PUBLIC-PRIVATE PARTNERSHIP GOVERNING BOARD  
PPP Governing Board Resolution No. 2017-08-03  
April 19, 2018

FOR : All Heads of Departments, Bureaus, Offices, Commissions, Authorities and Implementing Agencies of the National Government, Including Government-Owned and/or Controlled Corporations, Government Financial Institutions, and State Universities and Colleges, Local Government Units

SUBJECT : GUIDELINES ON MANAGING UNSOLICITED PROPOSALS UNDER REPUBLIC ACT NO. 6957, AS AMENDED BY REPUBLIC ACT NO. 7718

1. Background

Section 4-A of Republic Act (R.A.) No. 6957, as amended by R.A. 7718, otherwise known as the Build-Operate-Transfer (BOT) Law, allows acceptance of Unsolicited Proposals (USP) by any Government Agency/Local Government Unit (LGU), subject to the conditions outlined in the BOT Law and in Rule 10 of its Implementing Rules and Regulations (IRR).

Since the BOT Law’s enactment, the government has encountered several issues in the process of accepting USPs. These problems include, among others:

- incomplete feasibility study (e.g. no risk allocation, and no financial model);
- absence of proposed minimum performance specifications and standards;
- contracts lacking provisions that are required by law;
- lack of clarity on what constitutes government undertakings;
- lack of clarity on the roles of agencies (e.g. who shall receive USP, who shall issue Original Proponent status); and
- the implementing rules for procurement are in various sections but are not presented in the sequence that they are implemented.

These have resulted to delays and inconsistencies in treating USPs. On the other hand, past USPs provide lessons and opportunities, which may be adopted as solutions to identified issues.

Lastly, there is a lack of awareness on other issuances that are relevant to USPs.

2. Objectives

These Guidelines aim to:

a. Prevent avoidable delays in the processing of USPs;

b. Facilitate a clearer understanding of the government’s requirements;

c. Establish a cohesive link among all relevant issuances; and

d. Make it easier to follow the rules for procurement.
The above shall be achieved pursuant to the BOT Law, its IRR and other related issuances.

These Guidelines do not intend to revise, expand, or add provisions provided in the BOT Law and its IRR. These Guidelines are recommendatory in nature and do not delimit the flexibility of the Agencies/LGUs provided that the BOT Law and its IRR are followed.

3. Applicability

These Guidelines shall apply solely to all USPs covered under the BOT Law and its revised IRR.

4. Prescribed Timelines

The entire process of managing USPs shall follow the timelines and procedures prescribed in these Guidelines pursuant to the BOT Law and its IRR (See Annex A: Summary of Timelines and Activities on Processing Unsolicited Proposals).

5. Projects Eligible for Unsolicited Proposal

The USP should meet all of the following conditions:

a. The project involves a new concept or technology as determined by the Agency/ LGU and/or is not part of the List of Priority Projects pursuant to Section 10.2 of the BOT Law IRR;
   i. For national projects, the priority list refers to any the following: the Public Investment Program (PIP); the Comprehensive and Integrated Infrastructure Program (CIIP) and the Three (3)-Year Rolling Infrastructure Program (TRIP); or
   ii. For LGU projects, the priority list refers to any of the following: Provincial Development Investment Program (PDIP); Regional Development Investment Program (RDIP) and Local Development Investment Program (LDIP).

b. The project is not a component of an approved project; and
   i. An approved project refers to any project included in the priority lists as mentioned in Section 5(a) of this guideline which has been approved by the appropriate approving body.

c. No direct government guarantee, subsidy or equity is required, pursuant to Section 4-A of the BOT Law. The grant of usufruct of government assets, including right-of-way, shall be considered as direct government subsidy or equity unless the government receives appropriate compensation pursuant to Section 12.3(c) of the BOT Law IRR.
6. Submission of Complete Unsolicited Proposal

USPs shall be submitted to the Agency/LGU that has the jurisdiction over the proposed project.

The proponent shall ensure that the project meets the eligibility requirements, and that the USP meets the completeness requirements as per Section 4-A of the BOT Law, and Sections 10.1 to 10.5 of the BOT Law IRR. These Guidelines provide a checklist for completeness (See Annex B: Completeness Checklist).

The Feasibility Study should cover the minimum contents prescribed under the ICC Project Evaluation Procedures and Guidelines. These Guidelines provide a checklist for the prescribed contents of a Feasibility Study (See Annex C: Feasibility Study Checklist).

Furthermore, the draft contract should contain the terms and conditions mandated under Section 4.4 of the BOT Law IRR. These Guidelines provide a checklist for the prescribed contents of a contract (See Annex D: Draft PPP Contract Checklist).

7. Receipt of Unsolicited Proposal

The Agency/LGU may decline a USP outright.

In case the Agency/LGU receives more than one USP involving the same or similar project prior to acceptance of the proposal as the "original proponent" (OP), the Agency/LGU may reject all such proposals and instead, bid out the project as a solicited proposal. Otherwise, the Agency/LGU shall evaluate the proposals using a first-in-time approach pursuant to Section 10.6 of the BOT Law IRR.

If it decides to consider the USP, then it has to check for eligibility of the project and completeness of the proposal. Furthermore, the Agency/LGU shall inform the ICC and the PPP Center of its receipt of a USP.

The Agency/LGU shall acknowledge the submission of the proposal and advice the proponent whether the proposal is complete or incomplete within the periods provided in Section 10.5 of the BOT Law IRR.

The Agency/LGU shall discontinue the process of evaluating the USP if, at any stage of the evaluation process, any of the eligibility requirements are not met.

These Guidelines provide a checklist for completeness (See Annex B: Completeness Checklist, and Annex C: Feasibility Study Checklist, and Annex D: Draft PPP Contract Checklist).

8. Evaluation of the USP and of the Proponent by the Agency/LGU

Once the Agency/LGU has established that the project is eligible and that all requisite documents are complete, the project shall proceed with the detailed evaluation. However, the Agency/LGU may request additional documentation in order to support the requisite documents.
Meetings with the proponent to clarify any concerns on the proponent’s submission may also be requested by the Agency/LGU.

The Agency/LGU may procure transaction advisors/consultants to assist in the assessment of the USP and the pre-qualification of the proponent. They may also solicit the aid of the PPP Center, pursuant to Executive Order (E.O.) No. 8, series 2010, as amended by E.O. No. 136, series of 2013.

The IRR of the BOT Law provides the areas for evaluation (i.e. merits of the project, proponent qualification, the appropriateness of the contractual arrangement and reasonableness of risk allocation, and the proposed reasonable rate of return). However, the IRR does not specify in detail how the evaluation for the merits of the project and of the appropriateness of contractual arrangement shall be done. For these two areas, the following general guidelines may be considered:

a. **Merits of the Project** – The USP shall be evaluated in terms of the socio-economic, technical, financial, legal, and institutional merits.

These Guidelines provide guide questions that the Agency/LGU may consider in evaluating the merits of the USP. *(See Annex F: Guide Questions for Agency/ LGU Assessment of an Unsolicited Proposal)*

b. ** Appropriateness of Contractual Arrangement and Reasonableness of Risk Allocation**

This shall be established by first determining how the Agency/LGU prefers to allocate risks. Afterwards, the Agency/LGU shall evaluate if the proposed contractual arrangement is the most appropriate given the risk allocation.

For the preferred risk allocation, the Agency/LGU shall refer to the Generic Preferred Risk Allocation Matrix (GPRAM) issued by the ICC on August 2, 2016.

For the pre-qualification of the proponent, Rule 5 of the BOT Law IRR provides for specific details on how the pre-qualification shall be done. These Guidelines provide a list of frequently asked questions on this process and the corresponding answers, based on the BOT Law and its IRR. *(See Annex G: Frequently Asked Questions in the Prequalification of the USP Proponent)*

9. **Communication of the Results of the Evaluation of the USP**

Following the Agency/LGU’s evaluation, the Agency/LGU shall formally accept and confirm the OP status to the Proponent, or reject the USP. The Agency/LGU shall advise, in writing, the Project Proponent of its decision.

In case of acceptance, the Agency/LGU shall officially endorse the USP and submit the ICC Project Evaluation (PE) Forms and other requisite documents, including Reasonable Rate of Return (RROR), to the ICC.

These Guidelines provide a checklist on the required documents for USP. *(See Annex E: Checklist of ICC Requisite Documents for Unsolicited Proposals).*
10. Evaluation of the Unsolicited Proposal by the ICC-Technical Board (TB)

Once the complete requisite documents have been submitted to the ICC Secretariat, the ICC-TB shall evaluate the project pursuant to relevant guidelines and issuances.

Upon completion of the evaluation, the ICC-TB shall endorse the USP to the ICC Cabinet Committee (ICC-CC), with the following information:

a. Details and Proposed Project Terms of the USP, including RROR and other parameters for negotiation;

b. Results of Project Evaluation by the ICC-TB;

c. Other pertinent information as may be determined by the ICC-TB.

11. Evaluation of the Unsolicited Proposal by the ICC-CC and the Approving Body

Pursuant to Section 10.8 of the BOT Law IRR, the ICC-CC shall determine the RROR and other parameters for negotiation, and approve the project based on the endorsement of the ICC-TB. Thereafter, the Approving Body shall act on the USP upon recommendation by the ICC-CC.

12. Negotiation with the OP

Upon receipt of the Agency/LGU of the formal advice of the Approving Body, the Agency/LGU shall enter into exclusive negotiations with the OP pursuant to Section 10.8 of the BOT Law IRR.

Given the limit of 80 calendar days for negotiation, the Agency/LGU may consider creating a Negotiation Committee with permanent members and clear rules of engagement, to facilitate faster decision-making and conclusion of the negotiations within the prescribed period and ensure transparency in the process.

This practice is based on the Australian experience where their National PPP Policy and Guidelines require the creation of a team that is in charge of setting the framework for contract negotiation on PPP projects.

A formal agreement among the members of the Negotiation Committee shall be made to guide the negotiation process, including rights and obligations of each member, information requirements, confidentiality and approval requirements, and management of conflicts of interest.

The Agency/LGU may utilize transaction advisors/consultants to assist in the negotiation process. Such transaction advisors/consultants may be obtained through the Project Development and Monitoring Facility (PDMF) or under Government Procurement Reform Act (GPRA). They may also solicit the aid of the PPP Center, pursuant to E.O. No. 8, series of 2010, as amended by E.O. No. 136, series of 2013.

13. Results of the Negotiation and Final Approval/Validation of the ICC-CC and the Approving Body

a. In case of irreconcilable differences
If at the end of the stipulated negotiation period there are irreconcilable differences, the Agency/LGU shall have the option to reject the USP by advising the OP, in writing, and stating the grounds for rejection.

If rejected, the Agency/LGU may: (1) bid out the project as a solicited proposal under the BOT Law and its IRR; (2) undertake the project on its own under GPRA; or (3) accept a new USP.

b. In case of a successful negotiation

Should there be an agreement, the Agency/LGU shall submit a report to the ICC-CC and the Approving Body on the results of its negotiation with the OP for final approval/validation.

Once the results of the negotiation are approved/validated by the ICC-CC and the Approving Body, the Head of Agency/LGU and the authorized signatory of the OP shall issue a joint “Certificate of Successful Negotiation.”

Thereafter, the OP shall notify in writing the Agency/LGU that it accepts all the terms and conditions.

The approval of the USP by the Approving Body shall be valid only for a period of 18 months from the issuance of the approval unless the invitation for comparative proposals has been issued.

14. Procurement Process

The procurement process shall commence upon the approval/validation by the ICC-CC and the Approving Body of the results of negotiation, the issuance of the Certificate of Successful Negotiation, and the acceptance of all the terms and conditions by the OP.

The procurement process for USP is done according to the following sequence:

a. Release of Invitation for Comparative Proposals (according to Section 10.11 of the BOT Law IRR) and in parallel, the Approval of Unsolicited Contracts by the Head of Agency/LGU (according to Section 10.9 of the BOT Law IRR) and the Posting of Bid Bond by the OP (Section 10.12 of the BOT Law IRR).

b. Issuance of Tender Documents

c. Submission of Proposals

d. Evaluation of Comparative Proposals

e. Awarding of Contract

f. Signing of Contract

The Agency/LGU may utilize transaction advisors/consultants to assist in the procurement process. Such transaction advisors/consultants may be obtained through the Project Development and Monitoring Facility (PDMF) or under GPRA. They may also solicit the
aid of the PPP Center, pursuant to E.O. No. 8, series of 2010, as amended by E.O. No. 136, series of 2013.

15. Project Implementation

Upon award of the project to the Winning Bidder, the Agency/LGU shall implement and monitor the project pursuant to Rule 12 of the BOT Law IRR and PPPGB Resolution No. 2015-09-01 (PPP Monitoring Framework and Protocols).

16. Transitory Provision

Upon the effectivity of these Guidelines, all USPs, including those presently being assessed and/or reviewed but not yet approved by the Approving Body, shall hereafter be assessed and/or reviewed in accordance with these Guidelines.

USPs under implementation shall be governed by the contract provisions entered into by the concerned parties.

17. Effectivity

These Guidelines shall take effect immediately upon approval by the PPP Governing Board.

I hereby certify that these Guidelines were conditionally approved by the PPP Governing Board on August 10, 2017, with the last condition fulfilled on April 19, 2018.

FERDINAND A. PECSON
Undersecretary and Executive Director
Head, PPP Governing Board Secretariat
## ANNEXES

### ANNEX A: SUMMARY OF TIMELINES AND ACTIVITIES ON PROCESSING UNSOLICITED PROPOSALS

<table>
<thead>
<tr>
<th>Responsible Entity</th>
<th>Activities</th>
<th>BOT Law &amp; IRR</th>
<th>Days</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Submission of Complete Unsolicited Proposal and Agency/ LGU Evaluation of the Unsolicited Proposal and Proponent</strong></td>
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</tr>
<tr>
<td>Agency/LGU</td>
<td>Acknowledge the Receipt of Unsolicited Proposal (USP)</td>
<td>Sec. 10.5</td>
<td>Within Seven (7) calendar days from submission of USP</td>
</tr>
<tr>
<td>Agency/LGU</td>
<td>Advise Proponent whether USP is complete or incomplete</td>
<td>Sec. 10.5</td>
<td>Within 30 calendar days from submission of USP</td>
</tr>
<tr>
<td>Agency/LGU</td>
<td>Evaluate the USP, qualify the Proponent, accept/reject USP</td>
<td>Sec. 10.7</td>
<td>Within 120 calendar days from receipt of &quot;complete&quot; USP</td>
</tr>
<tr>
<td>Agency/LGU</td>
<td>Issue the letter of acceptance or rejection to the Proponent; granting OP status</td>
<td>Sec. 10.7</td>
<td>Within 120 calendar days from receipt of &quot;complete&quot; USP</td>
</tr>
</tbody>
</table>

| **Evaluation of the Unsolicited Proposal by the ICC and the Approving Body** | | | |
| Head of Agency(HOA) /LGU | Endorsement of USP to ICC | Sec. 10.8 | Within Five (5) calendar days from issuance of the letter of acceptance |
| ICC-TB and ICC-CC | Evaluation/Approval of USP by ICC (i.e. determination of reasonable ROR and other parameters) | Sec. 10.8 | Open Date |
| ICC-CC | Endorsement of USP to Approving Body | Sec. 10.8 | Open Date |
| Approving Body | Evaluation/Approval of USP by Approving Body | Sec. 10.8 | Within 30 working days from receipt of endorsement |
| Approving Body | Advise Agency/LGU of decision (i.e. RROR and other parameters for negotiation) | Sec. 10.8 | Open Date |

### Negotiation of Project Terms and Final Approval

<table>
<thead>
<tr>
<th>Responsible Entity</th>
<th>Activities</th>
<th>BOT Law &amp; IRR</th>
<th>Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency/LGU</td>
<td>Advisory to OP on the Commencement/Mechanics of Negotiation</td>
<td>Sec. 10.8</td>
<td>Within seven (7) calendar days from receipt of Agency/LGU of advice from ICC/Approving Body</td>
</tr>
<tr>
<td>Agency/LGU Negotiation Committee, OP</td>
<td><strong>Negotiation Period</strong></td>
<td>Sec. 10.8</td>
<td>Within 80 calendar days from receipt by OP of written notice from Agency/LGU to commence negotiations</td>
</tr>
<tr>
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</tr>
<tr>
<td>Agency/LGU</td>
<td><strong>Submit to ICC/Approving Body result of negotiation with OP for approval/validation</strong></td>
<td>Sec. 10.8</td>
<td>Within Seven (7) calendar days after negotiation period</td>
</tr>
<tr>
<td>ICC/Approving Body</td>
<td><strong>Approval/Validation of the results of negotiation with OP</strong></td>
<td>Sec. 10.8</td>
<td>Open Date</td>
</tr>
<tr>
<td>OP</td>
<td><strong>OP Acceptance of all the terms and conditions.</strong></td>
<td>Sec. 10.11</td>
<td>Open Date</td>
</tr>
<tr>
<td>HOA/LGU, OP</td>
<td><strong>Issue certification of successful negotiation</strong></td>
<td>Sec. 10.8</td>
<td>Open Date</td>
</tr>
</tbody>
</table>

### Project Procurement

<table>
<thead>
<tr>
<th>Agency/LGU</th>
<th><strong>Publish invitation for comparative proposals for three (3) consecutive weeks (advertisement)</strong></th>
<th>Sec. 10.11</th>
<th>Within seven (7) calendar days from issuance of certification of successful negotiation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>OP</td>
<td><strong>Posting of Bid Bond</strong></td>
<td>Sec. 10.12</td>
<td>On the first day of advertisement</td>
</tr>
<tr>
<td>OSG/OGCC, DOF</td>
<td><strong>Statutory Counsel/DOF review and issuance of opinion on draft PPP Contract</strong></td>
<td>Sec. 10.9</td>
<td>Within 10 calendar days from receipt of draft PPP Contract as submitted by Agency/LGU</td>
</tr>
<tr>
<td>HOA/LGU</td>
<td><strong>HOA review and approval of draft PPP Contract</strong></td>
<td>Sec. 10.9</td>
<td>Open Date</td>
</tr>
<tr>
<td>Agency /LGU</td>
<td><strong>Issuance of tender/bidding documents</strong></td>
<td>Sec. 10.11</td>
<td>Open Date but not earlier than the last date of publication</td>
</tr>
<tr>
<td>Agency /LGU</td>
<td><strong>Pre-bid Conference</strong></td>
<td>Sec. 10.11</td>
<td>30 working days after the issuance of tender/bidding documents</td>
</tr>
<tr>
<td>Challengers</td>
<td><strong>Preparation of bid for Swiss Challenge/Bid Submission</strong></td>
<td>Sec. 10.11</td>
<td>60 working days from date of issuance of tender/bidding documents</td>
</tr>
</tbody>
</table>

### Evaluation; Right to Match and Decision to Award

<p>| Agency /LGU | <strong>Evaluation of Envelope 1 (qualification documents) and</strong> | Sec.10.15, Sec. 5.5 | Within 20 calendar days from bid submission |</p>
<table>
<thead>
<tr>
<th>Agency /LGU</th>
<th>Evaluation of Envelope 2 (technical proposal)</th>
<th>Sec. 8.1</th>
<th>Within 20 calendar days from the date bids are opened</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency /LGU</td>
<td>Evaluation of Envelope 3 (financial proposal)</td>
<td>Sec. 8.2</td>
<td>Within 15 calendar days from the date of technical evaluation has been completed</td>
</tr>
<tr>
<td>Agency /LGU</td>
<td>Notification of result of Comparative Bid</td>
<td>Sec. 10.1</td>
<td>Open Date</td>
</tr>
<tr>
<td>OP</td>
<td>Right to Match by OP</td>
<td>Sec. 10.1</td>
<td>Within 30 working days from receipt of notification from Agency/LGU of the result of Comparative Bid</td>
</tr>
<tr>
<td>Pre-Qualification, Bids and Awards Committee (PBAC)</td>
<td>Recommendation of Award to HOA/LGU</td>
<td>Sec. 11.1</td>
<td>Within three (3) calendar days from the date of financial evaluation has been completed</td>
</tr>
<tr>
<td>HOA/LGU</td>
<td>Decision to award/approval</td>
<td>Sec. 11.2</td>
<td>Within three (3) calendar days from submission by PBAC of recommendation to award</td>
</tr>
</tbody>
</table>

### Issuance of Notice of Award (NOA) and Signing of Contract

<table>
<thead>
<tr>
<th>Agency /LGU</th>
<th>Issuance of NOA to Winning Bidder</th>
<th>Sec. 11.2</th>
<th>Within five (5) calendar days from Head of Agency/LGU approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Winning Bidder</td>
<td>Submission of NOA requirements</td>
<td>Sec. 11.3</td>
<td>Within 20 calendar days from receipt of NOA</td>
</tr>
<tr>
<td>Agency/ PPPC</td>
<td>Posting of NOA on PHILGEPS and Agency/PPPC Website</td>
<td>Sec. 11.4</td>
<td>Within seven (7) calendar days from receipt of NOA</td>
</tr>
<tr>
<td>HOA/LGU</td>
<td>Notification of NOA Compliance</td>
<td>Sec. 11.3</td>
<td>Within five (5) calendar days from receipt of NOA requirements</td>
</tr>
<tr>
<td>Agency /LGU, OP</td>
<td>Signing of PPP Contract</td>
<td>Sec. 12.1</td>
<td>Within in five (5) calendar days from receipt of NOA Compliance by Winning Bidder</td>
</tr>
<tr>
<td>Agency/LGU</td>
<td>Submission of PPP Contract to Approving Authority and PPP Center</td>
<td>Sec. 12.1</td>
<td>Within five (5) calendar days after signing of PPP Contract</td>
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**ANNEX B: Completeness Checklist for Unsolicited Proposals**  
*(Based on BOT Law IRR Sections 10.1; 10.2; 10.5; 2.3):*

<table>
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<tr>
<th>Present</th>
<th>Absent</th>
<th>Remarks</th>
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</table>
| a. Cover Letter indicating the basic information of the USP such as:  
  a. Expected Output and Outcome  
  b. Implementation Period  
  c. General Description of New Technology/New Concept (if applicable)  
  d. Other relevant information |
| b. Company Profile |
| c. Complete Feasibility Study  
  *Refer to Annex C: Feasibility Study Checklist* |
| 1. Draft PPP Contract consistent with Section 4.4 of BOT Law IRR  
  *Refer Annex D: Draft PPP Contract Checklist* |
| 2. Other documents that are needed even if proprietary in nature |

**Note:**  
Feasibility study, draft PPP Contract and other documents even if proprietary in nature shall be submitted in a sealed envelope.
ANNEX C: Feasibility Study Checklist for Unsolicited Proposals
(Based on ICC Project Evaluation Forms\(^1\), and Solicited Feasibility Studies).

Feasibility Studies shall include, but not be limited to, the following sections:

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<tr>
<th>Present</th>
<th>Absent</th>
<th>Remarks</th>
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</table>

1. Project Background/Description of the Project
   a. Sector
   b. Project Location
   c. Proposed payment scheme
   d. Contractual arrangement and length of concession/cooperation period
   e. Project Scope
   f. Total Project Cost
   g. Area Impacted by the Project
   h. Project linkages with the national and regional development thrusts, goals, gender and development and the environment
   i. Estimated Economic Life of Project
   j. Government Undertaking
   k. Legal and Institutional Analysis
   l. Stakeholder Analysis
   m. Project Proponent Composition (possible consortium members; contractor; financier; supplier; operator, etc.)

2. Technical Study
   a. New Technology/New Concept (if applicable)
   b. Technical Design
   c. Demand Forecast
   d. Technical and Operational Analysis/Feasibility (including interface with government’s masterplan and other infrastructure projects)

3. Financial Viability Assessment
   a. Complete Financial Model (cash flow, income statement, balance sheet, assumption sheets)
   b. Project and Financing Milestones

4. Project Economic Viability Assessment

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<table>
<thead>
<tr>
<th>Present</th>
<th>Absent</th>
<th>Remarks</th>
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<tbody>
<tr>
<td>a. Estimated Economic Cost and Benefits</td>
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<td>b. Methodology Employed</td>
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<tr>
<td>c. Economic IRR</td>
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<tr>
<td>d. Benefit-Cost ratio (B/C Ratio)</td>
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<tr>
<td>e. Net Present Value (NPV) of Net Benefits</td>
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<td>f. Sensitivity Analysis</td>
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</table>

5. Value for Money Analysis
   a. Assumptions and sources of data
   b. Public Sector Comparator
   c. Results of VfM Analysis

6. Risk Allocation Matrix\(^2\) (may include, as applicable, the following:)
   a. Site Risk
   b. Design, Construction, Commissioning Risk
   c. Sponsor and Financial Risk
   d. Operating Risk
   e. Demand Risk
   f. Network and Interface Risk
   g. Industrial Relations Risk
   h. Legislative and Government Policy Risk
   i. Force Majeure Risk
   j. Asset Ownership Risk

7. Environmental Impact Assessment
   a. Environmental Risk Analysis
   b. Proposed Mitigation Measures
   c. Climate Change Adaptation Measures
   d. Disaster Risk Reduction Measures
   e. Environmental monitoring and Management Plan

Note: The Proponent should also submit copies of the financial and economic models, in traceable format.

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ANNEX D: Draft PPP Contract Checklist for Unsolicited Proposals
(Based on Sec. 4.3 and 4.4 of the BOT Law IRR) ³

<table>
<thead>
<tr>
<th>Present</th>
<th>Absent</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Specific contractual arrangement, term and scope of work</td>
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<tr>
<td>b. Project technical specifications and system features</td>
<td></td>
<td></td>
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<tr>
<td>c. Implementation milestones including those for securing other approvals, project completion date</td>
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<tr>
<td>d. Cost recovery scheme via proposed tolls, fees, rentals, and charges, as the case may be</td>
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<tr>
<td>e. Liquidated damages as contemplated under Section 12.14 of BOT Law IRR</td>
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<td>f. Performance and warranty bonds contemplated under Sections 12.8 and 12.9 of the BOT Law IRR</td>
<td></td>
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<tr>
<td>g. Minimum insurance coverage as may be required for the project</td>
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<tr>
<td>h. Acceptance tests and procedures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>i. Warranty period and procedures (after transfer)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>j. Grounds for and effects of contract termination including modes for settling disputes</td>
<td></td>
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<tr>
<td>k. Manner and procedures for the resolution of warranty against corruption</td>
<td></td>
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</tr>
<tr>
<td>l. Compliance with all other applicable laws, rules, and regulations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>m. Minimum Performance Specifications and Standards (MPSS) and Key Performance Indicators (KPIs)</td>
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</tr>
</tbody>
</table>

³ It has to be clear in the draft PPP Contract that Government will not provide any direct government guarantee, subsidy or equity. In addition, the provisions listed under Section 4.4 of the BOT Law IRR are mandatory.
ANNEX E: Checklist of ICC Requisite Documents for Unsolicited Proposals
(Based on ICC Checklist for Proposed PPP Projects for ICC Review⁴)

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Date of Submission</th>
<th>Status/Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Project Proposal or Feasibility Study, if available (based on data not older than three years)</td>
<td></td>
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</tr>
<tr>
<td>2. Project Evaluation (PE) Forms No. 1 to 8</td>
<td></td>
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<tr>
<td>No. 1 – General Information</td>
<td></td>
<td></td>
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<tr>
<td>No. 2 – Estimated Project Cost</td>
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<tr>
<td>No. 3 – Project Revenue</td>
<td></td>
<td></td>
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<tr>
<td>No. 4 – Estimated Project Benefits and Costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4a – Financial</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4b – Economic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. 5 – Risk Allocation Matrix</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. 6 – Logical Framework</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. 7 – Project and Financing Milestones</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. 8 – Maximum Government Exposure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Two sets of electronic copy of financial and economic analyses in traceable formula format based on submitted PE Forms</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Endorsement by head of oversight/mother department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Environmental Impact Statement (EIS)/Environmental Compliance Certificate (ECC)/Certificate of Non-Coverage (CNC)</td>
<td></td>
<td></td>
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<tr>
<td>6. Department of Finance-Corporate Affairs Group (DOF-CAG) review for GOCC projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Location map (with e-copy)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Right-of-way (ROW) acquisition and resettlement action plan (implementation risk; implementing agency to provide a good description and the extent of the project’s ROW cost)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Project alignment with the Department’s overall strategy/program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Information on job creation/employment impact of the project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Regional Development Council (RDC) endorsements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12. Recommended rate of return</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Value for money (VfM) analysis</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ANNEX F: Guide Questions for Agency/LGU Assessment of an Unsolicited Proposal
(ICC Project Evaluation Forms\(^5\), and Solicited Feasibility Studies).

In the detailed evaluation of the merits of the USP, the Agency/LGU may consider the following guide questions:

<table>
<thead>
<tr>
<th>Area</th>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Socio-Economic Analysis</td>
<td>a. Did the economic IRR pass the hurdle rate of 10%?</td>
</tr>
<tr>
<td></td>
<td>b. Are the assumed economic cost and benefits reasonable?</td>
</tr>
<tr>
<td></td>
<td>c. Did the Unsolicited Proposal demonstrate how it will create additional economic activity and jobs, or meet unmet community needs, and how it assists with the achievement of the Agency/ LGU’s strategic priorities?</td>
</tr>
<tr>
<td></td>
<td>d. Has the willingness to pay survey been conducted?</td>
</tr>
<tr>
<td></td>
<td>Is the Unsolicited Proposal part of the Public Investment Program (PIP); Comprehensive and Integrated Infrastructure Program (CIIP) and the Three (3)-Year Rolling Infrastructure Program or the Provincial Development Investment Program (PDIP); Regional Development Investment Program (RDIP) and Local Development Investment Program (LDIP)?</td>
</tr>
<tr>
<td></td>
<td>e. What are the direct and indirect environmental impact of the project?</td>
</tr>
<tr>
<td></td>
<td>f. What are the proposed environmental protection and mitigation measures?</td>
</tr>
<tr>
<td></td>
<td>g. Is the proposed project consistent with applicable environmental statutes and regulations?</td>
</tr>
<tr>
<td></td>
<td>h. Does the proposed design meet applicable environmental standards?</td>
</tr>
<tr>
<td></td>
<td>i. Does the Unsolicited Proposal adequately address environmental issues identified?</td>
</tr>
<tr>
<td></td>
<td>j. Are there known or foreseeable negative environmental impacts arising from the project? If so, does the Unsolicited Proposal outline a plan to address those negative impacts?</td>
</tr>
</tbody>
</table>

| Technical Study               | A. Uniqueness Test for New Concept/Technology (if applicable)                                                                         |
|                               | • Does the proposed project possess at least one of the following:                                                                     |
|                               |   i. a recognized process, design, methodology or engineering concept which has demonstrated its ability to                             |
|                               |     a.) significantly reduce implementation of Construction costs; b.) accelerate project execution; c.) improve safety;               |
|                               |     d.) enhance project performance; e.) extend economic life; f.) reduce costs of facility maintenance and operations; g.) reduce negative environmental impact or social/economic disturbances or disruptions either during the project implementation phase/construction phase or the operation phase; |
|                               |   ii. process which proponent has exclusive rights;                                                                                   |
|                               |   iii. design, method or engineering concept which the proponent has intellectual property rights.                                    |

<table>
<thead>
<tr>
<th>Area</th>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>B.</td>
<td>Is the proposed new concept/technology of the Unsolicited Proposal based on proven technology that has been implemented in other jurisdictions/countries?</td>
</tr>
<tr>
<td>C.</td>
<td>Is the proposed new technology or concept limited in terms of accessibility and prevalence in the market which would make it difficult, if not highly improbable, for the Government to avail of such new concept or technology through ordinary means of procurement?</td>
</tr>
<tr>
<td></td>
<td>- Are there genuine intellectual property rights, without which the Unsolicited Proposal could not proceed to the implementation of the project (e.g. software or technology)?</td>
</tr>
<tr>
<td></td>
<td>- Does the Unsolicited Proposal have other demonstrably unique elements or innovative ideas that are not able to be delivered by another party within acceptable time frames?</td>
</tr>
<tr>
<td></td>
<td>- What is the degree of technical innovation associated with the Unsolicited Proposal?</td>
</tr>
<tr>
<td></td>
<td>- Is a certified copy of the patent rights or any other license/grant indicating proof of exclusive rights provided to the Agency/LGU for their assessment?</td>
</tr>
<tr>
<td></td>
<td>- What are the potential issues that the Government might face given the new technology?</td>
</tr>
<tr>
<td>D.</td>
<td>Other Technical Matters</td>
</tr>
<tr>
<td></td>
<td>- Is the Unsolicited Proposal described in sufficient detail to determine the type and size of the project, the location, all proposed interconnections/interface with other projects, the communities/stakeholders that may be affected, and alternatives (e.g. alignments) that may need to be evaluated?</td>
</tr>
<tr>
<td></td>
<td>- Are the details enough to populate the Project Evaluation (PE) Forms?</td>
</tr>
<tr>
<td></td>
<td>- Is the proposed project technically feasible?</td>
</tr>
<tr>
<td></td>
<td>- Is the MPSS at par with industry practice?</td>
</tr>
<tr>
<td></td>
<td>- Is the proposed project site/location available?</td>
</tr>
<tr>
<td></td>
<td>- Is the concession period/cooperation period reasonable?</td>
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<tr>
<td></td>
<td>- Is the time frame for project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the project?</td>
</tr>
<tr>
<td></td>
<td>- Does the Proponent present a reasonable plan for operation of the project or facilities that are included in the project?</td>
</tr>
<tr>
<td></td>
<td>- Does the Unsolicited Proposal set forth a plan to secure all property interests (ROW/ Site Acquisition) required for the project?</td>
</tr>
<tr>
<td></td>
<td>- Are there any potential interface/interoperability issues during construction and O&amp;M? Are there other infrastructure projects on which the project relies on for it to be ready in time?</td>
</tr>
<tr>
<td></td>
<td>- Are there known or foreseeable negative technical impacts arising from the project? If so, does the Unsolicited Proposal outline a plan to address those negative impacts?</td>
</tr>
<tr>
<td></td>
<td>- What are the technical surveys/studies conducted and completed?</td>
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<tr>
<td>Area</td>
<td>Questions</td>
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<tr>
<td></td>
<td>• Is this an Unsolicited Proposal relating to known public needs that can, within reasonable and practicable limits, be acquired by known and conventional competitive bidding methods?</td>
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<tr>
<td></td>
<td>• Are we certain that this project is not in conflict with any other projects of the Government?</td>
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<tr>
<td></td>
<td>• Are there any other similar projects/proposals being undertaken or are currently being considered by the Government that addresses the same scope and objective?</td>
</tr>
<tr>
<td></td>
<td>• Is the Unsolicited Proposal or any component thereof, already being undertaken by the Government (Agency/LGU) either via GPRA or ODA?</td>
</tr>
<tr>
<td></td>
<td>• Is the Unsolicited Proposal or any component thereof, already part of Government’s (Agency/LGU) pipeline of projects either via GPRA or ODA?</td>
</tr>
<tr>
<td></td>
<td>a. Does the Unsolicited Proposal present a sound base case financial model? Are the assumptions in the financial model reasonable and realistic? (i.e. inflation, costs, interest rates, etc.)</td>
</tr>
<tr>
<td></td>
<td>b. Are the planned sources of funding and financing realistic? Does the Proponent adequately identify sources of funding that it anticipates including in the project financing, and does the Proponent provide adequate assurance of the availability of those funds and the reliability of the funding sources?</td>
</tr>
<tr>
<td></td>
<td>c. Does the Unsolicited Proposal include an appropriately conducted life-cycle cost estimate of the proposed project and/or facility?</td>
</tr>
<tr>
<td></td>
<td>d. Is the estimated cost of the project reasonable in relation to the cost of similar projects?</td>
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<tr>
<td></td>
<td>e. What are the returns of similar projects within the sector in the country and in other jurisdiction?</td>
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<tr>
<td></td>
<td>f. Are the returns considered fair, given the project risks?</td>
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<td></td>
<td>g. Are there potential contingent liabilities that may arise from the Unsolicited Proposal? If so, have they been quantified?</td>
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<tr>
<td></td>
<td>h. Are there any possible regulatory issues on the financing of the Unsolicited Proposal?</td>
</tr>
<tr>
<td></td>
<td>i. Are there any government undertakings expected?</td>
</tr>
<tr>
<td></td>
<td>j. Does the Unsolicited Proposal ensure integrity in the model (i.e. Balance check; sources vs uses; etc.)</td>
</tr>
<tr>
<td></td>
<td>k. Are the assets fully depreciated by the end of the concession period?</td>
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<tr>
<td></td>
<td>l. Are there any unpaid liabilities at the end of the concession period (term loans; payables; bank overdraft, etc.)?</td>
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<tr>
<td></td>
<td>m. Is the proposed debt equity ratio consistent with industry counterparts?</td>
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<tr>
<td></td>
<td>n. Are there known or foreseeable negative financial impacts arising from the project? If so, does the Unsolicited Proposal outline a plan to address those negative impacts?</td>
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<tr>
<td></td>
<td>o. Will there be support needed from development banks?</td>
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<td></td>
<td>p. What is the tax regime applicable to the project?</td>
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<td></td>
<td>q. Will the project generate reasonable returns despite the absence of direct government guarantee, equity, or subsidy such as Viability Gap Funding?</td>
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<tr>
<td>Area</td>
<td>Questions</td>
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<tr>
<td>---------------------------</td>
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<tr>
<td></td>
<td>r. Will the Unsolicited Proposal deliver VFM and a net benefit to the Government?</td>
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<tr>
<td></td>
<td>s. Has a Public Sector Comparator been developed? Is it the basis for assessing VFM on the project?</td>
</tr>
<tr>
<td></td>
<td>t. What discount rate was used and what was its basis? Was it uniformly and consistently used for comparing the public and PPP procurement options?</td>
</tr>
<tr>
<td></td>
<td>u. Were all relevant ‘whole of life’ costs considered?</td>
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<tr>
<td></td>
<td>v. Were the project risks assigned to the party best able to handle it and were they appropriately reflected in the VFM calculation?</td>
</tr>
<tr>
<td></td>
<td>w. Was competitive neutrality considered in the VFM calculation?</td>
</tr>
<tr>
<td></td>
<td>x. Have the project-specific risks been identified?</td>
</tr>
<tr>
<td></td>
<td>y. Are the risks associated with the Unsolicited Proposal acceptable to Government?</td>
</tr>
<tr>
<td></td>
<td>z. Is the risk allocation proposed consistent with the GPRAM(^6)? (as applicable for Unsolicited Proposals)</td>
</tr>
<tr>
<td></td>
<td>aa. What are the proposed measures to mitigate the identified risks?</td>
</tr>
<tr>
<td>Legal and Institutional</td>
<td>a. Is the Unsolicited Proposal in conflict with any government policies and procedures/laws?</td>
</tr>
<tr>
<td></td>
<td>b. Does the Agency/LGU have the mandate to undertake the project?</td>
</tr>
<tr>
<td></td>
<td>c. Is the Proponent qualified to undertake the project pursuant to BOT Law IRR Section 5.4?</td>
</tr>
<tr>
<td></td>
<td>d. Is the repayment scheme and project structure consistent with all relevant rules and procedures?</td>
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<tr>
<td></td>
<td>e. Did the Proponent conduct stakeholder analysis? Are the roles and the responsibilities of these stakeholders clearly identified?</td>
</tr>
<tr>
<td></td>
<td>f. Are there known or foreseeable legal and institutional negative impacts arising from the project? If so, does the Unsolicited Proposal outline a plan to address those negative impacts?</td>
</tr>
<tr>
<td></td>
<td>g. What is the nature of the intended public use?</td>
</tr>
<tr>
<td></td>
<td>h. What is the justification of public use/public interest?</td>
</tr>
<tr>
<td></td>
<td>i. Are the expected output and outcome clearly stated and reasonable?</td>
</tr>
<tr>
<td></td>
<td>j. Who are the stakeholders and what are their initial feedback to the project?</td>
</tr>
</tbody>
</table>

Annex G: Frequently Asked Questions in the Prequalification of the USP Proponent
(Based on the Rule 5 of the BOT Law IRR)

In the pre-qualification of the proponent, the Agency/LGU may consider the following frequently asked questions:

I. Legal Qualification Requirements

a. Who can be Proponents of an Unsolicited Proposal?

The Proponent can be:

i. An individual, partnership, corporation or any other juridical entity\(^7\), whether local or foreign;

ii. A consortium whose members are individual(s), partnership(s), corporation(s) or any other juridical entity(ies).

If the Proponent is a consortium, a business plan must be submitted. The Business Plan must show the lead member and all consortium members, such that the sum total of the percentage interest of all consortium members must be one hundred percent (100%). The Business Plan must also indicate the entities which fulfill the qualification requirements, and in the case of financial qualification requirements, any affiliate whose financial qualifications are being submitted to comply with the qualification requirements.

Further, the members of a consortium shall execute an undertaking in favor of the Agency/LGU that if awarded the PPP contract, they shall bind themselves to be jointly and severally liable for the obligations of the Proponent consortium under the PPP contract. In summary, the Business Plan should at least contain the following:

i. Members with description of roles;

ii. Equity interest/contribution of each member;

iii. Prospective contractors with experience;

iv. Prospective facility operators with experience;

v. Statement of willingness to participate of prospective contractors and operators.

However, if members of the consortium organize themselves as a corporation registered under Philippine laws, such corporation shall execute an undertaking binding itself to be liable for the obligations of the Proponent corporation under the PPP contract.

b. Should we consider the constitutional limitation on foreign ownership of public utilities?

Yes. A Proponent of an Unsolicited Proposal can be 100% foreign-owned. However, when the Unsolicited Proposal involves a public utility, the operation and maintenance as performed by a facility operator (which may or may not be the Proponent) should adhere to the following: (1) the franchise, certificate or authorization to operate public utilities be held by Filipino citizens or corporations or associations organized under Philippine law

\(^7\) Other juridical entities include: Cooperatives duly organized under the laws of the Philippines and persons/entities forming themselves into a joint venture, i.e., a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract.
with at least 60% of its capital owned by Filipino citizens; (2) the participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital; and (3) all the executive and managing officers of such corporation or association must be citizens of the Philippines. The minimum Filipino-owned shareholding requirement must be met, which in accordance with Article XII, Section 11 of 1987 Constitution of the Philippines must be at least 60% Filipino nationals. Likewise, Proponents must present their Articles of Incorporation.

c. What are the documents that the Proponent may submit?

<table>
<thead>
<tr>
<th>Common Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mayor's/Business permit issued by the city or municipality where the principal place of business of the Proponent is located, or the equivalent document for Exclusive Economic Zones or Areas</td>
</tr>
<tr>
<td>Certification of Absence of Unsatisfactory Performance Record</td>
</tr>
<tr>
<td>Tax clearance per E.O. 398, s. 2005, as finally reviewed and approved by the Bureau of Internal Revenue “BIR”.</td>
</tr>
</tbody>
</table>

| Requirements per Type of Entity | Legal Documents
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Entity</strong></td>
<td><strong>Legal Documents</strong></td>
</tr>
<tr>
<td>Individuals or sole proprietors</td>
<td>Registration certificate from Department of Trade and Industry “DTI”</td>
</tr>
<tr>
<td>Partnerships and Corporations</td>
<td>Registration certificate from Securities and Exchange Commission “SEC” or with the appropriate government agency in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality.</td>
</tr>
<tr>
<td></td>
<td>A certified true copy of its latest General Information Sheet or equivalent document, stamped “received” by the SEC or acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality.</td>
</tr>
<tr>
<td></td>
<td>Certified true copy of the SEC Certificate of Incorporation, Articles of Incorporation, and By-laws or, for a foreign corporation, the equivalent documents (of the Certificate of Incorporation, Articles of Incorporation, and By-laws) submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality.</td>
</tr>
<tr>
<td></td>
<td>Business Plan</td>
</tr>
</tbody>
</table>

II. Technical Qualification Requirements

The technical qualification of a Proponent can be classified into two (2) groups: (1) Firm Experience and (2) Key Personnel Experience.

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8 Not all documents may be relevant. The Agency/LGU should assess which documents are necessary in evaluating the legal qualification of the Proponent.
a. **What is Firm Experience and Key Personnel Experience?**

*Firm Experience* - By itself or through the members in case of a consortium or through a contractor(s) which the Proponent may engage for the project, the Proponent and/or its contractor(s) must have successfully undertaken projects similar or related to the subject infrastructure/development project in the unsolicited proposal. The individual firms and/or their contractor(s) may individually specialize on any or several phases of the projects. A consortium proponent shall be evaluated based on the individual or collective experience of the member of the consortium and of the contractors that it has engaged for the project.

*Key Personnel Experience* - The key personnel of the Proponent and/or its contractor(s) must have sufficient experience in the relevant aspect of schemes similar or related to the subject project.

b. **How can a Proponent demonstrate Firm Experience?**

Firm experience can be demonstrated by showing that it has successfully undertaken similar or related projects. Proponent must provide supporting documents, including client certificates confirming the project experience/reference as evidence for meeting the technical and managerial requirements. A single entity may comply with any of the technical qualification requirements.

The Agency/LGU should check whether the submitted projects cover all the scope and components of the Unsolicited Proposal. For example, if a project is proposed to be under a Build-Operate-Transfer scheme, the Proponent should have submitted projects which demonstrate the following experiences: (1) Design and Engineering Experience; (2) Construction Experience; (3) Operation Experience; and (4) Maintenance Experience.

c. **How can a Proponent demonstrate Key Personnel Experience?**

The Proponent, the Consortium Members (if the Proponent is a Consortium), and their contractors must have among their collective personnel, or undertake to engage individuals with the required qualifications and experience.

Alternatively, the Agency/LGU may require the Proponent to submit the following:

i. List of contractor’s personnel (e.g., project manager, project engineers, materials engineers, and foremen), to be assigned to the contract to be bid, with their complete qualification and experience data

ii. Organizational chart for the contract to be bid

d. **What are the documents that a Proponent may submit?**

i. Notarized Certificate of Design Completion from the project’s owner

ii. Certified true copy of the design personnel’s valid registration certificate and valid license (i.e. renewable ID card) from the Professional Regulation Commission “PRC”

iii. Certified true copy of valid license issued by the Philippine Contractors Accreditation Board “PCAB” for Large B Classification/License Category AAA, in the case of a Filipino construction contractor, or by an equivalent accreditation institution in the construction contractor’s country of origin, in the case of a foreign construction contractor
v. Photocopy of the relevant contract or project final design report
vi. Full written disclosure of all claims and cases, pending or finally settled, that have been filed in connection with or related to the completed projects being submitted. Disclosure must include: (i) nature of the claim or case, (ii) status of the claims or case, (iii) amounts involved, and (iv) to the extent possible, an estimate of the amount or range of potential loss or gain

e. How can Agency/LGU assess if the submitted Firm Experience and Key Personnel Experience are sufficient for the undertaking of the Unsolicited Proposal?

The assessment must be based on comprehensive evaluation of the documents submitted by the Proponent. The BOT Law IRR does not prescribe a specific methodology of evaluating the Technical Qualification. The Agency/LGU are given reasonable discretion in assessing the sufficiency of the Firm Experience and Key Personnel Experience. Nonetheless, the following methodologies may be adopted:

i. Percentage of total project costs of the submitted successfully undertaken project over the project cost of the Unsolicited Proposal;

ii. Assigning a submitted project and nominated key personnel to an identified component of the Unsolicited Proposal (e.g. for a construction of a toll road, the Proponent should have submitted a completed toll road project and should have nominated a Registered Civil Engineer with a minimum of 20-year experience, more than five (5) years of which as a Project Manager of facilities in similar projects).

III. Financial Qualification Requirements

The Proponent must have adequate capability to sustain the financing requirements for the detailed engineering design, construction and/or operation and maintenance phases of the project, as the case may be.

a. How can a Proponent demonstrate financial capability?

To be financially pre-qualified for an unsolicited proposal, the Proponent must meet the following Financial Qualification Requirements:

i. Have (1) a Net Worth or (2) a Set-Aside Deposit, the amount of which is a significant percentage of the indicative project cost of the Unsolicited Proposal; and /or

ii. Letter testimonial from one or more domestic universal/commercial banks or one or more international banks with a subsidiary/branch in the Philippines or any international bank recognized by the Bangko Sentral ng Pilipinas “BSP” attesting that

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9 There is no standard amount required of Net Worth, Set-Aside Deposit, or Letter testimonial from banks for purposes of assessing the financial qualification of a Proponent. PPP projects normally use a large proportion of debt (as much as 70-90 percent) of the capital structure. The debt ratio is also referred to as “gearing” or “leverage.” The use of debt provides a positive leverage effect that magnifies equity returns. A total combined net worth and set-aside deposit equivalent to 10.0% - 30.0% of the indicative project cost is generally regarded as a reasonable requirement. In parallel, a total bank testimonial amount of 70.0% - 90.0% of the indicative project cost is also considered to be a reasonable requirement. See National Government Agency Public-Private Partnership Manual 57 (2014), available at http://ppp.gov.ph/wp-content/uploads/2014/10/NGA-PPP-Manual-VOL-1.pdf.
the Proponent and/or members of the Consortium (if the Proponent is a consortium) are banking with them and that they are in good financial standing, and qualified to obtain credit accommodations, the amount of which is a significant percentage of the indicative project cost of the Unsolicited Proposal.

The sum of (i) and (ii) should be equal to the indicative project cost of Unsolicited Proposal. In addition, the Proponent may be required to submit a Project Financing Plan, which may include the amount of equity to be infused, debt to be obtained for the project and sources of financing.

The Project Financing Plan should positively show that the same could adequately meet the cost requirements of the Project and should show a detailed phasing of project costs and corresponding financing sources in the pre-construction and construction phases.

Consequently, the amount of the presented Net Worth or Set-Aside Deposit and the letter testimonial from the Bank should reasonably support the Project Financing Plan.

**b. What are the documents that a Proponent may submit as regards Financial Qualification?**

i. Certified true copy of latest audited financial statements stamped “received” by the BIR, or for foreign entities, the equivalent forms for the country or jurisdiction where the foreign entity was registered for recognition or creation of its juridical personality or capacity, stamped “received” by the agency equivalent to the BIR if so required by that country or jurisdiction’s law. The financial statements must be certified by the entity’s Corporate Secretary. For foreign bidders, if the financial statements are not stamped by the equivalent of BIR, the entity’s Corporate Secretary must also certify that such stamping is not required by that country or jurisdiction’s laws. All certifications by the entity’s corporate secretary must be under oath and notarized;

ii. Proof of Set-Aside Deposit indicating the name of the account holder, and the amount of the Set-Aside Deposit, when applicable;

iii. A certified true copy of the Annual Income Tax Return (BIR Form 1702 or its equivalent) stamped “received” by the BIR, or for foreign entities, the equivalent form for the country or jurisdiction where the foreign entity was registered for recognition or creation of its juridical personality, stamped “received” by the agency equivalent to the BIR if so required by that country or jurisdiction’s law. The Annual Income Tax Return must also be certified by the entity’s Corporate Secretary. For foreign Proponents, if the tax return is not stamped by the equivalent of BIR, the entity’s corporate secretary must also certify that such stamping is not required by that country or jurisdiction’s laws. All certifications by the entity’s Corporate Secretary must be under oath and properly notarized;

iv. In case the Proponent which is a partnership, corporation or any other juridical entity will use an Affiliate to comply with the Financial Qualification Requirements, a Certificate for Establishing Relationship with Affiliates as evidence of such affiliation; and

v. Bank Testimonial Letter which categorically states that the Proponent is banking with the bank and the former is in good standing. It should also state that the Proponent is qualified to obtain credit accommodations from the Bank in the total amount indicated in the Project Financing Plan.
IV. Other Considerations

a. Are there other general grounds for disqualification as regards the members of the consortium of the Proponent?

Yes. It is suggested that those entities which fall in any of the following groups should not be allowed to participate in the Unsolicited Proposal:

i. inclusion in a blacklist issued by the Agency/LGU, Government Procurement Policy Board “GPPB”, the Department of Public Works and Highway “DPWH”, or the Construction Industry Authority of the Philippines of the Department of Trade and Industry “CIAP-DTI”, or any other pertinent governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list of major international financial institutions such as the World Bank, European Bank for Reconstruction and Development, Asian Development Bank, Inter-American Development Bank, and African Development Bank Group, whether as an individual contractor, partnership, corporation, or any other juridical entity, or as a member of a joint venture or consortium; and

ii. involvement in any corrupt practice, fraudulent, collusive, coercive, undesirable, or restrictive practice or having conflicts of interest.

b. After the Proponent has been granted OP status, can the members of the Proponent-consortium or shareholders of the Proponent-SPC (who were formerly members of a consortium) withdraw or be substituted at any stage of the Unsolicited Proposal Process?

After the Proponent is granted an OP status, the members of the consortium or shareholders of the SPC (who were formerly members of the consortium) may withdraw or be substituted or new members added, provided that all the following conditions are met:

i. consent of the Agency/LGU for such withdrawal, substitution and addition is obtained;

ii. in the case of withdrawal, the remaining members of the consortium or the shareholder-corporations of the SPC, remain legally, technically, and financially capable of successfully carrying out the implementation/operation of the project;

iii. in the case of substitution, the substitute has equal or better qualifications than the withdrawing member/s of the consortium or shareholder-corporations of the SPC; provided further, that the Agency/LGU shall undertake the necessary procedure to determine the qualifications of the substitute; and

In addition, once the Unsolicited Proposal is awarded to a Project Proponent (i.e. Winning Bidder), pursuant to Section 12.20 of the BOT Law IRR, subject to the approval of the Approving Body and upon due diligence and recommendation by the Head of Agency/LGU, a Project Proponent may divest or accede its ownership and/or rights to a project provided that, the divestiture or accession shall be after the holding or lock-in period which shall be determined by the Agency/LGU and indicated in the PPP Contract, and provided that, the new Project Proponent has equal or better qualifications as with the previous Project Proponent.
ANNEX H: CONTRACT PROVISIONS TEMPLATE FOR UNSOLICITED PPP PROJECTS IMPLEMENTED UNDER THE BOT LAW

Disclaimer:

This document only serves as a guidance material or template in drafting required provisions in a PPP contract for Unsolicited Proposals as required under the BOT Law and its IRR. This should in no way be considered as controlling and binding for any of the parties involved in a PPP project. It is still highly encouraged for any person who will use this document to seek other independent advice concerning contracts for PPP projects as wordings and contents of provisions in actual unsolicited PPP contracts may vary depending on the nature of the project. Lastly, this document does not constitute as binding advice on any end use. The PPP Governing Board (PPPGB) and the PPPGB Secretariat shall not be made responsible for any consequences resulting from the use of this document.

A. Specific contractual arrangement, term and scope of work

1. The scope of the Project comprises the undertaking of:

   For brownfield projects
   a. Construction of [•];
   b. Renovation and expansion of [•];
   c. Development of commercial assets;
   d. Installation of the information technology systems and other equipment;
   e. Operation and Maintenance of [•];
   f. Financing of the above activities; and
   g. Collection of Private Proponent revenue.

   For greenfield projects
   a. Construction of [•];
   b. Development of commercial assets;
   c. Installation of the information technology systems and other equipment;
   d. Operation and Maintenance of [•];
   e. Financing of the above activities; and
   f. Collection of Private Proponent revenue.

   For O&M projects
   a. Operation and Maintenance of [•];
   b. Provision of [capital spares];
   c. Development of commercial assets;
   d. Financing of the above activities; and
   e. Collection of Private Proponent revenue.

2. Effectivity of the PPP Contract (and Concession Period, if applicable)

   a. This PPP Contract shall become in full force and effect upon signing date.

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10 Private Proponent revenue may consist of: (1) Revenues from tolls, fees and other charges, or fixed payments from government; (2) commercial revenue; (3) other agreed payments.

11 This is to clarify that although the Concession Period has not commenced, contract is nonetheless already a binding agreement between the parties.
b. The Concession Period shall commence on the [•] and shall end on the date that is the [•], unless otherwise extended or terminated as may be authorized by law and as specified in this PPP Contract. Notwithstanding any other term of this PPP contract, the Concession Period shall in no event exceed the maximum period provided under existing law.

B. Project technical specifications and system features
*Note: Provision will depend on the PPP Project

C. Implementation milestones including those for securing other approvals, project completion date

1. Obligations of the Parties
   a. The Parties must cooperate, coordinate and work together to achieve the timely completion and successful implementation of the Project in accordance with the project milestones [as may be adjusted in accordance with Section [•] (Delay and Compensation)].
   b. In the event of any ambiguity or inconsistency between the provisions of this Section [•] (Project Milestones) and any other Section of this PPP Contract, the provisions of the other Section will prevail over this Section [•] (Project Milestones).

2. Project Milestones

<table>
<thead>
<tr>
<th>Section Reference</th>
<th>Project Milestone</th>
<th>Responsibility</th>
<th>Project Milestone Deadline</th>
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D. Cost recovery scheme via proposed tolls, fees, rentals, and charges, as the case may be

*Note: Provision will depend on the PPP Project

E. Liquidated Damages\textsuperscript{13} as contemplated under Section 12.14 of BOT Law IRR Liquidated Damages\textsuperscript{14}

The Parties acknowledge and agree:

1. That the amount of Liquidated Damages set out in this PPP Contract has been agreed by the Parties in good faith and is a genuine pre-estimate of the anticipated losses and

\textsuperscript{12} For brownfield projects, the Concession Period usually commences upon turnover of the existing assets to the Private Proponent.

\textsuperscript{13} It should be noted that the events giving rise to Liquidated Damages should be clear in the contract.

\textsuperscript{14} A PPP Contract for an unsolicited project may also provide for reasonable Liquidated Damages to be paid by the Agency/LGU to the Private Proponent for certain circumstances.
damages that the Grantor will or may suffer in circumstances contemplated under Section [•] of this PPP Contract;

2. Each Party wishes to avoid the difficulties of proof of damages in connection with the circumstances contemplated in Section [•] of this PPP Contract;

3. The Liquidated Damages payable in accordance with this PPP Contract are reasonable and not intended as a penalty.

Notwithstanding Section [•] (Liquidated Damages), if following a claim in which the Private Proponent asserts that the quantum of Liquidated Damages exceeds the relevant losses (if any) suffered by the Grantor as a result of the circumstances contemplated in Section [•] of this PPP Contract, and on the basis of such assertions the Private Proponent seeks relief to the effect that Liquidated Damages are a penalty or are otherwise unenforceable, and the Liquidated Damages (or any part of them) are held by a court or arbitrator or otherwise determined to constitute a penalty or to be otherwise unenforceable, the Private Proponent acknowledges and agrees (and it will not make any assertion to the contrary in any further claim) that the Grantor will be entitled to claim, and the Private Proponent must indemnify, defend, save and hold harmless the Grantor against any and all relevant losses suffered or incurred by a Grantor arising out of the circumstances contemplated by Sections [•] of this PPP Contract.

F. Performance and warranty bonds contemplated under Sections 12.8 and 12.9 of the BOT Law IRR

1. Private Proponent Performance Security
   a. The Private Proponent must arrange and maintain in accordance with this PPP Contract and to the Grantor’s satisfaction each form of Private Proponent Performance Security required under this PPP Contract at the times set out herein.
   b. Each Private Proponent Performance Security under this PPP Contract must be:
      i. in the form of cash, irrevocable standby letter of credit, bank draft or guarantee, surety bond, or any combination thereof;
      ii. issued by a universal bank or a commercial bank which is licensed by the Bangko Sentral ng Pilipinas and reasonably acceptable to the Grantor (acting reasonably); and
      iii. in the form set out in the relevant part of Annex [•] (Private Proponent Performance Security).
   c. The Private Proponent may from time to time replace any Private Proponent Performance Security provided under this PPP Contract with a replacement Private Proponent Performance Security that complies in all respects with requirement set out above.
   d. Where the Private Proponent provides a replacement Private Proponent Performance Security, the Grantor will release the Private Proponent Performance Security which is being replaced, but not before the replacement Private Proponent Performance Security is in full force and effect.
e. Neither the delivery of any Private Proponent Performance Security, nor the making of any demand under the Private Proponent Performance Security, will in any way prejudice, reduce or restrict the rights and remedies of the Grantor under this PPP Contract or under the relevant rules and procedures or at law.

f. A Construction Performance Security may be issued at the request and for the account of the Private Proponent or any subcontractor appointed by the Private Proponent in accordance with this PPP Contract.

g. If the operation of the issuer of a Private Proponent Performance Security is interrupted, the Private Proponent must replace the Private Proponent Performance Security within [*] days of the commencement of the interruption, with a replacement Private Proponent Performance Security that complies in all respects with the requirements set out above, for the same amount and with the same validity period as the Private Proponent Performance Security that it replaces, failing which a Private Proponent Event of Default will be deemed to have occurred.

2. Construction Performance Security

a. The Private Proponent must:

   i. deliver the Construction Performance Security to the Grantor in the amount equal to [*] percent ([*] %) of the estimated project cost, on [Signing Date];

   ii. ensure that the Construction Performance Security is at all times in full force and effect in accordance with the terms of this PPP Contract from the date of its issue until the date that is [*] days following the issue of a Final Acceptance Certificate in respect of the works.

b. The amount of the Construction Performance Security should be reduced when the Private Proponent reaches particular milestones.

c. If, for any reason, the Construction Performance Security is set to expire before the period required above, the Private Proponent must deliver to the Grantor a replacement Construction Performance Security in the prescribed amount and form no later than [*] days prior to the expiration of the existing Construction Performance Security. The replacement Construction Performance Security must become effective no later than the stated expiration date of the Construction Performance Security that it replaces.

d. If the Private Proponent fails to provide a replacement Construction Performance Security, the Grantor may draw the full amount of the existing Construction Performance Security and retain such amount as cash security. The cash security may be applied to satisfy any claim which the Grantor would be able to make against the Construction Performance Security under this Concession Agreement and will only be returned where:

   i. the Private Proponent delivers a replacement Construction Performance Security to the Grantor in the prescribed amount and form to stand as the Construction Performance Security; or

   ii. in the instances and at such times when the Construction Performance Security must be returned as provided below.
e. The Construction Performance Security will secure the Private Proponent’s obligations in relation to the works and the Private Proponent’s other obligations under this PPP Contract in the period prior to and including the Final Acceptance Certificate in respect of the works.

f. The Construction Performance Security may be applied by the Grantor to satisfy:
   i. any amount due to the Grantor and which remains unpaid after the time for payment; or
   ii. any bona fide claim (liquidated or otherwise) the Grantor may have against the Private Proponent, in each case in relation to the obligations contemplated in the preceding section.

g. If any amounts are drawn from the Construction Performance Security by the Grantor in accordance with this PPP Contract and as a result, the amount available falls below [*] percent ([*]%) of the amount required under this section, the Private Proponent must increase the amount of the Construction Performance Security by delivering an additional or replacement as soon as practicable and in any case within [*] days of the amount available under the Construction Performance Security falling below [*] percent of the amount required, such that the amount available under the Construction Performance Security is restored to the amount required under this section.

h. The Grantor will release the Construction Performance Security or any remaining balance thereof:
   i. within [*] days from the issuance of the Final Acceptance Certificate in respect of the works, subject to any rights which the Grantor may have under this PPP Contract to draw from the Construction Performance Security; or
   ii. in the instances and at such times when the Construction Security must be released as provided under this PPP Contract.

3. Operations Performance Security

a. The Private Proponent must:
   i. deliver the Operations Performance Security to the Grantor by the construction completion date;
   ii. ensure that the Operations Performance Security is at all times in full force and effect for [*] days.\(^{16}\)

b. The amount of the Operations Performance Security must be maintained in an amount no less than [*] Pesos (PhP[*]), from the date of its issue until it is released.

c. If, for any reason, the Operations Performance Security is set to expire before the period required above, the Private Proponent must deliver to the Grantor a replacement Operations Performance Security in the prescribed amount and form no later than [*] days prior to the expiration of the Operations Performance Security it replaces. The replacement Operations Performance Security must become effective

\(^{15}\) Should not be less than ninety (90) calendar days counting from the transfer date or termination date, in accordance with Section 12.9 of the BOT Law IRR.
no later than the stated expiration date of the previous Operations Performance Security.

d. If the Private Proponent fails to provide a replacement Operations Performance Security, the Grantor may draw the full amount of the existing Operations Performance Security and retain such amount as cash security. The cash security may be applied to satisfy any claim which the Grantor would be able to make against the Operations Performance Security under this PPP Contract and will only be returned where:

i. the Private Proponent delivers a replacement Operations Performance Security to the Grantor in the prescribed amount and form to stand as the Operations Performance Security; or

ii. in the instances and at such times when the Operations Performance Security must be returned as provided in this PPP Contract.

e. The Operations Performance Security will secure the Private Proponent’s obligations in relation to the operation and maintenance of the works and the Private Proponent’s other obligations under this PPP Contract in the period from \[O&M\text{ Start Date}\] until the expiration of a period of \[\text{[•]}\] days\(^{16}\) after the transfer date.

f. The Operations Performance Security may be applied by the Grantor to satisfy:

i. any amount due to the Grantor and which remains unpaid after the time for payment; or

ii. any bona fide claim (liquidated or otherwise) the Grantor may have against the Private Proponent, in each case in relation to the obligations contemplated in the preceding section.

g. If any amounts are drawn from the Operations Performance Security by the Grantor in accordance with this PPP Contract and as a result, the amount available under the Operations Performance Security falls below \([\text{•}]\text{ percent} (\text{[•]}\%)\) of the amount required under this section, the Private Proponent must increase the amount of the Operations Performance Security by delivering an additional or replacement Operations Performance Security as soon as practicable and in any case within \([\text{•}]\) days of the amount available under the Operations Performance Security falling below \([\text{•}]\text{ percent}\) of the amount required, such that the amount available under the Operations Performance Security is restored to the amount required under this section.

h. The Grantor will release the Operations Performance Security:

i. provided that the private proponent has delivered the Warranty Security in accordance with this PPP Contract, subject to any rights which the Grantor may have under this PPP Contract to draw from the Operations Performance Security;

ii. in the instances and at such times when the Operations Performance Security must be released as provided under this PPP Contract.

\(^{16}\)Id.
4. Warranty Security

a. The Private Proponent must, no later than five (5) days prior to the transfer date and as a condition for the release of the Operations Performance Security, deliver to the Grantor the Warranty Security in an amount equal to [•] Pesos (PhP [•]).

b. The Private Proponent must ensure that the Warranty Security is at all times in full force and effect from the date of its delivery until [•] year/s after the transfer date ("Warranty Period"17).

c. If the Private Proponent fails to provide the Warranty Security, the Grantor may draw the full amount of the Operations Performance Security and retain such amount as cash security. The cash security may be applied to satisfy any claim which the Grantor would be able to make against the Warranty Security under this PPP Contract and will only be returned where:

i. the Private Proponent delivers the Warranty Security to the Grantor in the prescribed amount and form; or
ii. in the instances and at such times when the Warranty Security must be returned as provided in this PPP Contract.

d. If the Private Proponent fails to deliver the Warranty Security by the end of the Warranty Period, the Grantor may retain the cash value of the Operations Performance Security as Liquidated Damages, without prejudice to the other rights which the Grantor may have, including the right of the Grantor to claim against the Private Proponent on the basis of the obligations secured by the Warranty Security.

e. The Warranty Security will secure the Private Proponent’s obligations in relation to the transfer of the works, including that the project assets will meet the transfer requirements during the warranty period.

f. The Warranty Security may be applied by the Grantor to satisfy:

i. any amount due to the Grantor and which remains unpaid after the time for payment; or
ii. any bona fide claim (liquidated or otherwise) the Grantor may have against the Private Proponent, in each case in relation to the obligations contemplated in the preceding section.

g. If any amounts are drawn from the Warranty Security by the Grantor in accordance with this PPP Contract and as a result the amount available under the Warranty Security falls below [•] percent ([•]%) of the amount required under Section [•] (Warranty Security), the Private Proponent must increase the amount of the Warranty Security by delivering an additional or replacement Warranty Security as soon as practicable and in any case within [•] days of the amount available under the Warranty Security falling below [•] percent of the amount required, such that the amount available under the Warranty Security is restored to the amount required under this section.

17 Should not be less than one (1) year counting from the transfer date or termination date, in accordance with Section 12.23 of the BOT Law IRR.
h. The Grantor will release the Warranty Security or any balance thereof on the expiration of the [*] anniversary of the transfer date and subject to any rights which the Grantor may have under this PPP Contract to draw from the Warranty Security.

G. Minimum insurance coverage as may be required for the project

1. Private Proponent required insurance

a. During the construction period, the Private Proponent shall maintain at its own cost at all times:

i. construction all risk insurance, at least up to the full replacement value of the works;

ii. third party liability insurance covering the works;

iii. worker’s compensation insurance in respect of all persons undertaking the works;

iv. appropriate insurance against terrorist attacks for any event and in the aggregate in respect of material damage;

v. marine cargo insurance for materials and equipment to be shipped by sea for the construction of the works; and

vi. such other policies of insurance with limits of liability and scope of cover sufficient and appropriate to the works being undertaken, as:

    1. may be required under any relevant rules and procedures; or
    2. which a prudent contractor engaged in the same or a similar type of undertaking as that of the Private Proponent under the same or similar circumstances as those contemplated by this PPP Contract would procure or maintain,

b. The Private Proponent must at all times during the Concession Period procure and maintain at its own cost:

i. all risk insurance in respect of all the project assets, in an amount equal to the full replacement cost of the project assets destroyed or damaged;

ii. third party liability insurance;

iii. worker’s compensation insurance;

iv. appropriate insurance against terrorist attacks for any event and in the aggregate in respect of material damage; and

v. such other policies of insurance with limits of liability and scope of cover sufficient and appropriate to the works being undertaken, as:

    1. may be required under any relevant rules and procedures; or
    2. which a prudent contractor engaged in the same or a similar type of undertaking as that of the Private Proponent under the same or similar circumstances as those contemplated by this PPP Contract would procure or maintain,

2. Insurers

All insurance policies must be procured from and maintained with reputable insurers licensed to do insurance business in the Philippines by the Insurance Commission, reasonably approved by the Grantor.
3. **Information**

   a. The Private Proponent must provide to the Grantor:

      i. certificates of currency (stipulating the type of policy and the major inclusions and exclusions and evidencing currency of the cover) in respect of each Insurance Policy;

      ii. a copy of each such insurance policy certified as a true copy by the Private Proponent’s corporate secretary or a notary, within [*] days of the Private Proponent receiving such Insurance Policy from the insurers; and

      iii. evidence satisfactory to the Grantor that each insurance policy has been procured and is being maintained in accordance with the requirements of this PPP Contract.

   b. The certificate of currency and evidence identified in Section [*] (Information) must be provided by the Private Proponent to the Grantor within [*] days after receiving a request from the Grantor to do so.

   c. The Private Proponent must every [*] months provide to the Grantor a report as to each insurance policy which it is required to procure and maintain, including details of all claims and other material events, as at the date of the report and during the previous [*] months.

   d. The Private Proponent must notify the Grantor immediately on the occurrence of an event which, would or might entitle the Private Proponent to make a claim under any insurance policy and must promptly take all necessary steps to ensure that its rights, and the rights of any other person to whom the benefit of the insurance policy may extend in respect of that claim, are fully preserved.

4. **No prejudicial action**

   The Private Proponent must:

   a. not to do anything or permit anything to be done within its powers which may prejudice any insurance policy or omit to do anything where such omission may prejudice any insurance policy;

   b. notify the Grantor of any fact or circumstance or change in circumstance which may prejudice any insurance policy;

   c. provide any information requested by the insurer in relation to any insurance policy issued by that insurer; and

   d. comply at all times with the terms and conditions of each insurance policy, including all provisions relating to disclose, notification and claims cooperation.

5. **Terms of policies**

   a. The Private Proponent must ensure that each insurance policy contains terms, where relevant and to the extent legally permissible, to the effect that:

      i. the insurance policy must not be cancelled or terminated prior to the expiration of its terms unless [*] days prior written notice of cancellation is provided to the Grantor;
ii. where insurance against liabilities is provided, the benefit of the insurance policy extends to the Grantor or its associates, in respect of any liabilities which the Grantor or its associate may incur arising out of or in connection with the project, including the works and the operations and maintenance of the Facilities;

iii. in relation to any insurance policy which provides an indemnity in respect of loss of or damage to property, the proceeds of any such material damage claim under the insurance policy must be paid to the Grantor or to such account in the joint names of the Grantor and the Private Proponent, to be withdrawn and applied in accordance with Section [*] (Use of Insurance Proceeds to Repair);

iv. the insurer:
   1. must not impute to any insured party any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured party;
   2. in the case of insurances under which the Grantors are also entitled to cover, acknowledges that the interests of the named insured and of the other person to whom the benefit of the insurance policies extend are in the entire assets and undertaking of the Project and waives any rights of subrogation and/or contribution which it may have against any insured party;

v. in the case of liability insurances, agrees to treat each insured as a separate insured party as though a separate contract of insurance had been entered into with each of the insured parties, without increasing the number of deductibles or the overall limit of indemnity.

6. Failure to maintain

If at any time the Private Proponent fails to procure or maintain in full force and effect any insurance policy, the Grantor may at its option, and without prejudice to any other rights which it may have under this PPP Contract, procure or maintain such insurance policy, and all sums incurred by the Grantor for this purpose must be reimbursed by the Private Proponent immediately on demand. Should the Private Proponent fail to reimburse the costs of procuring or maintaining any insurance policies to the Grantor, the Grantor will be entitled at its option to call on the Construction Performance Security (in respect of a failure to procure or maintain a construction insurance policy) or the Operations Performance Security (in respect of a failure to procure or maintain any insurance policy) up to the value of such amounts.

7. No liability to the Grantors for failure to insure

The Grantor will not bear any risk or responsibility for the failure of the Private Proponent to obtain or maintain, or to cause to be obtained or maintained, any or all of the insurance policies and, except as expressly provided in Section [*] (Force Majeure Event), will have no liability whatsoever for uninsured losses.

8. Insurance beneficiaries

The insurance policies must name the Private Proponent and the Grantor as co-insured parties.

9. Enforcement

The Private Proponent must do all things reasonably necessary and provide all documents, evidence and information necessary to enable the Grantor to collect or recover any moneys
due or which become due to the Grantor under or in respect of any insurance policy under which the Grantor is an insured party.

10. Cancellation and change

The Private Proponent must immediately notify the Grantor of any lapse, cancellation, material change or reduction of any insurance policy and must provide to the Grantor promptly following receipt, a copy of any notice it receives from an insurer relating to any proposed lapse, cancellation, material change or reduction of an insurance policy.

11. Use of Insurance Proceeds to Repair

a. Upon settlement of a material damage claim under an insurance policy relating to loss of or damage to any part of the works or the project assets, the money received from the insurance must be applied to the reinstatement of the loss of or damage to the relevant part or whole of the works or the project assets (as the case may be).

b. To the extent that the proceeds of any insurance policy referred to in Section [*] (Use of Insurance Proceeds to Repair) are insufficient to reinstate the loss or damage then, except as expressly provided in Section [*] (Force Majeure Event), the Private Proponent must fund the deficit.

c. If:

i. the proceeds of any insurance policy referred to in Section [*] (Use of Insurance Proceeds for Repair) are paid into a proceeds account in the joint names of the Private Proponent and the Grantor, as required by the Grantor; and

ii. the proceeds have discharged the purpose required in accordance with this PPP Contract and the relevant insurance policy,

then the balance of the proceeds will be applied to the payment of the Private Proponent's other liabilities incurred by virtue of the project.

H. Acceptance tests and procedures

1. Obligation to perform

The Private Proponent shall be solely responsible for ensuring that the commissioning and acceptance of the works is planned and executed for all of the facilities, systems and equipment installed as part of the project. The Private Proponent shall carry out all testing of the works in accordance with the schedule.

2. Notification of intention to carry out Commissioning and Acceptance Tests

a. The Private Proponent shall give the Grantor and the independent consultant, no less than [*] days prior written notice of its intention to carry out the Commissioning and Acceptance Tests;

b. The Private Proponent shall develop and submit to the Grantor and the independent consultant no later than [*] months from the construction start date, a detailed plan delineating the actions to be undertaken by the Parties towards commissioning and
acceptance of works (the "Commissioning and Acceptance Plan"). The Grantor and the independent consultant shall provide their comments and suggestions for modifications of such plan within [*] days of receipt of the same. The Private Proponent shall revise the Commissioning and Acceptance Plan based on such comments and suggested modifications within a period of [*] days of receiving such comments and shall submit the final Commissioning and Acceptance Plan to the Grantor and the independent consultant clearly outlining how various comments and suggested modifications were reviewed and reasonably incorporated in the final Commissioning and Acceptance Plan. The final Commissioning and Acceptance Plan shall be approved by the independent consultant, after taking into account any observations from the Grantor.

c. The Commissioning and Acceptance Plan shall include, as a minimum:

   i. the scope and objectives of the tests agreed between the independent consultant, the Grantor and the Private Proponent as required to be undertaken to prove the technical, safety and operational integrity of the tested works (the "Commissioning and Acceptance Tests");
   
   ii. organizational and administrative responsibilities for undertaking the Commissioning and Acceptance Tests;

   iii. pre-conditions, conditions and logistical support requirements for undertaking the Commissioning and Acceptance Tests;

   iv. schedule for the detailed Commissioning and Acceptance Tests for each of the tested works;

   v. the procedures and data collection, collation, analysis methodology and report documentation for the Commissioning and Acceptance Tests; and

   vi. Commissioning and Acceptance Tests criteria.

3. Commissioning and Acceptance Plan

a. The Private Proponent shall carry out the Commissioning and Acceptance Tests:

   i. in accordance with the Commissioning and Acceptance Plan; and

   ii. in the presence of the independent consultant (and the Grantor shall be given the opportunity to attend and participate in these tests if it so desires).

b. The Private Proponent shall report on the progress of the Commissioning and Acceptance Tests and activities, including the recovery from any delays to the works timetable arising from either late completion of previous activities or failure of any system or equipment to perform to the required standards during any part of the Commissioning and Acceptance Tests and activities.

c. The Private Proponent shall have sole responsibility to ensure that any certificates of testing, performance or compliance required in accordance with the provisions of this PPP Contract are acquired and handed over by the dates or within the timelines agreed upon. This shall include time taken for any re-testing or witnessing required by the independent consultant. The period for any re-testing required by the independent consultant shall be the same as the period for the original testing. However, the Private Proponent, Grantor and the independent consultant may agree to any reduction in time provided therein for such re-testing.
4. **Grantor observing Commissioning and Acceptance Tests**

The Grantor reserves the right to witness and participate in all or any part of Commissioning and Acceptance Tests or retesting and the Private Proponent shall facilitate the exercise of this right.

5. **No relief from liability**

Any review by the Grantor or the independent consultant of the Commissioning and Acceptance Tests shall not relieve the Private Proponent of any of its obligations under this PPP Contract or any liability for defects, hidden or otherwise.

6. **Determination**

Within [*] days of the Private Proponent carrying out the Commissioning and Acceptance Tests, the independent consultant shall be required to determine and notify the Parties through a Commissioning and Acceptance Notice, whether it believes that the Commissioning and Acceptance Tests:

a. have been carried out in accordance with the Commissioning and Acceptance Plan;

b. indicate that the tested works:
   
i. fully meet the requirements of the commissioning and acceptance standards; or
   
ii. substantially meet the requirements of the commissioning and acceptance standards; or
   
iii. fail to meet the requirements of the commissioning and acceptance standards specifying the failures in detail and notifying the Private Proponent in writing of any of the works failing to meet such requirements;

c. were sufficient in scope and detail to meet its intended purpose.

7. **Full acceptance**

a. **Final Acceptance Certificate**

   If the independent consultant states in a Commissioning and Acceptance Notice that:

   i. the Commissioning and Acceptance Tests have been executed and carried out in accordance with the Commissioning and Acceptance Plan;
   
   ii. the tested works fully meet the requirements of the commissioning and acceptance standards; and
   
   iii. the tested works have been certified as being safe for public use and commercial operation by the independent consultant, the Grantor shall ensure that the independent consultant issues within [*] days from the issuance of the Commissioning and Acceptance Notice, a Final Acceptance Certificate for the tested works, confirming that the works comply with the relevant detailed design and Minimum Performance Standards and Specifications (MPSS). The issue of the Final Acceptance Certificate shall signify achievement of the construction completion date.
b. The Final Acceptance Certificate shall only be issued upon submission by the Private Proponent to the Grantor of:

i. the operations and maintenance manual pursuant to Section [*] (O&M Manual);
ii. the Environmental and Social Management System; and
iii. unless the same have been provided prior to the signing date, either:
   1. If the Private Proponent is engaging a facility operator, the O&M Agreement and the Technical Service Agreement each complying with the relevant requirements of the schedule; or
   2. If the Private Proponent intends to operate the project itself, the Technical Service Agreement, complying with the relevant requirements of the schedule.

c. Consequence of Issuance of Final Acceptance Certificate. Following the issue of a Final Acceptance Certificate:

i. the Private Proponent must start operations of the project (as contemplated in Section [*] [Operation, Maintenance and Services]); and
ii. the construction completion date shall occur.

d. No later than [*] months after the issuance of the Final Acceptance Certificate, the Private Proponent shall submit to the Grantors, the originals of the as-built drawings of works as completed in both electronic and hard copy formats, in sufficient detail. The Private Proponent shall update such as-built drawings of works as necessary and shall provide any such updates in both electronic and hard copy formats and such other technical and design information and completion records relating thereto as the Grantors may reasonably require.

The Private Proponent shall provide the Grantor one (1) electronic copy and five (5) hard copies of all as-built drawings of works and any updates thereto. The Private Proponent shall provide the Grantor one (1) electronic copy and five (5) hard copies of all equipment and technical documents and drawings, including equipment plans, instructions, warranties, installation records, testing reports, quality supervision and acceptance.

8. Substantial Acceptance

a. Provisional Acceptance Certificate

If the independent consultant states in the Commissioning and Acceptance Notice that:

i. the Commissioning and Acceptance Tests have been carried out in accordance with the Commissioning and Acceptance Plan;
ii. the tested works substantially comply with the commissioning and acceptance standards; and
iii. the tested works have been certified as being safe for public use and commercial operation by the independent consultant, then the Grantor shall ensure that the independent consultant shall, within [*] days from the issuance of the Commissioning and Acceptance Notice, issue a Provisional Acceptance Certificate for the tested works:

1. confirming that the works substantially comply with the relevant detailed design;
2. confirming that the works substantially comply with the MPSS; and
3. identifying any punch list items to the Private Proponent in relation to the works;

b. Following the issuance of a Provisional Acceptance Certificate in accordance with Section [•] (Provisional Acceptance Certificate), the Private Proponent shall be permitted to start operations of the Project (as contemplated in Section [•] [Operation, Maintenance and Services]). Notwithstanding the issuance of a Provisional Acceptance Certificate, the Private Proponent shall remain obliged to carry out the works contemplated in Sections [•] (Punch List Rectification Program) to [•] (Failure to Rectify Defects) until a Final Acceptance Certificate is issued and the construction completion date shall not occur until the Final Acceptance Certificate is issued.

c. Start of operations after Provisional Acceptance Certificate

i. If the Provisional Acceptance Certificate is issued prior to the required completion date, the Private Proponent may wait for the achievement of construction completion date before it starts the operations of the project; provided however, that the Private Proponent shall be obliged to start operations on required completion date even if construction completion date has not occurred by such time.

ii. If the Provisional Acceptance Certificate is issued on or after the required completion date, the Private Proponent shall immediately start operations of the project.

9. Punch List Rectification Program

The Private Proponent shall send to the Grantor and the independent consultant, within [•] days of receipt of a Provisional Acceptance Certificate:

a. a program specifying how it intends to rectify the punch list items specified in the Provisional Acceptance Certificate; and

b. the timetable for rectifying punch list items.

10. Rectification of punch list items

The Private Proponent shall rectify the punch list items in accordance with the applicable Punch List Rectification Program or such other date which is within [•] days from the issuance of Provisional Acceptance Certificate, as the independent consultant may reasonably specify in the Commissioning and Acceptance Notice given to the Private Proponent.

11. Notice of rectification of punch list items

a. The Private Proponent shall notify the Grantor and the independent consultant when any Punch List Item has been rectified and Section [•] (Notification of intention to carry out Commissioning and Acceptance Tests) to [•] (Determination) (inclusive) shall apply to the retesting of those items.

b. The cost of any retesting of any works shall be for the account of the Private Proponent.
12. Failure to Rectify Defects

Without prejudice to any other right the Grantor may have under this PPP Contract, if the Private Proponent fails to rectify any punch list items for which it is responsible within the time provide:

a. the Grantor shall, upon reasonable notice to the Private Proponent, be entitled to have the punch list items in question corrected; and

b. the Private Proponent shall, within [*] days of the Grantor's demand therefor, reimburse the reasonable costs and expenses of the Grantor in so doing and the Grantor shall be entitled to enforce the Construction Performance Security to recover those amounts to the extent they have not been paid within this [*]-day period.

13. Rejection

If the independent consultant states in a Commissioning and Acceptance Notice that:

a. Commissioning and Acceptance Test has not been carried out in accordance with the Commissioning and Acceptance Plan; or

b. The tested works do not comply with the commissioning and acceptance standards, then the independent consultant shall issue a report in respect of the relevant part or parts of the tested works ("Independent Consultant Failure Report"), within [*] days from issuance of the Commissioning and Acceptance Notice, specifying in detail:

i. the reasons why the Commissioning and Acceptance Test was not carried out in accordance with the Commissioning and Acceptance Plan; or

ii. the reasons why the tested works do not comply with the commissioning and acceptance standards; and

iii. the actions that the Private Proponent must take to ensure that:

1. any further Commissioning and Acceptance Tests meet the requirements of the Commissioning and Acceptance Plan; or

2. the tested works meet the requirements of the commissioning and acceptance standards; and

iv. a reasonable timetable for:

1. taking the actions; and

2. carrying out further Commissioning and Acceptance Tests in relation to that relevant part or parts of the tested works, and the Private Proponent shall proceed with all due dispatch to take the actions and notify the independent consultant and the Grantor when they have been carried out.

14. Further Commissioning and Acceptance Tests

As soon as reasonably practicable following the completion of the actions, the Private Proponent shall carry out further Commissioning and Acceptance Tests in accordance with the timetable specified in the independent consultant failure report and Sections [*]
15. Failure of the independent consultant to attend the Commissioning and Acceptance Tests

If the independent consultant fails to attend the Commissioning and Acceptance Tests on the date specified in the notice issued by Private Proponent, the Private Proponent shall immediately issue a written notice to the independent consultant and the Grantor, calling the independent consultant’s attention to its failure to attend the Commissioning and Acceptance Tests in accordance with Section [•] (Notification of intention to carry out Commissioning and Acceptance Tests) (“First Notice for Commissioning and Acceptance Tests”) and notifying another date to conduct such Commissioning and Acceptance Tests. The independent consultant shall present himself/herself during the Commissioning and Acceptance Tests as specified in the First Notice for Commissioning and Acceptance Tests.

If the independent consultant fails to attend the Commissioning and Acceptance Tests conducted on the date specified in the First Notice for Commissioning and Acceptance Tests, the Private Proponent shall immediately issue a second written notice to the Grantor (“Second Notice for Commissioning and Acceptance Tests”), calling the Grantor’s attention to the failure of independent consultant to attend the Commissioning and Acceptance Tests and requiring the independent consultant and Grantor to attend the Commissioning and Acceptance Tests on the date specified in the Second Notice for Commissioning and Acceptance Tests.

If the Grantor fails to act in accordance with the previous Section, the same shall be considered as a Grantor Event of Default.

16. Consultations with stakeholders for operational readiness

[*•] days prior to the required completion date, the Private Proponent, with the assistance of the Grantor, shall undertake consultations with various stakeholders and relevant government authorities, to ensure that the stakeholders are familiar with the operational procedures of the project and are prepared for operation of such facilities in accordance with the works timetable. The Private Proponent shall complete the consultation process within [*•] days from the issuance of the Final Acceptance Certificate or Provisional Acceptance Certificate.

17. Updating of asset register

The Private Proponent shall update the asset register following completion of the Commissioning and Acceptance Tests and issuance of each acceptance certificate [including the completion of Commercial Development in accordance with the provisions of Section [*•] (Commercial Development)]18.

I. Warranty period and procedures (after transfer)

*Note: Provision will depend on the PPP Project

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18 Addition of statement in brackets will depend on whether the PPP Project involves Commercial Development.
J. **Grounds for and effects of contract termination**

1. **Private Proponent Event of Default**

   The following are Private Proponent Events of Default:

   a. if the full amount of the Construction Performance Security or Operations Performance Security is drawn down and in either case is not replaced as required under this PPP Contract;

   b. any representation or warranty made by the Private Proponent under Section [•] (Representations and Warranties) is false or inaccurate in any material respect and this is reasonably likely to have a material adverse effect on the ability of the Private Proponent to carry out the project;

   c. the Private Proponent [or the facility operator] files for corporate rehabilitation, insolvency, liquidation or dissolution or is the subject of an application filed by third parties for its corporate rehabilitation, insolvency, liquidation or dissolution and, in case of such applications filed by third parties, such application has not been dismissed within [•] days from the filing of the application;

   d. the Private Proponent abandons the project;

   e. the Private Proponent becomes subject to any litigation, arbitration or administrative proceeding which is reasonably likely to be resolved against it and which, if it were resolved against it, will have a material adverse effect on the project;

   f. the Private Proponent fails to procure or maintain in full force and effect any insurance policy, or any event or circumstance occurs which may entitle an insurer to avoid or otherwise reduce its liability under the relevant insurance policy;

   g. the Private Proponent fails to comply with any of its obligations under either Sections [•] (Private Proponent Performance Security), [•] (Operations Performance Security) or [•] (Warranty Security);

   h. Prohibited act is committed by any of the Private Proponent, its shareholders or any of their affiliates;

   i. the Private Proponent fails or refuses after reasonable notice from the Grantor to rectify any deficiency or otherwise perform the project in accordance with this PPP Contract and the Private Proponent is not excused by any of the other provisions of this PPP Contract, and such failure or refusal has a material adverse effect on the Grantor, the project or the public;

   j. a breach by the Private Proponent of any of its obligations under this PPP Contract which has a material adverse effect on the project.

2. **Grantor Events of Default**

   The following are the Grantor Events of Default:
a. the Grantor is dissolved, reconstituted or abolished and this PPP Contract ceases to be enforceable against it unless the obligations of the Grantor are assumed by the Government or by an entity owned by the Government;

b. material breach by the Grantor of any of its other material obligations under this PPP Contract, which has a material adverse effect upon the Private Proponent’s ability to carry out the works or the Operation and Maintenance.

3. Termination by Grantor for Private Proponent Event of Default

a. Upon the occurrence of any Private Proponent Event of Default, the Grantor may serve a written notice of default on the Private Proponent stating:

i. the nature of the Private Proponent Event of Default;

ii. whether the Private Proponent Event of Default is capable of remedy, or if incapable of remedy, whether the effects of the Private Proponent Event of Default are capable of being overcome; and

iii. if the Private Proponent Event of Default is capable of remedy or the effects of the Private Proponent Event of Default are capable of being overcome, requiring the Private Proponent to remedy the Private Proponent Event of Default within a cure period of [*] days from the Private Proponent’s receipt of such notice of default or such longer period as the Grantor may specify (“Private Proponent Cure Period”). Except for Private Proponent Event of Default under Section [*] (Private Proponent Event of Default), all Private Proponent events of default are deemed capable of remedy and capable of having its effects overcome.

b. The Grantor and the Private Proponent must promptly meet, but no later than [*] days after receipt by the Private Proponent of the notice of default, to discuss in good faith the means, period and any other terms and conditions for the curing of the Private Proponent Event of Default.

c. If:

i. the Private Proponent Event of Default is not capable of remedy; or

ii. the effects of the Private Proponent Event of Default are not capable of being overcome; or

iii. the Private Proponent fails to remedy the Private Proponent Event of Default or overcome its effects within the Private Proponent Cure Period,

the Grantor may issue a Notice of Termination, without prejudice to any of its other rights or remedies.

4. Termination by Private Proponent for Grantor Event of Default

a. Upon the occurrence of a Grantor Event of Default, the Private Proponent may serve a written notice of default on the Grantor, stating:

i. the nature of the Grantor Event of Default;

ii. whether the Grantor Event of Default is capable of remedy, or if incapable of remedy, whether the effects of the Grantor Event of Default are capable of being overcome; and
iii. if the Grantor Event of Default is capable of remedy or the effects of the Grantor Event of Default are capable of being overcome, requesting that the Grantor Event of Default be cured or its effects be overcome by the Grantor within at least [•] days from the Grantor’s receipt of such notice of default or such longer period as the Private Proponent may specify (“Grantor Cure Period”). Except for Grantor events of default under Section [•] (Grantor Event of Default) and Section [•] (Grantor Event of Default), all Grantor events of default are deemed capable of remedy and capable of having its effects overcome.

b. The Grantor and the Private Proponent must promptly meet, but no later than [•] days after receipt by the Grantor of the notice of default, to discuss in good faith the means, period and any other terms and conditions for the curing of the Grantor Event of Default.

c. If:

i. the Grantor Event of Default is not capable of remedy; or

ii. the effects of the Grantor Event of Default are not capable of being overcome; or

iii. the Grantor fails to remedy the Grantor Event of Default or overcome its effects within the Grantor Cure Period,

the Private Proponent may issue a Notice of Termination to the Grantor terminating this PPP Contract.

5. Events of Force Majeure

a. “Force Majeure” or “Force Majeure Event” refers to any event or circumstances which cannot be foreseen, or though foreseeable, is beyond the reasonable control of any of the Parties or is unavoidable despite the exercise of due diligence, the cause of which event is not attributable to the fault of any Party, and the effects prevent a Party from performing or fulfilling its obligations under the PPP Contract. Force Majeure will in no event include any Material Adverse Government Action.

b. Causes of Force Majeure Events may include, without limitation, the following:

i. lightning, fire, cyclone, earthquake, natural disaster, severe flood, drought, land slide, tsunami, or mudslide;

ii. strikes and industrial disturbances (provided that the strike or disturbance was not a result of a dispute between the Private Proponent and its employees or the employees of its Subcontractors);

iii. civil riot or rebellion, revolution, terrorism, insurrection, commotion and military usurped power, act of sabotage or act of a public enemy and war (declared or undeclared) or other like hostilities; and

iv. other analogous instances to the foregoing.

c. Notwithstanding the foregoing, the occurrence of any Force Majeure Event shall not release any Party from any of its monetary obligations which have accrued or were required to have been fulfilled prior to the occurrence of the Force Majeure Event in question.
6. Suspension of Obligation

a. Upon occurrence of a Force Majeure Event, the obligation of each Party under this PPP Contract (other than monetary obligations) affected by the Force Majeure Event will be suspended, but only to the extent that the Force Majeure Event prevents that Party from meeting its obligations in a timely manner under this PPP Contract. Provided, that the Parties must continue to exercise reasonable efforts to comply with their respective contractual obligations.

b. Any such suspension ends immediately on the earlier of:

i. the cessation of the Force Majeure Event or if later, the consequences of the Force Majeure Event ceasing to prevent the relevant Party from meeting its obligations in a timely manner; and

ii. the date and time when those consequences should have ceased to prevent the relevant Party if Section [•] (Mitigation) was observed.

c. During the period of suspension under this Section [•] (Suspension of Obligation), a Party’s failure to perform an obligation under this PPP Contract which has been suspended under this Section [•] (Suspension of Obligation) will not be a breach of this PPP Contract or result in a Private Proponent Event of Default or Grantor Event of Default, as the case may be.

7. Burden of proof

a. The burden of proving a Force Majeure Event and its effect on the performance by a Party of its obligations under this PPP Contract lies with the Party that issues the notice of Force Majeure in accordance with Section [•] (Notification of a Force Majeure Event).

8. Notification of Force Majeure Event

A Party seeking relief under Section [•] (Suspension of Obligation) must:

a. upon becoming aware of the Force Majeure Event and in any case as soon as it is practicable to do so, notify the other Party in writing of the occurrence of the Force Majeure Event and in the such notice provide:

i. details of the Force Majeure Event, including details of the basis which the Party formed the opinion that an event constitutes a Force Majeure Event;

ii. details of the extent to which the Force Majeure Event affects the notifying Party’s obligation under this PPP Contract, including the details of the obligations affected;

iii. details of the action that the Party has taken and proposes to take to avoid or minimize the consequences of the Force Majeure Event;

iv. to the extent possible, an estimate of the time during which the Party will be unable to carry out the affected obligations due to the Force Majeure Event; and

v. in the case of the Private Proponent only:

1. an estimate of the costs that the Private Proponent would incur to cure the impact of the Force Majeure Event were it able to do so; and
2. details of all insurance moneys on which the Private Proponent may claim in order to recuperate the damages incurred due to the Force Majeure Event; and

b. promptly after the occurrence of the relevant Force Majeure Event, continue to take proper and reasonable steps (including reasonable expenditure of money, rescheduling of manpower and resources and implementing appropriate temporary measures) to cure, avoid or minimize the consequences of the Force Majeure Event.

9. Termination for Force Majeure

a. Notwithstanding the foregoing, if on or before the date that is one hundred twenty (120) days after the commencement of discussion between the Grantor and the Private Proponent, the Parties are unable to agree that it would be “economic” to reconstruct or repair the project assets and the Parties do not agree to extend this period, then either Party will have the right to terminate this PPP Contract in accordance with Section [*] (Termination for Force Majeure after Construction Start Date).

b. If a Force Majeure Event does not cease on or before the date that is twelve (12) months after the date of the notice pursuant to Section [*] (Notification of Force Majeure Event), and the Parties do not agree to extend this period, then either Party will have the right to terminate this PPP Contract.

c. If either Party is entitled to and intends to terminate this PPP Contract under Section [*] (Termination for Force Majeure), the Party may, upon expiry of the [*] day period referred to in Section [*] (Termination for Force Majeure) issue a Notice of Termination.

d. If either Party is entitled to and intends to terminate this PPP Contract under Section [*] (Termination for Force Majeure), the Party will serve a warning notice on the other Party.

e. The warning notice may be served prior to the expiry of the [*] month period referred to in Section [*] (Termination for Force Majeure) but will expire on the later of:

i. the last day of such [*] month period; or

ii. the last day that is [*] days after the date of the warning notice.

f. The Parties must meet no later than [*] days after the date of the warning notice is received by the other Party. If the effect of the Force Majeure cannot be remedied by the later of the two (2) dates described in Section [*] (Termination for Force Majeure) above, either Party may issue a Notice of Termination.

10. Notice of Termination

a. Each Notice of Termination must state the termination date.

b. Any Notice of Termination delivered by the Grantor must specify a termination date which is no less than [*] days, but not more than [*] days, after the date of the Notice of Termination.

c. In any Notice of Termination delivered by the Private Proponent, the termination date must be a date no less than [*] days, but not more than [*] days, after the date of the Notice of Termination.
11. Consequences of Termination

a. Surviving provisions

The termination of this PPP Contract will not affect the rights and obligations of the Parties which will survive termination of this PPP Contract.

b. Rights of Grantor

After the issue of a Notice of Termination, the Grantor will have the right to:

i. assume (on and from the termination date) the rights and obligations of the Private Proponent under this PPP Contract, provided that the Grantor has the option to continue any contracts of the Private Proponent with third parties;

ii. call on any Private Proponent Performance Security then held and seek damages, including proceeding against any other bond, guaranty, letter of credit or other security given by or for the benefit of the Private Proponent for its obligations under this PPP Contract;

iii. on and from the termination date, without incurring any liability to the Private Proponent, and either with or without the use of the Private Proponent’s materials, equipment, tools and instruments, complete the works whether by enforcing any security given by or for the benefit of the Private Proponent for its performance under this PPP Contract or otherwise. The Grantor will have the right to take possession of, and use all equipment, materials, tools and instruments of the Private Proponent necessary for completion of the works. The Private Proponent will have no right to remove such items from the Project until such completion of works.

c. Obligations of Private Proponent

On the termination date stated in a Notice of Termination, if requested by the Grantor, the Private Proponent will:

i. withdraw from the project;

ii. undertake rectification works;

iii. assign to the Grantor such of Private Proponent’s contracts or subcontracts as the Grantor may request, and which by their terms may be assigned, provided that, any contracts or subcontracts which are not so assigned to the Grantor will be terminated by the Private Proponent, and provided further, that the Private Proponent will exert its best efforts to ensure that all such contracts and subcontracts are assignable to the Grantor. The Private Proponent will, prior to assigning such subcontracts, settle any obligations outstanding and payable by the Private Proponent in relation to such subcontracts;

iv. deliver and make available to the Grantor at no cost to the Grantor all proprietary information, patents, licenses and other intellectual property rights of the Private Proponent related to the project reasonably necessary to permit the Grantor to complete or cause the completion of the works or to take over the operation and maintenance;

v. authorize the Grantor to use such information in completing the works [or for the operation and maintenance];
vi. remove (at its own cost) such materials, equipment, tools and instruments, debris or waste materials used or generated by the Private Proponent in undertaking the project as the Grantor may direct; and

vii. give the Grantor (without charge) any or all designs, drawings, manuals, other relevant information and site facilities of the Private Proponent related to the project necessary for the completion of the works [or for the operation and maintenance].

d. General

On and from the termination date, the Private Proponent and the Grantor will no longer, except as provided in this Section [*] (Consequences of Termination), have any further obligations towards each other pursuant to this PPP Contract. Notwithstanding that the appointment of the Private Proponent may have been terminated, this PPP Contract remains in effect for purposes of novation to a substitute Private Proponent or to a third party selected by the Grantor.

12. Financial Consequences of Termination

a. Termination Payments [to be determined following the PPPGB Policy Guidelines on Termination Payments]

b. Payment arrangements

i. Any termination payment will be in Pesos, which may be paid in cash deposited with the bank account designated by the Private Proponent.

ii. The outstanding amount will:

1. be settled on a date that is no later than [*] after the termination date; and
2. include interest at the late payment rate which accrue from the termination date until the date of final payment.

Upon receipt of the Notice of Termination, the Parties will meet within [*] days and continue to meet to determine the amount of the termination payment, as applicable. If the Parties cannot agree on the amount of the termination payment the matter may be referred by any Party to an expert appointed in accordance with Section [*] (Expert).

iii. The termination payment, as applicable, will be computed based on values as of termination date, provided that for avoidance of doubt, in respect of the termination payment, any cash flows earned by the Private Proponent during the period from the termination date until the actual turnover of the cash flows to the Grantor, will be for the account of the Grantor and if retained by the Private Proponent, will be set off against the Grantor termination payment.

iv. The termination payment will be considered as full payment of all the obligations of and claims against the Grantor, under or in connection with this PPP Contract. Payment of the termination payment will extinguish any and all rights and obligations of the Parties, their successors-in-interests and assigns under this PPP Contract. The project and project assets will be immediately transferred to the Grantor following the termination date irrespective of payment of any termination payment in accordance with this PPP Contract.
c. Transfer of Project and Project Assets on Termination

Without prejudice to any right or remedy available to the Private Proponent on termination of this PPP Contract, the Private Proponent must on termination date transfer the project and the project assets to the Grantor as provided in Section [*] (Transfer of Project Assets).

d. Ownership of works in Progress

Without prejudice to any right or remedy available to the Private Proponent under this PPP Contract, the ownership of all the works in progress pertaining to the project will vest in the Grantor on termination date.

e. Costs incurred for the transfer of the project assets consequent to termination of this PPP Contract will be borne by:

i. the Private Proponent in the event of termination due to a Private Proponent Event of Default;
ii. the Private Proponent in the event of termination due to Force Majeure;
iii. the Grantor in the event of termination due to a Grantor Event of Default.

K. Modes for settling disputes

1. Consultation

a. Any disagreement or dispute among the Grantor, the Private Proponent and/or the independent consultant in respect of this PPP Contract and any non-contractual claim arising in connection therewith ("Dispute") will be amicably settled by the Parties within [*] days, or a longer period if agreed by both Parties, from either Party informing the other of the existence of a Dispute.

b. If the Dispute cannot be settled within the prescribed period, either Party may refer the dispute to the Project Dispute Resolution Board to be constituted in accordance with Section [*] (Project Dispute Resolution Board) for the resolution of the Dispute.

2. Project Dispute Resolution Board

a. The Dispute or part thereof which remains unresolved within the prescribed period in accordance with Section [*] (Consultation), must immediately be referred by way of written notice to a Project Dispute Resolution Board constituted under Section [*] (Project Dispute Resolution Board) for resolution. The Project Dispute Resolution Board must seek to resolve such Dispute within [*] days of a Dispute being referred to it.

b. The Project Dispute Resolution Board will be comprised of the following members:

i. a representative chosen by the Grantor;
ii. a representative chosen by the Private Proponent; and
iii. a representative to be appointed by the Grantor’s representative chosen in accordance with Section [*] (Project Dispute Resolution Board) and the Private Proponent’s
representative chosen in accordance with Section [*] (Project Dispute Resolution Board), and

c. Within [*] months from the signing date, the Parties will agree on the procedure of selection, term of appointment, qualifications and fees of the representatives to the Project Dispute Resolution Board.

d. Either Party’s disagreement with the action, decision or resolution of the Project Dispute Resolution Board or the constitution of the Project Dispute Resolution Board will be a dispute referable to arbitration in accordance with Section [*] (Arbitration).

3. Expert

a. All disputes relating to:

i. amounts payable to the Private Proponent;

ii. Force Majeure Restitution Amount under Section [*] (Damage Caused by Force Majeure);

iii. payment under Annex [*] (Financial Consequences of Termination);

iv. MPSS;

must, if incapable of being resolved by the Parties in accordance with Section [*] (Consultation) or Section [*] (Project Dispute Resolution Board), be finally resolved by an independent firm (“expert”) to be determined by agreement or, in default of agreement, appointed by the International Chamber of Commerce International Centre for Expertise in accordance with its rules.

b. The expert must not have any business relationship with the Grantor, the Private Proponent, or any of the shareholders, affiliate of Private Proponent, and affiliate of shareholders in the calendar year immediately preceding the date of the expert’s appointment for resolution of the dispute.

c. The expert must be a financial services firm with at least [*] years relevant experience and must be internationally recognized for its expertise and experience in resolving disputes of the type to be referred to it under this PPP Contract.

d. The expert must have freedom to determine the conduct of any matter referred to it for a decision.

e. The expert must give his written decision within [*] days of the matter being referred to it.

f. The fees of the expert will be borne equally by the Parties.

g. In reaching its decision the expert will not act as an arbitrator and, except as provided in Section [*] (Grantor Compensation), its decision will be final and binding.

3. Arbitration

a. Any dispute that is not resolved by the Parties within [*] days after the date of notice referred to in Section [*] (Project Dispute Resolution Board) must be finally settled by arbitration as provided under this Section [*] (Arbitration).
b. In case of a construction dispute, the dispute will be referred to and settled through arbitration by the Construction Industry Arbitration Commission (CIAC) under the Rules of Procedure Governing Construction Arbitration promulgated by the CIAC, pursuant to Executive Order No. 1008 (Construction Industry Arbitration Law), as amended by Republic Act No. 9285 (Alternative Dispute Resolutions Act of 2004) (or any other laws applicable to Construction Disputes at the time that the Dispute arises). The legal seat of the arbitration will be the Republic of the Philippines and the venue of the arbitration will be in Metropolitan Manila and the arbitration will be conducted only in English.

c. All disputes that are not construction disputes will be settled under the Rules of the Philippine Dispute Resolution Center (PDRC) in effect at the time the request for arbitration is submitted in accordance with the PDRC Rules, by such number of arbitrators as the Parties may agree or, in the absence of such agreement, by a panel of three (3) arbitrators appointed in accordance with the PDRC Rules. Except as provided by the PRDC Rules and the Relevant Rules and Procedures, the decision of such arbitration tribunal will be final and binding. The legal seat and venue of the arbitration will be Metropolitan Manila. The language to be used in the arbitral proceedings, and all documents, exhibits and other evidence shall be in the English language.

4. Continuous Work and Performance

While any dispute under this PPP Contract is pending, including the commencement and pendency of any dispute referred to arbitration, the Parties must continue to perform all of their respective obligations under this PPP Contract without prejudice to the final determination of such dispute in accordance with the provisions of this Section [*] (Dispute Resolution).

5. Survival

Section [*] (Dispute Resolution) will survive the termination of this PPP Contract as necessary to resolve any dispute arising out, in connection with, or relating to this PPP Contract and, notwithstanding any such termination, amounts owed under this PPP Contract by one Party to the other will be paid in accordance with this PPP Contract.

L. Manner and procedures for the resolution of warranty against corruption

1. Private Proponent’s Representations and Warranties

a. The Private Proponent hereby represents and warrants for the benefit of the Grantor that:

i. it is duly organized and existing and in good standing under the laws of the Republic of the Philippines and has the requisite legal power, authority and right to carry out the business which it now conducts or proposes to conduct;

ii. it has full legal power, authority and right to execute and deliver this PPP Contract and to perform its obligations hereunder, and has taken all necessary corporate legal action and obtained all approvals to authorize the execution, delivery, and performance of this PPP Contract and has submitted all such approvals, resolutions and authorizations to the Grantor;
iii. it is not debarred, blacklisted, or otherwise disqualified in any list that results in disqualification in the proper jurisdiction from entering and/or fulfilling its obligations under this PPP Contract;

iv. it has the financial standing, resources, and capacity to fund its obligations under this PPP Contract, including to the extent not funded by equity contributions through other sources including debt;

v. it has the required authority or has procured the required ability, skills and capacity to perform and will perform or procure the performance of its obligations under this PPP Contract in a manner consistent with the relevant rules and procedures, the relevant consents and prudent industry practice;

vi. it has carefully examined all information relevant to the project (including all documents comprising this PPP Contract) and any information provided by or on behalf of the Grantor, and has satisfied itself with and accepted all conditions, risks, contingencies and other circumstances that could impact the performance of its obligations under this PPP Contract;

vii. it has visited and carefully examined the project site and its surroundings and fully informed itself as to all conditions, characteristics and requirements for the project, and all surrounding locations, including access requirements, the need for and availability of plant and equipment, and all other risks, contingencies and other circumstances arising out of the project site and its surroundings that could impact the performance of its obligations under this PPP Contract;

viii. it has or has procured the requisite expertise, knowledge, and resources to apply for and be issued with all relevant consents, and has obtained or will procure that each relevant consent is obtained in accordance with due process, on or before the date such relevant consent is required, to enable the Private Proponent to perform its obligations under this PPP Contract;

ix. no Private Proponent Event of Default has occurred and is continuing;

x. it has not engaged in any other business or activity prior to the signing date and will not engage in any other business or activity other than undertaking the project pursuant to this PPP Contract;

xi. it has not incurred any liabilities on or before the signing date, other than those incurred in connection with the implementation of the project;

xii. this PPP Contract constitutes the legal, valid, direct and binding obligations of the Private Proponent, enforceable against the Private Proponent in accordance with its terms, except as limited by applicable bankruptcy, insolvency, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity;

xiii. this PPP Contract is in satisfactory and proper legal form under the laws of the Republic of the Philippines;

xiv. all information which the Private Proponent or any of the shareholders provided or will provide to the Grantor is or will be true and correct in all material respects on the date on which it was or is provided, and is not, by omission of information, or otherwise, misleading in any material respect;

xv. its signatory is of legal age, has full legal capacity, and is or will be, at the relevant date, duly and properly authorized by the Private Proponent to sign, execute and deliver this PPP Contract for and on behalf of the Private Proponent;

xvi. there is no action, suit, proceeding or investigation, pending or to its knowledge threatened against it before any court, executive, legislative or administrative body which might have a material adverse effect on its business, properties, or assets, its condition (financial or otherwise), or impairment of its ability to perform its obligations under this PPP Contract;
xvii. it owns, has rights to, or will procure the rights to use all intellectual property or other rights or intangible properties necessary to perform the Private Proponent's obligations under this PPP Contract;

xviii. neither it, nor any of its shareholders, nor any subcontractor, nor any affiliate of the Private Proponent or the affiliate of the shareholders, whether directly or indirectly, has it engaged in any prohibited act in relation to the project;

xix. it recognizes, understands and acknowledges that the Grantor is providing no representation or warranty regarding, and specifically disclaims any responsibility for, the usefulness, accuracy, completeness, validity or propriety of any or all reports, data, inferences, conclusions and other information provided by or to be provided by the Grantor. It acknowledges and agrees that it is not relying on the Grantor for any information, data, inferences, conclusions, or other information with respect to the required works for the project, and has conducted its own independent assessment of the project, including in relation to all risks, contingencies and other circumstances, prior to the Private Proponent entering into this PPP Contract, including the conduct of all necessary investigations and technical, financial, and legal due diligence;

xx. it recognizes and confirms that the pre-agreed levels of fees, charges, and damages under this PPP Contract are fair and reasonable and are not a penalty; and

xxi. subject to any legal requirement in force from time to time, the Private Proponent will follow a policy of non-discrimination and will provide the services required under this PPP Contract on fair and reasonable terms to all users without undue or unlawful discrimination against any person or entity.

b. The Private Proponent's Representations and Warranties are made on the signing date and will continue to remain true and correct for the duration of the Concession Period.

2. Grantor’s Representations and Warranties

a. The Grantor hereby represents and warrants for the benefit of the Private Proponent the following:

i. the entry into by the Grantor and the performance of the Grantor’s obligations under this PPP Contract constitutes the proprietary or commercial act of the Grantor and the Grantor may sue and be sued in relation to its dealings with the Private Proponent;

ii. it has all the requisite legal power, authority and right to execute and deliver this PPP Contract and to perform its obligations under this PPP Contract;

iii. it has taken all appropriate legal and/or other actions required and/or appropriate to authorize the execution, delivery, and performance of this PPP Contract and all other agreements, instruments, or documents contemplated thereunder;

iv. this PPP Contract constitutes the legal, valid, direct and binding obligations of the Grantor, enforceable against the Grantor in accordance with the terms of this PPP Contract and all other agreements, instruments, or documents contemplated thereunder;

v. this PPP Contract is in satisfactory and proper legal form under the laws of the Republic of the Philippines;

vi. its signatory is of legal age, has full legal capacity and is duly authorized to sign, execute and deliver this PPP Contract for and on behalf of the Grantor;

vii. no Grantor Event of Default has occurred or is continuing; and

viii. it has not intentionally withheld from the Private Proponent any material document, the nondisclosure of which would have a material adverse effect or would have adversely affected the decision making of the Private Proponent in entering into this PPP Contract.
b. The Grantor’s Representations and Warranties are made on the signing date and will continue to remain true and correct for the duration of the Concession Period.

3. Private Proponent undertakings

a. The Private Proponent must obtain, maintain and renew all relevant consents for implementing the project as required over the course of the Concession Period (other than the relevant consents required to be obtained by the Grantor under Section [*] (Relevant Consents) as and when such relevant consents are needed for the implementation of the project and comply with all conditions attached to any relevant consent.

b. The Private Proponent must undertake the project in compliance with all relevant legal requirements and the relevant rules and procedures, including those pertaining to social, environment, health and safety.

4. Grantor’s undertakings

a. The Grantor will, if requested by the Private Proponent, but without limiting the generality of Section [*] (Relevant Consents), provide the Private Proponent with such reasonable assistance as the Private Proponent may reasonably request in liaising with government authorities to assist the Private Proponent in obtaining such relevant consents.

b. The Grantor will at the Private Proponent’s cost obtain:

   i. the relevant consent required for [to be completed by consultant]; and

   ii. any other relevant consent which by its nature, can only be issued to the Grantor, provided that the Private Proponent gives the Grantor sufficient notice of the need for the relevant consent and provides such information and assistance as the Grantor reasonably require in relation to the application for or grant of the relevant consent.

5. Warranty and undertaking against corruption

a. The Private Proponent and its officers, employees, agents, advisers and subcontractors will observe the highest standard of ethics at all times. The Private Proponent also warrants that its officers, employees, agents, advisers and representatives, including those of its subcontractors and affiliates, or any person acting on its behalf or for its benefit, have not engaged in any prohibited act to secure or solicit this PPP Contract for any commission, favor, or any other consideration.

b. Notwithstanding anything to the contrary contained in this PPP Contract, the Grantor may terminate this PPP Contract as provided in Section [*] (Private Proponent Events of Default), without being liable in any manner whatsoever to the Private Proponent if the Private Proponent has been found, at any time, to have committed a prohibited act, in accordance with the process set out in Section [*] (Dispute Resolution). In such an event, the Grantor will forfeit the appropriate Private Proponent Performance Security in accordance with Section [*] (Rights of Grantor), without prejudice to any other right or remedy that may be available to the Grantor hereunder or otherwise.
c. Without prejudice to the rights and remedies which the Grantor may have under this PPP Contract, if the Private Proponent is found by the Grantor to have directly or indirectly or through an agent, committed a prohibited act, the Private Proponent, its Affiliates, Shareholders or Affiliates of Shareholders shall not be eligible to participate in any bidding of the Grantor from the date the Private Proponent is found to have directly or indirectly engaged in any such prohibited act.

d. The Grantor will seek to impose the maximum penalties for civil, criminal and administrative liability available under, but not limited to, Republic Act No. 3019 ("Anti-Graft and Corrupt Practices Act"), Republic Act No. 6713 ("Code of Conduct and Ethical Standards for Public Officials and Employees"), Republic Act No. 7080 ("Plunder Law") and Act No. 3815 ("Revised Penal Code") and other relevant rules and procedures on individuals and/or organizations found to have engaged in a prohibited act.

e. The Private Proponent and any of its subcontractors will be prohibited from engaging, in relation to the project, any legal, financial or technical advisors engaged by the Grantor in relation to the project or who was an employee of the Grantor, save where such engagement or employment has ended or been terminated for a period of not less than [•] year prior to the date of the advisor’s engagement by the Private Proponent or any of its subcontractors. This prohibition does not apply to the institutions engaged by the Grantor as legal, financial or technical advisors, but does apply to the specific persons handling the transactions in these instances.

f. Relatives within the fourth (4th) degree of consanguinity and/or affinity of any public officer or employee of the Grantor directly or indirectly involved in the award of this PPP Contract or the implementation of the project will be disqualified from being directly or indirectly involved and/or employed by the Private Proponent and any of its subcontractors in the Project during the Concession Period.

6. Sovereign immunity

The Grantor hereby irrevocably waives and agrees not to claim any immunity to which it or its property may, at any time be or become entitled to, from any legal action, suit, judgment, execution or proceeding in any court, tribunal, or arbitral body, and any immunity of any of its property from attachment or execution of judgment or arbitral awards. Except with regards to the following assets to which the Grantor does not waive any immunity thereof:

a. assets used by a diplomatic or consular mission of the Republic of the Philippines;

b. assets which are military in character and under the control of a military authority or defense agency of the Republic of the Philippines;

c. assets located in the Philippines and dedicated to a public or governmental use (as distinguished from patrimonial assets or assets dedicated to commercial use); or

d. in respect of special accounts with banks outside the Republic of the Philippines which are established pursuant to binding agreements between the Republic of the Philippines and its lenders, are administered by paying agents, and are pledged and used solely to service the Republic of the Philippines’ external debt to such lenders.
7. Notification

Either Party must promptly notify the other party in writing if any of the Representations and Warranties given by the respective parties ceases to be true or any undertakings furnished by it ceases to be relevant in any material respect. However, such notification will not release the Party from any of its obligations under the PPP Contract, nor be deemed to remedy any breach of such representation or warranty or undertaking.

M. Compliance with all other applicable laws, rules, and regulations

*Note: Provision will depend on the PPP Project

N. MPSS and Key Performance Indicators (KPIs)

*Note: Provision will depend on the PPP Project
**OTHER NECESSARY PROVISIONS**

There are contract provisions which are not provided under the BOT Law and its Revised IRR but are necessary for contract and project implementation.

<table>
<thead>
<tr>
<th>Scope of the Project</th>
<th>May include real estate development which is commercial in nature, repair/rehabilitation of existing assets, administration of existing contracts, etc.</th>
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</table>
| **Contract/Project** | **General Provision:**  
  - Lock up period  
  - Third Party Insurers (Step-in Rights)  
  **Private Proponent Obligation:**  
  - Formation of a Special Purpose Company (SPC) to ring-fence the project  
  **Government Obligation:**  
  - Material and Adverse Government Action (MAGA) |
| **Construction**     | **General Provision:**  
  - Independent Consultant  
  **Private Proponent Obligation:**  
  - Compensation to government for delay event  
  - Tests to be conducted  
  **Government Obligation:**  
  - Compensation to Private Proponent for delay of ROW delivery (usually through Concession Period adjustment) |
| **Monitoring/Implementation** | **General Provision:**  
  - Project Monitoring Team  
  - Independent Consultant  
  **Private Proponent Obligation:**  
  - Key Performance Indicators (KPIs)  
  - Compensation to government for failure to meet the KPIs (Performance Security)  
  **Government Obligation:**  
  - Inspection and monitoring  
  - Toll rate adjustment  
  - Foregone revenue for failure to approve tariff per schedule provided under the contract  
  - Temporary take-over in case of force majeure |
| **End of Concession** | **General Provision:**  
  - Handback Protocol  
  **Private Proponent Obligation:** |
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<tr>
<td>• Defects Performance Security to provide warranty on the assets</td>
<td>• General indemnification of the government</td>
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<td>to be turned-over to the government</td>
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