

# CONTRACT FOR CONSULTANCY SERVICES FOR THE MEDIA PLANNING AND GLOBAL PLACEMENT OF THE CLARK PROMOTIONAL CAMPAIGN

This **CONTRACT** is executed between:

The **BASES CONVERSION AND DEVELOPMENT AUTHORITY**, a government instrumentality vested with corporate powers, created by virtue of Republic Act No. 7227, as amended, with principal office address at the BCDA Corporate Center, 2/F Bonifacio Technology Center, 31<sup>st</sup> Street corner 2<sup>nd</sup> Avenue, Bonifacio Global City, Taguig City, represented herein by its Officer-In-Charge, Office of the Executive Vice President, **ATTY. GISELA Z. KALALO**, duly authorized for this purpose under Item 178 of the revised Manual of Approval which was approved by the BCDA Board on 22 November 2017, a copy of which is hereto attached as **Annex "A"**; hereinafter referred to as "**BCDA**";

- and -

The **TOUCH XDA, INC.**, a private corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at *16th Floor, Two World Square, 22 Upper McKinley Road, Fort Bonifacio, Taguig City*, represented herein by its Group Chief Operating Officer and Chief Financial Officer, **JUDD B. BALAYAN**, duly authorized for this purpose as evidenced by a *Secretary's Certificate* dated (*date of the submitted secretary's certificate*), a copy of which is hereto attached as **Annex "B"**; hereinafter referred to as "**Consultant**".

(BCDA and Consultant shall hereinafter be referred to, individually, as Party or, collectively, as Parties.)

## ANTECEDENTS

Republic Act (RA) No. 7227, as amended by Republic Act No. 9400, mandates the BCDA to accelerate the sound and balanced conversion into alternative productive civilian uses of the Clark and Subic military reservations and their extension, and to enhance the benefits to be derived from said properties in order to promote the economic and social development of Central Luzon in particular and the country in general as well as to provide funds for the AFP Modernization Program.

The Bases Conversion and Development Authority (BCDA) through the Investment Promotion and Marketing Department (IPMD) has been driving an extensive marketing and investment promotion campaign to establish Clark as a premiere investment, sports, leisure, and tourist destination.

Among the highlights of the campaign is the international release of the newest promotional video of Clark which aims to promote the newly opened Clark International Airport (CRK) to global audiences in Asia Pacific, the United States and other regions using television and digital media.

To effectively carry out these objectives in a scale that would generate greater awareness, understanding, interest, and promotion of Clark in the global stage, the IPMD seeks to engage the services of a media planning and placement agency to develop and execute the strategic placements of Clark's video campaign using television and digital platforms that have the global reach, trusted appeal, and credibility.

BCDA is desirous that the Consultant perform the media planning and global placement of Clark promotional campaign (hereinafter called the "Project") and thus, BCDA has accepted the proposal for **PESOS: Nine Million Nine Hundred Thousand and 00/100 (PhP9,900,000.00)**, inclusive of applicable taxes, fees and incidental expenses. by the Consultant for the execution and completion of such Consulting Services and the remedying of any defects therein.

**ACCORDINGLY**, for and in consideration of the foregoing premises, and in accordance with the stipulations and conditions hereinafter stated, the Parties hereby agree and bind themselves to the following:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be attached, deemed to form, and be read and construed as part of this Agreement, to wit:
  - (a) General Conditions of Contract;
  - (b) Special Conditions of the Contract;
  - (c) Terms of Reference and/or Technical Specifications;
  - (d) Request for Proposal;
  - (e) Bid Form and Price Schedule;
  - (f) Schedule of Requirements;
  - (g) Notice of Award of Contract and the Bidder's *conforme* thereto;
  - (h) Performance Security; and
  - (i) Other contract documents that may be required by existing laws and/or BCDA.
3. In consideration of the full and satisfactory performance of the services rendered by the Consultant, BCDA shall pay the Consultant the Total Contract Price of **PESOS: Nine Million Nine Hundred Thousand and 00/100 (PhP9,900,000.00)**, inclusive of applicable taxes, fees and incidental expenses.
4. In consideration of the payments to be made by the BCDA to the Consultant as hereinafter mentioned, the Consultant hereby covenants with the BCDA to execute

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and complete the Consulting Services and remedy any defects therein in conformity with the provisions of this Agreement in all respects.

5. The BCDA hereby covenants to pay the Consultant in consideration of the execution and completion of the Consulting Services, the Contract Price or such other sum as may become payable under the provisions of this Agreement at the times and in the manner prescribed by this Agreement.

**SIGNED BY THE PARTIES** on 28 December 2022 in Taguig City, Philippines.

**BASES CONVERSION AND  
DEVELOPMENT AUTHORITY**

By:

  
**GISELA Z. KALALO**  
Officer-In-Charge  
Executive Vice President - BCDA

**TOUCH XDA, INC.**

By:

  
**JUDD B. BALAYAN**  
Authorized Representative  
Group COO and CFO - Touch XDA, Inc.

Signed in the presence of:

  
**MICHELLE SAN JUAN-DE VERA**  
Officer-In-Charge  
Investment Promotions and  
Marketing Department

  
**ROSE DYAN R. EM**  
Managing Partner  
Touch XDA, Inc.

**ACKNOWLEDGMENT**

Republic of the Philippines)

Taguig City ) ss.

**BEFORE ME**, a Notary Public for and in Taguig City, personally appeared the following:

Name	Competent Evidence of Identity	Date of Issue / Expiry	Place of Issue
GISELA Z. KALALO	[REDACTED]	[REDACTED]	[REDACTED]
JUDD B. BALAYAN	[REDACTED]	[REDACTED]	[REDACTED]

who are known to me to be the same persons who executed the foregoing instrument and they acknowledged to me that the signatures they affixed confirm their voluntary act and the entities they represent.

**SIGNED AND SEALED** on DEC 28 2022 in Taguig City, Philippines.

Doc. no. 290

Page no. 59

Book no. 03

Series of 2022.

*MS*  
**ATTY. MARICEL C. CORONACION-SANTOS**  
 NOTARY PUBLIC FOR AND IN TAGUIG CITY  
 NOTARIAL COMMISSION UNTIL DECEMBER 31, 2023  
 ROLL OF ATTORNEYS NO. 63834  
 IBP NO. 178142 2-14-2022 / RIZAL  
 PTR NO. A-5395113 02-03-22 TAGUIG CITY  
 MCLE COMPLIANCE NO. VII-0005758 30 JULY 2021

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# *General Conditions of Contract*

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## 1. Definitions

1.1 Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Philippines as they may be issued and enforced from time to time.
- (b) “Consultant” refers to the short listed consultant with the HRRB determined by the Procuring Entity as such in accordance with the ITB.
- (c) “Consulting Services” refer to services for Infrastructure Projects and other types of projects or activities of the Government of the Philippines (GoP) requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the Procuring Entity to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies.
- (d) “Contract” means the agreement signed by the Parties, to which these General Conditions of Contract (GCC) and other sections of the Bidding Documents are attached.
- (e) “Effective Date” means the date on which this Contract comes into full force and effect.
- (f) “Foreign Currency” means any currency other than the currency of the Philippines.
- (g) “Funding Source” means the entity indicated in the SCC.
- (h) “GCC” means these General Conditions of Contract.
- (i) “Government” means the Government of the Philippines (GoP).
- (j) “Local Currency” means the Philippine Peso (Php).
- (k) “Member,” in case the Consultant is a Joint Venture (JV) of two (2) or more entities, means any of these entities; and “Members” means all these entities.
- (l) “Party” means the Procuring Entity or the Consultant, as the case may be, and “Parties” means both of them.
- (m) “Personnel” means persons hired by the Consultant or by any Subconsultant as employees and assigned to the performance of the Services or any part thereof; “Foreign Personnel” means such persons who at the time of being so hired had their domicile outside the Government’s country; “Local Personnel” means such persons who at the time of being so hired had their domicile inside the Philippines; and “Key Personnel” means the Personnel referred to in GCC Clause 39.
- (n) “Procuring Entity” refers to any branch, constitutional commission or office, agency, department, bureau, office or instrumentality of the Government, including GOCC, GFI, SUC, LGU, and autonomous regional government procuring Goods, Consulting Services, and Infrastructure Projects.



(o) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented.

(p) "Services" means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix I.

(q) "Subconsultant" means any person or entity to whom/which the Consultant subcontracts any part of the Services in accordance with the provisions of GCC Clause 50.

(r) "Third Party" means any person or entity other than the Government, the Procuring Entity, the Consultant or a Subconsultant.

## **2. Headings**

The headings shall not limit, alter or affect the meaning of this Contract.

## **3. Location**

The Services shall be performed at such locations as are specified in Appendix I and, where the location of a particular task is not so specified, at such locations, whether in the Philippines or elsewhere, as the Procuring Entity may approve.

## **4. Law Governing Contract and Services**

4.1 This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

4.2 The Consultant shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Subconsultant, as well as the Personnel of the Consultant and any Subconsultant, complies with the Applicable Law. The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

4.3 If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased on a no loss-no gain basis, and corresponding adjustments shall be made to the ceiling amounts specified in GCC Clause 52, provided that the cost is within the Approved Budget for the Contract (ABC).

## **5. Language**

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

## **6. Consultants and Affiliates Not to Engage in Certain Activities**

6.1 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Subconsultant and any entity affiliated with such Subconsultant, shall be disqualified from providing goods, works, or consulting services for any project resulting from or closely related to this Contract

other than the Services and any continuation thereof provided there is no current or future conflict.

6.2 The Consultant shall not engage, and shall cause their Personnel as well as their Subconsultants and their Personnel not to engage, either directly or indirectly, in any of the following activities:

(a) during the term of this Contract, any business or professional activities in the Government's country which would conflict with the activities assigned to them under this Contract; and

(b) after the termination of this Contract, such other activities as may be specified in the SCC.

## 7. Authority of Member in Charge

In case the Consultant is a JV, the Members hereby authorize the entity specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Procuring Entity under this Contract, including without limitation the receiving of instructions and payments from the Procuring Entity.

## 8. Resident Project Manager

If required by the SCC, the Consultant shall ensure that at all times during the Consultant's performance of the Services in the Government's country, a resident project manager, acceptable to the Procuring Entity, shall take charge of the performance of such Services.

## 9. Entire Agreement

This Contract, including the documents specified in Section 37.2.3 of the IRR of RA 9184, contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make any statement, representation, promise, or agreement not set forth herein of which the Parties shall not be bound by or be liable for.

## 10. Modification

Unless otherwise specified in the SCC, no modification of the terms and conditions of this Contract, including any modification of the scope of the Services shall be allowed. Pursuant to GCC Clause 14 hereof, however, each Party shall give due consideration to any proposal for modification made by the other Party.

## 11. Relationship of Parties

11.1 Nothing contained herein shall be construed as establishing a relation of employer and employee or of principal and agent as between the Procuring Entity and the Consultant. The Consultant, subject to this Contract, has complete charge of its Personnel and Subconsultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

11.2 The Consultant shall during the performance of the Services be an independent contractor, retaining complete control over its Personnel, conforming to all statutory requirements with respect to all its employees, and providing all appropriate employee benefits.

## 12. Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Procuring Entity or the Consultant may be taken or executed by the officials specified in the SCC.

## 13. Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

## 14. Operation of the Contract

The Parties recognize that it is impractical for this Contract to provide for every contingency which may arise during the life of this Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them; and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties shall use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with **GCC** Clause 34 hereof.

## 15. Notices

15.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when received by the concerned party, either in person or through an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SCC.

15.2 Notice shall be deemed to be effective as specified in the SCC.

15.3 A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to the provisions listed in the SCC with respect to **GCC** Clause 15.2.

## 16. Warranty as to Eligibility

16.1 The Consultant represents, warrants, and confirms that it, as well as its Subconsultant, if any, is eligible, *i.e.*, has the legal personality to act as a consultant in accordance with Part I, Section II. Eligibility Documents issued for this project.

16.2 The Consultant shall fulfill its obligations under this Contract by using knowledge according to the best accepted professional standards. The Consultant shall exercise all reasonable skill, care and diligence in the discharge of duties agreed to be performed and shall work in the best interest of the GoP.

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## **17. Confidentiality**

Except with the prior written consent of the Procuring Entity, the Consultant and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services. For purposes of this clause, "confidential information" means any information or knowledge acquired by the Consultant and/or its Personnel arising out of, or in connection with, the performance of the Services under this Contract that is not otherwise available to the public.

## **18. Payment**

18.1 In consideration of the Services performed by the Consultant under this Contract, the Procuring Entity shall make to the Consultant such payments and in such manner as is provided by GCC Clause 53 of this Contract. However, the Procuring Entity may refuse to make payments when the terms and conditions of the contract are not satisfactorily performed by the Consultant.

18.2 Subject to the ceilings specified in GCC Clause 52 hereof, the Procuring Entity shall pay to the Consultant: (i) remuneration as set forth in GCC Clause 53.2; and (ii) reimbursable expenditures as set forth in GCC Clause 53.4. Said remuneration shall not be subject to price adjustment.

18.3 All payments under this Contract shall be made to the account of the Consultant specified in the SCC.

## **19. Currency of Payment**

Unless otherwise specified in the SCC, all payments shall be made in Philippine Pesos.

## **20. Liability of the Consultant**

Subject to additional provisions, if any, set forth in the SCC, the Consultant's liability under this Contract shall be as provided by the laws of the Republic of the Philippines.

## **21. Insurance to be Taken Out by the Consultant**

21.1 The Consultant, at its own cost, shall be responsible for taking out or maintaining any insurance policy against any risk related to the project.

21.2 The Procuring Entity undertakes no responsibility in respect of life, health, accident, travel or any other insurance coverage for the Personnel or for the dependents of any such Personnel.

## **22. Effectivity of Contract**

The contract effectivity date shall be the date of contract signing, provided that the effectiveness of the conditions, if any, listed in the SCC have been met.

## 23. Commencement of Services

The Consultant shall begin carrying out the Services starting from the effectivity date of this Contract, as mentioned in GCC Clause 22.

## 24. Expiration of Contract

Unless sooner terminated pursuant to GCC Clauses 27 or 28 hereof, this Contract shall terminate at the end of such time period after the effectivity date as shall be specified in the SCC.

## 25. Force Majeure

25.1 For purposes of this Contract the terms “force majeure” and “fortuitous event” may be used interchangeably. In this regard, a fortuitous event or force majeure shall be interpreted to mean an event which the Consultant could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Consultant.

25.2 The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of force majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

25.3 Unless otherwise agreed herein, force majeure shall not include:

- (a) any event which is caused by the negligence or intentional action of a Party or such Party's Subconsultants or agents or employees;
- (b) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract and avoid or overcome in the carrying out of its obligations hereunder;
- (c) insufficiency of funds or failure to make any payment required hereunder; or
- (d) the Procuring Entity's failure to review, approve or reject the outputs of the Consultant beyond a reasonable time period.

25.4 A Party affected by an event of force majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder immediately or within a reasonable time.

25.5 A Party affected by an event of force majeure shall notify the other Party of such event as soon as possible, and in any event not later than fifteen (15) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

25.6 The Parties shall take all reasonable measures to minimize the consequences of any event of force majeure.

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25.7 Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a direct and proximate result of force majeure.

25.8 During the period of their inability to perform the Services as a direct and proximate result of an event of force majeure, the Consultant shall be entitled to continue receiving payment under the terms of this Contract as well as to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period, provided that such costs are still within the total contract price. However, the foregoing provision shall not apply if the Procuring Entity suspends or terminates this Contract in writing, notice thereof duly received by the Consultant, pursuant to GCC Clauses 26 and 27 hereof with the exception of the direct and proximate result of force majeure.

25.9 Not later than fifteen (15) days after the Consultant, as the direct and proximate result of an event of force majeure, has become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures considering the circumstances.

25.10 In the case of disagreement between the parties as to the existence, or extent of force majeure, the matter shall be submitted to arbitration in accordance with GCC Clause 34 hereof.

## **26. Suspension**

26.1 The Procuring Entity shall, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fail to perform any of their obligations due to their own fault or due to force majeure or other circumstances beyond the control of either party (e.g. suspension of civil works being supervised by the consultant) under this Contract, including the carrying out of the Services, provided that such notice of suspension:

- (a) shall specify the nature of the failure; and
- (b) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

26.2 The Consultant may, without prejudice to its right to terminate this Contract pursuant to GCC Clause 28, by written notice of suspension, suspend the Services if the Procuring Entity fails to perform any of its obligations which are critical to the delivery of the Consultant's services such as, non-payment of any money due the Consultant within forty-five (45) days after receiving notice from the Consultant that such payment is overdue.

## **27. Termination by the Procuring Entity**

27.1 The Procuring Entity shall terminate this Contract when any of the following conditions attends its implementation:

- (a) Outside of force majeure, the Consultant fails to deliver or perform the Outputs and Deliverables within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the Consultant prior to the delay;

(b) As a result of force majeure, the Consultant is unable to deliver or perform a material portion of the Outputs and Deliverables for a period of not less than sixty (60) calendar days after the Consultant's receipt of the notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased;

(c) In whole or in part, at any time for its convenience, the HoPE may terminate the Contract for its convenience if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and National Government policies;

(d) If the Consultant is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction; in which event, termination will be without compensation to the Consultant, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Consultant;

(e) In case it is determined prima facie that the Consultant has engaged, before or during the implementation of this Contract, in unlawful deeds and behaviors relative to contract acquisition and implementation, such as, but not limited to, the following: corrupt, fraudulent, collusive, coercive, and obstructive practices; drawing up or using forged documents; using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and any other act analogous to the foregoing. For purposes of this clause, corrupt, fraudulent, collusive, coercive, and obstructive practices shall have the same meaning as that provided in **ITB** Clause 3.1(a):

(f) The Consultant fails to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to GCC Clause 15.2 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Procuring Entity may have subsequently approved in writing;

(g) The Consultant's failure to comply with any final decision reached as a result of arbitration proceedings pursuant to GCC Clause 34 hereof; or

(h) The Consultant fails to perform any other obligation under the Contract.

27.2 In case of termination, written notice shall be understood to mean fifteen (15) days for short term contracts, *i.e.*, four (4) months or less, and thirty (30) days for long term contracts.

## **28. Termination by the Consultant**

The Consultant must serve a written notice to the Procuring Entity of its intention to terminate this Contract at least thirty (30) calendar days before its intended termination. This Contract is deemed terminated if no action has been taken by the Procuring Entity with regard to such written notice within thirty (30) calendar days after the receipt thereof by the Procuring Entity. The Consultant may terminate this Contract through any of the following events:

(a) The Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within sixty (60) calendar days following its receipt of the Consultant's notice specifying such breach;

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(b) The Procuring Entity's failure to comply with any final decision reached as a result of arbitration pursuant to GCC Clause 34 hereof

(c) As the direct and proximate result of force majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

(d) The Procuring Entity fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to GCC Clause 32 hereof within eighty four (84) days after receiving written notice from the Consultant that such payment is overdue.

## 29. Procedures for Termination of Contracts

The following provisions shall govern the procedures for the termination of this Contract:

(a) Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Procuring Entity shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;

(b) Upon recommendation by the Procuring Entity, the HoPE shall terminate this Contract only by a written notice to the Consultant conveying such termination. The notice shall state:

(i) that the contract is being terminated for any of the ground(s) afore-mentioned, and a statement of the acts that constitute the ground(s) constituting the same;

(ii) the extent of termination, whether in whole or in part;

(iii) an instruction to the Consultant to show cause as to why the contract should not be terminated; and

(iv) special instructions of the Procuring Entity, if any.

The Notice to Terminate shall be accompanied by a copy of the Verified Report;

(c) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Consultant shall submit to the HoPE a verified position paper stating why this Contract should not be terminated. If the Consultant fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the HoPE shall issue an order terminating this Contract;

(d) The Procuring Entity may, at anytime before receipt of the Consultant's verified position paper to withdraw the Notice to Terminate if it is determined that certain services subject of the notice had been completed or performed before the Consultant's receipt of the notice;

(e) Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the HoPE shall decide whether or not to terminate this Contract. It shall serve a written notice to the Consultant of its decision and, unless otherwise provided, this Contract is deemed terminated from receipt of the Consultant of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and



(f) The HoPE may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the HoPE.

### **30. Cessation of Services**

Upon termination of this Contract by notice of either Party to the other pursuant to GCC Clauses 27 or 28 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Procuring Entity, the Consultant shall proceed as provided, respectively, by GCC Clauses 35 or 36 hereof.

### **31. Payment Upon Termination**

Upon termination of this Contract pursuant to GCC Clauses 27 or 28 hereof, the Procuring Entity shall make the following payments to the Consultant:

- (a) remuneration pursuant to GCC Clause 53 hereof for Services satisfactorily performed prior to the effective date of termination;
- (b) reimbursable expenditures pursuant to GCC Clause 53 hereof for expenditures actually incurred prior to the effective date of termination; and
- (c) in the case of termination pursuant to GCC Clause 27(b) hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of this Contract including the cost of the return travel of the Personnel and their eligible dependents.

### **32. Disputes about Events of Termination**

If either Party disputes whether an event specified in GCC Clause 27.1 or in GCC Clause 28 hereof has occurred, such Party may refer the matter to arbitration pursuant to GCC Clause 34 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

### **33. Cessation of Rights and Obligations**

Upon termination of this Contract pursuant to GCC Clauses 27 or 28 hereof, or upon expiration of this Contract pursuant to GCC Clause 24, all rights and obligations of the Parties hereunder shall cease, except:

- (a) such rights and obligations as may have accrued on the date of termination or expiration;
- (b) the obligation of confidentiality set forth in GCC Clause 17 hereof; and
- (c) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in GCC Clauses 51(b) and 51(c) hereof, any right which a Party may have under the Applicable Law.



## **34. Dispute Settlement**

34.1 If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with the implementation of this Contract, the Parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

34.2 Any and all disputes arising from the implementation of this Contract shall be submitted to arbitration in accordance with the rules of procedure specified in the SCC.

## **35. Documents Prepared by the Consultant and Software Developed to be the Property of the Procuring Entity**

35.1 All plans, drawings, specifications, designs, reports, other documents and software prepared by the Consultant for the Procuring Entity under this Contract shall become and remain the property of the Procuring Entity, and the Consultant shall, prior to termination or expiration of this Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software. The plans, drawings, specifications, designs, reports, other documents and software, including restrictions on future use of such documents and software, if any, shall be specified in the SCC.

35.2 All computer programs developed by the Consultant under this Contract shall be the sole and exclusive property of the Procuring Entity; provided, however, that the Consultant may use such programs for its own use with prior written approval of the Procuring Entity. If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of any such computer programs, the Consultant shall obtain the Procuring Entity's prior written approval to such agreements. In such cases, the Procuring Entity shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned.

## **36. Equipment and Materials Furnished by the Procuring Entity**

Equipment and materials made available to the Consultant by the Procuring Entity, or purchased by the Consultant with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Procuring Entity an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the Procuring Entity's instructions. While in possession of such equipment and materials, the Consultant, unless otherwise instructed by the Procuring Entity in writing, shall insure it at the expense of the Procuring Entity in an amount equal to their full replacement value.

## **37. Services, Facilities and Property of the Procuring Entity**

The Procuring Entity shall make available to the Consultant and the Personnel, for the purposes of the Services and free of any charge, the services, facilities and property described in Appendix V at the terms and in the manner specified in said appendix, provided that if such services, facilities and property shall not be made available to the Consultant as and when so specified, the Parties shall agree on:

(a) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services;

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(b) the manner in which the Consultant shall procure any such services, facilities and property from other sources; and

(c) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to GCC Clause 52 hereinafter which should be within the agreed contract ceiling.

### **38. Consultant's Actions Requiring Procuring Entity's Prior Approval**

The Consultant shall obtain the Procuring Entity's prior approval in writing before taking any of the following actions:

(a) appointing such members of the Personnel as are listed in Appendix III merely by title but not by name;

(b) entering into a subcontract for the performance of any part of the Services, it being understood that:

(i) the selection of the Subconsultant and the terms and conditions of the subcontract shall have been approved in writing by the Procuring Entity prior to the execution of the subcontract; and

(ii) the Consultant shall remain fully liable for the performance of the Services by the Subconsultant and its Personnel pursuant to this Contract;

(c) replacement, during the performance of the contract for any reason, of any Personnel as listed in Appendix III of this Contract requiring the Procuring Entity's prior approval; and

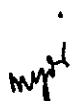
(d) any other action that may be specified in the SCC.

### **39. Personnel**

39.1 The Consultant shall employ and provide such qualified and experienced Personnel and Subconsultants as are required to carry out the Services.

39.2 The title, agreed job description, minimum qualification and estimated period of engagement in the carrying out of the Services of each of the Consultant's Key Personnel are described in Appendix III.

39.3 The Key Personnel and Subconsultants listed by title as well as by name in Appendix III are hereby approved by the Procuring Entity. In respect of other Key Personnel which the Consultant proposes to use in the carrying out of the Services, the Consultant shall submit to the Procuring Entity for review and approval a copy of their biographical data and, in the case of Key Personnel to be assigned within the GoP, a copy of a satisfactory medical certificate attached as part of Appendix III. If the Procuring Entity does not object in writing; or if it objects in writing but fails to state the reasons for such objection, within twenty-one (21) calendar days from the date of receipt of such biographical data and, if applicable, such certificate, the Key Personnel concerned shall be deemed to have been approved by the Procuring Entity.



39.4 The Procuring Entity may request the Consultants to perform additional services not covered by the original scope of work but are determined by the Procuring Entity to be critical for the satisfactory completion of the Services, subject to GCC Clause 55.6.

39.5 No changes shall be made in the Key Personnel, except for justifiable reasons as may be determined by the Procuring Entity, as indicated in the SCC, and only upon prior approval of the Procuring Entity. If it becomes justifiable and necessary to replace any of the Personnel, the Consultant shall forthwith provide as a replacement a person of equivalent or better qualifications. If the Consultant introduces changes in Key Personnel for reasons other than those mentioned in the SCC, the Consultant shall be liable for the imposition of damages as described in the SCC.

39.6 Any of the Personnel provided as a replacement under GCC Clauses 39.5 and 39.7, the rate of remuneration applicable to such person as well as any reimbursable expenditures the Consultant may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Procuring Entity. Except as the Procuring Entity may otherwise agree, the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced.

39.7 If the Procuring Entity finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action as defined in the Applicable Law, or has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Procuring Entity's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Procuring Entity.

#### **40. Working Hours, Overtime, Leave, etc.**

40.1 Working hours and holidays for Key Personnel are set forth in Appendix III. Any travel time prior to and after contract implementation shall not be considered as part of the working hours.

40.2 The Key Personnel shall not be entitled to claim payment for overtime work, sick leave, or vacation leave from the Procuring Entity since these items are already covered by the Consultant's remuneration. All leaves to be allowed to the Personnel are included in the staff-months of service set forth in Appendix III. Taking of leave by any Personnel should not delay the progress and adequate supervision of the Services.

40.3 If required to comply with the provisions of GCC Clause 43.1 hereof, adjustments with respect to the estimated periods of engagement of Key Personnel set forth in Appendix III may be made by the Consultant by prior written notice to the Procuring Entity, provided that:

(a) such adjustments shall not alter the originally estimated period of engagement of any individual by more than ten percent (10%); and

(b) the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in GCC Clause 52.1 of this Contract. Any other such adjustments shall only be made with the Procuring Entity's prior written approval.

## 41. Counterpart Personnel

41.1 If so provided in Appendix III hereto, the Procuring Entity shall make available to the Consultant, as and when provided in such Appendix III, and free of charge, such Counterpart Personnel to be selected by the Procuring Entity, with the Consultant's advice, as shall be specified in such Appendix III. Counterpart Personnel shall work with the Consultant. If any member of the Counterpart Personnel fails to perform adequately any work assigned to such member by the Consultant which is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Procuring Entity shall not unreasonably refuse to act upon such request.

41.2 The responsibilities of the Counterpart Personnel shall be specified in Appendix III, attached hereto, and the Counterpart Personnel shall not perform any work beyond the said responsibilities.

41.3 If Counterpart Personnel are not provided by the Procuring Entity to the Consultant as and when specified in Appendix III, and or if the Counterpart Personnel lack the necessary training, experience or authority to effectively undertake their responsibilities, the Procuring Entity and the Consultant shall agree on how the affected part of the Services shall be carried out, and the additional payments, if any, to be made by the Procuring Entity to the Consultant as a result thereof pursuant to **GCC** Clause 52 hereof.

## 42. Performance Security

42.1 Unless otherwise specified in the SCC, within ten (10) calendar days from receipt of the Notice of Award from the Procuring Entity but in no case later than the signing of the contract by both parties, the Consultant shall furnish the performance security in any the forms prescribed in the **ITB** Clause 32.2.

42.2 The performance security posted in favor of the Procuring Entity shall be forfeited in the event it is established that the Consultant is in default in any of its obligations under the contract.

42.3 The performance security shall remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance.

42.4 The performance security may be released by the Procuring Entity and returned to the Consultant after the issuance of the Certificate of Final Acceptance subject to the following conditions:

- (a) There are no pending claims against the Consultant or the surety company filed by the Procuring Entity;
- (b) The Consultant has no pending claims for labor and materials filed against it; and
- (c) Other terms specified in the SCC.

42.5 In case of a reduction of the contract value, the Procuring Entity shall allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.



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### **43. Standard of Performance**

43.1 The Consultant shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods.

43.2 The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with Subconsultants or third parties.

43.3 The Consultant shall furnish to the Procuring Entity such information related to the Services as the Procuring Entity may from time to time reasonably request.

43.4 The Consultant shall at all times cooperate and coordinate with the Procuring Entity with respect to the carrying out of its obligations under this Contract.

### **44. Consultant Not to Benefit from Commissions, Discounts, etc.**

The remuneration of the Consultant pursuant to GCC Clause 53 hereof shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and, subject to GCC Clause 45 hereof, the Consultant shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations hereunder, and the Consultant shall use its best efforts to ensure that any Subconsultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

### **45. Procurement by the Consultant**

If the Consultant, as part of the Services, has the responsibility of advising or procuring goods, works or services, for the Procuring Entity, the Consultant shall comply with any applicable procurement guidelines of the Funding Source, and shall at all times exercise such responsibility in the best interest of the Procuring Entity. Any discounts or advantages obtained by the Consultant in the exercise of such procurement responsibility shall be for the benefit of the Procuring Entity.

### **46. Specifications and Designs**

46.1 The Consultant shall prepare all specifications and designs using the metric system and shall embody the best design criteria applicable to Philippine conditions. The Consultant shall specify standards which are accepted and well-known among industrial nations.

46.2 The Consultant shall ensure that the specifications and designs and all documentation relating to procurement of goods and services for this Contract are prepared on an impartial basis so as to promote national and international competitive bidding.

### **47. Reports**

The Consultant shall submit to the Procuring Entity the reports, deliverables and documents in English, in the form, in the numbers, and within the time periods set forth in Appendix II.

#### **48. Assistance by the Procuring Entity on Government Requirements**

48.1 The Procuring Entity may assist the Consultant, Subconsultants, and Personnel in the payment of such taxes, duties, fees and other impositions as may be levied under the Applicable Law by providing information on the preparation of necessary documents for payment thereof.

48.2 The Procuring Entity shall use its best efforts to ensure that the Government shall:

- (a) provide the Consultant, Subconsultants, and Personnel with work permits and such other documents as shall be necessary to enable the Consultant, Subconsultants, or Personnel to perform the Services;
- (b) arrange for the foreign Personnel and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, and any other documents required for their stay in the Philippines for the duration of the Contract;
- (c) facilitate prompt clearance through customs of any property required for the Services and of the necessary personal effects of the foreign Personnel and their eligible dependents;
- (d) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services; and
- (e) grant to foreign Consultant, any foreign Subconsultant and the Personnel of either of them the privilege, pursuant to the Applicable Law, of bringing into the Government's country reasonable amounts of foreign currency for purposes of the Services or for the personal use of the foreign Personnel and their dependents.

#### **49. Access to Land**

The Procuring Entity warrants that the Consultant shall have, free of charge, unimpeded access to all lands in the Philippines in respect of which access is required for the performance of the Services. The Procuring Entity shall be responsible for any damage to such land or any property thereon resulting from such access and shall indemnify the Consultant and each of the Personnel in respect of liability for any such damage, unless such damage is caused by the default or negligence of the Consultant or any Subconsultant or the Personnel of either of them.

#### **50. Subcontract**

50.1 Subcontracting of any portion of the Consulting Services, if allowed in the **BDS**, does not relieve the Consultant of any liability or obligation under this Contract. The Consultant will be responsible for the acts, defaults, and negligence of any subconsultant, its agents, servants or workmen as fully as if these were the Consultant's own acts, defaults, or negligence, or those of its agents, servants or workmen.

50.2 Subconsultants disclosed and identified during the bidding may be changed during the implementation of this Contract, subject to compliance with the required qualifications and the approval of the Procuring Entity.



## **51. Accounting, Inspection and Auditing**

51.1 The Consultant shall:

- (a) keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as shall clearly identify all relevant time changes and costs, and the bases thereof;
- (b) permit the Procuring Entity or its designated representative and or the designated representative of the Funding Source at least once for short-term Contracts, and annually in the case of long-term Contracts, and up to one year from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Procuring Entity; and
- (c) permit the Funding Source to inspect the Consultant's accounts and records relating to the performance of the Consultant and to have them audited by auditors approved by the Funding Source, if so required.

51.2 The basic purpose of this audit is to verify payments under this Contract and, in this process, to also verify representations made by the Consultant in relation to this Contract. The Consultant shall cooperate with and assist the Procuring Entity and its authorized representatives in making such audit. In the event the audit discloses that the Consultant has overcharged the Procuring Entity, the Consultant shall immediately reimburse the Procuring Entity an amount equivalent to the amount overpaid. If overpayment is a result of the Consultant having been engaged in what the Procuring Entity (or, as the case may be, the Funding Source) determines to constitute corrupt, fraudulent, or coercive practices, as defined in GCC Clause 27(e) and under the Applicable Law, the Procuring Entity shall, unless the Procuring Entity decides otherwise, terminate this Contract.

51.3 The determination that the Consultant has engaged in corrupt, fraudulent, coercive practices shall result in the Procuring Entity and/or the Funding Source seeking the imposition of the maximum administrative, civil and criminal penalties up to and including imprisonment.

## **52. Contract Cost**

52.1 Except as may be otherwise agreed under GCC Clause 10, payments under this Contract shall not exceed the ceiling specified in the SCC. The Consultant shall notify the Procuring Entity as soon as cumulative charges incurred for the Services have reached eighty percent (80%) of this ceiling.

52.2 Unless otherwise specified in the SCC, the cost of the Services shall be payable in Philippine Pesos and shall be set forth in the Appendix IV attached to this Contract.

## **53. Remuneration and Reimbursable Expenditures**

53.1 Payments of Services do not relieve the Consultant of any obligation hereunder.

53.2 Remuneration for the Personnel shall be determined on the basis of time actually spent by such Personnel in the performance of the Services including other additional factors indicated in the SCC after the date determined in accordance with GCC Clause 22, or such other date as the Parties shall agree in writing, including time for necessary travel via the most



direct route, at the rates referred to, and subject to such additional provisions as are set forth, in the SCC.

53.3 Remuneration for periods of less than one month shall be calculated on an hourly basis for time spent in home office (the total of 176 hours per month shall apply) and on a calendar-day basis for time spent away from home office (1 day being equivalent to 1/30th of a month).

53.4 Reimbursable expenditures actually and reasonably incurred by the Consultants in the performance of the Services are provided in the SCC.

53.5 Billings and payments in respect of the Services shall be made as follows:

(a) The Procuring Entity shall cause to be paid to the Consultant an advance payment as specified in the SCC, and as otherwise set forth below. The advance payment shall be due after the Consultant provides an irrevocable standby letter of credit in favor of the Procuring Entity issued by an entity acceptable to the Procuring Entity in accordance with the requirements provided in the SCC.

(b) As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, the Consultant shall submit to the Procuring Entity, in duplicate, itemized statements, accompanied by copies of receipted invoices, vouchers and other appropriate supporting materials, of the amounts payable pursuant to **GCC** Clauses 52.1 and 53 for such month. Separate monthly statements shall be submitted in respect of amounts payable in foreign currency and in local currency. Each separate monthly statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenditures.

(c) The Procuring Entity shall cause the payment of the Consultant's monthly statements within sixty (60) days after the receipt by the Procuring Entity of such statements with supporting documents. Only such portion of a monthly statement that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Procuring Entity may add or subtract the difference from any subsequent payments. Interest shall be paid for delayed payments following the rate provided in the SCC.

## 54. Final Payment

54.1 The final payment shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Procuring Entity. The Services shall be deemed completed and finally accepted by the Procuring Entity and the final report and final statement shall be deemed approved by the Procuring Entity as satisfactory ninety (90) calendar days after receipt of the final report and final statement by the Procuring Entity unless the Procuring Entity, within such ninety (90)-day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final statement. The Consultant shall thereupon promptly make any necessary corrections within a maximum period of ninety (90) calendar days, and upon completion of such corrections, the foregoing process shall be repeated.

54.2 Any amount which the Procuring Entity has paid or caused to be paid in accordance with this clause in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the Consultant to the Procuring Entity within thirty (30)

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days after receipt by the Consultant of notice thereof. Any such claim by the Procuring Entity for reimbursement must be made within twelve (12) calendar months after receipt by the Procuring Entity of a final report and a final statement approved by the Procuring Entity in accordance with the above.

## **55. Lump Sum Contracts**

55.1 For Lump Sum Contracts when applicable, notwithstanding the terms of **GCC** Clauses 10, 18.1, 31(c), 41.3, 53.2, 53.3, 53.4, 53.5, and 54.1, the provisions contained hereunder shall apply.

55.2 Personnel - Any replacement approved by the Procuring Entity in accordance with **ITB** Clause 27.3 shall be provided by the Consultant at no additional cost.

55.3 Staffing Schedule - Should the rate of progress of the Services, or any part hereof, be at any time in the opinion of the Procuring Entity too slow to ensure that the Services are completed in accordance with the Staffing Schedule, the Procuring Entity shall so notify the Consultant in writing and the Consultant shall at its sole cost and expense, thereupon take such steps as necessary, subject to the Procuring Entity's approval, or as reasonably required by the Procuring Entity, to expedite progress so as to ensure that the Services are completed in accordance with the Staffing Schedule.

55.4 Final payment pursuant to the Payment Schedule in Appendices IV and V shall be made by the Procuring Entity after the final report has been submitted by the Consultant and approved by the Procuring Entity.

55.5 Termination - Upon the receipt or giving of any notice referred to in **GCC** Clause 29 and if the Consultant is not in default under this Contract and has partly or substantially performed its obligation under this Contract up to the date of termination and has taken immediate steps to bring the Services to a close in prompt and orderly manner, there shall be an equitable reduction in the maximum amount payable under this Contract to reflect the reduction in the Services, provided that in no event shall the Consultant receive less than his actual costs up to the effective date of the termination, plus a reasonable allowance for overhead and profit.

55.6 Unless otherwise provided in the **SCC**, no additional payment for variation order, if any, shall be allowed for this Contract.

## **56. Liquidated Damages for Delay**

If the Consultant fails to deliver any or all of the Services within the period(s) specified in this Contract, the Procuring Entity shall, without prejudice to its other remedies under this Contract and under the Applicable Law, deduct from the contract price, as liquidated damages, a sum equivalent to one-tenth of one percent of the price of the unperformed portion of the Services for each day of delay based on the approved contract schedule. Once the amount of liquidated damages reaches ten percent (10%) of the total amount of contract, the Procuring Entity may

consider termination of this Contract pursuant to GCC Clause 27. (as per GPPB Resolution 07-2019)



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# *Special Conditions of Contract*

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# Special Conditions of Contract

GCC Clause	
1.1(g)	<p>The Funding Source is:</p> <p>The 2022 BCDA Corporate Operating Budget.</p>
6.2(b)	<p>For a period of two (2) years after the expiration of this Contract, the Consultant shall not engage, and shall cause its Personnel as well as their Subconsultants and its Personnel not to engage, in the activity of a purchaser (directly or indirectly) of the assets on which they advised the Procuring Entity under this Contract nor in the activity of an adviser (directly or indirectly) of potential purchasers of such assets. The Consultant also agree that their affiliates shall be disqualified for the same period of time from engaging in the said activities.</p>
7	<p>The Member in Charge of the Consultant is</p> <p><b>JUDD B. BALAYAN</b>            Authorized Representative            Group COO and CFO- Touch XDA, Inc.</p>
8	Not applicable.
10	No further instructions.
12	<p>The Authorized Representatives are as follows:</p> <p>For the Procuring Entity:</p> <p style="text-align: center;"><b>GISELA Z. KALALO</b>            Officer-In-Charge            Office of the Executive Vice President</p> <p>For the Consultant:</p> <p style="text-align: center;"><b>JUDD B. BALAYAN</b>            Authorized Representative            Group COO and CFO- Touch XDA, Inc.</p>
15.1	<p>The addresses are:</p> <p>Procuring Entity: Bases Conversion and Development Authority</p> <p>Attention:</p> <p style="text-align: center;"><b>GISELA Z. KALALO</b>            Officer-In-Charge            Office of the Executive Vice President</p> <p>Bases Conversion and Development Authority            2/F Bonifacio Technology Center            31st Street corner 2nd Avenue,            Bonifacio Global City, Taguig City</p>

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	<p>Consultants: <b>JUDD B. BALAYAN</b></p> <p>Attention: <b>JUDD B. BALAYAN</b></p> <p>Address: <u>16F Two World Square 22 Upper Mckinley Road. Mckinley Hill. Fort Bonifacio. Taguig City 1634.</u></p> <p>Facsimile: <u>02 -8856 -7888</u></p> <p>Email Address: <u>jbbalavan@ddbgroup.com.ph</u></p>
15.2	<p>Notice shall be deemed to be effective as follows:</p> <p>(a) in the case of personal delivery or registered mail, on delivery;</p> <p>(b) in the case of electronic mail, on delivery.</p>
18.3	<i>State here Consultant's account where payment may be made.</i>
19	No further instructions.
20	No additional provision. If the Consultant is a joint venture, all partners to the joint venture shall be jointly and severally liable to the Procuring Entity.
22	None.
24	The contract shall terminate upon the issuance of the Certificate of Completion to the Consultant.
34.2	Any and all disputes arising from the implementation of this contract shall be submitted to the arbitration in the Philippines according to the provisions of Republic Acts 876 and 9285, as required in Section 59 of the IRR of RA 9184.
35.1	The media planning and placement campaign, monthly reports, and all other documents required in the Terms of Reference as prepared by the Consultant for the Procuring Entity under this Contract that shall become and remain the property of the Procuring Entity.
38.1(d)	No further instructions.
39.5	<p>The Consultant may change its Key Personnel only for justifiable reasons as may be determined by the Procuring Entity, such as death, serious illness, incapacity of an individual Consultant, resignation, among others, or until after fifty percent (50%) of the Personnel's man-months have been served.</p> <p>Violators will be fined an amount equal to the refund of the replaced Personnel's basic rate, which should be at least fifty percent (50%) of the total basic rate for the duration of the engagement.</p>
42.1	No further instructions.
42.4(c)	No further instructions.
52.1	The total ceiling amount in Philippine Pesos is Php _____ inclusive of all applicable taxes, fees, and incidental expenses.

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52.2	No further instructions.
53.2	No additional instructions.
53.4	Reimbursement is not applicable.
53.5(a)	Not applicable.
53.5(c)	The interest rate is zero.
55.6	No further instructions.

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## TERMS OF REFERENCE

### PROCUREMENT OF CONSULTING SERVICES FOR THE MEDIA PLANNING AND GLOBAL PLACEMENT OF CLARK PROMOTIONAL CAMPAIGN

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#### 1. RATIONALE

The Bases Conversion and Development Authority (BCDA) through the Investment Promotion and Marketing Department (IPMD) has been driving an extensive marketing and investment promotion campaign to establish Clark as a premiere investment, sports, leisure, and tourist destination.

Among the highlights of the campaign will be the international release of the newest promotional video of Clark which aims to promote the newly opened Clark International Airport (CRK) to global audiences in Asia Pacific, the United States and other regions using television and digital media.

The promotion across international audiences also complements BCDA's past, ongoing, and future participation in several webinar forums and speaking engagements hosted by local and foreign organizations including diplomatic and business groups.

The new Clark video aims to communicate the following:

- a. To introduce Clark and highlight its readiness amidst the threat of the pandemic to investors, locators, government, business community, media and the general public;
- b. To build a strong awareness, appreciation, desire, and partnership among various stakeholders: investors, government, media, civil society and the general public; and
- c. To ensure that Clark remains highly visible and distinctive

To effectively carry out these objectives in a scale that would generate greater awareness, understanding, interest, and promotion of Clark in the global stage, the IPMD seeks to engage the services of a media planning and placement agency to develop and execute the strategic placements of Clark's video campaign using television and digital platforms that have the global reach, trusted appeal, and credibility.

#### 2. SIGNIFICANCE OF THE PROJECT

This promotional campaign complements BCDA's past, ongoing and future participation and engagements in several webinar forums, conferences, business meetings, speaking engagements and site visits such as those by TECO (Taipei Economic and Cultural Office), WTTC (World Travel & Tourism Council), CNAS (US Think Tank), and other international groups. Hence, BCDA believes that this campaign will:

- a. Reinforce BCDA's commitment as a key driver of economic growth in especially for NCC's future developments and support government and private initiated roadshows and trade missions
- b. Communicate a strong message of ensuring business continuity in NCC in support of the new administration



- c. Build hype and sustain interest through aggressive marketing on a global scale, with the end-goal of inspiring and bringing confidence back to businesses and communities we serve
- d. Establish BCDA as a strong government partner in the Philippines and an enabler of projects that are resilient, future proof, sustainable, and of world-class standards.

### 3. SCOPE OF WORK AND DELIVERABLES

The consultant must undertake the following:

Scope of Work	Deliverables
Submission of Digital Media and Television Advertisement Campaign	<p>Identify and recommend the most appropriate digital and television campaign and other options including appropriate execution thereof. for Clark.</p> <p>Proposed media campaigns should include the following but not limited to: top or primetime news, business, and tourism television programs including top online business, travel, and tourism websites and social media channels including publications and investments driven events in the United States, Asia Pacific, Europe, the Middle East and other international markets.</p>
Media Research	<p>Conduct media research on relevant demographics and effective media selections.</p> <p>Identify and recommend an effective multi-media strategy for a global audience that is aligned with the objectives of the Clark campaign.</p> <p>Identify appropriate media for the target market for Clark in the United States and Asia Pacific.</p>
Coordination with BCDA-IPMD and Media Outlets such as TV networks, radio stations, social media partners, websites, content partnership, booking sites, and other relevant suppliers.	<p>Coordinate and liaise with media suppliers for rates, spots, bonuses, and other marketing opportunities in sports, business, and tourism for consideration and approval of BCDA-IPMD.</p> <p>Coordinate regularly with IPMD for the following, but not limited to:</p> <ul style="list-style-type: none"> <li>a. Coordination with media partners</li> <li>b. Evaluation of media packages, invitations, and proposals</li> <li>c. Implementation of the approved integrated media campaign plan or strategy; and</li> <li>d. Assist the IPMD in the evaluation of media proposals submitted directly to the Department.</li> </ul>



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<p>Monitoring of the Media Campaign</p>	<p>Submit corresponding monitoring and evaluation systems in the form of established and appropriate metrics and timelines to measure the implementation of the media campaign.</p> <p>Provide monthly assessment and implementation reports to reflect the success rate of the implemented strategies on the immediate reach, effectiveness of placement, and return on investment, and other established metrics.</p> <p>Render regular reviews on the overall media plan to ensure that the approved campaign adapts to current trends.</p>
<p>Evaluation of the Media Campaign Plan and Strategies</p>	<p>Towards the completion of the engagement, assess the outcome of the media campaign and plans to aid the IPMD in the crafting the succeeding campaign incorporating the insights and recommendations from the evaluation of placements made during the period of engagement.</p> <p>Provide to the IPMD a post project report and workshop assessing the outcome of the engagement and developing the working guidelines for subsequent media-planning/ media placement engagements.</p>
<p>Conduct of Training or Workshop</p>	<p>The Consultant must conduct at least one (1) training or workshop for BCDA-IPMD on Multi-media Marketing Trends.</p>
<p>Submission of Monthly Monitoring Report</p>	<p>Submit a detailed and written monthly assessment report which includes the following: recorded television commercial spots, engagements on digital content and display advertisements including its geographical locations or origins.</p>

#### 4. OBLIGATIONS OF BCDA

BCDA will provide the Consultant all the pertinent documents and technical information necessary in the execution and performance of the services. In addition, BCDA shall also assist the Consultant in the processing of permits for location filming as needed.

#### 5. TERM AND EFFECTIVITY

The Contract shall take effect upon the actual receipt thereof by the Consultant of the Notice to Proceed (NTP) and shall remain in force and in effect for a period of **four (4) months** or until issuance of the certificate of completion to the Consultant.

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## 6. APPROVED BUDGET FOR THE CONTRACT AND SCHEDULE OF PAYMENT

- a. The **Approved Budget of Contract (ABC)** for the project is **Pesos: Ten Million and 00/100 (Php10,000,000.00)**, inclusive of all applicable taxes, fees, and incidental expenses.
- b. The proposed payment scheme for the campaign will be billed progressively upon completion of the following milestones:

MILESTONES	% of Payment
Submission and approval of the proposed media campaign and placement strategy	15%
Submission and approval of accomplishment and monitoring report with proof of placements on the 1 <sup>st</sup> and 2 <sup>nd</sup> months of project implementation	25%
Submission and approval of accomplishment and monitoring report with proof of placements on the 3 <sup>rd</sup> and 4 <sup>th</sup> months of project implementation	25%
Completion of conduct of training/workshop, and submission and approval of Post-Training Report	15%
Submission and approval of the entire campaign and implementation of post-project assessment and workshop for the whole campaign and issuance of Certificate of Completion by BCDA	20%
<b>TOTAL</b>	<b>100%</b>

## 7. QUALIFICATIONS OF THE CONSULTANT

- a. The Consultant must be registered online with the Philippine Government Electronic Procurement System (<http://www.philgeps.net>) as a legitimate service provider for government requirements.
- b. The Consultant must be an experienced advertising agency or a creative/media/PR agency for at least five (5) years that has a dedicated team for media campaign planning and placement with the required manpower/personnel and staff.
- c. The Consultant must have been in the business for at least five (5) years.
- d. The Consultant must have handled any media campaign planning and placement accounts involving digital/online media or television or

combination of the two for at least one (1) multinational brand<sup>1</sup> during its existence.

- e. The Consultant must have handled at least three (3) projects similar to the project being bid out. For purposes of this Consulting Services, similar projects shall refer to media campaign planning and placement accounts<sup>2</sup> involving local and international TV and/or digital/online platforms.
- f. The Consultant must have handled at least (1) project amounting to 50% of the ABC or equivalent to Php 5,000,000.00.
- g. The media campaign placement team members must have the following qualifications in media campaign planning and placement or any work experience related to his/her function/s in the team:

Member	Years of Experience	Number of Similar Projects Handled	Educational Attainment	Number of Hours of Relevant Trainings	Job Description
Media Director	10	10	College Graduate	At least 40 hours of relevant training	<ul style="list-style-type: none"> <li>• ensures quality output and timely execution of the media campaign plan;</li> <li>• serves as the overall lead of the project and responsible in ensuring that requirements are met with accuracy;</li> <li>• has impeccable skills in negotiating/liaising with media suppliers and has extensive media contacts; and</li> <li>• oncall by BCDA.</li> </ul>

<sup>1</sup> Multinational brands are companies or corporations that operate in more than one country and are usually a worldwide or global enterprise with hugely popular products

<sup>2</sup> Media campaign planning and placement accounts refer to the comprehensive and integrated media strategies with a detailed list of any or all or a combination of the following: advertising spots, digital contents, display advertisements, target audience, social media platforms' reach, quality and types of content from media partners.



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Media Manager	10	10	College Graduate	at least 16 hours of relevant training	<ul style="list-style-type: none"> <li>responsible for the quality and timely approval and submission of materials including reports and reviews to BCDA, media and digital partners;</li> </ul>
Media Planner	5	5	College Graduate	at least 8 hours of relevant training	<ul style="list-style-type: none"> <li>develops an effective television media placement strategy and digital plans; and</li> <li>ensures media placements are available and booked according to the approved campaign plan.</li> </ul>
Digital Specialist	5	5	College Graduate	at least 8 hours of relevant training	<ul style="list-style-type: none"> <li>monitors the progress of digital placements and develop strategies to increase engagements and meet the campaign objectives</li> </ul>
Research Analyst	5	5	College Graduate	at least 8 hours of relevant training	<ul style="list-style-type: none"> <li>provides thorough research, data analysis, and market reviews</li> </ul>

These positions shall be filled-in by the Consultant, subject to approval of BCDA.

Aside from the identified members of the Media Campaign Placement Team, the Consultant shall provide other support staff, creatives, and editorial crew necessary for the completion of all requirements for this project at no additional cost to BCDA. Only the identified team members above will be subject to evaluation.

In the event that any members of the Consultant's Media Campaign Placement Team are unable to discharge their duties and assigned functions, a written notice must be submitted to BCDA with the substitute member/s to be evaluated and approved by BCDA.

## 8. METHODOLOGY

The Bids and Awards Committee for Consulting Services (BAC-C) shall conduct a detailed evaluation of bids using the **Quality-Based (QBE) Evaluation**. The basis for the selection of the Consultant shall be Section 33.2.1.1 and 33.2.2 of the Revised Implementing Rules and Regulations of the Government Procurement Reform Act (RA No. 9184).

## 9. EVALUATION CRITERIA FOR SHORTLISTING OF BIDDERS

The Bids and Awards Committee for Consulting Services (BAC-C) shall draw up a short list of five (5) bidders from those who have submitted its response to the Request for Expression of Interest, in accordance with the provisions of the revised Implementing Rules and Regulations (IRR) of Republic Act 9184 (R.A. 9184).

The evaluation criteria for shortlisting is as follows:

Evaluation Criteria For Shortlisting	Weight	Minimum Required Score
1. Applicable experience of the Consultant	40%	28%
2. Qualification of personnel who shall be assigned to the project	50%	35%
3. Current Workload of the personnel relative to capacity	10%	7%
<i>Note: Current Workload Relative to Capacity pertains to the ratio between one (1) proposed key personnel to the current number of projects he/she is handling.</i>		
<b>TOTAL</b>	<b>100%</b>	<b>70%</b>

Prospective bidders must meet the required minimum score of **seventy percent (70%)** on each criterion to be shortlisted. The **five (5) shortlisted** proponents will be entitled to submit bids upon payment of a non-refundable fee of **Pesos: Ten Thousand and 00/100 (Php 10,000.00)**, as specified in RA 9184.

## 10. EVALUATION CRITERIA FOR TECHNICAL PROPOSAL

The Consultants will be evaluated accordingly based on the following criteria:

Technical Proposal Criteria	Weight	Required Minimum Technical Score
1. Applicable Experience of the Consultant	20%	14%
2. Qualifications of the proposed team members	20%	14%
3. Methodology and Plan of Approach	60%	42%
<b>TOTAL</b>	<b>100%</b>	<b>70%</b>

The prospective Consultant(s) must meet the required minimum score of **seventy percent (70%)** on each criterion.

The Consultant shall make an oral presentation of the Technical Proposal and shall submit an electronic file of their presentation to the BAC-C. The corporate profile of the Consultant is required as part of the evaluation. The BAC-C shall rank the Consultants in descending order based on the combined numerical ratings of their technical proposals, from which the highest rated bid will be identified.

Only the financial proposal of the Consultant who gets the highest technical rating shall be opened in their presence. Total calculated bid prices which exceed the approved budget for the contract shall not be considered. The name of the Consultant, the quality scores and the proposed prices shall be read and recorded when the financial proposals are opened. Negotiations shall be undertaken with the Consultant who is first in rank.

The financial proposal shall not exceed the Approved Budget for the Contract (ABC) which is **Pesos: Ten Million and 00/100 (Php10,000,000.00)** and shall be deemed to include the cost of all taxes, fees, and incidental expenses.

## 11. COMPONENTS OF THE TECHNICAL PROPOSAL

As part of the Technical Proposal, the Consultant shall submit to BCDA the following:

- Company Profile (including list of previous clients, projects handled, among others)
- Portfolio, sample of works and awards received related to media and marketing campaign
- Electronic file of Technical Proposal in a USB flash drive
- Detailed media campaign plan with placements in local and international TV and/or digital/online platforms

## 12. PERFORMANCE SECURITY

To guarantee the faithful performance by the Consultant of its obligations under the contract prepared in accordance with the bidding documents, it shall post a Performance Security prior to the signing of the contract. The Performance Security shall be denominated in Philippine

Pesos and posted in favor of the Procuring Entity in an amount not less than the percentage of the total contract price in accordance with the following schedule:

Form of Performance Security	Amount of Performance Security (Not less than the Percentage of the Total Contract Price)
Cash or cashier's/manager's check issued by a Universal or Commercial Bank;  Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank; and/or	Five Percent (5%)
Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty Percent (30%)

The Performance Security shall at least be co-terminus with the final completion of the contract.

### 13. STANDARD OF SERVICES

The Consultant shall fulfill its obligations under the agreement by using its technical expertise and according to the best-accepted professional and industry standards. The Consultant shall exercise all reasonable skill, care, diligence, and prudence in the discharge of the duties agreed to be performed and shall always work in the best interest of BCDA. To attain these, the consultant shall provide personnel with sufficient qualifications and experience to ensure the full and satisfactory accomplishment of the required services/undertakings.

The services shall be conducted by the Consultant in accordance with the instructions or directions made or to be made by the BCDA at any time before its completion. The Consultant shall conduct regular consultation with BCDA in relation to the undertaking of its responsibilities under the Contract Agreement.

### 14. CONFIDENTIALITY

The Consultant warrants the full confidentiality of all information gathered for the consultancy contract given by BCDA, unless the latter indicates the contrary. The Consultant shall not disclose any communication disclosed to him for the purpose of this Services. After the completion of the contract, all materials, data, and other related documents provided must be returned to BCDA.

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## **15. LIQUIDATED DAMAGES**

The Consultant obligates itself to perform and complete all the Services within the period specified in the TOR, beginning from the starting date exclusive of such extensions of time as may be mutually agreed upon in writing. Should the Consultant fail to complete the Consulting Services within the stipulated time, liquidated damages, not by way of penalty, shall be paid to BCDA by the Consultant in an amount equal to one-tenth of one percent (1/10 of 1%) of the price of the unperformed portion of the services for each day of delay based on the approved contract schedule. BCDA may consider termination of the contract once the amount of liquidated damages reaches ten percent (10%).

## **16. CONFLICT OF INTEREST**

The Consultant and its key staff, who may be directly associated with entities that may have an interest in or bias against any BCDA project, shall divulge the extent of its conflict with BCDA. The Consultant agrees that the conflict of interest may be a ground for BCDA to terminate the Contract.

## **17. SETTLEMENT OF DISPUTES**

The Parties agree to resolve any dispute that may arise between them with respect to this Consulting Services through good faith and amicable negotiation. If at any time during such negotiation, one Party determines in good faith that the Parties cannot resolve the dispute through negotiations, that Party will deliver a notice to the other Party that the dispute will be settled by arbitration in accordance with Republic Act No. 9285 otherwise known as the "Alternative Dispute Resolution Act of 2004", as amended, failing which, the Parties may resort to the filing of the appropriate case in the proper courts of Taguig City to the exclusion of the other courts. The arbitration shall be conducted in Metro Manila, Philippines.

## **18. ANTI-CORRUPTION POLICY**

The Consultant warrants that no money or material consideration was given or has been promised to be given to any director, officer, or employee of BCDA to obtain the approval of this Consulting Services. The violation of this warranty shall constitute a sufficient ground for the rescission or termination of this Consulting Services without need of judicial action. Such rescission or termination shall be immediately effective upon service of notice to the Consultant.

## **19. OWNERSHIP**

BCDA-IPMD shall be the proprietor of all advertising and creative concepts that are original (raw and edited) materials produced and crafted in accordance with the Clark campaign, with complete and exclusive rights, with respect to their potential use both in the Philippines and internationally. All materials must be submitted in sturdy hard drives by the Agency.

## **20. RESERVATION CLAUSE**

BCDA reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract in the situations provided in Section 41 of the 2016 IRR of RA 9184 and consistent with Section 29.2 of the Instructions to Bidders.

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