

MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

PARTIES

OFFICE OF THE OMBUDSMAN with principal office at Ombudsman Building, Agham Road, North Triangle, Diliman, Quezon City, Philippines represented by the Ombudsman, **Hon. CONCHITA CARPIO MORALES** and hereinafter referred to as the “**OMBUDSMAN**”;

and

GOVERNANCE COMMISSION FOR GOCCs (GCG), with principal office at Third Floor, Citibank Centre, Paseo de Roxas, Makati City, Philippines, represented by its Chairman, **Hon. CESAR L. VILLANUEVA**, and hereinafter referred to as the “**GCG**.”

WITNESSETH: THAT –

WHEREAS, under Article 11, Section 13 of the Philippine Constitution OMBUDSMAN is tasked to:

- Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;
- Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient; and
- Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

WHEREAS, Section 2 of Republic Act (R.A.) No. 10149, otherwise known as the “*GOCC Governance Act of 2011*,” provides that the GCG is mandated to ensure that:

- The governance of GOCCs is carried out in a transparent, responsible and accountable manner and with the utmost degree of professionalism and effectiveness; and
- The governing boards of every GOCC and its subsidiaries are competent to carry out its functions, fully accountable to the State as its fiduciary, and acts in the best interest of the State.

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WHEREAS, Section 15 of R.A. No. 10149 provides that “[a]n Appointive Director...” in the Governing Boards of GOCCs “...shall be appointed by the President of the Philippines from a shortlist prepared by the GCG. x x x”;

WHEREAS, Section 16 of R.A. No. 10149 provides that the GCG shall ensure that all Board Members, CEOs and other officers of GOCC Boards shall be subject to the *Fit and Proper Rule* thus:

SEC. 16. *Fit and Proper*. — All members of the Board, the CEO and other officers of the GOCCs including appointive directors in subsidiaries and affiliate corporations shall be qualified by the Fit and Proper Rule to be determined by the GCG in consultation and coordination with the relevant government agencies to which the GOCC is attached and approved by the President.

To maintain the quality of management of the GOCCs, the GCG, in coordination with the relevant government agencies shall, subject to the approval of the President, prescribe, pass upon and review the qualifications and disqualifications of individuals appointed as officers, directors or elected CEO of the GOCC and shall disqualify those found unfit.

In determining whether an individual is fit and proper to hold the position of an officer, director or CEO of the GOCC, due regard shall be given to one's integrity, experience, education, training and competence.

WHEREAS, there is an administrative necessity for the GCG and the OMBUDSMAN to coordinate all their efforts in evaluating the pending cases filed with the Office of the Ombudsman against nominees for appointment as Directors, Trustees, Administrators, Commissioners and/or Members of the Governing Boards of GOCCs, which fall under the coverage of R.A. No. 10149;

NOW, THEREFORE, the foregoing premises considered and subject to the terms and conditions as herein specified, the Parties hereby mutually agree as follows:

1. **Working Arrangement.** – The Parties shall hereby designate members of both Agencies, who shall be charged with coordinating the collation, reproduction and transmittal of the complete case files of the pending cases of nominees for appointment as Members of Governing Boards of GOCCs under the coverage of R.A. No. 10149. Upon the transmittal of photocopies of case files, the GCG shall thereupon review and evaluate the pending cases, in order to determine whether there are grounds to disqualify the nominee from being appointed to the recommended seat in the Governing Board of the GOCC.

The representatives shall also study and recommend solutions for automating the process through the use of Information and Communications Technology in order to expedite the process while at the same time maintaining the necessary security/confidentiality protocols.

2. **Procedure for Requesting of Case Files.** – The GCG and OMBUDSMAN shall coordinate for the transmittal of the following documents between the Agencies:



- 2.1. The GCG shall, from time to time, transmit lists of names of recommended nominees for appointment to the Governing Boards of GOCCs with an accompanying reason for the request and the purpose for which the information will be used;
 - 2.2. The GCG shall secure an authorization with waiver of confidentiality on the part of the nominee-respondents in favor of the GCG as part of the application form/ nomination form of the nominee and shall transmit the authorizations to the Office of the OMBUDSMAN;
 - 2.3. The OMBUDSMAN shall provide clearances for the submitted lists of names within reasonable period from the receipt thereof, together with a letter indicating the names of nominees with pending cases filed with the Office of the Ombudsman;
 - 2.4. The GCG shall, upon receipt from the OMBUDSMAN of the list of names with pending cases, submit a letter of request, within 3 days, for the reproduction or scanned copies of complete case files of such indicated pending case composed of, but not limited to:
 - 2.4.1. Complaint-Affidavits;
 - 2.4.2. Counter-Affidavits;
 - 2.4.3. Reply-Affidavits and other submitted Affidavits;
 - 2.4.4. Orders, Resolutions and Comments from the Office of the Ombudsman regarding the case; and
 - 2.4.5. Annexed Supporting Documents;
 - 2.5. Reasonable costs of reproduction/certification, as well as the cost for the shipment of copies of records of cases emanating from the OMBUDSMAN's area offices in Visayas and Mindanao shall be for the account of GCG.

Alternatively, GCG can request for scanned copies of complete case files to be sent via electronic transfer with the necessary security protocols, such as but not limited to, password protecting of files, as may be defined by the official representatives of the Parties to this Agreement.
 - 2.6. The OMBUDSMAN shall, upon receipt of the request for the reproduction of the case files, cause the same to be reproduced within a reasonable period on the account of the GCG, and shall inform the GCG within the same time when the files are ready;
 - 2.7. The OMBUDSMAN reserves the right to exclude certain documents which may be restricted by law or existing policy;
 - 2.8. The GCG, upon notice from the OMBUDSMAN, shall endeavour to have the photocopies of the case files picked up within 3 days therefrom.
3. **Automatic Notice.** – The OMBUDSMAN shall immediately notify the GCG whenever a case is filed against any Director/Trustee of a GOCC when the same is pending preliminary investigation / administrative adjudication.



4. **Mutual Assistance.** – Should either the GCG or the OMBUDSMAN, in the exercise of their regular mandated functions, be able to receive reports of administrative or criminal cases committed by Directors/Trustees, in connection with their public duties and functions, it shall, within a reasonable period, relay the other of such information, not otherwise confidential. Either of the PARTIES may enlist the assistance of the other in conducting further investigation relative to the said information, with the end in view of consolidating the information against the said Directors/Trustees in connection with their official duties and functions.
5. **Confidentiality Agreement.** – The GCG shall not divulge or disclose to third persons any information obtained by the Commission in the course of this agreement. Any and all information acquired during the agreement shall be treated with utmost confidentiality and secrecy. The GCG shall keep confidential any such information even after the termination of this agreement. Moreover, the use of any information supplied in satisfaction of the request shall be subject to the limitation that, without the prior consent of the OMBUDSMAN, the GCG:
- a. will not permit the use of any information or document obtained from the OMBUDSMAN for purposes other than those stated in the request;
 - b. will not permit the release of any information or document obtained from the GCG to any other PARTY; and
 - c. will not use such information or documents as evidence in any legal or judicial proceedings.

A breach hereof shall constitute one of the grounds for pre-termination of this agreement, without prejudice to such other legal actions that the OMBUDSMAN may take against the GCG or any of its officials or employees.

6. **Collaboration.** – The OMBUDSMAN and the GCG shall collaborate closely, through the designated members of both agencies, for the expedient release of the requested case files within 10 days from the receipt of the official requests from the GCG by the OMBUDSMAN.
7. **Amendments.** – Any modification, alteration, addition or changes in the terms and conditions hereof shall not be binding on the Parties, unless the same are made in writing and duly executed by the Parties concerned.
8. **Separability.** – If for any reason, any section or provision of this Memorandum of Agreement is declared to be invalid, the other sections or provisions thereof which are not affected thereby, shall continue to be in full force and effect.
9. **Effectivity.** – This Memorandum of Agreement shall take effect upon the execution by the Parties.



IN WITNESS WHEREOF, the parties have hereunto set their hands this 21st day of June 2013 at Quezon City, Philippines.


OFFICE OF THE OMBUDSMAN


GOVERNANCE COMMISSION FOR
GOCCs


HON. CONCHITA CARPIO MORALES
Ombudsman


HON. CESAR L. VILLANUEVA
Chairman

Signed in the Presence Of:


RAINIER B. BUTALID
Commissioner
GOVERNANCE COMMISSION FOR
GOCCs


WEOMARK RYAN G. LAYSON
Assistant Ombudsman
OFFICE OF THE OMBUDSMAN

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
QUEZON CITY) s.s.


BEFORE ME, a Notary Public for and in the above-indicated locality, this 21st day of June 2013, personally appeared and exhibited to me their respective IDENTIFICATION DOCUMENTS hereinbelow described:

Name	ID #	Date / Place Issued
CONCHITA CARPIO MORALES	Office I.D. No. 110110	July 2011 / Quezon City
CESAR L. VILLANUEVA	Philippine Passport No. XX1750638	August 05, 2008 / DFA Manila

all known to me and known to be the same persons who executed the foregoing instrument consisting of five (5) pages including this one, which they signed and acknowledged before me as their own free and voluntary act and deed.

IN WITNESS WHEREOF, I have set my hand and affixed my notarial seal on the date and at the place first indicated above.

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Series of 2013.


ATTY. ANA MARIA PAZA BANAAG
NOTARY PUBLIC
Until December 31, 2013
IBP No. 878815, 01/06/12
PTR. No. 8136123, 01/13/12
Roll No 54733