding.

13.4 **Competition safeguards.** Nothing in this Section or in this MOU is an agreement to fix, restrict or coordinate prices or other terms of trade, to rig bids, or to divide markets, territories or customers. If the Parties are actual or potential competitors, each Party shall decide its own prices, bids and commercial strategy independently.

13.5 **Early end.** The Exclusivity Period ends early if either Party gives notice under Section 11.5 or if this MOU is terminated.

14. Confidentiality

14.1 **Meaning.** "Confidential Information" means any information that one Party (the "Discloser") gives to the other (the "Recipient") in connection with the Project, in any form, that is marked as confidential or that a reasonable person would understand to be confidential, including business plans, financial information, technical data, know-how, customer and supplier information, Personal Data and the existence and terms of the Parties' negotiations.

14.2 **Exceptions.** Confidential Information does not include information that the Recipient shows: (a) is or becomes public other than through a breach of this MOU; (b) was lawfully known to it before disclosure, free of any duty of confidence; (c) is lawfully received from a third person who is free to disclose it; or (d) is developed independently without use of the Discloser's information.

14.3 **Duties.** The Recipient shall: (a) use Confidential Information only to evaluate and carry out the Project; (b) disclose it only to its directors, officers, employees and professional advisers who need to know it for that purpose and are bound by duties of confidence at least as strict as this Section; (c) protect it with at least the care it uses for its own confidential information and never less than reasonable care; and (d) promptly notify the Discloser of any unauthorized use or disclosure.

14.4 **Required disclosure.** The Recipient may disclose Confidential Information when a law, a court, a government agency or a stock exchange requires it, provided that, where lawful, it gives the Discloser prompt notice and discloses only the part that is required. A Government Party may also disclose information when a law on access to public information requires it.

14.5 **Return.** On written request, or when this MOU ends, the Recipient shall return or destroy the Discloser's Confidential Information, except copies it must keep by law or that sit in routine backups, which remain confidential.

14.6 **Duration.** The duties in this Section apply during the Term and for [Years confidentiality lasts after the MOU ends: _____] years after it ends. Trade secrets remain protected for as long as they remain trade secrets.

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14.7 **Liquidated damages.** If the Parties write an amount here, a Party that discloses Confidential Information in breach of this Section shall pay the other Party [Liquidated damages per confidentiality breach: _____] for each breach as liquidated damages, without prejudice to the right to injunctive relief and to claim damages for fraud. The Parties acknowledge that a court may reduce this amount if it finds it iniquitous or unconscionable.

14.8 **Injunctive relief.** Each Party may apply to a court or arbitral tribunal for an injunction or other interim relief to stop an actual or threatened breach of this Section.

15. Data privacy and data sharing

15.1 **Compliance.** Each Party shall process any Personal Data it receives under this MOU in accordance with the Data Privacy Act of 2012 (Republic Act No. 10173), its implementing rules and regulations, and the issuances of the National Privacy Commission.

15.2 **Minimum data.** The Parties intend to share Personal Data only where it is needed for the Project. The categories of Personal Data the Parties expect to share are: [Personal data the parties expect to share: _____].

15.3 **Data sharing agreement.** Before a Party shares Personal Data with the other for its own purposes, and in any case before any sharing for commercial purposes, the Parties shall have a lawful basis for the sharing, including the consent of the data subjects where it is required, and shall sign a separate data sharing agreement that establishes adequate safeguards for data privacy and security and upholds the rights of data subjects.

15.4 **Outsourcing.** Where one Party processes Personal Data on behalf of the other, the Parties shall first sign a written contract that binds the processor to the controller and states the subject matter and duration of the processing, its nature and purpose, the types of Personal Data and categories of data subjects, the rights and obligations of the controller, and the location of the processing.

15.5 **Security and breaches.** Each Party shall keep organizational, physical and technical security measures appropriate to the Personal Data it holds, and shall tell the other Party without undue delay after it becomes aware of a personal data breach that affects Personal Data received under this MOU.

15.6 **Data subject requests.** Each Party shall promptly pass on to the other any request from a data subject that concerns Personal Data the other Party controls, and shall cooperate in answering it.

16. Intellectual property

16.1 **Background IP.** Each Party keeps all rights in its Background IP. Nothing in this MOU transfers or licenses any Background IP, except a limited right to use Background IP that a Party chooses to make available for the Project, during the Term and only for the Project.

16.2 **Project Materials.** Each Party owns the Project Materials that its own personnel create. Each Party grants the other a non-exclusive, royalty-free right to use its Project Materials during the Term for the purposes of the Project only.

16.3 **Commissioned works.** If one Party commissions the other to create a work for the Project, the commissioning Party owns the physical work, but the copyright in it remains with the Party that created it unless the Parties sign a written stipulation, in a Definitive Agreement or in a written amendment to this MOU, that transfers the copyright. No email, minutes or conduct is such a stipulation.

16.4 **Jointly created results.** Ownership of any Intellectual Property created jointly by the Parties is

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to be agreed in a Definitive Agreement. Until then, neither Party shall register, license, assign or commercially exploit jointly created results without the written consent of the other.

16.5 **No implied rights.** No license or other right in Intellectual Property arises by implication, estoppel or conduct.

16.6 **Moral rights.** Nothing in this Section affects the moral rights of any author.

17. Publicity and use of names and logos

17.1 **Consent needed.** Neither Party shall issue a press release, post on social media or make any other public statement about this MOU or the Project without the prior written consent of the other Party, which shall not be unreasonably withheld.

17.2 **Names and logos.** Neither Party shall use the name, logo, trademark or seal of the other Party without its prior written consent. Any consent given is limited to the use and the period stated in it and may be withdrawn on reasonable notice.

17.3 **Signing ceremony.** If the Parties agree to hold a signing ceremony or joint announcement, they shall agree in advance on the text of any statement.

17.4 **Required statements.** This Section does not prevent a statement required by law or by a stock exchange, or the posting of this MOU that a local government unit makes under the law that requires it.

18. No partnership, agency or joint venture

18.1 **Independent parties.** The Parties are independent of each other. Nothing in this MOU creates a partnership, joint venture, agency, employment or fiduciary relationship between them.

18.2 **No common fund.** The Parties do not bind themselves to contribute money, property or industry to a common fund, and they do not intend to divide profits among themselves. Any payment between the Parties is a fee, reimbursement or price for a specified item, and is not a share of profits.

18.3 **No partnership filing.** Because the Parties do not intend to form a partnership, they shall not register this MOU with the Securities and Exchange Commission as a partnership. If the Parties later decide to form a partnership or a joint venture company, they shall do so in a separate public instrument or incorporation documents that comply with the law.

18.4 **No authority to bind.** Neither Party may make any promise, incur any obligation or sign any document on behalf of the other Party, and neither Party shall hold itself out as having that authority.

19. Non-exclusivity

19.1 **Freedom to deal.** Except to the extent that Section 13 applies, this MOU is non-exclusive. Each Party may enter into similar arrangements with third persons and may develop products, services or projects that compete with the Project, provided that it does not use the other Party's Confidential Information or Intellectual Property to do so.

19.2 **No minimum commitment.** Nothing in this MOU obliges a Party to buy, sell or supply any minimum quantity of goods, services or work.

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20. Compliance with laws, competition and anti-corruption

20.1 **Laws.** Each Party shall comply with all laws, rules and regulations that apply to it in connection with this MOU and the Project, including laws on labor, taxation, the environment, foreign ownership, licensing and data privacy.

20.2 **Competition.** The Parties shall not use this MOU, the joint committee or any exchange of information under this MOU to agree on prices or other terms of trade, to rig bids, or to divide markets. Competitively sensitive information, such as current or future prices, costs, margins and bids, may be shared only where it is strictly needed for the Project and only among persons who need it.

20.3 **Anti-corruption.** Neither Party, and no person acting for a Party, shall offer, give, ask for or accept any gift, payment, loan or other advantage to or from a public officer or any other person to obtain or keep business, or to secure an improper advantage, in connection with this MOU or the Project. Each Party shall keep accurate books and records of payments it makes in connection with the Project.

20.4 **Government procurement.** If a Government Party is or becomes a Party, nothing in this MOU gives the other Party a right to be awarded a government contract without the competitive procedure that the procurement law requires. Any procurement by a Government Party shall follow the government procurement law and rules that apply to it.

20.5 **Notice of breach.** Each Party shall tell the other promptly if it becomes aware of a breach of this Section in connection with the Project.

21. Term, review and renewal

21.1 **Commencement.** This MOU takes effect on the Execution Date.

21.2 **Duration.** This MOU continues for [Term in months: _____] months from the Execution Date, unless it ends earlier under Section 22 or is replaced by a Definitive Agreement covering the whole Project.

21.3 **Replacement by a Definitive Agreement.** When the Parties sign a Definitive Agreement that covers the whole Project, this MOU ends on the date that agreement takes effect, except for any provision that the Definitive Agreement keeps in force. A Definitive Agreement that covers only part of the Project replaces this MOU only for that part.

21.4 **Review.** The joint committee intends to review this MOU every [Review interval in months: _____] months and to recommend any changes in writing.

21.5 **Renewal.** The Parties may extend the Term only by a written amendment signed by both of them before the Term ends. Continuing to cooperate after the Term ends does not extend the Term.

21.6 **Written form.** Because the Binding Provisions may need to be performed for more than one year, the Parties sign this MOU in writing and confirm that no oral promise varies it.

22. Termination and wind-down

22.1 **Termination for convenience.** Either Party may terminate this MOU at any time, without cause, by giving the other Party at least [Notice period to terminate, in days: _____] days' written notice. The same right belongs to both Parties.

22.2 **Termination for breach.** If a Party breaches a Binding Provision and does not cure the breach

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within [Days to cure a breach after notice: _____] days after receiving written notice describing it, the other Party may terminate this MOU immediately by written notice. In that case, the injured Party may choose between requiring performance of the Binding Provision and termination, and may claim damages in either case.

22.3 **Immediate termination.** Either Party may terminate this MOU immediately by written notice if the other Party becomes insolvent, is placed under rehabilitation or liquidation, or breaches Section 20.

22.4 **Wind-down.** On termination or expiry, the Parties intend to complete or close any joint activity already started in an orderly way, to agree on how to handle any third-party commitments, and to share the results achieved so far, subject to Sections 14 and 16.

22.5 **Effect.** Termination or expiry does not affect any right or liability that arose before it, or any provision listed in Section 23.

23. Survival

23.1 **Surviving provisions.** The following provisions survive the termination or expiry of this MOU: Sections 1, 3 and 4; Section 10.1, 10.3 and 10.5; Section 11.4; Section 14 (for the period in Section 14.6); Section 15; Section 16; Section 17; Section 18; Section 22.5; this Section 23; Sections 24, 26, 27 and 28; and Sections 32 to 34.

23.2 **Accrued rights.** Survival does not revive a Non-Binding Provision.

24. Liability and no reliance

24.1 **No liability for not proceeding.** Neither Party is liable to the other for deciding not to proceed with the Project or not to sign a Definitive Agreement, or for any cost the other Party incurs in preparing for the Project, except as stated in Section 24.4.

24.2 **No indirect loss.** Subject to Section 24.4, neither Party is liable to the other under this MOU for loss of profit, loss of business opportunity, loss of goodwill, or any indirect or consequential loss.

24.3 **Cap.** Subject to Section 24.4, each Party's total liability to the other under or in connection with this MOU is limited to [Liability cap: _____].

24.4 **Exclusions from the limits.** Sections 24.1 to 24.3 do not limit or exclude liability: (a) for fraud or fraudulent misrepresentation; (b) for wilfully causing loss or injury to the other Party in a manner contrary to morals, good customs or public policy; (c) for breach of Section 14 or Section 15; (d) for infringement of the other Party's Intellectual Property; or (e) that cannot be limited or excluded under Philippine law. No provision of this MOU waives an action for future fraud.

24.5 **No reliance.** Each Party confirms that it has not entered into this MOU in reliance on any statement, promise or forecast by the other Party that is not written in this MOU, except a statement made fraudulently.

24.6 **Indemnity for third-party claims.** Each Party shall hold the other harmless from claims by third persons, including that Party's own employees and subcontractors, to the extent the claim arises from the first Party's breach of the Binding Provisions, negligence or wilful misconduct.

24.7 **Insurance.** Each Party is responsible for its own insurance. Each Party intends to keep insurance appropriate to its activities under this MOU, including general liability insurance where it hosts activities on its premises.

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25. Force majeure

25.1 **Fortuitous events.** Neither Party is liable for a delay in or failure of performance of a Binding Provision caused by an event that could not be foreseen or that, though foreseen, was inevitable, such as a typhoon, flood, earthquake, volcanic eruption, fire, epidemic, war, civil disturbance, government action or a widespread failure of power or communications (a "Fortuitous Event").

25.2 **Conditions.** Section 25.1 applies only if the affected Party: (a) did not contribute to the event or its effects by its own fault or negligence; (b) notifies the other Party in writing as soon as reasonably possible, describing the event and its likely duration; and (c) takes reasonable steps to limit its effects and resume performance.

25.3 **Exceptions.** A Fortuitous Event does not excuse a breach of Section 14 or Section 15 that the affected Party could have prevented by reasonable security measures.

25.4 **Prolonged event.** If a Fortuitous Event prevents performance for more than sixty days, either Party may terminate this MOU by written notice.

26. Dispute resolution

26.1 **Negotiation.** A Party that has a dispute arising out of or in connection with this MOU shall first give the other Party written notice describing it. The Coordinators shall try to settle the dispute, and if they cannot do so within fifteen Business Days, the senior officers named in Annex C shall meet within a further fifteen Business Days to try to settle it.

26.2 **Mediation.** If the dispute is not settled under Section 26.1, either Party may refer it to mediation before a mediator the Parties agree on. If the dispute is not settled within [Days allowed for mediation: _____] days after the referral, either Party may begin arbitration under Section 26.4. Information obtained through mediation is privileged and confidential, as the Alternative Dispute Resolution Act of 2004 (Republic Act No. 9285) provides.

26.3 **Barangay conciliation.** If the dispute is one that the law requires to be brought first before the lupon tagapamayapa of a barangay, for example where both Parties are individuals and the dispute falls within the lupon's authority, the Parties shall first submit it to barangay conciliation before any arbitration or court action.

26.4 **Arbitration.** Any dispute not settled under Sections 26.1 to 26.3 shall be finally settled by arbitration under [Arbitration rules or institution: _____], before a sole arbitrator, unless the Parties agree on three. The seat and venue of arbitration is [Seat of arbitration (city): _____], Philippines, and the arbitration shall be conducted in English. The arbitration is a domestic arbitration governed by Republic Act No. 876 (the Arbitration Law), as amended by Republic Act No. 9285. The award is final and binding on the Parties, without prejudice to the remedies the law allows against an award.

26.5 **Referral by a court.** If a Party brings a court action on a matter covered by Section 26.4, the other Party may ask the court, not later than the pre-trial conference, to refer the Parties to arbitration.

26.6 **Interim relief.** Nothing in this Section prevents a Party from asking a court for an injunction or other interim measure of protection, before or during arbitration, to protect its rights under Sections 14, 15 or 16.

26.7 **Continued performance.** While a dispute is being resolved, each Party shall continue to perform the Binding Provisions that are not in dispute.

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27. Governing law and venue

27.1 **Governing law.** This MOU and any dispute arising out of or in connection with it are governed by the laws of the Republic of the Philippines.

27.2 **Venue.** Subject to Section 26, the proper courts of [City whose courts have jurisdiction: _____] have exclusive jurisdiction over any action relating to this MOU, including an application in aid of arbitration, to the exclusion of all other venues.

28. Notices

28.1 **Form.** A notice under this MOU must be in writing, in English, and signed by an authorized representative or sent from the Coordinator's email address named in Annex C.

28.2 **Delivery.** A notice may be delivered by hand, by registered mail or by reputable courier to the address of the receiving Party stated in the description of the Parties, or by email to the address in Annex C, with a copy to the Party's principal office for any notice of breach, termination or dispute.

28.3 **When received.** A notice is treated as received: (a) if delivered by hand or courier, on the day of delivery; (b) if sent by registered mail, on the date shown on the registry return card, or on the fifth Business Day after mailing if no card is returned; or (c) if sent by email, when it enters the recipient's mail server, unless the sender receives a delivery failure message. A notice received after 5:00 p.m. or on a day that is not a Business Day is treated as received on the next Business Day.

28.4 **Change of address.** A Party may change its address for notices by notice to the other Party.

29. Assignment

29.1 **No assignment without consent.** Neither Party may assign, transfer or delegate any of its rights or obligations under this MOU without the prior written consent of the other Party.

29.2 **Reorganization.** A Party may, on written notice, assign this MOU to a successor that takes over all or substantially all of its business relating to the Project by merger, consolidation or reorganization, provided that the successor agrees in writing to be bound by the Binding Provisions and that the successor is not a competitor of the other Party.

29.3 **Subcontractors.** A Party may use subcontractors for its own activities, but it remains responsible for their acts and omissions as if they were its own.

30. Amendment and waiver

30.1 **Written amendment.** No amendment to this MOU is effective unless it is in writing, refers to this MOU and is signed by a duly authorized representative of each Party. A change to the Non-Binding Provisions that the Coordinators confirm by email under Section 5.5 is the only exception.

30.2 **Waiver.** A waiver of a right under this MOU is effective only if it is in writing and signed by the Party that gives it. A waiver applies only to the circumstance for which it is given.

30.3 **No implied waiver.** A delay or failure to exercise a right, or a single or partial exercise of it, does not waive that right or prevent its further exercise.

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31. Entire understanding

31.1 **Entire understanding.** This MOU, including its Annexes, contains the entire understanding of the Parties about its subject matter and replaces all earlier proposals, term sheets, letters, emails and discussions about the Project.

31.2 **Separate agreements.** Section 31.1 does not affect any confidentiality agreement, data sharing agreement or other written agreement that the Parties have signed or sign later, which continues to apply according to its own terms. If such an agreement conflicts with this MOU, the agreement that gives the stronger protection to Confidential Information or Personal Data prevails.

32. Severability

32.1 **Severability.** If a court or arbitral tribunal finds that a provision of this MOU is invalid, illegal or unenforceable, or contrary to law, morals, good customs, public order or public policy, that provision is treated as deleted to the extent of the defect, and the rest of this MOU remains in force.

32.2 **Replacement.** The Parties shall negotiate in good faith to replace an invalid provision with a valid one that comes as close as possible to its original purpose.

32.3 **Non-binding status preserved.** If any part of Section 3 or Section 4 is held invalid, the Parties still do not intend the Non-Binding Provisions to bind them, and that intention shall guide the interpretation of the rest of this MOU.

33. No third-party rights

33.1 **No third-party rights.** This MOU is made only for the benefit of the Parties. The Parties do not clearly and deliberately confer any favor on any third person. No third person, including an affiliate, employee, beneficiary or end user of the Project, may demand the performance of any provision of this MOU, and any benefit a third person receives from the Project is merely incidental.

33.2 **Amendment without third persons.** The Parties may amend or terminate this MOU without the consent of any third person.

34. Language

34.1 **Language.** This MOU is written in English. Each Party confirms that its representative reads and understands English and has understood the terms of this MOU.

34.2 **Explanation.** If a Party's representative or witness does not fully understand English, the terms of this MOU shall be fully explained to that person, before signing, in Filipino or another language that the person understands, and the explanation shall be recorded in a short signed note attached to this MOU.

34.3 **Translations.** The Parties may prepare a translation of this MOU for convenience. If the English text and a translation differ, the English text prevails.

35. Counterparts and electronic signatures

35.1 **Counterparts.** This MOU may be signed in any number of counterparts. Each counterpart is an original, and all counterparts together form one instrument.

35.2 **Electronic documents and signatures.** The Parties agree that this MOU, any notice and any amendment may be made and signed as an electronic document under the Electronic Commerce Act (Republic Act No. 8792), and that an electronic signature on it is equivalent to a handwritten

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signature. The Parties agree to use the following method to identify each signatory and to show approval of the document: [Electronic signing method: _____].

35.3 **Notarized copies.** If the Parties choose to have this MOU notarized, each signatory shall sign a paper counterpart in the presence of the notary public, or shall appear before the notary under the rules on electronic notarization, and the notarized copy is the official copy for evidence.

35.4 **Copies.** Each Party shall keep at least one fully signed original or electronic copy of this MOU.

IN WITNESS WHEREOF, the Parties have signed this Memorandum of Understanding on the date and at the place first written above. By signing, each Party confirms that it accepts the Binding Provisions listed in Section 4.1 and that the Non-Binding Provisions record intentions only.

[First Party's full legal name: _____]
By:
Signature:
Name: [First Party signatory's full name: _____]
Position: [First Party signatory's position: _____]
Date:

[Second Party's full legal name: _____]
By:
Signature:
Name: [Second Party signatory's full name: _____]
Position: [Second Party signatory's position: _____]
Date:

SIGNED IN THE PRESENCE OF:

Signature:
Name: [First witness's full name: _____]

Signature:
Name: [Second witness's full name: _____]

ACKNOWLEDGMENT (complete only if the Parties have this MOU notarized)

REPUBLIC OF THE PHILIPPINES)
[City or province of notarization: _____]) S.S.

BEFORE ME, a Notary Public for and in [City or province of notarization: _____], on [Date of notarization: _____], personally appeared the following persons, each of whom is personally known to me or was identified by me through competent evidence of identity, as follows:

[First Party signatory's full name: _____], for and on behalf of [First Party's full legal name: _____], with [First Party signatory's ID: _____];

[Second Party signatory's full name: _____], for and on behalf of [Second Party's full legal name: _____], with [Second Party signatory's ID: _____];

who presented to me the foregoing Memorandum of Understanding, consisting of [Number of pages: _____] pages, including the page on which this acknowledgment is written, signed by them and their instrumental witnesses on each page; and who acknowledged to me that they signed it voluntarily, that it is their free and voluntary act and deed and that of the entities they represent, and that they have the authority to sign it in the capacities stated.

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WITNESS MY HAND AND SEAL on the date and at the place first written in this acknowledgment.

Notary Public: [Notary public's name: _____]
Commission and roll details: [Notary's commission, roll, PTR and IBP details: _____]

Doc. No. [Notarial register document number: _____];
Page No. [Notarial register page number: _____];
Book No. [Notarial register book number: _____];
Series of [Notarial series year: _____].

ANNEX A: WORKPLAN AND MILESTONES (NON-BINDING)

1. Planning and kick-off
Task: [First task: _____]
Lead Party: [Lead party for the first task: _____]
Target date: [Target date for the first task: _____]

2. Assessment or pilot
Task: [Second task: _____]
Lead Party: [Lead party for the second task: _____]
Target date: [Target date for the second task: _____]

3. Review and recommendation
Task: [Third task: _____]
Lead Party: [Lead party for the third task: _____]
Target date: [Target date for the third task: _____]

4. Decision on a Definitive Agreement
Task: Joint committee recommendation to each Party's authorized officers on whether to negotiate a Definitive Agreement, and on its main points.
Lead Party: Both Parties
Target date: [Target date to decide on a Definitive Agreement: _____]

The dates above are targets under Section 9.3. The Coordinators may update this Annex by email confirmation under Section 5.5.

ANNEX B: COST AND CONTRIBUTION ALLOCATION (NON-BINDING)

Contributions the First Party expects to make: [First Party's expected contributions: _____]

Contributions the Second Party expects to make: [Second Party's expected contributions: _____]

Costs the Parties expect to share, and the expected proportion: [Shared costs and proportion: _____]

Budget estimate for the Term: [Budget estimate for the term: _____]

This Annex describes expectations only. Under Section 10.2, no Party must pay or reimburse any amount unless a written agreement signed by both Parties says so, and under Section 10.3 no Government Party commits public funds through this Annex.

ANNEX C: COORDINATORS AND CONTACT DETAILS

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First Party Coordinator
Name and position: [First Party coordinator: _____]
Email: [First Party coordinator's email: _____]
Telephone: [First Party coordinator's telephone: _____]

First Party senior officer for escalation
Name and position: [First Party escalation officer: _____]

Second Party Coordinator
Name and position: [Second Party coordinator: _____]
Email: [Second Party coordinator's email: _____]
Telephone: [Second Party coordinator's telephone: _____]

Second Party senior officer for escalation
Name and position: [Second Party escalation officer: _____]

A Party may update its entries in this Annex by notice under Section 8.2 and Section 28.4.

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